



Department
of Labour

Improving the working conditions of all our people





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Foreword

South African workers can justifiably be proud of our government's achievements in creating a better life for all.

The government has set out to systematically change the apartheid laws which subjected our people to a life of hardship, misery and poverty. As the first decade of democracy and freedom draws to a close, new laws have been passed and processes have been implemented to create a new

South Africa free from oppression and suppression of one group by another. Part of the creation of a better life for all, is the improving of the working conditions of all our people and not only for some.



One of our achievements was the Minister's announcement of minimum wages for domestic workers.

The achievements of the democratic government are obvious in the better working conditions and the greater protection our workers now enjoy. Workers are no longer one of the most marginalised groups in our society. Our workers have a long and proud history of fighting for their rights. Workers no longer have to fight for those rights. When the democratic government came to power in 1994, those rights have been given to our workers.

The general and basic working conditions of our workers were radically improved by the Labour Relations Act, 1995, Employment Equity Act, 1998, and the Basic Conditions of Employment Act, 1997. The most marginalised and vulnerable of our workers, domestic workers and farm workers, are now being protected through minimum wages and conditions of employment.

We are reducing poverty, developing skills, creating jobs and growing the economy. But, we also know that there are still many of us who cannot yet directly benefit from what our economy offers. As a result of the country's shameful past, some of our people are unskilled and have low levels of education. Looking around us, we see one South Africa that is well-developed and modern, and another South Africa that is

underdeveloped and poverty-stricken. The government, including the Department of Labour, is focused and dedicated to free our people from this poverty and suffering.

The Department of Labour has made significant breakthroughs in the fight for healthy and safe working environments for workers. Between 2001 and 2002, the year on year workplace fatality rate was reduced by about 40%. The Department is committed to continue its fight against workplaces which resemble war-zones and where death and injury is an inherent occupational hazard.

Health and safety inspections to workplaces have been increased and the Department's inspectors will continue to ensure that employers, who still place profits ahead of their workers' lives, have no place to hide. We believe that one workplace accident or fatality is one too many.

In a further shift from the past, Government, Organised Labour, Organised Business and Communities, all participate in making labour laws at the National Economic Development and Labour Council (NEDLAC). All labour laws have to be discussed at NEDLAC first, before they can go to Parliament. It has given workers an important right in the process of law making.

Through focussed interventions, the government is committed to ensuring the dignity of every South African by helping those who are unemployed and dependent on social welfare to become employable through the skills development programmes. By the end of 2002, more than 23 000 learners have been on training programmes organised by the SETA's.

In 2001 the Government launched the Human Resources Development Strategy and National Skills Development Strategy which cover primary, secondary and Adult Basic Education, skills enhancement programmes and on-the-job training in public works programmes.

The National Skills Development Strategy will develop a culture of life long learning, foster skills development in the formal economy for productivity and economic growth, stimulate and support skills development in small businesses, promote skills development for employability through social development initiatives and assist young entrants into employment.

Shortly we will have an accurate picture of the skills profile and shortages of skills in the public sector. In order to increase access to the SETA's

training programmes by unemployed people, government is taking the lead by bringing more unemployed people on its training programmes.

As we are getting ready to enter the second decade of freedom, the government is committed to training unemployed people, training workers further, creating jobs and growing the economy.

The government has passed laws to improve working conditions. It is your duty to know your rights and to insist on your rights in order to give effect to these laws.

Labour Relations Act, 1995

The Labour Relations Act, 1995, (LRA) reflects the vision of workers and employers' rights as envisioned by the Constitution.

The LRA ensures the right to fair labour practices; to form and join trade unions and employers' organisations; to organise and bargain collectively; and to strike and lock-out.

The LRA promotes conciliation and negotiation as a way of settling labour disputes. It expects parties to make a real attempt to settle disputes through conciliation before going to arbitration, adjudication or industrial action.

Dismissal

- dismissal is when your employer ends your contract of employment with or without notice
- there are 3 types of legally permitted dismissals:
 - for misconduct when a worker deliberately or carelessly breaks a rule at the workplace, for example theft
 - for incapacity when a worker cannot work properly because of illness or inability
 - for operational reasons which are related purely to business needs



Even if there are very good substantive reasons for a dismissal, an employer must follow fair procedure before dismissing a worker.

and not because of some failing on the part of the worker

- dismissal has to be substantively fair and the employer has to follow a fair procedure
- the person who has to decide on the fairness of a dismissal must decide whether:
 - the worker has broken a rule of conduct in the workplace
 - the rule was valid or reasonable
 - the worker knew of the rule or should have known of the rule
 - the employer applied the rule consistently
 - dismissal is the appropriate step to take against the worker for breaking the rule instead of less serious action such as a final written warning or suspension
- even if there are very good substantive reasons for a dismissal, an employer must follow fair procedure before dismissing a worker
- fair procedure means that the employer must conduct an investigation into the alleged misconduct
- it is not necessary for the employer to conduct a formal enquiry, but these requirements should be met:
 - the employer must inform the worker of the allegations in a manner the worker can understand
 - the union should be consulted before the start of an enquiry into the conduct of a worker who is a shop steward or union office-bearer
 - the worker must be given reasonable time to prepare a response to the allegations
 - the worker must be given a chance to state his or her case
 - the worker has the right to be assisted by a shop steward or another worker
- after the enquiry, the employer must inform you of the decision, preferably in writing
- if you are dismissed, the employer must give reasons and inform you of your right to refer the dispute for resolution to a bargaining council or the Commission for Conciliation, Mediation and Arbitration (CCMA)
- if you want to challenge the dismissal, you must refer it to a bargaining council or the CCMA within 30 days of your dismissal
- employers must keep record of disciplinary action for each worker, including the nature of the misconduct, the disciplinary action and the reasons for the action.

