SEIFSA NEWS

BY THEIR VERY NATURE, NEGOTIATIONS ARE A GIVE AND TAKE

INDUSTRY WAGE AND EMPLOYMENT NEGOTIATIONS SUCCESSFULLY CONCLUDED

MANDATORY VACCINATION IN THE WORKPLACE: CONSIDERATIONS FOR EMPLOYERS

THE DECEMBER 2021 ANNUAL SHUTDOWN

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BY THEIR VERY NATURE, NEGOTIATIONS ARE A GIVE AND TAKE

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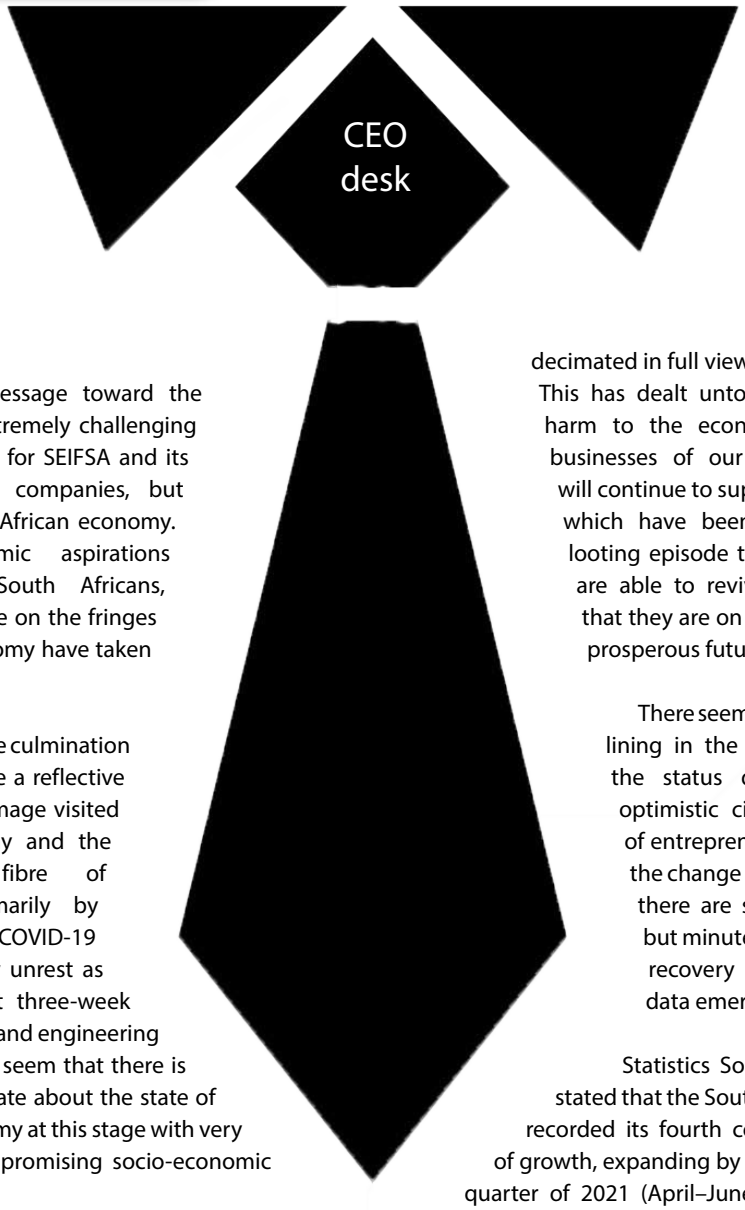

I write this message toward the end of an extremely challenging year not only for SEIFSA and its affiliated member companies, but also for the South African economy. The socio-economic aspirations of millions of South Africans, particularly of those on the fringes of the formal economy have taken a knock.

As such, with the culmination of 2021, we assume a reflective posture on the damage visited upon the economy and the socio-economic fibre of the country primarily by the unrelenting COVID-19 pandemic, the July unrest as well as the recent three-week strike in the metals and engineering sector. It sure does seem that there is very little to celebrate about the state of country and economy at this stage with very few glimpses of a promising socio-economic outlook.

It bears revisiting the damage caused by the COVID-19 pandemic on the lives of millions of South Africans. In the past, we have dealt a lot on the economic repercussions of the ongoing pandemic. However, we are beginning to take a lot more seriously the impact of the pandemic on human life and psyche. As a sector, we are deeply indebted to the hundreds of thousands of workers who have braved the frontline while dealing with the scars of the pandemic which has affected them directly and indirectly. They have shown remarkable resilience while companies have been forced to lay-off workers because of the pandemic. I am particularly pleased by the support of employers in the sector which they have extended to their workers in confronting the socio-economic ravages of the pandemic.

Similarly, the recent looting and unrest in July which affected mainly the economic hub of Gauteng and KwaZulu/ Natal did very little to quell and calm the jitters of investors as economic infrastructure was decimated in full view of the world's eye. This has dealt untold socio-economic harm to the economy and on the businesses of our membership. We will continue to support our members which have been affected by the looting episode to ensure that they are able to revive operations and that they are on the road to a more prosperous future.

There seems to be no real silver lining in the horizon! However, the status quo demands an optimistic citizenry and cadre of entrepreneurs that will drive the change we wish to see. But, there are small, encouraging but minute signs of economic recovery as fresh economic data emerges.

Statistics South Africa recently stated that the South African economy recorded its fourth consecutive quarter of growth, expanding by 1,2% in the second quarter of 2021 (April–June). This followed a revised 1,0% rise in real gross domestic product (GDP) in the first quarter (January - March). Despite the gains made over the last four quarters, the economy is 1,4% smaller than what it was before the COVID-19 pandemic.

These figures cover the months of April, May and June. This means that the economic impact of the wave of severe economic disruption in KwaZulu-Natal and Gauteng, will only reflect in the third quarter GDP results that are due for release in December.

While the StatsSA figures indicate a sudden drop in economic activity during the second quarter of 2020 when lockdown restrictions were at their most severe, the economy has seen consistent growth since that shock, but not enough to return to pre-COVID-19 levels. Real GDP was R1 131 billion in the second quarter of 2021, 1,4% down from the reading in the first quarter of 2020.

Lucio Trentini, CEO

Perhaps more daunting was the recent three-week strike which saw thousands of workers in the sector lay down their tools in order to demand a 'better' wage deal for themselves. The team at SEIFSA pulled out all the stops to ensure that a fair deal was achieved for employers.

I am grateful to the SEIFSA team for their unfailing dedication during a very stressful time. I am equally thankful of the Associations for their contribution, support and understanding in supporting a fair deal which protects the interests of employers and employees. I also extend gratitude to employers for their patience in a difficult negotiation environment.

We are also mindful that strikes rarely benefit any party. Workers take a knock on wages and some lose their jobs while employers lose millions in lost production and revenue. To arrive at a workable and fair deal, requires the effort of all parties on both ends of the negotiating table to negotiate in good faith and in the interests of the industry. We are thus thankful to all the unions for their dedication in doing their share to finding a just and fair deal for all.

SEIFSA is pleased that it has concluded a good deal for its members which has resulted in the constitution of a three-year wage deal which guarantees industrial relations peace, certainty and stability for all member companies until 30 June 2024. The deal was struck on 21 October 2021 on behalf of all SEIFSA's affiliated member companies.

This agreement followed a challenging negotiation and dispute-resolution process which comprised several formal, informal and bilateral meetings which commenced in May and ending with NUMSA signing the Settlement Agreement ending the three-week strike.

From a SEIFSA perspective and that of its Associations and membership, we are doing our bit in helping revive the fortunes of a manufacturing sector which finds itself in a precarious position. Recent manufacturing data is pointing towards the promise of an upward trajectory in the sector which should bode well for growth, improved revenue generation and sustainable jobs within the sector. We will continue to empower our Associations with support tools and interventions which should translate to a resilient membership base which continues to navigate and negotiate what is undoubtedly treacherous economic terrain.

We wish all our members, Associations and stakeholders a joyous and safe festive season as most companies approach the year-end shutdown. We are pleased to have travelled this journey with you in 2021 and we look forward to more support and collaborative energy in tackling the challenges facing the industry. I remain optimistic that 2022 will be a far better year than the one we have survived, with hopefully sustained growth and uninterrupted production being the order of the day for all of us!

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BY THEIR VERY NATURE, NEGOTIATIONS ARE A GIVE AND TAKE

The three-year agreement on wages and conditions of employment reached in October 2021 in negotiations between employers and labour in the metals and engineering sector was not perfect, as is the case with all agreements that are products of negotiations.

By their very nature, negotiations are a give and take. They bring together at least two sides. In our case, five trade unions and four employer groupings that approach them with differing – and often conflicting interests and desired outcomes in mind. If the parties to negotiations are equally strong, often the final product of the talks is something that addresses most of their respective concerns, something that the respective parties can live with. However, if one side is considerably stronger than the other or the others, then a real possibility exists that the final product of the talks is likely to be more favourable to that party.

Although the three-year Settlement Agreement that ended the three week-long strike on 21 October 2021 was not perfect, in the final analysis and insofar as the SEIFSA represented grouping of companies is concerned, it offered employers something that was of importance to them. For the affiliated membership, that was a return to the granting of wage increases on rand and cents.

This was last observed 29 years ago without having to compromise on Section 37 which protects employers from union demands for company-level bargaining on matters that were up for discussion in the negotiations within the Metals and Engineering Industries Bargaining Council.

Equally importantly, employers managed to obtain a three-year settlement which guarantees stability in the sector for a three-year period. Such stability is not to be taken for granted. At a time when our economy is doing so badly and the metals and engineering sector is bleeding, instability would have been absolutely disastrous.

