



The Influence of Labour Legislation on Job Creation and Job Sustainability in South Africa

Catharina A.J. Womack

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Catharina A.J. Womack



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Research Justification

This scholarly book focuses on the issue of high unemployment and the challenges related thereto in South Africa. It demonstrates the urgent need for research into the contribution of job creation to poverty alleviation and economic growth. This research is relevant from a legal, economic and social sciences point of view. The main thesis of the book is to explore the influence of labour legislation on job creation. It investigates sustainability regarding employment relationship through the lens of two primary participants: business and organised labour. This book adds value to the social justice context, from both societal and business point of view. It provides business and unionised labour a voice from which the influence of labour legislation on job creation and job sustainability can be addressed. The book demonstrates that labour legislation is not the only factor to consider with regard to the creation and sustainability of jobs, but the prevailing economic and political environment also needs to be taken into account. The informed manner in which these challenges are addressed has the potential to benefit society as a whole. This multi-disciplinary research generates a new perspective on labour legislation. The research results prevalent in the book are original as multi-disciplinary empirical research was conducted in which the attitudes of business people as well as trade unions towards the regulation of the employment contract by various labour laws were assessed. This scientific endeavour is significant from a business, labour and societal standpoint – specifically with regard to current legislative regulatory barriers, economic and political risks that could undermine job creation and job sustainability in South Africa. In the book's multi-disciplinary methodology, a parallel convergent mixed-method approach is used. Quantitative and qualitative data were first analysed separately and then merged. The qualitative findings correlate with and support the statistical findings. The author declares that the manuscript represents a substantially reworking of more than 50% of her obtained PhD. She also declares that there is no plagiarism in the manuscript.

This research forms part of the research Focus Area at the Durban University of Technology: 'Gender Justice, Health and Human Development', led by Prof. Dr Cheryl Potgieter.

Catharina A.J. Womack, Department of Applied Law, Faculty of Management Sciences, Durban University of Technology, Durban, South Africa.

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Biographical Note

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Catharina A.J. Womack has a PhD in Management Sciences (Business Administration). Her defined areas of specialisation are labour laws and legal practice. The title of her other research publication is *The Impact and the Effect, of the Management and Control of Judges by the Executive on the Independence of the Judiciary*. In addition to her research publications, Dr Womack has to her credit a textbook, titled *A Practical Guide to Legal Support Staff* published by Juta, which is now in its second edition. Dr Womack has 27 years' lecturing experience at, *inter alia*, the Durban University of Technology. In addition, she is an admitted attorney of the High Court, a conveyancer and a notary. Dr Womack is a member of the KwaZulu-Natal Legal Practice Council and the Christian Lawyer's Association. She practised as a sole practitioner for five years. She currently practices as a consultant to Römer Attorneys.

Abbreviations and Tables Appearing in the Text

List of Abbreviations

ACA	Association for Communication and Advertising
AIDS	Acquired Immunodeficiency Syndrome
B-BBEE	Broad-Based Black Economic Empowerment
B-BBEEA	Broad-Based Black Economic Empowerment Act
BCEA	<i>Basic Conditions of Employment Act</i>
CCMA	Commission for Conciliation, Mediation and Arbitration
COIDA	Compensation for Occupational Injuries and Diseases Act
CSR	Corporate Social Responsibility
EEA	Employment Equity Act
ESA	Employment Services Act
ETIA	Employment Tax Incentive Act
FDI	Foreign Direct Investment
HIV	Human Immunodeficiency Virus
ILO	International Labour Organisation
IT	Information Technology
LRA	Labour Relations Act
NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
OECD	Organisation for Economic Co-operation and Development
OHASA	Occupational Health and Safety Act
RQ	Research Question
SACCI	South African Chamber of Commerce and Industry
SADAC	Southern African Development Community
SARS	South African Revenue Services
SDA	Skills Development Act
SDL	Skills Development Levy
SDLA	Skills Development Levies Act
SETA	Sector Education Training Authorities

SME	Small and Medium-sized Enterprises
SMME	Small, Medium and Micro-enterprises
SPSS	Software Package for the Social Sciences
TES	Temporary Employment Services
TNC	Trans National Corporations
TU	Trade Union
UIA	Unemployment Insurance Act
UIF	Unemployment Insurance Fund

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Preface

Catharina A.J. Womack

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The South African economy is confronted with many challenges, notably high levels of poverty and unemployment. Job creation and job sustainability are of utmost importance, especially during the present economic climate in South Africa. The primary objective therefore needs to be growth, job creation and job sustainability. It is important not only to create more jobs but also to sustain existing jobs. At issue is the influence of labour legislation on job creation and job sustainability.

The multi-disciplinary study explores and focuses on how the 1996 Constitution of South Africa and labour legislation, *inter alia*, the *Basic Conditions of Employment Act* No. 75 of 1997 (BCEA); the *Labour Relations Act* No. 66 of 1995 (LRA); the *Employment Equity Act* No. 55 of 1998 (EEA); the *Skills Development Act* No. 97 of 1998 (SDA) and the *Broad-Based Black Economic Empowerment Act* No. 53 of 2003 (B-BBEEA) influence job creation and job sustainability in South Africa.

The unique contribution to knowledge creation was the unearthing of the hidden opinions of the business and trade union participants and respondents on how the present labour legislation influences job creation and job sustainability in South Africa. It was found that deregulation of and a more flexible South African labour market will not necessarily lead to the improvement of business and investor confidence, neither will it necessarily result in the creation and sustaining of jobs.

An interpretive, pragmatic, parallel convergent mixed-method approach was adopted, in which qualitative and quantitative

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techniques, methods, approaches, concepts and language were mixed and combined. Two types of research instruments, a survey questionnaire and an interview schedule, were used. Survey questionnaires were used and semi-structured interviews were conducted with businesspersons, senior managers, entrepreneurs and trade unionists, including senior trade union officials in South Africa to probe their experiences of the influence of labour legislation on job creation and job sustainability. The quantitative data and qualitative data were initially analysed separately using both the Statistical Software Package for the Social Sciences (SPSS) version 24.0 to analyse the quantitative data and In Vivo (NVIVO) PRO version 24.0 software program to analyse the qualitative and mixed-method data to establish the opinions and perceptions of entrepreneurs, managers and trade unionists. The constant comparative method of qualitative analysis was used. Data reduction was carried out in three stages, each representing a progressively higher level of theoretical abstraction. The results from each strand were subsequently combined, conclusions were drawn and recommendations made to all relevant stakeholders in respect of the findings.

The findings of the research are expressed as an integrated theory and as a series of propositions, generalised within the boundaries of the study, relating to the influence of labour legislation on job creation and job sustainability in South Africa. The conclusions are summarised in seven statements. Firstly, labour regulation is necessary; it fulfils a normative role and plays an important role in ensuring fairness and equity in the employment relationship. Secondly, labour legislation, in regulating the employment relationship and the enforcement of compliance, influences job creation and job sustainability. Thirdly, the LRA, the EEA and the B-BBEEA, in regulating equity and fairness overall, have influenced job creation, some to a greater extent than others. Fourthly, businesses that are incentivised by the SDA, the EEA, the B-BBEEA, the *Employment Tax Incentive Act* (ETIA) and the *Unemployment Insurance Act* (UIA) to train and develop their workers are expanding, growing, creating and

sustaining jobs. Fifthly, labour legislation *per se* is not the problem, but rather the implementation thereof is. Sixthly, the administrative burden and the cost of compliance with the BCEA, the LRA and the SDA threaten existing jobs and job creation. Finally, the administrative burden of complying, the enforcement of compliance and the costs of compliance with the B-BBEEA and the EEA are impeding job creation and job sustainability. The shortage of skills in South Africa has adverse consequences for all South Africans, including the business community. The political and economic uncertainties have a negative influence on local and foreign investor confidence, which has a negative impact on the South African economy.

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

Overview and background to the study

Keywords: Introduction; Background; Rationale; Purpose; Aim.

■ Introduction

This study is multi-disciplinary as it is a cross-over of the fields of both management and law. The study seeks to explore the influence of labour legislation on job creation and job sustainability. The regulatory framework consists of the *Basic Conditions of Employment Act* No. 75 of 1997 (BCEA); the *Labour Relations Act* No. 66 of 1995 (LRA); the *Employment Equity Act* No. 55 of 1998 (EEA); the *Skills Development Act* No. 97 of 1998 (SDA) as well as the *Broad-Based Black Economic Empowerment Act* No. 53 of 2003 (B-BBEEA). The knowledge generated from this inquiry provided new insights to assist in job creating and job sustaining practices of businesses in South Africa.

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

■ Background and context

It is widely accepted that there is a very great need to create jobs, as a means to stem the tide of chronic poverty in South Africa (Godfrey et al. 2017:799). Ongoing criticisms are that the over-regulation of the labour market is stifling economic growth, job creation and job sustainability.

The legislative framework as a whole has been criticised as being skewed too much in favour of labour and of creating an inflexible labour market, which is not conducive to job creation (Venter et al. 2011:576). Neo-liberalists have identified labour market inflexibility as the primary cause of South Africa's poor standing amidst the global competition. Abrassart (2015:226) confirms that the cost of labour, regularly labelled as labour market rigidity, is frequently identified as the central reason for the unemployment problem. Venter et al. (2011:76) identified issues such as restrictive labour market conditions and the lack of skilled labour as the primary contributory factors to South Africa's poor global competitive standing, as well as to the low levels of job creation and job sustainability. Abrassart (2015:227) agrees that there is a greater need to match skills in the labour market because of tertiarisation, skill-biased technological change and a knowledge-based economy.

Standing (2011:267), Standing (2007:1) and Standing, Sender and Weeks (1996:113-126) identify problems influencing job creation and job sustainability, such as below-average entrepreneurial activity; rising unemployment (because of factors such as regional disparities in race, age, gender, education and skill differentials); barriers to entry; duration of unemployment

and discouragement to obtaining employment. In addition, economic climate and inefficient South African Revenue Services are some of the main reasons for the lack of job creation (Darroll 2011:1). In addition, inflexible labour legislation, Broad-Based Black Economic Empowerment (B-BBEE) are major regulatory barriers to job creation (Abrassart 2015:226; Darroll 2011:1). Van Niekerk et al. (2008:7-8), Faulkner and Loewald (2008:18) and Herrington Kew and Kew (2010:5) share the critics' view that there may be a link between inflexible labour markets and over-regulation stifling of job creation. Accordingly, the South African business community is demanding the deregulation of the labour market in order to facilitate job creation, job sustainability and to avoid further job losses (Almeida & Carneiro 2009:28-29; Arnold & Hartman 2005:207-208; Darroll 2013:15).

The argument from a neo-liberal perspective is for the South African labour market to be deregulated. However, this is not ideal from a social justice point of view. The question is not whether regulation is wanted, but rather what kind of regulation is required (Santos 2009:48). The ethical value that underlies sustainable business practices is the value of social justice, in particular the ethical requirement to treat others fairly, which includes respecting employees' labour rights (Winston 2011:33). As a result, trade unions are demanding greater regulation of the labour market and increased labour protection as a solution to job creation and job sustainability, as well as to avoid further job losses (Muthethwa 2013:12). Nevertheless, Abras, Almeida, Carneiro and Corseuil's (2018:3) argue that labour regulations play an important role in creating jobs. Their study found that stringent enforcement increased job creation in the formal sector (Abras et al. 2018:2). Furthermore, business has a key role to play in promoting social, economic and environmental development, commensurate with a socio-economic responsibility towards workers and wider society (Patel & Mushonga 2014:55).

Venter et al. (2010:239) maintain that one of the major concerns of political interference with the labour relationship is the B-BBEEA's influence especially on small enterprises. Venter

et al. (2010:239) also question whether compliance with legislation is overly onerous. Other specific constraints include general economic concerns (such as the influence of economic conditions and the cost of basic inputs such as electricity); poor quality government administration; onerous government legislation and the influence of South Africa's poor skills base (Herrington et al. 2010:5). The authors highlight the need for policy interventions aimed at supporting and mentoring entrepreneurs through the difficult process of firm birth (Herrington et al. 2010:18).

Faulkner and Loewald (2008:18) are of the view that political and economic leadership, as well as economic vision, are essential to improving the country's growth performance. They argue that the strength of South Africa's labour market institutions, unions and the collective wage bargaining structure have reduced the flexibility of the labour market, ensuring that prevailing wages are high as compared to wages across other countries at a similar level of development. Hoeppli (2014:9) also blames the poor education system, a lack of awareness of what financing options are available and the difficulties of obtaining financing as major barriers to entrepreneurship, job creation and job sustainability.

According to Betcherman, Luinstra and Ogawa (2001:64), the two economic approaches are dominated by opposing economic views, namely: the Keynesian approach that favours the welfare state and the protection of workers through labour legislation and collective bargaining; and the neo-classical approach that emphasises the advantages of encouraging market processes (Mahadea & Simson 2010:399). The political, economic and social policies implemented by government essentially determine economic wellbeing and consequently influence the labour market in terms of employment levels (Bendix 2019a:478). The neo-classical approach has historically been the dominant approach in South Africa and has persisted despite the constitutional change in 1996. Recently, it has become apparent that favouring the neo-classical approach has caused further imbalances, increased unemployment, poverty and

socio-economic inequalities because of industrial unrest, especially in the mining sector. Bendix (2010:552) posits that a number of the problems perceived by business persons and trade unions can be addressed through the formation of a new social pact between employers, employees and the state in order to ensure the growth and sustainability of local businesses.

■ Rationale for the study

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

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

■ Problem statement

Research indicates that in South Africa, more job destruction than job creation is taking place and unemployment and poverty continue to rise (Aluko & Kibuuka 2018:2; Bendix 2019:488; Godfrey et al. 2017:799; Hoeppli 2014:9; Oosthuizen 2019:3; Pieters 2013:3). South Africa's current high unemployment rate reported at 29.1% (StatsSA Q1 2019:1) and its low economic growth at minus 0.7% has caused slow employment growth; increased unemployment and under-employment; the changing

nature of work; casualisation and productive decentralisation (Aluko & Kibuuka 2018:2; Meyer 2017:504; Oosthuizen 2019:3; Odeku & Rudolf 2019:1; Tzehainesh 2010:20). Meyer (2017:504) contends that high levels of unemployment correspond to structural weaknesses in the economy that has a destructive effect on poverty, inequality and social problems. Primary causes of the high unemployment rate, particularly among the youth at 38.8% (Bendix 2019:488) and poor job creation appear to be low skills levels, a poor education system, insufficient education, training initiatives and the inability of the South African economy to create sufficient jobs (Aluko & Kibuuka 2018:2; Le Roux 2013:508). The unemployment rate has worsened in comparison to the unemployment rate in the third quarter in 2017 at 27.7% when the annual growth rate declined to minus 0.7% (Aluko & Kibuuka 2018:2). Hoeppli (2014:9) maintains that business confidence is low and that the local economy is not growing at the rate that will reduce unemployment and poverty.

Regulation of the labour market by labour legislation is blamed for jobs not being created, jobs being lost, rising unemployment and poverty in South Africa. The global nature of the South African economy has prompted a vigorous debate among various interest groups, in particular business and economists, who have called for the relaxation of labour laws as a means of attracting foreign direct investment (FDI) (Chacaltana 2009:1; Worku 2015:58). The regulatory burden is a source of concern for South African businesses, especially small businesses (Darrol 2013:15). The recurrent question of whether or not the labour market is over-regulated or under-regulated, however, depends on which labour market theory is adopted (Basu et al. 2017:935).

Greene et al. (2007:85) claim that minimum wage laws are significantly detrimental as they create unemployment through pay scales being artificially kept at levels higher than worker productivity, thereby pricing workers out of the labour market. In addition, Venter et al. (2010:138) contend that regulation and

minimum wage fixing have resulted in increased direct and indirect labour costs. Noelke (2011:1) confirms that the two groups most negatively affected by minimum wage regulations are the poor and the youth. On the contrary, Sturn (2018:674) found that there is negligible proof that minimum wages cause job losses among low-skilled workers, low-skilled female workers and young workers. Basu et al. (2017:935) nevertheless maintain that an important feature of labour regulation especially in light of rising inequality is the minimum wage.

Du Plessis and Fouché (2019:51), Marneffe and Vereeck (2011:352), Venter et al. (2010:132) and Stähler (2008:1163) postulate that there is a danger that the implementation of the presumptions, in terms of Section 83A of the BCEA and Section 200A of the LRA, can further stifle job creation. The concern is that the previously mentioned presumptions will result in businesses' perception of the South African labour market being even more inflexible, inefficient and overcontrolled, further increasing labour costs. It is unclear, however, whether deregulation and the creation of a more flexible South African labour market will improve investor and business confidence and business sustainability, or whether the result will increase job sustainability and stimulate job creation. It may also not be in the interests of social justice (as understood in the South African Constitution) for the labour market to be deregulated.

The South African government has provided businesses with financial incentives through the EEA, the SDA, the *Skills Development Levies Act* No. 9 of 1999 (SDLA) and the *Employment Tax Incentive Act* No. 26 of 2013 (ETIA) to create jobs and to sustain jobs through skills development (South Africa, Department of Labour 2013:5). There is limited information on which aspects of labour legislation influence job creation and job sustainability. Thus, there is a need to explore, identify, understand and address aspects of labour legislation which may be hindering or impeding job creation and job sustainability.

■ Aims and objectives of this study

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

The objectives of the study are to:

- Describe, explore and understand the need for creating new jobs and for sustaining existing jobs.
- Describe, explore and understand through a literature review the regulatory influence of labour legislation on job creation and job sustainability.
- Explore, compare and relate the perspectives of businesses and trade unions on the extent to which selected labour legislation in South Africa, namely the BCEA, the LRA, the EEA and the SDA (1) fulfils the normative role of labour law, which is to protect workers, promote social equality and economic efficiency and (2) influences job creation and the sustainability of jobs particularly with respect to the manner in which it (1) assists with with and/or encourages job creation and the sustaining of jobs, (2) threatens existing jobs and job creation, (3) and impedes job creation and the sustaining of jobs.

■ Research questions

The research questions of this study are:

- Is there a need to create and sustain jobs in South Africa and how are jobs created and sustained in South Africa?
- Does labour legislation regulation influence job creation and job sustainability in South Africa?
- Which aspects of labour legislation influence job creation and job sustainability in South Africa?
- Which aspects of labour legislation should be amended to enable job creation and job sustainability to occur in South Africa?

- What are the factors, apart from labour legislation, affecting job creation and job sustainability?
- What strategies can businesses, trade unions and government implement to increase or improve job creation and job sustainability?
- To what extent do the qualitative results confirm the quantitative results of the empirical study?

■ Research methodology and design

The empirical multi-disciplinary transformative parallel mixed-method research study (Mertens 2007:212) explored the extent to which labour legislation influenced job creation and job sustainability in South Africa and how labour laws and policies could best respond to South Africa's present employment protection challenges. The normative principle used in order to evaluate this influence was social justice, which forms the basis of all legislation in South Africa, particularly labour legislation, as a price cannot be placed on fundamental rights, such as human rights and equity.

A meta-theory made up of a combination of the Phenomenological, Social Constructionist, Interpretivist, Labour Law Theory of Social Justice and Industrial Democracy (based on equality and fairness) (Davidov & Langille 2011:18) was used as the underpinning theoretical framework and basis for the empirical research. The conceptual and theoretical framework arose from the Michelman's Needs-Based Theory of Social Justice and the Constitutional Transformation approach (Fabbrizi 2018:71; Van der Walt 2004:289).

The intention of this research was to be solution orientated, hands-on and recognised by everyone to be just (Coates 2007:581). In order to do so, the areas of labour protection legislation were discussed. Consequently, a mixed-methods research methodology (Onwuegbuzi & Burke 2004:17) using the

convergent parallel mixed-method design (Creswell & Plano Clark 2011:78) and the concurrent triangulation approach is deemed to be the most appropriate method for this study.

The research began with a deductive thinking approach (literature review and theories) and then engaged in an inductive approach with testing reality by gathering data using both qualitative and quantitative techniques. The literature reviewed also revealed paucity in prior research on this topic. The intention of this study was to gain a better understanding of the sentiments of business and trade union respondents on the influence of labour legislation on job creation and job sustainability. South Africa was selected as the geographical area where the study would be conducted.

The data production process entailed examining local and foreign literature, conducting mainly telephonic interviews, some face-to-face interviews and self-administered online survey questionnaires that were analysed to establish the opinions and perceptions of business persons and trade unionists. Survey questionnaires and semi-structured interviews were the two main tools used for gathering the necessary data. The target population comprised businesses and trade unions. The two groups are unequal.

Random sampling was used for the survey participants and non-probability purposive convenience sampling was used for the interview participants (Creswell 2015:78). Both sets of participants came from the same target population. An attempt was made to obtain as many survey responses as possible. Seventy-one individual business persons and 18 individual trade unionists actually participated in the survey. Sixteen business persons and six trade unionists who represented various business sectors of the South African labour market also participated in the interviews.

This exploratory study took place over a period of just over one year, commencing on 01 March 2016 and ending on 31 March 2017.

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

■ Delimitations

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

■ Conclusion

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

An integrated theory and series of propositions relating to the general factors influencing job creation and job sustainability in South Africa

Keywords: Theory; Social justice; Labour law; Economic; Factors.

■ Introduction

It is a widely accepted fact that there is an urgent need to create jobs, as a means to stem the tide of chronic poverty in South Africa (Godfrey et al. 2017:799). Additionally, job creation is beneficial to both businesses and individuals (Chipeta, Meyer &

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Muzindutsi 2017:34). Klose and Muysken (2016:187) agree that the jobs created should lead to sustainable employment. There is also a need to create sustainable quality jobs within the social justice context. The creation of sustainable jobs aids in preserving economic and social stability (Chipeta et al. 2017:33). There are increased concerns however that the South African economy is not creating enough jobs, as well as concerns about the quality of the jobs that are being created (Muthethwa 2013:1). Both government and business play a vital role in making important strategic decisions about infrastructure, the restructuring of the economy, as well as the exposure of businesses and their ability to deal with and respond to greater risk and macro-economic uncertainty, which further influences economic growth, job creation and job sustainability. Social dialogue is an instrument for the promotion of labour justice (Araújo & Meneses 2020:18).

From literature, it is clear that some of the issues generally influencing and affecting job creation and job sustainability are globalisation, international competitiveness, trade reforms, economic policies, strategies and economic climate. This chapter discusses and explores the general influence the external and internal factors have on economic growth, the employment relationship, job creation, job sustainability and job destruction, before attempts are made in Chapter 3 to explore the explicit influence, if any, that legislative regulation has on the labour relationship, in particular on job creation and job sustainability.

The literature appears divided over what influences economic growth and consequently, what influences job creation and job sustainability. There is sufficient empirical support in the literature that economic growth generates more employment prospects and that various sectors in an economy have diverse job creation potential, such as the service sector in the urban areas and the agricultural sector in the rural areas (Suryadarma, Suryahadi & Sumarto 2013:549). Zagler (2007:228) contend that economic growth is driven by structural change and that there is an association between unemployment, structural change and economic growth. Munin (2012:26) postulates that economic

growth does not necessarily generate equitable and sustainable outcomes *per se*. In addition, Chipeta et al.'s (2017:33) study revealed that although economic growth has a positive impact on job creation, the impact is low. Influences on economic growth appear to be dependent upon which economic theory is applied to the research.

The relationship between labour regulation and economics (Chacaltana 2009:1) cannot be ignored, especially in light of the fact that economists constantly blame labour and labour-related laws for imposing rigidities on the labour market (Worku 2015:58). Jakab, Henriett and Szöllős (2018:10), however, contend that it is inappropriate to separate the legal system from its external environment. The authors aver that the decision whether legislation must be aligned with market needs or a higher-level approach is dependent on which economic viewpoint is adopted; namely, whether the market runs in accordance with labour law (the Neo-classical approach) or whether the labour law is independent of economic expectations (Keynesian economic approach) (Jakab et al. 2018:18). The neo-classical approach has historically been the dominant economic approach in South Africa and has persisted despite the constitutional change in 1996 (Bendix 2010:552). However, this may not be ideal from a social justice point of view. Wolterstorff (2013:389) emphasises that there is a need to guard against social injustices inflicted on members of society by laws and public social treatments. Le Roux (2013:513) maintains that a shift towards an economic model that focuses on sustainable human wellbeing rather than one that focuses on gross domestic product-based measures of progress is necessary. Consequently, the opposing Keynesian economic approach (based on the Needs-Based Theory) that is concerned with individual need, marginality, weakness, powerlessness and lack of rights (Schulz 2015:274; Van der Walt 2004:289) is a better economic approach for South Africa. Jakab et al. (2018:10) agree that the labour market is influenced by economic and social changes thereby necessitating the increased need for the labour market to be regulated. Nevertheless, the

authors posit that labour law regulations are not the only factor interfering with social and economic processes (Jakab 2018:10).

Nili (2011:630) contends that there is an international moral duty on the affluent nations to stop exploiting and harming the world's poor. In addition, Sornarajah (2006:330) claims that law should be found in justice rather than in power. In terms of the *Constitution of the Republic of South Africa Act, 108 of 1996* (the Constitution) and particularly the Bill of Rights, social justice and labour legislation have sought, through the establishment of a social pact between key players, to strike a balance between the opposing interests of rights and needs. It is therefore important to consider social justice that is enshrined in the Constitution when regulating the labour relationship between the parties.

■ Theoretical framework to assess the influence of labour legislation on job creation and job sustainability

This section provides the rationale for the chosen labour legislation framework and social justice as the underpinning theory forming the theoretical framework and the basis for the empirical study. Efficiency and social justice are the normative foundations of labour law (Araújo & Meneses 2020:13; Collins 2011:137). Social justice includes economic justice.

The ethical value that underlies sustainable business practices is the value of social justice, in particular, the ethical requirement to treat others fairly, which includes respecting employees' labour rights and preventing unjust exploitation (Winston 2011:33). Consequently, Anstey (2013:135) claims that sustainable businesses are accountable for preventing the unjust misuse of human and natural capital.

Historically, social justice has been neglected in South Africa in the pursuit of the adoption and implementation of global neo-liberal economic policies and strategies to help the growth of South African economy (Von Broembsen & Davis 2008:1).

Consequently, the South African government needs to address this neglect urgently, which it appears to be doing through the adoption of its New Growth Policy (Swanepoel et al. 2012:286) and through its National Development Plan (NDP) 2030. Smith (2007:3) *supports* Von Broembsen and Davis' *argument* and *maintains* that what is required is the collaboration of a multi-stakeholder, multi-sector and effective development partnership to address the social and economic inequalities which exist in South African society.

Globally, there is recognition and an expectation that certain levels in terms of human rights have to be complied with (Bronstein 2009:128; Kahn 2019:863). Moreover, the International Labour Organisation (ILO) states that everyone should have a right to decent work that incorporates the right to a living wage (Rogers 2014:1544; Warikandwa & Osode 2014:43). The ILO has primarily regarded economic and social rights as indivisibly connected to any robust notion of human rights (Fabbrizi 2018:46). Consequently, in achieving social justice, one must take into account not only the ILO's standards but also international human rights law (Bellace 2011:6). Thus, the ethical normative principle that was used to evaluate the influence of labour legislation on job creation and job sustainability in the empirical study was social justice.

The ideas of social justice and responsibility are not new. They have accompanying neo-liberal ideas. The two opposing economic frameworks, namely the neo-liberalist framework and the neo-corporatist framework, assert the extent to which the South African government should intervene in the industrial relations system. Neo-liberalists argue that the government should play a minimal role to facilitate a negotiation framework between employers and employees, whereas corporatists support a social-democratic approach that states that the government should play an active role in the industrial relations system wherein business, labour and the state work in cooperation (Klerck 2009:23). At the centre of it all is the issue of how power is distributed in the South African society. The neo-liberalist

versus neo-corporatist theoretical framework therefore shapes the extent to which employers perceive labour laws or the state's regulatory role in influencing business, and consequently job creation and job sustainability.

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

■ Legal theories from a labour perspective

Labour law requires a theory to justify its existence and weight for typical labour law rules and principles. It also requires theory to address the moral, political and legal force of labour law. Schömann and Schömann, cited in Houseman and Osawa (2003:352) reference two legal theories to explain the new roles of laws and changes to the laws, namely the Legal Theory of the Standard Employment Relationship and the Theory of Reflexive Labour Law (Jakab et al. 2018:11). 'Both theories highlight the need to take into account the internal and external factors in legal regulation to better understand how the regulation of non-standard work developed' (Levin-Waldman 2012:27; Schömann & Schömann 2003:352).

Collins (2011:154), however, argues in favour of adopting a legal theory that constitutionalises fundamental rights as a justification for labour law. According to the author, there are two primary justifications for a legal theory. The first justification, namely, neo-liberalist efficiency-based wealth maximisation justification, is about efficiency or welfare considerations wherein labour law is concerned with regulating employment contracts through a mixture of special contract law and market regulation

(Collins 2011:137). The second justification for labour law is social justice. The social justice justification is based on considerations of a fair distribution of wealth, power and other goods in a society wherein labour law is concerned with implementing social justice by supporting the collective bargaining system and the imposition of basic labour standards such as minimum wages ‘because these interventions in the labour market are calculated to improve the position of poorer and weaker members of the society’ (Araújo & Meneses 2020:5; Collins 2011:137).

Botero et al. (2004:1340) claim that a country’s approach to regulation under the legal theory is shaped by its legal tradition. The authors contend that the political power of labour has been central to the legal and regulatory design of the 20th century, which is true of South Africa wherein positivism shaped its legal tradition (Botero et al. 2004:1340). They further contend that it is common knowledge that South Africa inherited her basic legal structures from the English, which significantly influenced the South African legal system, particularly with regard to legislation. During that time, labour law adopted a positivist theoretical approach that was primarily regulatory and anti-social justice, as it promoted discrimination and unfair working conditions (Botero et al. 2004:1340).

Since 1994, under the new constitutional dispensation a more social-democratic and co-ordinated variety of capitalism was adopted (Nattrass 2014:56). Labour law has become more concerned with social justice and human rights by seeking to redress past inequalities and injustices. Consequently, social justice as a primary ethical value and normative principle was used to determine labour legislation’s influence on job creation and job sustainability.

□ The social justice theory of labour law

Some of the leading theories of social justice include the Influential Utilitarian Perspective of Habermas, David Miller’s Pluralistic Theory of Social Justice and the Dominant theory of

John Rawls: Rawls' Theory of Social Justice (Lindblom 2011:594; Robinson 2014; Taherzadeh 2012:3). Nevertheless, Amartya Sen's alternative capabilities perspectives and Martha Nussbaum's concept of human dignity should also be considered (Morris 2002:368; Webster et al. 2012:165). The Labour Law Theory of Justice is defined by labour law's morality (Langille 2011:11) and labour law's jurisdiction and content are bound together by this morality (Winston 2011:33). Consequently, labour law is an exercise in ethics, applied and otherwise (Langille 2011:3).

Historically, two predominant elements for the justification of labour law are the efficiency-based or welfare tradition and the social justice tradition, which ensure the fair distribution of wealth, power and other goods in a society (Collins 2011:137). Traditionally, labour law's 'paramount and systemic rationale' is the 'protection of the worker against unfair exploitation', which has caused constraints to be imposed on 'general contract and commercial law' (Langille 2011:8). Therefore, the normative foundations of the content of labour law are based on the inequality of the bargaining power relationship that 'labour is not a commodity', as well as on 'human dignity' (Langille 2011:7; Webster et al. 2012:165). Nevertheless, Sen's (1997:31) notion of substantive human freedom should be the overriding consideration and a distinction should be drawn between workers as objects and workers as subjects. Furthermore, social justice, the right to decent work and human rights are all inextricably linked (Bellace 2011:27). Thus, the overall purpose of labour regulation is to improve the lives of the inhabitants of the world, including their work (Abrams et al. 2018:2; Basu et al. 2017:935; Langille 2011:12). 'The right to decent work is not only to survive but to prosper and to have a dignified and fulfilling quality of life' (Rogers 2014:1544). Hence, the social justice theory of labour law will be used as the underpinning theory that forms the theoretical framework and the basis for this study of the influence of labour legislation on job creation and job sustainability.

The advantage of social justice is that it enforces on each person a personal obligation to act with others to create and constantly improve establishments as instruments for personal and social development (Center for Economic and Social Justice n.d). Social justice also encompasses economic justice and workplace justice (Lindblom 2011:594). Consequently, Van der Walt (2004:257) contends that the Transformation-Based Approach to the Theory of Social Justice is most appropriate for the South African context.

□ Transformation-based approach to the theory of social justice and human rights

Van der Walt (2004:257) claims that the Transformation-Based Approach to the Theory of Social Justice satisfies the requirement for and the validation of constitutionally established and judicially enforceable social and economic rights (Fabbrizi 2018:71). Consequently, he maintains that labour legislation regulation is necessary and justified for the balancing of rights, social justice and safety (Van der Walt 2004:257). In addition, the author contends that the two contrasting theoretical approaches, namely the rights-based and needs-based approaches, separately or combined are unable to attend to all aspects of social justice in a transformative context, as is required to be in accordance with the Constitution which entrenches social justice and human rights (Van der Walt 2004:257).

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

The second Needs-Based Theoretical Approach centres on the notion of weakness rather than strength and relies on moral or psychological replies to total need or unbearable individual suffering, in order to clarify and validate the establishment and implementation of social and economic rights (Van der Walt 2004:257). Warikandwa and Osode (2014:44) claim that the aim of distributive justice is simply to re-order economic relations in order to achieve a just division of all benefits and burdens in society, which can only be achieved once a minimum standard has been set. Whereas, Michelman's Theory of Social Justice chooses extreme need or deprivation as its basis and reinforces that a minimum threshold of social insurance must be supplied before the normal economic equalising of rights can take place (Van der Walt 2004:290). Accordingly, corrective justice should take preference over distributive justice and economic efficiency.

Therefore, even if labour legislation influences job creation and/or job sustainability and labour regulations are found to be too rigid, labour legislation is nevertheless necessary and justified in terms of the Needs-Based Theoretical Approach, as well as in terms of the Constitutional Transformation-Orientated Approach (Fabbrizi 2018:71). Consequently, the Transformation-Based Approach to the Theory of Social Justice appears to be the more appropriate approach to address inequality, unemployment and poverty in South Africa (Van der Walt 2004:257).

Postone (2005:70) maintains that the basic historical transformations have re-stated the essential significance of comprehending global past forces at work and far-reaching global structural changes in the modern world. Botero et al. (2004:1342) contend that the underlying theory justifying most state interventions is that free labour markets are imperfect. The recognition of the need for state intervention to deal with the worst effects of capitalist growth and development have occurred as early as the 1900, culminating in the creation of the modern day welfare state (DeMartino 2002:229).

■ A few other economic justification theories considered

The perception of labour legislation's regulatory influence on job creation and job sustainability is dependent on which economic viewpoint it is evaluated from (Darrol 2013:14; Jakab et al. 2018:18). Consequently, the answer as to whether labour legislation influences job creation and job sustainability and the extent to which it is dependent upon the economic theories as applied in the studies explored.

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

□ The prevailing neo-classical labour market theory

Neo-liberalism is an efficiency-based theory in terms of which the control of the economic factors is shifted from government to the private sector by limiting government interference in the free markets. The main traits of neo-liberalism are a free market; the cutting of public expenditure for social services; the deregulation of markets; the privatisation of public enterprises and a shift away from community or public goods towards individual responsibility (Kitson, Martin & Wilkinson 2000:632).

The neo-classical approach claims that there may be a link between inflexible labour markets and the stifling of job creation (Abrassart 2015:226; Faulkner & Loewald 2008:18; Herrington, Kew & Kew 2010:5; Van Niekerk et al. 2008:7–8). The leading view of the prevailing Labour Market Theory is that increased competitiveness will be achieved through the reduction of labour costs (Berg & Kucera 2008:22). Hence, neo-liberalists, corporatists and the business community are all in favour of deregulation as they believe

that doing so will enable local businesses to become more competitive globally (Van der Walt, Le Roux & Govindjee 2012:3).

Conversely, the neo-classical argument is countered by Deakin, Malmberg and Sarkar (2014:2) who observed that an increasing number of studies suggest that the assumed negative effects of labour laws may be either very minor or just absent, and that such laws could actually have beneficial consequences on productivity and innovation. Likewise, Cazes, Khatiwada and Malo (2012:36) claim that there does not appear to be a strong connection between employment protection legislation and employment levels. Moreover, Deakin et al. (2014:6) contend that labour laws can have several positive and negative consequences on efficiency, contingent on the circumstances. Cazes et al. (2012:36) agree that employment heights incline to be positively related with stricter regulations. Santos (2009:51) agrees that regulation has positive economic effects for affected groupings. He asserts that internal labour markets and collective bargaining are an effective solution that cannot be supplied by individual market dealings (Santos 2009:51). Furthermore, Burgess (2010:19) opposes deregulation and maintains that deregulation tends to weaken both individual and collective labour rights by giving employers more flexible power, thereby removing power from workers and unions. Without regulation, the parties are unable to negotiate contracts that promote skills development or the ability to adapt to external market changes (Santos 2009:51).

Other significant contemplations of equity, justice and fairness deserve equally significant consideration because these values cannot be sacrificed for greater efficiency (Santos 2009:51). Furthermore, society holds these values in such high regard that it will rather sacrifice the latter for the former (Santos 2009:51). Thus, social justice is the appropriate ethical value with which to evaluate the influence of labour legislation on job creation and job sustainability.

The disadvantage of the prevailing Labour Market Theory is that labour flexibility has become symbolic of jobs beneath the minimum permissible wage; demeaning working conditions and informal, unrecorded jobs (Santos 2009:45). Lee and McCann (2008:38), cited in Berg and Kucera posit that the perpetual recommendations put forward in response to the need to be competitive and to survive in the global economy have placed a significant burden on workers. Santos (2009:45) postulates that the dominant flexibility-rigidity conception is imprudent. Additionally, labour is dehumanised when it is viewed as a commodity by efficiency theorists (Collins 2011:151; Smit 2010:4; Webster et al. 2012:165). Externalisation is often used as a strategy to save on labour costs (Tzehainesh 2010:20).

Le Roux (2013:513) claims that labour productivity is an essential ingredient of profit-making. Proposals are being forwarded that it is better for the long-term to link judicious macro-economic policies plus employment and income goals (Escudero, Khatiwada & Malo 2013:105). In addition, Botha (2015:31) contends that employees contribute to a business's long-term growth, prosperity and sustainability. Thus, social justice is the appropriate ethical value with which to evaluate the influence of regulation and labour legislation on job creation and job sustainability.

The challenge for job creation and job sustainability should not only be to manage labour costs but to simultaneously improve skills (Badenhorst-Weiss & Waugh 2015:7). Han et al. (2011:60) assert that the alleged influence of law on increased labour costs having a harmful effect cannot simply be viewed from their effect on business cost competitiveness and profit margins alone. However, Strauss and Du Toit (2010:308) contend that excessive emphasis has been put on numerous topics such as numbers, quotas and B-BBEE. The authors argue that the matter of skills has been seriously neglected and that these issues need to be urgently addressed in order to make the country more competitive globally,

as well as to improve job creation and job sustainability (Strauss & Du Toit 2010:308). Consequently, it would appear that inflexible labour market policies have been erroneously accused for weak labour market performance.

Lee, McCann and Torm (2008:416) are also of the opinion that a more flexible regulatory framework does not necessarily equate to increased growth and employment creation. They maintain that there is growing evidence that regulation may in fact bring about both economic and social benefits (Lee et al. 2008:425). Furthermore, Smit (2010:4) argues that lasting peace is based on social justice and this should be the primary aim of any labour policy both nationally and internationally. Hence, the Neo-Classical Labour Market Efficiency-Based Theory is inappropriate for the empirical study, as it promotes non-intervention by government in labour-related issues. The theory results in the cutting of public expenditure for social services, the deregulation of markets and the privatisation of public enterprises. This is a shift away from community or public goods towards individual responsibility, which is contrary to social justice, job creation and job sustainability.

□ Heterodox Keynesian fiscal stimulus and the need for the social control of business theory

John Maynard Keynes' Welfare Justification theory challenged neo-liberalism as the best course of action for capitalists. Taylor and Atkinson (2013:185) postulate that improved government backing connected to the South African NDP (2011) is necessary to subsidise national development objectives and to create jobs. Consequently, during a recession such as the present one, Keynesian policies for fiscal stimulus can be used to enlarge aggregate demand when this is too weak to engender normal production; employment (Habanabakize & Muzindutsi 2018:123; Seidman 2012:273); job creation and sustain jobs, and which is aligned with social justice.

The advantage of the Heterodox Keynesian Fiscal Stimulus theory is that Keynesian policies recognise labour rights as fundamental rights where the emphasis is on individual dignity (Collins 2011:151; Webster et al. 2012:165). Tcherneva (2012:72) states that Keynes' objective is not only to create jobs but also stable and good jobs, which is in line with fulfilling the aims of social justice. Keynes claims that public works offer employment to those who are otherwise unable to find employment and that they deal with the unemployment problem in a direct and deliberate manner (Tcherneva 2012:64). Taylor and Atkinson (2013:185) argue that the rural economy can not only be enhanced by means of better backing for agriculture, but also by way of assistance to mining, tourism, agro-processing and fisheries. Matsiliza (2018:26) and Tcherneva (2012:68) support Keynes' advocacy for a permanent public works programme as a policy of employing workers at the verge because they see it not only as a short-term solution but also as a long-term solution to attain economic stability.

Kitson et al. (2000:632) state that a minimum social wage assists in reducing income inequalities, as well as stops the marginalisation of low-income earners and the unemployed, which is aligned with social justice. The authors are of the view that this will in turn broaden job prospects and lead to gradual improvement in the labour market, especially among those previously excluded, again in accordance with the principles of social justice. They also claim that this redistributive tax-benefit system resulted in high economic growth rates, full employment and lessening income disparities during the 1950s until the 1970s (Kitson et al. 2000:632), thereby positively influencing job creation and job sustainability.

The Keynesian Welfare State Economic Theory is better suited for this study compared to the Neo-Classical Economic Theory as it promotes government fiscal intervention. The theory results in the government investing and stimulating the economy in labour-related issues (Araújo & Meneses 2020:5; Basu et al.

2017:935; Klosse & Muysken 2016:201; Rogers 2014:1543; Sturn 2018:674). It increases public expenditure for social services and the regulation of markets through a shift towards community or public goods and away from individual responsibility, which is in line with social justice, job creation and job sustainability.

□ Labour theory of value

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

The Labour Theory of Value has been extensively criticised especially by Hume who viewed it as a fallacy (Fulda 2007:55). Baird (2004:10) maintains, however, that the focus should not lie on employers' and workers' opposing interests but rather on their common goals, especially when weighing up the issue of regulation versus deregulation of the labour market. Jarvis and Sitas (2009:28) support this argument and propose a system of governance of economic institutions, which is a 'multi-vocal agency' that addresses the need for an economic system that is accountable to social and civic needs. Social dialogue forms an important part of the European Social Model in which social justice and good economic performance are combined (Araújo & Meneses 2020:11).

Consequently, the European Social Model is more appropriate, as it is about rights as well as about progress and efficiency (Araújo & Meneses 2020:9). Jarvis and Sitas (2009:28) claim however that the economic system should go beyond the dualistic European Social Co-Determination Models in order to create a just society without exploitation and oppression and in accordance with the principles of social justice.

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

■ External factors influencing and affecting job creation and job sustainability

A number of external factors, primarily globalisation and the implementation of neo-liberal economic policies, globalisation, trade liberalisation and the global recession affecting job creation and job sustainability have contributed to the job crisis in South Africa (Cohen & Moodley 2012:324; Darrol 2013:14; Klosse & Muysken 2016:185; Muthethwa 2013:1; Tzehainesh 2010:21). Miller (2012:20) maintains that job creation is closely linked to economic, fiscal and monetary policies. Darroll (2011:1) agrees that the neo-classical liberal economic policies, strategies and economic climate, created and implemented by the South African government, are the primary reasons for the lack of job creation in South Africa. Miller (2012:20), however, contends that there is a lack of co-ordination between those responsible for implementing political commitments for job creation.

The South African economy is considered a free market system with a dual economy, as it has a sophisticated financial system with a developing-world social infrastructure (Nienaber 2007:77). Li and Ng (2013:25) claim that there are several social problems in South Africa, such as the energy crisis (electricity shortage); the crime rate; the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) crisis; as well as income inequality, which have seriously affected FDI and consequently economic growth, job creation and job sustainability in South Africa.

From the literature, it is clear that heightened macro-economic insecurity leads to decreased investment and consumption, thereby decreasing economic growth (ILO 2013:8). The exposure of business to several forms of risk, as well as business's limited capacity to cope with adverse outcomes and to recover from those outcomes, have all resulted in greater economic uncertainty under which businesses trade (Standing 2007:1). The Organisation for Economic Co-operation and Development (OECD) (2017:20) corroborates that economic growth in South Africa has continuously fallen in recent years, which they attribute to weak investment because of persistent policy uncertainty and continued low business confidence.

The problem with increased macro-economic uncertainty is that it has a direct positive relationship with unemployment as reduced private sector investment results in lower demand for new workers, thereby reducing vacancies and job matching (Chipeta et al. 2017:25; ILO 2013:8). Furthermore, employing a new person represents a long-term commitment for the firm and entails a cost to the firm. Consequently, firms are less willing to employ as they are concerned with the threat of less future demand for their goods or services (Chipeta et al. 2017:25; ILO 2013:8).

The broader structural trends that have arisen in the South African economy are some of the primary underlying reasons for job losses (Abrassart 2015:225; Baah-Boateng 2016:425;

Tomlinson 2003:112). Trade reforms have been identified as another factor affecting economic growth, job creation, job losses and job sustainability (Chipeta et al. 2017:23; Gaal & Fox 2008:15). Jobs have been lost because of the restructuring of the economy to meet local and global changes in the demand for goods and services (De Jongh 2019:92; Tomlinson 2003:112). Rigorous employment protection legislation has also been identified as causing the reduction of employment and labour productivity. More stringent employment protection has also increased labour market segmentation as firms are increasingly using temporary jobs as opposed to permanent jobs to adapt employment to changes in production (Cahuc 2014:27; Dräger & Marx 2017:973). The OECD (2012:37) and Bassanini, Nunziata and Venn (2009:387) are equally concerned about the extreme disparities in employment protection legislation between permanent or regular jobs and temporary contracts as contributing to duality in the labour market, which in turn may hamper employment and productivity. However, there are other external factors affecting job creation, such as trade liberalisation and globalisation which have contributed significantly to the present job crisis in South Africa (Tzehainesh 2010:21).

Consequently, Darrol (2013:15) contends that the perception that labour legislation imposes major liabilities on business, increasing business expenses and eventually costing jobs, needs to be addressed. Kleinknecht et al. (2006:171) raise serious doubts about the long-term sustainability of a low-productivity high-employment growth path. Levin-Waldman (2012:30) confirm that employment levels are not defined by wage rates, but by the rate of production.

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

■ Globalisation and the pursuit of neo-liberal policies

Globalisation is referred to by some as finance-driven imperialism or neo-colonialism (Bond 2010:196; Winston 2011:34). Globalisation favours liberal concerns over egalitarian objectives (Pieterse 2003:172). Dahan, Lerner and Milman-Sivan (2013:680) claim that economic globalisation has increased global competition among nations, above capital and jobs. By means of economic globalisation, neo-liberal culture has influenced local legal systems and prescribed a particular approach towards the safeguarding of civil liberties, the control of internal markets, state power over public initiatives and state-backed social aid spending (Pieterse 2003:4). Consequently, some perceive it to be an instrument for accelerated development, while others perceive it to be just another means of enslavement and re-colonisation (Adefolaju 2012:94).

Globalisation, decentralisation of production and technological innovation are important megatrends, affecting economic growth, job creation and job sustainability (Bronstein 2009:60; Snydstrup & Carter 2013:5; Klosse & Muysken 2016:185). The status of globalisation requires improved policy co-ordination, both nationally and internationally in order to sustain economic and employment growth (Rosas & Rossignotti 2005:146). One of the consequences of globalisation is changing patterns of work and labour (Grady 2017:274; Standing 2007:1) resulting in the growth of 'atypical' work arrangements (Tzehainesh 2010:41), increased economic insecurity for workers caused by casualisation and externalisation (Le Roux & Rycroft 2013:220). Vellem (2014:1) attributes cheap labour to be a significant cause for South Africa's history of poverty and inequality (Vellem 2014:1).

Moreover, Winston (2011:34) contends that the globalisation of production and finance has provided business with a substantial gain over labour in labour relations. Pascual and Jepsen (2006:26) contend that globalisation comes at a social cost of depressed

wages, job losses and a loss of social and labour protection. Pieterse (2003:8) affirms that the effect of globalisation appears to be that economic issues are viewed as separate from social issues. The author maintains that, previously, the economy was viewed as a vehicle for meeting the welfare needs of society, whereas society is now inversely being tasked with resolving economic problems (Nattrass 2014:57; Pieterse 2003:7). Pieterse (2003:4) agrees that this may be primarily attributed to the strength of multi-national neo-liberal institutions which have dominated the influence of global human rights structures, thereby ensuring that neo-liberal values are entrenched.

The resultant changes in production methods have also led to a change in the skills mix of the labour force, requiring a more skilled labour force (Meyer 2017:505; Tomlinson 2003:112). The OECD (2017:11) identified skills shortages and mismatches as key bottlenecks to growth and inclusiveness. Furthermore, the progression of de-industrialisation of the industrialised world, worsened by global recessionary conditions, has led to social division, homelessness and unemployment in numerous less-preferred areas (Geyer et al. 2011:265). Gaal and Fox (2008:14) maintain that employment growth in industry has fallen and although the service sector has grown, wage and salaried jobs in that sector have not. Thus, a recurrent criticism of globalisation is that it can lead to a progressive lowering or deterioration of labour and environmental standards, or tax rates in order to attract foreign capital (Olney 2013:1). Accordingly, Kapstein (2004:79) claims that the global economy is unjust and unfair.

Consequently, global competitiveness is an external factor that has been identified as affecting economic growth, job creation and job sustainability as it appears to be driving current economic policy (Felipe & McCombie 2008:120). The OECD (2010:117) noted that there are still comparatively major barriers to competition in certain sectors which need to be addressed. According to Darrol (2013:15), South Africa's monitoring and enforcement of legislation expenses relative to gross domestic

product are more than twice over those of several other comparative economies (including those of Sweden, Norway and New Zealand) that are connected with widespread state interference. Thus, emphasis is being placed on costs, productivity and labour market reform, resulting in increased demands for greater labour market flexibility. Various globalisation factors such as financial liberalisation; capital mobility; national government's failure to regulate the banks; foreign exchange volatility; trade liberalisation; inadequate legal protection of global labour rights; increased reliance on foreign investments and multi-national corporations (MNCs); diminished state sovereignty and autonomy; qualified international support; global recession and growing global uncertainties, are adversely influencing job creation and job sustainability. These are further deliberated upon.

□ Financial liberalisation and capital mobility

A vital part of the globalisation drive is financial liberalisation (Siddiqui 2012:18). Grady (2017:285) avers that financialisation of the employment relationship favours business and undermines labour. Globalisation and financialisation have resulted in increased deregulation; governments' withdrawal from the workplace; decreased protectionism; increased demand for speed and quality by global customers; the disappearance of international boundaries and increased trade (Ndimande 2000:11). Islam and Verick (2011:20) assert that national government's failure to properly regulate banks and financial institutions, are to blame for the global economic and financial crises, which is having a negative impact on job creation and job sustainability (Martinelli & Midttun 2010:10). Therefore, 'unregulated markets do not produce efficient outcomes' (Siddiqui 2012:21), especially in relation to job creation and job sustainability. Consequently, Siggel (2010:93) argues that globalisation and economic reforms have had a negative influence on both the formal and informal sectors.

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

Servais et al. (2007:3) contend that it is capital mobility and not labour mobility which has limited what governments can do to attract foreign investment, often pressurising them to reduce not only fiscal checks and controls but also social and labour regulations, which in turn may adversely influence job creation and job sustainability.

□ Global recession and rising global uncertainties

Increasing global insecurities, tight credit circumstances for families and businesses, public sector severity processes and the subsequent slowdown in aggregate demand are adversely influencing trade and investment flows. The ILO (2013a:21) posits that slow growth is set to weaken employment, particularly in developing countries (ILO 2013a:70). Globalisation and the global economic recession have compounded the problem of poverty and unemployment. The global financial crisis has intensely influenced the South African labour market, resulting in the cutting of almost one million jobs over 2009 and 2010 (Verick 2012:373). Countries have still to recuperate from the loss of jobs and income triggered by the global financial crisis (Escudero et al. 2013:102). The speedy implementation of financial sector reforms and the creation of an operational framework encompassing both local and international financial markets would greatly help to reduce financial market volatility and stimulate employment growth (Spiezia et al. 2012:28).

□ Exchange rate volatility influence

Chipeta et al. (2017:33) contend that the exchange rate movements affect South Africa's level of job creation. Their findings support Belke and Kaas' (2004:247) claim that exchange rate volatility has an adverse influence on labour markets and significantly lowers employment growth. The Snydstrup & Carter (2013:14) concur that there is ample empirical proof that the prolonged over-valuation of the exchange rate hurts growth and employment. Belke and Kaas (2004:247) recommend that the reduction of exchange rate volatility should be considered as an alternate for removing employment protection legislation as a means to improve job creation and job sustainability. Chipeta et al. (2017:35) agree that a stable currency will improve economic growth and employment growth and job creation.

□ Qualified international support

Chowdhury and Islam (2011:931) claim that international support has become qualified upon developing countries following a macro-economic policy mix deemed to be 'sound' by international financial institutions such as the World Bank, the IMF and the donor community. The OECD (2014:4) confirms that a number of recommendations need to be implemented in order to attend to the main hardship of labour informality, such as expanding the exposure of social security schemes, controlling labour expenses and reducing excessively rigorous job security for formal workers.

□ Increased reliance on foreign investments and multi-national corporations

Increased reliance on MNCs and foreign investments is problematic as this reliance causes national governments to have far less autonomy in their economic policy decision-making (Bernstein 2007:89; Cassanova 1996:41; Siddiqui 2012:20). There is growing concern about the control of MNCs and the damage their actions can cause to the population and the environment

(Winston 2011:34), which has negative consequences for job creation and job sustainability. Consequently, De Jonge (2011:67) warns that although it may be alluring for a country to invite Trans National Corporations (TNCs) to invest in its economy, the country's policy makers need to be cautious as they also have the capacity to cause great harm in that more jobs could be destroyed than created. Murphy (2009:307) maintains that the solution to address inequalities caused by global neo-liberalism lies in a global focus on egalitarianism (Murphy 2009:307).

□ The current inadequacy of legal protection of labour rights globally

The absence of an international legal organisation to hold TNCs responsible for breaches of international norms (De Jonge 2011:66) is a serious threat to job creation and job sustainability. Dahan et al. (2013:678) support the view that powerful TNCs should share legal responsibility with the states in whose territory violations of labour standards arise and be held accountable thereof to the ILO. Blackett et al. (2007:393) agree and maintain that the ILO should take a leadership role in promulgating and monitoring a comprehensive set of corporate social responsibility (CSR) standards. These standards will ensure that fewer jobs are cut and more jobs are created and sustained. Blackett et al. (2007:393) are also of the view that civil society groups should play a more active role and be included as partners in ILO initiatives. Consequently, CSR is progressively being endorsed as a tool to regulate TNC business activities and as a technique to inspire businesses to contribute to sustainable development at a national level (Gjølberg 2010:203).

■ The moral and ethical crisis in values, and the vision of humanity and society

The extent to which the globalisation of business and capital enhances or hinders social justice is a factor that must be

considered in business ethics at a global or international level. Swanepoel et al. (2012:113) claim that the global financial crisis is a result of the serious moral and ethical challenges that the world is facing. Swanepoel et al. (2012:198) agree with Van Gennip (2010:107) that the creation of an identity and vision of market, society, social cohesion and the importance of values is not defined in terms of money and profit but a humane and stable society in which community engagement is essential.

■ Internal factors influencing job creation and job sustainability in South Africa

There are a number of internal factors, other than labour legislation, affecting job creation and job sustainability in South Africa, in particular the oversupply of low-skilled workers, the shortage of critical skills and the lack of infrastructure which have contributed to the job crisis (Le Roux & Rycroft 2013:35). Dubin (2012:390) contends that businesses' choices to employ dismiss or redeploy workers are largely determined by their senior managers' perceptions of labour market rigidities. A further internal factor affecting economic growth, job creation and job sustainability is the decisions that both government and business make, which influence future performance and prosperity (Nienaber 2007:82). These factors have largely arisen as a result of South Africa having pursued neo-liberal economic policies such as restructuring and privatising the public sector; freeing up the local trade market through trade reforms; increasing deregulation; decreasing the protection of local industries and an over-emphasis on B-BBEE initiatives (Mahadea & Simson 2010:399). This has resulted in changing patterns of work and labour, making the South African economy increasingly vulnerable to social and economic shocks.

The broader structural trends that have taken place as a result of neo-liberalism are the restructuring of the economy, the

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

■ **Restrictive labour market conditions**

Restrictive labour market conditions have been identified as the primary contributory factor and primary cause of South Africa's poor global competitive standing (Venter et al. 2010:22). The lack of skilled labour and the strong link between political and labour dispensations also contribute to restrictive labour market conditions. Badenhorst-Weiss and Waugh (2015:6) affirm that the quality of the education system in South Africa is very weak; that labour market efficiency is weak; that the employing and dismissing practices are exceedingly rigid; wage determination is inflexible and substantial tension exists in labour-employer relations.

■ **A decline in productivity growth**

From the literature, it is clear that the main factors underpinning the broad decline in productivity growth are heightened macro-economic uncertainty and weak and slowing investment (ILO 2013:39). This macro-economic uncertainty, as well as reduced confidence in the capability of policy makers to attend to present economic challenges comprise another key contributing factor to decelerating growth and weak labour market outcomes. Consequently, focused action by policy makers is required to reinstate confidence, to encourage investment and to create jobs (ILO 2013:42). Another problem alluded to by Ndimande (2000:11) maintains that South African businesses need to formulate a common goal and vision of global competitiveness which takes

into account national competencies in order to achieve a sustainable international competitive advantage (Ndimande 2000:11). The OECD (2014:4) suggests that product market reforms could improve short-term growth, particularly if applied in certain protected sectors, for example, the retail trade and professional services where the possibility of creating jobs rapidly is immense.

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

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

Self-employment and the creation and sustainability of small and medium enterprises

Internationally and domestically, it is recognised that small, medium and micro-enterprises (SMMEs) can have an essential influence on job creation, economic growth, employment, income generation and economic stability (Darroll & Corrigan 2013:11;

Lekhanya 2015:412; Nkosi et al. 2013:1; Heitmann 2009:3; Van Loggerenberg & Ferreira 2012:212). Entrepreneurship plays an important role in economic growth, innovation, competitiveness and poverty alleviation through job creation and job sustainability (Fairoz, Hirobumi & Tanaka 2010:34; Nkosi et al. 2013:3; Odeku & Rudolf 2019:1). Ayanda and Laraba (2011:200) agree that the SMME sector is the mainspring behind job creation, poverty reduction, wealth creation, income distribution and a fall in income disparities. Lowrey (2011:1) concurs with them that the entrepreneur creates a job not only for himself or herself but also for others.

‘Entrepreneurial characteristics such as commitment and determination; leadership; opportunity obsession, and motivation to excel are important for the successful management of small enterprises’ (Nkosi et al. 2013:3), which in turn influences job creation and job sustainability. The poor education system, a lack of awareness of what financing options are available and the difficulties of obtaining financing are perceived as major barriers to entrepreneurship, job creation and job sustainability (Hoepli 2014:9; Odeku & Rudolf 2019:1). Herrington et al. (2010:5) affirm that South Africa has a trend of below-average entrepreneurial activity, which does not bode well for job creation and job sustainability. Hoepli (2014:9) identifies the lack of business and financial skills of entrepreneurs to be one of the biggest threats to start ups, job creation and job sustainability. Moreover, Nkosi et al. (2013:2) support his view and claim that it is also the fundamental reason for the closure of new businesses, which again affects job sustainability. Odeku and Rudolf (2019:1) agree that these problems can be overcome through ‘the provision of appropriate infrastructure and training; the development of innovative loan products; and policies to reduce the cost of compliance with legislation affecting SMMEs’ (Clover & Darroch 2005:238). In addition, some of the difficulties can also be overcome through seed funding and the use of mentors (Hoepli 2014:9).

Clover and Darroch (2005:242) identify certain labour legislation as imposing either financial or administrative constraints on SMME operations, such as minimum wage constraints, the skills levy procedure, paying a skills levy and managing employees' Unemployment Insurance Fund (UIF) payments, which will have a negative influence on job creation and job sustainability. Moreover, Herrington et al. (2010:33) argue that labour regulations and government's over-emphasis on B-BBEE initiatives are factors that hamper entrepreneurship, particularly with respect to young black South Africans. This will negatively influence job creation and job sustainability.

