

## Perceptions of Domestic Worker towards the Basic Conditions of Employment Act of South Africa

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**KEYWORDS** Basic Conditions of Employment Act. Domestic Worker. Passbook

**ABSTRACT** This paper investigates South African domestic worker perceptions of the Basic Conditions of Employment Act No. 75 of 1997. A survey questionnaire was disseminated with the purpose of accessing domestic worker knowledge and awareness of relevant sections of the Basic Conditions of Employment Act. Sections, which dealt with fundamental rights pertaining to everyday existence: ordinary pay, overtime pay, maternity leave pay and sick leave pay. By using these sections as a reference point, the researchers were able to assess domestic worker perceptions and knowledge of their basic rights as stipulated in the Act. This study is intended to enlighten legislators and unions of the need to inform, in order to increase domestic worker awareness of their rights as set out in law. In commemoration of those women who fought for progressive legislation in South Africa, the authors would like to dedicate this paper to all of those women who were forced to carry a 'dom-pass'.

### INTRODUCTION

The abuse and humiliation experienced by the black female domestic workers in South Africa is sometimes forgotten in post-apartheid South Africa. Apart from the physical and emotional abuse, domestic workers were prohibited to commute between rural and urban areas without a pass (King 2007: 50). This meant weeks or months away from family and loved ones, often accompanied by the fear of incarceration for failing to present a pass at a random security check (Webster 2001). Although the restriction of movement formed part of the general abuse experienced by domestic workers (King 2007), in retrospect, it would appear to be the most documented and consequential aspects in the liberation of the black South African women (Witbooi and Ukpere 2011). The year 1913 was apartheid South Africa's first attempt at compelling black female workers in South Africa to carry passes. This was first announced when the Orange Free State introduced a new requirement that women, in addition to existing regulations for black men, were to carry reference documents or 'dom-pass' as it came to be known. Dissatisfaction among black female domestic workers resulted in protest by a multi-racial group of women, many of whom were professionals who took the form of passive resistance to refuse the carrying of passes. The protest against passes spread through the Orange Free State (Bendix 2010). At

the onset of World War I, authorities agreed to relax the rule due to the resultant chaos and hardship that emanated as a consequence of the war (Walker 1991; Evans 2013).

At the close of World War I, the authorities in the Orange Free State tried to re-instate the requirement, which resulted to huge opposition. The Bantu Women's League, organised by its first president Charlotte Maxeke, coordinated further passive resistance during late 1918 and early 1919. By 1922 they had achieved landmark success, which made the South African government to agree that women should not be obligated to carry passes (Walker 1991; Evans 2013). However, the government still managed to introduce legislation which curtailed the rights of women, the Native (Black) Urban Areas Act No. 21 of 1923, extended the existing pass system such that the only black women allowed to live in urban areas were domestic workers (Hutt 2007; Evans 2013).

The South African government was not intimidated. The introduction of Passes for All Blacks and the Abolition of Passes and Co-ordination of Documents Act No. 67 of 1952 (Harrison 2006: xxii), saw the South African government amend the pass laws, requiring all black persons over the age of 16 in all provinces to carry a 'reference book' at all times. The new Act enforced influx control of blacks from the rural homeland (Stadler 1987; Evans 2013). This forced black South Africans to carry a range of

documents, including a photograph, place of birth, employment records, tax payments and criminal records, which enabled the government to further restrict their movement. It was illegal to be without a Pass, the penalty of which was arrest and jail terms (Hutt 2007). The Natives (Prohibition of Interdicts) Act of 1956 removed all legal recourse for objecting to the removal of black people from certain residential areas. The Urban Areas Act limited black people to 72 hours in an urban area without permission from a specific municipal officeholder (Jordaan and Ukpere 2011). On 9 August 1956 more than 20 000 South African women gathered to march to the Union buildings to hand a petition to the government demanding an end to Passes (Bendix 2010).

In July 1986 South Africa was in a state of martial law, with a nationwide State of Emergency having been declared in June of the same year. To counter escalating international condemnation, the government lifted the obligatory carrying of passbooks by black people on 23 July 1986 (Callinicos 2005). The pass system was, however, not abandoned altogether. Black men and women were still required to have reference books/passbooks although they were no longer expected to carry them at all times and failure to present a passbook on demand by the police was no longer an offence (Venter and Levy 2011).

