



***The impact of the hiring and firing decision of employment
protection legislation on unemployment in South Africa***

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ABSTRACT

The impact of strict employment protection legislation (EPL) on unemployment is still uncertain. However, evidence in literature points to the hiring and firing provisions of EPL being the source of some of the labour market rigidity in South Africa.

Hiring and firing provisions comprise a number of elements such as severance pay, dismissal procedures, probationary employment and temporary work arrangements. This research investigates the impact of these measures on the hiring and firing decision through a survey questionnaire distributed to approximately 20 000 small business respondents, who were also tested on the impact of EPL on small business in creating new jobs.

The purpose of the research was therefore to contribute to the literature on the role which EPL plays in the hiring and firing decision, and ultimately on unemployment.

The results of the research point to a still strong perception that EPL in South Africa is strict despite evidence to the contrary, and that small business respondents believe procedural elements play a significant role in their hiring and firing decision, but some uncertainty with regard to the role of severance pay. The strongest indication was the perception of the regulatory burden of EPL faced by small businesses.

KEY WORDS

Employment protection legislation, unemployment, hiring and firing decision

DECLARATION

I declare that this research project is my own work. It is submitted in partial fulfilment of the requirements for the degree of Master of Business Administration at the Gordon Institute of Business Science, University of Pretoria. It has not been submitted before for any degree or examination in any other university. I further declare that I have obtained the necessary authorisation and consent to carry out this research.

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CHAPTER ONE: INTRODUCTION

1 INTRODUCTION

1.1 Unemployment in South Africa

Unemployment is one of the main challenges facing South Africa today. It is widely acknowledged that unemployment in South Africa is historical and is rooted in the structure of the economy (Phillips, 2010). Over the years many policy frameworks were introduced by the South African government to tackle unemployment in South Africa, such as the Reconstruction and Development Programme (RDP), Growth Employment and Redistribution (GEAR), Accelerated and Shared Growth Initiative for South Africa (AsgiSA), Joint Initiative on Priority Skills Acquisition (JipSA) and more recently the New Growth Path (NGP) 2010 and the National Development Plan: Vision for 2030 of the National Planning Commission, 2011 (National Planning Commission, 2011). However, unemployment still remains unacceptably high; especially amongst previously disadvantaged communities in South Africa according to the latest Quarterly Labour Force Survey released by Statistics South Africa (2012), in the second quarter of 2012 the official unemployment rate was 24.9%.

The NGP is premised on the concept that "*creating decent work, reducing inequality and defeating poverty can only happen*" through growth (Economic Development Department, 2010, p.1). It suggests that this will be achieved through a combination of macro-economic and micro-economic interventions by focusing on infrastructure development investment in the key areas of energy, transport, communication, water and housing.

Whilst many solutions have been offered to reduce the unemployment problem, a common suggestion, causing much debate between the relevant stakeholders, is that labour laws in South Africa are too strict and that a relaxation of labour market regulation is required to help stem unemployment. It has, however, not always been clear what the role and effect of labour market regulation is on unemployment and to what extent the oft repeated claim of the strictness of South Africa's labour market regime is true.

In this regard, Benjamin, Borat and Cheadle (2010) have stated that the debate on labour market regulation in South Africa has tended to be dominated by rhetoric and perception based evidence, with not much empirical justification. In their analysis and critique of a World Bank survey on labour market regulation in various countries, including South Africa, Benjamin *et al.* (2010) point to various flaws in the World Bank methodology, but concede that an important outcome of the World Bank study was the indication that the reported rigidity of South Africa's labour market regime may stem from the inflexibility of legislative and other provisions dealing with hiring and firing of employees (Benjamin *et al.*, 2010).

Other authors (Hodge, 2009; Kingdon & Knight, 2007) have also suggested that the answer to the unemployment challenge in South Africa lies in the labour market and specifically that labour market regulation requires consideration as part of any policy interventions, although they do not deal with which specific aspects of labour market regulation which require change. Kingdon and Knight (2007) also show, similar to Hodge (2009), that the growth of the labour market in South Africa and its specific characteristics make it almost an "international outlier" (Kingdon & Knight, 2007, p.814). The authors then argue that to effectively address the unemployment challenge in South Africa various policy measures directed at labour market regulation and the development of the small medium and micro enterprises sector is required (Kingdon & Knight, 2007).

However, the question of the impact of labour market policies on extreme unemployment is difficult to answer definitively (Barnard, 2009). The World Bank (2011), for example, in a study of employment protection legislation (EPL) in Croatia, recognises that changes to EPL can be a challenging political process, and needs to be coupled with public information campaigns and dialogue with social partners (World Bank, 2011). The argument should be that relaxing the strictest labour laws will lead to better employment prospects and reduced unemployment (World Bank, 2011). These sentiments are also at the core of the current debate in South Africa on these aspects.

It is, however, necessary to understand which aspects of labour laws cause a constraint on the labour market and not generalise all labour law as a problem. In this regard, one of the key areas identified is the simplification of dismissal procedures (National Planning Commission, 2011) or, more broadly, the hiring and firing provisions of EPL. Hiring and firing provisions ultimately impact on the decision to hire or fire an employee, which decision then determines if a job is created or destroyed, thereby

impacting on unemployment. The focus of this research is therefore on the factors influencing those hiring and firing decisions.

Those factors range from procedural matters, provisions relating to probation and temporary work, severance pay provisions and also specifically how small business is affected, which is an important focus in this research. The development of small business is one of the key elements of policy measures to stimulate economic growth and create new jobs. It is therefore important to also understand how small businesses experience EPL in order to contribute to a business and regulatory environment which encourages the growth of new business.

There is some evidence that the strictness of EPL in South Africa is not as bad as it is actually perceived by executives (OECD, 2010). Even if it is so that the perception is worse than the actual EPL, it still remains important to understand what the underlying causes are which create those perceptions. One way of doing that is to ask specific questions about elements of EPL, in this case hiring and firing provisions, and its own constituent elements.

Through a better understanding of what causes the negative sentiments, policy makers will be in a better position to deal with both the perceived and the actual challenges of EPL.

1.2 Research Objective

The aim of this research is therefore to obtain a better understanding of specific aspects of EPL relating to the hiring and firing decision in order to form a view on how EPL should be amended, if at all. It is hoped that this would contribute to the literature on how EPL should be amended to achieve a more flexible labour market.

In essence, unemployment and its causes in South Africa is a complex issue, of which EPL is only one of the considerations, albeit an important one. A more detailed understanding of EPL and its impact on unemployment will then hopefully also contribute to reducing unemployment in South Africa. The special focus on small business will hopefully also provide much needed insight into measures which could encourage the development of small business in South Africa.

1.3 Outline of Research

The chapters of this report which follow contain the following –

Chapter 2 – provides an outline of the relevant literature on EPL and the impact of EPL on unemployment;

Chapter 3 – captures the research problem and the identified research propositions;

Chapter 4 – contains the research methodology followed and outlines the data collection process;

Chapter 5 – sets out the results of the data collection process;

Chapter 6 – discusses the results of the data collection process with specific reference to the literature in chapter 2; and

Chapter 7 – consolidates the findings and provides recommendations for future research.

CHAPTER TWO: LITERATURE REVIEW

2 LITERATURE REVIEW

2.1 Introduction

There is a common belief that the rigidity of labour markets, which include measures such as minimum wages, unemployment benefits and employment protection legislation (EPL), can lead to a high level of unemployment (Saint-Paul, 2002; Grieben, 2005; Lee, McCann & Torm, 2008). A common call is then made for the reduction in certain of these measures in order to reduce unemployment (Saint-Paul, 2002).

It is, however, not clear what the impact of labour market policy and EPL is on unemployment (Barnard, 2009) creating the need for further empirical study of the issue.

The literature dealt with here deals with the international studies on the effect of employment protection on unemployment and the South African perspectives on the question. The focus of the literature is also specifically on the hiring and firing provisions of EPL.

2.2 Employment protection legislation

EPL refers to restrictions on dismissal of employees, typically by means of severance pay stipulations, compulsory notification periods and other administrative measures (Kan & Lin, 2011). These measures are designed for the protection of the employee's welfare and have the effect of delaying or preventing employees from being dismissed (Kan & Lin, 2011).

In a broad sense, the source of employment protection can be found in legislation, collective agreements and individual contracts (Martin & Scarpetta, 2011). Therefore, the practical effect of EPL typically manifests in legislative interpretation by courts and practical enforcement of laws and regulations (Martin & Scarpetta, 2011). This factor makes cross-country comparisons of the application and impact of EPL difficult and requires further empirical and country specific analysis of the role of EPL in labour market developments (Martin & Scarpetta, 2011).

EPL also extends to placing limitations on the use of temporary and fixed term work contracts, measures designed to protect workers from arbitrary actions and encouraging longer working relationships between employers and workers (Venn, 2009).

One of the purposes of EPL is to provide employees with security in their work and in the event of dismissal or retrenchment (Cazes & Tonin, 2010). Theoretical models also predict that stricter EPL should make employment more stable and lengthen the duration of individual employment relationships (Cazes & Tonin, 2010).

The Organisation for Economic Co-operation and Development (OECD) (OECD, 2004) provides a comprehensive definition of EPL as referring to all measures to protect employees as found in legislation, court decisions, collective agreements or industry practice. Typically EPL regulations either forbid certain conduct, for example termination of employment with or without cause, or it mandates behaviour, for example the granting or payment of benefits such as sick leave and minimum wages, coupled with numerous procedural regulations for various situations (World Bank, 2011).

The theoretical basis of EPL in economics can be found in two components, being tax and transfer (OECD, 2004). The transfer component, which includes aspects such as severance payments, notice periods and collective dismissal costs, is considered a monetary transfer from employer to employee, in the same manner as a wage (OECD, 2004). On the other hand, the tax component consists of third party costs on the employer, for example trial and hiring costs (OECD, 2004). The OECD argues that employers take both these tax and transfer cost components into account before employing a worker as employers consider both entry and exit costs, or respectively hiring and severance costs, as relevant in the decision-making (OECD, 2004).

In South Africa, labour law, which takes precedence over other legislation other than the Constitution of the country, is sourced from primarily the Labour Relations Act No 66 of 1995 (LRA) (Benjamin, 2005). In addition to the LRA, employment conditions are also regulated by the Basic Conditions of Employment Act No 75 of 1997 (BECA), the Employment Equity Act No 55 of 1998 (EEA), the Immigration Act No 13 of 2002, and various other skills development, occupational health, safety and unemployment insurance legislation (Benjamin, 2005).

Current amendment legislation being considered in South Africa includes amendments to the LRA and BCEA. A major consideration behind these labour bills is to respond to the increasing use of non-standard forms of work in South Africa and the growth of the use of labour brokers and temporary workers by placing restrictions on the use of fixed term contracts (Benjamin, Bhorat and Van Der Westhuizen, 2010). The most contentious of these amendments have been those relating to the possible ban on the use of labour brokers and the proposal to create a presumption of indefinite employment with regard to temporary workers (Benjamin, Bhorat and Van Der Westhuizen, 2010).

Benjamin *et al.*, (2010) prepared a regulatory impact assessment of the various labour bills and, although they recognise that non-standard work, such as temporary work, has a place in a modern economy, they also recognise that temporary workers are typically subject to unfair and discriminatory working conditions. However, creating a presumption of permanence for fixed-term, temporary or seasonal workers is likely to lead to increased costs for employers who must now incur additional costs of employment of permanent workers and increasing the cost of doing business (Benjamin *et al.*, 2010). It is furthermore also likely that a substantial number of temporary workers will not necessarily be offered permanent employment which, in turn, will result in a decline of total employment and an increase in unemployment (Benjamin *et al.*, 2010).

There is though a need to improve the job security of temporary workers as research indicates that large numbers of temporary workers are employed on a non-permanent basis by the same employers for years on end (Benjamin *et al.*, 2010). It is likely that an approach which seeks an outright ban on labour brokers will not pass constitutional muster in South Africa as it would violate the rights to free trade and the right to fair labour practices (Benjamin *et al.*, 2010). For example, in Namibia a similar ban on labour brokers was struck down for failing these tests (Benjamin *et al.*, 2010).

Benjamin *et al.* (2010) also point out that researchers have recommended a policy of promoting labour market intermediaries who facilitate the placement of young and other vulnerable workers (Benjamin *et al.*, 2010; Feldmann, 2009a).

In measuring the strictness of EPL, the indicators developed by the OECD and the World Bank are widely used. In terms of the OECD methodology, EPL is described and measured across a range of items dealing with protection against individual dismissal,

measures relating to collective dismissal and regulation of temporary work (OECD, 2004). These measures can then be used to make EPL comparisons between countries and across time periods (OECD, 2004).

EPL therefore serves an important labour market regulatory purpose aimed at protecting workers generally (Kan & Lin, 2011) and setting the rules by which firms must conduct themselves (World Bank, 2011).

2.3 Unemployment

Traditional macroeconomic theory holds that typically unemployment will fall when an economy is growing and *vice versa* (Colander, 2010). Colander (2010) also distinguishes between cyclical unemployment, being unemployment resulting from fluctuations in economic activity, and structural unemployment, being unemployment caused by the institutional structure of an economy (Colander, 2010), as in the case of South Africa.

High unemployment tends to also cause job seekers to be discouraged from searching for jobs leading to the discouraged worker phenomenon (Kingdon & Knight, 2007). However, these discouraged workers should not be excluded from the measure of unemployment as they still form an integral part of the labour market; it would therefore be inappropriate to exclude them from the formal definition of unemployment (Kingdon & Knight, 2007). It is therefore appropriate to use the broad definition of unemployment (Kingdon & Knight, 2007).

The target rate of unemployment for an economy is normally described as the lowest sustainable rate of unemployment in an economy and is generally in the region of 5% unemployment (Colander, 2010), a view shared by Altman (2007) in the South African context. Altman (2009) also points out that, unlike other parts of the world, the unemployment challenge in South Africa is not caused by the recent global economic crisis (Altman, 2009).

In this study, the wide definition of unemployment will be used (Kingdon & Knight, 2007).

2.4 Labour market regulation

Benjamin (2005) points out that the concept of labour market regulation extends beyond the conventional notion of labour or employment law, but encapsulates laws, policies and other measures which seek to regulate the broader operation of the labour market (Benjamin, 2005). According to Benjamin (2005) the categories which make up employment market regulation are minimum conditions of employment, collective bargaining and worker participation, institutions of governance, dispute resolution and adjudication, the promotion of equality in the work environment, as well as providing skills development and placement within the employment market and providing social security linked with employment (Benjamin, 2005).

In South Africa, the suite of legislation and regulations comprising the labour regulation framework includes the LRA, BCEA, EEA and Unemployment Insurance Act and Skills Development Act. All these laws operate under the overall framework of the Constitution, containing a Bill of Rights, and the supreme law of the country.

Labour market regulation is sometimes also divided into five forms (Benjamin, 2005) –

- 2.4.1 protective regulations, with the objective of preventing those in power from abusing such power in relation to those that are weaker;
- 2.4.2 facilitating regulations, aimed at enabling certain developments taking place;
- 2.4.3 repressive regulations, to prevent certain conduct from occurring;
- 2.4.4 promotional regulations, to encourage certain developments; and
- 2.4.5 fiscal regulations, dealing with financial and fiscal aspects of the labour market (Benjamin, 2005).

This study is concerned with the protective types of regulations.

Benjamin (2005) also points to the hassle factor associated with the hiring and firing of employees as contributing to the perception of labour market rigidity which Borat, Lundall and Rospabe (2002) first raised. However, other than two references to hiring and firing factors, Borat *et al.* (2002) do not delve into any specifics of what the hassle factor entails or to what extent it may impact on unemployment in South Africa.

The literature on labour regulation in South Africa has typically only dealt with the strictness thereof, with little attention to specific aspects of labour regulation and how it impacts on unemployment in South Africa.

2.5 Labour regulation and EPL internationally

Until fairly recently, most of the literature and surveys investigating the effects of labour market regulation on unemployment have concluded that strict labour market regulation, such as employment protection measures, may negatively impact job creation and increase unemployment (Bernal-Verdugo, Furceri & Guillaume (2012). However, these surveys typically cover industrial countries, such as the OECD countries (Feldmann, 2009a), with only one study (Botero, Djankov, La Porta, Lopez-de-Silanes & Shleifer, 2004) before Feldmann (2009a), also extending its analysis to emerging market countries. Indeed, most of the surveys use the EPL indicators developed by Botero *et al.* (2004) (Benjamin, Bhorat & Cheadle, 2010).

Until at least 2003 it appears that there was still debate about the extent to which labour market regulation affects unemployment (Feldmann, 2003), such that the effect of, for example, hiring and firing regulations on unemployment could not be reliably deduced from theory, thus requiring further empirical analysis (Feldmann, 2003). In that early study, Feldmann (2003) finds that hiring and firing regulations aggravate unemployment and suggests various measures to relax the regulations in the surveyed countries. This survey also uses Executive Opinion Survey data, which Feldmann (2009a) points out has a potential for producing biased results.

Feldmann's (2009a) survey uses the labour market regulation component of the Economic Freedom of the World Index which consists of five indicators. According to Feldmann (2009a) these indicators are the "impact of minimum wage, flexibility in hiring and firing, collective bargaining, incentives from unemployment benefits and military conscription" (p77). Other than the military conscription indicator, the Executive Opinion Survey data was used for the calculation of the balance of the indicators (Feldmann, 2009a).

