

**ALTERNATIVE MEANS TO REGULATE THE
EMPLOYMENT RELATIONSHIP IN THE CHANGING
WORLD OF WORK**

by

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Abstract

Advancing technology has caused rapid and dramatic changes in the world of work. Labour law systems grounded in the industrial era, with their emphasis on collective bargaining, are not suitable in today's world of work.

Throughout the world, the 'atypical employee' is replacing the standard or typical employee whose terms and conditions of employment were generally regulated by collective agreements. Atypical employee's terms and conditions of employment generally are not regulated by collective agreements. World-wide trends in the decentralisation of collective bargaining, decollectivisation and individualisation of the employment relationship have contributed to a decline in trade union power and influence. Consequently the number of workers covered by collective agreements has decreased. Collective bargaining has been rendered less effective because of the changing the world of work.

The South African labour law system places a huge emphasis on collective bargaining, particularly at industry level, for the protection of employee interests. Given these trends in the changing world of work, the appropriateness of this emphasis on industry or central level collective bargaining is questioned.

The vacuum left by the inadequacy and inability of trade unions to protect employee interests in a comprehensive manner by means of collective bargaining, needs to be addressed. The following alternative means of protecting employee interests are considered:

- (i) The socialisation of the law of contract;
- (ii) the interpretation given to the constitutional right to fair labour practices; and
- (iii) the role of good corporate governance and corporate social responsibility.

These alternative means of addressing legitimate employee interests could play a role in filling the vacuum created by trade union decline. The South African law of contract is capable of bridging the gap between law and justice by the application of the concepts of good faith and public policy, so that employment contracts may take cognisance of employee interests despite the imbalance of power between employer and employee. The protection of worker interests by means of the constitutional right to fair labour practices depends on the judge's interpretation of what is fair. Implementation of good corporate governance codes can be influential in protecting and promoting employee interests.

Key words

Collective Bargaining refers to the negotiation between employer parties and trade unions in order to determine terms and conditions of work and all other aspects and issues arising from the employment relationship.

Plant level collective bargaining refers to collective bargaining between an individual employer and the trade union(s) representing the employees of that particular employer.

Industry/central level collective bargaining means bargaining at central level where employers and employees of an entire industry are represented.

Decentralisation refers to a movement away from industry level to plant level collective bargaining.

Decollectivisation refers to a move away from collective representation by trade unions of employee interests.

Individualisation refers to the setting of terms and conditions of the contract of employment between employer and individual employee as opposed to the setting thereof by means of collective bargaining.

“Fordism” refers to the assembly line mode of production prevalent in the latter part of the industrial era (approximately 1950-1980).

“Atypical” employee is a worker that does not qualify as an employee in terms of the definition of an employee provided for in labour legislation.

Corporate social responsibility refers to action that goes beyond legally imposed conduct, with the aim of achieving some social good rather than merely the maximisation of profits.

Good corporate governance refers to a style of corporate management that reflects concern and consideration of other stakeholders (aside from shareholders), including suppliers, clients, the community at large and employees.