Today, it is estimated that there are about one million domestic workers in South Africa, most of whom are blacks and Africans in particular. The South African government statistics, in terms of the latest 2011 Quarterly Labour Force Survey (QLFS) estimated that there are 876,000 domestic workers (Statistics South Africa (Stats SA) 2013). However, according to the South African Institute of Race Relations' 2012, South African Survey, there are 1,153,000 domestic workers in South Africa (Cronje 2013: 1). The escalation in the figures suggests that the number of domestic workers acquiring work has increased. Yet, 73.87% of domestic workers have accessed beneficial provision like the Unemployment Insurance Fund (COSATU 2011: 10). The concern that arises is that with the abolishment of pass laws and the implementation of fair labour practice, majority of domestic workers are still unaware of their rights and the protective legislation that support these rights.

### **Problem Statement**

With pass laws being lifted in July 1986 and the protection of labour legislation gradually

extended to domestic workers and inclusion of domestic workers in the scope of general legislation such as the Basic Conditions of Employment Act No. 75 of 1997 (BCEA), in addition to the Labour Relations Act No. 66 of 1995 and the subsequently establishment of a sectorial determination for domestic workers in 2011 through their inclusion in the scope of the Unemployment Insurance Act, South African domestic workers are currently legally protected in a number of ways. However, several decades after, it seems that majority of South African domestic workers are unaware of their right to fair labour practice under the new dispensation.

### **Research Question**

The following research questions will be considered:

- ♦ What percentage of South African domestic workers is aware of the Basic Conditions of Employment Act No. 75 of 1997?
- ♦ What are the South African domestic worker perceptions of the Basic Conditions of Employment Act No. 75 of 1997?
- ♦ Are South African domestic workers aware of their right to leave, meal time and hours of work?

### **Aim and Objectives**

- To measure the number of South African domestic workers who are aware of the Basic Conditions of Employment Act No. 75 of 1997.
- To examine South African domestic workers' perceptions of the Basic Conditions of Employment Act No 75 of 1997.
- To establish whether South African domestic workers are aware of their right to leave, meal time and hours of work.

### **RESEARCH DESIGN AND METHODOLOGY**

The researchers used a quantitative micro level research approach. A quantitative micro-level approach may be described as a quantitative method applied within a micro level, which is also referred to as the local level. The research population include a group of individuals in a particular social context (Lavrakas 2008; Smith 2002), in this case, domestic workers in South

Africa. Practical considerations of this design suggest a survey-based field study design (Lavrakas 2008; Smith 2002). This entails the development and administration of survey questionnaires that explore working hours and wages amongst domestic workers.

### Research Method and Measuring Instrument

The researchers developed a standardised instrument, in a field study design. Structured interviews were conducted with 93 domestic workers. The data was gathered during the month of March 2012. Structured interviews were used with the intention of preventing misunderstanding and misinterpretation of questions as researchers can explain exactly what information they need from the respondents and can immediately clarify uncertainties about the questions. It is also valuable for overcoming language barriers, especially when dealing with unschooled samples (Matjeke 2012: 4). The research questions were explored in the context of the problem statement and aims by means of descriptive statistics, which emphasised the exploration of workers' understandings, particular to the various facets of the Basic Conditions of Employment Act and labour practice related to domestic workers.

### Research Procedure

The researchers used criterion sampling as their sampling technique because not all individuals are employed as domestic workers. Individuals chosen have to meet a set criterion. A domestic worker according to the criterion as defined by the BCEA "*is an employee who performs domestic work in the home of his or her employer and includes a gardener, a person employed by a household as driver of a motor vehicle, and a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker*" (Republic of South Africa 1997). Researchers used a combination of convenience and purposeful sampling, to complement criterion sampling. Sample groups were purposefully identified and in some instances conveniently sampled. The purpose of using this method was to allow researchers to "*target those places where there is abundant information to ensure that the investigation is comprehensive*" (Matjeke 2012:

4). Adherence to acceptable ethical standards was observed and participants were informed as to confidentiality, anonymity and the purpose of the research.