Dismissal during unprotected strikes

- you cannot be dismissed for taking part in a procedural strike, but you can be dismissed for taking part in an unprotected strike

- taking part in an unprotected strike is regarded as misconduct
- but, taking part in an unprotected strike will not always be justified dismissal
- employers must consider whether such a dismissal would be substantively fair
- factors employers should consider are:
 - how serious the breach of the Act was
 - whether attempts were made to comply with the Act
 - whether or not the strike was in response to unjustified conduct by the employer
- before dismissing striking workers, an employer should:
 - contact the union to discuss the employer's intention to dismiss strikers
 - give striking workers a clear ultimatum which should state what is required of the workers and what will happen if they do not comply with the ultimatum
 - give workers enough time to consider the ultimatum
 - allow the workers a chance to make representations which the employer must consider
- the employer can ignore these steps if it is not reasonable to follow them, for example, if an unprocedural strike is accompanied by extreme violence and the employer might be forced in the interest of safety and security to ignore these steps.

Dismissal for incapacity

- before a worker can be dismissed for poor work performance, the employer must first give the worker appropriate evaluation, training or guidance and a reasonable time for improvement
- the employer must hold an investigation into reasons for the poor performance
- only if the worker continues to perform poorly thereafter and the problem cannot be reasonably solved without dismissing the worker, will dismissal be fair
- if temporary incapacity will keep you away from work for an unreasonably long time, it will be unfair to dismiss the worker unless the employer first investigates all possible ways of avoiding dismissal
- if your incapacity is permanent, the employer should first try to find alternative work for you or adapt the work so that you are able to do it.

Dismissal for operational reasons (retrenchment)

- an employer may dismiss workers for operational reasons but only if he or she has first avoided dismissal by reaching an agreement with recognised representatives of workers
- the LRA has been amended to make a distinction between retrenchments of individuals, retrenchments at small-scale businesses and retrenchments at large-scale businesses
- the main changes are:
 - individual workers who are retrenched may refer a dispute to arbitration by the CCMA or a bargaining council or for adjudication to the Labour Court
 - in large-scale retrenchments the consultation process may be facilitated by a person appointed by the CCMA
 - workers involved in a large-scale retrenchment may either strike or may refer a dispute over the substantive fairness of the retrenchments to the Labour Court.

Transfer of a business

- your contract of employment is automatically transferred when the business is sold as a going concern
- your continuity of employment is not interrupted by the sale of the business
- your terms and conditions of employment cannot be less favourable with the new employer
- if you do not want to transfer to the new employer, you may resign but will not get severance pay
- you cannot be dismissed because a business is sold, but you can be dismissed if the sale creates operational requirements that justify dismissal
- or if the business is transferred in a situation of insolvency.

Commission for Conciliation, Mediation and Arbitration (CCMA)

- the CCMA resolves disputes for all workers, including particularly vulnerable workers such as domestic and farm workers, through conciliation
- disputes must be referred to the CCMA within 30 days after it arose
- if conciliation fails, the CCMA must settle the dispute by arbitration

- the CCMA has a team of commissioners and conciliators to resolve disputes
- the CCMA is an independent body even though it is mainly funded by the State
- the CCMA is controlled by a governing body on which Government, Organised Labour and Organised Business have 3 representatives each
- the CCMA has offices in all the provinces and a Head Office in Johannesburg.

Labour Court

- workers involved in a large-scale retrenchment may either strike or refer the dispute over the substantive fairness of the retrenchment to the Labour Court
- workers who disagree with the ruling of the Commission for Conciliation, Mediation and Arbitration (CCMA) may approach the Labour Court for a review of the decision.

Basic Conditions of Employment Act, 1997

This law advances economic development and social justice by establishing and enforcing basic conditions of employment for workers. It does not apply to members of the South African National Defence Force (SANDF), National Intelligence Agency (NIA) and South African Security Service (SASS).

Working time

- you cannot work for more than 45 hours in any week
- you cannot work for more than 9 hours in any day if you work for 5 days or less a week
- you cannot work for more than 8 hours in any day if you work for more than 5 days a week
- you may be asked to work an extra



You cannot work for more than 8 hours in any day if you work for more than 5 days a week.

15 minutes but not more than 1 hour per week by mutual agreement to finish servicing a client after closing time

- this provision does not apply to senior management; sales staff who travel to customers and a worker who works for less than 24 hours a week for an employer, or a worker who earns above R115 572 per annum.

Overtime

- to be worked by mutual agreement
- an agreement may not require or permit a worker to work more than 12 hours on any day, inclusive of overtime
- you are not allowed to work more than 10 hours overtime in any week
- you must get at least 1.5 times your wage for overtime worked.

Meal intervals

- if you work continuously for more than 5 hours, you are allowed 1 continuous hour meal interval
- you must be paid for a meal interval if you are required to work or be available for work
- a written agreement may reduce meal intervals to not less than 30 minutes.

Pay for work on Sunday

- you must be paid double time for every hour worked on a Sunday if you do not normally work on a Sunday
- if you normally work on a Sunday, you must be paid 1.5 times your normal wage for each hour worked
- or by agreement, get paid time off for the time you have worked.

Night work

- night work means after 18:00 and before 06:00 the next day
- you are only allowed to work a night shift if you are paid an allowance or your working hours are reduced and if transport is available between your home and work at the start and end of your shift
- if you work night shift regularly, you must be informed in writing or orally if you are unable to understand a written communication, in a language that you understand, of any health and safety hazards associated with

your work as well as your right to a medical examination concerning those hazards.

Public Holidays

- you are not allowed to work on public holidays unless by mutual agreement between you and your employer
- if the public holiday falls on a day you would normally have worked, you must get paid
- if you normally do not work on public holidays and you are required to do so, you must get paid double your normal wage
- if your shift starts on the public holiday and ends on the next day, the whole shift is regarded as worked on the public holiday
- but, if the shift starts on a public holiday and the greater part is worked on the next day, you get paid your normal wage.



In terms of the basic Conditions of employment Act, you must get 21 consecutive days annual leave on full pay for every 12 months worked.

Annual leave

- you must get 21 consecutive days leave on full pay for every 12 months worked.

Sick leave

- a sick leave cycle runs over 36 months
- during the first sick leave cycle with an employer, you can get 1 day paid sick leave for every 26 days worked
- you cannot get paid sick leave if you have been absent from work for more than 2 consecutive days on more than 2 times during an 8-week period if you do not produce a medical certificate.

