

**HR EMPLOYEES' PERCEPTIONS REGARDING THE CHANGES IN SECTION 198B  
OF THE LABOUR RELATIONS ACT**

**by**

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## DECLARATION

I, **Melton Ledwaba**, hereby affirm that the study “**HR Employees’ perceptions regarding the changes to section 198B of the Labour Relations Act**” is my individual work and that the sources utilised have been indicated and acknowledged by means of comprehensive references.

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SIGNATURE

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DATE

## **ABSTRACT**

South Africa's labour legislation has recently undergone momentous changes, in particular, the changes relating to section 198B of the Labour Relations Act (LRA) 66 of 1995. These amendments have proven to be more contentious than any other changes implemented by government in past years. The purpose of this study is to examine and outline the specific implications that the amendments to legislation regarding fixed-term contracts have on a pension and provident fund company in Gauteng, South Africa. This research will therefore highlight the implications (positive and negative) concerning the changes to section 198B on a pension and provident fund organisation in Gauteng, South Africa.

The qualitative investigatory study was conducted with six employees of a pension and provident fund company which makes use of fixed term contract employees, until data saturation was reached. The data was collected by means of individual in depth interviews. The results of the study clearly indicate that the changes to section 198B will have both negative and positive implications. Some of the negative implications are that organisations have had to incur increased employment costs as a result of having to provide equal benefits and conditions of employment to all fixed term contract employees. Organisations now have to review the necessity of deploying fixed term contracts and where required to do away with such contracts. The implication here is that, the employment flexibility which organisations previously had has now been removed.

Some of the positive implications are that, a few employees who had been on fixed term contracts were employed on a permanent basis after the changes came into effect. Employees experienced greater job security and were offered much needed benefits such as medical aid, pension and disability benefits. Permanent and fixed term contract employees are now treated equally. Part-time employees have better job security and the enhanced ability to enforce statutory rights in terms of equal treatment in employment by evoking enforcement mechanisms such as the Commission for Conciliation, Mediation

and Arbitration (CCMA), labour courts and bargaining councils with jurisdiction to arbitrate matters.

**Keywords:** Organisation; Employees; Fixed term contract employees; Labour legislative changes; Section 198B of the Labour Relations Act; Pensions and provident fund company;

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## **LIST OF ACRONYMS**

AIDS - Acquired Immune Deficiency Syndrome  
ANC – African National Congress  
BBBEE – Broad-based-black economic empowerment  
BBC – Black Business Council  
BCEA – Basic Conditions of Employment Act  
BSA – Business South Africa  
BUSA – Business Unity South Africa  
CCMA – Commission for Conciliation, Mediation and Arbitration  
COSATU – Congress of South African Trade Unions  
EEA – Employment Equity Act  
FIFA – Federation Internationale de Football Association  
HIV – Human immunodeficiency virus  
ILO – International Labour Organisation  
HR – Human resources  
HRM – Human Resources Management  
LRA – Labour Relations Act of 66 of 1995  
MEC – Member of the Executive Council  
NEC – National Executive Committee  
NEDLAC – National Economic Development and Labour Advisory Council  
NUMSA – National Union of Mine Workers of South Africa  
SARS – South African Revenue Service  
SACP – South African Communist Party  
SDA – Skills Development Act  
SETA – Sector Education and Training Authorities  
TES – Temporary employment services

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## **CHAPTER 1**

### **GENERAL INTRODUCTION**

#### **1.1 INTRODUCTION**

The amendments to the Labour Relations Act, 66 of 1995 (LRA) were published in the Government Gazette of 2014. The labour amendments, in particular, changes to section 198B are justly contentious and many have contradictory viewpoints on the subject. There can be no doubt that the changes will have implications on organisations (Landis & Grossett, 2014).

Section 198B deals with fixed term contract employees. The law is that, a company may employ a fixed term contract employee only with good reason for a period longer than three months provided that the work the contractor will be doing is of a limited or a definite time period and that the contractor receives the same or equal benefits to those received by permanent employees (Schepers, 2015).

The legislative changes to section 198B is one of the most contentious pieces of legislation because of the nature of the implications it will have on a company's employment situation, the country's unemployment rate and the free labour market system (Loggenberg, 2015). The labour legislation part of this study will involve referring to section 198B of the LRA, 66 of 1995 regarding equal treatment of permanent and fixed term employees within the South African labour context.

Taking into account the above discussions, a need was recognised in the literature and in organisations to examine what implications the changes in section 198B of the LRA 66 of 1995 would have on organisations and employees. This chapter covers the background to the problem, motivation, objectives, rationale for the study and the disciplines involved. The chapter ends off with the chapter layout.

