**Business Studies**

**Grade 12**

**Legislation part 2**

**Notes**

**COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT (COIDA)**

**Purpose of COIDA**

* Provides a comprehensive protection to employees who injured in the course of performing their duties.
* COIDA applies to all casual and full-time workers who become ill/injured/ disabled/killed due to a workplace accident/disease
* It excludes workers who are guilty of wilful misconduct/workers working outside South Africa for at least twelve months/members of the SA Defence Force/Police services.
* It provides for the establishment of a Compensation Board whose function is to advise the Minister of Labour on the application/provisions of COIDA.

**Impact of the COIDA on businesses**

**Positives/Advantages**

* Promotes safety in the workplace.
* Creates a framework for acceptable employment practices and safety regulations.
* Supply administrative guidelines/mechanisms for dealing with/processing claims.
* Eliminates time and costs spent on lengthy civil court proceedings.
* Employers are protected from financial burden should an accident occur in the workplace provided that the employer was not negligent
* Claiming processes are relatively simple.
* Makes businesses more socially responsible as they cannot just employ workers at random in dangerous working conditions.
* Workers are treated with dignity and respect as businesses view them as

valuable assets and not just as workers.

* Covers all employees at the workplace if both parties meet all the necessary safety provisions in the Act.
* Employees do not contribute towards this fund.
* Employees are compensated financially for any injury/disability resulting from performing their duties at their workplace.
* In the event of the death of an employee as a result of a work-related accident/ disease, his/her dependent(s) will receive financial support.
* Employees receive medical assistance provided there is no other medical assistance option./Cannot claim medical assistance from the fund and medical aid.
* Any compensation to an employee/the family is exempt from income tax.
* Medical expenses/Other types of compensation are paid to employees and/or their families depending on the type/severity of the injuries.
* Employers have to pay a monthly amount to the Compensation Fund depending on the number of employees/the level of risk they are exposed to.

**AND/OR**

**Negative/Disadvantages**

* Claiming processes can be time consuming.
* Procedures required by this Act may be costly as paperwork places an extra administrative burden on businesses.
* Implementation processes/procedures required by the Act may be expensive.
* Employers have to register all their workers/make annual contributions to COIDA, which may result in cash flow problems.
* Employers may be forced to pay heavy penalties if they are found guilty of negligence/not enforcing safety measures.
* Workers who are temporarily/permanently employed in foreign countries are not covered.
* Domestic/Military workers are not covered.

**Discriminatory actions according to COIDA**

* Employers who bribe/prevent employees from reporting the accident/injury.
* Providing false information about previous, serious accidents/occupational diseases.
* Employers who do not contribute to the Compensation fund.
* Employers who do not allow claims for injuries, discriminates against injured employees.
* Employers that take too long to process claims/delay the claiming process.
* Compensation that is set off against any debt of the person entitled to the compensation.

**Penalties for non-compliance with COIDA**

* Businesses can be fined for refusing to lodge the claim/contravening the Act.
* Businesses can be forced to make large payments if it did not take the necessary precautions according to the Act.
* They may be forced to pay any recovery costs required by the Compensation Fund.
* Employees may take businesses to court for not registering them with the Commissioner of the Compensation Fund.
* If businesses are found guilty of any misconduct, they will have to pay large penalties/face imprisonment.

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

* Businesses should provide a healthy/safe working environment.
* Register with the Compensation Commissioner and provide the particulars of the business.
* Keep records of employees' income and details of work for four years.
* Report all incidents causing death/injury/illness of employees.
* Submit returns of earnings by no later than 1 March annually.
* Levies must be paid to the Compensation Fund.
* Ensure that the premises/equipment/machinery is in good working condition.
* Allow regular assessment of the workplace by inspectors in order to determine the level of risk their employees are exposed to.
* Employers may not make deductions for COIDA from employees' remuneration packages.
* Businesses must ensure that claims are lodged within twelve months of the date of the accident.



**BROAD-BASED BLACK ECONOMIC EMPOWERMENT**

**(B-BBEE)**

**Purpose of BBBEE**

* Enable wealth to be spread more broadly across all population groups.
* Outline areas that would give the government a platform for bringing equitable spread of wealth.
* Allows for the development of Codes of Good Practice.
* It aims at targeting inequality in the South African economy.

