

‘Regulated Flexibility’ and Labour Market Regulation: A Case Study of  
Twizza Soft Drinks in the Eastern Cape, South Africa.

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Half Thesis

# ABSTRACT

Following the negotiated settlement, which led to the ANC assuming power in South Africa in 1994, debates concerning the nature of the South African labour market ensued between policy makers and economists alike. Central to understanding the South African labour market was the policy objective of regulated flexibility that has guided the formation of labour legislation in the post-1994 period, including the Labour Relations Act of 1995, the Basic Conditions of Employment Act of 1997, the Employment Equity Act of 1998 and the Skills Development Act of 1998. Regulated flexibility attempts to accommodate the interests of the employer for flexibility and the interests of the employee in regulation or security. These four Acts and the relevant provisions contained within them are the central focus of this research paper, in particular how they affect the case study firm Twizza Soft Drinks. An interpretivist approach was utilised as the preferred research methodology with in-depth, semi-structured interviews being the primary source of data collection. This research paper attempts to situate more clearly the impact of South Africa's macro-economic policies since 1994 on labour market policy and undertakes an exploration of internal dynamics of firms in response to exogenous factors, such as government regulation. The key findings suggest that some Acts (BCEA, LRA) do not impose a significant burden on the firm and some provisions can lead to beneficial outcomes such as business modernisation and the adoption of formal Human Resource Practices. Conversely, some provisions contained in the EEA increase the administrative burden and therefore increase the indirect cost on the firm.

## **Keywords:**

Regulated flexibility, labour market, labour legislation, employment relations and human resource management, large firms.

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In loving memory Leigh Matthews.

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# Acronyms

AA – Affirmative Action

ANC- African National Congress

ASGISA – Accelerated Shared Growth Initiative South Africa

BCEA – Basic Conditions of Employment Act of 1997

BEE – Black Economic Empowerment

CCMA – Commission for Conciliation Mediation and Arbitration

EAP – Economically Active Population

ECC – Employment Conditions Commission

EEA – Employment Equity Act of 1998

EEP – Employment Equity Plan

EPL – Employment Tax Incentive

ER – Employment Relations

ETI – Employment Tax Incentive

EU – European Union

FAWU – Food and Allied Workers Union

GEAR – Growth Employment and Redistribution

HPWS – High Performance Work Systems

HRM – Human Resource Management

ILO – International Labour Organisation

IR – Industrial Relations

LFS – Large Firm Survey

LRA – Labour Relations Act of 1995



NGP – New Growth Path

NMW – National Minimum Wage

OHS – October Household Survey

OHSA – Occupational Health and Safety Act 1993

QLFS – Quarterly Labour Force Survey

RDP – Reconstruction Development Programme

SARS – South African Revenue Service

SBL – Sugary Beverages Levy

SDA – Skills Development Act of 1998

SDLA – Skills Development Levies Act

SETA – Sectoral Education and Training Authorities

SME – Small Medium Enterprises

StatsSA – Statistics South Africa

UK – United Kingdom

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# CHAPTER 1

## INTRODUCTION

### 1.1. Context of the Research

Following the advent of democracy in South Africa, debate shortly ensued over how best to regulate South African labour market in light of the triple challenge of high unemployment, poverty and inequality in the country. Following the release of the Labour Market Commission report in 1996, the commission argued for the need to establish a compromise between the interests of labour and the interests of capital (Bezuidenhout and Kenny, 2000: 11). This led to the introduction of the concept of regulated flexibility, which would guide labour market regulation in the democratic era in South Africa.

The policy objective of the regulated-flexibility framework, as it applies to the South African labour market, seeks to strike a balance between two diametrically opposed policy positions: (a) extensive deregulation of markets on the one hand, which emphasizes the role of the market as a primary coordinating mechanism; and (b) extensive regulation of markets, which emphasizes the role of institutions as the primary coordinating mechanism, on the other. The regulated-flexibility framework represents a hybrid of these two opposing positions in search of greater labour market and dynamic efficiency on the one hand, and to catalyse job-creating economic growth and employment protection through the implementation of minimum standards on the other. The importance of this theoretical concept must be understood within the broader context of global economic developments, which have had profound consequences for South Africa following global reintegration

Following the decline of Keynesianism as the dominant economic paradigm in many developed and developing countries (South Africa had a racially-exclusive form of Keynesianism), within the broader context of the crisis of accumulation in the early 1970s, led to the adoption of neoliberalism in the 1980s globally as the new dominant economic paradigm (Palley, 2004a: 1-2). Following the rise of neoliberalism, a new political paradigm emerged in the form of the “Third

Way”, which is defined as “a peculiar hybrid” between neoliberalism and social democracy in which the dictates of the former predominate the values upheld in the latter (Carroll, 2005:7). More specifically, the power of the market is “harnessed to serve the public interest” (Finlayson, 1999: 271). Neoliberalism can be defined as an economic philosophy that seeks to return to the free market ideals of Adam Smith (Palley, 2004a: 1; Lehoucq, 1997: 75-76). Social democracy is defined as “a political project committed to redistribution, democratic economic governance and social protectionism” (Hay, 1999: 57). Bhorat, Lundall and Rospabe (2002: 38) state “that South Africa is a pluralist social democracy . . . by way of its constitution but also in the system in which its economic, political and cultural affairs are governed”.

Van Eck (2013: 602) argues that two interrelated developments - namely, globalisation and neoliberalism - have enabled capital to become increasingly mobile internationally and revitalised the need for firms to remain competitive internationally. In response, countries have pursued one of the following strategies of stimulating economic growth: the low road or the high road. The low road emphasizes flexible labour markets, cost-determined competition, market-determined wage rates, and is characterised by antagonistic labour relations (Milberg and Houston, 2005; Crotty, 2000; Palley, 2004b). A flexible labour market denotes “the ability of companies to adapt the use of labour to changes in other markets” (Bezuidenhout and Kenny, 2000: 3). This policy orientation is associated with a decline of the traditional model of permanent, long-term employment and the proliferation of non-standard forms of work that are precarious in nature. The high road, by contrast, is characterised by cooperative labour relations through a centralised duty to bargain, higher wages and greater state involvement in the provision of social protection (Milberg and Houston, 2005; Crotty, 2000; Palley, 2004b).

The adoption of neoliberal economic policies in South Africa was evident in the late-1980s under the apartheid regime and would set the basis for economic policy in the democratic era under the ANC after 1994 (Bhorat *et al.*, 2002: 6). In 1996 the Growth, Employment and Redistribution (GEAR) strategy was adopted, that sought to establish a trade-off between different forms of flexibility and security; through creating a flexible labour market on the one hand and on the other, provide workers with job and employment security (Bhorat *et al.*, 2002: 2-3). However, it is important to note, since 1996 various macroeconomic policies have been implemented yet by and large the core elements of GEAR have remained.

This dissertation will explore the impact of labour legislation on a large firm, Twizza Soft Drinks. This will attempt to situate more clearly the effect of key labour market statutes such as the Labour Relations Act (LRA) of 1995, Basic Conditions of Employment Act (BCEA) of 1997, Skills Development Act (SDA) of 1998 and the Employment Equity Act (EEA) of 1998. These Acts as guided by regulated flexibility attempted to place the South African economy, and by extension firms on the high road to economic competitiveness (Webster and Omar, 2003).

Several studies show that the effects of labour legislation on firms are determined by a range of factors such as managerial perceptions and the broader market context with respect to both financial and competitive pressures (see Edwards *et al.*, 2003, 2004; Magruder, 2012; Marlow *et al.*, 2004; Pierre and Scarpetta, 2006). The greater these pressures are, the harder it is for firms to absorb the costs of regulation. Bhorat *et al.* (2002:46), further note that in the South African context, alongside rising costs of regulation, additional constraints include a lack of skills and extension of collective agreements, which culminate in higher costs of compliance for employers. However, despite the implicit costs, labour market regulation may lead to benefits being accrued to the firm, namely: business modernisation, adoption of formal Human Resource Policies (HR) and the implementation of High Performance Work Systems (HPWS). Furthermore a key theme explored throughout this research paper is role of informality in firms, which as some scholars suggest engender greater employee commitment and motivation, including greater flexibility (Edwards, 2003:11; Marlow, 2002; Nguyen and Bryant, 2004). Informality can be defined as management-worker relations based primarily on unwritten arrangements, tacit and common-sense understandings (Marlow *et al.*, 2010: 957).

## **1.2 Theoretical and Conceptual Framework**

This research will draw upon an industrial relations pluralism as the chosen theoretical and conceptual framework. South African labour law and the industrial relations system is premised on pluralism and voluntarism, which allows bargaining parties to “determine the nature and the structure of bargaining institutions” and the resulting economic outcomes – thereby providing a higher degree of labour market flexibility (Cheadle, 2006b: 35). Pluralism proceeds “from a set of assumptions and values that workplace conflict is inevitable” and legitimate within any enterprise comprising of different interests groups (Abbott, 2006: 192, see also Hyman 1978; 1989). Opposing interests would include the employees need for greater security (high road) and the

employers need for greater flexibility (low road). Therefore the primary “preoccupation of pluralists is with establishing structures and procedures within which those legitimate conflicts of interests can be contained” and ultimately institutionalised through collective bargaining (Blyton and Turnbull, 2004: 31; see also Klerck, 2016). Lastly, trade unions have been identified to serve a legitimate and crucial function in the protection and promotion of employees’ interest for greater security (Biagi, 2000).

### **1.3 Problem Statement**

In light of the context outlined above, the problem remains:

Given that the South African government under the ANC rule in the post-1994 has attempted to strike a compromise between the interests of the employer and the interests of the employee as encompassed in key labour market statutes outlined above, to what extent has labour market legislation had an impact (positive or negative) on this large firm and what are the factors that have mitigated or exacerbated the impact? The success of large firms and in particular Twizza Soft Drinks, as will be argued, are co-determined by the extent to which they can traverse and mitigate the legislative requirements of labour legislation alongside other factors such as market competition and alternative forms of regulation such taxation. Of key concern is the extent to which labour market legislation is perceived to be too onerous (negative) thus leading this particular firm down the low-road to economic growth?

### **1.4 Research Objectives**

The primary objective of the proposed research is to understand the impact of South African labour legislation at Twizzer Soft Drinks. The secondary objectives include:

- a) Comprehending the ways in which key provisions of the BCEA, LRA, EEA and SDA shape labour relations and human resource practices at Twizzer.
- b) Exploring the ways managers navigate the dictates of the labour legislation in question with respect to the need to remain competitive and their own labour relations policies.
- c) Assess the role of informality and formality in the Employment Relationship at Twizza

- d) Exploring the ways in which regulated flexibility makes allowances for numerical and functional flexibility as well as employment and job security at Twizzer.
- e) Exploring the ways in which regulated flexibility – as reflected in the provisions of the LRA, BCEA, EEA and SDA – has allowed a balance to be found between regulation/equity and flexibility/efficiency at Twizzer.

## **1.5 Research Methodology**

This dissertation will proceed from an interpretivist paradigm, which seeks to understand “the complex world of lived experience from the point of view of those who live it”, with emphasis placed on the context of such experiences (Schwandt, 1994: 221; see also Weber, 2004). This study seeks to gain an in-depth understanding of the respondents’ subjective perceptions of various provisions in labour legislation, a qualitative research design will be employed. A qualitative research design is well suited to incorporate and capture the insights gathered from the interpretivist emphasis on understanding the lived experience of workers and managers in Twizza and how that is shaped by labour legislation. Therefore, in order to gather respondents’ perceptions of the labour legislation in question, semi-structured, in-depth interviews will be conducted (Bryman, 2012: 424). An in-depth interview is classified as a qualitative research method that requires undertaking “intensive individual interviews with a small number of respondents to explore their perspectives on a particular idea, program or situation” (Boyce & Neale, 2006: 3). In addition to semi-structured interviews, relevant newspaper articles will be used to supplement the information gathered from interview where necessary in particular regarding company information and views of its founder Mr Ken Clarke. The research will utilise a purposive sampling technique of employees and managers at Twizzer. A sample of four employees and four managers will be drawn from the research site.

### **Table 1: Research participants**

Name of Respondent	Biographical Details	Position	Qualifications	Type of Employment	Date of Interview
Anna Marie Hiscock		Group Human Resource Manager	Hons. Degree Human Resources Management	Permanent	19/10/2018
Nelisa Bobie		Training and development Manager		Permanent	19/10/2018
Andrew Bryson		Payroll Administrator	NQF Payroll Administration	Permanent	19/10/2018
Ronald Raubanheimer	47 years old, English and Afrikaans Home language	Production Manager	Studying towards Operations Management; qualified Fitter and Turner	Permanent	19/10/2018
Mandilake Matyolo	28 years, Xhosa Home language	Shop Steward	Matric and Computer skills software	Permanent	19/10/2018
Nonteuanhla Mtshtenhi	26 years old, Xhosa Home language	Intern	Diploma in Human Resource Management	Contract	19/10/2018
Thanisizwe Verlum	32 years old, Xhosa Home language	Intern	N6 Management Assistant	Permanent	19/10/2018
Gwenga Mganyana	22 years old, Xhosa home language	Millwright Apprentice	Matric	Contract	19/10/2018

## 1.6 Ethical Considerations

The participants involved in the research were fully informed in writing regarding the purpose of the dissertation prior to obtaining their consent. It was explicitly stated to those participating in this research that the objective was to gather and analyse their perceptions of the subject matter at hand. The researcher acknowledges the need to adhere to all ethical protocols associated with social research. Ethics Approval Number: SOC2018-50.

## 1.7 Research Contribution and Limitations

This dissertation seeks to contribute toward understanding the role and impact of labour market legislation on a large, South African firm in the manufacturing industry. This research attempts to link and explore the impact of globalization and neoliberalism on macroeconomic policy and effect on labour market policy as guided by regulated flexibility with the objective of contributing towards the field of Industrial Relations and Human Resource Management (HRM).

The limits of this research include, first and foremost, that it centres on a case study analysis of one firm and thus is limited to explaining the experience of this particular firm. Secondly, research was constrained by time restrictions and thus future research on the themes explored here may warrant further investigation.

## 1.8 Chapter Outlines



Chapter one aims to provide a brief introductory overview of the topic of regulated flexibility in light of important global, macroeconomic and legislative developments since the advent of democracy. This chapter provides brief overview on the literature of firm responses, research methodology, and the theoretical and conceptual framework utilised.

Chapter two attempts to link more closely the key themes of the research, exploring macroeconomic developments i.e. from Reconstruction Development Plan (RDP) to the New Growth Path (NGP) and the disjuncture between labour market policies. Regulated flexibility and the various mechanism that encompass this underlying theoretical framework are explored as well as outlining the relevant provisions of LRA of 1995, BCEA of 1997, SDA of 1998 and the EEA of 1998. In addition, the literature on firms as it pertains to responses to labour legislation and the internal dynamics are explored with particular emphasis on the costs and benefits that arise from labour regulation such as formal HR and HPWS.

Chapter three deals with and outlines the empirical findings of this case study research, which highlights the key challenges of implementing and complying with labour market legislation as outlined by respondents from Twizza. These include high compliance costs and indirect administrative costs alongside a regional skill shortage.

Chapter four is the concluding chapter which provides a summary and overview of key themes and findings of this research paper explored in chapter two and three. This includes recommendations for further research.

# **CHAPTER 2**

## **LABOUR LEGISLATION AND LABOUR MARKET POLICY IN POST-APARTHEID SOUTH AFRICA**

### **2.1 INTRODUCTION**

There has been considerable debate in policy forums, trade unions and government departments alike, about the nature of the South African labour market, in particular since the demise of the apartheid regime following the country's first democratic elections in 1994. Some scholars, especially those operating within the economic orthodoxy, argue that the South African labour market is too rigid, which is seen as a consequence of an overly-regulated market (Bhorat *et al*, 2002: 2). This in turn affects firms' ability to do business, and is seen as the primary cause of unemployment in South Africa (Benjamin, Bhorat and Cheadle, 2010). According to Statistics South Africa (StatsSA) (2018: 1), the rate of unemployment in South Africa has been on the steady increase in the last decade, since 2008 the rate of unemployment has increased from 21 per cent to near 28 per cent in 2018.

This chapter will explore and analyse the key debates surrounding the challenges facing South African labour market since the advent of democracy. These include the ostensible disjuncture between South Africa's macro-economic framework, as encompassed by various economic policies post-1994, which have largely committed South Africa to a neoliberal growth path and South African labour market policies, including the pluralist framework that informs the post-apartheid industrial relations system, in which there is a commitment on behalf of the state to pursue active labour market policies. Furthermore, there is a wider debate between the proponents of the 'high road' and those of the 'low road' to economic growth. The former places significant emphasis on the importance of innovation, high wages and high-skills as vital to stimulate economic growth. The latter, in contrast, emphasizes cost-based competition based on low skills and low wages. This debate is particularly relevant in respect of the perceived rigidity of the South African labour market, both internationally and domestically, in the broader debate on the post-apartheid government's policy objective of 'regulated flexibility'.

The ways in which social scientists have explored the responses by firms' to labour market regulation will be investigated. It will be argued that despite all firms bearing the majority of the costs of labour market regulation, both employers and employees alike can stand to benefit through the adoption of formalised HR or Employment Relations (ER) practices, which may lead to business modernization and a potential source of competitive advantage for firms (Chowdhury and Rahman, 2007). Key indicators include the number of identifiable policies such as employee appraisal and disciplinary policies and procedures (Marlow, 2002). Furthermore the adoption of formal HR/ER policies by firms, as will be argued, allows firms to manage the use of labour more efficiently (in light of regulatory considerations) in terms of their use of flexible forms of work organisation such as functional and numerical flexibility for example (van der Meer and Ringdal, 2009).

## **2.2 LABOUR MARKET REGULATION AND 'FLEXIBILITY'**

### **2.2.1 Industrial Relations Pluralism**

Industrial Relations pluralism was selected as the guiding theoretical framework, which proceeds from a set of key assumptions about the employment relationship, which have particular relevance in the South African labour market context. The core assumption of pluralism is the inevitability of conflict, which arises as a result of different, and often opposing interest groups (employers organisations and trade unions for example), who play an active role in "determining the rules of employment" (Edwards, 2003: 1; see also Abbott 2006: 192). According to Abbott (2006: 192) opposing interests between employer and employee for example arise because of "the very nature of the factory system", thereby leading these two distinct groups to uphold opposing values and objectives.

For the purpose of this study, it is important to note that from this pluralist frame of reference employers have an interest in flexibility and profit maximisation, which is often pursued at the expense of the interests of the employee. Conversely, employees have an interest in social benefits such as higher wages and greater labour market regulation. Thus, conflict arises between these two groups based on each pursuing their respective interests. Therefore key to understanding industrial relations pluralism is the need to institutionalise conflict and achieve a balance between opposing interests. Proceeding from the assumption of the inevitability of conflict, a secondary assumption

is the existence of “different sources of authority within an organisation” (Abbott, 2006: 192). This in turn recognises that conflict will remain prevalent between these opposing sources of authority, in particular regarding allocation of work tasks and rewards. (Abbott, 2006: 192-193). ). Such conflict arises, according to pluralists, due to the complex social nature of business organisations or firms, which comprise of different interest groups such as managers and employees (Klerck, 2016: 28). Moreover, by managers or employers acknowledging the inevitability of conflict in the workplace, they should therefore seek means to regulate such conflict (Edwards, 2003: 11).

An added benefit of acknowledging the inevitability of workplace conflict is that it can catalyse or motivate managers “to explore innovative methods for handling it in a way that will produce the best results” (Abbott, 2006: 193). More specifically, by acknowledging the inevitability of conflict and the need to manage conflict collectively, pluralists argue that this can lead to positive organisational change through social dialogue between interested parties. Furthermore, by accepting and recognising multiple, competing sources of authority – typically, management versus trade unions and employees – it allows for organisations or firms to deal with workplace grievances collectively. This provides managers with an efficient remedy for “institutionalising employment rules and minimising the level of workplace conflict”, on the one hand. For employees, on the other hand, their collective organisation and strength in numbers allows them to “counter-balance the power of managers when negotiating workplace contracts” (Abbott, 2006: 193).

