



NATIONAL SENIOR CERTIFICATE EXAMINATION  
NOVEMBER 2016

**BUSINESS STUDIES: PAPER II**  
**MARKING GUIDELINES**

Time: 2 hours

100 marks

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**These marking guidelines are prepared for use by examiners and sub-examiners, all of whom are required to attend a standardisation meeting to ensure that the guidelines are consistently interpreted and applied in the marking of candidates' scripts.**

**The IEB will not enter into any discussions or correspondence about any marking guidelines. It is acknowledged that there may be different views about some matters of emphasis or detail in the guidelines. It is also recognised that, without the benefit of attendance at a standardisation meeting, there may be different interpretations of the application of the marking guidelines.**

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| <ul style="list-style-type: none"><li>• The following aspects may be considered when marks are allocated:</li><li>• Format:<ul style="list-style-type: none"><li>– The <b>CORRECT</b> format for each question must be used, i.e., business report.</li><li>– Where applicable, include an introduction and conclusion.</li><li>– Use headings and subheadings where appropriate.</li></ul></li><li>• Terminology: correct business terminology should be used.</li><li>• Content: must be sufficient to cover all aspects of the question.</li><li>• Substantiation: justification for statements made.</li><li>• Application to case study/context/theme.</li><li>• Creative problem-solving rather than just giving theoretical facts.</li><li>• Synthesis and sequencing.</li></ul> |
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## QUESTION 1

### Ethics

(max 70 marks)

Issues that may be seen as unethical, inter alia include:

#### Conflict of interest

If the person awarding a tender knows the person who is submitting the tender, he/she should not make the final decision about who will get the tender, but should disclose that it is a friend/family member submitting the tender and then withdraw from the tender allocation process.

It will create a conflict of interest if a person who serves on the board of directors is approached by a supplier to be part of that board of directors.

Example may be if someone is part of the recruitment and selection panel and they fail to disclose that one of the applicants is a friend or family member.

#### Bribes and corruption

When someone is offered a reward to give a third party an unfair advantage to which he/she/the business is not entitled, it is a bribe. A bribe does not have to be in the form of money, but may be a gift, an offer of employment, a promotion, or any other favour. If it is in the form of money, it is sometimes referred to as a **smoothing payment** or a **facilitation payment**.

When someone in a position of power abuses this power for personal gain, it is corruption. This may include, receiving a bribe, giving a kickback (indirect bribe) to a supplier, misappropriating funds or abusing an official position for personal gain.

#### Unauthorised use of funds

Using business funds that are not authorised may be the same as theft. People working in offices have more opportunities to get involved in this form of **white collar crime** than the workers in the manufacturing department for example.

Even something that seems as innocent as a manager having an expense account, taking his wife for lunch and claiming it as a business expense, is an unauthorised use of business funds. Someone who has a petrol card to pay for business travel and then uses the card for private use is spending money not authorised for that purpose.

#### Inappropriate gifts

Most businesses expect employees to declare all gifts that they have received. They may even stipulate that no employee may receive a gift greater in value than R... (a certain value). One possible reason is that it could be interpreted by others as being a form of bribery, even though it truly is a gift with no strings attached.

#### Sexual harassment

The **Code of Good Practice on the Handling of Sexual Harassment Cases** was issued to support section 2 of the Labour Relations Act, which stipulates that sexual harassment is a criminal offence. According to the abovementioned code, examples of sexual harassment may include:

- Unwelcome physical contact.
- Verbal conduct, such as sexual advances, sex-related jokes, unwelcome enquiries about a person's sex life and unwelcome whistling/body language directed at a person or group of persons.
- Non-verbal conduct, such as sexual gestures, indecent exposure or display of sexually explicit pictures and objects.
- When a more senior employee promises a reward in exchange for sexual favours.

Employees may also not engage in any of the above activities with customers, suppliers or any person who deals with the business.

Every business should have a clearly defined policy on sexual harassment, including the procedure to follow should the employee feel they are the victim of sexual harassment, as well as the penalties for being found guilty of this offence.

### **Employment/labour issues**

There are a large number of issues that can be discussed under this heading, namely:

- Employees abusing sick leave.
- The abuse of the Internet or email, which may include:
  - Employees who visit porn sites.
  - Employees who make confidential information available to people who should not have access to the information.
  - Employees who spread rumours or other damaging information about the business or a fellow employee.
  - Employees who spend work time on Facebook or other social media sites.
  - Employees spending time on personal emails during work hours and employees who send emails, which could bring the business into disrepute, to other people.
- Taking business stationery home for private use.
- Verbal abuse of staff members by a manager and the verbal abuse of a colleague or manager by an employee are all unacceptable behaviour.

### **Pricing of goods**

Price fixing occurs when competitors agree to charge the buyers a predetermined price. One of the principles of a free market economy is that competition keeps prices low and quality high. If businesses collude to fix the prices of products, it is unethical and illegal and the Competition Board may impose hefty fines. Directors may even be held liable for this in their personal capacity and face jail time.

The Consumer Protection Act (CPA) makes it illegal to charge more for products in rural areas than in urban areas without good justification. For example, if a business charges a high price simply because there are no competitors to keep the prices low, it is seen as unethical.

### **'Insider trading'**

This refers to a situation where someone trades shares on the JSE based on knowledge that is confidential, i.e. something only an insider (or their friends/family) in the business will know. This is a criminal offence.

### **Piracy**

Piracy is the illegal use or reproduction of somebody's work if it is protected by a patent or copyright. Think of the number of times that music or movies are illegally downloaded from the Internet ...

### **Counterfeiting/Bootlegging**

Counterfeiting can be described as someone fraudulently imitating another's work and pretending it is the original. Designer clothing, shoes and handbags are often imitated and sold as the original.

Bootlegging is the illegal production and/or distribution of a product.

**Taxation**

We differentiate between tax avoidance and tax evasion. Tax avoidance is legal and ethical, because the business finds legal ways to reduce the tax burden, i.e. deducting legal expenses before the taxable income is calculated. Tax evasion on the other hand is illegal (and therefore unethical) because the business does not declare all its income and lies about expenses in order to pay less tax.

**Whistle-blowing**

A whistle-blower is someone who exposes unethical behaviour, fraud, health and safety violations or the violation of a law. Consider the possible impact on a business when an employee, who is aware that something unethical is happening, blows the whistle and in the process the business loses a deal or even faces a huge penalty. Who has acted unethically: the business or the employee for exposing the action? Whistle-blowers are protected by law, because in South Africa it is illegal to fire an employee for whistle-blowing.

**Code of ethics/code of conduct**

A Code of Ethics is often defined as a set of rules that helps people when they have to make decisions, while a Code of Conduct will guide people's actions (conduct). But, is there really a difference?

**A Code of Ethics** will describe the principles that the business considers important when decisions are made. Some examples of these principles may include honesty, respect for others, obeying the law, avoiding harm to others, respecting nature, and accountability.

**A Code of Conduct** will prevent negative behaviour such as sexual harassment, abuse of company property for personal gain, distributing inappropriate emails or being racist.

