**Business Studies**

**Grade 12**

**Legislation part 1**

**Notes**

**SKILLS DEVELOPMENT ACT**

**(SDA)**

**Purpose of the Skills Development Act**

* Develops the skills of people in South Africa in order to improve productivity.
* Invests in education and training of workers.
* Improves the chances of getting a job for previously disadvantaged people
* Encourages workers to participate in learning programmes.
* Redresses imbalances of the past through education and training
* Encourages businesses to improve the skills of their workers.
* Improves the chances of getting a job for previously disadvantaged people.

**Impact of the SDA on business**

**Positives/Advantages**

* Trains employees to improve productivity in the workplace.
* Promotes self-employment and black entrepreneurship
* Increases the return on investment in education and training.
* Business could become globally more competitive.
* Increases the number of skilled employees in areas where these skills are scarce.
* Encourages on-going skills development and learning to sustain the improvement of skills development.
* Improves employment opportunities and labour movement of workers from previously disadvantaged groups.
* Workplace discrimination can be addressed through training.
* Workplace is used as an active learning environment where employees can gain practical job experience
* BBBEE-compliant businesses can improve their products/service delivery as they employ more skilled workers.

**AND/OR**

**Negative/Disadvantages**

* Increases cost as the process requires a large amount of paper work.
* Implementation of the SDA can be difficult to monitor and control.
* Skills programmes may not always address training needs of employees.
* Skills Development Levy could be an extra burden to financially struggling businesses.
* It may be monitored and controlled by government departments that do not have education and training as their key priorities.
* The SETAs may not be well organised and many courses offered by companies may not have unit standards that relate to the course content.
* Many service providers that offer training services are that not SAQA accredited.
* Many businesses may not support this government initiative.
* Employees are expected to attend learnerships during work hours which could affect the production process/productivity.
* Costly for businesses to employ a person to implement, manage and control learnerships.
* The time and money spent on improving employee skills is wasted if they leave the business.

**Discriminatory actions according to the SDA**

* Preventing employees from signing for a learnership due to their age or position in the workplace.
* Unfair promotion of skills and development/training to certain employees.
* Providing employment services for gain without being registered as an employer.
* Furnishing false information in any prescribed document.

**Penalties for non-compliance**

* Businesses that do not pay the Skills Development Levy may not offer learnerships/claim grants from the SDA.
* A labour inspector could order the business to stop operating should the business be found guilty of illegal practices.

**Ways in which businesses can comply with the SDA**

* Employers who collect PAYE should register with SETAs.
* One per cent of an employer's payroll has to be paid over to the SETA.
* Businesses should register with SARS in the area in which their business is classified (in terms of the SETA).
* Employers should submit a workplace skills plan and provide evidence that it was implemented.
* Businesses with more than 50 employees must appoint a skills development facilitator.
* Assess the skills of employees to determine areas in which skills development are needed.
* Encourage employees to participate in learnerships and other training programmes.
* Provide all employees with the opportunity to improve their skills.
* Businesses should register with the relevant SETAs.



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

**Role/functions of SETAs**

* Report to the Director General.
* Promote and establishes learnerships.
* Collect levies and pays out grants as required.
* Provide accreditation for skills development facilitators.
* Register learnership agreements/learning programmes.
* Approve workplace skills plans and annual training reports.
* Monitor/Evaluate the actual training by service providers.
* Allocate grants to employers, education and training providers.
* Oversee training in different sectors of the South African economy.
* Develop skills plans in line with the National Skills Development Strategy
* Draw up skills development plans for their specific economic sectors.
* Provide training material/programmes for skills development facilitators.
* Pay out grants to companies that are complying with the requirements of the Skills Development Act.
* Promote learnerships and learning programmes by identifying suitable workplaces for practical work experience.

**Funding of SETAs**

* Skills Development levies paid by employers e.g. 80% is distributed to the different SETA and 20% is paid into the National Skills Fund.
* Donations and grants from the public
* Surplus funds from government institutions
* Funds received from rendering their services.