## **1.2 BACKGROUND TO THE PROBLEM**

### **1.2.1 South African labour legislation**

South African labour legislation currently has three elementary statutes, that is the Labour Relations Act of 1995, the Employment Equity Act 75 of 1997 and the Basic Conditions of Employment Act 55 of 1998 (Basson, Christianson, Garbers, Le Roux, Mischke, & Strydom, 2005). The purpose of these Acts is to protect the rights of individual workers and employers and to play a pivotal supporting role in the workplace and in the employment relationship.

One of the first pieces of labour legislation was developed during the apartheid era, the “Industrial Conciliation Act of 1924” which protected the interests and rights of the skilled white workers but excluded black employees (Finnemore & Joubert, 2013). Further labour laws were introduced such as the Bantu Labour Act, Settlement of Disputes Act 48 of 1953, Industrial Conciliations Act 28 of 1956 and the Wage Act 5 of 1957. These laws were primarily geared at protecting the interests of white people through racial prejudice (Swanepoel & Slabbert, 2012).

The Wiehahn Commission of Inquiry was established in 1979 with the primary function of investigating the labour state of affairs in South Africa. The most momentous recommendation made by the commission was the extension of freedom of association to all persons irrespective of their race or sex. This meant that trade unions representing black people would be able to utilise the full machinery of the Labour Relations Act of 1956 (Bendix, 2000).

Finnemore, Koekemoer and Joubert (2019) suggest that South Africa’s labour challenges have existed since long ago and continue to exist to date. Although the country’s labour regulations have developed extensively, the challenges faced in the past continue to exist and can be traced back to the pre-colonial era. Landis and Grossett (2014) state that the amendments to the LRA, in particular, section 198B have been brought into existence

particularly to deal with the current challenges, inequalities and concerns that labour, government and business have to contend with.

### **1.2.2 Changes to section 198B of the LRA**

This section of the LRA deals with fixed term contracts of employment. Fixed term contracts can be defined as a contractual relationship between an employee and an employer that lasts for a specified period. It is a contract that lapses on either a specified date, the occurrence of a specific event or completion of a particular task. Providing permissible reasons would be acceptable for the deployment of fixed term contract employees. Without restricting the generality of these provisions, some of the justifiable reasons would include (Schepers, 2015).

- If an employee is employed for the purposes of replacing another employee who is not present at work for a short period or temporary basis.
- The employee is employed for the purpose of a momentary increase in work volume which is not anticipated to last more than 12 months.
- If an employee is employed to work entirely on a definite assignment that has a restricted or definite duration.
- If an employee is employed who is a non-resident of South Africa afforded a work permit for a distinct period.
- An employee is employed to perform seasonal work.
- An employee is employed for the purposes of an official public works scheme or similar public job creation scheme.

The regulation of this section with regards to fixed-term contracts concludes that, fixed-term contracts with periods longer than three months are only allowed if the work that needs to be done is only for a limited period and only if the employer can give a valid reason as prescribed by section 198B(b). This section also stipulates that employees on fixed term contracts may not be treated on less favourable terms than other permanent employees doing the same type of work. Fixed term contracts must be in writing, and employees working for longer than three months should be awarded the opportunity to also apply for internal vacancies (Grogan, Maserumule & Govindjee, 2015; Brand, Todd & Laubscher, 2012).

Finnemore and Joubert (2013) suggest that a fixed term contract of employment completed or renewed in contravention of subsection (3) of the Labour Relations Amendment Act will be deemed to be of an indistinct duration. Finkin and Mundlak (2015) suggests that, if it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of an employees' contract as contemplated by the act.

The OECD (2015) states that, as from the commencement of the Labour Relations Amendment Act of 2014, an employer must provide an employee employed in terms of a fixed term contract and an employee employed on a permanent basis with equal access to opportunities to apply for vacancies. An employee employed on a legitimate fixed term contract of employment for longer than 24 months is entitled to severance pay of at least one week for every completed year of service.

In the event that an employee's services are terminated, the employer bears the obligation to prove that the requirements in relation to section 198B have been fairly exercised. The potential adverse implications for the employer are immense (Landis & Grossett, 2014).

Truter (2015) suggests that, if an employee is contracted for three months or less, the provisions of changes to section 198B do not necessarily apply. The provisions also do

not apply if an employer employs less than ten employees or employs less than fifty employees and whose business has been in operation for less than two years. Fixed term contract employees will continue to benefit from the protection that the LRA provided prior to the amendments to section 198B.