Maternity leave

- you are entitled to 4 months maternity leave
- you are not allowed to work for 6 weeks after the birth of your child unless a doctor or a midwife certifies that you are fit for work
- if you have a miscarriage during the third trimester of pregnancy or has a stillborn child, you get 6 weeks maternity leave
- you must inform your employer in writing of when you will start your maternity leave and when you will return for work
- while you are pregnant or breastfeeding your child, you are not required to do work that is dangerous to you or your child's health
- during your pregnancy and the first 6 months after the birth of your child, your employer must offer you suitable alternative work at the same terms and conditions if you work at night or your work is dangerous to your or your child's health.

Family responsibility leave

If you have worked for longer than 4 months and at least 4 days a week for an employer:

- you get 3 days paid family responsibility leave during each annual leave cycle
- family responsibility leave cannot be accumulated if you have not taken it
- you may take family responsibility leave:
 - when your child is born
 - when your child is sick
 - when your spouse or life partner dies
 - when your parent, adoptive parent, child, grandparent, grandchild, your brother or sister dies
- an employer may ask for reasonable proof of the reason for taking family responsibility leave.

Payment

- you must be paid in South African currency
- you must be paid daily, weekly, fortnightly or monthly
- you must be paid in cash, by cheque or by direct deposit into an account
- you must get your pay at your work or at a place agreed to by you

- you must get your pay within working hours or within 15 minutes of the start or end of your working hours
- you must get your pay in a sealed envelope.

Deductions

- an employer is not allowed to make any deduction from your pay unless you have agreed to it in writing, or
- the deduction is allowed in terms of a law, collective agreement, Court Order or an arbitration award
- your employer may make a deduction to pay him or her back for loss or damage if:
 - the loss or damage happened during working hours and was your fault
 - your employer has followed a fair procedure and have given you the chance to show why the deduction should not be made
 - the total debt is not bigger than the amount for the loss or damage
 - the deduction from your pay is not bigger than 1/4 of your pay.

Termination

- if you have worked for 4 weeks, you must get 1 week notice
- if you have worked for more than 4 weeks but less than 1 year, you must get 2 weeks' notice
- if you have worked for more than a year, you must get four weeks' notice.
- you cannot be given notice while you are on paid annual leave or any other paid leave
- your employer can pay you for the notice period without you serving your notice period.

Severance pay

- you must receive 1 week's pay for every year of completed service
- the consulting party may reach agreement on a higher amount
- if you unreasonably refuse to accept the employer's offer of alternative employment you cannot get severance pay.

Minimum wages for domestic workers

- minimum wages for domestic workers became effective from

1 November 2002

- a domestic worker, who works for more than 27 hours per week in an urban area, must earn a minimum of R4,10 per hour
- a domestic worker, who works for 27 hours per week or less in an urban area, must earn a minimum of R4.51 per hour
- a domestic worker, who works for more than 27 hours per week in a rural area, must earn a minimum of R3.33 per hour
- a domestic worker, who works for 27 hours per week or less in a rural area, must earn a minimum of R3.66 per hour



Wages will go up by 8% on 1 November 2003 and 1 November 2004

- should you earn more than the minimum wage, your employer cannot pay you less as this would be an unfair labour practice
- you must get a wage increase every year even if you earn more than the minimum wage
- wages will go up by 8% on 1 November 2003 and 1 November 2004
- your employer may only deduct money from your wage if you agree
- the only deductions that are allowed, are for:
 - saving
 - pension fund
 - repayment of a loan to a financial institution
 - trade union subscription
- a total of 10% of your wages may be deducted for accommodation if it meets the following standards:
 - the room is weatherproof and generally kept in a good condition
 - it has at least one window and door, which can be locked
 - it is fitted with a toilet, bath or shower if you do not have access to another bathroom
- money cannot be deducted from your wages for:
 - equipment or tools provided at the workplace
 - uniforms or work clothing

- meals taken during working hours
- accidental burning of clothes during ironing
- any accidental breakages
- you may not work for more than 45 ordinary hours per week
- you must get paid overtime if you work more than 45 hours per week
- you must be paid 1.5 times your hourly wage for overtime worked
- if you work regularly on Sundays, you must be paid 1.5 times your hourly wage for every hour worked on Sundays
- if you only work sometimes on a Sunday, you must be paid double your wage for that day
- for overtime or work on Sundays and public holidays, you can be paid:
 - in cash
 - part in cash and part paid time off
 - paid time off in place of payment
- you must be paid for standby time. Standby is when you have to sleep in your employer's home to look after children or old people. This means that you may not be physically working but you must be available for work
- standby starts at 20:00 and ends at 06:00 the next morning. You must be paid R20 for every shift
- you are allowed to take a meal break of 1 hour after you have worked for 5 continuous hours
- you are allowed to take annual leave, sick leave, family responsibility leave and maternity leave
- you are allowed 3 weeks' paid leave per year
- sick leave is worked out on a 3-year cycle. So if you work five days a week, you get 30 days paid sick leave over a 3-year period
- you are allowed to take 5 days family responsibility leave every year
- if your contract of employment is terminated after you have worked for less than 6 months, you must be given one week's notice
- if you have worked for more than 6 months, you must get 4 weeks' notice.
- you must be paid all monies owed to you when your contract is terminated, including money for leave not yet taken
- severance pay is paid when your employer moves to another place, to a smaller home or your services are redundant because the children go to school or a frail person passes away
- your employer must register you with the Unemployment Insurance Fund (UIF)
- the UIF pay unemployment benefits, illness benefits, maternity benefits, adoption benefits and dependents benefits
- if you work for 3 different employers, they must all register with the UIF

- the total amount to be paid to the UIF is 2% of your monthly wage. One percent is paid by the employer and 1% is paid by you
- this means that if you are paid R600 per month, you will contribute R6 per month to the UIF and your employer will pay R6 per month to the UIF
- you earn credits at the UIF. For every 6 days you have worked, you earn 1 day's benefit from the UIF
- if you have worked for 3 months, you can receive 15 days' benefit
- UIF benefits are only paid if you are unemployed or ill for longer than 14 days
- UIF applications for maternity benefits must be made 8 weeks before confinement or within 6 months of the birth of your child.