**National Skills Development Strategy and the Human Resource Development Strategy**

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| --- | --- | --- | --- |
| **National Skills Development**  **Strategy** | | **Human Resources Development Strategy** | |
| - | Encourages good quality training in the workplace to ensure on-going development of skills. | - | Addresses skills shortages in the South African workforce. |
| - | Provides for the participation of government, organised business and labour. | - | Aims at achieving faster economic growth/higher employment levels and reduced levels of poverty. |
| - | Improves social development  through economic development. | - | Promotes social development/social justice and helps to alleviate  poverty. |
| - | Indicates how Sector Education and Training Authorities (SETAs) should use the money allocated from the Skills Development Levy. | - | Develops short term and long term workforce skills. |
| - | Increases/Improves access to training programmes. | - | Improves the supply of skills. |
| - | Builds/Provides career/vocational  guidance/training centres. | - | Increases employee participation in lifelong learning. |

**LEARNERSHIPS**

**Elaborate on the meaning of learnership:**

* Usually a workplace ***learning*** ***programme*** that is supported by an educational institution, and through which a worker can get a ***qualification*** ***while*** ***working***.
* ***Practical*** work experience



**LABOUR RELATIONS ACT**

**(LRA)**

**Purpose of the Labour Relations**

* Provides a framework/structure for labour relations between employers and employees.
* Promotes collective bargaining at the workplace.
* Promotes workplace forums to accommodate employees in decision making.
* Establishes Labour Courts and Labour Appeal Courts.
* Promotes simple procedures for the registration of trade unions and employer organisations.
* Provides for the right to lock-out by the employer as a reaction to lengthy strikes.
* Promotes fair labour practice between the employers and employees.
* Clarifies the transfer of employment contracts between the existing and new employers.
* Advances economic development/social justice/labour peace to ensure that the workplace maintains the basic rights of employees.
* Establishes the Commission for Conciliation, Mediation and Arbitration (CCMA) for dispute resolutions.

**Impact of the LRA on business**

**Positives/Advantages**

* Promotes a healthy relationship between the employer and employees
* Protects the rights of businesses in labour related issues.
* Labour disputes are settled quicker and are less expensive.
* Protect employers who embark on lawful lock-outs when negotiations between parties fail.
* LRA provides for the principles of collective bargaining and puts structures in place with which disputes in the workplace can be settled.
* Provides specific guidelines for employers on correct and fair disciplinary procedures.
* Employers and employees have guidelines regarding correct and fair dismissal procedures.
* Provides mechanisms such as statutory councils/collective bargaining/ CCMA.
* Employers are entitled to compensation from the Labour Court if they suffered damages as a result of unprotected strikes.
* Workplace forums can add value to businesses if it functions properly.

**AND/OR**

**Negatives/Disadvantages**

* Productivity may decrease if employees are allowed to participate in the activities of trade unions during work time.
* Costs of labour increases because of legal strikes
* Reduced global competitiveness due to lower productivity
* Employers may have to disclose information about workplace issues to union representatives that could be the core of their competitive advantage.
* Employers may not dismiss employees at will, as procedures have to be followed.
* Some businesses may feel that the LRA gives employees too much power as it creates lengthy procedures, e.g. consulting with workplace forums.
* Employers may not get a court interdict to stop a strike.
* Strike actions always result in loss of production for which employers may not claim.
* Some trade unions may not promote the mandate of their members but embark on industrial action, which is harmful to labour relations between employers and employees.
* Many employees and employers do not understand/respect the Labour Relations Act.
* Labour disputes and bargaining council processes become disruptive/ time consuming and can lead to a decrease in productivity in businesses.
* Many employees take advantage of the right to strike without acknowledging their responsibilities.

**Discriminatory actions according to the LRA**

* Unfair/Illegal dismissal of employees.
* Cancellation of employees' contracts by a new employer when a

business is sold

* Refusing the establishment of workplace forums.
* Refusing to give workplace forum members paid time off for attending meetings during working hours.
* Forcing employees to give up trade union membership.
* Preventing employees from joining trade unions.
* Refusing leave to trade union representatives to attend trade union activities.
* Breaching of collective agreements/resolution mechanisms by either employer/employee.
* Not allowing employees to take part in legal strikes( Employees’ rights)

**Penalties for non-compliance with the LRA**

* The employer may be forced to enter into a dispute resolution process.
* Businesses will be fined if they fail to comply with the agreements reached during the dispute resolution process.
* Businesses that fail to comply with this Act may risk financial costs e.g. legal/CCMA fees and fines.