**Impact of the BBBEE on businesses**

**Positives/Advantages**

* Encourages businesses to address the demands for redress/equity directly.
* Provides a variety of business codes to improve employment equity.
* A good BEE rating improves the image of the business.
* Promotes enterprise development, by developing entrepreneurial skills of PDI’s.
* Businesses that comply with BBBEE regarding the pillars will be rated high on the BEE scorecard/may get government tenders/may attract other BBBEE business partners/-suppliers.
* Encourages businesses to address the demands for redress/ equity directly.
* Provides for human resources development through training and development.
* Promotes enterprise development, by developing entrepreneurial skills of designated people to start their own businesses.
* Businesses will have a good overview on how it is performing in comparison to other businesses in the rest of the country.
* By focusing on BBBEE, the business will show commitment towards the social/education/economic developments in the community/country.
* Once rated, the business will understand how to develop BBBEE strategies that will increase its BBBEE ratings on an annual basis.
* Fronting is discouraged, as it may lead to the disqualification of a business's entire scorecard/BBBEE status.
* Share prices of BBBEE compliant businesses are likely to increase as they attract more business.
* Businesses that support Small, Micro, Medium Enterprises (SMMEs), may increase their own BBBEE ratings
* Complying with BBBEE requirements gives businesses experience/exposure to be able to provide better employment opportunities/staff development.

**AND/OR**

**Negative/Disadvantages**

* Businesses that want to do business with the government must have their BEE status assessed annually.
* Processes may lead to corruption/nepotism if not monitored properly.
* Investment/Ownership issues can cause unhappiness amongst existing share-holders/owners.
* Businesses have to go through the process of having their BBBEE compliance measured/verified by an independent BEE verification agency.
* Provides for preferential procurement, so certain businesses may be excluded from supplying goods/services.
* Many businesses have been disadvantaged due to BBBEE ratings as they may not be able to meet all the scoring.
* Processes and procedures may be costly for a business as there are many legal requirements for scoring enough points to be compliant.
* Businesses could experience large financial implications/penalties if they do not comply with BBBEE.
* Businesses will have to spend money in areas covered by the seven/five BBBEE pillars to obtain a good BBBEE rating.
* Investment/Ownershipissues can cause unhappiness between existing shareholders.

**Discriminatory actions according to BBBEE**

* Failing to implement affirmative action to meet BBBEE responsibilities.
* Promoting unsuitable people into a management positions at the expense of qualified PDP’s.
* Refusing to award tenders to black suppliers who are BEE compliant.

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

* Businesses may face imprisonment for non-compliance and fronting practices.
* The penalty could be a fine of up to 10% of the company’s annual turnover.
* A business can be banned from participating in government contracts for a period of 10 years.
* Business licenses may not be renewed and authorisations may not be issued
* Government will cancel any contract awarded that was based on false information regarding B-BBEE status.
* Businesses that fail to achieve at least a minimum 40% of compliance with ownership, skills development and new enterprise and supplier development will be automatically downgraded the by one level.

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

* Businesses must appoint black people in managerial positions
* Businesses must sell shares to black employees/people.
* Send black people for black for skill development training.
* Outsource their services to BEE compliant suppliers.
* Implement affirmative action when making appointments.
* Develop small business /SMME’s through ESD.
* Improve the standard of living of the communities in which they operate.

**Distinguish between BEE and B-BBEE**

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| --- | --- |
| **BLACK ECONOMIC EMPOWERMENT (BEE)** | **BROAD BASED BLACK ECONOMIC EMPOWERMENT (BBBEE)** |
| It is a government policy which may not be enforced. | It is an Act that is enforced/ must be complied with by businesses. |
| Benefits only a few previously disadvantaged people in the economy. | Encourages a wider group of previously disadvantaged people/ black women/ people who are physically challenged/ youth/ people in rural areas to participate in the economy. |
| Few previously disadvantaged individuals share in the wealth of the economy. | Aims at distributing the country’s wealth across a broader spectrum of society. |
| Focuses only on 3 pillars that did not include all previously disadvantaged people. | Focuses on 7/ 5 pillars which includes all sectors of the society, especially the previously disadvantaged. |



**BBBEE PILLARS**

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| --- | --- |
| **OLD PILLARS** | **REVISED PILLARS** |
| Management  | Management control  |
| Employment Equity |  |
| Skills development  | Skills development  |
| Ownership | Ownership |
| Preferential procurement/Supplier development  | Enterprise and supplier development (ESD) |
| Enterprise development |  |
| Social responsibility  | Socio-economic development/social responsibility  |

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**Implications/ apply of BBBEE pillars on businesses**

**New pillars (5)**

**Management control**

* Business must ensure that transformation is implemented at all levels.
* Appoint black people in senior executive positions/to management.
* Involve black people in the decision-making processes.
* Ensure that black females are represented in management.
* Businesses score points in both management and ownership when selling more than 25 % of their shares to black investors so that some of them can become directors.
* Due to a shortage of skilled black managers/directors, some businesses find it difficult to make appointments.
* Businesses are directly penalised for not implementing this pillar.

