

The Effects of Labour Law on Small Firms in South Africa.  
Perceptions of Employers in the Hospitality Sector in Pretoria,  
Gauteng.

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# ABSTRACT

The South African government has attempted to find a balance of interests between the employer and the employee by the introduction of the Labour Relations Act in 1995 and the Basic Conditions of Employment Act in 1997. It is critical to the health of the South African economy that these labour laws do not impact small businesses to the extent that the Gross Domestic Product of the country is negatively affected. There are conflicting reports as to how these labour laws affect small businesses. It is therefore important for government to be able to understand, define and measure the impact of its labour laws on small businesses, in order for it to strategise corrective measures, which may include reconsidering the application of the legislative directive, regulated flexibility, if required. The study was limited in the sense that it was solely based on evidence collected from employers. An interpretivist approach was applied as a research methodology to data collected through in-depth interviews. The main findings of the empirical analysis demonstrate that labour legislation does not heavily impact small firms. It was thus determined that extensive measures were not needed with regard to correcting the framework of regulated flexibility.

**Keywords:**

Small firms, labour market, labour legislation, human resource management in SMEs

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# Acronyms

ANC – African National Congress

BBBEE – Broad Based Black Economic Equality Act of

BCEA – Basic Conditions of Act of 1997

BEE – Black Economic Equality

CCMA – Commission for Conciliation, Mediation and Arbitration

COSATU – Congress of South African Trade Unions

ECC – Employment Conditions Commission

EEA – Employment Equity Act of

GDP – Gross Domestic Product

HRM – Human Resource Management

ILO – International Labour Organisation

IMF – International Monetary Fund

LRA – Labour Relations Act of 1995

NMW – National Minimum Wage

OHS Act – Occupational Health and Safety Act of

UIA – Unemployment Insurance Act of 2001

UIF – Unemployment Insurance Fund



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# CHAPTER 1

## INTRODUCTION

### 1.1. Context of the Research

The Department of Trade and Industry in South Africa has consistently recognized the importance of small businesses to the economy's growth and sustainability. Naidoo (2007) states that South Africa's small firms only contribute one-third of the country's gross domestic product (GDP), whereas in other developing countries the small business sector is central to the economy and on average contributes at least two-thirds of the GDP. At the level of policy and legislation, the government has intervened to support the objective of small business promotion in the economy. Small business policies have principally been informed by the 1995 White Paper on National Strategy on the Development and Promotion of Small Businesses (Seda, 2009). Due to the stated importance of small firms' contribution to the economy, the constantly debated topic of the impact that labour legislation is having on them shall be the focus of this dissertation.

The ruling party, the African National Congress (ANC), adopted a neo-corporatist framework, in line with its commitments to a developmental state (Donnelly and Dunn, 2006). Labour market regulation in a neo-corporatist framework involves a commitment to balancing worker protection, employment security and protection of trade unionism with employer interests and small business development and sustainability (SBP, 2009). Striking a balance between opposing economic interests within this framework involves finding an economically durable and socially sustainable trade-off between equity/security and efficiency/flexibility (Benjamin, Bhorat, and Cheadle, 2009; Standing, Sender and Weeks, 1996). The policy directive of 'regulated flexibility', which underpins South Africa's labour legislation, reflects the government's attempts at achieving such a trade-off in the post-apartheid labour market. Van Niekerk (2006) argues that, contrary to the views of the International Monetary Fund, the World Bank and other institutions, South Africa's labour

laws are neither rigid nor inflexible. Rather, “regulated flexibility remains as a valid means of ensuring a balance between worker protection and economic efficiency” (Van Niekerk, 2006: 6). Cheadle (2006) describes the concept of regulated flexibility as not only denoting a balance between the interests of employers and employees, but also providing a framework whereby a balance can be struck between the parties.

The literature on the growth and promotion of small firms is fundamentally concerned with the regulatory environment. Labour legislation, in particular, is often portrayed as having an adverse effect on the promotion of small business development (Collins, 2001). It was determined that businesses with less than R1 million in turnover will pay 8.3% of that turnover for compliance costs (Nieman, 2006: 268). The South African Chamber of Commerce and Industry and other business-orientated organisations are of the view that a less regulated labour market will enhance the competitive position of the country and boost the employment rate (Bhorat and Van Der Westhuizen, 2008; Harris, 2001).

This is the ‘low road’ to economic competitiveness, where the labour market is flexible, cost-based competition predominates, wages are market-determined, limits on working hours are diluted, skills development is relegated to managerial discretion and casual work proliferates. By contrast, the ‘high road’ to economic competitiveness – that is, extensive regulation of the labour market, high wages, high skills and quality-based competition – informs the trade union movement’s economic policies. Through its commitment to regulated flexibility, the government has sought to find a balance between these opposing visions of labour market reform. On the one hand, a deregulated labour market is likely to stimulate a ‘race to the bottom’, whereby employers are compelled to gain a competitive advantage based on low wages and worsening working conditions (Grimshaw and Carroll, 2006). In the context of a developing economy confronted by a legacy of structural inequalities and poverty, high unemployment and a lack of international competitiveness, this could potentially be disastrous both socially and politically (Piore, 2010). On the other hand, an extensively regulated labour market may introduce unnecessary rigidities into the industrial relations system and deprive employers of the flexibilities necessary to respond to rapidly changing product market conditions (Deakin and Sarkar, 2008).

This dissertation will explore the impact of labour legislation on small firms; that is, firms employing less than 10 employees. The Labour Relations Act (LRA) of 1995 and the Basic Conditions of Employment Act (BCEA) of 1997 were implemented to ensure fair and equitable labour relations while affording employers a measure of flexibility. This is primarily achieved through the provision of core labour rights and targeted exemptions. A sub-objective of this dissertation is to determine the efficacy of regulated flexibility with regard to small firms. The balance of interests within this framework is established through both collective and individual employment legislation (Cheadle, 2006). Firstly, the balance in collective labour law (i.e. the LRA) is demonstrated through the promotion and facilitation of collective bargaining; a choice in bargaining levels, range and agents; the extension of centralised collective agreements; the promotion of employee participation through workplace forums; and the development of codes of good practice (Cheadle, 2006; Roskam, 2006; Bhorat and Van Der Westhuizen, 2008; Benjamin, 2005; Grogan, 2010; Basson, Christianson, Garbers, Le Roux, Mischke, and Strydom, 2002; Godfrey, Maree, and Theron, 2006). Secondly, in legislation dealing with the individual employment relationship (i.e. the BCEA) a balance is established by allowing for the variation of employment standards – such as overtime payments and working hours – through collective agreements, sectoral and ministerial determinations as well as the various codes of good practice (Benjamin, 2005; Cheadle, 2006; Du Plessis, Fouche, and van Wyk, 2003; Bhorat and Cheadle, 2007; Brown and Crossman, 2000; Dicks, 2008).

According to Edwards, Ram, and Black (2004), there are three factors shaping the effects of labour law on small firms: the nature of the laws, the mediating effect of competitive conditions, and the relationships within small firms. The strength of each of these factors will determine the impact of labour legislation. First, in the South African context, collective labour law involves disputes over collective bargaining, trade union recognition and the organisational rights of representative unions. Given the low levels of union density, these are comparatively rare in most small firms (Anderson and Van Wyk, 1999; Du Plessis *et al*, 2003; Basson *et al*, 2002; Grogan, 2010). By contrast, individual labour law is more likely to have an impact on small firms, with disputes ranging from unfair dismissals to unfair labour practices (Roskam, 2006; Van Niekerk, 2006). International research suggests that established individual labour laws are absorbed more easily into practice than newer ones

and that universal laws are far more likely to have effects than laws only activated in certain situations, such as maternity leave (Edwards *et al*, 2004; Lewis, 2001).

Second, the competitive context of a firm is significantly influenced by certain external factors. Market conditions are a powerful influence on how labour legislation will affect the firm (Edwards, Ram and Black, 2003). A financial squeeze may add more pressure on the firm: in this sense, the firm's financial situation will determine the nature of the impact of labour legislation and the extent to which the firm is able to absorb a regulatory 'shock' (Faems, De Winne, Maes and Sels, 2003).

International research has identified at least four strategies used by small firms to cope with statutory regulation and still ensure competitiveness (Collins, 2001). The first involves policies aimed at discouraging employees from working overtime; this is specifically pertinent in sectors and firms where working hours are 'abnormal' (Edwards *et al*, 2003). The second involves firms cutting labour costs through capital investment or work intensification (Blackburn and Hart, 2003). The third strategy involves an increase in wages in an effort to make jobs more desirable, thereby reducing labour turn over and allowing for long-term skills development (Gilman, Edwards, Ram, and Arrowsmith, 2002; Heyes and Gray, 2004; Adam-Smith, Norris, and Williams, 2003). The final strategy involves firms implementing modernisation strategies in an attempt to gain higher levels of efficiency and growth (Edwards *et al*, 2003; Ram and Edwards, 2003; Bagraim, 2012). These strategies boil down to a strategic 'choice' between high road and low road approaches to competitiveness in the context of changes in labour market regulation.

The third factor that is central to the impact of labour legislation on small firms is their internal dynamics (Adeleye, 2011; Cho, Lee, and Lee, 2011; Edwards, Ram, Gupta and Tsai, 2006). Some have argued that small firms are 'beautiful' in the sense that employment relations are harmonious, flexible and therefore more stable than those in larger organisations (Tsai, Sengupta and Edwards, 2007). However, Ram and Edwards (2003:719) believe this view has accorded "insufficient attention to structural forces, and has neglected employee responses to the structurally-generated uncertainties that beset working lives in small firms". By contrast, others have argued that small firms resemble a 'bleak house' with disharmony in the working environment, flexibility leading to instability and authoritarian

managerial strategies (Chapman, 1999). Paternalistic and disciplinary forms of control limit the power of employees to resist the managerial prerogative and generate distrust and tensions in the labour relations of small firms.

Another prominent feature of relationships within small firms is the notion of 'informality'. In the literature on small firms, a common thread is that there is more likely to be face-to-face interaction between the parties and that formal processes are invariably kept to a minimum (De Kok and Uhlaner, 2001; Adam-Smith *et al*, 2003). Informality does not necessarily involve a normative assessment of labour relations in small firms, but rather specifies a means by which small firms cope with regulatory costs (Harney and Dundon, 2006; Ram and Edwards, 2003). Informality allows small firms to be flexible in their work practices as well as their labour relations (Barrett and Rainnie, 2002; Towers, 2004). Informality can include various facets such as extensive managerial prerogatives, the absence of formal procedures and familial relationships, which are often synonymous with labour relations in small firms. That is, the impact of labour legislation on small firms is (partly) a product of the ability of informality to absorb the regulatory 'shocks' associated with changes in labour legislation (Edwards *et al*, 2006).

## **1.2. The Problem Statement**

Within the context outlined above, the problem that arises is as follows:

The South African government has attempted to find a balance of interests between the employer and the employee by the introduction of the Labour Relations Act (LRA) in 1995 and the Basic Conditions of Employment Act (BCEA) in 1997. It is critical to the health of the South African economy that these labour laws do not impact small businesses to the extent that the GDP of the country is negatively affected (Naidoo, 2007). There are conflicting reports as to how these labour laws affect small businesses. It is therefore important for government to be able to understand, define and measure the impact of its labour laws on small businesses, in order for it to strategise corrective measures, which may include reconsidering the application of the legislative directive, regulated flexibility, if required.

### **1.3. Goals of the research**

The main objective of the dissertation is to identify and explain the impact of South African labour laws on small firms. To this end, the research will be guided by the following sub-objectives:

- (a) Study the nature and the extent of the impact of key provisions in the BCEA and the LRA on the labour relations policies and practices of small firms;
- (b) Explore employers' perceptions of labour legislation and the extent of compliance with statutory provisions;
- (c) Assess the implications of the strategic responses of employers to labour legislation for competitiveness and labour relations;
- (d) Examine the degree to which the existing regulatory framework allows for numerical and functional flexibility in small firms; and
- (e) Determine whether regulated flexibility achieves its objective of finding a balance between equity and efficiency.

### **1.4. Thesis Statement**

Consequent to the conflicting views on the impact labour legislation has on small firms in South Africa and the importance of the sustainability and growth of these businesses, it is imperative to investigate and understand the impact that labour legislation has on small firms. There are many, especially among employers, in support of the idea that labour legislation should not be too regulative, and some even argue that there is labour legislation and/or provisions in this legislation that should be repealed. However, the consensus among industrial relations scholars is that labour laws in South Africa do not hinder small businesses in a way that there should be drastic deregulation in order to grow the economy (Cheadle, 2006; Roskam, 2006; Bhorat and Van Der Westhuizen, 2008; Benjamin, 2005). In light of this, a central claim of this thesis is that labour legislation does not have an overly negative impact on small firms and that regulated flexibility remains a sensible and effective legislative directive.



### **1.5. Limits of the Research**

Provisions pertaining to hours of work and pay structures are contained in the BCEA. Provisions within the LRA, such as dismissals, disciplinary guidelines and dispute resolution procedures, can prove costly to a small firm. Drawing from this, the BCEA and the LRA will be the main focus of the research, with other labour legislation being considered only in passing. The reason for this focus is that the BCEA and the LRA contain the provisions most directly involved in governing the employment relationship.

The thesis investigates the framework of regulated flexibility and its purported balance between equity and efficiency by considering the impact of the BCEA and LRA on firms within the hospitality sector. The hospitality sector in South Africa presented a clear choice for the research as it is perceived to be a low-paying sector as well as being affected by restrictions on working hours (Adam-Smith *et al*, 2003: 31; Gilman *et al*, 2002; Heyes and Gray, 2004; Matlay, 1999; Wilkinson, 1999). The thesis assesses the impact of labour legislation on the extent of numerical and functional flexibility in small firms, by analysing responses of interviewees who occupy identical positions in one sub-sector of the hospitality industry. This thesis also takes into consideration the perceptions of employers within the hospitality sector of labour laws and the strategies that they utilise to improve their competitiveness and labour relations.

This dissertation is limited insofar as it is based solely on evidence collected from employers. The dissertation has not explored the views of the employee and it is not the intention of the thesis to determine the employee's perspective. Whilst the dissertation provides only a one sided view on the balance between equity and efficiency it is, nevertheless, an in-depth perspective.

### **1.6. Overview of Chapters**

In order to achieve the general objective of this thesis, the following structured analysis is employed:

1. Chapter one aims to provide an overview of the literature surrounding the topic. The main body of the first chapter is dedicated to examining the factors that contribute to a structure for assessing the effects of labour legislation on small firms, as identified by Edwards *et al* (2003). This chapter shall outline the Edwards *et al* (2003) model for assessing the effects of labour legislation as a necessary background for the body chapters where each of the factors as mentioned above is dealt with individually.
2. Chapter two delves into the methodology of the thesis. The interpretivist approach is the overall methodological philosophy. This chapter discusses broadly the research approach, essentially being case studies along with the detailed research methodology, including a discussion surrounding the specific research instruments, sampling methods, the data collection and analysis procedures. This chapter also examines the limitations found within the research as well as the ethical precautions that the researcher had to undertake.
3. Chapter three employs the first and second tier of the four-tier examination model suggested by Edwards *et al* (2003). This chapter firstly investigates the nature of the legislation, with a central focus on how the BCEA and the LRA are affecting small firms, and a minor focus on other labour laws. Secondly, the chapter provides an analysis of the nature of the small firms, with a focus on the extent of the informality element found and the overall sense of employment relations discovered in order to determine the extent of numerical and functional flexibility present within these firms.
4. Chapter four employs the third tier of the Edwards *et al* (2003) research model, which requires an examination into the perspectives of the employers in small firms and the extent to which they are complying with legislative provisions.
5. Chapter five employs the last tier of the Edwards *et al* (2003) research model, which requires an analysis of the small firm's competitive conditions. In addition to this, the

chapter examines the impact of employers' strategic responses to labour legislation on competitiveness and labour relations.

6. Chapter six is the concluding chapter, and is comprised of four sections. The first is a summary of the findings presented in chapters' three to five. The second section includes concluding comments on the research, essentially summarising what can be deduced from the research findings. The third section is a summary of contribution of the significance of the conclusions discussed in the second section. The final section provides suggestions for further research.

# **CHAPTER 2**

## **LABOUR LEGISLATION AND SMALL FIRMS – THE KNOWN IMPACT**

### **2.1 INTRODUCTION**

The importance of small firms to the prosperity of the economy is recognised in South Africa as well as internationally, and many governments recognise the fact that small firms are beneficial economically and socially. Despite this, regulators often find it difficult to obtain a balance between regulations that allow small firms (and their owners) to flourish whilst at the same time promoting the protection of workers' rights. Biagi (2000) argues that, in order to give effect to the goal of labour-absorbing growth, there is a need to coordinate macro-economic policy, industrial policy and labour market policy. She also states that she, amongst other researchers, have come to see rigidities in the labour market regulations as the central constraining factor of job creation.

This chapter aims to explore and examine the extent to which labour regulation rigidities may be experienced by small firms in the hospitality industry. International research on small firms' labour market regulation is discussed in relation to the South African government's directive for labour market regulation, as contained in the Green Paper on Labour (1994). Edwards *et al* (2003) model for examination the mediating factors of the impact of government regulation on small firms is utilised. This model is composed of four factors: the nature of individual labour laws, the nature of the small firm, the perspectives of employers, and the competitive advantage of the firm. The individual nature of the various labour laws in South Africa are reviewed as a mediating factor, together with the nature of the small firm, with a distinct focus on one of its key characteristics; informality. Following from this, the other mediating factors will be considered, including the perceptions that employers have of labour regulations and employers' strategic responses to such regulation for their firms' competitiveness.

South Africa's Department of Trade and Industry (the "DTI"), demarcates a small business as one where employment ranges between 5 and 50 employees. These enterprises are typically "owner-managed or are directly controlled by owner communities" (Herbst, 2001: 115). For the purposes of this dissertation, small firms will be classified as organisations employing less than 50 employees.

## **2.2. LABOUR MARKET REGULATION AND SMALL FIRMS**

In the following section, the essence of labour market regulation will be examined in terms of legal regulation on small firms, both internationally and locally.

### **2.2.1 Small Firms' Contribution to the Economy**

International research suggests that small firms are important because of their role in reducing unemployment and promoting job creation, encouraging innovation, stimulating economic competition, aiding big business, redistributing wealth, and encouraging growth and sustainability of the economy (Nichter and Goldmark, 2009: 1454). The importance of small businesses has also been recognised by the South African government. The DTI has, on numerous occasions, stated the importance of small businesses to the economy. Most significantly, the DTI has published the White Paper for National Strategy for the Development and Promotion of Small Businesses in South Africa. The ANC's New Economic Growth Path is focused specifically on job creation and equity (Donnelly and Dunn, 2006: 10). One of the ANC's four key organising principles is "improving labour absorption capacity in the economy"; therefore, the pursuit of development of small firms is highly significant in the government's goals for the economy (Economic Development Department, 2012: 12).

In South Africa, there is ample evidence of small businesses contributing significantly to relieving unemployment, introducing innovation and promoting growth in the economy. However, there is also evidence to suggest that not enough is being done by government to boost the growth of small firms. This is evidenced by the fact that there has been negative

growth amongst the lowest size group, the micro enterprises, which have shrunk by 5.6% between 2004 and 2007 (SBP, 2009). Without the growth of these firms, innovation, redistribution of wealth, economic competition, and job creation will not be realized to their full potential.

### **2.2.2 International and Local Labour Market Regulation**

A labour market is an imaginary market where labour is bought and sold (Barker, 2003: 1). When old enough, every person who intends working will enter the labour market, where they will sell their labour in return for remuneration. The concepts of equality, fairness and humaneness are integral elements which need to be regulated for in a labour market. There is an inherent inequality in the employment relationship: without regulation, the employer is in a stronger bargaining position than the worker, especially in countries where unemployment rates are high (Barker, 2003: 3). Labour legislation is required in order to promote long-term employment relationships (Biagi, 2000: 235).

The labour market is complex because its “products” are not standardized but rather highly diverse and in high supply (Barker, 2003: 2). The employer takes a risk in what he/she is buying because of the personality characteristics of labour, which are not always made known before on the parties enter into an employment relationship. Another complexity is the price of labour. Numerous factors influence the price of labour, including fringe benefits, taxation, inflation and standards of living for individual workers (Barker, 2003: 2).

The South African labour market is characterised by high levels of unemployment, income inequality and high labour costs (Barker, 2003: 3). High levels of unemployment are a result of the legacy of Apartheid where black workers were restricted in education resulting in an abundance of unskilled workers. Consequently, the labour market is described as being bottom heavy – with a vast number of unskilled workers entering the labour market every year (Barker, 2003: 3). South Africa’s income gap, a result of the inequalities of Apartheid, is one of the largest, making the country one of the most unequal in the world. The size of the

informal economy and the scale of unemployment in the country increase the Gini coefficient significantly (Biagi, 2000: 233) In addition, in South Africa there are increasing labour costs which decreases the demand for labour (Biagi, 2000: 234). Thus, it is argued that South Africa requires a system of regulation that promotes the prosperity of workers whilst simultaneously promoting the absorption of labour to decrease unemployment.

Benjamin (2005) states that there are several sub-categories of labour market regulation internationally. These include minimum conditions of employment, collective bargaining and worker participation, institutions of governance, dispute resolution and adjudication, promoting equality in the workplace, providing skills development, placement within the labour market, and providing employment-linked social security (Benjamin, 2005: 3-4). Labour legislation was initially implemented to provide a minimum set of conditions for the employees, who had unequal power compared to employers. Initially, labour law protected workers against the worst abuses, such as protection from forced labour and regulation of working time, leave, dismissals, and health and safety (Benjamin, 2005: 3). Later, legislation developed and began to promote more sophisticated ways for employees to gain a voice in their working terms and conditions, which included the formation of trade unions and the introduction of collective bargaining (Grogan, 2010: 7).

Labour laws, according to Benjamin (2005: 3), establish “a complex and varied architecture of institutions of governance for the labour market”. These institutions include those that involve stakeholder participation, those that are empowered to set minimum standards such as the minimum wage, sets of conditions for employment, either nationally or sectorally, and enforcement agencies sanctioned to promote and enforce compliance with labour legislation. Dispute resolution institutions are fundamental to the governance and fairness of labour legislation (Bhorat and van der Westhuizen, 2008: 28). Countries may adopt specialist labour courts, failing which, labour laws will be enforced through ordinary courts (Benjamin, 2005: 3). Labour laws promote equity, primarily through the implementation of employment equity laws, such as anti-discrimination and/or affirmative action statutes. Such equity laws can be of general application or can be limited to apply to

workplaces only (Benjamin, 2005: 4). Labour laws can also promote training and skills development, thus encouraging the employability of workers (Benjamin, 2005: 4). For those with employment, labour legislation can be developed for contributory social insurance schemes such as unemployment insurance and compensation for any occupational injuries and/or diseases that may occur (Benjamin, 2005: 4).

### **2.2.3. History of Labour Laws in Southern Africa**

This section sets out the history of labour market regulation in Southern Africa.

Southern African countries' labour laws are generally influenced by their colonial pasts. During this time, there was strict rule over indigenous wage forced labour, establishing the first racial reservations (Fenwick, Kalula and Landau, 2010: 177). In 1924, the Industrial Conciliation Act was adopted as South Africa's first labour relations statute. This Act embraced and furthered the legacy of entrenched racial separation for the next 55 years. There were job reservations for white workers in the mining sector, attempting to subdue the industrially active black population. The Act was amended in 1937 and then again in 1956, but its "institutional architecture remained largely intact until the end of Apartheid" (Brostein, 2009: 241). The amendment of 1956 further enforced racial separation by excluding African workers from the statute's bounds. The separation grew as job reservation was extended to other sectors of the economy as the Industrial Tribunal was granted power to reserve jobs for white workers (Brostein, 2009: 242).