Feldmann (2009a) though points to a potential weakness of using the Executive Opinion Survey data in that respondents may have a bias as to the strictness of labour regulation in their respective countries based on, for example, extensive media reports

with a particular viewpoint. Benjamin *et al.* (2010) allude to a similar concern when they state that the debate around the strictness of labour regulation in South Africa has been characterised by very little empirical justification for stated viewpoints. In addition, Feldmann (2009a) recognises that the data could be affected by the state of the business cycle at the time of the questioning; for example, respondents may judge a country's dismissal protection regulations more favourably during boom times when they may not have a need to retrench workers (Feldmann, 2009a). However, Feldmann's (2009a) correlation analysis of this question points to a rejection of the hypothesis that booms (recessions) lead to higher (lower) Executive Opinion Survey scores (Feldmann, 2009a).

Other than Feldmann's (2009a) own acknowledged weaknesses of the Executive Opinion Survey data, Benjamin *et al.* (2010) are much more firm in their critique of the Executive Opinion Survey data. Benjamin *et al.* (2010) points out, for example, that the Executive Opinion Survey has a very small number of executives who respond, with South Africa having had 39 and 57 respondents in 2009 and 2010 respectively. Benjamin *et al.* (2010) also criticise the use of subjective data when there are hard data available.

Feldmann (2009b), however, raises the point that it is difficult to develop an objective indicator that correctly reflects the strictness of hiring and firing provisions. In distinguishing between the *de jure* and *de facto* strictness of regulations, Feldmann (2009b) argues that even if it would be possible to capture the *de jure* strictness of labour regulations, it may not adequately capture the *de facto* strictness, which varies over time and is influenced by social norms, how rules are enforced in practice and the legal interpretation of those regulations (Feldmann, 2009b).

Feldmann (2009a) therefore proposes that some of the reasons why the Executive Opinion Survey data correctly reflects the strictness of the hiring and firing regulations are that the selection of respondents is representative and they have practical experience of the regulations, the Executive Opinion Survey questions are phrased objectively and the respondents being decision makers on hiring and firing decisions, their answers are more likely to reflect the strictness of hiring and firing regulations, better than objective data (Feldmann, 2009a).

The regression results of the Feldmann (2009a) study point to an increase in unemployment caused by tight labour regulations, with hiring and firing provisions

having the most severe effect. Feldmann (2009a) then suggests that despite the strength of their results further research is warranted on, in particular, effects of different types of labour regulation and how hiring and firing regulations should be relaxed. Possible measures that could be investigated are whether and to what extent notification requirements on dismissal should be relaxed or removed, if severance pay provisions should be reduced and what restrictions should be placed on the use of fixed term contracts and temporary work arrangements (Feldmann, 2009a).

There are, however, not explicit theoretical reasons for EPL to reduce average employment and increase average unemployment (Barone, 2001). Arguably, the hiring and firing provisions of EPL can be said to have two competing effects on employment and unemployment; on the one hand, strict EPL reduces the likelihood of employers hiring new employees out of fear for the difficulty of reversing the hiring decision, especially in uncertain economic times (Barone, 2001). On the other hand, strict EPL such as restrictions on firing can also lead to employers not dismissing employees during economic slowdowns with the result that the net effect between job creation and job destruction is not clearly distinguishable, with the overall employment and unemployment levels being unchanged (Barone, 2001).

Provisions regulating the use of temporary or fixed term workers, imposing training requirements on firms and which direct the employment of particular groups in society also affect employers' hiring decisions (Barone, 2001). On the other hand, the firing decision is influenced by provisions relating to mandatory pre-dismissal notification periods, severance pay and special requirements for collective dismissal (Barone, 2001). Strict EPL tends to force firms into seeking alternatives in the labour market through measures such as increased use of overtime and temporary workers (Barone, 2001).

Arguing in the same vein as Barone (2001), Cazes and Tonin (2010) state that the effect of EPL on employment appears ambiguous but that strict EPL in the form of extensive protection for permanent jobs will lead to employers increasing the use of atypical forms of employment such as temporary work contracts (Cazes & Tonin, 2010).

Martina and Scarpetta (2011) point out that the source of the justification for EPL lie in the need to protect workers from unfair behaviour by employers but that the implicit cost imposed on employers may hinder labour market movements and discourage job

creation. However, although Martina and Scarpetta (2011) focus more on the impact of EPL on productivity, they do move from the general premise that the impact of EPL on overall employment and unemployment is still the subject of much debate (Martin & Scarpetta, 2011).

In a report for the International Monetary Fund, Bernal-Verdugo, Furceri and Guillaume (2012) concludes that more flexible labour market regulations appear to have a statistically significant negative impact on unemployment, with employment protection measures relating to hiring and firing of employees having the strongest effect (Bernal-Verdugo *et al.*, 2012). More specifically, Bernal-Verdugo *et al.* (2012) also use the World Bank's Doing Business data for measuring, *inter alia*, aspects of hiring and firing measures, such as the mandated cost of hiring (Bernal-Verdugo *et al.*, 2012).

In 2010 Benjamin, Bhorat and Cheadle (2010) critiqued the methodology used in the World Bank Doing Business survey, arguing that the narrow focus on legislation provide only a partial picture of the labour market regulatory regime and proposing an extension of the framework to include subordinate legislation, labour market institutions and judicial interpretation. At the time of their writing, the World Bank had already suspended the use of the Employing Workers indicators as a basis for policy advice, these indicators being derived from the Doing Business survey (Benjamin, Bhorat & Cheadle, 2010).

In their analysis, Benjamin, Bhorat and Cheadle (2010) suggest that their calculations, using the World Bank Doing Business survey data, point to the reported rigidity of the South African labour market as perhaps being located in the legislative provisions on hiring and firing applicable in South Africa. Benjamin *et al.* (2010), however, do not investigate which hiring and firing provisions lead to the rigidity perception or how it does so. Furthermore, it should be noted that the analysis of Benjamin *et al.* (2010) is done with reference to the perception of the labour market inflexibility and not specifically on the impact of EPL on unemployment.

In their critique of the World Bank's "Employing Workers" index, on which the "*Doing Business*" indicators are based, Lee, McCann and Torm (2008) raise several problems. One of the assumptions of the index is that the typical employer is a limited liability company, operates in the manufacturing sector and has 201 employees (Lee *et al.*, 2008). In addition, the typical worker is assumed to be forty two years old, employed on a full-time basis and to have been employed by the same company for twenty years

(Lee *et al.*, 2008). Lee *et al.* (2008) are therefore rightly critical of these assumptions and point out that it is inappropriate in sub-Saharan Africa in that it is inconsistent with the reality of the typical employer and worker in the region and in many developing countries (Lee *et al.*, 2008).

More specifically with regard to EPL, until as recent as 2011, Kan and Lin (2011) argue that whilst theoretical analysis of the effect of EPL appear consistent, there are significant differences in empirical findings on the effect of EPL (Kan & Lin, 2011). Some of these differences, the authors argue, relate to the nature of the data used, which is typically cross-country and which ignore cross-country differentials such as institutions, rule of law and social norms (Kan & Lin, 2011). The same point is made by Benjamin *et al.* (2010) when they argue that the omission of certain features of a regulatory regime which is unique to a particular country could result in a biased outcome of labour regulation measures (Benjamin *et al.*, 2010).

Hartwell (2010) makes the same point as Kan and Lin (2011) regarding the weakness of empirical evidence on the effect of EPL on overall unemployment and also argues that not much is known on the effects of EPL on emerging markets and the impact of EPL on labour markets in a specific country (Hartwell, 2010). Hartwell (2010) also contends that most cross-country studies have found that EPL does not appear to have a significant effect on aggregate unemployment (Hartwell, 2010).

Morrison (2004) arrives at a similar conclusion regarding the minimal impact of EPL in New Zealand on their main labour market indicators. In analysing some of the reasons for the rarity of comprehensive surveys of the impact on EPL in New Zealand, Morrison (2004) argues that politically the ambiguity that surrounds the impact of EPL suits both sides to the debate with neither side being able to scientifically refute a claim or counterclaim (Morrison, 2004). This is perhaps also a situation similar to what has been the experience in South Africa on this debate; see for example Pillay (n.d.), arguing from a worker and trade union perspective, who states that a deregulated labour market will not lead to job creation, but rather make the lives of vulnerable employees worse.

Gimpelson, Kapelyushnikov and Lukyanova (2010), in their study of the enforcement of EPL in Russia, also find that strict EPL tends to suppress employment and stimulate unemployment. Their focus is more on the effect of stricter enforcement of EPL and they conclude that stricter enforcement may lead employers to reduce their

participation in the labour market, thus impacting on unemployment (Gimpelson *et al.*, 2010). They therefore argue that to ensure EPL compliance, EPL should be more transparent and less costly in order to encourage more active participation in the labour market, leading to the creation of employment (Gimpelson *et al.*, 2010).

Although much of the focus of the study of Gimpelson *et al.* (2010) is on the impact of differences in enforcement across regions and/or cities or segments of firms (Gimpelson *et al.*, 2010) their results and findings are also instructive on the impact of EPL on total unemployment. Similar to Feldman (2009a), Gimpelson *et al.* (2010) also find that young and women workers bear a disproportionate burden of strict EPL.

Clark and Postel-Vinay (2008) argue that EPL has an ambiguous effect on the overall unemployment rate. However, their research focusses on the effect of measures such as EPL and unemployment benefits on job security, with less of a focus on the actual impact on unemployment (Clark & Postel-Vinay, 2008). The argument of Clark and Postel-Vinay (2008) is in line with that of Addison, Teixeira and Grosso (2000) that the impact of EPL on unemployment and employment is indirect and difficult to isolate from other causal factors, making any conclusive finding on its impact difficult (Addison *et al.*, 2000).

Bertola, Boeri and Cazes (2000) also argue that empirical evidence on the relationship between EPL and labour market performance are based on imperfect measures of the strictness of EPL. Whilst also recognising the theoretical models which point to the effect of EPL on dismissal and hiring, they further point out that many aspects of EPL are qualitative and difficult to measure (Bertola *et al.*, 2000). Coupled with this qualitative consideration and the fact that typically EPL indicators are determined with reference to legal constraints that apply in each country, Bertola *et al.* (2000) argue that most EPL indicators are not well suited for tracking differences between countries and over time with regard to the extent of enforcement of EPL (Bertola *et al.*, 2000). Based on their findings and concerns with the complexity of calculating relevant indicators and rankings, Bertola *et al.* (2000) call for further research, in the same vein as Feldman (2009a), to capture the theoretical and empirical complexities of EPL and unemployment in order to provide a firm and sound basis for policy development (Bertola *et al.*, 2000).

In a recent study of the effects of EPL on labour market performance in Croatia, the World Bank (2011) finds that strict EPL is likely to have an adverse effect on labour

market performance and that substantial gains can be expected if EPL is made more flexible (World Bank, 2011). The specific proposals made for improving labour market outcomes in Croatia are that the strict regulation of fixed term (temporary) workers must be relaxed, the maximum compensation payable for the wrongful dismissal of a worker must be reduced, regulation of work hours must be more flexible to allow for seasonal fluctuations and the strict conditions for collective dismissal must be relaxed (World Bank, 2011).

One indication of the strictness of EPL in Croatia is the maximum amount payable for wrongful dismissal, being eighteen months' salary (World Bank, 2011), compared to the current similar requirement in South Africa of 12 months' salary. The Croatia study, however, appears to contradict Botha's (2009) similar study on the effect of minimum wages on employment in South Africa in that the World Bank (2011) finds a negative effect on employment.

Of particular interest to South Africa in the World Bank (2011) study is also the findings on the strength of trade unions and how it impacts on labour market performance. In analysing the sources of the rigidity of EPL in Croatia, it is argued that three main factors are identified: the pro-labour bias of courts, the strength of trade unions and collective bargaining agreements (World Bank, 2011). The argument is then extended that trade unions increase workplace protection of their own members covered by collective agreements, leading to worsened employment chances of workers not covered by the collective agreements and, in particular, the unemployed and new entrants into the job market (World Bank, 2011).

Moreover, trade unions also tend to block attempts by governments and employers' associations to make EPL more flexible by enhancing the job security and benefits of insiders and lowering the opportunities and benefits of outsiders (World Bank, 2011). In South Africa, Fourie (2011) also finds that union power may have resulted in a new form of labour market segmentation between unionised and non-unionised parts of the labour force.

Fourie (2011) analysed various approaches to the unemployment phenomenon in South Africa and identifies three so-called unemployment discourses, being labour, poverty development and macro. Fourie (2011) then argues that researchers in the different discourses are often blinkered and fragmented and do not engage with research results produced in other discourses, with debate occurring within but not

between the different discourses (Fourie, 2011). The implication of this is that the complex unemployment debate in South Africa needs to be broadened as it is unlikely that only one discourse will be able to provide the analytical insights and policy options which can effectively reduce unemployment in South Africa (Fourie, 2011).

Grieben (2005) also makes reference to the OECD (1999) study on EPL and similarly concludes that no significant effect of the strictness on unemployment as a whole is found, but long term unemployment may be aggravated by strict EPL due to the inflexibility in the labour market (Grieben, 2005). Grieben (2005) further points out that one of the basic principles of labour economics holds that an increase in firing costs may lead to a decrease in both hiring and firing by employers, with the result that the net effect on unemployment becomes uncertain.

2.6 Employment regulation in South Africa

Other than the international surveys, there does not appear to be much South Africa specific surveys analysing the effect of EPL on unemployment in South Africa. Borat and Cassim (2004) illustrate this point in pointing out that there have been very few studies of the impact of hiring and firing laws on long term employment growth in South Africa, with a joint study between the World Bank and the Greater Johannesburg Metropolitan Council in 1999 being one of a few such studies. This study focussed on formalised bargaining as a key consideration in hiring decisions (Bhorat & Cassim, 2004). Similarly Botha (2009) focussed on the minimum wage features of EPL and its impact on economic growth and, although discussing hiring and firing provisions in general, did not delve into the detail of it.

Although the majority of respondents in that study were of the view that labour legislation had no effect on their employment levels, Borat and Cassim (2004) criticise the study for making general reference to employment legislation and not dealing with specific clauses of the relevant labour laws to establish the effect of such provisions on unemployment. Borat and Cassim (2004) therefore argue the case for further study into employers' experiences with specific clauses or aspects of labour legislation and how it affects hiring and firing decisions (Bhorat & Cassim, 2004).

According to the OECD (2010) report, South Africa has one of the lowest scores (low being a good score) on the OECD's Employment Protection Legislation indicator, but it

recognises some challenges in how dismissals are dealt with, evidenced by the fact that firms appear to find firing more difficult than the EPL itself (OECD, 2010). This report also finds that lessons from other OECD countries indicate that EPL has no clear impact on total employment, but that the experience of OECD countries indicates that they can lower the so-called cost of protection by simplifying dismissal procedures (OECD, 2010).

The Investment Climate Survey of the World Bank (2007), had a few indicators of labour regulation, but instead based its survey information and results on the World Bank's Doing Business database. Therefore, the Investment Climate Survey also states the erroneous position that labour regulation in South Africa is stricter and that it is more difficult to hire and fire workers in South Africa than comparator countries or other OECD economies (World Bank, 2007).

The OECD Employment Outlook (2004) also suggests stringent EPL tend to increase structural unemployment in countries with large union coverage, although it confirms other studies at that time pointing to the lack of consensus on the overall impact of EPL on unemployment. Interestingly, the OECD Employment Outlook (2004) also provides evidence that EPL may not affect different demographic groups in the same manner and distinguishes the impact of EPL on youth and women, with Feldmann (2009a) also finding similar effects on the youth.

Bhorat and Cassim (2004) have pointed out a problem in one of the few studies done in South Africa on the effects of EPL, a joint study between the World Bank and the Greater Johannesburg Metropolitan Council in 1999, that hiring and firing provisions were not specifically dealt with and that the survey only makes general reference to labour legislation. That same study also focussed on formalised bargaining as a consideration in hiring decisions and was confined to manufacturing firms, again making the case for further study (Bhorat & Cassim, 2004) which goes beyond those narrow confines.

Barnard (2009) points out that, in contrast to the evidence of surveys such as the World Bank's *Doing Business* and World Economic Forum's *Competitiveness Index*, the OECD research on the impact of EPL on unemployment show little effect on the level of the unemployment rate but some impact on the duration of unemployment and the flows into and out of unemployment (Barnard, 2009).

The relationship between EPL and employment is more complex than that assumed by the *Doing Business* survey and there is no statistical relationship between the strictness of EPL and levels of unemployment (Benjamin & Theron, 2009). In their study of unemployment in South Africa, Kingdon and Knight (2007) also confirm the measurement difficulty of the potential ill-effects of labour legislation in South Africa (Kingdon & Knight, 2007).

The World Bank (2011), whilst also acknowledging further research is required on the correlation between EPL and labour market outcomes, nonetheless argue that strict EPL tends to be associated with longer spells of unemployment and lower employment rates for disadvantaged employee groups such as youth. This same point is made by Feldmann (2009a) whilst the World Bank (2011) also holds that strict EPL is associated with a larger informal sector.

Benjamin and Theron (2009) point out that the "difficulty of firing" index of the *Doing Business* survey is focussed more on redundancy than on ordinary dismissal. The authors argue that the reason could be that the *Doing Business* survey is typically directed at providing information to foreign investors, for whom the ease of entry and exit of a country would be primary considerations (Benjamin & Theron, 2009).

Therefore, whilst South Africa's EPL is not as strict as that of other OECD countries, there are acknowledged problems with hiring and firing provisions (OECD, 2010). However, there does not appear to have been much empirical research on specific elements of the hiring and firing decision in South Africa.

