

# POST-1994 LABOUR LEGISLATIONS: AN OVERVIEW OF INFLUENCE ON EMPLOYMENT RELATIONS IN EMERGING MARKETS

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## Abstract

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The purpose of this paper is to provide an overview of the primary labour legislation that was promulgated after the democratization of South Africa after 1994. These legislations were introduced as regulatory and corrective measures for workplace relationships in work organizations (Booyesen, 2005; Vettori, 2018). The data for this paper was collected through the perusal of scientific journals, newspaper articles, published/unpublished dissertations and theses, textbooks, and other relevant informative documents. The significant and influential role, which these labour legislations played in the development of a new era of employment relations in South Africa, cannot be overstated. The South African perspective of employment relations is also presented and discussed in this paper to reveal its nature and its role-players, such as the state, trade unions, and employers' organizations (Ehlers & Jordaan, 2016; Smith & Diedericks, 2016). The workplace relationship between employers (through their management) and employees (through their trade unions), and the effects which such an antagonistic relationship has had on the South African labour market are also addressed (Finnemore & Koekemoer, 2018). The main finding of this paper is that there has been an improvement in workplace relationships, since the implementation of the post-1994 labour legislation although such improvement has been gradual.

**Keywords:** Labour Legislation, Employment Relations, Role-Players, State, Trade Unions, Labour Market

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## 1. INTRODUCTION

The employment relationship in the South African workplace, pre-1994, could be described as toxic and regulated only in part. The Labour Relations Act of 1956, which was the only labour legislation that should have played a significant role in promoting

positive relationships in the workplace, failed to do so. It soon became evident that this Act was only aimed at preventing labour unrests, and ignored the most important part of promoting labour peace and positive relations in the workplace. Cassim (1984) reveals that although the Act went through several amendments, it still did not broaden its

scope further than the inclusion of limited rights for blacks and the introduction of the concept of unfair labour practice and the industrial court.

This situation justified the need for new regulatory labour legislations when the new democratic government came into power in 1994. As a result, a new constitution based on democratic values was drafted and implemented in South Africa, upon which all legislation had to be premised. Subsequent to the new constitution, labour legislations such as the new Labour Relations Act 66 of 1995 (LRA), Basic Conditions of Employment Act 75 of 1997 (BCEA), and the Employment Equity Act 55 of 1998 (EEA) were promulgated by the South African government.

According to Booysen (2005), the South African government introduced this legislation to law reform and promote employment equity in the workplace. Ferreira (2005) reveals that legal experts globally confirm that the labour legislation promulgated between 1994 and 2009 can be regarded as one of the world's most comprehensive legislations. The aim was to ensure justice and equality to redress past unfair discrimination suffered by designated groups in South Africa. Wöcke and Sutherland (2008) state that the South African government introduced these legislations with the aim of transforming the labour market and society. These new legislations offered previously disadvantaged South Africans full access to all the areas of the economy and management positions in the workplace (Wöcke & Sutherland, 2008).

However, it has to be revealed that although these labour legislations were aimed at promoting an environment characterized by labour peace and positive relations in the South African labour market, the implementation of these legislations was not without obstacles. Terera and Ngirande (2014) reveal that employment relations in the South African labour market have over the years been faced with serious challenges, which among others ranged from high turnover resulting in best employees leaving their organizations, which drastically affected work organizations in terms of lower production and higher recruitment costs.

This paper, therefore, aims to reveal the situation, which prevailed before and after the post-1994, labour legislations were promulgated and introduced in the South African workplace. The structure of this paper is as follows. Section 1 introduces the scenario of events pertaining to the title of the paper and further reveals its purpose and significance. Section 2 reviews the relevant literature that pertains to the South African perspective of the post-1994 employment relations. Section 3 analyzes the post-1994 labour legislation and its influence on South African employment relations. The paper closes with Section 4, which entails a full discussion of the findings emanating from the reviewed literature and the current state of affairs of the South African employment relations in general.

## 2. THE SOUTH AFRICAN PERSPECTIVE OF EMPLOYMENT RELATIONS POST-1994

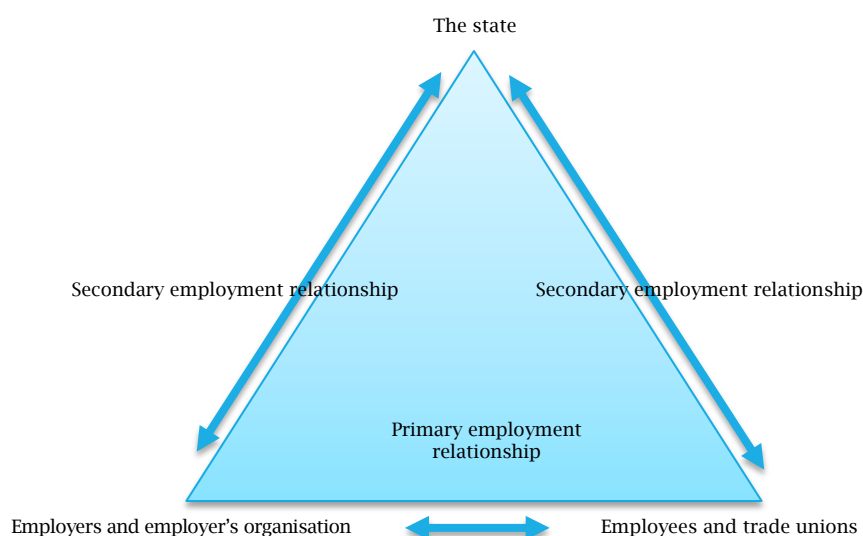
Smith (2016) states that an employment relationship perceived by both the employees and their work organization as being healthy or positive is very significant in the workplace. It has a positive impact on employees' behaviours and intentions regarding whether to stay or leave the organization. According to Ehlers and Jordaan (2016), an employment relationship refers to the relationships between subordinates and their supervisors, and relationships between groups of employees and management in the workplace.