Minimum wages for farm workers and seasonal workers

- this sectoral determination was promulgated on 2 December 2002
- the minimum wages became enforceable from 1 March 2003
- it covers all farm and seasonal workers
- there are two sets of wages. One is for Area A which covers municipalities with an urban profile. Area B covers municipalities in areas with a rural profile
- if you work in Area A for more than 27 hours per week, you must be paid R800 per month
- if you work in Area B for more than 27 hours per week, you must be



The minimum wages for farm workers became enforceable from 1 March 2003.

paid R650 per month

- if you work in Area A for 27 hours per week and less, you must be paid R4.10 per hour
- if you work in Area B for 27 hours per week and less, you must be paid R3.33 per hour
- these wages will be increased every year
- the farmer is only allowed to deduct money if you agree to the deduction
- money may only be deducted for:
 - savings
 - provident fund
 - repayment of a loan to a financial institution
 - trade union subscription
- farmers are not allowed to deduct money for:
 - equipment or tools provided at the workplace
 - uniforms, overalls and protective clothing
 - meals taken during working hours
 - any accidental damages
- the farmer is allowed to give you housing or food as part of your wages.
- if you receive both housing or food as part of your wages, it is not allowed to be more than 20% of your monthly wage
- housing is only allowed to be 10% of your wages and may be given if no rent is charged
- deduction for housing is only allowed if:
 - the roof is waterproof
 - the windows are glass and can open
 - there is electricity and water in the house
 - there is a flush toilet or a pit latrine
- you may not work for more than 45 hours per week
- you may work for 9 hours a day if you work 5 days per week
- you may work for 8 hours a day if you work more than 5 days per week
- you must be paid overtime if you work more than 45 hours per week
- farm workers may work 15 hours overtime per week
- you must receive extra pay for work on Sundays and on public holidays
- you may do night work from 20:00 to 04:00 by mutual agreement
- if you work at night you must be given an allowance of at least 10% of your ordinary daily wage
- you must get a 1-hour meal interval for every 5 hours worked
- you are entitled to annual leave, sick leave, family responsibility leave and maternity leave
- either you or the farmer can terminate the contract of service

- if you have worked for less than 6 months, you must get 1 week's notice
- if you have worked for more than 6 months, you must get 4 weeks' notice
- if you have livestock on the farm, you are allowed to keep the livestock on the farm for 1 month after your contract has been terminated or for the period stipulated in the contract of employment
- if you have standing crops on the land, you are allowed to tend, harvest and remove the crops within a reasonable time after the crops are ready for harvesting unless the farmer pays you for the crops.

Minimum wage for wholesale and retail workers

- this sectoral determination came into effect on 1 February 2003
- it gives greater job security and protects all workers in this sector
- all workers in this sector, including casual workers, will now get a minimum wage regardless of the number of hours worked
- all workers can get leave or notice pay
- you can get family responsibility leave
- you can choose whether you want to get a lower wage with benefits or a higher wage without benefits
- there are different wage levels for urban, rural and intermediate areas
- workers from the former Transkei, Bophuthatswana, Venda and Ciskei are covered by this provision
- there are different wage levels for different categories of workers from shop managers to assistants
- the minimum wage for assistant managers in urban areas is R9.50 per hour, or R427.78 per week, or R1 853.73 per month (previously excluded from the scope)
- the minimum wage for a cashier in urban areas is R5.55 per hour, R249.83 per week or R1 082.63 per month (previously excluded from the scope)
- the minimum wage for a general assistant in urban areas is R4.31 per hour, R194.43 per week or R842.59 per month (previously excluded from the scope)
- the minimum wage for a shop assistant in urban areas is R5.19 per hour, R233.95 per week or R1 013.80 per month (previously excluded from the scope)
- these minimum wages will increase by 8,8% in 2004 and 8,8% in 2005
- the minimum wages will be further adjusted for workers in the former homelands to be the same as those for the rest of the country by 2005.

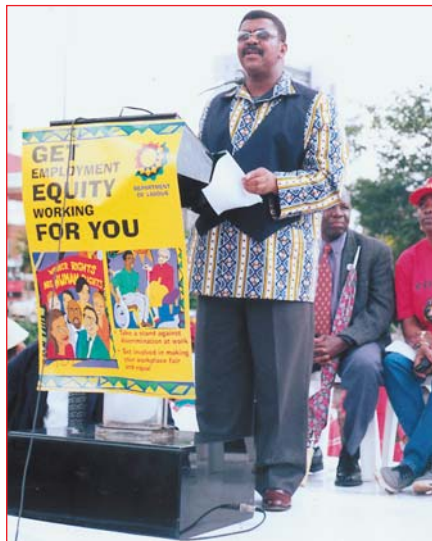
Child labour

- the Basic Conditions of Employment Act, 1998, says that children under 15 years of age are not allowed to work
- children found to be working in hazardous conditions, even if it is not for gain and they are not attending school, are viewed as being engaged in child labour activities
- the Basic Conditions of Employment Act, 1998, section 43, says that it is a criminal offence to employ a child. If found having contravened the law, the employer can go to jail for up to three years
- section 28 of the South African Constitution says that every child has the right to be protected from exploitative labour practices. Children should not be expected or permitted to perform work that:
 - is inappropriate for the child's age (like a child under the age of 18 years carrying bags of coal) or
 - place at risk the child's well-being, education, physical or mental health, spiritual, moral or social development. Children who are not able to attend school are denied the right for personal development
- it is every South African citizen's responsibility to be involved in eradicating child labour.

Employment Equity Act, 1998

This law promotes and ensures equal opportunities in the workplace by eliminating unfair discrimination.

You may not be unfairly discriminated against on the grounds of race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation,



The Employment Equity Act ensures equal opportunities in the workplace by eliminating unfair discrimination.

age, disability, religion, HIV status, conscience, belief, political opinion, culture, language or birth.

Medical testing

- your employer may not have you medically tested to determine your HIV status
- your employer may only have you medically tested in the light of medical facts, employment conditions, social policy, the fair distribution of employee benefits or the inherent requirements of the job
- your employer may not discriminate against you on the basis of your HIV status.