**Skills development**

* Business must engage black employees in skills development initiatives.
* Provide learnerships and learning programmes to black employees.
* Business must contribute 1% of their payroll to fund the skills development

programmes.

* Business benefits from the increased pool of skilled/trained workers.
* Business must go the extra mile to train staff where learnerships are not offered.
* Productivity is compromised as mentors/coaches have to find the time to participate in learnerships/training.

**Ownership**

* Business should include black people in shareholding/partnerships/franchises.
* Exempted Micro Enterprises (EMEs) with an ownership of 50% or more of black people are promoted to level 3 of the BEE scorecard.
* More opportunities are created for black people to become owners/ entrepreneurs.
* Encourage small black investors to invest in big companies and share ownership.
* Large businesses should form joint ventures with small black owned businesses and share business risks.
* Businesses sometimes find it difficult to locate suitable black business partners/ shareholders.
* Many black people cannot afford shares in companies/contributions to partnerships.

**Enterprise and supplier development (ESD)**

* Business must create jobs as ESD promotes local manufacturing.
* Businesses are encouraged to invest/support black owned SMMEs.
* Contribution can be monetary, e.g. loans/investments/donations.
* Contribution can be non-monetary, e.g. consulting services/advice/entrepreneurial programmes, etc.
* Outsource services to suppliers that are BBBEE compliant.
* Identify black owned suppliers that are able to supply goods and services.
* Develop the business skills of small/black owned suppliers, e.g. sales techniques, legal advice, etc.
* Support the cash flow of small suppliers by offering them preferential terms of payment.
* Businesses should invest in/support black owned SMMEs.
* SMMEs will be encouraged to use their own business initiatives to make them

sustainable.

* Develop and implement a supplier development plan/supply chain.
* Small/Large businesses may not be able to afford enterprise development

investment/support.

* Black owned SMMEs may become too reliant on support from other businesses/ unable to take their own initiatives.
* BBBEE suppliers may be without good workmanship.
* Smaller businesses that are not BBBEE compliant lose business.
* Businesses are forced to choose from a smaller pool of suppliers.

**Social responsibility/Socio-economic development**

* Businesses should CSI focus on critical areas which can affect growth and development in the country e.g. environmental awareness/education/ housing, poverty/unemployment etc.
* They should distribute scarce CSI resources to selected beneficiaries in the community.

**NATIONAL CREDIT ACT**

**(NCA)**

**Purpose of the NCA**

* Promotes the social and financial interest of consumers.
* Promote a fair but competitive credit market.
* Ensure that consumers know what is included in their credit contracts.
* Prevent discrimination and ensure credit is available to all consumers.
* Makes provision for the establishment of the NCR.
* Ensure registrations of credit bureau and debt counselling services.

**Impact of the NCA on businesses**

**Positives/Advantages**

* The whole credit process is transparent e.g. both businesses and customers know their responsibilities
* Authorised credit providers may attract more customers.
* Lower bad debts resulting in better cash flow.
* Increases cash sales as credit can only be granted to qualifying customers
* Protects businesses against non-paying consumers.
* Stamps out reckless lending and prevents businesses from bankruptcy.
* Businesses do thorough credit checks and receive up-to-date documentation from the consumer as proof that they can afford the repayment.
* Leads to more customers through credit sales as they are now protected from abuse.
* Credit bureau information is made available to businesses so that they can check the credit worthiness of consumers before granting credit.

**AND/OR**

**Negative/Disadvantages**

* Businesses can no longer carry out credit marketing.
* Leads to loss of sales as many consumers may no longer qualify to buy on credit.
* The paperwork and administrative process required by the act are costly and time consuming.
* The business needs to appoint additional staff to deal with the extra administration.
* Should the credit agreement be declared reckless the business can forfeit the outstanding debt and the goods.
* Businesses that are official credit providers, must submit a compliance report every year.
* A business must make sure that all attempts have been made to recover the debt before blacklisting the customer.
* Debt collection procedures are more complex and expensive.
* Credit providers cannot collect from consumers who are under debt reviews.
* Increases the administration burden on credit providers.
* More working capital is needed as businesses cannot sell many goods on credit due to stricter credit application processes.
* Fewer customers buy on credit as it is more difficult to obtain credit.
* Businesses struggle to get credit such as bank loans/overdrafts.
* Businesses that do not comply with the NCA may face legal action.