The importance of these two documents (many business combine them into one document) lies in the fact that in a group of employees there will be many individuals who have different values, but with the help of these documents, everybody in the team/business will use the same set of rules to judge or evaluate what is acceptable behaviour in the business and what is not.

**Professional codes**

Professional codes aim to regulate the behaviour of people practising a particular profession. A profession is an occupation/job, requiring specialised tertiary education that qualifies someone to practise as a professional in a particular field. Not all tertiary qualifications will enable the graduate to register with a professional body, but if someone is registered with a professional body, that person has to abide by the professional code of the organisation. If the code is contravened, the person may be fined, suspended or even disbarred from ever practising in that professional field.

Examples of professions that are subject to specific codes are: law, education, accounting, medicine, nursing, engineering, architecture, actuary.

**Good business practice**

The concept of good business practice refers to the standards of professionalism, accountability, ethics and effective business practice that should be conducted.

Professional behaviour is guided and prescribed to by professional codes which stipulate that there are predetermined consequences for professionals who do not act in accordance with the specific professional code.

If the employee does not belong to a professional organisation, it is sometimes not clear what is regarded as unethical behaviour, because ethical behaviour is also part of an individual's values and morals.

*To complicate matters even more:*

Unethical actions are not necessarily illegal, e.g. it is not illegal to sell goods of a poor quality at a high price, because we live in a free market economy. BUT all illegal acts will be seen as unethical, thus it will be illegal (and therefore unethical) to sell petrol below the price that government determines – even if selling it at a lower price may be to the advantage of consumers.

Considering the different ethical theories may help to explain why people sometimes justify certain actions as ethical vs. unethical: There are many such theories; think about the following three:

- The **Principle-based theory**: it states that the person's principles, values, morals or ingrained set of rules about what is right or wrong, will determine if the person sees the action as ethical or not, as the following examples show: If I have done something wrong, I should accept the consequences because it is wrong to lie, even if it means I can avoid punishment. If I have a deadline to meet, I cannot feign illness and 'phone in sick'. If it means the deal is not concluded, because I refuse to pay a bribe, then so be it ...
- According to the **Consequence-based theory**, the outcome (consequence) of the action will determine if the action is ethical or not. For example: it is OK to lie to my mom/boss/friend, if I know the truth will upset her.
- If we look at the **Utilitarian theory**, the decision of ethical or unethical action is based on what is best for the greatest number of people. For example: if I pay a bribe, the business will get the deal and I will create jobs for a large number of people, so it is OK to pay the bribe!

### **Corporate Governance and the founding principles of the King reports**

Corporate Governance can be defined as the set of rules and the processes that are used by Top Management to direct and control the business. Corporate Governance Acts do not only provide a framework and control measures to look after the bottom line of the business, but also to consider the interests of all stakeholders in the business. These stakeholders may include management, shareholders, customers, suppliers, government, the community as a whole and the environment. In short, Corporate Governance is responsible management **par excellence!**

The primary responsibility is the business's obligation to look after the interest of stakeholders, which are directly affected by the success of the business. This will include employees and shareholders. The secondary or broader responsibility is towards stakeholders who are indirectly affected by the business's activities, e.g. the community, government and the environment.

Corporate social responsibility in practice means the business is managed in a way that ensures its commercial sustainability (profitability) while acting in a manner that will meet society's expectations (ethics) of the business by contributing to society and the environment. This idea that the business has to give back to society and the environment is by no means a new concept. For many years there has been an ongoing debate about the extent of the responsibility of the business and how the business should act in a socially responsible/ethical manner way without over-burdening itself.

Despite the obvious importance of the business acting in a responsible and ethical manner, there are still people that will argue against the corporation's ethical responsibility towards stakeholders. Some of these arguments include:

- Many businesses have argued that CSR detracts from their core business activities.
- Businesses, and often shareholders as well, see the money spent on CSR as less profit in their pockets.
- It is difficult to measure the benefits of CSR and as such it is difficult to measure if the business gains anything from CSR.

- Many businesses feel the pressure from the communities that have been helped via a CSR programme, puts additional strain on them to keep on giving. If, however, the business is not able to meet all the needs of these communities, some communities may view the business in a negative light.
- Some people argue that not all CSR projects are sustainable and that businesses are wasting time and valuable resources on 'hit and run' programmes.
- CSR sometimes leads to businesses misleading stakeholders regarding their environmental practices. This is called Greenwashing.
- Some critics argue that CSR is allowing the state to shift its responsibility.

To counter arguments against social responsibility and to demonstrate the ethical responsibility of Business in South Africa to engage in ethical and responsible behaviour towards various stakeholders, the following arguments may be mentioned:

- Businesses that are assisting the community in which they operate through CSR programmes, receive greater support from the community. People see these businesses/brands as having a reputation for caring; the community in turn supports the business and becomes brand loyal.
- It is argued that businesses need to act on social issues in their communities or else customers will move away. For example: increased levels of poverty will lead to an increase in crime, which could result in customers avoiding the area. An increase in crime also results in the community having less money to spend at businesses.
- There are people debating the issue of whether government should enforce the King Code as a law. It is argued that if businesses are doing CSR voluntarily there will be no need for the added pressure for a law to enforce compliance, not to mention the red tape of policing it.
- If business assists the community to increase its standard of living through education and health programmes, it will benefit from a community that has a higher standard of living and a higher level of disposable income.
- By giving back to the environment through sustainability programmes, businesses are ensuring that future generations will have resources needed to prosper.
- Businesses that operate in sustainable ways are usually also innovative enough to identify additional avenues of income.
- Businesses that implement CSR initiatives are, generally speaking, concerned about the impact that they have on stakeholders and this in turn promotes more ethical business practice.
- In many cases, the business may already have suitable programmes in place to deal with social issues in the community. For example, the business could have programmes in place that deal with leadership and entrepreneurship that are used to empower its own employees. These programmes can then easily be expanded to include the broader community.

The King Committee was founded in 1992 explicitly to clarify the concept of Corporate Governance and how it can be implemented in the South African context.

The King Code talks about the business being an ethical corporate citizen and that its actions show that it cares about society and the environment.

- An ethical citizen will engage with all relevant stakeholders to ensure the sustainability of society and the environment. These stakeholders may include, but are not limited to: employees, shareholders, customers, the government and lobby groups; they all place pressure on the business and demand that the business acts in their interest.
- Some cynics argue that the business will only pretend to be a responsible citizen as long as it improves the brand image of the business to gain customers, thereby ultimately increasing its profits.
- It is crucial to understand that ignorance is not an excuse in the eyes of the law. This means that no person can use the excuse of 'I did not know' when the law is broken. It is imperative that general management (and for that matter all employees) fully understand the legal implications of their actions.

The **King I** Report recommended standards of conduct for companies listed on the JSE, as well as state-owned businesses, regarding their responsibilities towards citizens in the societies within which they function. Triple bottom line reporting (or integrated reporting) was introduced as a requirement for management. It was expected that management should not only focus on shareholders (**profit**) as an interest group, but that all stakeholders should be considered when strategies are formulated and implemented and consideration should also be given to the consequences of decisions for society (**people**) and the environment (**planet**).

