

## **Non-Compliance with Labour Legislation by Registered Small to Medium Enterprises in Harare Jeopardising Industrial and Labour Relations**

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**Abstract:** *The study was meant to establish how the Small to Medium Enterprises (SMEs) could be of significance to the socio-economic development of Zimbabwe by observing the country's labour laws in order to improve labour relations particularly in the areas of job security and employee welfare. Major concepts of labour issues that are provided by the major labour laws in Zimbabwe that the SMEs are supposed to comply with, were looked at. The major laws were; the Labour Act 28:01(amended 2015), the Factories and Works Act 14:08 of 1996, the National Social Security Authority (NSSA) Act, Chapter 17: 04 of 1989 and the Zimbabwe Revenue Authority Act 23:11 of 2001. The study which was qualitative was conducted in the capital city, Harare using unstructured interviews. A survey research design was used. The target population comprised the Ministry of Small and Medium Enterprises and Cooperative Development (SMECD), the Ministry of Public Service Labour and Social Welfare (PSLSW), the Labour court, Harare municipality, SMEs covering both the entrepreneurs and their association, as well as workers who were employed in that sector. The major findings were that; SMEs were violating a lot of provisions enshrined in the major labour laws. Majority of those employed entered into verbal employment contracts and there were no contributions by a lot of SMEs as per statutory requirements for pension, insurance, medical cover and income tax. Violation of employees fundamental rights was also prevalent. The study concluded that in this sector, there was lack of job security and not much was being done to improve the employees' welfare as evidenced by underpayment of wages and at times employees working under unsafe environments and other poor conditions of service. Major recommendations included the need for the department of labour, NSSA and even ZIMRA inspectorate departments to conduct audits on the level of compliance by SMEs on their practising of labour laws. Training was also needed as a way of creating awareness and providing basic knowledge of industrial and labour relations. Other key stakeholders such as the Ministry of SMECD, local authorities and financial institutions, should also provide necessary support to this pivotal sector for sustainable development and positive contribution to the Zimbabwe economy.*

**Definition of key terms:** *employee welfare, job security, legislation, industrial and labour relations, non-compliance, SMEs*

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Date of Submission: 27-10-2017

Date of acceptance: 02-11-2017

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### **I Introduction**

Zimbabwe's Small to Medium Enterprises (SMEs) make up more than 70 percent of all businesses and they are the country's biggest employer and also form the backbone of its economy (Manuere et al., 2012). Actually SMEs contribute 40% employment (Chivasa, 2014). The majority of these enterprises are focused on the domestic market, given their limited international competitiveness. SMEs are therefore an important and integral sector in the Zimbabwean economy due to their provision of employment, contribution to the GDP (Chadamoyo and Dumbu, 2012), alleviation of poverty and provision of an opportunity for women and youth to participate in the mainstream economy (Zimtreasury, 2013). According to a report by Junior Chamber International in 2014, SMEs in Zimbabwe contributed about 40% of the Gross Domestic Product (GDP) and about 5, 7 million were being employed in the sector. Cutting down red tape and making it easier for them to conduct business would help them spur job creation and economic growth including social development (Chadamoyo and Dumbu, 2012; David and Mark, 2009).

In Zimbabwe, SMEs fall under the parent Ministry of Small and Medium enterprises and cooperative development. The Ministry has since established policies and strategies to deal with the key challenges facing SMEs but due to financial constraints, progress has not been very much. The ministry's mandate is to formulate and implement policies for SMEs and Cooperative Development. Among some of the areas covered by the ministry

are ; to provide, coordinate and facilitate skills, entrepreneurship, innovative financing schemes and management training that support the growth of SMEs and cooperatives; to promote the formation and development of clusters, business linkages and associations for SMEs and cooperatives; to coordinate the provision of infrastructural facilities for SMEs and cooperatives as well as administering the Cooperative Act (Chapter 24:05) and the Small to medium enterprises development corporation (SMEDCO) Act (Chapter 24:12). The Ministry also works closely with the Ministry of primary and secondary education and that of Youth, Indigenization and economic empowerment.