2.7 Temporary Work and Probationary Employment

Neugart and Storrie (2006) explain the phenomenon of temporary work agency which is commonly referred to in South Africa as labour brokers. Temporary work agency is defined as the phenomenon where a temporary worker is employed by a temporary work agency and through a contract is hired out to perform specific work at a client organisation or business (Neugart & Storrie, 2006). The BCEA in South Africa also defines a temporary employment service as a person who provides other persons to a client to render services or perform work for the client and who are in turn remunerated by the temporary employment service (BCEA, 1997).

The study by Neugart and Storrie (2006) found that temporary agency work does not necessarily stifle regular employment, but they recognise that there has been very little theoretical work and even less empirical studies on the impact of temporary agency work on employment (Neugart & Storrie, 2006).

There is, however, no clear evidence that probationary employment has the effect of reducing unemployment or creating jobs which Harcourt and Wood (2006) found in their study in New Zealand. Harcourt and Wood (2006) also point to studies in France which similarly could not find evidence of job creation or unemployment reduction. Economies with features of significant disadvantaged groups facing unemployment challenges would maybe be better served by focussing on skills development programmes rather than probationary employment policies (Harcourt & Wood, 2006). This would resonate well with South Africa's own challenges.

In the final instance, it appears that further empirical research on the effect of temporary work and probationary employment is required.

2.8 The role of small business

Studies indicate that small firms are generally associated with faster growth of employment (Shaffer, 2006), with smaller firms associated with economic growth leading to increased job creation and decreased levels of unemployment (Shaffer, 2006). Smaller firms may also be less selective in their hiring practices, thereby creating more employment than larger firms, which in turn may lead to more persons being employed by other firms (Shaffer, 2006), with Floyd and McManus (2005) making a similar argument that small firms typically benefit an economy through many people often having a first job in a small firm rather than a large firm. However, although firm size appears to matter for employment growth, it is not clear or to what extent it does (Shaffer, 2006).

Bartelsman, Scarpetta and Schivardi (2005) also find inconsistent employment creation between a sample of small firms in Europe and the USA, which could be attributed to stricter hiring and firing regulations in Europe compared to the USA (Bartelsman *et al.*, 2005).

Drnovsek (2004) on the other hand specifically studies the job creation potential in transition economies as much of the research on the question was done in favourable and stable economic conditions in market economies. Drnovsek (2004) therefore studies Slovenia and finds that small firms have been the most important employer during economic transition periods, and although this study relates to Slovenia's transition from a socialist to a market economy, it also holds lessons for South Africa's economic transition to an inclusive economy. Fourie (2011) also recognises this problem in arguing that the developing country context of South Africa is often not properly taken into account in the various analyses of unemployment in South Africa and that this creates a gap in the discourse of unemployment in South Africa (Fourie, 2011).

Caution should, however, be exercised in extrapolating long term policy positions based on firms' short term behaviour since job creation results in the short term may not necessarily imply a firm's long term behaviour (Drnovsek, 2004).

Current proposals in South Africa for an improved labour market regulatory regime include-

- providing clarity on the nature and intent of probationary periods of employment;
 - simplifying dismissal procedures for poor performance or misconduct;
 - improved regulation of temporary employment services; and
 - strengthening and improving dispute resolution procedures
- (National Planning Commission, 2011).

In South Africa, small firms also typically complain of the labour regulatory burden which they suffer and, unlike larger firms, do not have the financial or administrative muscle to always comply with labour law requirements (National Planning Commission, 2011).

These proposals therefore also indicate the relevance of further empirical research on hiring and firing decisions in the workplace, focussing on small business.

2.9 Conclusion

There is not yet any comprehensive consensus on the impact of EPL on unemployment, with some evidence pointing to, at best, an unambiguous result as strict EPL could have the neutral effect of stifling both hiring and firing. There is a theme internationally and in South Africa though, that some of the measures which could create inflexibility in the employment market are hiring and firing provisions.

Hiring and firing provisions impact on the decision to employ or dismiss an employee which decision ultimately impacts on the job market. The aspects of the hiring and firing decision which typically come into play are length of notice periods, severance pay which may become payable and procedural aspects before and after dismissal. In addition, in South Africa, which has a significant unemployment problem, the effect of hiring and firing provisions on small business is crucial as small businesses tend to be the stimulators of economic growth of a country.

Many of the studies of EPL and unemployment have been cross-country studies and in South Africa there appears to be a disparity between the objective assessments of EPL by, for example, the OECD and the subjective perceptions of the EPL by executives and practitioners. As is the case in other countries which have strict EPL or perceived strict EPL, the alternative forms of employment such as probation and temporary work then surfaces. It then becomes necessary to also assess the impact of these alternative measures on unemployment, an aspect in which there still remains a dearth of research.

There is therefore scope for further research in order to understand the effect of EPL, specifically hiring and firing provisions, on unemployment in South Africa and the literature also seems to indicate that further empirical research on the question is necessary.

CHAPTER THREE: RESEARCH PROBLEM

3 RESEARCH PROBLEM

The study will investigate the impact of EPL on unemployment in South Africa, focussing on the provisions of EPL which affect the hiring and firing decision.

Unlike most studies on this topic which asked only general questions on the impact and experience of labour legislation on employment levels (Bhorat & Cassim, 2004), this study aims to ask more specific and detailed questions on the hiring and firing aspects of South African labour legislation and how it impacts on unemployment. It is therefore not clear if hiring and firing provisions of EPL have the same impact. Key areas, as suggested by Feldmann (2009a), to be addressed relate to severance pay, restrictions on the use of fixed term contracts and temporary work agencies. In addition, the study will also focus on probationary employment and CCMA procedures.

If unemployment is to be turned around, the development of small business to stimulate economic growth (Shaffer, 2006) will be critical. It is therefore also important to understand the impact of EPL on small business and whether business size matters in the experience or perception of EPL.

The crux of the research is therefore to obtain a deeper insight of some of the specific elements of the hiring and firing decision in order to add to the literature on what employers take into account in their employment decision.

3.1 Research Propositions

The identified research propositions for the study are -

- 3.1.1 Research Proposition 1 - Employment protection legislation in South Africa impacts negatively on unemployment.
- 3.1.2 Research Proposition 2 - Hiring provisions of employment protection in South Africa impact negatively on unemployment.

- 3.1.3 Research Proposition 3 - Firing provisions of employment protection in South Africa impact negatively on unemployment.
- 3.1.4 Research Proposition 4 – Business size of firms impact on their perception of hiring and firing provisions of EPL.

CHAPTER FOUR: RESEARCH METHODOLOGY

4 METHODOLOGY / RESEARCH DESIGN

4.1 Method

The research design used for the study was quantitative and descriptive in nature. Quantitative research designs are normally appropriate for numerical data (Saunders & Lewis, 2012).

Descriptive research typically is useful to describe specific observed events and is a useful forerunner to further explanatory research (Saunders & Lewis, 2012). This type of research design therefore asks questions designed to better describe, for example, the relation between different variables (Saunders & Lewis, 2012). It is contrasted with qualitative designs which have a more exploratory approach and which seeks new insights and asks questions in order to assess the research topic in a new light (Saunders & Lewis, 2012), making qualitative design also useful where relatively little is known on a particular topic.

Descriptive research also examines a situation as it is (Leedy & Ormrod, 2005) and is not intended to determine cause and effect links between variables, simply exploring correlations among two or more variables (Leedy & Ormrod, 2005). Descriptive research designs therefore are useful for generating quantitative information to which statistical analytical tools can be applied (Leedy & Ormrod, 2005).

A quantitative design for this research project was therefore appropriate given the nature of the data being used and the data collected. The literature reviewed also pointed to the issue of the link between EPL and unemployment and the impact of hiring and firing provisions not being fully understood (Feldmann, 2003; Hartwell, 2010; Kan & Lin, 2011).

Correlation studies on the other hand test the extent to which differences in one variable are related to differences in one or more other variables (Leedy & Ormrod, 2005). A correlation can then be said to exist where a change in one variable simultaneously increases or decreases another variable in a predictable manner (Leedy & Ormrod, 2005). It is important to note, though, that when variables are correlated, it does not necessarily mean that one of the variables influence the other;

correlation does not indicate causation as correlation by itself is not sufficient to infer a cause and effect relationship (Leedy & Ormrod, 2005).

4.2 Unit of analysis

The unit of analysis of the study was the perception of EPL by small business employers in South Africa, focussing on the hiring and firing decision.

4.3 Population and Sample

A population comprises of the full set of members of a group (Saunders & Lewis, 2012). In this research project the population was defined as all employers in South Africa.

Sampling selections can be done using either a probability or non-probability technique (Saunders & Lewis, 2012). Probability sampling is a technique where a full list of the population is typically available and a random sample is selected using one or more of a variety of probability sampling techniques, for example, simple random sampling, systematic random sampling or stratified random sampling (Saunders & Lewis, 2012).

On the other hand, non-probability sampling comprise a number of techniques where a full list of the population is not known and a random sampling method is therefore not possible as the probability of each member of the population being selected cannot be known (Saunders & Lewis, 2012). Non-probability techniques include quota sampling, purposive sampling, snowball sampling, self-selection sampling and convenience sampling (Saunders & Lewis, 2012).

Owing to time, resource and cost constraints, the sample for this research was determined based on which electronic databases of registered employer organisations and other employer associations which the researcher could gain access to for distribution of the data collection instrument. A non-probability, convenient sampling approach was therefore followed.

The survey was distributed to approximately twenty thousand respondents on the database of SEESA, an employer advisory and consulting business. The respondents were located nationally, SEESA having 19 offices across the country. The sample was

largely comprised of small businesses, a fact which was also borne out by the profile of the respondents to the data collection instrument.

Feldmann (2009a), for example, states that the selection of the respondents of the Executive Opinion Surveys is fairly representative and they have comprehensive knowledge of their country's EPL to comment thereon. It is argued that the respondents in this study are also representative of employers in South Africa and that they have an understanding of EPL to be able to comment thereon.

All of the above factors were taken into account in selecting a database for distribution of the data collection instrument and the sample.

At the close of the survey, 389 responses were received. An analysis of the responses revealed that 52 respondents did not complete the survey by not answering all the questions. During the data clean-up process explained below, those 57 responses were removed, leaving 337 responses on which the data analysis was performed.

4.4 Data collection and instrument

The data was collected by way of the electronic survey questionnaire tool, SurveyMonkey. Surveys are typically associated with a deductive approach to research and are appropriate for both explanatory and descriptive research (Saunders, Lewis & Thornhill, 2009). Surveys are therefore an economical way of collecting data from a large population and offers opportunities to compare data and develop models to describe relationships in data (Saunders, Lewis & Thornhill, 2009).

Respondents were contacted electronically, via email, and provided with a request to complete the survey, a high level explanation of the survey and a link to the electronic questionnaire. The survey was open between 29 August 2012 and 15 September 2012.

As proposed by Feldmann (2009a), the survey questionnaire included a written explanation and covered the following areas –

- 4.4.1 A written explanation of the questionnaire and high level motivation for the research;

4.4.2 Questions on the demographic details of the respondent; and

4.4.3 Questions regarding hiring and firing.

It was decided to use a system of rating questions to collect data. Rating questions are normally used to ask respondents how strongly they agree or disagree with a series of statements or questions on a four to seven-point rating scale (Saunders *et al.*, 2009). In this study a rating scale of five was used to allow a fair range of both positive and negative answer options. The answer scale for the study was done on a Likert-scale type format (Albright, Winston & Zappe, 2009), the most frequently used rating scale format (Saunders *et al.*, 2009) and adapted to be in line with the OECD EPL indicator methodology discussed in paragraph 4.5 below.

Apart from the demographic questions, the survey questions allowed respondents to answer on each question whether they –

Strongly Agree

Agree

(Are) Uncertain

Disagree; or

Strongly Disagree.

The survey questionnaire contained sixteen questions in total. Care was taken to not exceed the set number of questions in order to maintain respondent interest and ensure an adequate response rate.

A copy of the survey questionnaire is included in Appendix 1. The questionnaire was divided into questions covering the following areas –

- Demographic / business information of the respondent
- General questions regarding EPL in the labour market
- EPL and the hiring decision
- EPL and the firing decision
- EPL and small business

Demographic Questions

The demographic questions of the survey instrument were questions one to five. These questions are set out in Table 1 to 5 below.

Table 1 - Position in company

What is your position in your company?			
CEO / MD / Managing Member			
CFO / Financial Director			
HR Manager			
Operations Manager			
Other			

Respondents could only select one of the listed answers.

Table 2 - Location of Business

Where is the main location of your business?			
Eastern Cape			
Free State			
Gauteng			
Kwa-Zulu Natal			
Limpopo			
Mpumalanga			
North West			
Northern Cape			
Western Cape			

Respondents could only select one of the listed answers.

Table 3 - Annual Turnover of Company

What is the annual turnover of your company?	
Less than R5m	
More than R5m but less than R10m	
More than R10m but less than R15m	
More than R15m but less than R20m	
More than R20m	

Respondents could only select one of the listed answers.

Table 4 - Full-time Employees

How many employees do you have in full-time employ?	
Less than 20	
Between 20 and 50	
Between 51 and 100	
Between 101 and 150	
More than 150	

Respondents could only select one of the listed answers.

Table 5 - Temporary Workers Employed

How many temporary workers do you employ?			
Less than 20			
Between 20 and 30			
Between 31 and 40			
Between 41 and 50			
More than 50			

Respondents could only select one of the listed answers.

The questions dealing with the hiring decision were questions 6, 8, 10, 11, 13 and 14.
The questions dealing with the firing decision were questions 7, 8, 9, 12, 15 and 16.

Table 6 indicates how the respective questions were categorised for purposes of the data analysis.

Table 6 - Hiring and Firing Questions

	Hiring / Firing
Current labour regulations are an obstacle to the hiring of more workers in business.	Hiring
Current labour regulations are an obstacle to the dismissal of workers by businesses.	Firing
Employers can freely determine their own hiring and firing practices.	Hiring & Firing
The payment of severance pay on dismissal is a deterrent to firing of workers.	Firing
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	Hiring
More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.	Hiring
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	Firing
Current labour regulations are a deterrent to employing temporary workers.	Hiring
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	Hiring
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	Firing
The length of notice periods for dismissal is a deterrent to firing of workers.	Firing

4.5 Data Analysis

Albright, Winston and Zappe (2009) suggest that regression analysis, the study of the relationship between different variables is a useful method of predicting or explaining observed events. Regression studies involve a process of establishing how one or more explanatory variables (also called independent variables or predictor variables) explain a dependent (or response variable) (Albright, Winston & Zappe, 2009). Simple regression therefore involves a single explanatory variable and multiple regression several explanatory variables (Albright, Winston & Zappe, 2009).

Data Analysis Process

The process of analysing the data after the closing of the survey, involved the following steps –

- Cleaning up of the data
- Doing descriptive statistics, such as the means, mode, standard deviation and other descriptive measures
- Checking the distribution of the data for skewness and kurtosis
- Checking the reliability of the data
- Performing inferential statistical analyses
- Performing analyses of variance (ANOVA)

Reliability analysis of data involves checking the degree to which the data collection technique will produce consistent findings or that similar observations would be made by other researchers using the raw data (Saunders, Lewis & Thornhill, 2009). Reliability in this sense is therefore concerned with the robustness of the survey instrument and whether it would produce the same results at different times and under different circumstances (Saunders *et al.*, 2009).

One of the frequently used tests for checking internal consistency of a questionnaire is the Cronbach's alpha (Saunders *et al.*, 2009). The accepted lower limit for Cronbach's alpha is 0.70 (Saunders *et al.*, 2009).

The initial checking of the data also involved checking the data for skewness and kurtosis. Skewness of numerical data indicates the peakedness of the data (Albright *et al.*, 2009), where positive skewness indicates distribution of data where the majority of the data is bunched to the left, with a long tail to the right and negative skewness indicating data bunched to the right, with a long tail to the left (Saunders *et al.*, 2009). Kurtosis is a similar concept which checks the pointedness or flatness of a distribution of data (Saunders *et al.*, 2009). Therefore, a positive kurtosis value indicates that a distribution of data is pointier or peaked, described as leptokurtic, whereas if a distribution is flatter, it is platykurtic and the kurtosis value is negative (Saunders *et al.*, 2009).

The typical methodological approach used when assessing the EPL of a country focuses on three areas: (a) protection of workers against individual dismissal, (b) regulating temporary forms of employment and (c) requirements applicable to collective

dismissal (Botero *et al.*, 2004; Venn, 2009). The focus of this research was on the narrower aspects of EPL, dismissal provisions or hiring and firing provisions.

This approach is not without criticism in that it, for example, does not distinguish between law and practice, has problems of selection bias and does not always adequately take account of legal context (Benjamin & Theron, 2009). However, this methodology is widely used (Feldmann, 2009a; Venn, 2009) and in the absence of alternative acceptable methodological approaches, it was also used for this research project.

Drawing from the OECD (2004) methodology, the hiring and firing measures for the questionnaire dealt with –

- 4.5.1 Pre-dismissal procedures
- 4.5.2 Length of notice period
- 4.5.3 Severance pay
- 4.5.4 Probationary employment
- 4.5.5 Temporary employment.