### Theoretical Framework

Domestic workers in South Africa lacked labour protection until 1993, when the Basic Conditions of Employment Act (BCEA) was extended to include them. This Act is the general law, which provides basic protection for employees in respect of conditions of work such as working hours, leave and dismissal (Republic of South Africa 1997; Swanepoel 2008). The Act does not, however, prescribe a minimum wage. Instead, it provides for the possibility of the Minister of Labour to make sectoral determinations, which typically include minimum wages for employees in particular sectors in which workers are deemed to be 'vulnerable', and in which employees and employers are not sufficiently organised to engage in collective bargaining, in order to reach an agreement on minimum wages themselves (Budlender 2012: 9). The definition of domestic workers in the determination as stated earlier includes gardeners, drivers and domestic workers employed in private households (Republic of South Africa 1997; Nagtegaal 2007). It excludes domestic workers on commercial farms as they are covered by a determination for agricultural workers. The conditions specified in the 2002 sectoral determination, have remained unchanged up until the present (Republic of South Africa 1997). The minimum wage has, however, changed on an annual basis. Such annual changes are common across all sectoral determinations in South Africa.

The domestic worker determination demarcated the country into two types of geographical areas, namely on the basis of average household income within different municipal areas as recorded in the 1996 census. For those municipal areas with an average annual household income of R27 000 or more per year (specified as "Area A"), the minimum wage was initially set at the equivalent of R800 per month. For those with an average household income below R27 000 ("Area B"), the minimum wage was set at the equivalent of R650 per month. As from 1 December 2012 to 30 November 2013, the minimum hourly rate for the two areas is R8.95 and R7.65

respectively for those who work 27 hours or more during an ordinary week. The determination sets the minimum, as an hourly rather than monthly wage (Bendix 2010). This was done to cater for the fact that many domestic workers are not employed on a full-time basis. They may, for example, work only half-day or they may work for different employers on different days. The hourly rate also helps to avoid the dis-employment effects of a minimum wage. Where, for example, an employer feels unable to pay the minimum for the number of hours that the worker worked previously, the number of hours can be reduced without reducing the income of the worker, but allowing the worker more free time in which to do other income-earning activity. The determination sets a higher hourly rate for workers working less than 27 hours per week than for those working 27 hours or more. Thus, as from 1 December 2012 to 30 November 2013, the hourly rate for Area A is R8.95 per hour for those working 27 hours or more and R10.48 per hour for those working less than 27 hours, while the two rates for Area B are R7.65 and R9.03 respectively (Nel et al. 2005; Grogan 2009).

Securing an income is a serious concern for many South African domestic workers. It entails many challenges relating to the awareness of legally enshrined rights such as an awareness regarding overtime pay, hours of work and sick leave pay. These challenges are positioned in a context where domestic workers struggle to retain their positions of employment. This paper examines domestic worker awareness as to the rules entitling them to overtime pay, meal breaks, sick leave pay and maternity leave pay. These rules are set out in the BCEA. Domestic workers were asked to answer questionnaires on the BCEA that investigated domestic worker awareness, as to essential rules that govern their right to basic conditions of employment. These rights are often taken for granted (Martin n.d.), since it is assumed that every employee miraculously has some level of awareness regarding their rights. This paper tests this assumption and explores domestic worker perceptions of the BCEA. The results of the survey undertaken are set out below.

## RESULTS

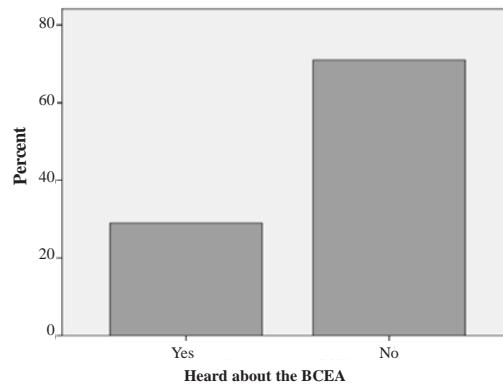
Section 2 of the BCEA (Republic of South Africa 1997) states that the purpose of the BCEA

is to advance economic development and social justice by fulfilling the primary objects of the Act, which are: to give effect to and regulate the right to fair labour practices conferred by section 23(1) of the Constitution of the Republic of South Africa. By establishing and enforcing basic conditions of employment; and regulating the variation of basic conditions of employment; in order to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation. The purpose of the BCEA seems to be far from being realised by many. When asked the question: Have you heard about the BCEA? 71% of the participants indicated that they have not heard of the Basic Conditions of Employment Act. Table 1 set out the percentage of domestic workers who indicated that they have not heard about the act.

