

The reality of Child Labour in South Africa



The International Labour Organization’s Program for Elimination of Child Labour (IPEC) describes the term “child labour” as work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.

This does not include participation of children above the minimum age for admission to employment in work that does not affect their health and personal development or interfere with their schooling, is generally regarded as being something positive and can help provide them with skills and experience to prepare them to be productive members of society during their adult life.

This includes activities such as assisting in a family business or earning pocket money outside school hours and during school holidays. The International Labour Organization has endorsed the need to eliminate child labour or at least the worst forms thereof (International Labour Organization's Convention No. 182 on the Worst Forms of Child Labour).

It is widely publicised that the world's poorest countries have the highest number of child labourers. UNICEF data estimated that at least 1 in 4 children in developing countries are engaged in child labour. According to the International Labour Organization, it is estimated that 164 million children around the world are affected by child labour, 600 000 of whom are in South Africa (www.vukuzenzele.gov.za - June 2020 2nd Edition).

South Africa has ratified the International Labour Organization's Convention against child labour in 2000. In this article we will look at South African law in the context with child labour, e.g. Basic Conditions of Employment, that gives effect to those conventions.

Child labour and the law in South Africa

Child labour in South Africa is regulated by the Constitution of the Republic of South Africa, the Basic Conditions of Employment Act, the South Africa Schools Act and the Regulations of the Minister of Labour in terms of section 44 of the Basic Conditions of Employment Act.

Definition of a child - According to section 28(3) of the **Constitution of the Republic of South Africa, 1996**, a person under the age of 18 years is a child.

In section 28(1) of the Constitution of the RSA, 1996-

- *section 28(1)(e) provides that every child has the right to be protected from exploitive labour practices.*
- *section 28(1)(f) provides that every child has the right not to be required or permitted to perform worker services that are age inappropriate or place at risk that child's well-being, education, physical or mental health, spiritual, moral, or social development.*

The Basic Conditions of Employment Act, 1997 (BCEA) in sections 43(1) and 43(2) distinguishes between children completing the last day of the school year in which they reached the age of 15 or completion of the ninth grade, whichever came first (**section 31(1) of the South African Schools Act**), and the employment of children 15 years and older.

- Section 43(1) prohibits employment of children under 15 years or those who have not yet completed grade 9.
- According to section 43(2) of the BCEA, children over 15 years of age may not be in employment if-
 1. it is inappropriate for a person of that age
 2. it places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.
- Section 44(1) of the BCEA, subject to 43(2) of the BCEA, authorises the Minister to make **regulations** to prohibit or place conditions on the employment of children aged 15 years and those no longer subject to compulsory schooling in terms of any law.

These **Ministerial Regulations** confirm that children under the age of 15 or those who have not completed grade 9 may not be employed but make a few exceptions, e.g. participating in artistic, cultural, advertising activities, etc.

Furthermore, the Regulations set conditions for **children over 15 years of age or those who have completed the last school day in grade 9.**

Child labour examples of the above rules are as follows:

- Employment should not interfere with their access to nutrition, health care and educational services. They may not perform piece work or task work, except if they are paid at least the minimum wage.
- A distinction is made between children attending school and those who are not, for example children still attending school may only work 20 hours a week, with a few exceptions, while those not attending school may work 40 hours a week.
- A child worker not attending school the next day, may work between 18:00 and 23:00 if-
 1. the work is in a restaurant, cinema, theatre, or shop where there is adequate adult supervision
 2. the work is baby-sitting or child-minding.

Furthermore, there is a long list of prohibited work, for example:

An employer may not require or permit a child to work in the following industries:

- Deep sea fishing
- Commercial diving or other hazardous work under water.

It is an offence to contravene the above-mentioned sections of the BCEA or the Ministerial Regulations, or to assist in enabling forced labour (sections 43(3), 44(2), 46, 48(3) of the BCEA).

In conclusion:

Employers are advised to consult with *SERR Synergy* as we specialise in labour guidance and assist businesses in a practical and supportive way. *SERR Synergy can assist employers to ensure that all matters are dealt with fairly and according to the relevant legislation.*

About the author: Jaco Conradie is employed by SERR Synergy as Specialist Legal Advisor: Labour and obtained a LLB degree from the University of Stellenbosch in 2005.

©SERR Synergy, www.serr.co.za