Smith and Diedericks (2016), state that the workers' relationship with their supervisor is of importance. A positive employment relationship between the leader (supervisor) and their members (employees) will depend on the capability of the leaders (supervisors) to promote quality interaction among the members (employees) through effective communication. Employment relations dynamics in South Africa interplay with and are influenced by certain factors in the external environment, which impact society as a whole (Nel, Kirsten, Swanepoel, & Poisat, 2012). All work organizations in South Africa are influenced by certain factors (micro and macro) in the environment in which they run their business and have to respond positively and in alignment with these influences to succeed (Venter & Levy, 2014).

According to Venter and Levy (2014), micro-environmental factors entail those arising from organizational culture, leadership, communication, nature of the workforce, policies and procedures, etc. Macro-environmental factors consist of those such as arising from social, economic, and political environments, which impact the needs, goals, expectations and power of employees, employers and trade unions in the relationship with each other in the workplace (Finnemore & Koekemoer, 2018).

Nel et al. (2012), describe the South African employment relationship as being composed of a tripartite relationship, consisting of two primary role-players (the employer and employees) and one secondary role-player (the state). Venter and Levy (2014) support this notion and confirm that the labour relationship in South Africa involves the employers and employees and, on the other hand, the employers, employees, and the state. This makes the South African employment relationship to be more of a tripartite relationship, consisting of three role-players. Venter and Levy (2014) point out that the relationship between the employees, employers, and the state forms the secondary employment relationship, while the relationship between employees (and their trade unions) and employers (and their employers' organizations) forms the primary employment relationship.

Figure 1 below depicts the employment relationship composed of the three parties that are primary role-players in the South African labour relations.

**Figure 1.** South African tripartite employment relationship

Source: Venter and Levy (2014).

Firstly, as a master, the state makes the laws that govern the primary employment relationship and ensures that there is a general order in the society by putting in place law enforcement institutions that will see to it that there is compliance with the laws. Secondly, as a servant, the state ensures that the parties in the primary relationship conduct themselves in an orderly manner that is characterized by labour peace between them. However, Venter and Levy (2014) argue that the interference of the state in the South African labour market has not been regarded as a good gesture. Analysts have described the labour market as being inflexible, because of it being highly regulated as a result of the state's intervention. However, Bendix (2019) points out that government policy helps to provide a framework, according to which role-players in labour relations have to interact. For instance, the labour legislation, from which the state occasionally promulgates and passes, is aimed at ensuring effective execution of policy and promoting labour peace and stability in the workplace.

The role played by employers in the primary employment relationship is of utmost significance. Employers ensure through their agents (managers) that things are done correctly and that decisions are taken that will ensure optimal utilisation of the employees in the workplace (Nel et al., 2012). Venter and Levy (2014) concur that management must ensure that the interests of stakeholders are satisfied, and act in a manner that supports the achievement of the goals of the organization.

Lastly, the role played by employees in the employment relationship is seen in their labour that they sell to employers in return for remuneration. Where the workplace is unionized, employees may be represented by trade unions, which may be members of any of the trade union federations found in South Africa (Nel et al., 2012). In the South African context, Section 213 of the LRA defines an employee as "any person, excluding an independent contractor, who works for another

person or the state and who receives, or is entitled to receive, any remuneration; and any other person who in any manner assists in carrying on or conducting the business of an employer" (p. 215).

### 2.1. The state as role-player and employer

Nel et al. (2012) reveal that the state, although it plays a very important role in the tripartite relationship, it also appears that the state also plays a double role of being both a secondary (as regulator) and a primary (as an employer) role-player.

Unlike the way, things stand currently, before 1993 all employees who worked for the state were not part of the general workforce in South Africa but belonged to a separate category of employees (Venter & Levy, 2014). This category of employees was regulated with separate legislation, such as the Public Service Labour Relations Act 105 of 1994 and the Education Labour Relations Act 146 of 1993, which co-existed with the former Labour Relations Act 28 of 1956. The separate category for public servants was justified because the state as the employer is a non-profit organization that funds itself through the taxes it collects from citizens, of which the employees form a part.

### 2.2. Trade unions as role-players

From as early as the late 1970s, employers' attitudes in South Africa have been changing to acknowledge the reality of union power. This occurred to the extent that they had to change adversarial and unitarist strategies in their approach towards trade unions (Finnemore & Joubert, 2013). Before the promulgation of the new LRA, employers were compelled by law to bargain with trade unions. Good faith bargaining was considered the most important factor in minimising industrial action, such as strikes in the workplace (Venter & Levy, 2014). As a result, any employer who refused to bargain would be guilty of unfair labour practice.

However, under the LRA, there is no duty assigned to any party to bargain, although the Act promotes collective bargaining between the employers (or employers' organizations) and employees (or trade unions). Any refusal by an employer to bargain with a trade union is a justifiable reason for a trade union to embark on strike action in the workplace (Venter & Levy, 2014). Bhorat, Naidoo, and Yu (2014) reveal that employers' organizations and trade unions are not merely economic agents but are key role-players in the South African political arena. Employers' organizations, for instance, have a very significant influence on the laws that the state promulgates that regulate the labour market in South Africa. Trade unions, on the other hand, also play a major role in influencing the political-economic spheres of the society in South Africa. This is evident in the direct influence that the Congress of South African Trade Unions (COSATU) appears to have on the government, as it forms part of the tripartite alliance.