**Table 1: Have you heard about the BCEA?**

		<i>Frequency</i>	<i>Percent</i>
<i>Valid</i>	Yes	27	29
	No	66	71
Total		93	100

Table 1 has been depicted in the Figure 1, the purpose of which is to direct the reader as to the contrast in response between participants, further demonstrating the low level of awareness of participants.



**Fig. 1. Have you heard about the BCEA?**

Section 10 (1) of the BCEA (Republic of South Africa 1997) speaks of overtime pay and that, an employer may not require or permit an employee to work overtime except in accordance with an agreement; to work more than three hours' over-



time a day; or ten hours' overtime a week. An employer must pay an employee at least one and one-half times the employee's wage for overtime worked. The employer may pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or grant an employee at least 90 minutes' paid time off for each hour of overtime worked. An employer must grant paid time off in terms of subsection (3) of the BCEA within one month of the employee becoming entitled to it; or an agreement in writing may increase the period contemplated up to 12 months. Simply put, a domestic worker may not work more than 15 hours overtime per week and may not work more than 12 hours on any day, including overtime. Overtime must be paid at one and a half times the employee's normal wage or an employee may agree to receive paid time-off. Table 2 depicts domestic workers perception of the rate of pay for overtime work. 90.1% of domestic workers did not know the overtime rate. 2.2% said that the overtime rate was the normal rate and 7.7% said that it was twice the normal rate as reflected in Table 2. The BCEA states that overtime pay must be paid at one and a half times the employee's normal pay or agree to receive paid time off.

**Table 2: Rate of pay for overtime work**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	20	62	82
	% of Total	22.0%	68.1%	90.1%
<i>1 Times</i>	Count	0	2	2
	% of Total	0.0%	2.2%	2.2%
<i>2 Times</i>	Count	5	2	7
	% of Total	5.5%	2.2%	7.7%
<i>Total</i>	Count	25	66	91
	% of Total	27.5%	72.5%	100.0%

Ordinary hours, excluding overtime a domestic worker may not be made to work more than 45 hours a week or work more than nine hours per day for a five day work week or work more than eight hours a day for a six day work week. Ordinary hours of work according to section 9 (1) of the BCEA (Republic of South Africa 1997) states that, an employer may not require or permit an employee to work more than 45 hours in any week; and nine hours on any day if the employee works for five days or fewer in a week; or eight hours in any day if the employee works on

more than five days in a week. An employee's ordinary hours of work in terms of subsection (1) of the BCEA (Republic of South Africa 1997) may by agreement be extended by up to 15 minutes a day but not more than 60 minutes in a week to enable an employee whose duties includes serving members of the public to continue performing those duties after the completion of ordinary hours of work. Schedule 1 of the BCEA (Republic of South Africa 1997) establishes procedures for the progressive reduction of the maximum ordinary hours of work to a maximum of 40 ordinary hours of work per week and 8 ordinary hours of work per day.

**Table 3: How many hours of work required for BCEA to apply?**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	20	60	80
	% of Total	21.5%	64.5%	86.0%
8	Count	0	1	1
	% of Total	0.0%	1.1%	1.1%
18	Count	1	0	1
	% of Total	1.1%	0.0%	1.1%
32	Count	0	1	1
	% of Total	0.0%	1.1%	1.1%
40	Count	1	0	1
	% of Total	1.1%	0.0%	1.1%
45	Count	1	0	1
	% of Total	1.1%	0.0%	1.1%
108	Count	0	1	1
	% of Total	0.0%	1.1%	1.1%
160	Count	0	2	2
	% of Total	0.0%	2.2%	2.2%
180	Count	2	1	3
	% of Total	2.2%	1.1%	3.2%
180	Count	1	0	1
	% of Total	1.1%	0.0%	1.1%
240	Count	1	0	1
	% of Total	1.1%	0.0%	1.1%
248	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%
<i>Total</i>	Count	27	66	93
	% of Total	29.00%	71.00%	100.00%

According to section 2 (1) (c) of the BCEA (Republic of South Africa 1997) the BCEA will not apply to employees who work less than 24 hours a month for an employer. Domestic workers were asked when the act would apply to them. 86% said that they did not know. Table 3 sets out participants' response to when the BCEA would apply to them.