**Ways in which businesses can comply with the LRA**

* Businesses must allow employees to form trade unions/participate in union activities/legal strikes.
* Allow/Support the establishment of workplace forums.
* Employees should not be unfairly/illegally dismissed
* Employers should not breach/ignore any collective agreement
* Disclose all relevant information required by trade union representatives to do their jobs effectively.



**The** **rights of employers and employees according to LRA**

**Rights of employers**

* Employers have the right to lockout employees who engage in unprotected/illegal strike/labour action.
* Form employer organisations.
* Form a bargaining council for collective bargaining purposes.
* Dismiss employees who are engaged in an unprotected strike/misconduct such as intimidation/violence during a strike action.
* Right not to pay an employee who has taken part in a protected strike for services/work they did not do during the strike.

**Rights of employees**

* Employees may join a trade union of their choice.
* Request trade union representatives to assist/represent employees in the grievance/disciplinary hearing.
* Trade union representatives may take reasonable time off work with pay, to attend to trade union duties.
* Embark on legal strikes as a remedy for grievances.
* Refer unresolved workplace disputes to the CCMA.
* Refer unresolved CCMA disputes to the Labour Court on appeal.



**EMPLOYMENT EQUITY ACT**

**(EEA)**

**Purpose of the EEA**

* This Act states that employees who do the same work (work of equal value) must be paid equally (equal pay).
* No discrimination on grounds of gender in the workplace.
* Promotes equal opportunity and fair treatment in the workplace.
* Provides for employees to refer unresolved disputes to the CCMA.
* Protects employees from victimisation if they exercise the rights given to them by the EEA.

**Impact of the EEA on business**

**Positives/Advantages**

* Promotes equal opportunity and fair treatment in the workplace
* Promotes the implementation of affirmative action measures to redress the imbalances in employment.
* Provides all employees with an equal opportunity to be selected/appointed/ promoted in a position.
* Provides employees with legal recourse if they believe they have been unfairly discriminated against.
* Motivates employees because the workforce is more diverse/representative/inclusive
* Encourages diversity in business by employing people from various racial backgrounds.
* Encourages consultation between employer and employees.
* Prevents unfair discrimination as it ensures that the workforce represents the demographics of the country.
* Businesses are in a better position to negotiate contracts with the government/Impacts positively of BEE ratings of businesses
* Certified psychometric tests may be used to assess applicants/employees to ensure that suitable.

**AND/OR**

**Negatives/Disadvantages**

* Increased administration burden, as businesses must compile/submit employment equity reports every two years.
* Expensive to train/employ someone who knows little about the Act.
* Fines/Penalties for non-compliant businesses may be expensive for the business.
* Employers have to appoint one or more senior managers to ensure the implementation of the plan, which increases salary expenditure
* Businesses must submit a compliance certificate before they can conduct business with state businesses
* Businesses are sometimes pressurised to appoint an unsuitable EE person to meet EE requirements
* Often positions go unfilled because there are no suitable EE candidates

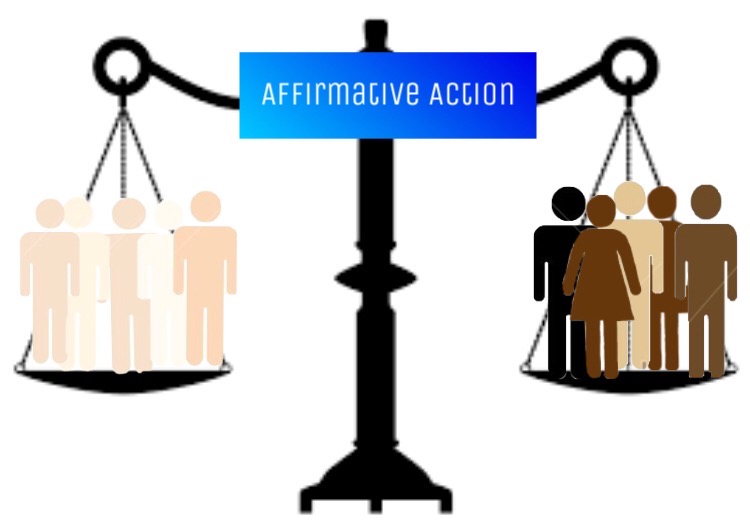
**Penalties for non-compliance with the EEA**