The OECD EPL indicator system divided the hiring and firing measures into cardinal scores ranging from 0 to 6, with higher scores indicating stricter regulation (OECD Employment Outlook, 2004). Feldmann (2009a), on the other hand, uses the World Economic Forum Executive Opinion Survey for its indicators and scoring of EPL hiring and firing provisions. Feldmann (2009a) himself recognises certain shortcomings of the World Economic Forum Executive Opinion Survey data and only uses the OECD EPL indicator as a test on the potential for perception bias of the World Economic Forum Executive Opinion Survey data.

Analysis of Variance - ANOVA

In order to enable further analysis of the data, the respondents to the survey were then divided into two sets of three groups, based on their position in the business and the turnover of the business, turnover being a proxy for business size, as follows –

Position in Company – Groups

CEO / MD / Managing Member

HR Manager

Other

Turnover of Company – Groups

Turnover less than R5 million

Turnover between R5 million and R20 million

Turnover more than R20 million

This then permitted further analysis of the data using the analysis of variance (ANOVA) method. The ANOVA method analyses the variance within and between groups by comparing the means of the groups and assesses the likelihood of any difference occurring by chance alone (Saunders *et al.*, 2009). If an ANOVA test produces a statistically significant p-value, which points to the differences between the groups, it is normally followed up with a post-hoc comparison of means (Leedy & Ormrod, 2005). A p-value which is statistically significant with a probability of less than 0.05 points to the likelihood of differences between groups occurring by chance alone being low (Saunders *et al.*, 2009).

The ANOVA analysis in this research was also followed up with a post hoc comparison of means.

It is also practice to measure the association between variables by finding the *Eta* value, which measures the coefficient of association, or effect size, and which allows the researcher to determine the effect of one variable on a construct (Rosenthal, Rosnow & Rubin, 2000). An *Eta* value of 0.1 – 0.29 shows a small effect size, 0.3 – 0.49 a medium effect size and above 0.50 a large effect size (Rosenthal *et al.*, 2000).

This therefore allows a statistical result to be judged not only on its statistical significance, but also its practical significant by taking into account the magnitude of the effect (Rosenthal *et al.*, 2000). The ANOVA results in this research were therefore also checked for its effect size by finding an *Eta* value.

4.6 Research Limitations

The research limitations identified were the following -

- 4.6.1 The sample selection method chosen may mean that the data may not be generalizable to the population as the sample was not a true random sample.
- 4.6.2 The response rate to the survey was very low, although the eventual sample size was still large enough for statistical analysis.
- 4.6.3 The recent global economic crisis and recession may distort some results as the pre- and post-recession data may be skewed by the effects of the recession.

CHAPTER FIVE: RESEARCH RESULTS

5 RESEARCH RESULTS

5.1 Introduction

This chapter outlines the results of the survey conducted. The descriptive statistics are outlined whereafter the results of the inferential and other statistical analyses are described. These results are discussed in detail in Chapter 6.

5.2 Overview of Survey

Three hundred and eighty nine responses were received. Fifty two of these responses were removed as the respondents did not complete the survey. The results discussed here are therefore based on 337 responses. The response rate was lower than expected, but the number of responses received allowed for reasonable statistical analysis.

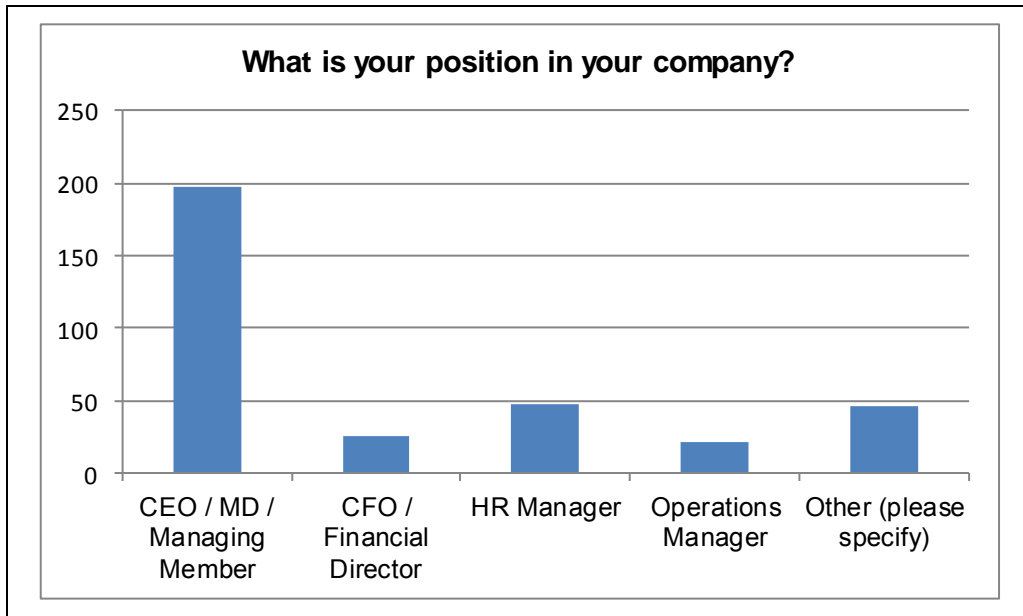
Table 7 - Overview of Survey Results

	N		Mean	Median	Mode	Std. Deviation	Skewness	Kurtosis
	Valid	Missing						
Current labour regulations are an obstacle to the hiring of more workers in business.	337	52	1.84	1.00	1	1.057	1.176	.526
Current labour regulations are an obstacle to the dismissal of workers by businesses.	337	52	1.58	1.00	1	.896	1.766	2.835
Employers can freely determine their own hiring and firing practices.	337	52	3.81	4.00	5	1.297	-.999	-.164
The payment of severance pay on dismissal is a deterrent to firing of workers.	337	52	2.69	2.00	2	1.217	.121	-1.227
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	337	52	2.69	2.00	2	1.227	.114	-1.292
More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.	337	52	1.69	2.00	1	.826	1.289	1.535
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	337	52	1.97	2.00	2	1.033	1.030	.199
Current labour regulations are a deterrent to employing temporary workers.	337	52	1.85	2.00	1	.964	.996	.104
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	337	52	1.50	1.00	1	.708	1.668	3.521
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	337	52	2.13	2.00	2	1.061	.760	-.457
The length of notice periods for dismissal is a deterrent to firing of workers.	337	52	2.55	2.00	2	1.152	.199	-1.225

Table 7 provides an indication of the skewness and kurtosis of the data in respect of certain of the questions, in particular question 8 (Employers can freely determine their own hiring and firing practices).

5.3 Demographics of Respondents

Figure 1 - Result for position in company



Most of the respondents were in the CEO / MD / Managing Member category, which is a good indication of the quality of the responses.

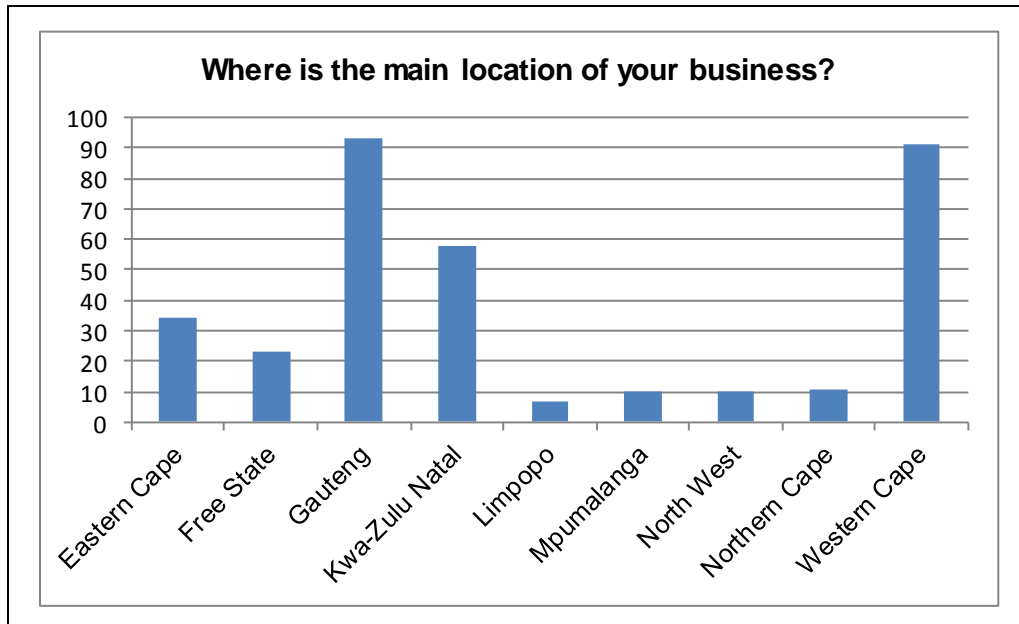
The respondents to question 1 dealing with the respondents' position in the company and who answered in the "Other" category were checked. The responses of those respondents are shown below in Table 8.

Table 8 - Position in Company (Other)

What is your position in your company? - Other (please specify)			Frequency	Percent
Valid			309	79.4
		accounts clerk	1	.3
		Accounts department	1	.3
		ADMIN CLERK	1	.3
		Admin Manager	3	.8
		Admin Manager / Bookkeeper	1	.3
		Administration Clerk	1	.3
		Administrative duties	1	.3
		Administrator	1	.3
		all above and owner	1	.3
		Business owner	1	.3
		CC Member /owner	1	.3
		clerk	1	.3
		COO	1	.3
		DEALER PRINCIPAL	1	.3
		Domestic	1	.3
		eienaar klein besigheid	1	.3
		Farmer (self employed)	1	.3
		Finanacial Manager	1	.3
		Finance	1	.3
		Finance & Admin	1	.3
		finance manager & hr manager	1	.3
		Finance/Admin Manager	1	.3
		Financial Administrator	1	.3
		Financial Manager	5	1.3
		General manager	1	.3
		General Manager	5	1.3
		HR ADMINISTRATOR	2	.5
		HR, Financial and Business	1	.3
		HR, PA and Finance Assistant	1	.3
		manager / owner wife	1	.3
		Marketing / Reservations / HR	1	.3
		Member	1	.3
		Nursing Manager	1	.3
		OFFICE ADMINISTRATOR	1	.3
		Office Administrator	1	.3
		office assistant	1	.3
		OFFICE MANAGER	1	.3
		OPERATIONS DIRECTOR	1	.3
		operations manager	1	.3
		owner	5	1.3
		Owner	8	2.1
		OWNER	3	.8
		owner farmer	1	.3
		owner/partner	1	.3
		PA	1	.3
		PA/Admin	1	.3
		Partner	1	.3
		partnership	1	.3
		Payroll Administrator	1	.3
		PERSONAL ASSISTANT	1	.3
		PERSONNEL CLERK	1	.3
		Pilot Test	1	.3
		RECEPTIONIST	1	.3
		Secretary of husband of farm	1	.3
		Sole Proprietor	1	.3
		Technical manager	1	.3
		Total	389	100.0

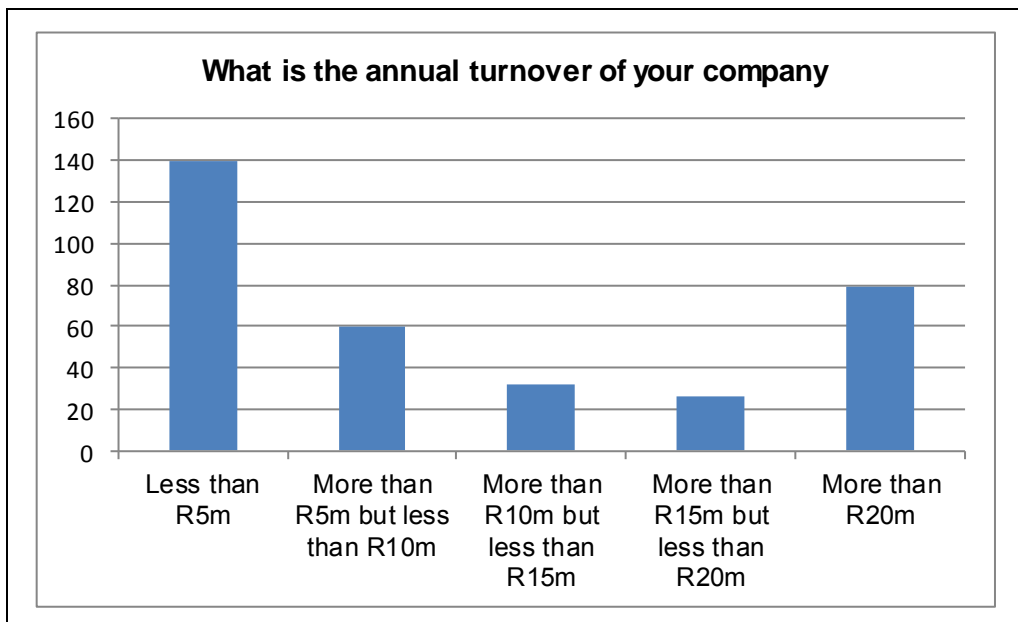
The highlighted responses, in total 12, were deemed to be equivalent to a CEO / MD / or Managing Member and were accordingly then recoded the same as CEO / MD / Managing Member for the further analysis.

Figure 2 - Result for main location of business



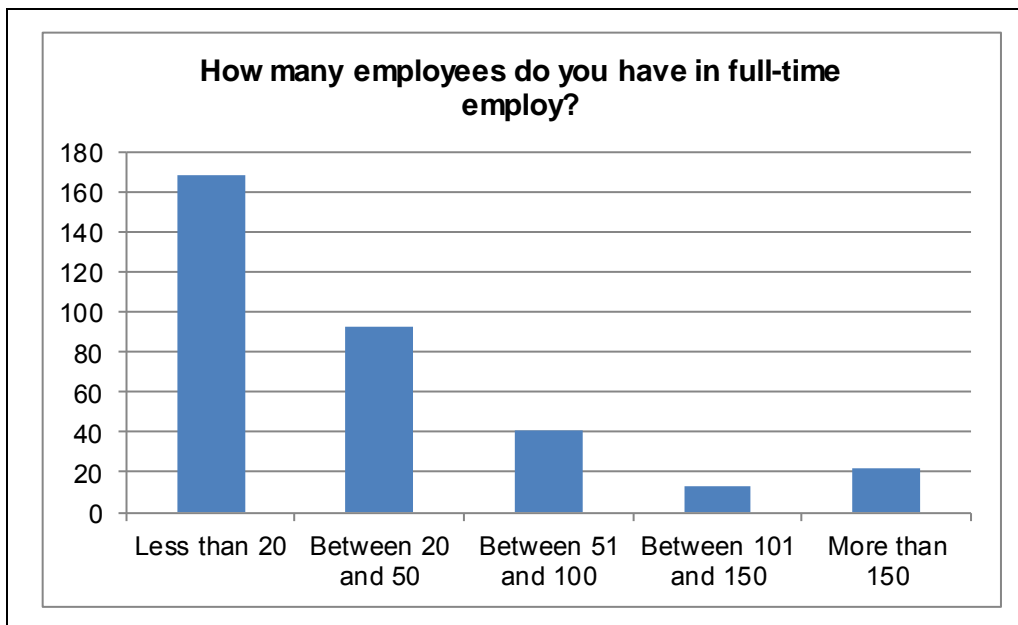
The respondents were mostly from the three main economic provinces, Gauteng, KwaZulu Natal and Western Cape.

Figure 3 - Result for annual turnover



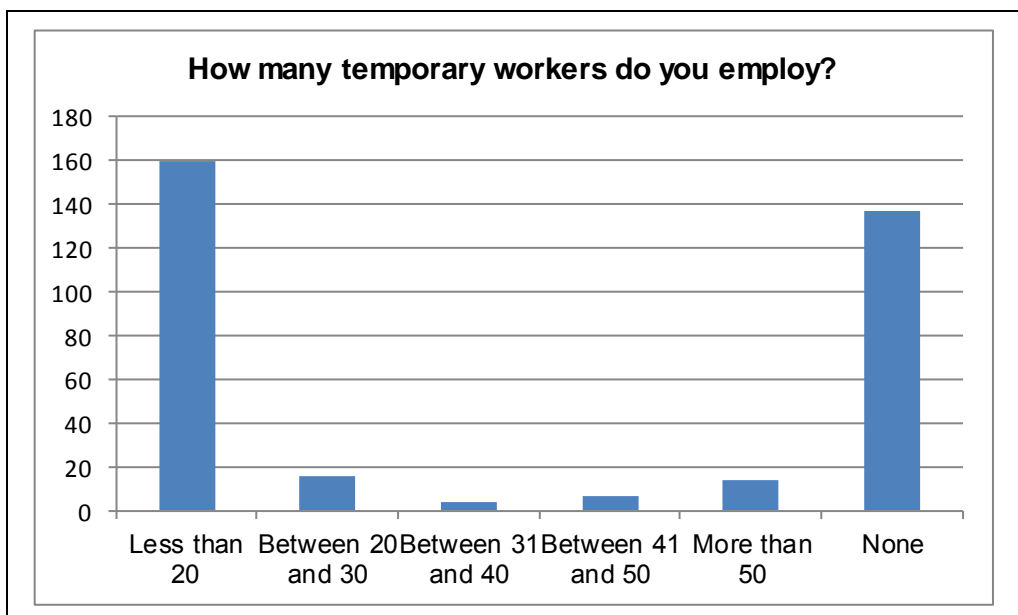
The result of this question identified three possible groups of respondents, those with turnover less than R5 million (172 respondents), those with turnover between R5 million and R20 million (132 respondents) and those with turnover of more than R20 million (85 respondents). Most of the respondents can be classified as small businesses.