**King II** was published in 2002 and it described seven principles of good Corporate Governance:

**Transparency** – It is often thought that transparency refers to the fact that everybody has to know what decisions are taken and why they are taken. This is not correct. Some decisions may always be kept confidential. Transparency refers to decisions being taken in accordance with a set of rules with which everybody is familiar and that these rules are understood by everybody. Transparency is of course a precondition for accountability, because if there is no transparency, how will it be possible to hold someone accountable for decisions taken?

**Accountability** refers to a person taking responsibility for their actions. In a business environment where Corporate Governance is accepted as the norm, accountability increases the level of confidence that stakeholders have in the business decisions taken.

**Integrity** or honesty or truthfulness will be part of decision-making if the person or organisation knows they will be held accountable for decisions taken.

**Independence** means there is no conflict of interest and that there are no unfair influences from any stakeholder that will result in a biased or unethical decision being taken in favour of a particular person or organisation. Although networking is a critical component in a person's and business's success, it may reduce the independence of decisions taken in the business if the decision maker feels they have an obligation towards someone they have networked with.

**Discipline** – When one looks at discipline, the starting point is always **self-discipline**. In a business environment, this relates to the **integrity** shown by management, when important decisions are taken.

**Social responsibility** – It has already been mentioned that good governance refers to the way in which decisions are made and policies are implemented. A business that follows a process of good governance will be publicly accountable, because they will act responsibly when it comes to social issues such as exploitation of natural resources, child labour, paying fair salaries that will enable employees to maintain a decent standard of living, support of employees suffering from diseases such as TB or HIV/Aids or any other debilitating disease.

**Fairness** in dealing with stakeholders – It implies that the business will be considerate when evaluating all relevant parties' interests when decisions are taken. Of course, it should be acknowledged that life is not always fair and that it is not always feasible or realistic to act in a manner that will promote the interests of all concerned. Sometimes it is necessary to make a trade-off between benefiting one group of people over another. For example, the business has to decide whether products will be manufactured locally at a higher cost while simultaneously creating employment vs. importing the product at a lower price, which may benefit some consumers but may disadvantage local employment. When this type of decision is made, it is impossible for all stakeholders to be treated equally (what fairness implies). Management decisions should always aim to serve the best interests of the business and employees and not because there is the lure of a 'kick back' when a particular decision is taken.

**Responsibility (of directors)** – The King reports promote responsible management and King III elaborates further on this issue when special reference is made to the duties and responsibilities of directors:

The board of directors is a key performance driver of the success of the company. The directors represent the shareholders and as such, shareholders hold high expectations of those directors to 'do the right thing' as they are in a position of trust. In the past, when a director's main function was strategic planning for the company, a change in policy to hold directors accountable for incompetence or wrongdoing occurred; this change was necessary because positions of trust had often been abused.

Some of the responsibilities of directors can be summarised as follows:

- Directors must act with skill and care when formulating guidelines, policies and procedures. When these are implemented, it should be ensured that there is compliance with laws and good standards.
- They must act in good faith and honesty (fiduciary duty) in terms of what they believe would be in the best interest of the business and relevant stakeholders. They may not abuse power given to them, but have to use the power to enhance the interests of the business (and never themselves).
- Try to pre-empt risks and put proper risk management procedures in place.
- Ethical leadership is non-negotiable. Audit committees should be established and used to monitor finances, as well as other aspects such as the responsible use of technology.
- Ensuring integrated reporting (triple bottom line reporting) and the disclosure of relevant information is important. This is done when a holistic view is given on the company's **financial** performance within the context of sustainable **social** and **environmental** development.

On 1 September 2009 **King III** was released and apart from the abovementioned detail regarding the responsibilities of directors, the following are also covered by King III:

- King III applies to all businesses, regardless of whether they are public, private or non-profit businesses.
- The directors may be liable in the case of misrepresentation.
- The business's audit committee has to ensure that they obtain an external opinion to verify the degree of sustainability indicated in the integrated report. This will probably have an impact on the task of the external auditor if they have to comment on the issue.
- There is a bigger emphasis on **Independent directors** and the board should investigate and assess to ensure the Independent directors are really independent.
- King III requires an **Independent Audit Committee** apart from the board of directors and it is stipulated that, where there is conflict between the decisions of the board and the **Independent Audit Committee**, the **Independent Audit Committee's** decisions will stand, because they will be held accountable by law for the specific issue that is decided upon.



<b>BUSINESS STUDIES PAPER II: LOWER ORDER THINKING RUBRIC (60% WEIGHTING)</b>						<b>Question 1</b>	<b>Question 2</b>
<b>CRITERIA</b>	<b>0</b>	<b>1</b>	<b>2</b>				
Format	Does not meet the correct standard	Partially correct format	Correct format				
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>			
Terminology	No use of business terminology	Isolated/limited use of business terminology	Good use of business terminology	Outstanding use of business terminology			
Content (number of relevant facts)	Maximum 50 facts. Divide by 2 to get mark out of 25. Marks are given inter alia for mentioning the fact, explanations of facts or statements, relevant examples; expansion of acronyms. NOTE: Listed facts that are not explained = max 4 marks (8 facts)						
<b>Subtotal: (30 marks)</b>							

<b>BUSINESS STUDIES PAPER II – HIGHER ORDER THINKING RUBRIC (40% WEIGHTING)</b>							
<b>If all SECTIONS have not been completed, the judgment is based on the amount of expected information.</b>							
E.g. a candidate substantiating one section well, but not answering the other, cannot qualify for a 'majority of statements' mark.							
<b>CRITERIA</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>		
<b>Substantiation (justification for statements made)</b>	No attempt at substantiation.	Very limited substantiation.	Less than half of the statements are substantiated.	The majority of the statements are substantiated.	The majority of the statements are thoroughly substantiated showing breadth and/or depth of understanding.		
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>		
<b>Application to context</b>	Superficial reference based on the case study/context given. (Just keep mentioning the name of the business repeatedly without relevant examples).	Continuous reference is made to the case study/context given with some applicable examples given.	Continuous reference is made to the case study/context given with several examples that are fully integrated into the answer.	Examples are relevant to the case study/context given and fully integrated into the response showing understanding of the issues at hand. Reference is made to current affairs.	Examples are relevant to the case study/context given and fully integrated into the response showing understanding of the issues at hand. Current affairs are fully integrated into the response.		
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>	<b>6</b>
<b>Creative problem-solving</b>	No understanding of the problem and no solution given.	Identification of the problem and an incorrect/poor solution suggested.	Identification of the problem with breadth but no depth (superficial).	Good insight and understanding of half the problem with solutions offered showing depth of understanding OR less than half in breadth and depth.	Good insight and understanding of the majority of the problem(s) with solutions offered showing depth of understanding OR half in breadth and depth.	Good insight and understanding of the holistic problem with solutions offered which are fully discussed, showing understanding on all aspects OR the majority in breadth and depth.	Good insight and understanding of the holistic problem with solutions offered that are fully discussed, showing breadth and depth of understanding.
<b>Synthesis</b>	None of the criteria as listed below are met.	At least one of the criteria fulfilled.	Any two of the criteria fulfilled.	Any three of the criteria fulfilled.	Any four of the criteria fulfilled.	Any five of the criteria fulfilled.	All six of the criteria are fulfilled.
1 Introduction – did not just re-write question, but shows an understanding of the 'link' between the topics.							
2 Conclusion – this should be a logical affirmation of the points raised.							
3 Flow of thought, i.e. paragraphs leading into one another.							
4 Integration of topics given in the question.							
5 Integration of question with other business-related topics to enhance the quality of the answer.							
6 Arguments are developed.							
<b>SUBTOTAL: (20 marks)</b>							

## QUESTION 2

### Legislation impacting on Human Capital

(max 70 marks)

There are a large number of Acts or laws that may have an impact on the business and how the business is managed. Legislation differs from country to country.