Employers are prohibited from utilising fixed term contracts as a substitute for probation. Should an employee work beyond the expiration date of his or her contract of employment without signing a new contract, the employee may then effectively dispute that their employment has become indistinct, the employee may further argue that a reasonable expectation of contract renewal or permanent employment was created. The provisions of changes to section 198B of the LRA do not afford protection to employees who earn more than the relevant threshold determined by the Minister (Truter, 2015).

The aim of the amendments was among other things, to legalise employment contracts that were camouflaged as fixed term contracts but were in actual fact permanent contracts and to ensure that vulnerable employees are no longer exploited. Employers who have justifiable reasons for concluding fixed term contracts will most probably not be affected by the perceived unfavourable processes of the amendments, provided that they comply with the requirements in terms of section 198B of the LRA (Government Gazette, 2014).

### **1.2.3 Motivation for the study**

All through the history of the changes in South Africa's financial system with regard to the international labour organisation, industrialisation as well as globalisation, the changes in legislation, more specifically the changes to labour legislation have become more fundamental. It may be argued that some of the changes to section 198 of the LRA were politically inspired and to some extent a bit unnecessary, the allegation is that the changes have been orchestrated by the ANC, SACP and COSATU (Nel, Kirsten, Swanepoel, Erasmus & Poisat, 2013).

The question therefore is what implications will the changes to section 198 and more specifically section 198B (changes to fixed-term contracts) of the LRA, 66 of 1995 (LRA)

have on different companies in South Africa? The researcher therefore intends to investigate the implications that changes to the LRA 66, of 1995 and more specifically the amendments to section 198B with regard to fixed-term contracts will have on a pension and provident fund company in Gauteng, South Africa.

It will be explored to understand whether the amendments have had positive or negative implications on the organisation and how the organisation can best deal with the changes. The aim is to gain an understanding of the experience of dealing with the changes from a human resource and organisational point of view.

Human Resources (HR) employees in diverse organisations have unswerving experience and knowledge of the changes to labour legislation because most changes to any labour related legislation have to be introduced and implemented by them. For the purposes of this study, the researcher has selected individuals from the HR department based on their experience and resourcefulness to assist in the research. The HR Manager of the organisation where the research was conducted was the point of contact for the researcher.

The changes in section 198B of the LRA could have immense implications on an integrated pension and provident fund company in Gauteng (the company used for this study) because this organisation makes use of fixed term contract employees on an extensive basis (Landis & Grossett, 2014).

### **1.3 PROBLEM STATEMENT**

Welman, Kruger and Mitchell (2005:14) states that “A research problem refers to some difficulty that the researcher experiences in the context of either a theoretical or practical situation and to which he or she wants to obtain a solution”.

The purpose of this research was to investigate the implications that changes to the LRA 66 of 1995 and more specifically the amendments to section 198B with regard to fixed-

term contracts have on a pension and provident fund company in Gauteng, South Africa. The researcher decided to conduct his research at this company because they make use of fixed term contract employees on an extensive basis.

According to the Government Gazette (2014), section 198B of the LRA regulates that fixed term contract employees who earn below the Basic Conditions of Employment Act (BCEA) salary threshold may be employed for longer than 3 months provided that, the work they will be doing would be of a limited or a definite time period or if justifiable reasons exist for the employment of the fixed term contract employee. These employees may not be treated less favourably than permanent employees unless justifiable reasons exist for the difference in treatment.

The research problem simply stated is the implications of the specific changes to section 198B of the LRA on the abovementioned organisation. It will be explored whether the amendments have had positive or negative implications on the organisation and how the organisation can best deal with the changes. The aim is to achieve an appreciation of the experience of having to deal with the changes.

Labour law amendments take place to either improve current written law or to adjust to technical changes or union pressure or demands that have implications on the labour market. It is unavoidable for an organisation to adapt to change more especially changes in labour legislation. Barker (2011) indicates that the labour legislative changes will result in both direct and indirect implications on business.

According to Mahlaka (2015), labour amendments have been hugely criticised for having the potential to curtail employment opportunities in South Africa. The amendments will probably result in organisations increasingly subcontracting services or scaling down on operations instead of employing fixed term or part-time employees. Affected companies in various industries have conducted a thorough review of their staffing needs and assessed whether they have fixed term contract employees and whether those

employees are needed or not. Most of these employees have been terminated where it was found that fixed term employees are in abundance (Mahlaka, 2015).

Maseko (2015) confirms the abovementioned statement by revealing that, the labour amendments may significantly cost the country existing jobs. It is claimed that several jobs would be lost ranging in the region of 215 150 as a direct implication of the particular amendment dealing with the equalisation of conditions of employment between fixed term and full-time employees. This will add to the country's unemployment figure of 27% in the latest quarter of 2018 (Frederick, Fourie & Skinner, 2018).