Trade unions became increasingly important in the struggle against racial discrimination in labour legislation. But, in the 1950s and early 1960s, unions faced intense suppression by the government. Independent trade unions became suppressed in the 1960s and were all but obliterated. Subsequently, Professor Nic Wiehahn was assigned by the nationalist government to conduct a commission of inquiry to investigate labour law reform (Du Plessis, Fouche, Jordaan and van Wyk, 1996: 2). It suggested that the formal industrial relations system should be open to include all trade unions and black workers be afforded the right of



association with these trade unions and engage in voluntary collective bargaining. The establishment of an industrial court was also recommended by the Wiehahn Commission, which became instrumental in extending modern labour law to all employees; specifically, it “articulated the unfair dismissal jurisprudence that required employers to comply with standards of procedural and substantive fairness” (Brostein, 2009: 242-3). This was to apply both to individual and collective labour law. The court used its powers to establish rules that would govern trade union recognition and the conduct of collective bargaining (Adler and Webster, 2000: 10). Then, in 1973, came extensive strike action, which foreshadowed the re-emergence of African independent trade unions (Brostein, 2009: 242). This movement of trade unions, which lasted throughout the 1970s and 1980s, became the core of the country’s labour movement, resulting in the formation of the Congress of South African Trade Unions (COSATU) in 1985 (Brostein, 2009: 242).

In the 1980s, the labour legislative environment witnessed high activity with the passing of the Machinery Occupational Safety Act. Mass stay-aways in 1988 by COSATU’s affiliates, in opposition to a rollback of the more progressive jurisprudence, eventually led to a negotiated accord between labour and organised business on the content of labour legislation in 1990. Government eventually agreed to withdraw the amendments that organised business and labour objected to (Harcourt and Wood, 2003: 89).

Democratisation came for South Africa in 1994 and soon thereafter labour legislative reform was on the agenda of the new government. A core aspect of the legislative reforms was the introduction of a system of collective labour law pursuant to the passing of the Labour Relations Act 66 of 1995 (Donnelly and Dunn, 2006: 10; Du Plessis *et al*, 2003: 20). This demonstrated government’s commitment to overcome the legacy of Apartheid and move towards a working environment in which all workers had adequate protection. In conjunction with this, the Basic Conditions of Employment Act 75 of 1997 (BCEA), which focuses specifically on individual labour law, was introduced in 1997.

#### **2.2.4. Policy Directives in South Africa – Neo-Corporatism versus Neo-Liberalism**

Throughout the 1990s, the tripartite alliance influenced much of the labour reform and government choose to pursue an interventionist approach, especially with regard to labour legislation (Tekle, 2010: 181). In the face of intense globalisation pressures, which pushed it to incorporate thorough deregulation in line with the policy directives of neo-liberalism, the government adopted a neo-corporatist approach characterised by institutionalised arrangements whereby labour, capital, and the government jointly intervene in the institutional arrangements for the industrial relations systems (Donnelly and Dunn, 2006: 9).

Since the demise of Apartheid 20 years ago, first world countries and transnational financial institutions have been attempting to force South Africa to adopt neo-liberal policy directives as a solution to the country's economic problems, despite the evidence of its failings (Harcourt and Wood, 2003: 85). Klerck (2008) argues that despite its commitments to a developmental state where the structure of reform is geared towards finding a balance of interests for all parties involved, there is evidence that "national policies for reconstruction and development in South Africa have consolidated distinct sets of winners and losers in the labour market".

With neo-corporatism, a country is seen as a corporate body, united as well as hierarchal, which is essentially dominated by the government (Crouch 1982: 213). All other relevant entities (labour, business, etc.) are expected to work for the public interest that is defined by the government (Crouch 1982: 213). It operates differently in the various countries depending on historical as well as socio-political circumstances. Neo-corporatism favours economic tripartism, which involves strong labour unions, government and employers' organisations working in unison as social partners to negotiate and manage a national economy (Klerck, 2008: 179). Essentially, it is built on a voluntary agreement between government, employers and labour of a communal goal of attempting to keep inflation and costs in check in order for them all to benefit from the competitiveness of the country (Harcourt and Wood, 2003: 86). This involves "consensual decision making, independent

interest group representation, their democratic control by members and voluntary participation in the organs of the state” (Harcourt and Wood, 2003: 87).

Globalisation has seen more and more countries move towards the ideological directive of neo-liberalism. Economic liberalization, free trade, open markets, privatization, deregulation and enhancing the private sector are a few of the core objectives of neo-liberalism. This type of movement entails macroeconomic policies that control inflation and restore a balance of payments in the national income accounts as well as microeconomic policies that support free and self-regulating markets (Lie and Thorsen, 2006: 13). The implication it has for policy is deregulation, essentially abolishing regulations that block market entry or restrict competition; the state is solely there to protect the interests of liberty and safeguard property rights (Lie and Thorsen, 2006: 14). One main criticism of neo-liberalism is that it focuses heavily on increasing income and not on increasing overall income equality (Lie and Thorsen, 2006: 15). The wealth is increasingly going into the hands of the small elite and this is exactly what the ANC is opposed to; their stated focus is on the eradication of poverty through wealth redistribution. Therefore, they readily refuse to implement neo-liberalism in its radical form as their policy directive (Harcourt and Wood, 2003: 86).

A key characteristic of neo-corporatism that is evident in South Africa is substantial government intervention in the economy. When it comes to intervention in the labour market, the government specifically attempts to boost job creation without undermining the main purposes of labour legislation, the protection of workers (Barker, 2003: 160). Employment relations in South Africa have always been a source of disharmony. The democratic government inherited a racial and unequal system and chose to establish the National Economic Development and Labour Council (NEDLAC) as the corporatist peak of the new employment relations system. Through NEDLAC, government regulates not only legislation, but also public finance and monetary policy, trade and industrial policies, all of which affect small businesses (Donnelly and Dunn, 2006: 10). The regulation in the labour legislative environment is a source of concern for policy makers as cooperation between unions, employers and government is needed to reach the promised goals of government

(Rankin, 2006: 12). Therefore, government embarked on a labour policy directive dubbed regulated flexibility.

#### **2.2.5. Regulated Flexibility**

The term regulated flexibility was first coined by Paul Benjamin. It is based on the approach to flexibility that the International Labour Organisation (ILO) took in South Africa's country review. It was the main conceptual underpinning of the labour legislation reform that took place in the 1990s (Cheadle, 2006: 663). Regulated flexibility incorporates the employers' and employees' interests in flexibility and security, respectively. Each of the two parties have their own interests, but through regulated flexibility as a framework for legislation and its reform, regulated flexibility ultimately attempts to find balance for the outcome of social justice (Benjamin, 2005: 27). Regulated flexibility as a concept "is not simply a balance between the two sets of interests but a framework within which an appropriate balance is struck" (Cheadle, 2006: 668).

Business's interest is flexibility. Cheadle (2006: 668) notes that there are three types of flexibility: employment, wage and functional. Employment flexibility has to do with the freedom one has to change employees' levels swiftly and cost effectively. Wage flexibility is the freedom of employers solely to determine their employees' wages. Functional flexibility includes an employer's freedom to modify working terms and conditions along with work processes. They argue that this type of flexibility will increase job creation in small firms; however, heavy deregulation for business could result in degradation of working conditions and a deterioration of a progressive wage structure (Barker, 2003: 30; Van Niekerk, 2006: 6).

On the other hand, employees' interest in labour law is to achieve maximum security. There are five types of security: labour market, employment, job, work and representation security (Cheadle, 2006: 668). Labour market security entails workers having many employment opportunities. It is also in workers' interest to have employment protection, essentially security against arbitrary loss of employment. Job security entails protection

against arbitrary loss or even alteration of the worker's job. When it comes to the health and safety of the worker, work security secures workplace well-being. Workers also seek security in representation in the workplace (Cheadle, 2006: 668). High job security could result in lack of growth in small firms. It thus follows that it may be in the employees' immediate interest to have high security; however, in the long-run it may result in high unemployment. On the other hand, it not plausible to have deregulation either with employees subjected to a possible race to the bottom where working conditions and wages are degraded in order for increased firm competitiveness (Van Niekerk, 2006: 10).

As mentioned earlier, business organisations such as the South African Chamber of Commerce and Industry argue that high flexibility and extensive deregulation will make the economy more competitive, allowing small firms to grow and therefore resulting in substantial economic growth. In a deregulated environment, employees have very low job security, wages are not determined collectively or by statute, and working terms are completely at the discretion of the employer. The low road to industrial adjustment entails gross "draconian cost cutting; especially by squeezing the labour force through lower wages, longer hours, the use of untrained and/or temporary workers (who have a higher propensity for industrial accidents), as well as the crowding of more workers into limited space, which are characteristics of sweatshops" (Piore and Skinner, 2010: 17). The high road embraces a change in work practices; broadening job responsibilities as well as decentralization of power and authority within the firm in a way that self-supervision is encouraged. It is typically followed by compliance with set conditions of work, regulation of working hours, wage standards, and health and safety measures. But the high road could potentially be detrimental to the economy insofar as it introduces unnecessary rigidities into the industrial relations system which could deprive small employers of the flexibilities necessary to respond to rapidly changing product market conditions (Deakin and Sarkar, 2008).

The government's commitment to regulated flexibility has led it to attempt to develop a framework in which a balance between employer and employee interests can be struck (Van Niekerk, 2006: 7). Social justice is a goal of the government and it is believed that it is a

precondition for a durable economy and society. The conceptual underpinning of regulated flexibility is essentially that the labour market is dynamic and diverse. Therefore, there are fundamental mechanisms which characterise regulated flexibility. Firstly, a balance is struck by accommodating the various voices of parties involved, namely “voice regulation”. The interests of the various parties need to be heard and implemented in the fields of collective bargaining, social dialogue, employee consultation and workers’ participation (Cheadle, 2006: 668).

Secondly, administrative discretion is restricted by set guidelines on how it is to be exercised. An example of this discretion is the decision to promote an independent institution to hear possible exemptions from sectoral collective agreements, provided this is in accordance with fairness and the objects of the LRA.

The third mechanism is the implementation of administrative determinations, including ministerial and sectoral determinations – the former is for any category of employees, employers or a specific employee or employer and the latter includes the sector of the economy.

The fourth mechanism is the element of soft law implemented in South African labour laws. The LRA has codes of good practice; these are not laws but guidelines to good practice in firms. Essentially, the primary mechanism is voluntary compliance with the code and the secondary mechanism will depend on the exercise of discretion by statutory institutions such as the Labour Court and the Commission for Conciliation, Mediation and Arbitration (CCMA) (Benjamin, 2011: 212-3; Cheadle, 2006: 669).

Fifthly, floors and ceiling are set with regard to operational requirements so that the varying qualities of the different enterprises can be accommodated. One example of this can be

seen in the averaging of hours in the BCEA, which allows flexibility in order to accommodate the needs of the different enterprises.

Lastly, there is a selective application of legislative standards or requirements and this particularly links to small firms because government has allowed small firms with 50 employees or less to disregard implementing Black Economic Empowerment (BEE) in their business (Cheadle, 2006: 669).

It may be asked whether the concept of regulated flexibility has been fully realised in terms of small firms. Several arguments have been put forward to support the contention that the impact of regulated flexibility has been blunted. Firstly, the amendments that were introduced during the negotiations of the BCEA limited its realisation. Secondly, it has been argued that the social partners have failed to realise the new role of collective bargaining as a principal mechanism for obtaining their security and at the same time balancing the operational needs of the individual employer (Cheadle, 2006: 670). Thirdly, statutory institutions such as the CCMA and Labour Court have not followed the guidelines set out in the codes of good practice, which are specifically a mechanism of regulated flexibility, by placing undue emphasis on procedures in pre-dismissal hearings, thereby blunting the objective of flexibility (Bhorat and van der Westhuizen, 2008: 28; Cheadle, 2006: 670).

The purpose of the above section has been to introduce the problem at hand – that is, small firms may be faced with negative effects from labour market regulation in general and labour law in particular. The government has implemented a policy directive described as regulated flexibility. A goal of this directive is to promote a fair balance of regulation and flexibility in employment, wage and functional flexibility. In order to determine the extent of these types of flexibilities, mediating factors such as the nature of the law, the nature of the firm, the perceptions that employer's hold and the market context in which the firm operates need to be examined.

## **2.3. MEDIATING FACTORS OF THE IMPACT OF LABOUR LEGISLATION**

Edwards *et al* (2003: 17) argue that the impact of labour legislation on a firm is mediated by four factors: the nature of individual labour laws, the nature of the small firm, the perspectives of employers, and the competitive advantage of the firm. The first section to be examined shall be the nature of the individual laws. This section's focus is on understanding the intricate components of the two labour laws, namely; the LRA and BCEA. It was stated in the introduction that the research on the effects of labour law on small firms has determined that collective labour laws have little impact. For this reason, the focus of this analysis is on individual labour laws. The second part of this section is dedicated to the internal dynamics of the small firm, which will specifically focus on the informal approach towards the employment relationship typically found within the small firm. In the third section employers attitudes towards labour legislation and how this can shape the effects of the law on them shall be set out. This chapter shall conclude with an examination of the strategic responses of small firms to the effects of labour legislation.

### **2.3.1. Nature of Individual Laws**

According to Roskam (2006: 11) labour market legislation should be evaluated "pragmatically by asking the question whether it reflects the correct and appropriate balance between the needs for economic growth and social justice". Cheadle's (2006) understanding of regulated flexibility has two inherent elements: kinds of flexibility and forms of security. Below, the nature of South African labour laws will be examined through an analysis of these two aspects. However, it is suggested by Cheadle (2006) that it is at the level of the framework itself where the appropriate balance must be struck, rather than between the two sets of interests.

#### **Labour Relations Act (65 of 1995)**

The LRA incorporates the main elements of collective labour legislation. The LRA deals with collective bargaining, collective agreements, workplace forums as well as unfair dismissals.



It also has codes of good practice that are used in a voluntary manner to help employers comply with the standards expected by the governing institutions. The LRA's objective is to promote social justice, economic efficiency and development, democracy in the workplace and labour peace. Some of the literature on the effects of labour legislation on small firms suggest that most aspects of collective labour legislation such as collective bargaining, bargaining councils, trade union recognition, collective agreements, unfair labour practices and workplace forums do not affect small firms, therefore the focus mainly will be on individual labour law (Edwards *et al*, 2003; Edwards *et al*, 2004). Dismissals, dispute resolution and disciplinary procedures have been regarded as fundamentally affecting these types of businesses.

Some claim that the cost of doing business is increased because of the inflexibility of the hiring and firing regulations (Benjamin, Bhorat and Cheadle, 2010: 76). At times, any gains obtained by employees come at a rigid cost for employers. The costs of entry and exit of employees pose unnecessary rigidities and inhibit job creation (Biagi, 2000). A study done in 2006 showed that if there was to be an impact of employment regulations on small firms it will be due to hiring and firing costs especially through dismissal and unfair labour practices provisions (Bhorat and Cheadle, 2007: 17). But, Bhorat and Cheadle (2007) also state that there are certain specialists that criticise this, claiming that the evidence measures legislative provision yet not the interpretation of this legislation by the relevant courts. A second criticism relates to the institutional capabilities and efficiency of dispute resolution institutions. It is plausible that a malfunctioning institutional system could render fair and thus neutral legislation, rigid (Bhorat and Cheadle, 2007: 17). It may be argued that the CCMA adds to the rigidity already present in provisions dealing with the hiring and firing legislation. The impact of dispute resolution institutions will be discussed in further detail below.

Provisions aimed at ensuring employment security, the fundamental aspect of labour regulation, are widespread within the LRA. The LRA guarantees the protection of workers' rights to form and join trade unions, and it has also broadened the scope of the Act to cover

all employees (Biagi, 2000: 237). Employees are protected under the LRA with the right not to be unfairly dismissed (Biagi, 2000: 237). Some dismissals are automatically unfair, whilst dismissals for misconduct, incapacity, or operational requirements are deemed to be unfair if not proven to be executed with a fair procedure and reason (Cheadle, 2006: 684; Biagi, 2000: 238). With regard to operational requirements, section 189(a) places additional legal requirements on firms retrenching more than 50 employees, thereby releasing small firms from the obligation to follow overly procedural requirements, which can become costly. Although the law still has a level of protection for employees, it introduces flexibility with this kind of dismissal (Cheadle, 2006: 685).

A disciplinary hearing is part of procedural fairness. To this end, procedural fairness requires employers to act in a semi-judicial way before imposing a disciplinary penalty on the worker. The process should not be an overly technical process and employers are not expected to take on procedures similar to proceedings one would find in a court of law (Grogan, 2002: 133; Sacks, 2001: 38-9). Small firms' employees enjoy the same rights as their larger counterparts whereas in some other countries' small employers may dismiss at their leisure. However, in contrast to larger firms, most small firms lack formal disciplinary codes due to their characteristically informal internal management structures (Edwards *et al*, 2003: 18). Critics have pointed out that this leisure (a quintessential low road approach) can cause a hire and fire phenomenon, which has the potential to create an unstable labour market and subsequently the labour market security reduces (Cheadle, 2006: 668).

The LRA also provides for the creation of a code of good conduct. "Codes are a form of employer and union participation in decision making – an attenuated form of employer and union assessors – a standard but expensive feature of dispute resolution" (Cheadle, 2006: 685). The purpose of the code was to move away from the system of a court and ad hoc development of jurisprudence to a system that is easily accessible to not only lawyers and consultants but small employers as well. On the negative side, these codes have not been systematically updated and therefore may impose rigidity within the Act because of the

problems stemming from misleading information due to incorrect and outdated jurisprudence (Cheadle, 2006: 685).

Another aspect of employment security within the LRA is the new dispute resolution institution, the CCMA. There is extensive literature on the CCMA and its functions (Du Plessis *et al*, 2003: 321-339; Fenwick *et al*, 2010: 175; Barker, 2003: 306-329; Brostein, 2009: 244-248; Basson *et al*, 2002: 20-2). The primary functions include conciliation and arbitration of disputes (Van Niekerk, 2006: 48). There are approximately 80 000 to 90 000 dismissal cases referred to the CCMA each year making them 80 per cent of all referrals (Benjamin and Gruen, 2006; Bhorat and Cheadle, 2007: 29; Roskam, 2006: 49). Bhorat and Cheadle (2007) argue that the high number of referrals demonstrates the CCMA's legitimacy, despite much criticism. The rate at which the CCMA conciliates disputes demonstrates that the commission has played an important role in reducing the disputes that reach the level of arbitration. Employees who did not have the means in the past, can now dispute their rights and interests with labour-related issues (Biagi, 2000: 238).

Although the introduction of the CCMA has benefited many workers, the downfalls of inefficiency can prove costly to either the employee or the employer. Often in small firm working atmospheres, there are no employee representatives who have the knowledge of the laws to help protect employees from unfair treatment. Therefore, if CCMA commissioners do not pay sufficient attention to each case, as they have been accused of doing because of their need to meet their settlement rates, either party could be at risk and employment security diminishes (Bhorat and van der Westhuizen, 2008: 26). Although costs for employees are low at conciliation and arbitration levels, it can become costly if either party wishes to appeal the arbitration award and carry out the dispute at the labour court (NWEQ, 2013: 22).

Problems that arise within the CCMA increase the rigidities and perceptions of inflexibilities of the law. The speed of the process in the CCMA is one of these problems. It has been

widely criticized for not resolving disputes as quickly as they should (Van Niekerk, 2006: 49). There are specific targets for each phase laid out and repeatedly disputes surpass these targets. The CCMA is also severely under staffed and underfunded and therefore the work overload due to lack of commissioners reduces effectiveness. Commissioners typically conciliate three to six cases a day and therefore cannot give proper consideration to each case with regards to the underlying issues and causes of the dispute. This may be even more so for small firms as it has been argued that commissioners do not see small firms as an importance and therefore do not allocate proper time to them (Bhorat and van der Westhuizen, 2008: 26-8).

Another challenge is specifically related to small firms, where commissioners of the CCMA over-emphasise procedural fairness. Labour law practitioners and employers are both guilty of over-emphasising the procedural process of the LRA's requirements (Bhorat and Westhuizen, 2008: 27). The CCMA is also to blame in this instance; it has been found that many commissioners enforce strict procedural rights beyond those that are required in the Code of Good Practice (Bhorat and van der Westhuizen, 2008: 28). This is a lack of up-to-date training for the present commissioners, which the CCMA still has yet to implement. This overemphasis fuels the perspectives of inflexibility of South African labour law and its institutions and this in turn incurs significant and unwarranted costs for small firms (Van Niekerk, 2006: 50).

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

The BCEA is another important piece of labour legislation in South Africa. This Act guarantees a certain level of minimum standards for employment, including hours of work, leave, particulars for employment and remuneration, monitoring and enforcement, sectoral determinations and even protection against discrimination (Brostein, 2009: 248). "Regulated flexibility has also been given effect to through the [BCEA]. The objective of the Act is to balance the protection of rights of employees against the demands for higher productivity, improved efficiency and the promotion of flexibility" (Biagi, 2000: 241). The Act

balances job security with worker protection; this is achieved through the setting of floor minimum rights and on the other hand, providing for terms and conditions to be varied through a process of collective bargaining. Essentially, certain conditions within the BCEA(not core rights) may be varied either by collective or individual agreement and by the sectoral and ministerial determinations (Brostein, 2009: 248; Biagi, 2000: 241).

There are aspects of the BCEA that have been found to have an impact on small firms; most commonly, the provisions relating to hours of work. Certain industry sectors, such as those relating to accommodation services, experience difficulties in complying with the provisions of the BCEA regulating working hours, specifically insofar as these relate to overtime payments and Sunday and night work (Benjamin, 2005: 28). However, an impact assessment done by Ntsika revealed that employers employing less than 10 employees would be affected more and those with five or less would have greater difficulty in complying with some provisions. Other provisions may include sectoral determinations in certain sectors as well as leave provisions (Benjamin, 2005: 28). In the following section, all of the above-mentioned elements of the BCEA will be examined.

Insofar as the elements of job and work security are concerned, the BCEA prescribes the maximum numbers of hours of work at 45 hours per week, comprised as to nine hours a day for five days a week and eight hours a day for those who work six days a week (section 9(b)(c)). The negotiation of these provisions by the social partners saw extensive debates on a 40-hour working week. Labour's view was that a 40-hour week would promote job creation, whilst Employers were of the view that a reduction in hours without a decrease in wages would lead to an increase in the unit cost of labour and thus have a detrimental effect on employment (Biagi, 2000: 242). It would be Employees in sectors that have longer working hours that would feel the effects of the shorter working week (Biagi, 2000: 242). On top of this, the BCEA has reduced the averaging limit of five hours per week overtime, which will ensure that employers will not misuse on overtime in averaging which could defeat the purpose behind the measure, namely job creation (Biagi, 2000: 243).

The Act introduced two forms of working time flexibility by allowing for averaging of hours over a period of four months (as per agreement) as well as a compressed working week (Brostein, 2009: 249). The averaging of hours assists employers in sectors with significant fluctuation in their demand for labour, whether this is monthly or even seasonally (Biagi, 2000: 243). The compressed working week allows workers to agree (in an individual or collective agreement) to work up to 12 hours a day, including meal intervals, without receiving any overtime. But that employee still may not work more than 45 hours and more than 10 hours overtime in a week or more than five days a week (Sacks, 2001: 4; BCEA Act of 2002). “This measure is designed to make it possible for employers to introduce increased shifts, thereby taking on more workers” (Biagi, 2000: 242). However, Benjamin (2005) argues that working time in South Africa consists of a vicious circle of smaller core workforce with increased overtime, intensification of work, atypical employment and limited or no increase in permanent employment.

The BCEA guarantees certain minimum standards of employment, which include different forms of leave. Certain rights within the Act, such as maternity leave and sick leave, are classified as core rights (Brostein, 2009: 248). The Act prescribes three weeks of annual leave along with an entitlement to three months maternity leave for full-time workers. These are more examples of the protection of job security present in the Act. However, although the Act protects employees against unfair abuse of minimum standards, there can be an alteration in these. The Minister has issued a “determination varying application of the Act in respect of overtime, averaging of hours and family responsibility for businesses employing less than 10 employees” (Brostein, 2009: 249). This can be done when the Minister is advised by the Employment Conditions Commission (ECC) that the position of small businesses can be conducted more successfully (Benjamin, 2005: 29). The ECC was introduced to help the country alleviate poverty, wage differentials and inequality (Brostein, 2009: 249).