A domestic worker is entitled to a one-hour break for a meal after five hours continuous work.

The interval may be reduced to 30 minutes by agreement. When a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes. If an employee has to work through his or her meal interval, then they must be paid for this meal interval according to the BCEA (Republic of South Africa 1997). An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour. During a meal interval, the employee may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another employee. An employee must be remunerated for a meal interval in which the employee is required to work or is required to be available for work; and for any portion of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises at which the workplace is situated. Work according to the BCEA is regarded as continuous unless it is interrupted by an interval of at least 60 minutes. An agreement in writing may reduce the meal interval to not less than 30 minutes and dispense with a meal interval for an *employee* who works fewer than six hours on a day. Table 4 address meal intervals. Participants were asked whether they know how meal intervals were calculated. 32.3% did not know and 67.7% believed that they knew.

**Table 4: Meal intervals**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	4	26	30
	% of Total	4.3%	28.0%	32.3%
<i>Yes</i>	Count	23	40	63
	% of Total	24.7%	43.0%	67.7%
<i>Total</i>	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%

A domestic worker, who works on a Sunday, must be paid double the daily wage.

If the employee ordinarily works on a Sunday he/she should be paid one and a half times the wage for every hour worked. If both the employer and employee agree, the employee can be paid by giving her / him time off of one and a half hours off for each overtime hour worked. Work on Sundays is voluntary and a domestic employee cannot be forced to work on a Sunday (Section 16 of the BCEA, cited in Bendix 2010). In terms of pay for work on Sundays, an em-

ployer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one - half times the employee's wage for each hour worked. If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of subsection (1) of the BCEA which is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage. Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work. If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day. An employer must grant paid time off in terms of subsection (3) of the BCEA within one month of the employee becoming entitled to it. An agreement in writing may increase the period contemplated to 12 months. The response in Table 5 shows 45.2% said that they did not know about more pay for work on Sunday. 52.7% said that they knew about such pay and 2.2% believed that they were not entitled to pay on a Sunday.

**Table 5: More pay for work on Sunday?**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	7	35	42
	% of Total	7.5%	37.6%	45.2%
<i>Yes</i>	Count	20	29	49
	% of Total	21.5%	31.2%	52.7%
<i>No</i>	Count	0	2	2
	% of Total	0.0%	2.2%	2.2%
<i>Total</i>	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%

Participants were asked if they said yes to Sunday pay how should such pay be calculated. The response in Table 6 reveals that 36.7% said that they did not know. 2% said that they should be paid the ordinary rate. 61.2% said double the ordinary pay. The correct answer a domestic worker, who works on a Sunday, must be paid double time. However, if a domestic worker works on a Sunday on a regular basis, he/she

should be paid at least one and a half times the hourly rate.

**Table 6: If yes to work on Sunday – should you be paid?**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	3	15	18
	% of Total	6.1%	30.6%	36.7%
<i>1 Times</i>	Count	1	0	1
	% of Total	2.0%	0.0%	2.0%
<i>2 Times</i>	Count	16	14	30
	% of Total	32.7%	28.6%	61.2%
<i>Total</i>	Count	20	29	49
	% of Total	40.8%	59.2%	100.0%

Chapter 2 section 18 of the BCEA (Republic of South Africa 1997) regarding work on public holidays, states that an employer may not require an employee to work on a public holiday except in accordance with an agreement. If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay, an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day; an employee who does work on the a public holiday, at least double the ordinary pay. If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to the employee's ordinary daily wage; plus the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method. An employer must pay an employee for a public holiday on the employee's usual pay day. If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day. Table 7 indicates that 37.6% do not know whether they should work on a public holiday. 4.3% said that they should work and 58.1% said that they should not work.