Code of Good Practice on Key Aspects of HIV/AIDS and Employment

In addition to the Employment Equity Act, 1998, the Department of Labour has promulgated the Code of Good Practice on Key Aspects of HIV/AIDS and Employment.

The purpose of this Code is to assist everyone in understanding and fulfilling their obligations in terms of the Employment Equity Act. The Code sets out guidelines for employers and workers to implement and ensure that individuals with HIV are not unfairly discriminated against in the workplace. This includes provisions on:

- creating a non-discriminatory work environment
- dealing with HIV testing, confidentiality and disclosure
- providing equitable employee benefits
- dealing with dismissals
- managing grievance procedures.

The Department of Labour recognises that the HIV/AIDS epidemic is one of the most serious public health problems facing our country. The epidemic threatens not only the lives of individual workers and employers. The epidemic poses a significant threat to every workplace, the effective functioning of the labour market and the economy as a whole.

The Department of Labour also recognises that HIV/AIDS poses a challenge which will require commitment to address the impact of the

pandemic and to reduce poverty.

In order to meet this challenge, the Department has adopted the following broad goals:

- eliminating unfair discrimination in the workplace based on HIV-status
- promoting a non-discriminatory working environment in which people living with HIV or AIDS are able to be open about their HIV status without fear of stigma or rejection
- promoting appropriate and effective ways of managing HIV in the workplace
- creating a balance between the rights and responsibilities of all parties
- giving effect to the regional obligations of South Africa as a member of the Southern African Development Community.

Affirmative Action

- the Employment Equity Act goes further than just ending unfair discrimination, it also promotes affirmative action. Larger employers are obliged by law to take steps to improve the situation of black people, women and people with disabilities in the workplace. This may mean that more black people need to be employed in higher positions. It may mean that a company's housing policy may have to change if it does not allow for allowances to black people or married women
- the Employment Equity Act says that certain employers, usually employers who employ 50 workers or more, have to:
 - make sure that a **manager is responsible** for promoting affirmative action
 - **consult all workers** on the steps that they want to take to improve the position of black people, women and people with disabilities
 - **work out if any problems** exist in the workplace which prevents black people, women and people with disabilities getting jobs or advancing in the company
 - **prepare a plan** to solve the problems and make sure that the company is representative of all the people in South Africa
 - **report to the Department of Labour** on how representative their company is and what steps they are taking to improve the situation
- all workers have a right to ask what their company is doing to promote affirmative action. If you think your company may be discriminating against black people, women and people with disabilities or not doing

enough to improve their situation, you can contact the Department of Labour.

Code of Good Practice on the Employment of People with Disabilities

- the Minister published the Code of Good Practice on Employment of People with Disabilities on 19 August 2002 in Government Gazette No. 23718
- the Minister received advice from the Commission for Employment Equity, after a process of public hearings and written comments from interested people and organisations were considered
- the development of technical assistance guidelines to accompany this is currently in progress.

Skills Development Act, 1998 and Skills Development Levies Act, 1999

- these laws sets out to develop the skills of the South African workforce.

Funds for training

- all employers must pay R1 for every R100 they pay all their workers in wages to the tax office. This is called a skills levy. Only very small employers who pay all their workers together less than R250 000 a year AND who don't have to pay income tax by law are not required to pay. Government departments also do not have to pay
- the money is paid to the tax office. The tax office sends it to the Department of Labour, together with a list of exactly which employer paid what amount
- the Department of Labour splits this money into two parts. For each rand that was paid:
 - twenty cents goes to a special fund known as the National Skills Fund. This fund is mainly for training unemployed people
 - eighty cents goes to special organisations called Sector Education and Training Authorities or SETAs for short. There are 25 SETAs in all A list of SETAs appear at the end of this publication.

Normal training at work

- employers who have paid the skills levy can get money back for training. In the first place employers can get 60c back for every rand they paid in levy. The money they get back is called a skills grant. The money they get back can be used to help pay the costs of training. They get back only a part of what they paid in their levy – this may not cover all the costs of the training they want to send their workers on. If



You should have a say about what training you are given. You must also ensure that you are indeed given training.

it does not cover all the costs, then they must pay the difference directly themselves. The training is for the workers employed in that workplace

- you should have a say about what training you are given. You must also ensure that you are indeed given training
- employers should talk to their workers about training
- this can be done in a committee or it can be done informally or even individually. In some cases there is a skills development committee where employers talk to workers about the training they plan to do.

The law does not say how it should happen – but it just makes sense

- to get a skills grant an employer must write a Workplace Skills Plan and send it to the SETA they pay their levy to. They will get 15 cents for every rand they paid in levy when the plan is sent to the SETA and they get another 45c for every rand they paid in levy when they send a report at the end of the year saying they have done the training
- a workplace skills plan is a simple list of the number and level of workers who are going to get training in the next year and what skills they are going to get. It is not a hard thing to do. The law does not tell employers what training to send workers on – they can decide, after talking to their workers
- employers who need help can go to the SETA they pay their levy to
- if you are getting no training you should first take this up with your employer. If they do not want to listen, take the matter to your union. The law says that if the employer wants to get this money back, they must fill out a Workplace Skills Plan. It does not say they must do it. So you will need to explain to your employer that it is a good thing to do and the money is sitting in the SETA waiting for them to claim.

Learnerships

- learnerships are special training programmes that both workers as well



Learnerships are special training programmes that both workers as well as unemployed people can enter.

as unemployed people can enter

- if an unemployed worker enters a learnership the Learnership Determination will cover them. The Learnership Determination is explained more carefully below. If a worker gets into a learnership with their current employer their normal wages and conditions must continue the same as before.

What is a learnership?

Learnerships are special training programmes that:

- lead to a qualification for a specific job.
- are nationally recognised – and which employers should know and trust;
- must have two parts
 - must include time at work where a learner learns from a more experienced worker how to do the job, and
 - it must include time at work where a learner learns from a more experienced
 - it must include some time learning some of the theory that explains why things work as they do. The theory can be at the workplace or at a college but it must be good quality learning that is checked by the SETA.

