



FREE MARKET FOUNDATION

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## **Free Market Foundation Submission on Basic Conditions of Employment Act**

**To:** Committee 1 (Triple Challenges of Inequality, Poverty and Unemployment)  
High Level Panel on the Assessment of Key Legislation

**By:** Free Market Foundation

### **1. The Free Market Foundation**

The Free Market Foundation (FMF) is an independent non-profit public benefit organisation founded in 1975 to promote and foster an open society, the rule of law, personal liberty, and economic and press freedom as fundamental components of its advocacy of human rights and democracy based on classical liberal principles. It is financed by membership subscriptions, donations and sponsorships.

### **2. Introduction**

There is nothing more central to solving the triple challenges of inequality, poverty and unemployment than a working and productive populace. How government policy deals with the matters surrounding employment must therefore be of such a nature that it does not unnecessarily make it more difficult for people to find jobs, or make it so difficult for employers to comply that they rather opt for mechanisation, computerisation, or simply elect not to expand their operations. The most relevant government policy in this regard is our labour law regime, which includes the Basic Conditions of Employment Act (75 of 1997).

The FMF has been at the forefront of calling for relaxed labour policy in the face of South Africa's catastrophic levels of unemployment. While it recognises that it is an unpopular position to hold, it is nonetheless the only economically sound and realistic position to hold. As Leon Louw, FMF executive director, writes in a prior (attached) submission on the Act, the only way for more employment to be realised is with an increased demand for labour. Such a demand will not come about while the cost of complying with labour regulations outweighs the benefits of employing more people.

This submission is divided into two sections: firstly, a bird's eye view of why the Act, taken holistically, is bad for employment; and secondly, focusing on a few particularly harmful sections which should be fundamentally changed or repealed.

### **3. Generally: burden of compliance**

It follows logically that when it costs more for an employer to comply with any kind of regulation or state-enforced policy, that he will modify his behaviour in such a way as to mitigate the cost. In no economic reality does any market actor incur cost happily without a counterweight. Therefore, especially when the cost of employment becomes more burdensome, employers will either make the product or service they are selling, more expensive, or they will hire fewer employees. Both of these outcomes are harmful to South Africa's low growth economy.

The Basic Conditions of Employment Act, by its very nature, is intended to enforce a regime of regulations upon employers as to afford employees improved working conditions. This is a noble cause,

but one which is detached from the reality on the ground. Employers need to make money to expand their operations, and new entrepreneurs entering the market need to know they'll make a lot of money when they're established. When, for example, the law gives a politician, the Minister of Labour, the power to prescribe the maximum permitted work hours, this assurance for employers is struck a blow.

The Act does not inspire certainty and attempts to dictate, from the Union Buildings, how employers, who are often experts in their field, should conduct their business. It also steals a multitude of unknown opportunities from employees. These opportunities are unknown because they will never materialise due to the existence of excessive bureaucracy and regulation in the labour market. This, as Frederic Bastiat would say, is "the unseen", while the good intentions of the Act are what "is seen".

#### **4. Particularly problematic sections**

Section 43 prohibits work by children, while recognising in section 50(2)(b) that there *may* be instances where complete prohibition is unwarranted, like cultural activities. At the outset this should appear problematic, because there is no reason to believe that there may not be other instances where it would be entirely appropriate for a child under 15 to be employed. The section assumes that being employed is inherently contrary to the interests of a child, which is not supported by fact, and certainly not the reality of South Africa's urban and rural poor. Rather than outright prohibiting work by children, the Act should rather mandate the conditions under which children may work, for example, that it may not overlap with schooling, or may not be in excess of two hours per day. The little money children could earn working part time could go a long way in emancipating a family from the shackles of poverty.

Section 55(4)(g) is particularly problematic in that it is unconstitutional. The section states that a sectoral determination may 'prohibit' certain forms of work, like sub-contracting or piecework. Section 32 of the Constitution provides that people may practice their trade subject to *regulation*, not *prohibition*. Furthermore, the notion of prohibiting something like sub-contracting within *any* sector of the economy is ridiculous within South Africa's low growth economy's context. If the government is truly serious about getting individuals employed, then it cannot afford to be unnecessarily picky about what form that employment must take. That would be a luxury of a highly developed economy.

The Act, furthermore, has various sections which vest the Minister of Labour or her delegates with excessive powers. The entire economy is influenced by events anywhere else in the economy, especially when the government is present to enforce such influence. To name only one example, as already noted above, the Minister may in terms of section 13(1) on very broad grounds 'prescribe' the maximum hours, *including overtime*, which a category of employee may work. This untethered discretion brings uncertainty into the economy as a whole.

#### **5. Conclusion**

The FMF thus proposes the following:

1. The Act as a whole must be reconsidered in light of South Africa's low growth economy, and there must be a holistic removal of burdens placed upon employers.
2. The sections mentioned above must be amended so as to bring them in line with the Constitution and economic reality.

#### **Attachments**

1. 2011 submission by the Free Market Foundation on BCEA
2. [Submission on JOBS FOR THE JOBLESS](#)



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## **Basic Conditions of Employment Act (BCEA)**

### **Submission by the Free Market Foundation**

**17 February 2011**

This submission is in two sections, the first of which deals with general principles of law and economics and the second of which deals with specific proposals.

#### **1. General Principles**

The discourse on labour law and policy tends to focus on details at the expense of basic truths. Arguably, the only “law” of economics that is incontestable is that “there ain’t no such thing as a free lunch” (TANSTAAFL). The implication of this law is of critical importance in South Africa since it is seldom acknowledged, especially in the context of labour. An inescapable fact is that all benefits have costs and that the benefit of improved working conditions, wages and job security is achieved by having fewer jobs, less investment, lower growth, substitution of technology for labour, and worse conditions for all non-formal employment. President Zuma has declared job creation as the leading national priority. Economic theory and the world’s experience suggest that all the jobs he envisages can be created with relative ease and certainty. The challenge is not how to increase employment, but whether the government is willing politically to implement measures that will do so.

The measures necessary to increase employment are mercifully straightforward yet lamentably difficult to achieve politically. Laws and policies that increase the cost, risk and difficulty of employing people, as the proposed measures do, necessarily have benefits for a privileged few at the expense of the unemployed and prosperity in general.

Given the priority of job creation, our proposal is that the existing measures should not be considered for implementation in isolation, but that the government should undertake a comprehensive review of laws and policies, and retain only those that will reduce unemployment immediately and improve working conditions, incomes and job security by virtue of increased demand for labour rather than draconian legislation.

Increased demand for labour, namely conditions that promote capital formation, skills, and the desire for hiring more employees, is the only sustainable means of achieving two otherwise irreconcilable objectives: more jobs and improved working conditions. In a static or low growth economy, one of these can be achieved only at the expense of the other and both can be achieved only under conditions of economic prosperity.