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

■ Shortage of managerial expertise

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

The human factor in SMMEs, specifically entrepreneurial actions and business management skills, is the strongest predictor of the survival of small businesses (Ligthelm 2011:160). Lekhanya (2015:412) discovered that numerous SMMEs failed within 5 years of their existence because of, *inter alia*, the lack of access to finance, absence of managerial skills and experience as well as human capital. Barker (1999:125) agrees that a major constraint to productivity improvement is the lack of management skills in leadership, mentoring, work re-organisation and decision-making. Venter

et al. (2010:140) affirm that there are compelling business and strategic reasons for businesses to adopt policies that will diversify the composition of the middle and upper personnel levels in order to address past racial and gender discrimination in a deep and meaningful way while also addressing job creation and job sustainability. Lekhanya (2015:412) as well as Ayanda and Laraba (2011:200) thus argue that government's energies should be focused on supporting SMMEs, fostering domestic investment and encouraging economic growth.

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

■ **Ability to anticipate and to adapt to change**

Globalisation has made it crucial that businesses develop a strategy for achieving and maintaining their competitive advantage, which is essential for creating and sustaining jobs. Surviving globalisation is essentially about managing change (Bassanini et al. 2009:387). An ability to anticipate change and to respond accordingly (Montgomery & Maggio 2009:203) will sustain jobs.

There are several trends affecting modern businesses, causing them to establish new business forms, business models and business practices (Ashton 2005:68) that may influence job

creation and job sustainability. Technology through digitisation and automation has enormous potential to ignite economic growth and job creation (Magwentshu et al. 2019:3). The new technology-enabled jobs however will require higher skills levels than the displaced jobs (Magwentshu et al. 2019:3) which may influence job creation and job sustainability. The OECD (2010:117) agrees that by reducing the speed at which businesses respond to fluctuating market conditions and altering their business strategies, they decrease the economy's ability to cope with the problems of globalisation, especially for technological nations where competition is beneficial to further innovation. Ashton (2005:68) contends that the trends which need to be taken into account are technology; globalisation; shifting demographics; movement to market-orientated economies; more sophisticated and demanding customers; more individualistic and entrepreneurial employees; increasingly activist shareholders; more powerful interest or pressure groups; greater share market volatility and corporate scandals. This will have a negative influence on job creation and job sustainability.

Preparedness and the ability to respond appropriately to crises

The global recession has also highlighted the importance of an organisation's ability to be prepared, to be able to anticipate and to respond appropriately to crises, thereby influencing job creation and job sustainability. Venter et al. (2010:18) claim that the organisation's ability to understand the influence of internal and external influences on it is critical for sound management. Tennant (2011:472) posits that the manner in which private sector businesses responded to the global crisis, how prepared they were and what preparations they took were essential to determine their survival, success or failure during the global crisis (Tennant 2011:476), all of which influenced job creation and job sustainability.

■ Other specific constraints on job creation and job sustainability

Other specific constraints on job creation and job sustainability facing businesses in South Africa are general economic anxieties (such as the influence of the recession and the price of basic inputs such as electricity); inferior quality government administration; burdensome government legislation and the influence of South Africa's poor skills foundation (Badenhorst-Weiss & Waugh 2015:6; Herrington et al. 2010:5).

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

■ Social responsibility

The ethical value underlying sustainable business practices is the importance of social justice, especially the ethical obligation to behave towards others fairly which includes respecting employees' labour rights (Araújo & Meneses 2020:1; Winston 2011:33). Therefore, a strong connection exists between CSR, corporate governance and sustainable business development (Botha 2015:15; Fabbrizi 2018:62). Accordingly, business has an ethical and moral obligation to create jobs, to sustain them and not destroy them. Courville (2003:269) contends that with the rise of CSR, numerous and astounding assortments of initiatives have been recognised to incorporate social justice concerns into business actions. Moreover, business has the potential to promote economic growth and to provide jobs (Da Piedade & Thomas 2006:66).

Corporations should act in a socially responsible way towards people in general (Botha 2015:9). Patel and Mushonga (2014:61) concur that business has a socio-economic responsibility towards

their workers and to the society at large. Kloppers (2014:63) agrees that businesses are accountable to the societies within which they function. He contends that a regulatory basis that encourages development, employment and beneficial control is necessary to guarantee an effectual procedure for CSR, whereby all members have confidence about their rights and duties (Kloppers 2013a:123). Regulations limit a business's capacity to manipulate and the business is obliged to conform to laws including the added costs of compliance (Kloppers 2014:64). Nevertheless, regulations should be reliable, effectual, obvious, reasonable and comprehensible (Kloppers 2013a:123).

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

■ Corporate governance

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

Davis and Le Roux, cited in Le Roux and Rycroft (2013:309), agree that the *Companies Act* (No. 71 of 2008) shifts the previous focus from the sole interests of shareholders to include the interests of other stakeholders as well, especially employee interests (Da Piedade & Thomas 2006:311), which is significant for job creation and job sustainability. In addition, Botha (2015:4)

maintains that because of the *Companies Act*, No. 71 of 2008, there appears to be a novel emphasis on workers' lawful securities and hopes, which has the potential for enhanced worker participation in the workplace, job creation and job sustainability. Deakin and Whittaker (2007:2) affirm that there is a common comprehension that the idea of CSR functions as a connection between concerns of governance on the one hand and ideas of equity and fairness in employment in society on the other, which might influence job creation and job sustainability.

■ Corporate social responsibility

Corporate social responsibility is about re-focusing a company's activities to take into account employees' and society's interests (Weiss 2005:48). In addition, the integration of human rights (including important labour rights) is currently an essential CSR concern for companies in South Africa, as well as for MNCs (Botha 2015:33). The general public requires businesses to accept CSR that surpasses legal responsibility and profit maximisation to incorporate economic and environmental sustainability and social development (Inyang 2013:123).

The problem with CSR is that it is voluntary and workers are unable to bring their claims before a court in instances where CSR breaches have occurred for enforcement thereof (Bronstein 2009:123). Jamali (2007:1) verifies that despite various CSR initiatives that have occurred more recently in Western countries, similar intense interest or activity has not occurred in developing countries. Fig (2005:601) confirms that businesses in South Africa usually evade the idea of CSR. The author contends that businesses usually favour the idea of corporate social investment over that of CSR (Fig 2005:599). Consequently, business should be held socially responsible, as well as socially accountable: they should not only be concerned with making a profit at all costs. Business needs to look beyond the bottom-line and consider wider social and environmental responsibilities.

Nevertheless, the private sector can play a crucial role through strategic goodwill. Jamali (2007:24) postulates that in addressing poverty and unemployment issues, reinforcing state-led development policy is necessary, not just simply through accountability. In addition, Swanepoel et al. (2012:498) contend that business leaders should have integrity; be morally, ethically and socially responsible, and that they should lead by example. Shamir (2011:331) recommends a business case approach model to CSR so that there is greater financial commitment from business. Wang and Dong (2007:383) also share the view that TNCs should share social responsibilities. Corporate social responsibility can also be used as a developmental tool, not simply as a business tool (Newell & Frynas 2007:677). Underhill and Rimmer (2017:49) contend that corporate commitment to private governance is weak, that self-regulation is limited and that external regulation is therefore required. Law has had to step in through the passing of legislation to deal with instances where business has no conscience. For example, the King Reports have made CSR mandatory in South Africa (Cohen, cited in Le Roux & Rycroft 2013:99).

Ramlall (2012:271) claims that business and human rights are indivisibly connected. The author affirms that the South African government has enacted a variety of laws that indirectly force businesses to participate in CSR, namely: the B-BBEEA; EEA; the *National Empowerment Fund Act*, No. 105 of 1998; the *Preferential Procurement Policy Framework Act*, 5 of 2000 and the SDA (Ramlall 2012:273). Snowball, Collins and Tarentaal (2017:306) confirm that the government has successfully been directing financial support to businesses with a greater percentage of black owners and employees. Consequently, corporate governance and social responsibility procedures play an important part in the formation and implementation of essential labour rights (Botha 2015:34). However, Kloppers (2013:123) maintains that CSR should not replace regulation or legislation concerning social rights.

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

■ Trade union social responsibility

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

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

■ Workplace governance

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

The common form of workplace governance in South Africa is collective bargaining. However, the ideal workplace governance form would be greater employee participation in the workplace (Botha 2015:31). The *Companies Act*, No. 71 of 2008, grants novel rights to employees as stakeholders, which are to their advantage and could influence job creation and job sustainability.

In addition, performance-enhancing mechanisms such as employee share ownership structures; the appointment of employee agents to the board of directors and employee contributions are also favourable to employee involvement in corporate governance. This may be directly and indirectly beneficial to companies (Botha 2015:38), as well as to job creation and job sustainability.

■ The need for job creation in South Africa

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

■ Chronic poverty, unemployment and inequality

Literature indicates that poverty, unemployment and inequality are increasing at an alarming rate. The rate of unemployment is 26.7%, but youth unemployment is around 52% (Mago 2018:1). There is growing concern that the youth unemployment rates

have surpassed adult unemployment rates. De Jongh (2019:85), Ebrahim and Pirttilä (2019:1) and Falakahla (2018:1) agree that the youth unemployment rate in South Africa is significantly high. The unemployment rate in 2017 rose to 27.7% (StatsSA Q2 2017:1).

Luis (1999:15) maintains that the real unemployment rate is higher than the reported figures because of a number of countries increasingly substituting full-time jobs for informal and part-time jobs. Informal work is often characterised by long hours, low productivity, low revenues and poor working conditions. Self-employed workers earn less than formal salaried workers do (Bargain & Kwenda 2011:S106; Miller 2012:10).

Economic growth, although important for overall employment creation, is insufficient on its own to reduce chronic poverty, unemployment and inequality (Escudero et al. 2013:111). Extensive research has demonstrated that economic growth on its own does not benefit certain vulnerable or excluded groups. Job creation requires not only sustained growth but also inclusive growth (Salazar-Xirinachs 2012:110). Improved job matching will help such groups to benefit from economic growth (Dobbins & Plows 2017:571; Escudero et al. 2013:111). In addition, Habanabakize and Muzindutsi (2018:123) as well as Wentzel and De Hart (2015:106) posit that the investment and training are vital not only in upgrading the manufacturing sector (Habanabakize & Muzindutsi 2018:123; Wentzel & De Hart 2015:106) but positively influencing job creation and job sustainability.

Inequality has been identified as the root cause of the current global economic and financial crises. Global neo-liberalism causes inequality both domestically and globally (Abrassart 2015:226; DeMartino 2002:218; Klosse & Muysken 2016:185; Nattrass 2014:56). Pons-Vignon (2011:77) also claims that class interests have been the instrument of neo-liberalism. The author further states that growing inequality is closely linked to the decline in wages and worker rights. He therefore maintains that the defence of workers' rights and wages is essential to ensure sustainable growth (Pons-Vignon 2011:XV). Olsen (2010:295) maintains that the sources of inequality and oppression need to be identified

and meaningful steps in the form of revolutionary practices and changes need to be taken urgently by current institutions in order to address them.

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

Youth unemployment and under-employment

There is growing recognition of the need to create productive, decent quality jobs for the youth worldwide (Baah-Boateng 2016:17; Rosas & Rossignotti 2005:139). The official youth unemployment rate in the first quarter of 2019 was 55.2% in South Africa between the ages of 15 and 24 years, the unemployment rate among graduates in this age group was 31.0% during this period compared to 19.5% in the fourth quarter of 2018 (StatsSA Q1 2019:1). The most affected are black youths (Odeku & Rudolf 2019:1). From a microeconomic perspective, the youth demographic characteristics relating to gender, race, education, skills, work experience, family background, where they reside and their wage expectations influence their chances of securing employment (Baah-Boateng 2016:17).

Spiezia et al. (2012:21) confirm that a large number of youth are trapped in low productivity, temporary employment and part-time work. Furthermore, young people are also more likely to be in vulnerable employment, a category that includes not only informal self-employment but also casual day labourers (Miller 2012:12). Governments play an important role in creating a favourable environment to foster employment-intensive growth (Abrassart 2015:225; Jansen & Von Uexkull 2010:11). They provide support for the private sector in creating jobs (Rosas & Rossignotti 2005:146) and in reaching employment targets (Miller 2012:14).

The South African government in recent years introduced transformative entrepreneur interventions such as broad-based entrepreneurship activities and ventures to address unemployment, poverty and inequality especially among black youth (Odeku & Rudolf 2019:1). The government implemented a wage subsidy system in 2014, called the Employment Tax Incentive to combat youth unemployment. A tax credit was granted to employers employing young persons (below 30 years of age) and low-wage (below R6000 a month) workers (Ebrahim & Pirttilä 2019:1). Mago (2018:1) recommends the overhauling of South Africa's educational system, creating jobs, skills development of the youth and facilitating youth entrepreneurship as strategies to stem the problem of youth unemployment. Ebrahim and Pirttilä (2019:17) found that despite government's intervention to increase youth demand as well as youth education and skill levels, the policies have not led to a systematic improvement in employment of the targeted youth.

Thus, there is a need for the formation of partnerships between government, businesses and trade unions in order to create decent jobs, especially for young people (Spiezia et al. 2012:9).

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

The lack of education, poor levels of skills and little experience characterise most unemployed people and have been a serious blow to human capital. Muthethwa (2013:14) claims that human capital plays a pivotal role in economic growth and the development of the country. The Department of Labour also identified the group of unemployed who did not finish secondary education as an essential component of the labour force that needs to be addressed, as they almost certainly will lose their jobs in times of retrenchment (Department of Labour Revised Annual Performance Plan 2014:4).

There is a rising demand for qualified and skilled people in the South African labour market (De Jongh 2019:85; Falakahla 2018:2; Muthethwa 2013:5). Employment has decreased in the semi-skilled and less-skilled occupations and an increase in demand in the job market for tertiary qualifications (Baah-Boateng 2016:414; Muthethwa 2013:12). Lekhanya's (2015:412) and Muthethwa's (2013:12) respective studies signify that there is a great need for managers and professional workers in the labour market. This need is further exacerbated when economies restructure, when a mismatch arises between the available supply of skills by the large majority of unemployed caused by economic disaster and the need for skills, especially in industrialised economies (Dobbins & Plows 2017:571; ILO 2013:34). The respective authors maintain that their results reveal the great importance of educated and skilled labour, rather than unskilled and less experienced workers (Lekhanya 2015:412; Muthethwa 2013:12). Businesses must participate in skills development, guidance and encouragement through corporate culture rather than the unequal or considerable rise in salaries of administrative and management staff (Badenhorst-Weiss & Waugh 2015:8), which will have an influence on job creation and job sustainability. Olofsson and Panican (2019:945) affirm that apprenticeship training rather than more insecure jobs and/or lower pay is the answer to addressing the challenges confronting the youth.

Consequently, the lack of sufficiently educated and skilled workers poses a serious risk to job creation and job sustainability (Badenhorst-Weiss & Waugh 2015:8).

Growing informal and precarious employment

As a result of the worsened insecurities under which businesses have been functioning and because of the indeterminate macro-economic perspective, businesses are more likely to favour employing new workers on temporary or part-time employment

contracts (Abrassart 2015:226; ILO 2013:36). This strategy to employ workers in informal and precarious work has led to a fragmentation of the employment relationship through the acceleration of the crumbling of labour markets into varied forms of employment (Dräger & Marx 2017:942; Grady 2017:282; McCann, Lee & Belser 2014:7). The increasing disparities and unfair discrimination in the workplace; increased domestic and cross-border labour migration; deficient mechanisms for the evaluation of labour market policies and programmes to determine their influence on the economy (Department of Labour Revised Annual Performance Plan 2014:5; Tzehainesh 2010:20), job creation and job sustainability. In addition, labour services provided via digital platforms have exacerbated the problem of informal and precarious work and are destroying regular jobs (Fleming, Rhodes & Yu 2019:489; Smith & Kubala 2018:170). Such situations may negatively influence job creation and/or job sustainability.

Goldberg (1997:302) contends that the benefits of employing permanent staff instead of contract staff can outweigh the costs, as the employer gains loyalty, stability, increased productivity and efficiency, less time spent on training, and receives a return on investment. Employers, however, will not invest in training if workers are employed on a short-term or temporary basis (Dräger & Marx 2017:942). Goldberg (1997:302) further asserts that full employment is a means of reducing poverty and economic inequality, although she acknowledges that it is not the only way. Voßemer et al. (2018:1230) agree that full employment is more conducive to health and that it is the most appropriate strategy for reducing economic inequality. This may directly and/or indirectly positively influence job creation and/or job sustainability.

Various authors maintain that long-term investment in skills, knowledge and experience has become a social and economic essential for Europe, as well as for the rest of the world. Employees benefit from stability and receive additional social benefits. Without investing in human capital, labour market flexibility will win a definitive victory over income security

(Dobbins & Plows 2017:571). Consequently, the values of social justice and solidarity urgently need to be re-awakened in order to prevent social exclusion and to stimulate economic innovation and growth (Euzéby 2012:85).

Although full employment is possible, there are political barriers such as political will and political feasibility that prevent it from being a possibility (Goldberg 1997:316; Roychowdhury 2019:122). Therefore, there is need to increase the scope for permanent employment and to limit the scope for temporary and part-time employment, which has been addressed by the legislature in the amendments to the BCEA, the LRA and the introduction of the ETIA, which will be explored further in this chapter.

■ **Below-average entrepreneurial activity**

The promotion of self-employment, entrepreneurship development and private sector support is necessary to create and sustain jobs. Caliendo and Künn (2011:311) claim that directing unemployment into self-employment has become a progressively significant function of active labour market policies in numerous OECD countries. Lekhanya (2015:412) and Arranz, Serrano and Hernanz (2013:327) argue however that self-employment is not enough and that further active labour market policies are required, such as agendas offering assistance and direction to the unemployed, public employment services and vocational training services. Their argument is supported by Spiezia et al. (2012:9), who have also recommended the implementation of active labour market measures to address youth unemployment and under-employment.

Promoting the creation and sustainability of SMMEs is critical for job-rich growth (Escudero et al. 2013:108; Lekhanya 2015:412). Consequently, the problem does not only lie with job creation but also with job sustainability, as many people are experiencing difficulties in remaining employed.

■ The need for sustaining jobs in South Africa

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

This section therefore examines several reasons advanced for the needs to not only create jobs but also to sustain jobs.

■ Better skills and qualifications are required to increase efficiency and productivity

Benjamin, cited in Le Roux and Rycroft (2013:29), contends that there is a surplus of low-skilled workers and a scarcity of critical skills. The private and public investment in workers has been identified as a fundamental necessity for sustainable economic growth and development in Africa (Isgogo 2014:62; Jakab et al. 2018:9). Additionally, there is a need to increase the scope for permanent employment and to limit the scope for temporary and part-time employment in order to sustain jobs. Consequently, there is a need to invest in education and training to improve the skills and qualifications, which are essential for economic growth (Heitmann 2009:1). There is a great need for better education and training not only to combat the problems of illiteracy, poverty

and ill-health but also to sustain jobs. The International Labour Office (2008:1) confirms that skills development and investment in workers is essential to maintain competitiveness, productivity and employment growth; to reduce poverty; and to sustain jobs (International Labour Office 2008:1; Jakab et al. 2018:9; Strauss & Du Toit 2010:302) all of which are essential to ensure job creation, long-term job retention and job sustainability.

■ Addressing the chronic shortage of decent work

Miller (2012:8) maintains that there is a prolonged shortage of decent jobs in South Africa. Muthethwa (2013:12) contends that decent work is characterised by sustainability and security of work (Baah-Boateng 2016:17; Muthethwa 2013:12; Rogers 2014:1544). The four core values of decent work are: the opportunity to work, the right to freedom of association, social protection and to have a voice (Le Roux 2013:512). Allais (2012:633) states that it is neither a 'skills shortage' nor an inflexible labour market which is the primary cause of unemployment. In order to sustain jobs, people increasingly need better education, training, skills and qualifications to compete in today's labour market (Abrassart 2015:225; Dobbins & Plows 2017:572; Sturn 2018:648). Partnerships between government, businesses and trade unions should be formed in order to sustain and retain jobs. To address job sustainability, business as well as the South African government need to adopt and implement better employment skills and support programmes linked to business and labour market needs.

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

■ Increased social protection in South Africa

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

Bassiani, Nunziata and Venn (2009:352) postulate that employment protection legislation should protect more vulnerable persons in industries where it is most needed. Where there is non-existence of regulations, businesses rely on retrenchments to make operational alterations in sectors where internal labour markets or voluntary turnover are more important, thereby causing more jobs to be destroyed than created (Bassiani et al. 2009:352), having an adverse influence on job creation and job sustainability. Therefore, the importance of determining the benefits of employment protection legislation as opposed to offsetting the costs needs to be explored. Noelke (2011:7) contends that by increasing the duration of periods of employment, both young people and employers have greater reasons to invest in general and specific skills. The author argues that deregulation destroys incentives for skill formation and damages the youth's labour market career prospects (Noelke 2011:7).

Consequently, economic growth and employment protection legislation are not the only factors which influence job creation

and job sustainability. There are other important external factors apart from protective labour legislation previously mentioned that influence economic growth, job creation and job sustainability in South Africa. Furthermore, internal factors previously mentioned also influence job creation and job sustainability. Consequently, an increased investment in education and skills development, social protection and an increased discourse between workers, employers and government is essential to ensure comprehensive founded growth underpinned by a reasonable, fair allocation of economic profits (Spiezia et al. 2012:44).

■ Strategies for job creation and job sustainability

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

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

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

- firstly, is through macro-economic policy
- secondly, through industrial restructuring
- thirdly, through skills development
- fourthly, by fostering the success of the informal economy

- fifthly, by eliminating unnecessary regulation in the formal economy for developing small businesses
- lastly, through public works schemes.

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

The implementation of neo-classical economic policies in South Africa has led to more job destruction and job losses than jobs being created. The Keynesian approach is better matched to deal with South Africa's high rate of unemployment, inequality and poverty. It is essential that government supports and increases investment spending in South Africa in order to create more and sustainable jobs (Habanabakize & Muzindutsi 2018:140). Thus, the South African government needs to be more actively involved in creating jobs through investment in public works and infrastructure (Lekhanya 2015:412). The South African government implemented the Expanded Public Works Programmes in an attempt to create jobs and to develop the youth's skills and capacity to make them more employable (Matsiliza 2018:26). Most of the developing world, including China, Russia, India and Brazil, have adopted neo-classical economic policies which have resulted in their workers being demeaned; their rights being attacked and undermined; and the majority of the working population becoming further impoverished (Nattrass 2014:56; Siddiqui 2012:16). Thus, neo-liberal employment policies are not suitable in the South African context (Vellem 2014:6).

Employment and the quality of employment are crucial for poverty reduction. Pieters (2013:23) claims that private sector employment creation has been weak, because of a low growth-elasticity of employment. Islam and Mageres (2001:289) contend that a deliberate policy is needed which makes employment a key clear objective and which is perceived to be as important as economic growth. This can be achieved by adopting employment-intensive technologies and through public investment in

infrastructure (Habanabakize & Muzindutsi 2018:140; Islam & Mageres 2001:279). Furthermore, Gaal and Fox (2008:17) maintain that growth in industrial and manufacturing output is essential for significant successful economic growth. Private investment however is required, particularly in large labour-intensive firms producing for export (Gaal & Fox 2008:17). Exports are essential for job creation, indirectly protecting and sustaining existing jobs (Habanabakize & Muzindutsi 2018:126; Habanabakize, Meyer & Muzindutsi 2017:328). Domestic household consumption of imported goods however tends to destroy local jobs (Habanabakize & Muzindutsi 2018:125).

A job-centred approach should be adopted whereby macro-economic and employment goals are balanced simultaneously taking into account social influences (Escudero et al. 2013:101). Sophisticated labour market and social security programmes will help to fulfil social goals and contribute to aggregate demand (Escudero et al. 2013:101). McGrath and Akoojee (2007:427) are in agreement with this view. Additionally, Chowdhury and Islam (2011:944) express the view that new development-orientated macro-economics such as full and productive employment, should be undertaken to combat unemployment and poverty. There needs to be a clearer agreement on job creation and sustainable growth. In order to achieve this, the government needs to take control of policy barriers that fail to appreciate the prioritisation of employment and social issues. These should be placed near the top of the reform agenda (Escudero et al. 2013:101).

Patel, Khan and Englert (2020:147) and Barchiesi (2007:569) argue in favour of a basic income grant for poor South Africans, especially the unemployed, in order to facilitate employment. However, Klosse and Muysken (2016:201) promote the introduction of a job guarantee scheme at the minimum wage as opposed to a basic income grant to address unemployment. The adoption of labour-based methods in infrastructure will provide a connection between job creation and economic

growth (Islam & Mageres 2001:289). This view appears to be in line with South Africa's National Development Strategy (Zarenda 2013:1) and with international trends (Swanepoel et al. 2012:113). Islam and Mageres (2001:289) express the opinion that government investment in basic services such as roads, irrigation, drainage, sanitation, water supply schemes, markets, housing and schools will all contribute to economic growth while simultaneously creating jobs for the poor. Olsen (2012:136) is also of the view that a greener economy creates employment across a variety of sectors, in particular the renewable energy, waste management and recycling sectors. In addition, Islam and Mageres (2001:289) argue that labour-intensive methods and techniques in some instances can be more cost-effective as compared to capital-intensive methods and techniques (Islam & Mageres 2001:291).

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

Ayanda and Laraba (2011:200) postulate that SMMEs have long been considered the catalyst for economic growth and the advancement of equitable development. Lekhanya (2015:412) and Herrington et al. (2010:33) emphasise the necessity for policy intercessions to sustain and guide entrepreneurs in the tough procedure of starting a business. Kerr, Wittenberg and Arrow (2014:15) on the contrary found that larger firms created more jobs as compared to smaller businesses. Habanabakize et al. (2017:328) contend that there is a need to invest in both as smaller firms in order to grow and create jobs and larger firms tend to sustain jobs. Lowrey (2011:1) agrees that business creation adds to job creation and that this should be taken into account in policy development. One of the most prominent job creation

strategies for South Africa at present is the NDP 2030, which is supplemented by a host of governmental programmes (Le Roux 2013:508).

■ **Neo-liberal employment strategies of developing countries**

Siddiqui (2012:22) claims that the pursuit of neo-liberal economic policies has contributed very little to reducing unemployment and inequality in developing countries. Developing countries have used various strategies to increase employment (MSS Research 2014).

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

■ **Keynesian European employment strategy**

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

is the best avenue to ensure equity, access to health, education and other vital services to ensure social justice.

Cray et al. (2011:5) contend that the four main approaches through which the state can influence job creation are interest rate reductions, government employing and purchases, transfer payments and tax credits. However, the authors state that the success of policies depends on the economic situation of the nation (Cray et al. 2011:5). One of the primary aims of the European Employment strategy has been to raise employment levels (Raveaud 2007:412) through 'flexicurity': the mixture of labour market flexibility and security of employees (Jakab et al. 2018:9; Knogler & Lankes 2012:152). Employer's need for flexibility and workers' demand for protection can be achieved through the flexibilisation of the law governing dismissal, coupled with active labour market policies, including unemployment insurance schemes such as has occurred in Denmark (Bronstein 2009:71), which South Africa attempts to do through the BCEA, LRA and the Unemployment Insurance Act (UIA).

Furthermore, Sørensen (2011:26) contends that the Flexicurity Model is an implicit social contract between employers, employees and the state. It has however been subject to the manipulation of socio-economic and political interests, which has emphasised flexibility to the detriment of job security (Jakab et al. 2018:9; Schmid 2011:171). Consequently, the Keynesian economic policy approach and employment strategy is more aligned with social justice and is better suited to the South African context.

■ A national job creation strategy

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

would be a national job creation strategy, which builds employment and sustains jobs around national skills and skills development.

■ **National development plan 2030**

The aim of the NDP is to increase employment levels over the next 20 years by creating 11 million new jobs and reducing unemployment to about 6% by 2030. However, Vellem (2014:5) is unconvinced that economic growth will create and sustain jobs as it has not led to job creation in South Africa, at any rate not insofar as it has been depicted as a solution to the problem of unemployment. Le Roux (2013:508) is also sceptical of the NDP as it focuses primarily on employment in the formal corporate economy and it does not give adequate consideration to inspiring alternate forms of work, such as self-employment, co-operatives, waste management and recycling (Godfrey et al. 2017:800; Le Roux 2013:516). Moreover, Le Roux (2013:508) is sceptical of the perception that the service, retail, business and finance sectors hold the biggest potential for job creation. The author further claims that, in fact, no new jobs have been created. He maintains that existing jobs are simply transferred from core business to the service sector through the process of externalisation (Le Roux 2013:508). Likewise, the Congress of South African Trade Unions contends that the NDP is not formed to improve economic proprietorship and redistribution of wealth in South Africa (Vellem 2014:6).

■ **Accelerated structural transformation**

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

- accelerated structural transformation towards higher value-creating activities

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

■ Infrastructure investment

Infrastructure investment has the ability to create jobs quickly, while offering a basis for future growth (Lanchovichina et al. 2013:2016). Thus, government should be involved in programmes of direct job creation, such as investing in the improvement of social infrastructure through an active labour market policy to cope with perpetual unemployment (Goldberg 2012:45). Improved service delivery of 'high-quality basic infrastructure services such as hospitals, schools and water supply and sanitation raises living standards, improves the employability of populations and provides prospects for inclusive growth' (Lanchovichina et al. 2013:209).

■ A national wage policy

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

■ A sound labour relations management system

Montgomery and Maggio (2009:200) claim that it is in the long-term economic interest and financial wellbeing of private business to establish a positive labour relations management system. Brandt (2014:32) and Badenhorst-Weiss and Waugh (2015:7) contend that restraints in labour relations have an exceptionally negative effect on economic growth and development. Bell (2014:23) attributes the continuing labour conflict to a legacy of years of inattention, oversights and tactlessness made on behalf of employers, unions and all tiers of government, with the resulting actions of workers participating in lengthy strikes leading to them suffering serious deprivation (Badenhorst-Weiss & Waugh 2015:7). However, if the focus were less on rights and a greater focus on needs through accommodation, cooperation and co-determination, there would be less reliance by businesses and trade unions on labour market institutions and on collective bargaining to resolve conflict and labour disputes (Herrington et al. 2010:16).

Olsen (2010:302) claims that collective bargaining is critical as it gives workers a representational say, which allows innovation to take place in decision-making and it can increase the influence of crisis responses to the requirements of the real economy, while simultaneously ensuring that workers' rights are meaningfully protected. Consequently, a new social pact is required wherein the state, employers, trade unions and civil society agree not to use the full extent of the power available to them for adversarial purposes but rather agree to leverage mutual accommodation, once again recognising that the benefits of cooperation are better than coercion (Anstey 2013:138; Bendix 2010:552). Swanepoel et al. (2012:427) maintain that it is important to foster healthy workplace relations, establish trust, good communication and participative management. Finnemore (2002:145) also asserts that human dignity should be respected as the organisation's workforce can provide it with the necessary competitive edge to succeed in a highly competitive world.

■ **Manage human and organisational resources and relationships effectively**

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

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

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

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

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

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

■ Conclusion

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

Thus, it would be short sighted to simply focus on labour law and to ignore the influence of economic paradigms and their related external factors which have and continue to influence the labour relationship, such as the ILO, national governments pursuing trade agreements, MNCs and international financial institutions (Burgess 2010:198). Poverty will not be overcome if informal employment and unemployment are not dealt with and, in order to achieve this, illiteracy and ill-health need to be addressed (Walker & Pellissery 2008:82). From a social justice and societal point of view, healthy and well-educated workforces

enable countries to compete globally in terms of a high-productivity and high-wage portfolio (Walker & Pellissery 2008:86). Accordingly, there are a number of external and internal factors influencing job creation and job sustainability. As a result of intensifying globalisation and global competition, there needs to be a co-ordinated national integrated industrial policy which targets competitiveness and sustainability through innovation and private sector development, which will promote the creation and growth of SMMEs, job creation and job sustainability, while simultaneously increasing social protection and social security.

Therefore, job creation and job sustainability are not achievable simply by focusing on labour legislation's influence on job creation and job sustainability. Such a view is short sighted and inadequate. The design and implementation of appropriate policies at the global, national and local levels are necessary. Transparent public policy-making will create and strengthen the contribution of businesses to productive and equitable economic and employment growth. Badenhorst-Weiss and Waugh (2015:8) maintain that a skilled, educated and efficient workforce continues to be a considerable predicament. They contend that investment in the social security of workers is essential (Badenhorst-Weiss & Waugh 2015:8). The authors aver that businesses operating in South Africa need to invest 'in training, development, up-skilling and mentoring of their workforce and make an effort to retain them' (Badenhorst-Weiss & Waugh 2015:8). The authors identify 'labour relations, especially strikes' and instability to be severe risk factors to businesses operating in South Africa (Badenhorst-Weiss & Waugh 2015:8). They attribute the precarious circumstances to unfavourable working conditions, the use of labour brokers, migrant workers, labour unions and bargaining councils. Nevertheless, regulatory policy can play an important role in creating and formalising job opportunities (Miller 2012:10). Therefore, government should only amend and improve labour legislation which promotes job creation and job sustainability.

Chapter 3 provides a review of relevant local and international literature around the influence, if any, of labour legislation on job creation and job sustainability in South Africa.

Exploring the extent to which labour legislation, in meeting the normative requirements and ethical requirements of social justice, influences job creation and job sustainability in South Africa

Keywords: Legislation; Human rights; Regulation; Protection; Equity.

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■ Introduction

Chapter 2 provided the background and an overview of the factors influencing job creation and job sustainability in general. While labour legislation should be accommodating of economic growth and employment, it is vital to acknowledge that the emphasis of law is not on job creation and ensuring employment for the Republic's inhabitants (Kettledas 2013:3). It is therefore important to view law in its local, regional, national and international context, as well as from its historical perspective (Tzehainesh 2010:11) because the labour market and work organisation are a result of political choices (Tzehainesh 2010:28).

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

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

The background to the need for labour law is provided below.

■ Brief background

Labour guiding principles are not merely an enquiry of economics. The essentials of the Constitution must be considered when alternatives are formulated in order to validate any constraint of any rights (Botha 2015:33). Consequently, it is necessary to first acknowledge and understand that law is not created in a vacuum, neither does it operate in a vacuum (Deakin, Malmberg & Sarkar 2014:4; Jakab, Henriett & Szöllős 2018:11). The South African labour arena requires apt labour legislation to confront the disparities in the labour market (Cole & Van der Walt 2014:511). Labour legislation is predominantly concerned with providing workers with fundamental protections against unfair labour practices, unsafe working conditions and a decent living wage (Kettledas 2013:3; Webster et al. 2012:162). The Constitution, as well as the LRA, the BCEA and the EEA safeguard the right of an employee to fair labour practices and the rights to freedom of association, freedom of expression, privacy and equality (Botha 2015:33).

The Constitution is the highest law and acts as the overseer of all legislation reducing everything to its provisions (Cole & Van der Walt 2014:515; Jakab et al. 2018:11). However, concern has been expressed about the two cornerstone pieces of labour legislation, namely the BCEA and the LRA, as acting as disincentives for investment and being too onerous for small businesses, which could lead to the widespread evasion of labour legislation (Darrol 2013:14).

It was, therefore, essential in Chapter 2 to first explore the prevailing social, economic and political models around which labour law developed in South Africa; who actually holds the power and what influence global economic neo-liberalism had and is having on national economic policy. This was deemed necessary in order to determine what their collective influence is

on labour legislation, on the regulation of the employment relationship and on job creation and job sustainability overall. Nevertheless, it is accepted worldwide that fundamental human rights in the workplace must be respected. Human rights concerns now occupy a far more prominent place in labour law than they did in the previous 30 years (Bronstein 2009:126; Jakab et al. 2018:10).

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

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

Furthermore, there is a historical mismatch between the realities of the developing world and the dominant labour law model with its underlying assumptions, which has been exacerbated further through globalisation (Tzehainesh 2010:9). In a capitalist economy, it is the marketplace and not the law that formulates, moderates and obliterates employment (Bronstein 2009:71). However, regulatory policy can play an important role in creating and formalising job opportunities (Miller 2014:10). This is in line with the Distributive Justice Theory, which aims at changing the neo-liberal economic order into an inclusive economic order by attempting to reach an equilibrium between businesses exploiting and guaranteeing sustainable development, wherein the safeguarding of workers' rights is considered as one of its fundamental standards (Warikandwa & Osode 2014:69).

Employment security is being traded for the hope of job creation, which is at the heart of many government policies (Bronstein 2009:71). Although employment protection legislation achieves its aim by safeguarding current jobs, it simultaneously makes it more difficult for job seekers to enter the job market (Bronstein 2009:70). Conversely, Gwatidzo and Moyo (2014:300) claim that there is no consensus on whether employment protection legislation is beneficial or harmful to the economy. Nevertheless, there has been a move from the traditional economics viewpoint of encouraging labour market flexibility to one which emphasises protecting labour rights in business activities (Deakin 2009:16), which Warikandwa and Osode (2014:65) confirm. Estlund (2013:103) also agrees with this view and argues that labour law should be perceived as part of the larger societal project of regulating work and working conditions (Kettledas 2013:3).

According to the Supriot Report (Freedland, cited in Tzehainesh 2010:6), labour law should be widened to the broader concept of work, and not limited to the narrow concept of employment (Tzehainesh 2010:6). Moreover, Estlund (2013:104)

observes that a great deal of law has emerged from democratic processes to regulate businesses and constrain their potentially harmful conduct, which businesses seek to resist. Broadening the concept to work opens the scope of labour law to other types of work contracts which typically fall outside the traditional employment contract (Tzehainesh 2010:13). The recent amendments to the LRA appear to be aligned with this kind of thinking.

Employment protection legislation, therefore, comprises regulations that are intended to influence the behaviour of employers in order to improve the welfare of employees (World Bank 2011:3). In addition, an important benefit of employment protection is that it limits job destruction, whereas temporary jobs intensify it (Cahuc & Postel-Vinay 2002:63; Habanabakize & Muzindutsi 2018:125). Thus, the danger of enabling the creation of additional temporary jobs to foster job creation is that it can increase job destruction, thereby increasing unemployment.

Moreover, even though regulations may have significant compliance costs, those costs are justified if the regulations will create much greater economic and social benefits (Abrás et al. 2018:24). Shapiro and Irons (2011:2) contend that a one-dimensional theory is inadequate to encapsulate how rules influence markets and the economy. Consequently, a multi-dimensional theory on the effects of regulations on employment is more appropriate (Shapiro & Irons 2011:3). This study seeks to clear this disparity by investigating the influence of employment protection legislation on job creation and job sustainability, as well as to examine the extent to which labour legislation can be used to achieve the goals of social policy. Furthermore, labour law should be perceived as an area of regulation among many other areas of regulation, such as consumer products, the environment and financial integrity (Estlund 2013:104).

Likewise, according to the Critical Legal Theory, law reflects the prevailing social, economic and political views of society, especially of those who actually hold power in a country which it regulates.

Generally, the power structure in society has been, and is, weighted towards the 'haves'. Consequently, the vulnerable members of society need protection (Sodhi 2014:100). Bronstein (2009:1) argues that labour law is not just a means of regulating the exchange between labour and capital but it is rather a means to not only protect the worker, through the ILO concept of 'decent work', as well as to ensure democracy in the workplace. Thus, labour law requires a theory to validate the presence and influence of usual labour law regimes and values by addressing the moral, political and legal influence of the said law (Araújo & Meneses 2020:22; Collins 2011:137).

The problem in many developing countries is that labour law, which was transplanted during the colonial period, has remained entrenched and reinforced after independence (Mutalemwa 2015:167; Tzehainesh 2010:10). During the prolonged period of colonialism and the subsequent apartheid era, labour law was primarily regulatory and adopted a positivist approach. It was anti-social justice; it promoted discrimination and unfair working conditions. Nevertheless, since 1994, labour law has become more concerned with social justice, human rights and redressing past inequalities and injustices. Consequently, social justice is the normative ethical principle that will be used to evaluate the influence of labour legislation on job creation and job sustainability as social justice forms the basis of legislation in South Africa, in particular, the Constitution and labour legislation. A social justice duty is stipulated in the two cornerstone pieces of labour legislation, namely the BCEA and the LRA. The LRA lists its goals or purposes as to 'advance economic development, social justice, labour peace and democratising the workplace' (Botha 2015:33).

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

The background to the importance of labour law is provided below.

■ The importance of labour law

The normative role of labour law as a means to protect workers and to promote social goals is being undermined by the weakened regulatory function of the state and political support for the neo-classical economic theories promoted by international financial institutions (Aluko & Kibuuka 2018:2; Tzehainesh 2010:4). The dominant school of thought, especially among international financial institutions, has encouraged developing countries to flexibilise labour relations and to deregulate through structural adjustment, privatisation, trade and financial liberalisation often as a condition of financial aid (Tzehainesh 2010:21). Warikandwa and Osode (2014:44) observe that developing countries rely on the argument that inflexible labour legislation may bring about unintentional negative effects on the economy and lower labour standards in order to attract investors. This global neo-liberalist argument has resulted in the relevance, role and purpose of labour law being questioned and viewed in a negative light (Warikandwa & Osode 2014:44).

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

The background to the need for and the importance of legal protection is provided below.

Legal protection

The purpose of labour law is to afford a legal safeguard to employees and employers through the promotion of safe and productive workplaces; the correction of unsafe, bad working conditions; the prevention of exploitation by limiting hours worked; the payment for overtime worked; equality in the workplace; job security; and freedom from bias and discrimination (Benjamin 2013:29 cited in Le Roux & Rycroft; Jakab et al. 2018:18). This view corroborates Botero et al.'s (2004:1339) opinion that labour law governs the individual contract of employment. Labour law is involved with the employment terms and conditions agreed to in terms of which employees work, as well as the situations in which the contract is ended (Benjamin, cited in Le Roux & Rycroft 2013:31). Nevertheless, it is important to note that law is the instrument, not the motivating influence, of a noble society. It must always continue as the servant, never to be the master (Clark 1942:393).

According to Smit (2010:1), it is unquestionable that people require laws and support in order to achieve social justice. Consequently, the primary goal of labour law is the protection of employees in the employment situation. However, it is essential that the enforcement of labour standards and rights can no longer take place solely nationally, and that it is necessary that labour standards and rights be enforced globally (Bhattacharjee & Roy 2012:70). Botero et al. (2004:1339) confirm that countries throughout the world have founded a multifaceted scheme of laws and establishments meant to safeguard the interests of their national workers, as well as to assist in guaranteeing a minimum living standard for their inhabitants in general. Djankov and Ramalho (2009:4) agree that countries establish employment law, collective labour relations law and social security law to safeguard and to guarantee their workers' interests. South Africa appears to have a similar arrangement. As a previous British

colony, the British labour law was transplanted into South Africa. This was subsequently replaced over time, especially after 1993, with the start of the new constitutional dispensation (Pieterse 2003:10).

The Constitution and the Bill of Rights not only entrench civil and political rights but also guarantee justiciable social and economic rights in South Africa (Fabbrizi 2018:71; Pieterse 2003:10). It is now at the top of the hierarchy of the sources of labour law, in which court decisions play a crucial role. The Constitution acknowledges essential labour rights and fair labour practices as being important. In terms of Section 123, social justice is an essential pre-requisite for forming a robust economy and society, as it imposes clear restrictions on the policy options available to those who try to regulate the labour market (Botha 2015:33). Thus, the Constitution and labour legislation play a crucial role in supporting the employment relationship. In addition, labour legislation and social security legislation, particularly employment-based social insurance, are interconnected (Mpodi, cited in Le Roux & Rycroft 2013:272).

Economic efficiency and flexibility

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

Educating from neo-classical labour market models, diverse legal scholars have contended that minimum wage laws compound unemployment; bring about further ineptitudes and that direct transfers are an excellent way of guaranteeing distributive justice (Rogers 2014:1543; Sturn 2018:674). Barker (1999:30–39) cites provisions in the BCEA as an example that can

have a negative influence on flexible working conditions and working time flexibility. Chen and Funke (2005:688) agree that issues such as wage flexibility, non-wage labour costs and job security all add to labour market rigidity. In addition, the author maintains that labour market establishments, such as the National Economic Development and Labour Council (NEDLAC), Bargaining Councils and Sectoral Determinations affect the labour market directly and indirectly. Political support of this viewpoint has resulted in the weakening of the state's regulatory functioning and the normative role of labour law, as a means of promoting social goals being challenged.

The results of the study conducted by Feldmann (2009:76) revealed that labour regulation does affect unemployment globally. Noelke (2011:1) shares his view that employment protection legislation negatively influences job creation, especially for the youth. Feldmann (2009:76) contends that stringent employing and dismissing laws have an adverse effect on employment, as does collective bargaining which he maintains increases female unemployment, with the greatest effects among the youth. Cohen and Moodley (2012:323) confirm his finding that 71% of the unemployed are under the age of 34. On the contrary, Bassanini, Nunziata and Venn (2009:352) disagree with Feldmann (2009:76) and Noelke's (2011:1) views. The authors claim that there is little evidence of protective labour legislation having a negative influence on employment (Bassanini et al. 2009:352). However, they conceded that employment protection legislation may be more binding in some industries than in others (Bassanini et al. 2009:352).

Interestingly, Gwatidzo and Moyo (2014:300) discovered that there is no consensus in the literature they reviewed on whether employment protection legislation is beneficial or harmful to the economy. Sen (2019:1565) also observed that labour regulations have no impact on job creation. In addition, Bennington and Wein (2000:31) found that the employers who participated in their study did not strongly support the economists' view that

legislation creates inefficiencies and interferes with market mechanisms. In fact, they found evidence to the contrary. The employers who participated in their study indicated that legislation had little or no influence on efficiency and that legislation did not really affect the cost of recruitment and selection. In addition, very few of them had any major difficulty with complying with legislation.

Roychowdhury (2019:137) and Bronstein (2009:71) agree that there is no evidence to support the assumption that deregulatory labour reforms alone will be sufficient to improve a country's employment levels. Consequently, South Africa as a democratic industrialised country should not entertain the question of whether or not employment relationships should be deregulated. Rather, it should consider how the employment relationship should best be regulated and to what extent. The South African government sought to achieve this through 'regulated flexibility' (Kettledas 2013:4) by combining the safeguarding of basic employment requirements with systems and processes to amend these criteria, through collective bargaining, sectoral determinations for unorganised sectors and administrative exemptions (Cheadle 2006:668).

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

Employment protection legislation is not enforced uniformly across the board (Boeri & Jimeno 2005:2057). The informal sector remains poorly regulated or unregulated in many countries (Cooke 2011:101). There is also feeble conformance to labour laws in many developing countries, which is expressed through the presence of large informal sectors that are frequently contended to be detrimental for workers and damaging to growth (Almeida & Carneiro 2009:64). The authors' study on labour inspections in Brazil found that austere enforcement led to an upsurge in formal sector employment and non-employment and that there was a decrease in employment in the informal sector (Almeida & Carneiro 2009:86), which seemed mostly to be owing to a decline in self-employment (cf. Viollaz 2018:Abras et al. 2018:2).

■ Equal distribution of power

Labour law is the compensatory power that assists the weaker party to counter-balance the disparity of the bargaining power integral to the employment relationship (Benjamin, cited in Le Roux and Rycroft 2013:22). Guest (1997:349) maintains that labour legislation is critical in ensuring participation by all stakeholders, as well as minimising exploitation. Berg and Kucera (2008:23) corroborate Guest's view that the aim of labour law is to deal with the imbalance by defensive and procedural rights which, if absent, could end in unfair consequences for employees. Van Niekerk et al. (2008:3) confirm the view that legislative interventions during the past century were deemed necessary in order to address the unequal power balance in the employment relationship. Additionally, Schwartz (2013:73) supports their view that there is a difference in the resources and power that MNCs enjoy, compared to that possessed by a human being.

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

■ The promotion of social equality and the protection of human rights

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

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

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

this study will be on the influence of statutory legislation and its regulations on job creation and job sustainability in South Africa.

While labour legislation should encourage economic growth and employment, it is imperative to acknowledge that the focus of law is not on job creation and obtaining employment for the country's inhabitants. The focus is on affording the employed fundamental protections against unfair labour practices, unsafe working conditions and a decent living wage (Kettledas 2013:3). The section '*The Constitution of the Republic of South Africa, Act No. 108 of 1996*' will deal with the labour legislative framework in South Africa and its influence on job creation and job sustainability.

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

The Bill of Rights, entrenched in the Constitution, provides for a number of fundamental workers' rights (Bronstein 2009:4; Moseneke 2012:12). The overarching effect is that these laws apply to all aspects of the employment relationship, including the rights to human dignity and to be treated with respect (*S v Makwanyane and Another* 1995 (3) SA 507A-B [CC]); Freedom of Association; fair labour practices, as well as the right to strike. Furthermore, according to De Vos's Equality theory, the Constitution is a vehicle for transformation (Van der Walt 2004:266). However, Van der Walt (2004:266) is critical of De Vos's Equality theory and argues that it limits the notion of social justice and is, therefore, inadequate for the South African context. The author maintains that the South African Constitution is a transformative document that approves and supports not only the protection of current rights, including socio-economic rights but also the expansion of rights to those who were formerly refused them (Van der Walt 2004:266). It is still relevant that De Vos argues that the transformative process is necessary for 'the achievement of long-term "real" equality' (Van der Walt 2004:266).

The relevant sections of the Bill of Rights are (Department of Labour 2014c:4):

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

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

■ The labour legislative framework in South Africa

Statutory regulation is an important source of labour law in South Africa (Bronstein 2009:4). The employment relationship is one of the most regulated types of contracts (Le Roux & Rycroft 2013:vii). There has also been a long history of established elevated levels of poverty, structural inequality and structural unemployment (Chibba & Luiz 2011:307; Meyer 2017:504). According to Benjamin, cited in Le Roux and Rycroft (2013:23), there is a shortage of critical skills in South Africa, which May and

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

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

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

The South African government has responded to the perceived rigidity of the labour laws by making certain changes to the BCEA, the LRA and the EEA. However, the legislative amendments have not provided greater flexibility. Instead, they have increased labour protection. An example is the supervision of non-standard employment, or labour broking, which has resulted in the

increased security of employment for vulnerable workers (Kettledas 2013:4), which may influence job creation and job sustainability. Another important amendment is Section 198 of the LRA and Section 6 of the EEA, dealing with the equal treatment of workers, which may also have an influence on job creation and job sustainability.

The legislative amendments have been criticised by economists. In addition, the government in its Regulatory Influence Assessment through the Department of Labour has acknowledged that jobs may be lost because of their implementation (Goldberg & Wilkinson 2014). Despite the aforesaid criticisms, the South African government re-affirmed its commitment to creating a labour market that is more favourable to job creation and job sustainability, as well as ensuring that the aims of social justice are addressed (Kettledas 2013:7). Kettledas (2013:7) further contends that labour law cannot provide solutions to the socio-economic challenges that South Africa is faced with – it can simply provide the framework within which solutions can be found. Socio-economic rights are constitutionally protected (Fabbrizi 2018:71) and enforceable in South Africa (Pieterse 2003:3; Van der Walt 2004:255). Consequently, the influence of the Constitution and the Bill of Rights in relation to the labour legislative framework in South Africa on job creation and job sustainability is examined further.

■ Specific labour legislation in South Africa

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

The BCEA provides the foundation and sets a floor for minimum standards in the labour market (Du Plessis & Fouché 2019:50). The EEA targets the legacy of racial and gender

discrimination in the workplace and in the labour market, providing a framework for businesses to implement affirmative action measures (Naidoo 2013:8). The SDA promotes training with the aim of facilitating skills acquisition in order to match demand and supply in the labour market with the necessary skills (Bendix 2019b:252; Cole & Van der Walt 2014:525). The LRA binds all the pieces of labour legislation together. Even though the LRA focuses on labour relations, it is instrumental in promoting sound labour relations between employers, employees and trade unions, primarily through collective bargaining and through the variation of minimum employment standards, in terms of the BCEA (Du Plessis & Fouché 2019:231; Van der Walt, Le Roux & Govindjee 2012:39). The legislative intention is to use collective bargaining to promote efficiency and to overcome any rigidity in the workplace and the labour market (Bendix 2019:205; Du Toit et al. 2011:39). However, the BCEA and the LRA are perceived by organised business as primarily to blame for restricting job creation (Godfrey 2014:2587). Although labour legislation is supportive of economic growth and employment, job creation and obtaining employment for the inhabitants of the country, this is not its aim. There are, however, a number of labour laws regulating and influencing job creation and job sustainability. Some are perceived to have a positive influence, while others are perceived to have a negative influence.

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

■ Influence of increased labour costs, as a result of compliance, on job creation and job sustainability

Compliance with labour regulation increases labour costs (Almeida & Carneiro 2009:28–29; Bassanini & Cingano 2019:127). The primary reason for the call for deregulation is to reduce

labour and compliance costs, in order to improve job creation and job sustainability (Arnold & Hartman 2005:207-208). Almeida and Carneiro (2009:28-29) agree and argue that more severe enforcement of labour regulation limits business' size, production, productivity and leads to higher unemployment. Ayanda and Laraba (2011:200) share the sentiments expressed by the authors above, maintaining that the problems of complying with government regulations and tax authorities are skewed more heavily onto smaller firms through higher compliance costs, for example import or export and tax costs; labour market procedures; and licensing and price control. Furthermore, Almeida and Carneiro (2009:28-29) postulate that efficiency and firm size are sacrificed in the process, apart from informal labour being employed to evade compliance with the laws. Consequently, the authors recommend the relaxation of enforcement and the promotion of more flexible labour laws to stimulate growth (Almeida & Carneiro 2012:64). However, they do concede that it is not only labour regulations that affect resource allocation in the economy but also other regulations such as investor protection, financial, business entry and tax regulations.

According to the Standard Economic Model of Enforcement, the employer will only conform if the likelihood of discovery is greater than the cost of compliance and penalties (McCann, Lee & Belser 2014:162). Compliance costs can be evaded or minimised by non-compliance; however, the majority of employers choose to comply with the law (Gimpelson, Kapelyushnikov & Lukyanova 2010:618). Consistent with the neo-liberalist approach, collective bargaining, labour costs, minimum wage regulation, industrial action and international competition result in increased direct and indirect labour costs that can influence job creation and job sustainability.

Labour market inflexibility could possibly result in business demanding complete labour market flexibility. Social justice

theorists, however, argue that complete labour market flexibility is not possible as all governments need to provide a safety net of protective legislation for their constituencies, especially for the most disadvantaged employees. Venter et al. (2010:130) claim that there is no such thing as a perfectly flexible labour market. Benjamin, cited in Le Roux and Rycroft (2013:27) and Venter et al. (2010:130) argue that the debates centring around deregulation create a false dichotomy. There can never be a total absence of regulation, and the debates are really about substituting one body of regulations for another (Le Roux & Rycroft 2013:27). Nevertheless, governments have a responsibility towards their citizens to balance the needs of business with societal needs, such as to provide remedies for unemployment; to safeguard health and safety, to ensure the general wellbeing of all its citizens, as well as to provide for retirement availability and skilled labour (Venter et al. 2010:134).

Thirdly, the issue of labour sub-contracting, outsourcing and labour brokers is one which employers are in favour of and to which unions and workers are vehemently opposed (Bendix 2019:113). Fourthly, there is the issue of the growing inequality of income distribution (Du Plessis & Fouché 2019:102; Venter et al. 2010:138). Fifthly, the issue of the social cost of the effects of past labour market discrimination based on race and gender through job reservation, unequal education and training opportunities has led to inefficiencies in the labour market (Du Plessis & Fouché 2019:199; Venter et al. 2010:139). Sixthly, the issue of labour productivity, efficiency and globalisation is important (Venter et al. 2010:142). Seventhly, there is the issue of the skills shortage in South Africa (Du Plessis & Fouché 2019:199), which Venter et al. (2010:146) claim is having a negative influence on South Africa's economic performance. Furthermore, the authors postulate that this is being further compounded by the serious shortage of sound managerial expertise in South Africa. Badenhorst-Weiss and Waugh (2015:6) agree that it is hampering economic growth. Finally, there is the issue of the high unemployment rate in South

Africa (Bendix 2019:488; Venter et al. 2010:147), impacting on job creation and job sustainability.

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

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

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

■ **Voluntary compliance through corporate social responsibility**

Weber and Gerard (2014:32) posit that CSR should be part of management's responsibility to create an ethical culture, wherein compliance is part of a more proactive corporate governance approach, in which preventative steps are taken to avoid compliance violations. This results in the promotion of institutional responsibility, which in turn could lead to the expansion or at least, the protection of jobs. The problem is that in South Africa, labour legislation is based on a liberal market system (Kalleberg 2009:15). A further problem is that not all businesses adhere to it (Underhill & Rimmer 2017:34). Consequently, Jamali (2007:1) and Fig (2005:601) contend there is a need for regulation. Kloppers (2014:78) suggests that compliant businesses should be taxed at a lower rate than non-compliant businesses, to encourage and ensure compliance.

■ **Compulsory compliance with no or little consequences**

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

□ **The *Skills Development Act*, No. 97 of 1998**

There is a shared appreciation that skills development is one of the major contributors to generating new employment; reducing poverty among the unemployed and underemployed; stimulating the economy; and increasing the potential for employment and income generation (Abrassart 2015:225; Baah-Boateng 2016:414; De Jongh 2019:85; Dobbins & Plows 2016:571; Falakahla 2018:2; Heitmann 2009:2; Lekhanya 2015:412; Mago 2018:1). The SDA was promulgated to attend to the serious skills shortage in South Africa and to change the skills profile to suit the needs of the economy, which underwent massive restructuring (Abrassart 2015:225; Dobbins & Plows 2017:572; OECD 2017:11; Sturn 2018:648; Venter et al. 2010:146). Consequently, the SDA aims to encourage proactive action in the labour market.

The SDA was introduced as a result of government's recognition of the need to train and retrain workers to meet changing industry requirements and to re-skill retrenched workers to enable them to re-enter the labour market (Du Plessis & Fouché 2019:201). It represents an attempt to connect the emphasis on equity in the LRA, the BCEA and the EEA and more effective human resource development as a means of generating greater efficiency (Du Toit et al. 2011:37). Consequently, the SDA created an empowering official and controlling framework for increasing strategic investment in education and training throughout all economic sectors (Rasool & Botha 2011:2).

The SDA provides the legal framework wherein the state assumes responsibility for the training of workers and it is tied to the capacity-building strategy encapsulated in the EEA (Cole & Van der Walt 2014:525). In order to achieve these aims, the SDA created a new uniform monetary framework for training and skills development. The Act is accompanied by two other pieces of legislation, namely the *South African Qualifications Authority Act*, No. 58 of 1995 (SAQA) and the *SDLA*, No. 9 of 1999, which together provide a broad dispersal of training and skills development for the entire economy (Bendix 2019:244; Du Toit et al. 2011:37). The skills development responsibility falls under the backing of the Department of Higher Education and Training and is facilitated through approximately 20 Sector Education Training Authorities (SETAs) that operate through a levy-and-grant system determined by the *SDLA* (Cole & Van der Walt 2014:525).

The SDA also endorses a skills development strategy that is adaptable, manageable, demand-led, dispersed and built on a partnership between the public and private sectors (Du Plessis & Fouché 2019:200). The SDA has a direct positive link with job sustainability and job creation as its aims are to remedy past imbalances; to enhance the level of investment in educating and training workers; to utilise the workplace as a learning environment; to inspire participation in leadership; to increase the employment prospects of disadvantaged people and to guarantee quality education and training in the workplace (Cole & Van der Walt 2014:525). By implication, any training programme presented must first be sanctioned; support must be provided to work-seekers to find work and to help retrenched workers to find alternative employment; and it should ensure facilitation and control of employment services, and have the backing of employers to participate in learnerships (Du Plessis & Fouché 2019:219; Du Toit et al. 2011:37).

There are a number of benefits flowing from this Act. The SDA, through its various structures such as the SETAs, can certify that essential degrees of training are uniform with the skill necessities

of the labour market (Du Plessis & Fouché 2019:202). The SDA lessens the free-rider problem by guaranteeing that all businesses participate in the cost of training through the SDLA. The SDLA enhances collection efficiency through the collection of levies by the South African Revenue Services, which improves compliance (Du Plessis & Fouché 2019:207). The SDA promotes training effectiveness and efficiency by ensuring that training is relevant. The Act also guarantees multifaceted involvement by employers and employees in the control of training and education funds. Thus, skills development can be used to promote sustainable livelihoods, as well as employability by ensuring that training excellence occurs in the workplace; that people who want to be self-employed are assisted; and that those who want to, acquire the necessary skills. The SDA ensures that critical skills are developed, as sustainable growth and equity encourage economic growth, which results in job creation and poverty alleviation. The structures created in terms of the SDA assist in detecting the skills connected to market demand.