The following laws require a detailed discussion regarding the purpose of each law and specifically the **implications** of each when referring to the process of **redress and equity**:

- Constitution of South Africa
- The Labour Relations Act
- The Employment Equity Act
- Broad-Based Black Economic Empowerment
- The Skills Development Act
- The Basic Conditions of Employment Act

### Constitution 108 of 1996 as amended

The South African Constitution was promulgated on 18 December 1996 and came into effect on 4 February 1997. It is the fundamental law of South Africa and no other law or contract may supersede (override) the Constitution.

The principle of human rights is one of the core values of the Constitution and the Preamble of the Constitution clearly states the intention of establishing 'a society based on democratic values, social justice and fundamental human rights'. This helps to redress inequalities of the past when the gross abuse of the human rights of certain groups of people in South Africa occurred.

This Bill of Rights is covered in Chapter 5 of the Constitution. The issues detailed form the cornerstone of our democracy and include aspects such as:

- The right to **just administrative action** that gives citizens the right to challenge government regarding the way in which they are treated if they feel it is unfair. This has been, and will continue to be, tested when citizens take matters to the Constitutional Court. Being able to do this is something that should give citizens peace of mind, knowing they have the right to challenge the government on certain issues, if need be.
- The right to **citizenship and freedom of movement** in and out of the country.
- People have **political rights**, which means they can form a political party, run for office and support any political party by voting for that party in elections. This is a sign of a true democracy as this occurs every time there is an election and new political parties are registered.
- People have the right to **housing, food and water, health care and social security**. The question, nevertheless, arises whether the current government is honouring its promises in this regard or, at the very least, if there is evidence of these rights being achieved quickly enough.
- **Children** under the age of 18 have special rights, such as protection from abuse and exploitation.
- People have a right to basic **education**, but unfortunately too often we hear about schools being mismanaged, non-delivery of textbooks to schools, and teachers striking.
- People may **not be unfairly discriminated against** on the grounds of gender, race, religion, marital status, disability, pregnancy, language, culture, age, etc. This refers to the concept of **inclusivity**. However, something like Affirmative Action is seen as **fair** discrimination due to the **limitation clause**.
- People may do whatever work they choose, because citizens are entitled to **freedom of trade, occupation and profession**.

- People have **freedom of association**, which means workers may belong to the trade union of their choice and may even strike if the correct procedures are followed. Employers also have the right to belong to employer organisations to further their aims.
- People have the right to **assemble peacefully, demonstrate and protest**, provided the correct procedures have been followed.
- Citizens have the right to live in an **environment** that is not harmful to their health or well-being. The Constitution also guarantees future generations' rights by demanding that people become more aware of environmental issues, that conservation is promoted, that businesses focus on sustainable development and that technology is used in such a manner that, where possible, pollution is prevented.

### **Labour Relations Act 66 of 1995 as amended (LRA)**

The Labour Relations Act has as its **main aims** to:

- Enforce the fundamental rights relating to labour issues that are guaranteed in the Constitution.
- Promote economic development, labour peace, social justice and democracy in the workplace by providing a framework for collective bargaining to solve labour disputes.

The LRA applies to all employers, employers' organisations, employees and trade unions, but does not apply to members of the National Defence Force, National Intelligence Agency and the South African Secret Service.

### **The implications of the Labour Relations Act**

Positive:

- The LRA ensures that international labour standards are applied in the South African labour context.
- The LRA gives clear guidelines on how labour disputes can be resolved.

Negative:

- Trade unions have a lot of power in South Africa and it appears that they sometimes forget that they are meant to protect the rights of employees and not become involved in politics and other issues under the pretext of implementing the LRA.
- It is important for employers to have a disciplinary policy and a grievance procedure in place. The purpose of these two documents is to ensure employees meet the required work standards and that they act in a manner that promotes improved job performance. The difference between the two documents is:
  - A disciplinary policy provides guidelines and informs the employee on what is acceptable behaviour and what the expected standards are that should be met, as well as what consequences will ensue if behaviour is unacceptable.
  - A grievance procedure allows the employee the opportunity to resolve a grievance (problem) related to their employment by communicating with the employer about the problems via a predetermined procedure and structure. The employee will usually take their grievance to the supervisor. If it is not resolved, it will be taken to the line manager (functional or departmental manager). Should the problem still persist, it is usually referred to the Human Capital Manager. The CCMA, Labour Court and Labour Appeal Court are the external bodies that may be consulted if the grievance is not resolved internally.

### **Substantive and procedural fairness**

The Labour Relations Act is very clear on the **procedure** that needs to be followed, as well as the three acceptable reasons to be implemented by an employer for dismissing an employee. The three reasons that constitute **substantive fairness** when an employee is dismissed are:

- Dismissal due to Incapacity (inability to meet the required standards)
- Dismissal based on Misconduct (not adhering to the rules)
- Dismissal due to Operational Reasons (retrenching workers)

Each of these reasons will be discussed, followed by an examination of **procedural fairness**. It is important to keep in mind that regardless of the reason for an employee's dismissal, the correct procedure has to be followed otherwise the dismissal may be seen as unfair.

### **Dismissal due to Incapacity (inability to meet the required standards)**

Dismissal due to Incapacity can be sub-divided into two categories:

- **Poor work performance:**
  - Examples may include incomplete or inaccurate work, work of a poor standard, carelessness regarding output or failure to meet deadlines.
  - The employer has to prove that the required work standard was fair, that the employee was aware of the required standard and that they were given sufficient support (e.g. training) to improve performance.
  - Demotion or a transfer to another job should be considered before an employee is dismissed (if this may solve the problem).
- **Poor health** preventing the employee from meeting the required standards:
  - The employer should try to modify or adapt the employee's tasks, if possible, to enable the employee to meet the required standards.
  - Extended unpaid leave should be considered if this will enable the employee to recover and thereby return to perform their duties to the required standard.
  - A transfer, to another more suitable position, should be considered before dismissal based on ill health occurs.

### **Dismissal based on Misconduct (not adhering to the rules)**

- The Disciplinary code of the business should stipulate which offences are seen as more serious than others and what the disciplinary action associated with each offence will be. An employee may be dismissed for a less serious offence if all other methods to correct the behaviour have failed. Some offences, however, are serious enough that they may warrant immediate dismissal.
- Forms of misconduct may include, but are not limited to:
  - Abuse or unauthorised possession of company property.
  - Actions that are a threat to the safety of the employee or others.
  - Being under the influence of alcohol or any illegal substance.
  - Bribery and corruption.
  - Failure to adhere to rules.
  - Fighting.
  - Illegal industrial action.
- Before the employee is disciplined for misconduct, it should be established that:
  - The employee contravened a rule or standard in the workplace.
  - The rule or work standard that was contravened, was a valid rule or reasonable standard.
  - The employee was aware or could reasonably be expected to have been aware of the rule or standard.
  - The rule or standard is consistently applied by the employer.
  - The appropriate sanction for the contravention of the rule or standard is implemented (verbal warning, written warning or dismissal – whichever is appropriate).