By virtue of the interdependence between employees and employer, both acknowledge “that destructive conflict should be avoided” through institutionalised collective bargaining (Klerck, 2016: 29). Proceeding from this basis, pluralists accept the legitimate right of employees to participate in collective bargaining, where trade unions are identified as a primary means by which employees’ collective interests can be articulated and ultimately addressed (Abbot, 2006: 193). More specifically, trade unions are acknowledged as the “legitimate and necessary vehicles for protecting and promoting the interests of employees” (Klerck, 2016: 28). Therefore, the primary “preoccupation of pluralists is with establishing structures and procedures within which those legitimate conflicts of interests can be contained” and ultimately institutionalised through collective bargaining (Blyton and Turnbull, 2004; see also Klerck, 2016). More fundamentally, Flanders (1970: 172 cited in Edwards 2003: 11) argues that “the paradox, whose truth

managements have found it so difficult to accept, is that they can only regain control by sharing it”.

The key function of an ‘industrial relations system’ is the institutionalisation of industrial conflict, which may be achieved through voluntarism and social dialogue between the parties concerned. More specifically, the state views the relationship between capital and labour “as voluntarist in nature, with a legal status to match” (Donnelly and Dunn, 2007: 12). According to Donnelly and Dunn (2007: 8), voluntarist employment relations provides “a loose legal framework with which an employment relations system can grow organically without any presumption that it will be largely collective or largely individualistic or indeed any presumption about the balance of power that might emerge between capital and labour”.

Donnelly and Dunn (2007: 12) further argue that unlike neoliberalism, which seeks to embrace market forces in their totality, pluralism is premised on “a pragmatic acceptance that market forces are likely to be modified by collective action . . . [and that] the state’s task is to manage these institutions, not suppress them”. It is within this context that pluralism was chosen as the guiding theoretical and conceptual framework for this dissertation. However the state is presented with the risk of bringing to the fore contradictory arrangements and policies at different levels under voluntarism, which “may produce fragmented, diverse and contradictory arrangements”, that often favour the secure at the expense of the insecure, with a resulting rise in inequality and inflation (Donnelly and Dunn, 2007: 8).

In the following section, an exploration of two distinct approaches to stimulating economic growth and firm competitiveness will be explored. Moreover, this section will seek to tie in more closely the pluralist assumption of diverging interests between employee and employer. The latter as will be discussed below is linked to the low-road approach, whilst the former in contrast is linked to the high-road approach. However with this in mind, the argument will be made in the ensuing section that the high-road approach is more conducive to both parties (employer and employees) interests and achieving the required balance between the two.

### **2.2.2 Low Road versus High Road to Economic Growth**

This section will seek to explore two distinct approaches to stimulating economic growth and firm competitiveness, namely the high-road or high commitment approach and the low road approach. Following the decline of Keynesianism as the dominant economic paradigm globally in the 1970s (South Africa had a racially-exclusive form of Keynesianism). This in turn led to the emergence of neoliberalism in the 1980s globally as the new dominant economic paradigm (Palley, 2004a: 1-2). These two approaches have important implications for how the South African labour market is perceived, both locally and abroad.

As noted in the introductory chapter, neoliberalism coupled with globalisation has made capital increasingly mobile internationally, which has placed significant pressure on nations to reduce the provision of high-cost social policies. Such social programmes “raise the cost of doing business, leading to a decline in international competitiveness and, in turn, domestic growth and employment” (Milberg and Houston, 1999: 2). According to Kleinknecht, Oostendorp, Pradhan and Naastepad (2006), advocates of the neoliberal or “low-road” approach see unemployment within an economy because of rigid labour markets. ‘Rigid’ labour markets denote “strong unemployment protection legislation, high social benefits for those out of work, and strong trade unions” (Kleinknecht *et al.*, 2006: 171).

In consequence, labour market ‘distortions’ are created, which impact negatively on the forces of labour demand and supply. Therefore, proponents of the low road approach argue for greater labour market flexibility or flexibilization, which will allow for greater ease for employers to hire and fire employees, whilst similarly advocating for decreased trade union power and density, less social service provision and greater wage flexibility (Kleinknecht *et al.*, 2006: 171).

The low-road approach is not without its critics, especially those originating from the heterodox school of economics. Proponents of this perspective argue in favour of the “high-road” approach, alternatively referred to as the “high trust or high involvement” approach (Kleinknecht *et al.*, 2006: 171). The high-road approach is seen as more conducive to the performance of firms, which in turn necessitates “rapid productivity growth and innovation based on cooperative labour relations . . . and more centralised labour unions, high quality production and higher wages, as well as greater state-supported social protection” (Milberg and Houston, 1999: 4).

The argument is made that through improved employment protection legislation (EPL), firms’ productivity performance can be enhanced, primarily through greater employment protection that

will induce workers to become more cooperative with managers within the workplace (Kleinknecht *et al.*, 2006: 172). Secondly, through greater EPL, tacit knowledge in the workplace will be catalysed regarding the unique production processes within the firm. (Storm and Naasterpad, 2007: 3-4). Thirdly, improved EPL will encourage both employers and employees to invest in additional training and education, thereby reducing “uncertainty associated with the future pay-offs of such human capital investments” (Kleinknecht *et al.*, 2006: 172).

According to Webster and Omar (2003: 195), the introduction of new labour market legislation (LRA of 1995, BCEA of 1997, SDA of 1998 and EEA of 1998) sought to promote equal opportunity in the labour market in the democratic era. These policies had been designed to place South Africa on the high road to economic competitiveness and growth, which aimed to promote skills development through additional training, maintain higher wages through collective bargaining and lastly promote the use of incentive schemes (Webster and Omar, 2003: 195). In addition, the overarching objective of such reforms was to overhaul existing workplace practices and organization in pursuit of greater “equity, efficiency and productivity” (Webster and Omar, 2003:195).

As a result, employers have had to adapt to the changing regulatory environment by using new “human resource management initiatives [which] include quality circles, team work, productivity-linked wages, profit sharing, and performance-based rewards” (Webster and Omar, 2003: 195). The fundamental challenge confronting the South African labour market and firms is to strike the appropriate balance between “these contradictory demands of workplace efficiency, employee rights and racial equity” (Webster and Omar, 2003: 211). However, if this balance is not struck, it could lead to firms pursuing the low-road approach, characterised by low-skill, low-wages and low-innovation leading to greater informalization of work, where short-term interests are pursued at the expense of the long-term objective of achieving workplace equity, efficiency and productivity (Webster and Omar, 2003: 211).

The following section will seek to explore economic policy choices of South Africa since the advent of democracy, which have had profound implications for the nature and perception of the South African labour market.

### **2.2.3 Stuck in GEAR – South African Economic Policies post-1994**

Following the negotiated revolution and the successful democratic transition post-1994, various economic policies were implemented with the objective of transforming the South African economy (Newman, Baloyi and Ncube, 2010: 8). These include the Reconstruction and Development Programme (RDP) 1994, GEAR 1996, Accelerated Shared Growth Initiative of South Africa (ASGISA) 2006 and finally the New Growth Path 2010 (Thompson and Wissink, 2018: 33). The objective of this section is to explore, albeit briefly, each policy in turn with the core focus placed on GEAR. The central argument advanced in this section is that South Africa has been placed on neoliberal economic trajectory since the latter years of apartheid. This is best encompassed by GEAR, and despite being replaced by more recent policies, the main neoliberal thrust of GEAR still remains evident today (Newman *et al.*, 2010:8-12; Koma, 2013: 147).

According to Newman *et al.* (2010: 8), the RDP implemented in 1994 was criticised for representing a set of objectives without articulating a coherent policy and intervention strategy in which these goals could be achieved. The key objectives included increasing growth rates through attracting higher rates of investment. This in turn, it was envisioned “would result in a more equal distribution of income and wealth” (Newman *et al.*, 2010: 8). By 1996, the RDP was replaced by GEAR, which is explored in more detail below. However it is important to note that GEAR represented a more concise macroeconomic policy framework (Newman *et al.*, 2010: 8), and was identified as “a major ideological shift embracing neoliberal values” (Koma, 2013: 147).

In 2006, GEAR was replaced by ASGISA, which aimed to expand “the base of BEE [Black Economic Empowerment] and to promote the emergence of a black business class” as well as reduce unemployment through promoting labour-intensive exports (Newman *et al.*, 2010: 8; Koma, 2013: 154). More fundamentally “as GEAR mutated into ASGISA, South Africa’s macroeconomic policy remained largely unchanged” (Newman *et al.*, 2010: 8), and can be seen as “continuation of the GEAR policy” in many respects (Koma, 2013: 154). However, unlike GEAR, key microeconomic interventions were evident in ASGISA, which include, amongst others, skills and education development initiatives (Newman *et al.*, 2010: 8). Four years later ASGISA was replaced by the NGP, which sought to address significant and ultimately structurally induced unemployment, as well as high levels of inequality and poverty in South Africa. These objectives would be achieved through creating sustainable, decent and green jobs with the emphasis placed on skills development (Newman *et al.*, 2010: 12; Koma, 2013: 154-155).



The primary objective of GEAR aimed to consolidate international investor confidence shortly after the 1994 elections, through articulating a coherent and concise neoliberal macro-economic policy (Bezuidenhout and Kenny, 2000: 13; Webster, 2012: 7). Within this policy framework there is an inherent commitment to pursuing ‘regulated flexibility’, which is explored in more detail below. As outlined in GEAR (1996: 18), “the government will pursue a policy of regulated flexibility in managing the labour market”. Regulated flexibility entails “the regulation of the labour market in a manner that allows for flexible collective bargaining structures, variable application of employment standards and voice regulation” (GEAR, 1996: 18). There are two interconnected objectives within this macroeconomic framework with respect to the South African labour market: “extending the protection and stability afforded by this regulatory framework to an increased number of workers”, and promoting “continued productivity improvements aimed at bolstering the development of skills across the full spectrum of the workforce in both the formal and non-formal sectors” (GEAR, 1996: 18).

GEAR was formally implemented in 1996 and has five broad objectives: “higher growth in non-gold exports, expansion in capital accumulation by private sector, rise in public sector investment, investment and output growth that is job-generating, increase in infrastructural development and service delivery” (Bhorat *et al.*, 2002: 2; see also Barker, 1999: 2-3). The latter two objectives are of keen interest here, which require specific interventions and relate directly to regulated flexibility and the legislative changes since 1994. For the first objective to be met, there is a view that “greater labour market flexibility is necessary to increase the labour absorptive capacity of the economy” (Bhorat *et al.*, 2002: 2; see also Nattrass, 1998: 4). More specifically, the South African economy is characterised by an inability “to absorb productively all the current labour force or all the increment to the labour force” (Kingdon and Knight, 2007: 814). Regarding the second objective “a national skills development programme is called for to improve employment creation and create a climate for improved service delivery and infrastructural development”, which was seen as key to the continuous improvements in productivity (Bhorat *et al.*, 2002: 2; Barker, 1999: 5).

As will be discussed below, the legislative changes linked to regulated flexibility have important implications for the South African labour market, but more so regarding how firms respond to labour market regulation and the need to remain competitive. The need for firms to remain competitive internationally has been exacerbated by neoliberal informed macroeconomic policies.

As will be explored in the subsequent section, neoliberalism coupled alongside globalization has had far-reaching consequences for the South African labour market. In particular for the nature of and extent of unemployment in South Africa, including the evident skill bias (discussed below); which arose because of the evident disjuncture between South Africa's macro-economic policies and labour market policy, leading to significant growth in informal and atypical employment in South Africa.

#### **2.2.4 South Africa's Macro-Economic and Labour Market Policies**

This section seeks to discuss the impact of globalization on the South African labour market and employment trends following the implementation of GEAR in 1996. The focus of this section seeks to highlight an evident disjunction between South Africa's macro-economic policies, as envisioned by the Department of Finance and labour market policies upheld by the Department of Labour. This disjuncture between South Africa's labour market policies and macro-economic policies is particularly relevant to understanding the nature and extent of unemployment in South Africa. Moreover, this has important implications for labour market trends in South Africa and understanding regulated flexibility. However, it is important to note that unemployment is far more complex in South Africa than some commentators will admit. The focus here is to shed some light, albeit briefly, on the issue of unemployment in relation to the central issue of regulated flexibility. In particular to investigate whether labour market legislation, as guided by regulated flexibility, contributes to or reduces unemployment in light of international competition and historical skills deficits in South Africa.

Nattrass (1998: 4) argues that the disjuncture between GEAR and South African labour market policies, alongside poor economic growth, led to significant job losses as opposed to the envisioned creation of jobs (see also Go, Kearney, Korman, Robinson and Thierfelder, 2009: 1482-1483; Borat and Leibbrandt, 1998; Kingdon and Knight, 2007; Oosthuizen and Borat, 2005). More specifically, despite the theoretical prospect of GEAR, in practice it was neither as "integrated" nor implemented as it was proposed by its adherents, especially regarding labour market policy (Nattrass, 1998: 4). In addition, there was an evident disjuncture between a neoliberal growth path sought by the Department of Finance and the corporatist policies of the Department of labour.

GEAR in essence projected that there would be not only strong output growth, but also strong employment growth under the assumption of rising labour intensity (Nattrass, 1998: 4). This macroeconomic framework assumed alongside favourable government policies that would catalyse further labour-intensive employment, which would outgrow other capital-intensive sectors of employment. In addition, GEAR posited that “labour-intensive technologies will become generally more important than capital intensive technologies (Nattrass, 1998: 4). Favourable policies for growth in labour intensive employment included supply side measures, such as tax breaks for example coupled with labour market reforms. These included, as outlined above, the advancement of regulated flexibility that would allow for greater wage variation for example, as well as the extension of collective agreements through greater ministerial discretion (GEAR, 1996: 18; Nattrass, 1998: 4).

GEAR (1996: 19) states that wage agreements must take into account regional labour market conditions, the variety and extent of skills evident in firms of various size, area and capital intensity, as well as the necessity to promote additional training for new labour market entrants. Moreover, this would require the removal of mandatory extensions on the one hand, and on the other restrict “the geographical scope of bargaining councils and Wage Board Determinations” (Nattrass, 1998: 4). However, this envisioned vision policy contained within GEAR and supported by international evidence was not shared by the Department of Labour. According to Nattrass (1998: 4), international evidence suggests that “trade liberalisation and other economic reforms should be accompanied by greater labour market flexibility”. In addition, this is presupposed on expanding labour-intensive production, which in turn would benefit the unemployed through additional forms of low-skill employment (Nattrass, 1998: 4).

In contrast, the economic policy pursued by the Department of Labour was centred on the need to increase productivity, which can be achieved in two ways. The first is a proactive approach, which includes policies that would stimulate skill improvement and promote improved workplace cooperation through workplace forums for example (Nattrass, 1998: 4). The second centres on a destructive approach, which aims to push “low wage, low-productivity firms and sectors out of business” (Nattrass, 1998: 4). This strategy would in turn benefit skilled workers, whom either are in relative demand due to the nature of their skillset or are employed in expanding, capital intensive sectors (Nattrass, 1998: 4).

Drawing on the October Household Survey (OHS) 1995 and OHS 1996, it is important to note the changes in demand for different skill bands, whereby as result of economic growth and the skills bias, “only highly skilled and skilled workers increased their share in total employment” (Bhorat *et al.*, 2002: 12). Natrass (1998: 2) attributes the rising demand for skilled labour to the shift toward capital-intensive based exports, away from labour-intensive exports. In addition, the decline in unskilled employment was compounded further by rising cheap imports from low-wage countries, thus placing significant pressure on labour-intensive sectors that utilise low-skilled labour (Natrass, 1998: 3).

Focusing specifically on the manufacturing sector, it is important to note that between 1995 and 1996 there was a recorded increase of 5.6 percent in the number of highly skilled and 3.1 per cent in the number of semi-skilled workers respectively whilst there was marked decreases in the demand for unskilled and elementary workers (Bhorat *et al.*, 2002: 11). Thus, the argument could be made that because of globalization and financial liberalization, the demand for highly-skilled and semi-skilled workers has increased in South Africa. Bhorat *et al.* (2002: 14), attribute the growth in demand for highly- and semi-skilled workers across sectors to technological change. The increased demand for semi- and highly skilled labour has important implications for the South African labour market, one that is characterised by a surplus of low skilled labour.

In addition, the rate of technological change in the manufacturing sector has been attributed to “defensive innovation . . . leading to an increased demand for skilled labour” and an associated decreased demand for unskilled labour. (Natrass, 1998: 3). Defensive innovation denotes a coping strategy by firms, which rely on skill-intensive technology to remain competitive following exposure to heightened import competition (Edwards, 2002: 18).

According to Bhorat *et al.* (2002: 17), one of the most fundamental challenges confronting South Africa in the era of globalization is “the reduction of poverty and inequalities within and between racial groups”. Based on wage trends between 1995 and 1999, it is clear that, in South African society, Africans are the most affected by the prevalence of poverty and inequality. Furthermore, during this same period Bhorat *et al.* (2002: 18) suggest that all workers across racial groups had “a greater probability of earning a lower wage in 1999 than in 1995”. This, in turn, is suggestive of the fact that, in the era of globalization, there have been significant trends in the South African labour market toward greater wage insecurity and inequality (Bhorat *et al.*, 2002: 20).

Clarke (2004: 559) asserts that the significant changes in the nature of employment in South Africa were due in part to the unintended consequences arising from the implementation of new labour legislation. These significant changes include for example, decline in formal sector employment and a relative rise in informal sector employment. Informal sector employment is defined as an employee working in a firm or organisation that employs less than five employees, who do not register for either value-added tax or income tax, and therefore do not receive any deductions off their wages (StatsSA, 2018: 17). Drawing on the Quarterly Labour Force Survey (QLFS) 2018, between January-March 2008 and January-March 2018, formal sector and informal sector employment increased by 14% and 19% respectively (StatsSA, 2018: 1). The QLFS for Quarter 3 2018 highlights that between July-September 2017 and July September 2018, formal sector employment decreased by 1.1% and informal sector increased by 12.2% (StatsSA, 2018: 1).

At face value, the new labour legislation was perceived to be “labour-friendly” (Clarke, 2004: 564). However on closer inspection, evident loopholes and weaknesses within the new laws governing the labour market had become apparent regarding the lack of regulation of “non-standard work and protecting workers in these forms of employment” (Clarke, 2004: 564). These include, for example “weak monitoring and enforcement provisions, exemption provisions for employers, exclusion from legislation and limited coverage for many groups of non-standard workers” (Clarke, 2004: 564).

The drafting of legislation post-1994 aimed to protect workers residing in full-time and long-term employment, which has since changed in the era of globalisation, deregulation and technological change (Fourie, 2008: 110-111). This led to significant growth in “atypical” or “non-standard” forms of employment that are more precarious in nature (Fourie, 2008: 111; Clarke, 2004: 559). Such atypical or non-standard employment includes “part-time work, contract work, self-employment, temporary, fixed-term, seasonal, casual, piece-rate work, or to employees supplied by employment agencies, home workers and those employed in the informal economy” (Fourie, 2008: 111).

The precarious nature faced by those in such forms of employment arises due to the fact that they are either lack the appropriate skill set, thereby forcing them out of formal sector employment into the informal sector; or are employed “in sectors with limited trade union organisation and limited coverage by collective bargaining, leaving them vulnerable to exploitation” (Fourie, 2008: 111).

Moreover increased pressure has been placed on government by business, both domestic and international, for greater “employment flexibility” (Fourie, 2008: 112). Employment flexibility, discussed in more detail below, refers to the ability of employers to hire and fire employees with relative ease (Kleinknecht *et al.*, 2006: 171; Fourie, 2008: 112). In addition, the growth of non-standard forms of employment has been attributed to employers attempting to avoid the costly protective sphere of labour laws (Fourie, 2008: 112).