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

□ ***Employment Services Act, No. 4 of 2014***

The ESA's overall purpose is to promote employment (Du Plessis & Fouché 2019:219). The aim of the ESA is to assist the unemployed in seeking new employment (Govindjee, Olivier & Dupper 2011:776). The further aims of the ESA are to (Morotoba, cited in the Department of Labour 2014c:8):

- offer public employment services
- fund plans to encourage the employment of young work-seekers and other vulnerable persons
- make available arrangements to help employees in financially strained businesses to maintain employment
- the registration and control of private employment agencies

- the formation of the Employment Services Board
- the launching of Productivity South Africa
- the instituting of Supported Employment Enterprises
- provide transitional provisions and concerns associated therewith
- enable the engagement of foreign nationals.

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

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

□ ***Employment Tax Incentive Act, No. 26 of 2013***

The ETIA was promulgated in 2013 to try to attend to the excessive levels of youth unemployment in South Africa by providing employers in the private sector with a tax incentive, to employ young workers between the ages of 19 and 29, with limited work experience in all sectors of the economy (Ebrahim & Pirttilä 2019:1). This tax incentive is utilised to provide jobs to the numerous school-leavers entering the labour market. However, this incentive scheme is a temporary measure used by the government to try to reduce the high numbers of unemployed youth in order to provide them with the necessary skills and experience to increase their chances of finding long-term employment.

□ ***Broad-Based Black Economic Empowerment Act, No. 53 of 2003***

The B-BBEEA is a broad socio-economic development strategy introduced in an attempt to de-racialise the economy and to increase involvement in the economy, particularly by those recognised as being previously excluded or denied access into the business arena (Du Plessis & Fouché 2019:452; Kloppers 2014:58). Thus, the purpose of the B-BBEEA is the financial liberation of all black people, including women, people with disabilities, people living in rural areas and the youth (Krüger 2011:207). Kloppers (2014:59) posits that the B-BBEEA attempts to transform society by dismantling economic inequality and is the leading instrument for the redistribution of wealth in post-apartheid South Africa. The B-BBEEA necessitates the development and publication of Codes of Good Practice to establish instructions for the B-BBEE procedure for the entire economy. There are arguments for and against the impact of B-BBEEA on investment, productivity, growth (Acemoglu, Gelb & Robinson 2007:1), job creation and job sustainability.

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

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

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

- the achievement of the goals of the B-BBEEA enhances the lives of previously disadvantaged individuals
- a sizeable black middle-class has emerged because of B-BBEE policies
- the B-BBEEA enables the use of the rare and distinctive skills of the previously disregarded black majority (Duffett et al. 2009:94), which may influence job creation and job sustainability.

The three major deterrents recognised in the Association for Communication and Advertising (ACA) survey to job creation and job sustainability were the lack of skills of black executives, the low number of black women at management level and the

brain drain of senior employees (Burger 2009:16). Consequently, there is ambivalence as to whether the B-BBEEA's effects are positive or negative on investment, productivity, growth (Acemoglu et al. 2007:23), job creation and job sustainability. However the, B-BBEEA is a useful tool for upliftment, and it connects with CSR movement (Kloppers 2014:60). All of these aspects should contribute positively to job creation and job sustainability, which will ultimately promote social justice.

■ **Compulsory compliance and adverse consequences**

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

□ ***Employment Equity Act, No. 55 of 1998***

The EEA gives effect to the right of equality contained in Section 9 of the Bill of Rights in Chapter II of the Constitution (Du Plessis & Fouché 2019:100), which is adapted to fit the workplace context (Cole & Van der Walt 2014:519). Du Toit et al. (2011:656) claim that Section 9(2) of the Constitution expands the idea of equality past the simple prohibition of officially unequal treatment to the aim of attaining equal enjoyment of rights. The South African equality legislation is based on the Canadian EEA (Cole & Van der Walt 2014:528).

The aim of EEA is to oppose inequalities and labour distortions (Du Toit et al. 2015:666), which should positively influence job creation and job sustainability. Le Roux and Rycroft (2013:244) confirm that the EEA's purpose is to regulate discriminatory conduct and to provide a structure for the operation of

affirmative action. Venter et al. (2010:139) also agree that the EEA was passed to address the social cost of the effects of past labour market discrimination based on race and gender through job reservation, unequal education and training opportunities, which should positively influence job creation and job sustainability.

Consequently, Du Toit et al. (2011:36) contend that the aim of the Act is to achieve employment equity through measures based on the circumstances of the workplace that will promote rather than hinder economic efficiency and human resource development, which in turn should positively influence job creation and job sustainability. The main aim of the Act is therefore to attain equity in employment through fostering equal prospects and fair employment practices (Du Plessis & Fouché 2019:100), as well as to attain the equitable representation of black people, women and people with disabilities in all occupational classifications through the implementation of affirmative action measures (Du Toit et al. 2011:36). The implication for job creation and job sustainability is that affirmative action ascribes socio-economic benefits such as positions or government contracts to those disadvantaged by status, as well as by introducing appropriate training and human resource development (Dapper & Garbers, cited in Le Roux & Rycroft 2013:253), which should positively influence job creation and job sustainability. Du Toit et al. (2011:726) share this view and further contend that when employers invest in their workforce and treat their workers with fairness and equity, their actions can result in increased productivity, motivation and resourcefulness in the workplace, which should positively influence job creation and job sustainability.

All of the aforementioned aspects should contribute to job creation and job sustainability, which ultimately will promote social justice. Some of the amendments made to the EEA, which came into effect on 01 August 2014, as well as their likely influence on job creation and job sustainability are discussed further.

▣ **Employment Equity Amendment Act, No. 47 of 2013**

In terms of the EEA, there is an overall responsibility on employers to initiate action to eliminate unfair discrimination at work with regard to employment conditions, remuneration and benefits (Du Plessis & Fouché 2019:102). The regulations and a draft Code of Good Practice provide substance to the legal framework of the EEA when enforcing the provisions of the EEA (Naidoo 2013:8). The regulations pose quite an administrative problem and increased workload for employers to implement (Solidarity Trade Union, cited in the Solidarity Research Institute Report 2012:4), which could influence job creation and job sustainability.

In terms of the amendments, the fines and penalties for non-compliance with the affirmative action provisions of the Act were increased significantly and pose severe restrictions on the employers' abilities to change working practices (Hofmeyer 2013:26), which might influence job creation and job sustainability. Furthermore, the amendments provide that only South African citizens can now benefit from affirmative action. The employment of foreigners will not be taken into account (Hofmeyer 2013:26). The use of contract workers by organisations is also affected, as employees who are assigned to a client by a labour broker for longer than 6 months are deemed employees of the business, for affirmative action purposes. This will pose quite an administrative problem to implement these provisions, which could influence job creation and job sustainability and could ultimately either promote or hinder social justice.

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

○ **Pay equity and the prohibition of wage discrimination**

In terms of Sections 6(4) and 6(5) of the EEA, pay equity necessitates that individuals who are similar in every detail should

not receive different pay established on discriminatory or prohibited factors (Cohen 2014:27). The provision is aimed at addressing the pay discrimination and inequalities that exist (Hlongwane 2007:71) based on workers being employed on fixed-term contracts or being allocated from a labour broker as opposed to being employed on a permanent basis (Cohen 2014:27).

The provision focuses on identifying and eliminating pay differentials and unfair remuneration practices, especially where it occurs on a prohibited or arbitrary basis (Cohen 2014:27). All these aspects present challenges to job creation and job sustainability, which ultimately could hinder social justice.

Nevertheless, it does not require that everyone should receive the same remuneration. Examples of valid wage dissimilarities are those differences founded on skill, performance, length of service, capabilities or flexibility, seniority and responsibility (Hlongwane 2007:76). The need to eliminate pay discrimination has long been recognised both locally and internationally (Du Toit et al. 2015:703). In addition, the EEA must be interpreted in compliance with the ILO conventions that advance the concept of equal pay for equal value, to which South Africa is a party.

○ **Affirmative action and employment equity**

In promoting the goals of affirmative action and employment equity, the amendments to the EEA (des Squire 2014):

[P]lace the onus on employers to review all employment policies, as well as to develop new and more in-depth job profiles, where the required competencies to perform the job are clearly outlined. (n.p.)

Recruitment and selection based only on educational qualifications and experience is no longer be acceptable. 'Academic qualifications and/or formal workplace qualifications and experience will, however, need to be considered' (des Squire 2014).

Employers will need to determine what the essential skills are that workers need in order to execute the fundamental aspects of the job and these will have to be recorded in the job profiles (des Squire 2014). Furthermore, additional associated selection criteria will need to be proven and well defined. Moreover, there is a greater responsibility on employers to include the recognition of prior learning in their recruitment and selection policies and procedures, as well as in addressing wage differentials between gender and race (des Squire 2014). This commitment to equal pay will increase labour costs, which will affect the employer's budget and ultimately the salary bill (Chen & Funke 2005:688). Given such constraints, employers may choose not to employ additional staff or not to employ more staff on a permanent basis, which could not only influence job creation but also job sustainability and could ultimately either promote or hinder social justice.

○ Increased reporting

Amendments made to Section 21 of the EEA have resulted in increased detailed employment equity plan reporting (Du Plessis & Fouché 2019:106) and the progress made in its implementation (Solidarity Trade Union, cited in the Solidarity Research Institute Report 2012:4).

Preceding its amendment, Section 21 of the EEA differentiated between employers who employed more than 150 employees from those who employed less than 150 employees. This difference is no longer relevant and every employer who employs more than 50 workers or has an annual turnover greater than the amount differentiated in Schedule 4 is obliged to present the equity report annually (Solidarity Trade Union, cited in the Solidarity Research Institute Report 2012:4). If an employer expects that he or she or it is unable to submit the report on time, the amendment currently obliges the employer to notify the Director-General of the

Department of Labour in writing of this anticipated failure before the last working day of August. The employer is also required to set out the reasons why he or she or it foresees that he or she or it is unable to submit timeously (Hlongwane 2007:77). This will increase the administrative problem of complying with these provisions, which could influence job creation and job sustainability and could ultimately either promote or hinder social justice.

○ **Employers' increased fines and penalties for non-compliance**

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

The amendment to the EEA provides disgruntled employees with cheaper and easier access for disputes of claims of unfair discrimination (Cohen 2014:27) to be arbitrated by the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of Section 10(6)(a) of the EEA. Previously, such claims had to be transferred to the Labour Court, which was a costly exercise. This cheaper referral could result in an increase in the number of disputes heard by the CCMA, which could lead to increased regulatory costs (Stähler 2008:1163) that could contribute to or present challenges to job creation and job sustainability, ultimately either promoting or hindering social justice.

Mandatory compliance with affirmative action and employment equity; the removal of unfair pay discrimination; increased reporting; and increased fines and penalties for non-compliance

could contribute negatively to and present challenges to job creation and job sustainability, which may ultimately hinder social justice.

□ **The *Basic Conditions of Employment Act*, No. 75 of 1997**

The main aim of the BCEA is to advance economic development and social justice by regulating the right to fair labour practices as stipulated in Section 23 of the Constitution (Van der Walt et al. 2012:39), which safeguards trade union, organisational and individual labour rights as essential rights. The main purpose is achieved by the BCEA guaranteeing certain minimum standards of employment for the safeguarding of workers who lack other defensive methods (Du Plessis & Fouché 2019:50), while simultaneously creating mechanisms to vary the application of those standards through a policy of 'regulated flexibility', in order to improve job creation and to enhance job sustainability (Bronstein 2009:248).

The BCEA's aim to strike a balance between equity and efficiency is achieved through the introduction of working time flexibility in terms of Section 49 and Section 50 of the Act; by the variation of collective agreements, sectoral determinations and ministerial determinations, as well as through the legislative provisions dealing with average hours of work in terms of Section 12; and the compressed working week in terms of Section 11 of the Act (Du Toit et al. 2015:35). Sections 51–58 of the BCEA enable the Minister of Labour to make sectoral determinations to establish basic conditions and minimum wages (Du Plessis & Fouché 2019:69). Berg and Kucera (2008:12) argue in favour of minimum wages as mutually beneficial to the employer, as well as for workers. Rogers (2014:1544) supports the view that minimum wage laws advance social equality for low-wage workers, aid in decreasing workers' poverty and inequality, and acts as a safeguard against pay devaluation (Escudero, Khatiwada & Malo 2013:109).

These mutual benefits to both employers and workers can positively influence job creation, as well as job sustainability, ultimately promoting social justice.

However, Greene et al. (2007:87) adopt a contrarian view they contend that minimum wage laws create unemployment through salary bands being maintained at unnaturally elevated levels, as opposed to worker productivity, thereby pricing workers out of the labour market (Greene et al. 2007:85). Venter et al. (2010:138) agree with Greene et al. (2007:87) that the resulting increased direct and indirect labour costs could threaten job creation and job sustainability (Marneffe & Vereeck 2011:352). Hepple, cited in Le Roux and Rycroft (2013:6), however, refutes their negative sentiment and argues that South Africa's minimum criteria are no greater influence than in other countries, especially with regard to annual leave. The author concedes, however, that the restriction of night work is the only exception, where South Africa is more rigid than other countries (Hepple, cited in Le Roux & Rycroft 2013:6). Nevertheless, Greene et al. (2007:85) argue that the poor and the young are the two groups most negatively affected by the minimum wage regulations. The authors oppose the argument that a higher income for some compensate for the cost in job losses. Additionally, the reduction of wages and income, although increasing external competitiveness, also results in a reduction of domestic consumption, threatening job creation and job sustainability (Escudero et al. 2013:107). Furthermore, the difference between labour earnings and productivity growth, as well as the disproportionate high rise in labour costs threaten job creation and job sustainability (Chen & Funke 2005:688). Hepple, cited in Le Roux and Rycroft (2013:7), however, contend that South Africa has the shortest notice period and lowest severance pay for a retrenchment dismissal. Rogers (2014:1544) also refutes the argument that minimum wage leads to job losses. The author posits that there is significant empirical evidence supporting the claim that past minimum wage increases have not led to job losses (Rogers 2014:1544). Consequently, the argument

in favour of minimum wages is that it could result in an increase in real wages, which could prove to be beneficial to the local economy – especially during an economic crisis – which could influence job creation and job sustainability. In addition, domestic consumption could be stimulated by increasing minimum wages and encouraging collective bargaining in order to raise overall wages (Escudero et al. 2013:109).

Berg and Kucera (2008:12) contend that employers' incentives are altered by controlling working conditions through health and safety, child labour regulations, minimum wages, employment protection and labour standards. Du Toit et al. (2011:597) support their view that the regulation of working time is an important provision, which promotes the health and safety of employees in terms of Section 7 of the BCEA. However, there needs to be a balancing of rights between industry and labour. If viewed in the abstract, it would appear that industry may have just cause to complain that minimum wages and other protection offered by legislation negatively influence business.

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

Venter et al. (2010:132) caution that the implementation of these presumptions can further restrain job creation, as it will result in business' perception of the South African labour market as being even more inflexible, inefficient, overcontrolled and further increasing labour costs (Marneffe & Vereeck 2011:352). The authors further claim that an employer burdened with

substantive costs as well as direct costs and procedural costs will be less inclined to employ more workers on a permanent basis. This presents challenges to job creation and job sustainability, which can ultimately hinder social justice.

Greene et al. (2007:85) postulate that the problem with labour legislation is that it tends to hurt the very people it is envisioned to assist, through job destruction and by eliminating jobs that they are qualified to perform. Nevertheless, the amendments to the BCEA and LRA were implemented to counter these adverse business practices and to specifically deal with atypical employment, which should contribute to job creation and job sustainability and promote social justice. The amendments to the BCEA sought to increase employee protection in the workplace (Hofmeyer 2013:24), which could contribute to job sustainability and ultimately promote social justice.

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

Basic Conditions of Employment Amendment Act, No. 20 of 2013

The objectives of the amendments to the BCEA were to (Du Plessis & Fouché 2019:50; Hofmeyer 2013:24):

- safeguard the employment relationship
- to initiate laws to control contract work, sub-contracting and outsourcing
- to attend to the predicament of labour broking
- to guarantee decent work for all workers
- to avoid the exploitation of workers and to outlaw particular offensive methods
- to reinforce the operation and implementation of the BCEA by increasing fines for non-compliance.

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

The stricter regulation of labour brokers and temporary employment services (TESs); the prohibition of accepting payments from employees in respect of their employment or allocation of work; the Minister's increased powers with regard to sectoral determinations; and the employer's increased liability for non-compliance and certain acts by employers constituting criminal offences, further expanded upon below, may additionally be perceived by business as contributing to greater inflexibility, thereby presenting challenges to job creation and job sustainability. However, in reality, this may not necessarily be the case.

○ **Stricter regulation of labour brokers and temporary employment services**

The triangular nature of the relationship between labour broker, employee and client poses challenges to labour regulation (Du Toit et al. 2015:42). Outsourcing has increasingly been used in the supply of labour to circumvent the definition of who is an employer (Bronstein 2009:62). Additionally, this is one of the methods which business and government has used as well as being a justification for creating jobs, and to create labour market flexibility. However, the converse was found in that atypical employment, instead of creating new jobs, actually resulted in more jobs being destroyed. Consequently, in order to combat this unfair business practice, Section 82 of the BCEA was introduced to regulate labour brokering more rigidly by making it unfeasible for employers to employ a full-time worker on either short-term contracts or through labour brokers (Du Plessis & Fouché 2019:52). This important amendment has curbed the widespread abuse and practice of employers exploiting vulnerable employees through outsourcing in an attempt to evade labour legislation protections (Brand 2010:1). This amendment could have a positive influence on job creation and job sustainability.

In addition, both the TES and the business client are now jointly and severally liable, if the TES does not meet its obligations as an employer in terms of the BCEA or any sectoral determination (Du Toit et al. 2015:591). Consequently, both are now liable for procedural fairness that could contribute to job sustainability although it may present challenges for job creation and could ultimately either promote or hinder social justice. Moreover, in terms of the amendment after a 3-month period, the client company now becomes the employer. This could contribute to job creation but presents challenges for job sustainability and could ultimately hinder social justice.

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

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

Another significant amendment which may influence job creation and/or job sustainability is Section 33(A)(1)(a) pertaining to the prohibition of employers from obliging employees to pay in order to obtain employment, and from obliging employees to buy goods, services or products (Du Plessis & Fouché 2019:68). However, this restriction is not applicable to arrangements in which employees obtain a financial advantage through the purchase of goods, products or services at a fair and reasonable price, such as insurance, medical aids, pensions, uniforms, etc. (Cohen 2014:8).

The amendment also makes it an offence for anybody to involve or authorise a child to do any work or offer any services that place the child's wellbeing at risk (Du Plessis & Fouché 2019:68). The prevention of anybody from compelling or allowing a child under 15 years of age to work is extended to cover all work done by children (as employees as well as independent contractors). A further important amendment is that the Minister of Labour may issue an 'umbrella' sectoral determination prohibiting or regulating the sub-contracting of work. Both these aspects could further contribute to and present challenges to job creation and/or job sustainability, which ultimately may hinder social justice.

○ **Minister's increased powers with regard to sectoral determinations**

In terms of Section 55(4) of the BCEA, the Minister has been given additional powers to, *inter alia*, prescribe minimum wage increases; prohibit or regulate sub-contracting with other forms of non-standard work and set a national minimum wage. Patel, Khan and Englert (2020:151) contend that there are arguments for and against the implementation of a national minimum wage. Minister's increased powers may affect the building sector and the Information Technology (IT) sector (Hofmeyer 2013:24), which could present challenges to job creation and job sustainability, and ultimately hindering social justice.

○ **Employers' increased liability for non-compliance**

Labour inspectors in terms of Section 64 of the BCEA have been given wide powers to conduct inspections; advise employees and employers of their rights and obligations; investigate complaints; secure written undertakings to comply in terms of Section 68 of the BCEA and issue compliance orders in terms of Section 69(1) of the BCEA against employers who do not conform

with their statutory duties (Du Plessis & Fouché 2019:73). In terms of Section 73 of the Act, failure of an employer to remedy non-compliance is now enforceable through a Labour Court order that could result in increased regulation costs (Marneffe & Vereeck 2011:352), which may present challenges to job creation and job sustainability and could ultimately hinder social justice.

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

○ **Certain acts by employers constitute criminal offences**

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

□ ***The Labour Relations Act, No. 66 of 1995***

The principal aim of the LRA is to advance economic development and social justice by regulating the right to fair labour practices as provided for in the Constitution (Van der Walt et al. 2012:39). In addition, the Constitution in terms of its Bill of Rights protects trade union, organisational and individual labour rights as basic human rights. Consequently, the LRA seeks to promote job creation and job sustainability through creating greater flexibility by eliminating inflexibilities and inadequacies from the BCEA's control of minimum employment conditions, by promoting

flexibility through collective bargaining; through the enforceability of collective agreements; through the encouragement of workplace forums; through codes of good practice; by allowing for the variation of employment criteria in certain situations and by the discerning treatment of legislative criteria, subject to certain thresholds (Du Plessis & Fouché 2019:56).

In making dismissals more difficult, the LRA provides businesses with greater incentives to train their workers. This may contribute to job creation and/or job sustainability, which ultimately promotes social justice. Despite the aforesaid, one of the major criticisms levelled against the LRA is that it makes difficult for employers to retrench workers when there is a reduction in demand for their goods or services (Bronstein 2009:69). Consequently, the protection against dismissals could also deter or prevent some employers from creating jobs, which can present challenges to job creation and/or job sustainability, ultimately hindering social justice. Consequently, the protection of workers against unfair dismissal remains as highly sensitive and controversial an issue as security of employment, which remains an important trade union negotiating issue (Bronstein 2009:69).

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

The LRA provides for coercive unionism through compulsory membership in closed shop agreements (Baird 2007:33), which is contrary to the principle of freedom of association entrenched in the Constitution, which in turn can potentially present challenges to job creation and/or job sustainability, which ultimately could hinder social justice. Furthermore, closed shop agreements can also be perceived as anti-competitive behaviour, which should not be allowed or at least it should not be endorsed by legislation, as in can present challenges to job creation and/or job sustainability, which could hinder social justice.

In consideration of the aforementioned, union coercion should be constrained by removing legislative provisions such as closed shop agreements as found in the LRA (Baird 2007:37) in order to promote job creation and/or job sustainability, which ultimately ensures social justice. Nonetheless, trade unions should be encouraged to compete with each other, as this will result in workers being able to secure the best form of representation of workers' interests and not that of the unions (Baird 2007:46), which could contribute to job creation and/or job sustainability, which could ultimately promote social justice. Thus, Carby-Hall (2006:430) argues in favour of industrial democracy in which social dialogue takes place between the social partners through information sharing, consultation and collective bargaining, resulting in the conclusion of social partnership agreements which could contribute to job creation and/or job sustainability and ultimately promote social justice. Furthermore, the author maintains that social dialogue is the very fabric of law, justice and democracy. Radu and Avram (2012:95) agree with Carby-Hall that the aim of social dialogue is to achieve social peace. In addition, Carby-Hall (2006:430) posits that worker participation in the management of the business through the creation of a scheme of worker directors, supervisory boards, two-tier boards of management, and joint production committees could advance job creation and/or job sustainability and ultimately, promote social justice (Carby-Hall 2006:430).

The amendments to the LRA, which came into force on 01 January 2015 as further elaborated on below, established significant changes for employers in the manner in which they conducted their businesses, which could further contribute to and present challenges to job creation and/or job sustainability, which ultimately promotes or hinders social justice.

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

The amendments in terms of Section 198(4A) to Section 198(4F) provide enhanced protection to fixed-term employees, which is an attempt by the legislature to attend to the problem of the intensified informalisation of labour and atypical work to guarantee that vulnerable groups of workers are sufficiently safeguarded and are employed in decent work circumstances (Du Plessis & Fouché 2019:236). Nevertheless, Section 198 is only applicable to employees earning below R205 433 per annum. Amendments were also made to Section 200A, dealing with the presumptions as to who is an employee. This was extended to include all other employment laws, including Section 98A of the *Insolvency Act*, No. 24 of 1936 (Du Plessis & Fouché 2019:236) and the addition of the new Section 200B, which expanded the scope of who is an employer for compliance purposes. Such amendments could further contribute to and present challenges to job creation and/or job sustainability, which ultimately promotes or hinders social justice.

Cohen and Moodley (2012:322) claim that TESs contributed considerably towards externalisation and vulnerable working conditions. Bronstein (2009:77) argued that fixed-term contracts ought only to be authorised for time-limited tasks or to replace workers who are temporarily absent from work (Bronstein 2009:77). It appears that the South African legislature followed his line of reasoning in enacting the new Section 198B, which deals with similar limitations on the abuse of fixed-term employment contracts.

Consequently, the amendments in terms of Section 198(4A) to Section 198(4F) seek to reverse the trend of atypical employment by encouraging employers to employ workers on permanent contracts of employment (Du Plessis & Fouché 2019:236).

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

The amendment of Section 198 and the insertion of Sections 198A to 198D dealing with TES providers (labour brokers) (s. 198A) and fixed-term contracts (s. 198B) sought to regulate non-standard employment more actively, which could further contribute to or present challenges to job creation and/or job sustainability, which ultimately could promote or hinder social justice. The amendment seeks to limit the employer's use of fixed-term contracts by making it legally more difficult to use them as a device to create flexibility for a period longer than 3 months. In terms of Section 198B, all fixed-term contracts are legally regarded as normal open-ended employment contracts, unless the employer can advance cogent reasons, which are justified in terms of Section 198D as to why the arrangement should be on a fixed-term basis (Du Plessis & Fouché 2019:236).

Consequently, the amendment provides for fixed-term contracts or consecutive fixed-term contracts for longer than 6 months only if the work is of a short duration or the employer can prove a justifiable reason for fixing the term of the contract (Cohen & Moodley 2012:331; Du Plessis & Fouché 2019:236). Accordingly, an employee who is employed on a fixed-term basis for longer than 6 months acquires the right to equal treatment in terms of Section 198C, the same as a permanent employee doing the same or similar work (Du Toit et al. 2015:42), unless there is a justifiable reason for dissimilar action (Du Plessis & Fouché 2012:237). This could contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice, especially with regard to deterring employers

from employing more temporary staff and/or renewing fixed-term contracts after 3 months.

The onus and burden of proof has shifted to the employer to prove that the fixed-term contract is justified. Therefore, the change has made it simpler to show abuses, which are effectively monitored, and employees are more conscious of them (Cohen 2014:18). Thus, employers are presently unable to employ contract workers on repeated fixed-term contracts. Consequently, Sections 198A to 198D of the LRA could influence businesses, especially those relying on outsourcing arrangements, such as cleaning, maintenance and surveillance (Bronstein 2009:62), as well as either contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice. Nevertheless, employers who already obey the law will discover that, effectively, there is no actual difficulty (Bronstein 2009:62).

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

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

The amendment to Section 65 of the LRA stipulates that the court may suspend a particular strike (Du Toit & Ronnie 2012:195). Evidently, if employees do not accept the court order, this is serious contempt (Du Plessis & Fouché 2019:297), which can

either contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice. It also signifies that prolonging the strike would be unlawful, and therefore, unprotected, and consequently the protections against dismissal and having to pay damages would seemingly decrease. This amendment limits the effectiveness of the strike, which could contribute to or present challenges to job creation and/or job sustainability and ultimately promote or hinder social justice.

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

■ Need for continued regulation and labour legislation protection

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

Furthermore, Martin and Neugart (2009:44) observe that the consequences of employment protection legislation are indecisive. Likewise, Scharler and Leibrecht (2009:275) discovered that employment security legislation did not wield a statistically significant influence on FDI flows from MNCs. They, therefore, concluded that labour market inflexibilities only perform a negligible role in justifying FDI movements of MNCs (Scharler & Leibrecht 2009:277). Additionally, Martin and Neugart (2009:45) found that association between the employment security system and the economic situation did have a certain effect.

Smit and Mpedi (2010:172) claim that social protection and social assistance benefits should be extended to Southern African workers in the informal economy and to their dependants, as well as to the marginalised and to the poor, who are to a large extent completely excluded from social protection schemes (Smit & Mpedi 2010:182). Consequently, the idea of income support being provided to the unemployed could be beneficial to the local economy as it can mitigate against the decrease in aggregate demand during financial crises (Escudero et al. 2013:110).

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

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

■ The effect of labour legislation on economic growth and job creation

The concern is that the BCEA's, the LRA's, the EEA's, the B-BEEE's and the SDA's increased regulatory costs (Stähler 2008:1163) could contribute to or present challenges to job creation and job sustainability, which ultimately could either promote or hinder social justice. Venter et al. (2010:132) contend that the danger is that implementation of the BCEA's and the LRA's presumptions can further stifle job creation (Marneffe & Vereeck 2011:352). An employer burdened with substantive costs, as well as with direct costs and procedural costs will be less inclined to employ more workers on a permanent basis (Abrassart 2015:226; Venter et al. 2010:133).

The EEA's opposition to inequalities and labour distortions (Du Toit et al. 2015:666; Lekhanya 2015:412) should positively influence job creation and job sustainability. The SDA should also positively influence job creation and job sustainability as it is directly linked thereto through the fulfilment of its aims (Cole & Van der Walt 2014:525). Of major concern is the B-BBEEA's influence on small enterprises and whether compliance with the B-BBEEA is exceedingly arduous (Duffett et al. 2009:91; Venter et al. 2010:239), which may negatively influence job creation and job sustainability.

Furthermore, Rankin, Daroll and Corrigan (2013:1) contend that the objective of the amendments was to address abusive practices and vulnerable work, which they appear to have done. The primary emphasis of the amendments to the BCEA, the LRA and the EEA was to address the phenomenon of 'labour brokering' by combatting the growing concern over the 'casualisation' of

work, which became a characteristic of the South African labour market in the 10 years preceding 2013 (Le Roux & Rycroft 2013:220). This was confirmed by the Labour Department, as was the regulation of contract work; strikes and lockouts; essential services; organisational rights and collective bargaining; among others. However, the amendments, instead of appeasing business, appear to have exacerbated negative business sentiment (Donnelly 2012), which in turn could have an adverse influence on job creation and job sustainability.

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

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

■ Conclusion

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

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

Therefore, labour legislation is justified by the following underlying themes: business sustainability; human rights in terms of the Constitution and in terms of the ILO in order to fulfil the demand for decent work, as well as the elimination of exploitation and abuse; social equity to redress past wrongs and inequalities through the EEA and the LRA; and regulatory function through the BCEA, the SDA and the SDLA, the *Occupational Health and Safety Act* (OHASA), the *Compensation for Occupational Injuries and Diseases Act* (COIDA) and the UIA.

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

However, there is no consensus on whether employment protection legislation is beneficial or harmful to the economy (Gwatidzo & Moyo 2014:300). Feldmann (2009:76), Bassanini et al. (2009:352) and Bennington and Wein (2000:31) agree on this point. Thus there is a gap in the literature which needs to be explored and examined further as to precisely which aspects of labour legislation in particular are beneficial or harmful to job creation and job sustainability and precisely how they influence job creation and job sustainability.

In Chapter 4, the analysis of the quantitative aspect of the empirical study will be discussed.

Research methodology and design

Keywords: Interdisciplinary; Multi-disciplinary; Mixed-methods; Parallel convergent; Triangulation.

■ Introduction

The methodology used to test the research questions of this study is presented in this chapter. The chapter is organised into five sections, namely, the design of the study; the selection of the participants; the instruments; data collection and data analysis.

■ Design of the study

This study is located within a mixed-method pragmatist research paradigm in which qualitative and quantitative techniques, methods, approaches, concepts and language are used. The purpose of the study, the resources available, time constraints and the audience of

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this study determined the chosen method. The convergent parallel mixed-methods design in particular, using triangulation (Bloomberg & Volpe 2012:36), is deemed to be the best method of inquiry for this study as it can provide the best understanding for this research problem (Creswell 2014:20). It addresses social justice issues relating thereto (Creswell 2014:27) and answers this study's research questions (Creswell & Plano Clark 2011:2).

An open and flexible mixed-method research strategy is adopted as the initial research method technique using self-administered online survey questionnaires containing some open-ended questions to collect the quantitative data from business and trade union respondents. The quantitative data are then analysed separately. Semi-structured individual interviews are conducted, primarily telephonically, to collect qualitative data which are then analysed separately for codes and themes to add depth to the research and to make probing and clarification possible. Ethical clearance was obtained prior to the research instruments being administered.

■ Selection of the participants

Sampling for the quantitative (numeric) data and qualitative (text) data occurred separately. The sample size of each group was unequal, which the business group being the larger of the two groups. The two groups of individual participants were drawn using random sampling for the survey and purposive convenience sampling for the interviews from the target population of businesspersons working for or employed by the business entities and trade union officials, representing trade unions in South Africa. The sampling frame used for the semi-structured interviews were the business and trade union respondents who had indicated in their online survey responses that they were also willing to participate in interviews.

Seventy businesses comprising primarily of small and medium business enterprises and a few large businesses as well as 17 trade unions participated in the study. There are no similar studies

with which to compare the response rate. In total, there were 22 case interviews.

■ Instrumentation

A literature review was first conducted to gain insight into whether labour legislation may be influencing job creation and job sustainability. The researcher developed an online survey questionnaire using Google Forms as well as a semi-structured interview schedule. The questionnaire design was informed by the literature reviewed. The questionnaire was then duplicated and modified slightly: one for business and another for trade unions, although the core questions were virtually identical.

■ Data collection

■ Sampling technique and description of the sample

Data were gathered using the convergent design mixed-method approach. Both types of data were collected concurrently but separately. The primary data gathering tools used in this study were self-administered online survey questionnaires and semi-structured interviews. The quantitative and qualitative data were collected from the two independent sources concurrently. The researcher conducted the semi-structured interviews, the majority of which were telephonic. The collection of quantitative and qualitative data occurred over a period of 1 year, commencing from April 2016 to March 2017.

■ Data analysis

In choosing the previously mentioned data collection techniques, the overall strategy conducted was a convergent parallel mixed-method study using primary data analysis, classified into textual and numeric data. The two data sets were analysed individually

and independently of each other using typical qualitative and quantitative analytic techniques.

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

The survey instruments were tested for reliability with the Cronbach's α coefficient test of reliability, using SPSS version 24.0 for internal consistency (Sekaran & Bougie 2016:224) of survey instruments. The researcher chose to use principal component analysis to test validity. To strengthen reliability and to ensure internal validity, the researcher used the triangulation of data as a strategy to increase the trustworthiness and credibility of the findings (Wagner, Kawulich & Garner 2012:138). The results from the entire study were integrated using exploratory principal component analysis as an information transforming instrument (Baird 1987:320) during the discussion phase (Creswell et al. 2007:269) to find patterns in collections of correlations.

The quantitative and qualitative results were presented together in a discussion table so that they can be effortlessly assessed. This was followed by a commentary specifying how the qualitative quotes either corroborate or refute the quantitative results. The combined results were subsequently interpreted to determine the extent to which the two databases converged and

to assess how the analysis answered the mixed-method research question. While merging the two data sets for the purpose of convergence, the researcher also examined if there were any differences so that inconsistencies could be addressed. If there were any similarities found, what conclusions could be drawn from the differences and similarities were also established.

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

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

Integration occurred through linking the techniques of data collection and analysis. Coherence of the quantitative and qualitative findings occurred in three ways through confirmation, expansion and discordance (Fetters, Curry & Creswell 2013:2144).

■ Delimitation

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

■ Conclusion

This chapter restates the purpose of this study, its aims and research questions. It provides an overview of the research methodology and the mixed-method research methods used in this study. The selection of the participant sample from the target population is discussed. The survey respondents were chosen through random sampling and the interview participants were purposively selected. In addition, the validity and reliability of the research instruments are discussed, as well as how they were tested. The data collection procedures and response rates were also discussed in this chapter. Finally, the methods of data analysis for each research instrument were discussed, including a discussion of the statistical analyses that were conducted for each data set. Chapter 5 presents and analyses the findings that emerged from the quantitative empirical study.

Presentation, interpretation and analysis of quantitative data from business and trade union online surveys relating to factors influencing job creation and job sustainability in South Africa

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Keywords: Quantitative data analysis; Rotated component matrices; Cronbach α ; Trade union; Business; Social justice; The role of labour law.

■ Introduction

Chapter 4 explored some of the primary labour legislation of South Africa to understand the extent to which the legislation in question influences job creation and job sustainability, as well as to determine whether it meets the normative and ethical requirements of the principles of social justice. The empirical study is located within the convergent parallel mixed methods pragmatist research paradigm and the concurrent triangulation approach in which qualitative and quantitative techniques, methods, approaches, concepts and language are used. The intention of the empirical study was to gain a better understanding of the sentiments of business and trade union respondents on the influence of labour legislation on job creation and job sustainability in South Africa. This chapter presents the results, discusses the quantitative data collected and presents findings obtained from the business and trade union self-administered online survey questionnaires.

■ Quantitative data analysis

Two groups of respondents participated in the empirical study, namely, business and trade unions. Their data were collected and analysed separately for comparative purposes to determine the level of agreement between their responses.

■ Demographic and general profile of the respondents

The demographic and general profile of the respondents are as follows.

□ Business

Business represented in the study comprised top and senior management of business entities, namely, chief executive officers (11.7%), directors (11.7%), managing directors (17.5%), senior managers (20.5%) and managers (14.5%), as well as members of close corporations (12.1%), owners (9%), partners (1.5%) and researchers (1.5%).

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

The business respondents in the study were representative of various sectors. The largest sector represented by business in this study was the manufacturing sector, followed by the business and financial services sector, and the transport and storage sector.

□ Trade unions

The trade union group comprised trade unions and trade union federations of various sectors/industries. Trade unions represented in this study comprised top and senior trade union officials, as follows: general secretary (23.5%), deputy general secretary (23.5%), trade union officials (35.3%) and trade union representatives (17.7%).

The trade union respondents in the study were also representative of various sectors, that is multi-sector trade unions. The largest sector was the retail and wholesale sector, followed by the education sector, the motor trade sector and the hospitality sectors.

■ **Percentage of workers employed in each category of work**

The business respondents were asked to indicate the percentage of their workforce employed in each category of work. From their responses, it would appear that the business respondents prefer to permanently employ the majority of their workers. Less than 20% of their workforce appears to comprise the other temporary categories of workers, namely, workers on fixed-term contracts, seasonal workers, casual workers and workers supplied by labour brokers.

□ **Percentage increase/decrease of permanent versus temporary jobs**

Both business and trade union respondents were asked to indicate the percentage increase/decrease in temporary versus permanent jobs. From their responses, it would appear that the number of temporary jobs has increased and the number of permanent jobs has decreased. A total of 37.7% of the business respondents indicated that the number of permanent jobs had increased slightly, while 35.9% stated that there has been a slight increase in temporary jobs. A total of 20.3% of the business respondents also stated that there was a substantial increase in permanent jobs, compared to 6.6% who stated that the number of temporary jobs had increased slightly. A total of 21.9% of the business respondents stated that the number of permanent jobs had remained the same, compared to 31.1% who indicated that the number of temporary jobs had remained the same. Of the business respondents, 14.11% confirmed that the number of permanent jobs had decreased slightly, while 11.5% of the business respondents stated that the number of temporary jobs had decreased slightly. A total of 7.8% of the business respondents indicated that the number of permanent jobs had decreased substantially, while 11.8% of the respondents stated that the number of temporary jobs had decreased substantially.

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

□ Percentage of unionised workforce

The respondents were asked to indicate the percentage of their workforce that belonged to a trade union. From their responses, it would appear that there is almost an equal distribution between businesses with unionised and non-unionised workforces. Fifty-two per cent of the business respondents indicated that their workers were not unionised. Consequently, only 48% of the businesses represented in the study's workforce were unionised.

There were three trade unions that each represented large memberships, between 50 000 and 100 000 members; between 100 000 and 200 000 members and between 200 000 and 400 000 members, respectively. A total of 41.2% of the trade unions represented between 1000 and 5000 members. A few (17.6%) represented between 5000 and 10 000 members. Others (11.8%) represented between 500 and 1000 members. Yet others (11.8%) represented between 5000 and 10 000 members.

■ **Bargaining council or statutory council presence**

The respondents were asked to state whether a bargaining council or statutory council had been established for their sector of which they were a member. Fifty-five percent of the business respondents and 47.1% of the trade union respondents confirmed that there was a bargaining council established for the industry/sector under which they fell, and 19% of the business respondents and none (0) of the trade union respondents indicated that they were unaware of the existence of a bargaining council or statutory council for their sector.

■ **Presentation of results of budget spent on job creation**

■ **Percentage of budget spent on job creation**

The respondents were asked to indicate the percentage of the organisation's budget that was spent on job creation as well as their cumulative responses. The majority of business respondents indicated that they spent up to 20% of their budget on creating jobs, compared to the trade union respondents, who indicated the opposite. A total of 47% of the businesses indicated that they spent less than 20% of their budget creating jobs, compared to 60% of the trade unions, who indicated that businesses spent up to 20% of their budget creating jobs. Approximately 21% of the businesses indicated that they spent up to 40% of their budget on creating jobs, while 18.5% of the trade unions stated that businesses spent up to 40% of their budget creating jobs. Only 7.5% of the businesses indicated that they spent 60% of their budget creating jobs, compared to 60% of the trade unions, who indicated that businesses spent up to 60% of their budget creating jobs. While 12% of the business respondents indicated that there was no budget allocated for job creation, 12% of the

trade union respondents also indicated that there was no budget allocated for job creation.

Just under half (47.1%) of the trade union respondents indicated that businesses spend up to 20% of their budget on creating jobs. Almost one-third (29.4%) stated that some businesses spend between 41% and 60% of their budget on creating jobs. A few (11.8%) indicated that some businesses spend between 21% and 40% of their budget on creating jobs, while others (11.8%) indicated that some businesses spend over 60% of their budget on creating jobs.

The scoring patterns of the two groups of respondents per variable per section are analysed below.

■ **Presentation of results of parts 1–4 of respondents' opinions and perceptions on various issues, *inter alia*, the influence of labour legislation on job creation and job sustainability in South Africa**

The results are first presented using summarised percentages for the variables that constitute each section. The frequency for each possible response in terms of the percentage of respondents that gave a particular response to a particular question on the various themes is provided. Results are then further analysed according to the importance of the statements.

■ **Part 1: The importance of social justice, human rights and decent work**

The survey respondents were asked to rate the importance of several statements that were aligned to social justice, human rights and decent work, and their cumulative responses reveal that:

- *For creation of job opportunities for work-seekers*, an overwhelming majority (94%) of business respondents thought that it was important, whereas a vast majority (82.4%) of the trade union respondents believed that it was very important.
- *For freedom from exploitation in the workplace*, an overwhelming majority (94.2%) of the business respondents considered it important. Equally, 94.1% of the trade union respondents deemed that it was very important.
- *For protection of workers' rights, ensuring workplace security*, the vast majority (81.2%) of the business respondents thought that it was important. Equally, 82.4% of the trade union respondents felt that it was very important.
- *For the development of quality education and training systems*, an overwhelming majority of business respondents (97.1%) perceived it as important, whereas the vast majority (88.2%) of trade union respondents deemed that it was very important.
- *For equality in the workplace*, the vast majority (86.6%) of business respondents comprehended it as important. Equally, 88.2% of trade union respondents understood that it was very important.
- *For freedom from discrimination in the workplace*, an overwhelming majority (95.6%) of business respondents considered that it was important, whereas the vast majority (88.2%) of trade union respondents thought that it was very important.
- *For sustainable living whereby workers are paid a fair income*, the majority (78.2%) of the business respondents understood that it was important, whereas the vast majority (88.2%) of trade union respondents believed that it was very important.

Both businesses and trade unions agreed that the creation of job opportunities was very important. The vast majority of trade union respondents felt that all seven statements pertaining to social justice, human rights and decent work were very important. However, the business respondents felt that some of the statements were more important than the others. There was

strong agreement between the respondents on freedom from discrimination in the workplace, the development of quality education and training systems, and freedom from exploitation in the workplace. However, the business respondents disagreed with the trade unionists that equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights is very important.

■ Part 2: The role of labour law

Survey respondents were asked to indicate whether or not they agreed with eight statements pertaining to the role of labour law.

There is strong agreement between businesses and trade unions on the role of labour law in ensuring conformance with human rights and the regulation of the employment relationship, as well as on balancing the employment relationship. However, they differed on business sustainability, social equality, efficiency and worker security social justice and efficiency, and economic equality.

The results on the strength of businesses and trade unions' agreement with the eight statements reveal that the following:

- *For balancing the employment relationship*, approximately two-thirds (68.1%) of the business respondents agreed, whereas all (100%) of the trade union respondents concurred that balancing the employment relationship is the role of labour law.
- *For regulating the employment relationship*, the majority (72.5%) of the business respondents agreed, whereas a vast majority (82.8%) of the trade union respondents concurred that regulating the employment relationship is the role of labour law.
- *For ensuring conformance with human rights*, a vast majority (81.2%) of the business respondents agreed, whereas all (100%) of the trade union respondents concurred that

ensuring conformance with human rights is the role of labour law.

- *For ensuring business sustainability*, approximately two-thirds (63.7%) of the business respondents agreed, whereas an overwhelming majority (94.1%) of the trade union respondents concurred that ensuring business sustainability is the role of labour law.
- *For enhancing social equality*, approximately two-thirds (60.9%) of the business respondents agreed, whereas all (100%) of the trade union respondents concurred that the role of labour law is to enhance social equality.
- *For enhancing economic equality*, more than half (56.5) of the business respondents agreed, whereas an overwhelming majority (94.1%) of the trade union respondents concurred that the role of labour law is to enhance economic equality.
- *For finding a balance between social justice and efficiency*, more than half (56.5%) of the business respondents agreed, whereas the vast majority (82.8%) of the trade union respondents concurred that the role of labour law is to find a balance between social justice and efficiency.
- *For finding a balance between efficiency and work security*, more than half (58%) of the business respondents agreed. The vast majority (88.5%) of the trade union respondents concurred that the role of labour law is to find a balance between efficiency and work security.

Additional comments made by the business respondents on the role of labour law are as follows.

□ Legislation

- 'I support all the initiatives by government to ensure that there is fair labour practice. Therefore, any legislation is welcomed to try to change the past.'
- 'Legislation focuses too much on protecting labour and structurally changing the economy along racial lines.'

❑ **Socio-economic and political factors**

- Government policies lack real foresight and an understanding of the implications to the economy as a whole, and business specifically. The current state of the economy and the value of the South African rand is reflective of policy failure.
- Both government and the unions view business or the West (Capitalism) as the enemy. Their communist/socialist ideology continues to dominate, even though the Soviet Union/Cuba/Zimbabwe are key failures in this regard. Yet there is a continued belief that this will cure South Africa's ills.
- As an investor, why would one want to invest in an economically unstable country where business is constrained in its ability to flourish?

A trade union survey respondent commented that:

- Government should continue to respect the tripartite alliance with business and labour and employers and labour must respect the laws of the country.

■ **Part 3: Influence of labour legislation on job creation**

❑ ***Basic Conditions of Employment Act, 75 of 1997***

In this section, both businesses and trade unions were asked to state how likely the regulation of working hours, work-time flexibility, labour inspectors monitoring and enforcing of the BCEA influences job creation.

❑ **The influence of the *Basic Conditions of Employment Act's* regulation of working hours on job creation**

The survey respondents were asked to state how likely it was that the statements on the BCEA's regulation of working hours influenced job creation, and their cumulative responses are reflected below.

The results on the influence of working hours on job creation indicate that the following:

- *Ordinary hours of work:* 65% of the business respondents indicated that it was likely to influence job creation, and 71.2% of the trade union respondents signified that ordinary hours of work were likely to influence job creation.
- *Overtime:* 63.2% of the business respondents indicated that it was likely to influence job creation, and 71.2% of the trade union respondents showed that payment of overtime was likely to influence job creation.
- *Sundays:* Approximately 54% of the business respondents signified that it was likely that it influences job creation. On the other hand, 70.6% of the trade union respondents indicated that the regulation of work on Sundays was likely to influence job creation.
- *Night work:* 36.2% of the business respondents suggested that it is likely that it influences job creation, and 64.7% of the trade union respondents revealed that the regulation of night work was likely to influence job creation.
- *Public holidays:* 44.9% of the business respondents designated that they were likely to influence job creation. On the other hand, 64.7% of the trade union respondents suggested that it was likely that the regulation of work on public holidays to influence job creation.

Consequently, with regard to working hours, the majority (70.6%) of the trade union respondents concurred that the regulation of ordinary hours of work, overtime and work on Sundays, night work and work on public holidays was likely to influence job creation. A majority (63.2%) of the business respondents agreed that the regulation of ordinary hours of work and overtime influenced job creation, but they disagreed on work on Sundays, public holidays and night work influencing job creation.

□ **The influence of the *Basic Conditions of Employment Act's* work-time flexibility provisions on job creation**

The survey respondents were asked to state how likely it was that the statements in this section on the BCEA's regulation of work-time flexibility influenced job creation, and their cumulative responses are reflected below.

The results on the influence of work-time flexibility reveal the following:

- *Regulation of compressed week*: 53.6% of the business respondents indicated that it was likely to influence job creation. Equally, 52.9% of the trade union respondents revealed that the provision relating to a compressed working week was likely to influence job creation.
- *Averaging of hours*: 56.5% of the business respondents implied that it was likely to influence job creation. Equally, 58.8% of the trade union respondents denoted that the provision relating to the averaging of working hours was likely to influence job creation.

Thus, on work-time flexibility, at least half of the respondents in each of the groups agreed that work-time flexibility influenced job creation.

□ **The influence of labour inspectors' monitoring and enforcing compliance with the *Basic Conditions of Employment Act* on job creation**

The survey respondents were asked to state how likely the statements on labour inspectors' monitoring and enforcement of compliance with the BCEA influencing job creation are.

The results pertaining to the influence of monitoring and enforcement of compliance with the BCEA by labour inspectors reveal the following:

- *Monitoring compliance with the BCEA by labour inspectors:* Approximately a third (37.7%) of the business respondents suggested that it was likely to influence job creation. On the other hand, approximately two-thirds (64.74%) of the trade union respondents signified that the labour inspectors' monitoring of compliance with the BCEA was likely to influence job creation.
- *Enforcing compliance with the BCEA by labour inspectors:* 42% of the business respondents showed that it was likely to influence job creation. On the other hand, approximately two-thirds (64.72%) of the trade union respondents indicated that the labour inspectors' monitoring of compliance with the BCEA was quite likely to influence job creation.

An additional comment made by one of the business respondents was:

- 'Consider the influence of the legislation and compliance thereto in terms of SME's that may not fully understand all these requirements.'

□ The *Labour Relations Act*, No. 66 of 1995

The survey respondents were asked to state the likelihood that the LRA equity and fairness requirements, as well as the monitoring and enforcement of compliance thereof, influenced job creation.

□ Influence of the *Labour Relations Act's* fairness requirements on job creation

The survey respondents were asked to state the likelihood of the LRA's general fairness requirements' influence on job creation, and their cumulative responses are reflected below.

There is strong agreement between the businesses and trade unions on two of the statements relating to the regulation of alternative employment contracts and industrial action as having

a likely influence on job creation. However, they disagreed on the likelihood of the protection of workers in mergers, takeovers and transfers improving job creation.

The results on the influence of the LRA's fairness requirements in general on job creation reveal the following:

- *Regulation of the use of alternative employment contracts:* 78% of the business respondents denoted that it was likely to improve job creation, and 77% of the trade union respondents indicated that the regulation of the use of alternative employment contracts was likely to improve job creation.
- *Protection of workers affected by mergers, takeovers or transfers:* 45% of the business respondents indicated that it was likely to improve job creation. On the other hand, approximately two-thirds (64.7%) of the trade union respondents signified that the protection of workers of Section 197 affected by mergers, takeovers or transfers was quite likely to improve job creation.
- *Regulation of industrial action promotes labour peace in the workplace:* Approximately two-thirds (64%) of the business respondents denoted that it was likely to influence job creation. On the other hand, 82.4% of the trade union respondents signified that the regulation of industrial action to promote labour peace in the workplace was likely to influence job creation.

The influence of the *Labour Relations Act's* fair dismissal requirements on job creation

The survey respondents were asked to state how likely it was that the statements on the LRA's requirements for fair dismissals influenced job creation, and their cumulative responses are reflected below.

The results on the influence of the LRA's fair dismissal requirements on job creation reveal the following:

- *General requirements for a fair dismissal*: 90% of the business respondents revealed that these were likely to influence job creation, while 88.29% of the trade union respondents suggested that the general requirements for a fair dismissal are likely to influence job creation.
- *Minor retrenchments*: 60% of the business respondents implied that it was likely to influence job creation. On the other hand, 82.4% of the trade union respondents indicated that the fairness requirements for minor retrenchments were likely to influence job creation.
- *Major retrenchments*: 62% of the business respondents showed that these were likely to influence job creation, while 70.6% of the trade union respondents revealed that the fairness requirements for major retrenchments were likely to influence job creation.
- *Mergers, takeovers or transfer retrenchments*: 56% of the business respondents implied that these were likely to influence job creation. On the other hand, 70.6% of the trade union respondents felt that the fairness requirements in terms of Section 197 were likely to influence job creation.

Although the business and trade union respondents agreed with the statements pertaining to the influence of the LRA's fair dismissal requirements on job creation, they differed on how likely the influence was. The majority of the trade union respondents indicated a stronger likelihood that the LRA's requirements for fair dismissals will influence job creation.

The influence of the *Labour Relations Act's* provisions for equality and equal treatment in the workplace on job creation

The survey respondents were asked to state how likely it was that the statements on the LRA's regulation of equality and equal treatment in the workplace influenced job creation, and their cumulative responses are reflected below.

The results on the influence of the LRA's regulation of equality and equal treatment in the workplace on job creation reveal the following:

- *Standardisation of income and employment conditions:* Approximately two-thirds (65%) of the business respondents showed that it was likely to influence job creation, while 70.6% of the trade union respondents indicated that standardisation of income and employment conditions was likely to influence job creation.
- *Control of alternative employment contracts:* 68% of the business respondents implied that it was likely to influence job creation. Equally, 64.7% of the trade union respondents suggested that the control of alternative employment contracts was likely to influence job creation.
- *Not to discriminate unfairly in selection and recruitment:* 56% of the business respondents denoted that it was likely to influence job creation. On the other hand, 76.5% of the trade union respondents implied that the requirement not to discriminate unfairly in selection and recruitment was likely to influence job creation.
- *Regulation of unfair labour practices:* 47% of the business respondents revealed that it was likely to influence job creation. On the other hand, 70.5% of the trade union respondents denoted that the regulation of unfair labour practices was likely to influence job creation.
- *Automatically unfair dismissals:* Half (50%) of the business respondents suggested that it likely to influence job creation. Equally, 58.8% of the trade union respondents indicated that automatically unfair dismissals were likely to influence job creation.

There is agreement between the businesses and trade unions on three of the statements relating to the regulation of alternative employment contracts and standardisation of income as likely to influence job creation and automatically unfair dismissals

influencing job creation. However, they disagreed on the right not to discriminate and the regulation of unfair labour practices.

□ **The influence of monitoring and enforcement of compliance with the *Labour Relations Act* on job creation**

The survey respondents were asked to state how likely the statements pertaining to the monitoring and enforcement of compliance with the LRA are influencing job creation, and their cumulative responses are reflected below.

□ **The influence of bargaining council agents' monitoring and enforcement of compliance with collective agreements on job creation**

The survey respondents were asked to state how likely it was that the statements pertaining to the bargaining council agents' monitoring and enforcement of compliance with collective agreements are influencing job creation, and their cumulative responses are reflected below.

The results reveal that:

- *Monitoring of collective agreements:* 49% of the business respondents implied that it was likely to influence job creation. On the other hand, 82.3% of the trade union respondents signified that bargaining council agents' monitoring of collective agreements was likely to influence job creation.
- *Enforcement of collective agreements:* 46% of the business respondents denoted that it was likely to influence job creation. On the other hand, 70.6% of the trade union respondents revealed that bargaining council agents' enforcing of collective agreements was likely to influence job creation.

There is significant disagreement between businesses and trade unions on the influence of the monitoring and enforcement of collective agreement by bargaining council agents on job creation. Less than half of the business respondents denoted that

it was likely to influence job creation, whereas the majority of trade union respondents indicated that the monitoring and enforcement of collective agreements by bargaining council agents is likely to influence job creation.

One of the business respondents, in the additional comments section, elaborated on this issue:

- ‘The bargaining council is selective in terms of which businesses they enforce compliance. It severely affects the sustainability of compliant factories trying to compete with non-compliant factories’.

The influence of labour inspectors’ monitoring and enforcing compliance with the *Labour Relations Act* on job creation

The survey respondents were asked to state how likely it was that the statements pertaining to the labour inspectors’ monitoring and enforcement of compliance with the LRA are influencing job creation, and their cumulative responses are reflected below.

The results reveal the following:

- *Monitoring*: Approximately a third (34%) of the business respondents suggested that it was likely to influence job creation. However, approximately two-thirds (64.7%) of the trade union respondents indicated that it was likely that labour inspectors’ monitoring of compliance with the LRA influences job creation.
- *Enforcement*: 40% of the business respondents denoted that it was likely to influence job creation, while 58.8% of the trade union respondents implied that it was likely that labour inspectors’ enforcement of compliance with the LRA influenced job creation.

Approximately a third (34%) of the business respondents indicated that it was likely to influence job creation, whereas approximately two-thirds (64.7%) of the trade union respondents

indicated that monitoring and enforcement of the LRA by labour inspectors was likely to influence job creation.

Thus, the results reveal that monitoring and enforcement of the LRA by labour inspectors is unlikely to influence business in terms of job creation. The possible reason is that inspections do not occur on a regular basis.

□ **The *Employment Equity Act*, No. 55 of 1998**

□ **The influence of the promotion of equality and equal treatment in the workplace on job creation**

The survey respondents were asked to indicate how likely it was that the statements pertaining to the EEA promotion of equality and equal treatment are influencing job creation, and their cumulative responses are reflected below.

The results of the influence of the EEA's regulation of promotion of equality and equal treatment in the workplace on job creation reveal the following:

- *Prohibition of unfair discrimination*: 41% of the business respondents implied that it was likely to influence job creation. Whereas 76.5% of the trade union respondents signified that the prohibition of unfair discrimination was quite likely to influence job creation.
- *Removal of unfair discrimination*: 41% of the business respondents revealed that it was likely to influence job creation. The majority (76.4%) of the trade union respondents signified that the removal of unfair discrimination was quite likely to influence job creation.
- *Right to equal income distribution*: 56% of the business respondents felt that it was likely to influence job creation. However, the majority (82.5%) of the trade union respondents indicated that the right to equal income distribution was likely to influence job creation.
- *Regulation of unfair labour practices*: 42% of the business respondents revealed that it was likely to influence job creation. On the other hand, 88.3% of the trade union respondents

signified that the regulation of unfair labour practices was likely to influence job creation.

- *Promotion of affirmative action in selection and recruitment:* Approximately a two-third majority (60%) of the business respondents showed that it was likely to influence job creation. The majority (76.5%) of the trade union respondents implied that the promotion of affirmative action in selection and recruitment was likely to influence job creation.
- *Affirmative action:* Approximately two-thirds (63%) of the business respondents revealed that it was likely to influence job creation, and 58.8% of the trade union respondents indicated that affirmative action was likely to influence job creation.

The business responses reveal that the EEA's provisions on the prohibition of discrimination, removal of unfair discrimination, right to equal income distribution and regulation of unfair labour practices are less likely to influence them to create jobs. The EEA's provisions on equal income distribution and the promotion of affirmative action, however, are more likely to influence them in terms of job creation. The trade unions indicated that there is a greater likelihood that all the statements pertaining to the EEA's provisions on the prohibition of discrimination, removal of unfair discrimination, equal income distribution, regulation of unfair labour practices and promotion of affirmative action will influence job creation.

□ **The influence of labour inspectors' monitoring and enforcement of compliance with the *Employment Equity Act* on job creation**

The survey respondents were asked to state how likely it was that the statements pertaining to the labour inspectors' monitoring and enforcement of compliance with the EEA are influencing job creation, and their cumulative responses are reflected below.

The results reveal the following:

- *Monitoring:* Approximately one-third (38%) of the business respondents implied that it was likely to influence job creation. On the other hand, the majority (64.7%) of the trade union

respondents indicated that it was likely that labour inspectors' monitoring of compliance with the EEA influenced job creation.

- *Enforcement*: 41% of the business respondents suggested that it was likely to influence job creation, while 58.8% of the trade union respondents indicated that labour inspectors' enforcing of compliance with the EEA influenced job creation.

Thus, the results reveal that monitoring and enforcement by labour inspectors is not likely to influence job creation. The possible reason is that inspections do not occur on a regular basis.

■ **Ancillary legislation likely to influence job creation**

The respondents were asked to state how likely it was that the statements pertaining to various ancillary legislation are likely to influence job creation, and their cumulative responses are reflected below.