When asked whether they should be paid more for working on a public holiday 61.3% said they did not know. 34.4% said yes that they should be paid and 4.3% said no that they should not be paid more as reflected in Table 8.

**Table 7: Should you work on public holiday?**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	5	30	35
	% of Total	5.4%	32.3%	37.6%
<i>Yes</i>	Count	1	3	4
	% of Total	1.1%	3.2%	4.3%
<i>No</i>	Count	21	33	54
	% of Total	22.6%	35.5%	58.1%
<i>Total</i>	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%

**Table 8: Should you be paid more for working on a public holiday?**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>Don't know</i>	Count	11	46	57
	% of Total	11.8%	49.5%	61.3%
<i>Yes</i>	Count	15	17	32
	% of Total	16.1%	18.3%	34.4%
<i>No</i>	Count	1	3	4
	% of Total	1.1%	3.2%	4.3%
<i>Total</i>	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%

Those participants who said yes were then asked if they knew how the pay should be calculated. All of these participants said that it should be twice the normal rate, as revealed in Table 9. Where the government declares an official public holiday at any other time, then this must be granted. The days can be exchanged for any other day by agreement. If the employee works on a public holiday he/she must be paid double the normal day's wage.

**Table 9: If yes to the above – how many times more should you be paid?**

		<i>Heard about BCEA?</i>		
		<i>Yes</i>	<i>No</i>	<i>Total</i>
<i>2 Times</i>	Count	14	17	31
	% of Total	45.2%	54.8%	100%
<i>Total</i>	Count	14	17	31
	% of Total	45.2%	54.8%	100%

Section 22 (1) of the BCEA (Republic of South Africa 1997) in this section, "sick leave cycle" means the period of 36 months' employment with the same employer immediately following, an employee's commencement of employment; or the completion of that employee's prior sick leave

cycle. During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks. During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked. During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave by the number of days' sick leave previously taken. According to section 23, of the BCEA (Republic of South Africa 1997) an employer must pay an employee for a day's sick leave. The wage the employee would ordinarily have received for work on that day; and on the employee's usual pay day. An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this section if, the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and the employee's entitlement to pay for any day's sick leave is at least 75% of the wage payable to the employee for the ordinary hours the employee would have worked on that day. Sick leave over the sick leave cycle is at least equivalent to the employee's entitlement pay.

In summary, during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked. For a sick leave cycle of 36 months, an employee is entitled to pay sick leave that is equal to the number of days the employee would normally work during a period of 6 weeks. The employer does not have to pay an employee if the employee has been absent from work for more than two days in a row, or on more than two occasions during an 8-week period, and does not produce a medical certificate stating that he/she was too sick or injured to work. The certificate can be from a doctor, a traditional healer or a qualified nurse. In Table 10, domestic workers were asked if they should be paid when sick. 59.1% said that they did not know, 32.3% said yes that they should be paid, while 8.6% said no that they are not expected to be paid.

Those participants who understood that they should be paid when sick were asked how many sick days they were entitled to. Table 11 reflects that 33.3% of domestic workers said they don't know. 39.4% said one day of paid leave. 9.1% said two days of paid leave. 6.1% said three and five days respectively, and 3% correspond-

ingly said seven and thirteen days. According to the Act two days would have been the correct answer which 9.1% answered correctly.

**Table 10: Should you be paid on days when sick?**

		Heard about BCEA?		
		Yes	No	Total
<i>Don't know</i>	Count	10	45	55
	% of Total	10.8%	48.4%	59.1%
<i>Yes</i>	Count	15	15	30
	% of Total	16.1%	16.1%	32.3%
<i>No</i>	Count	2	6	8
	% of Total	2.2%	6.5%	8.6%
<i>Total</i>	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%