The following section will seek to outline the central elements of regulated flexibility, which features as the guiding theoretical framework for labour market legislation post-1994 as outlined below. Key to understanding the notion of regulated flexibility, is that there are different forms of security and flexibility. These provide certain benefits to both the employee and employer, and the central focus in the following section is to understand how certain forms of security are traded-off for different types of flexibility, to ensure both parties in the employment relationship benefit. Moreover, as will be discussed below, contained within certain Acts are provisions that seek to protect non-standard forms of employment.

### **2.3 Regulated Flexibility**

Post-1994, the formulation and implementation of new labour market legislation is underpinned by the policy directive of regulated flexibility, which highlights the attempt by the South African government to achieve a trade-off or compromise between opposing economic interests. The core aim of these trade-offs is to arrive at socially sustainable and economically desirable outcomes in the South African labour market. These compromises include: flexibility/security, stability/change, equity/efficiency and managerial control/worker autonomy for example. Regulated flexibility can be defined as

Not simply a balance between two sets of interests but a framework within which an appropriate balance is struck. It accordingly concerns limits and mechanisms. The limits should constitute the boundaries within which the mechanism determines the balance (Cheadle, 2006b: 6).

The International Labour Organisation (ILO) key recommendation regarding the ‘flexibility’ debate in South Africa, was the assertion that “the South African labour market was more flexible in world standards than some commentators were willing to admit” (Bezuidenhout and Kenny, 2000: 11). The director of ILO’s labour market policies, Guy Standing, argued that the labour market in South Africa is flexible, and in some instances too flexible. In fact, he argued that “the rigidities of wage flexibility have been overemphasized” (Bezuidenhout and Kenny, 2000: 12).

An important aspect of regulated flexibility as a policy directive is that it is premised on a dynamic, as opposed to a static, understanding of the South African labour market. More specifically, it is acknowledged that “the labour market is both diverse and dynamic – one shoe does not fit all and that a shoe that fits now does not fit for all time” (Cheadle, 2006b: 6). Furthermore, this concept seeks to make certain allowances, within the limits, so that “employers and workers can adapt standards to suit the needs of any particular sector, sub-sector or workplace over time” (Cheadle, 2006b: 6). According to Van Eck (2002: 604), the pursuit of regulated flexibility in the South African labour market is guided by two underlying principles:

- (1) The recognition that lower-income employees are “generally in a more precarious position” compared to higher-income employees, who have acquired higher levels of education, experience, skills and thus employment security and employability.
- (2) Smaller firms should not be overburdened by statutory obligations and regulations “that could potentially introduce rigidities and costs that would ultimately inhibit job creation” (Van Eck, 2002: 604).

There are multiple mechanisms that characterise this concept of regulated flexibility, which provide the opportunity and space for choice to be undertaken between different sets of interests. Firstly, there is “voice-regulation”, which is expressed through social dialogue at either the regional or the national level, collective bargaining at sectoral or workers’ participation at the level of enterprise and lastly employee consultation at the level of the workplace (Cheadle, 2006b: 6).

The second mechanism is that of “administrative discretion bounded by clear guidelines on how the discretion is to be used” – such as the use of an “independent body to hear exemptions from sectoral collective agreements” in line with the LRA’s criteria concerning fairness, for example. Exemptions are an important element of regulated flexibility as exemptions seek to “balance efficiency in the use of productive resources and the protection of human resources” (Bhorat *et al.*,

2002: 51). “Administrative determinations” represent the third aspect, in the form of ministerial determinations imposed by the Minister of Labour regarding any employee or employer type operating within a specific sector or area (Cheadle, 2006b: 7).

Fourth is the application of “soft law” as reflected in the Codes of Good Practice published under the LRA of 1995, these codes seek to establish “standards of behaviour” and not “impose duties” upon employers (Cheadle, 2006: 7). Furthermore, any deviation from the established Codes of Good Practice will not result in any penalty imposed, but may rather “lead to an adverse finding in the CCMA or Labour Court” in the event that such deviation cannot be justified (Cheadle, 2006b: 7). The underlying mechanisms that guide the application of Codes of Good Practice are, firstly, voluntary compliance followed by discretion exercised by either the CCMA or Labour Courts in terms of assessing fairness concerning dismissals.

The fifth mechanism seeks to establish “floors and ceiling within which the operational requirements of different enterprises can be accommodated” – for example, the “averaging hours of work in the BCEA” (Cheadle, 2006b: 7). The last mechanism, which comprises the regulated flexibility framework, is the “selective application of legislative standards or requirements” such as the exclusion of higher-earning and higher-skilled workers from certain provisions of the BCEA (Cheadle, 2006b: 8).

According to Standing, Sender and Weeks (1996: 6), the notion of ‘flexibility’ as it pertains to the South African labour market has been interpreted differently by trade unions, employers and policy makers alike. In brief, ‘flexibility’ from the perspective of employers has become to be understood to imply the “capacity to make change speedily and at relatively less cost” (Standing *et al.*, 1996: 6). More specifically, for employers, “there are various *forms* of flexibility and there are various *levels* of flexibility”. A labour market may be characterised as ‘flexible’ when “employment restructuring takes place without obstacles or social conflict or without a period of induced mass unemployment” (Standing *et al.*, 1996: 6).

However, it is important to note that for a labour market to be flexible, some institutional rigidities may be required at both the micro and meso levels (Standing *et al.*, 1996: 6). From a theoretical perspective, the argument may be made that without certain institutional rigidities that, for example, limit the prerogative of employers to hire and fire, the result may be “higher unemployment during a period of restructuring” (Standing *et al.*, 1996: 6). By contrast, a system



in which, for example, employers and trade unions are compelled in advance to negotiate the best possible outcome of employment restructuring and wages may be less prone to job losses. Therefore, contrary to the assertion by orthodox economists that an economy, left to market forces will be more efficient, Standing *et al.* (1996: 6) argue that an economy “might function better . . . if subject to institutional rigidities in the form of centralised bargaining on policy reforms”. More importantly, according to the Labour Market Commission (1996: 8), ‘flexibility’ must be “understood as a multi-faceted concept that is not merely a euphemism for lower wages or weakened unions, and is furthermore consistent with labour market security”.

It is argued that, whilst each form of flexibility (explored below) has advantages for both employers and employees, ‘flexibility’ in and of itself can be taken too far, which will impact negatively on labour market outcomes and efficiency (Labour Market Commission, 1996: 11). More specifically, the ILO argues that, whilst both the interests of the employer and employee need to be considered, including “those of the more marginalised or vulnerable on each side of the spectrum”, this cannot be done if either of the parties concerned are “enfeebled or fragmented” (Labour Market Commission, 1996: 11). Therefore, “voice mechanisms, or representative institutions, are required, even though the neo-liberal supply side advocates of flexibility and deregulation regard institutions and regulations as rigidities and the main source of inflexibility” (Labour Market Commission, 1996: 12). However, labour market flexibility must be understood as “bargained, not one imposed by the state, but facilitated by co-operation between the state, labour and capital in corporatist institutions” (Bezuidenhout and Kenny, 2000: 13). Hence, the notion of ‘regulated flexibility’ must be seen as a means “to protect workers’ security on the one hand whilst allowing employers strategies to reorganise to compete globally” (Bezuidenhout and Kenny, 2000: 13).

### **2.3.1 Types of Flexibility**

In terms of the different forms of flexibility, at least four can be discerned: functional/worktime flexibility and numerical flexibility, work-process flexibility and wage flexibility (Standing *et al.*, 1996: 6-9; Cheadle, 2006a: 668-669; Bezuidenhout and Kenny, 2000: 3-4). Functional or worktime flexibility denotes “the internal labour market of firms” and their ability to change working practices and job structures to changes in other markets (Standing *et al.*, 1996: 6).

According to Horwitz (1995: 1-2; 5), functional or worktime flexibility can be defined as “a deviation from an even breakdown of an agreed number of hours of work over an equally agreed number of weekdays”. This can involve the use of temporary work, shift systems and part-time work (Bezuidenhout and Kenny, 2000: 3). Numerical flexibility refers to “changes in the number of workers”, alternatively referred to as the flexibility of employment” and the distinction between the two is centred on the flexibility of work practices for example (Standing *et al.*, 1996: 6; see also Bezuidenhout and Kenny, 2000: 3-4).

For employers, employment flexibility is defined as the ability to hire and fire employees with relative ease. In South Africa however, certain provisions in the LRA have made the ability to fire employees more difficult. This, in turn, has led to the decline of “regular protected employment”, whilst casual and temporary employment has risen globally, with less security by comparison as employers seek to circumvent certain legislative provisions with respect to the termination of the employment contract (Standing *et al.*, 1996: 6). However, despite this global trend and the need for employers to retain a degree of employment flexibility, Standing *et al.* (1996: 6) argue that too much flexibility will negatively affect both the efficiency and equity of labour markets. More specifically, although “excessive rigidity may impede entrepreneurship and intra-preneurship, some institutional rigidity can limit opportunism, and thereby improve dynamic efficiency” (Standing *et al.*, 1996: 6). By limiting opportunism in the labour market regarding the hiring and firing of employees, this in turn can promote more rationally informed decision making and encourage greater investment in firm-specific skills (Standing *et al.*, 1996: 6).

According to Bezuidenhout and Kenny (2000: 3), wage flexibility, for example, can include “the shift from uniform pay system towards individualised or team pay, with variability based on performance” (i.e. productivity bonuses). As with numerical and functional flexibility, wage flexibility has both different levels and degrees of flexibility that need to be explored. Levels of wage flexibility refer to, for example wage differentials between different occupational groups (micro), firms (meso) and sectors (macro) in an economy (Standing *et al.*, 1996: 7). Degrees of wage flexibility implies that on the most flexible end of the spectrum, immediate decisions are made, with respect to wage determination, which may result in “highly inflationary wage round and wage drift at the micro level” (Standing *et al.*, 1996: 7). Conversely, at the most rigid end of the spectrum or wage inflexibility, market signals would be distorted and limit economic

restructuring. Standing *et al.* (1996: 7) argue that the optimum level of wage flexibility is co-determined by the “institutional characteristics of the labour market and the educational-training system” on the one hand, and on the other, “the structure and role of labour market policies and the macroeconomic strategy”.

This carries the implication that in an economy with decentralised sectoral bargaining for example, excessive wage flexibility may induce greater wage differentials between different levels i.e. sectors and occupational groups, which in turn could result in greater inequality and unemployment for example. Alternatively, restructuring employment as means to stimulate economic growth can be undertaken by restricting wage differentials between sectors and occupational groups through centralised bargaining process. This in turn would raise “expected rates of return in sectors with high productivity and profits while squeezing investment out of low productivity sectors” (Standing *et al.*, 1996: 7). This alternative strategy was central to Swedish model in the mid-twentieth century; however, it remains to be seen whether such a strategy would be applicable to South Africa in the age of globalisation.

Work-process flexibility refers to “managerial capacity to shift workers between sets of tasks easily and at low cost and to alter working time and working practices easily and at low cost” (Standing *et al.*, 1996: 7). This involves the use of various forms of teamwork, multi-skilling and job rotation, with the objective of restructuring the labour process through joint decision-making between employers and employees (Bezuidenhout and Kenny, 2000: 3).

From the employee and trade union perspective, labour market flexibility can be seen to imply a higher degree of insecurity, which is linked to greater managerial autonomy and prerogative (Standing *et al.*, 1996: 7). Mainstream economists proceeding from the assumption that institutions and regulations, such as collective bargaining and employment protection tend to distort the efficiency of market outcomes in which they argue that such rights need to be reduced or removed entirely in search of greater labour market flexibility (Standing *et al.*, 1996: 8). Despite the implications of unfettered labour market flexibility, employees still see some forms of flexibility as beneficial. This includes work-process flexibility – i.e. “the capacity to adjust working time and pursue upward mobility” (Standing *et al.*, 1996: 7-8; see also Bezuidenhout and Kenny, 2000: 12). In general, however, an employee ultimately wants to retain a degree of security that is compatible

with the ability to be flexible in terms of “gaining greater autonomy or control over his or her own work activities, or labour power” (Standing *et al.*, 1996: 8).

Therefore, in the broader context of the existence of conflicting interests between employers and employees, as well as certain vulnerability for employers and marginalised employees to exogenous factors such as global competition, “voice mechanisms, or representative institutions, are [ultimately] required” (Standing *et al.*, 1996: 8). Voice mechanisms and representative institutions (trade unions and employers organisations) prevent opportunism in the negotiating process and the pursuit of short-term interests. Opportunism and pursuing short-term interests could impede “dynamic efficiency” and desirable labour market outcomes that combine security with flexibility in the long-term (Standing *et al.*, 1996: 8). Thus highlighting the importance of the negotiating process and social dialogue in determining what types of flexibility and what forms of security are beneficial to both parties concerned.

It is important to note that with each form or type of flexibility, certain advantages can be accrued to both parties (the employer and employee). However, each form of flexibility can be taken too far, which will impact negatively upon firm efficiency (Regalia, 2005: 28) and the types of labour market security discussed below. If a given labour market is characterised by excessive employment flexibility, where the hiring and firing of employees is easily undertaken, this will discourage both the firm and workers from undertaking additional investments in firm-specific skills that may lead to increased productivity.

If the state, and by extension firms, ensure a degree of labour market security, certain benefits can arise in the form of a trade-off between flexibility and security. By guaranteeing a degree of labour market security, which prevents arbitrary loss of employment for example, workers in exchange will be more willingly to accept a degree of work process or wage flexibility (Standing *et al.*, 1996: 8). The South African regulatory regime, as guided by the adoption of regulated flexibility, which is mirrored in labour statutes such as the BCEA of 1998 and the LRA 1995, “reflects government’s endeavours to reconcile the concerns of employers with those of organised labour” (Fourie, 2008: 112).

### 2.3.2 Forms of Security

According to Standing *et al.* (1996: 8; see also Cheadle 2006a: 668-669), “there are seven forms of labour security” that characterise any given labour market. The first is *labour market security*, which refers to “widespread opportunity for effective labour market participation” and implies “that there must be a low, or a falling, level of employment”. In the case of the South African labour market, it is characterised by a high degree of labour market insecurity (Standing *et al.*, 1996: 8). The second is *employment security*, which seeks to protect employees from “arbitrary loss of employment, by collective agreements, regulations or the force of convention” (Standing *et al.*, 1996: 8). Employment security of an employee is promoted in Chapter 5 of the BCEA of 1998 (Department of Labour, 1998). Third, *job security* denotes the protection of employees “against arbitrary transfer between sets of work tasks and loss of job-based rights”, whilst simultaneously encompassing the employee’s need for upward job mobility and career development (Standing *et al.*, 1996: 8).

*Work security* presents the fourth form, which concerns “working conditions and health and safety protection in employment” (Standing *et al.*, 1996: 9). Fifth, *skill reproduction security* denotes the ability of employees to “have access to the means of skill acquisition and access to employment and labour market retraining to ensure that their skills do not become obsolescent or inadequate” (Standing *et al.*, 1996: 9). The relevant provisions in the Skills Development Act (SDA) of 1998 seek to ensure job security and skill reproduction security on behalf of an employee (Department of Labour, 1998).

*Income security* represents the sixth form, which refers to the “protection against arbitrary reduction in incomes and protection against penury, through the assurance of at least subsistence wages and a system of transfers that protect those at the edge of the labour market”, thereby increasing economic equity for the most marginalised (Standing *et al.*, 1996: 9). Section 32 of the BCEA of 1998 outlines the specific requirements bestowed upon the employer for an employee remuneration (income security) (Department of Labour, 1998).

Lastly, there is *representation security*, which refers to the need for those active in the labour market to have “a secure capacity to bargain and influence the character of employment, to have an adequately strong voice to ensure that distributive justice is pursued consistently” and thus being the underpinning factor with regards to the other forms of labour market security (Standing

*et al.*, 1996: 9). The LRA of 1995 ensures representation security for the employee by guaranteeing the right of freedom of association to join a trade union or workplace forum for example and as well the right to bargaining agents (Department of Labour, 1995). However, the right of freedom of association is undermined in certain sectors characterised by low trade union densities for example.

## **2.4 SOUTH AFRICA'S LABOUR AND EMPLOYMENT LEGISLATION**

Hyman (2001: 9) distinguishes between three forms of social regulation in industrial relations. The first is through legislation that gives effect to regulated flexibility, namely the LRA of 1995, the BCEA of 1997, the Employment Equity Act (EEA) of 1998 and the SDA of 1998. The second form of social regulation refers to other forms of government intervention such as employment subsidies and taxation for example. The third is agreements or contracts between parties (employer and employees) which as negotiated through collective bargaining (Hyman, 2001: 9). The three forms of social regulation will be core focus of this section.

Key elements of regulated flexibility are encompassed within these Acts, which includes the role of bargaining and statutory councils, the CCMA and the Employment Conditions Commission (ECC). These laws and the statutory protection offered to employees by them are based on the common-law of contract service and therefore it is of key importance to outline each with respect to how they regulate employment in South Africa. In addition, for the statutory protection offered by legislation under common-law to be applicable to an individual, this individual “must either work for another person for remuneration or assist” in conducting another individuals business (Fourie, 2008: 119).

Each law, explored in the sections to follow, seek to accommodate the interests of employer and employee. More critically, it is important to review and discuss how these opposing interests are accommodated within such progressive legislation. These four labour laws have been “widely regarded as one of the most substantial legislative achievements of the country’s first five years of democracy – this has arguably made South Africa’s labour regulatory regime a model for other developing countries around the world” (Benjamin *et al.*, 2010: 74).

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

The LRA of 1995 is premised on international best practice and complies with various ILO conventions. It seeks to “give effect to, and regulate, labour rights outlined in the country’s new constitution” (Clarke, 2004: 560; Van Niekerk, 2007: 6; Bhorat and van der Westhuizen, 2008: 3). The LRA of 1995, which concerns collective labour rights, gives effect to the concept of ‘regulated flexibility’ through “the promotion of collective bargaining, the choice of sectoral bargaining as preferred but not compulsory level of bargaining, the enforceability of collective agreements, promotion of workplace forums and BCEA” (Cheadle, 2006b: 8). The implementation of the LRA was seen as a major milestone for organised labour. The Act

formalised and codified organisational rights, laid the basis for worker participation in the workplace, granted workers a meaningful right to strike (without fear of dismissal), introduced a new dispute resolution system, provided strong support for collective bargaining, and extended coverage of its provisions to most workers (Clarke, 2004: 560).

The fundamental objective of the new LRA was to move away from an adversarial industrial relations system to the creation of “a new system that would be able to meet the challenges posed by globalisation” and is premised on voluntarism (Clarke, 2004: 560). For instance, the CCMA, which is a statutory yet independent body, seeks to promote voice-regulation through facilitating the establishment of workplace forums and statutory councils for example. The core function of the CCMA is to “attempt to resolve disputes by conciliation so as to reduce the incidence of industrial action and litigation” (Explanatory Memorandum LRA, 1995: xx, cited in Benjamin, 2013: 1). Other functions of the CCMA include “dispute resolution, dispute management, and institution-building within the labour arena and the provision of education, training and information to employers and employees and their organizations” (Benjamin, 2013: 6).

The concept of regulated flexibility and its use as a underlying guiding principle has been blunted, in part, by a lack of adherence to the Codes of Good Practice by the CCMA and the Labour Courts as well as “over-proceduralized pre-dismissal hearings”, which contribute to the perceived rigidity of the South African labour market (Cheadle, 2006b: 8). Due the excess of dismissal cases (between 80 000 to 100 000) referred to the CCMA, its role in South Africa is justified (Bhorat

and Cheadle, 2006b: 29; Benjamin 2013: 1). The CCMA provides a free of charge service that provides an additional degree of employment security by ensuring “everyone’s Constitutional right to fair labour practice” (CCMA, 2019: 1).