It is therefore recommended that the envisaged measures not be proceeded with. Instead they should be included in a comprehensive response to the President's call for "jobs, jobs, jobs". It is recommended that the government include in such a comprehensive policy review, not only all existing and proposed labour law and policy, but all other measures that are of direct relevance. Such other measures include the proposal repeated by the President in his two State of the Nation addresses, by Minister Ebrahim Patel and others, that there should be a review of laws and policies impacting small business so that it is easier for small business to operate and prosper in general and so that small businesses create more jobs in particular. Comprehensive review of measures to increase employment should consider all disincentives to savings and investment, both by local and foreign investors.

There are two broad categories of policy available to government if it wants to create jobs. The first is to discontinue measures that discourage and penalise employment, and the second is to implement new measures that encourage and reward employment, including self-employment.

There are various provisions in this Bill on which no comment is made because they are regarded as positive or of no significant consequence. Comment has been confined to issues of concern.

## **2. Basic Conditions of Employment Act (BCEA)**

**Clause 2** will have the unintended consequence of discriminating against temporary employees because it will become more costly to employ them. In other words, it will benefit people who already have jobs by victimising people who don't. For reasons presented below, its impact on employers will be negligible.

**Clauses 2 & 3** (32 & 33a in the Act) are an example of a provision where the good intentions of the legislature are apparent and appreciated, but where the cost to intended beneficiaries may be underestimated. An inescapable fact is that anything that reduces incentives to employ, reduces the likelihood of employment, and anything that raises the effective cost of employment, is offset by employees being paid less or being replaced by technology. It also drives job-creating forms of enterprise out of existence or abroad.

Unfortunately causality is seldom that straightforward in economics. The problem is that there is no way of knowing at whose expense increased costs mandated by legislation occur. Contrary to popular assumption, the least likely person to bear regulatory costs is the one presumed to do so, in this case an employer. Employers are concerned with "rates of return" on their investment or enterprise. No matter what legal burdens are imposed, rates of return soon adjust to be relatively constant over time. This is a simple business principle, which everyone in business economics understands. If you raise or lower the cost of any input, rates of return adjust back to "market-related rates" almost immediately (in competitive markets). We see this happening around us every day. As the rand strengthened, we saw the price of computers, for instance, tumble. If the cost of raw materials goes up, the price of beneficiated products soon follows. There are no mysteries involved and rare exceptions that arise are of no greater significance than that they prove the general rule. This is as true of labour as it is of everything else.

Since rates of return to employers stay the same regardless of the impact on them of cost-raising labour law, you can safely conclude that it is not employers who bear the costs (except to the limited extent that

higher costs result in slightly smaller markets for their goods and services compared to other sectors). Such relative shifts in the size of market sectors occur only if costs imposed on one are not imposed on others. If the minimum wage is multiplied tenfold in the leisure industry and scrapped in the clothing industry, there will still be a relative contraction in the former and growth in the latter, but rates of return will stay the same.

Who then does pay the substantial cost imposed by labour policy, including the proposed amendments? The reason such legislation is popular and seductive is that nobody knows. There is an unpredictable and unknown impact on everyone. Government gets less revenue, consumers pay higher prices, employees get lower pay and fewer benefits, bankers have less profitable financial transactions, managers earn less, less is spent on skills development, there is less philanthropy, exports are less competitive, and so on. The economy in general suffers and individual groups are impacted differentially. The connection between such negative impacts and the law concerned is seldom recognised simply because there is no obvious causal link.

A wise government understands such realities and avoids superficially seductive measures. Instead it looks at the “big picture” and does what is truly in the national interest. It is concerned about and protects the interests of victims even though they do not see themselves as victims, such as, in this case, workers.

This analysis cannot be disputed. It may give the mistaken impression that the “baddie” in the equation is the employer who appears to be the only role player exempt from the unavoidable cost of the proposed law. It appears as if employers simply “pass-on” costs to everyone else in society. The only employers for whom the “rate of return” declines are “marginal” employers who go out of business when uncompetitive markets contract. Most marginal businesses are the self-employed and small businesses that in South Africa are typically black people whom the government wants to advance.

This could lead to the flawed assumption that “something must be done” about less vulnerable businesses which survive unscathed. There is an obvious temptation to find ways of forcing them to bear the costs of well-intentioned measures. Unfortunately, reality does not allow for a solution. The laws of economics mean that investment in business occurs according to anticipated rates of return. There is nothing that can or should be done about this. On the contrary, if government wants more jobs, the laws of economics require it to do precisely the reverse, which is to find ways of increasing the rate of return on employment.

However, it will find that the reverse also does not happen: rates of return do not rise for the same reason that they do not fall. What government policies do is decrease or increase market size. If it lowers costs by reducing rather than increasing cost-raising measures, the market sectors concerned will grow locally and internationally, and if it does so throughout the economy, the country as a whole will prosper.

**Clause 4** (34 in the Act) is a relatively minor amendment to the existing prohibition on child labour. The degree to which child labour is an emotive issue, unfortunately makes it difficult to consider the implications rationally. There are many contexts in which children under the age of 15 are legitimately employed, such as child models and actors, and children in family employment. If the law is being amended at all, it should be subjected to a more sophisticated and critical examination, not on whether children may work, but under what conditions they may do so.

Provisions governing child labour are perhaps inappropriately considered to be part of labour policy. It is not at all clear that the BCEA should govern child labour. These provisions are or should be about the protection of children and should therefore be left to the child welfare authorities and legislation.

This is not merely a matter of what is administratively appropriate. Throughout history, laws restricting and prohibiting child labour have been lobbied for by adults not wanting competition in the labour market and child labour laws have had more to do with protecting adults than children. Placing the protection of children in the correct department means that the matter will be approached in the true interests of children and not subverted by the crude self-interest of adults.

As a matter of simple social dynamics it should be appreciated that adults rule the world: they lobby for, formulate and enforce laws. Children on the other hand, are not politically organised, have no voice, and are powerless against supposedly well-intentioned legislation that harms them.

**Clause 9** (55 in the Act) sub-clause (g) should have the word “prohibited” scrapped (or suspended pending the comprehensive review suggested above). It is probably unconstitutional since Section 32 of the Constitution secures the right for people to practise their trade subject to regulation, not prohibition. It is in any event inappropriate to prohibit piecework, etc, especially when the top national priority according to the State President is to promote employment.

The literal meaning of the provision is probably not its intention. It provides, for instance, that sub-contracting can be prohibited. Apart from the fact that there should be no prohibition in the context of this clause at all, there should certainly be no possibility of sub-contracting being prohibited.