Figure 4 - Result for full-time employees



Most of the respondents had less than 20 employees, again indicating that they are small businesses.

Figure 5 - Result for temporary workers employed



Most of the respondents employ less than 20 temporary workers, with the next largest group not employing any temporary workers.

Summary of Demographics Results

A synopsis of the demographic questions showed that respondents mostly –

Were CEO / MD / Managing Member of their organisation

Located in Gauteng, Western Cape or KwaZulu Natal

Had annual turnover of less than R5m or more than R20m

Had less than 50 employees

Had less than 20 temporary workers or none at all.

5.4 Main Questions

The rest of the results of the survey are presented below with reference to each of the research propositions to which the respective survey questions relate.

Research Proposition 1 - Employment protection legislation in South Africa impacts negatively on unemployment.

Questions 6, 7 and 8 were the main questions dealing with this research proposition. The general results for these questions are set out in Table 9.

Table 9 - Flexibility of EPL

		Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	Total
Current labour regulations are an obstacle to the hiring of more workers in business.	Count	170	93	39	28	7	337
	Row N %	50.4%	27.6%	11.6%	8.3%	2.1%	100.0%
Current labour regulations are an obstacle to the dismissal of workers by businesses.	Count	204	95	16	18	4	337
	Row N %	60.5%	28.2%	4.7%	5.3%	1.2%	100.0%
Employers can freely determine their own hiring and firing practices.	Count	33	32	26	120	126	337
	Row N %	9.8%	9.5%	7.7%	35.6%	37.4%	100.0%

Table 9 shows that most respondents were of the view that current labour regulations pose an obstacle to hiring and firing of employees. The specific aspects of the hiring and firing decision are dealt with in the further questions of the survey.

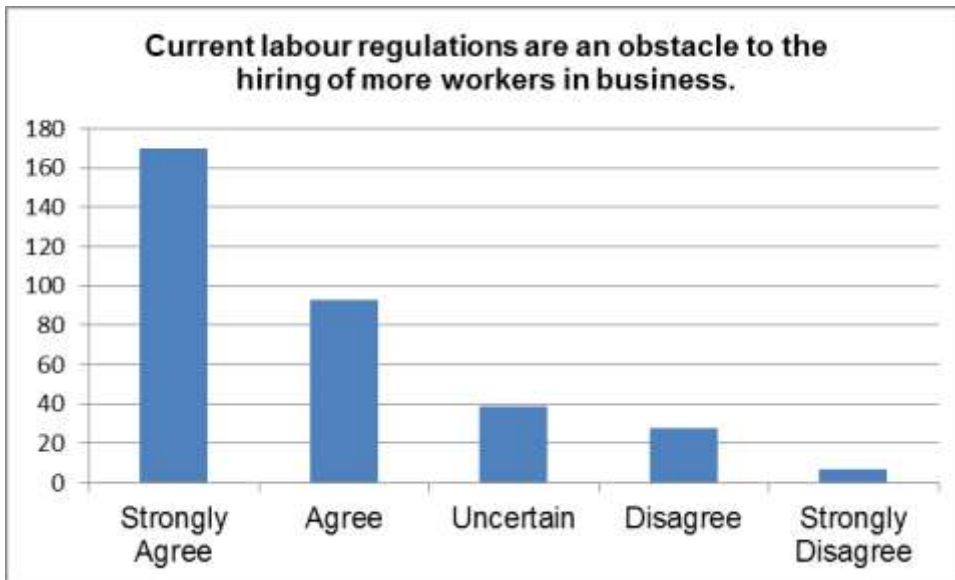
Table 10 - Overview of Hiring and Firing

	N	Mean	Median	Mode	Std. Deviation	Skewness	Std. Error of Skewness	Kurtosis	Std. Error of Kurtosis
	Valid								
Firing	337	2.1852	2.2000	2.00	.76743	.367	.133	-.406	.265
Hiring	337	1.9151	1.8000	1.80	.69319	.662	.133	.012	.265

Table 10 provides an overview and indication of the skewness and kurtosis of the data in respect the hiring and firing questions grouped together.

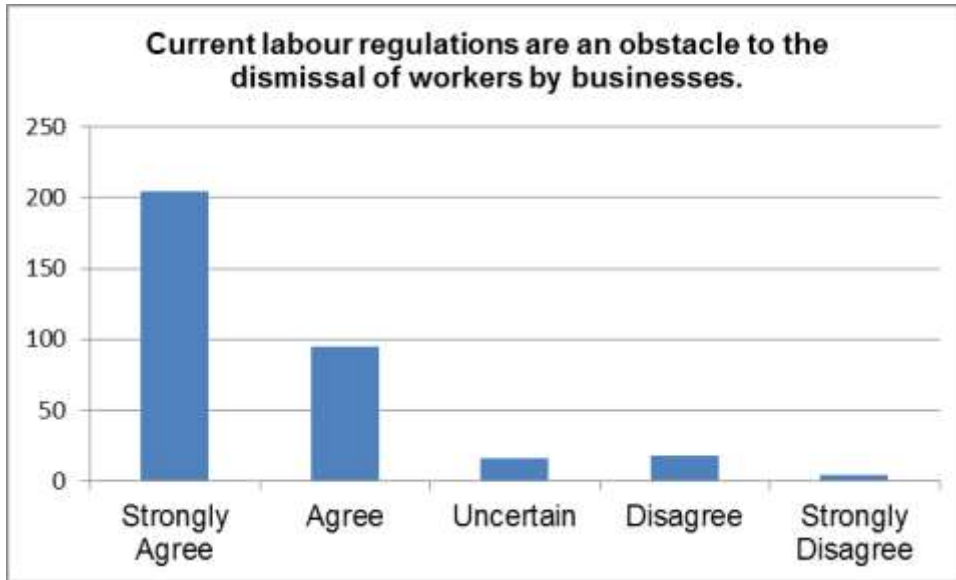
The results for each individual question is set out in the tables which follow.

Figure 6 - Result for hiring



Most of the respondents (78%) agreed or strongly agreed with the statement that current labour regulations are an obstacle to employing more workers.

Figure 7 - Result for dismissal



Most of the respondents (88.7%) agreed or strongly agreed with the statement that current labour regulations are an obstacle to dismissal of workers. However, the results of this firing question indicates that respondents have stronger views on firing than on hiring.

Figure 8 - Result for flexibility of EPL



The responses to this statement indicated that most respondents (73%) disagreed or strongly disagreed that employers have flexibility in determining their hiring and firing practices, which speaks to the perception which respondents have of the strictness of

hiring and firing provisions of EPL in South Africa.

Research Proposition 2 - Hiring provisions of employment protection in South Africa impact negatively on unemployment

Questions 6, 8, 10, 11, 13 and 14 were related to this research proposition. The general results for these questions are set out in Table 11.

Table 11 - Hiring Provisions (Overview)

	N	Mean	Median	Mode	Std. Deviation	Skewness	Kurtosis
	Valid						
Current labour regulations are an obstacle to the hiring of more workers in business.	337	1.84	1.00	1	1.057	1.176	.526
Employers can freely determine their own hiring and firing practices.	337	3.81	4.00	5	1.297	-.999	-.164
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	337	2.69	2.00	2	1.227	.114	-1.292
More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.	337	1.69	2.00	1	.826	1.289	1.535
Current labour regulations are a deterrent to employing temporary workers.	337	1.85	2.00	1	.964	.996	.104
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	337	1.50	1.00	1	.708	1.668	3.521

Table 11 provides an overview and indication of the skewness and kurtosis of the data in respect of the hiring provisions.

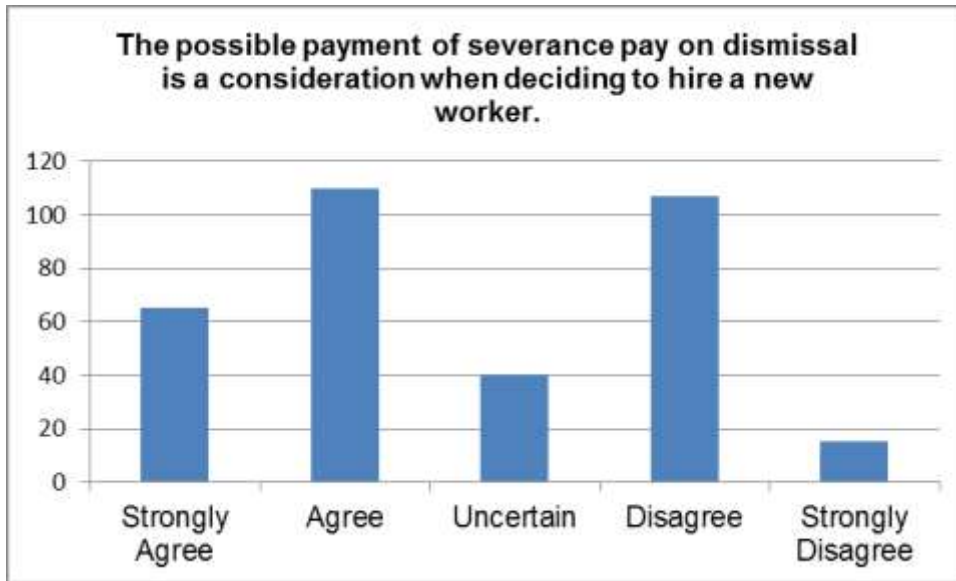
Table 12 provides details of the specific responses on the hiring questions.

Table 12 - Hiring Provisions Results

Hiring Provisions		Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	Total
Current labour regulations are an obstacle to the hiring of more workers in business.	Count	170	93	39	28	7	337
	Row N %	50.4%	27.6%	11.6%	8.3%	2.1%	100.0%
Employers can freely determine their own hiring and firing practices.	Count	33	32	26	120	126	337
	Row N %	9.8%	9.5%	7.7%	35.6%	37.4%	100.0%
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	Count	65	110	40	107	15	337
	Row N %	19.3%	32.6%	11.9%	31.8%	4.5%	100.0%
More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.	Count	162	135	22	17	1	337
	Row N %	48.1%	40.1%	6.5%	5.0%	.3%	100.0%
Current labour regulations are a deterrent to employing temporary workers.	Count	153	115	38	30	1	337
	Row N %	45.4%	34.1%	11.3%	8.9%	.3%	100.0%
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	Count	199	117	12	8	1	337
	Row N %	59.1%	34.7%	3.6%	2.4%	.3%	100.0%

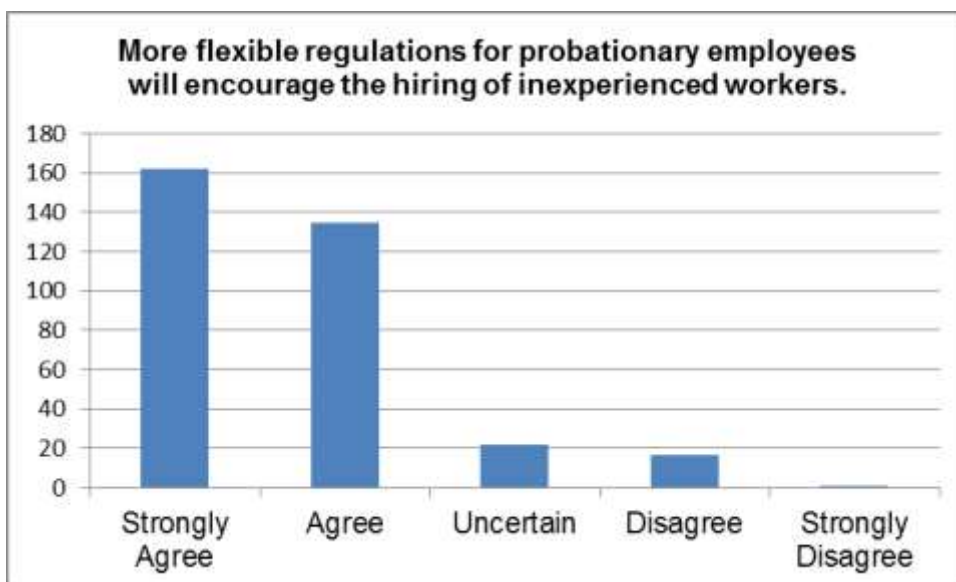
The specific results for each of the questions in Table 12, other than questions 6 and 8 which are already provided above, are set out below.

Figure 9 - Result for severance pay and hiring



The responses to this question point to the data being split between those respondents that agree (32.6%) and those that disagree (31.8%) that the prospect of the payment of severance pay is a deterrent in the hiring decision.

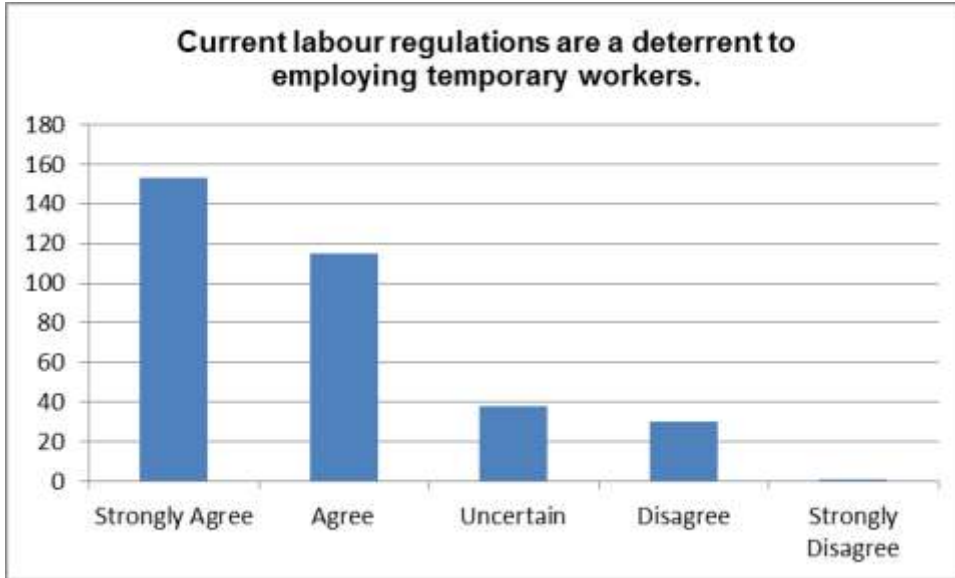
Figure 10 - Result for probation provisions



Most of the respondents (88.2%) agreed or strongly agreed with the statement that

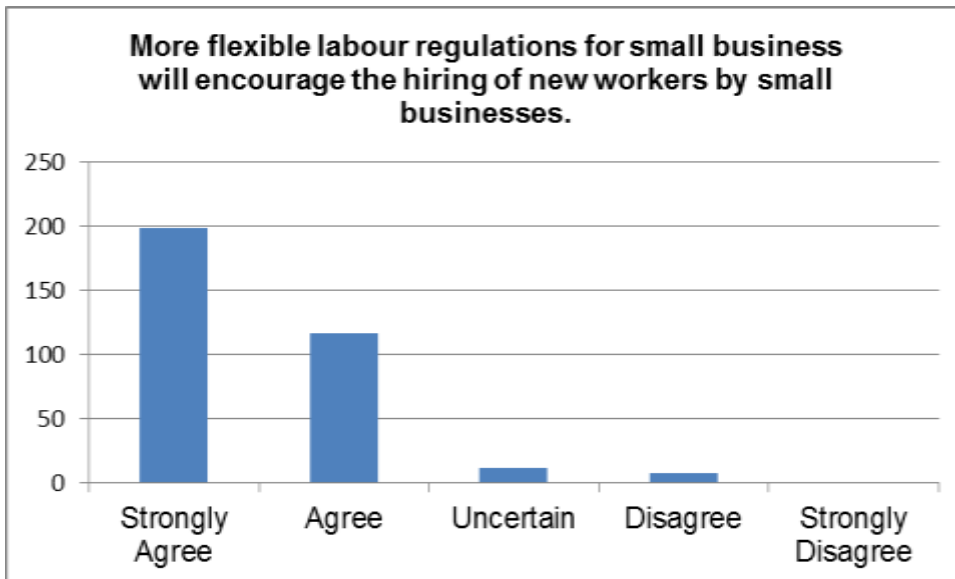
more flexible regulations relating to probationary employees will encourage the hiring of inexperienced workers.

Figure 11 - Result for employment of temporary workers



Most of the respondents (79.5%) agreed or strongly agreed with the statement that current EPL is a deterrent to employing temporary workers.

Figure 12 - Result for small business regulations



Most of the respondents (93.8%) agreed or strongly agreed with the statement that more flexible EPL for small businesses will encourage the hiring of workers by such

businesses.

Research Proposition 3 - Firing provisions of employment protection in South Africa impact negatively on unemployment

Questions 7, 8, 9, 12, 15 and 16 were related to this research proposition. An overview of the data for these questions are set out in Table 13.