The World Economic Forum’s 2017-2018 Global Competitive Report has ranked South Africa 125 out of 137 countries for the ability to hire and fire employees as regulated by the LRA (WEF, 2017: 269). Such perceptions have contributed toward the perceived inflexibility of labour legislation, which allegedly increase the costs of doing business in South Africa. To dismiss an employee fairly, both procedural and substantive fairness have to be satisfied as set out in the relevant Codes of Good Practice (Bhorat and van der Westhuizen, 2008: 6). In addition to adhering to the above requirements a 30-day dismissal period is enacted, in which a referral by the employee may be bought to the CCMA (Section 190 of the LRA, 1995). Following recent amendments to Section 198 of the LRA, which introduce additional protective measures to non-standard employees (temporary, part-time) who earn less than R205 433.30 per year. In the interests of the employer for flexibility, there is a three-month probationary period to assess an employee’s suitability. Section 186 of the LRA, the provision for reasonable expectations of renewal of fixed term contracts stipulates that any employee employed longer than three months is employed indefinitely. This imparts higher costs of entry and exit of employees on employers, where gains for workers are ultimately seen as a direct cost to employers (Benjamin, Bhorat and Cheadle, 2010: 76).

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

The concept of regulated flexibility was most notably given effect to in the BCEA of 1997 (Van Eck, 2002: 604), which deals specifically with the individual employment relationship and makes allowances for “a variation of employment standards through collective agreement, sectoral determination, the Minister and on occasion by employees themselves, and Codes of Good Practice” (Cheadle, 2006b: 8). The BCEA of 1997 seeks to promote “equity and workers’ rights, while balancing these goals against the need to create more efficient and competitive workplaces” (Clarke, 2004: 561). More specifically, this Act set the basis for “minimum conditions of employment and extended them to all workers”, barring those exempt in the LRA which includes members of the National Defence Force, the South African Secret Service and the National



Intelligence Agency (Department of Labour, 1995; 2018). This saw the inclusion of domestic and farm workers, as well as many forms of casual and irregular employment, under the protective sphere of the BCEA (Barker, 1999: 13).

The BCEA represents a significant advance toward improved minimum standards, through the introduction of new conditions that seek to regulate working time on the one hand, whilst on the other allowing for a degree of flexibility in respect to how working time is regulated. According to Clarke (2004: 561), the improvements made by the Act include “working time, maternity leave, overtime rates, and annual leave provisions” as well as the inclusion of “family responsibility leave”. In terms of maximum working time, it is important to note that this has been reduced to 45 hours a week (Department of Labour, 1997: 8). Overtime pay has increased to 1.5 times the normal hourly working rate, from 1.33 for those working on Sundays (Department of Labour, 1997: 8). For those who do not work on Sundays, the hourly rate has increased to double the going rate (Department of Labour, 1997: 10). In terms of annual leave, there has been a significant increase from 14 to 21 consecutive days leave (Department of Labour, 1997: 12). However Nattrass (2000:131 cited in Bhorat *et al.*, 2002: 44), argues that provisions for annual and family responsibility leave in the BCEA has increased “the direct cost of employing labour while the reduced hours of work increases their hourly fixed cost”.

A key component of the BCEA is the provisions that allow for the variation in employment standards through “collective bargaining, through Sectoral Determinations introduced by the Minister on advice of the new ECC, through exemption procedures, and by individual contracts of employment” (Clarke, 2004: 561). Through each of these mechanisms available to employees and employers, the scope for variation of wage rates or employment conditions is increased up to the point when the limits contained in the Act are reached. For example, employers may alter specific provisions of the Act regarding “ordinary daily and weekly hours of work, overtime . . . payment for work on Sunday, and sick leave” (Clarke, 2004: 562), in the individual employment contract between an employer and an employee, provided that the specified limits are not surpassed.

Clarke (2004: 562) notes that, “subject to certain limitations, ordinary collective agreements may replace or exclude any basic condition to the extent permitted by the Act”. For example, collective agreements may be reached or concluded at the level of the firm through collective agreements between employers and trade unions that stipulate the averaging of workhours or the compression

of the working week over a given period. This provides employers with a higher degree of (worktime) flexibility to adjust to fluctuations in market demand within their respective markets, whilst ensuring minimum standards are adhered to in the interests of employees' need for job and work security (Standing *et al.*, 1996: 8).

The policy basis or justification for maintaining sectoral level bargaining were based, first and foremost, on lower “transactional costs for employers and trade unions” and therefore greater cost-effectiveness (Cheadle, 2006a: 33). In addition, sectoral level bargaining allows for the migration of significant issues out of the workplace, with the objective of “permitting more co-operative forms of engagement at the level of the workplace – more particularly workplace forums” (Cheadle, 2006a: 33). Third, through sectoral level bargaining outcomes, “a competitive floor allowing for different or improved terms and conditions at the level of the workplace” can be established (Cheadle, 2006a: 33). Furthermore, this negates the ability of firms to compete on the basis of a “socially undesirable reduction of wages or the extension of working hours” and sets the precedent for firms to compete on the basis of productivity gains (Cheadle, 2006a: 33).

Following the announcement by President Cyril Ramaphosa that a National Minimum Wage (NMW) of R20.00 an hour will come into effect from 1<sup>st</sup> of January 2019 (Mail and Guardian, 2018: 1; Department of Labour, 2018). Prior to this announcement, statutory minimum wages were established through sectoral determinations by the ECC. These statutory minimum wages varied between “occupation, sector and location” (Bhorat, Kanbur and Mayet, 2011: 5). However, a fundamental issue with sector-determined minimum wages is a “lack of compliance amongst employers, due to imperfect enforcement” (Bhorat *et al.*, 2011: 1). Proceeding from this fundamental issue, it is important to undertake a brief review of the implications of a NMW for firms in South Africa. Literature on the effect of minimum wages on productivity and distributional outcomes remain ambiguous and produce different outcomes depending on the institutional context and legal tradition (Betcherman, 2014). Minimum wages can be seen as form of income security (Standing *et al.*, 1996: 9) and an anti-poverty and preventative measure against worker exploitation (Betcherman, 2014: 134-135). Any real rate wage increase, either through nationally- or sectorally-determined minimum wages, will induce a higher cost to employers.

### **2.4.3 Skills Development Act (97 of 1998)**

The key objective of the SDA of 1998 is to stimulate industry-level competitiveness by addressing the historical skills deficit in the economy (Daniels, 2007). Simply stated, this skill shortage means that the demand for skills, in particular for semi-skilled and skilled workers exceeds the supply of such skills (Daniels, 2007: 1-2)

Through the promotion of skills development and training, the Act aims to improve workers quality of life (Department of Labour, 1998) and can be seen as a key component of skill reproduction security and job security (Standing *et al.*, 1996: 9). This is achieved by stimulating investment in both education and training, whilst seeking to increase returns to investments in each area. Of particular importance is the emphasis on encouraging skills development on behalf of the employer and in their workplace to improve job mobility, productivity in the workplace and competitiveness of the firm. More broadly, this Act aims to stimulate greater investment in training and education, with the objective of receiving greater returns of that investment (Department of Labour, 1998). The workplace is viewed as an active learning environment, which seeks to promote worker participation in learnerships and other forms of training programmes, and increase the employability of those identified as previously disadvantaged through additional training and education. Lastly, this Act seeks to guarantee the education and training quality received in and for the workplace, and lastly aid the placement of first-time job seekers (Department of Labour, 1998: 4).

These objectives are funded and achieved through a skills development levy, legislatively imposed through the Skills Development Levies Act (SDLA) of 1999. The SDLA seeks to finance various skills development initiatives in South Africa (Department of Labour, 1998). The overarching objective of this Act is to advance the employability of work seekers through encouraging a strategic and structured approach to training and learning. Furthermore, the SDLA effectively seeks to incentivise employers to fully participate in this programme whilst simultaneously allowing employers to accrue the benefits of a workforce that is better equipped in terms of skills and therefore potentially more productive. According to the SDLA, the levy is funded through

1% of the employees' monthly wage bill paid by the employer on their employees' behalf (Department of Labour, 1999).

Key to the success of the SDA was the replacement of the Apartheid-era Industry Training Boards with Sectoral Education and Training Authorities (SETAs). According to Allais (2012: 633), "SETAs are stakeholder bodies, with employer and trade union representatives on their boards" and funded through a levy-grant system, whereby "employers pay one percent of payroll costs, 80% of which goes to the Seta" (Allais, 2012: 633). The key function or role of the SETAs is to "distribute some of the money back to employers upon receipt of training plans and reports". This seeks to establish "an incentive for employers to train, to support training and to supply information about the training needs of each sector" (Allais, 2012: 633).

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

The core objective of this Act, as outlined in Section 2, is to advance equity in the workplace through the promotion of equal opportunities and just treatment of employees in the employment relationship through eliminating unfair discrimination (Department of Labour, 1998: 1). Key to achieving this objective is the implementation of affirmative action (AA) in the workplace in order to advance historically-disadvantaged groups. The EEA also seeks "to ensure their equitable representation in all occupational categories and levels in the workforce" (Department of Labour, 1998: 1; Horwitz and Jain, 2011).

The EEA seeks to address and ultimately prevent unfair discrimination and victimization regarding the recruitment and selection of employees (Bhorat and van der Westhuizen, 2008: 11; See also Department of Labour, 1998: 1). Any employer who has been deemed to have breached the EEA will "be subject to an administrative investigation and if found guilty will be subject to an administrative fine" (Bhorat and van der Westhuizen, 2008: 11). Furthermore, the Act provides remedies to the discriminated employee in that it allows the employee to sue for financial compensation from the employer based on damages incurred (Bhorat and van der Westhuizen, 2008: 11).

Sections 13 and 15 of the EEA outline the statutory responsibilities of the employer and AA measures respectively. In terms of the former, each employer above the threshold of 50 employees

must implement AA measures for previously-disadvantaged groups with the objective of promoting employment equity. To achieve this, the employer must firstly consult with their employees, assess where there is a lack of representation, implement an Employment Equity Plan (EEP) to address shortcomings in the workplace, and lastly report progress to the Director-General on the implementation of the equity plan (Department of labour, 1998).

Section 15 defines AA as involving “measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity” with the objective of achieving equal opportunities and representation of disadvantaged groups “in all occupational categories and levels of workforce” as determined by the Economically Active Population (EAP) (Department of Labour, 1998). The core function of the EAP is aid “employers during the analysis of their workforce to determine the degree of under-representation of designated groups” (Department of Labour, 2013: 13). These measures must seek to identify and remove barriers that have a negative impact on disadvantaged groups, promote workplace diversity and undertake the training and development of designated groups. In addition, such measures must include preferential treatment of designated groups and outline numerical goals in line with the objective of equitable representation (Department of Labour, 1998; Horwitz and Jain, 2011: 7). However, some scholars argue that firms are confronted with the “the double challenge of recruiting and retaining competent, previously-disadvantaged employees and implementing training and development strategies” (Booyesen, 2007: 48).

The following section will explicitly deal with alternative forms of regulation beyond the ambit of the labour market, which seek to undertake other forms of intervention within the South African economy. These direct interventions seek to incentivise and restrict certain types of behaviour by both firms and consumers. This is the focus of the following section.

## **2.5 Regulatory Role of Tax Incentives and Disincentives**

This section will focus on two different forms regulation that lay outside the South African labour market. These seek to moderate certain consumption habits of consumers by taxing the use of sugar by firms in the beverage industry through the Sugary Beverages Levy (SBL) on the one hand. On the other seeks to encourage certain firms to recruit younger and less experienced employees through the Employment Tax Incentive (ETI). The importance and relevance of these

two forms of government regulation that lay outside of South African labour legislation are significant due to the prevalence of high youth unemployment and high levels of obesity in all age groups, from childhood to adulthood (Kruger, Puoane, Senekal and van der Merwe, 2005: 1-2).

### **2.5.1 Employment Tax Incentive**

The South African ETI was implemented in January 2014 and seeks to “address low youth employment by reducing the cost of hiring young workers” (Ebrahim *et al.*, 2017: 1). More specifically, the ETI can be seen as a “direct intervention in the labour market aimed at stimulating demand for youth labour” through providing tax credits to firms that hire individuals between 18 and 29 years of age (Ebrahim *et al.*, 2017: 1). The ETI can be seen to denote a wage subsidy, which seeks to reduce the inherent costs and risks to firms for hiring inexperienced youth, whilst avoiding a real wage decrease for such workers.

Key to the success of the ETI in creating additional jobs for the youth in the South African labour market is that such a wage subsidy needs to be linked with “skills training, especially in industries that are sensitive to labour costs, and should have a focus on youth” (Ebrahim *et al.*, 2017: 1; see also Burns *et al.*, 2010). The overarching objective of the ETI is to “subsidize 432 000 youth jobs and create 178 000 new youth jobs over the policy period (1<sup>st</sup> January 2014 to 31<sup>st</sup> December 2016) at a cost to the government of ZAR 5 Billion” (Ebrahim *et al.*, 2017: 2).

A clear limitation of this policy is that no additional training is required for the employed youth. This policy is applicable to all industries, thereby allowing firms to “claim the subsidy for a 24-month period for an eligible employee”, where the subsidy received in the first 12 months is more than the subsidy received for the last 12 months, and the subsidy amount is based on the employees’ salary (Ebrahim *et al.*, 2017: 2). Only a handful of studies (De Jongh *et al.*, 2016; Odendaal, 2016; Ranchhod and Finn, 2014), which focus on how the ETI was perceived by prospective firms, have been conducted since the inception of this subsidy. These studies show that perceptions were largely positive and firms were in support of the policy. However, it is important to note that 80 per cent of firms receiving the subsidy claimed that no additional jobs had been created as a result (De Jongh *et al.*, 2016; cited in Ebrahim *et al.*, 2017: 3). A key concern for firms receiving the subsidy was with the skill levels of young employees rather than the tax incentive (Ebrahim *et al.*, 2017: 3).

Other studies, such as Ranchhod and Finn (2014, cited in Ebrahim *et al.*, 2017: 3), focused on the policy six months after implementation. This study highlights the fact that there was no increase in youth employment. Despite the objective of increasing the employability of unemployed youth, a key implication arising from the policy is that the benefits only accrue for a very short term, whilst similarly representing a significant cost to government as a result of an increasingly large deadweight loss. This deadweight loss arises because of a trade-off between youth jobs created irrespective of the ETI and the redirecting of state funds away from other subsidies to the ETI (Ranchhod and Finn, 2014: 5-6).

### **2.5.2 Sugary Beverage Levy**

The SBL is relevant to this particular case study of Twizza Soft Drinks (explored in the next chapter) because this levy directly raises the cost of a key input (sugar) into the production process for firms that produce soft beverages in South Africa, for the South African market. With higher input costs, this in turn could constrain a firms' ability to retain profit on the one hand, and on the other implement other initiatives (employee training and community development) that would have otherwise been funded through profits obtained in absence of such a levy. However in light of raising the costs of inputs such as sugar, firms may seek out alternative inputs and innovative solutions in addressing this issue.

According to SARS (2018: 1), the SBL forms part of the health promotion levy, which seeks to reduce non-communicable diseases such as obesity and diabetes in South Africa by reducing sugar intake of consumers. The SBL came into effect on 1 April 2018 and the levy is "fixed at 2.1 cents per gram of sugar content that exceeds 4 grams per 100ml" (SARS, 2018: 1). Moreover, only manufacturers who produce sugary beverages that exceed the total annual amount of 500kgs must register with SARS to pay the levy. Manufacturers producing less than the total annual amount are exempt from the levy, but are still required to register with SARS. To assess the sugary content of beverages produced, certified tests need to be undertaken to verify the content. In the absence of a certified test, the sugar content of levied 20 grams per 100ml will be assumed (SARS, 2018: 1).

## **2.6 EFFECTS OF EMPLOYMENT PROTECTION LEGISLATION ON SMALL AND MEDIUM-SIZED FIRMS**

This section will provide an overview of how Employment Protection Legislation (EPL) affects firms by investigating how such legislation has either benefitted or constrained firms. In general, the objective of EPL seeks to “promote worker welfare and more stable employment relationships, for the benefit of both the worker and the firm” (Allard, 2005: 1). EPL is defined as “the rules governing the initiation and termination of employment contracts” (Betcherman, 2014: 136). EPL includes the procedural requirements that need to be adhered to when dismissing an employee, such as a written statement that outlines the reasons for dismissal; severance pay and notice requirements and lastly “prevailing standards and penalties for unfair dismissals” (Allard, 2005: 3).

The perceived strictness of EPL is determined by “the nature of the individual labour laws” and the market in which the firm operates (Edwards, 2003: 17). In addition, the market context as well as the specific characteristics of each firm such as firm size and capital intensity, internal dynamics (formality and informality in the employment relationship), and the extent to which firms are innovative determine the effect of EPL (Pierre and Scarpetta, 2006; Edwards *et al.*, 2003: 7). According to Ram, Edwards, Gilman and Arrowsmith (2001: 846) informal Employment Relations (ER) may denote “a process of workforce engagement, collective and/or individual, based mainly on unwritten customs and the tacit understandings that arise out of the interaction of parties at work”. Formal ER may be defined by the extent to which employment practices “are documented, systemized and institutionalised” (Nguyen and Bryant, 2004: 601).

Moreover, it is important to note that the external regulatory environment coupled with firm growth plays a significant role in the adoption of formalised employment practices, which, in turn, can yield significant benefits for firms, such as a sustained competitive advantage, as well as lead to the adoption of HPWS (Sheehan, 2013). According to De Kok and den Hartog (2006: 9) HPWS refers to “a set of distinct but interrelated HRM practices that together select, develop, retain, and motivate a workforce” with the objective of improving firm performance and sustain the competitive advantage of the firm. HPWS are based on “trust, teamwork, participation,



organisational learning, orientation and employee skill development” for example (Sheehan, 2013: 550).

According to Edwards (2003: 10) the state has a direct influence through laws on wages such as the NMW and working conditions (regulation of working time); and indirect influence on the employment relationship through its relationship with trade unions and other statutory bodies. In a study of HRM in small and medium-sized firms (between 10-249 employees) in the UK, Sheehan (2013: 554) notes that formalised HRM practices in these firms were introduced as a preventative measure to mitigate the potential of being taken to an employment tribunal. Thus, the greater the extent or prevalence of proactive enforcement by the state of labour market regulations, the greater the degree of formalised employment practices is likely to be.

Sheehan (2013: 546) further argues that in the European Union (EU), the wider regulatory and legal environment played a significant determining role in the dynamics of informal and formal employment policies within which firms operate. European employment directives have “contributed to more formal human resource practices” in firms, thereby highlighting the role played by the external regulatory environment on firm decision making regarding formalised practices (Sheehan, 2013: 546). The decision to adopt more formalised HRM practices in UK firms was either undertaken to prevent being taken to an employment tribunal or reactively, once a case had been registered (Sheehan, 2013: 554). In a separate study of medium-sized firms in the UK by Atkinson, Mallet and Wapshott (2016: 17), it was noted that the effects of regulation on these firms were determined by the internal dynamics of the firm. More specifically, firm compliance with regulation “does not necessarily constrain the exercise of informal management prerogative, but rather alters how it is exercised” (Atkinson *et al.*, 2016: 17).

### **2.6.1 Informality and formality as dynamic constructs**

In a study by Marlow *et al.* (2010) of managerial practice in six growing small and medium-sized firms in the UK. Marlow *et al.* (2010: 954) argue that “empirical evidence suggests a notable tendency for informality in managerial action, resulting from spatial and social proximity between owners, managers and labour”. Here informality can be seen to denote “a process of management-worker relations based primarily on unwritten arrangements and tacit understandings” (Edwards

*et al.*, 2003: 31; Ram *et al.*, 2001: 846). Informality is further understood to be “embedded in a common-sense way as practices that evade or challenge formality, face-to-face rather than procedural or bureaucratic” (Marlow *et al.*, 2010: 957). Some scholars (such as Barrett and Sexton, 2006; Tsai, Sen-Gupta and Edwards, 2007) argue that “social and spatial proximity can be drawn upon to engender employee commitment, enable swift decision making, facilitate mutual problem solving and so add to competitive advantage” (Marlow *et al.*, 2010: 955). This competitive advantage arises because of informal “fraternal or familial relationships within the firm” (Gilman *et al.*, 2002: 54). More specifically, a certain degree of informality within businesses can embed “a strong sense of teamwork and social relations and increase employees’ motivation” as well as participation (Nguyen and Bryant, 2004: 601, see also Marlow, 2002).