The results reveal the following:

- *Job creation schemes in terms of the ESA*: Approximately half (55%) of the business respondents denoted that these were likely to influence job creation, whereas the majority (70.6%) of the trade union respondents signified that job creation schemes in terms of the ESA were likely to influence job creation.
- *Tax incentive schemes in terms of the ETIA*: The majority (72%) of the business respondents signified that these were likely to influence job creation. Equally, the majority (71%) of the trade union respondents felt that tax incentive schemes in terms of the ETIA were likely to influence job creation.
- *Employment services offices in terms of the SDA*: Half (50%) of the business respondents suggested that these were likely to influence job creation. Equally, 58.6% of the trade union

respondents revealed that employment services offices in terms of the SDA were likely to influence job creation.

- *Training the unemployed in terms of the UIA:* Approximately two-thirds (62%) of the business respondents denoted that it was likely to influence job creation, while 88.2% of the trade union respondents signified that it was likely that training the unemployed, in terms of the UIA, influences job creation.
- *Black ownership, corporate advancement and involvement of black people in terms of the B-BBEEA:* Approximately two-thirds (63%) of the business respondents indicated that these were likely to influence job creation. Approximately half (52.9%) of the trade union respondents suggested that black ownership, corporate advancement and the involvement of black people in business in terms of the B-BBEEA were likely to influence job creation.

Hence, the majority of both business and trade union respondents indicated that tax incentive schemes are likely to influence job creation. The majority of the trade union respondents also indicated that training of the unemployed and job creation schemes are likely to influence job creation. The two groups of respondents disagreed on the employment services offices and the B-BBEEA influencing job creation.

■ **Part 4: The influence of labour legislation on job sustainability**

□ **The *Basic Conditions of Employment Act*, No. 75 of 1997**

The survey respondents were asked to state how likely the statements pertaining to the BCEA's provisions on work security and the labour inspectors' monitoring and enforcement of compliance with the BCEA are to influence job sustainability.

□ **The *Basic Conditions of Employment Act's* work security provisions' influence on job sustainability**

The survey respondents were asked to state how likely it was that the statements pertaining to the BCEA's work security provisions, the regulation of overtime, sick leave, maternity leave, minimum wages, notice periods and severance pay are influencing job sustainability, and their cumulative responses are reflected below.

The results on the influence of work security on job sustainability show the following:

- *Control of overtime*: 60% of the business respondents suggested that it was likely that it influences job sustainability, whereas, 88.1% of the trade union respondents signified that it was quite likely that the control of overtime hours influenced job retention.
- *Regulation of sick leave*: Approximately two-thirds (65%) of the business respondents indicated that it was quite likely that it influences job sustainability, and 70.42% of the trade union respondents revealed that it was likely that the regulation of sick leave influenced job retention.
- *Regulation of maternity leave*: 64% of the business respondents showed that it was likely that it influences job sustainability, while 52.9% of the trade union respondents indicated that the regulation of maternity leave was likely to influence job sustainability.
- *Notice periods*: 49% of the business respondents noted that it influences job sustainability, while 35.3% of the trade union respondents suggested that it was likely that notice periods influenced job sustainability.
- *Minimum wages*: Approximately, two-thirds (67%) of the business respondents revealed that it was likely that it influences job sustainability, and 58.8% of the trade union respondents indicated that it was likely that minimum wages influenced job sustainability.

- *Severance pay*: Just over half (57%) of the business respondents indicated that it was likely that it influences job sustainability. Approximately, a third (35.3%) of the trade union respondents revealed that the payment of severance pay was likely to influence job sustainability.

There is agreement among the survey respondents that the BCEA's provisions for work security through the regulation of overtime, sick leave, maternity leave, minimum wages, notice periods and severance pay is likely to influence job sustainability. The majority of the respondents indicated that the regulation of sick leave and maternity leave is likely to influence the retention of jobs. There is close agreement between the two groups' responses on the regulation of minimum wages as likely to influence sustaining jobs. There is a marked difference, however, between the two groups on the control of overtime hours and the regulation of severance pay influencing job retention and sustainability. In addition, the agreement on the likelihood of the regulation of notice periods influencing job sustainability is low.

Two of the business respondents made additional comments on working hours, minimum wages and sick leaves as follows.

Technology:

- 'We have moved so far with technology, yet there is no change in this subject.' (B6, male, 22 September 2016)

Governed by big business rules:

- 'We really need to consider small businesses and the people who are also just willing to work to earn a daily living. Small business is struggling to make it, yet is being governed by the rules of big business. We need to help people who are unskilled labour but we are being prevented by rules. Just ask a man who cannot feed himself or his family and ask a small business how expensive it is to employ someone unskilled at a high minimum rate. I employ people in the road freight industry and simply cannot understand why we need to pay over sick

leave to the bargaining council for all employees, even though they may not be sick; and we still pay staff sick leave when they do not come to work. At the end of it all, the employee still gets all sick leave back as a bonus. Total nonsense. These are the things preventing me from employing people.’ (B6, male, 22 September 2016)

□ **Labour inspectors’ monitoring and enforcement of compliance with the *Basic Conditions of Employment Act***

The survey respondents were asked to state how likely it was that the monitoring and enforcement of compliance with the BCEA by the labour inspectors influenced job sustainability, and their cumulative responses are reflected below.

The results shown in Table 5.1 reveal the following:

- *Monitoring*: Approximately a third (37%) of the business respondents implied that it was likely to influence job sustainability. On the other hand, 52.8% of the trade union respondents suggested that labour inspectors’ monitoring of compliance with the BCEA was likely to influence job sustainability.
- *Enforcing*: 39% of the business respondents revealed that it was likely to influence job sustainability, whereas 64.7% of the trade union respondents indicated that labour inspectors’ enforcing compliance with the BCEA is likely to influence job sustainability.

The results reveal that there is agreement among the business and trade union respondents that labour inspectors’ monitoring of compliance with the BCEA’s provisions does not influence job sustainability. However, there is a considerable difference between businesses and trade unions on the influence of labour inspectors’ enforcing compliance on job sustainability.

□ **The *Labour Relations Act*, No. 66 of 1995**

The survey respondents were asked to indicate how likely it was that the statements pertaining to the LRA's regulations on fairness, equity, job security, monitoring and enforcement of compliance with the LRA influenced job sustainability.

□ **Do the *Labour Relations Act's* fairness regulations promoting job security influence job sustainability?**

The survey respondents were asked to state how likely the statements pertaining to the regulation of alternative employment contracts, industrial action and the protection of workers in terms of Section 197 were to influence job sustainability, and their responses are reflected below.

The results reveal that the following:

- *Regulation of the use of alternative employment contracts*: The majority (70%) of the business respondents indicated that it was likely to improve job security. Equally, 70.6% of the trade union respondents revealed that regulation of the use of alternative employment contracts was likely to improve job security.
- *Protection of workers affected by mergers, takeovers or transfers*: Half (50%) of the business respondents suggested that it was likely to improve job security. On the other hand, the majority (70.6%) of the trade union respondents signified that it was likely that the protection of workers of Section 197 affected by mergers, takeovers or transfers was likely to improve job security.
- *Regulation of industrial action promotes labour peace in the workplace*: Approximately two-thirds (62%) of the business respondents implied that it was likely to influence job sustainability. The majority (70.6%) of the trade union respondents indicated that it is likely that the regulation of industrial action to promote labour peace in the workplace influences job sustainability.

The majority of the responses from both businesses and trade unions indicated that the regulation of alternative employment contracts and the regulation of industrial action to promote labour peace in the workplace are likely to influence job sustainability. However, there is a considerable difference in opinions between businesses and trade unions that the protection of workers of Section 197 affected by mergers, takeovers or transfers was a likely influence on job sustainability.

□ **The influence of the *Labour Relations Act's* fair dismissal requirements on job sustainability**

The survey respondents were asked to state how likely the statements pertaining to the LRA's requirements for fair dismissals are to influence job sustainability and their cumulative responses are reflected below.

The results reveal the following:

- *General requirements for a fair dismissal:* Half (53%) of the business respondents suggested that it was likely to influence job sustainability, whereas the majority (76.5%) of the trade union respondents signified that the general requirements for a fair dismissal were quite likely to influence job sustainability.
- *Minor retrenchments:* 47% of the business respondents implied that they were likely to influence job sustainability. On the other hand, the majority (70.6%) of the trade union respondents indicated that the fairness requirements for minor retrenchments were likely to influence job sustainability.
- *Major retrenchments:* Half (54%) of the business respondents noted that they were likely to influence job sustainability. Approximately two-thirds (65%) of the trade union respondents indicated that the fairness requirements in terms of Section 197 were likely to influence job sustainability.
- *Mergers, takeovers or transfer retrenchments:* Approximately half (49%) of the business respondents suggested that these were likely to influence job sustainability. The majority (70.6%)

of the trade union respondents indicated that the fairness requirements in terms of Section 197 were likely to influence job sustainability.

The majority of trade union respondents indicated that all the statements pertaining to the LRA's requirements for fair dismissals influence job sustainability. However, there was a considerable difference in business and trade union responses to the three statements on the fairness requirements pertaining to the different types of retrenchments influencing job sustainability.

□ **Influence on job sustainability of the *Labour Relations Act's* equality and equal treatment in the workplace**

The survey respondents were asked how likely were the statements relating to the LRA's equality and equal treatment in the workplace to influence job sustainability, and their cumulative responses are reflected below.

The results reveal the following:

- *Standardisation of income and employment conditions:* Approximately two-thirds (61%) of the business respondents revealed that standardisation of income and employment conditions was likely to influence job sustainability. Equally, 64.7% of the trade union respondents suggested that the standardisation of income and employment conditions was likely to influence job sustainability.
- *Control of alternative employment contracts:* 60% of the business respondents indicated that the control of alternative employment contracts was likely to influence job sustainability, while 70.6% of the trade union respondents implied that the control of alternative employment contracts was likely to influence job sustainability.
- *Not to discriminate unfairly in selection and recruitment:* 45% of the business respondents suggested that the requirement for non-discrimination during selection and recruitment was likely to influence job sustainability. On the

other hand, the majority (70.6%) of the trade union respondents revealed that the requirement not to discriminate unfairly in selection and recruitment was likely to influence job sustainability.

- *Regulation of unfair labour practices*: Approximately 46% of the business respondents noted that the regulation of unfair labour practices was very likely to influence job sustainability. The majority (70.6%) of the trade union respondents indicated that the regulation of unfair labour practices was likely to influence job sustainability.
- *Automatically unfair dismissals*: 45% of the business respondents designated that automatically unfair dismissals were likely to influence job sustainability, whereas approximately two-thirds (64.7%) of the trade union respondents implied that automatically unfair dismissals were likely to influence job sustainability.

The majority of trade union respondents indicated that all the statements relating to the LRA's equality and equal treatment in the workplace are likely to influence job sustainability. There was, however, a considerable difference in responses from the two groups on the fairness requirements for all three statements relating to non-discrimination, unfair labour practices and automatically unfair dismissals as likely to influence job sustainability.

The influence of monitoring and enforcement of compliance on job sustainability

The survey respondents were asked to state how likely the statements relating to bargaining council agents' and labour inspectors' monitoring and enforcing of compliance were to influence on job sustainability, and their cumulative responses are reflected below.

□ **Influence of bargaining council agents' monitoring and enforcing compliance on job sustainability**

The survey respondents were asked to state how likely the statements pertaining to bargaining council agents' monitoring and enforcing compliance were to influence job sustainability, and their cumulative responses are reflected below.

The results reveal the following:

- *Monitoring of collective agreements:* 47% of the business respondents noted that bargaining council agents' monitoring of collective agreements was quite likely to influence job sustainability. On the other hand, 70.6% of the trade union respondents signified that bargaining council agents' monitoring of collective agreements was likely to influence job sustainability.
- *Enforcing collective agreements:* 48% of the business respondents suggested that bargaining council agents' enforcing of collective agreements was likely to influence job sustainability, whereas the majority (70.6%) of the trade union respondents indicated that bargaining council agents' enforcing of collective agreements was likely to influence job sustainability.

Although both businesses and trade unions agreed that monitoring and enforcement by bargaining council agents influenced job sustainability, the trade unions felt more strongly that the monitoring and enforcement by bargaining council agents was more likely to influence job sustainability.

□ **The influence of labour inspectors' monitoring and enforcing compliance with the *Labour Relations Act* on job sustainability**

The survey respondents were asked to state how likely the statements relating to the monitoring and enforcing of compliance

by labour inspectors with the LRA were to influence job sustainability, and the responses are reflected below.

The results reveal the following:

- *Monitoring:* Approximately one-third (35%) of the business respondents implied that monitoring was likely to influence job sustainability. On the other hand, 58.8% of the trade union respondents suggested that labour inspectors' monitoring of compliance with the LRA influences job sustainability.
- *Enforcement:* Approximately one-third (38%) of the business respondents revealed that labour inspectors' enforcement of compliance with the LRA was likely to influence sustainability, whereas two-thirds (64.7%) of the trade union respondents indicated that labour inspectors' enforcement of compliance with the LRA influences job sustainability.

Thus, the results reveal that monitoring and enforcing of the LRA by labour inspectors does not influence businesses to sustain jobs. The possible reason is that inspections do not occur on a regular basis. However, there is a considerable difference in the trade union responses, as opposed to the business responses.

□ *Employment Equity Act, No. 55 of 1998*

Survey respondents were asked to state how likely the EEA's provisions on promoting equality, equal treatment in the workplace and monitoring and enforcement of the EEA by labour inspectors were to influence job sustainability.

□ *The influence of the promotion of equality and equal treatment in the workplace on job sustainability*

The survey respondents were asked to rate the likelihood of the EEA's provisions promoting equality and equal treatment in the workplace influencing job sustainability, and the cumulative responses are reflected below.

The results below reveal the following:

- *Prohibition of unfair discrimination:* 42% of the business respondents noted that it was likely to influence job sustainability. On the other hand, the majority (76.5%) of the trade union respondents indicated that the prohibition of unfair discrimination was likely to influence job sustainability.
- *Removal of unfair discrimination:* 40% of the business respondents felt that it was likely to influence job sustainability, whereas 58.8% of the trade union respondents revealed that the removal of unfair discrimination was likely to influence job sustainability.
- *Right to equal income distribution:* 57% of the business respondents indicated that it was likely to influence job sustainability. The majority (70.6%) of the trade union respondents suggested that right to equal income distribution was likely to influence job sustainability.
- *Regulation of unfair labour practices:* 43% of the business respondents implied that it was likely to influence job sustainability, whereas the majority (70.6%) of the trade union respondents revealed that the regulation of unfair labour practices was likely to influence job sustainability.
- *Promotion of affirmative action in recruitment and selection:* Approximately two-thirds (61%) of the business respondents indicated that the promotion of affirmative action in selection and recruitment was likely to influence job sustainability. Equally, 64.7% of the trade union respondents showed that the promotion of affirmative action in selection and recruitment was likely to influence job sustainability.

An analysis of the responses reveals that businesses and trade unions agreed that the EEA provisions on equal income distribution and the promotion of affirmative action were more likely to influence them in sustaining jobs. However, they differed considerably on the influence of the prohibition of discrimination and removal of unfair discrimination and unfair labour practices on job sustainability. The business respondents indicated that the

prohibition of discrimination and removal of unfair discrimination and unfair labour practices were less likely to influence them to sustain jobs. The majority of the trade union responses signified a greater likelihood of the prohibition of discrimination, right to equal income and regulation of unfair labour practices influencing job sustainability. They also noted that the promotion of affirmative action and removal of discrimination as being less likely to influence job sustainability.

Monitoring and enforcement of compliance with the *Employment Equity Act* by labour inspectors

Survey respondents were asked to state how likely the statements relating to the monitoring and enforcement of compliance by labour inspectors with the EEA were to influence job sustainability, and the responses are reflected below.

The results of this section revealed the following:

- *Monitoring*: 42% of the business respondents implied that labour inspectors' monitoring of compliance with the EEA was likely to influence job sustainability, whereas the majority (64.7%) of the trade union respondents suggested that labour inspectors' monitoring of compliance with the EEA influences job sustainability.
- *Enforcement*: Approximately 39% of the business respondents revealed that labour inspectors' enforcing of compliance with the EEA was likely to influence job sustainability, whereas 64.74% of the trade union respondents indicated that labour inspectors' enforcing compliance with the EEA influences job sustainability.

An analysis of this section reveals that the business respondents indicated that monitoring and enforcement by labour inspectors is likely to influence them to sustain jobs. A possible reason is that inspections may be occurring on an irregular basis. Nevertheless, the trade union responses indicated a stronger

likelihood that monitoring and enforcement of compliance with the EEA by labour inspectors was likely to influence businesses to sustain jobs.

□ The influence of skill development on job sustainability

Survey respondents were asked to state the likelihood of education and training in general, as well as education and training in terms of both the LRA and the SDA, influencing job sustainability, and the cumulative responses are reflected below.

□ The influence of education and training in general on job sustainability

Survey respondents were asked to state the likelihood of education and training in general influencing job sustainability, and the cumulative responses are reflected below.

The results below reveal the following:

- *Education improves business competitiveness:* The majority (89%) of the business respondents signified that education's improving business competitiveness was likely to influence job sustainability. All (100%) of the trade union respondents revealed that education's improving business competitiveness was likely to influence job sustainability.
- *Training improves business competitiveness:* 89% of the business respondents implied that education's improving business competitiveness was likely to influence job sustainability, and 94.2% of the trade union respondents also signified that education improves business competitiveness and is likely to influence job sustainability.
- *Education increases worker productivity:* 87.2% of the business respondents revealed that education increasing workers' productivity was likely to influence job sustainability. All (100%) of the trade union respondents indicated that education

increasing workers' productivity was likely to influence job sustainability.

- *Training increases worker productivity:* 88% of the business respondents felt that training increasing workers' productivity was likely to influence job sustainability. All (100%) of the trade union respondents showed that training increasing workers' productivity was likely to influence job sustainability.

An analysis of the results reveals that there is overwhelming agreement between both businesses and trade unions that education and training improve a business's competitiveness and increases workers' productivity.

□ **The influence of the *Skills Development Act's* provisions on education and training on job sustainability**

The survey respondents were asked to state the likelihood of the SDA provisions on education and training influencing job sustainability, and the cumulative responses are reflected below.

The results revealed the following:

- *Education ensuring that workers are equipped with the necessary skills (s. 22):* Approximately two-thirds (68%) of business respondents indicated that it was likely to influence job sustainability. On the other hand, 88% of the trade union respondents implied that education ensuring workers are equipped with the necessary skills was likely to influence job sustainability.
- *Training programmes ensuring that workers are equipped with the necessary skills to perform work competently (s. 20):* The majority (74%) of the business respondents revealed that they were likely to influence job sustainability, and 82.4% of the trade union respondents indicated that training programmes ensuring workers are equipped with the necessary skills to perform work competently were likely to influence job sustainability.

- *Retraining through skills programmes providing new skills to perform different work (s. 20)*: 65% of the business respondents showed that it was likely to influence job sustainability, while 82.4% of the trade union respondents suggested that retraining through skills programmes was likely to influence job sustainability.
- *Learnership agreements ensuring workers are equipped with the relevant vocational skills to perform work competently (ss. 16–19)*: Approximately two-thirds (68%) of the business respondents implied that it was likely to influence job sustainability. The majority (88.3%) of the trade union respondents revealed that retraining through skills programmes was likely to influence job sustainability.

An overwhelming majority of the trade unions and a majority of the businesses indicated that education and training programmes ensuring workers were equipped with the necessary skills, retraining through skills programmes and learnership agreements were all likely to influence job sustainability.

However, under the additional comments section, one of the business respondents commented that:

- ‘The SETA system is dysfunctional and does not deliver training into the workplace.’

□ Influence on job sustainability of the *Labour Relations Act’s* provisions on education and training

The survey respondents were asked to state how likely the LRA’s provisions on education and training were to influence job sustainability, and the cumulative responses are reflected below.

The results on the LRA’s influence on job sustainability reveal the following:

- *Educating workers who lack skills*: Approximately two-thirds (65%) of the business respondents implied that it was likely to

influence job sustainability. Equally, 64.7% of the trade union respondents disclosed that educating workers who lack skills was likely to influence job sustainability.

- *Training workers who lack skills:* Approximately two-thirds (65%) of the business respondents revealed that it was likely to influence job sustainability, whereas 76.5% of the trade union respondents felt that training workers who lack skills was likely to influence job sustainability.
- *Retraining workers with new skills to perform different work:* 65% of the business respondents noted that it was likely to influence job sustainability. Equally, 64.7% of the trade union respondents indicated that retraining workers with new skills to perform different work was likely to influence job sustainability.
- *Ensuring relevant vocational skills are acquired through learnership agreements:* The majority (70%) of the business respondents implied that it was likely to influence job sustainability, while 82.4% of the trade union respondents indicated that ensuring that workers acquire relevant vocational skills through learnership agreements to perform their jobs competently was likely to influence job sustainability.
- *Training underperforming workers:* Approximately two-thirds (65%) of the business respondents suggested that it was likely to influence job sustainability. The majority (76.5%) of the trade union respondents noted that training underperforming workers was likely to influence job sustainability.
- *Retraining workers instead of retrenching them:* 56% of the business respondents implied that it was likely to influence job sustainability, whereas the majority (76.5%) of the trade union respondents disclosed that retraining workers instead of retrenching them was likely to influence the sustainability of jobs.

The majority of both businesses and trade unions indicated that retraining workers, instead of retrenching them, training workers who lacked skills and retraining workers with new skills to perform different work were likely to influence job sustainability. Both

businesses and trade unions indicated that learnership agreements were most likely to influence job creation. The business respondents disclosed that retraining of retrenched workers was least likely to influence job sustainability.

Thus, there is agreement between businesses' and trade unions' responses that the LRA's provisions on education and training were likely influence job sustainability. An overwhelming majority of the trade union and a majority of the business responses indicated that education and training programmes to ensure workers are equipped with the necessary skills, retraining through skills programmes and learnership agreements were all likely to influence job sustainability. The trade union responses, however, indicated a stronger likelihood that education, training and retraining were likely to influence businesses to sustain jobs.

The business respondents, in their additional comments, commented on the influence of skills on productivity and the need to improve the education system in South Africa:

- 'Job creation is a balance between the costs of employees measured against workers' skills and productivity. Ultimately, job creation will improve when there is a pool of skilled, productive labour available. This will only happen when the education system produces graduates who are well versed in the core skills required for a twenty-first-century economy. Employers can develop these employees' skills in line with their specific job requirements.' (Business respondent, gender undisclosed, date unknown)
- 'The economy of this country has failed to use its competent human resources effectively because of over-regulation a resultant lack of freedom and self-development that humans thrive on. A good education is key but beyond that, people need to take more self-responsibility for themselves and what they achieve for the country.' (Business respondent, gender undisclosed, date unknown)

Two trade union respondents also expanded on the influence of skill development on job sustainability. They commented that:

- ‘Employers should fulfil their duty to further train people whom they have promoted in order to ensure their success.’ (Business respondent, gender undisclosed, date unknown)
- ‘Employers have an obligation to train employees who are promoted to higher levels in managerial status to enable them to be competent and not set them up to fail and then dismiss them.’ (Business respondent, gender undisclosed, date unknown)
- ‘Employers are very lazy to train newly promoted workers during their probation period and, when the employee does not perform after the probation period, employers unfairly dismiss them.’ (Business respondent, gender undisclosed, date unknown)

▣ **Ancillary legislation likely to influence job sustainability**

The survey respondents were asked to state the likelihood of the UIA, OHASA and COIDA influencing job sustainability.

▣ **The *Unemployment Insurance Act’s* influence on job sustainability**

Survey respondents were asked to state how likely the statements relating to the UIA’s provisions were to influence job sustainability, and the cumulative responses are reflected below.

The results reveal the following:

- *Illness benefits*: 49% of the business respondents suggested that illness benefits were likely to influence job sustainability, whereas approximately two-thirds (64.7%) of the trade union respondents indicated that illness benefits were likely to influence job sustainability.

- *Maternity benefits:* 48% of the business respondents implied that maternity benefits were likely to influence job sustainability, whereas the majority (76.5%) of the trade union respondents noted that maternity benefits were likely to influence job sustainability.
- *Adoption benefits:* Just over one-third (38%) of the business respondents revealed that adoption benefits were likely to influence job sustainability, whereas 58.8% of the trade union respondents noted that adoption benefits were quite likely to influence job sustainability.

Thus, there is agreement between businesses' and trade unions' responses that maternity benefits are likely to influence job sustainability. The businesses and trade unions, however, disagree on the influence of illness and adoption benefits on job sustainability.

□ The Occupational Health and Safety Act's influence on job sustainability

The survey respondents were asked to state the likelihood of the OHASA provisions on creating a safe working environment, monitoring and enforcement influencing job sustainability.

□ The Occupational Health and Safety Act's influence of creating a safe working environment on job sustainability

Survey respondents were asked to state how likely it was that the statement relating to the OHASA provision of creating a safe working environment influenced job sustainability, and the responses are reflected below.

The results revealed that approximately two-thirds (61%) of the business respondents indicated that creating a safe working environment was likely to influence job sustainability. The majority (76.5%) of the trade union respondents noted that creating a safe working environment was likely to influence job sustainability.

There is agreement between businesses and trade unions that the creation of a safe working environment is likely to influence job sustainability.

□ **The influence of monitoring and enforcing of compliance with the *Occupational Health and Safety Act* on job sustainability**

Survey respondents were asked to state how likely the statements relating to the monitoring and enforcement of compliance by safety representatives in terms of the OHASA were to influence job sustainability, and the cumulative responses are reflected below.

The results show that:

- *Monitoring by health and safety representatives:* 56% of the business respondents implied that the monitoring of compliance by health and safety representatives was likely to influence job sustainability, whereas the majority (76.5) of the trade union respondents felt that the monitoring of compliance by health and safety representatives was likely to influence job sustainability.
- *Monitoring by labour inspectors:* 40% of the business respondents suggested that the monitoring of compliance by the labour inspectors was likely to influence job sustainability. On the other hand, the majority (76.5%) of the trade union respondents signified that the monitoring of compliance by the labour inspectors was likely to influence job sustainability.
- *Enforcement by labour inspectors:* Approximately a third (39%) of the business respondents revealed that enforcement by labour inspectors was likely to influence job sustainability, whereas the majority (70.6%) of the trade union respondents noted that the enforcement of compliance with the OHASA by labour inspectors was likely to influence job sustainability.

Consequently, there is agreement between businesses and trade unions that monitoring of compliance with the OHASA by health and safety representatives was likely to influence job sustainability. However, they disagreed on the likely influence of monitoring

and enforcing of health and safety by labour inspectors on job sustainability. The majority of the business respondents indicated that monitoring and enforcing of health and safety by labour inspectors were unlikely to influence them to sustain jobs. However, the majority of trade union respondents indicated that monitoring and enforcing of health and safety by labour inspectors were likely to influence job sustainability.

□ **Compensation for Occupational Injuries and Diseases Act's influence on job sustainability**

Survey respondents were asked to state the likelihood of the monitoring of compliance with the COIDA's provisions of holding inquiries and the enforcement of compliance influencing job sustainability.

□ ***Compensation for Occupational Injuries and Diseases Act's influence of holding enquiries on job sustainability***

Survey respondents were asked to state how likely the provisions of holding enquiries and enforcing compliance with the COIDA influenced job sustainability, and the cumulative responses are reflected below.

The results reveal that:

- *Holding of enquiries into accidents:* 46% of the business respondents suggested that the compensation commissioner holding enquiries into accidents was likely to influence job sustainability. On the other hand, approximately two-thirds (64.7%) of the trade union respondents noted that the compensation commissioner holding enquiries into accidents was likely to influence job sustainability.
- *Enforcement by the compensation commissioner:* 43% of the business respondents revealed that enforcement by the compensation commissioner was likely to influence job sustainability, whereas 64.7% of the trade union respondents

indicated that enforcement by the compensation commissioner was likely to influence job sustainability.

The business and trade union respondents disagreed on how likely the influence of the compensation commissioner holding enquiries into accidents and enforcing compliance would be on job sustainability. Approximately 43% of the business respondents indicated that they were likely to be influenced by the compensation commissioner holding enquiries into accidents and enforcing compliance to sustain jobs, whereas almost two-thirds (64.7%) of the trade union respondents indicated that the compensation commissioner holding enquiries into accidents and enforcing compliance were likely to influence job sustainability.

■ Introspection of results

The results indicate the following patterns:

- There is a highly significant ($p < 0.001$) relationship between all the statements relating to social justice, human rights and decent work factors and by all respondents (combined p -value).
- There is a highly significant ($p < 0.001$) relationship between all the statements relating to the role of labour law and by all respondents (combined p -value).
- There is a significant ($p = 0.007$) relationship between business respondents and both statements on the increase in the number of permanent and temporary jobs in the past 5 years, whereas there is no significant relationship between these statements and statements by the trade union respondents.
- There is a significant relationship between various aspects of the BCEA, LRA, EEA and SDA influencing job creation and job sustainability and statements by all the respondents (combined p -value).

There is significant agreement among the respondents on working hours, work-time flexibility, work security, monitoring and enforcement of the BCEA's influence on job creation and job sustainability.

As can also be seen from Table 5.2, there is significant agreement among the respondents on the general fairness requirements, requirements for fair dismissals, monitoring and enforcement of the LRA's influence on job creation and job sustainability.

As can be seen from Table 5.3, there is significant agreement among the respondents on the requirements for equality and

TABLE 5.1: Significant agreement among respondents on the BCEA.

Labour legislation's influence on BCEA	Job creation	Job sustainability
Working hours/work-time flexibility/work security	<p>Working hours</p> <p>There is a highly significant ($p < 0.001$) relationship between the statements relating to ordinary hours, overtime hours and night work and by both groupings (trade unions and business combined). There is no significant relationship between all the respondents (combined) and the statements on work on public holidays and working on Sundays</p> <p>Work-time flexibility</p> <p>There is a significant ($p = 0.007$) relationship between all respondents (combined trade union and business) and compressed working week. There is a highly significant ($p < 0.001$) relationship between business and the provision relating to the averaging of hours worked</p>	<p>Work security</p> <p>There is a highly significant ($p < 0.001$) relationship between all respondents (combined) and all the statements relating to overtime hours, sick leave, maternity leave, notice periods, minimum wages and severance pay influencing job sustainability</p>
Monitoring and enforcement	<p>There is no significant ($p = 0.239$) relationship between all respondents (combined) and the statements on the monitoring and enforcement of the BCEA by labour inspectors (ss. 63–84)</p>	<p>There is a significant ($p < 0.003$) relationship between all respondents (combined) and both statements in this section relating to the labour inspectors' monitoring and enforcing compliance with the BCEA influencing job sustainability</p>

Source: Adapted from Table 5.33 of Womack (2018:249).
BCEA, *Basic Conditions of Employment Act*.

equal treatment and monitoring and enforcement of the EEA's influence on job creation and job sustainability.

As can be seen from Table 5.4, there is significant agreement among the respondents on the additional legislation's influence on job creation and job sustainability, with regard to job creation and work security.

TABLE 5.2: Significant agreement among respondents on the LRA.

Labour legislation's influence on LRA	Job creation	Job sustainability
General fairness requirements	There is a highly significant relationship ($p < 0.001$) between all respondents (combined) and both statements in this section on the regulation of alternative employment contracts and the regulation of industrial action. The relationship between both groupings of respondents (combined) and the statement on the protection of workers in terms of Section 197 is also significant ($p < 0.002$)	There is a highly significant ($p < 0.001$) relationship between and by all respondents (trade unions and business combined) and both statements relating to the regulation of alternative employment contracts and industrial action. However, there is no significant relationship between the statement on the protection of workers in terms of Section 197 and by all respondents (combined)
Fair dismissals	There is a highly significant ($p < 0.001$) relationship between all respondents (combined) and all the statements relating to the LRA's fair dismissal requirements' influence on job creation	There is a highly significant relationship ($p < 0.001$) between all the respondents (combined) and all the statements on the influence of the LRA's regulation of fair dismissals on job sustainability
Monitoring and enforcement	There is a significant ($p < 0.004$) relationship between both statements on monitoring and enforcement by bargaining agents on job creation and by all the respondents (combined)	There is a highly significant ($p < 0.001$) relationship between by all respondents (combined) and both statements on the LRA's monitoring and enforcement by bargaining council agents' influence on job sustainability
	There is no significant ($p = 0.258$) relationship between all the respondents (combined) on both statements on monitoring and enforcement by labour inspectors influence on job creation	There is a significant ($p < 0.039$) relationship between all the respondents (combined) and both statements on the influence on job sustainability of the LRA's monitoring and enforcement by labour inspectors

(Table 5.2 continued on next page)

TABLE 5.2 (Continues...): Significant agreement among respondents on the LRA.

Labour legislation's influence on LRA	Job creation	Job sustainability
Equality and equal treatment	There is a highly significant ($p < 0.001$) relationship between all the statements relating to the LRA's provisions on equity and equal treatment requirements in the workplace influencing job creation and by all the respondents (combined), except for the statement on automatically unfair dismissals which is also significant ($p = 0.011$)	There is a highly significant ($p < 0.001$) relationship between all the respondents (combined) and the statements on the LRA's equality and equal treatment requirements' influence on job sustainability

Source: Adapted from Table 5.34 of Womack (2018:250).
LRA, *Labour Relations Act*.

TABLE 5.3: Significant agreement among respondents on the EEA.

Labour legislation's influence on EEA	Job creation	Job sustainability
Equality and equal treatment	There is significant agreement among the business respondents on all the statements relating to the EEA's promotion of equality and equal treatment's influence on job creation ($p < 0.001$). There is also significant agreement among the trade union respondents on the first three statements relating to the prohibition and removal of unfair discrimination and the right to equal income distribution ($p = 0.08$)	There is a highly significant ($p < 0.001$) relationship between the business respondents and the statements in this section on the influence of the EEA's provisions promoting equality and equal treatment in the workplace on job sustainability. There is no significant relationship between the trade union respondents and the statements in this section, other than the statement on the right to equal income distribution ($p = 0.009$)
Monitoring and enforcement	There is a significant ($p < 0.005$) relationship between both statements in this section on the monitoring and enforcement of the EEA by labour inspectors and all the respondents (combined)	There is a significant ($p = 0.011$) relationship between both statements on monitoring and enforcement by labour inspectors and responses by all respondents (combined)

Source: Adapted from Table 5.35 of Womack (2018:251).
EEA, *Employment Equity Act*.

TABLE 5.4: Significant agreement among respondents on additional legislation.

Labour legislation's influence on additional legislation	Job creation	Job sustainability
Additional legislation on job creation	There is a highly significant ($p < 0.001$) relationship between all the respondents (combined) and the statements for this section on the influence of job creation schemes, tax incentive schemes, employment services offices, training of unemployed workers and black ownership, corporate advancement and involvement of black people on job creation	
Education and training		There is a highly significant ($p < 0.001$) relationship between all the statements on education and training's influence on job sustainability and all the respondents (combined)
Skill improvement in terms of the LRA		There is a highly significant ($p < 0.001$) relationship between all the respondents (combined) and all the statements relating to the LRA's provisions on education and training's influence on job sustainability
Skill development in terms of the SDA		There is a highly significant ($p < 0.001$) relationship between responses by all of the respondents (combined) and all the statements relating to education, training, retraining and learnership programmes' influence on job sustainability

(Table 5.4 continued on next page)

TABLE 5.4 (Continues...): Significant agreement among respondents on additional legislation.

Labour legislation's influence on additional legislation	Job creation	Job sustainability
UIA benefits and job sustainability		There is a highly significant ($p < 0.001$) relationship between all respondents (combined) and both statements on illness benefits and maternity benefits in this section on the UIA's influence on job sustainability, whereas there is no significant relationship between the statement on adoption benefits and all respondents (combined)
Ensuring a safe working environment in terms of the OHASA		There is a highly significant relationship between the statement on the OHASA's influence in creating a safe working environment on job sustainability and responses by all respondents (combined)
Monitoring and enforcement in terms of the OHASA		There is a highly significant relationship ($p < 0.001$) between all the respondents (combined) and all three statements on OHASA's monitoring and enforcement of compliance by safety representatives and labour inspectors on job sustainability
Compensation commissioner conducting enquires in terms of the COIDA		There is a highly significant ($p < 0.001$) relationship between the statement on the influence of the compensation commissioner holding enquiries on job sustainability and responses by all the respondents (combined)
Monitoring and enforcement of the COIDA		There is a highly significant ($p < 0.001$) relationship between the statement on the compensation commissioner's enforcement on job sustainability and by all the respondents (combined)

Source: Adapted from Table 5.36 of Womack (2018:252).

COIDA, *Compensation for Occupational Injuries and Diseases Act*; LRA, *Labour Relations Act*; OHASA, *Occupational Health and Safety Act*; SDA, *Skills Development Act*; UIA, *Unemployment Insurance Act*.

■ Summary of results

As per the summary of the statistics:

- The two groups of respondents were representative of the target population studied.
- On the importance of social justice, human rights and decent work, both the business and trade union respondents agreed that the creation of job opportunities is very important. Although the vast majority of trade union respondents felt that all seven statements in this section were very important, the business respondents felt that some of the statements were more important than others.
- On the role of labour law, both the business and trade union respondents agreed that labour law played a role. There is strong agreement between the respondents that freedom from discrimination in the workplace, the development of quality education and training systems, and freedom from exploitation in the workplace are very important. The business respondents, however, disagreed and differed on the importance of the role that labour law played in ensuring equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights.
- There is significant agreement among the business and trade union respondents that labour legislation does influence job creation and job sustainability.
- There was significant agreement among the two groups of respondents on various aspects of the BCEA's influence on job creation and job sustainability:
 - o Working hours: The majority of the trade union respondents and a majority of the business respondents agreed that the regulation of ordinary hours of work and overtime influenced job creation, but they disagreed on work on Sundays, public holidays and night work influencing job creation.

- Work-time flexibility: At least half of the respondents in each of the groups agreed that work-time flexibility influenced job creation.
- The influence of labour inspectors in monitoring and enforcing the BCEA: The respondents differed. A majority of the trade union respondents agreed that they influence job creation, whereas the business respondents disagreed. A possible reason could be their failure to conduct regular inspections and/or to enforce the provisions of the BCEA.
- There is significant agreement among the two groups of respondents that various aspects of the LRA influenced job creation and job sustainability:
 - On the general requirements for fairness: There was strong agreement between the business and the trade union responses on the regulation of alternative employment contracts and industrial action as having a likely influence on job creation. However, businesses and trade unions disagreed on the likelihood of the protection of workers in mergers, takeovers and transfers improving job creation.
 - The majority of the trade union respondents indicated a much stronger likelihood that the LRA's requirements for fair dismissals would influence job creation.
 - On the equality and equal treatment requirements: There was agreement between the business and trade union respondents on the regulation of alternative employment contracts and standardisation of income as likely to influence job creation. The businesses and trade unions, however, disagreed on the right not to discriminate, the regulation of unfair labour practices and automatically unfair dismissals influencing job creation.
 - There is overwhelming agreement between businesses and trade unions that education and training improve a business's competitiveness and increase workers' productivity.

- o On the influence of the monitoring and enforcement of collective agreements by the bargaining council agents on job creation: There was significant variance between businesses and trade unions. Less than half of the business respondents indicated that it was likely to influence them, whereas the majority of the trade union respondents signified that it was likely to influence job creation.
- o There is disagreement among the two groups of respondents with regard to labour inspectors' monitoring and enforcing of compliance with the LRA and its influence on job creation. Only some of the business respondents indicated that it was likely to influence them, whereas the majority of trade union respondents indicated that the monitoring and enforcement of collective agreement by bargaining council agents was likely to influence job creation.
- There is significant agreement among the two groups of respondents that various aspects of the EEA influence job creation and job sustainability:
 - o On the promotion of equality and equal treatment: An investigation of the responses for this section reveals that both business and trade union respondents agree that the EEA provisions on equal income distribution and the promotion of affirmative action are more likely to influence them in sustaining jobs. Although they differ considerably on the influence of the prohibition of discrimination and removal of unfair discrimination and unfair labour practices on job sustainability, the business respondents indicated that the prohibition of discrimination and removal of unfair discrimination and unfair labour practices were less likely to influence them to sustain jobs. The majority of the trade union responses indicated a greater likelihood of the prohibition of discrimination, right to equal income and regulation of unfair labour practices influencing job sustainability. They also indicated that the promotion of affirmative action and removal of discrimination were less likely to influence job sustainability.

- o On the monitoring and enforcement of the EEA by labour inspectors: The respondents differed in their opinions of their influence on job creation. The majority of the business respondents indicated that monitoring and enforcement by labour inspectors was unlikely to influence them to sustain jobs. A possible reason is that inspections may be occurring on a regular basis. The majority of the trade union responses, however, indicated a stronger likelihood that the monitoring and enforcement of compliance with the EEA by labour inspectors was likely to influence businesses to sustain jobs.
- There is significant agreement among the two groups of respondents that skill development influences job creation and job sustainability:
 - o On training and education in general: There was overwhelming agreement between both businesses and trade unions that education and training improve a business's competitiveness and increase workers' productivity.
 - o On the SDA's training and education provisions: There was agreement between businesses' and trade unions' responses on all the statements in this section. An overwhelming majority of the trade union and a majority of the business responses indicated that education and training programmes ensuring workers are equipped with the necessary skills, retraining through skills programmes and learnership agreements were all likely to influence job sustainability. The trade union responses, however, indicated a stronger likelihood that education, training and retraining of workers were likely to influence businesses to sustain jobs.
 - o On the LRA's training and education provisions: There is agreement between the business and trade union responses on all the statements in this section. An overwhelming majority of the trade union and a majority of the business responses indicated that education and training programmes ensuring workers are equipped with

the necessary skills, retraining through skills programmes and learnership agreements are all likely to influence job sustainability. The trade union responses indicated a stronger likelihood that education, training and retraining of workers are likely to influence businesses to sustain jobs.

- There was agreement among the respondents that the UIA benefits influence job sustainability. The businesses and trade unions, however, disagreed on the influence of illness and adoption benefits on job sustainability.
- There was agreement among the respondents that the OHASA influenced job sustainability:
 - o On creating a safe working environment: Between the business and trade union respondents, there is agreement that it is likely to influence job sustainability.
 - o On the monitoring of health and safety by safety representatives: Both groups of respondents also agreed that it is likely to influence job sustainability.
 - o On the monitoring and enforcement of health and safety by the labour inspectors: There was disagreement between the two groups of respondents. The majority of the business respondents indicated that they were unlikely to influence them to sustain jobs.
- There was agreement among the respondents that COIDA influences job sustainability:
 - o On the compensation commissioner's holding of enquiries into accidents and the enforcement of compliance: The respondents agree that they are likely to influence job sustainability. Both groups of respondents, however, disagreed on how likely that influence was in job sustainability. The majority of the business respondents indicated that they were unlikely to be influenced thereby to sustain jobs. The majority of the trade union respondents indicated that the compensation commissioner's holding of enquiries into accidents and the enforcement of compliance were likely to influence job sustainability.

■ Conclusion

This chapter has provided an overview of the quantitative data collection and data analysis results of the business and trade union survey questionnaires. It has revealed that labour legislation does influence job creation and job sustainability. It does not reveal, however, whether the influence is positive or negative and to what extent it influences job creation and job sustainability. Chapter 6 presents and provides a detailed discussion of the qualitative study's findings and greater insight into the significance and the extent to which labour legislation influences job creation and job sustainability. It also provides insight into which aspects of labour legislation have a positive influence, which aspects have a negative influence and which aspects have no influence at all on job creation and job sustainability.

Presentation, interpretation, analysis of qualitative data from business and trade union interviews relating to factors influencing job creation and job sustainability in South Africa

Keywords: Thematic framework; Labour legislation; Staffing contracts; Working conditions; Job security; Skill development; Labour cost; Administrative burden; Cost of compliance.

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■ Introduction

Chapter 5 presented the results and analysis of the quantitative data collected. This chapter presents the results, and discusses the qualitative data collection and findings obtained from the semi-structured interviews conducted with the business and trade union (TU) respondents in the empirical study. It is hoped that a better understanding of business' and TUs' perceptions of labour legislation's influence on job creation and job sustainability will provide insight into how labour legislation can be amended to better encourage and support job creation and sustainability.

A total of 22 interviewees participated in the empirical study, which comprised 16 business and six TU interviews. The study was based on answering the following nine research questions:

- Question 1: Who creates and sustains jobs, and how?
- Question 2: How did the participants perceive labour legislation's influence on job creation and job sustainability?
- Question 3: How do the participants' perceptions about labour legislation influence businesses to create and/or sustain jobs?
- Question 4: Which labour legislative factors did the participants perceive as helpful to creating and sustaining jobs?
- Question 5: What labour legislative factors did the participants perceive as impeding or threatening job creation and job sustainability?
- Question 6: What suggested changes, if any, should be made to labour legislation to improve job creation and/or job sustainability?
- Question 7: What are the factors (apart from labour legislation) affecting job creation and job sustainability?
- Question 8: What are the strategies to increase and/or improve job creation and job sustainability?
- Question 9: To what extent do the qualitative results confirm the quantitative results of the empirical study?

The aim of the qualitative research aspect of the empirical study was to gain an understanding of the influence that labour legislation had on job creation and job sustainability.

■ Qualitative data collection

The semi-structured interview guide was the primary tool used to collect qualitative data from the two separate groups of interviewees. Both interview schedules contained 16 primary questions containing sub-questions, which were broken up into two parts, one for job creation and the other for job sustainability. Factual information questions, such as current position, type of entity and business sector were also asked. Sixteen business and six TU interviews were conducted, which were deemed sufficient for analysis. The interview guide was divided into 16 questions (plus sub-questions), which measured various themes as reflected in Table 6.1.

■ Qualitative data analysis

The following is a discussion of the major key findings, with details that support and explain each finding. In this study, there

TABLE 6.1: Themes of the influence of labour legislation on job creation and job sustainability.

Themes	Job creation		Job sustainability	
Participant's opinions on	Q 1		Q 9	
Factors influencing	Q 10		Q 10	
Business's behaviour towards	Qs 2, 3 and 4		Qs 11 and 12	
Reasons for their behaviour	Q 2		Q 13	
Views of labour legislation	Q 5		Q 13	
Experience of labour legislation	Q 6		Q 14	
Suggested strategies to improve	Q 8		Q 16	
Influence of labour legislation	Regulation	Compliance	Regulation	Compliance
Fairness and work security BCEA	Q 7.1 a-d	Q 7.1 e	Q 15.1 a-d	Q 15.1 e
Fairness and work security LRA	Q 7.2 a-e	Q 7.2 f	Q 15.2 a-e	Q 15.2 f
Equity – EEA	Q 7.3 a-d	Q 7.3 e	Q 15.3 a-d	Q 15.3 e
Skills development – SDA			Q 15	Q 15

Source: Adapted from Table 6.1 of Womack (2018:262).
 BCEA, *Basic Conditions of Employment Act*; LRA, *Labour Relations Act*; EEA, *Employment Equity Act*; SDA, *Skills Development Act*.

are two sets of cases, namely business cases and TU cases. The phenomenon studied is reactions and behaviour towards labour legislation in terms of how it influences decisions to create and sustain jobs (Miles, Huberman & Saldaña 2014:28).

■ **Presentation of results of the demographic and general profile of each group of participants**

This section summarises the biographical characteristics of the two groups of interviewees.

□ **Position of the interviewees in their organisations**

The majority of business interviewees held top and senior managerial positions in their organisations. One business participant was a chief executive officer. One company secretary, three managing directors, two directors, three senior managers, four managers and two entrepreneurs participated in the study. Top and senior TU officials also represented TUs in this study. Two (33.3%) divisional managers, one secretary general (16.7%), one deputy secretary general and two (16.7%) TU representatives participated in this study.

□ **Geographical areas in which the interviewees are situated**

Nine business participants were primarily representatives of the greater Durban area. There were five participants from Johannesburg and two participants were from Cape Town. The TU participants were primarily situated in Johannesburg (66.7%) and, to a lesser extent, in Durban (33.3%).

□ **The gender distribution of interviewees**

The majority of interviewees in both groups were men. The business group comprised 13 male (81%) and three (19%) female participants.

The TU group comprised five male (83%) and one female (7%) participant.

□ **Types of entities represented by the participants**

The business group of participants primarily comprised small, medium and large enterprises as well as a business federation of various sectors/industries. The majority (67%) of the TU group comprised TUs. However, there were a few participants (33%) who represented TU federations as well.

□ ***The various sectors represented by the participants***

The various sectors of which the business participants were representatives are as follows: five (31%) business participants were from the transport, logistics, forwarding and freight sectors; another three (18%) business participants were from the manufacturing sector; and one was from the metal and engineering sector (6%). Two (12%) business participants were from the retail and wholesale sector and another two (12%) were from the business services sector. The remaining sectors – security (6%), private education (6%), and electricity, gas and water (6%) – were represented by one business participant each.

The TUs primarily represented the mining, metal and engineering sectors (33.3%) and the tertiary education sector (33.3%), followed by the hospitality (16.7%) and retail sectors (16.7%).

In summary, the population studied included the following:

- A business group comprising small, medium and large enterprises, as well as a business federation, of various sectors/industries.
- Top and senior management who represented business.
- A TU group comprising TUs and TU federations of various sectors/industries.

- Top and senior TU officials who represented TUs in the study.
- Men and women who represented businesses and TUs in the study.
- Businesses and TU participants in this study who represented various South African business sectors.

■ **Presentation of results of interview, participants' opinions and perceptions on various issues, *inter alia* the regulatory influence of labour legislation on job creation and job sustainability in South Africa**

In total, 22 semi-structured, primarily telephonic interviews were conducted. To ensure anonymity, the participants' names for this qualitative case study were coded alphabetically with the prefix B (business) and TU. Codes B1 to B16 and TU1 to TU6 were used to distinguish between the two groups.

■ **Labour legislation fulfilling the normative role of labour law**

Four participants agreed that labour legislation fulfils its normative role in that it regulates the employment relationship and guides and controls the way jobs are created and how workers are employed. It also acts as a guide and helps resolve disputes. Labour laws are flexible and avert industrial action. Their comments are as follows:

- 'The BCEA and the LRA have normalised the employment relationship and bargaining agents help resolve labour queries.' (B2, male, 19 September 2016)
- 'The BCEA is a process to put minimum fair mechanisms in place. If an employer cannot afford the minimum provisions, it

can approach the Department of Labour to relax the provisions in terms of section 50.’ (TU4, male, 31 October 2016)

- ‘It is a standard used throughout the world which is driven by the ILO.’ (TU3, male, 26 October 2016)

■ **The influence of labour legislation and labour legislative factors on job creation and job sustainability**

The majority of business and two TU participants concurred that labour legislation is necessary and mostly justified. It is not enough to stimulate jobs. There is also a need to protect jobs. It is essential for legislation to protect both the employers and the employees. Consequently, the majority of participants indicated that, overall, the labour legislation in regulating the employment relationship and the enforcement of compliance by labour inspectors does not influence them to create jobs. The participants’ opinions differed, however, on labour legislation’s influence on job sustainability.

Four business participants commented generally on labour legislation’s influence on job sustainability. They felt that there is more than enough legislation and that both labour legislation and economic climate are equally significant. The comments made by the business participants include the following:

- ‘The LRA and BCEA process is a guide as it is not hampering businesses.’ (B5, male, 21 September 2016)
- ‘Legislation is worthwhile and it helps job sustainability by making it difficult to dismiss somebody.’ (B7, B8, B10 and B11, male, 23 September 2016, 04 October 2016 and 18 October 2016)
- ‘The whole of the LRA creates barriers to abusing people.’ (B15, male, 19 January 2017)

The majority of TU participants thought that labour legislation primarily has a positive influence on job creation and job sustainability:

- 'There are enough mechanisms in place if businesses properly comply with the legislative tools to address their concerns.' (TU4, male, 31 October 2016)
- 'Government, however, is not doing enough in terms of the LRA and BCEA to avoid casualisation in this country. Workers do not have decent work and they are losing their jobs, which affects job sustainability. The OHASA helps to keep people alive, as there are fewer accidents.' (TU5, male, 26 October 2016)

A few business participants agreed that the legislation is fair, but they conceded that the parties need to have a fair amount of knowledge about labour legislation and that business has to invest a large amount of time and resources to comply with labour legislation. Nevertheless, one business participant and two TU participants differed and stated that labour legislation does not influence job creation. They consider that the BCEA is a process to put fair mechanisms in place. However, one business participant declared that industrial action and shortage of skills, foreign exchange fluctuations and inflation do have a direct influence on job creation. Two business participants agreed that, at times, labour legislation has a positive influence, while at other times, it has a negative influence. One business participant commented that something is seldom either negative or positive and that one needs to look at the overall result. The net result is that labour legislation creates opportunities and sustains the jobs created.

Six of the business participants disclosed that the B-BBEEA, BCEA, LRA, the SDA and the ETIA influenced them both positively and negatively. The reason they gave was that these acts provided certainty while simultaneously restricted freedom to give financial incentives to retain skills and experience. The EEA

is not representative. Furthermore, the business participants add that the EEA operates in silo as other arms of the government do not sufficiently support it. Additionally, educational institutions need to improve primary, secondary and tertiary education legislation. The business participants remarked that the B-BBEEA does not really create jobs. The business participants added that it helps smaller companies and black businesses to thrive but more has to be exercised to educate black businesses to thrive. They stated that the B-BBEEA can cripple and cause existing businesses to close down for not meeting its criteria.

Three of the TU participants confirmed that labour legislation might influence job creation if employers see it as a costly exercise. Nonetheless, they observed that people are easily dismissed and that employers have the funds to obtain the services of lawyers and labour specialists to assist and guide them. They added that employers are also not concerned about arbitration awards, judgements and their enforcement. The TU participants added that employers continue to use labour brokers regardless of the amendments to the labour legislation.

The business participants stated that the SDA has not really encouraged job creation. They remarked that rather it is a cost to company which they try to recover by developing skills. They stated that businesses are limited to only recovering a maximum of 25% of what they have spent on training. The business participants criticised the SDA in that although it is designed to enhance job creation, it is poorly executed and the SETAs waste money on meetings and parties. One business participant disclosed that skills improvement legislation, other than the youth tax incentives, has not influenced him to sustain jobs. He conceded that initially the ETIA youth tax incentive helped him to consider taking on youths for training. However, he has since stopped, as he considered the youth to be more of a burden than a benefit. He also believed that the youth are unsettled; they lack integrity and skills; and their militant and demanding attitude discouraged him from employing them.

Four business participants concurred that the ETIA has a negative influence on job creation. The reasons they gave were that although a tax incentive initially encouraged them to create jobs and employ the youth, they were disillusioned and discouraged with employing the youth, whom they considered to be more of a burden than a benefit. This has resulted in higher staff turnover. They also believed that the youth are unsettled; they lack integrity and skills; and they are only willing to do the job and nothing more. They conceded that the youth have the energy but it is their attitude which discourages businesses as they do not think things through; they resist before they adhere; and there is a violent and destructive element among the youth, whom the participants found to be quite militant and demanding.

Consequently, some business participants indicated that they would prefer to employ people in the age category of 30–40 years, who have families. They felt that the tax incentive scheme should be extended to cover this age category as well. In addition, some businesses perceived the ETIA to be a punitive incentive to create jobs as it costs money to create jobs and they felt that the financial incentives do not adequately cover the cost of employing and training the youth. None of the business participants commented on the ESA influencing job creation. Only one TU participant commented in general thereon that the intention was good. However, she disclosed that she was unaware of any government employment agencies and that she did not have a positive view of private employment agencies, which she thought deprived prospective workers of a decent salary. She remarked that the union is totally against employment agencies which create the unemployment situation, a disservice.

Labour legislation and its regulatory influence are divided into three sub-themes, namely: equity; fairness – fair and favourable working conditions; and job security, including skills development and social security.

□ **Fairness: Fair and favourable working conditions**

Fair and favourable working conditions increase efficiency and productivity. In order to create fair and favourable working conditions, the BCEA guarantees certain minimum standards of employment.

□ ***Basic Conditions of Employment Act, No. 75 of 1997***

The participants expressed their opinions on various sections of the BCEA ensuring fairness, efficiency and productivity, influencing their decisions to create and sustain jobs. The theme of fairness and efficiency is divided further into four sub-themes, namely: staffing contracts; working conditions; notice periods and severance payment; and minimum wages.

Staffing contracts: The majority of the business participants, 12 out of 16, and one TU participant, agreed that the provisions on staffing contracts did not influence businesses to create jobs. Five business participants and one TU participant were in accord that the same provisions on staffing contracts did not influence them to sustain jobs. Seven business participants stated that they are unaffected or uninfluenced by the amended provisions, as there is enough of a window in the legislation if they have justifiable reasons. Two others confirmed that they use fixed-term contracts as a form of probation and thereafter made permanent appointments. Five of the business participants are regulated by bargaining council agreements, which gazette wages and working conditions. They comply with the provisions and align their contracts with the BCEA. One of the business participants thought that the ethical thing to do is to treat workers fairly and not to exploit them.

Staffing contracts were seen as unfair in the following respects: Five of the business and the majority (four) of the TU participants agreed that the BCEA's provisions on staffing contracts, especially

the legislative amendment limiting the use of fixed-term contracts to 3 months and the restrictions on the use of casual labour, have negatively influenced businesses and discouraged them from creating jobs. Three business participants concurred that the BCEA's regulations to ensure fair staffing contracts negatively influences job sustainability. They remarked that the provisions of the Act could also inhibit building capacity in advance of obtaining a contract. They added that the main reason is that the BCEA lacks flexibility. They stated that it might help some employees to be employed permanently, but it could also serve as a deterrent to employ more staff. They commented that employers bypass the amendments by replacing workers or rotating them and their jobs. They felt that the amendments have actually fuelled unemployment. One of them remarked that businesses would keep on going and that they would be simply more resolved.

The BCEA also heavily regulates the employment relationship; it increases the cost of existing staff; and infringes on the employer's freedom to employ and the right to select, which has a negative influence on job creation. The comments by the business participants included the following:

- 'The nature of the transport industry is such that one cannot shrink and expand the labour force.' (B11, male, 18 October 2016)
- 'The hour-based limits on casual labour are likely to result in the decreased use of casual labour.' (B3, male, 20 September 2016)
- 'The BCEA and LRA are pro employees, and employers have a rather difficult time working around these Acts. The industry is not highly skilled, so it is easy to replace people. I keep a person for 3 months, then terminate his or her services and take on a new person. I never use the same person twice, so it has had a detrimental effect and has fuelled unemployment.' (B10, male, 04 October 2016)
- 'Employers should have the right to make use of more temporary types of employment and be granted greater

leeway for the use of fixed-term contracts, labour brokers and part-time workers to manage and harness the type of work that the business needs.’ (B7, male, 23 September 2016)

Two TU participants and one business participant concurred that the regulation of staffing contracts, as well as the amendments thereto, has a positive influence on job creation and job sustainability, especially when using someone on a contract basis for probation and thereafter creating full-time, permanent jobs. The comments by the business participants included the following:

- ‘There is enough of window in the legislation which allows the employer to employ after 3 months if they have justifiable reasons. As long as they follow the law, there is no problem. The amended provisions are aimed at rouge employers, who have no legitimate reasons.’ (B16, male, 25 January 2017)
- ‘The probation process is simple. The employer must have a standard and a measure. One is dealing with people; they need to be given reasons and provided with an opportunity.’ (TU4, male, 31 October 2016)
- ‘There are specific procedures that employers must follow with probation to ensure that there is no abuse of authority at the workplace.’ (TU6, female, 16 March 2017)

One business participant (B12) commented that when one looks after workers emotionally and physically, they work better and that it also prevents employers from abusing their authority. One TU participant (TU2) also commented that it helps workers to be permanently employed, although he conceded that it can deter some employers who choose to do without workers, especially in the current difficult economic climate that has placed employers under pressure. On the other hand, staffing contracts were seen as fair in the following respects: one of the TU participants (TU3) remarked that the BCEA is a process to put fair mechanisms in place and is in accordance with international standards, and

employers can apply for exemptions if they cannot afford the minimum provisions.

Working conditions: The majority of business participants, 11 out of 16, agreed that the BCEA's provisions to ensure fair working conditions did not influence them to create jobs. Three business participants and one TU participant concurred that the same provisions did not influence job sustainability either. The common reasons given were that they comply with the law. Three business participants are subjected to bargaining councils, which regulate their industry, in which they participate. They added that bargaining council agents ensure that workers are treated well and the business representatives represent their interests and negotiate the working conditions for their industry, and they comply with the bargaining council's collective agreements. One business participant remarked that the only issue he has with bargaining councils is the selective enforcement of compliance.

Working conditions were seen as unfair in the following circumstances: One of the TU participants stated that certain industries who work for a 7-day week, for example supermarkets, and those smaller employers who are unable to comply, are forced to go out of business. Four business and four TU participants agreed that the negative experiences and perceptions of the provisions of BCEA for public holidays, overtime, night shift and working on Sundays are inflexible and influence job creation negatively.