Learnership Agreement

- to start a learnership there has to be an agreement between the employer, a training provider and the person who is going to be trained. This agreement is known as a Learnership Agreement. It must be registered with the SETA that the employer pays his or her levy to
- the employer may get another skills grant from the SETA when they register the learnership with the SETA. Employers must talk to the SETA about this. They can also deduct the allowances or wages paid to the worker from their taxes
- the Learnership Agreement sets out what employers and learners must do. This is set out in a special Learnership Agreement that was published on 3 April 2001. It says that workers, employers and training providers have certain rights and duties:

The learner

The learner has the right to:

- education and training as set out in the learnership agreement
- the tools and opportunities they need for the training
- get tested and get the test results
- get a certificate when they pass
- raise grievances with the SETA if the training is not what it is supposed to be.



The National Skills Development Strategy will develop a culture of life long learning.

The learner must:

- work for the employer as part of the learnership
- be available for the learning and working set out in the learnership course
- obey the workplace policies and procedures
- complete any timesheets or tests needed for the learnership
- attend the courses that are set out in the learnership.

The employer

The employer has the right to expect the learner to:

- do the work and study set out in the learnership agreement
- stick to the rules and regulations in the workplace.

The employer must:

- provide the learner with training as set out in the learnership course
- give the learner the tools and time they need to learn
- give the learner the help they need to learn
- make sure that the learner is tested when the tests are needed
- keep records of learning and discuss progress with the learner
- if the person was not employed with the employer before the learnership started, then they must tell them about their allowances and terms and conditions of employment.

The training provider

The training provider has the right to:

- get to look at the learner's books, learning material and workplace, if needed.

The training provider must:

- give the training set out in the learnership
- support the learner
- keep records of the training that was given
- carry out the tests that are set out for them in the learnership
- give reports to the employer.

Ending a Learnership Agreement

A learnership ends on the date set out in the agreement. It can end earlier than the date set out in the agreement if:

- the learner successfully finishes the course earlier
- the learner is fairly dismissed by the employer because of reasons linked to their behaviour as a worker
- the employer and learner agree to end the contract
- if the learner asks, and the SETA agrees, to end the learnership. The SETA can only agree when an employer asks if they give a very good reason.

Dispute

- if there is a dispute between the learner and the employer it can be referred to the CCMA.

Minimum wages for learners on learnerships who were not already working for the employer

- if you are already working for the employer when you sign a Learnership Agreement, then you must get your normal wages and your normal conditions apply. You do not need to sign a new employment contract
- if you were not working for the employer before the Learnership Agreement was signed, then the employer must give you a new employment contract, lasting for the time of the learnership. The

Learnership Determination covers you if you were unemployed at the time you entered the Learnership Agreement.

Learner allowances for previously unemployed learners

- the law sets minimum amounts that you must be paid on a learnership if you were unemployed before. The minimum amount changes depending on the level of the learnership - but the lowest anyone can be paid is R120 a week
- because people learn at different rates, it is possible that different people will take different amounts of time to finish their learnerships. The law says that an average learner will take 10 hours to earn 'one credit' of learning. 120 credits will take about a year to finish if you pass all the tests on the way. On the other hand you could take longer to earn the credits if you do not pass the tests first time. Most employers will give you a one-year contract to finish 120 credits
- most learnerships are designed to lead to 120 credits, but they can be two times this number if they last two 'years', three times this number if they last three 'years' and so on. The longest possible learnership is likely to be five 'years' or 540 credits
- the minimum allowance that can be paid to a learner depends on the number of credits they have earned:

0 – 120 credits (first 'year')	– R120 per week
121 – 240 credits (second 'year')	– between R226 and R260 per week*
241 – 360 credits (third 'year')	– between R370 and R389 per week
361 – 480 credits (fourth 'year')	– between R540 and R548 per week
481 – 600 credits (fifth 'year')	– R700 per week

* The actual minimum depends on the learnership for which the learner is registered – this is outlined in more detail in the Determination
- an employer can agree to pay more than these minimum rates
- the rest of the terms of conditions of employment of a learner are basically the same as those outlined in this book under Basic Conditions of Employment Act. But there are a few differences because you will be on a short-term contract if you were unemployed before you started the learnership. The differences include:

Leave

- only if you are on a learnership that leads to more than 120 credits will you earn leave. If you are on a learnership that leads to more than 120 credits then you earn one week's leave for every 40 credits earned or for every four months worked whichever is the lowest.

UIF

- if you were unemployed before the learnership, then you do not qualify for UIF. Of course if you were employed with the same employer before you started the learnership, then you qualify just as if you never started the learnership.



The employer does not have to employ you after the learnership is terminated.

Termination of the learnership

The employer can only terminate the contract of employment of a learner if –

- the period of the learnership set out in the learnership agreement has ended
- you have successfully completed the learnership
- you and the employer have agreed to end the learnership
- if you have been fairly dismissed as a worker (see the Basic Conditions of Employment Act)
- the employer does not have to employ you after the learnership is terminated
- if you want more information about learnerships, or if you want to put your name down to be considered for a learnership, visit the

Department's local labour centre nearest to where you live.

Training for unemployed people

- the Skills Development Act sets out the employment services that labour centres should provide. These include:
 - help work seekers to find work
 - help retrenched workers to find work again
 - help employers find workers when they have a vacancy
- but there are not enough jobs for all the people that visit the labour centres. So the Department of Labour offers training to unemployed people linked to work opportunities, even if the jobs are only short-term jobs on government-funded projects. If you have an idea for a project, but you need training, you can ask the Department and if the Department judges your project to be viable, then they can pay for training for your own project as well
- if you are interested in receiving training, you can visit the Department's labour centres and ask for more information.



Organised Business and Organised Labour were partners with Government when the Occupational Health and Safety Accord was signed.