**Discriminatory actions according to the NCA**

* Refusing credit to customers based on gender/race.
* Charging different interest rates to customers based on gender/race
* Blacklisting customers without making efforts to recover the debt

**Penalties/consequences for non-compliance with the NCA**

* The court may declare the granting of credit by the business reckless and may order consumers not to repay the credit/or part thereof to the business.
* The business may not demand payment, sue or attach the clients/consumers salaries/assets.
* The business may not charge any fee/interest/other charges under that specific credit agreement.
* The National Credit Regulator may impose a fine/penalty on the business for non-compliance.
* The business will bear all costs of removing the negative information of clients/ consumers who were blacklisted as a result of reckless lending.

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

* Credit providers must be registered with the National Credit Regulator.
* Businesses must submit an annual compliance report to the National Credit Regulator.
* Conduct affordability assessment to ensure the consumer has the ability to meet his/her obligation.
* Conduct a credit check with a registered credit bureau and could also consult the National Credit Register.
* Credit providers must have procedures in place to comply with the provision of the Financial Intelligence Centre Act (FICA).
* Verify the identity of clients, report suspicious transactions/train staff on their obligations in terms of FICA.
* Disclose all costs of loan/No hidden costs should be charged/added.

**Consumer rights in term of the NCA**

Consumers have a right to:

* Apply for credit and to be free from discrimination.
* Obtain reasons for credit being refused
* Receive pre-agreement documentation before concluding any credit transaction.
* Fair and responsible marketing.
* Choose which goods they will buy and return such goods if they are not satisfied.
* Receive Information in plain and understandable language.
* Receive documents as required by the Act.
* Access and challenge credit records and information.

**CONSUMER PROTECTION ACT**

**(CPA)**

**Purpose of the Consumer Protection Act**

* Promote and protect the economic interests of consumers by providing access to information.
* Promotes fair/accessible and sustainable places for people to sell their products
* Establishes national standards to protect consumers
* Provides guidelines for better consumer information and to prohibit unfair business practices
* Promotes responsible consumer behaviour
* Promotes consistent laws relating to consumer transaction and agreement
* Establishes a National Consumer Commission (NCC)
* Ensures that consumers have access to information they need to make informed choices
* Promotes the rights and full participation of historically disadvantaged individuals as consumers
* Ensures that consumers are not misled/deceived by suppliers of goods/services
* Promotes consumer safety by protecting them from hazardous products/services
* Strengthens a culture of consumer rights and responsibilities.
* Empowers consumers to take legal action if their rights are not upheld
* Protects consumers against contracts that include unfair terms which limit the liability of suppliers
* Protects consumers against unscrupulous businesses such as fly-by-night franchisors
* Allows for consumers and businesses to resolve disputes fairly/effectively

**Impact of the CPA on businesses**

**Positives/Advantages**

* Enables businesses to resolve disputes fairly through the National Consumer Commission/Consumer Court/Industrial ombudsmen
* Businesses may build a good image if they ensure that they do not violate consumer rights.
* May gain consumer loyalty, if they comply with CPA.
* Businesses may be safeguarded from dishonest competitors.
* Businesses may be protected if they are regarded as consumers
* Prevents larger businesses from undermining smaller ones.

**AND/OR**

**Negatives/Disadvantages**

* Confidential business information may become available to competitors
* They have to disclose more information about their products and processes/services
* Businesses may feel unnecessarily burdened by legal processes
* Penalties for non-compliance may be very high
* Staff need to be trained /Legal experts need to be consulted, which can increase costs
* Many business documents need to be simplified /revamped at extra cost as consumers have a right to receive contracts in simple/understandable language.
* Administration costs increase as legal contracts need to be worded in plain language /pitched at the level of the consumer
* Businesses may need insurance against claims from consumers /provisions in the Act increase risks for unforeseen claims and lawsuits
* Businesses have to replace/repair faulty items/refund money if the fault occurs within six months after purchase.
* Supply chain management in stock levels will have to change, as defective goods have to be replace within six months at the request of the consumer
* Information technology systems need to be improved as the retailer must keep more detailed records of interactions with consumers /be able to report to the National Consumer Commission.