Three business participants were in accord that the restrictions imposed by the BCEA on overtime and sick leave influenced job sustainability negatively. Some of the reasons given were the ad hoc presidential declarations of additional public holidays; payment of overtime, particularly when employers become aware of employees abusing overtime payment; regulation of night shift and payment for working on Sundays, especially in the transport industry where businesses are unable to deliver at night or on Sundays.

Their comments on the fairness/unfairness of working conditions included the following:

- 'The unforeseen public holiday, 27 December 2016 declared as such, resulted in an unforeseen additional labour cost of R87 000 in overtime wages, for which the company had not budgeted and catered for in advance, and which had to come directly off the company's bottom line.' (B8, male, 23 September 2016)
- 'An employer objects to workers who deliberately work slowly throughout the day so that they can work overtime at night to receive extra pay to meet their daily targets. This has a negative influence on operations, especially in a fast moving goods industry which operates on the just-in-time principle.' (B10, male, 04 October 2016)

Two of the business participants noted that the employers in these sectors must be able to compromise, otherwise it is operationally impossible. The comments by the business participants included the following:

- 'The laws are inflexible; I cannot predict when the next load is going to be, as we work on a just-in-time basis.' (B2, male, 19 September 2016)

One business participant (B8) mentioned that sick leave is open to abuse, which results in additional costs and affects pricing.

A TU participant added that the provision also affects certain industries, for example supermarkets and sectors which operate on all seven days as well as the security and the gambling sectors. His comments included the following:

- 'It was not really a deterrent but a difficult one, especially with the changing world that we are living in affects certain industries, for example supermarkets and sectors, which operate [on] all 7 days.' (TU2, male, 24 October 2016)

On the other hand, the provisions on working conditions were seen as fair by the participants in the following respects:

The standardisation of working hours in terms of the BCEA ensures that workers work for reasonable hours and keep the workforce happy (Du Toit et al. 2011:597). Business participants abide by the rules and ensure that their workers are treated well. Two of the business participants who need workers to work for 24 h per day, use shift work to create more jobs by making working hours more flexible and reducing the hours of work of the existing employees.

However, one business participant and two TU participants agreed that the BCEA's regulations ensuring fair working conditions have a positive influence on job sustainability. The reasons they gave were that it provides guidelines; if workers are looked after emotionally and physically, they would work better; and that all social partners should form a social pact, act differently and work together for the good of the country.

Notice periods and severance payment: The majority of business participants, 12 out of 16, agreed that the BCEA's provisions on notice periods and severance payment did not influence them to create jobs. Three business and two TU participants agreed that the same provisions also did not influence job sustainability. The reasons they gave were that the provisions are fair; they have little or no effect; these provisions are a necessary cost of doing business; the business participants comply with the legislative requirements and they relocate retrenched workers.

Notice periods and severance payment were seen as unfair in the following respects: Two business participants agreed that the BCEA's regulations ensuring fair notice periods and severance payment negatively influenced job creation and job sustainability, especially when the dismissal procedure and the notice of termination only protect the employee. Only the employee can give notice, and does not have to remit a month's notice salary if he or she fails to give proper notice. The comments by the business participants included the following:

- 'I resent being "persuaded" to pay a dismissed employee who had committed a misdemeanour "nuisance pay"'. (B2, male, 19 September 2016)

- ‘The whole dismissal process is very costly, tedious and time-consuming.’ (B10, male, 04 October 2016)

On the other hand, notice periods and severance payment were seen as fair in the following respects: Two TU participants were in agreement that the BCEA’s provisions on notice periods and severance payment have a positive influence on job creation. They stated that the legislative intention is to ensure that parties give notice, which allows for planning and preparing for retrenchment, and severance payment is only paid when people are retrenched.

Minimum wages: The majority of business participants, 11 out of 16, agreed that the BCEA’s regulation of minimum wages and sectoral determinations do not influence to create jobs. Three business participants were in agreement that the regulation of minimum wages also does not influence job sustainability. Some commented that bargaining councils guide and regulate minimum wages in their industry; that the regulations are good; they create certainty and act as a guide and they pay above the minimum wages set for their industry. However, three business participants raised concerns that it might have a detrimental effect on job creation. One participant, however, conceded that they could apply for an exemption if they are unable to cope with minimum provisions. The comments by the business participants included the following:

- ‘The business is threatened when the annual increase is set above inflation as it hurts the bottom line.’ (B8, male, 23 September 2016)
- ‘If the national minimum wage[s] is set too high, it will have an adverse effect on food manufacturing, the agricultural sector and wholesalers.’ (B10, male, 04 October 2016)

Minimum wages were seen as unfair in the following respects: Three business participants and one TU participant concurred that the BCEA’s regulation of minimum wages negatively influenced job sustainability. The reasons they gave were the bargaining council’s selective enforcement of compliance; that

minimum wages exacerbate unemployment and destroy job opportunities; and salary increase over and above inflation results in greater job losses. They further stated that if the labour supply becomes too expensive, minimum wages are unaffordable and people would lose their jobs, which would actually exacerbate unemployment.

Two business participants and one TU participant agreed that the regulation of minimum wages and sectoral determinations was too bureaucratic and unwieldy.

They highlighted issues about staff incompetence and wasteful expenditure. The comments by the business participants included the following:

- 'There is such a lot of wasteful bureaucratic expenditure and the staff are [*sic*] incompetent. It is unwieldy like the Titanic.' (B7, male, 23 September 2016)
- 'It poses a problem for smaller companies who cannot afford to pay minimum wages, it is not cost-effective.' (B12, female, 21 October 2016)

One TU participant (TU1) agreed with business participants that an employer also has to be knowledgeable on minimum standards or hires someone who can advise on costs.

On the other hand, the provisions of minimum wages were seen as fair in the following respects: Two TU participants concurred that the BCEA's minimum wages regulations positively influence job sustainability in terms of qualitative work, and if the employer believes that costs could be managed and are sustainable, jobs are sustained.

Enforcement of compliance with the BCEA by bargaining councils: Five business participants agreed that the bargaining council agents' inflexible approach towards small businesses and the manner in which they and TUs are enforcing compliance negatively influences job creation. The reasons they gave were that the bargaining council agents and TUs were unfairly targeting

and victimising them; there is competitive jealousy in the industry and the TU is encouraged to lodge complaints with the bargaining council and that compliance should be enforced more uniformly. One TU participant remarked that the regulations would have more influence but the problem is with implementation by the Department of Labour. This participant added that the officials would not compel or enforce compliance and there was massive corruption among labour inspectors.

However, four business and two TU participants concurred that the enforcement of compliance with the BCEA by labour inspectors does not influence job sustainability, because the inspectors have not conducted inspections recently and they defer to the bargaining council. They added that it is very important that labour inspectors must work within the parameters to ensure that workers have some kind of protection and security, and that the labour inspectors should strongly encourage safe working practices.

Thus, the aspects of the BCEA which negatively influence job creation and job sustainability are as follows: Staffing contracts, primarily the legislative amendment limiting the use of fixed-term contracts to three months; hours of work; the perceived inflexibility of payment for work on public holidays, overtime, night work and work on Sundays; the bureaucracy, and the number of time-consuming and costly administrative duties; corrupt officials abusing power and wanting to be bribed; and the inflexibly rigid and selective enforcement of compliance by the agents of bargaining council.

Equity

In South Africa, the need to balance equality with efficiency considerations finds expression in the Constitution as well as in labour legislation (Du Toit et al. 2015:35). The LRA and EEA promote and regulate equality and equal treatment of workers at the workplace.

□ **The *Employment Equity Act*, No. 55 of 1998**

The majority of business participants, 11 out of 16, agreed that the provisions of the EEA regulating equity did not influence them to create jobs. What is interesting to note is that seven of them disclosed that their workforce was primarily from disadvantaged groups.

A few participants commented that recruitment practices, affirmative action, equal payment for equal value and income differentials did not influence job sustainability. However, one business participant remarked that he was not at all influenced by the EEA to sustain jobs. He declared that the Act had good intentions, although he found it very difficult to employ persons with suitable skills, as the EEA operates in isolation from the support structure that feeds into businesses, namely primary, secondary and tertiary educational institutions, which he felt are to be improved by the government. A few participants agreed that the EEA's provisions on recruitment practices and equal payment for equal value have a positive influence on job creation.

The theme of equity and the EEA is further divided into four sub-themes, namely: recruitment practices; affirmative action; equal payment for equal value and income differentials.

Recruitment practices: The majority of business participants, 11 out of 16, and four out of six TU participants, concurred that the EEA's regulation of recruitment practices did not influence them to create jobs. Two business and two TU participants concurred that the same provisions also did not influence job sustainability. Some of the reasons given were that it has aligned business with legislation; it is used as a guide and it influences businesses to employ more disadvantaged persons. One business participant remarked that all his labour comprised black, coloured and Indians or Malay and there were no white people employed.

The EEA's regulation on recruitment practices was seen to promote equity in the following ways: The EEA regulates the employment relationship heavily; measures are put in place to

give preference to disadvantaged groups; it ensures equality and no discrimination and bigger businesses would comply with its provisions. One business participant and two TU participants agreed that the EEA's provisions on recruitment practices have a positive influence on job creation and job sustainability, as it causes business to employ more disadvantaged people; it provides guidelines on how to create jobs; and ensures equal treatment, no discrimination and skills retention.

On the other hand, the following views were expressed as to why the EEA's regulation of recruitment practices did not promote equity: Two TU participants agreed with business participants that affirmative action has the opposite effect on job sustainability, and compliance makes it difficult to fill positions with correct people. They added that it overlaps the bargaining council agreements and disability, rather than race which influences job sustainability. One business participant remarked that he has had a negative experience of employing disabled persons. Another business participant, however, admitted that he puts skills first. Yet another business participant acknowledged that she looked at qualifications, skills and experience, but she felt that it could stifle entrepreneurs. One business participant objected to the provisions and said that it was unfair to oblige to take on disadvantaged people who were not appropriate for the job. Some of the comments from these participants included the following:

- 'Companies have had 18 years to implement affirmative action.' (B9, female, 03 October 2016)
- 'The majority we employ are Africans. The company, however, is not representative of other minority race groups, especially Indians and whites, in the lower skills category as they do not want to work at the lower levels.' (B8, male, 23 September 2016)
- 'People who want to work should be allowed to work.' (B12, female, 21 October 2016)
- 'I have lost a lot of money and I am struggling to dismiss them. I should have the right to employ who I believe is the right person for the job.' (B14, male, 14 November 2016)

- ‘The EEA is not [*an*] effective legislation. Instead of employing the right person for the job, you have to fulfil the employment equity plan and the affirmative action goals set out in the employment equity plan. There is a high turnover of ‘black diamonds’, so no long-term planning is possible.’ (TU1, male, 22 September 2016)

Affirmative action: The majority of business participants (11 out of 16) agreed that the EEA’s regulation of affirmative action does not influence them to create jobs. It is interesting to note that three of them disclosed that the majority of their staff was black. However, two other business participants and one TU participant agreed that the equity plans influenced business participants. Another TU participant remarked that the provisions were necessary to ensure fairness and equity and to address past inequalities. Following are the business participants’ comments on affirmative action’s influence:

- ‘There is a need for a B-BBEE partner, who is prepared to roll up his/her sleeves.’ (B11, male, 18 October 2016)
- ‘We do not base appointments on colour, gender or anything else, only on qualifications, experience and the position in the company.’ (B12, female, 21 October 2016)
- ‘The company does have equity plans and conducts its own in-house training programmes to support affirmative action, but there is not enough people coming through the system.’ (B4, female, 20 September 2016)

Three business participants and one TU participant also agreed that the EEA’s regulation of recruitment practices does not influence job sustainability as long as affirmative action is complied with in a manner prescribed by legislation, although there are issues with succession, poor education and a lack of skills. One of the business participants commented as follows:

- ‘There is no one with managerial skills to take over my business when I retire.’ (B11, male, 18 October 2016)

On the other hand, the following views were expressed as to why the EEA's regulation of affirmative action did not promote equity: One business participant remarked that affirmative action is having a negative influence on job sustainability as the employment equity plan requires them to have targets. However, the problem is with the minority groups, such as coloured persons; it is very difficult to find coloured persons with the required skills in a small town like Ladysmith. One of the TU participants conceded that there has to be a sunset clause for affirmative action, as the regulation of affirmative action was negatively influencing job sustainability.

Equal payment for equal value on income and benefits: Overall, it appears that this provision on 'no wages discrimination' does not really influence job creation. More than half (nine of the 16) of the business participants are of the same view that the EEA's regulations on pay equality did not influence job creation. Three of them disclosed that they were regulated by bargaining councils; they complied with the gazetted income and benefits; and that it is essential to ensure fairness. However, three business participants admitted that they drew a distinction based on extra effort, skills and experience, which they felt was fair. Following are the comments of business participants:

- 'It ensures that full-time and part-time workers, all receive the same benefits.' (B6, male, 22 September 2016)
- 'The company has a salary banding system. The classification is based on experience; time with the company; training and intrinsic value to the company.' (B1, male, 18 September 2016)
- 'It protects both sides. Businesses must ensure that there is equity and fairness in [*sic*] the workplace.' (B9, female, 03 October 2016)

Four business participants were in agreement that the EEA's provisions relating to pay equality did not influence job sustainability. One remarked that his business mainly has female workers and that the bargaining council controls their job descriptions.

The EEA's regulations on equal wages for equal value on income and benefits were seen to promote equity in the following ways: Two TU participants concurred that the EEA's provisions on no wages discrimination have a positive influence on job creation and job sustainability as it ensures equality, fairness and the payment of a living wages. There should not be any discrepancies in income and benefits, and employees doing the same work should be paid the same wages.

Reduction of 'disproportionate' income differentials: The overwhelming majority of business participants (13 out of 16) agreed that the EEA's regulations on reducing 'disproportionate' income differentials did not influence them to create jobs. The majority of them stated that they complied with the bargaining council's regulations and adhered to their company's salary banding systems. Two business participants revealed that they follow the gazetted distinctions, but they admitted that they pay more salary to experienced workers. Another felt that the legislators had obtained this idea from their bargaining council. Yet another stated that they rectify the problem immediately. Following are the comments of business participants:

- 'It can be a challenge in certain instances.' (B14, male, 14 November 2016)
- 'If there is a proper scheme, it is easy to identify and rectify the unequal treatment immediately.' (B9, female, 03 October 2016)

Two business participants concurred that the EEA's regulations on income differentials do not influence job sustainability. The only problem they foresaw was with paying all workers the same rate as it would increase their labour costs.

The EEA's provisions on the reduction of disproportionate income differentials were seen to promote equity and fairness in the following ways: Two TU participants agreed that they have a positive influence on job creation and job sustainability on the overall aspect of equity and fairness. It is a process in which businesses have to identify the differences and put a plan in place

to reduce disparities. Workers want fairness. There cannot be discrepancies and discrimination, otherwise there will be chaos and labour turnover. People will leave, which means there will be no job sustainability.

Labour inspectors' enforcement of compliance with EEA: The majority (9 of the 16) of business participants were in agreement that the enforcement of compliance with the EEA by labour inspectors did not influence their decisions to create jobs. Three business participants agreed that enforcement of compliance by labour inspectors with EEA also did not influence job sustainability. The reasons they gave was that inspections have not occurred in the past; labour inspectors are more active now in coming around for checking on whether the firm is complying with employment equity; labour inspectors perform an in-depth audit on employment equity, compare it with the company's employment equity plan and advise the firm. They added that the labour inspectors have not been very strict and have only guided them. Business participants stated that they had to justify how they had tried to overcome the challenges that they faced with minority representations, and the fear of penalties ensured that their businesses adhered to their employment equity plans. One TU participant confirmed that the labour inspectors were enforcing compliance and that they conducted ad hoc visits. However, this participant thought that the old penalties were ineffective on bigger companies who would rather budget for penalties.

Thus, the most important aspects of the EEA negatively influencing job creation are as follows: Business participants experienced problems in complying with affirmative action and employment equity plans; and the local demographics and available labour pool skills restrict businesses from meeting their equity targets. They further stated that poor education and a lack of or inadequate skills caused duplication of positions and roles. They added that white-owned businesses are struggling to meet their equity targets, and the no wages discrimination provisions and the enforcement of compliance negatively influenced job creation to a lesser extent.

□ ***Broad-Based Black Economic Empowerment Act, No. 53 of 2003***

Four business participants share the opinion that the B-BBEEA's regulation of equity did not influence them to create jobs. Only one business participant mentioned that change in the B-BBEEA scorecard was not a problem for him, as his was a fully black-owned company, so it did not influence him to sustain jobs. This participant further added that the B-BBEEA's regulation of equity helps small companies and businesses to thrive, but more entrepreneurial skills are needed. Other business participants added that the B-BBEEA's regulation of equity does not really create jobs and more should be carried out to educate black businesses. The business participants further stated that the B-BBEEA's regulation of equity does not have a major effect on their businesses unless they tout for the government contracts or for a major business. Some of them admitted that they use the B-BBEEA as a balancing guide when making selections and appointments. They added that the businesses which are B-BBEE score-rated have to be B-BBEE-compliant.

Five business and two TU participants agreed that the B-BBEEA negatively influences job creation and job sustainability, especially if they perceived the B-BBEE to be in a bureaucratic industry. Expressing their views as to why the B-BBEEA did not promote equity and threatened job creation and job sustainability, the business participants stated that as the B-BBEEA scales tip, it threatens existing businesses and deters new businesses if they do not qualify. They stated that this specifically affected the predominately white-owned and smaller businesses who had to find equity partners. One business participant added that for these businesses equity is not a priority, 'as much as legislation demands' (Business participant, gender undisclosed, date unknown). He stated that the way in which the legislature has structured the B-BBEE scoring system, it could cripple and cause existing businesses to close down for not meeting the B-BBEE scorecard criteria.

The business participants stated that businesses that have to comply with the B-BBEE scorecard criteria to have the government contracts and tenders are under threat of change in existing criteria. They remarked that the B-BBEEA could deter a business from employing people if the business does not qualify. In addition, they stated that the new B-BBEE scorecard requirements threaten business sustainability and discourage expansion and growth, especially where businesses do not meet the new criteria or where skills are needed or experience is required. They claim that it limits employers' freedom to select and employ and does not help the people in need of it. However, some business participants admitted that they overcame some of the difficulties they encountered through skills training. Furthermore, the business participants added that although the amendments were broad, they were not ideal, and more work is needed to improve them. Their comments on the B-BBEEA's influence on job creation and job sustainability were as follows:

- 'The company is predominantly white-owned, so we created a 25% black shareholding.' (B4, female, 20 September 2016)
- 'It does not make business sense to find equity partners with whom to share the business. I am prepared to give workers a profit share, but not equity. I want to retain control over my business.' (B7, male, 23 September 2016)
- 'The moment [*the*] legislation starts being [*sic*] punitive, it takes away job opportunities.' (B12, female, 21 October 2016)
- 'It is getting worse for the business as the B-BBEEA scales tip. No matter how compliant we are, we are going backwards as we are not 51% black-owned.' (B8, male, 23 September 2016)
- 'Our employees are all white: We are in the training environment, where we are constrained by time. Equity is not a priority for us, as much as legislation wants it to be.' (B13, male, 11 November 2016)

On the other hand, the B-BBEEA was seen to influence job creation and job sustainability by promoting equity through

training and development. Four business participants and one TU participant agreed that the B-BBEEA has a positive influence on job sustainability. The reasons they gave are that the business B-BBEE scorecard and the status level are improved through training, which has made it attractive for their businesses to invest in the training and development of staff as well as unemployed.

■ Job security

Job security is primarily addressed through the LRA, although other labour legislations such as the BCEA, SDA and the UIA also contain aspects that ensure and promote job security (Barker 1999:30–39). The LRA, nevertheless, binds all the other pieces of labour legislation together (Du Toit et al. 2011:39). It, therefore, seeks to promote job creation and job sustainability through job security by removing the BCEA's rigidities and inefficiencies and promoting flexibility and sound labour relations through collective bargaining, dispute resolution and workplace forums (Du Plessis & Fouché 2012:50).

Consequently, the LRA contains provisions which promote and regulate fairness and equity at the workplace as well as fair labour practices and skills development to ensure job security (Van der Walt, Le Roux & Govindjee 2012:39).

■ ***The Labour Relations Act, No. 66 of 1995***

The theme of job security and the LRA are divided into five sub-themes, namely: staffing contracts; dismissals and probation; bargaining councils; industrial action – strikes and dispute resolution.

Staffing contracts: Just over half of the business participants, nine out of 16, agreed that limiting the various types of staffing contracts does not influence their decision to create jobs. Two business participants agreed that the provisions also did not influence job sustainability. A common reason given was that they comply with the bargaining council's specifications which guide

the employment contracts for the whole industry and are in accordance with the law. The business participants added that the legislative amendments limiting fixed-term contracts to 3 months simply made them decide faster. They stated that they did not see the benefit of a labour broker as they were still liable. Furthermore, they indicated that they only used labour brokers to source low-level employees, tested them and then offered them a permanent position.

The regulation of staffing contracts was seen as promoting job security in the following ways: Three TU participants agreed that it has a positive influence on job creation, as it deters employers from offering insecure jobs and denying employees certain benefits. Three business participants and one TU participant were in one accord that the restrictions placed on staffing contracts also have a positive influence on job sustainability. They were of the view that the amendments have enhanced flexibility. They added that Section 198 allows for 3-month contracts to be rolled over. The business participants stated that it allowed employers to hire a person on contract basis but not to abuse him or her. One of the TU participants remarked that employers are more mindful of their employees because of the restrictions that the LRA has placed on staffing contracts. The participant added that she hoped that businesses would 'do the right thing' and create a few more jobs. She added that the regulation protects the employee, as the worker can feel secure about the job and after 3 months, he or she becomes permanent, which helps to sustain jobs. The TU participant further added that it also ensured that a person receives retrenchment benefits.

On the other hand, the following views were expressed as to why the regulation of staffing contracts did not promote job security. Three TU participants concurred that the LRA regulations ensuring job security through staffing contracts have a negative influence on job sustainability. The reasons they gave were that the amendments caused workers to be dismissed rather than appointed for full-time; fixed-term contracts do not need to be renewed; fixed-term contracts are open to abuse as externally funded employers can manipulate the system to keep employees

on a contract basis; and if smaller businesses cannot afford the services, it stifles job creation as employers avoid employing.

Dismissals and probation processes: The majority of business participants, 11 out of 16, and the overwhelming majority of TU participants, four out of five, concurred that the dismissal and probation provisions did not influence businesses with job creation. Two business participants and one TU participant concurred that the provisions also did not influence job sustainability. The participants shared the opinion that the LRA dismissals and probation processes did not influence job creation and sustainability as they are fair process guides for organisational collective bargaining and fair labour practices. Some of the reasons given by the business participants are that businesses complied with the LRA procedures because they are beneficial, fair and protect both parties; they follow the law; the code of conduct creates certainty; they have been very lenient; and they employ experts to assist. They strongly supported the provisions as it is important to be seen to be acting ethically and fairly. The business participants added that they follow retrenchment procedures and keep records of the same. One of the business participants remarked that the legislation, although it appeared to be onerous to businesses, was relatively easy to comply with the provisions.

One TU participant added that the LRA dismissals and probation processes were in line with the standards of ILO. The TU participant also confirmed that employers are dismissing workers relatively easily by drafting correct documentation; by being procedurally correct and substantively fair; and that reducing probation to 3 months helps to assess business performance. The business participants' comments on the fairness of the LRA dismissals and probation processes' influence on job creation and job sustainability included the following:

- 'Employers have to be careful to ensure that they employ right person to fit into the company and its environment. The business world has to be adaptive. If staff cannot adapt, it

makes it very difficult for a business to survive in an economic downturn.’ (B13, male, 11 November 2016)

- ‘The only time the company ‘pulls the plug’ is when the business contract with the client is threatened. The company will dismiss the employee and settle at the CCMA.’ (B8, male, 23 September 2016)
- ‘Ninety per cent of the time, workers opt for compensation.’ (TU5, male, 26 January 2017)
- ‘Employers are not concerned about the judgements. The union frequently has to go to the Labour Court to enforce arbitration awards.’ (TU1, male, 22 September 2016)
- ‘The LRA ensures that the employer does not abuse the workers’ rights; that there is no abuse of authority and that there is fairness in the workplace.’ (TU6, female, 16 March 2017)

Three business participants and one TU participant agreed that the LRA provisions on dismissals and probation have a negative influence on job sustainability. The following views were expressed as to why the regulation of dismissals and probation did not promote job security: The business participants have cut down their probationary period to three months in accordance with the statutory amendments; the dismissal process at the CCMA is time-consuming and places employers under unnecessary emotional stress; the staff aggravate and tire out their employers, knowing it is not easy for the employer to dismiss them, which in the long-term has a detrimental effect on the employer’s future. One business participant remarked that he cannot simply dismiss an employee for poor work performance, as poor work performance dismissals are more difficult to deal with. He further stated that the amendments have had a significant effect on sustainability and employability because the employers would dismiss contract workers after three months, rather than appoint them for full-time. The TU participants confirmed that it had an opposite effect, as contracts are not being renewed. They added that the odd contracts are converted to permanent ones if such is possible.

On the other hand, the regulation of staffing contracts was seen by a few as promoting job security through securing jobs. Two TU participants concurred that the LRA regulations ensuring job security through the fair dismissals and probation processes have a positive influence on job sustainability. The reasons they gave is that if a job is secured, there is security and sustainability.

Bargaining councils and collective agreements: Two business participants conceded that the LRA regulation of bargaining councils and collective agreements did not influence them to create jobs as they are not part of a bargaining council and it does not apply to their businesses. Two business participants who are not part of a bargaining council are in agreement that bargaining councils and collective agreements do not influence them to sustain jobs. Another business participant, however, felt that the bargaining council is unfair in advising an employer that he cannot demand payment in lieu of notice from an employee's salary; and 'wasting everybody's time' in trying to extract a settlement from the employer. The business participants were divided on the bargaining council's influence on job creation.

Bargaining councils and collective agreements were seen by some as promoting job security. Seven business participants and one TU participant agreed that bargaining councils and collective agreements have a positive influence on job creation. Two business participants and one TU participant (TU6) also agreed that they have a positive influence on job sustainability, and supported this view with the following reasons:

- 'They level the playing fields, create balance and certainty so that businesses can budget and do their costing properly.' (B2, B4, B5, B6, B9, B12 and B15, male and female, 19 September 2016 to 19 January 2017)
- 'They provide for social security.' (B10, male, 04 October 2016)
- 'Assist parties with labour issues.' (B7, male, 23 September 2016)
- 'They ensure labour peace.' (B2, B5 and B15, male, 19 September 2016 to 19 January 2017)

- ‘They prevent “cowboys and fly-by-nights”.’ (B11, male, 18 October 2016)
- ‘The bargaining council is representative of the people in the industry and ensures equal representation of employers and TUs on the bargaining council.’ (B15, male, 19 January 2017)
- ‘They ensure standardisation and provide uniformity as to what the conditions of employment are.’ (B4, female, 20 September 2016)
- ‘They avoid unfairness and abuse of salaries throughout the sectors.’ (B12, B13 & B14, male and female, 21 October 2016 to 14 November 2016)
- ‘The bargaining council agents help with labour queries, they are more disciplined and they care for staff welfare.’ (B2, male, 19 September 2016)

Some business participants disclosed that they are part of a bargaining council and that their companies either have their own representatives in employer associations of the bargaining council that represent their interests and help with not having to retrench workers. One TU participant agreed that bargaining councils ensure standardisation throughout the sectors and they help to avoid unfairness and abuse of salaries. Their comments in support of this contention include the following:

- ‘There are more pros than cons with bargaining councils.’ (B15, male, 19 January 2017)
- ‘Everybody is accounted for, big and small.’ (B9, female, 03 October 2016)
- ‘It has helped not to retrench people.’ (B6, male, 22 September 2016)
- ‘Overall, it is a good thing, but if enforced inconsistently, it becomes a bad thing.’ (B11, male, 18 October 2016)
- ‘A nationally based centralised bargaining council is inconvenient. It should be regionally based.’ (B11, male, 18 October 2016)

On the other hand, the following views were expressed as to why bargaining councils and collective agreements did not promote

job security. Two business and two TU participants agreed that bargaining councils and collective agreements negatively influence job sustainability. The reasons they gave for the negative influence on job sustainability were the ineffectiveness of collective bargaining and bargaining councils; and that these are poor at dispute resolution. They added that the rigorous selective enforcement of regulations by bargaining council agents in Cape Town and their non-enforcement of compliance with the regulations in the KwaZulu-Natal Midlands and Free State had a negative influence on job sustainability. One business participant stated that this rigorous selective enforcement of compliance has had a negative influence on job sustainability, especially when bargaining council agents have caused compliant businesses in Cape Town to close down.

Industrial action-strikes: Six business participants concurred that the LRA regulations regarding industrial action and strikes do not influence them in job creation. The reasons they gave were that they complied with the legislation. One participant commented that the business is compliant and they didn't have a strike for the past 26 years. Another acknowledged that strikes do affect his business but he uses scab labour. Yet another business participant stated that industrial action does not necessarily influence him negatively. He just needed to ensure that when he employed people, they should understand the employment contract and what was expected of them. One TU participant acknowledged that industrial action and strikes are a power play which, if not properly regulated in terms of Section 64, could create situations of wildcat strikes. Nevertheless, he said that the section is absolutely necessary.

Industrial action-strikes were seen by a few as promoting job security. One TU participant remarked that industrial action has a positive influence on job creation and job sustainability, as it is the only power through which workers can ensure fairness. The same TU participant stated that business' power is money, which is used to influence the decisions made by it. She further stated that the right to go on strike is very important, and so it must

remain because it influences business decisions to be circumspect on how and what jobs to create. The TU participant also remarked that strikes protect workers and ensure that 'management does not abuse them'. She further stated that jobs are sustained through strikes.

On the other hand, the following views were expressed as to why the LRA regulations with regard to industrial action and strikes did not promote job security. Three business and two TU participants were in one accord that industrial action and strikes negatively influence job sustainability. The reasons they gave were that the LRA regulations with regard to industrial action and strikes do not protect them. They stated that clients are unsympathetic and despite strikes, they want service; businesses are ransacked and looted and the violence that takes place results in job losses and loss of lives; and industrial action causes foreign companies to move their business volumes somewhere else. Furthermore, they added that the rise of militant trade unionism and the failure of collective bargaining deter employers and the economy from sustaining jobs.

Dispute resolution: Eight business and two TU participants are in accord that the LRA regulations with regard to dispute resolution do not influence job creation. The reasons they gave were that the CCMA is a good system; it creates fairness; it protects and it is a procedural path to resolve disputes.

However, one business and one TU participant indicated that the LRA regulations with regard to dispute resolution influences job creation when commissioners favour employees, although it is counter-balanced by the advice that employers receive from labour specialists. The comments made by participants on the LRA regulations with regard to dispute resolution influence on job creation included the following:

- 'The CCMA is one of the most successful institutions of its type in the world. Arbitration may have an influence; however, they do not think it is a major influence. Bargaining councils

also deal with disputes, the same as the CCMA.’ (B14, male, 14 November 2016)

- ‘The CCMA is accessible, quick and efficient. However, the commissioner generally sides with the worker and gives the worker the benefit, even if the company could win. With the CCMA, the perception is that the employee leaves with something, whereas in court proceedings, the lawyers make the money and it takes a lot of time.’ (B11, male, 18 October 2016)
- ‘The Labour Court is more costly and time-consuming.’ (B7, male, 23 September 2016)

One TU participant stated that the LRA’s regulations on dispute resolution negatively influenced job creation and job sustainability as the bargaining councils are ineffective and poor. He, nevertheless, confirmed that the CCMA is expedient as it provides speedy resolution for disputes but felt that the CCMA is overburdened and there is a need for effective legislation to be promulgated.

On the other hand, dispute resolution was seen as promoting job security in the following ways: Two TU participants agreed that the LRA regulations on dispute resolution positively influence job creation and job sustainability as they ensure fairness by giving workers an avenue to lodge disputes and grievances if treated unfairly. It causes businesses to create jobs in a qualitative and not just a quantitative manner. Businesses are also aware of the repercussions when jobs are lost as employees go to the CCMA if there is abuse.

Enforcement of compliance with the LRA by labour inspectors:

The majority of business participants (12 out of 16) and four TU participants share the same opinion that it does not influence job creation as there is very little enforcement of compliance by labour inspectors. Three business and four TU participants (the majority) are in one accord that they also do not influence job sustainability, as labour inspectors have a history of being ineffective. The reasons they gave are that business participants

comply; labour inspectors are not very active; they do not conduct regular inspections; they focus mainly on employment equity; they do not investigate small companies very often, and if they do, they give companies time to rectify; they are reluctant to enforce compliance; they fear that if they enforce compliance, it may cause smaller businesses to close down; and bargaining councils and TUs are more active in enforcing compliance. They stated that non-compliance is usually dealt with on the shop floor and conducted internally, rather than by labour inspectors. Labour inspectors would be more effective if TUs report employer's non-compliance to the Department of Labour.

Enforcement of compliance with the LRA by labour inspectors promote job security in the following ways: One business participant and two TU participants agree that it has a positive influence on job creation as it causes employers to operate within the LRA guidelines and regulations; that it ensures that workers are paid fairly; and that they have a quality of life and a job. In addition, if the enforcement of compliance is privatised, it will create an opportunity for more jobs. Thus, the aspects of the LRA which negatively influence job creation are the problems that business participants experience with industrial action; strikes adversely affecting businesses, which deter them from starting new businesses, thereby preventing them from employing and creating jobs; dispute resolution; CCMA commissioner's unethical behaviour, they are biased in favour of employees and focus on procedural unfairness; bargaining councils are bureaucratic, ineffective and follow the majoritarian principle; bargaining councils set increase in wages too high, which smaller businesses cannot afford; bargaining councils and bargaining council agents enforcing compliance act arbitrarily in strictly and selectively enforcing compliance; dismissals and probationary periods are tedious, time-consuming, costly and expensive; staffing contracts increase the cost of existing staff and limit the employer's right to engage and disengage, which discourages the use of the same contract person twice; and enforcement of compliance by labour inspectors threaten small businesses.

□ **The *Skills Development Act, No. 97 of 1998***

Seven business and all six TU participants agreed that the SDA and B-BBEEA positively influence job sustainability, as training and developing workers' capacities empower them. This improves their skills, and training has also caused businesses to expand and sustain jobs. The reasons they gave in support of this view were that training is essential for business growth and ensured that the business ran smoothly. They added that SETAs offer training grants which encourage businesses to invest in providing skills and up-skilling of their workers. Some business participants indicated that they have expanded their businesses through development of skills by starting a company to train their own workers as well as workers of other companies, and that they conduct both in-house and external training. They also stated that they engage in ongoing training to upskill and develop their workers. Training also ensures that workers receive proper skills before an employer can decide whether the worker has ability to work, which helps to sustain jobs.

On the whole, the TU participants agreed that the SDA has a positive influence on job sustainability. However, the TU participants acknowledge that the bureaucracy related to its implementation is problematic. Three TU participants also felt that the ETIA, youth tax incentives have had a positive influence on job sustainability. However, five business participants indicated that the administrative burden, bureaucracy and perceived wastage of money in the implementation of the SDA have negatively influenced them not to train and sustain jobs.

Four business and two TU participants concurred that the SDA and Skills Development Levy (SDL) regulation about development of skills had a negative influence on job creation because of the cost implications and administrative burdens placed on businesses to comply with it. Five business participants and one TU participant also agreed that the SDA negatively influences job sustainability because it heavily regulates employment relationships. The business participants acknowledged that they were benefited by training people. However, they stated that the problem is with the

bureaucracy related to the implementation of skills development, as the government, through the SETAs, has made it cumbersome for businesses to train and to claim their money spent for training. The business participants added that the SETAs are too bureaucratic, instead of being empowering and supportive. Furthermore, they stated that there was too much administrative work they were required to do, which they found burdensome.

The business participants added that the SDA provisions restrict the employer's freedom to engage and disengage through the skills training plan. They added that the Department of Labour might force people into a business if it accepts subsidies, which would have a negative influence on job creation. The business participants remarked that skills development is incredibly expensive to finance. That is why, it is simply perceived by some business participants to be another form of tax with a negative influence on job creation. The business participants added that the quality of training courses is also not being checked. They stated that some of the courses were too expensive and those within the price range were inferior in quality. They added that the SETAs' failure to implement and the perceived wastage of money for the implementation of skills development is discouraging businesses from training, which had a negative influence on job creation. The TU participants agreed that the SETAs were run inefficiently and that the levies could be better utilised. Only one business participant confirmed that the skills improvement legislation and the youth tax incentive legislation did not influence him to sustain jobs.

Consequently, the administration related to the SDA and SDL documentation is laborious, onerous and time-consuming. Businesses have to go through extensive bureaucratic red tape to obtain approval and access funds. The business participants found it a major administrative burden to obtain a training grant and to conduct skills training programmes for the poor which had a negative influence on job creation. Some business participants were limited to recovering a maximum of only 25% of what they had spent on training, which has discouraged them from training and creating jobs. Other business participants also

found it difficult to have accreditation for their training programmes, which was hindering them from applying for funding, and this had a negative influence on job creation and job sustainability. Therefore, many businesses perceived the SDL to simply be another form of taxation. Thus, the participants perceived the SETAs to be bureaucratic and dysfunctional and they felt it to be streamlined. Although the participants acknowledged that the SETAs had created jobs in the bureaucracy, they felt that it had not delivered on training, especially the smaller SETAs. The participants added that the SETAs administered the funds poorly; they did not spend training monies efficiently, and wasting money on parties and meetings. Following are the participants' comments on the negative influence of SDA and SETAs on job creation and job sustainability:

- 'I could not do it all myself, so I had to bring in someone to do it for me. It is a nightmare to obtain SETA accreditation. I have tried to get funding for training but I have now given up and stopped applying for funding. There are 20 SETAs, which is far too many. Government should dissolve all the SETAs. There should be one communal home for all SETAs. The bargaining councils are duplicating the SETAs' functions concerning training and development.' (B7, male, 23 September 2016)
- 'Various SETAs are very dysfunctional. They have created a big bureaucratic institution which does not deliver training on the shop floor.' (B11, male, 18 October 2016)

□ ***Occupational Health and Safety Act, No. 85 of 1993***

One TU participant observed that the OHASA's influence on job creation is positive. It is important to comply with the Act, as it keeps businesses within legislative boundaries and ensures that they focus on the quality of jobs and not just on quantity, which is beneficial to both the employer and the employee.

The *Unemployment Insurance Act, No. 63* of 2001

The majority of TU participants (four out of six) agreed that the UIA has a positive influence on job sustainability. The reasons given are that it serves a purpose, there is much good; workers need a financial and social security net, which it provides security, such as the training lay-off scheme; it provides income benefits, which have increased; and it provides assistance to the unemployed to find jobs.

In summing up, regarding the influence of labour legislation and labour legislative factors on job creation and job sustainability, the majority of participants concurred that the BCEA's provisions ensuring fairness, efficiency and productivity through the regulation of staffing contracts, working conditions, notice periods and severance payment and minimum wages do not influence job creation, mostly because they complied and a number of them are regulated by bargaining councils. The majority of participants also agreed that the LRA provisions ensuring fairness, efficiency and productivity through the regulation of staffing contracts; dismissals and probation; bargaining councils; industrial action; strikes; dispute resolution and the enforcement of compliance do not influence job creation, mainly because they complied; a number of them are regulated by bargaining councils; the procedures are fair and protect both parties; and there is very little enforcement of compliance by labour inspectors.

The majority of participants further concurred that the EEA's equity provisions regulating recruitment practices; affirmative action; equal payment for equal value; reduction of income differentials; and enforcement by labour inspectors did not influence job creation, primarily because they complied, a number of them are regulated by bargaining councils and their workforce is mainly from disadvantaged groups. However, only a few businesses were not influenced by the B-BBEEA to create jobs,

as they did not rely on the government contracts or on major businesses for work, although they acknowledged that they nevertheless used the B-BBEEA as a balancing guide.

Consequently, the majority of participants agreed that labour legislation fulfils its normative role in the BCEA, LRA and EEA, regulating employment relationships to ensure equity, fairness, favourable working conditions and job security by acting as a guide. Labour law provides for minimum employment standards, creates flexibility and fair mechanisms, and processes to resolve disputes and avert industrial action.

■ **Positive aspects of labour legislation promoting job creation**

Three business and all TU participants are of the same opinion that the B-BBEEA and SDA, through skills development training, SETA grants, youth tax incentives and the UIA, promote job security and have a positive influence on job creation.

They commented that the SDA and SDL influence businesses to focus on skills development and training because it is a legislative requirement, otherwise they would neglect training. They stated that the SDA encourages businesses to train workers and to use the workplace as a training ground. They felt that the legislation provides both guidance and penalties for non-compliance. They remarked that the SETAs, by giving businesses two types of training grants, namely a mandatory grant for in-house training and a discretionary grant for learnerships, have encouraged and incentivised businesses to train people. They felt that this has empowered workers and made them more marketable and self-sustainable. The participants felt that the training courses are very motivating for the workforce. The only problem they noted, however, was that although companies were prepared to give opportunity, they never gave a permanent position. Another problem they pointed out was that the SETAs

were not working well, and as suggested by one of the business participants, they should be streamlined.

The participants commented that the UIA provides assistance for unemployed workers to secure employment. They remarked that the B-BBEEA also influences businesses in employing, providing skills and training previously disadvantaged groups. They were concerned that the B-BBEEA is not helping the people who needed it. They conceded that the employment equity legislation has caused them to employ more disadvantaged people. However, they acknowledged that they might have had to compromise in not acquiring the degree of skills they required to meet their business targets.

Seven business and two TU participants concurred that the ETIA's financial incentives have positively influenced them to create jobs and employ young people through learnerships and apprenticeships. The ETIA helped them to employ additional people, but it is also a punitive incentive to create jobs as the tax rebate does not cover the cost of salaries. The ETIA is good for job creation. However, it can lead to the abuse of young people and create a problem for people earning higher salaries, which is not sustainable. Four other business participants, however, expressed their reluctance to employ the youth. A few of them have abandoned employing the youth because they became a burden and lead to a higher staff turnover. Although initially they were financially incentivised to employ the youth, they have since stopped as they considered the youth to be more of a burden than a benefit. They also believed the youth to be unsettled; lacking integrity and skills; and have militant and demanding attitudes, which discouraged businesses from employing them.

Four business and two TU participants agreed that labour legislation has a positive influence on job sustainability. The reasons they gave are that labour legislation is effective; it is not easy to dismiss employees; it protects workers; it helps to sustain

jobs; the business participants' businesses are doing well; they are recovering monies for the training of workers; and they are happy to comply with the legislation. The comments by the TU participants included the following:

- 'The OHASA, COIDA and UIA ensure that the employee is protected in the workplace.' (TU6, female, 16 March 2017)
- 'Each piece of legislation is critical and very important to ensure regulation in the workplace, as there are unscrupulous employers. Laws ensure that workers are fairly dismissed and that there is job retention.' (TU3, male, 26 October 2016)

Negative influence, hampering and/or impeding job creation

The majority of business participants (10 out of 16) agreed that there are aspects of the BCEA, LRA and SDA which negatively influenced job creation. Start-up businesses and businesses in general perceive labour legislation to be difficult, inflexible and a minefield to navigate and comply with its provisions. Two business participants confirmed that knowledge of the legislation is essential, but it is time-consuming to go through the legislation, which can be costly. This may influence smaller businesses that do not have the experience and the confidence to understand what is required of them. Businesses also have major issues with bureaucracy and compliance related to the implementation of labour legislation. The new legislative amendments limiting fixed-term contracts to 3 months is discouraging job creation, inhibiting them from employing, training and building up the capacity in advance.

Two business and three TU participants agreed that there are aspects of the B-BBEEA and EEA which deter them, especially those who did not qualify, namely predominantly white-owned entities. These participants also claimed that affirmative action is not working and that it needs to be balanced. The administrative burden of employing persons and completing reports on

affirmative action and skills development could also deter smaller employers. The current legislation negatively influenced job creation in comparison with other countries such as China.

Four business and two TU participants concurred that there are aspects of labour legislation which negatively influenced job sustainability. The reasons given are that some of the legislation is cumbersome; compliance is extremely onerous, time-consuming and costly and could be punitive. The LRA amendments limiting fixed-term contracts to 3 months and the proposed national minimum wages could deter the start-up of new businesses or going for a business expansion. Over-regulation is a hurdle to job sustainability. However, employers have become enlightened. Following are the comments of participants:

- 'There is some legislation in place which does not make business sense. Labour legislation needs to be amended. Parliament should streamline all seven Acts.' (B7, male, 23 September 2016)
- 'For businesses, the sustainability of the business is more important than maintaining employment.' (TU1, male, 22 September 2016)
- 'Labour legislation assists employers as it provides them with a way to deal with processes, thus making it easier to retrench employees.' (TU2, male, 24 October 2016)

□ Bureaucracy, inflexibility, onerous and over-regulation influencing job creation

Six business participants and one TU participant agreed that bureaucratic, over-regulated, inflexible and too onerous labour environment, with too many stringent rules, negatively influences job creation. The reasons they gave are that there are too many stringent rules and that it is becoming too onerous for smaller companies to deal with the same. Hence, the government should simplify the rules. Labour legislation lacks flexibility and there is excessive legislative bureaucracy, which adds to the cost

of doing business. Businesses, in general, find it time-consuming to understand everything and to deal with all the paperwork instead of focusing on expanding their businesses. Legislative prescription hampers flexibility, while compliance impedes the growth of small businesses. The TU participant confirmed that businesses are operating in a hostile over-regulated environment, wherein it is difficult to manage staff. Furthermore, they felt that greater flexibility is required. One TU participant remarked that labour legislation poses a challenge for a new business owner to manage all aspects of legislation. He acknowledged that it is alarming that a small business owner must take all of this into account in order to manage all the legislative aspects and still make a profit.

Thus, it is not the legislation itself which appears to be the problem but the implementation thereof.

□ Legislative amendments needed to increase or improve job creation and job sustainability

It does not appear that the legislation itself is a problem, but the implementation thereof. The administrative burden, bureaucracy and perceived wastage of money surrounding implementation have negatively influenced some businesses not to create and/or sustain jobs.

Five business participants agreed that the B-BBEEA, BCEA, EEA, ETIA, LRA and SDA influence them positively sometimes, while at other times negatively. Two of them confirmed that the B-BBEEA is positive and good, although one of them felt that more is needed to educate black business, while the other was concerned that it could cripple and cause existing businesses to close down for not meeting the B-BBEEA scorecard criteria.

Three of the business participants agreed that the EEA, B-BBEEA and LRA have caused more disfavour to employ people. However, in doing so, businesses may have had to compromise in not acquiring the degree of skills they required to meet their business targets. Some of them also felt restricted as they did not

have the freedom to give financial incentives to retain skills and experience. Three other business participants agreed that the ETIA is good for job creation as it has helped additional people to be employed. However, one of them was concerned that it could lead to the abuse of young people and create problems for those earning higher salaries, which he thought was not sustainable. Furthermore, they perceived employing the youth to be a burden – as it causes an increase in staff turnover.

Bureaucracy and legislative prescription: Seven business and two TU participants agreed that bureaucracy and legislative prescription negatively influenced businesses not to create and/or sustain jobs. The reasons they gave were the legislative prescription as to whom they could employ and engage with on shop floor; over-regulation; hostile business environment with a lack of incentives; all these negatively influenced job creation and job sustainability. They added that small business enterprises were ineffective and poorly trained because the government was not creating enough opportunity for them which negatively influenced job creation and job sustainability. The participants stated that inconsistent and selective enforcement of compliance by bargaining council agents and inspectors with the law negatively influenced job creation and job sustainability. The business participants added that the lack of skills was onerous, costly and negatively influenced the growth of their businesses and discouraged businesses, especially small businesses, from creating jobs.

The administrative burden, bureaucracy and perceived wastage of money surrounding the implementation of the SDA have negatively influenced some businesses not to train and sustain jobs. Five business participants commented that the administrative burden; bureaucracy created by the SETAs; their failure to implement and their perceived wastage of money surrounding the implementation of skills development have negatively influenced job sustainability. Only one business participant commented that the skills improvement legislation and the youth tax incentive legislation did not influence him in sustaining jobs.

The TU interviewees primarily focused on the SDA and SETAs influencing job sustainability. On the whole, they felt that the SDA had a positive influence on job sustainability, although they acknowledged that the bureaucracy in its implementation was problematic. They also commented that the SETAs were functioning inefficiently and the levies could be better utilised.

Financial impact of increased labour costs: Six business and all TU participants agreed that increased labour costs have a negative influence on job creation. The reasons given are that extra payment for working on Sundays and in night shifts, additional unforeseen public holidays, additional benefits, unrealistic increase in minimum wages, time-consuming and expensive dismissal nuisance pay settlements and training costs which they are unable to recover, adds to their labour costs. All of these payments eat into their profit margins, which negatively influenced job creation and could result in loss in jobs. Furthermore, the payments made in terms of the EEA and UIA, as well as the SDLs in terms of the SDA, are perceived as a secondary form of taxation. In addition, businesses, which are forced to employ additional staff, increase their businesses' cost of existing staff. Two of the business participants agreed that if the proposed national minimum wages are set too high, it would affect business sustainability and deter start-up businesses and businesses from expanding, as it affects their overheads and minimum requirements.

Administrative burden of compliance: Four business participants agreed that the administrative burden of compliance negatively influences job creation. They felt that much of administration was involved to comply with legislation, which has a detrimental effect on job creation. They found the completion and submission of annual returns to be very onerous. The administrative burden of employing persons and completing reports on affirmative action and skills development deter smaller employers. They remarked that the government should not 'kill' small businesses with all the documentation. The government should rather ensure that businesses are treated fairly; reduce business requirements and provide them with a small checklist to ensure compliance.

One of the business participants commented that the completion of annual returns and the BCEA documentation is onerous. He delays the completion until he gets notices to complete the matter.

Cost of compliance: Two business participants and one TU participant agreed that the cost of compliance has a negative influence on job creation. The reasons they gave were that it is very onerous, costly and time-consuming to comply with legislations; adds to the cost of doing business and it has become difficult for small business to flourish. In addition, businesses have had to employ additional people to deal with the administrative documentation. Dismissals are onerous and expensive. Following are the comments given by the business participants:

- 'I have contracted with someone to relieve me of the administrative burden, but it is costing me an extra twenty thousand rand per annum to take care of the administration.' (B11, male, 18 October 2016)
- 'I now have a manager who does the administrative compliance work for me.' (B2, male, 19 September 2016)
- 'I settle outside of the CCMA, regardless of the merits of the case, which adds to the cost of doing business.' (B6, male, 22 September 2016)

Enforcement of compliance by bargaining council agents: Three business participants agreed that the enforcement of compliance by bargaining council agents and TUs is more active as opposed to labour inspectors. This affects small businesses more than big business, especially when bargaining council agents and TUs selectively enforce compliance.

Dysfunctional SETAs and difficulties in accessing SETA funding for training: Two business and four TU participants agreed that the SETAs should be abandoned as they are bureaucratic; dysfunctional; are not spending money efficiently; they are wasting money and are not delivering on training. Sector Education Training Authorities need to be focused. Furthermore,

high training costs and difficulties in accessing funding also influence job creation negatively. Following are the comments of business participants:

- 'Sector Education Training Authority bureaucracy has made it extremely difficult for businesses to access funding for training, which is not getting to the shop floor, where training ideally should take place.' (B11, male, 18 October 2016)
- 'Big businesses get grants and do the training, while small businesses have given up trying to access funds for training.' (B2, male, 19 September 2016)

The majority of the business participants (10 out of 16) felt that overall labour legislation did not influence job sustainability. They confirmed that they complied with the legislation. The reasons they gave is that the spirit of the legislation is good, as it helped to protect worker and sustain jobs. Some business participants perceived labour legislation to influence job sustainability positively, while others perceived its influence to be negative. However, one of the participants commented that one cannot generalise that all labour legislations are either positive or negative.

Some participants commented that certain labour legislations such as the SDA, ETIA and B-BBEEA have a positive influence on job sustainability, while others commented that the administrative burdens and the costs surrounding compliance with labour legislation negatively influence job sustainability. In addition, there appears to be certain aspects of labour legislations, such as dismissals and fixed-term contracts in terms of the LRA and B-BBEEA levels and scores, which negatively influence businesses not to sustain jobs. Concerns were also expressed about the proposed national minimum wages, which if set too high could also have a negative influence on job sustainability.

Consequently, bureaucracy, legislative prescription, the financial impact of increased labour costs, the B-BBEE scorecard criteria, the administrative burden of compliance with legislation, the cost of compliance, employing the youth, the enforcement of

compliance by bargaining council agents, dysfunctional SETAs and the difficulties experienced in accessing SETA funding for training, negatively influenced job creation and job sustainability, and need to be addressed.

From the responses of the participants, the problem appears to be with implementation, the bureaucracy related to compliance and the enforcement of compliance, creating the impression among some of the participants that the labour legislation is inflexible. Thus, it is not the legislation itself which appears to be the problem but the implementation thereof. One of the business participants remarked that the government should streamline labour legislation. However, a far more pressing challenge appears to be with primary, secondary and tertiary education, which the government needs to improve.

■ Other factors influencing job creation and job sustainability

The participants confirm that there are a number of macro and micro factors, other than labour legislation, which appear to have had a far greater influence on businesses' decisions to create and sustain jobs, namely: the economy; the political and social environment; happenings in South Africa and business viability. Two business participants were in agreement that business sustainability is dependent on a combination of factors, namely: the economy; foreign exchange fluctuations; international ownership; the ability to secure international contracts; visionary leaders; always looking for opportunities to increase revenue and to counter inflationary environment; keeping control of overhead costs; localisation; technology; skills and the sentiment of the South African labour market. The participants added that all these factors have influenced job creation and job sustainability some to a greater and others to a lesser extent.

The business and economic environment: Four business participants agreed that poor economic climate and restrictive

business environment have negatively influenced job creation. Business needs an environment that is conducive to its functioning and provides entrepreneurial support. Businesses are relying on outsourcing and bringing in labour from outside to reduce their labour costs. Businesses object for being dictated about whom they should employ, and what and for how long should they employ. Businesses feel that they should be allowed to manage their staff in a way that they can sustain their businesses.

Eight business and three TU participants agreed that factors that adversely affect businesses, which in turn negatively influence job sustainability, include the economic climate, the state of the economy, economic growth, government's reckless actions, foreign exchange fluctuations and the constant threat of downgrades, increase in petrol prices, inflation, poor infrastructure, financial aid and tax incentives. Other external economic factors influencing job sustainability are the opening of South African borders to international trade; international competition, both overseas and Southern African Development Community (SADAC) and countries of the African Union; local competition as well as unfair competition by non-compliant businesses within the same industry; small businesses competing with big business; dependency of some businesses on the success of other businesses and on government contracts, and the non-payment thereof; consumer confidence and the way that labour policies are implemented in the country.

Political factors: One business participant and two TU participants concurred that businesses also look at the political climate when deciding about growth and expansion, which in turn influence their decisions on whether to sustain jobs. Issues of corruption, political disturbances, instability, recklessness and uncertainty in the country destroy confidence and influence business and job sustainability. Other factors such as inflexible prescriptive legislation, poor education and shortage of skills in South Africa influence business decisions to sustain jobs. One of the TU participants also remarked that the government's failure to address high unemployment rate, which has been the highest

in 13 years, has contributed to poverty and social inequality, leading to crime and civil unrest in South Africa, thereby influencing job sustainability.

Shortage of skilled labour: Twelve business participants agreed that one of the primary labour factors affecting job creation is the lack of suitably qualified staff. The majority of participants agreed that skills, specialisation and entrepreneurial skills are very important to run a business. The business participants remarked that they needed better qualified staff in order to grow their businesses and that there is also a need for generic skills. There is a shortage of artisans and people with maintenance skills. The participants confirmed that lack of entrepreneurial skills and support, as well as shortage of skills in South Africa, is affecting businesses' ability to grow and create jobs.

Five business participants identified the following important factors affecting job creation: The skills mismatch between education and workplace; mismatch between higher education and training; mismatch between tertiary education degree content and workplace needs; and literacy and language issues. Three business participants were highly critical of the current level of education in South Africa, which they maintained is of a very poor standard, especially poor literacy and numeracy skills. They agreed that job applicants need to have a basic competence level and mechanical comprehension, and that mathematics and language are essential. Some of them also remarked that English is essential as it is the business language of this country.

Two business participants agreed that shortage and mismatch of skills influenced job sustainability; they need better qualified staff in order to grow; jobs filled need to meet the needs of business and the contents of university degrees are to match workplace needs.

Youth unemployment and lack of workplace experience: Four business participants and one TU participant agreed that another important labour factor influencing job creation is that

the youth are unable to find work and/or qualify without experience. They agreed that the lack of available opportunities for work-seekers to gain workplace experience affected the youth's employability. They also agreed that the skills development training levies, subsidies and youth tax incentives have encouraged some of them to employ the youth and first-time work-seekers. However, four of the business participants were discouraged for creating jobs and employing people because of people being unpredictable, especially the youth whose loyalty and work ethics are different.

One TU participant commented that the government's education system is not channelling the youth correctly. He felt that it should be pointing out to the youth that there are opportunities available in agriculture and that there is a shortage of artisans in the country, areas to which the youth should be channelled. The participants felt that the youth need more education and skills, including entrepreneurial skills, and that they should be taught how to start up, manage and run their own business successfully.

Internal factors: Four business participants and one TU participant agreed that internal factors influence job sustainability and that it is essential that the board of a company keeps the business sustainable. They were in accord that the financial drivers of their businesses are business volumes, certainty and investment. In addition, they concurred that they must take strategic notice of opportunities: look for new market opportunities; offer new products and value-added services; keep abreast of changes in the industry, innovation and specialisation; use and staying ahead in technology and robotics; limitations imposed by clients; operational requirements; increased revenue and reduce risk. They acknowledged that businesses need to look at their internal controls; have good operational procedures and processes for workers and resource controls; meet customer demands and customer satisfaction; have a satisfied client base and offer value-added services; focus on efficiency and micro-manage expenses to ensure job sustainability.

Industrial action, strength and influence of trade unions: One business participant and all TU participants agreed that the strength and influence of TUs in South Africa could have a negative influence on job creation. Some business participants expressed concern over the crippling effect that TUs are having on the country and its economy. Some of them acknowledged that their fear of industrial action and militant TUs crippling their businesses, the economy and the country, and the country's sentiments have negatively influenced job creation. Furthermore, they indicated that if businesses are coerced, they will relocate.

All six TU participants maintained that some businesses perceive staff to be a major obstacle that threatens their livelihood. Furthermore, business is scared of labour and unreasonable demands of wages, which are influencing some businesses to replace labour with automation and mechanisation. Furthermore, businesses are reluctant to employ more people because of labour unrest and strength of TUs.

Five business and two TU participants agreed that the government's failure to support small businesses, salary increase, over-regulation, profitability, productivity, skills, technology and industrial action have influenced job sustainability. Some businesses also expressed concern over the strength and crippling effect of unions on the country and its economy, as having an adverse effect on job sustainability.

Employment equity and the B-BBEEA: One business participant remarked that employment equity, the B-BBEEA and political instability are influencing job sustainability. In addition, the government is not really addressing poverty and unemployment with employment equity and the B-BBEEA. All it is doing is simply reallocating work from one component to another component, but the unemployment rate remains the same. The administrative processes are time-consuming. Environmental legislation also places constraints on private developers by stifling their projects, which also affects job sustainability.

Thus, although the participants' opinions varied on the influence of labour legislation on job creation, overall it appears that the business participants agreed that business' needs and their clients are the primary drivers of job creation as well as the types of jobs created. Businesses must focus on clients and the services they represent. Having a viable business influences job sustainability. Dependency on clients' businesses and government contracts and tenders can influence job sustainability. Businesses need to constantly look for new market opportunities in order to remain sustainable. Job sustainability is also dependent on the market needs of the country as well as on having a favourable business environment. These provide entrepreneurial support; balance international trade; regulate fair exchange rates (Belke & Kaas 2004:247); affect imports and exports; eliminate unfair competition; reduce bureaucracy and eliminate corruption. Some small businesses perceive bureaucracy and legislative prescription as to whom they employ and engage with on shop floor influencing their growth. Consequently, although the labour legislation has an influence on job sustainability in South Africa, it is not the only factor.

Productivity and skills are essential to ensure business and job sustainability. One of the primary factors positively influencing businesses' decisions to sustain jobs is training and education. Poor education and the shortage of skilled labour in South Africa have had an adverse effect as they affect businesses' ability to grow and sustain jobs. Lack of suitably qualified staff, current poor level of education, and inferior literacy and numeracy skills cause skills mismatch between education and the workplace; the last being another important factor affecting job sustainability, as skills need to match the requirements of business. Furthermore, the mismatch between tertiary education degree content and the workplace is yet another important factor affecting job sustainability. University degree content must match workplace needs. It is also equally important to ascertain whether jobs are meeting business requirements. The nature of employment and jobs is changing. Lack of available opportunities to gain workplace experience affects the youth employability. Disproportionate salaries are also affecting job sustainability.