In the unlikely event that what the clause says is intended, we point out that sub-contractors are also subject to all labour law. There is no ability to escape labour law by sub-contracting. The building in which this submission is being written, probably has many functions sub-contracted or outsourced such as building maintenance, security, catering, cleaning, courier services, and so on. Such sub-contracting is economically efficient, partly because it enables people who sub-contract, and the sub-contractors to whom they sub-contract, to concentrate on their “core functions”. It promotes essential specialisation and the division of labour. It would be manifestly absurd for police stations to be forced to employ rather than outsource vehicle maintenance, for instance.

If there are specific contexts in which the government wants to prohibit sub-contracting or temporary employment, it should never be by way of open-ended administrative discretion and always, in accordance with the Constitution and rule of law, by way of unambiguous legislation by the legislature.

The envisaged ability of the Minister to set organisational thresholds is unnecessary in law when the Minister has the right to make minimum wage and related determinations. The Minister is free in good faith and in accordance with administrative law to take all appropriate representations and information into account. It is inappropriate and undesirable to allow for non-representative unions to be elevated by arbitrary law and administrative discretion to the status of representative organisations.

More seriously, to allow for different thresholds for different sectors would clearly not be a law of general application (equally applicable to all) as required by the Constitution and the rule of law. This provision violates basic principles of good law, natural justice and the Constitution.

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## Free Market Foundation Submission on JOBS FOR THE JOBLESS

To: Committee 1 (Triple Challenges of Inequality, Poverty and Unemployment)  
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### 1. The Free Market Foundation

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### 2. Introduction

For more South Africans than ever before, every day is a public holiday. A May 1 "Workers' Day". Day after day. Year after year. Unemployment statistics published by Stats SA tell us that this is so for nearly 9-million South Africans. They all earn the same statutory minimum wage. Zero.

More people earn zero than any other wage; more are in the jobless sector than in any other sector. When Stats SA says unemployment increased from 24.5% to 26.7%, we have a statistic. The "expanded" number, 36.3%, is a bigger statistic. Youth unemployment of more than 50% is bigger still and 9-million unemployed people is too many to comprehend.

Proponents of failed labour policies are unmoved by numbers. If they ventured out of their air-conditioned offices in their luxury 4x4s to spend a day with a jobseeker, their callous hearts might mellow. They might realise what it is like to spend every minute of every hour of every day of every week of every month of every year in hopeless distress, indignity and squalor, walking the streets and facing rejection, leaching and begging, hungry and insecure. They might understand the temptations of radicalism and crime.

### 3. Proposal – Exempt the long-term unemployed from labour legislation (extract from attached booklet)

Exempting the unemployed from the labour laws by issuing those who qualify and wish with a **Job Seekers' Exemption Certificate (JSEC)** will make it possible for them to rapidly find jobs of their own choosing. [Note: in original 2003 publication, JSECs were referred to as Special Exemption Certificates.]

#### ***Who will qualify for exemption?***

It is suggested that anyone who has been unemployed for six months or more should qualify, as of right, for exemption. The six month waiting period is a precaution against employers firing employees and promising to take them back when they have exemption certificates.

The task of issuing exemption certificates and identifying who qualifies could be assigned to any agencies or institutions (such as local authorities) that operate countrywide; it would not necessarily have to be carried out by the Department of Labour.

#### ***The exemption should cover all the labour laws***

If the JSECs are to be effective, they should exempt the unemployed from all the laws and regulations under the jurisdiction of the Department of Labour. This would allow the certificate-holder to offer a prospective employer an agreement that is free of inadvertent transgressions under the statutes. Firms that currently do not hire labour

because they are fearful of prosecution for breaking laws they are not aware of, or that avoid hiring because of the administrative complexity related to employing staff, would then be encouraged to hire holders of exemption certificates.

#### ***Employee exemption must provide the employer with total protection***

While it is the employee and not the employer who enjoys the exemption from the labour laws, it does mean that employers of exempted employees are protected from the provisions of any legislation from which those employees have been exempted. The exemption should remain valid only as long as the employee chooses. Certificate-holders should have the right to cancel their exempt status at any time within the two-year validity period of the certificate, on giving appropriate notice to their employers in terms of their employment contracts.

#### ***Why JSECs should be valid for at least two years***

Exemption terms for the certificates should be long enough for their holders to consolidate their positions on the job market. Firstly, the possession of an exemption certificate will not necessarily be a passport to an immediate job. Secondly, the exempted person may change jobs several times before finding suitable employment.

Employers become understandably wary of employing people who have been without work for a long time. Unemployed people therefore need the opportunity to prove their worth. Certificate-holders may, for example:

- agree to start at very low wages in order to learn skills on the job that they could not acquire otherwise;
- settle for low starting wages with periodic adjustments as they demonstrate their worth;
- change employers regularly as they find increasingly attractive employment and discover better ways to exploit their newly-learned skills;
- work long hours in order to get their feet on the first rung of the employment ladder;
- engage in day-to-day employment terminable at 24 hours' notice from either side.

#### ***Basic, simple, employment contracts***

Written employment contracts between exempt employees and their employers should be obligatory so that there can be no doubt as to the basis of their agreements. In the interests of the employees, however, these should be as simple and uncomplicated as possible. Items that should appear in every agreement are:

1. Names of the parties to the contract together with identifying information such as identity numbers and company registration numbers.
2. Nature of the work to be performed by the employee.
3. Date of commencement of the contract.
4. Salary or wage payable per hour, day, week or month.
5. Hours of work.
6. Overtime conditions and remuneration.
7. Day of the week or month upon which remuneration will be paid.
8. Annual leave conditions.

#### ***Testing the proposal***

If government wishes to do a trial run it could choose an area where unemployment is exceptionally high to test whether the possession of a JSEC improves the chances of an unemployed person of getting a job. Government owes it to the 9 million jobless to give this proposal a chance.

#### ***Attachment***

1. Booklet: Jobs for the Jobless: Special exemption certificates for the unemployed



***Jobs for the Jobless***  
***Special exemption certificates***  
***for the unemployed***

*Eustace davie*

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## **Addendum**

## *The author*

Eustace Davie is a Chartered Accountant and has been a director of the Free Market Foundation since 1981. His interests include the study of economic freedom as a means of improving all aspects of development and the role of property rights, highly devolved political power, constitutional protection of individual rights and the rule of law in limiting government power and aiding human progress. He has given special attention to public policy on the role of sound money, low levels of taxation and private ownership of property and the means of production (including private provision of education and health-care) in facilitating economic growth and increasing general prosperity and welfare. His research on public policy issues has included participation in international conferences in Austria, Chile, France, Germany, Guatemala, Hong Kong, South Africa, Spain, Switzerland, the United States of America and the United Kingdom.