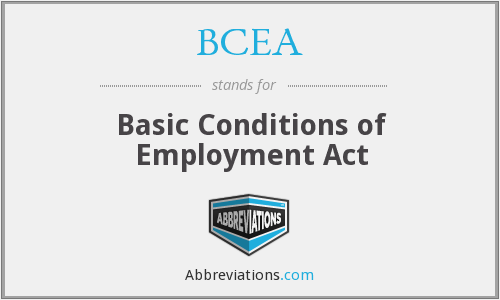
* Businesses may be taken to the Labour Court for prosecution.
* Fines may be imposed on businesses that fail to comply with its reporting obligations.
* The Department of Labour may block non-compliant companies from doing business with the government.

**Discriminatory actions according to the EEA**

* Not employing a young woman because she would want to have children in future.
* Refusing to employ a person because he/she has strong religious beliefs/has a disability
* Doing HIV testing unless justified by the Labour Court.
* Denying people access to the workforce based on gender/race/culture/etc. and treating them unfairly.

**Ways in which businesses can comply with the EEA**

* Businesses must guard against discriminatory appointments.
* Promote equal opportunities and fair treatment
* Reasonable accommodation of people from designated groups
* Ensure that there is equal representation of all racial groups in every level of employment.
* Submit the employment equity plan to the Department of Labour
* Retain designated groups, including skills development of such groups.
* Assess the racial composition of all employees, including senior management.
* Clearly define the appointment process, so that all parties are well informed.
* Use certified psychometric tests to assess applicants/employees to ensure that suitable candidates are appointed.
* Ensure that diversity/inclusivity in the workplace is achieved.
* Implement affirmative action measures to redress disadvantages experienced by designated groups.
* Prepare an employment equity plan in consultation with employees.
* Implement an employment equity plan.
* Assign one or more senior managers to ensure implementation and monitoring of the employment equity plan.
* Eliminate barriers that have an adverse impact on designated groups.
* Retain/Develop/Train designated groups, including skills development.
* Regularly report to the Department of Labour on progress in implementing the plan.

**BASIC CONDITIONS OF EMPLOYMENT ACT**

**(BCEA)**

**Purpose of the BCEA**

* Provides clear terms and conditions of employment for employers and employees.
* Set minimum requirements/standards for the employment contract.
* Regulates the right to fair labour practices as set out in the Constitution.
* Adheres to the rules and regulations set out by the International Labour Organisation.
* Regulates the variations of basic conditions of employment.
* Advance economic development and social justice.

**Impact of the BCEA**

**Positives/Advantages**

* Creates a framework of acceptable employment practices e.g., work hours, leave, etc.
* Promotes fair treatment of employees in business.
* Encourages consultation between employers and employees.
* Outlines minimum requirements that form the basis of employment contracts.
* Work hours are specified so that the employer cannot exploit employees.
* The rules and regulations are very specific, which clearly guides the employer on

how to deal with employment issues.

* Employees are permitted to consult labour unions in cases where the BCEA conditions are violated. (Relationship with LRA)
* Employees may submit complaints to labour inspectors who can address it.

**AND/OR**

**Negative/Disadvantages**

* Developing/Drafting a formal/legal employment contract may be time-consuming/costly.
* Businesses may regard employment contracts negative and may not implement it, which result in non-compliance/penalties.
* No employer may force an employee to work more than 45 hours in a week. This may result in reduced productivity.
* Hiring cheap labour is no longer possible, so businesses cannot exploit workers.
* BCEA forces businesses to comply with many legal requirements, which may increase labour costs.
* Businesses not complying to the Act, may be charged with high penalties, which may affect their cash flow negatively.
* Businesses may consider the provisions of the BCEA as unimportant and an unnecessary administrative burden that increase operating costs.