■ How jobs are created

The participants agreed that jobs are created primarily through development of skills; businesses which are financially incentivised to train are motivated to expand, grow, employ and create jobs; and there needs to be a healthy economy.

Skills development: The all participants concurred that skills and knowledge are essential for job creation. Two business participants are of the same view that the B-BBEE legislation has created jobs through skills development. Three of the business participants also indicated that the SETAs and SDLs have encouraged them to train, which had a positive influence on job creation.

The economic and political environment in which businesses operate: Five business and two TU participants were in agreement that jobs are created when the economy flourishes, and there are positive economic policies and economic growth. Following are the comments given by the participants:

- 'The economy has made it difficult [to] do business.' (B9, female, 03 October 2016)
- 'There needs to be economic growth, investor confidence and political stability to facilitate job creation.' (TU2, male, 24 October 2016)
- 'Jobs will be created when the economy is healthy. There are good economic policies, economic growth and local and overseas investors are encouraged to invest in companies operating in South Africa.' (TU4, male, 31 October 2016)

Incentivise businesses financially: Six business participants and one TU participant were of the same opinion that the provisions of government financial incentives through the ETIA employment tax incentives, Department of Trade and Industry's subsidies, and the SETA refunding of SDLs to promote employment, skills development and training has a positive influence on job creation.

Implementation and investment in strategic projects: Two business participants and one TU participant agreed that

government implementation, involvement, investment and intervention in strategic projects through the expansion of public works are necessary for job creation.

Business volumes and work volumes: Three business participants indicated that job creation is dependent on the needs of the country and that the market demand of goods, clients' needs, business volumes and work volumes drive employment and job creation.

Business expansion, growth, innovation, efficiency and enhancement: Six business participants were of the same opinion that jobs are created through innovation, efficiency and enhancement of businesses as well as the localisation of raw materials through organic growth, business expansion and restructuring.

Entrepreneurship and entrepreneurial activity: Five business and four TU participants shared the opinion that entrepreneurship, entrepreneurial activity, and the start-up of new and small businesses create jobs. They also highlighted that entrepreneurial skills and support were essential to ensure success. Two TU participants remarked that the youth tax incentive has encouraged job creation, but that it was not enough to combat youth unemployment. They suggested that the government should encourage the youth to be more entrepreneurial by assisting with educating, skilling, training and providing the youth with necessary support to start up and maintain their own businesses, which, in turn, would lead to job creation for others.

State-owned enterprises: A TU participant remarked that state-owned enterprises could be used to create jobs, as in the apartheid era, as well as to alleviate poverty and unemployment. Another TU participant also commented on the strength of TUs having a significant influence on job creation.

Conflicting views on who is creating jobs: It is interesting that some participants' views conflicted on who creates jobs. Two of the business participants, one of which is from a larger business,

and one TU participant concurred that entrepreneurship and small businesses create jobs; that it is unlikely that big business will provide jobs for the country; and that the focus should be on small business enterprises as well as equipping the workforce to become independent and to earn their own income. However, three TU participants disagreed with them. They were of the opinion that small and medium businesses are not creating job opportunities. One of them maintained that only larger industries are creating jobs.

Conflicting views on where job creation is occurring: Also interesting is that some participants' views conflicted on where they perceive job creation in general to be occurring. One TU participant felt that most jobs created in the last 2 years were actually within the government or state-owned institutions, whereas one of the business participants thought the opposite that not many jobs are being created in the public sector, and that jobs are, in fact, reduced.

The theme or area covered in this section is job creation in general. The theme of job creation is further divided into four sub-themes, namely: how jobs are created; factors influencing job creation; labour legislation's influence on job creation; and possible strategies business, government and TUs can implement to increase job creation.

■ Likelihood of future job creation

Ten business participants agreed that they are likely to create jobs in the near future, especially those businesses that were growing and expanding and receiving government incentives and subsidies to develop skills for training and employment. One business participant remarked that the potential for job creation lies in the skills development platform, through learnerships and apprenticeships, the strategic integrated projects in terms of the National Infrastructure Development Plan of 2012 as well as through the ETIA, the tax incentive scheme to employ and train the youth.

Three TU participants were optimistic that jobs are likely to be created in the future to fulfil clients' demands and to service institutions' needs. New shopping malls and the tourism industry are creating jobs. In addition, the service sector, namely the insurance industry and the financial sector, have created quite a number of jobs through tax incentives. However, another business participant pointed out that business is limited as it can only accommodate a certain number of people but other sectors had created sufficient capacity to meet demand. Two business participants and one TU participant were uncertain as to whether jobs would be created in the future and whether the jobs being created are for longer period or are short-term occupation.

The reasons why job creation is unlikely in the future: Six business participants disclosed that they were unlikely to create jobs in the future. Three participants agreed with them and doubted whether any significant number of jobs would be created in the future because of economic and political uncertainty and corruption issues. Some of the business participants felt discouraged by the current political and economic climate and uncertainty in South Africa; insufficient financial incentives provided, as the tax rebate does not cover the cost of training or the salary of employees undergoing training; and downsizing, as employing additional staff is a risk and it is difficult to replace inadequate staff. They also maintained that the lack of managerial skills and inability to employ necessary management to run the business is constraining business. Following are the comments given by the participants:

- 'Business has not created jobs. It had actually retrenched 20 000 people because of poor economic climate and uncertainty.' (B15, male, 19 January 2017)
- 'Business is not creating jobs, and is only replacing people who resign, or employing people for specific projects.' (B5, male, 21 September 2016)
- 'Government is not delivering on its promises to create five million jobs. There are more jobs being lost than jobs being created.' (TU6, female, 16 March 2017)

- 'Three million jobs have been shed.' (TU1, male, 22 September 2016)
- 'Job creation is very slow and sluggish in South Africa and they confirmed that there have been retrenchments.' (TU6, female, 16 March 2017)

Types of businesses that are likely to create jobs: Two TU participants conflicted on which types of businesses they thought were more likely to create jobs. One thought that big businesses are unlikely to provide jobs for the country, whereas another reasoned the opposite that small and medium businesses were unlikely to create jobs and that job creation lies with larger industries.

■ Jobs created in the previous year

Ten business participants confirmed that they had created jobs in the previous year, others to a lesser extent. Their responses indicated that the businesses that were incentivised financially to create jobs actually did the needful by creating more jobs.

Types of jobs created: The overwhelming majority of business participants, 14 out of 16, disclosed that they preferred to employ workers permanently. Seven of them acknowledged that they created a mixture of permanent and fixed-term contracts, as well as some temporary jobs, depending on the scope of work required. Three of them revealed that they took interns, trained them and then used them to fill positions which they either created or became vacant for similar reasons.

The largest job creation among the business participants appeared to have been in the clothing industry. One business participant confirmed that her firm created 300 permanent skilled machine operator jobs, as they had received funding from the Department of Trade and Industry and the KZN clothing and textile and fabric, processing and manufacturing SETA, which had enabled them to train and create jobs.

Financial incentives: The participants further revealed that those businesses that are incentivised financially to create jobs

did in fact create more jobs. One business participant disclosed that he created temporary jobs because of the subsidy that he received for training the unemployed, and that he appoints them on a permanent basis if a permanent position is available.

Number of jobs: The overall number of jobs that the business participants created, however, is small. The largest number created by one business participant is 300 permanent jobs and the smallest number created was just two jobs. Other jobs created were: 70–80 jobs because of the financial incentives provided; 55 jobs; 30 permanent specialised skilled jobs; five new positions, four permanent and one temporary job; and three new jobs. Some business participants disclosed that they started off with fixed-term contracts while the workers are on probation, which are later converted into permanent jobs.

Four TU participants confirmed that not many and no real substantive jobs were created in the past year. Furthermore, the jobs being created were of a temporary nature. Nevertheless, two of them are optimistic that jobs are likely to be created in the future because of new shopping malls, tourism industry, service sector, insurance industry and the financial sector which are creating a number of jobs through tax incentives.

Reasons why no jobs were created: The reasons provided for not creating jobs were the current poor economic climate; some businesses experienced stagnant growth; some are going backwards or are stable; while others are not really looking to create jobs. One TU participant confirmed that the hostile business environment, too much taxation, over-regulation and lack of incentives are the reasons for not creating jobs, especially for small enterprises. He added that the staff is perceived to be a huge obstacle, especially if they are ineffective and poorly trained. Businesses are also not incentivised to expand their operations, and it is easier for them to downsize.

The majority of business participants stated that they preferred to employ workers on a permanent basis. However, poor economic climate is largely blamed for fewer jobs created. The majority of

participants agreed that most of the job creation taking place is through skills development and financial incentives being provided for training workers. However, the TUs expressed concern that the jobs being created through skills development are more of a temporary nature.

■ Job sustainability

The theme covered in this section is job sustainability in general. The theme of job sustainability is further divided into four sub-themes, namely: how jobs are sustained; factors influencing job sustainability; labour legislation's influence on job sustainability; and the possible strategies that business, government and TUs can implement to increase job sustainability.

The majority of business participants (11 out of 16) agreed that job sustainability and business sustainability are interconnected, and that job sustainability is dependent on businesses remaining sustainable and viable. They commented that if businesses prosper, they can sustain jobs. The business participants concurred that their businesses prospered when they expanded, grew and operated their business ethically. They were in accord that business leaders need to be aware of market conditions along with local and global sentiments. They also agreed that better-managed businesses prospered and survived. They further concurred that in order to prosper, their businesses needed to:

- have visionary leadership
- be managed well
- be forward-looking
- be positive and capable of adapting to change
- seek new markets and new opportunities
- create new business and grow that business
- be able to do things smartly
- make greater use of technology
- create value

- have good products or services
- continuously improve themselves
- engage in creating value and value-adding activities along the value chain
- be profitable
- pay their expenses
- be efficient in their operations
- keep control of overhead costs
- cut costs
- focus on labour efficiency
- watch their bottom-line
- implement lean management principles and multi-tasking
- retain good talent
- replicate good skills
- train and motivate their workforce to increase productivity
- remain sustainable, and viable.

Four business participants agreed that in order to sustain employment, people must be well-trained and productive and that training is an integral part of running a successful business. They concurred that their businesses should not only invest in technology but also in human capital. There was agreement that multi-tasking, education, training, retraining, skilling and up-skilling workers would help their businesses to sustain jobs. Some business participants revealed that they had employed workers for a short time as an interim measure to try to avoid retrenchment, or they had tried to minimise retrenchments by employing them in different capacities, different divisions or in new start-up businesses. They also identified places to utilise their workers and whether they could be trained and up-skilled. Two business participants concurred that in order for their businesses to prosper, grow, expand, be profitable and sustain jobs, there needed to be economic growth, a healthy economy, an efficient government, low inflation, rebates on imports and the proper regulation of industries, with fair and equitable enforcement of compliance.

■ Likelihood of jobs being sustained

Eight business and three TU participants were in one accord that jobs are likely to be sustained in the future, primarily through constant training and skills development. They agreed that to sustain employment, people need to be well-trained and productive. The business participants confirmed that they have saved jobs by placing workers on short-time basis, by finding them alternative positions or employing them in new start-up businesses. One TU participant remarked that no sector has sustained jobs and the jobs created are short-term jobs.

The overwhelming majority of business participants, 14 out of 16, confirmed that they are likely to sustain jobs. Seven were confident that they are likely to sustain jobs. Some of the reasons given are that the business is stable; it is going through a growth phase; currently, the business is doing well; it has good government contracts; the 3-year bargaining council agreement provides certainty and industrial peace; and business trends indicate as such. Two business participants confirmed that they will not retrench and will remain the same. One business presently is of optimal size and another has 50 families dependent on him.

Three business and all TU participants expressed uncertainty as to whether jobs will be sustained. The reasons they gave were that job sustainability is under threat because of political uncertainty; poor economic conditions in South Africa; ineffective collective bargaining; it is expensive to belong to bargaining councils; it is less time-consuming and cheaper to have strikes or to retrench and deal with consequences; the need for a change in policy and progressive leadership and possibly a change in government in South Africa. All these factors influence job sustainability.

Three business participants commented that job sustainability would depend on whether their businesses would regain growth; government's stance in controlling the industry; and the political and socio-economic climate in South Africa. One business

participant was unsure but optimistic through prayer, hard work and effort that jobs in her business would be sustained. Only one business participant strongly stated that it was unlikely that he would sustain any jobs in the near future as he had no confidence in the government, in the South African economy, in labour legislations, in labour, and especially in TUs.

■ Jobs sustained in 2016

The participants confirmed that a small number of jobs were sustained in 2016, primarily through training, retraining and up-skilling of workers. Only one business participant did not save any jobs in 2016. One business participant verified that they had retrenched 20 000 people in the previous year, but that they had managed to save some jobs. However, they had just retrenched another 105 workers. Five TU participants agreed that more jobs have been lost than sustained and that there has been a rise in unemployment. The TU participants also confirmed that a number of jobs have been lost in the mining, metal and engineering industry because of companies closing down, downsizing and going into liquidation.

The types of jobs sustained were primarily skilled and semi-skilled jobs. Restructuring appears to be threatening some managerial positions. A number of low-level and unskilled jobs were either lost or are at risk. These are being replaced by automation, machinery and technology. This was validated by one business participant, who confirmed that the jobs of 20 low-skilled workers were saved when a division closed down by transferring them to another division. Furthermore, eight workers who were affected by automation were saved through their retraining. Delays in securing future contracts, government contracts and tenders are potentially threatening jobs. Others mentioned that some jobs were under threat, but that they had saved them. Nine business participants confirmed that although they had retrenched, they were able to save jobs by training and retraining workers and finding them alternative positions.

■ Strategies suggested to increase and/or improve job creation and job sustainability

The participants suggested various strategies that each of the three major stakeholders – business, government and TUs – could implement to increase job creation and job sustainability.

■ Business strategies to increase job creation and job sustainability

Twelve business and five TU participants suggested various strategies that businesses could implement to increase job creation. Ten business and five TU participants suggested similar strategies to increase job sustainability.

The business participants suggested that businesspersons should be more confident and positive about South Africa and its economy and focus their energies on exploring, discovering and exploiting opportunities for the localisation of technology. Two business and two TU participants suggested that businesses should be outward-looking, identify opportunities, produce a product or service that adds value and set strategic objectives to develop skills to achieve localisation.

The business participants added that businesses need to understand the markets, be ethical, manage their finances, manage their internal and external environments, analyse and be efficient in their business processes, market their businesses, plan strategically for next 5 years, be adaptable to changes and have a positive mindset. Three business and three TU participants suggested that businesses should be inward-looking; focus on efficiency and improve internal mechanisms and processes; and chief executive officers and managing directors should be more involved in the business and not simply delegate and have productive staff.

The business participants stated that all businesses should invest in people, impart skills to workers and provide capacity

and facilities. They added that it should be ensured that they have a healthy and fit workforce, and implement and support the greater use of electronics and technology. They stated that they should set strategic objectives to develop skills to achieve localisation as well as capitalise more on local resources that exist in both South Africa and the African continent to grow and prosper their businesses. Two business participants suggested that businesses should limit the influence of TUs; be more influential in business forums and chambers of commerce; and be more aggressive in their approach to unions and the government in order not to be dictated by TUs. One TU participant suggested that businesses should openly accept TUs at their workplaces and establish good relationships with them. This would lead to a better relationship between employer and employees. Another TU participant suggested that all stakeholders should form a social pact and work together as social partners and do something different and new for the good of the country.

Four other business and three TU participants suggested the formation of private and public partnerships with the government. South Africa produces and has good business leaders. There should also be greater assistance and cooperation between big and small business. Businesses should contribute to overall training, over and above their individual requirements. Big businesses should assist with funding and remunerate small businesses to develop; give entrepreneurs access and opportunity; educate small businesses; and assist with training and skills development, facilities and capacity. They should fund training and development, engage in and conduct their own training programmes and in-house training and workplace mentoring. Businesses should produce good business leaders and set strategic objectives. One business participant also suggested that business owners should pray constantly for the success of their businesses.

Consequently, the business strategies suggested by the participants to increase job creation and job sustainability are as follows:

- focus on running a well-managed organisation in an orderly, disciplined and efficient manner
- they must revolutionise how they do business
- identify opportunities and be more innovative for growth and expansion; and set strategic objectives for skills development
- big business can and should help small business; and give entrepreneurs access and opportunity
- business should be more influential and aggressive in their approach to unions and the government and limit the influence of TUs
- business persons need to constantly commit their businesses to prayer.

The TU participants agreed and, overall, made similar suggestions. Four TU participants also suggested that business should form a partnership with the government; all stakeholders should form a social partnership similar to the German model; they should all work together for the greater good of the country; businesses should be incentivised further to employ and train more people; businesses should find alternatives to retrenchments; businesses must ensure that they comply with equity and affirmative action policies; and they should implement proper work procedures to ensure workers are treated fairly.

Government strategies to increase job creation and job sustainability

All the participants suggested various strategies that the government should implement in order to increase job creation. The majority of business participants (11 out of 16) and all TU participants on the whole agreed with or shared similar

suggestions that the government can implement to help sustain jobs. The participants suggested the following government strategies to increase job creation and job sustainability.

The government should:

- operate its administration in accordance with the same business ethics, guidelines and rules as done by private businesses
- employ business-orientated people with the same qualifications, the right background and industry experience as required to run a business
- fill positions with correct people as would be required in the private sector
- ensure that there is a performance policy or performance criteria for government employees
- ensure that government departments are expenditure-compliant.

The government needs to:

- create a business-friendly environment, wherein there is economic certainty and long-term political stability
- increase investor confidence in the South African economy by ensuring that the economy is run in a more investor-friendly manner
- deal decisively with corruption as this is chasing investors away
- the presidency should properly consult with and implement business suggestions
- also look at and deal with foreign policy correctly, and deal with unregistered businesses which are not paying taxes
- stimulate the economy, help workers get internships and start infrastructure development programmes to create jobs
- cut back on excessive spending and utilise taxpayers' money more wisely
- spend more money on pre-tertiary education and training, and improve language skills to create and sustain jobs.

With regard to education, the government should:

- empower workers with necessary skills to make them more proficient and productive
- increase and develop the national skills pool to match supply with demand in order to sustain jobs
- improve the support structure that feeds into business by focusing on the quality and not the quantity of education
- the quality of primary, secondary and tertiary education needs to be improved
- change the education system to fit the economy, which is market-related, and properly channel the youth into avenues where opportunities are plenty, such as addressing the shortage of artisans in South Africa
- encourage and equip the youth in basic education in order to plan to succeed and cope with the challenges of self-employment
- align courses and degrees with the job market so that their qualifications are market-orientated
- focus on youth development by creating opportunities for the young and university graduates who are unemployed to become self-employed
- provide more government-sponsored internship programmes
- fairly distribute funding, resources and skills in terms of the employment system
- broaden training and education to non-designated groups
- encourage the departments of labour, higher education and trade and industry to consult one another to improve on the skills development needs of the workplace.

With regard to small businesses, the government should:

- play a more active role in assisting small businesses
- stimulate small businesses by equipping them with business skills and business measures to make them sustainable
- focus on entrepreneurial skills and sustainability
- ensure that entrepreneurs get greater access and business opportunities, and that all businesses are incentivised

- provide funding and grants, not only to some but to all
- reduce bureaucracy, make administrative compliance easier and reduce the cost of compliance, especially for start-up companies and small businesses, through the creation and use of more electronic media and online technology systems
- cut the red tape; provide funding through non-governmental organisations for people who do not qualify for access to funding, assistance and fund micro-vendors
- make funds available to small business; provide more financial incentives to employ and train people; train the youth and the unskilled labour force; and extend the youth development programmes to include people in their thirties and forties
- encourage big businesses to support small businesses to grow
- look at assisting the informal sector to grow and sustain itself so that it can contribute to job creation
- focus on encouraging South African businesses to export to other countries.

Overall, the government should be business-friendly, and not just provide tax incentives. It should also make easier for businesses to do business.

With regard to employment, job creation and job sustainability, the government should:

- have policies that encourage employers to create qualitative and secure jobs which provide workers with a better lifestyle
- ensure that there are employment opportunities and create employment opportunities in parastatals and semi-parastatals
- encourage big businesses to employ more local people, imposing a quota of 70% local people and 30% foreigners in the mines
- set a national goal for everyone to follow in order to make the country work.

With regard to labour legislation and bureaucracy:

- the government should not make any drastic changes to labour legislations, as these are international benchmark

- where there are problems, the government should amend the legislation so that it is fair for all parties
- the government should streamline labour legislations, create a minimum legislative framework and reduce bureaucracy
- the BCEA and LRA should be streamlined into one
- the SDA and SDL should also be streamlined into one
- the 21 SETAs should be merged into one
- the government should reduce the cost of compliance with legislation in general, although there should be a certain level of compliance
- 'it would be helpful if industries are able to be more flexible about collecting and accepting deliveries during night hours. It would be better for trucks to drive after working hours when it is quiet, as they do in New York. We then could be more efficient and cost-effective.' (B6, male, 22 September 2016)
- ensure that bargaining council agents do not selectively enforce compliance; non-compliant businesses must comply; and the law is enforced fairly and evenly throughout the country
- the CCMA should have a vetting process, such as a pre-conciliation process, where a commissioner can decide whether a case has merit in order to deal with frivolous cases
- set minimum wages regionally and be industry-specific, not nationally
- limit the strength of TUs
- reduce import duty on fabrics to assist with diminishing international competitiveness in order to help sustain jobs in the clothing industry
- relax the B-BBEEA scorecard requirements and reduce the levels of compliance for smaller businesses
- there should be a sunset clause to the EEA so that 'we can settle down to a normal society'.

One TU participant disagreed about making any drastic changes to labour legislations. He thought that the only amendments that should be made to labour legislations are those that are fair to both parties.

■ Trade union strategies to increase job creation and job sustainability

Fifteen business and five TU participants suggested various strategies that TUs can implement to increase job creation. Nine business participants suggested similar strategies which TUs could implement in order to increase job sustainability.

Five business participants and one TU participant suggested that:

- there should be greater communication and cooperation between businesses and TUs
- moreover, TU should coordinate more with businesses, whose workforce they represent
- also have a clear understanding of business as a whole. They should know how to assist in keeping businesses successful and sustainable
- help smaller businesses to employ more people and help companies to grow
- help to reduce absenteeism and conflict
- focus on labour stability, have realistic expectations and make reasonable demands and compromises
- educate their members on the challenges faced by small businesses and focus on ensuring labour stability
- make realistic and reasonable demands about increase in wages
- balance TU satisfaction, earnings and survival of business.

Two business participants also suggested that TUs should:

- focus on representing employees' interests and not their political agenda
- depoliticise and assist the Department of Labour to ensure that industries are completely compliant with worker-related legislation
- play a more active role in representing their members' interests, especially on bargaining councils.

One TU participant agreed that the future depends on keeping employers and employees satisfied and that it is the only way to retain and sustain jobs.

Three business participants suggested that TUs should:

- focus on the bigger picture and not just the employed
- take a wider view, consider and include the unemployed in the negotiation process
- re-look at their model and take cognisance of how the nature of work has changed
- be more flexible and technological.

Six other business participants and one TU participant suggested that TUs should:

- cooperate and work with management to tackle the big problem of non-compliant companies
- enforce compliance of non-compliant businesses equally and fairly across the entire industry and not do this selectively, as there are many Chinese and non-compliant manufacturers in Northern KwaZulu-Natal, especially in Newcastle
- be whistle-blowers: They could use cell phone technology to enforce compliance by sending SMS and videos to chief inspector or inspectors to enforce compliance
- ensure that all businesses comply with the legislation and that all industries are completely compliant with labour legislation
- exercise more leniency, depending on the size of the business.

All TU participants made similar suggestions. One TU participant also suggested that TUs need to work on their administrative aspects.

Therefore, all the participants agreed that knowledge and skills were essential, and that jobs were primarily created through development of skills. Furthermore, business participants stated that they were financially incentivised by the ETIA, Department of Trade and Industry's subsidies and the SDA to render training. They added that these departments helped businesses to expand and grow, which caused them to employ and create more jobs.

One participant stated that the largest job creation that had occurred in the clothing industry was the result of the financial incentives that they had received for skills development and training.

The majority of business participants agreed that labour legislation did not influence job creation. However, some business participants agreed that certain aspects of labour legislation, such as skills development, had a positive influence on job creation, while other aspects, such as affirmative action, the B-BBEEA, bureaucracy, administrative burden and the cost of compliance, had a negative influence on job creation. Nevertheless, labour legislation was not the overriding factor. The primary factors negatively influencing job creation were skills shortage; youth unemployment; political and economic uncertainty in South Africa; the B-BBEEA scorecard criteria; affirmative action and employment equity in terms of the EEA.

The business participants stated that start-up of new businesses and expansion and growth caused businesses to create jobs. They added that the types of jobs created were primarily permanent and skilled jobs, although they acknowledged that some temporary, fixed-term and part-time jobs were also created. There were conflicting views among the participants as to where job creation was taking place; whether it was in the public sector or the private sector, and whether it was big business or small business creating most of the jobs. In addition, the majority of participants agreed that job and business sustainability are interconnected and that training is integral to a sustainable business. The participants indicated that the factors negatively influencing job sustainability were poor education, shortage of skills, poor economic and political climate, labour issues and labour cost.

The general consensus among the participants is that more jobs are being lost than created. Nevertheless, the majority of participants indicated that they were likely to create and sustain jobs in the future if they were financially incentivised to provide training. They added that the economic and political environment

has had a negative influence on job creation and job sustainability. The business participants stated that job creation and job sustainability would depend on the demand for their goods and services apart from economic and political climate. Nevertheless, the overwhelming majority of business participants indicated that they were likely to sustain jobs in the future, again stating that it would depend on political and economic certainty. The participants confirmed that a small number of jobs, primarily skilled and semi-skilled jobs, were sustained in 2016 through training. They stated that businesses had saved jobs by employing workers for a short time and by providing them training and retraining to fill alternative or new positions.

The participants felt that legislation on the whole was good as the LRA made it difficult to dismiss people and created barriers to abuse people, which had a positive influence on job sustainability. The B-BBEEA, EEA and SDA have contributed to job creation through encouraging and promoting skills development. Once again, the participants agreed that there were aspects of labour legislation, such as skills development, which had a positive influence. They agreed that the LRA, SDA and UIA contributed to job sustainability through encouraging and promoting skills development. Other aspects of labour legislation, such as the EEA, the B-BBEEA, bureaucracy, administrative burden and the cost of compliance for job creation and sustainability, had a negative influence.

The primary factors negatively influencing job sustainability were skills shortage, youth unemployment, political and economic uncertainty in South Africa, the B-BBEEA and the EEA.

■ Conclusion

This chapter has provided an overview of the qualitative data collection and analysis of the business and TU interviews. The data revealed the study participants' perspectives and experiences of labour legislation's influence on job creation and

job sustainability. As is typical of qualitative research, extensive examples were included in this chapter. Using the participants' own words, the aim was to build reader's confidence by accurately representing the reality of the business and TU persons and situations studied. This revealed that labour legislation may or may not influence job creation and job sustainability, and recent legislative amendments to the labour legislation further interfere and influence positively or negatively job creation and job sustainability.

Chapter 7 presents and provides a detailed discussion of the analysis, interpretation and synthesis of the qualitative and quantitative findings of this study.

Discussion of results and findings and implications for practice

Keywords: Research questions; Merged findings; Social justice; Human rights; Decent work; Role of labour law; Jobs created; Jobs sustained.

■ Introduction

In Chapter 5 and Chapter 6, the quantitative and qualitative results were presented and analysed, respectively. This chapter provides a summary of the study, discussion of the results and findings, and implications for practice.

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■ Discussion of the findings

Previous researchers and authors commented on various aspects of the phenomena influencing job creation and job sustainability. The goal of the empirical study was to explore and determine what labour legislative factors were statistically significant and the extent to which they influenced job creation and job sustainability. This section discusses the implications of the findings for each of the nine research questions.

■ The importance of social justice, human rights and decent work

The findings that emerged from the quantitative study's questions on social justice, human rights and decent work indicate that both businesses and trade unions agreed with the statement that the creation of job opportunities was very important. The findings that emerged from the quantitative study aligned with Miller's (2012:8) claim that there is a chronic shortage of decent jobs in South Africa, which needs to be addressed. There was also strong agreement among the business respondents on three statements: namely, freedom from discrimination in the workplace, the development of quality education and training systems, and freedom from exploitation in the workplace as being very important. Therefore, it would appear that the respondents upheld the values of equity, justice and fairness and recognised that these values cannot be sacrificed for greater efficiency (Santos 2009:51).

The respondents also appear to agree with Winston's (2011:33) assertion that social justice is the underlying ethical value of sustainable business practices, to treat others fairly and to respect employees' labour rights. For this reason, they are in agreement with Winston's (2011:34) contention that businesses are responsible for avoiding the unjust exploitation of human and natural capital. However, they disagreed on the other three statements on labour law's purpose, namely the importance of

equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights.

The responses of both businesses and trade unions differed with Patel and Mushonga's (2014:55) argument that business has to play a key role in promoting social, economic and environmental development, as well as having a socio-economic responsibility towards their workers and to wider society. Thus, there needs to be a balance between economic imperatives and social transformation. The vast majority of trade union respondents felt that all seven statements pertaining to social justice, human rights and decent work were very important. The Keynes' objective, however, is not only to create jobs (Tcherneva 2012:64) but to create stable and good jobs (Habanabakize & Muzindutsi 2018:123). This is in line with fulfilling the aims of social justice (Araújo & Meneses 2020:13; Botha 2015:15; Fabbri 2018:62; Tcherneva 2012:78).

The above-mentioned findings speak to the recognition of social justice, human rights and decent work as important, which is in agreement with the literature reviewed that decent work is concerned with the opportunity to work; the right to freedom of association; social protection (Le Roux 2013:512); sustainability and security of work (Muthethwa 2013:12); equality; creating jobs; guaranteeing rights at work; extending social protection; promoting social dialogue; protecting the dignity of workers (Wheeler, Klaas & Mahoney 2004:1) and promoting human rights at work (Collins 2011:142), as entrenched in the Constitution. Business and human rights are inextricably linked (Ramlall 2012:271).

The findings that emerged from the quantitative study also agree with Kloppers' (2014:63) contention that businesses have a responsibility towards the societies within which they operate (Habanabakize & Muzindutsi 2018:140). The findings from the quantitative study further align with Botha's (2015:63) argument that a strong nexus exists between CSR, corporate governance and sustainable business development. Thus, business has an ethical, legal and moral obligation to create jobs, to sustain them and not to destroy them.

■ The role of labour law

Social justice is entrenched in the Constitution, which includes the principles of equality, fairness and economic justice. Furthermore, labour law's normative foundations are based on social justice and efficiency (Collins 2011:137). Consequently, the findings resulting from the survey questions on the role of labour law indicate that both businesses and TUs confirm that labour law plays an important role.

There was also strong agreement between both businesses and TUs that freedom from discrimination in the workplace and the development of quality education and training systems are very important. This is in line with labour law's purpose to provide legal protection to employees and employers through the promotion of safe and productive workplaces; the prevention of exploitation; equality in the workplace; job security; and freedom from bias and discrimination (Benjamin, cited in Le Roux Rycroft 2013:29). However, the findings that emerged from the quantitative study also indicated that the business respondents disagreed on the importance of labour laws ensuring equality in the workplace, paying a fair income for sustainable living and the protection of workers' rights.

The findings that emerged from the qualitative study indicate that the interview participants supplement the survey respondents' opinion on labour legislation's fulfilling its normative role in regulating, guiding and controlling job creation and how workers are employed. Their consensus that it normalises the employment relationship, acts as a guide in setting minimum provisions and provides for fair mechanisms and processes, which help to resolve disputes, is in agreement with the contention of Botero et al. (2004:1339) that labour law governs the individual contract of employment.

The majority of business participants considered labour legislation to be necessary and mostly justified. They agreed with Kettledas (2013:3) that legislation was primarily concerned with providing the employed with basic protections against unfair

labour practices, unsafe working conditions and a decent living wage. Berg and Kucera also maintained that labour laws and policies play an influential part in (Berg & Kucera 2008):

[/]mproving social justice for workers by levelling and limiting bargaining through laws that protect freedom of association and collective bargaining, as well as mandating standards on conditions of work, many of which are not subject to international agreements. (p. 27)

The findings that emerged from the qualitative study indicate that the labour legislation is fair, but that the parties needed to have a fair amount of knowledge about labour legislation. The findings from the qualitative study indicate that business has to invest a large amount of time and resources to comply with labour legislation, which confirm Almeida and Carneiro's (2009:28–29), as well as Ayanda and Laraba's (2011:200) views that smaller firms experience greater problems in dealing with compliance. However, the findings from the qualitative study contradict the findings of a similar study undertaken by Bennington and Wein (2000:31) in 1999 among businesses in London, those employers did not experience any major difficulties in complying with legislation. Only one business participant found labour laws to be flexible and averting industrial action, which confirms Venter et al.'s (2010:130) claim that there is no such thing as a perfectly flexible labour market, neither it is socially desirable. The majority of the trade union participants thought that labour legislation primarily has a positive influence on job creation.

The responses from the interview participants further indicate that labour legislation also influenced job sustainability, sometimes positively – by creating opportunities; sustaining the jobs created; making it difficult to dismiss an employee and creating barriers against abusing people; and at other times, negatively. This finding supports Deakin, Malmberg and Sarkar's (2014:6) argument that labour laws can have a number of positive and negative effects on efficiency, depending on the context. The business participants affirmed that legislation protects employees and thus is needed.

Nevertheless, it is not good enough to just stimulate job creation. There is also a need to protect jobs. In addition, the EEA was found not to be representative and that educational institutions do not sufficiently support it. This finding is consistent with and supports Cole and Van der Walt's (2014:525), Rasool and Botha's (2011:2) and Venter et al.'s (2010:139) claim that primary, secondary and tertiary educational institutions need to be improved to support the EEA. Thus, labour legislation is necessary to balance all these rights, to ensure social justice and safety.

■ Research question one

□ How are jobs created and sustained in South Africa?

The findings that emerged from the empirical study for research question one indicate that jobs are created through skills development, as well as when businesses are incentivised and motivated to expand, grow and create jobs within a healthy economy. The findings from the qualitative study confirm Miller's (2012:20) view that jobs were created when the economy improved and when there were positive economic policies and economic growth. The findings that emerged from the qualitative study also indicate that economic growth, good economic policies and political stability encouraged local and overseas investors to invest in companies operating in South Africa, thereby creating jobs.

The findings that emerged from the qualitative study also confirm Tzehainesh's (2010:21) averment that economic growth was necessary to create and sustain jobs to reduce poverty. This study also indicated that job creation was dependent on the country's needs and market demand for the goods. The findings that emerged from the quantitative study confirm Tzehainesh's (2010:21) argument that trade liberalisation, globalisation, global competitiveness, decentralisation of production and technological innovation are important megatrends driving current economic

policy, which are affecting economic growth, job creation and job sustainability.

Jobs are also created through business innovation, efficiency and business enhancement; localisation of raw materials; organic growth and business expansion through restructuring (Wilhelm & Wilhelm 2012:63). The findings that emerged from the quantitative study indicate that the provision of employment tax incentives, the Department of Trade and Industry's subsidies and the SETAs refunding of skills development levies have encouraged businesses to develop skills and training, which in turn have led to jobs being created.

The results also indicate that jobs are primarily being sustained through skills development; when there is economic growth; a healthy economy; a healthy government; a properly regulated industry in which compliance is enforced and when businesses do well. The findings further indicate that jobs are sustained when a company is well-managed; forward-looking; can adapt to change; seeks out opportunities; creates new business; and is profitable, remains sustainable and is viable. In addition, the findings indicate that businesses sustain jobs through education, training, retraining, skilling and up-skilling workers and placing them on short-time to avoid retrenchments. Business sustainability is ensured through skills development, which helps to increase the efficiency and productivity of the worker. Skills improvement helps to preserve jobs.

The findings that emerged from the quantitative study indicate that there are conflicting views on whether small and medium business enterprises or large businesses are creating jobs. The weight of the literature reviewed appeared to favour small business, for example Nkosi, Bounds, and Goldman (2013:1); Van Loggerenberg and Ferreira (2012:212); Heitmann (2009:3) and Cray et al. (2011:5) all identify small businesses as the vehicles for job creation. The findings that emerged from the qualitative study also indicate that there are conflicting views as to whether the public sector is creating or reducing jobs. Nonetheless, the findings from the empirical study are aligned with McGrath and

Akoojee's (2007:427) and Le Roux and Rycroft's (2013:35) contentions that the restructuring and the privatisation of the public sector have resulted in job losses. The findings that emerged from the qualitative study are in agreement with the sentiments expressed by Lanchovichina et al. (2013:216); Goldberg (2012:45); and Islam and Mageres (2001:279) that investment in infrastructure has the potential to create jobs quickly and provide a foundation for future growth. According to the participants, if businesses prosper, they can sustain jobs.

□ The likelihood of jobs being created and/or sustained

□ Businesses are likely to create and sustain jobs

The findings that emerged from the empirical study indicate that the majority of business participants are likely to create jobs in the near future, especially businesses that are doing well, growing and expanding; are receiving government incentives and/or subsidies to develop skills for training and employment; have good government contracts; and have certainty and industrial peace. The findings that emerged from the qualitative study indicate that jobs are likely to be created to fulfil clients' demands, to service institutions' needs, to staff new shopping malls and to operate the tourism industry. In addition, the findings from the qualitative study indicate that the services sector has created a number of jobs through tax incentives. There are fewer secure permanent employees and the jobs being created appear to be short-term, which is not sustainable. The findings that emerged from the quantitative study further indicate that jobs will be sustained in the future, primarily through training. Jobs are also being saved through placing workers on short-time, finding them alternative positions or employing them in new start-up businesses.

Thus, businesses are likely to create jobs in the near future provided they continue to receive financial incentives to train and are growing. However, the threat of economic and political

uncertainty, and corruption and labour unrest has an adverse effect on job creation and job sustainability.

□ Some businesses are unlikely to create and sustain jobs

The findings that emerged from the quantitative study also indicate that some businesses are unlikely to create jobs in the near future, mainly because of the poor economic climate and political uncertainty; government's stance in controlling industry; the lack of managerial skills; inadequate financial incentives; ineffective collective bargaining and businesses' perception of employing additional staff as a significant risk. The results that emerged from the qualitative study further align with Venter et al.'s (2010:146) view that there is a serious shortage of sound managerial expertise in South Africa. Three trade union participants agreed with the business participants that businesses are unlikely to create jobs because of economic and political uncertainty and government corruption issues. They confirmed that job creation is slow and that more jobs are being lost than are being created. This is in agreement with Pieters' (2013:23) view that a lot more jobs have been and are being destroyed than jobs being created.

□ Jobs created and/or sustained in the previous year?

□ Jobs were created and/or sustained

The findings that emerged from the quantitative study indicate that the majority of the business participants, some to a large extent, and others to a lesser extent, had created jobs in the previous year. Those businesses that were financially incentivised to train and create jobs did in fact create more jobs. The findings that emerged from the quantitative study indicate that the largest job creation that took place among the business respondents was in the clothing industry. Nevertheless, the number of jobs created overall appeared to be small. There were over 335 new

permanent jobs and 70–80 temporary jobs. The findings that emerged from the quantitative study also suggest that no real substantive jobs are being created and those jobs being created are of a temporary nature. The findings that emerged from the qualitative study indicate that the majority of business participants, although some of them had retrenched workers, jobs were saved through training and retraining and finding the workers alternative positions.

□ **The types of jobs created**

The findings that emerged from the quantitative study denote that an overwhelming majority of the business participants permanently employ workers and are in agreement with Goldberg's (1997:302) contention that the benefits of employing permanent staff outweigh the costs. This is contrary to what McCann, Lee and Belser (2014:7); Pieters (2013:8); Miller (2012:12) and Tzehainesh (2010:21) claim that informal and precarious employment is growing and that businesses are creating more temporary jobs. A possible reason may be the implementation of the amendments to the BCEA and the LRA to curtail the use of temporary employment contracts, which appear to have had a positive influence on job creation.

Nevertheless, the findings that emerged from the empirical study also demonstrate that some of the business participants created a mixture of permanent and fixed-term contracts, as well as some temporary jobs, depending on the scope of work required. A few took on interns, trained them and then used them to fill positions – either created or which had become vacant – for similar reasons. Some participants created temporary jobs because of the subsidy that they received for training the unemployed. They would subsequently appoint them on a permanent basis if a permanent position became available. This finding confirms Kloppers' (2014:78), Bronstein's (2009:69) and Berg and Kucera's (2008:12) averment that financial incentives encourage businesses to train their workers, which has a positive influence on job creation.

▣ **A few businesses did not create or sustain jobs**

The findings that emerged from the empirical study indicate that a few business participants did not create jobs because of the poor economic climate, stagnant business growth and business instability.

Consequently, the findings that emerged from the empirical study confirm that:

- The majority of the business participants are creating jobs through skills development and through governmental financial incentives provided to businesses for training workers. However, the trade unions are concerned that the jobs being created through skills development are temporary, which were in agreement with Cahuc and Postel-Vinay's (2002:63) warning that temporary jobs intensify job destruction.
- Growth has fallen continuously in former years, which the OECD (2017:20) attributes to weak investment because of persistent policy uncertainty and continued low business confidence.
- Business confidence is low because the domestic economy has not been growing at rates high enough to effectively tackle unemployment and poverty.
- South Africa's economy is growing at a slower rate than was projected by government, which has caused slow employment growth, increased unemployment and under-employment. The changing nature of work, casualisation and productive decentralisation also impact economic growth.
- A small number of jobs were similarly sustained in 2016, primarily through training, retraining and up-skilling workers.
- The SDA has a direct positive link to job sustainability and job creation.
- The types of jobs sustained were primarily skilled and semi-skilled jobs.
- A more skilled labour force is required.
- Restructuring appears to be threatening some managerial positions.

- A number of low-level and unskilled jobs were either lost or at risk, confirming that employment in the semi-skilled and less-skilled occupations has decreased.
- Machinery and technology are threatening and replacing some of the lower-level jobs.
- Delays in securing future contracts, government contracts and tenders are potentially threatening jobs.

The findings that emerged from the qualitative study confirm that there is an increased need for tertiary qualifications in the job market that the demand for managers and professional workers had increased and that employment in the semi-skilled and less-skilled occupations had decreased.

■ Research question two

□ How does labour legislation influence job creation and job sustainability in South Africa?

The findings that emerged from research question two indicate that there was significant agreement among businesses and trade unions that labour legislation has both a positive and negative influence on job creation and job sustainability.

□ Negative influence on job creation

The findings that emerged from the empirical study indicate that the majority of the business participants felt that the BCEA, the LRA and the SDL have a negative influence on job creation. Some of their perceptions are that labour legislation is difficult, inflexible and a minefield to navigate. The findings that emerged from the qualitative study also indicate that knowledge of the legislation is essential and that compliance is time-consuming and costly. There are also aspects of the B-BBEEA, the EEA and the SDA which negatively influence job creation. It is interesting to note that the findings that emerged from the qualitative study confirm

that the EEA and the B-BBEEA could be a deterrent for businesses that do not qualify for BBEE, namely entities owned by white people. The findings that emerged from the qualitative study further show that although employment equity might have a positive influence in addressing inequality, the majority of the participants feel that affirmative action was not working. They indicated that affirmative action needed to be balanced. The findings that emerged from the qualitative study revealed even further that the administrative burden of employing additional staff, completing reports on affirmative action and SDA as a deterrent for smaller employers.

Additionally, the findings that emerged from the qualitative study signify that some of the business participants considered the labour environment to be hostile, over-regulated, excessively bureaucratic, inflexible and too onerous, which has a negative influence on job creation. The findings that emerged from the qualitative study revealed that businesses were noticing that it was difficult to manage staff; that there were too many stringent rules; and excessive legislative bureaucracy and compliance which added to the cost of doing business, thus impeding the growth of small businesses. However, Bronstein (2009:40) contends that labour flexibility rarely creates new and authentic jobs. The findings that emerged from the qualitative study showed that young start-up businesses and businesses in general were remarking that it was time-consuming to understand what was required of them and to deal with all of the documentation, instead of focusing on expanding their businesses. This confirms Darrol's observation (2013:15) that small businesses are concerned about the regulatory burden. Hence, the participants maintained that government should simplify and streamline the legislation.

▣ Positive influence on job sustainability

This study's results indicate that labour legislation influences some of the businesses with regard to job sustainability. Legislation helps job sustainability because it makes it difficult to

dismiss somebody, which is a positive factor for workers. The findings that emerged from the qualitative study reveal that there is adequate legislation and that both labour legislation and the economic climate are equally significant. The trade unions perceived labour legislation to be a guide and not to hamper businesses. Thus, the findings that emerged from the qualitative study revealed that labour legislation had both a positive and negative influence on job creation and job sustainability. On the whole, however, labour legislation created opportunities and sustained the jobs created.

■ **Justifications for legislative interference**

The discussion below on the different pieces of legislation will refer to the five sub-themes: fairness, equity, job security, skills development and social security.

□ ***The Basic Conditions of Employment Act, 75 of 1997***

The discussion of the findings below on aspects of the BCEA will refer to the themes relating to fairness, equity and job security. The discussion is further divided into five sub-themes, namely, staffing contracts; working conditions; minimum wages; notice periods and severance pay; and enforcement of compliance.

Staffing contracts: The findings that emerged from the qualitative study indicate that the majority of business participants agreed that they were not influenced by the BCEA's provisions on regulating and limiting staffing contracts to create jobs and that they were unaffected by the amendments. In addition, the finding of the qualitative study was that a number of business participants were regulated by bargaining council agreements. They remarked that it was the ethical thing to do, while some participants used fixed-term contracts as a form of probation and thereafter made permanent appointments. The findings confirm that the BCEA is a process which puts fair mechanisms

in place (Berg & Kucera 2008:23; Guest 1997:349) that it is in accordance with international standards (Bhattacharjee & Roy 2012:70; Du Plessis & Fouché 2019:54; Hofmeyer 2013:24) and that employers can apply for exemptions if they cannot afford the minimum provisions (Cheadle 2006:668).

The results from the qualitative study also reveal that some business participants are uninfluenced by the legislative limitations imposed on staffing contracts to sustain jobs as they are compliant and they are part of collective bargaining council agreements. In addition, the findings confirm that there is enough of a window in the legislation to extend the 3 months if they have justifiable reasons (Cohen & Moodley 2012:331; Du Plessis & Fouché 2019:237). The findings also indicate that some business participants did not feel the need to exploit workers (Brand 2010:1). However, the findings also indicate that the participants have an issue with the Department of Labour's enforcement of compliance, and in particular with their perception of massive corruption among the labour inspectors.

Hours of work and working conditions: The results from the qualitative study confirm that the majority of business participants prefer to comply with the law (McCann et al. 2014:163) and with collective agreements. Consequently, they are uninfluenced by the provisions regulating the hours of work and working conditions to create or sustain jobs as the bargaining councils guide and regulate them and ensure that workers are treated well. In addition, the findings indicate that a few of the participants also participate in and negotiate the working conditions for their industry.

The findings from the qualitative study suggest that the BCEA ensures business sustainability through a healthy and productive labour force (Parker 2012:1) by controlling the various categories of rest periods to ensure that workers have adequate time off to remain healthy and to attend to their needs.

Minimum wages and sectoral determinations: The results from the qualitative study indicate that the majority (11 out of 16)

of business participants are uninfluenced by the provisions regulating minimum wages and sectoral determinations to create jobs as the bargaining councils guide and regulate them and they use the regulations as a guide. They also confirmed that they pay their workers above the minimum wage set for their industry.

The findings that emerged from the qualitative study also indicate that the minimum wage and sectoral determination provisions did not influence a few of the business interviewees to sustain jobs. These research participants stated that they are regulated by bargaining council agreements and they pay above minimum wages. This confirms Rogers' (2014:1544) contention that there is significant empirical evidence supporting the claim that past minimum wage increases have not led to job losses (Rogers 2014:1544).

Notice periods and severance pay: The results from the qualitative study indicate that the majority (12 out of 16) of business participants are uninfluenced by the BCEA's provisions on notice periods and severance pay to create jobs. The reasons they advanced were that the provisions are fair, that they accept the rule and comply, and that it is beneficial in that it allows for a period in which they can bring in a new person. However, one TU participant disagreed and remarked that the regulation of notice periods is important.

In addition, the findings indicate that a few (three) of the business interviewees, as well as two TU participants perceived the notice periods and severance pay provisions of the BCEA was not influencing job sustainability. They advanced the same reasons, namely, that they comply; that the provisions are fair; that they have little or no effect; and that it is a necessary cost of doing business.

Enforcement of compliance: Results indicate that business and TU respondents differed on the influence of labour inspectors in monitoring and enforcing compliance with the BCEA. The majority of the TU respondents agreed that they influence job creation, while the business respondents disagreed. The results

from the qualitative study reveal that labour inspectors have not conducted regular inspections. The trade unions stated that labour inspectors strongly encourage safe working practices. They confirm that the inspectorate co-opts the bargaining councils to enforce compliance.

□ **The *Labour Relations Act No. 66 of 1995***

The discussion of the findings below on aspects of the LRA will refer to the themes relating to fairness, equity and job security. The discussion is further divided into six sub-themes, namely: staffing contracts; dismissals and probation; bargaining councils; industrial action – strikes; dispute resolution; and enforcement of compliance.

Staffing contracts: The findings that emerged from the qualitative study indicate that the LRA's provisions on staffing contracts did not influence the majority of business participants to create jobs. A common reason given is that they already complied with bargaining council specifications, which were in line with the law. A number of them confirmed that they are regulated by bargaining council agreements. One participant perceived it as the ethical thing to do. However, some conceded that they use fixed-term contracts as a form of probation and thereafter make a permanent appointment. In addition, the findings indicate that a few (two) business participants were negatively influenced by the provisions (i.e. not to create jobs or to employ) and that they did not use the same person twice, which confirms the OECD's (2014:142) contention that contract workers face a higher degree of job insecurity.

The findings from the qualitative study also indicated that the LRA's restrictions on types of staffing contracts did not influence a few of the business participants with regard to job sustainability, as they are compliant and there is enough of a window in the legislation to extend the 3 months if they have justifiable reasons, which has resulted in increased security of employment for vulnerable workers (Kettledas 2013:4).

Dismissals and probationary periods: The findings from the qualitative study indicate that the LRA provisions on dismissals and probationary periods did not influence the majority of the business participants to create jobs. Some of the reasons advanced were that the LRA's procedures are fair and beneficial to both parties; they are compliant and they follow the law; the code of conduct creates certainty; it is important to be seen to be acting ethically and fairly; and they have been very lenient, and they employ experts to assist them. Furthermore, their perception is that the LRA is a fair process guide for organisational collective bargaining and fair labour practices and that the law is in line with ILO standards. However, the results from the qualitative study indicate that employers are dismissing people relatively easily by drafting the correct documentation, and by being procedurally correct and substantively fair. Reducing the probation to 3 months helps businesses to assess their performance.

The findings from the qualitative study also indicate that the LRA's provisions do not influence a few of the business participants on job sustainability. They stated that they strongly support the provisions; they have been very lenient; they treat workers fairly; they follow the retrenchment procedure and they keep records. In addition, the findings indicated that although the legislation appears to be onerous, it is relatively easy. Employers simply need to act strictly in accordance with it; be correct; substantively and procedurally fair; and draft the correct documentation.

A few business participants are in agreement with Bronstein (2009:69) that protection against dismissals may deter or prevent employers from creating jobs. They confirm the criticism levied against the LRA that it makes it difficult for employers to dismiss and retrench workers. The findings also confirm the author's contention that employers fear that they will be unable to retrench workers when there is a reduction in demand for their goods or services. The findings further confirm his claim that the protection of workers against unfair dismissal is a highly sensitive and controversial issue, as security of employment remains an important TU negotiating issue.

The findings also reveal that a few of the TU participants are in agreement with Berg and Kucera's (2008:14) contention that by making dismissal more difficult, workers benefit, as it provides businesses with greater incentives to train their workers.

Bargaining councils and collective agreements: The findings from the qualitative study indicate that business participants who are not part of a bargaining council or where it does not apply to their businesses, were uninfluenced by them to create and to sustain jobs. The findings also reveal that bureaucratic, ineffective bargaining councils which set wage increases too high, as well as the majoritarian principle, negatively influence job creation. The findings confirm Barker's (1999:30-39) contention that bargaining councils and sectoral determinations affect the labour market directly and indirectly, and that issues such as wage flexibility, non-wage labour costs and job security all add to labour market rigidity. The findings further confirm Badenhorst-Weiss and Waugh's (2014:289) claim that the actions of some of the TUs and bargaining councils were questionable.

Industrial action: The findings from the qualitative study indicate that some business participants were uninfluenced by industrial action to create jobs. The reason they gave was they were compliant. One of them stated that her business has not experienced strikes for the past 26 years. Another research participant conceded that strikes do affect his business, but that he uses scab labour. One of the TU participants stated that Section 64 regulates industrial action and that it is absolutely necessary. Nevertheless, the finding is that the majority of the business participants and two trade union participants agree that strikes negatively influence job creation because it deters employers and the economy from creating jobs.

The findings from the qualitative study also revealed that only one business participant commented on industrial action's influence on job sustainability – that it did not necessarily influence him to sustain jobs. He stated that he simply needs to ensure that when he employs people, they understand their employment contract and what he expects of them.

Dispute resolution: The findings from the qualitative study indicate that half (eight) of the business participants were not influenced by the LRA's provisions on dispute resolution to create jobs. The findings confirm that the participants consider the CCMA to be a good system as a procedural path to resolve disputes and it creates fairness and protects (Cohen 2014:27). The findings also reveal that employers are not deterred when they obtain advice on how to handle disputes from labour specialists.

Enforcement of compliance by labour inspectors: The findings from the qualitative study indicate that the enforcement of compliance with the LRA by labour inspectors did not influence the majority (12 out of 16) of the business participants to create jobs because they complied with the law and the labour inspectors have a history of being ineffective. The findings reveal their perception that labour inspectors are reactive rather than proactive and do not conduct regular inspections and when they do, they give companies time to rectify issues. These findings confirm Botha's (2015:34) contention that minimum labour standards are not being enforced.

The findings from the qualitative study likewise indicate that a few of the business participants were uninfluenced by labour inspectors enforcing compliance to sustain jobs. The remaining business participants were silent on this point. The findings reveal that labour inspectors strongly encourage safe working practices. The findings also indicate that the inspectorate has delegated the conducting of inspections to the bargaining council agents. Nevertheless, it is very important that businesses work within the legislative parameters to ensure that workers have some kind of protection and security (Du Toit et al. 2011:639).

□ The *Employment Equity Act*, No. 55 of 1998

The findings from the qualitative study indicate that the provisions on employment equity do not influence the majority (11 out of 16) of the business participants to create jobs. Seven of the

participants indicated that their workforce is already representative of the disadvantaged groups. The aim of the EEA is to oppose inequalities and labour distortions (Du Toit et al. 2011:666). Discrimination based on race and gender through job reservation, unequal education and training opportunities needed to be addressed (Venter et al. 2010:139). Nevertheless, the findings show that seven other business participants and one TU participant agreed that affirmative action and equity plans negatively influence job creation and job sustainability because poor education and the lack of/or inadequate skills have caused some businesses to duplicate positions and roles resulting in increased labour costs and production inefficiencies. The findings show that only one business participant was not influenced by the EEA to sustain jobs.

The discussion below on aspects of the EEA will refer to the themes relating to fairness, equity and job security. The findings relating thereto are further divided into five sub-themes, namely recruitment practices; affirmative action; equal pay for equal value; income differentials and enforcement of compliance.

Recruitment practices: The findings that emerged from the qualitative study indicate that the EEA's regulation of recruitment practices did not influence the majority (11) of business participants to create jobs. The reasons given are that the Act has aligned business with legislation; it is used as a guide, and that it influences businesses to employ more disadvantaged persons. However, some participants acknowledged that it could stifle entrepreneurs. The findings support Du Toit et al.'s (2011:726) contention that when employers invest in their workforce and treat their workers with fairness and equity, their actions can result in increased productivity, motivation and resourcefulness in the workplace. Nevertheless, the findings indicate that a few business participants regarded skills, qualifications and experience as the priority.

One business participant thought it unfair that he is obliged to take on disadvantaged people who were 'not right' for the job.

The findings of the majority (four out of six) of TU participants confirm that the EEA is fulfilling its purpose in regulating discriminatory conduct and providing a framework for the implementation of affirmative action (Le Roux & Rycroft 2013:244). The findings also indicate that the EEA heavily regulates the employment relationship and puts measures in place to give preference to disadvantaged groups (Hofmeyer 2013:26). It also ensures equality and no discrimination and that bigger businesses will comply (Du Plessis & Fouché; 2019:97; Hofmeyer 2013:24).

Nevertheless, the findings of the qualitative study further indicate that the EEA's regulation of recruitment practices did not influence a few (two) of the business participants to sustain jobs. Their perception is that big business will comply and that it overlaps with the bargaining council agreements. However, one of the business participants remarked that his business is affected by disability, not by mixed race. This finding confirms Du Toit et al.'s (2011:36) contention that the main aim of the EEA is to achieve equitable representation not only of black people and women but also of people with disabilities in all occupational categories.

Affirmative action: The findings that emerged from the qualitative study indicate that the EEA's regulation of affirmative action did not influence the majority (11 out of 16) of the business participants to create jobs, as the majority of their staff are black people and they comply. In addition, the findings indicate that affirmative action did not influence a few (three) of the business participants to sustain jobs, as they had problems with succession planning, poor education and a lack of skills. Whereas, the TU participant stated that as long as affirmative action is complied with in a manner as prescribed by government, the person still qualified for and is able to do the job (Dapper & Garbers in Le Roux & Rycroft 2013:253).

Equal pay for equal value on income and benefits: The findings of the qualitative study indicate that the EEA's provisions on the promotion of equal income distribution did not influence

more than half (nine out of 16) of the business participants to create jobs. Some of the reasons given are that the provisions are essential to ensure fairness, businesses are regulated by bargaining councils and they comply with the gazetted income and benefits. However, a few participants admitted that they distinguished pay differentials on the basis of extra effort, skills and experience, which they felt was fair.

Reducing ‘disproportionate’ income differentials: The findings that emerged from the qualitative study reveal that the overwhelming majority (13 out of 16) of business participants were not influenced by the EEA’s provisions on reducing income differentials to create jobs. The findings indicate that they complied with the bargaining council’s regulations, they followed the gazetted distinctions and they adhered to their company’s salary banding systems. They admitted, however, that they paid experienced workers more, and they rectified the problem as soon as they were notified of it. The TU participants’ findings differed as two of them perceived the EEA’s provision relating to reducing ‘disproportionate’ income differentials as influencing job creation on the overall aspect of equity and fairness. The findings confirm that reducing ‘disproportionate’ income differentials is a process in which businesses have to identify the difference and put a plan in place to reduce the income differentials (Hlongwane 2007:76).

Enforcement of compliance with the EEA by labour inspectors: The findings confirm that labour inspectors have the power to enforce compliance with all employment laws during a single visit to the employer’s premises (Du Toit et al. 2011:639). Nevertheless, the findings of the qualitative study indicate that a few of the business participants were uninfluenced by labour inspectors’ enforcement of compliance with the EEA to sustain jobs, as labour inspectors have been to them a number of times to check on compliance and they have had no problems. However, the amendments have significantly increased the penalties for non-compliance, especially with regard to affirmative action and employment equity plan provisions of the Act (Du Plessis & Fouché 2012:67; Hofmeyer 2013:26).

All of these aspects of the EEA relating to recruitment practices; affirmative action; equal pay for equal value; income differentials and enforcement of compliance ultimately promoting social justice, contributing to job creation and job sustainability. However, the findings confirm that the employment of foreign nationals or foreigners, who became citizens after April 1994, is not to be taken into account for employers to meet their affirmative action targets (Hofmeyer 2013:26). The discussion below on the SDA will refer to the themes relating to equity, skills development, job security and social security.

□ The *Skills Development Act*, No. 97 of 1998

The findings indicate that the SDA promotes and facilitates productive employment and helps to preserve jobs. Nevertheless, the SDA overlaps with the LRA's provisions, which deal with the regulation of industrial and sectoral training and education through bargaining councils, collective agreements and workplace forums. The SDA attempts to connect the emphasis on equity in the LRA, the BCEA and the EEA. The findings confirm Rasool and Botha's (2011:2) contention that skills development, through education and training, helps to increase the efficiency and productivity of the worker sectors.

■ Research question three

□ Which aspects of labour legislation influence job creation and job sustainability in South Africa?