Occupation Health and Safety Act, 1993

- workers and employers must share the responsibility of ensuring health and safety at the workplace
- you and your employer must proactively identify dangers and develop control measures to make the work place safe
- you cannot be fired after you have been injured at work
- you must be paid for injuries sustained while on duty
- your employer must ensure a safe work environment
- this means that your employer must ensure that the workplace is free of hazardous substances
- where this is not possible, your employer must inform you of these dangers, how they may be prevented and how to work safely
- your employer must provide and maintain all the equipment that is necessary to do the work, and all the systems according to which the work must be done, in a condition that will not affect your health and safety
- before personal protective equipment may be used, your employer must first try to remove or reduce any danger to the health and safety of workers
- you must also look after your own health and safety as well as those of others who may be affected by your actions or negligence
- you must report unsafe or unhealthy conditions to your employer or health and safety representative as soon as possible
- if you have been involved in an incident that may influence your health or cause an injury, report the incident to your employer or health and safety representative as soon as possible but not later than by the end of the shift
- occupational health and safety inspectors carry out planned and unplanned inspections
- complaints about safety at the workplace are treated confidentially by the inspectors
- workers should ensure that they know who the Health and Safety Representatives in their workplace are and whether a Health and Safety Committee exists and functions in their workplace
- if Health and Safety Representatives have not been appointed and /or a Health and Safety Committee is non-existent, then report it to the nearest office of the Department of Labour.

Unemployment Insurance Act, 2001

- in terms of the Unemployment insurance Act all workers who work for more than 24 hours per month should be registered with the UIF and contribute to the UIF
- it is your employer's responsibility to register you with the UIF. make sure that it is done for your own good
- since 1 January 1997 farmers had to register their farmworkers with the UIF and contribute to the UIF
- since 1 April 2003, domestic workers are covered by the Unemployment Insurance Fund (UIF)
- the UIF gives short-term relief to workers when you become unemployed, or are unable to work because of illness, maternity or adoption leave
- the UIF also pays out benefits to dependents of deceased contributors
- your employer must register with the UIF
- all workers working for more than 24 hours per month must contribute to the UIF
- you pay 1% of your monthly wage and your employer pays 1% of your monthly wage to the UIF
- you accumulate credits with the UIF. For every six days you have worked, you get 1 day's credit
- if you have worked for 3 months, you will get 15 days credit
- benefits are paid to a maximum of 238 days or the maximum number of days credit you have accumulated over 4 years
- the rate at which benefits are paid vary from 38% for highly paid workers and 58% for the lowest paid workers
- your average wages over the last 6 months of your employment are used to calculate your UIF earnings



The UIF gives short-term relief to workers when you become unemployed, or are unable to work because of illness, maternity or adoption leave.

- you will not receive UIF benefits if:
 - you are getting a monthly State pension
 - you are getting payment from the Compensation Fund for illness or injury
 - you receive benefits from any other scheme established by the Labour Relations Act, 1995
- you can get UIF benefits only after you have been unemployed or ill for 14 days
- you only get UIF benefits if your work has been terminated by your employer or your resignation can be deemed to be constructive dismissal
- if the company you have worked for becomes insolvent, you can get UIF benefits
- when you apply for UIF benefits at your nearest labour centre, take with you the following:
 - copy of identity document
 - copy of payslips: a minimum of 2 payslips if you are paid monthly and 4 payslips if you are paid weekly
 - a service certificate from the employer
 - a fully completed application form available at all labour centres
 - form UI 19 for worker's details.

A train ride from Pretoria Station to Johannesburg Station enabled the Minister of Labour and his staff to interact with passengers on the registration of employers and domestic workers with the UIF.



Compensation for Occupational injuries and Diseases Act, 1993

- the main objective of the Compensation Fund is to provide for compensation for disablement caused by occupational injuries or diseases sustained or contracted by workers in the course of their employment, or for death resulting from such injuries or diseases
- only employers contribute financially to the Compensation Fund and no deductions are made from workers'
- workers should ensure that all workplace accidents are reported to the Compensation Fund in terms of the law
- contact the nearest office of the Department of Labour for more information.



A worker is assisted at a rehabilitation centre after sustaining a hand injury in the workplace.

Provincial Offices of the Department of Labour

Limpopo (Polokwane) Tel: (015) 290 1744

Mpumalanga (Witbank) Tel: (013) 655 8700

Gauteng North (Pretoria) Tel: (012) 309 5000

Gauteng South (Johannesburg) Tel: (011) 497 3000

Free State (Bloemfontein) Tel: (051) 505 6200

North West (Mafikeng) Tel: (018) 387 1800

KwaZulu-Natal (Durban) Tel: (031) 336 1500

Northern Cape (Kimberley) Tel: (053) 838 1500

Eastern Cape (East London) Tel: (043) 701 3000

Western Cape (Cape Town) Tel: (021) 460 5911

Labour Centres of the Department of Labour

Gauteng South

Alberton	Tel: (011) 861 6130
Boksburg	Tel: (011) 898 3340
Brakpan	Tel: (011) 744 9000
Carletonville	Tel: (018) 788 3281
Germiston	Tel: (011) 345 6363
Kempton Park	Tel: (011) 975 9301
New Canada	Tel: (011) 474 2468
Sandton	Tel: (011) 444 7631
Sebokeng	Tel: (016) 988 2626
Roodepoort	Tel: (011) 766 2000
Vanderbijlpark	Tel: (016) 981 0280
Vereeniging	Tel: (016) 430 000
Johannesburg	Tel: (011) 497 3163

Eastern Cape

Aliwal North	Tel: (051) 6332633
Butterworth	Tel: (047) 4910657
Cradock	Tel: (048) 881 3010
Fort Beaufort	Tel: (046) 6454686
Graaf-reinet	Tel: (049) 8922142
Grahamstown	Tel: (046) 6222104
King William's Town	Tel: (043) 642 3401
Lusikisiki	Tel: (039) 2531996

Maclear	Tel: (045) 9321424
Mdantsane	Tel: (043) 7613151
Port Elizabeth	Tel: (041) 5065000
Queenstown	Tel: (045) 8075400
Uitenhage	Tel: (041) 9924627
Umtata	Tel: (047) 532 5674