***Procedural fairness for Incapacity and/or Misconduct***

- The complaint should be put in writing and fully investigated, with the investigation process recorded in writing. This may include taking statements from the complainant and all witnesses.
- The accused should be advised of the full nature and details of the charge(s) against him/her and given full access to all written statements collected.
- The date, time and venue of the disciplinary hearing should be given to the accused in writing.
- The accused should be given reasonable time in which to prepare and to appoint his representative for the disciplinary hearing, but it is important to not delay the disciplinary hearing unnecessarily.
- The accused is entitled to have an interpreter if they are not comfortable with the language in which the disciplinary hearing will be held.
- The complainant presents their case first by giving evidence and calling witnesses to testify. The accused is given an opportunity to cross-examine witnesses.
- The accused then presents their defence and calls their own witnesses. The complainant will have the opportunity to cross-examine the accused's witnesses.
- The Chairperson of the disciplinary hearing decides on the guilt or innocence based on the evidence presented by both sides. At this stage no aggravating or mitigating circumstances are considered – only the facts relating to the disciplinary issue.
- The Chairperson decides on the verdict. If the accused is 'not guilty', this is confirmed in writing and given to the accused, and the matter is closed. If the verdict is one of 'guilty', then the Chairperson considers aggravating or mitigating circumstances and decides on a fair sanction (punishment).
  - These aggravating or mitigating circumstances may include the age of the employee, employee's state of health, length of service, level of education, position in the company, remorse shown or any other valid point.
- The Chairperson will advise the accused of their rights to appeal and to take the matter to the CCMA.

**Dismissal due to Operational Reasons (retrenching workers)**

Section 189 of the LRA prescribes the procedures to be followed when retrenchments are implemented. Retrenchments may be implemented for a number of reasons, such as:

- The restructuring of the department or business.
- If the business has economic reasons such as cost reduction.
- Technological reasons such as new machines necessitating fewer employees, and making some employees redundant.
- The business is closing.

In order for retrenchments to be **procedurally fair**, the employer must provide evidence to justify:

- Possible steps that were taken in order to prevent or minimise the retrenchments.
- The reasons for retrenchments and whether alternatives were considered.
- How much consultation with the affected employees and their representatives took place.
- Criteria used to identify employees for retrenchment.
- Notice periods given to employees affected by the retrenchment process.
- Offers of severance pay.
- Whether offers of re-employment may occur at a later stage.

**Unfair treatment and unfair dismissal**

If there is a dispute about any unfair labour practice, it may be taken to the CCMA. The CCMA will try to resolve the situation through conciliation, mediation and if needed, arbitration.

When one looks at what constitutes **unfair treatment**, the following types of actions are included:

- Unfair treatment regarding the allocation of benefits.
- Unreasonably long probationary periods.
- Unfair discrimination which is based on race, gender, language, religion, culture, sexual orientation, age, disability, political orientation and family responsibilities. There are, however, times when it would be fair to discriminate based on some of these factors (refer to the discussion of the limitation clause earlier). Examples may include:
  - Affirmative action to redress imbalances of the past; justifying discrimination when promotions are made or for training purposes.
- Unfair suspension or unfairly subjecting an employee to any form of disciplinary action.
- Failing to re-employ an employee when such agreement was reached.
- Treating an employee unfairly after whistle-blowing (whistle-blowing is when the employee discloses unlawful conduct in the workplace).

**Unfair dismissal** includes any of the following:

- The employee is dismissed because they participated in the activities of a trade union or workplace forum.
- The employee is dismissed when they are taking part in a **protected strike**.
- The employee is dismissed due to pregnancy or any reason related to her pregnancy or the employer refuses to allow an employee to return to her job after her maternity leave.
- The employer ends a contract of employment without appropriate notice to the employee.
- The employee is dismissed due to arbitrary factors such as race, age (except on retirement), gender, sexual orientation, religion and/or family responsibility.
- The employer makes the working environment impossible for the employee to tolerate and thus the employer 'forces' the employee to resign. This is known as **constructive dismissal**.

Remedies for unfair dismissal may include:

- Re-employment.
- Compensation (the maximum compensation will be the equivalent of 24 months' salary).
- Combination of the two.

Re-employment will not be an option if:

- The dismissal was substantively fair but only **procedurally unfair**.
- The employee does not want to be re-employed.
- The continued employment relationship will be intolerable for either party.
- It is impractical for the employer to re-employ the worker.

### **Industrial relations, collective bargaining and industrial action**

**Industrial relations** can be defined as the relationship that exists between the employer (management), the employee (often represented by trade unions) and other institutions such as government. The aim is to establish industrial peace by ensuring high worker morale and a functional *workplace where productivity is high*.

**Collective bargaining** refers to the process that takes place when the employer and trade unions (representing the employees) negotiate the terms of employment. Issues that may be addressed during these negotiations include:

- Employment and working conditions.
- Salaries and wages, overtime pay and other benefits such as health care and retirement.
- Working hours.
- Issues relating to annual leave and sick leave.

**Industrial action** refers to steps that workers take to enforce their demands if the collective bargaining process fails to meet their demands. This industrial action may take the form of strikes, go-slows, work-to-rule or picketing which employees use to air their grievances and enforce their demands.

According to the Labour Relations Act, employees have the Constitutional right to strike, provided they follow the correct procedures. Employers, on the other hand, have the Constitutional right to implement a lock-out as recourse to the strike.

**Different types of strikes and other industrial action:**

- A **strike** can be defined as two or more employees refusing to work based on a shared, work-related purpose.
- A **go-slow** takes place when workers still work, but they decrease their rate of productivity.
- **Work-to-rule** is a form of industrial action where workers do no more or no less than the minimum requirements described by the rules of a workplace.
- **Intermittent strikes** take place when employees stop and start the same strike, often extending it over a period of time.
- When employees refuse to work any overtime, it is a form of industrial action known as **Overtime bans**.
- **Picketing** refers to a situation where striking workers demonstrate in a public place *outside* of the workplace. Only a registered trade union may organise a picket, and it must meet the requirements as stipulated in **Code of Good Practice on Picketing** issued by **Nedlac**.
- **Secondary (or sympathy) strike action** takes place when employees strike in support of another strike. In order for the secondary strike to be protected (see below), the original strike has to be protected, i.e. the correct procedure has been followed.

**Some of the most frequent reasons for industrial action include:**

- Remuneration issues.
- To have a trade union recognised.
- The employer makes unilateral changes to working conditions.