The findings from research question three indicate that there is agreement among the business and TU survey respondents that there are aspects of labour legislation which at times influence job creation and job sustainability positively and at other times negatively, and in a number of instances, not at all. The findings confirm Bennington and Wein's (2000:31) conclusion that employers who participated in their study do not strongly support the economists' views that legislation creates inefficiencies and

interferes with market mechanisms. In fact, there is evidence to the contrary. This study's findings also indicate that legislation had little or no influence on efficiency, and legislation does not affect the cost of recruitment and selection, other than with regard to affirmative action.

In addition, the findings confirm that very few of the employers had any major difficulty with complying with the legislation, except for the administrative burden and bureaucracy relating thereto. Martin and Neugart (2009:44) also found the effects of employment protection legislation to be inconclusive. The authors found that the employment protection system, on average, does not necessarily harm employment performance and that the interaction between the employment protection system and the economic environment did have some effect (Martin & Neugart 2009:45).

□ The *Basic Conditions of Employment Act, No. 75 of 1997*

The findings indicate that there is significant agreement among the businesses and TUs, as well as among both groups of interview participants that various aspects of the BCEA influence job creation and job sustainability. However, in the business and TU research participants differed on the extent to which the various aspects of the BCEA influenced job creation and job sustainability.

Nevertheless, the findings of the qualitative study reveal that the majority of the business participants were not influenced by the BCEA's provisions to create jobs. The responses of a few of the TU participants were in conformance with Bronstein's (2009:77) assertion that the provisions of the BCEA are positive for job creation, especially when using someone on a contract basis for probation and for the creation of permanent quality jobs. In addition, the findings from the qualitative study reveal that a few research participants were in agreement with Du Plessis and Fouché's (2012:225) contention that the provisions positively influence job sustainability as a whole. The TU responses confirmed that workers who are looked after emotionally and

physically work better; that the provisions of the BCEA prevent employers from abusing their authority, and they help employees to be employed permanently. However, the findings also aligned with Cohen and Moodley's (2012:331) concern that it can deter employers.

The discussion below on aspects of the BCEA influencing job creation and job sustainability refers to the themes relating to fairness, equity and job security. The findings relating thereto are divided into five sub-themes, namely staffing contracts; working conditions; minimum wages; notice periods and severance pay; and enforcement of compliance.

Staffing contracts: The findings that emerged from the qualitative study reveal that the participants who indicated that they are influenced by the BCEA's provisions on staffing contracts show that the negative influence is greater than the positive influence on job creation and job sustainability. The findings denote that some business participants are discouraged from creating jobs because of the limitations imposed on them with regard to fixed-term contracts being limited to 3 months, and the restrictions placed on using casual labour. Their perceptions are that the provisions lack flexibility; they infringe on their freedom to employ and the right to select; they increase the cost to their existing staff and they inhibit the building up of capacity in advance.

The above-mentioned findings are supported by Cohen (2014:27), who contends that the legislative restrictions imposed on staffing contracts could serve as a deterrent to creating new jobs and to employing additional staff. The findings suggest that a few of the business participants were also discouraged as far as sustaining jobs were concerned because of the nature of the industry they are in; the hourly-based limits that are imposed on the use of casual labour; the limitations and restrictions placed on fixed-term contracts; and the ease with which unskilled workers can be replaced and rotated.

The findings confirm that only a few TU participants perceive the staffing contract provisions and the legislative amendments in

respect thereof to have a positive influence on job creation, which is in agreement with Du Plessis and Fouché's (2019:231) contention that it protects workers against discrimination. Only one business participant and two TU participants agreed with Bronstein (2009:77) that the influence on job sustainability would be positive, as a whole, when workers are better looked after and that the legislative restrictions prevent the abuse and exploitation of vulnerable workers.

Hours of work and working conditions: The findings emerged from the quantitative study indicate that the majority of business respondents agreed that the regulation of ordinary hours of work and overtime influenced job creation. However, they disagreed on whether work on Sundays, public holidays and night work influenced job creation. The findings of the majority of the TU respondents support Du Plessis and Fouché's (2019:54) contention that the regulation of ordinary hours of work, overtime and work on Sundays, night work and work on public holidays is likely to influence job creation. It is interesting to note that half of the survey respondents in each group support Du Toit et al.'s (2011:35) and Bronstein's (2009:248) claims that work-time flexibility influences job creation.

The findings from the qualitative study of a few business participants confirm Du Toit et al.'s (2011:597) and Benjamin's claim, cited in Le Roux and Rycroft (2013:29), that the use of overtime and shift work can be used creatively to create jobs. However, the findings reveal that a few of the business participants are also negatively influenced by the regulation of working hours, especially with regard to public holidays, overtime, night work and work on Sundays, which they perceive to be inflexible. These findings are in agreement with Hepple, cited in Le Roux and Rycroft (2013:6). In addition, the findings indicate that the ad hoc presidential declarations of additional public holidays; the payment of overtime in instances where employees are abusing overtime for extra pay; the regulation of night work and work on Sundays, especially in the transport industry where businesses are unable to deliver at night or on Sundays, have a negative influence on job creation.

The majority of the TU participants agreed that the regulation of working hours affects certain industries that work a 7-day week, depending on the kind of employer and the nature of the business. Smaller employers who are unable to comply may be forced to go out of business. Furthermore, the findings that emerged from the qualitative study confirm Du Plessis and Fouché's (2019:58) claim that the restrictions imposed by the BCEA on overtime and sick leave provisions can also negatively influence job sustainability as it is open to abuse, results in additional costs and affects pricing.

Nevertheless, the findings agree with the claim made by both Benjamin, cited in Le Roux and Rycroft (2013:29), as well as Du Toit et al. (2011:597) that the regulation of working hours and working conditions can positively influence job creation when businesses use shift work instead of overtime to create more jobs. The findings also confirm Du Plessis and Fouché's (2019:58) contention that the Act provides guidelines and by looking after workers emotionally and physically sustains jobs.

Minimum wages and sectoral determinations: The findings that emerged from the qualitative study agree with Barker's (1999:30–39) contention that sectoral determinations have a negative influence on job creation because they are too bureaucratic and unwieldy, especially because of staff incompetence and wasteful expenditure. The findings from the qualitative study also confirm that if the national minimum wage is set too high, it could have a detrimental effect on businesses to create jobs (Clover & Darroch 2005:248; Escudero, Khatiwada & Malo 2013:109). One of the suggestions is that the minimum wage should be set regionally and be industry-specific, not nationally.

The responses of a few of the research participants (businesses and TUs) were aligned with Venter et al.'s (2010:143) contention that the difference between labour earnings and productivity growth, as well as the disproportionately high rise in labour costs, threaten job creation and job sustainability. The few research participants' responses were also aligned with Greene et al.'s (2007:87) claim that a minimum wage can stifle employment and

job creation. In addition, the findings agree with Greene et al.'s (2007:85) statement that minimum wages can be significantly detrimental, as they can contribute to unemployment through pay scales being artificially kept at levels higher than worker productivity, thereby pricing workers out of the labour market.

Moreover, the responses of a few of the research participants (businesses and TUs) were aligned with Noelke (2011:1) and Barker's (1999:30–39) contentions that the two groups most negatively affected by minimum wage regulations are the poor and the youth. Furthermore, the findings confirm Venter et al.'s (2010:138) contention that regulation and minimum wage fixing result in increased direct and indirect labour costs.

Notice periods and severance pay: The findings that emerged from the qualitative study of a few of the business participants confirm that they are influenced by the BCEA's provisions on notice pay and severance pay (Bronstein 2009:69; Feldmann 2009:76). The findings also reveal that, especially when employers are obliged to pay notice pay for misconduct dismissals even though the employee was fairly dismissed, they consider this to be very costly, tedious, time-consuming and unfair. This has a negative influence on job creation and job sustainability.

Furthermore, the findings that emerged from the qualitative study of a few of the business participants agree with Noelke's (2011:1) assertion that the required notice of termination and dismissal procedure negatively influenced them not to sustain jobs. It is interesting to note that the responses of only two TU participants were aligned with Hepple, cited in Le Roux and Rycroft (2013:7), that the requisite notice period has a positive influence on job creation and job sustainability as it allows for planning. Furthermore, the findings agree with the author that severance pay is only paid when people are retrenched and that South Africa has the shortest notice period and lowest severance pay for a retrenchment dismissal in the world.

Enforcement of compliance: The findings that emerged from the quantitative study confirm Boeri and Jimeno's (2005:2057)

contention that enforcement is inconsistently applied. The findings indicate that the business and trade union survey respondents differed on the influence of labour inspectors in monitoring and enforcing compliance with the BCEA. In addition, the findings that emerged from the interviews conducted among businesses are in conformance with Hofmeyer's (2013:24) averment that inspectors' visits are infrequent. The findings that emerged from the quantitative study reveal that there is disagreement between the majority of the trade union respondents about labour inspectors' enforcement of compliance influencing job creation, whereas, business respondents disagreed with them. The trade union participants agree that the inspectorate defers to the bargaining councils.

The findings that emerged from the qualitative study are in agreement with Badenhorst-Weiss and Waugh's (2014:289) views that the inflexible, rigid and selective manner in which bargaining councils and trade unions are enforcing compliance, especially with small businesses, were negatively influencing job creation. In addition, the findings from the qualitative study are in agreement with Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), contention that there is too much bureaucracy, which has created a number of time-consuming administrative duties, compounded by the problem of corrupt officials.

This is in accordance with Godfrey's (2014:2587) contention that enforcement of compliance negatively influences businesses. Conversely, the findings indicate that some of the TU participants perceive the provisions on staffing contracts and notice periods to have a positive influence on job creation.

□ The *Labour Relations Act*, No. 66 of 1995

The findings that emerged from the quantitative study indicate that there is significant agreement among the business and TU respondents, the business respondents in particular, that various aspects of the LRA influence job creation and job sustainability.

The discussion below on aspects of the LRA influencing job creation and job sustainability refers to the themes relating to fairness, equity and job security. The findings relating thereto are divided below into six sub-themes, namely staffing contracts; dismissals and probation; bargaining councils; industrial action – strikes; dispute resolution and enforcement of compliance.

Staffing contracts: The findings that emerged from the quantitative study on the general requirements for fairness indicate that there is strong agreement between the business and TU respondents on the regulation of alternative employment contracts, which support Brand's (2010:1) contention that regulation is likely to influence job creation. The findings from the quantitative study also indicated that there was agreement between businesses and TUs on the equality and equal treatment requirements, as well as that the regulation of alternative employment contracts and the standardisation of income were likely to influence job creation. They confirmed Goldberg and Wilkinson's (2014) contention that jobs may be lost as a result of the implementation of the regulations.

The findings that emerged from the qualitative study indicate that only half (three out of six) of the TU participants perceived the regulation of staffing contracts to have a positive influence on job creation because the regulation of staffing contracts deters employers from offering insecure jobs and from denying employees certain benefits. Although it allows employers to use employees on a contract basis, this should not be abused. In addition, the amendments to the regulation of staffing contracts have enhanced flexibility as Section 198 allows for 3-month contracts to be rolled over, which ensures that a person gets a retrenchment benefit. Consequently, trade unionists were in agreement with Kettledas' (2013:4) assertion that the regulation of non-standard employment or labour broking had resulted in increased security of employment for vulnerable workers, which may have had a positive influence on job creation. The findings aligned with the author's contention that the LRA's restrictions on staffing contracts had a positive influence on job sustainability.

Furthermore, the findings revealed that the regulation of staffing contracts protecting employees influenced three business participants to sustain jobs. One TU participant agreed that employers as a result of the aforesaid regulation were more mindful of treating their employees correctly and created a few more jobs. She remarked that at least the employee felt more secure about the job as after 3 months, he or she might become permanent.

The findings that emerged from the qualitative study were in agreement with OECD's (2014:142) views that the LRA's restrictions on staffing contracts had a negative influence, as the increased restrictions had discouraged two business participants from creating jobs. One business participant admitted that he never uses the same person twice. Another stated that where she previously hired someone on a fixed-term contract, she now hesitated to employ. In addition, two TU participants agreed that the restrictions placed by the LRA on staffing contracts increased their labour cost to existing staff and limited the employer's right to employ and dismiss workers, which stifles job creation, especially if smaller employers cannot afford the services.

Moreover, the responses of three TUs participants agreed with OECD's (2014:142) contention that the amendments had a negative influence on job sustainability as it had caused some workers to be dismissed, rather than to be appointed full-time. Fixed-term contracts were not being renewed and they were open to abuse, as the employers could manipulate the system.

Thus, the overall findings were in agreement with Kettledas' (2013:4) observation that the LRA's provisions on staffing contracts had some influence on job creation and, to a lesser extent, on job sustainability. Furthermore, the findings aligned with Gwatidzo and Moyo's (2014:300) claim that there is no consensus on whether employment protection legislation is beneficial or harmful to the economy. It is interesting to note that only the TUs perceive the LRA's restrictions on staffing contracts to have a positive influence on job creation, while some businesses did perceive it to have a positive influence on job sustainability.

Furthermore, the business participants' responses were in agreement with Cahuc and Postel-Vinay's (2002:63) contention that an important benefit of employment protection is that it limited job destruction, whereas temporary jobs intensified it. The findings that emerged from the qualitative study aligned with Bronstein's (2009:70) assertion that although employment protection legislation protected existing jobs, it simultaneously made it more difficult for job seekers to enter the job market. Thus, the findings are in agreement with OECD's (2014:142) view that there is a risk that the LRA's provisions limiting the use of certain types of staffing contracts can negatively influence job creation and job sustainability.

Dismissals and probationary periods: The findings that emerged from the quantitative study indicate that there was strong agreement between business and TU survey respondents on the general requirements for fairness, being likely to influence job creation. However, the findings supported Botha (2015:33) and Kettledas' (2013:3) contentions that there is disagreement on employment protection improving job creation. The findings indicate that the business and TU respondents disagreed on the likelihood of the protection of workers in mergers, takeovers and transfers improving job creation. In addition, the findings from the quantitative study denote that although they agreed on fair dismissal requirements having an influence, they differed on how likely that influence would be on job creation. Moreover, the TU findings suggested a much stronger likelihood that the LRA's requirements for fair dismissals influence job creation. The findings that emerged from the quantitative study reveal that the business and TU survey respondents also disagreed on the likelihood of the right not to discriminate, the regulation of unfair labour practices and automatically unfair dismissals influencing job creation.

The responses of two of the TU participants were in agreement with Berg and Kucera's (2008:14) contention that the regulation of dismissals and probationary periods could have a positive influence on job sustainability. If a job was secured, then it was sustained. The findings supported Berg and Kucera's (2008:14)

contention that by making dismissal more difficult provides businesses with greater incentives to train their workers.

On the other hand, the responses of three of the business participants aligned with Noelke's (2011:1) and Bronstein's (2009:69) contentions that the regulation of dismissals and probation negatively influenced job creation. The perception was that government regulations were very tedious and expensive to comply with, and that it had become increasingly more difficult to dismiss workers for misconduct and poor work performance. In addition, the findings that emerged from the qualitative study suggest that smaller businesses were reluctant to go to the CCMA, as they perceived the commissioners to be biased in favour of the dismissed employees.

The findings that emerged from the qualitative study showed that the fair dismissal and probation requirements negatively influenced three of the business participants not to sustain jobs, as businesses had become more regulated. The reason they gave was that the amendments to the LRA had caused them to reduce their probationary period to 3 months. Another deterrent was that the LRA had made it difficult for employers to dismiss and retrench workers when there was a reduction in the demand for their goods or services (Bronstein 2009:69). Furthermore, they found the dismissal process to be time-consuming and placed them under unnecessary emotional stress. Their staff provoked them knowing it is not easy for their staff to be dismissed. Consequently in the long-term, the amendments have had a detrimental effect on the employer's future. The findings further indicate that the amendments negatively influenced not only job sustainability, but also job creation and employability, as these amendments were deterring or preventing employers from creating jobs. A few of the business participants revealed that they dismiss rather than appoint workers full-time, they will not renew contracts and they will only convert the odd post which becomes available to a permanent position. Consequently, the findings support Bronstein's (2009:69) contention that the protection of workers against unfair dismissal remains a highly sensitive and controversial issue.

Bargaining councils and collective agreements: The responses of seven business participants aligned with Olsen's (2010:302) statement that bargaining councils and collective agreements have a positive influence on job creation, especially when they formed part of a bargaining council and had their own business representatives on the employer associations and/or on the bargaining council. The findings support McCann et al.'s (2014:163) contention that bargaining councils ensure standardisation throughout the sectors and avoid unfairness and abuse of salaries. In addition, bargaining councils created a balance and ensured equal representation; levelled the playing fields; provided certainty and social security; assisted the parties with labour issues; ensured labour peace and prevented unscrupulous persons or businesses trading in the industry.

The responses of two business participants aligned with Shapiro and Irons' (2011:2) contention that bargaining councils and collective agreements had a positive influence on job sustainability, as it helped them with labour queries. Furthermore, the bargaining council agents were more disciplined and the bargaining councils took care of staff welfare. They also created certainty and industrial peace by having some kind of control system with what was happening with the labour market forces and ensured job sustainability.

The responses of six business participants align with Cohen and Moodley's (2012:323) and Feldmann's (2009:76) contentions that bargaining councils and collective agreements negatively influenced them not to create jobs. The findings further support Barker's (1999:30–39) claim that issues of bureaucracy, enforcement of compliance and the majoritarian principle negatively influenced them. Consequently, the findings of some business participants confirm Badenhorst-Weiss and Waugh's (2014:289) and Ayanda and Laraba's (2011:200) views that bargaining councils were perceived to be bureaucratic; ineffective; set wage increases too high and for fixed periods; they were an abuse of the collective bargaining process; wasted time extracting settlements from employers; limited business expansion; chased business away; and stifled job creation, especially among small businesses.

The responses from two of the business participants aligned with Almeida and Carneiro's (2009:64) contention that rigorous selective enforcement of regulations by bargaining council agents and the non-enforcement with non-compliant businesses counteracted against job sustainability and had negatively influenced them not to sustain jobs.

Thus, the overall findings indicate that bargaining councils and collective agreements influence job creation and job sustainability. However, the participants disagreed on the extent of the influence. They were equally divided on whether the influence is positive or negative. This finding is in agreement with Gwatidzo and Moyo's (2014:300) conclusion that there was no consensus on this issue.

Industrial action: The findings that emerged from the quantitative study indicate that there is strong agreement between the business and the TU survey respondents that industrial action was likely to influence job creation.

The finding from the qualitative study revealed that only one TU participant perceived industrial action to have a positive influence on job creation and job sustainability, as it was the only power that workers had to ensure fairness. Industrial action influenced businesses not to abuse their authority and to be circumspect on how and what jobs to create (Finnemore 2002:145; Mcleod 2007:609; Swanepoel et al. 2012:427). Strike action also protected workers and ensured that jobs are sustained (Baird 2007:47; Venter et al. 2010:23-24).

The responses of nine of the business participants were in agreement with Badenhorst-Weiss and Waugh's (2015:8) contention that strikes had a negative influence on job creation. The findings that emerged from the qualitative study indicate that strikes discouraged business growth; caused a loss of international investment; promoted international companies to move their businesses elsewhere and impacted on the industry as a whole. Strikes resulted in increased costs and loss of revenue as businesses had to employ scab labour. The research participants feared violence and intimidation, which led to the loss of life

and property. They were also concerned that the manner in which negotiations took place had changed.

Additionally, the responses of three of the business participants indicated that strikes had negatively influenced them not to sustain jobs for the same reasons. Furthermore, two TU participants' responses indicated that they were in agreement with the business participants' responses and they were aligned with Badenhorst-Weiss and Waugh's (2015:8) contention that the rise of militant trade unionism and the failure of collective bargaining deterred employers and the economy from creating and sustaining jobs. Thus, the overall findings were in alignment with the author's contention that industrial action negatively influences job creation and job sustainability.

Dispute resolution: The response of one TU participant aligned with Cohen's (2014:18) contention that dispute resolution had a positive influence on job creation, causing businesses to create qualitative jobs and making businesses aware of the repercussions if they abuse the process.

Conversely, the responses of seven business participants indicate that dispute resolution negatively influenced them not to create jobs and they perceived the CCMA commissioners to be biased and behave unethically in favour of the dismissed employees. Furthermore, some of the business participants felt that the CCMA commissioners by focusing on procedural fairness, they wasted valuable time. They complained that the CCMA commissioners bullied them into quick settlements and nuisance payments. It had resulted in one of the business participants halving his employees, automating and outsourcing his business.

The findings that emerged from the qualitative study further indicate that TU participants were divided on dispute resolution's influence on job sustainability. The responses from two TU participants suggested that dispute resolution by the CCMA had a positive influence on job sustainability as the CCMA is expedient and ensured fairness. The findings were in agreement with Badenhorst-Weiss and Waugh's (2014:289) and Cohen's (2014:27)

contentions that businesses perceived bargaining councils to be ineffective. One TU participant felt that the CCMA is overburdened, which negatively influenced job sustainability.

The findings that emerged from the qualitative study indicate that overall, dispute resolution does influence job creation and job sustainability. Nevertheless, the participants were divided between dispute resolution not having an influence and it having a negative influence.

Enforcement of compliance with collective agreements by bargaining council agents: The findings that emerged from the quantitative study indicate that there was significant disagreement between businesses and trade unions on the influence of the monitoring and enforcement of collective agreements by bargaining council agents on job creation. The responses of some of the business respondents suggest that enforcement of compliance with collective agreements by bargaining council agents was likely to influence them, whereas the responses of the majority of trade union respondents revealed that it was likely to influence job creation. Consequently, the findings support McCann et al.'s (2014:163) contention that regulatory costs are likely to influence job creation.

The responses from four of the business participants are in agreement with Cooke's (2011:101), Almeida and Carneiro's (2009: 64) and Boeri and Jimeno's (2005:2057) contentions that the regulatory costs of monitoring and enforcing compliance influenced job creation. The findings show that the rigid enforcement of collective agreements; the selective targeting of certain factories in certain areas; the insistence that employers be penalised for late payments by bargaining council agents and their arbitrarily wanting their own rules negatively influenced four business participants not to create jobs.

Enforcement of compliance by labour inspectors: The findings that emerged from the quantitative study indicate that there was disagreement among the business and trade union respondents with regard to the labour inspectors' monitoring and enforcement of compliance with the LRA as being less likely to influence job creation. Only some of the business respondents denoted that the

enforcement of compliance by labour inspectors was likely to influence them, whereas the majority of trade union respondents indicated that it was likely to influence job creation. Thus the findings confirm Du Toit et al.'s (2011:639) claim that the monitoring and enforcement of compliance influences job creation.

The findings that emerged from the qualitative study suggest that the monitoring and enforcement of compliance by labour inspectors have a positive influence. One of the business participants remarked that it ensures that jobs are created in accordance with the LRA's guidelines and regulations, and a worker is paid fairly, and if the labour inspectors were privatised, this would create an opportunity to create jobs.

The response one of the business participants aligned with Shapiro and Irons' (2011:2) contention that regulations influence job creation and should be enforced in a more positive light. The finding indicates that the negative perception of consciously and subconsciously threatening small businesses chases business away.

Thus, the findings signify that the majority of research participants were in agreement with Bennington and Wein's (2000:31) view that labour legislation had little or no influence on efficiency. Furthermore, they did not have major difficulty complying with the legislation. The findings demonstrate that overall labour legislation, in regulating the employment relationship and the enforcement of compliance by labour inspectors, influenced job creation to some extent. Furthermore, in some instances, the influence was to a greater extent, while in other instances to a lesser extent. The findings indicated that bargaining councils, industrial action, dispute resolution and enforcement by bargaining council agents were the factors most likely to negatively influence job creation.

□ The *Employment Equity Act*, No. 55 of 1998

The findings that emerged from the quantitative study indicate that there was significant agreement between the business and TU survey respondents that various aspects of the EEA influenced

job creation and job sustainability. However, the survey respondents differed considerably on the influence of the prohibition of discrimination, removal of unfair discrimination and unfair labour practices on job sustainability. The findings of the business respondents revealed that the prohibition of discrimination, removal of unfair discrimination and unfair labour practices were less likely to influence them to sustain jobs. They also indicated that the promotion of affirmative action and removal of discrimination as less likely to influence job sustainability. However, the findings of the majority of the TU participants signified a greater likelihood of the prohibition of discrimination, right to equal income and regulation of unfair labour practices influencing job sustainability.

The findings that emerged from the qualitative study indicated that the provisions on employment equity did not influence the majority (11 out of 16) of business participants to create jobs. It was pertinent that the workforce of seven of these business participants was primarily from disadvantaged groups. Only one business participant was not influenced at all to sustain jobs.

The discussion below on aspects of the EEA will refer to the themes relating to fairness, equity and job security. The discussion of the findings relating thereto is further divided into four sub-themes, namely recruitment practices, affirmative action, equal pay for equal value and income differentials.

Recruitment practices: The response from one of the business participants aligns with Du Toit et al.'s (2011:656), Ramlall's (2012:273) and Du Plessis and Fouché's (2019:103) contentions that the EEA's regulation of recruitment practices had a positive influence on job creation as it caused businesses to employ more disadvantaged people; provided guidelines on how to create jobs; ensured equal treatment; ensured that there was no discrimination and encouraged skills retention.

The responses of two of the business participants were in agreement with Hofmeyer's (2013:26) contention that the EEA's regulation of recruitment practices had negatively influenced them

not to create jobs. The regulation affected businesses owned by white people who were unable to meet the necessary equity targets timeously. The findings confirmed Du Toit et al.'s (2011:36); Solidarity TU's, cited in the Solidarity Research Institute Report (2012:4) and Giles' (2011) contentions that the EEA heavily regulated the employment relationship, increased costs and limited the employer's right to choose. In addition, these two business participants had an issue with productivity and claimed that those businesses that were unable to appoint the right person would close.

Affirmative action: The findings that emerged from the qualitative study indicate that compliance with affirmative action and equity plans negatively influenced seven business participants not to create jobs. The findings are in agreement with Hofmeyer's (2013:26) contention that the reasons include problems with local demographics and the available skilled labour pool which restricts businesses in meeting their equity targets. In addition, the findings confirm that poor education and a lack of/or inadequate skills have caused businesses to duplicate positions and roles. The findings verified that training could overcome some of the difficulties that businesses experienced with the available skills pool through their in-house training programmes (Cole & Van der Walt 2014:525), but they felt that it was not near enough. The findings indicate that one TU participant agreed with the business participants that if the employer was unable to employ the right person, a business did not reach its objectives.

The findings that emerged from the quantitative study on the promotion of equality revealed that both businesses and trade unions agreed that the EEA provisions on the promotion of affirmative action were more likely to influence them in sustaining jobs. They were in agreement with Dapper and Garbers' contention, cited in Le Roux and Rycroft (2013:253), that affirmative action had socio-economic benefits for the disadvantaged by introducing appropriate training and human resource development.

However, the responses from of the business participants were in agreement with the Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), contention that

compliance with affirmative action and equity plans negatively influenced businesses not to sustain jobs, as the employment equity plan required the business to have targets which it cannot always meet. The findings which emerged from the qualitative study indicate that one of the problems that some of the business participants were experiencing was with the business being representative of minority groups, such as mixed-race persons, who were difficult to find with the requisite skills especially in small towns such as Ladysmith. The response of one TU participant aligned with Du Toit et al. (2011:36) and Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), views that compliance with affirmative action made it difficult for business to fill positions with the correct people, which had the opposite effect on job sustainability.

Equal pay for equal value on income and benefits: The findings that emerged from the quantitative study indicate that both business and TU respondents agreed that the EEA's provisions on the promotion of equal income distribution were more likely to influence job sustainability.

Nevertheless, two TU participants agreed that the EEA's provisions on the promotion of equal income distribution had a positive influence on job creation. Furthermore, the two TU participants' responses aligned with Du Plessis and Fouché's (2019:102) contention that the EEA's provisions on the promotion of equal income distribution ensured equality, fairness and the payment of a living wage. One of the TU participants who perceived the provisions of the Act to positively influence job sustainability was in agreement with Cohen's (2014:27) view that there should not be any discrepancy in income and benefits and those workers should be paid the same.

The findings that emerged from the qualitative study indicate that the EEA's provisions on the promotion of equal income distribution negatively influenced three of the business participants not to create jobs. The three business participants

agree with Hofmeyer (2013:26) that the provisions infringed on their discretion to pay certain employees more for making a special effort. It also resulted in increased labour costs to pay everyone the same.

Enforcement of compliance with the EEA by labour inspectors: The findings that emerged from the quantitative study aligned with Boeri and Jimeno's (2005:2057) contention that labour protection legislation was not enforced uniformly. The findings that emerged from the quantitative study indicate that the survey respondents differed in their opinions on whether the monitoring and enforcement of compliance with the EEA by labour inspectors influenced job creation. Furthermore, the findings indicate that it was unlikely to influence the majority of the business respondents to sustain jobs. On the other hand, the findings of the majority of the TU respondents were in agreement with Almeida and Carneiro's (2009:64) contention that there was a stronger likelihood that it was likely to influence businesses to sustain jobs.

The responses from two of the business participants were in agreement with Du Toit et al. (2015:36) and Bronstein's (2009:123) contentions that enforcement of compliance by labour inspectors with the EEA negatively influenced businesses not to create jobs, especially if the enforcement was harsh and may cause businesses to close.

Consequently, the findings that emerged from the qualitative study were that the majority of participants indicated that overall the labour legislation, in regulating equity and fairness, influenced job creation – some to a greater extent than others – and that affirmative action was the most likely to negatively influence job creation.

□ The Skills Development Act, No. 97 of 1998

The findings that emerged from the quantitative study indicate that there was significant agreement among the business and TU

respondents that skills development influenced both job creation and job sustainability. The findings indicate that on training and education in general, there was overwhelming agreement between both business and TU respondents and aligned with McGrath and Akoojee's (2007:427) contention that education and training improved a business's competitiveness and increased workers' productivity. The findings also denote that on the SDA's training and education provisions, there was agreement between businesses and TUs. The findings signify that an overwhelming majority of TU and the majority of business respondents agreed that education and training programmes which ensured that workers were equipped with the necessary skills, retraining through skills programmes and learnership agreements, were all likely to influence job sustainability. However, the findings that emerged from the quantitative study reveal that the TU responses showed a stronger likelihood that education, training and retraining were likely to influence businesses to sustain jobs. The findings that emerged from the quantitative study demonstrate that there was agreement between businesses and trade unions' responses on the LRA's training and education provisions. The findings also show that an overwhelming majority of the trade union and a majority of the business respondents agreed with each other and were aligned with Heitmann's (2009:2) contention that education and training programmes ensuring workers were equipped with the necessary skills, retraining through skills programmes and learnership agreements were all likely to influence job sustainability.

The findings that emerged from the qualitative study aligned with Cole and Van der Walt's (2014:525) contention that the SDA has a direct positive link to job creation and job sustainability. The responses of two of the business participants were in agreement with Du Plessis and Fouché's (2019:201) and Rasool and Botha's (2011:2) contentions that the SDA positively influenced businesses to create jobs by incentivising businesses through training grants to use the workplace as a training ground to train people, which empowered workers and made workers more marketable and self-sustainable.

The responses from seven business participants aligned with Wentzel and De Hart's (2015:106) view that the SDA positively influences job sustainability through the training grants offered by the SETAs. The seven business participants confirmed that they had expanded their businesses through skills development and that they engaged in ongoing training to upskill and develop their workers. The findings that emerged from the qualitative study aligned with Cole and Van der Walt's (2014:525) contention that the SDA had encouraged skills development and training, which had empowered people.

Conversely, the responses of four of the business participants were in agreement with Venter et al. (2010:132) and Greene et al.'s (2007:85) contentions that the SDA and SDL's regulation of skills development had negatively influenced them not to create jobs because of the cost implications and administrative burdens placed on them to comply. Although businesses benefited from training people, the findings that emerged from the qualitative study indicate that the SETAs were bureaucratic, dysfunctional, wasted money and inefficiently spent training monies. In addition, the smaller SETAs were not delivering on training. Moreover, they found the skills development administration to be laborious and onerous. Furthermore, because of excessive bureaucratic red tape, some business participants struggled to be accredited; to obtain approval for their training courses and to access funding for training, which had caused them to stop applying. The business participants were also limited by the amount that they could recover on what they had spent on training, which discouraged them from training and creating jobs. Consequently, many of the business participants perceived the SDL simply to be another form of tax. The SDA also heavily regulated the employment relationship and restricted the employer's freedom of choice through the skills training plan, whereby businesses were forced to take on additional people if they accepted subsidies.

The findings that emerged from the qualitative study also confirmed that the SDA had negatively influenced five business participants not to sustain jobs for the same reasons – that the

bureaucracy surrounding the implementation of skills development has made it cumbersome for employers to train and get their money back. Moreover, they perceived the SETAs to be too bureaucratic and there was too much administration, which they found to be burdensome, instead of enabling and supportive. One TU participant agreed with the five business participants. He felt that the skills development levies were fine but that the SETAs needed to spend the monies more efficiently and that there are billions of rands in SETA allocations and this money was wasted. He remarked that the SETAs were not working and that they should be abandoned.

Consequently, the finding that emerged from the qualitative study was that the SDA had the most positive influence on job sustainability as it helped to create and sustain jobs through training and development. This finding is aligned with Cole and Van der Walt's (2014:525) contention that the SDA had a direct positive link to job sustainability through the fulfilment of its aims. Thus, the overall findings indicate that it is not the SDA itself which is the problem, but rather the implementation thereof.

The promotion and facilitation of productive employment

Various pieces of labour legislation, namely the ESA, the ETIA, the UIA, the EEA and the B-BBEEA have been passed to ensure the promotion and facilitation of productive employment.

The findings that emerged from the qualitative study indicate that the promotion of skills development training primarily through the SETA grants, the ETIA youth tax incentives, the B-BBEEA and the UIA had positively influenced three of the business participants to create jobs. The findings also showed that all seven TU participants agreed with the business participants that the SDA, the ETIA, the EEA, the B-BBEEA and the UIA through the provision of financial incentives and the promotion of skills development and training positively influenced job creation. The discussion of the findings below will cover the

influence of each of the aforesaid Acts' influence on job creation and job sustainability separately.

□ ***The Broad-Based Black Economic Empowerment Act, No. 53 of 2003***

The responses of five of the business participants aligned with Venter et al.'s (2010:239) contention that businesses perceive the B-BBEEA to be bureaucratic, which has negatively influenced them not to create jobs. The findings that emerged from the qualitative study reveal that businesses perceive the manner in which the legislature had structured the B-BBEEA scoring system to be destroying small business, especially among predominantly businesses owned by white people. The finding also aligned with Duffett, Van der Heever and Bell's (2009:91) contention that smaller businesses were struggling to find suitable equity partners.

The findings that emerged from the qualitative study also indicate that B-BBEEA discouraged business expansion and growth, as the legislative amendments to the B-BBEE scorecard criteria threatened business participants whose businesses do not meet the new criteria and who were reliant on government contracts and tenders. In addition, the responses from the business participants were in agreement with Tucker (2003:1) that their business sustainability was threatened where skills needs or experience was required. Nevertheless, the findings that emerged from the qualitative study show that a few of the business participants had overcome some of the B-BBEEA scorecard difficulties through skills training. The findings also indicate that two TU participants agreed with the business participants that it limited the employer's freedom to select and employ and that it also does not help the people who need it. The finding is that the amendments are broad but not ideal, and that more work needs to be done to improve them.

The findings that emerged from the qualitative study aligned with Duffett et al.'s (2009:91) identification of some of the challenges and criticisms pertaining to the implementation of

the B-BBEEA in relation to the high costs associated with compliance with the B-BBEEA, which was believed to be detrimental to foreign investment; B-BBEE partners often added little value to B-BBEE deals; insincere government affiliations; fronting; discrimination and narrow-based transformation. In addition, the findings were in agreement with the ACA survey, cited in Duffet et al. (2009:91) which identified the lack of skills of black executives, the low number of black women at management level and the brain drain of senior employees. The findings also aligned with Acemoglu, Gelb and Robinson's (2007:23) contention that there is ambivalence as to whether the B-BBEEA's effects are positive or negative on investment, productivity and growth.

□ The *Employment Tax Incentive Act*, No. 26 of 2013

Overall, the findings that emerged from the qualitative study indicate that the ETIA had (to some extent) positively influenced some business participants to create jobs, especially among the youth, as well as through learnerships and apprenticeships. Conversely, the responses of four other business participants indicated businesses' reluctance to employ the youth. Although they were initially incentivised to employ them, they have subsequently stopped. The four business participants were disillusioned and discouraged with employing the youth, whom they found to be more of a burden than a benefit. The finding emerged from the qualitative study is that the ETIA is also perceived by businesses to be a punitive incentive to create jobs as the tax financial incentives do not adequately cover the cost of employing and training the youth. Conversely, two TU participants were in agreement with Cray et al. (2011:5) that the ETIA's job creation strategy benefited job creation as it enabled management to employ young workers. The findings that emerged from the qualitative study also indicate that the ETIA has a positive influence on job sustainability.

□ **The *Employment Services Act*, No. 4 of 2014**

The findings that emerged from the qualitative study indicate that an overwhelming majority of the research participants (both business and TU participants) failed to comment on the ESA. The response from one TU participant was in agreement with Morotoba's, cited in the Department of Labour (2014c:10); Arranz, Serrano and Hernanz's (2013:327); Hofmeyer's (2013:26) and Tzehainesh's (2010:21) contentions that the intention of the ESA is good. A possible reason is that the research participants might be unaware of the employment agencies.

Thus, once again, it is not the legislation itself which appears to be the problem, but rather the implementation thereof.

□ **The promotion and facilitation of work security**

The following discussion will cover the findings on aspects of legislation that promote and facilitate work security which positively influences job creation and job sustainability.

□ **The *Broad-Based Black Economic Empowerment Act*, No. 53 of 2003**

The findings that emerged from the qualitative study indicate that the B-BBEEA positively influenced four business participants to sustain jobs, which was also confirmed by one of the TU participants. The reasons given were that training improved the businesses' B-BBEE score and level. Thus, the findings are in agreement with Krüger's (2011:207) and Acemoglu et al.'s (2007:1) contentions that the B-BBEE scorecard made it attractive for business participants to invest in training, which led them to develop and train staff as well as the unemployed.

Hence, the findings that emerged from the qualitative study aligned with Duffett et al.'s (2009:94) contention that the benefits

of the B-BBEEA were that it improved the lives of previously disadvantaged individuals; that a substantial black middle-class people had emerged as a result thereof and Kloppers' (2014:59) claim that the B-BBEEA facilitated the utilisation of the scarce and unique skills of the previously marginalised black majority.

□ ***The Skills Development Act, No. 97 of 1998***

The findings that emerged from the qualitative study was that seven business participants and three TU participants responses aligned with Cole and Van der Walt's (2014:525); Le Roux and Rycroft's (2013:23); Du Plessis and Fouché's (2019:201); Rasool and Botha's (2011:2); Venter et al.'s (2010:142) and Heitmann's (2009:2) contentions that the SDA and the B-BBEEA positively influenced job sustainability through businesses expanding by training workers and by improving their skills.

□ ***Occupational Health and Safety Act, No. 85 of 1993***

The findings that emerged from the quantitative study reveal that there was agreement among the business and TU respondents that the OHASA influenced job sustainability. The findings also indicate that businesses and TUs were in agreement with the Department of Labour's Annual Report (2014:5), Le Roux and Rycroft's (2013:vii) and Venter et al.'s. (2010:134) views that the creation of a safe working environment was likely to influence job sustainability. Furthermore, the findings that emerged from the quantitative study reveal that businesses and TUs agree with Rogers' (2014:1544), Du Toit et al.'s. (2011:597) and Berg and Kucera's (2008:12) contentions that the monitoring of health and safety, by health and safety representatives, influenced job sustainability.

However, the disagreement between the business and trade union respondents on the monitoring and enforcement of health and safety by the labour inspectors' influencing job sustainability

aligned with Almeida and Carneiro's (2009:64) claim that there is disagreement in the literature on this point. The findings that emerged from the quantitative study reveal that the majority of the business respondents are in agreement with McCann et al. (2014:163) and Boeri and Jimeno (2005:2057) that monitoring and enforcing of health and safety by the labour inspectors were unlikely to influence them to sustain jobs.

It is interesting to note that only one trade union participant remarked on the OHSA having a positive influence on job creation. She stated that it was important to comply with OHASA and that compliance with OHASA was beneficial to both the employer and the employee as it kept businesses within legislative boundaries and ensured that they focused on the quality of the jobs and not just on quantity.

Thus, the findings that emerged from the empirical study align with the Department of Labour's Annual Report (2014:5), Le Roux and Rycroft's (2013:vii) and Venter et al.'s (2010:134) contentions that it is important to ensure a safe working environment. In addition, the findings that emerged from the qualitative study are in agreement with Rogers' (2014:1544), Du Toit et al.'s (2011:597) and Berg and Kucera's (2008:12) views that the OHASA generally covers and ensures health and safety in the workplace.

□ ***The Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993***

The findings that emerged from the quantitative study show that there is agreement among business and TU respondents that the COIDA influences job sustainability. The findings that emerged from the quantitative study also indicate that businesses and TUs are in agreement with Morotoba's, cited in the Department of Labour (2014c:10), contention that both the compensation commissioner's holding of inquiries into accidents and the enforcement of compliance are likely to influence job sustainability. However, the business and TU respondents disagreed on how likely that influence

would be on job sustainability. The majority of business respondents indicated that it is unlikely to influence them to sustain jobs. Whereas the majority of the trade union respondents indicated that the compensation commissioner's holding of inquiries into accidents and the enforcement of compliance were likely to influence job sustainability. The findings that emerged from the qualitative study are in agreement with Escudero et al. (2013:110) and Venter et al.'s (2010:253) averments that the COIDA provides for the compensation for workers who have been injured on duty and/or contracted a listed disease in the workplace.

□ The *Unemployment Insurance Act, No. 63 of 2001*

The findings that emerged from the quantitative study indicate agreement among the business and TU respondents. The businesses and TUs are in agreement with Le Roux and Rycroft (2013:vii), Venter et al.'s (2010:134) and Heitmann's (2009:2) contentions that the UIA's benefits influence job sustainability. However, the findings that emerged from the quantitative study indicate that the business and TU survey respondents disagree on the influence of illness and adoption benefits on job sustainability.

The findings that emerged from the qualitative study also show that the majority of TU participants (four out of six) agree that the UIA positively influences job sustainability. The majority of the TU participants are in agreement with the Department of Labour's Annual Report (2014:4) and Smit and Mpedi's (2010:172) contentions that workers need a social security net which provides them with important financial social security, training and retrenchment schemes because these provide the unemployed with important assistance to help them find jobs.

Consequently, the findings that emerged from the qualitative study align with Morotoba's, cited in the Department of Labour (2014c:10), claim that the UIA helps to promote and facilitate productive employment as well as work security. The findings

that emerged from the qualitative study is in agreement with the Department of Labour's Annual Report (2014:4) statement that it primarily helps to negate the effects of unemployment, provides the unemployed with a temporary income and assists unemployed workers to improve or acquire new skills to enable them to find alternate employment.

Therefore, the findings that emerged from the empirical study indicate that the B-BBEEA, the SDA and the UIA, through training and development, have positively influenced job creation and job sustainability. The TU participants' responses indicate that the OHASA and the COIDA, by ensuring a safe working environment and providing for compensation in the event of an accident or contracting a disease, positively influence job sustainability.

■ Research question four

□ Which aspects of labour legislation should be amended to enable job creation and job sustainability to occur in South Africa?

The findings that emerged from the qualitative study indicate that the majority of business participants (10 out of 16) perceived the BCEA, the LRA and the SDL to negatively influence job creation. The reasons were that they found labour legislation to be difficult, inflexible and a minefield to navigate. The 10 business participants were in agreement with Godfrey's (2014:2587) contention that the BCEA and the LRA were perceived by organised business as being mostly to blame for restricting job creation. The findings that emerged from the qualitative study indicate that two business participants considered knowledge of the legislation to be essential. Furthermore, they found its administration and implementation to be time-consuming and costly. The findings that emerged from the qualitative study also were in agreement with Darrol's (2013:14) concerns that the LRA and the BCEA act as a dis-incentive for investment. Furthermore, the LRA and the BCEA were too onerous for small businesses, which could lead to the widespread evasion of labour legislation.

The responses of two other business participants were in agreement with Venter et al.'s (2010:239) and Duffett et al.'s (2009:91) contentions that the B-BBEEA and the EEA could be a deterrent to job creation, especially for businesses that did not qualify, such as entities owned by white people. In addition, the responses from three of the TU participants were in agreement with the two business participants and were also aligned with Hofmeyer's (2013:26) averment that certain aspects of the B-BBEEA, the EEA and the SDA negatively influenced job creation. The business and TU participants conceded that employment equity had a positive influence on addressing inequality. However, they felt that affirmative action is not working and they were in agreement with Naidoo's (2013:8) contention that affirmative action should be balanced. The findings that emerged from the qualitative study aligned with Venter et al.'s (2010:133) contention that the administrative burden of employing and completing reports on affirmative action and skills development deterred smaller employers. The findings that emerged from the qualitative study further indicated that the current legislation had negatively influenced job creation in comparison with other countries, such as China.

The discussion below identifies the various aspects of implementation relating to bureaucracy, administrative burden and costs of compliance, all of which negatively influenced job creation and job sustainability.

❑ Flaws identified in the implementation of labour legislation

The findings that emerged from the qualitative study relating to compliance and its enforcement are in agreement with Almeida and Carneiro's (2009:28–29) averment that labour regulation causes labour costs to be higher because of compliance. Nevertheless, the findings emerged from the empirical study aligned with Weber and Gerard's (2014:32) claim that organisational culture and ethical stance influence businesses'

adherence and proactive commitment to compliance. Consequently, various pieces of labour legislation required regulatory compliance, some to a greater degree and others to a lesser degree, which in turn influenced job creation and job sustainability.

The findings that emerged from the qualitative study relating to the cost of compliance are in agreement with Hofmeyer's (2013:26) view that increased fines for employment equity shortcomings and the serious limitations on employers' abilities to change working practices adversely influenced job creation and job sustainability.

Furthermore, the findings emerged from the qualitative study relating to administrative compliance indicated that compliance with the legislative amendments to the B-BBEEA scorecard detrimentally influenced job creation and job sustainability. The findings emerged from the empirical study indicated that adherence to and enforcement of compliance with adverse consequences negatively contributed to and presented challenges for job creation and job sustainability, which ultimately hindered social justice.

The discussion below relates to the various aspects of compliance with labour legislation negatively influencing job creation and job sustainability. The findings relating thereto are divided into three sub-themes, namely administrative compliance – bureaucracy and the administrative burden of compliance; the cost of compliance and the financial impact of increased compliance; and the enforcement of compliance by bargaining council agents in particular.

□ Administrative burden of compliance – bureaucracy, legislative prescription and over-regulation

The findings that emerged from the qualitative study indicate that seven business participants were negatively influenced by the bureaucratic, over-regulated, inflexible and too onerous

labour environment to create jobs. In addition, the findings from the qualitative study indicate that new start-up businesses and businesses in general were finding it difficult to comply with labour legislation administratively. Likewise, the findings that emerged from the qualitative study indicated that businesses were finding it time-consuming to understand everything that the legislature expected from them and to deal with all of the paperwork, instead of focusing on expanding their businesses.

Furthermore, the findings that emerged from the qualitative study confirmed that legislative prescription was hampering flexibility, which was impeding the growth of small businesses. The responses from three of the TU participants confirmed that businesses were operating in a hostile, over-regulated environment, in which it was difficult to manage staff. Furthermore, administrative compliance with labour legislation posed a challenge for businesses, which was negatively influencing and discouraging businesses, especially small businesses, from creating jobs.

The responses from two of the business participants indicated that they perceived SETAs to be bureaucratic, dysfunctional and not delivering on training. In addition, the difficulties businesses experienced in accessing SETA funding was having a negative influence on them creating jobs. Furthermore, the responses of the majority (four) of trade union participants were in agreement with Marrock's (2012:6) contention that the SETAs are dysfunctional; that they waste money and that high training costs negatively influence job creation.

Although the participants' opinions varied on the influence of various aspects of labour legislation on job sustainability, they were in agreement with Wilhelm and Wilhelm (2012:63) and Almeida and Carneiro (2009:28-29) that their clients and their business needs, and not labour legislation, were the primary drivers for the sustainability of jobs, as well as the types of jobs sustained.

The findings that emerged from the qualitative study indicate that the administrative burden of compliance had negatively influenced four of the business participants not to create jobs. The reason was that there was too much administration involved

in complying with legislation. The business participants also found the completion and submission of annual returns and the BCEA's documentation to be onerous. The findings that emerged from the qualitative study also indicated that employing, completing reports on affirmative action and skills development is a deterrent to smaller employers. One business participant was in agreement with Hofmeyer's (2013:24) and the Solidarity Trade Union's, cited in the Solidarity Research Institute Report (2012:4), contentions that small businesses should not be destroyed with the completion of all the documentation.

The cost of compliance and the financial impact of increased labour costs

The findings that emerged from the qualitative study indicated that the cost of compliance negatively influenced two business participants to create jobs. The reason given was that it was very onerous, costly and time-consuming to comply with legislation. In addition, it added to the cost of doing business. This burden made it difficult for small businesses to flourish. Furthermore, the business participants had to employ additional people to deal with the legislative administration. One of the TU participants was in agreement with the two business participants that dismissals were time-consuming and expensive.

Consequently, the findings that emerged from the qualitative study were in agreement with Duffett et al.'s (2009:94) argument that compliance would depend on the penalty. The findings that emerged from the qualitative study further aligned with McCann et al.'s (2014:163) contention that businesses will try to avoid or minimise compliance costs through non-compliance. The findings that emerged from the qualitative study were also in agreement with the authors' assertion that most employers prefer to comply with the law. Furthermore, the findings that emerged from the qualitative study aligned with Duffett et al.'s (2009:94) contention that costs of compliance vary across different types of labour regulation, for example dismissal, discrimination and safety. Moreover, the probability of detection, violation and

enforcement varies. The findings that emerged from the qualitative study likewise confirmed that all these aspects of compliance would result in increased costs to the employer, which might contribute to or present challenges for job creation and job sustainability, ultimately either promoting or hindering social justice.

The findings that emerged from the qualitative study indicated that the financial impact of increased labour costs influenced seven of the business participants negatively to create jobs. The reasons they advanced were the extra payment for work on Sundays; night work; ad hoc public holidays; additional benefits; skills development levies; unrealistic minimum wage increases and nuisance pay settlements added to labour costs which they were unable to recover from their clients. The findings that emerged from the qualitative study also confirmed that the proposed national minimum wage negatively influenced two of them to create jobs. Results that emerged from the qualitative study also indicated that five TU participants were in agreement with some of the business participants' contention that the regulation of dismissals was time-consuming and expensive and that additional benefits increased labour costs. Moreover, the findings that emerged from the qualitative study confirmed that payments made in terms of the EEA, the UIA and the SDLA are perceived by some business participants to be a secondary form of tax. The findings that emerged from the qualitative study aligned with Venter et al.'s (2010:133), Almeida and Carneiro's (2009:28–29) and Arnold and Hartman's (2005:207–208) contentions that forcing businesses to comply and to take on additional people negatively influenced job creation.

The results that emerged from the qualitative study also were in agreement with Solidarity Trade Union's (2012:4) assertion that analysing and cross-referencing the different legal provisions; looking up applicable case law guidelines and interpretations; and reducing it all to a workable tool to use in relation to 'equal pay' issues would pose an administrative problem and increase costs for employers to implement. These in turn could have an adverse influence on job creation and job sustainability.

The findings that emerged from the qualitative study aligned with Almeida and Carneiro's (2009:28-29) claim that efficiency and firm size were sacrificed in the process, as well as more informal labour being employed to evade compliance with the law. The findings that emerged from the qualitative study were in agreement with Venter et al.'s (2010:133) averment that an employer burdened with substantive costs, as well as with direct costs and procedural costs, will be less inclined to employ more workers on a permanent basis.

☐ Enforcement of compliance, especially by bargaining council agents

The findings that emerged from the qualitative study indicated that the enforcement of compliance by bargaining council agents negatively influenced three business participants not to create jobs. The findings that emerged from the qualitative study were in agreement with Badenhorst-Weiss and Waugh's (2015:8), Ayanda and Laraba's (2011:200) and Almeida and Carneiro's (2009:28-29) views that bargaining council agents' and TUs' more active participation in regulating and enforcing compliance affected small businesses more than big business. The findings that emerged from the qualitative study aligned with Barker's (1999:30-39) contention that the selective enforcement of compliance by bargaining council agents and TUs affected small businesses more than big businesses.

Results from the qualitative study also agreed with Almeida and Carneiro's (2009:28-29) view that stricter enforcement of labour regulation constrained firm size, output, productivity and led to higher unemployment. The findings that emerged from the qualitative study also aligned with Ayanda and Laraba's (2011:200) contention that the problem of dealing with government regulations and tax authorities fell more heavily onto smaller businesses through higher compliance costs, for example the fixed costs of complying with import/export and tax regulations, labour market regulations, and licensing and price control.

Consequently, the findings that emerged from the qualitative study indicate that the majority of business participants, 10 out of 16, perceived that overall labour legislation did not influence them to sustain jobs as they complied with the legislation. The reasons provided were that the spirit of the legislation was good as it helped to protect workers and to sustain jobs. Nevertheless, all labour legislation cannot be generalised as having either a positive or a negative influence. The findings that emerged from the qualitative study indicate that some of the business and TU participants perceived certain labour legislation such as the SDA, the ETIA and the B-BBEEA to positively influence job sustainability; while others perceived the LRA and the B-BBEEA in terms of dismissals, the administrative burdens and cost of compliance negatively influence job sustainability. In addition, the findings that emerged from the qualitative study indicated that the business participants perceived that the proposed national minimum wage would be set too high, which would negatively influence them not to sustain jobs.

Thus, the findings that emerged from the qualitative study were in agreement with Arnold and Hartman's (2005:207-208) contention that the primary reason for a call for deregulation was to reduce labour and compliance costs to improve job creation and job sustainability. Furthermore, the findings that emerged from the qualitative study aligned with Almeida and Carneiro's (2009:28-29) recommendations that enforcement is relaxed, especially by bargaining councils, as well as for the promotion of more flexible labour laws to stimulate growth. Likewise, the findings that emerged from the qualitative study were in agreement with the author's claim that in most developing countries, strict labour market regulations implied high costs of employing workers and low labour flexibility.

Consequently, the findings that emerged from the qualitative study aligned with Strauss and Du Toit's (2010:308) averment that in South Africa too much emphasis had been placed on various issues such as numbers, quotas and B-BBEE. The findings that emerged from the qualitative study were in agreement with the authors' views that the issue of skills urgently needed to be

addressed to make South Africa more globally competitive. Moreover, the findings that emerged from the qualitative study aligned with Kloppers' (2014:67) contention that a skilled workforce was a central element of sustainable economic and social development and was essential to achieving global economic competitiveness.

Thus, the findings that emerged from the qualitative study confirmed that it was not the legislation itself which appeared to be the problem, but rather the implementation thereof. The problem appears to be with the proliferation of legislation and the bureaucracy created by the SETAs surrounding administrative compliance, cost of compliance, the enforcement of compliance and the perceived wastage of money. The implementation of the SDA has negatively influenced five businesses to train and sustain jobs. The findings that emerged from the qualitative study indicated that only one of the business participants was uninfluenced by the SDA and the ETIA to sustain jobs. Conversely, the findings that emerged from the qualitative study indicated that the TU participants perceived the SDA and the SETAs to have a positive influence on job sustainability as a whole, although they conceded that the bureaucracy surrounding its implementation was problematic. They confirmed that the SETAs were run inefficiently and that the levies could be better utilised. Nevertheless, the findings that emerged from the qualitative study indicated that a far more pressing need was for government to improve primary, secondary and tertiary education.

■ Research question seven

□ What factors other than labour legislation influence job creation and job sustainability in South Africa?

The findings from research question seven indicate that there is agreement among the business and TU participants that there are a number of macro and micro factors, other than labour legislation, which appear to have had a far greater influence on

businesses' decisions to create and to sustain jobs, namely the economy; the political and social environment; what is happening in South Africa and business viability.

□ Factors influencing job creation and job sustainability

The findings that emerged from the qualitative study indicate that economic factors, political factors, internal factors, skills shortage and skills mismatch, as well as labour costs influence job creation and job sustainability. This study's findings confirm Miller's (2012:20) contention that job creation is closely linked to economic, fiscal and monetary policies. This study's findings indicate that the poor economic climate, issues of corruption and political uncertainty, foreign exchange fluctuations, inflation, poor infrastructure, international competition, shortage of skilled labour, industrial action and a restrictive business environment have negatively influenced job creation and job sustainability in South Africa. This study's findings confirm Le Roux and Rycroft's (2013:35) averment that there are a number of internal factors, other than labour legislation, affecting job creation and job sustainability in South Africa, in particular the oversupply of low-skilled workers, the shortage of critical skills and the lack of infrastructure which have contributed to the job crisis. This study's findings agree with Nienaber's (2007:82) contention that the decisions that both government and business make influence businesses' future performance and prosperity, thereby affecting economic growth, job creation and job sustainability.

□ Negative factors influencing job creation and job sustainability

The findings that emerged from the qualitative study confirm that:

- Some businesses are finding it difficult to do business in South Africa because of the current economic climate and the

- restrictive business environment, which has influenced job creation and job sustainability. Inflexible, prescriptive legislation; poor education; political instability and uncertainty, government's failure to address corruption; the high unemployment rate; poverty and social inequality; and skills shortages in South Africa negatively influence job sustainability.
- Structural interference; high levels of job insecurity; high levels of inequality; the inadequacy of social security systems; the oversupply of low-skilled workers and the shortage of critical skills affect job sustainability.
 - The improvement of skills and qualifications are essential for economic growth, job creation and job sustainability.
 - Education, training and lifelong learning are essential for increased productivity, quality employment, income growth and development.

The findings that emerged from the qualitative study also confirm that a general shortage of a skilled workforce in South Africa is hampering economic growth. One of the primary labour factors influencing job creation is the lack of suitably qualified staff. The OECD (2017:11) identifies skills shortages and mismatches as the key bottlenecks to growth and inclusiveness. This is confirmed by the majority of the participants, who emphasise that the skills mismatch between education and the workplace is an important factor affecting job creation. They also remarked on the mismatch between higher education and training, and between tertiary education degree content and workplace needs, which are other important factors affecting job creation. Thus, they confirm Badenhorst-Weiss and Waugh's (2015:8) argument that the lack of sufficiently educated and skilled human resources poses a serious risk to job creation and job sustainability.

A few of the business participants were also highly critical of the current quality and standards of education in South Africa, which they maintain is of a very poor standard, especially with regard to poor literacy and numeracy skills which is affecting jobs. They therefore confirm Badenhorst-Weiss and Waugh's

(2015:8) contention that a skilled, educated and efficient workforce remains a large problem in South Africa. Their views also corroborate Venter et al.'s (2010:146) understanding that the issue of the skills shortage in South Africa is having a negative influence on South Africa's economic performance, which is being further compounded by the serious shortage of sound managerial expertise.

The findings that emerged from the qualitative study aligned with Le Roux and Rycroft's (2013:35) contention that the oversupply of low-skilled workers, the shortage of critical skills and the lack of infrastructure contribute to the job crisis in the country. They validate Le Roux's (2013:508) argument that the primary causes for the skills shortage appear to be a poor education system, low skill levels and the inability of the South African economy to create sufficient jobs. According to Miller (2012:20), job creation is closely linked to economic, fiscal and monetary policies. Consequently, to sustain jobs, people increasingly need better education, training, skills and qualifications to compete in today's labour market. Consequently, the challenge should not only be to manage labour costs but to simultaneously improve skills (Badenhorst-Weiss & Waugh 2015:7).

Furthermore, the findings that emerged from the qualitative study indicated that other external factors which negatively influence job sustainability, such as international competition by foreign businesses from overseas countries, as well as, from SADAC countries of the African Union; unfair local competition by non-compliant businesses within the same industry; small businesses competing with big businesses; and dependency of some businesses on the success of other businesses and on government contracts, which were not being paid timeously. These factors adversely affect businesses, which in turn negatively influences job sustainability.

The findings that emerged from the qualitative study suggested that the strength and the debilitating effect of TUs on the country and the economy negatively influenced some of the

businesses' ability to create jobs. Their perceptions and attitudes towards the strength of TUs and the effects of industrial action can also have an adverse effect on their decision to sustain jobs. They confirm Badenhorst-Weiss and Waugh's (2015:8) identification of labour relations, strikes and unrest in particular, as serious risk factors to all industries in South Africa.

Positive factors influencing job creation and job sustainability

The findings that emerged from the qualitative study revealed that infrastructure development; government implementation and involvement; investment and intervention in strategic projects; and expansion of public works positively influence and are necessary for job creation. State-owned enterprises are, and can be used to create jobs to alleviate poverty and unemployment. The Department of Labour's annual performance plan (2017:1) states that the youth represent about 3.5 million or 65.2% of the total unemployed persons in the country. The findings confirm that the lack of opportunities for work-seekers to gain workplace experience affects the youth's employability. Nevertheless, it appears from the findings of the qualitative study that levies, subsidies and youth tax incentives had encouraged some of the business participants to employ the youth and first-time work-seekers. However, it had also discouraged a few because of their unpredictability and volatility.