There are many purposes for the formation of trade unions in the workplace, which include, among other functions, the following (Bendix, 2010):

- participating in collective bargaining at the plant level, industrial level and national level to improve wages and working conditions;
- lobbying the government into making laws and policies that will be in favour of employees, through representation in the National Economic Development and Labour Council (NEDLAC);
- forcing employers into conceding with employees' demands by engaging in strike actions where necessary;
- joining federations to leverage their influence, which in turn strengthens them as other federations (such as COSATU) have political partnerships with the government;
- ensuring that union members are provided with the necessary benefits that they deserve, such as access to housing, bursaries, pension, medical aid, and general opportunities that are necessary for their development and self-betterment, such as education and training.

Nel et al. (2012) state that a trade union is a group of employees voluntarily organized together. Trade unions are formed by employees, serve employees, and exist only because of employees, as well as for the purpose of promoting organizational and social justice (Nel et al., 2012). Historically, the general purpose of trade unions has been to render services to employees at the company level, as well as nationally where required (Visagie, Uys, Linde, & Havenga, 2012).

Trade unions in South Africa have increased in number, especially since 1994. This increase can be attributed to growth in unionization in the public sector and the fact that the LRA demanded that all trade unions be registered in South Africa (Finnemore & Joubert, 2013). By 2012, it was estimated that 25% of the employees in the workplace belonged to trade unions. This percentage has since decreased as the rate of unemployment in South Africa has been escalating each year. Currently, where people are employed, they are either employed on a part-time basis and/or in the informal sector, where they can neither afford to pay for or join trade unions or the sector is not unionized (Finnemore & Joubert, 2013).

### 2.3. Employer organizations as role-players

Finnemore (2009) defines employers' organizations as a formal grouping of employers who gather voluntarily to advise, represent, and defend the interests of its group members against organized labour and to influence the state where required. An example of an employers' organization in South Africa is the Chamber of Commerce and Industry, which represents businesses and lobbies the government to protect and enhance their interests. Employers' organizations play a very important role in the South African labour market, as they negotiate and interact with organized labour on issues of importance to both parties (Finnemore, 2009).

Employers' organizations were formed when employers realised that employees who acted through their trade unions in the workplace, which in turn belong to the trade union federation, were more powerful than an individual employee who acts alone (Nel et al., 2012). Employers' organizations may be sectoral, but they can also operate nationally, depending on the type of industry being represented (Nel et al., 2012).

When compared to trade unions in South Africa, employers' organizations became relatively weaker as compared to the time when the old Labour Relations Act of 1956 was in force (Venter & Levy, 2014). However, things started to gradually change as time progressed, as employers' organizations have become important and active role-players in their interaction with organized labour in South Africa.

### 3. POST-1994 LABOUR LEGISLATION AND THEIR INFLUENCE ON EMPLOYMENT RELATIONS

The change of government in 1994 was followed by the drafting of the new constitution of South Africa (Constitution of the Republic of South Africa, Act 108 of 1996), which was negotiated and finally approved in 1996 as the supreme law of the country. The new constitution, which came into effect in 1996, replaced the old apartheid constitution. The new constitution significantly influenced labour relations in terms of entrenching protection of human dignity, equality, and freedom, as well as the right to fair labour practice of all South African citizens (Finnemore & Joubert, 2013).

What makes the constitution more profound, according to Grogan (2014a), is that it provides mechanisms that South African citizens can use to challenge actions of the state, which appear to be infringing upon any of the rights enshrined in Chapter 2 of the Constitution. The protection of human rights arising from Chapter 2 (known as the Bill of Rights) of the Constitution also applies to employees' rights in the workplace. The South African Constitution is significant to all employable South African citizens and provides protection for employees' rights in the workplace. To ensure adherence to the protection of these rights, Section 39(2) of the Constitution states that when the courts, tribunals or forums interpret any law or when they are developing the common law or customary law, they must see to it that the spirit, purpose and objects of the Bill of Rights are promoted (Venter & Levy, 2014).

Section 9 of the Constitution provides for the right to equality, which translates into including even the rights of employees in the workplace. Subsection 4 of Section 9 prohibits unfair discrimination on any grounds including race, sex, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth. Section 18 of the constitution provides for the freedom of association, while Section 23 provides for employment relations' rights such as that everyone has the right to fair labour practice in the workplace. Section 23 further provides for employees' right to form and join a trade union, and for employers to form and join an employers' organization. Section 24 of the constitution provides for, among other rights, the right to an environment that is not harmful to a person's health and well-being, which translates into a safer workplace and includes safer working conditions. The constitution provides that legislation should be promulgated that would give effect to the sections mentioned above (Vettori, 2018).

There are seven South African labour legislations that were enacted to give effect to the human rights enshrined in the constitution. Vettori (2018) reveals that the legislation, which deals with employment relations and the protection of rights of both employees and employers in the workplace, consists of the following pieces of legislation:

- Labour Relations Act 66 of 1995 (LRA);
- Basic Conditions of Employment Act 75 of 1997 (BCEA);
- Employment Equity Act 55 of 1998 (EEA);
- Unemployment Insurance Act 30 of 2001 (UIA);
- Occupational Health and Safety Act 85 of 1993 (OHSA);
- Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA);
- Employment Services Act 4 of 2014 (ESA).

The first three legislations (LRA, BCEA, and EEA), which are referred to as primary labour legislations, have been taken into consideration for the purpose of this article.