The major strength of Zimbabwe's Small and Medium Enterprises (SMEs) is their flexibility in adapting to changes in market tastes and preferences. Being that as it may, SMEs are confronted with a plethora of obstacles to grow. Such obstacles include financial, managerial, taxation, infrastructural, access to competitive markets, management ability, weak legal and regulatory structures (Chivasa, 2014). Registered organisations including those classified as SMEs are supposed to comply with the country's labour laws so that there is a harmonious and productive working environment at the work place (Uzhenyu, 2017). Issues of so many labour disputes as manifested by worrying cases of industrial action causing loss of production, heavy backlog of court cases, victimisation and discrimination in some organisations in Zimbabwe, seem to be also prevalent among SMEs in Harare as well. A lot of employees in SMEs seem to have the notion that they are underpaid and that the boss takes all the money and enjoys all the benefits that they would have "slave-laboured" for, which in many cases was true (Finscope, 2014). This is despite the existence of the major labour administrative laws that are supposed to enhance organisational harmony by creating sound working relations especially between workers and employers such as the Labour Act 28:01 recently amended in 2015, the Factories and Works Act 14:08 of 1996 and the National Social Security Authority (NSSA) Act, Chapter 17: 04 of 1989 and Zimbabwe Revenue Authority Act 23:11 of 2001 (Mudyawabikwa and Sambureni, 2003). It is against this background that the researcher was motivated to conduct this study given the importance of the SMEs as a key sector in Zimbabwe at the moment.

## **II Statement of the problem**

Industrial and labour relations are not sound as they should be in formally registered SMEs in Harare. SMEs are supposed to adhere to labour laws so that the working environment becomes conducive and productive, yet what is on the ground seems to suggest that there are contentious issues surrounding the employment issues between the workers and the employers. A lot of irregularities exist which constitute unfair labour practices and violation of employees rights.

## **III Research Questions**

1. What is the level of labour legislation compliance by SMEs?
2. Which labour issues are not dealt with properly that create poor labour relations in SMEs?
3. What should be done for SMEs to comply with labour laws to enhance sound labour relations?

## **IV Literature Review**

### **The SME concept**

There is no universally accepted definition of an SME (Inyang, 2013). A lot of researchers, scholars, academics, governments and private institutions have attempted to define the concept from various perspectives, backgrounds and angles (Chirisa et al, 2012). The Small and Medium Enterprise Development Corporation, an arm of the parent ministry of Small and Medium Enterprises and Cooperative development in Zimbabwe defines an SME as a business that has not more than 100 employees and maximum annual sales turnover of USD 830 000 yet the ministry itself has defined the SMEs as those registered in terms of their legal status and employing anywhere between 6 to 100 workers (Chirisa et al. 2012). The latest Zimbabwe SMEDCO Act (2011) describes SMEs as the business organizations with an asset value ranging from USD10,000 to USD2 million, employs 2 to 20 people and has an annual turn-over that ranges from USD30,000 to USD5 million. The same definition has been adopted by the Reserve Bank of Zimbabwe. The above demonstrates how difficult it is to define an SME in the Zimbabwean context.

### **Difference between Small and medium enterprise**

A Small Enterprise is a business with a turnover of less than USD 240 000 and the Asset base of less than USD 100 000 whereas a medium enterprise is the one which has a turnover of above USD 240 000 but less than USD 1000000 (Zimbabwe Association of SMEs, 2010)

**Statistics on SMEs**

**Table 1:** Distribution of registered SMEs including Micro ones according to class in 2013 (Finscope, 2014).

Class	No of SMEs (% in brackets)
Small	112 000 (80)
Medium	28 000 (20)
<b>Total</b>	<b>140 000 (100)</b>

The above table shows that there are so many small enterprises relative to medium sized enterprises.

**Table 2:** Distribution of SMEs according to sector in 2013 (Finscope, 2014)

Sector	%
Retail	33
Food and lodging	44
Transport	1
Manufacturing	9
Other	13
<b>Total</b>	<b>100</b>

Table 2 shows that most SMEs are into retailing and hardly into manufacturing which should be contributing significantly to the economy if most of the SMEs were in that sector since there is value addition and beneficiation in light of the national economic blueprint, the Zimbabwe Agenda for Sustainable Socio-Economic Transformation (Zimtreasury, 2013).