Marlow *et al.* (2010: 954) argue that as firms expand, they become more complex organizationally, thereby leading to the emergence of formality with respect to terms and conditions of employment, which “are inscribed within written policies and articulated through a more professionalised form of management”. However, caution must be raised “not to construct a simplistic dichotomy between informality/formality and small/large firms respectively (Marlow, 2010: 955). It is important to note that “informality and formality are dynamic constructs which coexist in differentiated forms in time and space such that informality . . . is matter of degree and not kind” (Marlow *et al.*, 2010: 955; see also Atkinson *et al.*, 2016: 19; Sheehan, 2013: 548). In the study of medium-sized firms by Atkinson *et al.* (2016: 19), they argue that, coupled with firm growth and the need to develop formal HR practices in line with government regulation, informality remained a key aspect of the everyday working relationship between managers and employees.

From the employees’ perspective, informality allows for greater flexibility in the allocation and performance of work tasks. As Edwards (2003: 14) notes: “expectations about how work is performed often arise from informal understandings”. However, key to ensuring employee commitment to the firm is consistency and fairness in governing the employment relationship (Nguyen and Bryant, 2004: 601, see also Wilkinson, 1999). Without clear guidelines and processes to address workplace grievances, informality may lead to challenges that could affect the employment relationship negatively. With this in mind, Nguyen and Bryant’s (2004: 602) study suggests that, “formality is an important dimension in [small and medium-sized enterprises’] management since finding the right level of formality is both challenging and potentially

beneficial”. This highlights the dualism of formality and informality in firms, between retaining managerial prerogative (control) through formalised policies and employee autonomy (flexibility) through informal and unwritten understandings is key to the success of firms (Marlow *et al.*, 2010: 956).

Previous literature (Roethlisberger and Dickson, 1939), suggests that “employment relations in the largest organizations operate through both formalised policies and informal interactions or negotiation” (Marlow *et al.*, 2010: 956). Furthermore, irrespective of firm size, the literature suggests that “degrees of informality and formality [can] coexist within all organizations, and that analysis should be oriented toward understanding this interplay” (Marlow *et al.*, 2010: 956). Misztal (2000: 4) argues that informality and formality must be understood as a “dualistic span”, which suggests that “formalization and informalization can take place simultaneously”. These constructs must be understood to “form two ends of a continuum from informal to formal”, which highlights the varying degree of either formality/informality (Nguyen and Bryant, 2004: 601). Moreover, pressure to formalize within the firm arise when “existing approaches lead to errors or lack the capacity to meet new demands” (Marlow *et al.*, 2010: 956), alongside the need for regulatory compliance as firms expand.

### **2.6.2 Advantages of formalised Human Resource Management/Employment Relations policies**

Following recent studies (Bacon and Hoque, 2004; Cully *et al.*, 1999; Forth, Bewley and Bryson, 2006; Heneman, Tansky and Camp, 2000), that concern employment relations in smaller enterprises, “the key indicator of formality is the number of identifiable employment policies and practices in place” (Marlow *et al.*, 2010: 957). These include job advertisements, the use of formal recruitment methods, formal employee appraisal and grievance systems, equal opportunity policies, dismissal procedures, the use of a “professional qualified resource specialist” and lastly employee training schemes (Sheehan, 2013: 554; Edwards *et al.*, 2013: 32). Marlow *et al.* (2010: 959) argue that a shift towards formality arises “through key events in managing the employment relationship . . . especially evident in accounts of recruitment and selection, appraisal, and grievance and discipline”. The benefits of more formalised procedures governing the employment

relationship include “improvements in individual performance, managerial procedures and customer relations” (Marlow *et al.*, 2010: 959).

The shift towards more formalised employment relations may be attributed to firm growth and improved performance as well as the need to address the concerns of additional employees more efficiently (Sheehan, 2013: 547). Firm performance is accordingly measured based on “profitability, innovation and labour turnover” (Sheehan, 2013: 547). Innovation can be seen to denote “product and process innovation, as well as organisational and marketing innovation” (Sheehan, 2013: 555). As firms grow terms of output and employee numbers, the need to develop more formalised, “identifiable policies, rules and regulations that define and oversee the employment relationship” arises (Nguyen and Bryant, 2004: 601, see also Marlow, 2002).

Marlow *et al.* (2010: 690) conclude in their study of six medium-size firms in the UK, that “formalization is presented as inevitable [by employees], driven by internal organizational dynamics and customer demands, to maintain the organization of employment relations in a semblance of order”. Alongside internal organizational dynamics, the need to formalise is motivated by external factors as well. In a study of HRM practices of small firms in Vietnam, Nguyen and Bryant (2004:599) argue that the adoption of formal ER and HRM practices was undertaken reactively to “competition from international firms”, as means to remain competitive. Therefore, it is important to note that both external and internal factors have a role to play in the adoption of formal ER and HRM policies of the firm.

The benefit of formalised HR practices and processes in small and medium-sized enterprises (SMEs) is not only about smaller firms attempting to compete with larger ones for customers and market share, but also to attract skilled labour as well. More specifically, a key determining factor for employees when choosing to work for a given company is a greater degree of job security and better terms and conditions of employment, which are usually characteristic of larger firms (Nguyen and Bryant, 2004: 604). As the knowledge-based economy becomes more prominent, firms will require more skilled workers. According to Nguyen and Bryant (2004: 605), while “training is expected to have a positive impact on firms’ performance . . . [it] needs to be converted into positive behavioural outcomes for the business to benefit”.

The emphasis placed on additional training to improve firm performance is linked to HPWS (van der Meer and Ringdal, 2009) or high-involvement work systems (HIWS) literature (Pohler and

Luchak, 2014). HPWS seek to promote greater employee participation and work-process flexibility in return for greater job security and improvements in productivity. Furthermore, the emphasis is placed on training and skills development, which is suggestive of a positive correlation between firm performance and skills development (Storm and Naasterpad, 2007: 4). According to van der Meer and Ringdal (2009: 530) in their study of firms in Norway, they found a positive correlation between formal firm funded training initiatives and union membership to higher wages and productivity. Moreover, key to HPWS in firms was the emphasis on training and developing personnel as means to engender greater commitment or involvement through teamwork and functional forms of work organisation, such as job enrichment, enlargement or rotation (van der Meer and Ringdal, 2009: 530). The introduction of functional flexibility may lead to improved working conditions and, depending on the nature and market of the firm, functional flexibility and numerical flexibility could be viewed as complements. Chowdhury and Rahman (2007: 36) argue that HRM practices have become key to developing and sustaining the competitive advantage in firms through development of mutual trust and shared values. Moreover the key function of HRM is to promote “multi-skilling and skills upgrading and continuous learning” in the enterprise through human resource planning and development (Rahman and Chowdhury, 2007: 36).

Verreynne *et al.* (2011, cited in Sheehan, 2013: 550), highlight the positive correlation of high-performance, high-trust work systems to the performance of firms. HPWS include “trust, team working, participation, organisational learning orientation and employee skill development”. Furthermore, a degree of informality assisted in the adoption of HPWS in these firms, as well as contribute toward “positive organisational culture, which in turn enhanced performance” (Sheehan, 2013: 550). Positive organisational culture includes identifying with and sharing the values and goals of the firm, alongside existence of employee support structures.

In their study of SMEs in the UK, Bacon *et al.* (1996) propose “an inverse U-shaped relationship between firms’ formality and performance” (cited in Nguyen and Bryant, 2004: 605). The key challenge for such firms was to implement more formalised HR policies and processes “alongside the informal culture and organic nature of management in small business” (Nguyen and Bryant, 2004: 605). Through formalisation, professionalism and managerial autonomy are enhanced, whilst “informal culture can be a source of SME’s competitive advantages” (Nguyen and Bryant, 2004: 605). A difficult balance must be struck between the needs of informality (flexibility,

teamwork and communication) and formality (efficient policies and procedures to regulate the employment relationship). Too much of the former could constrain business potential, while too much of the latter could constrain employees' ability to work effectively in teams (Nguyen and Bryant, 2004: 605). The pressure for SMEs to formalise the employment relationship arises out of the need to remain competitive with larger firms by attracting and retaining skilled employees. Through formalising a firms' HR practices and processes, the firms become "more transparent, and therefore more attractive to employees" whilst similarly leading to higher firm performance on Nguyen and Bryant, 2004: 611).

### **2.6.3 Market Context of firms**

The market context that a firm is confronted with will "affect the ease with which it can absorb any costs of legislation" (Edwards *et al.*, 2004: 251). Therefore, it may be argued that the greater the firm's competitive market pressures, the greater the absorptive costs associated with EPL. Edwards *et al.* (2003: 33) argue that the nature of a firm's product market shapes the firm's behaviour in the sense that lower quality product markets result in the use of "lower skilled workers and paid lower wages". Therefore, as the competitive pressures within the market that a firm operates in increase, employment legislation will lead to increased costs and potentially push the firm toward non-compliant operations and employment practices (Edwards *et al.*, 2004: 251).

Bhorat *et al.* (2002: 31) state that, on the basis of the South African Large Firm Survey (LFS) of 1996, South African firms have been following their international counterparts by shifting toward "greater use of flexi-workers, through casual labour, sub-contracting to smaller firms, homeworkers and other outworkers and agency workers". The LFS shows that sub-contracting to smaller firms by larger firms is a rising trend because of the changing labour market environment. Changes to the labour market environment, as outlined in section 2.4, is greater protection afforded to non-standard employees and growth in informal sector employment. Most large firms outsource "general services, transport and training", this includes the outsourcing of production by 45 per cent of firms within the study (Bhorat *et al.*, 2002: 31). The primary motivation behind the decision to outsource was guided by flexibility considerations, which enabled firms to respond to rapid changes in demand. Outsourcing was also seen as an important cost-saving measure as opposed to directly employing standardised forms labour (Bhorat *et al.*, 2002: 31). The decision to outsource

certain business functions has been noted to induce greater employment insecurity and wage insecurity for employees since non-standard forms of employment are beyond the protective ambit of labour legislation, whilst also receiving lower wages compared to those in standard, full-time employment. Alongside flexibility considerations, large-firms see outsourcing as an important means to expand the workforce when required by the market whilst avoiding the prospect of hiring workers permanently (Bhorat *et al.*, 2002: 32).

A common strategy by firms, both large and small, is to outsource certain functions and to use temporary employment when required based on considerations of ‘flexibility’. This can be seen as a significant consequence of the dictates of globalization on firms in which there is renewed emphasis on the need for firms to remain internationally competitive following the greater incidence of international trade (Bhorat *et al.*, 2002: 33). As firms seek greater flexibility in response to globalization, Bhorat *et al.* (2002: 33) suggest that “that conditions of employment and worker security have been affected. In addition, another key source of labour market of rigidity in South Africa is high trade union density, which is perceived to induce greater employment and wage inflexibility for firms (Bhorat *et al.*, 2002: 35). However, from the employee perspective, trade unions are seen as a vital source of representation, income and employment security due to the integral role played by unions in distributing benefits.

#### **2.6.4 Cost and Benefits of Employment Protection Legislation**

In recent years, according to Pierre and Scarpetta (2006: 1), there has been a heated debate over the perceived costs and benefits of EPL. This legislation has been implemented with the sole objective of “enhancing workers’ welfare and improving working conditions, but if too onerous legislation may raise labour adjustment costs and affect labour market outcomes” (Pierre and Scarpetta, 2006: 1). EPL has been suggested to impact upon the ability of firms to hire and fire employees (Pierre and Scarpetta, 2006: 1). Drawing on the World Bank’s Doing Business Survey and Investment Climate Surveys (ICS), Pierre and Scarpetta (2006) seek to construct and analyse the perceived strictness of EPL in 47 developing or emerging economies and how that affects employment creation.

The aggregate data of EPL suggests that, *ceteris paribus*, “young or small firms appear less concerned with labour regulations, while older, or medium and large firms are more likely to report

these regulations are an obstacle to their business” (Pierre and Scarpetta, 2006: 6). This assertion was further corroborated by Edwards *et al.* (2003: 10) in their study of small firms in the UK, which shows that managerial autonomy has been constrained by the existence of EPL. However, the primary effects on firms were largely confined to extra-administrative burden, thus leading to additional time placed on managers’ to research legislation and comply (Edwards, *et al.*, 2003: 10).

Taking indicators of firm performance into account, such as their history of innovation and employment growth, “innovating firms are more likely to report that labour regulations are a significant source of constraint” (Pierre and Scarpetta, 2006: 6). Innovative firms may introduce new technology that may require new skills and the argument is posited, that the stricter the EPL, greater is the direct and indirect costs. For example, this may include extra administrative burden of adjusting the firms’ workforce to changes in other markets (reducing costs) or complying with the NWM. Pierre and Scarpetta (2006: 6) further argue that “firms facing stricter EPL are more likely to report that regulations are a major obstacle to their operation”.

Medium to large firms are the most severely affected by EPL, as “they tend to be more sensitive to the strictness of regulation” compared to smaller firms which are either exempt from certain elements of EPL or escape the ambit of enforcement completely (Pierre and Scarpetta, 2006: 6). Pierre and Scarpetta (2006: 6) assert that too onerous EPL can act as a disincentive to innovating firms that adapt new technologies, which “may over time negatively affect the aggregate productivity and growth potential of the country”. Conversely, Edwards *et al.* (2003: 60) argue that regulation or EPL can encourage “innovation and a shift toward high-value added activities, it will contribute to the development of the business and its benefits”. However, such perspectives remain largely indeterminate, whereby the degree to which hiring and firing costs affect the firm productivity and ability to innovate, is largely dependent on the institutional environment (Storm and Naasterpad, 2007: 2).

Storm and Naasterpad (2007) drawing on the recent work of Auer, Berg and Coulibaly (2005), argue on the basis of available empirical evidence from Europe that more regulated or coordinated economies have higher aggregate labour productivity growth in comparison to more flexible labour markets. A key issue regarding costly hiring and firing costs in a decentralised bargaining environment is the free rider problem for firms, which increases the cost and risk associated with



investments in on the job training, for example (Storm and Naasterpad, 2007: 6). Despite this, labour market regulation in the form of strict EPL may increase labour productivity growth, through inducing greater sense employer motivation and effort. These two factors are influenced by “the wider social environment in which workers operate, and within which notions of trust and fairness are defined” (Storm and Naasterpad, 2007: 3).

Edwards *et al.* (2004: 252) conclude that “the extent of costs will thus depend on the nature of the firm rather than being automatic consequences of regulation”. Thus, labour-intensive firms exposed to international competition will likely undertake skill-intensive, defensive innovation to remain competitive. Largely to the determinant of unskilled wage and employment levels (Edwards, 2002: 18).

## **2.7 CONCLUSION**

In conclusion, this chapter has attempted to link multiple themes and areas of focus with the objective of situating more clearly the importance of regulated flexibility as a guiding theoretical framework under a pluralist industrial relations system. Key mechanisms of the regulated flexibility framework include voice-regulation, administrative discretion and application of soft law for example. Pluralism as noted previously accepts the inevitability of conflict between different interest groups (employers and employees), and the key to resolving opposing interests is through promoting social dialogue and institutionalising conflict. It is important to note that employers have an interest in flexibility (work-process, numerical flexibility) and employees have an interest in security or regulation (job, employment and representation security). Social dialogue and voice-regulation is promoted through workplace forums and bargaining councils, for example. The broader objective of a pluralist industrial relations system is the modifying of market forces through collective action and social dialogue. The overarching objective of regulated flexibility is to achieve the desired balance between opposing interests, in which certain types of flexibility are traded-off for certain forms of regulation. As was argued too much regulation and too much flexibility could affect the efficiency and equity of the labour market respectively, thereby leading to undesirable economic outcomes to the detriment of both parties.

Linked to these opposing interests are two distinct approaches to stimulating economic growth and international competitiveness. The first is the neoliberal low-road approach which emphasizes greater labour market flexibility, low wages, low social benefits and limited EPL as a means to retain cost-competitiveness, and has been the dominate economic paradigm since the decline of Keynesianism in the 1980s. The second is the high-road, high-trust approach in which the emphasis is placed on high-wages, high social benefits and greater EPL which is viewed as more conducive to the performance of firms and international competitiveness. Central to understanding labour market regulation in post-apartheid South Africa and key forms of legislation such as the LRA of 1995, BCEA of 1997, SDA of 1998 and EEA of 1998 is an attempt to position South Africa on the high-road to economic growth. The high-road approach emphasises skills development and a cooperative industrial relations system under a pluralist framework, which would allow employers and employees through their representatives to determine their own employment arrangements, if the limits contained in the BCEA of 1997 (for example) were not transgressed.

Despite attempts from legislators and policy makers alike to pursue the high-road, there was a clear disjuncture between labour market regulation and South Africa's macroeconomic framework. Although various policies have been implemented and adapted post-1994, such as the RDP in 1994, GEAR in 1996, ASGISA in 2006 and the NGP in 2010. It is important to note that South Africa in terms of macroeconomic policies was placed on a neoliberal growth path during the latter years of the apartheid regime. Since the introduction of other policies post-GEAR, South Africa's macroeconomic framework has remained largely unchanged. More importantly contained within the GEAR macroeconomic framework is commitment on behalf of the South African government to pursue regulated flexibility. The objective being to extend protection to more workers and promote continuous productivity improvements in the economy including the informal sector. Despite this commitment to regulated flexibility, the intended implementation of GEAR did not materialise as envisioned by the Department of Finance. The disjuncture between the Department of Finance and the Department of Labour centred on how to address unemployment with the former seeking to expand labour-intensive employment and proposed greater labour market flexibility, the latter proposed increased productivity improvements.

As international competition become more prevalent, companies shifted toward more capital-intensive production leading to higher demand for skilled labour. However due to South Africa's historical skill deficit, unemployment grew alongside non-standard forms of employment (temporary, casual and informal). The growth of non-standard forms of employment and the decline of standard long-term employment, it was argued as an unintended consequence of new labour market legislation and the disjuncture between South Africa's macroeconomic frameworks. Moreover, as the data from the QLFS indicates, between July-September 2017 and 2018 informal sector employment has increased significantly in comparison to formal sector employment.

Despite the increase in unemployment and rise in non-standard forms of employment, a central objective of regulated flexibility as the guiding principle underpinning the four key forms of labour legislation, was the commitment to avoid overburdening firms with too much regulation. As outlined, the LRA of 1995 deals with collective legislation and the BCEA deals with individual legislation. Furthermore, these two key forms of legislation are supported by the EEA of 1998 and the SDA of 1998 in which the relevant provision that encompass regulated flexibility were explored.

Proceeding from this, the effects of labour market regulation or EPL on Small and Medium firms were explored. The argument advanced in this paper is that greater EPL, which seeks to position firms on the high-road to economic competitiveness, can accrue certain benefits for the employer and employee. This carries the implication that despite the inherent costs of greater EPL on firms (which is dependent on the nature of the firm), the benefits include business modernisation and greater employee commitment as a result of higher wages and greater job security. Furthermore, as firms expand and adopt more formalised HRM practices, informality remained a key element within the day-to-day operations. Central to understanding the internal dynamics of firms, is the duality of informality and formality, which exist to varying degrees in all firms irrespective of size. With respect to informality in firms, the argument was made that informal relations within firms assisted in the adoption of formal HRM policies and HPWS such as team-working and organisational learning.