A baseline of protection for employees lies in the contract of employment, which includes the written particulars of employment. There has been much discussion on the changing

nature of employment in South Africa and whether the employment relationship has shifted towards casualisation and informalisation (Klerck, 2008: 352). Many argue that the normative model of an employment contract protects a small percentage of employees, which goes against the fundamental objective of labour legislation (Benjamin, 2005: 9; Bhorat and van der Westhuizen, 2008: 2; Biagi, 2000: 241). Although there were amendments introduced in 2002, some criticize these stating that they still fail to provide a holistic response to the scale of unregulated atypical work (Benjamin, 2005: 32). Essentially, the protection that they wished to extend to atypical workers has not been realised because of the lack of enforcement of the legislation (Benjamin, 2005: 32). Although the contract of employment allows for employment and job security for permanent employees it still fails to extend protection to all workers. In certain sectors, there are various forms of employment, including piecework, casual, informal, temporary and part-time workers (Bhorat and van der Westhuizen, 2008: 2). Therefore, workers are at risk of exploitation if the Act does not protect them.

Sectoral determinations are a source of both flexibility and security (Biagi, 2000: 243). It can either “lower standards in certain areas where the BCEA conditions might be regarded as too onerous, or it may be used to increase very low wages in remote areas where workers are open to wage exploitation” (Biagi, 2000: 243). The determination is there in order to protect the employee, especially in sectors known for work intensification and low wages (Biagi, 2000: 244). However, the sectoral determinations are not set overly high in order to encourage employers to employ more workers. The rate is also smaller for micro firms employing less than 10 employees in order to promote flexibility for them (Department of Labour, 2013). There is a fine balance of government intervention here in an effort to promote growth in the labour market and by extension the economy (Donnelly and Dunn, 2006: 5).

It has been argued that the lack of monitoring of labour legislation in has been a loophole for employers (Biagi, 2000: 243). If labour inspectors do not reach many workplaces, employers can get away with a low road approach of exploitation of their workers and non-

compliance. However, measures were taken in order to ensure more effective methods of enforcement, such as the introduction of enforcement through the CCMA and Labour Courts instead of the ineffective ways of the criminal courts (Department of Labour, 1996). The nature of the labour disputes for small workplaces make the CCMA the proper place to enforce claims as it is more approachable (Department of Labour, 1996).

Employers argue that the administrative burden placed on them is extensive and discourages them from employing more people because of the work around hiring and keeping a new employee (Department of Labour, 1996). In the sectors that have a high amount of pressure and work intensification, an increased administrative workload may either be pushed aside and thus not complied with or employers may choose not to employ more people and rather absorb the pressure onto themselves and work longer or more intensified hours (Edwards *et al*, 2003: 32).

The nature of the laws is a single tier of a four tier approach of the mediating effects of labour legislation on small firms. All mediating effects work together on the firm to absorb effects of the law. The nature of the small firm is another component in this tiered approach. The nature of the South African labour law has brought about circumstances within the organisation that may be mediated by the unique characteristics of the small firm. It is argued that the way the law is put into practice in small firms may be distinctive due to its internal dynamics. In the following section these internal dynamics shall be thoroughly examined for what ways they can absorb the impact of labour legislation.

### **2.3.2. The Internal Dynamics of the Small Firm**

The internal dynamics of small firms are important as mediating factors to labour regulation. The internal characteristic of informality is common within small firms and can help with absorbing the impact of labour legislation. Below, the concept of informality within small firms is introduced and discussed along with a thorough look at the debate on small firms'



internal working relations. Working relations refer to the intricate relationships between the employer and the employee found within the small firm and the debate will look at the small firm as being either a beautiful environment or a bleak one depending on various factors.

### **Informality/Flexibility**

A prominent characteristic of small firms highlighted in the research - namely, informality - plays a major role in mediating the effects of labour law. Informality is defined as “a process of management-worker relations based primarily on unwritten arrangements and tacit understandings” (Edwards *et al*, 2003: 31). Therefore, if a firm’s internal relations are informal, the employer is likely to avoid statutory requirements such as formal procedures when it comes to discipline and dismissal and generally rely on face-to-face communication and understandings with employees (Edwards *et al*, 2003: 31). Research by Edwards *et al* (2004: 261) shows that managers avoided legislation by using their discretion when it came to leave entitlement, thereby displaying the effect of informality in some small firms. Small firms in the case study display varying levels of informality and non-compliance with labour legislation. It is suggested further that if an employer regards the particular legislation as going against the grain of the set of informal norms in the workplace, then it may be ignored (Edwards *et al*, 2003: 31).

Informality is not only revealed by informal management-worker relations but also by the levels of formality within human resource management (HRM) systems. This is highlighted by the presence of four indicators: firstly, formal appraisal systems, secondly, grievance structures, thirdly, disciplinary and dismissal procedures, and finally, equal opportunity policies (Edwards *et al*, 2003: 32). There was a mixture of levels of formality found in the study done by Edwards *et al* (2003: 32). With regard to the above-mentioned indicators, some small firms revealed low levels of formalisation for the first and final indicators, but the gap was smaller when it came to the other two. However, it is important to note that the study was done on firms with up to 99 employees, and when narrowed down it was

found that there was more informality in firms employing less than 50 employees. Edwards *et al* (2003) divided the firms in their study into two types: family-run and small companies, where both operated relatively informally. These were characterised by a lack of administrative systems and situations where the owner would personally handle issues through face-to-face communication.

Ram and Edwards (2003) highlight the importance of familial networks in their research. They argue that Barrett and Rainnie (2002) focused too heavily on structural forces in determining managerial actions. The human agency aspect of Barrett and Rainnie's (2002) framework is important; the choices that people make in small firms can be linked to their familial network both inside and outside the firm. This network is seen as a source of flexibility for the workers and managers; however, the extent of informality in each firm is different. Informality has also been shown to have a link to family-run businesses: essentially, familial networks mediating negative effects on the firm (Edwards *et al*, 2004: 248). This is possible through the help of members of the family within the business to absorb the impact, such as lightening the administrative workload on the owner/manager through another family member taking on the burden. However, the heavily personalised relationships within a family-run business can also cause tension (Barrett and Rainnie, 2002: 416). It must be stressed that all small firms are different and in no way homogenous, and this is the case with family relations as well (Barrett and Rainnie, 2002: 416).

Human agency is part of the 'totality' view. The totality concept embraces all other factors (labour market, product market, resources, strategic choice, rules and routine, and management style) as influencing decision-making. It is an intricate part of the embeddedness of informality (Edwards *et al*, 2006: 709-11). In other words, the informal environment is interpreted actively; the environment shapes the firm as well as the reverse (Edwards *et al*, 2006: 709).

There are basic assumptions in the literature that HRM practices in small firms are informal because the small firm is informally organised. De Kok and Uhlaner (2001), however, suggest that there are exceptions to this pattern and that other contextual factors besides size influence HRM. One of these other contextual factors could in fact be labour legislation affecting the firms' processes and procedures. It is an objective of this dissertation to determine whether the law is changing small firms' HRM practices and whether their informality is in fact absorbing this impact. Some believe that small firms should stay flexible in order to deal with environmental instability and others believe that it is a lack of foresight or resources that do not allow them to formalise HRM practices (De Kok and Uhlaner, 2001: 6). The general theme of small firm HRM practices is that one will discover informal training schemes, recruitment and selection techniques, pay structures, disciplinary and dismissal procedures. Managers will often rely on their discretion when it comes to HRM practices because of the absence of a formalised system of employee relations (Edwards *et al*, 2003: 33).

Informality in small firms is a prominent aspect of the literature on small firms. Informality, in this sense, is when firms rely on unwritten understandings with employees. While it can be measured in many ways, this dissertation sets out to analyse informality through the presence of informal agreements through examining the nature of the employer's face-to-face understandings with employees as well as the existence of formal procedures (Edwards *et al*, 2003, 32). Informality has been shown to mediate the effects of labour legislation in various ways, from non-compliance to semi-compliance depending on the level of informality present in each context (Edwards *et al*, 2003: 32). In the following section, the debate on the autonomy and harmony of small firm working relations is examined.

### **Small Firms' Employment Relations – Beautiful or Bleak?**

For many years, there has been a debate on the relationship between the firm's size and the work experiences of its employees. The small-is-beautiful perspective is dominant in the literature. The small-is-beautiful debate is structured around elements of job satisfaction or

job autonomy reportedly making experiences in small firms 'beautiful' (Tsai *et al*, 2007: 1780). However, other findings suggest that size may only be "a proxy for other more theoretically relevant variables that are usually poorly specified" (Tsai *et al*, 2007: 1780). Essentially, some researchers believe that industrial sector and other factors should be taken more seriously than the pure size effect of the firm. These points are discussed in more detail below.

The "experience of work" is used to evaluate the small-is-beautiful debate through the evaluation of three concepts within the small firm's employment experience, namely; job quality, autonomy and satisfaction. Firstly, the concept of job quality is defined as being the variety in a task. Secondly, job autonomy is the level of initiative that an employee can express. Finally job satisfaction is dependent on the extent of employee participation and degree to which the job permits personal and professional growth through training, promotions and self-development as well as job security (Tsai *et al*, 2007: 1781).

Personalised relationships in small firms are common and relations between management and workers will often show close personal ties (Edwards *et al*, 2004: 248). It is argued by Tsai *et al* (2007) that an element of job satisfaction boils down to informal face-to-face relationships with managers. Kalleberg and Van Buren (1996) found job autonomy to be higher in small firms than in larger firms where tasks and freedom of choice is often constrained (as cited in Tsai *et al*, 2007: 1781).

Due to the various roles that employees in small firms occupy (because of small firms' less developed division of labour), Tsai *et al* (2007) hypothesised that workers in small firms would have high levels of autonomy and would express favourable attitudes towards managers, which would lead to a higher level of job satisfaction and loyalty compared to large firms. However further research suggested that there was no evidence to support the hypothesis that workers in small firms held more loyalty to their employers in comparison to

larger firms (Tsai *et al*, 2007: 1782). Most workers, when offered a hypothetical better position, said that they would take it (Tsai *et al*, 2007: 1782).

Some argue that small firms are conflict-free and that larger firms are more conflict-ridden through the expressive, visible industrial action and unionisation of their employees (Barrett, 1998: 7). Although there is evidence that unionisation is most likely to be low in smaller firms, this does not support the claim that small firms are without conflict all together. The small-is-beautiful argument would have one believe that the industrial relations of the small firm is fundamentally harmonious, but low unionisation does not necessary mean non-conflictual relations; rather, it may reflect employees' lack of awareness of unions. The bleak house argument claims that face-to-face relations and attitudes can cause animosity and dissatisfaction in the working environment (Barrett, 1998: 11).

Some researchers found that the size of the small firm alone was not the most important factor in determining job satisfaction. Instead, they found other elements such as the sector the small firm was in held more significance (Tsai *et al*, 2007: 1782). It was discovered that elements such as the workers' age affected what features of a job was seen as important and hence satisfying. In addition, firms in sectors that are inherently low paying and that require higher intensity of work, whether because of long hours or higher demands from customers, will inevitably lead to less job satisfaction (Edwards *et al*, 2003: 67). It is also stated that job autonomy is not necessarily a characteristic of small firms as many small firm jobs, according to sector, can be monotonous and unchallenging creative wise (Tsai *et al*, 2007: 1781). It is important to consider and be cognisant that small firm internal employment relations can be affected by many other factors than simply size. Therefore, there is a possibility that other factors than those related to size – such as informality – affect internal employment relations (Tsai *et al*, 2007: 1783).

Factors that can be related to size as well as be distinct from it are the formality of jobs in small firms as well as the product market conditions particular to the various sectors

(Edwards *et al*, 2003: 68). If the firm is subject to poor product market conditions, such as declining growth of the market or a high level of competitiveness, then it is assumed that management will be autocratic and work experience will be poor through most dimensions (Tsai *et al*, 2007: 1783). This side of the debate is dubbed the bleak house model.

Formality is an element that is internal to the firm. It has been found that many small firms have a less formalised division of labour than larger firms and that this therefore is a finding in support of the pure size effect (Tsai *et al*, 2007: 1782). The informality of small firms is said to have an absorbing effect on external influences such as labour legislation (Edwards *et al*, 2003: 30). An example of this is that administrative burdens are made easier by management's flexible working hours (Edwards *et al*, 2003: 30). The bleak house perspective states that pressure of extended working hours by management translates into pressure on workers and thus a sense of insecurity. However, Ram (1994) argues that even if small firms face pressure from external sources, work relations remain informal and through these informal and personalised relationships, there is a bond of mutual obligation. It is stated that the degree of autonomy and attachment alleviate pressures such as intense market competition, and thus leaves workers feeling an obligation towards the firm (Tsai *et al*, 2007: 1784).

A key objective of individual labour law in South Africa is security. Essentially, the laws were implemented for worker protection because of the unequal powers inherent in the employment relationship (Tekle, 2010: 175). Security has been enhanced in many ways under the various laws. The nature of the laws reveal that there is more security than flexibility within the individual labour laws (Benjamin, 2005: 31). Nevertheless, there is inherent flexibility in the laws. For example, regulations dealing with dismissals, working hours, skills development, and leave all have inherent elements of flexibility in certain provisions. The perception of the laws being overly rigid may be a result of an inequality between security and flexibility. This inequality does not however prove that South Africa's labour laws are more onerous than other countries or that they are in fact 'rigid'. The nature

of the various labour laws is not the sole mediating factor, in addition, the firm's competitive/market context can be a deciding factor on how they perceive the law as well.

Informality is a crucial internal feature that is argued to be a mediating factor in the effect of legislation on the small firm (Edwards *et al*, 2003: 15; Ram and Edwards, 2003: 723). The degree of informality is determined by the structures and procedures in place within the firm as well as the degree of personalised relationships within the firm. It is believed that the higher the informality within the firm, the more employers will use their own discretion and thus lead them onto a route of non-compliance (Edwards *et al*, 2003: 64). Thus, it is argued that in firms characterised by high levels of informality, legal compliance will have no bearing on management's decisions and the effects of labour legislation will be near non-existent.

### **2.3.3. Employer's Perceptions of Regulation**

Edwards *et al* (2004: 245) state that the perceptions of regulation that employers hold are rather broad and general and are not typically informed by concrete experience. Yet, survey results shows that employers from small firms often state that the administrative workload due to regulation is heavy and therefore costly, and that there is a need for them to pay for external legal advice as they lack in-house expertise (Blackburn and Hart, 2003: 60). These may be exaggerations of the negative effects of labour laws. According to Edwards *et al* (2003: 35), it is wrong to assume that negative comments given in a survey mean that the employer has had a direct experience of the relevant situation he or she is referring to. There was evidence that a rhetoric-reality gap had developed in some employers' minds; in other words, "general perceptions of possible effects of the legislation and the fact that such effects had not been experienced by the firm itself" (Edwards *et al*, 2003: 36). There was a possibility that the perceptions may in fact change future behaviour; essentially, it was a way for managers to make sense of the world.

Insights into the attitudes of employers towards labour legislation are one of the aspects that Edwards *et al* (2003) believes will influence the effects on the business. It may be that

employers perceive a cost to the business through an overload of administration or compliance costs in general. Several elements could be a cost to the business in labour legislation. In contrast, there are also benefits found that may balance out the costs. Formalisation of procedures is one of a number of benefits that could be the outcome of higher regulation. A common thread in the existing research is that small firms are mainly affected by individual labour legislation rather than collective labour law. In this regard, the researchers found that it was more relevant to focus on discipline and dismissals rather than trade union recognition, strikes and lockouts (Edwards *et al*, 2004: 247).

Overall, the consensus among scholars in South Africa is that the country's labour regulatory environment is not overly onerous compared to other middle-income countries (Benjamin, 2005: 31; Borat and Cheadle, 2007: 35; Cheadle, 2006: 664; Roskam, 2006: 11; Van Niekerk, 2006: 51). But there are contrasting studies done on the flexibility debate: the ILO argues that the country is flexible when it comes to the labour market, but a World Bank study in 2004 found that limited labour market flexibility was a factor increasing the cost of doing business in the country (Benjamin, 2005: 31; Van Niekerk, 2006: 11). The studies showing that South Africa may, with regards to labour legislation, be inflexible, do not help perceptions of regulation.

Another factor leading to negative perceptions of labour legislation is the actions of labour law practitioners in the country. Firstly, legal advisors are hired by small businesses and, on many occasions, these advisors over-emphasise the procedural fairness of dismissals. This may be explained, in part, by the fact that they practiced the majority of their career under the old LRA where the requirements of procedural fairness were more strenuous. This factor leads to the misconception that labour laws in South Africa are rigid and inflexible according to leading South African legal experts (Cheadle, 2006: 665; Van Niekerk, 2006: 6). International experience shows that, if employers feel that the regulation is a burden, then there is more likely to be non-compliance (Edwards *et al*, 2003: 14). However, the perceptions of regulation can be influenced by the market context; if it is a constraining environment, it can intensify perceptions of statutory rigidity.



### **Costs and Benefits of Labour Regulation**

It has been suggested that labour legislation imposes an unnecessary burden through high costs of compliance (Barrett, 1998: 7). Small firms have certain characteristics, such as lower wages and longer hours, which must be taken into account when determining the costs and benefits of labour legislation. Small firms may be affected more by minimum wages. It also may be more difficult for them to provide the prescribed leave set out in labour legislation because of their long hours and this may impose a disproportionate burden on employers in small firms (Edwards *et al*, 2004: 246). But, there is research claiming that the idea that labour legislation imposes costs is a myth; rather, the regulatory environment benefits the employer (Edwards *et al*, 2003: 59). For example, it is argued that the procedures and processes that the law imposes area benefit to employers because these help them with not only their efficiency but also with their competitive advantage.

When assessing the impact of labour legislation on small firms, Edwards *et al* (2003) claimed that it was necessary to assess regulatory burdens. They distinguished three potential burdens: the first is direct administrative costs as well as other compliance costs; the second is direct constraints on the decision-making within the firm; and lastly, the impact on the competitiveness of the firm. With regard to the latter, there were further types identified: low cost and differentiation of the product. Businesses will adopt different strategies and thus need different characteristics. For example, firms selling in high value niche market will adopt a different strategy than a business that operates in a mass market selling undifferentiated products (Edwards *et al*, 2003: 59). There is no single definition or standard of competitive advantage given by the authors. Benefits of attempting to gain a competitive advantage include encouraging firms to adopt long-term strategies and helping the firm plan in an efficient way (Edwards *et al*, 2003: 59-60).

Decision-making as a burden or a benefit is a recurring theme in the literature, according to Edwards *et al* (2003). These authors argue that legal regulation may be a burden to a firm's

decision making in the sense that it demands a significant portion of management's time (neglecting possible productive opportunities). On the other hand, the time spent on the provisions of the labour law is a benefit in the sense of firm efficiency (e.g. through planning). Ultimately "regulation encourages innovation and a shift towards high valued-added activities, it will contribute to the development of the business and its benefits" (Edwards *et al*, 2003: 60).

There is a strong possibility that a cost to a manager may be a benefit to an employee; thus, the estimate of the costs and benefits is a complex task. Hard evidence of costs of specific pieces of legislation is difficult to locate in the research. Also, it is important to note that none of the leading large firms had done any cost-benefit calculation and therefore it is unlikely that a small firm, due to their informal nature would have done them (Edwards *et al*, 2003: 61). Essentially, it was discovered that the broad issue of the impact on competitive advantage could be determined through the assessment of the costs of compliance, decision-making and organisational choice (Edwards *et al*, 2003: 61-4). In other words, legislation can affect a small firm's competitive advantage through it having certain compliance costs such as legal advice. Also, the impact of labour legislation is measured through estimating whether the presence of a law would lead to different decision making than would have been the case in its absence, and finally, an assessment of constraints on organisational choice will aid in an investigation of the effects of labour legislation on small firms.

In small firms, compliance costs have the capacity to place a disproportionate burden on the business and therefore are fundamental in determining the overall impact of labour legislation (Dickens and Hall, 2003: 149). The first compliance cost in the UK identified by Edwards *et al* (2003) was the cost of legal services. Since small firms do not have an in-house labour law expert, they have to spend money on making sure that they comply with employment legislation. There are two different aspects of costs: the first being routine information and the second being advice along with non-recurrent costs (Edwards *et al*, 2003: 63). Most managers in the UK did not feel that legal costs were too high of a burden

on them (Edwards *et al*, 2003: 61). Also, there were no administrative costs reported in the UK because there were not many changes in recent times (Edwards *et al*, 2003: 64). But in some cases, there was a cost with regard to working time as well as the National Minimum Wage in the UK (Brown and Crossman, 2000: 208). The minimum wage would likely be a burden to the firm if the employees were paid below the wage and now had to be paid above it. Moreover, managers may view the fact that they get the same productivity for a higher wage as a cost as well (Brown and Crossman, 2000: 208). It was evident in some firms in the UK that the employers' response to this was to retaliate by making the employees work harder (Edwards *et al*, 2003: 62).

With working time, it was found that some firms in the UK were slightly affected by the law, whereas others were systematically attempting to deal with opt-out provisions (Edwards *et al*, 2003: 61). Moreover, some managers mentioned that it took time to research the legal regulations and due to the lack of knowledge of labour legislation provisions sometimes resulted in bad decisions and therefore took even more time out of management (Edwards *et al*, 2003: 64). Another area where direct costs were found was within the area of disciplinary cases as well as cases that proceeded to the Employment Tribunal (Edwards *et al*, 2003: 63). The costs would be legal fees and managerial time in dealing with the cases. Therefore, it could be said that managerial time was a central shock absorber for effects of the law. Managers were often found to work into the late evening, which was characteristic of managers in small firms (Blackburn and Hart, 2003: 63). Some firms in the UK found that considering the totality of their efforts related to labour legislation, legal regulation was a distinct source of concern and imposed growing demands on their time (Blackburn and Hart, 2003: 64). There is often a need for a small scale human resource expert, but small firm managers often feel that there is not a sufficient amount of employees to justify employing such an expert (Matlay, 1999: 289). Ultimately, it was concluded that "administrative burdens have discontinuous effects, with the impact being sharpest where firms are stretched with their present resources but lack the grounds to employ more administrative staff" (Edwards *et al*, 2003: 64).

One negative influence on decision-making may be that of hiring and firing employees (Edwards *et al*, 2003: 64). It is difficult to estimate what decisions would have been taken if the labour legislation regulating hiring and firing was absent. Other evidence showed that freedom of choice when it came to hiring and firing for the managers rather than the costs of administration were more of a constraint (Blackburn and Hart, 2003: 64; Edwards *et al*, 2003: 63). In the research that was done in the UK, the unfair dismissal law was fairly new and therefore some employers thought that it was more onerous to dismiss workers than was actually the case (Edwards *et al*, 2004: 252). Some ostensible negative influences on decision making may have been more of perceptions than concrete evidence, as managers may not have been as constrained as they thought (Blackburn and Hart, 2003: 65). But, on the other hand, small firms employers did not believe it to be economical for them to fight dismissal cases, although research in the UK has found that fighting a dismissal case was not as costly as it was perceived (Edwards *et al*, 2003: 62). Another reason why the employer did not want to fight the case was that they lacked the paper trail to sustain the dismissal, thereby demonstrating a main characteristic of small firms: namely, informality (Nieman, 2006: 273). If the firms had kept documented evidence and followed procedures, they would have sufficient freedom to dismiss (Edward *et al*, 2003: 64). This contradicts the evidence found by Blackburn and Hart (2003), where employers stated that the biggest cost/impact of labour legislation was the administrative workload.