### 3.1. Labour Relations Act 66 of 1995

Before the Labour Relations Act of 1995 was passed, there was the Labour Relations Act of 1956, which according to Nel, Swannepoel, Kirsten, Erasmus, and Tsabadi (2008), had resulted in many problems than solutions in the workplace. The problematic stipulations of the Labour Relations Act of 1956 were used as the reasons upon which the drafting of the new LRA would be based. The LRA and all other labour legislations promulgated thereafter had to be consistent with the fundamental rights protected by the Constitution (Finnemore & Joubert, 2013).

Grogan (2014b) reveals that the objectives of the LRA are broader and more ambitious than those of the Labour Relations Act of 1956, which was only aimed at preventing unrest in the workplace. For instance, the main purpose of the LRA is the advancement of economic development, social justice, labour peace, and the democratization of the South African workplace. Hence, this Act became the primary legislation that regulated employment

relations (employer-employee and employer-trade union relationships) in South Africa in comparison to any other labour legislation. Section 210 of the LRA states very clearly that "if any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law save the Constitution or any act expressly amending this Act, the provisions of this Act will prevail" (p. 214).

It still cannot be argued that the promulgation of the LRA was to promote peace and stability in the labour market. Section 1 of the Act states that the Act purports to advance economic development, social justice, labour peace, and the democratization of the workplace in South Africa. Vettori (2018) reveals that the LRA was enacted in order to give effect to Section 23 of the Constitution.

The LRA legitimized trade unions in the South African workplace, and further provided unions with rights such as the right to freely operate in the workplace and to strike. It is the same LRA which also compelled employers to bargain with trade unions where they are required to.

Employers had a problem with the right to strike, which the LRA was legalizing in the workplace. According to South African employees, allowing employees to strike freely would affect their businesses and should not have been allowed at all. However, this argument was minimized by the employers' right to lockout their workplaces in retaliation to trade unions, where they so the need to do so within the confines of the LRA.

### 3.2. Basic Condition of Employment Act 75 of 1997

The Basic Conditions of Employment Act 75 of 1997 (BCEA) lays out the minimum conditions of employment with the aim of ensuring the protection of employees against any form of exploitation in the workplace. This Act is also of significance as it is applicable to all the employers and employees in both public and private sectors, with the exception of employees working for the South African National Defence Force, National Agency, South African Secret Service, and volunteers working for charity organizations (Ehlers, 2007). According to Grogan (2014b), the BCEA was designed to give effect to Section 23(1) of the constitution, which entrenches unfair labour practice in the workplace.

According to Borat et al. (2014), the Act was revised in 2002 to provide for the formation of the Employment Conditions Commission (ECC), whose main function involves making recommendations to the Minister of Labour where decisions must be made relating to sectoral minimum wage and employment conditions. Finnemore and Koekemoer (2018) reveal that the BCEA was passed into law in 1998 after negotiations at the NEDLAC, where it was agreed that the Act would establish, enforce and regulate conditions of employment in the labour market.

Reviewed literature reveals that the promulgation of the BCEA was aimed at giving effect to Section 24 of the Constitution. Section 24 provides for the right to an environment that is not harmful to a person's health and well-being, which translates into a safe workplace, and includes working conditions (Vettori, 2018).

The main purpose of the BCEA was to set the minimum conditions of employment in both the private and public sectors, to protect employees against exploitation by their employers (Mzangwa, 2015). Employers had a serious problem with this legislation as according to them; it interfered with their freedom to utilize their employees as they pleased.

For the first time in South Africa, employers had to abide by the law with regard to the normal hours, which their employees had to work each week. For the first time after many years of exploitation, employees had to be compensated for each hour they worked more than their normal working hours - as that fell under the category of overtime, which they had to be paid for.

### 3.3. Employment Equity Act 55 of 1998

Grogan (2014a) states that when the Employment Equity Act 55 of 1998 (EEA) was passed into law the main aim was to eradicate discrimination in the place of work and to promote affirmative action. The EEA is divided into two parts. The first part prohibits discrimination in the workplace and provides employees mechanisms they can recourse when they feel that they have been discriminated against. The second part sets the ground rules for the implementation of affirmative action as a mandatory policy in the workplace. As a result of the implementation of the EEA, every South African work organization had to ensure that they act against unfair discrimination, promote affirmative action and the right to fair labour practice in the workplace (Finnemore & Koekemoer, 2018).

The promulgation of the EEA was done mainly to give effect to Chapter 2 (Bill of Rights) of the Constitution (Du Plessis & Fouché, 2006). Section 2 of Chapter 2 of the Constitution strongly advocates the notion of equality of every South African citizen before the law, as well as the right to equal protection under the law. This notion is echoed by Ehlers (2007), who states that the purpose of the EEA is to attain equity in the workplace. This is achieved by ensuring that equal opportunity and fair treatment prevail. Equity is further promoted in employment by eliminating unfair discrimination and implementing affirmative action measures aimed at addressing the disadvantages in employment experienced by designated groups. Reviewed literature indicates that the EEA was enacted for the purpose of giving effect to Section 9 of the constitution which provides for the right to equality and the prohibition of unfair discrimination (Vettori, 2018).

The EEA is known as a legislative tool that was implemented to address discrimination in the South African workplace. However, that objective would not be achievable if the legislation would not be supported by supplementary employment practices and strategies that focus on the development of human capital and organisational culture that are flexible to change (Booyesen, 2007). Booyesen (2007) further points out that, according to his assessment, the challenges, which South African work organizations would face later in relation to effective implementation of employment equity in the workplace, emanated from factors such as:

- insufficient focus, coordination, and integration of existing implementation processes;
- lack of shared understanding of and communication regarding employment equity;
- lack of leadership commitment;
- inconsistency in employment equity implementation;
- white fears around employment equity; and
- organizational cultural barriers.

