

Chapter 4

THE IMPACT OF EMPLOYMENT RELATIONS AND LABOUR LEGISLATION ON AN
ORGANISATION

Introduction

- ▶ Employment relations deal with everything that emanates from or impacts on the employment relationship. The employment relationship is that relationship that exists between the employer and employee in the working environment. It is important that this relationship is effective and successful. Good employment relations results in the following:

- ❖ Better performance
- ❖ Reduce absenteeism
- ❖ Increase productivity
- ❖ Improvement in quality
- ❖ Fewer dismissals
- ❖ Low labour turnover

The Role-Players in Employment Relations

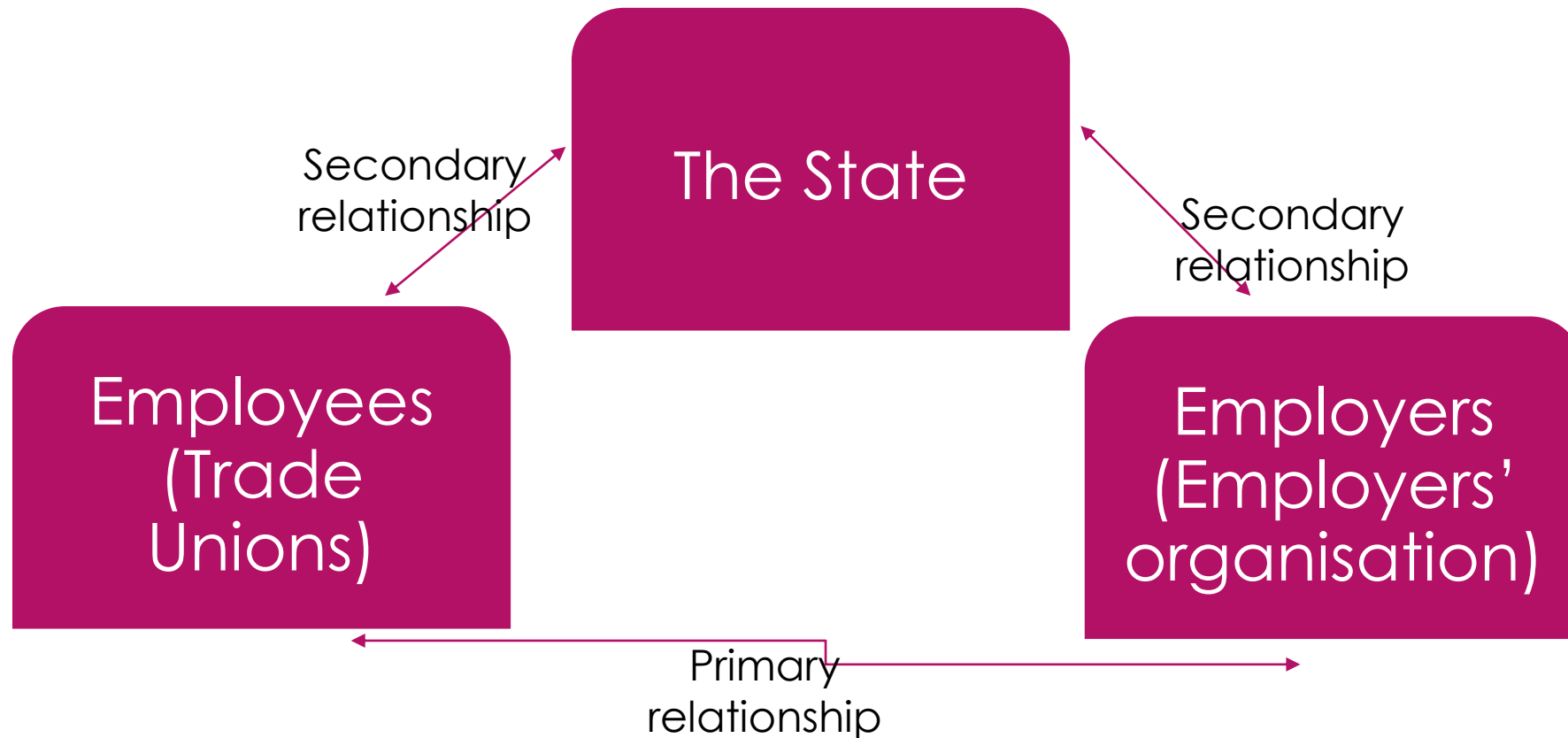
- ▶ Role-player in employment relations- there is three parties on this relation (employer (organisation/company, employee (trade union) and state) this relation is called tripartite relationship. E.g. in summary when you are employed in an organisation, automatically primary relationship is established. These relationship is economical, because employee is doing work in exchange of remuneration.

- ❖ Employees has a right to join trade union of his choice of which main function of that union it will be negotiating on behalf of employee for better wages and working condition(for those leaners who are in mining and steel industry such union are NUM, UASA, NUMSA, Solidarity and AMCU)

N.B. Employer must ensure that goals are met through effective planning, organising, leading and controlling (See chapter 2 of METS for further discussion of POLC) and role and responsibility of employee must be clarified.