A decision that would potentially not be taken if labour laws did not exist is the use of agency labour to avoid managing the direct employment relationship (Edwards *et al*, 2003: 65). In other research, it was found that the use of agency labour was a decision that was only taken by about 15.6 per cent of employers in small firms, although using this kind of labour was a potential cost or benefit (Blackburn and Hart, 2003: 64). The use of agency labour has direct costs of being more expensive; however, the benefit of this kind of labour is that the employer does not deal directly with the employment relations issues (Blackburn and Hart, 2003: 64).

Edwards *et al* (2003) found that in 14 firms working time as well as hiring and firing were not perceived to be an issue, even though they were presumed to have significant effects on small firms. But, other sectors may show a constraint on regulation of working time and/or other laws because of the nature of the sector. For example, working hours were an issue in care homes where only the minimum wage was given, and employees were expected to work long hours and work in tough conditions (Edwards *et al*, 2003: 41). When set alongside other influences on the business, labour legislation was a minor force and most firms could more easily and readily adjust to new requirements than some would expect (Edwards *et al*, 2003: 65). Therefore it is clear that the characteristics of the sector played a role in the perceptions of the law.

In the following section the market context as a mediating factor of the effects of labour legislation on the small firm is examined further.

#### **2.3.4. The Market Context of the Firm**

The competitive context of the firm is repeatedly emphasised as a key variable by researchers of industrial relations in small firm. Research shows that firms in different sectors are affected in different ways by labour legislation and therefore it is important to take into account the unique characteristics of a particular product market (Edwards *et al*, 2003: 15). In investigating these effects, the hospitality sector in South Africa was chosen, as it is commonly perceived to be an industry in which certain labour legislation provisions are not adhered to (Adam-Smith *et al*, 2003: 31; Gilman *et al*, 2002; Heyes and Gray, 2004; Matlay, 1999; Wilkinson, 1999). An examination of the hospitality industry and its characteristics is followed by a discussion of the competitive conditions in the sector.

### **Small Firms in the Hospitality Industry**

There has been some research done on small firms in the hospitality industry. These studies include an examination of employment relations as well as the impact that certain factors on businesses in the sector (Adam-Smith, Norris and Williams, 2003: 31; Gilman *et al*, 2002; Heyes and Gray, 2004; Matlay, 1999; Wilkinson, 1999). This dissertation is concerned with the influence of labour legislation on small firms. However, in order fully to grasp the impact and effect labour law has on a firm, it is important to examine the industry in which the firm is situated. Certain competitive conditions will affect the way that labour legislation influences the firm. A more in-depth look at the product market and the competitive context of the firm will be explored further in this section, and the following discussion will identify the key characteristics of small firms in the hospitality industry that are fundamental in shaping the impact of labour legislation.

The hospitality industry is dominated by a myriad of small establishments that employ a large number of young workers and, because of seasonal fluctuations in patterns of demand, a large number of part-time and temporary workers may be employed (Adam-Smith *et al*, 2003: 31). Jobs in hospitality are mostly filled by women, and in certain jobs there are often patterns of gender segregation (Heyes and Gray, 2004: 210). Women are found to account for most of the housekeeping jobs, which are rather mundane and menial, while men will be found more in jobs such as barman, chef and supervisor where more autonomy can be found. Jobs in hospitality that women mostly account for are often highly repetitive and require little formal training and qualifications (Adam-Smith *et al*, 2003: 31). Another factor for finding women in such jobs is that it is socially accepted as their “at-home job” and therefore this can be transferred to their professional jobs. Researchers found that employers chose females in such positions because their labour was cheap and available at the right time of the day as well as season (Adam-Smith *et al*, 2003; Brown and Crossman, 2000: 206-7).

Low pay is characteristic of the hospitality sector. A possible result of low pay and labour intensive production is that labour turnover is high. The rate of labour turnover may be high because of tough conditions such as intensive work, long working hours and low pay. Conditions in smaller hotels were found to be poorer than larger ones (Adam-Smith *et al*, 2003; Brown and Crossman, 2000; Heyes and Gray, 2004). Given the low-pay conditions, it is argued that the hospitality industry should be “affected greatly by the establishment of a statutory floor of wages” (Adam-Smith *et al*, 2003: 30). Other studies such as Brown and Crossman’s (2000) research sought to uncover the likely impact that the introduction of the minimum wage in Britain would have on small firms and the subsequent employer strategies it would set in motion.

Brown and Crossman (2000) state that managers are reactive in their choices about employment relations. They tend to apply an ad hoc approach to their management style to keep costs down. However, this can be at the expense of the employees (Brown and Crossman, 2000: 207). All managers will have their perceptions on how employment relations should be conducted and this will be influential in their management styles (Chapman, 1999: 74). Their management styles will also be affected and mediated by the sector that they are in and the competitive conditions that they face.

### **Competitive Context**

All firms experience competitive conditions that pressurise managers to minimize costs, which can translate into pressures on employees and lead to a sense of insecurity (Tsai *et al*, 2007: 1784). The focus of this section, however, is on how managers/owners deal with the pressures of these competitive conditions and whether they affect the way in which labour legislation affects the firm. Ram and Edwards (2003) elaborate on the impact of structural forces on small firms, especially the product market. In competition, they show how larger producers or competitors can directly and indirectly limit a small producer’s room to manoeuvre. Their research demonstrates that small firms’ responses to labour legislation

are shaped by a combination of product and labour market circumstances as well as internal dynamics of the firm. It was also suggested that the effects of labour legislation on small businesses would only be determined through the way that the labour process is organised (Edwards *et al*, 2006: 709). This means that, under capitalism, the labour process has specific characteristics with the most relevant being the transformation of labour power into productive labour (Barrett and Rainnie, 2002: 416). This highlights that competitive conditions are universally accepted as affecting firms' responses to external shocks (Ram and Edwards, 2003: 721).

Edwards *et al* (2004: 259) studied competitive conditions in different sectors and found that the role of markets is an external dynamic that is inter-related with the internal organisation of the firm. It was discovered that the role of the market could be a powerful influence on the way that the labour legislation would affect the firm. It was discovered that direct effects from the competitive conditions of each of the sectors had indirect effects on the ways in which a manager would deal with labour legislation (Edwards *et al* 2004:259). It was found in one sector (care homes), work intensification was used as a strategy to cut labour costs (Edwards *et al* 2003: 40). In addition to work intensification, Harney and Dundon (2006) establish that a stretched product life cycle (a competitive condition of the sector) encouraged the company to invest in more technology and introduce stricter job descriptions, thus adopting an innovative strategy. This is evidence that some competitive conditions can lead to positive effects (Harney and Dundon, 2006: 62). A discussion on the relation between effects and strategies will be introduced in the next section of this chapter.

### **Strategies adopted in the hospitality industry as a response to costs imposed by labour legislation**

Certain labour regulations have a specific impact on small firms. It has been previously stated that the costs of small firms can be countered by employers by implementing strategies to absorb the impact. However, Chapman (1999) questioned whether small firm's



human resources have a 'strategy' or a conscious design to achieve a preconceived end or whether they simply achieve control through an unconscious act. If an impact is felt, it is argued that employers will go out of their way to determine strategies in assisting them cope with the felt impact (Wilkinson, 1999:208). It is also questioned whether small firms use these strategies attempting to counteract the negative effects of labour law in order to cope or rather to gain a competitive standing within their sector (Tsai *et al*, 2007: 1784). These three strategies are examined in the following subsection.

The literature paints a picture of international experience dealing with a phenomenon that discourages employers from employing more workers or even workers of different ages because of interventions for example the national minimum wage (NMW) (Heyes and Gray, 2004: 210). A single piece of legislation is claimed to set in motion several occurrences that could be seen as potentially damaging to the small firm. The first being the possibility of employers reducing the number of employees or on the positive side introducing new technology and increasing production at the risk also of losing employees (Heyes and Gray, 2004: 211). There is also the threat of increasing the intensity of work for the employees, thereby implementing cost minimisation whilst attempting to increase quality. With adjustments in many small firms, there was an increase in the tasks that the employees had to perform and the number of machines that they had to mind. It was also discovered that overtime was intentionally reduced with the impact of the NMW (Heyes and Gray, 2004: 211).

Other studies show that the impact of the NMW is limited because most employers were already paying above what is necessary. But, in agreement with Heyes and Gray (2004), is the study done by Brown and Crossman (2000), where they found that there were fundamental adoption of cost minimisation through strategies such as increasing the use of part-time workers, reducing annual leave, reducing overtime, and even the introduction of unpaid breaks. In summary, it was found by Schuler and Jackson (1987) that there were three fundamental strategies used by small firms in order to gain a competitive advantage. These included cost reduction (minimisation), innovation or quality enhancement

(maximisation) (Brown and Crossman, 2000: 207-8). However, Heyes and Gray (2004), Brown and Crossman (2000) and Gilman *et al* (2002) argue that these strategies are not always mutually exclusive and firms have been discovered overlapping more than one of these strategies. There was a lack of evidence of the innovation strategy being adopted within the hospitality industry and thus the researchers decided to replace this strategy with 'other changes' (Brown and Crossman, 2000: 208). Other changes include modernisation and new technology, which was fairly evident within the industry (Heyes and Gray, 2004: 214).

Organisations that adopt the strategy of cost minimisation will attempt to compete on a low-cost basis. In theory, these organisations will follow the cost reduction strategies of tight controls and overhead minimisation (Schuler and Jackson, 1987: 210). In practice, as mentioned previously, employers using a cost reduction strategy are likely to increase their use of part-time and casual workers, reduce working hours, overtime, leave and leave pay, to name a few. Through labour intensification, employers are able to absorb any imposing labour costs without having to make significant changes to the organisation of work (Edwards *et al*, 2003; Heyes and Gray, 2004).

From the regulated flexibility view, some features of this approach may be characteristic of the 'low road' approach to competitiveness (Grimshaw and Carroll, 2006: 36). The introduction and the continued amendment of labour legislation is said to put a burden on employers, essentially affecting their businesses negatively by forcing them to reassess their rewards and employment strategies (Grimshaw and Carroll, 2006: 40). A common research focus has been on the introduction of the NMW in Britain. It was predicted to have negative effects on business, especially in low paying sectors such as hospitality (Adam-Smith *et al*, 2003: 30; Brown and Crossman, 2000: 206; Gilman *et al*, 2002: 54; Heyes and Gray, 2004: 209). The informality of the small service sector is regarded as playing a part in mediating the impact of labour legislation. Brown and Crossman (2000) argue that if management style is ad hoc then the impact of the NMW is more likely to be small because they more inclined to use cost minimising strategies.

Heyes and Gray (2004) determined that two, top strategies for offsetting the increased costs imposed by labour law in the service sector was reducing hours of work as well as reducing the number of employees. Perhaps in larger small firms this may be possible; however, in micro firms it is practically more difficult no matter how cost effective it may be (Heyes and Gray, 2004: 223). But, what is worth noting is that amongst the cost cutting strategies that were not mentioned at all was the cutting of overtime payments (Adam-Smith *et al*, 2003: 30; Brown and Crossman, 2000: 206; Gilman *et al*, 2002: 54; Heyes and Gray, 2004: 209). Adam-Smith *et al* (2003) argue that overtime was rarely distributed in small firms. This is not to say that they did not do overtime, rather that they were rarely paid for overtime. On occasion, employees even had to fight for their overtime payments (Heyes and Gray, 2004: 210).

Overall, the pay structures in hospitality have been described as informal, unsophisticated and underdeveloped in character with workers being paid an hourly rate and in addition being paid in kind (Adam-Smith *et al*, 2003: 32; Heyes and Gray, 2004: 222). Ultimately, researchers witnessed payment as being part of a total package, even though bonuses were rare and tips (although sometimes inferior) were given in select sections such as bar tenders, waitresses and housekeeping (Adam-Smith *et al*, 2003: 42). In the hospitality sector, it is not uncommon to find that the pay would include rewards such as meals, drinks and even accommodation (Adam-Smith *et al*, 2003: 32). Informal pay setting may have allowed employers to absorb the impact of the NMW; some employers were even found to be in non-compliance and not bothered by it because the labour market environment allowed them flexibility in this area (Heyes and Gray, 2004: 217; Wilkinson, 1999: 209).

The cost minimisation strategy could mean the “use of peripheral labour, bringing the benefits of numeric flexibility, through the contracting out of various services or the use of casual labour, or agency staff” (Brown and Crossman, 2000: 208). The use of part-time workers was seen as a way to avoid national insurance payments. With regard to employees, staff retention in the hospitality industry was highly sought after, yet difficult to obtain (Gilman *et al*, 2002: 62). With cost cutting, the risk of losing employees runs higher,

especially when management reduces bonuses, pensions, medical aid, start charge for extras such as meals and increasing deductions from employee wages (Gilman *et al*, 2002: 62). The costs of losing employees can be far greater than the costs that could possibly retain them. For example, the costs, of training a new employee can be more costly to the firm than simply rewarding the employee adequately to retain his/her services (Wilkinson, 1999: 210). Yet employers continue to implement cost minimising ways such as reducing training and employing young, inexperienced people over the older, seemingly more expensive workers (Brown and Crossman, 2000: 209). It was discovered that small firms responded in various ways to labour legislation, the strategies of cost cutting were at the top with quality maximisation shortly after – however, it is argued that the two are not mutually exclusive (Adam-Smith *et al*, 2003: 34; Brown and Crossman, 2000: 208; Heyes and Gray, 2004: 223). For example, a strategy can be cost cutting as well as a quality maximising one such as getting employees to work smarter. Working more efficiently is enhancing the quality of the job and simultaneously can cut costs for employers by potentially cutting working hours or attaining increased production out of employees (Adam- Smith *et al*, 2003: 34-5).

In some firms, there was evidence of cost minimisation which ultimately lead to direct and indirect effects from the NMW. Some employers had to increase wages in preparation for the introduction of the minimum wage (Heyes and Gray, 2004: 210). These direct effects can have a large impact on small firms (Edwards *et al*, 2004: 250). However, the employers' responses to these effects were largely non-strategic and reactive (Adam-Smith *et al*, 2003: 40). Research shows that, if they were paying below the minimum wage, employers simply brought wages up to where they should be without implementing any type of strategy (Heyes and Gray, 2004: 211). However, if an employer did chose to implement a strategy it was likely that it would be quality maximising.

There are fewer strategies that an employer can implement with quality maximisation compared to those that can be employed with cost minimisation. The quality maximisation strategy is committed to investment in employees through increasing training and developing their skills – a strategy that could be regarded as being in line with the 'high

road' approach to competition described in the beginning of this chapter (Grimshaw and Carroll, 2006). Essentially, it is implemented to facilitate productivity through improving employees' performance; it aims to encourage reliable behaviour and multi-skilling of a fully functional and flexible workforce (Brown and Crossman, 2000: 207). A fundamental element of the strategy is the inherent levels of efficiency that workers may achieve. A company that implements quality enhancing strategies will encourage employees to work smarter; that is, more effectively and efficiently (Adam-Smith *et al*, 2003: 35). Brown and Crossman (2000) argue that the hotel industry is more likely to have well developed personnel function and thus this may imply that they recognise the importance of a quality-enhancing approach. However, it is known that in small firms in most sectors there is a lack of knowledge surrounding human resources and the absence of an in-house expert; therefore, it is more difficult for them to recognise the fundamental elements of such an approach (Matlay, 1999: 289). A human resource expert knows the benefits of quality maximisation, for example, sending your staff on extensive training can not only benefit production but also boost morale, which in turn also enhances production. However, with small firm employers, the benefits of cost cutting are immediate and directly foreseeable therefore, most small employers choose cost-cutting strategies as a way to deter the effects they feel from other factors such as labour law.

Another strategy that may be introduced with this approach is increasing prices of the product once its quality has been enhanced through the performance of the employees, which could eventually amplify income (Adam-Smith *et al*, 2003: 33). However, evidence of increasing prices may not be due to labour legislation and further quality maximisation, there are other factors such as the economic environment that have an influence (Harcourt and Wood, 2003: 86). Therefore, it is important to distinguish the difference between whether an employer is enhancing their product and subsequently their prices because of the fundamental shift towards quality maximisation or whether perhaps a recession or administered costs are impacting their overall business and therefore need to adjust accordingly (Matlay, 1999: 286). Many employers planned for the introduction of the NMW, and therefore only a few were caught in non-compliance, yet were refusing to pay the minimum wage because they simply could not afford it and because in their local labour

market conditions, they were able to retain their employees (Adam-Smith *et al*, 2003: 34). In many businesses where employers were not paying the NMW, employees were not asking to be paid higher wages, for reasons unknown, but one can speculate that it is because of a lack of knowledge of the legislation or the subservient position that they occupied in the workplace (Adam-Smith *et al*, 2003: 38). However, those who take the quality road are more likely to employ more experienced and older staff, who in turn may have more knowledge of the law than younger more inexperienced workers (Heyes and Gray, 2004: 217).

Heyes and Gray (2004) found evidence that some employers employ both quality maximisation as well as cost minimisation simultaneously. However, firms that improve the quality of their product were less likely to reduce hours of work or reduce employment. Some cost-minimising strategies were found to be simultaneously quality enhancing – these included increased workload, reduction in the length and number of breaks, and greater emphasis on discipline (Heyes and Gray, 2004: 221). Those employers who were affected in some way by labour legislation, such as the NMW, took steps to intensify work whilst improving the quality of their products.

Modernisation in the hospitality industry, depending on the type and size of the firm will always be different. In restaurants in Europe, there has been the introduction of handheld electronic point of sales, in larger hotels there is an electronic checklist of rooms cleaned in order to determine whether they can offer early check in (Adams-Smith *et al*, 2003). These are examples of both modernisation and technology that has been introduced; however, in smaller firms technology comes slower and is even resisted by some (Lucas, 2004: 13). In small food establishments researched by Edwards *et al* (2003), when new technology was introduced this usually meant a reduction in staff. These firms introduced more technology because the NMW posed a threat to their business. Essentially employment legislation would pose a threat to their business, specifically the wage bill and therefore their strategy to counter this negative impact was to rather use agency labour (Edwards *et al*, 2003: 544-5).

In some sectors, it is easier to mechanise production than others. For example, in the automotive industry, it is much easier to mechanise the production line than the hospitality sector. In the automotive industry, there are clear stations and sections for the particular parts that need to be added to the car. In the automotive industry, there are products that are made and can be slightly altered; however, the customer chooses that product based on what they know and see of it. In the hospitality industry, there can be a certain level of mechanisation, for example the ability to replace the amenities within a hotel room to restore it to its original state. However in the hospitality industry, especially in small firms, they have a more intimate dealing with the customer and because of the high competition and the limited access of the product for customers, owners of guesthouses for example need to fit to meet their customer's needs, ultimately being more flexible with their product than a more mechanised sector.

But through all the change in these small firms, they still attempted to remain informal, it was found that they attempted to keep their own disciplinary procedures and had their own customary unwritten practices (Edwards *et al*, 2003: 545). Even if employers had some formal procedures, informality was upheld as much as possible in order to maintain personal relationships – in the employers (unitary) words in pursuit of a “happy ship” (Wilkinson, 1999: 210). Matlay (1999) found that in small firms, especially micro firms with less than 10 employees, there was never a fully formal approach to any type of employment relations. With small firms in the hospitality industry, managers can encourage improvements in the layout and organisation of work processes (Matlay, 1999: 291). This may in fact include the introduction of new technology alongside improvements in the flow of work (Gilman *et al*, 2000: 62). It is fair to say that some businesses will introduce new technology to rid problems with labour legislation and the regulatory impact that they feel (Edwards *et al*, 2003: 54).

Strategies in small firms are hotly debated amongst leading scholars in the field. The concept of ‘strategy’ is that there must be a conscious design. It is doubted by many that small firms are likely to develop a specific strategy because of their lack of expertise of the

various employment relations strategies as well as their inherent reactive and ad hoc practices attempting to keep costs minimised (Chapman, 1999: 77). However, some argue that small firms can have some level of a strategy (Brown and Crossman, 2000: 207). There were three, broad strategies found in small firms: namely, cost minimisation, quality enhancement and innovation. But innovation was found to be less important or common in small establishments than the others. Strategies were discovered to be heavily influenced by the management's style, whether an employer would employ the cost minimising approach to labour legislation would depend on their overall style of controlling their workforce (Matlay, 1999: 288-9).

Research found that these strategies are not necessarily mutually exclusive and established that sometimes implementing the one would complement the other (Brown and Crossman, 2000: 208). For example, when employers implemented quality tactics such as increasing training, production became more efficient and therefore cost minimising. Certain pieces of legislation affected small firms in international research more than others (Brown and Crossman, 2000: 206; Edwards *et al*, 2003: 42; Edwards *et al*, 2004: 245; Gilman *et al*, 2000: 61). The NMW in Britain was found to have an impact when it was first introduced on some of the lower paying sectors such as hospitality and therefore firms were forced to implement cost minimising and quality enhancing strategies such as labour intensification and employing more quality employees. Fundamentally, the strategies implemented were revealed to be a sign of various levels of impact from the regulatory environment. Therefore, it is essential that this factor – namely, analysing the strategies that small firms adopt– be explored by the research at hand.

#### **2.4. DIRECT, INDIRECT AND AFFINITY EFFECTS OF THE LAW**

Costs and benefits of labour legislation are more easily analysed through an analysis of direct, indirect and affinity effects. In the following subsection, the argument will look at how the presence of direct, indirect and affinity effects of labour legislation can directly inform the costs and benefits of it. On the other hand, it will also consider that effects are



filtered through the three main mediating effects and the effects will have to be considered in light of relationships of power and influence between workers and employers.

Direct effects are when the behaviour of the firm specifically changes because of the introduction of a law. An example would be the national minimum wage (or sectoral determination in the South African case) and the changes in wages when this was introduced (Edwards *et al*, 2004: 251). An indirect effect is when the law specifically encourages the employer to change behaviour. For instance, where a firm adopts an indirect relationship with the employee, such as outsourcing, even if the law does not directly state that they must adopt this type of relationship. Finally, there are affinity effects that occur when there is no specific link between the law and changes in behaviour, but there are common moves occurring. An example of this would be a firm making changes, such as introducing a family-friendly practice, when the legislation makes no specific requirement for that (Edwards *et al*, 2004: 251).

The free market theory considers the consequences of these effects; namely, the costs and benefits of labour regulation. The free market theory expects that any effects on a small firm will be costly (Edwards *et al*, 2004: 252). These include the administrative costs that come with an increase in regulation as well as labour costs that can increase decision making constraints (Edwards *et al*, 2004: 252). The institutional theory, on the other hand, argues that “firms are not in perfect markets, they may be making what economists would term monopoly profits or ‘rents’, and employment laws may result in a shift towards workers” (Edwards *et al*, 2004: 252). Essentially, the institutional theory concludes that the consequences of labour legislation will depend on the nature of the firm rather than automatic consequences. Consequences are not solely costs but also can be benefits. Some effects claim to promote efficiency effects. For instance, some labour legislation, such as minimum wages, can shock the firm into labour saving innovations and thus into more efficient behaviour (Edwards *et al*, 2004: 252). The effects of labour law can also have an impact on the competitive advantage of a firm. If the firm becomes more efficient through, for example, implementing more formal procedures - an affinity effect - then the

competitive advantage position of the firm has the potential to increase its position through higher efficiency (Edwards *et al*, 2003: 60).

It was concluded by Blackburn and Hart (2003) that managers believed that because of their lack of resources they had costs relating to administrative burdens as well as legal advice. There was evidence that labour legislation does burden small firms not only on the level of direct costs of compliance but also through indirect costs such as it taking up managerial time (Blackburn and Hart, 2003: 64). The law had negative effects on decision making related to compliance costs, this included decision-making taking longer because of the lack of HRM specialists. Ultimately, with decision-making, it was difficult to prove if small firms would change their behaviour in the absence of labour law. The perceptions of the law may also have negative influences on the impact. Overseas, small firm's employers were under the impression that, as employers, they are more constrained than may actually be the reality.