The EEA distinguishes between white males and previously disadvantaged individuals belonging to the designated groups. Designated groups are accordingly defined as only Africans, coloureds, Indians, white females, and people with disabilities. However, Barker (2007) had earlier warned that care had to be taken when implementing the EEA in the workplace, as most of the previously advantaged groups were still seeing the Act as propagating reversed discrimination. The effects of the warning started to be felt when those who were not in favour of the implementation of the EEA in the South African workplace labelled the Act as one of the most controversial legislation. The feeling was that the Act is not for the general benefit of every South African citizen, but only for those of who are said to have been disadvantaged during the apartheid dispensation (Thompson & Van Der Walt, 2008).

However, this does not seem to be true when one looks at the revelation of Finnemore and Joubert (2013). Finnemore and Joubert (2013) points out that the overall objective of the EEA is to correct the wrongs of the past and achieve equity in employment by promoting equal opportunities in the workplace and addressing the imbalances experienced by members of the designated groups. Grogan (2014b) reiterates that the only purpose of the EEA is to address the demographic imbalances in the South African workplace. Consequently, employers are forced to remove all stumbling blocks that can hinder the advancement of the designated groups in all categories of employment.

There is still a lot to be done to have the Act optimally implemented across the board by every South African employer. However, the EEA has so far contributed significantly to the reshaping of the socio-economic and political framework of South Africa in general and the workplace in particular (Venter & Levy, 2014). The aim of the EEA has been and still is to eradicate unfair discrimination from all employment policies and practices and to ensure that no discrimination against any person on any ground should be allowed (Ferreira et al., 2015).

## 4. DISCUSSION

The literature reviewed on the South African perspective of employment relations has revealed that the employment relationship between employers and employees in the private sector, as well as between management and public servants in the public sector workplaces has not been positive over the years. The Annual Reports 2006/2007-2016/2017 on labour disputes have shown that the disputes, with the highest number, are relating to unfair labour practice and unfair dismissal, which is an indication that South African public servants are not happy in the workplace (Ntimba, 2019).

Annual Reports in the same period (2006/2007–2016/2017) on grievances reveal that most of the grievances lodged related to unfair treatment by supervisors and managers. This is a clear indication that there is a serious problem with regard to the employee-supervisor relationship in the South African workplace (Ntimba, 2019).

The recent results of the Global Competitiveness Report 2017/2018 raise another serious concern about South Africa’s employment relations (Schwab & Sala-i-Martin, 2018). For instance, out of the 137 countries which were assessed, the report revealed that there has not been any significant improvement in South Africa’s performance with regard to employment (including labour-employer) relations as the country was rated as the worst, at position 137 out of 137 countries (Schwab & Sala-i-Martin, 2018). Under the circumstances, it appears that although the post-1994 labour legislations (such as LRA, BCEA, and EEA) are addressing the antagonistic employment relations

of the past, their effect seems to be gradual rather than radical.

**4.1. Factors characterising the type of relationship between employers and trade unions in South Africa**

Ehlers (2017a), who is the only researcher to conduct an assessment of the South African employment relations, reveals that factors such as trust, compliance, fairness, and good faith, which he calls primary desirable social conditions, can be used as an assessment tool for employment relationships. According to Ehlers, the presence of these factors in a relationship characterizes a type of employment relationship where employers (through their management) and their employees (through their trade unions) work together towards ensuring positive relations between the parties in the workplace. Table 1 below depicts the primary desirable social conditions for a positive employment relationship.

**Table 1.** Typology of desirable social conditions in supervisory relationships

<i>Social condition</i>	<i>Behavioural criteria</i>
Trust: Conviction that a relationship partner will behave in an expected manner in relationship exchanges.	Trust levels relate to levels of: <ul style="list-style-type: none"> <li>- compliant</li> <li>- fair</li> <li>- in good faith</li> </ul>
Good faith: Constructive pursuit of mutual benefit in relationship exchanges.	Behaviour will be in good faith if it is: <ul style="list-style-type: none"> <li>- sincere</li> <li>- respectful</li> <li>- positive</li> <li>- considerate</li> </ul>
Fairness: Even-handed behaviour.	Behaviour will be fair if it is: <ul style="list-style-type: none"> <li>- objective</li> <li>- equitable</li> <li>- consistent</li> <li>- reciprocal</li> </ul>
Compliance: Procedural justification of behaviour in relationship exchanges.	Behaviour will be compliant if it is: <ul style="list-style-type: none"> <li>- legal</li> <li>- contractual</li> <li>- directional</li> <li>- procedural</li> </ul>

Source: Ehlers (2013, p. 63).

The factors reflected in Table 1, have been used as a checklist for the type of employment relations that exist in the South African workplace in order to determine if it is either positive or negative in nature. How employees perceive the levels of trust, compliance, fairness, and good faith in relation to how their supervisors or managers interact with them in the South African workplace, will determine the type of relationship that exists between them. These factors are discussed below in relation to the South African perspective of employment relations.

**4.1.1. Levels of trust between employers and employees**

In emphasizing the importance of trust in the employment relationship, Grogan (2014a) states that trust is one of the primary factors upon which the employment relationship between the employer and the employee is founded. Grogan (2014b) further reveals that where the trust relationship has been destroyed irreparably between the employer and employee, the parties accept that the relationship no longer exists between them. However, Smith and Diedericks (2016) advise that although relationships are built on trust, it is

the levels (high or low) of trust in the relationship that will determine the quality of the relationship in which the individuals are involved. Adding to the significance of trust in relationships, Smith and Diedericks (2016) reveal that a relationship is built on reciprocity and should not depend on spontaneity.