## **CHAPTER 3**

# **TWIZZA SOFT DRINKS: A CASE FOR REGULATED FLEXIBILITY?**

### **3.1 INTRODUCTION**

The objective of this chapter is, firstly, to provide a company profile of and background to Twizza Soft Drinks (henceforth Twizza), which was established in 2003 by Ken Clarke. The second objective of this chapter is to outline and explore the product market within which they compete. Twizza, one may argue represents a highly competitive domestic manufacturer of carbonated soft drinks, which competes not only with local producers in the affordable carbonated soft drinks market in South Africa, but globally-recognised beverage manufactures such as Coca-Cola and affiliated brands. Twizza represents an interesting case study in that the company is able to adapt to the dictates of the broader regulatory environment while remaining competitive, both locally and across South Africa's borders. Moreover, in this regard the BCEA of 1997 a highly favourable form of legislation despite the implicit costs. The third objective is to undertake an exploration of the firm's internal dynamics with specific reference to informality/formality and how it affects or catalyses firm performance. The core argument that will be advanced throughout this chapter is that, despite labour market legislation and government regulation imposing direct and indirect costs; these laws can lead to significant advantages being accrued to the firm in terms of business modernization, innovation in pursuit of higher value-added production and lastly more efficient management of the company's human resources. Finally, a broader assessment of Twizza's training programmes will be explored in light of demands placed on the company by legislation, namely the SDA of 1998. Moreover, company documents with respect to training and development initiatives will be utilised, as supplied by the company.

### **3.2 Company Profile**

Twizza was established in 2003 as a side project by company owner and founder Ken Clarke, who originally was in the dairy industry. According to Finweek (2018: 1), Twizza has business

distribution networks spanning across Southern Africa, including Lesotho, Botswana, Mozambique, Namibia and Swaziland. The popularity and the success of the company's products are attributed to affordability and quality.

Twizza produces various types and flavours of soft drinks, still water and energy drinks (Finweek, 2018: 1). It now has production plants in Cape Town, Middleburg and Queenstown, and has the capacity to produce 4.5 million litres a day. Twizza represents a local competitor to the large multinational corporations such as Coca-Cola that dominate the global soft drink market. As such, it is important to investigate the impact of the broader regulatory environment on the firm. The overarching objective from the company perspective was "to become the number one local producer in the country" (Ken Clarke, cited in Finweek, 2018: 1). Their key advantage compared to their competitors was to undertake their own distribution, marketing and packaging from day one. Emphasis was placed on controlling the value-chain from raw materials to finished product, thereby highlighting the importance of vertical integration within their business strategy (Finweek, 2018: 1). Unlike the broader trend of outsourcing aspects of the production to smaller firms, Twizza has kept all business functions in house to keep costs low according owner and founder.

The moment you outsource too much to others, you become their cash cow (Ken Clarke cited in Finweek, 2018: 1).

This is in contrast to trends among other firms in the manufacturing sector, which have outsourced various aspects of the production process (logistics to training) as cost saving measures (Bhorat *et al.*, 2002: 31). By controlling their own distribution, Twizza could ensure and maintain a cost-effect service to their wholesalers, with a timeframe of between 20-48 hours to get the product to its market destination. Given the local and national success of the initial Twizza products, the firm is expanding its product base to compete in the lower-cost product market and the higher-cost market with their premium brand of bespoke mixers, Clark and Sons.

### **3.2.1 Market Context**

Since its establishment, Twizza has grown significantly in terms of both company size and customer base. In 2011, the company employed 350 people, which has grown to 834 people in 2018 (Andrew Bryson, 12/09/2018). Such growth, one could argue, is a result of the product

market within which they compete and the emphasis placed on controlling costs throughout their vertically-integrated business model.

In terms of the Twizza customer base, I would say definitely on the increase. It seems every year there is more and more demand for the product and we can see that with the payroll ... The demand is accelerating (Andrew Bryson, 12/09/2018).

Despite the market being very competitive, Twizza has “the second biggest market share”, with Coca-Cola having the biggest market share (Andrew Bryson, 12/09/2018). The Twizza business strategy seeks to capture the lower to middle- and higher-income bracket markets, through specifically-designed products for each. As Ronald Raubanheimer (12/09/2018), states:

We are targeting everyone. Like I say, we are servicing consumers. People out there, everyone ... We have new ranges that have come through now. So, we targeting everyone. We are servicing the lowest income to I’m sure the highest.

For the lower-income bracket, Twizza has released their Roxy product that has a “lower profit margin”. For the higher-income product, Clarke and Sons, seeks to capture the bespoke mixer market, used in cocktails (Andrew Bryson, 12/09/2018). Lastly, the original Twizza range successfully captured the lower-middle income bracket. In effect, Twizza has expanded both ways.

It is a very good strategy, lots of time and effort has gone into the research, the tasting of the product and the marketing strategy is very well thought-out . . . Re-branding is happening now, with the new label generating interest in the market as a whole. Also the shape of the bottle, everything they have put a lot of research into every angle of it. For each product they are targeting the right demographic (Andrew Bryson, 12/09/2018).

Due to the success of Twizza in the last 15 years as a local carbonated soft drink producer, competition has become more prevalent within the industry as numerous competitors have emerged in recent years in the domestic market. Local competitors include Refresh and Cooie, for example, which all seek to capture part of the market for affordable carbonated soft drinks. However, from company perspective, the firm maintains that its competitive advantage remains in “being and delivering the best quality product” whilst remaining cost competitive (Anna-Marie Hiscock, 12/09/2018). This point was further emphasized by company founder and owner Ken Clarke:

We are passionate about making the best product we can make and the key to the secret of our success in the market is producing affordable quality soft drinks (cited in HeraldLive, 2014: 1).

This increased market competition has been exacerbated by rising fuel costs, increased Value Added Tax (VAT), and the SBL (explored below), which increases the cost of the final product. These increased costs, alongside certain labour market provisions explored below, have constrained the growth of Twizza to a degree. However, as argued below, government regulation has led to certain benefits being accrued to firms such as Twizza. These benefits include the adoption and use of formal HR policies, which alongside an important informal dimension (explored below) have allowed the company to remain competitive.

### **3.3 THE IMPACT OF LABOUR LEGISLATION AND GOVERNMENT REGULATION**

This section will explore the impact of the relevant provisions of the labour laws in question, namely the LRA of 1995, the BCEA of 1997, the SDA of 1998 and the EEA of 1998. It will be argued that, although some provisions contained within these Acts are perceived to be favourable or equitable to the needs of employers such as those contained within the LRA and BCEA, other provisions as contained within the EEA for example are perceived to be too burdensome in the context of the regional skills deficit. This has led significant emphasis being placed on training and development initiatives as mandated by the SDA of 1998.

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

As noted in Chapter 2, the LRA of 1995 primarily encompasses collective labour legislation that includes provisions on organisational rights, the hiring and firing of employees, which includes probationary periods for new employees and last the role and scope of the CCMA as the primary labour market institution that deals with disputes.

Some scholars have suggested that probation is a vexed issue, on the basis that during the period of probation normal provisions to protect the employee against dismissal are relaxed (Cheadle, 2006a: 19; Bhorat and van der Westhuizen, 2008: 10). The objective of a probationary period is to

allow managers to gauge the suitability of an employee. Employees are provided with on-the-job training and are assessed in terms of performance and progress in respect to training. (Cheadle, 2006: 20).

Based on the general employment contract for Twizza employees, the probationary period for potential candidates is three months (Twizza, 2018a: 2). Upon completion of the probationary period, which includes on-the-job training and supervision, permanent employment will be offered. However, the company reserves the right, as provided by legislation, to dismiss an employee during this period on grounds of poor performance.

Regarding dismissal procedures for either the operational requirements of Twizza, misconduct or incapacity, the employment contract stipulates this in conjunction with company code of conduct. In this respect, the company undertakes induction annually or bi-annual to revise employees on the expectations placed on them. The Twizza permanent contract of employment stipulates during the probationary period, on the job training will be provided, during which performance will be assessed and monitored. Upon completion of the probationary period, permanent employment at the company will be offered. However, the company, in accordance with the LRA, reserves the right terminate the contract of employment on the basis operational requirements, incapacity or misconduct (Twizza, 2018a: 9).

The permanent contract of employment stipulates that, employment may be terminated by either party (employer or employee) “upon 1 (one) weeks; notice during the first 6 (six) months, 2 (two) weeks’ notice during six months to one year and 4 (four) weeks’ notice after 1 (one) continuous year of service” (Twizza, 2018a: 9). Notice to terminate the employment contract must be provided to either party in writing on any given working day. At Twizza Middleburg factory, employees were dismissed based on operational requirements due to “too many people” at the Middleburg factory. Further retrenchments are being planned in the future because of workplace efficiency and labour costs considerations (Anna-Marie Hiscock, 12/09/2018).

The company maintains that it abides by and adheres to all labour market statutes, including those that concern formal disciplinary hearings, which are subject to the company disciplinary code and procedure. Managers at Twizza maintain that an employee will only be brought before a disciplinary hearing once due process has been followed with respect to substantive and procedural fairness. However, despite this, disgruntled employees have still taken the company to the CCMA.



We had a case in the week where we had an end of contract with an employee, which clearly stipulates an end of contract that you waive your rights for further action . . . The Commissioner did not entertain that. Because why, the CCMA is free of charge, anybody can go (Anna-Marie Hiscock, 12/09/2018).

This may be attributed to a lack of familiarity on behalf of an employee with respect to the relevant provisions as they pertain to dismissal and termination of contract. When asked about the extent of their knowledge of the LRA of 1995, 3 out of 4 employees interviewed said they had a vague idea about the provisions, but could not say which provisions were the most important.

Drawing on company records, supplied by the HR department, the company dealt with an estimated 21 cases at CCMA in 2018. Of those 21 cases, 14 were resolved through the conciliation process through non-monetary settlements. The remaining seven were resolved through the process of arbitration. A key function of the CCMA, as discussed in Chapter 2, is the application of Soft Law, through the Codes of Good Practice and was previously noted as a key mechanism of regulated flexibility. When posed the question concerning Codes of Good Practice in relation to the CCMA which are meant to be updated on a regular basis. The Codes of Good Practice aim to establish general guidelines or “standards of behaviour” as opposed to imposing duties on employers (Cheadle, 2006: 7). However as the literature outlined in Chapter 2 suggested, Commissioners do not adhere to the Codes of Good Practice, and rather rely on “over-proceduralized pre-dismissal hearings” for example (Cheadle, 2006b: 8). In this regard, Anna-Marie Hiscock (12/09/2018) argues that the primary point of contention was with the lack of “quality commissioners coming through now” compared to the commissioners a few years ago. Furthermore, Anna-Marie Hiscock (12/09/2018) argues that the current commissioners are not adequately trained to deal with new legislation coming through.

Take equal work for equal pay and discrimination, you will only have a certain group of commissioners that are trained to actually run with it. As an employer, your hands [are] in the commissioners’ [hands] and the same as an employee. . . The commissioners must make the call and that is why you have further action to do. If I am not happy with an arbitration case . . . then I can take the case on review” (Anna-Marie Hiscock, 12/09/2018).

Unlike the new generation of commissioners coming through, “your old school CCMA commissioners are good, especially those that are senior commissioners that are either attorneys or advocates, they are bloody good” (Anna-Marie Hiscock, 12/09/2018). Furthermore, Anna-Marie Hiscock (12/09/2018) maintains that in order to improve the effectiveness of the CCMA, the new commissioners coming through need to be better trained. Therefore, based the annual

number of cases taken to the CCMA, the costs incurred to the company remain marginal and do not represent a significant constraint on business operations.

As noted in Chapter 2, the LRA provides for formal and codified organisational rights, and the promotion of employee participation in the workplace through workplace forums. However at Twizza, there is no bargaining council agreement and thus the company relies heavily on the minimum standards outlined in the BCEA and LRA for example. Moreover, representation security, as ensured through the right of freedom of association is evident through the presence of a minority union FAWU (Food and Allied Workers Union). When asked about the relationship between the union and Twizza, the local shop steward stated that the relationship between the two parties are largely cooperative.

Toward the union, when we have problems we come to the HR department and discuss the issues. There is a policy that we all have here. The HR door is always open; it's what they are telling us. If they organizers have got a problem, just pick up the phone and say I would like to come meet you, at any time you are always welcome. So they're friendly toward us (Mandilakhe Matyolo, 12/09/2018).

However, some of the employees interviewed expressed certain reservations regarding the role of FAWU in articulating their interests, and in particular the lack of a viable alternative union.

I am not, because they were since I got here. I have only heard that there is FAWU as a union. They have not come to us sell themselves to us. They have not come to us [to explain the benefits of joining a trade union] . . . but I see in some meetings that the guys want to leave that FAWU. They say it is not working for them. Because ever since they joined FAWU people have been dismissed, they haven't even won one case the FAWU guys (Thanisizwe Velem, 12/09/2018).

Therefore, although the LRA guarantees the right of freedom of association to join a trade union and thus offers representation security, the extent to which representation security is propagated, depends on the nature and ability of the organisation charged with looking after the core rights of workers.

As required by legislation all employees have mandatory Unemployment Insurance Fund (UIF) deductions from their pay and those who are members of Food and Allied Workers Union (FAWU) have membership fees deducted from their pay. The mandatory UIF deductions serve to provide employees with an additional form of income security in the event of unemployment either as a result of dismissal, end of contract or employer bankruptcy. The mandatory UIF fee is 1 per cent

of an employees' monthly salary. Union membership fees are deducted, upon employee approval to fund the activities of the union as a representative organisation. FAWU union fees are either deducted weekly or monthly and range between R35.00 to R130.00. The overall purpose of the mandatory UIF and agreed trade union fees is to provide employees a greater degree of income security and representation security.

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

This Act is perhaps the best example of regulated-flexibility at work. For example, it makes key allowances for the variation of work hours for a given week, if the maximum threshold of 45 hours in a week is not surpassed. Proceeding from this, Twizza stipulates within the permanent contract of employment that employees must be available for 45 hours per week on average as per the Act. The employment contract, which details the particular terms and conditions of employment at Twizza impart both a degree of job and employment security for employees, such that arbitrary loss of employment is prevented in which adequate notice periods for the termination of contract are included.

Twizza is a largely demand driven enterprise in which the need to either decrease or increase production is indicated by market demand. Market demand for Twizza products is highest during the summer peak season (September to March) and lowest during winter off-season (April to August). During the Twizza peak season, the Twizza factory is required to operate 24 hours a day, six days a week. Subject to significant changes in the demand for Twizza products, the company reserves the right to makes use of temporary workers *in lieu* of operational requirements.

In production we only have permanent people. Then when its peak, we are going to have casual maybe for cleaning and loading trucks and stuff. During peak season they hire casuals (Mandilakhe Matyolo, 12/09/2018).

As alluded by van der Meer and Ringdal (2009: 530), depending on the characteristics of the firm and the nature of the market, numerical and functional flexibility may be either complementary or a substitute. Therefore in the case of Twizza, the nature of the market in which they compete and the characteristics of the firm suggests that functional and numerical flexibility are complementary.

The company has implemented two types of shift systems. The two-shift system for a three-week cycle includes a day shift (06:00 to 18:00) and a night shift (18:00 to 06:00) that includes a 30-minute lunch break. The Twizza three-shift roster, which includes 7.5 hours a day for six days a week (45 hours in total) were: day shift (06:00 to 14:00), afternoon shift (14:00 to 22:00) and night shift (22:00 to 06:00) including a 15-minute and 30-minute tea and lunch break, respectively (Twizza, 2018a: 4). When asked further about how the shift system works in practice at Twizza, the following was noted:

We have got three shifts, 12 hours so you will work say for example 4 hours on and 2 hours off or 4 hours on and 1 hour off and then you will shift from day to night. But there is a rotational layout and that is how it works. The other guys will come in on different shifts during the day to make sure that they cover up till, for example warehouse will cover up until whenever they finish. And then you will have a group coming in early and another grouping coming in mid-day (Anna-Marie Hiscock, 12/09/2018).

The shift system as guided by the regulation of working time in the BCEA and can be seen to denote a form of work-process flexibility with regards to the ability of Twizza change, in short notice and relatively little cost, the working time and the allocation of work tasks between different teams of employees.

The permanent contract of employment stipulates that employees be notified of the need for overtime at short notice of one shift due to “demand fluctuations” and is limited to 10 hours per week (Twizza, 2018a: 5). It is important to note that, as outlined in the employees’ terms and conditions of employment, Saturday forms part of the normal shift schedule outlined above. Work on Sundays and public holidays is determined purely by operational requirements and employees are paid double the normal wage rate. Out of the four employees interviewed, 3 have been required to work on public holidays and Sundays.

It depends on the peak season, if the company wants you to work on a public holiday or weekend, we do come to work on those days. If it is a public holiday, you get paid double. If it is normal day, say Saturday I would get my normal pay. Public holidays and Sundays we get paid double (Mandilakhe Matyolo, 12/09/2018).

Never actually public holiday, but when we are going to work on a weekend they do let us know; that guys we need you on a Sunday. But it is not forced, the ones that cannot come, they won’t get in trouble. But if you can come, then you come . . . extra money (Thanisizwe Velem, 12/09/2018).

No, unless we are asked to. Not sure, but I think it’s double the time (Gwenga Mganyana, 12/09/2018).

Therefore as noted previously in chapter 2, the BCEA is the most clear-cut example of the implementation of the regulated flexibility framework. It is evident that the limits established within the Act provide an equitable balance between the interests of the employee and employer. Moreover, through the mechanism of voice regulation, through an agreement of mutual interest between the employer and employee, employees can either opt for additional income (income security) or time off in the case of overtime. In addition, this can be seen as an example of work-process flexibility, whereby through joint decision making the labour process is restructured in which employees agree to work on Sundays or public holidays. In this instance, employees can opt for Public holiday overtime pay or receive time off (Twizza, 2018: 5).

The BCEA provides a degree of worktime flexibility by limiting overtime to 10 hours in any given week unless an agreement is reached between manager and employees. However, this may not surpass 15 hour per week and the duration of this agreement cannot exceed two months. Moreover, the averaging of working hours over a given period, which may not exceed 4 months, is beneficial to both the company and employee.

Therefore, the argument may be made that the regulation of working time, as mandated by the BCEA provides a degree of worktime and work-process flexibility for Twizza, in that it can respond to changes in market demand for its products at relatively short notice. The primary source of security (job and employment) for employees is contained in the permanent contract of employment, which includes terms and conditions pertaining to the need on behalf of the company for greater flexibility when required. However despite the accommodation of both flexibility and security for both parties, there are inherent costs linked to the regulation of working time and affording employees' a degree of job security.

From a payroll side . . . you are now paying out 13 week or a three month average commission. Whereas before, prior to 2003, before they had that law, the companies would just simply pay a basic salary . . . They would not add the extension of commission on to it. A company like Twizza has got lots of drivers . . . if we did not have that law we would save about a R1 million a month, easy (Andrew Bryson, 12/09/2018).

Regarding remuneration and performance bonuses, the former is determined by the number of hours worked subject to the operational requirements (such as changes in demand) of the company. The latter is subject to the sole discretion of the company in terms of employee performance and

appraisal procedures, whereby both are identified as key forms of wage flexibility. There is an evident degree of wage flexibility; the decision by managers for employees to work overtime as required by changes in the demand for Twizza products, is made at relatively short notice (one shift). It is important to note that minimum remuneration is stipulated at R20.00 following the promulgation of the NWM from 1 January 2019. However, Twizza had, prior to this announcement, already implemented the minimum wage increase by 1 March 2018. For employees, depending on the occupation grouping (i.e. management) and the extent of their education, training and experience will be paid more compared to a picker and packer on the shop floor. From a HR perspective, wage differentials are being assessed between different types of employees.

We are busy looking at that at the moment, we have already started filtering that out to make people all earn the same (Anna-Marie Hiscock, 12/09/2018).