Although negotiations are, by definition, a process of give and take, it helps to ensure that one enters them fully prepared. Thankfully, the SEIFSA affiliated associations had done their homework and were fully-prepared for the challenge. We were aware that unions would attempt to approach the negotiations with a mindset of wanting to claw back some of the concessions they felt they made in the historic standstill agreement in 2020.

The mandate for this round of negotiations was clear, unambiguous and to the point. Founded on the so-called four pillars, namely: a three-year wage deal, a reverting to the granting of wage increases on rand and cents, extension and a special phase in dispensation in order to encourage greater support for the main agreement. The four pillars assumed such fundamental importance to employers that throughout the negotiations and even going into the strike, employers were not willing to make any concessions on any element of the package.

Taking into consideration all economic and socio-political developments in present-day South Africa and the mood of the country, a three-week strike was in itself regrettable. However, of greater concern was the accompanying violence, intimidation and acts of

criminality that tragically have become all too common in all aspects of our society. This has come to characterise service delivery protests and the deplorable looting the nation witnessed earlier this year. This includes acts of violence and intimidation accompanying almost all strikes. One despairs as to where it will all end, and what responsible corporate citizens can expect in the absence of firm and decisive political leadership at the highest level.

> Equally importantly, employers managed to obtain a three-year settlement which guarantees stability in the sector for a three-year period

As such, it is critical that as SEIFSA and its member associations begin shifting their focus to other issues, we do not lose sight of the need to regroup, reflect, critically evaluate and take stock of what we got right, where we failed and more importantly, what we can do better in preparation for the next round of main agreement negotiations. This will entail the associations having serious, and even robust discussions and debates among themselves, ahead of the emergence of a firm SEIFSA mandate for the 2024 negotiations.

We at SEIFSA stand ready to assist and play our part in the process. We remain clear in our minds about our roles: member associations, through the SEIFSA Council, will develop the negotiating mandate and working with representatives from the respective associations, we will do the very best that we can to lead and implement that mandate.

Lucio Trentini is the Chief Executive Officer of the Steel and Engineering Industries Federation of Southern Africa (SEIFSA)

INDUSTRY WAGE AND EMPLOYMENT NEGOTIATIONS SUCCESSFULLY CONCLUDED

SEIFSA is delighted that it recently successfully concluded a three-year wage deal which guarantees industrial relations peace, certainty and stability for all member companies until 30 June 2024.

The deal was struck on 21 October 2021 on behalf of affiliated employer associations ending a devastating three-week strike. An agreement was signed with the biggest metalworkers trade union in South Africa, the National Union of Metalworkers of South Africa (NUMSA). The agreement with NUMSA came after deals had already been signed with Solidarity and the United Association of South Africa (UASA). This was followed by agreements with the Metal and Electrical Workers Union of South Africa (MEWUSA) and the South African Equity Workers Association (SAEWA) on 22 October 2021.

This ensured a complete representation of all the trade unions as signatories to the main agreement covering terms and conditions of employment for the three-year period commencing on 1 July 2021 and ending 30 June 2024.

This agreement followed a challenging negotiation and dispute-resolution process which comprised several formal, informal and bilateral meetings which commenced in May and ending with NUMSA signing the Settlement Agreement ending the three-week strike.

SEIFSA believes that the agreement contains the following direct benefits to the membership:

- **The employer negotiating team managed to secure a three-year wage deal.** This guarantees industrial relations peace, certainty and stability for all member companies from now until 30 June 2024.
- The wage increases, calculated on the scheduled rates, and awarded as a rand and cents amount for next July and again in 2024 are clear and unambiguous – they are not dependent on further negotiations and strike action on the increases is not possible. **Member companies now know precisely what their employment costs will be for the coming three years, and have an opportunity to manage these appropriately.**
- Notwithstanding considerable pressure brought to bear by the unions (in particular, NUMSA), **SEIFSA succeeded in securing a key principle that wage increases must be calculated on the scheduled rates** as contained in the agreement and awarded to employees as a rand and cents amount.
- Finally, **SEIFSA and all the trade unions have, as a fundamental element of the agreement, recommitted themselves to pursuing extension and gazettal of the agreement to all non-party employers and employees in the industry and as part of this commitment**, have agreed to a special phase-in dispensation for employers, who have been operating outside of the main agreement collective bargaining arena.

Wages

WAGE INCREASES AND DATE OF IMPLEMENTATION

The agreed wage increases (ranging from 5% at Rate A to 6% at Rates F, G and H) are detailed in the wage tables contained in **Appendix A.** These increases will become effective from 1 July 2021 and member companies are urged to implement these as soon as possible.

WAGE INCREASES ON 1 JULY 2022 AND 1 JULY 2023

SEIFSA and the trade unions have agreed that the wage increases for both 1 July 2022 and 1 July 2023 will be will be calculated on the same basis as year one of the agreement.

Please note: the rand and cents increases to employees are based on the rand and cent amount calculated on the scheduled rate per category (i.e. Rate A, B, C etc.) of employment, regardless of how much more an employee may be earning above the minim scheduled rate of pay.

Please also note: back pay must be calculated on the normal hourly rate and includes overtime hours, work performed on a Sunday and shift work.

Effective from 22 October 2021, employees covered by the main agreement shall be paid not less than the rate he/she was receiving prior to 22 October plus, as a guaranteed personal increase, an additional rand and cents increase (calculated on the minimum rate) for his category of work.

Increases awarded prior to the 22 October may be off-set against the final agreed rand and cents increases.

Employees who received no increases on or after 1 July 2021 shall be entitled to receive the full quantum of the rand and cents increase calculated on the minimum rate with effect from 1 July 2021.

An employer must consult in good faith at plant level with the representatives of the officials of a trade union and/or elected shop stewards on when the back pay will be paid.

The union officials shall make themselves available to meet with an employer and where not available then the employer must consult directly with the elected shop stewards.

The wage tables for year 1, 2 and 3 are outlined in **Appendix A.**

WAGE EXEMPTIONS:

The industry's current wage exemption procedure continues to apply. A company which is unable to implement the agreed wage increase, leave enhancement pay and/or backpay may submit an application to its local regional council for an exemption to implement lesser wage increases than those negotiated.

Please note: any exemption application must be lodged with the Bargaining Council upon 30 days of signature of the Settlement Agreement.

The exemption questionnaire that must be used to apply for any exemption is attached as **Appendix B**.

Members experiencing any difficulty in implementing the new wage increases should contact the SEIFSA Industrial Relations Division for advice and assistance on (011) 298-9400

Lucio Trentini, SEIFSA CEO

Extension of a Bargaining Council Agreement

is a key ingredient in ensuring labour market peace and stability

A lot has recently been written about the extension of collective agreements and particularly those covering terms and condition of employment in the metals industry.

A starting point in responding to these criticisms is to acknowledge that the extension of a bargaining council's collective agreement is not unconstitutional. This view was upheld by Judge John Murphy on behalf of a full bench of the North Gauteng (Pretoria) High Court in the 2016 Free Market Foundation (FMF) v Minister of Labour & Others Judgment.

The argument that collective agreements adversely affect non-party employers by requiring them to pay higher wages than they would otherwise have done may well be correct, but the question is whether our critics can take the same narrow view.

Labour law is derived from our Constitution, which is dedicated to the achievement of social justice. Fundamental to this, as Marikana reminded us, is the reduction of inequality.

Collective bargaining is a cornerstone of the system and the reduction of disproportionate income differentials is one of its purposes. Add to this the right to strike, which is constitutionally entrenched for the very purpose of allowing workers to exercise economic pressure – in other words, forcing employers to pay higher wages than they would otherwise have done – and it becomes less obvious why collective bargaining aimed at achieving the same outcomes should be regarded as being reprehensible.

The point here is that section 32 of the Labour Relations Act (LRA) expressly empowers – indeed, requires – bargaining councils and the Minister of

Employment and Labour to follow a specific procedure for extending bargaining council agreements. This procedure was agreed upon in 1995 by the parties to NEDLAC, including the representatives of business. Twenty-six years on, the system stands accused as being unfair. In reality, arguments supportive of this view are, at best, inconclusive or, at worst, speculative.

No less contentious is the belief that the extension of bargaining council agreements is a significant barrier to job creation and that the millions of unemployed South Africans stand to gain employment if collective bargaining – and, implicitly, the extension of collective agreements – was done away with. Interestingly, less than a third of South Africa's workforce is subject to bargaining council agreements and less than 5% is affected by extended agreements, thus leaving the greater part of the economy free from this real or imagined evil.

Collective bargaining at industry level, as the court put it in the Free Market Foundation (FMF) v Minister of Labour & Others, "will be undermined if bargaining agents in a majoritarian setting were uncertain at the outset of negotiations about whether or not their agreements would be extended." That is precisely what Parliament, in enacting section 32 of the LRA, set out to achieve: in essence, to oblige the Minister to extend a bargaining council agreement at the behest of the parties (employers and trade unions), provided the formal requirements set out in section 32 are met.

In particular, these requirements are that: one or more registered trade union/s whose members constitute the majority of the members of the trade unions that are party to the bargaining council vote in favour of the extension, and one or more registered employers' organisations, whose members employ the majority of the employees employed by the members of the employers' organisations that are party to the bargaining council, vote in favour of the extension.