- ❖ State provides legal frame work, which help on ensure that employees and employers conduct their relationship accordingly to law.
 - ❖ Contract of employment describe duties and obligation of each parties in employment.

The Tripartite Relationship



The Contract of Employment and The Basic Conditions of Employment Act

- ▶ The Basic Condition of Employment Act requires employer to supply their employees at the commencement of employment with the particular list below:
 - ❖ The full name and address of employer
 - ❖ The name and occupation of the employee or brief description of the work for which the employee id employed
 - ❖ The place of work
 - ❖ The date on which employment began
 - ❖ Ordinary working hours and days
 - ❖ Wage or rate and method of calculating wages
 - ❖ The rate of pay for overtime
 - ❖ Any other cash payments and any payment kind to which employee is entitled.
 - ❖ How frequently remuneration will be payed
 - ❖ Any deduction on remuneration
 - ❖ Leave on which employee is entitled for
 - ❖ Period of notice required to terminate employment
 - ❖ List of documents that form part of employment.

Summary of The BCEA

Employment Issue	Condition of Employment
Application of the Act	The Act applies to all employees and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for an organization with a charitable purpose.
Ordinary hours of work	No employer shall require or permit an employee to work more than— <ul style="list-style-type: none">❖ 45 hours in any week;❖ nine hours in any day if an employee works for five days or less in a week; or❖ eight hours in any day if an employee works on more than five days in a week.
Overtime	An employer may not require or permit an employee— <ul style="list-style-type: none">❖ to work overtime except by an agreement;❖ to work more than ten hours' overtime a week. An agreement may not require or permit an employee to work more than 12 hours on any day. A collective agreement may increase overtime to fifteen hours per week for up to two months in any period of 12 months. Overtime must be paid at 1.5 times the employee's normal wage or an employee may agree to receive paid time off.

Summary of The BCEA (Cont.)

Employment Issue	Condition of Employment
Meal intervals	<p>An employee must have a meal interval of 60 minutes after five hours work.</p> <p>A written agreement may—</p> <ul style="list-style-type: none">❖ reduce the meal interval to 30 minutes;❖ dispense with the meal interval for employees who work fewer than six hours on a day.
Daily and weekly rest periods	<p>An employee must have a daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which, unless otherwise agreed, must include Sunday.</p>
Pay for work on Sunday	<p>An employee who occasionally works on a Sunday must receive double pay.</p> <p>An employee who ordinarily works on a Sunday must be paid at 1.5 times the normal wage.</p> <p>Paid time off in return for working on a Sunday may be agreed upon.</p>

Summary of The BCEA (Cont.)

Employment issue	Condition of Employment
Night work	Employees who work at night between 18h00 and 06h00 must be compensated by payment of an allowance or by a reduction of working hours and transport must be available.
Public holidays	Employees must be paid their ordinary pay for any public holiday that falls on a working day. Work on a public holiday is by agreement and paid at double the rate. A public holiday may be exchanged with another day by agreement.
Annual leave	Employees are entitled to 21 consecutive days' annual leave per leave cycle.

Summary of The BCEA (Cont.)

Employment Issue	Condition of Employment
Sick leave	<p>An employee is entitled to six weeks' paid sick leave in a period of 36 months.</p> <p>An employer may require a medical certificate before paying an employee who is absent for more than two consecutive days or who is frequently absent.</p>
Maternity leave	<p>A pregnant employee is entitled to four consecutive months' maternity leave.</p>
Family responsibility leave	<p>Full time employees are entitled to three days paid family responsibility leave per year, on request, when the employee's child is born or sick, or in the event of the death of the employee's spouse or life partner, or the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.</p> <p>An employer may require reasonable proof.</p>

Summary of The BCEA (Cont.)

Employment Issue	Condition of Employment
Termination of employment	<p>A contract of employment may be terminated on notice of not less than—</p> <ul style="list-style-type: none">❖ one week, if the employee has been employed for six months or less;❖ two weeks, if the employee has been employed for more than six months but not more than one year;❖ four weeks, if the employee has been employed for one year or more, or if a farm worker or domestic worker has been employed for more than six months.
Severance pay	<p>An employee dismissed for operational requirements, employer must at least pay one week's severance pay for every year of service.</p>
Prohibition of employment of children	<p>It is a criminal offence to employ a child under 15 years of age.</p>
variation of basic condition of employment	<p>A collective agreement concluded by a bargaining council may replace or exclude any basic condition of employment except the following:</p> <ul style="list-style-type: none">❖ the duty to arrange working time with regard to the health and safety and family responsibility of employees;❖ reduce the protection afforded to employees who perform night work;❖ reduce annual leave to less than two weeks;❖ reduce entitlement to maternity leave;❖ reduce entitlement to sick leave to the extent permitted; and❖ prohibition of child and forced labour.

The Grievance Procedure

- ▶ Grievance procedure is upward communication.

Example: Page 69 of METS 3rd edition.