**Critical issues in labour relations**

Industrial and labour relations is a multi-disciplinary subject which covers all relationships at the work place related to the employment contract and usually involves workers (labour), employers (business) and government (state) according to Mudyawabikwa and Sambureni (2003). The discipline involves the following major issues for discourse or dialogue among the above also known as social partners (Uzhenyu, 2017);

- Employment contracts (covering nature of employment e.g. contracts, probation, part time, full time and other issues involving those listed below such as remuneration etc.)
- Working conditions or conditions of service (include time off duty/work such as leave days, working hours).
- Employee grievances (usually related to welfare issues or ‘bread and butter issues).
- Remuneration or salary administration (includes job grading, wages, salaries, overtime and benefits).
- Health and safety at the workplace (include accidents reduction/prevention, protective clothing, clean and safe working environment).
- Social security and protection (include medical cover, insurance, pension, retrenchment benefits).
- Code of conduct (includes set of rules outlining the social norms, rules and responsibilities of, or proper practices for, an individual, group, party or organization including disciplinary matters handling procedure and appeals or procedures for recourse).
- Collective bargaining (includes joint collaboration, dialogue or negotiation in order to reach an amicable agreement e.g. on salary/wage increase).
- Worker representation or activism (includes establishment and recognition of workers’ committees, trade unions, labour bodies in representing workers concerns to management or employers).
- Causes of disputes and settlement (includes issues of dispute of right, dispute of interest, retrenchments, victimisation, unfair labour practices, industrial action, code of conduct, conciliation, mediation, voluntary arbitration, labour courts).
- Labour legislation (includes various laws governing the employment contract such as the Labour Act 28:01 amended 2015, the Factories and Works Act 14:08 of 1996 and the National Social Security Authority (NSSA) Act, Chapter 17: 04 of 1989 and Zimbabwe Revenue Authority Act 23:11 of 2001).
- Bipartism and tripartism (include works councils, employment councils, social dialogue and contracts).
- Performance management (includes the planning, monitoring and reviewing an employee's work objectives and overall contribution to the organization, key result areas (KRAs), action plans, appraisals, promotions, training and development etc.)
- International labour standards (International Labour Organisation conventions especially on labour rights and standards).

**Fundamental rights of a worker**

These are given in detail by the Labour Act 28:01 Section 4(i) to (3)) and some are implied rights. These are.

- Right to be a member or office bearer of a workers' committee or trade union and engage in all lawful activities of such committee or trade union for the advancement or protection of this interest(s) and/or fellow colleagues.
- Right to be protected against discrimination e.g. based on grounds of race, tribe, place of origin, political opinion/affiliation, colour, creed or sex in all issues related to employment
- Right to fair labour standards, for example get fair remuneration based on job evaluation and performance, work within normal working hours and conditions.
- Right to democracy in the workplace such as airing any grievance, negotiating any matter. Also employer should allow a labour relations officer, trade union official or employment board member to access the premises and talk to any member on lawful labour issues.
- Right to health and safety (implied)
- Right to fair remuneration (implied) and benefits as per employment contract or conditions of service.

#### **Unfair labour practices by employer.**

These are outlined in labour Act 28:01 sections 8. These include;

- Obstructing, preventing or hindering any employee in the exercise of his/her rights as outlined on 8.3 above
- Refusing to negotiate in good faith with a registered or duly formed workers' committee or trade union
- Refusing to cooperate with employment council or employment board on which the interests of any of his employees are represented.
- Fails to comply with or to implement a CBA or any other decision binding upon in terms of the Labour Act 28:01
- Negotiates with another trade union where a certified or duly elected trade union representing his employees exists.

#### **Health and safety policies and regulations in general**

At a general level occupational health and safety laws that are applicable to all employers and employees across sectors in Zimbabwe are the Labour Act, Chapter 28:01 and NSSA (Accident Prevention) (Workers Compensation Scheme) Notice No. 68 of 1990. At a secondary level there is the Protection from Smoking (Public Health) (Control of Tobacco) Regulations S.I.264 of 2002 that prohibits smoking in enclosed public places including workplaces and the Labour Relations (HIV and AIDS) regulations S.I.202 of 1998 which prohibits discrimination on the ground of AIDS/HIV status including;

- Prohibition of mandatory testing for HIV as a precondition of employment
- The duty to respect the confidentiality of HIV status of employees
- The provision of protective clothing and other safety devices to prevent the spread of AIDS/HIV at the workplace, including mandatory education and information sharing programmes

#### **Employer's duties**

The employer has a duty to ensure the employees' safety, health and welfare at work is reasonably practicable. In order to prevent workplace injuries and ill health the employer is required, among other things, to:

- Provide and maintain a safe workplace which uses safe plant and equipment
- Prevent risks from use of any article or substance and from exposure to physical agents, noise and vibration
- Prevent any improper conduct or behaviour likely to put the safety, health and welfare of employees at risk
- Provide instruction and training to employees on health and safety
- Provide protective clothing and equipment to employees
- Appointing a competent person as the organisation's Safety Officer

#### **Employees' duties**

The duties of employees while at work include the following:

- To take reasonable care to protect the health and safety of themselves and of other people in the workplace
- Not to engage in improper behaviour that will endanger themselves or others
- Not to be under the influence of drink or drugs in the workplace
- To undergo any reasonable medical or other assessment if requested to do so by the employer
- To report any defects in the place of work or equipment which might be a danger to health and safety

#### **Risk assessment and safety statement**

Every employer is required to continuously carry out a risk assessment for the workplace which should identify any hazards present in the workplace, assess the risks arising from such hazards and identify the steps to be taken to deal with any risks.

The employer must also prepare a safety statement which is based on the risk assessment. The statement should also contain the details of people in the workforce who are responsible for safety issues. Employees should be given access to this statement and employers should review it on a regular basis. The NSSA has published guidelines on risk assessments and safety statements.

#### **Protective equipment and measures**

The employer should tell employees about any risks that require the wearing of protective equipment. The employer should provide protective equipment (such as protective clothing, headgear, footwear, eyewear, gloves) together with training on how to use it, where necessary. An employee is under a duty to take reasonable care for his/her own safety and to use any protective equipment supplied. The protective equipment should be provided free of charge to employees if it is intended for use at the workplace only. Usually, employees should be provided with their own personal equipment.

There is a range of measures that employers must take in regard to visual display units (VDUs). These include examining the reflection and glare, the operator's position in front of the VDU, the keyboard and the software used. Operators must be given adequate breaks from the VDU. In addition, employers must arrange for eye tests and, if required, make a contribution towards the purchase of prescription eyeglasses.

#### **IV Methodology**

The study was **qualitative** and the unstructured interview was the sole instrument used to collect data in order to gather as much detail as possible (Durand and Chantler, 2014). The **survey design** was suitable for this study as the researcher targeted those who were really involved with SMEs on a regular basis particularly aware of the operations and the nature of handling labour issues. The **target population** comprised the Ministry of Small and Medium Enterprises and Cooperative Development, Ministry of Public Service Labour and Social Welfare (PSLSW), the Labour court, Harare municipality, SMEs including the entrepreneurs and the association, as well as workers who were employed in that sector. The **Quota sampling technique** was used in order to cover all the key stakeholders for inclusivity (Abawi, 2008). The **sample size** was based on **data saturation technique** (Rubin and Babbie, 2014). The **Research ethics** were observed during the entire collection and analysis of data in light of research best practices as suggested by Porter (2014) and Naagarazan (2006). **Analysis of data** to derive the findings was done using the **content analysis method** which is ideal for qualitative research (Neuman, 2013).

#### **V Major Findings**

##### **1. Lack of knowledge pertaining to industrial and labour relations.**

Educational background was cited as a major contributory factor. A sizeable number of the business owners had their education background in engineering, finance and marketing and not human resources management which covers industrial and labour relations. In addition, very few had copies of major labour laws (Acts) particularly the important ones namely; the Labour Act 28:01 amended 2015, the Factories and Works Act 14:08 of 1996 and the National Social Security Authority (NSSA) Act, Chapter 17: 04 of 1989 and Zimbabwe Revenue Authority Act 23:11 of 2001.

One SME operator had this to say

*‘ We don't even know where these laws can be obtained. In bookshops you can't find them and even the language is so technical to understand ’*

##### **2. No formal contracts of employment in violation of the Labour Act.**

One SME operator said *‘ Why should I be bothered to offer employment contract when I am actually doing a favor to help a desperate relative or church mate who had no hope of being employed at all. The person has to agree with what I want and should work on my instructions in order to survive. ’*

##### **3. Unreported workplace accidents in violation of the NSSA Act**

A number of occupational hazards especially accidents were not reported. One worker (welder) said *‘ You are warned that if you tell the law enforcement agents like NSSA, you will lose your job and find yourself going back to join your rural life once again to experience poverty ’*. The situation was compounded by inadequate safety clothing, rare maintenance of machinery, factory inspections and lack of social protection as majority of the employees were classified as casuals and told that they were not entitled to medical and insurance cover as well as pension benefits.