# Introduction

The world is a frightening and unfriendly place for people who are unskilled and unemployed. How are they to feed, clothe and shelter themselves and their children when they have few or no qualifications for a job and no means to acquire a trade? This is the stark reality for a great many South Africans today. At least five million people, and possibly more than eight million, are currently without work and have little hope of obtaining any. It is a problem of vast proportions for the government and for our society at large.

South Africa's labour laws are exacerbating this unemployment crisis. Written with the intention of protecting workers, they provide a high level of job security to those in employment and make favourable working conditions obligatory. Employers who do not meet the statutory requirements are subject to onerous penalties. However, an unintended consequence of the laws is that they prohibit unemployed people from selling their labour on less favourable terms than the law prescribes, but which are nevertheless acceptable to them. This effectively deprives them of their only means of climbing on to the first rung of the employment ladder.

Many jobless people are thus condemned to living on welfare grants or relying on the charity of friends and family. While this may provide some measure of relief from the physical consequences of poverty, it does incalculable damage to the self-esteem of the unemployed and leads to feelings of hopelessness and desperation. That desperation was clearly in evidence when uShaka Marine World in Durban advertised 300 jobs this February and an estimated 10 000 people turned up to apply. A stampede occurred when the crowd started pushing from the back, and a number of applicants had to be hospitalised. A spokesman for Marine World commented that the stampede was a "manifestation of the unemployment rate in our country".

### **What is to be done?**

We cannot allow this situation to continue: we need to take decisive action *now* to promote job creation, and to offer the hope of economic betterment to the millions of South Africans who are jobless and unskilled. The purpose of this paper is to suggest a way in which this can be done.

The solution proposed here would be effective, easy to implement and politically 'saleable'. It would help those who need help – the unemployed – without affecting the statutory rights of the employed. And it would result in economic growth that will benefit all South Africans.

# Allowing the labour market to work

### The proposal

People who have been unemployed for six months or longer should be entitled to a special exemption (SPEX) certificate, which would *a)* grant them exemption from all labour legislation for a period of two years and *b)* protect any employer who hires them from prosecution under the labour laws.

This would allow the unemployed to accept work at less than the minimum wage, and to agree to less favourable employment conditions (such as longer working hours or less rigid employment termination procedures) than those mandated by the labour laws. They would then have the opportunity to acquire skills and build up an employment history. It is important to note that these individuals, while relinquishing statutory protections, would still have all the protections against abuse that are afforded by the common law.

Why create a two-tier system, with some workers subject to labour laws and others not? Why not simply allow freedom of contract between all employers and all employees? The simple answer is that neither the government nor the unions would agree to this. Most countries have, to a lesser or greater extent, sacrificed contractual freedom in labour markets in favour of worker protections. South Africa has embraced the global trend and appears unlikely, in the near future, to make fundamental changes to its laws. The solution offered here is one that will disturb the existing labour dispensation as little as possible, yet allow large numbers of extra jobs to be created.

If a SPEX (special exemption) certificate were available, it would reduce unemployment rapidly and dramatically, and accelerate economic growth. These results would all be quantifiable. A less tangible, but equally important consequence, would be the improvement in the psychological health and emotional outlook of millions of people.

SPEX certificates would empower the unemployed, not the employer.

Organised labour is likely to oppose any labour law reform that reduces demands on business. This factor can be removed from the equation by placing the benefits of the reforms in the hands of the unemployed – in other words, by empowering the unemployed rather than the employer.

Thus the SPEX certificates would be issued to the unemployed, exempting them for a period of two years from the Basic Conditions of Employment Act, the Labour Relations Act and all other labour laws that restrict their ability to determine their own conditions of employment. The SPEX holder would become a free agent, entitled to make any form of employment arrangement she/he wishes with an employer, who would in turn be protected by the SPEX certificate from prosecution under the labour laws.

Empowering the unemployed person in this way would have several important benefits:

- no changes need be made to the current labour laws, except for a brief section exempting the unemployed and determining the conditions of the exemption;
- the job security of existing employees would not be affected ;
- the concept is simple for unemployed people to understand and utilise; and
- potential employers, most of whom are likely to be small firms, would have a minimum of red tape to comply with.

Unemployed people would decide for themselves whether or not to apply for a SPEX certificate: the choice would be entirely in their hands. After acquiring a certificate they would remain in control of the situation and would be able to choose any of the following options:

- refrain from using the SPEX certificate but keep it in reserve in case of need;
- use the SPEX certificate to get a job and stay in it for the full two-year term;
- use the SPEX certificate to job-hop and find the most satisfactory job; or
- take back the SPEX certificate by agreement with the employer once firmly established in a job, thereby bringing all the labour laws into operation, but keep it to cover future contingencies.

The introduction of SPEX certificates would have major advantages for the jobless and no disadvantages. Employers would gain by having extra labour only for as long as conditions of employment remain mutually beneficial.

### **Conditions of issue of SPEX certificates**

The following conditions are proposed to satisfy potential critics while allowing the SPEX certificates to perform their intended function of helping the unemployed to get jobs:

#### ***1. People who have been unemployed for six months or longer should automatically qualify for certificates***

Ideally, all unemployed people should become eligible for SPEX certificates upon losing their jobs. However, critics may argue that immediate qualification would encourage employers to circumvent the labour laws by firing their workers and re-hiring them once they have obtained SPEX certificates. As it is not the purpose of this proposal to help people evade the labour laws, a method must be devised for identifying the genuinely unemployed. Whatever method is chosen must:

- not present opportunities for cheating;
- not present so many obstacles to qualification that unemployed people lose heart.

A waiting period is probably the simplest way of doing this. Initially, this period could be set at six months of unemployment, but it should be reviewed if it is found to be too long, or if government finds a better way of identifying the genuinely unemployed. A six-month wait for a SPEX certificate is better than having no prospect at all of getting a job, and a large number of the existing unemployed would in any case qualify immediately as they will already have been unemployed for longer than six months.

#### ***2. A simple and quick procedure should be adopted for issuing SPEX certificates***

The task of identifying SPEX certificate qualifiers and issuing the certificates could be assigned to any agencies or institutions (such as local authorities) that operate or are to be found countrywide; it would not necessarily have to be carried out by the Department of Labour. A simple procedure could be adopted, requiring an applicant to complete an application form and sign a declaration confirming the period for which she/he has been unemployed. All applicants would have to be made aware of the penalties for making false declarations. Placing an onerous and time-consuming burden of proof on applicants regarding the length of time they have been jobless would be unfair, and should be avoided.

