

Small may be beautiful for some, but not for workers

Claire Horton and Kiaran Honderich

Much has been written about South Africa's burgeoning unemployment crisis and the need to create a labour absorbing economy. As a response government policy is increasingly looking at small business promotion as a mechanism for job creation. But are small businesses more effective at creating more jobs relative to their size than larger firms? International studies show that while new and expanding small businesses (those with fewer than 50 employees) create new jobs at a higher rate than their larger counterparts, they also eliminate jobs at a higher rate. Thus, with respect to net job creation, there is no apparent pattern as to business size. Further, larger businesses pay higher wages, provide better benefits and offer greater job security than their smaller counterparts. Since this is the case, should government policy be favouring small business by giving them a favourable dispensation in regards to Basic Conditions of Employment Act (BCEA)? Do the longer term effects of the legislation not outweigh the short-term negative effects? Lastly, even if the legislation will undermine the viability of some businesses (either in the short-or the long-term), is this negated by other policy considerations and benefits that will accrue to society?

Before looking at the process that led to the recent Ministerial Determination for small business, it is necessary to look at the intention and scope of the Act. The aim of the Act is to establish a floor of basic conditions of employment. The Act regulates conditions such as working time (e.g. weekly hours of work, overtime, Sunday work, night work, etc.); leave (e.g. annual, maternity and family responsibility leave); particulars of employment and remuneration, termination of employment and the prohibition of child and forced labour.

Prior to the promulgation of the new BCEA, Act 75 of 1997, the then Minister of Labour, Tito Mboweni, announced his intention to appoint a task team to examine the impact which the Act would have on small business. Ntsika Enterprise Promotion Agency was commissioned by the Department to conduct an impact analysis. Subsequent to this and the Ministerial Task teams recommendations, the Employment Conditions Commission was requested to make a recommendation for a Ministerial Determination for small business in terms of section 50 of the BCEA. In terms of section 50 of the Act, the Minister may make a determination to "replace or exclude" basic conditions of employment provided for in the Act in respect of any category of employee or employer. The Act does however exclude certain conditions from variation by Ministerial determination.

In its conclusion the Ntsika report found that : "...the impact of the BCEA on the broader South African economy would be marginal, especially in relation to other current economic phenomena." The report suggested that some sectors would experience a more significant impact as a result of the implementation of the BCEA, such as general dealers, service stations, catering and accommodation, transport, and security services.

Specific provisions in the BCEA that would be problematic for these sectors are: regulation of working time, overtime payment, pay for work on Sundays and night work. Provisions that would be problematic for all sectors include maternity leave, family responsibility leave, and notice of termination of employment. The report does however note that "making too many exclusions or exemptions for different sub sectors or size classes will make the BCEA unnecessarily complex. Simultaneously the limited capacity of small business to comply with the provisions of the BCEA, due to the fact that they are less formalised, should be taken into account."

Nonetheless the Ministerial Determination brought the following changes to the BCEA for employers who employ less than 10 employees including farmers. The only exception is domestic workers. Furthermore, this determination is inapplicable if and when superseded by a bargaining council agreement, or a sectoral determination, or a collective agreement.

1. The maximum overtime an employee may work is increased from 10 to 15 hours per week.

2. Overtime payment is reduced from time-and-a-half to time-and-a-third (for the first 10 hours of overtime worked).
3. Averaging of working hours up to a maximum of 45 hours per week is permitted by written individual agreement instead of by collective agreement.
4. The scrapping of three days family responsibility leave provided there is a written agreement between employer and employee.

This determination is however contrary to a number of the recommendations made by the Employment Conditions Commission. First, the ECC argued against a blanket exemption for all small businesses, arguing that this will "vary conditions downward for a great number of workers whose employers will not suffer undue hardship in abiding by the BCEA". The Ntsika report identified only 5 sectors that would experience a significant impact as a result of the implementation of the BCEA. Second, the rate of remuneration for overtime should be the same as set by the BCEA. Third, "Up to two days family responsibility leave may be offset by the employer against annual leave".

There is no evidence to suggest that the erosion of workers' conditions of employment in small business will lead to job creation. In fact it is equally likely that it will lead to the destruction of jobs and further reduce the already poor working conditions of workers in small businesses. It is estimated that 10 to 12% of all employees would be covered by this determination. Many of these workers are not organised, or they work in sectors where union organisation is very difficult. Neither are the majority of these workers covered by bargaining council agreements, the only protection afforded to these workers is through the BCEA and LRA.

There is the real danger that this Determination will encourage outsourcing and casualisation. There is also the real incentive for these enterprises to restructure themselves in order to gain the advantage of the downward variation. Small businesses may be reluctant to step over the 10 employee threshold.

The Determination is likely to widen the gap in terms of conditions of employment between bargaining council agreements and those now applicable in small businesses. This will create a disincentive for employers in small businesses to participate in bargaining councils. Linked to this is the shift from collective to individual agreement. Providing for an individual employer-employee agreement also does not take account of the power relations operating in many workplaces, especially in small businesses. As many of the employees in small business are black, women, unskilled and unaware of their rights, individual written agreements is meaningless in this context and open to abuse.

The need to address the real problems

Small business face much more daunting obstacles than labour regulations. As the Ntsika report said, their (labour regulations) impact is marginal in relation to other current economic phenomena. The state of the macro economy, difficulties in borrowing money, and inadequate training in the skills needed to run a business, are all major problems for entrepreneurs trying to start or grow a small business.

Statistics SA asked a sample of manufacturing companies of all sizes why their capacity utilisation has been low and falling, reaching only 78.6% in 1999. 76% of the firms said that the primary reason was not supply factors such as shortage of skilled labour or inflexible labour markets, but insufficient demand for output. This had risen from 60% in 1996. In an economy with extremely high unemployment and low growth, few people can afford to buy what firms are producing. Waiving labour regulations will not make those firms any more inclined to hire extra workers; what is needed is job creation programmes and stimulation of the macro economy. We need workers to have more income so they can demand output, not less income so the economy continues to stagnate.

The availability of credit is another major roadblock in starting or sustaining a small business. Statistics on this do not exist, but the consensus from those who have surveyed small business owners is that many of them find

it extremely difficult to access loans. A recent study by the Centre for the Study of Financial Innovation (London) showed that only 20% of South Africa's 16 million economically active people have formal banking facilities. Further, access to credit is rarely a component of banking services when they are offered to low income markets.

The bricklayer or seamstress who decides that she has a skill to sell so she will start a small business - in some cases, just because she has been retrenched and can't find a job - is highly unlikely to succeed unless she first learns skills like bookkeeping and marketing. Even with training entrepreneurs still need the experience and aptitude - to search for market niches, identify real needs and be clear about whether they can be supplied at viable prices, adapt to problems and challenges, and be proactive in tracking changing markets. In effect, with the recent Determination, workers are expected to subsidise poorly run businesses.

Why is it that wherever there is a discussion about developing small businesses, workers are the ones who are expected to pay for this development by having their wages and conditions of employment eroded? Reducing the status of workers will not solve the problems faced by small business, and it is highly unlikely to lead to significant new jobs. Rather it may worsen the already bad conditions of this countries working poor.

Claire Horton (Co-ordinator - Labour Standards Programme)
Kiaran Honderich (Senior Economist)