According to the latest Department of Labour determination of the representativeness of the metals and engineering industries bargaining council issued in terms of Section 49 of the LRA, the following Representative Determination is made:

- The trade unions party to the council represent 153 443 (36,80%) out of 416 994 of the employees concerned;
- Of the 416 994 employees, a total of 292 992 (70,26%) of them are employed by the employers' organisations that are party to the council, falling within the registered scope of the council (the SEIFSA-affiliated employer Associations alone represent 57,6%, the Confederation of Employers Organisation (CEO) represents 3,9%, NEASA represents 19,5%, the Plastics Converters Association of South Africa (PCA-SA) represents 10,2%, the South African Engineers and Founders Association (SAEFA) represents 6,2%, the Federated Employers Organisation of SA (FEOSA) represents 0,7% and the South African United Commercial and Allied Employers Organisation (SAUEO) represents 1.5% of these employees); and
- There is a total of 3 919 (37,8%) out of 10 342 companies which are members of the employers' organisations party to the council in the registered scope of the council. The SEIFSA-affiliated employer Associations alone represent 27%, CEO represents 13,9%, NEASA represents 40,6%, PCA (SA) represents 9,4%, SAEFA represents 6,9%, FEOSA represents 0,1% and SAUEO represents 1,8% of these employers.

After a bruising round of collective barraging culminating in a three week strike that cost the industry in excess of R300m in lost wages and over R600m in lost revenue all five of the trade unions, who sit on the Bargaining Council, signed the 2021-2024 Settlement Agreement supporting its extension to non-party employers and employees. The 18 SEIFSA-affiliated employer Associations which signed the 2021-2024 Settlement Agreement represent 57,6% of all employees employed by all the employers' organisations that are party to the bargaining council.

As matters currently stand, in the case of a section 32 extension, where an agreement is negotiated and concluded by bargaining agents who represent and employ the majority of employees falling within the council's coverage, the extension of a bargaining council agreement is seen as a reasonable and necessary mechanism of collective bargaining and is a key ingredient in ensuring labour market peace and stability. After all, this is the legislative model which the social partners agreed on in 1995 and which Parliament duly enacted.

Preventing and/or delaying extension may well delay the implementation of higher wage increases for non-parties, but the indirect effects are no less important. For the affected workers and their unemployed family members, this would almost certainly translate into greater distress. It is hard to reconcile this with the goal of social justice.

Lucio Trentini is the Chief Executive Officer of the Steel and Engineering Industries Federation of Southern Africa (SEIFSA).

Interfering In Domestic Employment Matters By The EFF: **The Labour Court Responds**

By Rod Harper: CHM Legal

Labour relations in South Africa is increasingly being placed in a precarious position with the involvement of political parties in employer/employee disputes.

This has resulted in the dispute resolution processes out in the Labour Relations Act (LRA) being ignored. This practice is gaining traction because aggrieved employees have turned to political parties such as the Economic Freedom Fighters (EFF) to champion their individual causes in the absence of what they deem as "inadequate" or "poor" representation by their unions.

For example, it is becoming common cause for political parties such as the EFF to contact an employer demanding their audience to discuss the dismissal of an employee following a decision to terminate the employee's contract for serious misconduct.

In response to this perceived vacuum at the workplace, the Economic Freedom Fighters ("the EFF") saw an opportunity and set up a labour desk and sought to engage with employers and on occasion has elected to take over union functions. As a result of fundamental flaws in the Labour Relations Act, employers have had to deal with majority and minority unions, challenges by and between competing unions as well as with a proliferation of unions and now a political party.

Your instinctive response as an employer would be to brand such demands as ludicrous, unwarranted and inappropriate and in breach of the LRA. Your position would be that it is not the role of a political party to interfere employment matters. As such, you would feel entitled to rebuff any attempts to discuss such issues with a political party and even refuse to grant it access to your premises. Recent case studies at the Labour Court support this position that employers should not engage with political parties on domestic industrial relations issues.

It appears that very little attention was given to the provisions of the Labour Relations Act by the EFF in respect of its participation at the workplace. Therefore, it became inevitable that an employer would respond to the EFF's efforts to enter the workplace by referring complaints to the Labour Court.

A CASE STUDY

In Brightstone Trading 3 CC t/a Gordon Road Spar v Economic Freedom Fighters and Others ILJ (2021) 42 page 1953 in summary the facts were as follows:

- An aggrieved employee of the Spar sought the assistance of the EFF;
- The local regional secretary of the EFF addressed a letter to the company setting out several demands relating to working conditions;
- The EFF requested a meeting with management and arrogantly recorded that it would not accept any objection on the basis that it should not represent its members and the workers;
- Members of the EFF then entered the premises and engaged in intimidation which included threatening staff and customers and barricading the store;
- On a second occasion the EFF engaged in a violent protest.
- The Spar approached the Labour Court for an interdict prohibiting violent and unlawful conduct;
- On two occasions the customers fled the store and on the second occasion the store closed for the safety of the public and the employees of the Spar;
- Evidence was given that an official of the EFF indicated that its members would burn down the Spar;
- At the hearing, the EFF attempted to deny responsibility on the basis that it had not authorised the protestors to act on its behalf;
- The Spar relied on the concept of ostensible authority (not direct authority) to prove its case and the Labour Court found that it had proven its case.
- The Labour Court found that:
- The EFF had to hold its members accountable when the members acted in breach of the EFF constitution;
- The company was entitled to expect the EFF to not become involved in employment matters and that its employees should comply with the provisions of the LRA;
- The EFF was interdicted from carrying out the unlawful action and costs were awarded against the EFF.

This judgment of the Labour Court accords with the earlier judgments in Calgan Lounge (Pty) Ltd v NUFAWUSA & Others (2019) 40 ILJ 342 (LC) and Langplaas Boerdery CC & Others v Matshini & Others (2021) 42 ILJ 1210 (LC). In those judgments, the Labour Court held explicitly that the EFF (or any other political party) had no business engaging in workplace issues.

CONCLUSION

Employers should not engage with political parties on domestic industrial relations issues. Employers should refer them to the LRA which indicates that registered unions should deal with industrial relations issues. Employees should be advised that political parties are not entitled to assume the functions of unions. Where a political party attempts to "bully" an employer in relation to dealing with it. Often, a strong letter sent to the political party solves the problem. It is to be hoped that the EFF now accepts that it should not become involved in domestic industrial relations matters.

Secondary strikes:

Constitutional court upholds judgments of the labour court and labour appeal court

by Lizle Louw, Johan Olivier, Shane Johnson

On 12 November 2021, the Constitutional Court (CC) held in favour of mining employers in a historic secondary strike judgment*. Our employment team successfully represented several mining employers from the interdict stage at the Labour Court (LC) to the appeal stage at the Labour Appeal Court (LAC) and finally the CC.

BACKGROUND FACTS AND LC AND LAC HISTORY

The Association of Mineworkers and Construction Union (AMCU) and Sibanye-Stillwater (SSW) were involved in an ongoing wage dispute which resulted in AMCU members embarking on a protected strike at SSW gold operations for approximately 6 months. During February 2019, AMCU issued several mining houses with notices of an intention to embark on secondary strikes for 7 days.

The affected secondary employers launched separate urgent applications in the LC to interdict the secondary strikes. The mining houses presented joint argument to the LC that the test on whether a secondary strike is protected must be applied per secondary employer. In so doing the LC must test whether the harm caused by a secondary strike at any individual mining house is proportional to the influence it will have on the primary employer. AMCU argued that the LC should not apply the proportionality test per individual secondary employer but rather determine whether the harm caused by an industry wide secondary strike is proportional to the effect it will have on SSW. The LC held that the intended secondary strikes did not satisfy the reasonableness and proportionality requirements under section 66 of the LRA. The secondary strikes were declared to be disproportionate and unprotected.

AMCU lodged an appeal before the LAC. The LAC found that the primary strike had ceased and the dispute between the parties was therefore moot. No exceptional circumstances existed that warranted the attention of the LAC. The LAC held that the nature of the proportionality assessment had been pronounced upon previously and that no further judgment was required.

* Association of Mineworkers and Construction Union and Others v Anglo Gold Ashanti Limited t/a Anglo Gold Ashanti and Others [2021] ZACC 42

CC JUDGMENT

AMCU applied for leave to appeal to the CC.

The CC needed to answer the following main question: does section 66(2)(c) import the principle of proportionality in assessing the reasonableness and the substantive lawfulness of secondary strikes? The CC answered "yes" to this question. Section 66(2)(c) seeks to balance two competing aspects –

The impact of the secondary strikes on the secondary employers

The effect of the secondary strikes on the business of the primary employer

If the secondary strikes have no effect on the primary employer or if the effect is disproportionately harsh on the secondary employers, the secondary employers would be entitled to interdict the strike under section 66(3) of the LRA.

In this matter, the potential effect of the secondary strikes was disproportionately harsh on the secondary employers and therefore, the CC ultimately confirmed the LC judgment which held that AMCU did not meet the reasonableness and proportionality requirements under section 66 of the LRA.

The CC judgment confirms that this matter will be etched into the history of labour law in South Africa for the following reasons:

This is the first time that the LC, LAC and CC had to consider a campaign of secondary strikes called for by a trade union across a particular industry.

The LC (as confirmed by the CC) set an important precedent regarding such a campaign in holding that the reasonableness requirement was not met.

The initial LC judgment avoided serious financial losses for the affected mining houses as well as the South African economy as a whole.

The number of mining houses involved in this matter was also unique.

SOUTH AFRICA

SOUTH AFRICA'S INDUSTRIAL POLICIES NEED TO BE REFINED IN ORDER TO TAKE ADVANTAGE OF GROWING GLOBAL STEEL PRICES

If South Africa is to take advantage of rising global steel prices, it will need to strategically refine and polish its industrial policies by bringing together all stakeholders, including the private sector, labor, and government, to increase internal demand, localize beneficiation, and establish value-added goods exports in order to serve as a value creator for the South African economy.