No official should have the discretionary power to refuse to issue a SPEX certificate to a genuinely qualifying unemployed person: legislation should set objective criteria that will allow qualifying individuals to claim certificates as of right. No fees should be payable by the unemployed, and this fact should be widely advertised to avoid corruption.

Government would have to ensure that the certificates are issued expeditiously. Ideally, they should be issued immediately on receipt of applications and signed declarations.

#### ***3. The exemption should cover all the labour laws***



If the SPEX certificates are to be effective, they should exempt the unemployed from all the laws and regulations under the jurisdiction of the Department of Labour. This would allow the certificate-holder to offer a prospective employer an agreement that is free of the possibility of inadvertent transgressions. Firms that currently do not hire labour because they are fearful of prosecution for breaking laws they are not aware of, or that avoid hiring because of the administrative complexity related to employing staff, would then be encouraged to hire holders of exemption certificates.

A partial exemption would compel prospective employers to study the legislation in order to determine their legal responsibilities. Such an exercise is beyond the capabilities of many potential employers, and it would tend to become another barrier to employment. The thrust of this proposal is that long-term unemployed people are better off being employed and protected by the common law than being unemployed and kept in that condition by laws providing a high level of job security to others.

No one can seriously contend that an unemployed person is better off remaining unemployed than relying on an employment contract and the common law as protection against a potentially unscrupulous employer. Reasonable employers significantly outnumber bad employers, but in any event the holder of an exemption certificate would also be in a better position than a non-holder to leave poor employment and find a better job.

In fact, one of the primary purposes of the SPEX certificate would be to give its holder the opportunity to change jobs more easily.

#### ***4. Employee exemption must provide the employer with total protection***

While it is the employee and not the employer who enjoys the exemption from the labour laws, it does mean that employers of exempted employees are protected from the provisions of any legislation from which those employees have been exempted. The exemption should remain valid only as long as the employee chooses.

SPEX certificate-holders should have the right to cancel their exempt status at any time within the two-year validity period of the certificate, on giving appropriate notice to their employers in terms of their employment contracts. They may then either leave their employment or negotiate new contracts that are fully subject to the labour laws. However, there should be no requirement compelling employers to transfer exempted employees to regular employment contracts, as this would almost totally negate the contractual freedom that is the principal benefit of the SPEX certificates.

Exempted employees and their employers should be required to enter into simple straightforward written employment contracts detailing the essential terms of their agreements. Employers should further be required to retain certified copies of their exempted employees' SPEX certificates, but should under no circumstances be entitled to keep the originals, which would be the exclusive property of the holders. The written contracts together with the copies of the SPEX certificates should be all that is necessary to protect employers from charges of infringing the labour laws..

#### ***5. Why SPEX certificates should be valid for at least two years***

Exemption terms for the SPEX certificates should be long enough for their holders to consolidate their positions on the job market. Firstly, the possession of an exemption certificate will not necessarily be a passport to an immediate job. Secondly, the exempted person may change jobs several times before finding suitable employment. Thereafter, the employee will need to build up an employment record that will satisfy potential future employers of her/his abilities and reliability, or to satisfy an existing employer that she/he deserves to be appointed to permanent formal employment.

Employers become understandably wary of employing people who have been without work for a long time. Unemployed people therefore need the opportunity to prove their worth. They need to be able to say to an employer, 'Give me a chance and I will show you what I can do!' The SPEX certificate would make that possible. Certificate-holders may, for example:

- agree to start at very low wages in order to learn skills on the job that they could not acquire otherwise;
- settle for low starting wages with periodic adjustments as they demonstrate their worth;
- change employers regularly as they find increasingly attractive employment and discover better ways to exploit their newly-learned skills;
- work long hours in order to get their feet on the first rung of the employment ladder;
- engage in day-to-day employment terminable at 24 hours notice from either side.

Experimenting with job opportunities and acquiring skills requires time and the kind of latitude provided by the proposed SPEX certificates. A period of at least two years is necessary to give exempted people a chance of obtaining regular employment after the expiry of the certificate.

#### ***6. Exempted persons should face a minimum of restrictions in their choice of employers***

Unemployment would decline most rapidly if no restrictions whatsoever were to be placed on the type of employer that exempt persons might choose to contract with. However, such an arrangement would be inclined to conflict with the interests of trade union members. Even if trade unions were to accept the exemption certificate concept in principle as a least-costly method of reducing unemployment, and recognise the future benefits of an overall larger workforce, they would nevertheless probably wish to limit potential competition from SPEX certificate-holders.

The unions would therefore probably suggest limitations on the size of the firms that would be entitled to employ such workers. There is no scientific way of determining what the 'right' size of a firm should be, as measured by number of employees, that should qualify to employ exempted workers. Therefore, an arbitrary figure would have to be chosen, which should be as high as interested parties will allow. The greater the number of firms that are allowed to participate, the more rapidly the unemployment rate will be reduced.

One possibility is to allow all small, medium and micro enterprises (SMMEs) to employ holders of exemption certificates. The National Small Business Act, 1996 has a very complicated system for classifying businesses by size; a simpler classification for employment purposes would greatly facilitate unemployment reduction. All firms, for instance, with 200 employees or fewer should qualify, without restriction, to employ SPEX certificate-holders.

Another possibility is not to exclude any firms at all but to adopt a reverse sliding scale, allowing very large firms to employ very small numbers of exempted unemployed as a percentage of their total workforce and increasing the percentage for smaller firms, to a point where the smallest firms are allowed to employ as many certificate-holders as they can afford. The formula could be devised in such a way that competition with unionised workers is reduced to a minimum.

#### ***7. Basic, simple, employment contracts***

Written employment contracts between exempt employees and their employers should be obligatory so that there can be no doubt as to the basis of their agreements. In the interests of the employees, however, these should be as simple and uncomplicated as possible. Items that should appear in every agreement are:

1. Names of the parties to the contract together with identifying information such as identity numbers and company or close corporation registration numbers.
2. Nature of the work to be performed by the employee.
3. Date of commencement of the contract.
4. Salary or wage payable per hour, day, week or month.
5. Hours of work.
6. Overtime conditions and remuneration.
7. Day of the week or month upon which remuneration will be paid.
8. Annual leave conditions.

9. Sick leave conditions.
10. Notice required for termination of the contract.
11. Date of issue of the applicable exemption certificate and the period for which it is valid.
12. Date and place of signature of the contract.
13. The signatures of the parties.

An example of a simple contract of employment is attached as an addendum.

# Current labour policy and its consequences

Labour laws that seek to increase the job security of those already in employment cannot avoid interfering with the contractual rights of both the unemployed and potential employers. If that were not so, there would be nothing to prevent job-seekers from contracting freely with firms on mutually agreeable terms. Given unrestricted freedom of contract, no one should be unemployed other than those who are holding out for higher wages or better conditions.