Research question eight

What are the strategies to increase job creation and/or improve job sustainability in South Africa?

The findings from research question eight indicate that there is agreement among the business and TU participants about the strategies businesses, government and TUs could implement to increase job creation and/to improve job sustainability in South Africa.

▣ **Business strategies to increase**

▣ **Job creation**

The following suggestions were advocated by the business participants to be implemented to increase job creation:

- focus on running a well-managed organisation in an orderly, disciplined and efficient manner
- identify opportunities and be more innovative in growth and expansion and set strategic objectives for skills development
- business persons need to constantly commit their businesses to prayer.

The trade union participants agreed and, on the whole, made similar suggestions.

▣ **Job sustainability**

Ten business participants indicated that business should implement the following to increase job sustainability:

- Businesspersons should be more confident and positive about South Africa and its economy and focus their energies on exploring, discovering and exploiting opportunities that exist, both in South Africa and on the African continent, and they should grow and prosper their businesses.
- Produce good business leaders and set strategic objectives.
- Business should form a partnership with government. Stakeholders should form a social partnership similar to the German model and work together for the greater good of the country.
- Businesses should be further incentivised to employ and train more people. Businesses should find alternatives to retrenchments.
- Businesses must ensure compliance with equity and affirmative action policies and implement proper work procedures to ensure that workers are treated fairly.

- There should also be greater assistance and cooperation by big business with small business. Big business should assist with and provide funding for education and training, pay for development and help small businesses to grow and succeed.
- All businesses should invest in people, give workers skills and provide capacity and facilities, as well as contribute to training overall, over and above their individual requirements. They should fund training and development, engage in and conduct their own training programmes, in-house training and workplace mentoring.
- All businesses should make correct, effective, efficient and ethical strategic decisions. They need to understand the markets; be ethical and moral; manage their internal and external environments; improve their operational performance; manage their finances, maximise revenues; reduce expenses and market their businesses. They should have a positive mindset; strategise; be adaptable to change; analyse and be efficient in their business processes; focus on efficiencies; implement the greater use of technology; and train and educate their workers.
- Businesses should ensure that they have a healthy and fit workforce, as well as support the use of electronics and technology.

□ **Government strategies to increase**

□ **Job creation**

The findings that emerged from the qualitative study indicated the following strategies suggested by the business participants for government to implement in order to increase job creation. Government should:

- stop corruption; create certainty and confidence in the South African economy; cut back on excessive spending; streamline bureaucracy; merge the SETAs and be more business-friendly
- communicate more between departments and there should be greater engagement with business

- consider policy decisions carefully and ask whether these will stimulate the economy and business
- assist and support SMMEs and create opportunities for all businesses to grow
- be more astute and spend more money on pre-tertiary education
- improve the skills support structure that feeds into business
- focus on providing quality education
- provide for a skilled labour base, extend the youth development programme and increase the skilled labour pool
- facilitate, fund and provide training for artisans and the acquisition of necessary skills
- give entrepreneurs access and opportunity
- reduce bureaucracy and the cost of compliance
- provide for a sunset clause on employment equity
- better implement B-BBEEA
- amend the B-BBEEA legislation to place fewer requirements on smaller business
- better control the unions.

The findings that emerged from the qualitative study indicated that trade union participants made similar suggestions to the business participants. On the whole, the trade union participants agreed with or shared similar suggestions. However, one trade union participant disagreed with the business participants about making any drastic changes to the labour legislation. He remarked that only amendments which are fair to both parties should be made.

Job sustainability

The majority of the business participants (11) suggested the following strategies that government can implement to increase job sustainability. Government should:

- the presidency should listen to what business has to say
- stop wasting money, cut back on excessive spending, eliminate corruption and utilise taxpayers' money more wisely to

sustain jobs. For example, spending more money on pre-tertiary education, improving language skills and channelling money to sustain jobs

- be an active participant in the economy. It should stimulate the economy, assist business to sustain jobs, stop privatisation and assist struggling companies to sustain jobs
- create employment mechanisms as it did in the 1940s and 1950s, start infrastructure development programmes and get internship programmes. There should be less regulation
- stop cronyism and limit the strength of the trade unions
- appoint business-orientated people with the same level of qualifications in these positions as would be required in the private sector. Government workers need to have the necessary skills, be proficient and productive
- broaden training and education to include non-designated groups
- step in and help small business; empower workers with the necessary skills to make them more efficient and productive; provide more government-sponsored internship programmes; and be fair and not restrict training and development only to designated groups
- improve primary, secondary and tertiary education. It should focus on the quality of education and not the quantity of education
- increase and develop the national skills pool to match supply with demand to sustain jobs. There should also be more government-sponsored internship programmes
- reduce bureaucracy, revise bureaucratic red tape and prevent the selective enforcement of compliance
- ensure that the law is applied fairly and evenly throughout the country by its agents, as well as ensure that non-compliant businesses comply
- make administrative compliance easier and reduce the cost of compliance through creating and facilitating the use of more computer online technology and systems in order to sustain jobs, especially for new businesses and start-up businesses
- control business less and streamline labour legislation. Labour legislation should be more in tune with business, instead of

trying to control. Be more laissez-faire and create a minimum legislative framework

- provide the CCMA with a vetting process to establish the merits of and to deal with frivolous cases in advance
- set minimum wages regionally, not nationally. Minimum wages need to be industry-specific
- reduce the import duty costs on fabrics to assist with diminishing international competition to help sustain jobs in the clothing industry.

□ Trade union strategies to increase

□□ Job creation

The following strategies were suggested by the business participants that trade unions may implement to increase job creation. Trade unions should:

- know how to keep a sustainable business
- focus the balance between union satisfaction, earnings and business survival
- cooperate and work with management. They need to look at the bigger picture and not just at the employed
- be more realistic in their demands. They should also consider and include the unemployed
- ensure that employers comply with worker-related legislation. They can use cellphone technology to enforce compliance
- ensure that all the businesses, not only some in the industry, are compliant
- focus on representing employee interests, not on their political agenda.

□□ Job sustainability

Nine of the business participants suggested the following strategies that trade unions can implement to increase job sustainability. Trade unions should:

- play a more active role in representing their members' interests and participate in bargaining council structures
- balance union satisfaction, earnings and business survival. They should abstain from participating in unrelated political strikes
- de-politicise and assist the Department of Labour with controlling and enforcing non-compliance equally and fairly across the entire industry, and not do so selectively
- exercise more leniencies when enforcing compliance, depending on the size of the business
- assist in ensuring that industries are completely compliant with worker-related legislation
- educate their members on the challenges faced by small businesses and they should focus on ensuring labour stability
- work with management
- deal with trust and greed; keep employers and employees satisfied; be committed to settling disputes; work with members; be reasonable about monetary issues; be involved in policy-making in the workplace and act in the best interest of ensuring business sustainability
- ensure greater communication and cooperation between businesses and trade unions
- coordinate more with the businesses in which they are involved
- stop making unrealistic and unreasonable demands, causing companies to close down
- take a wider view, consider and include the unemployed in the negotiation process.

■ Research question nine

□ To what extent do the qualitative results confirm the quantitative results of the empirical study?

As evidenced by the triangulation of the findings that emerged from the quantitative study and with the literature for research questions one to four above, to a large extent the results that

emerged from the qualitative study confirm and expand on the results that emerged from the qualitative study of the empirical study. The findings emerged from the quantitative study indicated the legislative aspects that influence job creation and job sustainability. The findings that emerged from the qualitative study added the extent to which the legislative aspects influenced job creation and job sustainability, and whether the influence was positive or negative.

The findings that emerged from the empirical study indicated that to a large extent, the various regulatory aspects of the legislation did not influence job creation and job sustainability. The findings that emerged from the qualitative study also identified and elaborated on the legislative aspects which had a positive influence on job creation and job sustainability. The findings that emerged from the qualitative study further identified and elaborated on the negative influence, which to a large extent revolved around implementation and compliance. It was pertinent to note that the greatest negative influence appeared to be the manner in which labour legislation was being implemented and to a lesser extent enforced, especially by bargaining councils.

This study uncovered four primary findings. These findings were organised according to the research questions:

- The primary finding is that poor education and the skills shortage in South Africa affect job creation and job sustainability.
- The second finding is that the current economic and political environment in which businesses operate does not motivate businesses to create and/or sustain jobs.
- The third finding is that legislation which provides businesses with financial incentives and promotes skills development motivates businesses to create and/or sustain jobs.
- The fourth finding is that increased labour costs, compliance with and enforcement of compliance with labour legislation deters and/or discourages businesses from creating and/or sustaining jobs.

Thus, the overall findings that emerged from the empirical study indicated that the greatest problem does not lie with the legislation itself, but rather with its implementation, which needs to be addressed to improve job creation and job sustainability.

■ Summary

Although the focus of this study was limited to labour legislation's influence on job creation and job sustainability, it was realised that the complete deregulation of the labour market is not ideal as it would not have the desired effect of improving the economy and the lives of South Africans. It was discovered that the influence of labour legislation was minimal in comparison to its greater good. Furthermore, it was learned that there were other far more pressing factors such as globalisation, political and economic uncertainty, poor education and skills shortages, which have had far greater and further reaching influence on job creation and job sustainability than labour legislation. It was uncovered that the labour legislation, especially through the promotion of training and skills development, positively influenced job creation and job sustainability and in the long run, had a positive influence on the South African economy. This in turn had positive implications for the South African business community.

Consequently, the short-term goals of big business and international business should not be promoted over the long-term goals of the South African nation as a whole. To pander to the ideals of neo-liberalists promoted by big business and international business is not in the best interests of South Africa and local business in the long run.

In accordance with the Keynesian economic approach, the labour theory of social justice and CSR, the focus should be on decent work, among other things, and not just on pure profit. Decent work is ensured by improving the security and quality of life of the worker through education and training, job and social security, as well as the payment of a decent wage. Furthermore,

when the needs of workers are appropriately addressed, there will be labour peace and increased productivity, which will boost both local and foreign investor confidence in the country and the South African economy.

In accordance with the Keynesian economic approach and the labour theory of social justice, the South African government plays an important active role in passing labour legislation, which the CCMA, the labour courts and its administration enforce to ensure labour protection and fairness, equity and work security. Therefore, the South African government cannot afford to adopt a hands-off approach, as the neo-liberalists would like it to do. In a constitutional state, entrenched human rights are of paramount importance. Thus, to deregulate or to amend labour legislation and to make it more flexible for business to do business, is to re-open the doors to exploitation and to defeat the normative purpose of labour law.

Additionally, the removal of labour protection will result in greater inequality, increased unemployment and poverty, destabilising the country further. This is not in the interests of South Africa. Labour legislation, through ensuring equity, fairness and job security, leads to an increase in productivity and the long-term reduction of labour costs if the goals of social justice are achieved.

Therefore, the findings that emerged from the empirical study are in agreement with Van der Walt's (2004:261) contention that the transformative theoretical approach is the correct approach for the country. The labour legislation in South Africa does not need to be amended drastically.

■ Conclusion

An analysis of the results provided an insight into the extent to which labour legislation influenced job creation and job sustainability, which in some instances were discovered to be positive, while in other instances they were negative. The provision

of financial incentives to businesses to train workers had a positive influence on job creation and job sustainability. Conversely, the bureaucratic implementation of administrative compliance and the cost implications thereof, as well as the enforcement of compliance and the cost implications thereof, negatively influenced job creation and job sustainability. Nevertheless, in most instances, labour legislation did not influence job creation or job sustainability at all. The research study results also highlighted the importance of social justice and the importance of the role that labour law plays. The inherent flaws in the bureaucratic implementation of labour legislation need to be addressed. This study's results have also highlighted the negative impact that the EEA and B-BBEEA are having on the sustainability of small and medium enterprises. This also needs to be addressed.

Conclusions and recommendations

Keywords: Economic, political and internal factors influence; Flexibility; Labour costs; Skills development; Collective bargaining; Dispute resolution; Regulatory influence; Fixed term contracts; Non-standard; Youth employment.

■ Introduction

This final chapter discusses the conclusions drawn from the study objectives and the research problem, as well as the recommendations of the study. The purpose of this study was to establish the influence of labour legislation on job creation and job sustainability. Although there is a plethora of literature and research available on various aspects of the research topic covered herein, there is no previous study that dealt with the topic as comprehensively as carried out in this study.

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The empirical study explored and determined the influence of labour legislation on job creation and job sustainability in South Africa, the results of which are set out in Chapters 5 and 6. As noted in Chapter 4, a convergent parallel mixed methods research, combining the quantitative and qualitative methods, was adopted in this study to explore the research objective. Specifically, on the one hand, the quantitative component of this study examined the relationships among different pieces and aspects of labour legislation, the interaction between them and their influence on job creation and job sustainability. On the other hand, the qualitative study assessed the positive and/or negative influences of various aspects of labour legislation in promoting, threatening or impeding job creation and job sustainability by conducting semi-structured interviews with 16 businesspersons and six trade unionists in South Africa.

By using quantitative statistical analysis and qualitative interview-based analysis, the study explored the following central research question (RQ): *Does labour legislation influence job creation and/or job sustainability?* This central question was broken into the following nine specific RQs, namely:

- RQ1: Who creates and sustains jobs, and how?
- RQ2: What are businesses' perceptions about labour legislation?
- RQ3: Which specific aspects of the labour legislation influence businesses to create and/or sustain jobs? Why?
- RQ4: How do businesses' perceptions about labour legislation influence them to create and/or sustain jobs?
- RQ5: What may be the problems and limitations with labour legislation for job creation and job sustainability?
- RQ6: What changes, if any, should be made to labour legislation to improve job creation and/or job sustainability?
- RQ7: What are the factors (apart from labour legislation) affecting job creation and job sustainability?
- RQ8: What are the strategies to increase and/or improve job creation and job sustainability?

- RQ9: To what extent do the qualitative results confirm the quantitative results of the empirical study?

In particular, RQ3–RQ6 aimed to assess the interactions among different aspects of labour legislation as well as other factors and their influence on job creation and job sustainability by using the quantitative and qualitative approaches. RQ1 was concerned with understanding how jobs are created and/or sustained as well as who creates and/or sustains them. RQ5 and RQ6 intended to explore issues related to aspects of labour legislation's influence on job creation and job sustainability. RQ5 and RQ6 are joint questions that were answered by the integration and combination of the quantitative and qualitative approaches. RQ7 and RQ8 intended to explore issues related to factors, other than labour legislation, influencing job creation and job sustainability. RQ9 explored the extent to which the qualitative results confirmed the quantitative results of the empirical study. By answering these questions, the study provides a comprehensive picture of how specific aspects of labour legislation (RQ5 and RQ6) influence job creation and job sustainability respectively. Finally, the research findings in relation to RQ2–RQ9 that were gathered from the integration of the quantitative and qualitative studies are presented below.

The study findings met the research objectives and resolved the RQs as discussed in Table 8.1.

■ Understanding who creates and sustains jobs and how

Considering the research objective and the RQ related to who and how jobs are created and sustained, the findings of the study showed that the creation of job opportunities and the sustaining of jobs are very important, and that jobs are primarily created and sustained through development of skills. Consequently, the study discovered that skills development had the most significant

influence on both job creation and job sustainability. Moreover, the study understands that one of the greatest threats to business sustainability, economic growth, job creation and job sustainability is the lack of skills, poor education and workers not having the skills needed for the workplace. Furthermore, the study unearthed that one of the greatest opportunities for economic growth, business sustainability, expansion, growth, job creation and job sustainability is in the development of requisite skills for the workplace by empowering and training workers and potential workers. In addition, businesses that were financially incentivised to train and develop skills were motivated to expand and grow to create and sustain jobs. Accordingly, the study realises that the provisions given in the SDA, EEA, LRA, UIA and B-BBEEA for promoting skills development have had a positive influence on job creation and job sustainability, especially in recent years. Furthermore, the study discloses that the majority of jobs created are permanent, although some temporary jobs are also created as a result of the financial incentives that businesses receive to train workers and employ the youth.

Additionally, it is interesting to note that the study has found that economic, political and internal factors have a far greater influence on job creation and job sustainability than labour legislation. Consequently, the study realises that it is important for businesses to be well-managed; forward-looking; continuously improving themselves; operating ethically; be efficient in their operations; have a well-trained productive workforce; investing in the training and development of their workers; and operating in a healthy economy where there is economic growth and political stability to create and sustain jobs. Moreover, the study discovered that businesses which acknowledge their responsibility towards the society in which they operate and support social justice as their underlying ethical value, particularly in treating others fairly and respecting employees' labour rights, create good stable sustainable jobs. Thus, the frequency tables reveal that businesses' recognition of and adherence to social justice, human rights and

decent working principles are very important for job creation and job sustainability.

The empirical results of the qualitative study observed that businesspersons and trade unionists presented different views on who is creating jobs. Consequently, the study findings are inconclusive as there is disagreement as to whether small and medium business enterprises or large businesses are creating and sustaining more jobs. The study findings also indicated that there is disagreement as to whether it was the public sector or the private sector that is creating and sustaining most of the jobs. Nevertheless, the study confirmed that more jobs are being lost than created and/or sustained, which was largely attributed to political and economic uncertainty, corruption, poor education, shortage and mismatch of skills and labour costs.

The regulatory influence of labour legislation on job creation and job sustainability

Considering that the research objective and the RQ related to the regulatory influence of labour legislation on job creation and job sustainability, the study findings show that overall businesses and trade unions favour labour legislation regulating the employment relationship. In addition, the empirical study reveals that the BCEA, LRA, EEA and SDA create and sustain jobs through the regulation of employment contracts, working conditions, efficiency, ensuring fair and equal treatment at the workplace, work security and development of skills. Consequently, the study discloses that the BCEA, LRA, EEA and SDA fulfil labour law's normative role of protection, efficiency, equity and fairness through regulation.

The empirical study findings also confirm that businesses are largely uninfluenced by labour legislation to create and sustain jobs. Moreover, the results of the study indicate that on the whole, businesses' perceptions of the BCEA's provisions on staffing

contracts, hours of work, minimum wages, notice periods and enforcement of compliance by labour inspectors do not have a significant influence on creation and sustainability of jobs.

Furthermore, the empirical study verifies that the LRA focuses on labour relations as it is concerned with fair labour practices, flexibility and work security. Bargaining councils ensure standardisation throughout the sectors to prevent unfairness and abuse of salaries. However, businesses perceive bargaining councils to be bureaucratic in their selective and unfair enforcement of compliance with labour legislation, which has a negative influence on creation and sustainability of jobs.

Although the study realises that the EEA promotes and regulates equality, fairness and equal treatment at the workplace, it discovered that affirmative action, employment equity and the enforcement of compliance have a negative influence on creation and sustainability of jobs.

Furthermore, the study corroborates that the SDA promotes training and facilitates acquisition of skills. However, the study's discoveries reveal that bureaucratic and ineffective SETAs and the administrative burden of compliance influence negatively creation and sustainability of jobs.

Nonetheless, the empirical study's results reveal that there are regulatory aspects of the BCEA, LRA, EEA, B-BBEEA, SDA and the SDL, namely bureaucracy, administrative burden, enforcement of compliance and labour costs which influence creation and sustainability of jobs negatively. In particular, the study's findings reveal that affirmative action in terms of the EEA has the most likely negative influence on creation of jobs. The study's findings further reveal that bargaining councils, industrial action, dispute resolution and enforcement by bargaining council agents in terms of the LRA are most likely to negatively influence negatively creation of jobs.

In spite of the aforesaid, the study unearthed that there are aspects of the SDA, EEA, B-BBEEA, ETIA and UIA which positively influence creation and sustainability of jobs.

■ **Positive legislative aspects which assist with and/or encourage job creation and job sustainability in South Africa**

Considering that the research objective and RQs related to the positive influence of aspects of labour legislation which assist and/or encourage creation and sustaining of jobs in South Africa, the study findings reveal that certain aspects of the SDA, EEA, B-BBEEA, ETIA and UIA have a positive influence on job creation by generating job opportunities and/or sustaining the jobs that have been created. The provision of financial incentives by the ETIA, the Department of Trade and Industry's subsidies and the SETAs refunding of skills development levies for the training and development that business have conducted, encourage businesses to develop skills and implement training, thereby creating jobs and promoting employment, especially for the youth.

Consequently, the empirical study's findings confirm that the SDA, EEA, B-BBEEA and UIA have a positive influence on businesses to create and sustain jobs by financially incentivising businesses to train and develop workers' skills. In addition, the study's findings reveal that the BCEA, through the creative use of shift work instead of paying overtime, allows for flexibility by creating additional jobs and saving labour costs.

Likewise, the study's findings disclose that rest periods ensure a productive and healthy labour force, which has a positive influence on the sustainability. The study further shows that the termination notice allows planning, and that severance pay for retrenched workers has a positive influence. Furthermore, the study findings reveal that trade unions perceive the BCEA's provisions relating to staffing contracts and notice periods as having a positive influence on creation of jobs.

The study's results verify that the LRA's procedures are fair and beneficial for both parties as it creates certainty, and if a job is secured, it is sustained. In addition, the study's findings reveal

that the LRA helps job sustainability by making it difficult to dismiss somebody, which has a positive influence on job sustainability as it provides businesses with greater incentives to train their workers. Moreover, the study's findings disclose that the limitations imposed on fixed-term contracts by the LRA deter employers from offering insecure jobs and from denying employees certain benefits, all this has a positive influence on both job creation and job sustainability.

Furthermore, the study findings reveal that bargaining councils and collective agreements have a positive influence as they help to create certainty and industrial peace. In addition, the study findings show that strike action ensures fairness and workers are protected and jobs are sustained. The study's findings confirm that the CCMA is expedient and ensures fairness in dispute resolution.

The empirical study's outcomes validate that the EEA and SDA indirectly compel businesses to engage in CSR, which has a positive influence on creation and sustainability of jobs. In addition, the study's findings reveal that the B-BBEEA and EEA compel businesses to indirectly engage in CSR through affirmative action, training and provision of equal pay for equal value, which ensures equality, fairness and payment of a living wage.

Moreover, the study findings disclose that the SDA indirectly compels businesses to engage in CSR through the provision of training incentives. The study also reveals that businesses expanded through development of skills as they are engaging in ongoing training to upskill and develop their workers. Furthermore, the study proves that the SDA encourages businesses to develop in-house training programmes and to use the workplace as a training ground. Thus, improvement in skills has a positive influence on sustainability of jobs as it helps to preserve jobs.

The study reveals that most of the jobs created and sustained are through training and development of skills, which is primarily

because of the provision of incentives to businesses, namely the SETA grants, improved B-BBEE scorecard levels, the ETIA youth tax incentives and the UIA, all of which positively influenced creation and sustainability of jobs. In addition, the study uncovers that businesses expand and sustain jobs through training of workers and improving their skills because of the SDA and B-BBEEA. Consequently, the B-BBEEA scorecard has made it attractive for businesses to invest in training, thus encouraging them to develop and train their staff as well as the unemployed. It was also found that the ETIA, through the promotion of learnerships and apprenticeships, has to some extent influenced job creation positively, especially among the youth.

Therefore, the government should not deregulate labour legislation, but rather regulate the EEA, B-BBEEA and SDA by simplifying, reducing duplications and streamlining them as well as by providing businesses with more incentives to train workers. Business will consequently continue to invest in training to educate, retrain and develop their workers' skills.

Therefore, the study unearths that the SDA has the most positive influence on job sustainability, and it also helps to create some jobs through training and development. However, the study also discovered the bureaucracy and administrative burdens attached to the implementation of the SDA to be problematic because they most likely to have a negative influence on creation and sustainability of jobs.

Accordingly, the government should not deregulate labour legislation but rather regulate to make it better by simplifying it, reducing the duplications that exist across its various pieces, streamline them and provide businesses with more incentives to provide training. Businesses should then increase and continue to invest in training, retraining and developing workers' skills.

■ **Impeding legislative aspects' negative influence on job creation and job sustainability in South Africa**

Considering the research objective and RQs related to negative aspects of labour legislation impeding job creation and job sustainability, the study's findings reveal that the LRA's limitations imposed on fixed-term contracts infringed on businesses' right and freedom to select and employ. It also increased their costs of existing staff, causing some employers to hesitate employing additional people while inhibiting others from building up capacity in advance. Moreover, the study results show that the LRA amendments for fixed-term contracts increased insecurity and uncertainty as employers are discouraged to employ the same person twice. It caused some workers to be dismissed rather than be appointed for full-time. Fixed-term contracts are not being renewed and they are open to abuse, as employers manipulate the system.

Likewise, the study outcomes also show that the national minimum wages, if set too high, can have a detrimental effect on job creation and sustainability, resulting in greater job losses when labour supply becomes too expensive and unaffordable, thereby exacerbating unemployment. In addition, the study's findings reveal that job creation is stifled if smaller employers are not able to afford the services of labour.

Moreover, the study findings disclosed that the BCEA's hourly-based limits imposed on the use of casual labour and the LRA's limitations and restrictions placed on fixed-term contracts have deterred some businesses from creating jobs and/or employing additional staff. Furthermore, the study's verdicts indicate that CCMA commissioners, by bullying businesses to pay quick settlements, which they otherwise would not have agreed to pay, impede job creation and job sustainability when businesses decide to automate, outsource and retrench their employees as a result of such bullying tactics.

Similarly, the study findings show that the EEA and the B-BBEEA could stifle entrepreneurs and deter businesses who do not qualify, especially small and white-owned entities. Furthermore, the study findings reveal that the administrative burden of complying with the EEA and having to employ additional people to complete affirmative action reports, as well as the bureaucracy attached to the EEA's implementation, enforcement and the severest penalties for non-compliance, deter businesses and smaller employers from creating and sustaining jobs.

Threatening negative legislative aspects which hinder job creation and job sustainability in South Africa

Considering the research objective and RQs related to negative aspects of labour legislation threatening existing jobs and job creation, the study findings show that the labour legislation, in regulating the employment relationship and in the enforcement of compliance by labour inspectors, influences job creation and job sustainability overall, some legislation to a greater extent than others.

The empirical study's findings indicate that businesses' negative perceptions of the BCEA's provisions on staffing contracts, hours of work and enforcement of compliance are more negative than their negative perceptions of minimum wages and notice periods in influencing creation and sustainability of jobs. In addition, the study findings disclose that the BCEA's provisions for public holidays, overtime, night work and work on Sundays can be perceived to be inflexible, especially in the transport industry and with smaller employers who are unable to comply.

Furthermore, results reveal that the financial impact of increased labour costs caused by the BCEA's provisions for extra

payment for working on Sundays, night shift, ad hoc public holidays, additional benefits and unrealistic increase in minimum wages, which eat into profit margins and employers are unable to recover from their clients, negatively influence creation and sustainability of jobs. Moreover, the study findings show that fixing wage increase for 3 years limits expansion of businesses. Furthermore, the study findings disclose that sectoral determinations are too bureaucratic and unwieldy because of incompetence of staff and wasteful expenditure, which negatively influence job creation and job sustainability.

The study's findings also show that businesses are finding dismissals for misconduct and poor work performance in terms of the LRA to be difficult, time-consuming and expensive. Furthermore, the study findings disclose that although some businesses have reduced their probationary periods to 3 months, it was not long enough for them to assess workers. Likewise, findings confirm that businesses perceive 'nuisance payments' to be very costly, tedious and time-consuming, which has a negative influence on creation and sustainability of jobs.

Similarly, the study findings disclose that smaller businesses are reluctant to go to the CCMA as they perceive the commissioners to behave unethically and biased in favour of dismissed employees. Additionally, findings show that the enforcement of compliance by bargaining councils has a far greater negative influence than labour inspectors enforcing compliance. Correspondingly, the study findings disclose that the problem of corrupt officials abusing power and in need of bribes negatively influences creation of jobs.

Furthermore, the study findings indicate that strikes and industrial actions discourage growth of business, causing a loss of international investors as international companies move their businesses elsewhere, with an overall impact on the industry. It was found to result in increased costs, loss of revenue, employment of scab labour, fear of intimidation, victimisation and violence,

and loss of life and property. In addition, study findings reveal that it affects the overall development of country's economy, especially if a strike lasts for more than 6 months.

Similarly, the study findings confirm that the EEA heavily regulates the employment relationship and sets measures in place to give preference to disadvantaged groups. Moreover, the study findings show that it is to employ persons with suitable skills. Furthermore, findings reveal that the poor education system, lack of skills and training, and forcing businesses to comply with employment equity negatively influence creation of jobs. Nevertheless, the study findings disclosed that in-house training programmes have helped some businesses to overcome some of the difficulties they are experiencing with the available skills pool, although they felt it was not enough.

Additionally, the study findings reveal that the EEA is not a representative. Similarly, the study findings also disclose that the EEA operates separately from other educational institutions such as high schools and tertiary education, which do not sufficiently support it. The study findings further show that the EEA's provisions of 'equal pay' infringes on businesses' discretion to pay certain employees more 'for going the extra mile', which results in increased labour costs if they have to pay everyone the same. Moreover, the study has revealed that businesses perceive the payments made in terms of the EEA to be a secondary form of tax.

In addition, the study results show that businesses find the large amount of administrative documentation that they have to comply with when completing SDA reports, and applying for accreditation of training courses and refunds of training courses to be burdensome. The study findings also disclose that the quality of the training courses is not checked. The study outcomes disclose that employers are forced by the Department of Labour to take on more people through the skills training plan if the business accepts subsidies, which increases the cost to existing staff. Equally, the study results disclose that although some of

the SETAs have created jobs in the bureaucracy, they have not delivered on training.

The study findings verify that the skills development levies increase labour costs. Similarly, the study discloses that although one of the business participants commented that there were billions of rands in SETA allocations, businesses are frustrated when they see the SETAs wasting money.

Moreover, findings of the empirical study reveal that the latest B-BBEEA scoring system discourages businesses, especially small businesses, from expanding and growing, which have a negative influence on job creation. Furthermore, the study findings show that few business participants overcame some of the B-BBEE scorecard difficulties that they encountered through skills training. Likewise, the study results reveal that smaller businesses are struggling to find suitable equity partners.

The study outcomes disclose that businesses perceive the ETIA to be a punitive incentive to create jobs as it costs money to create jobs. Equally, the study shows that financial incentives do not adequately cover the cost of employing and training the youth. The study findings also reveal that the business participants perceive the youth to lack integrity and skills; are quite militant and demanding; and are only willing to do the job and nothing extra, which negatively influences job sustainability.

■ **Integration of findings from the quantitative and qualitative approaches**

Considering the research objective and the RQs related to the extent to which the qualitative results confirm the quantitative results of the empirical study, the study findings, through triangulation, reveal that qualitative results confirm and elaborate the quantitative results and the literature reviewed in the study.

Conclusions

The conclusions drawn from the empirical study are interpreted and discussed based on the following research objectives and RQs (see Table 8.1).

Conclusions from the literature review

There is no consensus on whether employment protection legislation is beneficial or harmful to the economy (Gwatidzo &

TABLE 8.1: Research objectives and research questions.

Research objectives	Research questions
1. To describe, explore and understand the need for job creation and job sustainability	1. Who creates and sustains jobs, and how?
2. To describe, explore and understand through a literature review the regulatory influence of labour legislation on job creation and job sustainability	2. What are businesses' perceptions about labour legislation?
3.1 To explore and compare through an empirical study using semi-structured interviews and surveys the perspectives of businesses (entrepreneurs, senior managers) and TUs (trade unionists) in South Africa in order to establish the extent to which selected labour legislations (viz. BCEA, LRA, EEA, SDA etc.) influence the creation and sustainability of jobs	3.1. Which specific aspects of the labour legislation influence businesses to create and/or sustain jobs? Why?
3.2 Assists with and/or encourages job creation and sustaining jobs	3.2. How do businesses' perceptions about labour legislations influence them to create and/or sustain jobs?
3.3 Threatens existing jobs and job creation	3.3. What changes, if any, should be made labour legislations to improve job creation and/or job sustainability?
3.4 Impedes job creation and job sustainability	3.4. What are the factors, apart from labour legislations, affecting job creation and job sustainability? 4. What strategies businesses, trade unions and the government can implement to increase/improve job creation and job sustainability? 5. To what extent do the qualitative results confirm the quantitative results of the empirical study?

Source: Adapted from Table 8.1 of Womack (2018:420).
BCEA, *Basic Conditions of Employment Act*; SDA, *Skills Development Act*; EEA, *Employment Equity Act*; LRA, *Labour Relations Act*.

Moyo 2014:300), job creation and job sustainability. Consequently, this study sought to fill the gap by investigating the influence of employment protection legislation on job creation and job sustainability, and to examine the extent to which law could be used to achieve the goals of social policy. The normative ethical principle that was used to evaluate the influence of labour legislation on job creation and job sustainability was social justice, which forms the basis of legislations in South Africa, in particular, the Constitution and labour legislations.

□ Labour legislations' regulatory influence on job creation

In a market economy, it is the market and not the law that creates, modifies and destroys employment (Bronstein 2009:71). There are two main economic theories, namely the Neo-classical Economic Theory and the Keynesian Stimulus Theory, which shape perceptions of labour legislation's influence on job creation and job sustainability. Consequently, labour legislation's regulatory influence on job creation and job sustainability is dependent on the economic viewpoint from which it is perceived (Darrol 2013:14; Jakab, Henriett & Szöllős 2018:18).

Herrington, Kew and Kew (2010:5), Faulkner and Loewald (2008:18), and Van Niekerk et al. (2008:7-8) favour deregulation and support the neo-classical argument. The British Neo-classical Economic Approach has influenced South African labour law (Sebola & Nkuna 2014:926). Nevertheless, the pursuit of neo-liberal economic policies in South Africa has resulted in changing patterns of work and labour, and made the South African economy increasingly vulnerable to social and economic shocks (Mahadea & Simson 2010:399). Consequently, the decisions taken by both the government and the industry influence economic growth, job creation and job sustainability (Nienaber 2007:82). Nonetheless, Faulkner and Loewald (2008:18) and Herrington et al. (2010:5)

agree that labour legislation through over-regulation has stifled job creation in South Africa.

Van Niekerk et al. (2008:7-8) maintain that there is a link between inflexible labour markets and stifling job creation. Issues such as wage flexibility, non-wage labour costs and job security add to labour market rigidity (Chen & Funke 2005:688). The BCEA can have a negative influence on flexible working conditions and working time flexibility, and labour market institutions, such as the NEDLAC, Bargaining Councils and Sectoral Determinations, directly and indirectly affect labour market flexibility (Barker 1999:30-39). Bassanini, Nunziata and Venn (2009:352) disagree with Barker's view. There is little evidence of protective labour legislation having a collective influence on employment (Bassanini et al. 2009:352). Nevertheless, Feldmann (2009:76) found that stricter regulations, tight hiring and firing rules, as well as collective bargaining, have an adverse effect. These generally appear to increase unemployment, especially among women and, in particular, the youth (Cohen & Moodley 2012:323; Noelke 2011:1).

Conversely, the neo-liberal demand for deregulation is built solely on the premise that labour market regulation is detrimental to efficiency and is misleading (Benjamin, cited in Le Roux and Rycroft 2013:29). In addition, the debate as to whether or not regulation is necessary is false (Darrol 2013:14). The debates revolving around deregulation create a false dichotomy that there can never be a total absence of regulation (Le Roux & Rycroft 2013:27). The debates are really about substituting one body of regulations for another (Le Roux & Rycroft 2013:27). Furthermore, Venter et al. (2010:130) claim that there is no such thing as a perfectly flexible labour market and they contend that neither is it socially desirable. Consequently, the focus should not be on deregulation but rather on how best to promote labour laws and policies that best respond to country's current challenges of development (McCann & Torm 2008:428).

Deakin, Malmberg and Sarkar (2014:2), Cazes, Khatiwada and Malo (2012:36), and Burgess (2010:19) support the Keynesian Stimulus Theory and are opposed to deregulation. Cazes et al. (2012:36) maintain that employment levels tend to be positively associated with more stringent regulations. Deakin et al. (2014:2) contend that the supposed negative effects of labour laws are either very small or simply non-existent and that such laws, in fact, have beneficial effects on productivity and innovation. Bronstein (2009:71) agrees that there is no evidence to support the assumption that deregulatory labour reforms alone will be sufficient to improve the country's levels of employment. Conversely, Miller (2012:10) claims that regulatory policy plays an important role in creating and formalising job opportunities to promote job creation and job sustainability, which is aligned with the Distributive Justice Theory (Warikandwa & Osode 2014:69). The aim of the ESA is to assist the unemployed in seeking new employment (Govindjee, Olivier & Dupper 2011:776). Since business in South Africa generally avoids the idea of CSR, there is a need for regulation (Fig 2005:601; Jamali 2007:1).

Furthermore, Le Roux and Rycroft (2013:35) contend that there are a number of factors, other than labour legislation, which affect job creation and job sustainability in South Africa, in particular the oversupply of low-skilled workers, shortage of critical skills and lack of infrastructure, which have contributed to the job crisis. Tzehainesh (2010:11) also maintains that the influence of labour legislation on job creation and job sustainability cannot be viewed in isolation and that the labour market structure, the socio-political structure, the state legal framework beyond labour laws, legal culture, non-state regulatory systems and social norms, as well as the economic ideological environment, need to be taken into account. Moreover, Clover and Darroch (2005:238) identify labour legislation as one of the eight factors or constraints that affect business survival or growth. Thus, Shapiro and Irons (2011:3) contend that a multi-dimensional theory on the effects of regulations on employment is more appropriate.

Labour legislation's regulatory influence on job sustainability

The regulation of non-standard employment or labour broking has resulted in the increased security of employment for vulnerable workers (Kettledas 2013:4), which may have an influence on job creation and job sustainability. An important benefit of employment protection is that it limits job destruction whereas temporary jobs intensify it (Cahuc & Postel-Vinay 2002:63). The danger of facilitating the creation of more temporary jobs to foster job creation is that it can increase job destruction, thereby increasing unemployment. Thus, the more flexible the regulation on fixed-term contracts, the greater the potential to destroy jobs, increase unemployment and reduce aggregate welfare, especially when firing costs are high (Cahuc & Postel-Vinay 2002:65).

Labour legislation imposes significant burdens on business, raising business costs, and ultimately costing jobs (Darrol 2013:15). Labour regulation causes labour costs to be higher because of compliance (Almeida & Carneiro 2009:28-29). Arnold and Hartman (2005:207-208) maintain that the primary reason for deregulation is to reduce labour and compliance costs in order to improve job creation and job sustainability. Therefore, Almeida and Carneiro (2009:28-29) recommend the relaxation of enforcement and the promotion of more flexible labour laws to stimulate growth. Regulation and minimum wage fixing has resulted in increased direct and indirect labour costs, which could influence job creation and job sustainability (Marneffe & Vereeck 2011:352; Venter et al. 2010:138). The two groups most negatively affected by minimum wage regulations are the poor and the young (Greene et al. 2007:85).

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

■ **Conclusions from the empirical study**

□ **The extent to which labour legislation regulation influences job creation and job sustainability in South Africa**

In considering the research objective and the RQs related to the regulatory influence of labour legislation on job creation and job sustainability, the study concludes that labour legislation has played and continues to play an important role in ensuring fairness and equity in employment relationship; that it fulfils its normative role and that labour regulations are necessary. In addition, the study deduces that businesses, on the whole, comply with labour legislation and the deregulation of employment relationship is, therefore, unwarranted.

Moreover, the study construes that some labour legislation, in regulating the employment relationship and the enforcement of compliance by labour inspectors, influences job creation, to a greater extent than others. Furthermore, the study supposes that the LRA, EEA and B-BBEEA, in regulating equity and fairness, have influenced job creation, some legislation to a greater extent than others. Likewise, the study deduces that there are the aspects of labour legislation which require amendment in order to enhance and promote job creation and job sustainability.

□ **The extent to which labour legislation assists with and/or encourages job creation and job sustainability in South Africa**

In considering the research objective and the RQs related to the aspects of labour legislation which assist with and/or encourage job creation and job sustainability, the study concludes that businesses which are incentivised by the SDA, EEA, B-BBEEA, ETIA and UIA to train and develop their workers are expanding, growing, creating and sustaining jobs. In addition, the study concludes that the enforcement of compliance by labour inspectors ensures that jobs are created in accordance with the

LRA guidelines and regulations and the workers are paid fairly. Moreover, the study concludes that industrial action influences businesses to be more circumspect on how and what jobs they create. Furthermore, the study deduces that the SDA, through the SETA training grants, incentivises businesses to train people, which empowers and makes them more marketable and self-sustainable, thereby promoting job creation and job sustainability. Likewise, the study assumes that the SETA training grants help businesses to sustain jobs through training. Similarly, the study construes that workers need to have necessary skills to be proficient and productive. Additionally, the study infers that development of skills through education and training helps to increase the efficiency and productivity of workers, as well as promotes and facilitates productive employment, which has a positive influence on job creation and job sustainability.

❑ The extent to which labour legislation threatens existing jobs and job creation in South Africa

In considering the research objective and the RQ related to the extent to which labour legislation threatens existing jobs and job creation, the study concludes that the administrative burden and the cost of compliance with labour legislation threaten existing jobs and job creation. In addition, the study deduces that businesses find the completion and submission of annual returns and BCEA documentation to be very taxing, especially for small businesses that have employed additional people to deal with their legislative administrative documentation, which threatens existing jobs and job creation.

Likewise, the study construes that the enforcement of compliance, especially by bargaining councils and bargaining council agents, as well as industrial action, dispute resolution, affirmative action, B-BBEE scorecard criteria, and dysfunctional, bureaucratic and inefficient SETAs, are the factors that are most likely to threaten existing jobs and job creation.

In addition, the study infers that the administrative bureaucracy and enforcement of compliance with the BCEA threatens existing jobs and job creation. The study supposes that the amendments to the LRA restricting fixed-term contracts to 3 months threatens existing jobs and job creation, as businesses easily replace and rotate unskilled workers. Furthermore, the study presumes that businesses perceive bargaining councils to be administrative bureaucracy.

Equally, the study reckons that some bargaining councils are ineffective and unfair in their enforcement of compliance with labour legislation which threatens existing jobs and job creation. Similarly, the study assumes that bargaining council agents who selectively target certain factories in certain areas, and in other areas rigidly, monitor and enforce compliance with collective agreements and the law; this threatens job creation and job sustainability.

The study further concludes that bargaining councils that waste employers' time in trying to extract settlements also threaten job creation and job sustainability. Correspondingly, the study deduces that the CCMA commissioner's over-emphasis on non-adherence to procedural fairness and their wasting of employers' valuable time in conciliation and arbitration processes could have a detrimental effect on employers' future, thereby threatening existing jobs and job creation.

Moreover, the study assumes that business needs to employ appropriately skilled people in order to survive, otherwise the EEA threatens existing jobs and job creation. The study also presumes that local demographics and available skilled labour pool restrict businesses from complying with affirmative action and meeting their equity targets. Furthermore, the study deduces that compliance with the EEA's affirmative action and employment equity plans have made it difficult for businesses to fill their positions with right people. Equally, the study reckons that poor education and lack of or inadequate skills have caused businesses to duplicate positions and roles.

The study concludes that businesses find the administration and bureaucracy surrounding the SDA and the skills development levies documentation to be laborious, onerous and time-consuming. Likewise, the study infers that 21 SETAs are excessive. Similarly, the study assumes that some of the SETAs are too bureaucratic, dysfunctional and that they are not implementing skills development properly. Moreover, the study presumes that the skills development levies are simply perceived to be another form of tax, especially when businesses are limited to recovering a maximum of 25% of what they have spent on training, which threatens existing jobs and job creation. Correspondingly, the study findings also indicate that businesses perceive payments in terms of UIA to be another form of secondary tax.

In addition, the study construes that recent amendments to the B-BBEEA, in particular the new B-BBEEA scorecard requirements, threaten existing jobs and job creation, especially where businesses do not meet the new scorecard criteria or where skills need or experience is required. Correspondingly, the study deduces that amendments to the B-BBEEA are broad but not ideal, and that more work needs to be done to improve them.

Likewise, the study supposes that although businesses were initially incentivised by the ETIA to employ the youth, they have since stopped doing this. Similarly, the study concludes that businesses have become disillusioned and discouraged by employing the youth, whom they found to be more of a burden than a benefit, which threatens existing jobs and job creation.

□ The extent to which labour legislation impedes job creation and job sustainability in South Africa

In considering the research objective and the RQs related to the extent to which labour legislation impedes job creation and job sustainability, the study concludes that increased labour costs, the administrative burden of compliance and the enforcement of compliance with labour legislation by collective bargaining

agents deter and/or discourage businesses from creating and/or sustaining jobs.

In addition, the study presumes that the national minimum wage, if set too high in terms of the BCEA, will result in greater job losses and exacerbate unemployment, which will have a detrimental effect on job creation and job sustainability. Moreover, the study deduces that job creation is stifled when smaller employers cannot afford labour's services. The study also assumes that the BCEA's hourly-based limits imposed on the use of casual labour and the LRA's limitations and restrictions on fixed-term contracts have deterred some businesses from creating jobs and/or employing additional staff.

Moreover, the study infers that the LRA's limitations imposed on fixed-term contracts infringe businesses' freedom to employ and their right to select, and increase their cost of existing staff. This will cause some employers to hesitate to employ additional people and inhibit others from building up capacity in advance. Furthermore, the study presumes that the LRA's amendments to fixed-term contracts impede job creation and the sustaining of jobs, as the amendments discourage employers from employing the same person twice. They encourage fixed-term contracts not to be renewed and cause temporary and part-time workers to be dismissed after 3 months, rather than to be appointed for full-time.

The study also deduces that the LRA's majoritarian principle results in wage increase being set too high, which smaller businesses are unable to afford, thereby stifling job creation. Similarly, the study reckons that CCMA commissioners who bully businesses into paying quick settlements cause businesses to automate, outsource and retrench their employees, thus impeding job creation and job sustainability.

Furthermore, the study supposes that the administrative burden of complying, and the enforcement and cost of compliance

with the B-BBEEA and EEA are impeding job creation and job sustainability as they can stifle entrepreneurs and deter businesses who do not qualify, especially small white-owned entities, from creating and sustaining jobs.

Equally, the study assumes that the financial impact of increased labour costs through the enforcement of compliance by bargaining council agents and the non-enforcement of non-compliant businesses counter job sustainability.

The study presumes that labour legislation *per se* is not the problem but rather its implementation thereof. Moreover, the study supposes that although the legislation appears to be onerous, it is relatively easy to comply with. Furthermore, the study infers that the problem lies with the bureaucracy attached to the implementation, the compliance and the enforcement of compliance with labour legislation. This creates the impression that labour legislation is inflexible.

❑ **The extent to which the quantitative and qualitative findings support social justice**

The study concludes that the triangulation of the findings confirms and supports the underpinning meta-theory that regulation through labour legislation is important and necessary to ensure that social justice is realised at the workplace.

■ **Recommendations**

A social justice model for labour legislation for the promotion of job creation and job sustainability is proposed. Further, it is recommended that an increase in skills development to address shortage of skills, accompanied by a reduction in administrative and compliance costs, will assist and promote job creation and job sustainability in South Africa

■ **Entrench social justice, human rights, decent work as important underlying ethical values**

This study recommends that in order to ensure social justice, it is essential that the employment relationship continues to be regulated by labour legislation, despite its influence on job creation and job sustainability. In addition, it is recommended that the government should amend those aspects of labour legislation that the study has identified as threatening or impeding job creation and job sustainability. It is also recommended that the underlying ethical value within which businesses, the government and TUs operate is social justice, which includes human rights and decent work. This will, in turn, influence job creation and job sustainability positively.

■ **Recognise and accept the importance of labour law's normative role and labour legislation's regulation of employment relationship**

It is recommended that all stakeholders (businesses, government and TUs) acknowledge and respect the important normative and regulatory role that labour laws attempt in protecting both employers and employees by ensuring efficiency, fair and equal treatment at workplace, work security, and promotion and development of skills to improve business sustainability, growth, expansion, economic growth, job creation and job sustainability.

■ **Increase and continuation to promote and encourage skills development through labour legislation**

It is recommended that the government should improve the current economic and political environments in which businesses

operate in order to positively influence economic growth, business sustainability, job creation and job sustainability.

In addition, recommendation to the government is that it needs to provide for a skilled labour base, extends the youth development programme and increases the skilled labour pool. A further recommendation to the government is that it also needs to facilitate, fund and provide training to artisans for acquiring necessary skills. Another recommendation is for the government to incentivise businesses further to employ and train more people and to give entrepreneurs access and opportunity.

Consequently, it is recommended that labour legislation should continue to regulate, promote and encourage skills development and continue to provide businesses with financial incentives and subsidies through the SDA, ETIA, B-BBEEA, EEA, LRA and UIA to motivate them to develop skills; train their workers; employ the youth, first-time work-seekers and the unemployed; and to assist with and encourage job creation and job sustainability.

It is further recommended that the government should extend and increase the ETIA's incentives, the Department of Trade and Industry's subsidies and the SETA refunds to businesses for training and development so that businesses are further encouraged to invest even more in training and skills development, all of which have a positive influence on job creation and job sustainability and promoting employment.

This study also recommends that the government should spend more money on pre-tertiary education. Additionally, it is recommended that the government urgently improves primary, secondary and tertiary education contents to match the workplace needs. Moreover, it is recommended that the government improves the language skills of its people in order to sustain jobs. Furthermore, the government should continue to increase and develop the national skills pool to match supply with demand and assist with and encourage job creation and job sustainability.

Likewise, it is recommended that the government should provide more sponsored internship programmes. Similarly, it is also recommended that the government should step in, channel money and help small businesses, and empower workers with the necessary skills to make them more efficient and productive. It is further recommended that the government should be fair and must not restrict training and development to designated groups only.

A recommendation to the government is that the skills development levies need to be spent more efficiently. It is recommended that the government should focus on providing quality education and not just quantity of education. The government needs to improve the support structure that feeds into business, namely primary, secondary and tertiary education. It is recommended that the government should broaden training and education to non-designated groups as well. A further recommendation is that business should continue to invest in education, training, retraining, and skills development and up-skilling their workers, as it would have a positive influence on business sustainability, growth, expansion, economic growth, job creation and job sustainability.

Moreover, it is recommended that the overall contribution of businesses should be there by providing training over and above their individual requirements. Furthermore, it is recommended that there should be greater assistance and cooperation between big businesses and small businesses in order to assist them with and provide funding for education, training and development. This will help small businesses to grow and succeed.

The recommendation for businesses and TUs is that there should be greater communication and cooperation between them. Furthermore, it is recommended that TUs should represent their members' interests and participate more actively on bargaining council structures.

■ Simplify and streamline labour legislation

The recommendation for the government is not to deregulate labour legislation but to regulate it for better, increase flexibility, simplify provisions, and remove duplications and overlap. The recommendation is for the government to simplify and streamline labour legislation by consolidating the BCEA and LRA; incorporating the EEA into the LRA; combining the SDA and SDL; removing duplication and overlap in functions between the CCMA, bargaining councils and SETAs; ensuring that industries are properly regulated; reducing bureaucracy and administrative documentation by facilitating online applications and submissions; and reducing compliance costs and penalties. Similarly, it is recommended that the government should control businesses to a lesser extent and create a minimum legislative framework.

It is recommended that the government should refine the BCEA provisions relating to hours of work and hourly-based limits imposed on the use of casual labour, which introduces greater flexibility for small businesses and certain industries such as the transport industry.

This study also recommends the government to amend the LRA's provisions relating to the limitations and restrictions placed on fixed-term contracts by increasing the initial period of fixed-term contracts to 6 months as this would allow for maternity leave and a longer period of probation. In addition, it is recommended that the government should revisit and revise the role and functioning of bargaining councils, especially where they overlap and duplicate the functions of the CCMA, labour inspectors and the SETAs.

It is recommended that the government should improve the regulation of strikes, and there should be a fair mechanism to break deadlocks if parties reach an impasse. Moreover, it is recommended that the government should improve the regulation of trade unions.

It is further recommended that the government should relieve the CCMA's burden by refining its vetting process by having a pre-trial conference before conciliation takes place. This would ensure that the CCMA establishes the merits and deals with frivolous and vexatious cases in advance. It is also recommended that commissioners should be trained to know that they need to be ethical at all times and should remain neutral throughout the conciliation and arbitration process, and to focus on the substantive merits during the conciliation process when trying to arrive at a fair settlement between the parties.

Moreover, it is recommended that there needs to be a sunset clause on employment equity. Furthermore, it is recommended that the government should also amend the B-BBEE legislation; revise the B-BBEE scorecard and relax the B-BBEE scoring system; place fewer requirements on smaller businesses; and implement the B-BBEEA more effectively and efficiently.

Simplify administrative compliance

It is recommended that the government should simplify business' administrative burden of complying with the BCEA, EEA, LRA, SDA and the SDLA, and reduce the administrative bureaucracy found in bargaining councils, sectoral determinations and in SETAs. Correspondingly, it is recommended that the government should make administrative compliance easier for businesses and reduce the cost of compliance through automation, such as the creation and facilitation of online e-filing technology and systems used by the South African Revenue Services (SARS) to enable businesses to complete the administrative compliance forms and apply for refunds online. Likewise, it is recommended that the government should reduce bureaucracy and the cost of compliance.

It is proposed that the government should make it less cumbersome for employers to render training and get a refund of their money. In addition, it is recommended that the government

simplify the administrative process by developing an enabling and supportive online e-filing system for labour legislation, such as that of SARS, so that SDA reports, applications for accreditation and refunds for skills development levies could be completed and submitted online. Furthermore, it is recommended that the government should consolidate, streamline and reduce the number of SETAs, retain the working ones and abandon those not working. Furthermore, it is recommended that there should be one communal SETA with branches, similar to the CCMA's structures. In addition, it is recommended that the government must extend the ETIA and increase financial incentives for businesses to employ and impart training to the youth.

Likewise, it is recommended that the government should operate its administration in accordance with ethical business principles and appoint business-orientated people with the same level of qualifications, as in the private sector. Similarly, it is recommended that the government should cut back on excessive spending, stop wasting money and eradicate corruption; create certainty; and increase business and investor confidence in the South African economy. Correspondingly, it is suggested that the government should be a more active participant in the economy. It should revitalise the economy, stop privatisation and motivate business to sustain jobs and assist struggling companies. Additionally, it should create employment mechanisms as it did in the 1940s and 1950s, start infrastructure development programmes, with less of regulations.

Therefore, the government should not deregulate labour legislation, rather it must improve regulation by simplifying the labour legislation, streamlining it, and reducing bureaucracy and administrative burdens, compliance costs and penalties.

The recommendation for business is that employers need to act strictly in accordance with labour legislation; be correct; substantively and procedurally fair; and draft correct documentation.

■ Reduce compliance costs and penalties

The recommendation is for the government to reduce the financial impact of increased labour costs and the payment of 'nuisance settlements'. In addition, the recommendation is that the government should reduce bureaucracy related to the implementation, compliance and its cost, and enforcement of compliance with labour legislation. It is also recommended that the government should properly regulate the enforcement of compliance in order to enhance and improve job creation and job sustainability. It is further recommended for the government to enforce compliance through labour inspectors and not bargaining council agents.

■ Suggestions for the future studies

Time constraint has not allowed going for more research on this topic, and consequently the study has not explored in detail all the identified issues. Thus, there is a scope for further research, which is as follows.

The current study was limited to two groups, namely businesses and trade unions, who are generally a homogenous population with similar backgrounds. It is recommended that the study should be expanded to other members of the business and trade union community, from which the participants and respondents are selected. A truly representative sample would look at a heterogeneous population comprising members from the NEDLAC; the Department of Labour; employer organisations; business forums and chambers of commerce; trade union federations; legal institutions; human resources; law and management academics as well as professionals from the legal, human resources and managerial professions who practice in South Africa.

A number of focus areas are there that this study was unable to examine. Consequently, the following topics have come up in this study for the future studies to consider:

- Consolidating and streamlining labour legislation, especially where there is an overlap.
- The effectiveness of current labour legislation strategies to encourage and improve job creation and job sustainability.
- The effectiveness of current legislation strategies to encourage and improve development of skills and youth employment.
- Ways in which the administrative burden and cost of compliance with labour legislation can be reduced through computerised record-keeping and online e-filing for submitting reports and applications for refunds.
- Efficient and effective functioning of the SETAs.
- Consolidation as well as revision of the role and functioning of the SETAs, reduction of bureaucracy and administrative burden, and removal of unnecessary duplication by bargaining councils on training and development.
- Efficient and effective functioning of bargaining councils, statutory councils and sectoral determinations.
- Revision of the role and functioning of bargaining councils, and the removal of unnecessary duplication of dispute resolution with the CCMA, and on training and development with the SETAs, and enforcement and compliance with labour inspectors.
- Efficient and effective functioning of the CCMA.
- A revision of the CCMA's dispute resolution processes, especially regarding conciliation and 'nuisance' settlements.
- Effects on country's economy where both executive and legislature disrespect the Constitution of South Africa, the rule of law and social justice; where bribery and corruption are rife among its state officials; and there is a weak education system.

■ Conclusion

The primary objective of the study was to establish the influence of labour legislation on job creation and job sustainability in South Africa. The study findings reveal that development of skills primarily takes place where job creation and sustainability have

taken place in recent years. This may be attributed to specific pieces of labour legislation such as the SDA, EEA, LRA and UIA. In addition, the study findings show that other ancillary legislation has also positively influenced job creation and job sustainability by encouraging, facilitating and promoting development of skills and creation of jobs.

An evaluation of business and trade union perceptions regarding the influence of labour legislation on creation and sustainability of jobs shows that labour legislation primarily has a positive influence. Nevertheless, certain aspects of labour legislation, in particular compliance with labour legislation, threaten and/or impede job creation and job sustainability.

In particular, the study findings expose that the administrative burden, cost of compliance, selective enforcement of compliance, and the related bureaucracy as well as corruption threaten and/or impede job creation and job sustainability.

In addition, the study findings disclose that bargaining councils and SETAs are too bureaucratic and that their administration, enforcement and implementation of labour legislation threaten and/or impede job creation and job sustainability, and negatively influence creation and sustainability of jobs. The study's findings confirm that these negative influences have contributed in increasing criticism of labour legislation, with increased demand for relaxed labour legislation and the labour market to be deregulated.

The study findings further reveal that development of skills has a positive influence on economic growth, business' sustainability, growth and expansion, employment, job creation and job sustainability. Therefore, it is recommended that government should continue to provide businesses with greater financial incentives to train and develop workers. It is also recommended that the government should focus on finding ways to reduce the administrative burdens and the bureaucracy associated with the labour legislation as well as eliminate bias and corruption.

Furthermore, it is recommended that government should take drastic steps to eliminate corruption and ensure economic and political stability to increase local and foreign investors' confidence in the South African economy. Moreover, it is recommended that government should only amend those aspects of labour legislation which the study has identified as threatening and/or impeding creation and sustainability of jobs. The government must look into reducing the related administrative burdens, bureaucracy and enforcement of compliance which hinder and impede job creation and job sustainability in South Africa. Consequently, the study's recommendation for the future is that government should enhance the positive aspects of labour legislation identified here and encourage, enhance and improve development of skills to empower the nation, increase economic growth and productivity, eliminate inequality and reduce poverty.

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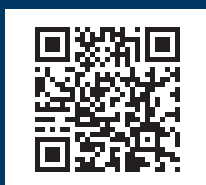
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This multi-disciplinary research generates a new perspective on labour legislation and is scientifically significant from a business, labour and societal standpoint – specifically with regard to current legislative regulatory barriers, economic and political risks that could undermine job creation and job sustainability in South Africa. The book explores the influence of labour legislation on job creation. It investigates sustainability regarding employment relationships through the lens of the two primary participants: business and organised labour. This book adds value to the social justice context, both from a societal and business point of view. It provides business and unionised labour a voice from which the influence of labour legislation on job creation and job sustainability can be addressed. The book demonstrates that labour legislation is not the only factor to consider with regard to the creation and sustainability of jobs. The prevailing economic and political environment also need to be taken into account.

A well-researched and informative book that is more relevant than ever in these economically tumultuous times. Womack tackles the influence of labour legislation on job creation and sustainability brilliantly! The writing style utilised by the author is so straightforward and simple to follow that every single point being made comes through. The author has brilliantly managed to steer clear of legalese and unnecessary verbosity, making the manuscript easy to follow and understandable. Through this read, Womack explores a fundamental part of our lives, jobs and livelihoods in such an informative manner. She incorporates the voices of business and Trade Unions, two of the most important role players within the labour market. This fresh perspective provides valuable insights into the attitudes of business and Trade Unions with regard to the influence that labour legislation has on job creation and sustainability. The book explores not only the impact of labour legislation but other factors that also play a role within the labour market. Womack blends various subjects in this multi-disciplinary study, which provides a broad-brimmed understanding with regard to the job market and its workings. I highly recommend that legal scholars, economists and social scientists within the labour market read this brilliant manuscript.

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