**Discriminatory actions according to the BCEA**

* Forbidding workers to discuss wages/salaries with co-workers.
* Preventing workers from having access to employment contracts.
* Refusing to accept a valid medical certificate of a sick worker.
* Refusing to grant a worker family responsibility leave to support a sick family member

**Penalties businesses may face for not complying with the BCEA**

* Labour inspectors may serve a compliance order by writing to the Department of Labour
* The Director General may agree/change/cancel the compliance order.
* Labour inspectors may investigate/inspect/ask questions about complaints and remove records as evidence.
* Businesses may be taken to the labour court for a ruling.
* Businesses that are found guilty of non-compliance may face heavy fines/ penalties.
* They can be ordered to pay compensation and damages to the employee.

**Ways in which businesses can comply with the BCEA**

* Workers should only work 9 hours per day in a 5 day work week./8 hours per day in a 6 day work week./Overtime should not exceed 10 hours per week.
* They must have a break of 60 minutes after five hours of work
* Workers can take up to six weeks paid sick leave during a 36-month cycle
* Businesses should not employ children under the age of 16.
* Workers must receive double if they work during public holidays/Sunday



**Provisions of the BCEA**

**Hours of work/Work hours**

* Workers may not work for more than 45 hours in any week.
* Workers may work nine hours a day if they work five days or less per week/eight hours a day√ if they work more than five days a week.
* Night work performed after 18:00 and before 6:00 the next day by agreement, must be compensated by allowance/reduction of work hours.
* Ordinary work hours may be extended by agreement√ by a maximum of 15 minutes per day/maximum of sixty minutes per week to complete duties when serving the public.
* Ordinary work hours may be reduced√ to a maximum of 40 hours per week/8 hours per day.

**Overtime**

* Workers must agree to work overtime.
* Workers cannot work more than three hours overtime per day/10 hours per week.
* Overtime must be compensated as follows:
* One and half times the normal rate of pay for overtime worked on week days and Saturdays.
* Double the normal rate of pay for overtime worked on Sundays and public holidays.
* Overtime must be paid either at specified rate for overtime or an employee may agree to receive paid time off.
* Minister of Labour may prescribe the maximum permitted working hours, including overtime, for health and safety reasons for a certain category of work.

**Leave**

**Types of leave**

**Annual leave**

Workers are entitled to:

* 21 consecutive days annual leave per year/One day for every 17 days worked√/One hour for every 17 hours worked.
* An employer can only pay a worker in lieu of leave if that worker leaves the job.

**Sick leave**

Workers are entitled to:

* Six weeks paid sick leave in a period of 36 months/1 day paid sick leave for every 26 days worked during the first six months of employment.
* A medical certificate may be required before paying an employee who is absent for more than two consecutive days/who is frequently absent.



**Maternity leave**

* A pregnant employee is entitled to four consecutive months' leave.
* A pregnant employee may not be allowed to perform work that is hazardous to her unborn child.
* The starting date is usually any time from four weeks before the expected date of birth or on advice of a doctor/midwife.

**Family responsibility leave**

* Three to five (3 to 5) days paid leave per year on request in the event of the death of the employee's spouse/life partner/parent/ adoptive parent/ grandparent/child/adoptive child/grandchild/sibling.
* An employer may require reasonable proof, before granting this leave.
* Male employees are entitled to a maximum of three/five day’s paternity leave when his child is born.

**Meal breaks and rest periods**

* Workers must have a meal break of 60 minute after five continuous hours of work.
* This can be reduced to 30 minutes by written agreement, when working less than 6 hours per day.
* A worker must have a daily rest period of 12 continuous hours/a weekly rest period of 36 continuous hours which must include Sundays.

**Public holidays**

* Workers must be paid for any public holidays that fall on a working day.
* Work on public holidays is by agreement and paid at double the rate.

**Termination of employment**

* A contract of employment may only be terminated following one week’s notice, if the worker has been employed for six months or less.
* A minimum of four weeks’ notice must be given, if the worker has been employed for a year or longer.
* The employee must be given notice in writing.
* An employee who is retrenched/ dismissed for restructuring reasons is entitled to one week’s severance pay for every year of service.

**Child and forced labour**

* It is illegal to employ a child younger than 15 years of age.
* It is also illegal to force someone to work.
* Businesses may employ children over the age of 15 years, if employment is not harmful to their health/well-being/education/moral and social development/ minors under 18 years of age may not do dangerous work/work meant for an adult.