Onerous termination requirements, minimum conditions of employment, compulsory minimum wages and other regulatory conditions imposed on employers, all serve to consign some people to the ranks of the permanently unemployed. This is because the sum total of their wages and the costs to the employer of complying with the labour regulations exceed the economic value of their expected production. Compliance costs include the time required to understand the legislation and to implement and maintain the administrative processes needed to avoid contravening the laws, and the potential executive time, professional fees and other costs related to an inadvertent contravention.

Many small firms are incapable of dealing with the complexities of the regulations and respond by refraining from hiring staff. Compliance costs are similar for high-wage and low-wage employees, which means that they constitute a greater percentage of the total cost of employing low-wage workers. They are therefore a greater deterrent to the employment of unskilled than skilled workers.

Wealthy countries tend to adopt more demanding labour laws than others and the detrimental consequences become increasingly visible over time. Even highly developed European countries are finding that they can no longer afford onerous labour laws and comfortably provide social grants (the dole) to the resultant unemployed. Germany, well known for its 'labour democracy', is currently revising its labour laws in an attempt to reduce the cost and level of unemployment.

South Africa's labour laws are as inflexible as those of Germany, France and Italy, and considerably more inflexible than those of the United States, United Kingdom, New Zealand and Chile. Hong Kong, Singapore and Taiwan, by comparison, have total freedom of contract in their labour markets. (Rautenbach, 1999, 216) Comparisons of levels of inflexibility have to be viewed in context, in light of circumstances prevailing in the countries being measured, and taking into account that effects vary according to the strictness of enforcement. For instance, whereas South Korea's labour laws appear to provide job security at a similar level to that in South Africa, the consequences are very different because South Korea has weak labour unions and the laws are not strictly applied, while South Africa's unions are politically powerful (Siebert, 2001, 15).

According to the International Monetary Fund (IMF), South Africa's labour laws are not more inflexible than those of the Organisation for Economic Co-operation and Development (OECD) countries (Siebert, 2001, 1). However, that does not mean that they are appropriate for our circumstances. For one thing, South Africa has an appreciably higher number of unskilled and semi-skilled people than the OECD member states. Since the administration and labour law compliance costs of employing an unskilled worker can be equal to or higher than the costs of employing a skilled person, prospective employers often decide that these costs are inordinately high in relation to the benefit they would receive from

hiring an unskilled person. In this way, regulation creates a serious bias against the employment of the unskilled.

Secondly, countries such as South Africa that have many low-skilled job seekers usually also have large numbers of existing and potential low-skilled employers, who do not have the capacity to administer and comply with the requirements of complex labour laws. Inflexible labour laws then have a doubly retarding effect on the employment of labour: not only do they price unskilled people out of the labour market, they also prevent low-skilled people from becoming employers. Relief for both employees and employers at the lower end of the South African job market could consequently bring about both a significant reduction in unemployment and an increase in the number of labour-intensive firms.

### **Problematic laws**

Legislated restrictions on termination of employment contracts (generally referred to as “unjustifiable dismissal” provisions), and compulsory minimum wages without doubt represent the greatest statutory barriers to employment. Together, these two measures create a formidable obstacle to employment for South Africa’s jobless. Employers dare not ignore the laws because the penalties are substantial.

#### ***1. Onerous termination procedures***

When employers face onerous procedures for the termination of contracts of employment (unjustifiable or wrongful dismissal procedures), such as requirements for written notices to employees, internal disciplinary hearings, and potential hearings before the Commission for Conciliation, Mediation and Arbitration (CCMA) and possibly the Labour Court, they understandably become more careful about hiring. Some employers will even cease hiring altogether if they believe that the level of statutory intervention has become unbearable.

Most of the cases coming before the CCMA are for alleged wrongful dismissal (Bagraim and Davie, 1997, 1), and of these, the great majority involve small businesses. This is not surprising as the procedural requirements demand careful study of the legislation and meticulous attention to detail – skills that are not generally found in small firms.

Being kept unemployed by laws that would protect them from dismissal if they were ever employed is what some economists call a ‘negative benefit’ for the jobless. If unemployed people realised that the unjustifiable or wrongful dismissal provisions constitute such a major barrier to their employment, it is likely that the vast majority of them would readily forego this doubtful privilege in exchange for the right to contract freely with potential employers.

In his monograph *Unjustifiable dismissal – The economics of an unjust employment tax: The New Zealand Employment Contracts Act*, Professor Charles W. Baird concluded (Baird, 1998, 56) that–

While the proponents of those (unjustifiable dismissal) restrictions may have been well intentioned, the economic effects of the regulations are lamentable. On purely theoretical grounds we can infer that the economic effects of unjustifiable dismissal regulations include:

- Less efficiency in the management and deployment of labour resources.
- Higher information costs in labour markets.
- The founding of fewer start-up firms and the expansion of fewer existing firms.
- The hiring of fewer high-risk employees.
- Diminished opportunities for entry-level work and on-the-job training.
- Decreased productivity of many already-hired employees.
- Lower real compensation paid to workers.
- Less employment opportunities in general.
- Increased inequality in the distribution of income.

At least half these effects have detrimental consequences for the unemployed.

## **2. Minimum wage laws**

Minimum wage laws appear to be compassionate but have cruel consequences for workers who lose their jobs and those who can't get jobs as a result of such laws.

South Africa's minimum wage laws affect predominantly the lowest-income families and cause great social harm. The laws are generally touted as a means to relieve poverty but they either induce or exacerbate poverty among the most vulnerable people in our society. A study carried out for the Department of Labour prior to the introduction of minimum wages for domestic and farm workers estimated that as many as 240,252 domestic service jobs and 70,747 farm jobs could be lost at the wage levels being considered at the time. The minimums in both sectors were eventually set R100 above the figures on which these estimates were based, and it is therefore likely that job losses caused by minimum wages in these sectors could be far higher than 300,000.

Some of the consequences of minimum wage laws are:

- The lowest-skilled people in the country lose their jobs or are unable to find jobs.
- Opportunities for on-the-job training decline, as do the fringe benefits offered by employers.
- If a significant differentiation is not made between wage rates in rural and urban areas and between other existing high-wage and low-wage areas of the country and sectors of the economy, unemployment in the poorer areas will rise, further increasing their levels of poverty.
- Skilled workers replace unskilled workers, part-time workers replace full-time workers, and machines replace people.