##### **4. Non-observance of vacation and maternity leave provisions in violation of the Labour Act.**

A female worker said *‘ You are told to choose between either having a baby or to lose your job or no payment for time off duty ’*.

##### **5. Under payment or no payment at times, violating a worker's fundamental right**

Some workers went for several months without full salary. In some cases, they were given part of the salary on the condition that they reported for duty. This was worsened by the prevalence of long working hours with no overtime payments. However, it was also noted that business for most SMEs was facing stiff competition from large corporates and those in the retailing and manufacturing sectors were being affected by an influx of cheaper products from China and Dubai.

## **6. No right to associate and organise in violation of Labour Act and International Labour Organisation (ILO) Conventions**

Worker activism was not encouraged by SMEs who usually applied the unitary perspective of industrial relations which emphasizes central power of decision making and views workers committees and trade unions as counterproductive. The perspective assumes that everyone shares the same vision and understanding (strong culture) without room for diversity or divergence of ideas (conflict).

## **7. Lack of government inspections and reinforcement of labor law compliance worsened by corrupt tendencies**

A Ministry of PSLSW official in the labour department said “*We do not have adequate manpower to monitor labour compliance issues and we depend on reported cases for intervention should resources be permitting*”. However, a labour body official cited the problem of corruption as the major one. He said “*Some of the labour officials are given kickbacks to disregard genuine cases of labour malpractices perpetrated by employers and these are swept under the carpet or ruling is done in favor of the employer because the ordinary worker does not have the financial muscle to seek recompense through expensive legal avenues*”

## **8. Non remittance of statutory obligations**

A number of SMEs were not remitting income tax, pension and insurance premiums as provided for in the NSSA and ZIMRA Acts, yet surprisingly in some cases, the deductions reflected on some employees’ payslips.

## **VI Conclusion**

There was very low level of labour law appreciation by some SMEs and that were worrying numbers of cases involving the disregarding (violating) of these laws. Flouting of labour law provisions by SMEs was creating poor labour relations as manifested by perennial labour disputes and employee disgruntlements.

## **VII Recommendations**

### **1. Improved surveillance and supervision of SMEs on labour compliance issues**

There was need to have regular inspections by the various inspectorate and compliance departments from the Ministry of labour, NSSA, Zimbabwe Occupational Health and Safety Council (ZOHSC) and ZIMRA.

### **2. Empowering SMEs through training**

A more vigorous approach to capacitate SMEs on employment or labour matters, was to conduct training workshops facilitated by labour and compliance experts from the departments of Labour, NSSA and ZIMRA. This will enable SMEs to become conversant with the dictates of industrial relations and statutory obligations as well as the legal implications emanating from violation of such issues.

### **3. Promotion of workplace democracy**

Government should put in place mechanisms or systems that should ensure that those employed by SMEs enjoy their fundamental labour rights in line with the provisions of the Labour Act. These rights should include the provision of employees to;

- form workers’ committees or affiliate to a relevant trade union of their choice.
- negotiate freely with their employer(s) on their grievances or matters of concern.
- enjoy fair labour standards e.g. hours of work, time off duty, right to be heard, entitlement to remuneration, conducive safe and health workplace.
- be involved and participate on all matters of concern that affect issues regarding the employment contract and their welfare e.g. salary reviews, retrenchments, code of conduct, and other conditions of service.

### **4. Reinforcement of employment contracts**

All employees should have written and agreed contracts crafted in line with sectoral or industrial expectations to avoid unfair labour practices by employers or even employees. This should be made very clear by the inspectorate officials or during training that drafting and signing by both parties of an employment contract, is a prerequisite before the employer engages a new employee.

### **5 Reinforcement of a code of conduct**

Each SME should be guided by a code of conduct which should have been registered first with the Department of labour. This will definitely result in reduced labour disputes and improved strong organisation, sectoral or industrial culture and work ethics.

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Dominic Uzhenyu. "Non-Compliance With Labour Legislation by Registered Small to Medium Enterprises in Harare Jeopardising Industrial and Labour Relations." *IOSR Journal of Business and Management (IOSR-JBM)*, vol. 19, no. 10, 2017, pp. 67-73.