**Discriminatory actions according to the CPA**

* Denying customers proper information about the product/services.
* Varying the quality of goods when selling in different areas.
* Prioritising any consumer group over another when marketing/selling
* Charging unfair prices for the same goods and services.
* Treating customers differently based on gender/age/race.

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

* A contract may be rendered void or a fine or term of direct imprisonment may be imposed.
* Businesses may face fines or imprisonment for a period not exceeding 10 years.
* Government agencies may conduct audits, enact fines or even dissolve your business entirely.
* Businesses will be forced to compensate consumers in line with the extent to which their rights have been violated.

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

* Disclose prices of all products on sale.
* Provide adequate training to staff on the CPA.
* Ensure that goods/services offered are standardised/of the same quality.
* Comply with the requirements regarding promotional competitions.
* Display the name of the business on all business documents, e.g. invoices/contracts.
* All agreements must provide for a five-day cooling off period.
* Comply with requirements regarding the display of information on labels/ packaging
* Provide adequate training to staff on the CPA.
* Bundling of goods/services should benefit consumers, e.g. offering a cell phone and a tablet at a special price.
* Implement measures that will facilitate complaints, e.g. suggestion boxes.



**CONSUMER RIGHTS OF THE CONSUMER PROTECTION ACT**

**Right to choose**

Consumers have the right to:

* choose suppliers and/or goods.
* shop around for the best prices.
* reject goods that are unsafe/defective for a full refund.
* cancel/renew fixed term agreements.
* request written quotations and cost estimates.

**Right to privacy and confidentiality**

* Consumers have the right to stop/restrict unwanted direct marketing.
* They can object to unwanted promotional e-mails/telesales.
* They have the right to stop/lodge complaints about the sharing of their personal details.

**Right to fair and honest dealings**

* Suppliers may not use physical force or harass customers.
* Suppliers may not give misleading/false information.
* Businesses may not promote pyramid schemes and/or chain-letter schemes
* Businesses may not overbook/oversell goods/services and then not honour the agreement.

**Right to information about products and agreements/Right to disclosure and information**

* Contracts and agreements should be in plain language and easy to understand.
* Businesses should display prices which are fully inclusive disclosing all costs.
* Consumers may request the unit and bulk price of the same product.
* If two prices for the same product are displayed, consumers should pay the lower price.
* Businesses should label products and trade descriptions correctly.

**Right to fair/responsible marketing/promotion**

* Businesses should not mislead consumers on pricing, benefits/uses of goods.
* Consumers may cancel purchases made through direct marketing within five working days/cooling off-period.
* All information related to the country of origin/expiry dates/ingredients of the products should be disclosed/clearly labelled.

**Right to accountability from suppliers**

* Consumers have the right to be protected in lay-bye agreements.
* Businesses should honour credit vouchers and prepaid services.

**Right to fair/just/reasonable terms and conditions**

* Businesses should provide consumers with written notices of clauses that may limit consumer rights.
* Businesses may not market/sell goods at unfair prices.

**Right to equality in the consumer market place**

* Businesses should not limit access to goods and services.
* Quality of goods may not vary when supplied to different consumers.
* Businesses may not charge different prices for the same goods/services.
* No discrimination should occur when businesses market products and services in different areas/places.

**Right to return goods/have goods replaced/claim a refund**

* Goods that are unsafe/ defective may be replaced by the supplier.
* Faulty items may be returned for a full refund.
* They may return faulty items if the fault occurs within six months after purchasing the item.

**Right to complain**

* Consumers may use various methods/channels to complain about poor quality goods/services.
* They can complain via customer care desks/consumer hotlines/ombudsman etc.

**Right to privacy/confidentiality**

* Consumers have the right to stop/restrict unwanted direct marketing.
* They can object to unwanted promotional e-mails and telesales.
* They have the right to stop/lodge complaints about sharing personal details.

**Right to fair value/good quality/safety**

* Consumers may demand quality services/goods.
* They may receive an implied/written warranty.
* Cancel /renew fixed term agreements.
* To be informed about hazardous/dangerous products
* Reject goods that are not the same as the sample marketed
* Return faulty items if the fault occurs within six months after purchasing the item

**Right to fair/honest dealings**

* Suppliers may not use physical force/harass customers.
* They may not give misleading/false information about the product/service/ transaction.
* Businesses cannot promote pyramid/chain-letter schemes.
* Businesses may not overbook/oversell goods/services and then not honour the agreement.