Table 13 - Firing Provisions (Overview)

	Statistics						
	N Valid	Mean	Median	Mode	Std. Deviation	Skewness	Kurtosis
Current labour regulations are an obstacle to the dismissal of workers by businesses.	337	1.58	1.00	1	.896	1.766	2.835
Employers can freely determine their own hiring and firing practices.	337	3.81	4.00	5	1.297	-.999	-.164
The payment of severance pay on dismissal is a deterrent to firing of workers.	337	2.69	2.00	2	1.217	.121	-1.227
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	337	1.97	2.00	2	1.033	1.030	.199
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	337	2.13	2.00	2	1.061	.760	-.457
The length of notice periods for dismissal is a deterrent to firing of workers.	337	2.55	2.00	2	1.152	.199	-1.225

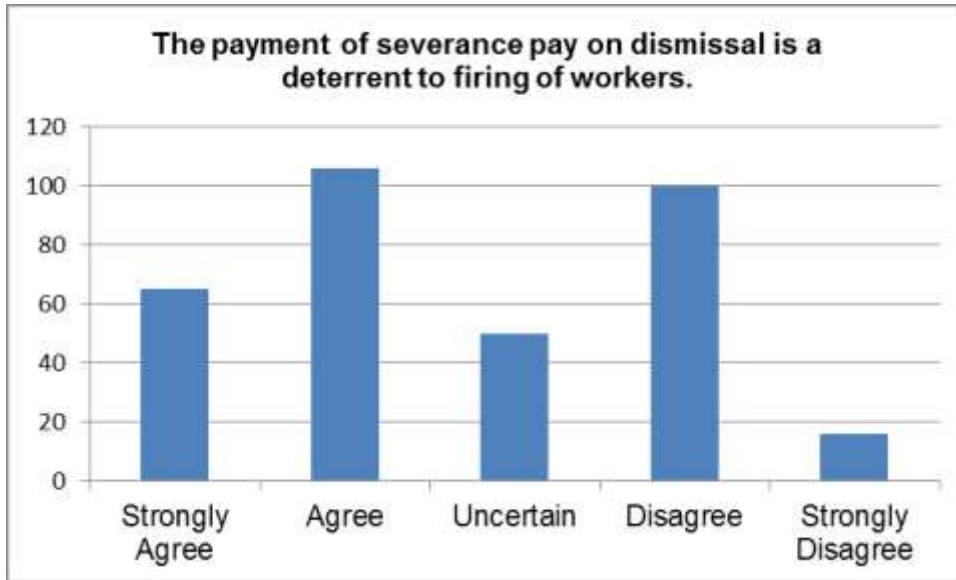
Table 14 provides details of the specific responses on the firing questions.

Table 14 - Firing Provisions Results

		Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	Total
Current labour regulations are an obstacle to the dismissal of workers by businesses.	Count	204	95	16	18	4	337
	Row N %	60.5%	28.2%	4.7%	5.3%	1.2%	100.0%
Employers can freely determine their own hiring and firing practices.	Count	33	32	26	120	126	337
	Row N %	9.8%	9.5%	7.7%	35.6%	37.4%	100.0%
The payment of severance pay on dismissal is a deterrent to firing of workers.	Count	65	106	50	100	16	337
	Row N %	19.3%	31.5%	14.8%	29.7%	4.7%	100.0%
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	Count	128	142	19	44	4	337
	Row N %	38.0%	42.1%	5.6%	13.1%	1.2%	100.0%
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	Count	105	145	28	56	3	337
	Row N %	31.2%	43.0%	8.3%	16.6%	.9%	100.0%
The length of notice periods for dismissal is a deterrent to firing of workers.	Count	70	118	50	93	6	337
	Row N %	20.8%	35.0%	14.8%	27.6%	1.8%	100.0%

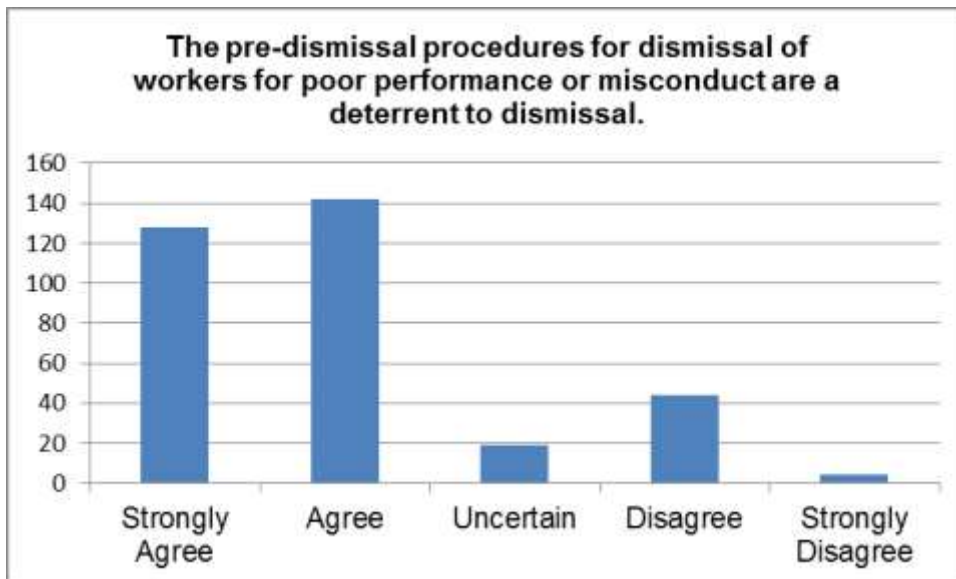
The specific results for each of these questions, other than questions 7 and 8 which are already provided, are set out below.

Figure 13 - Result for severance pay and dismissal



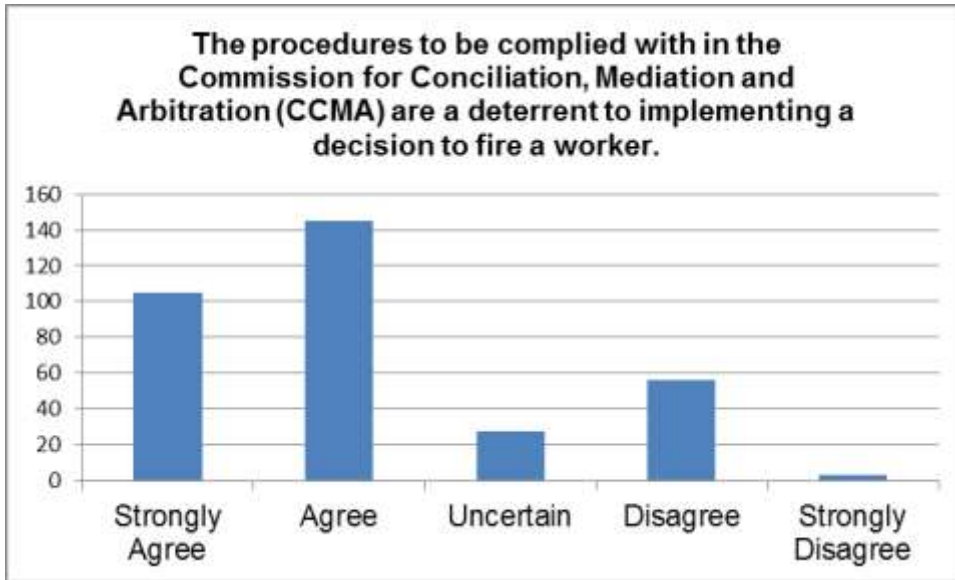
The result of this question points to the data being split between those respondents that agree (31.5%) and those that disagree (29.7%) that the prospect of the payment of severance pay is a deterrent in the firing decision.

Figure 14 - Result for pre-dismissal procedures



Most of the respondents (80.1%) agreed or strongly agreed with the statement that pre-dismissal procedures are a deterrent to dismissal.

Figure 15 - Result for CCMA procedures



Most of the respondents (74.2%) agreed or strongly agreed with the statement that CCMA procedures are a deterrent to firing a worker.

Figure 16 - Result for length of notice periods



Most of the respondents (55.8%) to this statement agreed or strongly agreed that the length of notice periods is a deterrent in the firing decision. However, a significant number (27.6%) also disagreed with the statement.

5.5 Reliability Analyses

The reliability analyses below tests to what extent the survey instrument is robust and will produce consistent results, in particular taking into account the grouping together of questions relating to a specific topic.

Table 15 – Cronbach's alpha for questions relating to general provisions

General		
Reliability Statistics		
Cronbach's Alpha	N of Items	
.355	3	
Item-Total Statistics		
	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Current labour regulations are an obstacle to the dismissal of workers by businesses.	.283	.153
Current labour regulations are an obstacle to the hiring of more workers in business.	.324	.023
Employers can freely determine their own hiring and firing practices.	.060	.616

The Cronbach's alpha for all the general questions is below 0.7 resulting in the average Cronbach's alpha also being below 0.7. Therefore the grouping of these questions into a category cannot be expected to produce consistent results under identical conditions.

Table 16 – Cronbach's alpha for questions relating to hiring provisions

Hiring		
Reliability Statistics		
Cronbach's Alpha	N of Items	
.757	5	
Item-Total Statistics		
	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Current labour regulations are an obstacle to the hiring of more workers in business.	.546	.707
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	.448	.759
More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.	.527	.716
Current labour regulations are a deterrent to employing temporary workers.	.588	.691
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	.612	.701

The average for all the hiring questions is 0.757, indicating that the grouping of these questions in a category can be expected to produce consistent results. The Cronbach's Alpha for one of the questions is below 0.7, but if this item is removed the Cronbach's alpha only changes to 0.759, a marginal difference.

Table 17 – Cronbach's alpha for questions relating to firing provisions

Firing		
Reliability Statistics		
Cronbach's Alpha	N of Items	
.757	5	
Item-Total Statistics		
	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
Current labour regulations are an obstacle to the dismissal of workers by businesses.	.312	.777
The payment of severance pay on dismissal is a deterrent to firing of workers.	.568	.698
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	.505	.721
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	.621	.679
The length of notice periods for dismissal is a deterrent to firing of workers.	.623	.675

The Cronbach's Alpha for three of the questions is below 0.7. However, the average for all the firing questions is 0.757, indicating that the grouping of these questions in a category can be expected to produce consistent results.

Table 18 – Cronbach's alpha for questions relating to procedural provisions

Procedures		
Reliability Statistics		
Cronbach's Alpha	N of Items	
.622	2	
Item-Total Statistics		
	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	.451	
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	.451	

The Cronbach's alpha for all the procedures questions is below 0.7 resulting in the average Cronbach's alpha also being below 0.7. Therefore the grouping of these

questions into a category cannot be expected to produce consistent results.

Table 19 – Cronbach's alpha for questions relating to severance pay

Severance Pay		
Reliability Statistics		
Cronbach's Alpha	N of Items	
.744	2	
Item-Total Statistics		
	Corrected Item-Total Correlation	Cronbach's Alpha if Item Deleted
The payment of severance pay on dismissal is a deterrent to firing of workers.	.592	
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	.592	

The average Cronbach's alpha for the questions relating to severance pay is 0.744, indicating that the grouping of these questions in a category can be expected to produce consistent results.

5.6 Inferential Statistics

The inferential statistical analyses below allowed the researcher to draw inferences to the population from the sample and whether differences between groups occur by chance or are statistically significant.

Table 20 also shows the result of the correlation analysis done in respect of the hiring and firing provisions.

Table 20 - Correlation (Hiring and Firing)

Correlations		
		Hiring
Firing	Pearson Correlation	.597
	Sig. (2-tailed)	★ .000
	N	337

The table above indicates that the correlation between the hiring and firing provisions has a Pearson correlation of 0.597, indicating a medium correlation. The p-value is 0.000, indicating a statistically significant correlation.

5.7 ANOVA

The tables below indicate the ANOVA results for the groups based on the respondents' position in the company and the respondent company's turnover.

Table 21 – Recoding of position in Company

[RR] What is your position in your company?			
		Frequency	Percent
Valid	CEO / MD / Managing	197	58.5
	Other	93	27.6
	HR Manager	47	13.9
	Total	337	100.0

Table 21 shows the size of the groups after respondents were recoded to form the three groups based on their position in their company or business.

Table 22 – Recoding of turnover of Company

[RRR] What is the annual turnover of your company?			
		Frequency	Percent
Valid	Less than R5m	140	41.5
	More than R5m but less than	118	35.0
	More than R20m	79	23.4
	Total	337	100.0

Table 22 shows the size of the groups after respondents were recoded to form the three groups based on the turnover of the respondents' businesses.

Table 23 - One Way ANOVA (Position)

What is your position in your company?						
Descriptives						
		N	Mean	Deviation		
Firing	CEO / MD / Managing	197	2.0721	.77846		
	Other	93	2.2323	.71462		
	HR Manager	47	2.5660	.70071		
	Total	337	2.1852	.76743		
Hiring	CEO / MD / Managing	197	1.7442	.66695		
	Other	93	2.1032	.64107		
	HR Manager	47	2.2596	.68894		
	Total	337	1.9151	.69319		
ANOVA						
		Sum of Squares	df	Mean Square	F	Sig.
Firing	Between Groups	9.541	2	4.770	8.459	★ .000
	Within Groups	188.345	334	.564		
	Total	197.886	336			
Hiring	Between Groups	14.625	2	7.312	16.634	★ .000
	Within Groups	146.828	334	.440		
	Total	161.453	336			

The above shows a p-value less than 0.05, indicating there are statistically significant differences between the groups identified in relation to the hiring and firing questions, therefore requiring further analysis.

Table 24 - Multiple Comparison (Position)

Multiple Comparisons				
Scheffe				
Dependent Variable			Mean Difference (I-J)	Sig.
Firing	CEO / MD / Managing	Other	-.16018	.239
		HR Manager	-.49388	★ .000
	Other	CEO / MD / Managing	.16018	.239
		HR Manager	-.33370	.047
	HR Manager	CEO / MD / Managing	.49388	★ .000
		Other	.33370	.047
Hiring	CEO / MD / Managing	Other	-.35906	★ .000
		HR Manager	-.51541	★ .000
	Other	CEO / MD / Managing	.35906	★ .000
		HR Manager	-.15635	.421
	HR Manager	CEO / MD / Managing	.51541	★ .000
		Other	.15635	.421

The above result indicates that on firing measures the significant difference is between the HR Managers group on the one hand and the CEO and Other groups, on the other hand, with the HR Manager group agreeing less with the statements. On the hiring

measures, the CEO group agrees more with the statements than the HR Manager and Other Groups.

Table 25 - Effect Size (Position in Company)

Directional Measures				Value
Nominal by	Eta	Firing Dependent		.220
Directional Measures				Value
Nominal by	Eta	Hiring Dependent		.301

The Eta for the firing measures is below 0.3, indicating a small effect size, whereas the Eta for the hiring measures is slightly above 0.3, indicating a medium effect size.

Research Proposition 4 – Business size of firms impact on their perception of hiring and firing provisions of EPL

Table 26 - Small Business and EPL

		Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	Total
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	Count	199	117	12	8	1	337
	Row N %	59.1%	34.7%	3.6%	2.4%	.3%	100.0%

Table 26 shows the results for the statement in respect of EPL and small business.

Table 27 - Recoding of Turnover Results

What is the annual turnover of your company?				
Descriptives				
		N	Mean	Deviation
Firing	Less than R5m	140	2.0914	.78047
	More than R5m but less than	118	2.1593	.70919
	More than R20m	79	2.3899	.79865
	Total	337	2.1852	.76743
Hiring	Less than R5m	140	1.8486	.68188
	More than R5m but less than	118	1.8966	.66190
	More than R20m	79	2.0608	.74445
	Total	337	1.9151	.69319

Table 27 shows the size of the groups after respondents were recoded to form the three groups based on the turnover of the respondents' businesses which were used to produce the ANOVA below.

Table 28 - ANOVA Result (Turnover Groups)

ANOVA						
		Sum of Squares	df	Mean Square	F	Sig.
Firing	Between	4.619	2	2.310	3.992	★ .019
	Within Groups	193.266	334	.579		
	Total	197.886	336			
Hiring	Between	2.336	2	1.168	2.452	.088
	Within Groups	159.117	334	.476		
	Total	161.453	336			

The above result indicates that the only significant impact between groups is on the firing provisions.

Table 29 - Multiple Comparisons (Turnover Groups)

Multiple Comparisons				
Scheffe				
Dependent Variable			Mean Difference (I-J)	Sig.
Firing	Less than R5m	More than R5m but less than R20m	-.06789	.775
		More than R20m	-.29844*	★ .021
	More than R5m but less than R20m	Less than R5m	.06789	.775
		More than R20m	-.23055	.115
	More than R20m	Less than R5m	.29844*	★ .021
		More than R5m but less than R20m	.23055	.115

The above table shows that the difference in groups is between the less than R 5 million group and the more than R 20 million group.

Table 30 - Effect size (Turnover)

Directional Measures			
			Value
Nominal by	Eta	Firing Dependent	.153
Directional Measures			
			Value
Nominal by	Eta	Hiring Dependent	.120

The Eta value for both the firing and hiring provisions is below 0.3, indicating a small effect size.

All of the above results are discussed in Chapter 6.

CHAPTER SIX: DISCUSSION OF RESULTS

6 DISCUSSION OF RESULTS

6.1 Introduction

The preponderance of literature on the impact of EPL on unemployment has been to the effect that further empirical study on the question is required (Feldmann, 2003), with Benjamin *et al.* (2010) also pointing out that the debate regarding the strictness of EPL in South Africa has been based on very little empirical justification.

The data derived from the Executive Opinion Survey has also been critiqued for the fact that a small number of executives responded, with South Africa having had 39 and 57 respondents in 2009 and 2010 respectively (Benjamin *et al.*, 2010). This research improves on this aspect having received 337 responses, albeit a small percentage of the total population surveyed. The typical cross-country comparative analyses of EPL has also not permitted the differences between countries, such as institutions and social norms, to be properly taken into account (Kan & Lin, 2011) in addition to very little being known about the effect of EPL in emerging markets and specific countries (Hartwell, 2010).