More importantly, the implementation of the NMW prior to its promulgation into law highlights that the level at which it is set is not an issue for the company. However, it is important to note that, like most firms in the manufacturing industry, labour costs constitute the bulk of Twizza's total costs (Anna-Marie Hiscock, 12/09/2018). When asked to describe the company's employment policies and practices, the group HR noted that from a remuneration point of view more could be done.

From a group HR perspective, from a personal perspective I do feel that we can do more. Our salaries from a management level is good, we are competitive out there. If you ask about a blue-collar worker, I will tell you that we can do more (Anna-Marie Hiscock, 12/09/2018).

Following the implementation of the NMW on 1 March 2018 at Twizza, the four employees interviewed were asked whether they saw the increased wage-rate positively or negatively. Three out of the four employees saw the NMW in a largely positive light.

I see it as a positive, because people were earning less than that and now ever since that minimum wage has been introduced, it is a good thing as people's lives are going to change (Mandilake Matyolo, 12/09/2018).

I would say it is a positive, as people are getting paid more now than previously (Nonteuanhla Mtshatsheni, 12/09/2018).

Ya it should be positive, because everything is going up, you know (Gwenga Mganyana, 12/09/2018).

However, the fourth employee highlighted the plight of most workers, that despite the wage increase, the increase is still not enough from a subsistence point of view.

It is negative. Because everything has gone up food wise, fuel wise but everything has gone up. But now . . . you cannot do much on R3900. Example for now, I stay in Esbelele [Location near Queenstown]. I think it is 2-3kms, we decide to walk because now transport is too expensive. Then that R3900, with other responsibilities as well you see, family responsibilities. So, it is a negative. Ja, it is better, because the guys now - before they said they were earning R2700 and now it has gone up to R3900. It is better than that one (Thanisizwe Velem, 12/09/2018).

Therefore it may be argued that, as per the definition of income security by Standing *et al.* (1996: 9), which focuses on assuring “at least subsistence wages”, that despite the increase in the wage-rate in the form of the NMW, there still exists a degree of income insecurity in this case, compounded by other factors such as the increase the price of fuel and VAT.

Twizza largely abides by the various leave (annual, maternity family responsibility and sick leave) provisions contained within the Act. The right to take any one form of leave is seen as a core right. However, due to the “seasonality” of Twizza business, employees are prevented from taking leave during the Twizza peak season (between October and March) and leave is limited to 15 working days per annum. A medical certificate is required if an employee wishes to take maternity leave as required by the Act. Family responsibility leave is available to all employees subject to the completion of four consecutive months of employment, in which three days of leave is provided per annum. As with maternity leave, to qualify for both family responsibility and sick leave, reasonable proof is required by the employer (Twizza, 2018a: 6).

In terms of the provisions regarding leave, the key impact on the company is of an administrative nature, which has a “huge impact on the company” (Anna-Marie Hiscock, 12/09/2018). The brunt of the impact is centred on the increased administrative burden of finding suitable replacements to cover the time off by the employee on leave.

Either you must bring in a temporary worker, and with that you can’t just bring in any temp worker. It depends on the operational requirements . . . Now everybody must run around

and make sure that the person must get trained and be assessed (Anna-Marie Hiscock, 12/09/2018).

Interestingly Anna-Marie Hiscock (12/09/2018), states that although they comply fully with the law regarding maternity leave, there is room to go beyond what the law stipulates as a means to retain senior or quality staff by providing 25 to 50 per cent paid maternity leave, for example. The minimum standards contained within the BCEA stipulates, in the case of an employee on maternity leave, in which 4 months unpaid leave is granted. However, this is a minimum standard and subject to an agreement between the employee and employer, improved terms and conditions of employment, i.e. maternity leave benefits may be included in the employee's contract of employment.

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

As outlined above, the fundamental objective of the EEA is to promote equal opportunities and representation as well as fair treatment of employees by preventing unfair discrimination in the workplace (EEA, 1998: 1). The Act key focus is on the implementation of AA and the use of EEP to achieve equitable representation in the workplace as informed by the regional EAP. From a company perspective, the EEA can be seen as onerous due to the significant amount of resources, administrative or otherwise, required to comply with this Act. However, a key leveller in this respect is the ETI, which seeks to reduce the direct costs and risks of employing people between the ages of 18 and 28.

The key challenge from a recruitment perspective is complying with the legislative requirements that concern the EAP in terms of each respective firm (Twizza) EEP as per Section 19. This requires employers to set:

“numerical goals and numerical targets in their Employment Equity Plans, employers must take into account, both the national and regional/provincial demographics of the Economically Active Population as per Section 42 of the Act” (Employment Equity Act, 1998).

This may prove administratively burdensome to the firm in search of finding suitable employees who satisfy qualification criteria for the specific role on the one hand, and on the other satisfy



demographic representation for the Eastern Cape on the other. From a recruitment perspective, the skills shortage in the Queenstown area has presented and compounded the challenge of satisfying the EAP. The EAP for the Eastern Cape for 2014 suggested that 76.9 per cent of employees must be black, 13.5 per cent coloured and 9.5 per cent white. The Eastern Cape EAP for 2017 suggests that 82.4 per cent must be black, 9.5 coloured, and 7.3 per cent white (Department of Labour, 2018b: 14)

A little town like Queenstown, it is difficult to recruit previously disadvantaged . . . Say you make an offer to a previous disadvantaged employee and in the meantime, they use it as a carrot to go back to their current employer (Anna-Marie Hiscock, 12/09/2018).

Despite Twizza being a large firm with various resources such as dedicated HR department at its disposal, the skill shortage is having a significant impact, both in terms of direct cost to company and retaining previously disadvantaged skilled staff. Therefore, significant pressure is being placed on Twizza to comply with the regional EAP by the EEA. In this respect, this can be seen as a broader challenge confronting firms subject to the EEA. As alluded to by Booysen (2007: 48), firms such as Twizza are faced with the double challenge of recruiting and retaining competent, previously-disadvantaged employees and implementing training and development strategies”.

### **3.3.4 Skills Development Act (97 of 1998)**

As outlined in Chapter 2, a key objective of the Skills Development Act of 1998 is to stimulate industry-level competitiveness by addressing historic skills deficits. Because of this legislation, Twizza have placed a renewed emphasis on the need to promote and develop employee skills (in conjunction with the FoodBev SETA) above what is required by the Act (Twizza, 2018b).

The Twizza training and development policy document acknowledges the importance of retaining, developing and utilising relevant skills, which are identified as “paramount to the Company’s success” and performance (Twizza, 2018b: 1). Moreover, Twizza commits to providing “opportunities for our employees to grow, develop and acquire skills required not only perform in their current roles but also roles into which it is agreed they may have the potential to develop” (Twizza, 2018b: 1). However, it is important to note that, the eligibility of employees to receive

additional training and development cannot be viewed as a given right, but rather dependent on budget constraints, recognition of performance and potential (Twizza, 2018b: 1).

[The] budget for training is not only based on what the legislation states . . . but based on the need of what the organisation wants, per department (Anna-Marie Hiscock, 12/09/2018).

According to Twizza (2018b:1) in conjunction with the relevant Acts (BCEA, SDA, SDLA) training needs of the employees are identified either through “Performance Appraisal or Performance Development Review”. Only employees who have been employed in the organisation (Twizza) are applicable to pursue additional training and development. All training and development initiatives are coordinated through the HR department, in conjunction with the employees’ line-manager and the Training Committee. Following approval by Senior Management, the training and development initiatives will be combined into the Workplace Skills Plan.

According to the Twizza Talent Management policy, there is a commitment to promote employee participation in potential career path discussions with the emphasis placed on utilising the internal labour market or “talent pool” to address the talent requirements of the company (Twizza, 2018c: 2).

If it is a position where, the [Head of Department] feels that I can take Anna-Marie [as an example] and develop her into being the best unit manager. That’s when HR sits in on the interview . . . They will have put together a training and development plan with an assessment as well. It all depends on what is required . . . This person is going to need three months, six months, 12 months or whatever the duration is (Anna-Marie Hiscock, 12/09/2018).

The costs of the training and development initiatives are covered by the company, unless the employee fails the course or leaves the company prior to completing the course. In addition, the employee will be liable to cover the total costs of training if they leave the company within 12 months of completing the course.

The emphasis placed on training employees with proven performance and potential is viewed as critical to the success of the company. Retaining skilled employees has proved to be a significant constraint on company operations.

We have a problem retaining skills especially in Queenstown, it is a major problem (Anna-Marie Hiscock, 12/09/2018).

The Twizza training and development initiatives, as outlined above seek to identify employees with the potential and proven performance to pursue additional training and development in order to increase their job mobility through detailed career path discussions.

The whole thing for HR and training, especially in training department is engaged in communication and we've already, in the last 7-8 months have already identified per plant who are our successes and who is part of the talent side (Anna-Marie Hiscock, 12/09/2018).

### **3.3.5 Sugary Beverages Levy: A Catalyst for Innovation?**

A key point of contention for Twizza and other soft beverage companies is the impact of the sugar tax or the SBL (discussed in Chapter 2). Soft beverage companies that utilise sugar as an input in their production process, since 1 April 2018, are taxed for the use of sugar in their products. Law firm Hogan Lovell's estimates that this will increase the average price of soft drink by 11 per cent (BusinessTech, 2017: 1). Ken Clarke, in response to the Sugar Tax, is unsure of the longer-term impact on the industry, which he argues depends on how the consumer accepts this development (Finweek, 2018: 1). When asked about the impact of the SBL, the production manager stated.

[The SBL] is a concern due to the fact that it affects your market prices . . . same with the recession that we are going through now, it is all affecting the same thing (Ronald Raubanheimer 12/09/2018).

In response to prospect of increased input costs that in turn would raise the cost of the final product, the HR manager was asked how the company would retain its competitive advantage.

We have undertaken a lot of innovation . . . a lot is done through innovation of operations teams as well from a technical point of view. From a marketing and production point of view – everything is about innovation . . . If you look at the amount of money that government makes from beverages and any other organisation that does with food. On Sugar Tax . . . we had to work on initiatives that would reduce the use of sugar Anna-Marie Hiscock 12/09/2018).

Twizza has implemented an innovation strategy that seeks to reduce the company reliance on sugar as a core input, by using sugar substitutes. As outlined by Sheehan (2013: 547), innovation broadly

speaking, can be understood as product and process modernisation on the one hand, and marketing and organisational modernisation. Moreover, the company has proceeded to overhaul the production process, by reorganising production teams, adopting latest production-line technologies and changing how the product is marketed to the end consumer. Regalia (2005: 25) argues that companies can achieve greater flexibility in their production processes through what is termed “hard” and “soft” innovation. The former refers to process upgrading through additional investments in technology and machinery. The latter refers to the reorganization of work through worktime, teamwork and work-process flexibility.

It is within this context of the SBL and broader labour market legislation that managers were asked to indicate, in order of importance, what they regard as the main difficulties they face in running Twizza. The options were market competition, government regulation or labour legislation.

Government regulation with the sugar tax . . . that is a massive factor, second would be [labour] legislation and market competition definitely third (Andrew Bryson, 12/09/2018).

You have to take all into consideration when you do your business scenario, in your business scenario you will work with/off your variable costs and your fixed costs and to determine your input time . . . at the end of the day you need to know what your variable costs and fixed costs (Anna-Marie Hiscock, 12/09/2018).

The market competition is quite cut throat, I can't tell you about the other two (Ronald Raubanheimer 12/09/2018).

In analysing the above, the first two statements are more indicative of the impact that these three factors have on the company. As noted above the SBL has raised the variable cost of sugar and the NWM has raised the fixed cost of labour. Therefore, from a financial perspective the argument could be made that the extent to which Twizza may compete in the market is determined by labour legislation and government regulation.

### **3.3.6 Cost/Benefit Overview of Legislation and Government Regulation**

As outlined in Chapter 2, the perceived impact and strictness of EPL is co-determined by the market in which the firm operates, firm characteristics (size and capital intensity) and the extent to which firms are innovative (Pierre and Scarpetta, 2006; Edwards *et al.*, 2003: 7). Apart from

EPL that seeks to regulate the labour market, other forms of government regulation also have an impact on the operation of firms, such as the SBL and ETI.

As argued in the section above, government regulation in the form of SBL has increased the cost of using sugar above the 4 grams per 100ml threshold that in turn has led to the company implementing sugar alternatives to decrease the use of sugar in the product. It may be argued that the SBL has broadly the same effect on Twizza direct competitors, in terms of raising the direct cost of using sugar as an input in production. This in turn has made the market for CSD even more competitive, whereby extent to which this effect is minimised by innovative sugar alternatives, will in turn affect the cost and quality of the product.

In terms of the impact of labour legislation on the company, some provisions affect the company more than others. Anna-Marie Hiscock argues that the EEA is too onerous from the company's perspective due to the administrative workload in achieving compliance. Therefore it may be argued that efficiency has been constrained by the emphasis placed on achieving equity in the firm. In terms of the other key forms of labour legislation (LRA, SDA and the BCEA) are not perceived to be a significant hindrance to the operations of the company and are more or less fair.

The negative impact of labour legislation centres on the indirect cost of assessing the company compliance to certain provision and measured contained in legislation.

BEE and employment equity, skills development . . . can have a huge impact on organisations, and especially with the legislation changes . . . failure to comply will result in a fine by the Department of Labour inspector (Anna-Marie Hiscock, 12/09/2018).

However, in response to the rising costs of labour legislation, external training initiatives are likely to be reduced in the future. As Anna-Marie Hiscock explains:

Some of the first departments that we will look at is HR and say 'okay go back to the drawing board' . . . [We have] just had an exercise now to say 'listen here, if the training that is scheduled for external is okay, is it a want or a need?' (12/09/2018).

From a Twizza HR perspective, the incentive placed on employers to comply with labour legislation in that failure to comply will result in an adverse finding from the inspector for the Department of Labour, followed by an administrative fine. As seen below, the quote clearly illustrates the complexity and administrative burden associated with complying with certain forms

of legislation. However, firms are incentivised to comply fully with legislation order to get money spent back from the industry SETA. This largely confirms that, although other functions of SETAs have been criticised, the incentive placed upon employers to comply has been realised in practice (Allais, 2012: 633).

The whole thing of any legislation is to make sure you comply. If you don't comply, the labour inspectors will come and haunt you, and that is the truth . . . ya, we go through employment equity and skills development audits . . . Mainly DG reviews and substantive audits. We do go through all of that and, yes, it is a pain in the arse when they do come here because sometimes, we do feel that they don't know . . . So, we do get the ad-hoc visits regarding compliance (Anna-Marie Hiscock, 12/09/2018).

Another significant cost incurred to the company is filling vacancies of employees on leave and retaining suitably qualified staff. This in turn increases the administrative burden of searching for replacements with the appropriate qualifications.

We lost one of our [injection mould] operators . . . The guy offered him nearly 50% more than what we could pay. He does not have to comply with the same regulations as we, a medium to large firm (Anna-Marie Hiscock, 12/09/2018).

In assessing the above statement, although an isolated incidence, in which a smaller firm exempt from certain forms of legislation, had outcompeted a larger firm for skilled talent. However, it is important to note that this is by no means a universal trend. The retention of skilled labour and adhering to the company EEP as guided by the provincial EAP for the Eastern Cape is identified as a significant challenge to Twizza's operations at present. The challenge of complying with the EEA is compounded further by the lack of skills within the broader Queenstown area, which led Twizza to incur significant (indirect) administrative and (direct) search costs in search of the required talent for either vacancies or employees on leave. This largely confirms the findings of Pierre and Scarpetta (2006: 6), who argue that stricter EPL (in this case EEA) will present a major challenge to firms' operations. More specifically, this legislation imparts a higher indirect cost through stringent compliance measures for example, which in turn limits the numerical flexibility of the firm.

Other direct cost incurred by Twizza is the regulation of working and the implementation of the NMW. However, the regulation of working time and overtime has brought explicit benefits

through greater work-process and working time flexibility, which allows the firm to respond to changes in market demand within a short time period. The impact of the NWM on the company is seen as marginal since it was acknowledged that the current minimum wage rate of R20.00 could be improved upon. Finally, as explored below, the company undertakes significant skills and talent development (which carries additional direct and indirect costs for the firm) with the objective of addressing skills deficit of employees.

### 3.4 Formal Human Resource Management Policies

As noted by Sheehan (2013: 548), Marlow *et al.* (2010: 954) and Atkinson *et al.* (2016: 19), formalised HRM practices arise because of firm growth, in terms of both output and labour turnover, which increases organizational complexity. Twizza has recorded significant growth in terms of size, production output and labour turnover, and experienced growth in organisational complexity with three factories in different locations across South Africa. The Twizza case study suggests that formal HR practices have been a key part of company since inception and have contributed toward the competitive advantaged of the company. Formal HR policies and practices were identified as the most efficient means to ensure regulatory compliance. The implementation of formal HR policies was largely implemented as a preventative measure.

Human Resource policies were implemented when the company started and gets reviews on an annual base to ensure that the company stays in line and up to date with the changes within the BCEA and the LRA (Anna-Marie Hiscock, 12/09/2018).

Key indicators of formalised HR policies in firms, as outlined by Sheehan (2013: 554) and Edwards *et al.*, (2013: 32), include the use of job advertisements, formal recruitment methods, established employee appraisal, dismissal and grievance procedures; employee training schemes and the use of a designated human resource specialist.

Table 2: Formal Human Resource Policies at Twizza

<u>Policy</u>	<u>Yes</u>	<u>No</u>
Formal Recruitment and Selection Procedures	x	
Formal Appraisal and Promotion System	x	
Formal Grievance Producers	x	
Formal Disciplinary and Dismissal Procedures	x	

Equal Opportunity Policies	x
Formal training and Staff Retention Schemes	x
Formal Pay Structures	x
Formal Productivity Agreements	x

(Source: Interview, 12/09/2018).

As indicated in Table 2 above, Twizza reflects the primary indicators of formal HR policies, however it is important to note that productivity agreements are informally determined. Twizza has a designated Group HR executive in Anna-Marie Hiscock, who oversees HR policies across Twizza's operations. Twizza also has a designated compliance manager, who in conjunction with the HR department, is charged with adhering to labour market legislation (i.e. BCEA, LRA, SDA and EEA) and Occupational Health and Safety Act (No. 85 of 1993). The OHSA of 1993 seeks to promote health and safety standards in the workplace through annual mandatory training programs on chemical handling and operation of heavy machinery. This was illustrated by Mandilakhe Matyolo who works in the mixing department in the Twizza factory:

I have received a lot of training. I have received forklift training, food and safety, chemical handling, I can only think of those now. Because what happens every year, we go for food and safety training every year. Even though we have new employees, we just got for a recap to just refresh people (12/09/2018).

Therefore, the above can be seen to denote a form of work security through the imposition of occupational safety procedures and skill reproduction security of employees through mandatory on the job training and retraining.

Regarding the training and development initiatives, beyond those mandated by legislation, there is an inherent commitment linking training to company performance. According to Twizza (2018b: 1) training is defined as “short to medium term intervention to address gap in requirements for position vs skills possessed thus assisting performance improvement”. Development refers to a “longer-term intervention for employees which seeks to take employees to the next level and maximise their potential to operate with enhanced responsibilities” (Twizza, 2018b: 1). According to the Twizza Talent Management policy, there is a commitment to promote employee participation in potential career path discussions with the emphasis placed on utilising the internal



labour market or “talent pool” to address the talent requirements of the company (Twizza, 2018c: 2).

If it is a position where, the [Head of Department] feels that I can take Anna-Marie [as an example] and develop her into being the best unit manager That’s when HR sits in on the interview . . . They will have put together a training and development plan with an assessment as well. It all depends on what is required . . . This person is going to need three months, six months, 12 months or whatever the duration is (Anna-Marie Hiscock, 12/09/2018).

The Twizza training and development initiatives are undertaken primarily during the firm’s off-peak season between May and August. When asked what the training and development initiatives entailed, the training and development manager stated

We [are] focusing a lot on training holistically and multi-skilling and upskilling, talent development, mentorship programmes (Neusa Bobby, 12/09/2018).