Steelmaking continues to be an important strategic industry for South Africa, accounting for 1.5 percent of GDP and 190,000 jobs.

The South African steel industry's value chain multiplies the value of iron ore by four and is crucial to the country's energy and water supply infrastructures, among other things.

The local steel industry, once a pillar of the local economy's manufacturing, is in decline as costs rise, worldwide prices remain stable, and ambitious local infrastructure projects remain pipe dreams.

Since 1990, manufacturing's actual value added as a percentage of gross domestic product (GDP) has been steadily declining at current prices. Since the global financial crisis in 2009, when the South African manufacturing industry's contribution to GDP fell by 11% to R353 billion in constant 2010 prices, the South African steel sector has only recovered to 2008 levels by 2013, and has showed virtually no growth since then.

Manufacturing's contribution to the South African GDP dropped by 44% from 24% in 1990 to 13% in 2018, clearly indicating the pace at which South Africa is moving down the deindustrialisation path.

Given its high fixed costs, the primary steel industry relies on economies of scale to realise sustainable margins. And in that context, one figure explains a great deal about the state of the industry globally: 928-million. That's the number of tonnes of crude steel that China – undisputed global champion of scale – produced in 2018. The next largest national producer – India – produced one ninth of that amount. South Africa produced 6 million tonnes.

If there were sufficient global demand to sop up China's colossal production, then its low prices could be met through tariffs and the exploitation of local competitive advantages. But the steel market has been overheated for years, resulting in product dumping and globally depressed prices.

This, then, is the global playing field. And locally, the home side is facing its own, crippling challenges.

Primary steel producers are facing prohibitive input costs, unreliable transport and energy infrastructure, and low domestic demand on top of cheap imports. The downstream sector faces its own set of hurdles, including an uneven tariff regime and ineffective border controls.

> South Africa is a small player in world steel, and needs to focus on its comparative advantages such as regional supply, niche quality products, and ready availability of input materials such as iron-ore. But those advantages are only brought to bear on something that would approximate a level playing field. And the playing field seems, at the moment, to be almost insurmountably vertiginous

The World Steel Association conducted a study in 2017 to quantify the impact of the steel industry on the global economy. Although the multipliers may differ from country to country, a general trend can be concluded from these indicators.

The steel industry's direct economic impact on the supply chain, as a result of the backward linkages into raw materials, equipment, energy and services, creates $2.5 of value-added activity in the downstream for each $1 of value added within the steel industry.

Every 1 000 t of steel produced locally adds R9.2-million to GDP; provides three jobs directly and three indirectly; enables domestic procurement spend of R5.3 million, of which R0.5-million is spent with SMMEs; and gives rise to products that, in an ideal world, should be fuelling our industrialisation.

The answer to our challenges cannot, therefore, be the wholesale abandonment of an industry which has built up its steel-making expertise and infrastructure over a century, and has the skills, knowledge logistics networks and downstream businesses required for a viable and potentially thriving local steel sector.

South Africa is a small player in world steel, and needs to focus on its comparative advantages such as regional supply, niche quality products, and ready availability of input materials such as iron-ore. But those advantages are only brought to bear on something that would approximate a level playing field. And the playing field seems, at the moment, to be almost insurmountably vertiginous.

As an industry body we have put forward recommendations for incorporation into the Carbon and Stainless-Steel Value Chain Master Plan. These include, but are not limited to: intensifying the work of an inter-agency working group on illicit trade of steel products; deploying appropriate trade measures to level the playing field, especially for downstream products; applying carbon taxes on imported as well as domestically produced steel products; improving the short and long-term electricity pricing frameworks; improving logistics and transport infrastructure; and identifying and prioritising markets within Africa with high export potential, alongside other regional integration efforts.

If we were somehow to see consistent, reliable electricity, a coordinated approach to tariffs encompassing the downstream and upstream sectors, an improved transport infrastructure and the revitalisation of the construction industry, we might, finally, be in a position where we could begin to rebuild the industry, even in the face of cut-price imports. But if our current policy uncertainty continues, these markers of a healthy economy seem destined to remain pipe dreams.

As the steel sector falters it steadily loses its ability to regain its presence in local and international markets. Complicating the sector's competitiveness is its dependence on the fortunes of manufacturing, mining and construction, all of which have been under pressure since the end of the commodity boom, and the sector's inability to multiply productive linkages within the economy.

GLOBAL

GLOBAL ECONOMIC RECOVERY FUELING DEMAND FOR STEEL AND SPIKING PRICES

With global governments planning to splurge on infrastructure development as they map their post-pandemic path to growth this is resulting in steel prices spiking from Asia to North America, and iron ore's marching higher, as bets on a global economic recovery fuel frenzied demand.

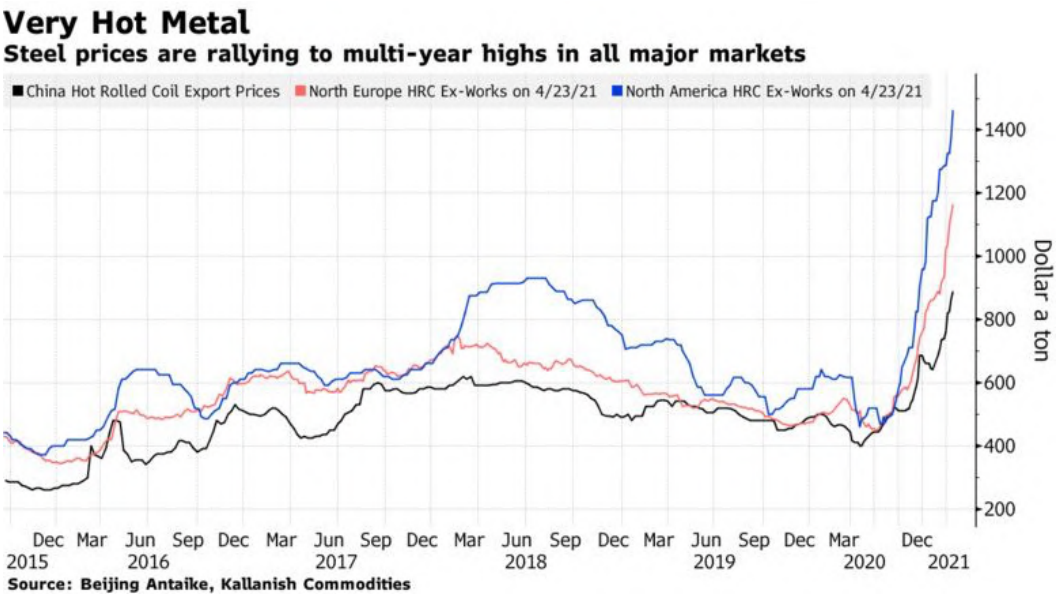
The world outside China is finally catching up with the Asian steel giant's already strong markets as a global rebound drives a powerful wave of buying that can't be matched by production. Sectors such manufacturing and construction are ramping up and governments have pledged to splurge on infrastructure as they map their post-pandemic path back to growth.

Mills' order books are filling up as buyers look to lock in steel after a year of output curbs and idling of plants. On top of that, the biggest iron ore miners have been hampered by operational issues, tightening a market that hadn't fully recovered from a supply shock more than two years ago.

Here's four charts that show what's behind the sudden surge in ferrous markets.

PRICING POWER

Prices for hot-rolled coil, a benchmark steel product, are up threefold in North America from pandemic lows and they're also soaring in Europe. In China, which has already enjoyed a year of robust demand, steel is the most expensive since 2008.



That's a boon for steelmakers, who are suddenly enjoying healthy margins -- and optimism -- after a miserable year. South Korea's Posco, one of the top suppliers outside China, just posted its best quarterly profit since 2011 and expects the recovery will continue in the second half on stimulus and the rollout of coronavirus vaccines.

GOING GLOBAL

Worldwide steel demand will grow 5.8% this year to exceed pre-pandemic levels, according to the World Steel Association. China's consumption, about half of the global total, will keep growing from record levels, while the rest of the world rebounds strongly.

HUNGRY

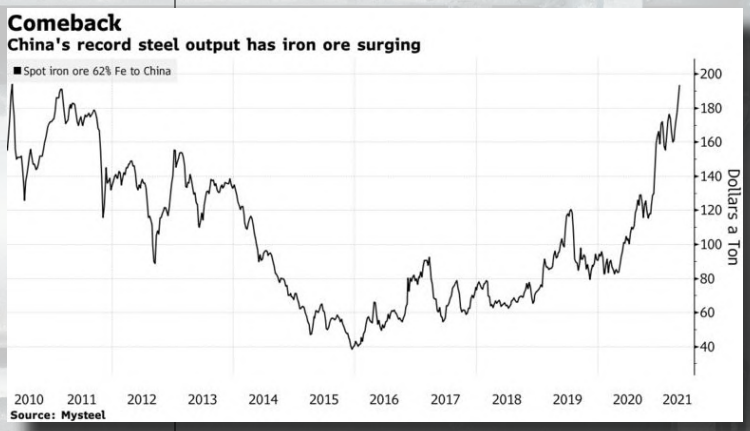
China's huge steel market is still growing, while others are rebounding

Source: World Steel Assn; 2021 and 2022 are forecasts

"Lead times are really, really long and some mills are saying they are selling for the third or even fourth quarter," Tomas Gutierrez, analyst at researcher Kallanish Commodities, said by phone. "There's optimism on the demand this year with the Covid recovery, and a lot of stimulus plans. Demand outside China in April is higher than we've seen in many, many years."