**Protected vs. unprotected strikes:**

In order for a strike to be considered a protected strike, certain procedures have to be followed:

- Before the strike can take place, the issue over which workers want to strike must be referred to the CCMA, a bargaining or a statutory council.
- The CCMA or council has 30 days during which they must aim to resolve the issue.
- If it is not possible to resolve the issue, a certificate must be issued stating this is the case.
- In the private sector there is a 48 hour notice period to inform the employer that workers are planning to strike. If the employer is the state, the notice period is 7 days.

**The benefits from the employee's perspective if it is a protected strike:**

- During a protected strike, the employees have the security of knowing they cannot be dismissed. If, however, they engage in misconduct during the strike, they may be dismissed for the misconduct, but not for participation in the strike.
- Employers cannot get a court interdict to stop the strike.
- Employers are not allowed to seek damages because of loss of production during the strike.
- Employers have to continue to provide food and accommodation for employees if it is part of the employees' remuneration. Once the strike has ended, employers may go to the Labour Court as a means to reclaim the money spent on accommodation and food during the strike.



**When is it not a protected strike?**

- If the correct procedure has not been followed.
- If there is a collective agreement in place that states workers may not strike over a particular issue, and the matter must first be referred to the Labour Court.
- If workers are engaged in an essential service, the strike will not be protected. Essential services include:
  - The South African Police Service.
  - A service which, if disrupted, may endanger the health or safety of a part of the population (e.g. doctors or nurses).
  - Parliament.

**What is a lock-out?**

- The employer prevents employees from entering the workplace in an attempt to force them to accept the employer's demands.
- During a protected lock-out (the employer followed the correct procedure), the employer does not have to pay wages and employees cannot sue the employer for loss of income.

**Dispute-resolution mechanisms**

The Labour Relations Act makes provision for different dispute-resolution mechanisms to be created in order to prevent and solve dysfunctional conflict in the workplace.

**Collective bargaining and Bargaining structures**

Collective bargaining can be defined as the process where the employer (management) and employees (represented by a trade union) discuss issues of concern in order to reconcile their conflicting goals and reach an agreement on these topics.

Management is prepared to engage in the process of collective bargaining, because it enables negotiation with one set of people and not individual employees. The employees are prepared to allow the trade union to represent them, because it gives them enhanced **bargaining-power**.

When an agreement is reached, the terms of the settlement will be recorded in a **collective agreement** and all parties sign the agreement and are then bound by that agreement.

The Labour Relations Act also makes provision for **Centralised collective bargaining**. This is when employers in a particular sector join forces to negotiate with one (or more) unions representing the employees in that sector. For example, a group of car manufacturers may get together to negotiate with unions representing employees in the car manufacturing industry.

Under section 28 of the LRA, **bargaining councils** may be formed by employers' organisations and trade unions in a particular sector. Nedlac must agree that there is enough representation of both employers and employees on the proposed bargaining council before it can be established. This level of representation is important, because agreements reached within the bargaining council will apply to all parties in that sector, regardless of whether they were part of the agreement or not. Nevertheless, if an employer in the sector feels the agreement is to his disadvantage, he may apply to be exempted from the agreement.

The functions of a bargaining council are to:

- Negotiate and enforce collective agreements on issues such as wages, benefits and grievance procedures.
- Design and submit proposals for policies and laws that have an impact on that sector.
- Prevent and resolve labour disputes in that sector/industry.
- Establish training and education schemes in that industry.

A **statutory council** is similar to a bargaining council, BUT agreements reached at the statutory council cannot be extended to other parties in the sector/industry without the approval of the Minister of Labour. The minimum requirement for the establishment of a statutory council is 30% representation of employees and employers operating in that sector.

**Workplace forums (WPF)** may only be established if the business employs 100 employees or more. It is a mechanism whereby employees and employers can consult with one another and make joint decisions on certain issues (except wages). Some of the issues that the employer and WPF may negotiate on include:

- Health and safety measures.
- New work methods resulting in the possibility of restructuring.
- Retrenchment of workers.
- Job grading.
- Criteria for merits and bonuses.
- Education and training.

If there is a dispute between the WPF and the employer which cannot be settled, the dispute is referred to the CCMA (in writing) for a settlement.

### **Commission for Conciliation, Mediation and Arbitration (CCMA)**

The CCMA is an independent dispute-resolution body that is not run or controlled by any political party, trade union or business, but it is funded by Nedlac.

The aim of the CCMA is to settle disputes between employers and employees in order to prevent labour unrest, e.g. strikes. The process followed by the CCMA is one of conciliation, followed by mediation and if needed, arbitration.

- **Conciliation** refers to the process where the commissioner meets with the employer and employee in order to explore ways to settle the dispute by mutual agreement.
- **If** conciliation fails, **mediation** will follow. The commissioner then makes a recommendation on how they think the dispute should be settled. If the parties are not willing to follow the recommendation, the process proceeds to arbitration.
- During **arbitration** the commissioner will issue an award (make a decision) that is legally binding on both parties.
- If one of the parties feels that there is a flaw in the arbitration process, the party has six weeks to refer the matter to the **Labour Court**.

### **Trade unions**

A Trade union can be defined as a group of workers organising themselves in a collective organisation with the aim to engage in collective bargaining with the employer and/or employer organisations.

The South African Constitution recognises trade unions and gives employees the right to join a trade union. The Labour Relations Act allows registered trade unions to be part of the collective bargaining process and to fulfil the following **roles and functions**:

- Ensure industrial peace by influencing policies and decisions regarding labour issues.
- Address issues such conditions of service, safety in the workplace, remuneration (wages) and workplace restructuring (including possible retrenchments).
- Ensure fair treatment of workers (setting realistic working standards and representing employees in disciplinary issues).

The functions, as discussed above, appear very simplistic. If the underlined point only is examined more fully, namely: the **setting of reasonable and realistic work standards**, it immediately becomes clear how important the active involvement of the trade unions is to this process, as well as the huge responsibility that rests on their shoulders.

- Work standards give employees an understanding of performance expectations. Once workers are aware of expectations, it will lead to better performance, more profits and potentially better wages. A win-win situation for all.
- At the same time workers will have an understanding of how failure to meet the required standards will be dealt with (disciplinary action).

The role of trade unions, (as outlined above) is carried out by participating with employers in the collective bargaining process. If it is not possible to reach an agreement on an issue via collective bargaining – conciliation, mediation and arbitration follow. As a last resort, the LRA allows Trade Unions to organise strikes (after the correct procedures have been followed) in an effort to force the employer to negotiate a settlement for the dispute.

Three of the biggest trade union bodies in South Africa are the Congress of South African Trade Unions (Cosatu), the Federation of Unions of South Africa (Fedusa), and the National Council of Trade Unions (Nactu).

### **National Economic Development and Labour Council (Nedlac)**

Nedlac is an important role player in South Africa when it comes to the relationship between business, trade unions, government and community groups. The different parties engage in social dialogue with Nedlac, aiming to:

- Make economic decision-making more inclusive
- Promote the goals of social equity and economic growth

Section 77 of the Labour Relations Act empowers Nedlac to intervene as a dispute-resolution body when there are disagreements between business, trade unions and government, regarding issues of socio-economic policy.