**Table 11: If yes, – how many days paid sick leave?**

		Heard about BCEA?		
		Yes	No	Total
<i>Don't know</i>	Count	3	8	11
	% of Total	9.1%	24.2%	33.3%
<i>1</i>	Count	10	3	13
	% of Total	30.3%	9.1%	39.4%
<i>2</i>	Count	1	2	3
	% of Total	3.0%	6.1%	9.1%
<i>3</i>	Count	2	0	2
	% of Total	6.1%	0.0%	6.1%
<i>5</i>	Count	1	1	2
	% of Total	1	3.0%	6.1%
<i>7</i>	Count	0	1	1
	% of Total	0.0%	3.0%	3.0%
<i>13</i>	Count	0	1	1
	% of Total	0.0%	3.0%	3.0%
<i>Total</i>	Count	17	16	33
	% of Total	51.5%	48.5%	100.0%

Those participants who understood that they should be paid when sick were asked if they should be paid more than two days consecutively. Table 12 reveals that 77% stated that they did not know, 16.2% said yes and 6.8% said

**Table 12: Should be paid more than two days consecutively?**

		Heard about BCEA?		
		Yes	No	Total
<i>Don't know</i>	Count	14	43	57
	% of Total	18.9%	58.1%	77.0%
<i>Yes</i>	Count	7	5	12
	% of Total	9.5%	6.8%	16.2%
<i>No</i>	Count	3	2	5
	% of Total	4.1%	2.7%	6.8%
<i>Total</i>	Count	24	50	74
	% of Total	32.4%	67.6%	100.0%



no. The employer is obligated to pay for more than two consecutive days 16.2% answered correctly.

A domestic worker is entitled to up to four consecutive month's maternity leave. The employer does not have to pay the employee for the period for which she is off work due to her pregnancy. However the employer and employee may agree together that the employee will receive part of her whole wage for the time that she is off. The mother can also claim maternity benefits from Unemployment Insurance Fund for the full four months. What are the important issues relating to maternity leave? Maternity leave is a four-month period, which starts four weeks before the expected date of birth. A domestic worker may not work for six weeks after the birth of a child, unless a medical practitioner or midwife certifies that the domestic worker may begin work. Where possible, notice of leave and date of return to work must be provided before the leave begins.

According to section 25 (1) of the BCEA (Republic of South Africa 1997) an employee is entitled to at least four consecutive months' maternity leave. An employee may commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed; or on a date from which a medical practitioner or midwife certifies that it is necessary for the employee's health or that of her unborn child. No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so. An employee who has a miscarriage during the third trimester of pregnancy or bears a stillborn child is entitled to maternity leave for six weeks after the miscarriage or stillbirth, whether or not the employee had commenced maternity leave at the time of the miscarriage or still birth.

An employee must notify an employer of the date on which the employee intends to commence maternity leave; and return to work after maternity leave. Notification must be given at least four weeks before the employee intends to commence maternity leave; or if it is not reasonably practicable to do so, as soon as is reasonably practicable. The payment of maternity benefits will be determined by the minister subject to the provisions of the Unemployment Insurance Act No 30 of 1966 (Bendix 2010). Participants were asked should they get paid for maternity leave. 47.3% said they did not know, 39.8%

said yes and 12% said no. The correct answer being yes of which 39.8% said yes, as shown in Table 13.

**Table 13: Should you get paid for maternity leave?**

		Heard about BCEA?		
		Yes	No	Total
<i>Don't know</i>	Count	7	37	44
	% of Total	7.5%	39.8%	47.3%
<i>Yes</i>	Count	18	19	37
	% of Total	19.4%	20.4%	39.8%
<i>No</i>	Count	2	10	12
	% of Total	2.2%	10.8%	12.9%
<i>Total</i>	Count	27	66	93
	% of Total	29.0%	71.0%	100.0%

Participants who answered that they believe they should be paid for maternity leave were asked how many months they were entitled to have leave. Table 14 reveals that 16% stated three months and 84% said four months. Correct answer being four months with 84% response.