MATERIAL INCREASE

Iron ore is enjoying a sudden rebound to near-record levels -- spot prices are less than $1 away from their peak of $194 a ton -- as China's steelmakers keep output rates at more than a billion tons a year to feed still rampant consumption from a busy economy. While Beijing has set a goal of reducing steel production this year, that could prove difficult with consumption as strong as it stands.



Robust prices have bolstered earnings at the world's top miners, even as they struggle to supply enough of the raw material. Brazil's Vale SA churned out less than expected last quarter after lower productivity at one mine and a ship loader fire, slowing its recovery from an early-2019 dam disaster. BHP Group and Rio Tinto Group said quarterly shipments dropped on weather disruptions in Australia.

WHY COLLABORATION IS CENTRAL TO NET ZERO EFFORTS

"There's a high possibility that Chinese steelmakers will ride the wave of this uptrend and accelerate production, at least this year," Australia & New Zealand Banking Group Ltd. analysts including Daniel Hynes wrote in a note. A long-awaited wave of extra iron ore supply, especially from key shipper Brazil, hasn't yet materialized as the bears expected.

MAKING MONEY

Meanwhile, higher steel prices and China's effort to clean up its mammoth and heavy-polluting industry with targeted production curbs has pushed profitability at mills to the highest in more than a decade, according to a Bloomberg Intelligence gauge.

Steel margins in China "continue to suggest that current iron ore prices are sustainable in the near term" and would need to go negative for iron ore prices to correct lower, Commonwealth Bank of Australia analyst Vivek Dhar wrote in a note.

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OUR PASSION, YOUR SUCCESS

Workplace disharmony - What's love got to do with it?

By Tanya Mulligan: CHM Legal

Romantic relationships at the workplace, although intrinsically private, can unfortunately often be associated with workplace disharmony, favoritism and sexual harassment exposing the employer to increased risk.

The controversial issue was succinctly summarised by the Labour Court in Rustenburg Platinum Mines Limited v UASA obo Pietersen and Others (2018) 39 ILJ 1330 (LC) where the Court held as follows:-

"[40] A workplace is exactly that and should not ordinarily be confused with a 'find me love' sanctuary or lonely hearts' club for love-sick employees. I agree with the Commissioner's observations that there is nothing wrong with employees being attracted to each other at the workplace. After-all, we are all part of Homo sapiens with feelings and emotions, and it is possible for the office affair to turn into a 'happily thereafter union'.

[41] There is a school of thought that holds the view that human beings can be slaves to their urges. That being so, it does not imply that employees are incapable of controlling those urges in the workplace. A workplace should be free from 'amorous' and testosterone filled employees looking for love and gratification at every available opportunity. There is everything wrong when employees express their affection in the workplace to each other, to the point where the conduct in question is frowned upon, as it crosses that fine line between innocent attraction and sexual harassment".

Apart from possible claims of sexual harassment, exposing the employer to increased risk and liability in accordance with the provisions of the Employment Equity Act, workplace disharmony must be considered. In most instances workplace romances do not turn into a 'happily thereafter union' and instead, the once salacious working relationship becomes tainted with embarrassment or resentment directly affecting the working environment.

In the case of G v K (1998) 9 ILJ 314 (IC) a junior director was dismissed as her affaire de coeur with a senior director allegedly caused embarrassment to him and affected his relationship with his wife. In evaluating the dismissal of the junior director, the Industrial Court held that there is no legal basis for dismissing an employee for having an affair with another employee once the affair is over and that the senior director 'having made his bed, he must now lie there", so to speak.

In the case of Zaindeen and Clicks Retailers (Pty) Ltd 35 ILJ 2322 (CCMA) an employee was dismissed for unauthorised removal of stockroom keys and sexual harassment of B, another employee. The employee had taken the stockroom keys to go there and kiss B after work. Fortunately for the employee, the Commissioner found that his conduct towards B was consensual and that his dismissal for the removal of the keys was too harsh in the circumstances.

The question of course then arises, how do employers navigate this conundrum at the workplace, particularly as it normally involves the private affairs of two consenting adults.

In the USA employers have resorted to the so-called "Love Contract". The purpose of a Love Contract is to notify the employer of a consensual romantic relationship and indemnity it against claims of sexual harassment. The Love Contract also contains certain rules for appropriate and professional workplace conduct. Although Love Contracts are often perceived as invasive or an infringement of an employee's right to privacy, it does serve a legitimate organizational purpose and may mitigate against the adverse effects of workplace relationships. A proactive approach should be adopted.

The answer, although not uncomplicated, can thus be found in the employee's terms and conditions of employment. Employers, who wish to steer clear of the "hands-off' approach, can contractually regulate romantic relationships at the workplace and promote a culture of transparency by issuing an appropriate policy. Such a policy would also enable employers to implement the necessary steps and safeguards in order to ensure overall productivity and a safe and harmonious working environment. As the implementation of such a policy may alter existing terms and conditions of employment it is recommended that legal advice be sought.

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SOUTH AFRICA: CONCOURT RULES - INTOLERABILITY OF A CONTINUED EMPLOYMENT RELATIONSHIP MUST BE CONSIDERED BEFORE ORDERING REINSTATEMENT

By Bowmans Law

A recent Constitutional Court judgment serves as a cautionary tale for employers to ensure that during conduct-related arbitrations, they provide unassailable evidence that continued employment would be intolerable due to the employee's conduct. This cannot be raised for the first time in a review application.

THE FACTS

Mr Mlungisi Booi (Mr Booi) was an employee of the Amathole District Municipality (Municipality) until he was dismissed for misconduct.

Mr Booi approached the South African Local Government Bargaining Council (SALGBC) to challenge the substantive and procedural fairness of his dismissal. The SALGBC exonerated him on all the charges, found that the dismissal was substantively unfair and awarded him retrospective reinstatement with back-pay in the sum of ZAR 751 340.64.

The Municipality took the SALGBC award on review. One of the grounds of review was that the arbitrator committed a reviewable irregularity by ordering reinstatement even though the trust relationship between Mr Booi and the Municipality had, on the evidence, obviously broken down. Having considered the remedy of reinstatement, the Labour Court found that the way in which Mr Booi conducted himself had destroyed the prospect of continued employment.

The Labour Court held that the arbitrator had failed to take this evidence into account and thus, his decision that Mr Booi be reinstated, fell outside the 'band of decisions that are reasonable'. The Labour Court set aside the award of retrospective reinstatement and replaced it with one of compensation equal to the back-pay awarded by the arbitrator. Following the Labour Court's judgment, Mr Booi claimed the compensation awarded to him which was duly paid by the Municipality.

Notwithstanding that he claimed and was paid compensation in terms of the Labour Court judgment, Mr Booi sought leave to appeal the judgment. Leave to appeal was refused and Mr Booi petitioned the Labour Appeal Court. The petition was also dismissed on the basis that it lacked prospect of success, whereafter Mr Booi petitioned the Constitutional Court. The Constitutional Court granted leave to appeal directly to the Constitutional Court.

THE CONSTITUTIONAL COURT JUDGMENT

The Constitutional Court confirmed that in determining whether to award reinstatement or not, arbitrators and courts are required to consider if the continued working relationship has been rendered intolerable. The Constitutional Court emphasised that reinstatement must be awarded unless the provisions of section 193(2)(a)–(d) of the Labour Relations Act applied, in which case compensation may be ordered.

The Constitutional Court stressed that a reviewing court's role is to assess whether the intolerability enquiry conducted by the arbitrator led to a decision that could not have been reached by a reasonable decision-maker conducting that intolerability enquiry. It is not the role of the reviewing court to determine the issue afresh.

The Constitutional Court found that the arbitrator's decision to reinstate Mr Booi fell within a band of reasonable decisions and held that there was no basis for the Labour Court's interference with this decision.

The Constitutional Court set aside the Labour Court's judgment and reinstated Mr Booi. On the issue of back-pay, the Constitutional Court limited the award of back-pay due to delays in finalising the dispute, which were occasioned by Mr Booi's conduct.

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MANDATORY VACCINATION IN THE WORKPLACE: CONSIDERATIONS FOR EMPLOYERS

By Webber Wentzel

Various unanswered questions around mandatory vaccination may be tested in the courts after several organisations have announced that they are implementing mandatory vaccination policies at their workplaces

Several corporations have recently announced that they will implement mandatory vaccination at their workplaces, and possibly many more will follow.

This important development will hopefully result in a few unanswered questions around mandatory vaccination finally being tested (and answered) before our courts (including, among other things, disciplining employees in this context). Two of the most common considerations which our clients have faced in determining how best to address Covid-19 vaccination in their workplaces are:

- whether an employer may exclude employees who are not vaccinated from the workplace, and if so, whether this exclusion can be extended to contractors and visitors; and
- whether an employer may require employees to disclose their vaccination status.

We address these considerations below.

EXCLUDING UNVACCINATED EMPLOYEES, CONTRACTORS AND/OR VISITORS FROM THE WORKPLACE

The Occupational Health and Safety Act, 1993 (the OHSA) places several obligations on an employer. These include that an employer must provide and maintain a workplace that is safe and without risk to the health of its employees. An employer must also ensure that, "persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety." Importantly, Regulation 2C of the General Safety Regulations to the OHSA expressly prohibits an employer from allowing a person to "enter a workplace where the health or safety of that person is at risk, or may be at risk, unless such person enters such workplace with the express or implied permission of and subject to the conditions laid down by such employer: Provided that such express or implied permission shall not apply in respect of a person entitled by law to enter such workplace or premises".