The author of *South Africa's War Against Capitalism*, economist Walter Williams, describes how minimum wages were used to exclude blacks from jobs during the apartheid era:

... white unionists argued that 'in the absence of statutory minimum wages, employers found it profitable to supplant highly trained (and usually highly paid) Europeans by less efficient but cheaper non-whites.' One South African union leader said, 'There is no job reservation left in the building industry, and in the circumstances I support the rate for the job (minimum wages) as the second best way of protecting our white artisans.' (Cato Institute, 2003)

Those unionists were clear and open about their objectives, which is unusual. Most often, the call for minimum wages is disguised as a method to assist low-paid workers and reduce poverty.

The effects of the labour laws on the unemployed are similar to the effects that the 1913 Land Act had on black sharecroppers. Sol Plaatje documented in *Native life in South Africa* how they trekked along South Africa's roads with their livestock, searching in vain for land to hire or for alternative partners to replace those who had suddenly informed them that they would in future have to work for wages and could no longer trade their labour for a share in the crops. What they failed to realise was that legislation had been adopted that made it an offence, punishable by a substantial fine, for a white landowner to sell or lease land to a black person, or to farm in partnership with black farmers.

Neither those early landowners nor current-day firms dare disobey the laws in view of the sizable penalties for transgressing. While the 1913 farmers trudged futilely from farm to farm looking for places to settle and resume farming, the jobless now trudge futilely from firm to firm looking for jobs, unaware of the nature of the problem that causes doors to be shut in their faces.

### **A politically palatable alternative**

The approach that is proposed in this paper will provide the currently unemployed with job experience and saleable skills at no cost to the taxpayer. It will not drain resources from the existing formal sector, nor will it pose a significant threat to unionised labour. However, it will introduce a two-tier labour market, as mentioned in Chapter 2.

Two-tier labour markets result when governments attempt to deal with the negative consequences of special privileges granted by legislation to the upper tier. Because of the political disadvantages associated with any attempt to reduce privileges once granted, governments tend to confine themselves to reducing regulation at the lower end of the employment market, usually by granting exemptions to SMMEs, while leaving the upper end intact, thus creating a situation in which slightly-less-regulated and highly-regulated labour markets operate uneasily side by side.

Traditionally, all regulation is aimed at curbing employers, and insufficient attention is paid to the detrimental effects of such laws on the providers of low-value labour, who are often either unskilled, young, old, or handicapped, and who have no political influence either individually or collectively.

In the absence of regulatory prohibitions and barriers to employment, unemployed people would knock on the doors of employers and eventually find some form of work under a mutually beneficial arrangement. Given the right conditions, not only would existing firms use more labour-intensive methods but new firms would be created to utilise the available labour. This does not currently happen because the labour laws prevent the lower end of the employment market from functioning efficiently.



### The role of small firms in employment

Small firms have a key role to play in reducing unemployment in South Africa. Studies have shown that in most countries they employ the largest percentage of the total workforce. Two-thirds of all jobs in the European Economic Area and Switzerland, for example, are in SMEs (small and medium enterprises) employing 0 – 249 employees. By contrast, SMEs employ only 33% of the workforce in Japan and 46% in the USA. (European Communities, 6)

South Africa's small firms employ slightly more than 50% of the total workforce but our data are not strictly comparable with figures from other countries because South Africa's small firms are classified differently. For instance, South African firms that employ 100 or more workers in the agricultural, retail and motor, wholesale, catering and accommodation, and finance and business services sectors are defined as large firms, as are firms in these sectors with fewer than 100 employees but with turnovers or total gross assets exceeding the minimums stipulated in the National Small Business Act, 1996. Utilising the same straightforward measure of 0 to 249 workers used by the EU, South Africa's SMME sector would be considerably larger.

While these numbers give us an insight into the structure of an economy, they do not tell us why there are so many small firms in the EU and especially why 93% of them are micro enterprises with fewer than 10 employees. (European Communities, 4) High levels of regulation, and especially labour regulation, could possibly be responsible for this phenomenon. In business environments characterised by stringent labour laws, small firms tend, wherever possible, to employ family members and to avoid expanding to the point where they attract the attention of labour unions.

In the absence of regulatory barriers, unskilled people do not generally look to large firms or the government for employment. They usually approach small firms, which are more accessible, often more conveniently situated in relation to their homes, more likely to take on staff for trial periods to test their capabilities, and more inclined to provide on-the-job training in a diversity of disciplines. Once they have gained skills and experience in small firms, workers are in a better position to secure employment in large organisations.

Some employees may in time become part owners of the small firms employing them, or break away to start their own businesses. Yet without adequate entry points – that is, without an adequate number of small firms able and prepared to employ them – job-seekers face the unenviable reality of too many applicants for too few jobs. And if they are unskilled, or have other characteristics that reduce the demand for their labour, they will be forced to settle for wages and working conditions that reflect the value in labour they are able to deliver. This may mean having to accept compensation that is well below what would be considered a 'living wage'. An unemployed person or first-time job-seeker would accept such a job for several reasons, including the opportunity to learn skills and build up an employment history, or for the most basic reason of all, expressed in the old adage that 'half a loaf is better than none'.

#### **Small firms hire fewer people when the laws become onerous**

Small firms, including some that hire relatively large numbers of workers, often do not have personnel departments. An owner or other senior member of the firm does the hiring, and if the position to be filled does not require special skills, CVs and references may be dispensed with. The person doing the hiring will rely on his or her personal judgement, or on recommendations from existing staff, thus

reducing the cost of hiring. However, when the small firm is subjected to onerous labour laws and the dismissal of an unsuitable person can be very costly, the firm has to change its hiring system and possibly its entire approach to labour utilisation.

If the firm decides it needs to create a personnel department to handle labour law requirements, it will have less money available for employing productive workers, which will reduce its output and efficiency. It may outsource the work previously done by certain categories of employees, or alternatively, utilise machines and technology operated by fewer more highly skilled workers. Another alternative would be for the firm to shut down its labour-intensive divisions altogether.

All approaches to the problem of reducing the 'hassle factor' created by the labour laws, especially in the employment of unskilled people, entail a reduction in the numbers employed. Job losses are even greater than is superficially apparent because of the many potential new firms that may have been started, and that may have employed unskilled people, but never do so. The latter are the 'invisible' or 'unseen' job losses that are not quantifiable and tend to be overlooked.

### **Utilising the job-creating potential of small firms**

Government can facilitate the creation of a great number of additional jobs in South Africa by making the regulatory environment more conducive to employment. A more entrepreneurial and business-friendly regulatory framework would allow for the creation of many more jobs while lifting the economic growth rate, potentially to the 6.1% per annum growth rate posited by government's Growth, Employment and Redistribution (GEAR) policy document. The GEAR target and even higher growth is possible but this will not happen if government continues to increase the regulatory burden on business, especially in the labour field, contrary to the stated intention in GEAR, which promised 'greater labour market flexibility'.