However, looking at the South African perspective of employment relationships, one can clearly see a question mark in the element of trust in those relationships. For instance, South African supervisors and managers have been found to be unwilling to appreciate, respect or promote trust in their relationships with employees. The disregard of these determinants of quality relationship has given subordinates negative perceptions about their job security, job satisfaction, transparency, as well as their relationship with their organizations (Ehlers, 2017a).

**4.1.2. Compliance with rules, processes and procedures**

Organizational procedures and practices that ensure the prevalence of justice in the workplace are very important, as they determine employees’ decision whether to stay or leave their work organization.



This notion is supported by studies that have found that where employees finally decide to leave an organization, it would be when they have experienced decreased satisfaction as a result of having lost trust and respect for their work organization (Farooq & Farooq, 2014).

Ehlers and Jordaan (2016) describe compliance in relation to being in line with the Republic of South Africa's constitution, labour legislation, employment contracts or collective agreements, workplace directive, and formal procedures to ensure a harmonious employment relationship. When it comes to the South African perspective of employment relations, especially employee-supervisor or employee-organization relationships, it appears that compliance is one of the most desirable social conditions of employment relationships, although it is not fully prioritized. For instance, according to Ehlers and Jordaan (2016), the Commission for Conciliation Mediation and Arbitration (CCMA) 2010/2011 Annual Report identified a number of "illegal, unfair or inequitable" (p. 6) behaviours of supervisors, which are not desirable in the employee-supervisor relationship. It is because of these undesirable behaviours that the employment relations in South Africa have become riddled with workplace conflict, tension, formal grievances, and statutory labour disputes (Ehlers, 2017b).

#### *4.1.3. Fairness when dealing with workplace issues*

Fairness is found in an employment relationship that is characterized by objectivity, equity, consistency, and reciprocity. Unfairness takes place where one or more of these requirements do not form part of the rules governing the relationship (Ehlers & Jordaan, 2016). Perceptions of unfairness are likely to be experienced where employees have low levels of trust in their organization. Where this happens, undesirable conduct will be triggered by subordinate employees that will negatively impact on employees' performance and ultimately affect production in the organization.

Although the South African employment relations seem to be going in a different direction altogether, supervisors have a duty to act both procedurally fair and substantively fair in employment relationships. This duty is clearly defined in the South African labour laws and related codes and is regarded as a generally implied obligation in every employment contract (Ehlers & Paul-Dachapalli, 2016). It is, however, unfortunate that while South African supervisors and managers have a statutory duty to act fairly in the workplace, they have been reported to have been engaged in undesirable behavioural practices, such as those reported by Ehlers and Jordaan (2016).

#### *4.1.4. Ability of supervisors/managers to act in good faith*

Good faith is defined by Ehlers and Paul-Dachapalli (2016) as an honest and sincere intention to create mutual benefit for all parties in a relationship by displaying honest, respectful, considerate, and positive behaviour in relationship exchanges.

Where employees have high perceptions of good faith in their organization they are more likely to display a number of positive organizational behavioural outcomes, which will benefit

the organization (Ehlers, 2017a). It is, however, important to mention that the duty to act in good faith in employment relationships is not expressed in the South African labour laws, but is only generally implied (Ehlers & Paul-Dachapalli, 2016).

#### **4.2. The effects of the antagonistic relationship between employers and trade unions on the South African labour market**

The antagonistic relationships that have been ongoing in the South African Labour market have resulted in many challenges that have impacted negatively on the economy as a whole. Finnemore and Koekemoer (2018) reveal that challenges such as the lack of job creation to absorb the unemployed have also negatively impacted on the relationship between employers and employees in the workplace. For instance, the lack of job creation has resulted in the following challenges that face South Africa as a whole:

1. South African employees feel that their job security is at risk, and fear that they may end up being permanently unemployed, should they be retrenched.

2. Most employees are breadwinners and responsible for extended family members, which has created a serious financial burden to most of them, resulting in serious proportions of employee debt in South Africa.

3. The power of trade unions in South Africa has gradually been weakened by the fact that the unemployed are prepared to accept even the lowest wages in the industries compared to what other employees are currently earning.

4. Employers are now employing the unemployed as temporary and/or fixed-term contract employees as an easy way to avoid the costs of permanent employment.

5. Employers are viewing labour-friendly labour legislation as interfering with job creation based on their strictness against other forms of employment, contrary to permanent employment.

6. Unemployment has resulted in the commission of a crime by employees in the workplace relating to theft, corruption, and nepotism with which employers have to deal.

Finnemore and Koekemoer (2018) state that international isolation, lack of foreign and national investment, low productivity, strikes, stay-aways, and sanctions, which hit South Africa before 1994 had a negative effect on the country's economic growth. In the International Monetary Fund report of 2008, South Africa's economic growth was reported to have lagged behind all other developing countries between 1996 and 2006, with a 3% average growth. The South African economy's average growth during the said period was attributed to factors such as slow investment of capital, lower savings rates and higher cost of capital, lower investment in research and development, and poor labour skills in South Africa (Finnemore & Koekemoer, 2018).

Venter and Levy (2014) earlier made a succinct presentation where they indicated that the impact of the economic environment is felt through micro-environment factors such as government policy, inflation and unemployment, globalization and retaining competitive advantage, and technology. The state of the South African labour



market has had a notable impact on the distribution of labour and jobs between job seekers and potential employers, although it resulted in a negative effect on the economy as a whole.