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

#### **The purpose of the Act:**

When one looks at The Employment Equity Act, it seems to discriminate against certain groups of people. This is indeed the case with the justification being; that the Act is designed to redress the inequalities of the past. This is done through Affirmative Action (AA).

Affirmative Action means designated groups (Blacks, Coloureds, Indians, Chinese, all females and disabled people) who were previously marginalised in the workplace, now get preferential treatment to ensure there is equal representation in all job categories and at all levels of the workplace. When looking at issues such as training, promotion and remuneration, any inequality due to past practices has to be rectified. Although some people may argue that this is illegal because it is 'discrimination against some of the existing workforce', we need to refer to the limitation clause (previously discussed) in this regard.

## The implications of the Employment Equity Act

Positive:

- Imbalances and unfairness of the past are corrected.
- A more diverse workforce with better representation from all people is ensured.

Negative:

- One of the disadvantages of EE is that it places an additional workload on the business. Employers have to conduct an analysis to identify equity issues and then submit this in their EE report. There are EE inspections to ensure EE reports are accurate and this again places an additional burden on staff during this time of the inspection. Huge fines may be imposed if certain requirements are not met.
- People who do not necessarily have the skills to work in a certain position are sometimes promoted to get the right proportion of designated people. This may hamper productivity.
- The brain drain experienced by South Africa is a disadvantage of EE. Some well qualified white males feel that due to AA and EE there are limited job opportunities for them and consequently leave the country to look for better opportunities elsewhere. As a result of this brain drain, many skills have been lost to the country.

## Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEE)

### The purpose of the act:

BBBEE aims to redress imbalances of the past by bringing the black majority of the country into the economic mainstream. It is suggested that this is achieved by focusing on the following **five elements** (pillars) of the BBBEE scorecard (implementation date October 2013 – previously SEVEN pillars):

- The percentage of black owners in a business (as measured by their voting rights in the business) has to be increased to a minimum of 40% **black ownership** to get maximum BBBEE points.
- The aim is to empower more black people to become active at **management level in the businesses**. This is achieved via Employment Equity targets.
- Encourage the implementation of mentorships, learnerships and internships in order to promote human capital development of black people and to keep emphasising **skills development** as part of BBBEE.
- To ensure businesses use **black-owned business as their suppliers**, and in turn, to help these suppliers to develop where possible.
- To establish **socio-economic development** by ensuring black people have access to funds to become economically empowered and to own businesses.

### **The implications of the BBBEE Act**

Positive:

- A large portion of the black middle class has experienced dramatically improved standards of living, owing to promotion by businesses to meet BBBEE targets.
- Real opportunities have been created for black people to become part of the economy, either through ownership or in management positions.
- Skills development for black people has increased.

Negative:

- The majority of black people in the country have not benefited from BBBEE and still live in abject poverty.
- Companies find it difficult to make changes to their management structures as the number of black people with qualifications and the required experience is still limited. It takes years to gain the experience to function at top management levels.
- There are still companies that try to manipulate the system through 'window-dressing' in order to achieve maximum BBBEE points to secure government contracts.

### **Skills Development Act 97 of 1998**

The Skills Development Act (passed in 1998) and the Skills Development Levies Act (passed in 1999) were the starting points to formulate a National Skills Development Strategy that could help to ensure South Africa develops the skills needed for economic growth, social development and sustainable job creation.

The Minister of Labour used representatives from business, organised labour, government and other relevant bodies to establish the National Skills Authority that was tasked to help with the drafting and implementation of the National Skills Development Strategy and to ensure SETAs (Sector Education and Training Authorities) help businesses to make skills development a reality.

### **The aims of the Skills Development Act**

- To help South Africans to improve their qualifications and skills and to ensure economic development is achieved and people have better standards of living.
- To introduce Learnerships and skills programmes to boost vocational learning (i.e. the workplace becomes a place of learning).
- To promote entrepreneurship through training and improved skills levels.
- To improve employment opportunities for unemployed people by giving them skills needed to find or create their own employment.
- To encourage employees to improve their skill levels by becoming involved in training.

Skills development in South Africa is funded via a levy that businesses pay. This levy is equal to 1% of the total payroll. When training takes place, some of this money can be claimed back to cover the training expenses.

It is important to note that the mandatory grant, (the money that the business automatically gets back for submitting the Workplace Skills Plan (WSP) and Annual Training Report (ATR), has been reduced from 50% to 20% of what was paid as the Skills Levy. In order to get the rest of the money, new policy dictates that the business must implement essential training, unlike the training previously implemented which often was of little value to that sector. The changes were introduced in 2013.

**SETAs (Sector Education and Training Authorities)**

SETAs work out sector skills plans (i.e. what skills are needed in that sector?) and implement the plan to make sure the skills are developed. They do this by:

- Watching over education and training in the sector.
- Approving Workplace Skills Plans (WSP) and Annual Training Reports (ATR) from employers in that sector.
- Making sure learnerships are established in the sector.
- Making funds available to employers and trainers to do the training required to make the sector skills plan a reality.

A WSP is a plan developed by the business, based on the needs identified in the Skills Gap Analysis. This plan is then submitted to the SETA which uses all the WSPs in the sector to identify scarce skills and critical skills and then assist employers to train people to develop these (and other) skills.

An ATR explains which of the training plans in the previous year's WSP were implemented through training and development in the business. Records of all training programs must be available for the SETA to verify that training took place should the need arise.

The date by which the WSP and ATR have to be submitted to the SETA has been changed from 30 June to 30 April.

**The implications of the Skills Development and Skills Development Levy Act**

Positive:

- Funding for training is obtained from skills development levies, regardless of what the business plans to spend on training. Skills are thus not compromised when training budgets are reduced.
- Twenty per cent of the skills development levy may be claimed back simply by submitting a WSP and ATR. This encourages businesses to plan and implement training programs.

Negative:

- The Sector Education and Training Authorities (SETAs) overseeing training in the different sectors are not always effective and the result is that there are large sums of money that should be spent on training that simply sit in some of the SETAs' bank accounts.
- The amount that may be claimed back for submitting the WSP and ATR has been reduced from 50% to 20% with effect from 2013. This makes it more difficult for businesses to claim back their money, because not just any training will qualify to warrant the additional 30% reduction.

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

### **Purpose of the act**

The BCEA is aimed at ensuring that employees are treated in a fair manner in the workplace and through this, the BCEA promotes economic development. The BCEA protects workers against unfair labour practises. No employer may include anything in an employment contract not allowed under the BCEA. Even if the worker signs the contract, that condition of employment will not be valid in terms of the law.