The use of multi-skilling and upskilling initiatives, alongside incentives to induce greater employee commitment and participation such as career path discussions in the firm indicate the some key elements of HPWS in Twizza. Van der Meer and Ringdal (2009: 530) in their study on Norwegian firms suggested a positive correlation between firm training and union membership to higher wages and productivity. However the Twizza case study suggests that, although firm level training is extensive, the need to improve wages and reduce wage differentials have been acknowledged, which may in the future induce further employee commitment and participation and thus performance.

### **3.4.1 Dynamism of Informality and Formality**

As noted in Chapter 2, “informality and formality are dynamic constructs which coexist in differentiated forms in time and space” (Marlow *et al.*, 2009: 635). Moreover, irrespective of firm size, the extent to which informality and formality coexist within a firm is dependent on the nature of the firm. This section will seek to explore, alongside the relevant literature outlined in Chapter 2 how informal interactions alongside formal procedures contribute toward business operations.

The managers interviewed at Twizza were asked if they would describe manager-worker relations at the Twizza Head Office in Queenstown as highly formal, fairly formal, fairly informal or highly informal. The following responses were recorded:

Fairly informal, the reason being . . . you are working with people you know. When I sit down and do my job, I am doing it. When I am down with my people, I need to come to . . . I am not saying I must go down to their level. It is just that, I need to understand their situation and they have to understand my situation. So, it is almost like, an area that we create when I am down with my people, understand? When we speak work, it is totally formal but when we . . . when I speak to my people it is fairly informal (Ronald Raubanheimer, 12/09/2018).

As noted above, formality in organisations arises out of the implementation of formal HR policies in accordance with the need to comply with the rule of law i.e. labour legislation and company code of conduct, which is agreed to upon signing of the employment contract. As noted by Edwards (2003: 13) informality arises through informal understandings of how work should be done. Moreover as emphasized by Marlow *et al.* (2010: 957) informality is linked to a “common-sense way” and “face-to-face” understanding of how work should be undertaken enabled through “social and spatial proximity” of managers and workers.

Depending on the department and the position held in the company, some aspects of this formality-informality mix are emphasized more than others. This is particularly pertinent to the last statement by Ronald Raubanheimer, a production manager at Twizza, whereby the working relationship is regulated through formal policies that entrench managerial control yet informal interactions exist based on unwritten and tacit understandings on the factory floor. Moreover in the HR department the relationship between the HR manager and the training manager are largely based on informal understanding and unwritten agreements.

In our department, we are such a good team . . . There is 500% engagement between us all the time. Maybe in the office, maybe not in the office, maybe after hours. That is how we work (Anna-Marie Hiscock, 12/09/2018).

Proceeding from this, the HR manager of Twizza highlighted a key distinction between manager-worker relations at Queenstown (Eastern Cape) head factory compared to those in Cape Town (Western Cape) and Middleburg (Mpumalanga).

Formal and informal. I think it is good, you know. It [manager-worker relations] is in between and you must remember . . . I mean here, we have got Queenstown's culture which is so much more different than Cape Town and Middleburg; and that is spot on you know I must say Queenstown, we really do have a good bunch of people (Anna Marie Hiscock, 12/09/2018).

Therefore, it may be argued that, although Twizza has operations across South Africa, the friendly "culture" at the head factory has led to the assertion that manager-employee relations are neither strictly formal nor informal. Furthermore, this suggests that informality and formality are indeed dynamic constructs, in which depending on the location and time will vary to a significant degree. In contrast to the Queenstown head factory, worker-manager relations have been slightly more constrained in the Middleburg factory.

Middleburg as well, although we got a little bit of a huge dispute with FAWU in Middleburg. But I must be honest, having the dispute in Middleburg - we still got the cooperation on what we need from the people. Again if people don't comply with what they need to do, yes they will be disciplined in line with our company code of conduct. Which they have all been trained on (Anna Marie Hiscock, 12/09/2018).

Although the origin and cause of the dispute was not divulged at the time of the interview, clear guidelines and processes to address workplace grievances through the company code of conduct are evident. Thereby highlighting the importance of a consistent and fair approach to regulating the employment relationship, enabled through identifiable HR policies.

### **3.5 Conclusion**

The first part of the chapter has attempted to provide insight into the effects of labour market regulation on Twizza Soft Drinks. Established in 2003, Twizza competes in the highly competitive South African market for CSD and represents a local competitor to multinational companies such as Coca-Cola. By 2018, the company employs over 800 employees across three different factories. As outlined in Section 3.2, the success of the company, from a cost perspective, was to keep all business functions in-house and avoid outsourcing non-core functions. Furthermore, Twizza managers attribute the success of the company to competing on the basis of quality and price. Proceeding from this, the key objective of this chapter was to investigate the extent to which labour market and government regulation had an effect on the company operations. The key labour market

statutes included the LRA of 1995, BCEA of 1997, SDA of 1998 and the EEA of 1998, which are underpinned by regulated flexibility. Twizza is not party to any bargaining council agreement and therefore relies heavily on the minimum standards outlined in the BCEA and the individual contract of employment.

In terms of the LRA of 1995, which deals with collective labour law and includes organisational rights provisions on dismissals and the scope of the CCMA. The probationary period was noted as an important provision that has decreased the costs of hiring and firing an employee whereby during the probationary period of three months, dismissal procedures are relaxed. In terms of dismissals for operational requirements based on efficiency and labour cost considerations, these provisions do not represent a significant constraint to the company. Regarding the role and impact of the CCMA, the primary point of contention centred on the quality of commissioners who are not trained on new legislation. As noted above, there were 21 estimated cases were taken to the CCMA in 2018, 14 of which were resolved through conciliation and seven through arbitration. In terms of organisational rights and provisions on dismissals, these can be seen to impart a higher degree of representation security and employment security reinforced by the permanent contract of employment. However, key reservations were noted with the lack of a viable alternative to the resident trade union FAWU.

As noted in section 3.3.2, the BCEA of 1997 represents the clearest example of regulated flexibility through the regulation of employment standards. In particular how working time is allowed to vary through agreement on issues of mutual interest – namely variation of working hours. The variation of working hours was argued to be highly beneficial to the Twizza operations as it imparted a degree of working-time and functional flexibility. Furthermore key to adapting to changes in demand for Twizza products, was the use of shift systems and team work in which subject to changes in demand, namely during peak season production could be adapted at little cost and short notice. In addition, the use of double pay on Sunday work when required provided further security of income for employees, who could either opt out and receive time off. More importantly, was the role of voice-regulation at the level of the enterprise in reaching a compromise between the interests of the company and its employees. However despite the regulation of working time being beneficial to the company operations, higher costs are incurred by the company. Yet the regulation of working time is seen as justified from an employee welfare perspective.

In terms of remuneration, Twizza since 1 March 2018 had already implemented the new NWM, which was enacted from 1 January 2019. This suggest that, despite labour cost constituting a significant proportion of the total cost to company, the level at which it is set (R20.00 per hour) is not a significant constraint on the company. Moreover, it was acknowledged that more could be done in terms of offering a better wage to blue-collar workers beyond that which is stipulated. In this regard, Twizza has undertaken measures to reduce wage differentials between employees. In addition, despite a higher wage being afford to employees through the NMW, some employees still struggle to cover their cost of subsistence that has been compounded by rising fuel prices and a rise in VAT.

In terms of labour legislation that constrained business operations, the core burden faced by Twizza were largely of an administrative nature, which in turn induced indirect costs to the company. These include leave provisions which are identified as a core labour right, the challenge was to find suitably qualified temporary replacements to fill the position. However, this was exacerbated by a regional skill shortage, in which depending on the position a temporary worker could be used. However, this would lead to an additional training costs being incurred to the company. The most significant burden, it was argued, was the EEA of 1998, which requires the company to implement AA measures as well as formulate EEP with the objective of achieving equitable representation in the company as determined by the regional EAP. A marginal mitigating factor was the ETI, which aimed to reduce the cost and risk of employing people between the ages of 18 and 28 years old. This issue was compounded further by a skills shortage and difficulty retaining skilled previously disadvantaged staff.

The last section of the chapter attempted to analyse the role of formal HR policies, which were seen as a response to government regulation and the internal dynamics of the company. As it was argued that despite the explicit costs associated with complying labour market regulation, this led to business modernization and the adoption of HPWS in the firm. More specifically, skill and training initiatives were guided according to the needs of the company and the SDA of 1998 highlighting the importance of firm level training to firm performance. In terms of the internal dynamics of the company, it was argued that informality alongside formal HR policies could lead to improved firm performance and employee commitment. Lastly, it was argued that informality and formality might exist to different degrees depending on the time and location, highlighting the

dynamism of these constructs. In this regard, it was argued that the Queenstown head factory had a greater degree of informality compared to the Middleburg and Cape Town factories.

# **CHAPTER 4**

## **CONCLUSION**

### **4.1 INTRODUCTION**

This research paper has attempted to situate more clearly some of the defining issues plaguing the South Africa economy broadly speaking and the labour market in particular since the start of the democratic era post-1994. These include the challenges of globalization and financial liberalisation, the prevalence of high unemployment and growth of non-standard forms of employment on the one hand, and on the other the perceived rigidity of labour market regulation in South Africa. However contrary to these more orthodox views, the South African labour market by comparison to world standards is in fact more flexible in certain respects. The core focus of this paper has attempted to provide an analysis of labour market regulation in South Africa as guided by regulated flexibility which accommodates the interests of the employer for flexibility and the interest of the employee in security and regulation in the form social benefits and higher wages. South African legislation, most notably the BCEA of 1997, LRA of 1995, SDA of 1998 and EEA of 1998 are guided by this theoretical framework.

### **4.2 EMPIRICAL FINDINGS AND CONCLUSIONS**

The core focus of chapter three was to illustrate and explore the role of labour market regulation as guided by the regulated flexibility framework, on a large firm, Twizza Soft Drinks. This company was selected for this case study due to the relative success experienced since inception in 2003 in the market for CSD. Therefore, it was deemed pertinent to explore how key provisions within the BCEA of 1997, LRA of 1995, SDA of 1998 and the EEA of 1998 either benefited or constrained the firm.

Due to the nature of the market for CSD, which is highly demand driven in particular during the peak period between September and March, the BCEA of 1997 was seen as vital form of legislation alongside the LRA of 1995. In particular, the regulation of working time and the variation of employment standards through agreement allowed the company to adapt to rapid changes in

demand for their products. Moreover, this Act allowed changes to the production teams to be made at relatively low costs and at short notice periods. However, the regulation of working time did incur costs to the company, whereby in the absence of such regulations on working time, labour costs that constitute a significant proportion of the company's total costs, would have been reduced significantly. However, managers acknowledged the importance of such provisions from an employee welfare and retention point of view.

Following the promulgation of the NMW from 1 January, which requires firms to pay a minimum wage of R20.00 per hour. In this regard it is important to note that the company undertook to implement prior to its enactment thus highlighting that the level at which it is set is not a significant constraint to the company. In addition, it was acknowledged that more can be done in terms of the current wage afforded to lower-earning employees, in which an employee importantly outlined that irrespective of the wage increase, covering costs of subsistence remains a challenge

In terms of the costs or constraints induced because of labour market legislation, these were primarily of an administrative nature, which in turn led to indirect costs being incurred to the company. These pertain to leave provisions contained in the BCEA and the need to implement AA measures in line with satisfying the provincial EAP for the Eastern Cape in the context of high unemployment and low skill levels. In this regard, the Company undertakes significant training and development initiatives in line with the production needs of the company and beyond what is stipulated by the SDA of 1998. Moreover, given the potential for job mobility, employee commitment was enhanced alongside upskilling and multi-skill initiatives, thereby highlighting the key role of formal HRM policies in Twizza

The role of formal HRM policies in adhering to and complying with labour market legislation, it was argued that informality was key in certain respects to the company and its functions. Moreover, it was argued that informality facilitated teamwork and the negotiations of certain workplace issues and was further argued to vary depending on the department and the issue at hand. Nevertheless, the formal contract of employment remained the primary means through which employment was regulated alongside the company code of conduct.

As was outlined in chapter 2, the broader objective of these key forms of labour legislation attempted to place firms and the economy on the high-commitment or high road to economic growth. However this was too a degree undermined by the nature of the South African labour



market (i.e. structural unemployment and low levels of skills) post-1994 and South Africa's macroeconomic frameworks, which remained largely unchanged from the initial neoliberal GEAR framework.

### **4.3 SUGGESTIONS FOR FURTHER RESEARCH**

Although this case study has attempt to provide some (limited) insight in the role of labour market legislation on a large firm, further research is needed to explore the impact of labour market legislation alongside the market context of firms. In particular, more research needs to be undertaken with respect to the impact of the EEA in fulfilling its objective of achieving equal representation in firms across South Africa in the context of the prevailing skills deficit. Further research needs to be undertaken regarding potential changes to the relevant provisions of the EEA of 1998 in conjunction with the SDA of 1998, which will allow for the objective of achieving equal representation and developing skills whilst not unnecessarily burdening firms.

### **4.4 CONCLUSION**

The main conclusion of this study is that in some respects labour market legislation is not a burden on firms and may, in certain instances, lead to favourable outcomes. In other respects, firms are largely constrained, administratively and otherwise, to address issues of compliance with statutory provisions.

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**THE IMPACT OF LABOUR LAWS ON MEDIUM-TO-LARGE FIRMS  
– MANAGEMENT INTERVIEW SCHEDULE –**

1. **Please provide a brief outline of the firm's history and context.**  
[Date of establishment? Rising or declining turnover? Customer base? Ownership of the company?]
2. **Please provide a breakdown of jobs in the company.**  
[Number of workers? Job categories? Gender breakdown? Full-time, part-time and casual workers?]
3. **What are the major labour market constraints faced by Twizza?**  
[Availability of sufficient qualities and quantities of labour? How do you compensate for shortcomings in the labour market? Problems encountered when filling vacancies?]
4. **How would you describe the product market in which the firm competes?**  
[Nature of competition? Potential for growth? Dynamics of the sector? Impact of the technical recession?]  
Impact of rival competitors' products i.e. Coca-Cola and associated brands?
5. **How would you describe the firm's employment policies and practices?**  
[Long-term strategic or short-term pragmatic?]
6. **Please list, in order of importance, the main difficulties you face in running the business.**  
[Market competition? Government regulation? Labour legislation?]
7. **Rate, in order of importance, the various factors that shape cost structures in the firm.**  
[Market prices? Exchange rates? Interest rates? Labour costs?]
8. **What major shifts have taken place in the firm's cost structures?**  
[Nature of changes? Extent of changes? Reasons for changes?]
9. **Do you agree with the following statement: 'the overall extent and complexity of legal regulation is a distinct source of concern'?**  
[Provide reasons for your answer]
10. **What are your overall impressions of labour laws in South Africa?**

11. Please rate the overall effects of labour legislation on the firm, using a 1-10 scale where 1 = minimal and 10 = extensive.
12. Do you think the overall balance of advantage in existing labour legislation leans towards employers or employees, or is it broadly fair?
13. Please outline the extent to which you think labour laws have had a direct and/or indirect effect on the firm.
14. Do you regard any specific piece of labour legislation that affects the competitive advantage of the firm to a significant degree?
15. What are your views on the costs of existing labour laws?
16. What are your views on the benefits of existing labour laws?
17. To what extent has labour legislation changed existing work and employment arrangements in the firm?
18. Have any employees been retrenched as a direct result of labour laws?
19. Do you agree with the following statement: 'the impact of labour legislation is hard to separate from other influences on the business'?  
[Provide reasons for your answer]
20. Please indicate whether the presence of labour legislation leads to the making of different decisions than would have been taken in its absence?
21. How confident are you about your knowledge of current labour laws?  
[Confident, somewhat confident or not confident?]
22. Please provide an indication of the extent of your *knowledge* of any of the following:
- (a) minimum wages;
  - (b) working time;
  - (c) annual leave, sick leave, family leave and maternity leave;
  - (d) discipline;
  - (e) unfair dismissals;
  - (f) trade union recognition;
  - (g) unemployment insurance;
  - (h) strikes and lockouts;
  - (i) employment contracts;

- (j) unfair labour practices
- (k) unemployment insurance

23. Please provide an indication of the extent of your *experiences* with any of the following:

- (a) minimum wages;
- (b) working time;
- (c) annual leave, sick leave, family leave and maternity leave;
- (d) discipline;
- (e) unfair dismissals;
- (f) trade union recognition;
- (g) unemployment insurance;
- (h) strikes and lockouts;
- (i) employment contracts;
  
- (j) unfair labour practices
- (k) unemployment insurance

24. Which of these sets of conditions would you regard as most important in determining the effects of labour legislation: external factors (such as a firm's product market position) or the internal organisation of the firm (such as the relations between managers and workers)?

[Provide reasons for your answer]

25. How would you describe management-worker relations in the firm: highly formal, fairly formal, fairly informal or highly informal?

26. Which of the following characterise the firm's response to labour laws? Please indicate with an "x" which response is applicable

REACTION	YES	MAYBE	NO
Employ more young/inexperienced staff			
Use more part-time/temporary workers			
Reduce training			
Reduce annual leave			
Reduce leave pay			
Reduce working hours			
Reduce pensions and medical aid			
Reduce bonuses			

Reduce the number of staff			
Reduce overtime			
Increase deductions from wages			
Introduce unpaid breaks			
Charge or increase charge for staff meals			
Apply for exemptions			
Get employees to work harder			
Employ more experienced/older staff			
Employ better quality staff			
Develop a more effective staff retention policy			
Increase training			
Reduce wage differentials			
Introduce new technology			
Get employees to work smarter			
Improve advanced planning on wages			
Use labour brokers or outsource services			
Increase prices			
Cut profits			

**THE IMPACT OF LABOUR LAWS ON MEDIUM TO LARGE  
BUSINESSES**

**– EMPLOYEE INTERVIEW SCHEDULE –**

1. **Please provide your biographical details.** (Qualifications? Age? Sex? Home language?)
2. **How long have you been working in your present job?**
3. **Are you employed on a permanent, temporary, part-time or casual basis?**
4. **How would you describe your job?** (Which aspects of your job are satisfactory? Which aspects of your job are not satisfactory?)
5. **How would you rate your knowledge of the Labor Relations Act; which provisions within the Act do you consider key?**
6. **How would you rate your knowledge of the Basic Conditions of Employment Act; which provisions within the Act do you consider key?**
7. **How are/were your wages determined – determined through a bargaining council or an individual agreement with your employer?**
8. **What are your views on the impending national minimum wage?** Mr Lisle Clarke says he has already implemented this prior to the national requirement – do you see such a decision negatively or positively, please explain why?



9. **What deductions are made from your wages?** (List of deductions on your payslip? Amounts or percentages deducted? Have the deductions increased since the introduction of the sectoral determination in 2007?)
10. **Do you have a problem with any of the deductions that are made from your wages?** (Provide reasons for your answer).
11. **Do you receive any extra-wage benefits or perks such as free food or a pension plan?** (List of benefits? Monetary value of the various benefits? Have the benefits increased or decreased since the introduction of the sectoral determination in 2007?)
12. **How many hours do you work on average in a week?** (Are your weekly hours of work too much or too little? Has your working hours increased or decreased since the introduction of the sectoral determination in 2007?)
13. **Do you work on weekends and public holidays?** (If so, what is your rate of pay on these days?)
14. **Is your employer using more casual, temporary or part-time workers since 2007?** (If so, why is the employer doing this? What is the relationship between the different categories of workers?)
15. **Have you received any training since you were first employed by the firm?** (If so, what type of training? What type of training would you like to receive?)
16. **Are you a member of a trade union?** (If no, why do you not belong to a union? If yes, what has the union done for you? What issues would you like the union to take up? What is your employer's attitude towards the union? Has the minimum wage reduced the need for a trade union?)