Western Cape

Beaufort West	Tel: (023) 414 3427
George	Tel: (044) 801 1201
Oudtshoorn	Tel: (044) 272 4370
Knysna	Tel: (044) 382 3150
Mossel Bay	Tel: (044) 691 1140
Bellville	Tel: (021) 945 3827
Mitchell's Plain	Tel: (021) 376 1771
Paarl	Tel: (021) 872 2020
Somerset West	Tel: (021) 852 2535
Vredenburg	Tel: (022) 715 1627
Cape Town	Tel: (021) 460 5082
Worcester	Tel: (023) 347 0152

Free State

Bethlehem	Tel: (058) 303 5293
Ficksburg	Tel: (051) 933 2299
Harrismith	Tel: (058) 623 2977
Koffiefontein	Tel: (053) 205 0298
Kroonstad	Tel: (056) 212 4471
Parys	Tel: (056) 811 3043
Phuthaditjhaba	Tel: (058) 713 0373
Sasolburg	Tel: (016) 970 3200
Thaba nchu	Tel: (051) 873 2004
Welkom	Tel: (057) 391 0200
Zastron	Tel: (051) 673 1471

North West

Brits	Tel: (012) 252 3068
Christiana	Tel: (053) 441 2120
Garankuwa	Tel: (012) 702 4525
Klerksdorp	Tel: (018) 464 8700
Lichtenburg	Tel: (018) 632 4779
Mogwase	Tel: (014) 555 5693
Mafikeng	Tel: (018) 381 1010
Potchefstroom	Tel: (018) 297 5100

Rustenburg	Tel: (014) 592 8214
Taung	Tel: (053) 994 1679
Temba	Tel: (012) 7177059
Vryburg	Tel: (053) 927 5221

Limpopo

Ellisras	Tel: (014) 763 2162
Giyani	Tel: (015) 8129041
Nylstroom	Tel: (014) 7171046
Lebowakgomo	Tel: (015) 633 6958
Louis Trichardt	Tel: (015) 516 0207
Phalaborwa	Tel: (015) 781 5114
Seshego	Tel: (015) 223 1681
Polokwane	Tel: (015) 290 1744
Potgietersrus	Tel: (015) 491 5973
Tzaneen	Tel: (015) 306 2600
Thohoyandou	Tel: (015) 960 1300

Northern Cape

Calvinia	Tel: (027) 341 1523
De Aar	Tel: (053) 631 0952
Kimberley	Tel: (053) 838 1500
Kuruman	Tel: (053) 712 3952
Springbok	Tel: (027) 718 1058
Upington	Tel: (054) 331 1752

KwaZulu–Natal

Durban	Tel: (031) 336 1500
Dundee	Tel: (034) 212 3147
Estcourt	Tel: (036) 352 2161
Kokstad	Tel: (039) 727 2140
Ladysmith	Tel: (036) 637 3461
Newcastle	Tel: (034) 312 6038
Pietermaritzburg	Tel: (033) 342 9361
Pinetown	Tel: (031) 700 2206
Port Shepstone	Tel: (039) 682 2406
Prospecton	Tel: (031) 902 1590
Richmond	Tel: (033) 212 2768
Richards Bay	Tel: (035) 789 3760
Stanger	Tel: (032) 551 4291
Verulam	Tel: (032) 533 5050
Vryheid	Tel: (034) 980 8992

Ulundi Tel: (035) 879 1439

Gauteng North

Atteridgeville	Tel: (012) 386 5114
Benoni	Tel: (011) 747 9601
Bronkhorstspuit	Tel: (013) 932 0197
Krugersdorp	Tel: (011) 955 4420
Mamelodi	Tel: (012) 805 5090
Randfontein	Tel: (011) 693 3618
Soshanguve	Tel: (012) 799 7395
Pretoria	Tel: (012) 309 5050
Springs	Tel: (011) 362 6636
Nigel	Tel: (011) 814 7095

Mpumalanga

Barberton	Tel: (013) 712 3066
Bethal	Tel: (017) 647 2383
Carolina	Tel: (017) 843 1077
Eerstehoek	Tel: (017) 883 2414
Mswazi Madonsela	Tel: (017) 819 7632
Evander	Tel: (017) 632 2295
Groblersdal	Tel: (013) 262 3150
Kwamhlanga	Tel: (013) 947 3173
Lydenburg	Tel: (013) 235 2368
Middelburg	Tel: (013) 283 3600
Nelspruit	Tel: (013) 753 2844
Piet Retief	Tel: (017) 826 1883
Sabie	Tel: (013) 764 2105
Standerton	Tel: (017) 712 1351
Volskrust	Tel: (017) 735 2994

SETAS established in terms of the Skills Development Act

FASSET	Tel: (011) 476-8570
BANKSETA	Tel: (011) 805-9661
CHIETA	Tel: (011) 726-4026
TEXTILES	Tel: (031) 702-4482
CETA	Tel: (011) 265-5915
DIDTETA	Tel: (012) 663-6983
ETDP SETA	Tel: (011) 517-3650

ESETA	Tel: (011) 838-0117
FOODBEV	Tel: (011) 802-1211
FIETA	Tel: (011) 712-0600
HWSETA	Tel: (011) 607-6900
ISETT	Tel: (011) 805-5115
INSETA	Tel: (011) 484-0722
LGWSETA	Tel: (011) 456-8579
MAPPP	Tel: (021) 949-1463
MQA	Tel: (011) 403-7946
MERSETA	Tel: (011) 492-1533
POSLECSETA	Tel: (011) 805-0084
PAETA	Tel: (012) 325-1655
PSETA	Tel: (012) 314-7208
SETASA	Tel: (012) 348-2337
SERVICES	Tel: (011) 715-1800
THETA	Tel: (011) 803-6010
TETA	Tel: (011) 781-1280
W&RSETA	Tel: (012) 452 9200

CCMA Offices

Bloemfontein	Tel: (051) 505 4400
Cape Town	Tel: (021) 469 0111
Durban	Tel: (031) 362 2300
East London	Tel: (043) 743 0826
Johannesburg	Tel: (011) 377 6600
Kimberley	Tel: (053) 831 6780
Klerksdorp	Tel: (018) 464 0700
Polokwane	Tel: (051) 297 5010
Port Elizabeth	Tel: (041) 505 4300
Richards Bay	Tel: (035) 789 0357
Witbank	Tel: (013) 656 2800



**Department
of Labour**