## **2.5. CONCLUSION**

The research sets out to determine the impact of labour legislation on small firms in the hospitality industry. There have been numerous studies done on the impact of labour legislation on small firms. However, most of this research has been done in the developed industrial economies. This signals an obvious gap in our understanding. Hence, this dissertation seeks to determine the impact through the effects of labour legislation on small firms. It was eventually determined through the examination of the literature that the effects of labour legislation are measured by various aspects.

The dissertation is centred around the effects of labour legislation on small firms. Therefore, it is logical to make that the focal point for this conclusion. In the discussion above, it is clear that there are two main factors for the analysis of what an effect is and how that effect shall play out in various contexts. Firstly, effects are filtered by four mediating factors namely; the

nature of individual laws, the market context, the perceptions of regulation and internal dynamics of small firms. It was argued by many authors that regulated flexibility is an integrated component of the nature of the laws in South Africa. Essentially that the government has been working in cooperation with labour and employers organisations in order to determine the correct balance between workers need for regulation and employers interest in flexibility. The level of this balance shall be one determinant of the overall impact. The perceptions that employers hold of labour regulations will also be one of these determinants. Contrasting studies done on the flexibility with the costs of doing business in South Africa leads employers to confusing mind sets, which can ultimately lead to non-compliance.

The small firms sector and thus market context is a factor that can mediate the effects of the law. It was argued that if firms are experiencing a financial squeeze, this could amplify any effects felt by the law. Labour market conditions can also affect the firms competitive position, if labour market conditions are poor it can affect the firms position negatively thus indirectly affecting the firm. The last of the mediating factors is the internal dynamics of the small firm. Informality is commonly researched because of its large implications for filtering negative effects of the law. The informal nature of the firm such as personalised relationships and unwritten instructions can ease the impact of the effects. A more informal approach to labour relations can ease some of the impact from labour legislation. The internal environment debates whether this aspect of informality gives way to job autonomy and job satisfaction, ultimately rating whether small firms have beautiful environments or bleak ones. The internal environment of a firm is essentially an important aspect of mediating the impact from the effects of labour legislation.

Secondly, the consequences of the effects of the law are namely the costs and benefits of it. Direct, indirect and affinity effects along with the mediating factors ultimately determine whether an effect is a cost or a benefit. In turn, costs and benefits solidify whether the effect is negative or positive. It was determined that costs and benefits are identified through being an effect in one of three ways, either through administratively,

competitiveness, or decision making ways. The relations within the workplace also played a part, the power and influence relationship between workers and employers became a central part of whether it is felt as a negative or positive effect.

There seems to be a gap between the effects of labour legislation and how firms deal with these effects. Ultimately, it is argued within the dissertation that the presence of strategies such as cost minimisation, quality maximisation and modernisation as well as the extent that these strategies are used to ease the impact of regulation proves the existence of an effect of labour legislation. The extent, therefore, of the effects will be coagulated by the presence of multiple strategies. In the following chapter, the research design shall be discussed bringing to light the methodology used, the design methods, the objectives of the study as well as the final methods of analysis that will be used in the proceeding chapters.

# CHAPTER 3

## RESEARCH DESIGN

*“The aim [of research], as far as I can see, is the same in all sciences. Put simply and cursorily, the aim is to make known something previously unknown to human beings. It is to advance human knowledge, to make it more certain or better fitting...the aim is...discovery”*  
(Veal, 1992).

### 3.1. INTRODUCTION

The purpose of the study, as laid out in the previous chapter, is exploring and determining the nature of the effects of labour legislation on several small firms in the hospitality industry. It is fundamental to take note that the study is geared towards determining the detrimental effects the labour law may be having on the small firm. This chapter sets out to discuss the method the researcher took in order to draw conclusions from the data collected. The assessment of the thesis statement will be achieved through a research design focused around the methodology of interpretivism. The methodology will be integrated through the research design by using the qualitative method of case study research. The case studies will be analysed by using the research instrument of in-depth semi-structured interviews with the sample selected through a non-probability method. The reiteration of the research objectives provide a guideline of what the research design is to systematically achieve. In other words, the research design was devised in order to optimally achieve the objectives and goals of the research. The elected research design aims to provide detailed experiences of the effects within small firms related to labour legislation, thereby determining the degree and nature of the impact.

### 3.2. GOALS OF THE RESEARCH

The main objective of the dissertation is to identify and explain the impact of South African labour laws on small firms. To this end, the research will be guided by the following sub-objectives. Firstly, study the nature and the extent of the impact of key provisions in the

Basic Conditions of Employment Act and the Labour Relations Act on the labour relations policies and practices of small firms. Secondly, explore employers' perceptions of labour legislation and the extent of compliance with statutory provisions. Thirdly, examine the degree to which the existing regulatory framework allows for numerical and functional flexibility in small firms. Fourthly, determine whether regulated flexibility achieves its objective of finding a balance between equity and efficiency. Lastly, assess the implications of the strategic responses of employers to labour legislation for competitiveness and labour relations.

### **3.3. RESEARCH APPROACH**

The central topic of this dissertation is focused on and ultimately immersed in complex environments. Therefore, the approach or design of the research has to ensure the accurate evaluation of the data being collected. The data is fundamentally engrossed in a social, context specific environment. Therefore, the interpretivist approach which evolved out of phenomenology, surfaced as the most appropriate research philosophy to use with the research at hand. This approach "allows researcher to explore the complexity of the phenomenon and its potential causes while discovering the reality working behind the reality" (Pinilla, 2000:67). Since it has been determined that a particular understanding of the reality of the contexts of small firms is a fundamental underpinning to the study, it would therefore be fitting for the method of case studies to be chosen. A discussion and evaluation of the strengths and weaknesses of the chosen approach shall be provided below.

Two central concepts within social research are ontology and epistemology. Firstly, ontology is a theory of the nature of reality. Secondly, epistemology is a theory of the knowledge of reality can be understood as the relationship between the researcher and that reality – ultimately being how reality is perceived by the researcher (Edirisingha, 2012). As mentioned earlier, the approach that this research will adopt towards understanding reality is an interpretivist approach. With interpretivism, reality is understood as relative and there can be more than one understanding of reality. There can also be more than one structured

way of assessing these realities (Edirisingha, 2012). Multiple realities are difficult to interpret as they depend on the various interpreters and systems. Knowledge generated through interpretivism is “perceived through socially constructed and subjective interpretations” (Edirisingha, 2012). Thus, this type of approach towards reality is well suited to qualitative research as it will allow the researcher to explore the values, beliefs and meanings that the respondents attach to the object of focus being the effects of labour legislation. This approach enables the researcher to be more personal and flexible with the research instrument and thus becoming more receptive to the employer’s values, beliefs and meanings they attach to the effects of labour legislation. A fundamental objective for the researcher subscribing to interpretivism as a methodology is to understand motives, reasons and meanings of human behaviour. Ultimately, the goal of interpretivism is to “understand and interpret human behaviour rather than generalise and predict causes and effects” (Edirisingha, 2012).

The specific objectives of the research, as listed above, range from studying the nature of the impact of the BCEA and the LRA on labour relations within the small firms to exploring employers’ perceptions on these Acts. Therefore, qualitative research methods have been adopted. Case studies are the appropriate choice for this research, as it will ultimately seek to link external influence to concrete behaviour. A way to reveal this is through multiple case studies. The aim is to take a variety of situations and show how processes vary between them. In other words, the researcher aims to explore the various processes of how the firm responds to labour legislation through an explanation for behaviour explored. It is to study the mechanisms between the cause and effects of labour law. It is not the objective of the research to quantify any impact the law might have, but rather to “assess the processes through which firms respond to legislation and the ways in which legislation is perceived” (Edwards *et al*, 2003: 12).

It is important that one does not assume that all small firms are the same. Therefore, Edwards *et al* (2003) argue that it is fundamental to choose a method through which the tendency to treat small firms as though they are all necessarily similar to each other is

avoided. This method is case study research. Zainal (2007) argues that case studies are a robust method allowing for in-depth and holistic information to be ascertained. Through the case study method, complex issues can be studied by understanding “the behavioural conditions through the actor’s perspective” (Zainal, 2007: 1).

Since the research deals with perceptions and it is noted that the recollections of employers can often be hazy when it comes to labour legislation because of their dealings with all areas of the business, it is accepted that the research will not set out to determine a concrete impact. It is rather designed to look at an estimate of the impact through researching how employers regard the costs and benefits of the law and what their strategies are for coping with any impact. The potential advantages and disadvantages of using case studies and their potential effect on the study at hand are set out in the table below.

**Table 1: Advantages and Disadvantages of Case Study Research**

ADVANTAGES	POTENTIAL EFFECT ON STUDY
Data examined in the context of its use	This will be advantageous in determining the nature of the small firm – one can analyse more effectively when the research is conducted within the environment. Reality can be understood through the perceptions of the employers when the research is conducted within the specific environment.
Can be intrinsic, instrumental, and/or collective	The case study shall be instrumental, consequently the research can observe small groups of employers and their perceptions and processes, in order to examine a pattern of behaviour(essentially, how they perceive the effects of labour law). Multiple cases are an advantage in order to link concrete behaviour to external influences.



Detailed qualitative accounts	Will aid in assessing processes within the firm and the perceptions of the employers. Also, helps with understanding exact reasons for strategies and the unique character of the small firms. Only qualitative accounts can be used when using an interpretivist approach as it strives to understand and interpret human behaviour.
DISADVANTAGES	POTENTIAL EFFECT ON STUDY
Risk of Losing Focus	With such a large amount of data resulting from case studies, it is easy for the study to lose focus; however, in an effort to combat this, an attainable and limited amount of case studies were conducted to ensure focus.
Generalizability of Results	There is a risk with case studies that there is very little basis for scientific generalisation. The research, however, seeks to provide slight insight into the impact on a certain geographical location and does not wish to generalise. With the epistemological perspective, interpretivism, one can overcome the danger of generalizability. One goal of this methodology is to understand and interpret rather than generalise and predict causes and effects.
Subjectivity	Case studies have been criticised for researchers often adding their bias views and equivocal evidence and allow it to shape the direction of their study. However, in most qualitative methods there is more often than not a risk of stating bias views. It is a difficult criticism to get away from. Yet, if the researcher is aware and consistently reminded to analyse with objectivity.

(Sources: Yin, 1994: 150; Zainal, 2007: 1-6).

Case study research can add strength to what is already known through previous research. There has been extensive research done on the pressing issue of the level of impact that labour legislation is having on small firms around the world (Bhorat *et al*, 2007; Bhorat *et al*, 2010; Bhorat and van der Westhuizen, 2008; Broughton, 2012; Cheadle, 2006; Deakin and Sarkar, 2008; Edwards *et al*, 2003; Edwards *et al*, 2004; Lucas, 2004; Matiso, 2003; Ram and Edwards, 2003; Ram *et al*, 2001; Rankin, 2006; Roskam, 2006; Wilkinson, 1999; Van Niekerk, 2006). Although there are disadvantages to the method, many researchers continue to use it with success in carefully thought out and crafted studies of real-life situations, issues and problems (Soy, 1996).

### **3.4. RESEARCH METHODOLOGY**

Interpretivism as a methodology was selected specifically for its ability to generate or perceive knowledge through socially constructed and subjective interpretations. As a methodology, we can expect interpretivism to concentrate on understanding and interpreting data through the eyes of the researcher. Information will be extracted, using the research instrument, in-depth semi-structured interviews, with the supporting secondary instrument being the literature review. In the discussion to follow, the data one should expect the instrument to deliver and why it will provide reliable data as well as its essential purpose in the research and the interview's design will be outlined. Thereafter, sampling techniques are explained, essentially determining the outcome of the sample and the selection of the firms. The most effective procedure of how data was collected from the sample and then analysed will round off the section.

#### **3.4.1. Research Instruments**

As noted above, the sole instrument used for data collection was semi-structured, in-depth interviews. A single source of evidence was used in these case studies, as the other sources of collecting evidence were either not accessible to the researcher or not relevant to the study. Throughout the design phase, the researcher had to ensure that the study was well planned to guarantee construct and internal validity as well as reliability (Soy, 1996). It has

been stated above that it is not the purpose of a qualitative study to generalise and therefore external validity does not apply to this research and shall not be discussed here. Moving forward, the various elements of designing the research instrument will be discussed below.

The in-depth semi-structured interview was created with the intention of producing a research instrument that can construct, internal validity as well as having reliability. Firstly, construct validity requires that the correct measures are implemented for the concepts (Soy, 1996). It was determined through the research philosophy adopted that the most appropriate research approach would be case studies. However, to collect relevant data through case studies, which is in line with this philosophy, it was determined that in-depth interviews would be appropriate. Essentially, the approach was chosen not only because it is a qualitative method of obtaining case study data but also because of its convenience in achieving the objectives of the research. The goal of a qualitative semi-structured interview is to “develop an understanding of the social and psychological processes that have occurred in a particular setting or among people who have had particular sets of experiences” (Jones, 1996: 140).

Secondly, “internal validity (especially important with explanatory or causal studies) demonstrates that certain conditions lead to other conditions and requires the use of multiple pieces of evidence from multiple sources to uncover convergent lines of inquiry” (Soy, 1996). The in-depth interview was conducted with the direct casual observation, as the researcher believed that observing the respondents behaviour on their responses and interpreting their attitudes would add richness to the research. This other source of evidence was the best resource available to the researcher as it was made clear early on in the research that retrieving supporting documentation would prove to be a fruitless exercise.

Finally, reliability is based on the stability, accuracy, and precision of measurement of the data. It is argued that an exemplary case study design ensures that all procedures used are well documented and can be repeated with the same results an infinite number of times (Soy, 1996). All interviews were recorded to ensure the accuracy, precision and measurability of the data. The interview schedule, as a research instrument, allows for minor deviation from it in order to capture additional pertinent information. However, it gives the research a core procedure that is set allowing results to be reliable.

The primary purpose of using in-depth interviews is to achieve a comprehensive and detailed analysis of the topic at hand (De Clerck, Willems, Timmerman, Carling, 2011: 13). The open-ended questions of the interview were used to encourage participants to freely give their opinions, which are fundamental to the outcome of the research (Pinilla, 2002: 56).

### **3.4.2. Sampling**

There are two broad sampling methods one can use for research: probability and non-probability. For the purposes of this research, a non-probability sampling method was employed. With the adoption of the non-probability method, the sector and firms were chosen with two different techniques. Firstly, the selection of the sector was realised through extensive research on small firms, where the hospitality industry evidently presented as a sector that needed to be studied due to its perceived low wages and long hours. Another component of the choice of sector was the availability and ease of access. Secondly, the technique used to select firms was the selective and convenient technique, snowball sampling. This type of sampling will be elaborated on below. Essentially, non-probability sampling was employed because it was difficult to obtain interviews with some guesthouses, as they either did not have time or did not wish to participate. Therefore, the study's sample had to depend on the availability of the population. Once chosen, the aims and objectives of the research were explained to the respondents.

Fourteen small firms in Pretoria were selected across the hospitality sector to be studied. The selection of this sector was broadly based upon ease of access, typical working hours as well as pay structures (Edwards *et al*, 2003). The goal is to investigate a specific sector in order to grasp the competitive context and examine the firms in sufficient detail in order to examine and explain their responses to labour laws.

The initial firms were selected using a website to find guesthouses and bed and breakfasts in the same geographical area. After the initial two interviews, names of other probable willing candidates were given by the respondents. As mentioned above, this process is known as snowball sampling whereby the researcher identifies a few research subjects, who have characteristics relevant to the study, and whilst in the process of data collection the researcher may ask if they know of any others like them with the relevant characteristics needed for the study (Babbie, 2001).

Table 2 indicates the names of the firms, their location and size as well as a summary of the nature of their business activity. All of the firms were within the hospitality sector and all were within accommodation services. All firms studied were within relative close proximity of each other for purposes of construct validity as inferences can legitimately be made when the guesthouses were geographically close.

Those within the sector, as well as onlookers, will regard the guesthouse industry as competitive. However, the perceptions of employers in the sector regarding the nature of competition varied from employer to employer. Certain employers regarded competition as being non-existent for them, due to their larger market share within the geographical area. Since they have been around for a while (some for over 10 years), they felt that they no longer competed with their surrounding guesthouses but rather had built up enough loyal customers to sustain their business. Other employers, who were invariably newer, considered the competition to be intense in the hospitality industry and especially in accommodation services.

**Table 2: Summary Features of Case Study Firms**

<u>FIRM</u>	<u>LOCATION</u>	<u>NUMBER OF EMPLOYEES</u>	<u>NATURE OF BUSINESS</u>
40 on Ilkey	Menlyn, Pretoria East	6 total – 5 full-time; 1 part time	Accommodation
B&B in Hatfield	Hatfield, Pretoria	7 total– 5 full-time; 2 part time	Accommodation
Edward House	Waterkloof, Pretoria	3 total – 2 full-time; 1 Piece work	Accommodation
Elonda's B&B	Farie Glen, Pretoria East	3 total – 1 full-time; 2 part time	Accommodation
Farmer's Folly GH	Brooklyn, Pretoria	4 total – All full-time	Accommodation
Goodey's GH	Colbyn, Pretoria	3 total – All full-time	Accommodation
Loerie's Nest B&B	Hatfield, Pretoria	4 total – 2 full-time; 2 part time	Accommodation
Moindis GH	Colbyn, Pretoria	2 total – All full-time	Accommodation
Muckleneuk GH	Muckleneuk, Pretoria	5 total – 2 full-time; 1 part time	Accommodation
Oxnead GH	Moreletapark, Pretoria East	3 total – 2 full-time; 1 part time	Accommodation
Peter's GH	Lynnwood, Pretoria East	5 total – All full-time	Accommodation
Velvet Gardens B&B	Lynnwood, Pretoria East	2 total – 1 full-time; 1 part time	Accommodation
Villa la vie GH	Lynnwood, Pretoria East	8 total – All full-time	Accommodation
Waterkloof B&B	Waterkloof, Pretoria	3 total – All full-time	Accommodation

Source: Authors Interviews with small firm managers/employers

The wider regulatory context of the sector was taken into consideration due to the significance this factor held in Edwards *et al* (2003) research. With regards to this research, some employers considered regulations for health and safety and rezoning regulations a burden which caused a financial crisis for the business. However, the financial constraint of both the health and safety compliance and property rezoning was the only observable ‘other’ regulations impacting negatively on two of the case studies. Although employers note that financial issues were a constraint in their businesses, the researcher observed that this constraint was not overly burdening on the firm. Most of these firms went on to state that they felt they had a fair share of the market and that consequently were steadily getting by.

### List of Respondents

Table 3 summarises the list of respondents that the researcher interviewed. As noted above, all were in the accommodation services sector of the hospitality industry.

**Table 3: List of Respondents**

<u>Name of Respondent</u>	<u>Position</u>	<u>Name of Guesthouse</u>	<u>Date of Interview</u>
Danel Muller	Manager/Owner	40 on Ilkey B&B	31/01/13
Andrew Peters	Owner	B & B in Hatfield	04/03/13
John Robertson	Manager/Owner	Edward House	01/02/13
Leon and Ellenette Light	Managers/Owners	Elonda's B&B	25/03/13
Maria and Patricia*	Managers	Farmer's Folly Guest House	30/01/13
Kevin*	Manager/Owner	Goodey's Guest House	12/02/13
Marlene*	Manager/Owner	Loerie's Nest B&B	30/01/13
Lola Patrick	Manager/Owner	Moindis Guest House	11/02/13
Jutta*	Manager/Owner	Muckleneuk Guest House	19/03/13
Nelia Smit	Manager/Owner	Oxnead Guest House	20/03/13
Amanda*	Manager	Peter's Guest House	31/01/13
Eileen Kania	Manager/Owner	Velvet Gardens B&B	22/04/13
Natasha*	Manager	Villa la Ve Guest House	11/03/13
Linda*	Manager/Owner	Waterkloof B&B	11/02/13

\*Unknown Surnames; Source: Authors Interviews with small firm managers/employers

### **3.4.3. Data Collection Procedure**

With the interpretivist approach to data collection, the researcher and the respondent are mutually interactive throughout the process and through this relationship they construct a collaborative account of what they perceive as reality (Edirisingha, 2012). The researcher should remain open to new ideas and not be restrained totally by his/her prior knowledge of the topic at hand. Hudson and Ozanne (1988) argue that “the use of such an emergent and collaborative approach is consistent with the interpretivist belief that humans have the ability to adapt, and that no one can gain prior knowledge of time and context bound social realities” (as cited in Edirisingha, 2012). The purpose of this section is to clarify the procedure the researcher adopted in the data collection phase of the research.

#### **In-Depth Semi Structured Interviews**

Interviews took place over a period of five months from December 2012 until April 2013. Interviews were conducted with managers and/or owners of the guesthouses. The objectives of the research were explained to them as well as the way the information or data collected would be handled and stored. All interviews were conducted face-to-face and all interviewees were asked if the interview could be recorded, to which they consented. All of the interviews went well once the initial tension was eased by making clear what the aims and objectives of the study were. The interviews were purposefully semi-formal in order to reach a high level of understanding and pleasant conversational atmosphere with the respondents. Many were interested in the topic and thus gave longer, informative answers. During the interviews, there was a conscious effort by the researcher not to engage in debate or provide responses. Once the data was collected, the next step was to analyse the findings.



### **3.4.5. Data Analysis Procedure**

In order to extract the rich information of shared experiences present in in-depth interviews, the researcher followed precise steps for analysing the research data. The researcher analysed the data collected through Piercy's (2001) modern take on McCracken's (1988) five step approach for in-depth interviews.

Piercy (2001) describes five steps to analysing data retrieved from in-depth interviews; each step of the analysis represents a higher level of generality. The first read through the transcripts should be dedicated to understanding the content and the second read should be for identification of useful comments noted as observations (Piercy, 2001: 3). In order to carry out these two main objectives of data analysis, the five steps offer insights into preparing written transcripts for the data analysis phase. The first step is to read the transcript, sorting through the information. The researcher should break the respondent's long soliloquies into paragraphs to note the break in ideas. Throughout the first step, notes should be taken during the reading in order to establish specific themes that capture what the respondent is speaking about (Piercy, 2001: 4). Essentially, this step is about sorting out the information into important and unimportant categories.

"In the second stage of analysis, observations are developed into preliminary descriptive and interpretive categories based on evidence presented in the transcripts, one's literature review, and the theory or conceptual framework used to guide the research" (Piercy, 2001: 4). The implications and possibilities of the observations found in the first step are more fully played out in the second step. Themes should emerge from the observations noted in the first step; these themes should be evident by key words written in the margins next to the transcript.

The third step is about developing these themes and focusing on connections in the observations. At this stage, McCracken believes that a field of patterns and themes should be visible (Piercy, 2001: 5-6). Connections should be written out in order for the researcher to have clarity.

The fourth stage of analysis involves a determination of further analysis of these themes by examining clusters of comments made by respondents and memos made by the researcher (Piercy, 2001: 6). The use of coding by way of themes should be used in an attempt to make connections between causes and effects. Through coding, the researcher should be able to acquire information about the subject's behaviour.

The final step involves examining all themes discovered through the other steps. This is accomplished through examining all the interviews and delineating dominant themes. These themes will fulfil the objectives of the study in that they will provide answers where needed and essentially providing a basis for writing up the data. "McCracken noted that at this stage, a researcher discusses the general properties of thought and action in the group being studied" (Piercy, 2001: 6).

From this method of qualitative data analysis, one can learn much about the meanings that the respondents attach to how labour legislation is affecting their business. The use of McCracken's process of analysing data ensures the construct and internal validity as well as the reliability of the research through the following elements. The process ensures validity and reliability through its capacity to develop an understanding of the social and psychological processes occurring from the employers' experiences through the direct casual observation and the mandatory recording of answers from the respondents. In every research process there is bound to be certain ethical considerations; the ones for this research are illustrated below.