- ▶ Unresolved employee grievances can lead to unproductiveness and even strikes.
- ▶ Grievance procedure usually provide for informal, formal, external procedure

Discipline Management

- ▶ The main aim of discipline in an organisation is to correct unacceptable behaviour and adopt a progressive approach in the workplace.
- ▶ The disciplinary procedure must be fair, just and equitable for the entire workforce, irrespective of race, sex, and religion or job category.

Discipline Management

- ▶ The disciplinary sanctions - When making a decision on the appropriateness of a disciplinary sanction the following factors must be considered:
- ❖ ☐ the seriousness of the transgression; ☐ the circumstances under which the transgression was committed; ☐ the nature of the job; ☐ whether the employee is or should have been aware of the fact that the conduct was unacceptable; ☐ the number and nature of previous transgressions committed by the employee during the preceding six (6) months (for purposes of determining the progressive disciplinary sanction, relevant previous transgressions must be taken into account); ☐ the employee's service record; ☐ how similar transgressions were treated in the past; ☐ whether there are extenuating or aggravating circumstances; and ☐ the influence that the disciplinary action may have on other employees.

Discipline Management

► The disciplinary sanctions -

- ❖ verbal warnings
- ❖ Written warnings
- ❖ Final written warnings
- ❖ Transfer
- ❖ Suspension
- ❖ Demotion
- ❖ Dismissal

Discipline Management

example of a disciplinary code(adopted from Grasset, 1999: 252)

Offences	First offence	Second offence	Third offence	Fourth offence
Minor offences Arrival late for work Loafing	Verbal warning	First written warning	Final written warning	Dismissal
Serious offences Absenteeism Leaving company premises without permission Sleeping on duty Abusing sick leave benefits	Written warning	Final written warning	Dismissal	
Very serious offences Refusal to carry out lawful instructions Being under the influence of alcohol/drugs while on duty	Final written warning	Dismissal		

CCMA, Labour Court and Labour Appeal Court

- ▶ CCMA stands for Commission for Conciliation Mediation and Arbitration.
- ▶ CCMA is an independent dispute resolution body. It was established by labour relation act. The main objective of CCMA is to promote a sound working environment relationship, to prevent labour disputes from arising and settle dispute that do arise.
- ▶ Some mechanisms available when solving dispute are pre-dismissal arbitration, conciliation, conciliation arbitration, arbitration, labour court and labour appeal court.
- ▶ The commissioner has no power to make a decision, but will assist the parties in attempting to reach an agreement.
- ▶ Labour court has the same powers as a provincial division of the Supreme Court.

CCMA, Labour Court and Labour Appeal Court

- ▶ See brief discussion of CCMA mechanisms on METS Chapter 4 (Page 79-80)
- ▶ See also steps to be taken into consideration when referring a case to CCMA on METS Chapter 4 (Page 81-82)

Strikes and Lock-Outs

- ▶ A strike means the partial or complete concerted refusal to work, or the retardation or obstruction of work, by person who are or have been employed by the same employer or by different employers.
- ▶ Strikes are used by employees as a tool to force management to accept their demands.
- ▶ The “no work, no pay” principle applies during a strike.
- ▶ If workers at a company were striking for such a long period of time that the business has become economically unviable then the company may dismiss workers once the procedural and substantive requirements of the LRA have been followed.

Other important aspects of labour relation act

- ▶ Freedom of association
- ▶ Collective bargaining
- ▶ Bargaining councils
- ▶ Works forums

(METS Chapter 4 Page 84 and 85.)

Other Important labour legislation that governs and protects the employment relationship

► Employment equity act (EEA) 55 of 1998

► Purpose:

- ❖ Equal opportunities
- ❖ Eliminate unfair discrimination (in terms of race, gender, pregnancy, marital status, family responsibility, ethnic origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, etc.)
- ❖ Implementation of affirmative action
- ❖ Designated groups identified by this legislation: black people, women, people with disabilities

► Skills Development Act 97 of 1998

- ❖ Purpose: to develop the skills of employees/skills plan for all employees must be developed. Skill development lev equal to 1% of their wage bill, payable to the SARS. Portion of the levy can be recovered back by employer as a grant on meeting some requirements set out on development skill Act.

Other Important labour legislation that governs and protects the employment relationship

- ▶ Unemployment Insurance Act 63 of 2001
- ▶ Occupational Health and Safety (OSH) Act 85 of 1993
- ▶ Compensation for Occupational Injuries and Diseases Act 130 of 1993
 - ❖ The Compensation for Occupational Injuries and Diseases Act applies to all employers and casual and full-time employees who as a result of a workplace accident or work-related disease are injured, disabled or killed or become ill

Conclusion

- ▶ It is important to practice good employment relation.
- ▶ All employees need to be aware of labour legislations that are applicable in an organisation
- ▶ Use checklist on METS Chapter 4 Page 88 to ensure sound employment relations.

References

- ▶ Ref: Management for Engineers, Technologists and Scientists, 3rd edition, by Wilhelm P. Nel