In order to rapidly absorb the unemployed into the labour market, South Africa needs spectacular growth in the order of 7.2% per annum for an extended period, which is the growth level required to double the country's GDP every ten years. Other countries, such as South Korea and China, have averaged higher growth rates for decades and there is no reason why South Africa should not do the same. However, the full wealth-creation and job-creation potential of all firms, but especially small firms, must be utilised to make this possible.

No special dispensation for small business is required in a low-tax, low-regulation environment. But when taxes are high and regulations onerous, small firms need special treatment to reduce the competitive disadvantage that they otherwise suffer because of their higher regulatory compliance costs per worker. The compliance cost per worker has been shown to average as much as 60% more for small firms than for large firms. The reason is that in a big company the costs are spread over a larger number of workers. The average cost then constitutes a much greater percentage of the wages of employees of small firms and is particularly high in the case of low-wage workers.

For instance, if the average compliance cost per worker is R1,000 for a small firm and it hires one worker at R1,000 per month and another at R10,000 per month, the compliance cost is 100% of the monthly wage for the first worker and only 10% for the second, creating a substantial disincentive against the hiring of low-paid workers. Based on a 60% higher cost for small firms, the comparable compliance costs of a large firm in respect of workers earning the same wages would be 62.5% and 6.25% of the monthly wages respectively.

The bias against small firms caused by high government-imposed costs should be removed or reduced, either by reducing such costs for all firms or by exempting small firms from some of the laws and regulations. Small firms in some instances become the victims of laws and regulations that are specifically intended to regulate the activities of large companies. Identifying and exempting small firms from such 'all-encompassing' regulatory requirements should be a relatively simple matter, and instituting measures to ensure that small firms are not accidentally ensnared by future legislation should also be easily accomplished.

By reducing regulation on small firms in tandem with the granting of a special dispensation to the unemployed, government can bring about the most rapid possible reduction in unemployment. It will allow unemployed people and small employers to 'find' each other quickly, without barriers to employment intervening in the process. Small firms are primary job generators; all that is needed is for jobs and workers to be left to find a match with each other as fast as possible. No other policy proposal has the potential to reduce unemployment as rapidly and permanently as the policies proposed in this paper.

## Conclusion

**T**he special exemption (SPEX) certificates described in this paper are

the result of a great deal of thought and numerous discussions with unemployed people. The proposal recognises the realities of the current labour dispensation and accepts that labour unions have a right to protect their members with every instrument available to them, including the statutes that are biased in their favour, even if this has unfortunate consequences for the unemployed. That is their job. Levelling the playing field so as to provide the unemployed with a fairer dispensation is the responsibility of Parliament.

Special exemption (SPEX) certificates for the unemployed would reduce unemployment considerably without reducing job security for existing workers. They would also provide a major boost to the economy. If three million additional people were to be employed at a low wage of R5000 per year, their incomes would add R15 billion to the economy and that would be only part of the positive contribution they would make.

Would SPEX certificate-holders be vulnerable to exploitation? Although poor treatment of employees is the exception, some exempted people may well be ill-treated by unscrupulous employers. However, whether the ill-treatment is physical or relates to breach of contract, employees would be able to call on the law to protect them.

Would they be reluctant to seek legal redress because of the fear of losing their jobs, even if their circumstances are appalling? SPEX certificate-holders would not have the same fears that the unskilled have today, because their exemption would allow them to find another job more easily. It is likely that they would not put up with ill-treatment but would look for other employment without delay.

Would SPEX certificate-holders voluntarily agree to wages and working conditions that are exploitative, and should they be prevented from doing so? This is the crux of the problem to which we are trying to find a solution. It is precisely because the law prevents the unemployed from making their own choices, determining their own agreements, and entering freely and voluntarily into contracts of employment based on those agreements, that we now have mass unemployment in South Africa.

No one should have the right to deny unemployed people the opportunity to choose their own working conditions, no matter how unattractive those conditions may appear to those who enjoy better circumstances. SPEX certificates will largely overcome potential problems because they will give their holders the protection of written contracts and allow them to change jobs more freely.

This proposal is submitted in the hope that it can be utilised to improve the lives and alleviate the poverty of the millions of people who want to work but cannot, for reasons that they do not understand and are beyond their control.

In the final analysis, the law must stop preventing unemployed people from deciding that poorly paid jobs and poor working conditions, if that is all they can find, are better than no jobs at all.

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Example of a simple contract of employment:

**CONTRACT OF EMPLOYMENT**  
(entered into by the holder of a Special Exemption Certificate)

between

\_\_\_\_\_  
(Employee)

and

\_\_\_\_\_  
(Employer)

**PREAMBLE**

This contract is entered into in terms of the requirements of Special Exemption Certificate No \_\_\_\_\_ held by the employee, which entitles her/him to negotiate and enter into agreements with employers on terms that do not conform to the standard labour legislation and regulations.

**CONDITIONS OF EMPLOYMENT**

1. This contract commences on \_\_\_\_\_.
2. Remuneration will be \_\_\_\_\_.
3. The total number of ordinary working hours per day/week (delete whichever is not applicable) will be \_\_\_\_\_ hour(s) and the maximum number of working hours in any one day will be \_\_\_\_\_ hour(s).
4. The rate of pay for overtime will be \_\_\_\_\_ times the rate of pay for normal time worked.
5. The number of paid working days leave per year will be \_\_\_\_\_ days.
6. The number of paid working days sick leave will be \_\_\_\_\_ day(s) for every month worked with a maximum of \_\_\_\_\_ day(s) in any cycle of \_\_\_\_\_ months.
7. Normal hours of work will be from \_\_\_\_\_ to \_\_\_\_\_ from Monday to Friday (with a \_\_\_\_\_ lunch break) and from \_\_\_\_\_ to \_\_\_\_\_ on Saturdays.
8. This contract is subject to a probation period of \_\_\_\_\_ month(s) after which notice of termination will be at least \_\_\_\_\_ calendar week(s) by either party.
9. During the first period of \_\_\_\_\_ month(s) the contract may be terminated by either party by giving the other party 24 hours notice of termination.

**SPECIAL EXEMPTION (SPEX) CERTIFICATE**

It is agreed that the employer will be entitled to make and retain a certified copy of the SPEX certificate as evidence that the employee is empowered to enter into this contract but shall hand over this copy on demand to the employee on termination of the contract. It is further agreed that at the expiry of the term of the SPEX Certificate this contract will terminate automatically and further employment will be subject to negotiation between the parties.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 200\_\_.

\_\_\_\_\_  
Employee

\_\_\_\_\_  
Employer

Witness:

\_\_\_\_\_