Most of the literature on EPL in South Africa has focussed on the strictness of it, with not much focus on specific aspects of the hiring and firing provisions, although Benjamin (2005) and Borat *et al.* (2002) did raise the impact specifically of hiring and firing provisions. Feldmann (2009a) pointed to hiring and firing provisions having a more profound effect on the phenomenon of unemployment caused by inflexible labour regulations.

In essence, tight or inflexible hiring and firing provisions are thought to impact on the likelihood of employers making a decision to hire a new employee (that is, the hiring decision) and the commensurate decision to not dismissing employees as a result of firing restrictions (that is, the firing decision) (Barone, 2001). This research therefore delves into the hiring and firing decision in more detail, unlike the "difficulty of firing" index of the *Doing Business* survey which focussed more on redundancy measures than ordinary dismissal (Benjamin & Theron, 2009) and seeks to add to that body of empirical knowledge of EPL in South Africa and emerging markets in general.

Table 20 in Chapter 5 also shows the correlation between the hiring and firing

measures as tested in the survey, indicating a medium correlation, but a statistically significant p-value. More specific analysis of this correlation is, however, beyond the scope of this research.

The demographic results are discussed below before the results in chapter 5 are discussed, with reference to each research proposition.

6.2 Demographics of Respondents

The respondents to the survey comprise mostly small firms with turnover of less than R5 million as illustrated in Table 31.

Table 31 - Annual Turnover

What is the annual turnover of your company?		cy	Percent
Valid	Less than R5m	172	44.2
	More than R5m but less than R10m	68	17.5
	More than R10m but less than R15m	36	9.3
	More than R15m but less than R20m	28	7.2
	More than R20m	85	21.9
	Total	389	100.0

The profile of the respondents therefore speaks to Fourie (2011) who argued that the developing country context of South Africa is often not properly taken into account in the discourse on unemployment in South Africa. The respondents' profile is also useful for exploring further considerations relating to the contention that small firms play a greater role in employment creation (Shaffer, 2006; Floyd and McManus, 2005) and the recognition by the National Planning Commission (2011) of the regulatory burden faced by small firms.

Moreover, though, it has been argued that one of the assumptions of the World Bank's "Employing Workers" index, on which the "Doing Business" indicators are based, that the typical employer has 201 employees, is inappropriate in sub-Saharan Africa and other developing regions (Lee *et al.*, 2008). In this regard, most of the respondents in

the survey had less than 20 employees as shown in Table 32.

Table 32 - Number of Employees

How many employees do you have in full-time employ?			
		Frequency	Percent
Valid	Less than 20	203	52.2
	Between 20 and 50	102	26.2
	Between 51 and 100	44	11.3
	Between 101 and 150	14	3.6
	More than 150	26	6.7
	Total	389	100.0

Some of the reasons why the Executive Opinion Survey data is thought to be reliable is that the respondents to the Executive Opinion Survey are decision makers in their businesses and considered to be better placed to comment on the strictness of EPL (Feldmann, 2009a). Despite this, Feldmann (2009a) is of the view that further research is required in order to better understand the specific aspects of EPL which require to be amended or removed as the case may be. As shown in Figure 1 in paragraph 5.3, most of the respondents in this survey can also be classified as decision makers as they fall in the category of "CEO / MD / Managing Member", with the next largest group of respondents being in the "HR Manager" category.

Most of the respondents also either do not employ temporary workers or employ less than 20 temporary workers. It would have been expected that more respondents either employed temporary workers or more than 20 temporary workers as Barone (2001) argues that strict EPL cause employers to seek alternatives to fulltime employment in measures such as temporary work. However, it is likely that the reason for the low rate of temporary workers employed in the sample of respondents could be explained by the fact that most respondents are smaller businesses.

The results of the questions on main location of the business of respondents and number of temporary workers employed provides insight into the demographic composition of the respondents but there are no particular inferences to be drawn from it for purposes of this research.

6.3 Research Proposition 1 - Employment protection legislation in South Africa impacts negatively on unemployment

The main question dealing with the respondents' perception of the strictness of EPL was question eight (Employers can freely determine their own hiring and firing practices), together with question six and seven. The overall general results for these questions are shown again in Table 33.

Table 33 - Flexibility of EPL

		Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	Total
Current labour regulations are an obstacle to the hiring of more workers in business.	Count	170	93	39	28	7	337
	Row N %	50.4%	27.6%	11.6%	8.3%	2.1%	100.0%
Current labour regulations are an obstacle to the dismissal of workers by businesses.	Count	204	95	16	18	4	337
	Row N %	60.5%	28.2%	4.7%	5.3%	1.2%	100.0%
Employers can freely determine their own hiring and firing practices.	Count	33	32	26	120	126	337
	Row N %	9.8%	9.5%	7.7%	35.6%	37.4%	100.0%

As illustrated in Table 7 in paragraph 5.2, the responses to question eight showed that 73% of respondents disagreed or strongly disagreed with the statement that employers can freely determine their own hiring and firing practices. This seems to point to the strength of the perception of how strict EPL is perceived to be in South Africa, despite the assertion of Benjamin *et al.* (2010) that these views tend to not be backed by empirical data.

The results also show a somewhat stronger view in respect of the dismissal provisions of EPL, with 299 respondents either agreeing or strongly agreeing with the statement that current labour regulations are an obstacle to dismissal. On the other hand, 263 respondents agreed or disagreed with the commensurate statement in respect of the effect of current labour regulations on the hiring decision. These results should, however, be treated with some caution as respondents may be influenced by media reports and other commentators and may have a bias as to the strictness or impact of EPL on their hiring or firing decision (Feldmann, 2009a).

It appears also that there is a disparity between the perception of EPL and the results of surveys such as the OECD (2010) which found that South Africa compares well against other OECD countries on the OECD Employment Protection Legislation indicator. At the same time, though, since the survey questions were based on hiring

and firing provisions, the results also confirm the notion that there is scope for simplifying dismissal procedures (OECD, 2010). In this regard, there is also merit in Feldmann's (2009a) argument that, in certain respects, better reliance can be placed on the view of decision makers of hiring and firing decisions, as their views are likely to better reflect the practical experience of EPL.

However, as pointed out in Table 15 in paragraph 5.5, the Cronbach's alpha for the questions grouped together as general was significantly below 0.7, pointing to the fact that respondents did not consider those questions to be related. Care should therefore be exercised in drawing inferences from the results of these questions put together. Nonetheless, the responses to question 6 (Current labour regulations are an obstacle to the hiring of more workers in business) and question 7 (Current labour regulations are an obstacle to the dismissal of workers by businesses) clearly show that most respondents are of the view that both the hiring and firing decision is affected by their perception of current labour regulations.

This can be summarised, as Barone (2001) does, as follows –

The perception of the flexibility or inflexibility of EPL impact on employers making a decision to hire a new employee (that is, the hiring decision) and the commensurate decision to not dismissing employees as a result of firing restrictions (that is, the firing decision) (Barone, 2001). Respondents in this survey therefore believe that the hiring and firing decision is impacted by their perception of EPL, but the firing decision more so.

It is of course not clear which aspect of current labour regulations respondents believe impact on the hiring and firing decision, but the perception of the respondents in this survey is consistent with survey data such as the Executive Opinion Survey on South Africa. Feldmann (2009b) also points out that the strictness and impact of EPL on unemployment is strongly influenced by prevailing norms and practices and subjective interpretation of specific legal provisions. Benjamin *et al.* (2010) have also expressed concern that care should be exercised with the perception of the strictness of EPL in South Africa in the absence of empirical data for those views.

The results though confirm the perception that EPL and hiring and firing provisions in South Africa impact negatively on the hiring and firing decision and what Benjamin (2005) calls the hassle factor associated with the hiring and firing of employees which contributes to the perception of rigidity. Research proposition 2 and 3 seeks to obtain a

better understanding of this hassle factor.

6.4 Research Proposition 2 - Hiring provisions of employment protection in South Africa impact negatively on unemployment

The questions dealing with hiring provisions of EPL were the following –

Question 6 – Current labour regulations are an obstacle to the hiring of more workers in business

Question 8 – Employers can freely determine their own hiring and firing practices

Question 10 – The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker

Question 11 – More flexible regulations for probationary employees will encourage the hiring of inexperienced workers

Question 13 – Current labour regulations are a deterrent to employing temporary workers

Question 14 – More flexible labour regulations for small business will encourage the hiring of new workers by small businesses

The results of the questions relating to the hiring decision are set out in Table 34.

Table 34 - Hiring Provisions

	N	Mean	Median	Mode	Std. Deviation	Skewness	Kurtosis
	Valid						
Current labour regulations are an obstacle to the hiring of more workers in business.	337	1.84	1.00	1	1.057	1.176	.526
Employers can freely determine their own hiring and firing practices.	337	3.81	4.00	5	1.297	-.999	-.164
The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.	337	2.69	2.00	2	1.227	.114	-1.292
More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.	337	1.69	2.00	1	.826	1.289	1.535
Current labour regulations are a deterrent to employing temporary workers.	337	1.85	2.00	1	.964	.996	.104
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	337	1.50	1.00	1	.708	1.668	3.521

The results for questions six and eight were already discussed in paragraph 6.3.

This group of questions therefore seeks to obtain an understanding of the impact of

EPL provisions relating to severance pay, probationary employees, temporary workers and small business on the hiring decision. The results in respect of each of these topics are discussed below.

Severance Pay

As pointed out in Figure 9, the data on the question relating to severance pay and the hiring decision appeared to be split, which is also evident from the mean of 2.69 in respect of that question. Although more respondents either agreed or strongly agreed with the statement, 48.2% of respondents were either uncertain, disagreed or strongly disagreed with the statement, as shown in Table 12.

This result does not appear to be consistent with the OECD (2004) argument that employers take measures such as severance pay into account as part of the tax and transfer costs considerations when making a hiring decision. Feldmann (2009a) have also suggested that some of the measures which require investigation in order to understand how hiring and firing regulations can be improved include the extent to which severance pay provisions should be reduced or amended. However, the respondents in this research do not appear to value severance pay provisions as one of the areas that matter in their hiring decision making, compared to the other measures tested in the survey.

Given the nature of this result in that the data is split, care should, however, be taken with drawing definitive conclusions from it.

Probationary Employees

Table 12 shows that 88.2% of respondents either agreed or strongly agreed with the statement that more flexible regulations for probationary employees will encourage the hiring of inexperienced workers. It therefore appears that measures regarding probationary employment has a strong influence on the hiring decision.

This result is inconsistent with the evidence produced by Harcourt and Wood (2006) regarding the impact of probationary employment in their study of New Zealand and the studies they refer to in respect of France. At the same time, though, the result confirms the view that when EPL is strict or perceived to be strict, employers will seek

alternatives in the labour market in measures such as probationary employment (Barone, 2001). It is possible therefore that the inconsistency between this result and the evidence in New Zealand is explained by the perception of strict EPL in South Africa, resulting in employers in South Africa more seeking solutions in alternative measures such as probationary employment.

However, the survey did not test which specific aspects of probationary employment have an impact and it is therefore not possible to draw further specific conclusions from this result other than that respondents believe that the hiring decision will be impacted if it is easier to make use of probationary employment. The survey statement also used the term "inexperienced workers" and it is not clear to what extent respondents answered the question with reference to "inexperienced workers" only or whether they answered in relation to probationary employment in general, which would, in principle, not be restricted to inexperienced workers.

Temporary Workers

Table 12 shows that 79.5% of respondents either agreed or strongly agreed with the statement that current labour regulations are a deterrent to employing temporary workers. As with the comment on severance pay measures above, the OECD (2004) argues that provisions relating to temporary work also influence the hiring decision, although Neugart and Storrie (2006) could not find conclusive evidence for it, either in theory or empirical evidence. Temporary work arrangements, or labour broking, has been receiving much attention in South Africa recently. As with severance pay and other measures, in an environment of strict EPL or perceived strict EPL, it is in temporary work arrangements which employers seek alternatives (Barone, 2001) in order to circumvent the strict EPL measures.

This result is surprising in that the current amendments being considered to temporary work arrangements in South Africa stem from the fact that employers abuse temporary work arrangements to employ workers on a temporary basis for long periods of time (Benjamin *et al.*, 2010). It is possible that respondents may have been biased in their responses on this statement due to the significant media attention which the labour broking amendments have been receiving in South Africa. These amendments are in fact designed to regulate the freedom with which employers have been using temporary work arrangements and to protect vulnerable workers against unfair

workplace arrangements (Benjamin *et al.*, 2010).

This result goes some way to explaining the perception employers have in this regard, with most respondents holding the view that current EPL impacts their hiring decision in respect of temporary workers, despite the current freedom employers have in using temporary work arrangements.

Small Business

Table 12 shows that 93.8% of respondents either agreed or strongly agreed with the statement that more flexible EPL for small business will encourage the hiring of new workers by small businesses. This result is the strongest of all the questions relating to hiring provision. However, as shown in Figure 3, most of the respondents can also be classified as small businesses, so it is possible that there may have been some bias by respondents in their response to this question.

The result though appears to confirm the view that small firms find the labour regulatory burden which they bear difficult and that they do not have the same ability as larger firms to comply with existing EPL (National Planning Commission, 2011). This is an important factor as small firms tend to create more jobs (Shaffer, 2006) but it does not offer more detail on the exact manner in which current EPL should be amended to accommodate small businesses.

This result is discussed further in paragraph 6.6 on research proposition 4.

ANOVA Result on Hiring Provisions

In order to obtain a better understanding of the results, the respondents were divided into groups according to their position in the company and the turnover of the respondents' companies, turnover here being a proxy for business size.

The ANOVA result on the groups determined by the respondents' position in the company indicate that the CEO group is more in agreement with the statements on the hiring provisions than the HR Manager group and Other groups. This is an interesting result taking into account the argument of Feldmann (2009a) that respondents may judge a country's dismissal protection laws more favourable during better economic

times when they may not have a need to dismiss workers. It could not in the current economic climate be justified in the same manner. It is, however, not clear to what this perception of the CEO group can be attributed.

However, on the individual questions, respondents on question 10 (The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker) are less certain of the impact of severance pay on the hiring decision compared to probationary measures, temporary work measures and measures for small businesses.

Conclusion on Research Proposition 2

The result of the questions relating to factors influencing the hiring decision point to the following –

Generally, respondents are of the view that current labour regulations are an obstacle to employment, leading to the conclusion that it impacts negatively on unemployment. On the specific measures of EPL, respondents felt strongest about the impact of EPL on the ability of small businesses to create more employment. Given the profile of respondents, in that they were mostly small businesses, this last mentioned conclusion must be treated carefully as respondents may have been biased in answering questions on the effect of EPL on small businesses.

The effect of severance pay provisions on the hiring decision is uncertain but respondents felt stronger about the impact of provisions relating to probationary employees and temporary workers on the hiring decision.

Therefore, whilst respondents agree strongly with the general proposition that EPL measures relating to hiring provisions impact on the hiring decision, and thus by extension unemployment, there are nuances in respect of specific measures of EPL, such as probation and temporary work compared to severance pay, where the results differ.

6.5 Research Proposition 3 - Firing provisions of employment protection in South Africa impact negatively on unemployment

The questions dealing with firing provisions of EPL were the following –

Question 7 – Current labour regulations are an obstacle to the dismissal of workers by businesses

Question 8 – Employers can freely determine their own hiring and firing practices

Question 9 – The payment of severance pay on dismissal is deterrent to firing of workers

Question 12 – The pre-dismissal procedures for dismissal of workers for poor work performance or misconduct are a deterrent to dismissal

Question 15 – The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire worker

Question 16 – The length of notice periods for dismissal is a deterrent to firing of workers

The results of the questions relating to the firing decision are set out in Table 35.

Table 35 - Firing Provisions

	Statistics						
	N Valid	Mean	Median	Mode	Std. Deviation	Skewness	Kurtosis
Current labour regulations are an obstacle to the dismissal of workers by businesses.	337	1.58	1.00	1	.896	1.766	2.835
Employers can freely determine their own hiring and firing practices.	337	3.81	4.00	5	1.297	-.999	-.164
The payment of severance pay on dismissal is a deterrent to firing of workers.	337	2.69	2.00	2	1.217	.121	-1.227
The pre-dismissal procedures for dismissal of workers for poor performance or misconduct are a deterrent to dismissal.	337	1.97	2.00	2	1.033	1.030	.199
The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.	337	2.13	2.00	2	1.061	.760	-.457
The length of notice periods for dismissal is a deterrent to firing of workers.	337	2.55	2.00	2	1.152	.199	-1.225

The results for questions six and eight were already discussed in paragraph 6.3.

This group of questions therefore seeks to obtain an understanding of the impact of EPL provisions relating to severance pay, pre-dismissal procedures, CCMA procedures

and notice periods on the firing decision. The results in respect of each of these topics are discussed below.

Severance Pay

Table 14 shows that 31.5% of respondents agreed and 29.7% of respondents disagreed with the statement that considerations of severance pay are a factor in the firing decision. In addition, 50.8% of respondents either agreed or strongly agreed and 49.2% of respondents either disagreed, were uncertain or strongly disagreed with the statement. As pointed out in paragraph 6.4, the data on the corresponding question on hiring provisions was also split although a different result for the firing provisions would have been expected since severance pay is more likely to arise in a firing decision than a hiring decision.

Feldmann (2009a) has pointed to the need for further empirical work on the impact of severance pay on hiring and firing decisions, but also pointed out that it was not clear what changes are required and how EPL should be amended (Feldmann, 2009a). The result provides some indication that severance pay is not as important a factor in the firing decision compared to the other measures tested in the survey, which contradicts some of the literature which assumes it to be more important (Feldmann, 2009a).