On the basis of an employer's obligations in terms of the OHSA, it can be argued that an employer has grounds to deny entry to the workplace to those employees (including contractors and visitors) who are not vaccinated (except where a legal right to entry exists). Such a decision, however, must also be informed by the risk assessment conducted by the employer (i.e. the measure should only be implemented in circumstances where an employer's risk assessment has identified it to be necessary).

While there is another argument that such an exclusion may amount to unfair discrimination, in our view an employer may argue that the exclusion is rational, not unfair, and justifiable because of the employer's obligations in terms of the OHSA, which requires an employer to provide a safe and healthy workplace.

There is currently no legislation which requires all South African citizens to be vaccinated. Vaccination is still a choice, and is not mandatory. The above position may become clearer if vaccination becomes mandatory in the future, or if the Government adopts an approach of specifically mandating that entrance to public places can be restricted to vaccinated persons, in relation to public policy considerations. Given that this issue has not yet come before our courts, it should be noted that such a measure is not without risk of constitutional scrutiny and/or unfair discrimination claims.

REQUESTING EMPLOYEES' VACCINATION STATUS

In requesting and retaining information about an employee's vaccination status, an employer should be aware of the provisions of the Protection of Personal Information Act, 2013 (POPIA). If an employee is requested to provide proof of vaccination, and refuses, an employer must be cognisant of the employee's right to privacy, which includes a right to protection against the unlawful collection, retention, dissemination and use of personal information.

However, there is currently no prohibition on requesting employees to voluntarily declare their vaccination status. This information may be obtained by way of consent in the form of a voluntary, specific and informed expression of will. It may also be argued that, despite an employee's right to privacy, an employer's obligations in terms of the OHSA require that an employer is aware of who is and is not vaccinated within that workplace. Such information should, however, be gathered and processed in accordance with POPIA.

From a practical perspective, we recommend that an employer should first request employees to disclose their vaccination status on a voluntary basis, while making its privacy policy available to employees at the same time. Then, depending on the information received, an employer may ask employees more directly to disclose this information. If an employee refuses to disclose their vaccination status, this should be dealt with on a case-by-case basis, taking into account the reason for the refusal.

The December 2021 annual shutdown: Leave Pay and Leave Enhancement Pay (the bonus) Calculations

In this article we discuss some of the main provisions regarding the annual shutdown and the calculation of leave pay and leave enhancement pay (leave bonus)

The dates of the annual shutdown are determined by the firm's management. However, the shutdown must take place as close as possible to the previous year's shutdown as stipulated in clause 16 of the Main Agreement. Often, companies close on the last working day before the Day of Reconciliation on December 16. The public holiday falls on a Thursday this year. However, the final decision is up to the company and the workload may influence the shutdown date.

The annual shutdown must allow employees to take three consecutive weeks' paid leave which must be taken over an unbroken period and it must include four weekends. In addition, the three weeks' leave must be extended with full pay for each public holiday which falls during the shutdown period and which would otherwise have been an ordinary working day. This year, depending on the start of your company's annual shutdown, the following public holidays will most likely fall into this category:

- Thursday 16 December - Day of Reconciliation
- Friday 1 January - New Year's Day

For companies that work a five-day week from Monday to Friday, (majority of companies), the shutdown will not be affected by the following public holidays as they fall on a non-working day:

- Saturday 25 December - Christmas Day
- Saturday 26 December - Day of Goodwill,
- Friday 1 January - New Year's Day

The Main Agreement says that all employees are entitled to their full leave pay and leave enhancement pay (the bonus) on completion of 234 shifts worked on a five-day week basis or 283 shifts on a six-day week basis excluding overtime.

If a company's financial situation is such that it cannot afford the annual leave enhancement pay, companies can apply for an exemption to not pay the LEP. The exemption deadline is October 31 each year.

However, for good reason, the company can apply for a late condonation of their exemption application. This year you have a very good reason – namely, that the negotiations were finalised very late, (end of October) and the agreement was only adopted by the MEIBC in November.

Please contact Seifsa if more information is required.

CALCULATING SHIFTS AND WHAT COUNTS AS A SHIFT?

Section 12 of the Main Agreement states that the qualification for paid leave shall be 234 shifts actually worked on a five-day week basis or 283 shifts actually worked on a six-day week basis. These are the maximum amount of shifts that an employee can work in a year to qualify for leave. The table below explains this further.

Yes, there is an extra public holiday this year which was voting day on November 1. However, we do not have to deduct another public holiday as three of the 12 public holidays have already been deducted twice.

How is that? - Because they fall on a Saturday and all 52 Saturdays have already been deducted.

The shift system is a way of encouraging employees to strive for full work attendance and if one happens to be sick, they are required to produce a valid sick note. If an employee accumulates all 234 shifts, then the employee is rewarded with full leave pay and enhancement pay. If this does not happen, and the employee accumulates less than 234 shifts, then they are penalised and receive less leave pay and enhancement pay (bonus).

More importantly, an employee who works all available shifts during the year is entitled to full leave pay and enhancement pay even where the shifts amount to fewer than 234 shifts (five-day week) or 283 shifts (six-day week) respectively. This provision accommodates a situation where the dates of the annual shutdown may change from year to year at your company. New employees and others who have not worked all available shifts during the year are entitled to pro-rata leave pay and pro-rata leave enhancement pay.

	5-day week	6-day week
Number of days: In a year	365	365
Less: Saturdays and Sundays	104	52
Less: Three weeks'annual leave (working days)	15	18
Less: Normal Public holidays	12	12
Total number of shifts	234	283

TABLE 1.

LEAVE QUALIFYING SHIFTS		
	Five day week worker	**Six day week worker**
Minimum number of shifts to be worked	*** 234 shifts**	*** 234 shifts**
Maximum number of shifts to be worked before pro rata leave pay and leave enhancement pay is paid upon: - Termination - Resignation	 **10 shifts** **20 shifts**	 **13 shifts** **25 shifts**
Marine work and turnaround work upon: - Termination - Resignation	 **no minimum** **20 shifts**	 **no minimum** **25 shifts**
Period of absence because of sickness counting towards leave qualfication purposes (provided employees produces a medical certificate for each absence)	**43 shifts**	**52 shifts**
Short Time (Clause7)	Short shifts worked whilst working short time shal count as shift actually worked. Employees working 24 hour or more spread over three or four days, and employees on a three-shift system working three or four shifts per week shall - Be credited with the full shifts for an ordnary week for purposes of the paid leave refered in this clause, for up to three(3) months in any calendar year and - thereafter, be credited with one additional shift per week and above those shift actually worked for purposes of the paid leave referred to in this clause.	
Periods of absence falling within the scope of the COID Act	Full number of shifts during absence	
Absences whilts on the additional week's paid leave or accumulated additional leave	Periods of absence whilst on this additional paid leave counts as shifts worked	
First 8 weeks lay-off	Full shifts	
Absences whilts on the protected strike (section 64 of LRA)	Full number of shifts while on protected strike	
Shop steward traning leave	Periods of absence whilst on shop steward training count as shift worked	
Shop stewards elected as Trustees and/or representatives of MIBFA, MEIBC and/ or merSETA	Periods of absence whilst attending a MIBFA/MEIBC and / or merSETA meeting count as a shifts worked.	
Absences whilts on family responsibility leave (clause 42 of the Main Agreement)	Shifts do no count	
*365 calendar days - 52 Saturdays - 52 Sunday - 12 puublic holidays - 15 day's leave = 23		

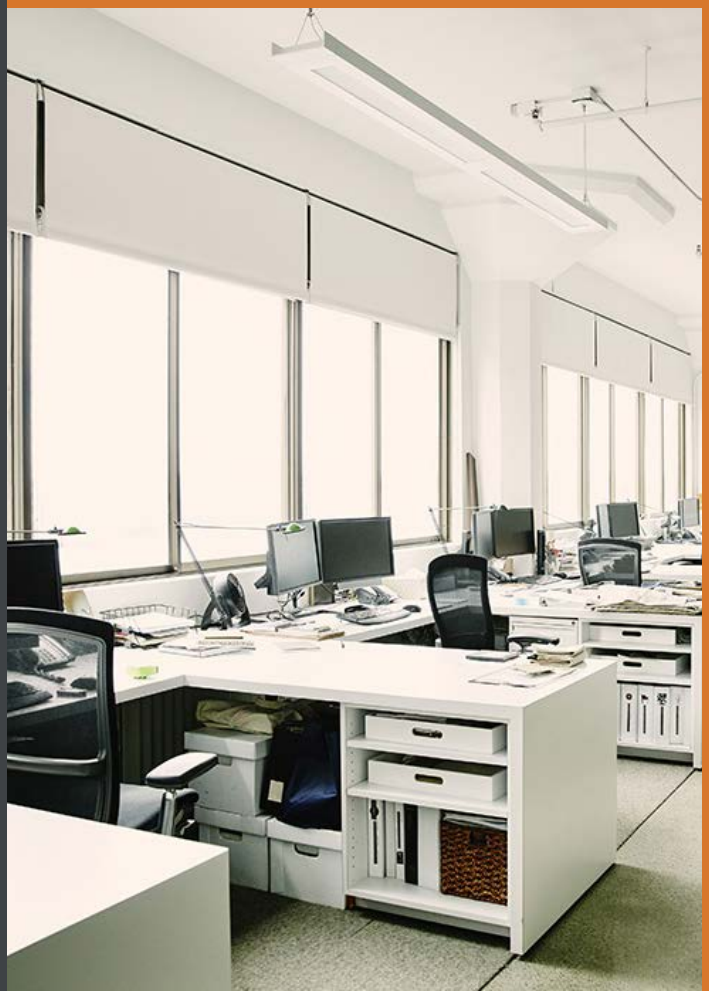
WHAT ABOUT LOCK-DOWNS AND SHIFTS?

