

Skills Development Act 97 of 1998 (SDA)

Topic: Labour and Broad-Based Black Economic Empowerment (BBBEE)

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Introduction

The Skills Development Act (SDA) seeks to encourage and promote the education and development of the South African workforce in order to improve the quality of the life of the workers, promote self-employment, promote and improve employee prospects of work and labour mobility and improve productivity in the workplace and the competitiveness of employers.

Objectives of the Act

The SDA aims to increase levels of investment in education and training in the labour market and improve the return on that investment. The SDA seeks to encourage employers to use the workplace as an active learning environment, to provide employees with the opportunities to acquire new skills, to provide opportunities for new entrants to the labour market to gain work experience and to employ persons who find it difficult to be employed.

The SDA also encourages workers to participate in learnership and other training programmes and initiatives, to improve the employment prospects of persons previously disadvantaged by unfair discrimination and to redress those disadvantages through training and education.

Finally, the SDA aims to assist unemployed individuals to find work, retrenched workers to re-enter the labour market and employers to find qualified employees, and to provide and regulate employment services.

Application of the Act and its implication to Tourism

The SDA applies to employers and employees.

To enter into a learnership an employer must have a training programme accredited by a SETA, obtain a subsidy or funding for such training programme or develop and offer a skills development programme. The employer must also comply with the SDA.

Compliance by an employer can be delegated to the human resources or industrial relations department, a skills development facilitator (SDF) or, in the case of a small business, the owner of the business or a manager.

Where an employee wishes to enter into a learnership or undertake a skills development programme, the employee must ensure that these activities are in compliance and in line with the SDA.

Summary of the provisions of the Act

Learnerships

A learnership is a structured learning programme that includes practical work of a specified nature and duration, which, once completed, will lead to a qualification. Any learnership must be registered with the Department of Labour.

A Sector Education and Training Authority (SETA) may establish a learnership if the learnership includes a structured learning component, includes a structured work experience component and would lead to a qualification registered by the South African Qualifications Authority (SAQA) associated with a trade, occupation or profession and the intended learnership is registered with the Director-General.

Learnerships are governed by 'learnership agreements' between the learner, the employer or group of employers and the accredited training provider. When the employer enters into any learnership agreement, being an agreement entered into for a specified period between a learner, the employer or a group of employers and a skills development provider who is accredited by the Quality Council for Trades and Occupations (QCTO) or group of such skills development providers, then such learnership must—

- oblige the employer to employ the learner for the period specified in the agreement;
- provide the learner with the specified practical work experience;
- release the learner to attend the education and training specified in the agreement;
- oblige the learner to work for the employer and attend the specified education and training; and
- oblige the skills development provider to provide the education and training specified in the agreement and the learner support specified in the agreement.

A learnership agreement must be in the prescribed form and registered with a SETA in the prescribed manner. The employer or skills development provider that is party to a learnership agreement may be substituted with the consent of the learner and the approval of the SETA which registered the agreement. Where an employer has developed a learnership, it should register this learnership with the SETA and ensure that a contract is concluded with the learner. Notice of such contract should be given to the Department and the SETA.

Contract of employment with learner under a learnership

If a learner was in the employment of the employer who is party to the learnership agreement when the agreement was concluded, the learner's contract of employment is not affected by the agreement.

If the learner was not in the employment of the employer who is party to the learnership agreement when the agreement was concluded, the employer and learner must enter into a contract of employment.

The contract of employment of a learner may not be terminated before the expiry of the period of duration specified in the learnership agreement, unless the learnership agreement is terminated as a result of the expiry of the learnership agreement.

When the learner is already in the employment of the employer before conclusion of the learnership, the employment contract will continue.

A learnership agreement may not be terminated before the expiry of the period of duration specified in the agreement unless–

- the learner meets the requirements for the successful completion of the learnership;
- the SETA which registered the agreement approves of such termination; or
- the learner is fairly dismissed for a reason related to the learner's conduct or capacity as an employee.

Skills programme

A 'skills programme' means a skills programme that is occupationally based and, when completed, will constitute a credit towards a qualification registered in terms of the National Qualifications Framework. Skills programmes include one or more unit standards for which a learner can obtain credits. A skills programme by itself is not, however, a full qualification.

A person who has developed a skills programme may apply to the relevant SETA for a grant or to the Director-General for a subsidy. In this regard, the SETA or Director-General may fund such skills programme if it is in accordance with the sector skills development plan or the national skills development strategy.

A SETA or the Director-General may set any terms and conditions for funding that the SETA or the Director-General consider necessary. The SETA or the Director-General must monitor the skills programmes funded by the SETA or the Director-General, as the case may be.

Where an employer has developed a skills programme, it should pursue opportunities to apply for a grant or subsidy from the government in respect of such program.

Procedure to claim rebates

An employer has the right to claim back some of the money which it has invested in the development of its employees. The actual claim that the employer has to submit to activate the claim procedure is called an annual training report and workplace skills plan (ATR & WSP). This document consists of two parts.

The first part is the annual training report. The annual training report tells the SETA what training has taken place in the organisation in the previous 12 months and which employees received training.

It also contains information as to the type, cost and delivery method of the training. It then addresses whether the training that the employees received is in line with the planned training for the organisation, industry and critical skills identified by the SETA.

The second part of the document is the workplace skills plan. This part of the document tells the SETA what training the organisation will provide to employees in the next 12 months, based on the operational requirements of the organisation, its industry and the critical skills identified by the SETA. This document is a checks-and-balances system for the SETA, allowing it to gather valuable statistical information regarding skills shortages, critical skills in organisations and development requirements within the industry.

It also allows the government to collect skills needs and to make this information available to training institutions, such as universities and technical training institutions. Without this information, the government would not be able to plan learnership training courses nor provide for skills shortages.

Completing this document falls under the control of the skills development facilitator (SDF) of the organisation. To complete the required documentation, the organisation needs a trained and accredited SDF. Although this might seem like just completing a form, the compilation of the information and the implementation is very involved.



WHAT HAPPENS IF YOU DO NOT COMPLY?

Failure to comply with this Act results in a criminal offence and any person who is found guilty may be sentenced to a fine or imprisonment for a period not exceeding one year.



RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

The following controls must be in place to demonstrate compliance with the Act:

- Learnership agreements;
- Contract of employment with learner under learnership; and
- Application for rebate on money spent in respect of staff training which will include the compilation and submission of workplace skills matrix, work plan skills programme and training schedule and record of training.

FURTHER INFORMATION

Regulator

Department of Labour

Website

www.labour.gov.za