**Table 14: If yes to above-how many months?**

		Heard about BCEA?		
		Yes	No	Total
<i>3 months</i>	Count	2	2	4
	% of Total	8.0%	8.0%	16.0%
<i>4 months</i>	Count	11	10	21
	% of Total	44.0%	40.0%	84.0%
<i>Total</i>	Count	13	12	25
	% of Total	52.0%	48.0%	100.0%

**DISCUSSION**

In 2010, Budlender conducted research on decent work for domestic workers. He reported that "several of the worker groups referred to the relevant law as the Labour Act or Labour Relations Act. While the latter does apply to domestic workers and gives general rights, it is the Basic Conditions of Employment Act that governs basic conditions of employment. There is no South African law named the Labour Act. Many of the groups referred to the Unemployment Insurance Fund (UIF), although none noted that this fell under a separate act. When asked whether a law existed in relation to domestic workers, in most groups one of the first points to be made was that the law stated that domestic workers must be registered" (Budlender-

er 2010: 20). This law no longer exists. Two years later knowledge as to the relevant law has not changed. 93.4% of domestic workers have not heard of the BCEA. Domestic worker perceptions of the BCEA are limited. Workers' overall perceptions of the BCEA are vague, clouded by ignorance. Of the 14 questions, 12 questions had the option of "don't know" as an answer. Consonant with 93.4% of the workers having not heard of the act, the majority of respondents indicated that they "did not know". This does suggest that there is a considerable level of ignorance concerning to the Act.

Domestic worker awareness as to their rights, particularly rate for overtime pay, hours of work required for BCEA to apply, meal intervals, Sunday pay and work on a public holiday, sick leave pay and maternity leave pay. Rate for overtime pay is one and a half times the employee's normal wage or an employee may agree to take paid time off. According to participants 90.1% did not know, 2.2% said one time and 7.7% said two times the normal wage. How many hours of work required for BCEA to apply, participants were uncertain 86% did not know. Their response as to the working hours varied from 8 to 248 hours. None of the respondents answered correctly with regard to how the BCEA will apply to employees who work less than 24 hours a month for a particular employer. Awareness as to meal intervals, 67.7% agreed that they were entitled to meal intervals; a far higher response was expected. However, 32.3% did not know whether they were entitled to a meal interval. More pay for work on a Sunday showed improved awareness, as 52.7% said that they were entitled to extra Sunday pay, 45.2% said they did not know and 2.2% said no. For those respondents who believed that they should be paid more for work on a Sunday, 61.2% said they should receive double pay, 2% normal pay, while 36.7% did not know the additional rate of pay. The correct answer being double pay. Should you work on public holiday, 58.1% said that they should not. For those respondents who believed that they should, 34.4% said that they should be paid extra for working on a public holiday and of those respondents, 45.2% said that they should be paid double.

Should you be paid on days when sick, 59.1% said they did not know, 32.3% said yes and 8.6% said no. Of those who believed that they were entitled to sick pays, 16.2% said they

should be paid for more than 2 consecutive days. Should domestic workers be paid maternity leave, 39.8% said yes, and of those, 84% said that four months was the required leave.

## CONCLUSION

It has been a hundred years since South African women, notably domestic workers, first took to the streets demanding their rights. The abolishment of pass laws has given way for the empowerment of women and their fight for fair labour practice and equality. Today descendants of those very women have failed in accessing legislation. Domestic workers today do not lack the qualities that these women exhibited. Yet, when questioned about their perceptions of relevant legislation, most of these domestic workers are unable to clarify their entitlement to these rights, as more than 90% of them are unaware of the Act. Most of them seem to have become placid. Relevant legislation like the BCEA is protective and informative and therefore allow workers (including domestic workers), to become more aware of their rights. Yet most of the domestic workers choose not to be informed or equip themselves with knowledge that can be successfully applied in the workplace. Being underpaid and over worked is no excuse when lack of awareness is the cause of labour injustice. Domestic workers have the right to protective legislation and fair labour practice in the post-apartheid South Africa. However, the passion for exploring their rights appear to have dwindled when compared to their precursors.

## LIMITATIONS OF THE STUDY

Several limitations to the study arose, as a result of participants being afraid of being identified as migrants. Suspicion regarding the content of the questionnaire led to many participants refusing to participate in the study. Sample size should have been larger and distributed to other areas around the Johannesburg Central Business District (CBD). The survey should have investigated employer perceptions of the BCEA. This could have helped clarify the debate as to employee versus employer perceptions of the Act. As with most studies, the limitations are often discovered in hindsight. In the converse, this leaves room for other researchers to explore aspects of the study, in order to allow for greater

understanding of the dilemma faced by many domestic workers in South Africa.

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