SEIFSA and the MEIBC recommend that you still calculate and add shifts over the lockdown period for the purposes of leave and LEP. It is also advised to regard it as a lay-off as defined in Annexure A of the Main Agreement. If one then considers section 12, it states that a maximum of eight weeks of lay-off count as shifts.

However, it must be noted that a lay-off as defined in Annexure A of the Main Agreement is not the same as the lockdown.

Therefore, the final decision whether to credit shifts for eight weeks of the lockdown or not remains with management. Considering that many companies may be implementing the Main Agreement defined lay-offs after the lockdowns they would be expected to give shifts for up to eight weeks of lay-off.

This is in addition to the economic and financial difficulties being experienced by many companies which may lead to them having to apply for an exemption from paying the leave enhancement pay/ bonus, in its entirety.



DOES SHORT-TIME EFFECT THE SHIFT ACCUMULATION?

Due to the difficult economic times that companies are confronted with, many have had to implement short-time. Are the shifts affected by short-time? The answer is yes. Let's consider what the Main Agreement says on the matter.

Firstly, short shifts (i.e. shifts where the hours have been reduced) worked while working short-time count as shifts actually worked.

Secondly, employees working 24 hours or more spread over three or four days and employees on a three-shift system working three or four shifts per week:

- must be credited with the full shifts for an ordinary week for purposes of paid leave for up to three months in any calendar year; and
- thereafter, must be credited with one additional shift per week over and above shifts actually worked for purposes of paid leave.

BUT, WHAT HAPPENS WHERE EMPLOYEES ARE WORKING LESS THAN 24 HOURS IN A WEEK?

The Main Agreement, states that, to obtain a shift for leave pay and leave enhancement pay, one needs to work a shift. In addition, short shifts worked while working short-time count as shifts actually worked. Therefore, employees are credited with only the shifts that they have worked in the week.

Whatever the number of days the employees come to work, whether it be one, two or three days or more, than that is the number of shifts that they are to be accredited with.

As has already been stated, an employee who has worked all available shifts from the first day after the previous year's annual shutdown up to and including the last shift preceding the current shutdown is entitled to full leave pay and a bonus.

WHEN DOES AN EMPLOYEE QUALIFY

FOR THE ADDITIONAL PAID LEAVE?

An employee qualifies for an additional week's paid leave after qualifying for his fourth and subsequent annual leave. By mutual arrangement between the employer and employee, the annual shutdown may be extended by an extra week or the employee may be paid out the monetary value of this extra week's leave.

Alternatively, and again by mutual agreement, the extra week's leave may be accumulated until the employee qualifies for such extra three weeks' paid leave. The fourth week's leave may also be taken as ad hoc leave in the following year. However, this is taken at the employer's convenience and with the employer's permission.

In cases where employees doing essential work continue working during the shutdown, the relevant MEIBC regional office must be informed of the names of these employees at least one month in advance. These employees must be given their paid leave within four months of the date of the shutdown.

LEAVE PAY:

Every employee is entitled to leave pay calculated on the following basis:

TABLE 2: CALCULATION OF LEAVE PAY

LEAVE ENHANCEMENT PAY:

$$\text{normal weekly wage rate (excluding allowances)} \times \begin{matrix}\text{3 weeks} \\ \text{(4 weeks where employee is entitled to additional leave)}\end{matrix} \times \frac{\text{number of shifts worked}}{\text{234 shifts (five-day week worker)}}$$

Every employee is entitled to leave enhancement pay calculated on the basis of 8,33 percent of actual earnings, excluding allowances (calculated on a 40-hour work week or upon actual normal hours worked) on the date the employee actually goes on leave, and in the case of termination, at the actual rate at the date of termination.

TABLE 3: CALCULATION OF LEAVE ENHANCEMENT PAY

$$\text{normal weekly wage rate (excluding allowances)} \times \text{52 weeks} \times \text{8.33\%} \times \frac{\text{number of shifts worked}}{\text{234 shifts (five-day week worker)}}$$

For more information on these and other Main Agreement matters:

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CONTINUED INCREASE IN MANUFACTURING PRODUCTION & SALES DATA IS ENCOURAGING

The Steel and Engineering Industries Federation of Southern Africa (SEIFSA) is encouraged by manufacturing data released by Statistics South Africa's (StatsSA) today which indicates an uptick of 1.3 percent in total manufacturing production on a year-on-year basis in September 2021 compared to September 2020.

The improvement in manufacturing data is despite the current disruptions caused by Eskom load-shedding which has significantly affected production.

"According to the manufacturing data, total manufacturing sales increased by 9.0 percent year-on-year in September 2021, compared to September 2020. The Metals and Engineering (M&E) sector's annual performance was generally in line with that of broader manufacturing production which increased with a year-on-year basis average of 4.6 percent in September 2021. Total sales increased by 17.0 percent to reach R82.9 billion in September 2021.

The increase in manufacturing output, and specifically in the M&E sector, is line with total manufacturing capacity utilisation data which improved to 78.0% in the third quarter of 2021 compared with 71.7% in the third quarter of 2020. Within the M&E sector, capacity utilisation improved significantly to 74.9% in the third quarter of 2021 compared to 66.1% in the third quarter of 2020," says Ms Palesa Molise, SEIFSA Economist

The expansion in output is encouraging as it filters down to companies in the M&E sub-sectors which are under duress. Moreover, given the multiplicity of challenges faced by businesses, the uptick of output data provides a glimmer of hope that momentum will continue to increase in the coming months. However, the re-introduction of Eskom load-shedding, high electricity and fuel costs and volatility in the exchange rate will place significant strain on production levels.

"The Metals & Engineering sector has recently come out of a three-week industrial action which cost the industry immensely. Therefore, an urgent response to the issue of Eskom load-shedding is required for the broader manufacturing sector and for the M&E sector companies to regain momentum and to boost production and sales levels by leveraging on the relaxed lockdown level restrictions." says Ms Molise.

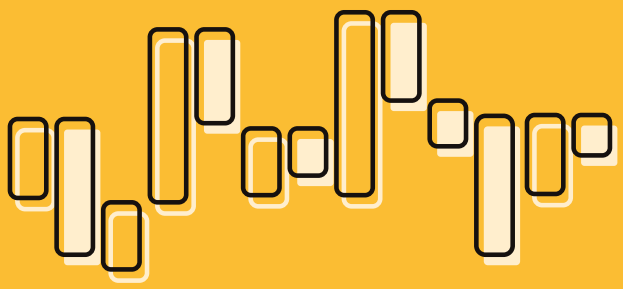
Theory and Calculation of

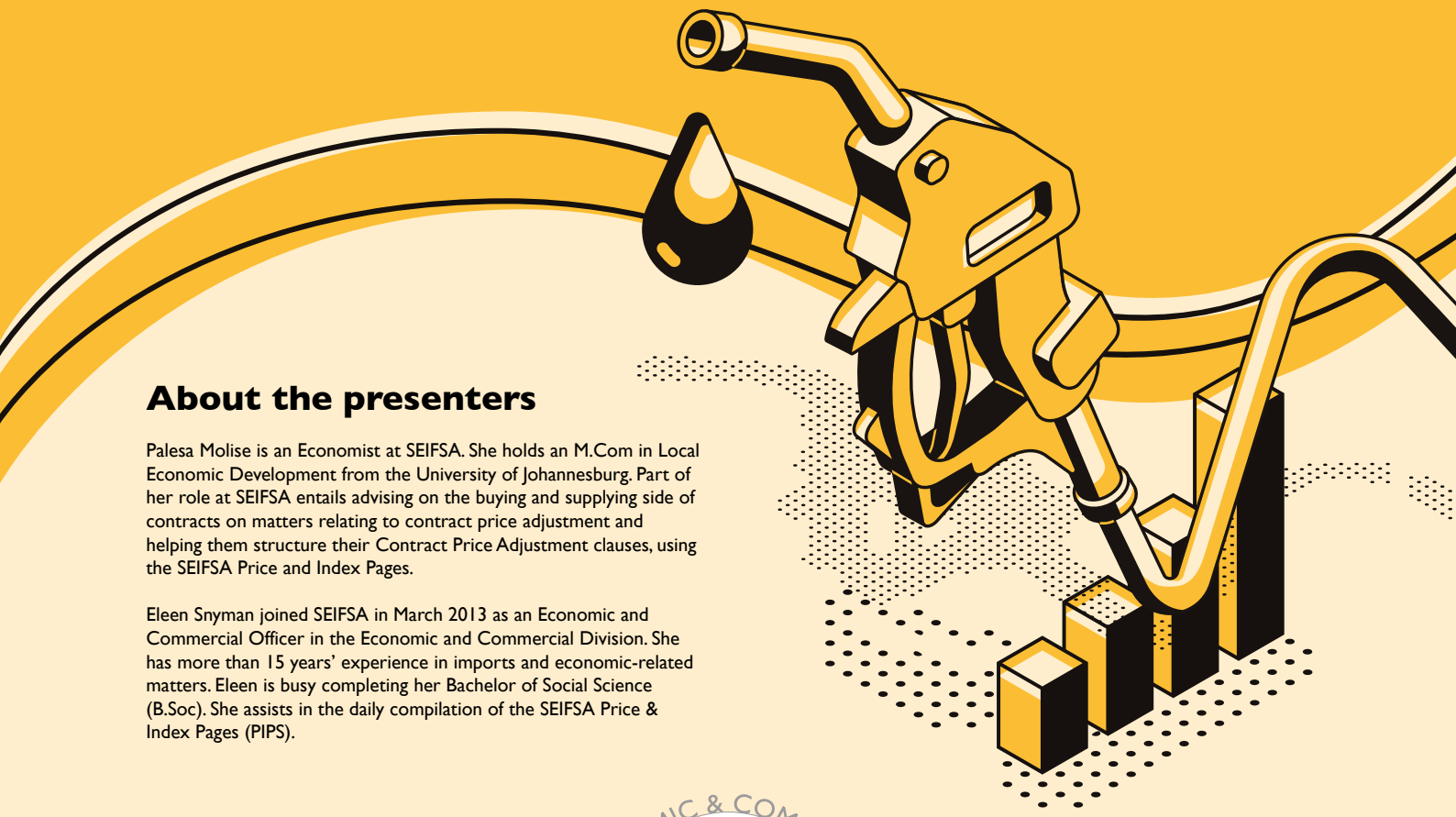
CONTRACT PRICE ADJUSTMENT

1 The interest in price indices as well as their importance has grown rapidly over the past couple of decades. **A sound practical knowledge of these indices has therefore become essential for businesses in the tender and contracts environment.**

2 **Provided over two sessions, the theory and calculation of Contract Price Adjustment webinar provides a systematic explanation of the full range of indices used in Contract Price Adjustment**, the practical application of indices and formulas, and how to derive the most value from the practice.