### **3.5. ETHICAL CONSIDERATIONS**

Those involved in the research had full disclosure as to what the dissertation entails and they were ensured of anonymity if they so wished. It was also made clear to the participants that the research sought only to determine their perceptions through investigating the nature of the impact of labour laws on small firms and would in no way be an instrument in the process of legislative change. The researcher is fully aware of all ethical protocols surrounding the delicate and personal nature of relationships within small enterprises.

### **3.6. CONCLUSION**

This chapter sets out to explain the method for achieving the goals of the study. The research approach was examined; case studies were revealed as being the best research method given the qualitative approach and interpretivist methodology adopted in the research. The methodology section described the particular use of the case studies. Essentially, in-depth interviews were used in order to achieve a detailed account of the experiences of labour legislation by employers in small firms. In depth interviews were determined to be the best instrument for the context of employer's experiences as it acquires a detailed account of what employers perceive as reality. The method of sampling was presented as being the non-probability sampling; with the snowball technique being adopted due to the difficulties in obtaining interviews with some of the target population, as they either did not have time or did not wish to participate. The data collected via the research instruments was then analysed through the method that Piercy (2001) adapted from McCracken's (1988) approach to interviews.

# CHAPTER 4

## Small Firms, the Law and Informality

### 4.1. INTRODUCTION

This chapter delves into the analysis of responses that small firm employers have to the nature of the law and an analysis of the research done on small firm's characteristics. International research done by Edwards *et al* (2003) suggests that the impact of the law on employment practices and administrative costs are small. They state that there is evidence to suggest that the absorption of the impact lies within the very nature of the small firm and its most common characteristic – informality. The first section of the chapter is based around the research's findings. The nature of the LRA and BCEA and the employer's responses to the provisions contained in these Acts shall be the first tier of this section. The second tier shall include the findings from the nature of the small firm's internal characteristics. This section shall inform how the small firm's characteristics have a mediating effect on the findings in the first tier. The second section of the chapter deals with the analysis of the two-tiered approach to the research findings. The final section shall set out the sub-conclusions drawn from the analysis of the findings.

### 4.2. EMPLOYER RESPONSES TO LABOUR LEGISLATION

In the introduction chapter it was noted, for the first time, that the purpose of this thesis is to determine whether employment legislation is having a hindering effect on small firms in the hospitality industry. Therefore, it follows that there is importance in distinguishing the difference between a positive and a negative effect. On the positive side, the definition used throughout this dissertation shall be that, the employment legislation impacts on the business in a favourable way promoting the business to be better. This type of effect will be acceptable in the eyes of the employer (Edwards *et al*, 2003: 31). In contrast, the negative side, labour legislation would be said to be producing unfavourable situations which is

detrimental to the business. Also, this type of effect is seen as unacceptable and impairing the private justice the employer sees for their organisation (Edwards *et al*, 2004: 257). The employer's responses to key provisions of the LRA and BCEA are the foundation to determining the positive and negative effects of these laws. In this section, the different effects of the law will be discussed by way of examining the nature of the law and the employer's responses to the law. It is not the purpose of this section to determine whether the effects are negative or positive, this will be set out in the analysis section of the chapter. It was found that collective labour legislation did not play a role in impact on the firms, no experience was found with regards to trade union recognition, collective bargaining and bargaining councils. Therefore the following findings focus on the effects of the individual employment rights in the areas of: working time, minimum wage, annual leave, discipline, dismissals, employment contracts, labour practice and unemployment insurance.

Six out of the fourteen (42 per cent) of employers interviewed were somewhat confident with their knowledge of labour. The highest levels of awareness were firstly, surrounding employment contracts. This finding was different to what Blackburn and Hart (2003) found where the contract appeared only as the fifth highest awareness on their list of twelve individual employment rights. Their finding was that there was a positive relationship between the size of the firm and their awareness of individual employment rights. The awareness was essentially borne out of necessity states Blackburn and Hart (2003) and this is the case with the employer's awareness of the employment contract in this research. Most employers new about the employment agreement and perceived it as a protective measure for both them as well as the employee. The agreement stipulates the terms and conditions of the employment relationship therefore employers felt that it was a necessary administrative measure to protect both parties. Insistently, half of the employers agreed that along with labour legislation in general, employment contracts were a necessary basis and helpful guideline for the relationship. Also evident was a widespread knowledge of working hours, many employers would demonstrate their knowledge by reciting the amount of hours as found in the BCEA. With the common known nature of a guesthouse, that being that the employers and employees are on call 24/7, the possibility of employer's non-compliance with the working hour's provisions of the BCEA was not unforeseen.

*“Sometimes I find her in the house at 10 at night, but that’s her choice to do that. On many occasions you know we’ve said we’re happy to pull back and share her job with somebody else but doesn’t want it. You know...I think in the Macro sense we do comply with leave, sick leave, minimum wage we exceed with that quite dramatically, things like that. But working hours is probably our biggest non-compliance” (John, Owner/Manager, Edward House, 01/02/13).*

International research on the hospitality industry found that working time regulations were a problem many organisations faced (Adam-Smith *et al*, 2003: 32; Heyes and Gray, 2004: 222). Due to problems with adhering to working time regulations, the need for flexibility is eminent for the firm’s survival. Flexibility was found in the case of Edward House through having the worker live in and keeping no records of working time. There was a finding that supported a sense of private justice in trading non-compliance in one regulation with the over compliance in the other referring to John’s (above quote) statement on exceeding compliance with leave and wages. Another employer shared this view of private justice.

*“I try and be fair on the girls but I can’t listen to every little thing they (the labour inspectors) say” (Amanda, Owner/Manager, Moindis GH, 11/02/13).*

This take on labour legislation ties in with the nature of the small firm which shall be discussed further in the analysis section.

Three primary difficulties were explored in the research including; market competition, labour legislation, and government regulation. The greatest constraint for the small firms in these cases was market competition. Market competition was defined by the employers as their guesthouse competing with other guesthouses in their suburb and direct surrounding suburbs of Pretoria. The setting painted for the researcher by the employers was one of the guesthouse market being flooded by newcomers for various reasons such as; converting a house that was too big for two people into a guesthouse, a tactic to pay off the property, unemployment or even a hobby. From the researcher’s point of view, it is clear that there was no shortage of guesthouses due to the ease of gaining the cases for the research.

Market competition was stated as the main difficulty in running a guesthouse by 42 per cent of the employers followed by government regulation at 29 per cent of the employers. Government regulation is defined as any form of regulation set out by government which includes examples such as municipality regulations and/or government legislation. Employers believed that the municipality was unfair and too rigid with their regulations such as rezoning and property taxes.

*“Government regulation yeah it’s the local...it’s quite a difficulty we had to rezone here for a guesthouse which was a big issue it took a few months but it was approved” (Andrew\*, Owner, B&B in Hatfield, 04/03/13).*

Water regulations as well as prices were also cited as an issue hindering their businesses.

*“We all had to apply for consent use before 2010 and we are still struggling to get our consent use and the reason for that is that they seem to think that we have drainage problems....But they want us to put in pipe that go through the neighbour’s yard into the next street and that will cost about R100 000...We told them that we are not doing this, some people have done it just to get their consent use and we are going to stand up against them but unfortunately if they tell us to close down we will have to” (Ellenette, Owner, Elonda’s B&B, 25/03/13).*

Employers were clearly conscious of the local municipal costs that were impacting their businesses.

Labour Legislation was the least felt constraint facing the small firms that were interviewed with only 7 per cent of employers stating that they felt that labour legislation was the largest regulatory burden. The employer had had a negative experience in the past with a CCMA case not ruling in her favour. She had indicated at various points of the interview that labour legislation was an annoyance to her, with her ultimately wanting to hire and fire people before the probation period was over so that she never had to deal with the burdens again that came with having a permanent employee. She highlights and sums up her perspective of labour legislation in the following quote:

*“If they (employment regulations) were not there they oh my word, it would be so much easier we could hire and fire whoever” (Jutta, Manager/Owner, Muckleneuk Guest House, 19/03/13).*

She claims that because of the impact and complexity of labour legislation she has decided to use labour brokers and have them deal with the regulatory burden instead of her. Labour brokers therefore would be seen as a direct cost to the small firm. Not only has this firm endured direct costs but due to the negative experience of the CCMA case this has directly affected them in the sense that it has promoted more awareness on labour legislation. It has also had an indirect effect in that it has encouraged them into compliance, where they chose to pass that compliance off onto labour brokers.

It is argued that effects are mediated by, amongst other factors, the nature of the law (Edwards *et al*, 2003: 15; Gilman *et al*, 2002: 54). The effects discovered relating directly to the nature of the law included direct, indirect as well as affinity effects. As defined in the first chapter, direct effects are summarised as representing widespread knowledge of the legislation and acceptance thereof. One related direct effect found was the employers attempt to formalise procedures which ultimately proved costly on management’s time. Many of these small firms were actually homes before they were turned into businesses, often employees being there before the business came about. Subsequently, most procedures were highly informal and once the business was established the employers wished to formalise procedures, such as employment agreements.

*“...The one lady was our maid here and we were quite informal with her we decided to put in contracts and spell out all her duties and everything in there. Our things are now more organised” (Kevin\*, Manager/ Owner, Goodey’s Guesthouse, 12/02/13).*

The most commonly formalised process was disciplinary procedures where either the manager/owners would formalise the disciplinary code or they would seek external consultants to carry out the correct procedures for them. There was also a clear attempt to formalise procedural fairness for dismissals by 50 per cent of owner/managers. Although,



not all firms formalised procedures – this finding shall be discussed further in the next section. Some employer's (28.6 per cent) believed that the formalisation of policies and procedures for the sake of compliance cost manager's time.

*"It impacts on your time, everything that they do that brings more rules and regulation impact on the business" (Linda\*, Manager/ Owner, Waterkloof B&B, 11/02/13).*

All of the formalisation found had both negative and positive effects; however these findings shall be discussed in further detail in the analysis section of this chapter.

Indirect effects are those that are found from the encouragement from the presence of the different laws (Edwards *et al*, 2003: 16). One of the indirect effects found impacting on the Muckleneuk Guest House was a result of the CCMA case mentioned above, the process of that case provided more knowledge of the laws for the owner/manager and therefore this awareness lead to more formalised procedures in the firm.

*"We have had a CCMA case but I don't want to go into that it was a bad experience but yeah it was a negative effect definitely. But it opened up our eyes, that's why we got in this new company that is doing everything for us by the book" (Jutta, Manager/Owner, Muckleneuk Guest House, 19/03/13).*

There were 2 additions employers that had a similar experience of a CCMA case resulting in them coming out of the experience with knowledge gained about the law. However the two separate employers perceived the effects in contrasting ways. In the case of Leon and Ellenette from Elonda's Guesthouse, they never actually ended up going to the CCMA although they had received a notification of sit down. They paid her out what they were advised by a consultant and the case was dropped by the employee. This experience encouraged them to learn the correct disciplinary procedures and ultimately practice those going forward. In contrast, Goodey's Guesthouse owner, Kevin, contracted labour law consultants to carry out a disciplinary hearing when it was needed. It was observed that this employer had every intention of compliance with the law when it came to disciplinary matters and dismissals.

*“I have done a disciplinary hearing, I got people in, labour experts who facilitated things, that was the lady that used to work for us and that was about a year ago and because of the labour law how it is it was quite easy. The guidelines are laid out quite nicely...So in that perspective it was actually quite helpful... because the one lady was our maid here and we were quite informal with her we decided to put in contracts and spell out all her duties and everything in there. Our things are now more organised.” (Kevin\*, Manager/ Owner, Goodey’s Guesthouse, 12/02/13).*

An affinity effect is “between a firm’s approach and the direction of public policy” (Edwards *et al*, 2003: 16). This means that when an affinity effect is present there is no indirect or direct effect of the latter on the former. There were findings in the research that suggest that at least 57 per cent of the firms were affected by affinity effects. Four employers (35.7 per cent) claimed that they had formal productivity agreements, although this is not a requirement of the employment regulations. It is evidence that the employer’s implementing these productivity agreements are dually implementing a strategy to boost the productivity of their employee’s through remunerating them by way of bonuses, commission, and/or thirteenth cheques. The same four owner/managers also stated that all their employees have job descriptions in their employment contracts as a part of a performance management system. Job descriptions are regarded as an affinity measure, although it is not required by law presently in the hospitality sector, there is a possibility that in future job descriptions may become a requirement as they are already in for the mining sector (Department of Mineral Resources, 2014). Therefore the implementation of productivity agreements through job descriptions, bonuses, and 13<sup>th</sup> cheques are all regarded as affinity effects of public policy.

*“What we do is we give them a salary and a bonus according to the number of guests that we have for the month” (Ellenette, Owner, Elonda’s B&B, 25/03/13).*

Other areas where affinity effects were uncovered in the research were with leave provisions as well as the sectoral determination. Three employers’ (21.4 per cent) explicitly stated that they granted more than enough leave to their employees, this is considered to be an affinity effect because although they award more leave than legally needed, it is

possible that in future, leave provisions could be increased. Although there is an encouragement of public policy to give more leave than necessary, some may argue that the act of rewarding employees with more leave than necessary demonstrates a sense of private justice within the small firm and is characteristic of informality and flexibility. It was said by Edwards *et al* (2003) of small firms that “the tradition of informality was of central importance: firms mainly dealt with short-term family needs through uncoded and personal relationships”. As mentioned above, the theme of private justice shall be examined and discussed further in the analysis section of this chapter.

The purpose of the sectoral determinations within South Africa was to “establish minimum conditions of employment in sectors and areas where prevailing conditions were unacceptably low” (Klerck, 2008: 338). The findings in the research at hand demonstrated that 35.7 per cent of owner/managers believed that they pay their employees well over the minimum wage.

*“...minimum wage, we exceed with that quite dramatically” (John, Owner/Manager, Edward House, 01/02/13).*

With this finding, it is important to note that the employer’s also felt that the law encouraged them to plan their wages ahead of time, although linked to the above affinity effect finding, this particular finding is an indirect effect of the provisions for sectoral determinations within the hospitality industry. The findings of these direct, indirect, and affinity effects are said to be mediated by internal and external factors of the small firm. The next section shall examine the findings of possible internal characteristics that could have mediated the responses to the labour legislation set out in this section.

#### **4.3. CHARACTERISTICS OF SMALL FIRMS**

The internal characteristics of small firms have been argued to impact on the responses of small employer’s to employment legislation. There was a generic theme that manifested throughout literature on small firms that their most dominant internal characteristic was informality (Edwards *et al*, 2003: 31; Edwards *et al*, 2004; 261; Ram and Edwards , 2003:

720; Ram *et al*, 2001: 845). Informality in small firms has been defined as “a process of workforce engagement, collective and/or individual, based mainly on unwritten customs and tacit understandings that arise out of the interaction of the parties at work” (Ram *et al*, 2001: 846). Edwards *et al* (2003) states that throughout their research they have found that informality in small firms is measured through four indicators that is the management/worker relations, the formality of policies and procedures of the firm, the degree of the business being family run, and where the firm stands with regards to their labour relations in the small-is-beautiful debate. Therefore, the next section shall examine the four indicators of formality to lay out the research’s findings.

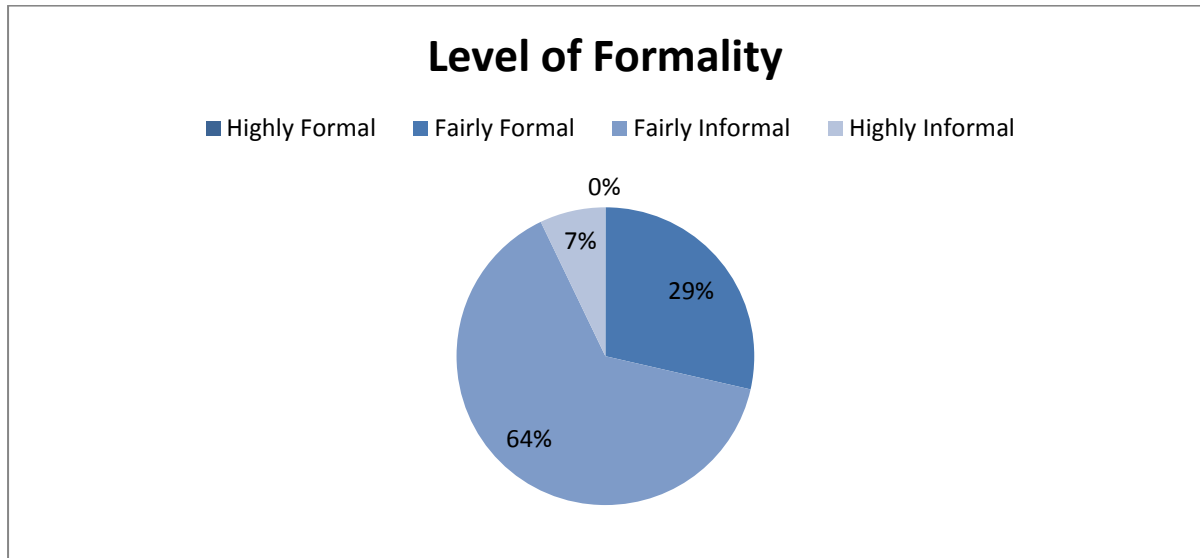
In figure 1 below, the small firm owner/managers rated the overall formality of the internal relations of their company. Most of the firms stated that they believed that their firm was fairly informal. This in part is due to the personalised relationship between management and workers. Not one employer believed their relationship with their employees to be a formal one. There were 5 (35.7 per cent) highly informal firms when it came to personalised relationships, one of the managers from Farmer’s Folly puts the informal, personalised relationship they have with their employees into perspective.

*“We’re a family, absolutely a family, we have breakfast together, if there is something wrong then I’ll call them and we’ll have a chat about it...” (Maria, Manager, Farmer Folly’s, 30/01/2013).*

However, not all formality is gone from small firms as six firms argued that they are somewhere in between formality and informality when it comes to personalised relationships. They tend to shy away from becoming too informal due to the potential consequences of losing the respect of their employees.

*“I would say our relationship is formal but informal at the same time. You know it’s a respect that you have for them but they must still know that you’re in charge” (Marlene, Manager/Owner, Loerie’s Guesthouse, 30/01/2013).*

**Figure 1. Level of Formality in Small Firms**



Employers do have a broad perspective of their own firm, however insofar as the firm is highly informal, the management/worker relations will be “based primarily on unwritten arrangements and tacit understandings” (Edwards *et al*, 2003: 31). 64.3 per cent of the owner/managers claimed that their relations with their employees are mainly based on these kind of understandings. Two other elements of highly informal firms are that they are expected to avoid formal procedures and they rely mainly on face-to-face understandings. (Edwards *et al*, 2003: 31; Ram *et al*, 2001: 845-6). Not all employers believed that they avoided formal procedures, 50 per cent believed that they had more formal procedures when it came to discipline and dismissal and a further 14 per cent believe that their procedures with regards to these two provisions was in between formal and informal.

*“Yeah that (discipline and dismissal) is kind of formal, if it were to happen there is a procedure to follow that I will keep to” (Nelia Smit, Owner/Manager, Oxnead Guesthouse, 20/03/2013).*

When it came to discipline, 10 employers had knowledge about the correct procedures to follow however, only six of those had experienced it. On the other hand, nine employers knew about dismissals and five have had experiences with dismissal cases. Despite the lower number of cases experiencing a dismissal (35.7 per cent) and/or disciplinary

hearings/warnings (42.9 per cent) there was a higher number of respondents claiming to have a formal procedure in place. Half the sample believed it is important to go by the law in this case, since dismissal cases are the most for small firms appearing in the CCMA, it is not surprising to find that employers formalised this procedure as it is again a protective measure against any future direct costs of labour legislation.

It was interesting find that most employers were not willing to elaborate on the extent of formality and would rather claim that their procedures were either formal or not. With regards to determining whether employers avoided all formal procedures it was discovered that they for the most part did, of all the procedures asked about only 31.75 per cent were formal. There were findings in other studies that small firms were less likely to be formalised but not completely operating in an informal manner (Bartram, 2005: 141; Edwards *et al*, 2003: 32).

When it came to face-to-face understandings, three (21.4 per cent) employers openly admitted to solely relying on this type of communication. Nine (64.3 per cent) employers had stated that there were times that they did and other times they relied on more formal methods. However, both sets of employers believed that on a daily basis they relied on face-to-face job instructions with their employees. Stemming from face-to-face understandings and avoiding formal procedures, a firm shall also be expected to purposefully avoid explicit statements of rights and duties. In the above discussion on face-to-face understandings it was discovered that 64.3 per cent of employers argued that they have contracts that dictates clear job descriptions for each of their employees.

In the literature on small firms there is a casual link drawn between a firm being 'more' informal and family run businesses (Edwards *et al*, 2003: 32; Gilman *et al*, 2002: ). It was found that if the business is family run it is more likely to be informal in contrast to firms the same size not run by family. In the research at hand, 57 per cent of the firms had at least two members from the same family working full time. In all instances this was husband and

wife running the guesthouse. In 50 per cent of these cases the children of the owners also helped out part time with the guesthouse.

*“My family helps out, my one daughter in law does all my e-mails and all that for me and she also does the EFT’s” (Eileen Kania, Owner/Manager, Velvet Gardens B & B, 22/04/2013).*

Linda from Waterkloof guesthouse has elements of a family run business however mostly operates the guesthouse by herself.

*“...when I go on holiday I call my son and his girlfriend then they have to do it. Sometimes my husband will help me but not really but you can say that I am doing most of it but I can depend on one of my children to come and look after the place for the weekend they can do it. But mainly I do it, if there is a problem in the shower or something my husband will help me but not often” (Linda\*, Manager/ Owner, Waterkloof B&B, 11/02/13).*

The element of flexibility is evident amongst using a family member instead of one of the employees to look after the business when the owner/manager is away. This may not be the case in larger firms where the absence of the owner does not necessarily warrant a replacement but rather the employees alone can run the business. This speaks to the inherent flexibility and inflexibility of the situation of small businesses. In the one sense it is flexible due to the owner’s ability to chose a family member to look after the business however in contrast the small business is inflexible compared to the large firm because the absence of the owner/manager warrants a replacement where in a large firm it is unlikely that the absence of the owner/manager would necessarily require a replacement. Essentially, the importance and dependency on the manager highlighted here also points to a dominant theme in the research surrounding the topic; managers in small firm’s have sole discretion over employment decisions. Managerial discretion is common within small guesthouses, in the research all guesthouse owner/managers believed that decisions were solely up to their discretion (Wilkinson, 1999: 209). The findings shall be analysed further in the following section.

Managerial discretion, as discussed in chapter one, can be an element that leads to small firm relations being either beautiful or a bleak (Tsai *et al*, 2007: 1780). The bleak house argument holds that the authoritarian management style of small firm employers leads to a dictatorially run working environment and ultimately the employees will lack job satisfaction and security. In contrast, the beautiful side argues that rather it is a more family like environment where there are harmonious relationships that lead to high job satisfaction and a sense of job security (Edwards *et al*, 2006: 709; Tsai *et al*, 2007: 1781). In the research done on small firms in this dissertation, the employer was the single side interviewed. Therefore, the findings demonstrate only their perspective on the elements of the debate.

The inherent nature of the tasks in a guesthouse is monotonous. Daily, tasks need to be repeated. Therefore, it was likely to find that employers would be stating that either they have daily schedules or even a formality such as checklists. However, 42.9 per cent of employers expressed that they did not have a stringent level of formality in that respect, that there was no sort of checklist or set schedule. They believed that it was a rather erratic schedule where tasks would be given on an ad hoc basis. John from Edward House demonstrates the level of informality with employee relations as well as the ad hoc daily tasks that arise in guesthouses.