The introduction of post-1994 labour legislation in the labour market, for instance, was aimed at regulating the South African labour market, according to Bhorat et al. (2014). Instead, because of the dismissal procedure which is complicated and time-consuming, employers were exposed to a situation where they had to keep employees in their employ although they are no longer productive. This is true as South Africa is viewed as a country that has an overly regulated labour market. Even though the labour market regulation is aimed at protecting employees' rights, the regulations make it difficult for employers to fire employees, even where the employees are no longer productive to the employer.

According to Cilliers and Aucoin (2016), the levels of unemployment, inequality, poverty, and poor governance in South Africa impact social stability in many ways. Economic inequality, frequent protests, and lack of trust in the government are additional factors that have contributed to social instability and dissatisfaction in South Africa as a whole (Cilliers & Aucoin, 2016). It cannot be denied that employers have consequently become frustrated to the point where they neglect their responsibility of ensuring the satisfaction of their employees in the workplace to boost their productivity.

What has been happening in the South African public health sector where 'brain drain' has been the order of the day, has displayed the types of employers that now exist in the labour market, who do not prioritize employee satisfaction in their organizations. This behaviour has unfortunately led to challenges such as high turnover; skills shortage; best employees who have been internally developed leaving the organization; loss of production; and high costs of recruiting new employees (Terera & Ngirande, 2014). Van der Walt, Thasi, Chipunza, and Jonck (2016) have found that employees who work in organizations that have a skills shortage experience job dissatisfaction, because of the high volumes of work they do, which do not tally with the remuneration they receive.

In addition to the skills shortage, skills mismatch has also been found to have a strong negative impact on the job satisfaction of employees in the workplace. It can push an employee to search for another job that will adequately utilize their skills and abilities (Van der Walt et al., 2016). Recent studies have also shown that there is a relationship between job satisfaction and job performance and that employees who are not satisfied with their work are poor performers (Van der Walt et al., 2016).

Since South Africa has become part of the global community after having been accepted again into the international community after the 1994 democratic elections, which resulted in a new government, the country has had to firstly deal with all the ills that had led to its exclusion therefrom. As a result, the South African government has been trying to ensure that it complies with the globalization demands by redesigning its economy in such a manner that it is in line with the global community standards (Venter

& Levy, 2014). However, the Global Competitive Report 2013/2014 released by the World Economic Forum, which comprises the global community to which South Africa also belongs, ranked South Africa in position 53 out of 148 countries. This ranking is according to labour markets that are doing their best to comply with the set standards of the global community. According to the report, South Africa was ranked position 2 in sub-Saharan Africa, with Mauritius being in the lead (Schwab, Sala-i-Martin, & Brende, 2013).

Since globalization also directly impacts the employment relations of a country, it demands a country's compliance with regard to factors such as labour market conditions, workforce health, quality of education, labour market efficiency, hiring and firing practices, wage flexibility, and labour-employer relations. South Africa did not do that well (Venter & Levy, 2014). For instance, according to the same 2013/2014 Global Competitiveness Report, which assessed 148 countries, South Africa scored very low on a number of areas, as shown below. A concerning image of the South African labour market is portrayed:

- position 133 on workforce health;
- position 146 on quality of education;
- position 116 on labour market efficiency;
- position 147 on hiring and firing practices;
- position 144 on wage flexibility;
- position 148 on labour-employer relations.

It is not surprising that the results show South Africa at position 148 (i.e., last position) on labour-employer relations, which proves that the labour market is doing poorly in that area. Furthermore, according to Schwab and Sala-i-Martin (2018) the most recent results of the Global Competitiveness Report 2017/2018, which assessed 137 countries, there appears to be no improvement in South Africa's performance with regard to labour-employer relations. South Africa rated as position 137 out of 137 countries. Once more, these results are a true reflection of the state of affairs in the South African labour market. The results are displayed as follows:

- position 121 on workforce health;
- position 114 on quality of education;
- position 93 on labour market efficiency;
- position 125 on hiring and firing practices;
- position 132 on wage flexibility;
- position 137 on labour-employer relations.

Although these global results on South Africa's performance in its labour market are still not that convincing, it seems like there is an improvement in other areas of importance when compared to other countries that are still doing worse than South Africa.

According to Barker (2018), a labour market should work towards achieving certain objectives, namely efficiency, equity, growth, and social justice. Efficiency refers to continuously improving matching job seekers (i.e., the unemployed in the labour force) and labour-seekers (i.e., employers). Equity refers to ensuring that everyone is given equal opportunities in relation to "jobs, training, treatment at work, and payment". Growth describes the ability of the labour market to grow to increase future employment with the aim of contributing to higher productivity for employers and incomes for employees in the workplace. Finally, social justice refers to society's involvement in the labour market

to minimize the negative effects or harm that the market has caused the welfare of employees.

However, when one looks at the state of the South African labour market, it is clear that its operation is in contradiction to the above labour market objectives. Since the implementation of post-1994 labour legislation, such as the LRA, the BCEA and the EEA, running a profitable business has never been an easy task for work organizations.

#### **4.3. What employers need to do to improve workplace relationships?**

Ehlers (2017a) reveals a number of undesirable behaviours that characterize South African supervisors and managers in the workplace. The undesirable behaviours that have diluted the relationships in the workplace include, those such as mental bullying of subordinates; ridiculing subordinates in the presence of others; preferring a less deserving candidate for promotion; not considering employees for progress on the grounds of race, gender, language, culture, religion, union affiliation or age; victimizing subordinates; allowing privileges to selected employees on subjective grounds; and allowing special privileges to selected employees, or intentionally blocking promotion and progress. The prevalence of these undesirable behaviours in the South African workplace is a clear indication of a supervisory or managerial employment relationship that is in a bad state, and that still needs a lot of improvement.