### **Issues covered in the Act**

- Working hours and overtime: No employer may require a worker to work more than 45 hours in any week. This means nine hours a day if the employee has a five day week or eight hours per day if the employee works more than five days in a week. After this, additional hours worked are seen as overtime. There are, however, exceptions to this specified in the BCEA, e.g. if the employee is senior management. Employees should be paid 1½ times their salary and/or the employer has to give the employee time off if they work overtime.
- Deductions: An employer may not deduct any money from the employee's remuneration unless the employee agrees to it in writing or unless it is a legal requirement that the deduction should be made, e.g. tax.
- Public holidays: If the employer wants the employee to work on a public holiday, the remuneration is double pay or the employee has to get time off to compensate him/her for working on a public holiday.
- Leave
  - Annual leave: An employee is entitled to 21 consecutive days' annual leave every annual leave cycle.
  - Sick leave: An employee is entitled to 30 days sick leave in a three year cycle if they work a 5 day week or 36 days if they work a six day week.
  - Maternity leave: An employee is entitled to at least four consecutive months' maternity leave, but it does not have to be paid leave. The employer can give unpaid leave or fully paid leave or any combination of the two. If the employee does not receive her full salary, she may claim from Unemployment Insurance Fund (UIF).
  - Family responsibility leave: This only applies to an employee who has been employed for longer than four months and works at least four days a week for the employer. The employee is entitled to three days paid leave per year and may take this when a child is born, when a child is sick or when an immediate family member passes away.
- Notice periods to terminate employment: The minimum notice period that applies is 1 week if the worker has been employed for less than a month. 2 weeks are required if they have worked for the business for less than a year. A notice period of 1 month applies if a year's service has been completed.
- The BCEA makes provision for employment conditions commissions to be established. The Commission will investigate working conditions and wages in a particular sector. A recommendation is made to the Minister of Labour on, for example, minimum wages in that sector. If the Minister of labour decides to accept the recommendation it becomes a law in the form of a sectorial agreement.

### **The impact/implications of the BCEA**

Positive:

- It protects vulnerable employees such as part-time, farm and domestic workers.
- It provides mechanisms to set minimum wages for farm and domestic workers (sectorial agreements).
- It prevents child labour.
- It protects employees against unreasonably long working hours, especially in areas such as the transport and security industries.
- It ensures employees are treated in a fair manner.

### **Unemployment Insurance Fund (UIF)**

- The Unemployment Insurance Amendment Bill (2013) changes certain issues that were covered by the Unemployment Insurance Act of 2001.
- The Unemployment Insurance Fund (UIF) gives short-term relief to workers when they are unemployed, or if they are unable to work because of maternity leave or illness. It also provides relief to the dependants of a deceased employee who has contributed to the fund.
- Contributions are made by both the employee and employer. 1% of the gross salary is deducted from the employee's salary and an equal amount is contributed by the employer who is responsible for paying this amount to SARS. The ceiling amount (limit for the purposes of calculating contributions) is currently (2015) R14 872 per month.
- The following people are excluded from UIF insurance:
  - Employees who work less than 24 hours a month.
  - Employees who earn commission only.
- Civil servants and foreigners working in the country were previously excluded. Now some foreigners are covered by UIF. Employees on learnerships are also included as per the 2013 Amendment.
- Domestic workers are INCLUDED in UIF and the employer must ensure they register with the Department of Labour.
- The maximum amount that will be paid to the unemployed worker is 58% of the monthly salary, provided they have already contributed for at least 4 years to UIF. The claim will not be paid for more than 238 days. In the case of maternity leave the maximum number of days that the mother can claim for is 121 days.

### **Compensation for Occupational Injuries and Diseases Act (COIDA)**

- This was previously known as the Workmen's Compensation Fund.
- If an employee is injured at work or becomes sick or disabled as a result of their job, the person is entitled to claim compensation from the COIDA. It is also possible for families or dependants of a breadwinner to claim, if they have died as a result of a work-related accident or disease.
- Every employer registers with the compensation fund and pays an annual fee based on the employee's earnings and the risks associated with that particular job.
- The amount of compensation paid to an employee is calculated as a percentage of the salary that the employee was earning at the time.
- When will claims not be paid?
  - Privately employed domestic workers cannot claim, but domestic workers employed by a hotel or guest house may claim.
  - Members of the South African National Defence Force or South African Police Services are not covered by COIDA, because they have their own separate fund.
  - If the employee is booked off for three days or less due to the incident, the fund will not pay.
  - If the claim is older than 12 months from the date of the incident or when the diagnosis was made, automatic rejection of the claim occurs.



<b>BUSINESS STUDIES PAPER II: LOWER ORDER THINKING RUBRIC (60% WEIGHTING)</b>						<b>Question 1</b>	<b>Question 2</b>
<b>CRITERIA</b>	<b>0</b>	<b>1</b>	<b>2</b>				
Format	Does not meet the correct standard	Partially correct format	Correct format				
	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>			
Terminology	No use of business terminology	Isolated/limited use of business terminology	Good use of business terminology	Outstanding use of business terminology			
Content (number of relevant facts)	Maximum 50 facts. Divide by 2 to get mark out of 25. Marks are given inter alia for mentioning the fact, explanations of facts or statements, relevant examples; expansion of acronyms. NOTE: Listed facts that are not explained = max 4 marks (8 facts)						
<b>Subtotal: (30 marks)</b>							

<b>BUSINESS STUDIES PAPER II – HIGHER ORDER THINKING RUBRIC (40% WEIGHTING)</b>							
<b>If all SECTIONS have not been completed, the judgment is based on the amount of expected information.</b>							
E.g. A candidate substantiating one section well, but not answering the other cannot qualify for a 'majority of statements' mark.							
<b>CRITERIA</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>		
<b>Substantiation (justification for statements made)</b>	No attempt at substantiation.	Very limited substantiation.	Less than half of the statements are substantiated.	The majority of the statements are substantiated.	The majority of the statements are thoroughly substantiated showing breadth and/or depth of understanding.		
<b>Application to context</b>	Superficial reference based on the case study/context given. (Just keep mentioning the name of the business repeatedly without relevant examples).	Continuous reference is made to the case study/context given with some applicable examples given.	Continuous reference is made to the case study/context given with several examples that are fully integrated into the answer.	Examples are relevant to the case study/context given and fully integrated into the response showing understanding of the issues at hand. Reference is made to current affairs.	Examples are relevant to the case study/context given and fully integrated into the response showing understanding of the issues at hand. Current affairs are fully integrated into the response.		
<b>Creative problem-solving</b>	No understanding of the problem and no solution given.	Identification of the problem and an incorrect/poor solution suggested.	Identification of the problem with breadth but no depth (superficial).	Good insight and understanding of half the problem with solutions offered showing depth of understanding OR less than half in breadth and depth.	Good insight and understanding of the majority of the problem(s) with solutions offered showing depth of understanding OR half in breadth and depth.	Good insight and understanding of the holistic problem with solutions offered which are fully discussed, showing understanding on all aspects OR the majority in breadth and depth.	Good insight and understanding of the holistic problem with solutions offered which are fully discussed, showing breadth and depth of understanding.
<b>Synthesis</b>	None of the criteria as listed below are met.	At least one of the criteria fulfilled.	Any two of the criteria fulfilled.	Any three of the criteria fulfilled.	Any four of the criteria fulfilled.	Any five of the criteria fulfilled.	All six of the criteria are fulfilled.
1 Introduction – did not just re-write question, but shows an understanding of the 'link' between the topics.							
2 Conclusion – this should be a logical affirmation of the points raised.							
3 Flow of thought, i.e. paragraphs leading into one another.							
4 Integration of topics given in the question.							
5 Integration of question with other business-related topics to enhance the quality of the answer.							
6 Arguments are developed.							
<b>SUBTOTAL: (20 marks)</b>							