This result, apart from it being inconclusive, also cannot provide answers on those questions raised by Feldmann (2009a) as the question only tested respondents' views on the overall effect of their knowledge of severance pay provisions on the firing decision.

Pre-dismissal Procedures and CCMA Procedures

Table 14 shows that most respondents (80.1%) agreed or strongly agreed with the statement that pre-dismissal procedures are a deterrent to dismissal and the firing decision. This result is consistent with Barone (2001) that pre-dismissal procedures affect the firing decision. Table 14 also shows that 74.2% of respondents agreed or strongly agreed with the statement that CCMA procedures are a deterrent to firing a worker.

There is a need to simplify the pre-dismissal procedures and dispute resolution

mechanisms (National Planning Commission, 2011) which have been constraining the firing decision by employers. This result also shows that employers have a strong view on pre-dismissal and CCMA procedures and that in both cases employers consider it a deterrent to the firing decision. The strictness of EPL is typically experienced more directly in the procedural provisions of the EPL and the result confirms that South Africa can also learn from OECD countries in that the perceived cost of dismissal can be lowered through amendments to EPL aimed at simplifying firing procedures (OECD, 2010).

It is, however, not clear from this result how or to what extent the pre-dismissal and CCMA procedures should be amended as the question only tested the respondents' perception of the impact of those provisions on their firing decision.

Notice Periods

Table 14 shows that 55.8% of respondents either agreed or strongly agreed with the statement that the length of notice periods is a deterrent in the firing decision. A significant number of respondents (27.6%) also disagreed with the statement, with an additional 14.8% of respondents being uncertain.

The length of notice periods is one of the factors taken into account in the OECD (2004) methodology for measuring hiring and firing provisions of EPL in line with the OECD (2004) argument that employers take tax and transfer components of EPL, such as notice periods, into account in their decision-making (OECD, 2004). However, the result does not show as clear an indication of this as theoretically assumed. Respondents also appear to distinguish between notice periods and other procedural aspects of EPL, with the result on notice periods not being as strong as the result on pre-dismissal procedures and CCMA procedures.

This distinction could be attributed to, on the one hand, the specific measures of EPL, such as notice periods and the practical experience of the EPL. In this sense, it confirms the OECD (2010) argument that firms in South Africa find firing more difficult than the EPL itself; that is, there appears to be some disparity between the actual EPL and the experience of it by employers in practice.

However, care should be exercised with drawing significant conclusions from this result as only one question related to notice periods and the firing decision and the specific

result was also not clear.

ANOVA Result on Firing Provisions

As with the questions on the hiring provisions, the respondents were divided into groups according to their position in the company and the turnover of the respondents' companies, in order to obtain a better understanding of the results. The result of the ANOVA on the turnover groups in respect of the firing decision, indicate that the only difference between the groups was between the <R5m group and the >R20m group, providing some indication that business size is a factor in how firing provisions are experienced or perceived by employers.

This is discussed further in paragraph 6.6 with reference to research proposition 4.

The ANOVA result on the groups determined by the respondents' position in the company indicates that the HR Manager group agree less with the survey questions than the CEO and Other groups on the firing decision measures. This seems to confirm one of the OECD (2010) report findings that there are challenges in South Africa in how dismissals are dealt with in that respondents find firing more difficult than the actual legislative provisions, making the case for simplified dismissal provisions. Any further analysis of respondents based on their position in their companies is, however, beyond the scope of this research.

However, on the individual questions, as with the hiring decision above, respondents on question 9 (The payment of severance pay on dismissal is a deterrent to firing of workers) are less certain of the impact of severance pay on the firing decision compared to pre-dismissal procedures, CCMA procedures and the length of notice periods.

Conclusion on Research Proposition 3

The result of the questions relating to factors influencing the firing decision point to the following –

Respondents have a strong view that current EPL impact on their firing decision illustrated by the results on the specific measures which were tested. On the specific

elements of EPL, pre-dismissal procedures shows the strongest result, with CCMA procedures and length of notice periods also playing a role in the firing decision. There is therefore merit in the argument that although EPL in South Africa may be less strict than, for example, other OECD countries, there are problems with dismissal laws which are either objectively strict or are perceived to be strict by employers. This research therefore provides some evidence of which aspects of dismissal laws are perceived to be the constraints, with a strong emphasis being on the procedural aspects such as pre-dismissal procedures and CCMA procedures.

The impact of severance pay provisions on the firing decision is, however, uncertain, despite the fact that severance pay is more directly linked to the firing decision.

6.6 Research Proposition 4 – Business size of firms impact on their perception of hiring and firing provisions of EPL

One of the ways of tackling the unemployment challenge in South Africa is to encourage the development of small businesses, which typically stimulate economic and employment growth (Shaffer, 2006). In an environment with either actual or perceived strict EPL, it therefore matters how small businesses are affected by existing EPL.

Although only one question (question 14) specifically dealt with small business, as already established, most of the respondents in the survey can be classified as small businesses. The respondents' responses to question 3 (What is the annual turnover of your company) also then allowed for an analysis of the responses based on business size, turnover being a proxy for business size. The ANOVA analysis allowed for a comparison of means of the recoded groups of respondents, being those with turnover less than R 5 million, between R 5million and R 20 million and more than R 20 million.

Table 36 shows the result of the question dealing with small businesses and EPL.

Table 36 - Small Business and EPL

		Strongly Agree	Agree	Uncertain	Disagree	Strongly Disagree	Total
More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.	Count	199	117	12	8	1	337
	Row N %	59.1%	34.7%	3.6%	2.4%	.3%	100.0%

Most respondents (93.8%) agreed or strongly agreed with this statement, the highest percentage of all the statements in the survey.

Tables 28 and 29 in paragraph 5.7 also showed that when comparing the recoded turnover groups, the only significant difference between the groups was in respect of the firing provisions and specifically between the less than R 5 million group and the more than R 20 million group. This result indicates that business size matters only in respect of the impact of firing provisions and there is no statistically significant difference between the groups in respect of hiring provisions.

In addition to the fact that firm size matters for employment growth (Shaffer, 2006), it appears to also matter at a granular level of EPL, where it matters more in respect of firing provisions. It is important from this result that a distinction must therefore be drawn between hiring and firing provisions of EPL. To talk interchangeably of hiring and firing provisions of EPL without taking into account the different impact or perception of EPL depending on the size of a business, it is possible that some of the implications of the distinction could be lost. This distinction would be of particular importance to policy makers.

The result also confirms that current policy discussions by, for example, the National Planning Commission (2011) to reduce the regulatory burden of EPL felt by small firms are on the right track. However, as with Bartelsman *et al.* (2005) who found inconsistencies in their study of small firms in the USA and Europe, better qualitative data could be obtained in a specific study of small business and how EPL in South Africa impacts on their employment creation potential.

This research though indicates that business size does matter in how EPL is experienced; more so in respect of firing provisions of EPL, and it would be an important factor to take into account in considering any changes to EPL in South Africa.

6.7 Conclusion

The overall survey results therefore indicate that all four research propositions can be proven correct. However, on certain aspects, such as the impact of severance pay provisions on both the hiring and firing decision, the results are inconclusive. The survey respondents also provide some indication that existing EPL makes it difficult for small business to create new employment.

Furthermore, the results for the different groups, be it based on turnover or position in the company, are not consistent, but there is some indication that a respondent's position in a company impacts on how such a respondent perceives EPL.

CHAPTER SEVEN: CONCLUSION

7 CONCLUSION

7.1 Introduction

Unemployment is undoubtedly one of the main challenges facing South Africa today. The causes of the structural unemployment are numerous but one of the factors often raised is the inflexibility of labour laws, or EPL, in South Africa.

This statement is often made in the face of empirical and theoretical evidence to the contrary, but unfortunately it appears to obtain traction of its own in popular media. The theoretical and empirical consensus on EPL and unemployment as outlined in the literature herein is in essence that the effect of EPL on unemployment is uncertain, but, in South Africa, provisions relating to dismissal play a role in creating a potentially inflexible labour market. As recognised by the OECD (2010), in South Africa there is a disparity between the EPL and the actual experience or perception of the EPL by firms. It is therefore more the perception which impacts on the hiring or firing decision. These perceptions thus must be properly understood in order to deal with it.

This research therefore sought to obtain a better understanding of the impact of EPL on the hiring and firing decision specifically and the factors influencing the decisions, in order to provide a basis for recommendations to stakeholders.

7.2 Discussion and Recommendations

Despite the evidence to the contrary, respondents still hold the view that EPL in South Africa is inflexible and creates a constraint on the labour market, thereby impacting on unemployment by stifling job creation. The research propositions therefore focussed on the perception of the strictness on the one hand and the views of respondents on how EPL impacts on the hiring and firing decision.

Specific focus was also on small business because of the role which small business can play in economic growth.

Research Proposition 1 - Employment protection legislation in South Africa impacts negatively on unemployment.

There is still a strong perception of the strictness or inflexibility of EPL in South Africa. Respondents, however, have a stronger view on the dismissal provisions of EPL which are perceived as having more of an impact on the employment decision, be it hiring or firing. Although it may be tempting to dismiss such results as being biased and not consistent with credible empirical studies, for example those by the OECD, it is nonetheless important to recognise the impact of EPL on the labour market.

Irrespective whether the perceptions are fact-based or not, if it is as widespread as generally believed, it may cause a real labour market constraint as these perceptions directly influence the hiring and firing decision. It may therefore not be good enough to dismiss these perceptions as not being fact-based. These views appear to be mostly held by employers and employer organisations, all of whom are important stakeholders in the labour market.

The fact that there is a mismatch between the actual EPL and practitioners' experience and perception of it, therefore points to the solution lying in dealing with the perceptions and not necessarily through amending the relevant EPL. In this regard, labour market institutions and other civil society organisations can play a key role in confronting and rectifying the erroneous perceptions.

Research Proposition 2 - Hiring provisions of employment protection in South Africa impact negatively on unemployment.

In addition to the general perception of the strictness of EPL in South Africa, respondents believe that the hiring decision is affected by existing EPL. More specifically, the impact of EPL on small business shows the biggest impact although the impact of severance pay measures on the hiring decision is uncertain.

There are therefore indications that there may be specific aspects of EPL which require attention as respondents clearly distinguish between these and experience these nuances differently, to the extent that the impact of different measures on the hiring decision differs. It would therefore be a mistake to generalise hiring provisions of EPL

and its impact on the employment decision, but rather to deal with those specific measures which require attention.

In addition to the fact that small businesses are typically considered to be net job creators, this research shows that it is those very same small businesses which appear to be more constrained by EPL measures. This has already been highlighted, for example by the National Planning Commission (2011), but this research also points to specific measures which require attention, such as probation and temporary work arrangements, with some uncertainty regarding the impact of severance pay provisions.

Research Proposition 3 - Firing provisions of employment protection in South Africa impact negatively on unemployment.

This research shows that respondents view current EPL as impacting more on their firing decision than the hiring decision. Pre-dismissal procedures and CCMA procedures and length of notice periods also play a role in the firing decision. As with the hiring decision, the impact of severance pay provisions on the firing decision is uncertain.

Once again, this study shows that specific aspects of EPL relating to the firing decision require attention and care must be exercised that a general notion does not develop of EPL measures relating to dismissal being problematic. It is more important to highlight those specific measures which need amendment, in this case pre-dismissal procedures, CCMA procedures and notice periods. This also appears to point to the fact that the implementation of EPL, that is through its procedural provisions, is where some of the challenges lie. It is consistent with the OECD (2010) which showed that firms find firing, for example, more challenging than the actual EPL. If EPL procedures are the source of some of the challenges it therefore means that some of the solutions can be found in strengthening CCMA and other institutions and providing training to stakeholders such as trade union shop stewards, human resource managers and others, on a proper understanding of EPL and ways of improving EPL processes and dispute resolution mechanisms.

Research Proposition 4 - Business size of firms impact on their perception of hiring and firing provisions of EPL

The research results indicating the impact which business size has on the experience of employers with the hiring and firing provisions of EPL is potentially the most important of the study. This is so because of the critical role which small business can, and has to, play in stimulating the kind of economic growth which can lead to meaningful employment creation.

If measures aimed at improving the impact of EPL on small businesses are not prioritised, it is possible that policy measures seeking to turn unemployment around will simply ring hollow. It is encouraging that there is already a recognition that small business bears a potentially harmful regulatory burden (National Planning Commission, 2011) through existing EPL and this research provides an indication of which aspects of EPL small business executives find more challenging than others in their hiring and firing decisions. Small business executives therefore find firing provisions of EPL more challenging than hiring provisions. However, in an environment which employers find it difficult to fire employees, it will also stifle the decision to hire a new employee.

A labour market environment which is attractive to the creation of new jobs would therefore require that the voice of small business must be heard; it is from there that the economic and employment growth will stem.

7.3 Suggestions for further research

It is not clear to what the disparity between EPL and the experience or perception of EPL can be attributed. This research, for example, discovered some link between respondents' position in their companies and their perception of EPL. Bertola *et al.* (2000) have, for example, indicated that many aspects of EPL are qualitative making it difficult to measure definitively. Therefore, further qualitative research, in particular, on the reasons executives hold the views they do on EPL in South Africa would be useful.

Whilst there is a need to distinguish between hiring provisions, on the one hand, and firing provisions, on the other hand, there appears to be a correlation between hiring

and firing provisions, which could not be further explored in this study. If this correlation is better understood, it will also contribute to a better understanding of how amendments to EPL will possibly impact on the labour market. Further quantitative research focussing specifically on the correlation between hiring and firing provisions would therefore contribute to this.

The survey result in this research on the impact of severance pay provisions on the hiring and firing decision was uncertain. The scope of this research could also only investigate certain aspects of hiring and firing decisions. Further research on other aspects of the hiring and firing decision not dealt with herein, and more detailed research on the impact of severance pay provisions would therefore be useful. Such research would contribute to a more comprehensive understanding of how EPL should be amended and which aspects specifically should be amended in order to contribute to a flexible labour market conducive to employment creation.

It is established in this research that business size impacts on the perception firms have of EPL. It is, however, not clear why that is so and what the influencing factors are which contribute to this. Further research in order to understand the qualitative factors which influence small business and their perception of EPL is recommended.

Feldman (2009a) and Gimpelson *et al.* (2010) have also pointed to the sometimes disproportionate impact which EPL has on young and women workers. Further research on some of the specific elements of EPL as identified in this research on the youth and women workers in South Africa would also contribute to a better understanding of how EPL can be used to reduce unemployment affecting those groups.

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Appendix 1

SURVEY QUESTIONNAIRE

I am conducting research on the impact of employment protection legislation, particularly hiring and firing provisions, on unemployment in South Africa. I hope to form a better understanding of the role that labour market policy and labour regulation plays on the performance of the job market. Completing this questionnaire should not require more than 10 minutes of your time. Your participation is voluntary and you can withdraw at any time without penalty. Of course, all data will be kept confidential. By completing this questionnaire, you indicate that you voluntarily participate in this research. If you have any concerns, please contact me or my supervisor. Our details are provided below.

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Please answer the following questions by marking the appropriate answer with an "X"	
SECTION 1: BUSINESS INFORMATION	
1.	What is your position in your company?
	1 = CEO / MD / Managing Member 2 = CFO / Financial Director 3 = HR Manager 4 = Operations Manager 5 = Other (Specify)
2.	Where is the main location of your business?
	1 = Eastern Cape 2 = Free State 3 = Gauteng 4 = Kwa-Zulu Natal 5 = Limpopo 6 = Mpumalanga 7 = Northern Cape 8 = North West 9 = Western Cape
3.	What is the annual turnover of your company?
	1 = Less than R5m 2 = More than R5m but less than R10m 3 = More than R10m but less than R15m 4 = More than R15m but less than R20m 5 = More than R20m
4.	How many employees do you have in full-time employ?
	1 = Less than 20 2 = Between 20 and 50 3 = Between 51 and 100 4 = Between 101 and 150 5 = More than 150
5.	How many temporary workers do you employ?
	1 = Less than 20 2 = Between 20 and 30 3 = Between 31 and 40 4 = Between 41 and 50 5 = More than 50

Please rate the following statements marking the appropriate answer with an "X" in accordance with rating scale provided.	
SECTION 2: EMPLOYMENT PROTECTION LEGISLATION IN THE LABOUR MARKET IN SOUTH AFRICA	
6.	Current labour regulations are an obstacle to the hiring of more workers in business.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
7.	Current labour regulations are an obstacle to the dismissal of workers by businesses.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
8.	Employers can freely determine their own hiring and firing practices.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
9.	The payment of severance pay on dismissal is a deterrent to firing of workers.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
10.	The possible payment of severance pay on dismissal is a consideration when deciding to hire a new worker.
	1 = Strongly agree 2 = Agree 3 = Uncertain

	4 = Disagree 5 = Strongly disagree
11.	More flexible regulations for probationary employees will encourage the hiring of inexperienced workers.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
12.	The pre-dismissal procedures of workers for poor performance or misconduct are a deterrent to dismissal.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
13.	Current labour regulations are a deterrent to employing temporary workers.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
14.	More flexible labour regulations for small business will encourage the hiring of new workers by small businesses.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree
15.	The procedures to be complied with in the Commission for Conciliation, Mediation and Arbitration (CCMA) are a deterrent to implementing a decision to fire a worker.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree

16.	The length of notice periods for dismissal is a deterrent to firing of workers.
	1 = Strongly agree 2 = Agree 3 = Uncertain 4 = Disagree 5 = Strongly disagree