However, there appear to be very serious reasons why South African supervisors and managers are failing in their supervisory and managerial duties in the workplace. According to Botha and Moalusi (2010), the diverse labour market in which South African supervisors operate is characterized by many serious political, social and economic challenges. It, therefore, requires that employers at all times strive to prevent any miscommunication, misunderstanding or conflict with their subordinates in all their relationships in the workplace. South African supervisors appear to be faced with more responsibilities than supervisors in other countries. Ehlers and Jordaan (2016) reveal that in addition to their routine organizational duties, South African supervisors are expected to deal effectively with many unpredictable and highly challenging labour related issues that emanate from a transforming labour market.

According to Ehlers and Jordaan (2016), supervisors in the South African workplace are also faced with serious challenges regarding “lack insight, knowledge, understanding or experience in equity related employment relations expectations and are therefore unable to deal with the challenges posed by workplace diversity” (p. 6). However, it has also been found that occasionally some supervisors’ undesirable behaviours are unintentional. The behaviour simply emanates from supervisors’ lack of insight, knowledge, and understanding or experience with regard to matters pertaining to equity expectations in employment relationships. Where employees are confronted with such situations, which erode their trust in the organization, they find themselves having no other recourse than to perceive these behaviours as non-compliant, unfair and in bad faith (Ehlers & Jordaan, 2016).

Therefore, in order to be successful, a manager needs to adopt a strategic leadership role, which requires them to have a different thinking approach. They need to transform from managers who are just doing their managerial work to being leaders who encourage others in the workplace to execute their responsibilities (Mallaby, Price, & Hofmeyer, 2017). Emotional intelligence is another factor of importance for a manager’s success in their duties. According to Mallaby, Price and Hofmeyer (2017) emotional intelligence empowers the manager to “inspire loyalty, encourage innovative solutions, and build strong teams and lasting relationships” (p. 3). Tau (2017) states that the manager’s areas of focus in the workplace include monitoring, performance, inspection, competency, risk assessment, enforcement, assessment, HR, and employees’ fitness for work. It can, therefore not be denied that, overall, supervisors and managers who are successful in the work organization are those who are fair and consistent in decisions they make in the workplace.

#### **5. CONCLUSION**

The kind of employment relations that prevailed in the South African Labour market pre-1994 favoured employers (through their employers’ organizations) far more than employees (through their trade unions). This notion is substantiated by the fact that the Labour Relations Act of 1956 gave more power to employers’ organizations and allowed limited recognition and rights to Black Trade Unions in the workplace (Cassim, 1984). This situation necessitated a transformation of the South African employment relations into one that is characterized by labour peace and protection of the human rights of both employees and employers in the workplace.

The promulgation of the labour legislation, such as, among others, the three primary labour legislations (LRA, BCEA, and EEA) was the only way in which the South African employment relations could be transformed. Without the promulgation of the EEA, Section 9 of Chapter 2 of the Constitution, which strongly advocates the notion of equality of every South African citizen before the law, the right to equal protection under the law and the prohibition of unfair discrimination, could not have been given effect to (Du Plessis & Fouché, 2006). Without the enactment of the LRA, Section 23 of the South African Constitution which serves as a foundation for labour relations as a whole, in terms of providing for the protection of employees’ rights in the workplace, could not have been given effect to (Venter & Levy, 2014). Without the promulgation of the Basic Conditions of Employment Act (Basic Conditions of Employment Act 75 of 1997), the exploitation of employees in the workplace could not have been prevented (Mzangwa, 2015). It is only through the promulgation of the primary labour legislation and all the other supplementary labour legislation that the human rights enshrined in the South African constitution could be given effect to, in the workplace.

The three primary labour legislations mentioned and discussed in this article may not have achieved the highest percentage of success on what they were originally promulgated to achieve, but these legislations have succeeded in improving the relations in the South African workplace.

The improvement in the South African employment relations can be seen more in the corrective, regulatory, and protective labour laws, which now exist, as compared to the situation prior to the implementation of these labour legislation. When one looks at the type of employment relations that existed pre-1994, in comparison with the current (post-1994) employment relations – one can say without any hesitation that there definitely has been an improvement, even though such improvement may at times, be said to have been gradual.

It also cannot be left unmentioned that the amendments on the three labour legislation such as the Labour Relations Amendment Act 6 of 2014, which amended the LRA; Basic Conditions of Employment Amendment Act 20 of 2013, which amended the BCEA; and the Employment Equity Amendment Act 47 of 2013, which amended the EEA, which came into effect in 2014 were aimed at making the legislation more effective by addressing the crucial areas which could have inadvertently been overlooked during the original billing stage of the legislation.

This paper is, therefore, of importance for future research as it provides a depiction of how the employment relations have been in the South African workplace, before and after 1994. This paper reveals the antagonistic relations that existed in the workplace as well as the South African government's intervention to address the situation, which ultimately resulted in the promulgation of the post-1994 labour legislation. This paper further reveals the influence, which the post-1994 labour legislations have had on the employer-employee/trade union relationship in the South African workplace. However, the limitation, which future researchers may experience when undertaking research on any of the areas mentioned above, may be that such research would only have to be conducted in government departments. The reason for this would be to obtain reliable data as the implementation of the post-1994 labour legislation is strictly monitored more in the public sector workplace than in the private sector workplace.

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