*“You go into the hotels and on the back of the doors there’s a whole checklist that you’ve got to clean the toilets every 8 hours so you see what has been cleaned, we could never run like that it would be crazy. We are too small again, you know there’s none of that utilisation like I said we clean it once a day but sometimes twice a day and even three times a day you know if people are here and they’ve got visitors and they make a mess in the toilet you’re not gonna wait two hours to clean it, it must be cleaned immediately” (John, Owner/Manager, Edward House, 01/02/13).*

Although this demonstrates a level of variety in schedule in tasks, it speaks to the lack of variety in the task itself. It also demonstrates the level of control the employer has over what the employee is doing with their schedule of tasks. It was established that the employer is very much in control of decisions when twelve out of the fourteen firm’s



employers believed that all decisions, in context of the organisations procedures, were at their sole discretion.

The lack of formalised performance management seen in the small firms in this study with no firm's offering formal performance appraisals or set career development paths it could be said from the bleak house perspective that there is evidence of degeneration into over-control of employees through solely informal/in-house training. In defence of the beautiful perspective it was uncovered that 21.4 per cent small firm's employers felt that it was necessary for their employees to learn transferrable skills. The employer from 40 on Ilkey demonstrated her passion for training her employees on transferrable skills specifically.

*"...people must leave my service with more skills then they entered with, I do believe in training anything from worm farming, to training with flies what is their habitat, with such a lot of flies it is important to know where the source is and do training in the kitchen and functions...I will also let them do things such as painting and dying fabric just to break the daily procedures and I also ice cakes with them and it's something they can take pride in" (Daniel Muller, Owner/Manager, 40 on Ilkey B&B, 31/01/2013).*

This finding is evidence of this specific employer's desire for the employee's satisfaction and participation in the business. There is a component of consideration for the employee's future after the current employment.

The findings of the two ends of informality amongst labour relations in the study have posed interesting results. It has been made repeatedly known that the filtering effects of the characteristic of informality ever so present in small firms is fundamental to the measurement of the impact that labour legislation has on small firms. In the next section, the exact nature of those filter effects shall be analysed.

#### **4.4. THE MEDIATING OF THE EFFECTS OF INFORMALITY ON EMPLOYMENT REGULATIONS: AN ANALYSIS**

The central argument of this chapter, put clearly, encompasses the idea that the nature of the small firm, specifically the characteristic of informality found within many small firms, absorbs much of the impact that the firm feels from labour laws. The following section of the chapter shall examine the four indicators of informality as mentioned in the previous section and analyse the effects the law has on the small firm taking into consideration the absorption that these indicators have on the overall impact of labour legislation on the firm. From this analysis shall determine the negative and positive effects of the law which shall be discussed in the sub-conclusions section.

The first indicator of informality, as described above, is the relations between management and workers. It was found that 64.3 per cent of the cases perceived themselves as fairly informal. Almost all firms were weary of becoming fully informal and having heavily personalised relationships with their workers due to respect issues however they also did not want to go as far as calling themselves formal with their relations with their employees. The 64 per cent of the small firms mentioned above had elements of highly informal firms where they would rely solely on unwritten arrangements. These unwritten arrangements were inclusive of instructions for their daily duties and working hours. As mentioned in the findings section, some employers chose to not comply with working hours due to the working nature of a guesthouse being on call 24/7, a problem that many hospitality firms face. The owner/managers whom admitted to going over working hours also stated that they exceeded compliance in other areas such as leave and the sectoral determination. This is evidence of their private justice. They argue that it is ok to comply in the 'macro' sense because they over compensate in other areas. They had face to face understandings and unwritten arrangements with their employees about the trade off and therefore these firms could secure internal numerical flexibility through the adjusting of working hours and wages.

The provisions of working hours do not impact on these small firms because the manager/owners does not allow them to by either letting employees work longer hours through a trade off of leave and/or higher wages or by doing the employees work themselves (after hours). This is characteristic of affinity effects of the law however they are not negative effects. The employer does not regard the effects that the provisions of working time are detrimental to the business. It is absorbed through their informality of management/worker relations.

The second indicator of informality in firms is the level of formality of the businesses policies and procedures. Discipline and dismissal procedures were the most common (50 per cent of the cases) to be formalised. By evidence of observation and through the answers given to the researcher it was determined that if the procedures were followed by the employer for discipline and dismissal, it was timely but not overly burdening on the businesses. Thus, 57.1 per cent of employers found that hiring and firing regulations were fair and effective and at the same time not detrimental to the firm if the correct procedures were adhered to. It can be argued that the employers have significant external numerical flexibility if correct policies and procedures are in place in the firm. Formalisation of policies and procedures in the small firms, as discussed in the findings section, is a direct effect of the law. It was perceived as negatively impacting on owner/manager's time by 21.4 per cent of the cases. These few employers believed it was a waste of time to have to constantly keep updated with the regulations. Formalising their procedures was perceived as impacting on their time they could be spending on the business. However, there is another view that formalisation also has a positive effect on a business (Edwards *et al*, 2003: 33). As argued by Edwards *et al* (2003), formalisation of procedures and policies is an indication of acceptance of employment laws. It was stated by 28.6 per cent of employers that labour legislation was a good guideline and provides a stable and structured approach to employment relations for them.

Thirdly, this research is in line with Ram and Edwards (2003) research highlighting the importance of familial networks in the flexibility that they bring. Seven of the nine

employers, whose business was run by two or more family members, were fairly informal. Family-run businesses were more common than their counterparts were. It was demonstrated in the findings section that flexibility was secured through relationships with family, there was a clear dependency on the knowledge that family members had of legal regulation. The flexibility allowed by nepotism absorbs the shock financially by relatives stepping in for the owner when they are away but it also absorbs the effects of labour legislation where the employers would have had to pay for legal costs when an industrial relations issue arises. More evidence backing up that family-run businesses were able to absorb the costs of legal fees is when the employer from Muckleneuk (not a family-run business) claimed that she did not have the necessary knowledge of the law and therefore had to prescribe to legal services. Ultimately, family-run owner/managers regarded the nature of their relationships with family as a benefit to their respective businesses insofar as it mediates external consultant costs.

The fourth indicator of informality is where the firm stands with regards to the labour relations debate. The debate in the literature structures around an analysis of three elements as examined in chapter 1 these are; job autonomy, job quality and job satisfaction.

With regards to job autonomy, it was discussed in the previous sections of this chapter that 35.7 per cent of employers avoided explicit statements of rights and duties in their contracts, purposefully leaving them vague because of the nature of work in a guesthouse. In small firms in the hospitality industry, work is often found to be erratic and therefore employers use the tactic of leaving duties vague to protect themselves from claims from employees. Four employers (28.6 per cent) ventured to say that they worded the contracts like this because work within the guesthouse is ever changing. They rather rely on face-to-face understandings with employees than have their duties expressed in writing. However, the work changes every day so 57.1 per cent of the owner/managers believed that they rely both on the formal employment contract and on face-to-face communication of daily duties. Essentially this speaks to the level of job autonomy in these small firms. The task schedules are constantly changing on a daily basis to meet the needs of the customers.

Scheduling of tasks is typically left up to managerial discretion. Managerial discretion is a key part of the labour relations debate and in the instance of job autonomy it is clear that the managerial control had elements of dictatorially run firms. In addition to the perspective of a bleak house, the tasks in the guesthouse carried out by employees were observed by the researcher as being monotonous and unchallenging creative wise.

With regards to job satisfaction, workers are mainly informally trained for their duties, only 21.4 per cent of employers were found to train their employees with transferrable skills. The extent to which the jobs within the guesthouses allowed for personal growth was clearly low due to the monotonous and unchallenging work creative wise paired with lack of external training in all firms.

#### **4.5. CONCLUSION**

The objectives of the chapter was to firstly to investigate the nature of the legislation, with a central focus on how the BCEA and the LRA are affecting small firms, and a minor focus on other labour laws. Secondly, to provide an analysis of the nature of the small firms, with a focus on the extent of the informality element found and the overall sense of employment relations discovered in order to determine the extent of numerical and functional flexibility present within these firms. Summarised, the chapter discovered that although regulations such as leave, working time, discipline and dismissal affected the small firms the most, however negative effects from these provisions thereof were minimal due to the mediating impact of the characteristic of the small firm, namely, informality. The the employers perspectives on the effects of labour legislation in small firms is the next mediating effect to be analysed.

# **CHAPTER 5**

## **AN ASSESSMENT OF THE PERCEPTIONS OF LABOUR REGULATION**

### **5.1. INTRODUCTION**

The previous chapter focused on determining the extent and nature of the impact that key provisions of the labour laws are having on labour relations practices in the small firm along with examining the degree to which the existing regulatory framework of labour legislation allows for numerical and functional flexibility in these small firms. In order to conduct a holistic assessment of the effects that labour legislation is having on small firms, it is imperative that the dissertation touches on another mediating factor that is the mental image of the law which managers and owners of small firms hold of labour legislation. It is the objective of this chapter to explore employer's perceptions of labour legislation and the extent of compliance with statutory provisions. This shall be achieved through determining the employer's compliance with the labour regulations through linking their comments about the effects of the law with direct experiences, supported by an examination of their impressions of the costs and benefits of the labour laws.

### **5.2. PERCEPTIONS OF THE COSTS AND BENEFITS OF LABOUR LEGISLATION**

Edwards *et al* (2003) has a structured framework for the assessment of the costs of dealing with employment regulations. As discussed in literature review, this assessment distinguishes between three potential burdens of labour regulation namely; direct administrative and other compliance costs, constraints on decision-making, and the impact on competitiveness (Edwards *et al*, 2003: 59). The costs of competitiveness shall be analysed in the following chapter along with a discussion on market conditions of the industry.

Employers in this research were asked multiple questions on the various categories of potential regulatory burdens. However, the aim of the following section is to explore the findings on employer's perceptions of the costs and benefits of labour legislation. The analysis section shall embark on an analysis of the following findings.

One of the goals of the research is to determine whether labour law disproportionately burdens small employers. Analysing the direct costs of labour law is an essential part of this goal. Employers were asked whether they believed that labour law places a disproportionate burden on their business. Eleven owner/managers believed that labour legislation was not burdening their small firm.

*"No I don't see it as a burden...on my decision making processes" (Daniel Muller, Owner/Manager, 40 on Ilkey B&B, 31/01/2013).*

Only half (7) of the employers interviewed elected to answer whether the labour law impacts on the speed of their decision-making processes, three of these employer's stated that it does not affect their decision-making at all. Two employers insisted that labour legislation did impact on the processes of their decision making. Those who answered yes believed that they have to take time out and plan for upcoming minimum wages and other payments such as UIF and OHSA.

*"You have to sit down and think about what you are going to do, you can't just do something in the spur of the moment, you have to follow the rules" (Jutta, Manager/Owner, Muckleneuk Guest House, 19/03/13).*

Looking at whether the presence of labour legislation led to the employers making different decisions than they would have taken in its absence, it was found that 64.3 per cent of employers stated that they would do nothing differently. This claim is highly unrealistic as many of the provisions have administrative requirements attached to them therefore these would disappear if the law was not there. Disregarding these administrative requirements that would obviously fall away, employers insisted that they liked the inherent fairness of

legal regulation and would not like it if it was not there. The other 35.7 per cent of the employers noted that they would change regulations such as leave, working hours, contracts, discipline and dismissals.

*“If they were not there they oh my word, it would be so much easier! We could hire and fire whoever” (Jutta, Manager/Owner, Muckleneuk Guest House, 19/03/13).*

In the literature review, it was established that perhaps there were cost constraints on small firms, especially when it came to hiring and firing in South Africa. However the findings in this research ties up with Edwards *et al* (2003) research insofar as the small firm keeps proper records and follow the correct procedures there is freedom to dismiss. This finding shall be unpacked further in the analysis section.

Edwards *et al* (2003) argue that if regulation drew a manager away from other productive activities, then it could be seen as a cost. This was one of two costs that were elected as the “most” burdening. Ten (71.4 per cent) employers chose to respond to the question about management’s time being seen as a cost and four employers regarded their time as being negatively impacted by labour legislation. One employer stated that she has to

*“go sit on the internet and read about the labour laws because I don’t understand and the government gazette, it is so hard to understand!” (Maria and Patricia\*, Managers, Farmer’s Folly Guest House, 30/01/13).*

Administrative work for the regulations such as UIF and OHSA, was mentioned by one employer as negatively impacting on their time. However, four employers said that there was no impact on their time when it came to labour legislation. With the increase in administrative workload, the six of respondents believed that the administrative side of labour legislation either affected them a little or it fully affected them. Most believed that it was only a small amount of administration surrounding labour regulations and these employers complied with the UIF and OHSA. Some were reluctant to say that it had any impact on their business; they stated that it did not keep them busy for hours or months.



The costs of complying with the UIF and OHSA were partly through administrative work and managerial time.

*“It (labour regulations) impacts on your time, everything that they do that brings more rules and regulation impact on the business. It is definitely an increased administrative load as well” (Linda\*, Manager/ Owner, Waterkloof B&B, 11/02/13).*

Most managers did not place a high priority on the costs of legal advice, which coincides with the research done on small firms (Edwards *et al*, 2003: 63). 64.3 per cent of employers held that if labour legislation was costing them, it was a necessary cost and that it was essentially not seen as a burden. Most employers relied on their own knowledge of the law rather than spending money on legal services. Only in one case were the cost perceived to be high for legal services because they were the only ones who obtained a monthly subscription. This cost was perceived as a negative effect by the employer due to a lost case at the CCMA. Working time regulations was mentioned several times as being a difficult provision for the guesthouses to comply with. However, in most instances when it was a major difficulty it was found that employers simply ignore the regulation, thereby evading the potential costs.

Putting estimates on the costs of a firm is a complex undertaking when a cost can also be a benefit. For example, although as described above there has been costs to employer's decision making can be both a benefit in regards to efficiency as well as a burden with regards to time and freedom.

It was discovered that although the costs of labour legislation were minimal, employers did not see many benefits to it either. In this case, an enquiry into what employers perceived as the benefits of labour law ensued. The employers were thus asked whether they saw any benefits in making cost-benefit calculations, whether the law encouraged them to plan more efficiently or encourage innovation, whether they saw labour legislation as pushing

them in a direction that they wished to go, whether it pushed them into business modernisation, or perhaps it made them adopt more formal labour relations procedures.

There was only one benefit found to be agreed upon by 8 employers, this was planning more efficiently because of labour legislation. The majority of these employers argued that it did make them more efficient because they could plan for wages ahead of time and cost things effectively. The employer's decision-making behaviour in the instance of wage planning was observed by the researcher as being the most significant benefit of labour legislation.

*"...that is the one thing...I think it does make us plan in a more long term way, especially for wages" (Linda\*, Manager/ Owner, Waterkloof B&B, 11/02/13).*

But what was interesting with their view of benefits overall is that 9 out of the 14 employers believed that there was at least some benefits to labour regulation, but when asked about benefits that affect them they were rather unenthusiastic about it. Rather half of the cases decided that it mainly protects the employees and this benefits them in the way that it either keeps them organised and "on top of things" (Amanda\*, Manager, Peter's Guest House, 31/01/13). Only two employers thought that it improved their decision-making processes and three owners/managers argued that it promoted business modernisation, formal labour relation procedures and encouraged innovation. An 92.9 per cent of cases thought that labour legislation did not push the firm (either at all or in the right direction), that it did not at all encourage business modernisation essentially because the guesthouse was too small an organisation for that and that it did not encourage innovation in any sense.

*"I don't think it has pushed us in any direction and it hasn't made us modernise the workplace so I don't see any benefits, not at all" (Marlene, Manager/Owner, Loerie's Guesthouse, 30/01/2013).*

One benefit that 35.7 per cent of employers believed that it did encourage them to adopt more formal procedures in organisations. In the perceptions of only 2 employers was

formalisation coming from a positive influence (of labour legislation). Some of these cases implemented more formal procedures from having a negative case affect their business.

### **5.3. CONTRASTING PERCEPTIONS**

In research done by Edwards *et al* (2003) it was argued that perceived negative effects of the law by employers may be exaggerations. It is believed that it would be wrong to argue that a negative comment of labour legislation was necessarily borne out of reality (Edwards *et al*, 2003: 35). The rhetoric-reality gap is a common device used to determine where people use a 'rhetoric' which has no basis in reality (Edwards *et al*, 2003: 36). An example of the rhetoric-reality gap is when management claim that they generate empowerment through teambuilding but in reality do very little. Therefore the gap in this case is in the absence of the action (to get employees to partake in teambuilding) after the specific claim to do something has been made. In the context at hand, a gap would mean that although the employer states that their business is impacted by provisions of labour legislation; in reality they have no experience to back this claim up. In the following section, perceptions of labour legislation shall be explored insofar as to detail employer experiences with the law and its perceived effects.

In the case of the employer from Muckleneuk guesthouse, it was clear that she perceived labour legislation as having a large negative impact on her business more so than any of the other 13 employers. She mentioned (see above quote) that she wished that she could just hire and fire any employee she wanted in her own way. The negative impact was a result of her non-compliance with the provisions of procedural fairness with dismissals. She felt that her freedom of action was the overall constraint on her firm. She also believed that if she had a better knowledge of the labour law she would be able to carry out the right processes but she claims to not have enough time to read about the correct processes. Therefore, it is suggested that if she absorbed the impact of reading about the provisions for procedural fairness when it comes to dismissals there would be substantial freedom to dismiss.

There was a similar experience of dismissal in Elonda's guesthouse as well, which the employer's perceived as a negative effect. It was determined that they had dismissed an employee, they had followed the correct steps (as determined by the researcher) however they believed that they did not have enough hard evidence to provide at the CCMA. They received notice of a sit-down and made a decision to pay the employee what they wanted in an effort to avoid the CCMA. As in the employer's case at Muckleneuk guesthouse, it was the lack of knowledge of the correct procedures. Again, if the employer had the necessary knowledge of the provisions for dismissals the case would have not been a negative experience.

#### **5.4. SUB-CONCLUSION**

The main sub-conclusion of this chapter was that although employers in these cases did not fully comply with the provisions of the labour law, the costs or perceived negative effects were not enough to warrant an in-house expert.

#### **5.5. CONCLUSION**

The objective of the chapter was to examine the perspectives of the employers in small firms and the extent to which they are complying with legislative provisions. It was argued throughout the chapter that employer's perceptions of labour legislation can have a mediating effect on its impact. Through determining the perceptions of compliance with employment regulations it was determined that many are in non-compliance due to a private justice system. When they see that labour legislation cuts across the grain of what they perceive as fair it is ignored.

# **CHAPTER 6**

## **EMPLOYERS STRATEGIC RESPONSES TO LABOUR LEGISLATION**

### **6.1. INTRODUCTION**

This chapter involves the last tier of the Edwards *et al* (2003) framework for analysis of the effect of employment regulation in small firms which included an examination of the firm's competitive conditions. Firstly, the market context of the cases is explored through a discussion on the findings of the specific conditions. Secondly, the costs of labour legislation with regards to competitive advantage are discussed. Thirdly, the findings on small firm's use of strategic responses to labour legislation for competitiveness are examined. Fourthly, the implications of the strategic responses are analysed in light of the firm's market context. Lastly, the final section shall set out the sub-conclusions drawn from the analysis of the findings.

### **6.2. THE MARKET/COMPETITIVE CONTEXT**

Firstly, employers were asked about the nature of competition in their sector, the dynamics of their sector, whether they felt that there was room for growth in their specific business and whether they felt any impact from the recession. It was discovered that four employers felt that their sector was over-populated, essentially that there was extensive competition. On the other hand, some employers had the perception that they did not compete against others but rather helped one another out. If they were fully booked, they would refer guests to another guesthouse and that guesthouse would reciprocate the favour when they were in the same situation. There were two other employers who felt they were established enough in the market that they did not feel that competition impacted them in any way. It

was found that those with more market share were least likely to perceive they were in competition with others.

*“Market competition we haven’t got because we are in a fortunate position because we’ve been in business long and we are very ideally situated, I mean we are next to the University sports grounds and high performance centre and on the edge of town and next to the highway” (Andrew\*, Owner, B & B in Hatfield, 04/03/13).*

It is also important to note that some chose to operate within the niche market of self catering/bed and breakfast or simply just bed and breakfast. The hospitality sector it is a highly competitive one in nature due to the ease of entry into the industry. According to 21.4 per cent of employers the sector is also a dynamic and volatile one. Pretoria is populated with many small guesthouses as well as large hotels, which cater mainly for business and international guests.

Over a quarter of the cases felt that they were either at their potential or that they did not wish to grow their business. This was perhaps a characteristic of many of the types of owners of these kinds of businesses or the limitations on growth in the industry. Over half of the owners/managers were found to be housewives who opened a guesthouse for a hobby.

*“Yeah for us it’s almost a hobby. We’re not very business orientated” (Ellenette, Owner, Elonda’s B&B, 25/03/13).*

However, two respondents thought they could expand their business significantly if they had more access to finances. In the literature, financial stringency was one main barrier to growth in small firms (Broughton, 2012: 1). Broughton (2012) asked employer’s in the UK what their major barriers to growth were in their business in an attempt to determine whether the employer’s thought that labour regulation was a problem in light of the controversial Beecroft report on employment law which sought deregulation (Broughton, 2012: 1). In the case studies done for this research, it was found that the main problem that

employer's had (if they wanted to grow their business) was obtaining finances. Whereas in other research of other countries discovered that the main problem was the economy. Employers were also asked directly about how they have been affected by the recession. Four of the respondents felt that they were in some way impacted by the recession. These employers believe that they were impacted as an indirect impact of their customers being impact. In other words their customers were becoming more money conscious and therefore would not stay at the guesthouse perhaps as often as they used to. Therefore as a result they had to withhold on increasing their rates. The owner of Waterkloof guesthouse thought that the reason her/his business did not experience an impact was because of loyal guests and because of the nature of long stay self-catering.

*"You know what I don't think I have been impacted by the recession but I think because I have these clients that stay for a while... I haven't been impacted because of the people because of my existing clientele. They stay over long periods otherwise I would have definitely been impacted. (Linda\*, Manager/ Owner, Waterkloof B&B, 11/02/13).*

The impact of the recession was felt minimally by almost half of the respondents, yet they did not provide reasons why they thought this to be the case. One employer thought that he had not been in business long enough; therefore his business had not felt any impact at all. A financial squeeze on the firm, such as a recession, was mentioned in the literature as being exaggerated by pressures felt from labour legislation (Broughton, 2012: 1). However, even those who proclaimed that they were low income earners, the impact was not exaggerated by this. In the next section, the extent of how the market context and labour legislation together affects the competitive advantage of the small firm will be explored.

### **6.3. COSTS TO COMPETITIVE ADVANTAGE**

This section is responsible for analysing competitive advantage as a cost. According to Edwards *et al* (2003), competitive advantage "is conveniently approached by considering firms' overall perceptions of the burdens of employment regulation". Therefore the

following section shall set out the overall effects whilst using the firms' market context to identify the possible costs (of labour legislation) to their competitive advantage.

The researcher asked the employers to rate the overall effects that they believed labour legislation had on their respective firms on a scale of 1-10 (1 being weak effects and 10 being major effects). Table 4 below is based on their responses given.

**Table 4: Overall employer assessments of the effects of labour legislation.**

FIRM	IMPACT (1: weak to 10: major)
40 on Ilkey	No effect
B&B in Hatfield	5
Edward House	No effect
Elonda's B&B	No effect
Farmer's Folly GH	5
Goodey's GH	5
Loerie's Nest B&B	7
Moindis GH	Do not know
Muckleneuk GH	10
Oxnead GH	4
Peter's GH	7
Velvet Gardens B&B	1
Villa la vie GH	5
Waterkloof B&B	Do not know

Source: Authors Interviews with small firms managers/employers

The following points stand out:

- 5 Firms either saw a weak effect or regarded the law as not affecting them in any way
- 4 Firms felt that the effects fell in between
- 2 firms felt that it was more towards a major impact



The researcher found that just short of half (42.9 per cent) of the owner/managers did not believe labour legislation affected their competitive advantage in a negative way. However, two employers argued that labour law would affect competitive advantage because enforcement of the law is lacking and therefore some of their competitors are getting away with paying their workers little and making them work longer hours. They implied that this impacts on their own competitive advantage if they must follow the rules.