3 During this webinar, participants will learn how to analyse and control cost increases in the business and how to achieve optimal cost recovery. **They will also gain insight on how to sustain profit margins through the use of the SEIFSA – Price and Index Pages (PIPS)..**





About the presenters

Palesa Molise is an Economist at SEIFSA. She holds an M.Com in Local Economic Development from the University of Johannesburg. Part of her role at SEIFSA entails advising on the buying and supplying side of contracts on matters relating to contract price adjustment and helping them structure their Contract Price Adjustment clauses, using the SEIFSA Price and Index Pages.

Eleen Snyman joined SEIFSA in March 2013 as an Economic and Commercial Officer in the Economic and Commercial Division. She has more than 15 years' experience in imports and economic-related matters. Eleen is busy completing her Bachelor of Social Science (B.Soc). She assists in the daily compilation of the SEIFSA Price & Index Pages (PIPS).

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Upcoming SEIF

MONTH	DATE	WORKSHOP/ EVENT	DURATION	Location
January	18	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	18	Skills Development Facilitator Training	4 days	Webinar
	18	WSP The Intricacies of Workplace Skills Report Submissions	1 Day	Webinar
	25	Supervisory Development Training	3 Day	Webinar
	25	How to Earn Maximum BBBEE Points through Skills Development	1 Day	Webinar
February	1	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	1	WSP The Intricacies of Workplace Skills Report Submissions	1 Day	Webinar
	4	The Main Agreement – Wages and Conditions of Employment	Half day	Webinar
	8	Theory and Calculation of Contract Price Adjustment	Half day	Face-to-face
	8	Train-the-Trainer - Facilitator Training Programme (unit standard aligned) – NQF 5	3 days	Webinar
	8	WSP The Intricacies of Workplace Skills Report Submissions	1 Day	Face-to-Face
	9	Introduction to Performance Management	1 Day	Webinar
	10	How to tender successfully	Half day	Webinar
	11	Managing Absenteeism and Leave - Including Sick Leave, Paternity Leave, FRL	Half day	Webinar
	14	Skills Development Facilitator Training	4 days	Face-to-Face
	15	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	15	Skills Development Committee Training	1 Day	Webinar
	16	How to Earn Maximum BBBEE Points through Skills Development	1 Day	Face-to-Face
	16	POPIA Workshop	Full day	Webinar
	17	Fair and Effective Discipline - Chairing Disciplinary Hearings	Full day	Webinar
	22	Supervisory Development Training	3 Day	Face-to-Face
	22	Skills Development for HR Managers	1 Day	Webinar
March	1	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	1	Assessor – Conduct outcomes-based assessment (unit standard aligned) – NQF 5	3 days	Webinar
	1	Diversity & Social Inclusion	1 Day	Face-to-Face
	2	Four (4) Main Forms of Violence & Harassment in the Workplace	1 Day	Webinar
	3	Retrenchments, Short-Time and Lay-Offs, Flexible Working Time – Do it Right	Half day	Webinar
	7	Skills Development Facilitator Training	4 days	Webinar
	8	Theory and Calculation of Contract Price Adjustment	Half day	Face-to-face
	8	WSP The Intricacies of Workplace Skills Report Submissions	1 Day	Face-to-Face
	11	Managing Misconduct in the Workplace	Half day	Face-to-Face
	15	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	15	How to Earn Maximum BBBEE Points through Skills Development	1 Day	Webinar
	16	POPIA Workshop	Full day	Webinar
	17	Preparing a case for arbitration and understanding the difference	Full day	Webinar
	18	The Main Agreement – Wages and Conditions of Employment	Half day	Webinar
	22	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	23	Skills Development Committee Training	1 Day	Face-to-Face
	29	Supervisory Development Training	3 Day	Webinar
	29	Understanding The Income Differential Statement otherwise known as “Form EEA4"	1 Day	Webinar
	31	Managing Intoxication in the Workplace – Alcohol and Cannabis/Marijuana	Half day	Webinar

To book, please email sales@seifsa.co.za (011) 298-9400
or make an online booking **www.seifsa.co.za**

SEIFSA

Steel and Engineering Industries Federation of Southern Africa

OUR PASSION, YOUR SUCCESS

SA Workshops / Events 2022

January - June

MONTH	DATE	WORKSHOP/ EVENT	DURATION	Location
April	5	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	5	Train-the-Trainer - Facilitator Training Programme (unit standard aligned) – NQF 5	3 days	Face-to-Face
	5	Four (4) Main Forms of Violence & Harassment in the Workplace	1 Day	Face-to-Face
	5	Employment Equity Committee Training	1 Day	Webinar
	5	The Main Agreement – Wages and Conditions of Employment	Half day	Face-to-Face
	6	Introduction to Performance Management	1 Day	Face-to-Face
	6	Employment Equity Submission: Everything you need to know	1 Day	Webinar
	12	Theory and Calculation of Contract Price Adjustment	Half day	Face-to-face
	12	Understanding The Income Differential Statement otherwise known as “Form EEA4"	1 Day	Face-to-Face
	12	Fair and Effective Discipline - Chairing Disciplinary Hearings	Full day	Webinar
	12	Preparing a case for arbitration and understanding the difference	Full day	Face-to-Face
	19	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
May	3	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	6	Managing Absenteeism and Leave - Including Sick Leave, Paternity Leave, FRL	Half day	Webinar
	10	Theory and Calculation of Contract Price Adjustment	Half day	Face-to-face
	10	Assessor – Conduct outcomes-based assessment (unit standard aligned) – NQF 5	3 days	Face-to-Face
	10	Diversity & Social Inclusion	1 Day	Webinar
	11	Four (4) Main Forms of Violence & Harassment in the Workplace	1 Day	Webinar
	11	POPIA Workshop	Full day	Face-to-Face
	16	Supervisory Development Training	3 Day	Face-to-Face
	17	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	17	Employment Equity Committee Training	1 Day	Face-to-Face
	18	Employment Equity Submission: Everything you need to know	1 Day	Face-to-Face
	18	How to tender successfully	Half day	Face-to-Face
	20	The Main Agreement – Wages and Conditions of Employment	Half day	Webinar
	23	Skills Development Facilitator Training	4 days	Face-to-Face
	24	How to Earn Maximum BBBEE Points through Skills Development	1 Day	Face-to-Face
	31	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	31	Skills Development Committee Training	1 Day	Webinar
Junne	2	Key Aspects of labour Law – Overview of the LRA and the BC EA	Full day	Webinar
	7	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	7	Supervisory Development Training	3 Day	Webinar
	7	Employment Equity Committee Training	1 Day	Webinar
	8	Four (4) Main Forms of Violence & Harassment in the Workplace	1 Day	Face-to-Face
	8	Employment Equity Submission: Everything you need to know	1 Day	Webinar
	9	Introduction to Performance Management	1 Day	Webinar
	9	Understanding The Income Differential Statement otherwise known as “Form EEA4"	1 Day	Face-to-Face
	9	Fair and Effective Discipline - Chairing Disciplinary Hearings	Full day	Face-to-Face
	14	Theory and Calculation of Contract Price Adjustment	Half day	Face-to-face
	14	The 2022-2023 Main Agreement – Wages and Conditions of Employment	Half day	Webinar
	21	Theory and Calculation of Contract Price Adjustment	Half day	Webinar
	21	Train-the-Trainer - Facilitator Training Programme (unit standard aligned) – NQF 5	3 days	Webinar
	22	Preparing a case for arbitration and understanding the difference - rescissions and reviews	Full day	Webinar
	24	The 2022-2023 Main Agreement – Wages and Conditions of Employment	Half day	Webinar
	27	Grading masterclass	Half day	Webinar

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Steel and Engineering Industries Federation of Southern Africa

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FESTIVE SEASON
CLOSURE OF SEIFSA OFFICES

SEIFSA offices will close on
Wednesday 22 December 2021 at 12:00
and will re-open at 08h00 **Monday, 10 January 2022**.

Companies requiring urgent assistance during this period are requested to consult the following people:

Lucio Trentini: 082 449 6270 - Rajendra Rajcoomar: 083 788 1386
Sumaya Hoosen: 082 786 1867 - Louwresse Specht: 082 303 2213
Michael Lavender: 082 459 7678 - Theresa Crowley: 082 725 6717
Palesa Molise:083 507 2746 - Nuraan Alli: 083 415 2780

SEIFSA wishes you a safe and peaceful festive season
and a very prosperous 2022