*“I think it is very difficult to compete in the market with people who are not going by the same rules” (Daniel Muller, Owner/Manager, 40 on Ilkey B&B, 31/01/2013).*

It is important to note that all costs that are analysed here could easily recur as arguments of impact on minimum wage, for instance, issues concerning managerial time and the speed and nature of decision making can be linked back to also impacting on competitive advantage. Part-time and temporary workers can be a strategy or method of coping with the impact of labour legislation; this can be for various reasons one including for a competitive advantage. However, the employers in almost all cases unanimously agreed that they did not use part-time or temporary workers in response to labour legislation. The use of part-time workers was rather for other reasons. It was interpreted that the reasons for hiring these types of workers was due to the workload available, in other words the workers were part-time due to the lack of work they had for them. Nine of employers the felt that labour legislation did not force them in any way to use this form of the employment relationship.

#### **6.4. STRATEGIES FOR COMPETIVENESS**

The business strategies of small firms proved to be not overly methodical and consistent. Many employers believed that their business strategy was having a quality product, a good price, and retaining superior staff. Although these are common business strategies, they lack diversity and innovation. That is not to say that some guesthouses did not try exceptionally hard with their business strategies to differentiate themselves from their competitors, but whether these strategies were in response to labour legislation is a different question.

Therefore, the focus will be on whether employers have business strategies in their firms and if they exist, where they originated from.

The employers were asked to describe their business strategies in general and to explain how they would expand their market share in particular. Five employers chose to comment that they do use specific strategies to gain customer loyalty; these were through having a competitive price for their product, a quality product and a good staff to deliver that product. In addition to these strategies, one employer added that he pays his employees well as a strategy because he knows that if they share in the wealth of the business that they will feel loyalty towards it. In the words of the employer

*“if they share in her prosperity then they’ll be loyal and hard-working” (Andrew\*, Owner, B & B in Hatfield, 04/03/13).*

Five employers felt that there was no need for them to have strategies as they had been in the business so long and therefore had a loyal customer base. It was felt by these employers that if they were to advertise more to gain a larger market share that they would not be able to accommodate more customers. One of these employers state that they

*“don’t have any form of business strategy” (NeliaSmit, Manager/Owner, Oxnead Guest House, 20/03/13).*

However, some people felt that they could widen their customer base to more international or tourist customers. Several people believed that if they renovated their guesthouse to make it larger, they could grow and increase their market share. Access to finances, a barrier to growth, limited them in this endeavour. On the surface, several of the business strategies present did not indicate a link between labour legislation and the actual strategies used. When asked about what influences cost structures, employers stated that it was raising administered costs rather than labour costs that influenced their decisions.

It is important to examine whether employers regarded labour legislation as changing anything with regard to their internal practices; essentially, whether they were pushed in

any direction and their reaction. It was noted in the literature review that if a manager is forced to respond to something through circumstances then it is not a strategy, rather only when he or she have a choice in the matter will it be strategic. Half of the employers felt that the law had not changed anything in their business; they felt no pressure or impacted by it negatively. The others who regarded the law as changing their business in some way mainly saw it as altering procedures to a more formalised setting, but they found the law to be beneficial in that way and that they had gained more awareness through the necessity of implementing more formal procedures. Although the law may have added more awareness and formality to the guesthouses in the case study, there was no evidence that the changes forced the firms in a way that they would have to develop strategies to offset any costs of the changes. This finding was reinforced when employers were asked whether they had any coping strategies for offsetting costs. 78.6 per cent of employers believed that they did not have a coping strategy whatsoever when it came to labour legislation essentially because they either did not find it a burden or it did not have a negative effect on their business and therefore they did not feel the need for a specific strategy. The manager from Peter House summarised saying that they

*“don’t find labour laws a burden; so... I don’t think it would apply” (Amanda\*, Manager, Peter’s Guest House, 31/01/13).*

Managerial control strategies can mainly be seen in the personalised relationships between the workers and managers. As noted in the informality section of the previous chapter, the personalised relationships in these firms tended to be fairly informal and that there was some sense of private justice within the firm. However, it was also noted that managers believed that they should not be highly informal with their staff so that they forget who the employer is and who the employee is. Their strategy for control lined up with one of the four categories of employer control; namely, benevolent autocracy. Where employers are cautious of becoming overly friendly with their staff specifically to the extent of fraternalism to ensure proprietorial authority is not undermined. The environment of a guesthouse is one of direct control; also the size of the guesthouse allows the employers to easily have direct control over employees examining every task they perform.

With regards to employment policies and practices, employers predominantly felt that long-term strategic described their business practice. They tended to like to plan for the future, to keep employees for the long term to avoid having to train new employees all over again. They acknowledged that if they took an employee on, who they could not have long term, this may increase their costs. But it was discovered that 78.6 per cent of employers felt that they did not have a strategy and therefore that would mean they thought about things on a pragmatic basis. There were also manager/owners who thought that they had to make both long term and short term decisions about employment practices depending on the situation. One employer even took a highly strategized approach to employment and said that,

*“in this industry, a guy should not be in this job for more than five years, people get itchy and bored which is not good” (Daniel Muller, Manager/Owner, 40 on Ilkey B & B, 31/01/13).*

She would thus not employ someone for more than five years in case they became careless or lethargic in their daily tasks. In the first question asked with regards to strategies, employers stated that they mostly had general business strategies for retaining customers and the rest did not develop any strategies at all. However, when it came to employment policies and practices, half the respondents strongly believed that they were long term strategic and a further three thought that they fell in between showing that there is a higher level of strategy than one would presume. Moving to the next section, specific strategies will be singled out to get a more detailed grasp on the impact of labour legislation on the small firm.

## **6.5. STRATEGIES IN RESPONSE TO LABOUR LEGISLATION**

As it was mentioned in the previous chapters, the knowledge of employers tended to be extensive in areas such as dismissal, discipline, working hours, minimum wages and leave. Awareness about labour law in general was on the rise and with that came more formalisation of procedures. Whether employers consciously set out to cope with effects

from labour law is important to note for the following section. Whether they find labour law burdensome will make managers seek help from strategies to ameliorate the impact. The following sub-sections examine in what circumstances owner-managers felt that specific strategies were necessary in light of effects felt by labour legislation. It is understood that, in general, managers believed that they did not have any coping strategies because if a burden was felt, it was not enough for them to strategise for it. The following sections delve deeper into whether labour legislation is impacting employers. Many researchers state that there are at least three categories of strategies in response to labour legislation (Adam-Smith et al, 2003; Brown and Crossman, 2000; Gilman et al, 2002; Heyes and Gray, 2002; Schuler and Jackson 1987). These are cost minimisation, quality maximisation, and modernisation and technology. However, in addition to these there is another element that Edwards *et al* (2003) elaborated on, which entails employers formalising their procedures as a strategy to counter any potential effects of the law, all of which will be discussed further below.

#### **6.5.1. Cost Minimisation**

The small firms that were interviewed never regarded themselves as high profit organisations. It was mainly medium income stipulated or that they were on the low income side. With small hospitality sector firms, it is characteristic for them to close down either because of lack of finances or the high levels of competition that they face. Therefore, it would be fair to assume that, even in general, their business strategies would be focused on cost minimisation. However, the results were surprising; with the case studies it was found that most employers believed that they did not use cost minimising strategies. Twelve employers did not believe they hired part-time employees as a response to the law, but rather because of the characteristics of the specific jobs.

There were two strategies that just under half of the respondents agreed that they embraced. These included introducing unpaid breaks as well as intensifying their employees' work. The hospitality industry was chosen specifically because of its supposed long working hours – introducing unpaid breaks would be a way of absorbing an impact

through lessening costs and a number of employers claimed that they might reduce working hours because of the law. This is linked to the minimum wage. Not one employer felt that the minimum wage burdened them heavily. They stated that they paid above the level of the minimum wage, thereby turning this maybe into a more than likely no. Their response to using overtime also was in line with their views of working hours; they did not wish to have workers work overtime. Although they said they would not reduce overtime, some stated that the workers would never get overtime. The impact from workers not working overtime was essentially absorbed through the amount of workers. Although overtime increased labour costs, the owner/managers did not regard this as a major burden.

Leave was not a problem for employers either. It did not affect them at all, as all the employers stated that they did not foresee themselves reducing leave or leave pay. One reason for this was because some employers had enough employees to absorb the impact by making them take leave at various times of the year. Most businesses were so small that for the amount of annual leave available to the employees meant that the managers/owners could take on the job of the employee themselves or work with a skeleton staff. The employer from 40 on Ilkey strategised when her employees took leave so that it did not directly impact on her

*“The annual leave every year we will have a skeleton staff working in December and in April because that is when our low times are and we will in the beginning of the year negotiate, normally the guys who are more senior or have been here for a longer period will work during the difficult time when everyone else goes on leave. By the middle of January everybody has had their leave. We do try to negotiate with them and make sure that all my staff doesn’t take leave all at the same time” (Daniel Muller, Owner/Manager, 40 on Ilkey B&B, 31/01/2013).*

Employers were also found not to believe in increasing deductions from their employees’ pay. It was also made known by the employers that they give their employees ‘extras’ such as tea, coffee and lunches. In some cases, employers even provided accommodation and

furniture. When questioned about charging for staff's meals it was not surprising to see that not a single employer believed in charging staff, which is distinctive of the hospitality industry.

*"No we don't do that, we always provide them with tea, coffee and lunch" (Ellenette, Owner, Elonda's B&B, 25/03/13).*

As mentioned in the first chapter, these types of firms will often regard pay as part of a whole package (Brown and Crossman, 2000: 208). The package, in most instances, included bonuses as well, thus proving their labour costs are technically not greatly impacting. Moreover, it was discovered that pensions and medical aid in the industry are not part of the salary package in these firms.

With the cost minimisation strategy, managers will employ younger, more inexperienced employees because this lowers labour costs. However, only three employers claimed that they used this as a strategy. They did not believe in reducing the necessary training either. Although they do not fall under the Skills Development Act, they felt that employees did need the basic skills to do their job and therefore would never reduce the training because of any labour legislation impact. But it is important to note that in the interviews two employers stated that they liked their employees to have training and certificates so that if they had to let them go in the future, they would be able to find work elsewhere. Therefore, it is difficult to gather whether they would not reduce training because of the legislation or because of their need to help their employees in the long run. On the other hand, a lack of an impact in this sense could be due to the exemption that small firms have from developing the skills of their employees in South Africa. Overall, the analysis of the strategies of these employers revealed that most respondents did not use cost minimising strategies. There was a slight impact from costs of labour legislation however not great enough to say that labour legislation was excessive enough for them to want to adopt this coping mechanism.

### **6.5.2. Quality Maximisation**

It was noted in chapter one that employers, who prefer the quality maximisation route, will ultimately take on strategies aligned with investing in their employees. Employers in these cases were found to be more quality driven in their responses to labour legislation than cost minimising. 57.1 per cent of the respondents stated that they employ people who are more experienced; however, it was specified by some of these employers that they preferred to employ experienced workers because of their impatience with training. On the other hand, four employers said that they increased the on the job training in order for their employees to be the best at what they do. Neither of these explanations relates directly to an impact from labour legislation. However, indirectly, having quality staff members that are loyal and taken care of (invested in) will, in the long run, cut costs and ease the impact of labour legislation's potentially burdening impact.

Many of the respondents revealed that they get their employees to work smarter – that is, more efficiently and effectively so that they are more productive. Two employers admitted to not allowing their workers to put in overtime; however, they chose not to elaborate on the reason for this. One reason is in line with the argument that workers, who work overtime, become less efficient and effective and therefore are not quality and not contributing to the goals of the business (Schuler and Jackson, 1987; 211). Many businesses had long-term employees and some felt that this added to the quality of their business for continuation and customer satisfaction. Being from the hospitality industry, at least half of the respondents acknowledged the importance of their personnel and did not feel that reducing training was an option, but rather felt that either increasing it or employing experienced persons was a better answer.

When asked about increasing their prices, many owner/managers believed that they did. However, it was apparent that administrative costs were the mildly influencing their cost structures; in effect, labour legislation was far away from their minds in this aspect. Therefore, although five employers stated that they increased their prices in response to labour laws; these responses were contradicted by other questions in the interview relating to cost structures, constraints and main difficulties. Although employers claimed using



quality maximising strategies, this does not necessarily mean that it is a 'strategy' by definition. The employers did not specifically use quality maximising strategies in a conscious and premeditated manner in reaction to labour legislation. Rather, these actions may be a coping mechanism for the employers not only labour from labour legislation, but also from other general influences, with the belief that it would benefit them in the long run through return business.

#### **6.5.3. Modernisation and Innovation**

When employers were asked about new technology in their firms, many gave a little chuckle stating again that they were just too small, and that they had no reason or room to introduce new technology. Four employers believed that there was the option of implementing new technology, but were not sure how well it would work. A couple of employers had attempted a system of signing staff in and out every day, but it fell away because it was not formalised or consistently monitored. Many employers did however believe in improving their planning on wages, although it was mentioned earlier in their experience with the sectoral determination, most employers did not have any problems in paying this wage with a lot of employers stipulating that they were paying way above the minimum wage. Thus, this supports the finding that many respondents were not using labour brokers or outsourcing services because there was minimal impact from the sectoral determination. Effectively no employers had adopted an overly modern approach neither to employment relations or their labour process. New technology and innovation were clearly lacking in these small guesthouses. However, as the respondents put it, it was difficult for them to introduce new technology because of the inherent limitations of the size of their business.

#### **6.5.4. Formalisation**

This section examines whether there were forces encouraging the firms towards formalisation such as the minimum wage, disciplinary procedures, dismissal provisions or even new technology. Ultimately, it examines whether these small firms used formalisation as a strategy in response to increasing costs of non-compliance. Existing research shows that

knowledge of labour law and experience with it, especially experiences with disciplinary cases, lead to a higher degree of formalisation of policies and procedures. As stated in chapter four, there was evidence that employers in these cases had formalised their disciplinary and dismissal procedures because of their knowledge of the costs of non-compliance. It was also shown that with the experience of the law came more formalisation. In many cases, employers would only react after a case of unfair dismissal presented itself. While there were a few knowledgeable employers who had procedures in place from the beginning of their business, most of the employers, who had a negative experience with the law or had to implement more formal procedures, did so through necessity. This goes beyond the findings of Edwards *et al* (2003), which are that one in five employers changed their procedures because of a case. In this case study, it was found that some degree of formalisation took place after the incident, with three employers and the other four already had formal procedures in place.

None of the respondents had experienced any recruitment difficulties. The regulation of dismissals was more prominent. In chapter one, it was shown that small firm employers deal mainly with dismissal and discipline, but will use an external advisory system because of their lack of knowledge of the law. In these cases, the majority of employers did not seek out labour brokers as a rule but rather dealt with labour legislation on their own. The formalisation of the recruitment process was not seen as popular either. Although a few employers did go through external agencies to hire their labour, most did it themselves and had a criterion that was often case specific. However, those who did move to an agency were affected indirectly by the law and the labour market. Some employers believed it was difficult to deal with employees and therefore favoured the idea of an agency being in control of those issues even though it cost them more. Strategies like these are designed either to reduce the costs of effort or to gain a competitive advantage over other employers through employing quality employees through an agency and at the same time taking the processes of hiring and firing that worker off their hands. Therefore, it is essential to acknowledge that some strategies are for the competitive standing of a small firm as opposed to a reactive response to labour legislation. It was made clear in the previous chapter that the competitive standing of the firm was often negated as a fair amount of the

firms had solidified their market share through years of being in the industry. Formalisation was a widely used strategy to guard against possible negative experiences from legislation and thus was somewhat of an impact however not in any case perceived as an unnecessary one.

## **6.6. CONCLUSION**

This chapter examined how the employers dealt with the negative effects of labour legislation. If there was any sort of impact felt, employers were likely to either have a specific strategy for it or at the very least explore a coping strategy. Overall, business strategies were found not to be pursued heavily by the case study firms. When a general business strategy was pursued, 35.7 per cent of employers found that it leant towards keeping a quality product, maintaining a reasonable price and productive staff. Many employers interviewed stated that they did not wish to expand their market share nor did they feel they used a specific strategy with regard to expanding their business, as many of the businesses were long established with a loyal client base. However, there was mention by employers that because they may have been affected by the recession that they did not increase the prices of their product in years before 2013. However, financially things were better than before for those who stated that they were negatively impacted by the recession.

Although coping strategies were generally not needed with regard to labour legislation, the majority of employers agreed that they took a long-term approach to employment policies and that staff retention was imperative for them. Therefore, there was a strong sense of long-term thinking and planning with their employees, and taking dismissal, discipline and skills development costs into consideration. Ultimately, if there were coping strategies or the firms held dismissal and discipline procedures high, the businesses discovered that it

was beneficial to have these procedures in place not only to protect employees but also to protect themselves. To protect themselves, they believed that it was necessary to maintain personal yet still professional relationships with employees; this was an element of their overall benevolent autocracy strategy of managerial control. But when asked directly about changing work arrangements, half the employers claimed that the necessary procedures were already in place and if not it was mainly due to their benefit as they gained more awareness and knowledge about the law.

Existing research identifies three distinct strategies adopted by employers of small firms in response to labour legislation (Adam-Smith *et al*, 2003; Brown and Crossman, 2000; Gilman *et al*, 2002; Heyes and Gray, 2002; Schuler and Jackson 1987). Firstly, cost minimisation was used sparingly amongst these employers; their responses overwhelmingly displayed that they were in most instances not using cost-cutting strategies. The only element with some cost-cutting implications was evidence of employers intensifying their employees' work as well as looking into the possibility of providing for unpaid breaks. This was linked to the idea that working hours was perhaps a greater impact than employers were letting on. However, with all other strategies, such as using part-time and/or temporary workers, reducing annual leave or reducing the number of staff, were described as not being an option for managers. Secondly, quality maximisation strategies were more prominent amongst the responses of the interviewees. In their general business strategies, employers mentioned that they worked for quality products and productive staff. Following from this it is not surprising that the data shows that at least half of the sample was committed to quality-related strategies. It is a significant rise from the low number of managers who used a cost minimising strategy. This effectively demonstrates a fair impact in some of the firms. Thirdly, the research explored the implementation of technological or modernising strategies to counter the effects of the law. It was laughed off by many as being a slight possibility because of the size of their firm. Most believed that they were too small for the experience of implementing new technology to replace people. Essentially, they agreed that even labour brokers were not prominent in their choices of business strategies. Finally, formalisation was not found to be overly popular either; although awareness of labour legislation had made employers seek some formalisation, overall the majority of respondents remained

fairly informal with regard to xxx. The impact that employers did feel from having to formalise procedures was regarded as necessary for the protection of both themselves and the employees, and was therefore not regarded as a burden.

With all the strategies, it was clear that for the majority of owner/managers, labour legislation was not greatly impacting on them as they did not feel the need to rely heavily on strategies. There were one or two respondents that had negative experiences with labour legislation and therefore felt that perhaps it burdened them more than other employers whom have in-house experts. However, they did see a benefit in the situation, which made them more aware of the laws. In the next chapter, conclusions will be drawn on the impact of labour legislation on these small firms and whether South Africa's legislative directive of regulated flexibility is serving its purpose.

# **CHAPTER 7**

## **CONCLUSION**

### **7.1. INTRODUCTION**

Broadly, this dissertation set out to determine whether labour legislation has a burdening impact on small firms. The following chapter shall be structured in the following way. The initial subsection is broken into two parts: the first shall be a summary of the empirical findings as discussed in chapters three, four and five, and the second shall be the final conclusions deduced from these findings and the analysis thereof. The following subsection shall discuss the researcher's summary of the contributions that the dissertation has added to the field and the implications thereof. In the final section of the chapter the researcher's suggestions for further research in the area of regulations on small firms.

### **7.2. EMPIRICAL FINDINGS AND CONCLUSIONS**

The first part of this section shall discuss the findings and sub-conclusions as established in chapters three, four and five. The second part shall examine the sub-conclusions of each chapter and determine a holistic integrated conclusion about the research.

In chapter three, it was discovered that the provisions of labour law that had the most impact on them included; working time, leave, discipline and dismissal regulations. All of these regulations had relatively small impacts on the various firms due to the firm's inherent internal characteristic of informality. The mediating factors of the law were determined to be as a result of heavily personalised relationships, mainly informal policies and procedures, and the majority of the small firms being family-run. Through these factors of informality the firm reserved significant numerical and functional flexibility with only rigidity lying within the owner/managers lack of knowledge of the proper procedures of labour laws.

In chapter four, the overall perceptions of employers on labour law was examined as being not overly burdening on them. It was found that the costs of labour legislation were not overly high in that it had a detrimental effect on the firms. It was also discovered that if the employers followed the proper procedures set out by labour legislation, that they would not be impacted heavily. There were two cases that came to light where there were negative perceptions of labour legislation due to their non-compliance with the law however the impact did not warrant an in-house expert.

In chapter five, it was reiterated that in the literature on small firms it states that the market/competitive conditions can put increased pressure on firms and thus exaggerate the impact of labour legislation. However, it was determined that the market context of the firms seemingly did not exacerbate the impact that the law was having.

It was then argued that due to there being a modest impact felt as a result of labour legislation on the small firms that there would be little use for strategies to combat the effects of the law. Coping strategies were not prominent in the findings, as many employers felt that there was no effect from the law and therefore no need to cope. It was discernible that no provision of employment legislation affected the respondents' businesses' competitive advantage. Overall they argued that labour legislation either had no effect or very little in their perspective. Extensive strategies were not needed in these small firms; their informality made this clear. They were able to bend and cope through informal practices (as mentioned above – informality as a mediating factor) and it was clear that these small firms were not accustomed to sitting down and planning their strategies.

Reflecting on the thesis statement, the dissertation sought out to determine whether labour legislation was having a negative impact on small firms and that regulated flexibility remains a sensible and effective legislative directive. From the findings and conclusions above it can be said that labour legislation is not overly burdening on employers and that there is not a great impact on them. Insofar as determining whether regulated flexibility is a fair and

effective directive, it can be concluded that, in line with certain South African research (Cheadle, 2006; Van Niekerk, 2006; Roskam, 2006), regulated flexibility remains a viable legislative directive.

### **7.3. SUMMARY OF CONTRIBUTIONS**

Presently, there are contradicting theories on the impact of labour legislation on South African small businesses. The World Bank and the IMF have presented research that South Africa's labour laws are unnecessarily rigid and inflexible, especially with regard to decisions relating to hiring and firing. However, leading labour regulatory scholars such as Cheadle (2006), Van Niekerk (2006), Benjamin (2005) and Roskam (2006) fundamentally agree on one thing – that labour legislation in South Africa is not unduly inflexible. However, they also state that there are aspects of the legislation that could be changed to make it more compatible with the regulated flexibility framework. Since one fundamental finding was that discipline and dismissal was the most impacting out of all the provisions, it can be said that it necessary to relook at the this provision of the LRA and how the pressure from it can be lifted off small employers

### **7.4 SUGGESTIONS FOR FURTHER RESEARCH**

The full impact of labour legislation is poorly understood in South Africa. There are several studies that could assist with a deeper understanding of the impact that all labour regulation is having on small firms. More focused research could be done on discipline and dismissal provisions and their effects on small businesses. Much of the existing research suggests that dismissals are the most costly to small businesses and that they should be exempt from these provisions (Collins, 2001). Although this may never happen, it needs to be fully understood why dismissals costs are perceived as being high and determine a effective solution to assist small firms with the effect.



The research on the impact that labour legislation has on small firm's competitiveness in Southern Africa, particularly when it comes to element of managerial strategies is underdeveloped. These strategies for competitiveness is believed to be a fundamental aspect in understanding the impact of labour legislation on small firms and therefore it is argued that more research should be done in this area.

## **7.5. CONCLUSION**

The key conclusion of the study is that the effects of legislation are generally minimal; essentially, firms do not have many strategies to cope with the law and there were no statutory provisions which were regarded as overly burdening by the respondents. It was subsequently determined that the impact of labour legislation on these firms in the hospitality industry was slight.

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