This research will be conducted at a pension and provident fund company in Gauteng. The organisation employs roughly 200 fixed term employees who are employed as employee benefit fund administrators and are responsible for the administration and processing of surplus related claims in the Metal and Engineering sector.

Permanent employees range between 550 to 600, most of them, administer and process benefits for employees in the Metal and Engineering Industries, benefits such as provident fund, pension fund, sick pay fund, disability fund and death related benefits. A total of 200 fixed term contract employees were employed in 2014/2015 before the new legislation came into existence. The changes to section 198B of the LRA among other things could therefore have adverse implications on this organisation.

This research will be significant and of great value due to the fact that the topic of the amendments is fairly new and comprehensive research on the subject is yet to be conducted. The research is critical because it will outline the implications of the amendments and it will identify precisely what is absent in literature and in practice. The most important research question formulated in this study is as follows: What implications will the changes to section 198B of the LRA have on an integrated pension and provident fund company in Gauteng, Johannesburg.

#### **1.4 OBJECTIVES OF THE RESEARCH**

The purpose of this study is to investigate the perceptions of employees in the HR department with regard to the changes to section 198B of the LRA and to further examine and outline the specific implications that the amendments to legislation regarding fixed-term contracts have on employees and the organisation in a pension and provident fund company in Gauteng, South Africa.

This research will therefore highlight the implications (positive and negative) concerning the changes to section 198B of the Labour Relations Act (LRA) on a pension and provident fund organisation in Gauteng, South Africa. The study endeavors to provide a thorough understanding of the legislative changes and will assist organisations to correctly interpret and apply the amendments.

The study will give guidance to organisations on strategically managing and implementing the legislative changes so as to remain effective, efficient and to help avoid unnecessary litigation as a consequence of non-compliance to the amended section 198B of the LRA. The study is paramount because it will provide new insight to the field of Labour Relations and to HR practitioners.

The anticipated outcomes will be that, suitable interventions will be identified and implemented to minimise the adverse implications of the changes to the LRA and to embrace the positive implications thereof, not only within the pension and provident fund company but on many other organisations in the labour market.

## **1.5 ASSUMPTIONS**

Assumptions are statements believed to be true but which have not been tested as yet (Roberts, 2002; Babbie, 2008). Assumptions are unexamined beliefs, it is what we think without realising it. Our inferences are often based on assumptions that we have not thought about critically. According to Morehouse and Richards (2012), ontology assumption can be defined as a question about the nature of reality in the intended study

and epistemology can be defined as how people understand the reality in the intended study.

Assumptions are things that are accepted as true or plausible by researchers and scholars who will be reading this particular thesis. For instance, any scholar who reads this thesis ought to assume that certain aspects of the study are accurate given the population sample, statistical test and research design. It is a belief that forms one of the bases for the research without any pragmatic data to support the belief (Nkwake, 2012). The assumptions in concern will be discussed in more detail below.

### **1.5.1 Epistemological assumptions**

Epistemology is concerned with the theory of knowledge particularly with regard to its methods, validity, scope and the distinction between justified belief and opinion. In short, it is about how what is assumed to exist can be known (Grix, 2002). An epistemological position within the interpretivism perspective is primarily based on the premise that, a strategy is required that would respect the differences between people and the objects of the natural sciences, therefore requiring the social scientist to comprehend the idiosyncratic meaning of social action (Bryman, as quoted in Grix, 2002:178).

According to Roberts (2002) epistemology is the study of knowledge and justified belief. It relates to questions such as what are the necessary and sufficient conditions of knowledge? What are its sources? What is its structure? And what are its limits? Epistemology aims to answer such questions and is also about issues having to do with the creation and dissemination of knowledge in particular areas of inquiry.

Reality is one-sided depending on different circumstances or situations. Epistemological assumptions describe questions that individuals deem appropriate as proof of matters in the societal world. These questions assist the researcher to explore theories and knowledge and how to demonstrate them in writing (Babbie, 2008; Roberts, 2002).

The epistemological assumption of this study is to interpret the actuality of the implications of the changes to section 198B of the LRA, regarding equal treatment of fixed term and permanent employees in terms of pay and benefits, on a pension and provident fund company in South Africa as practiced through the premise of knowledge by the partakers. Through individual group in-depth interviews, the researcher will fashion an in-depth comprehension as to whether the amendments to section 198B of the LRA have negative or positive implications.

### **1.5.2 *Ontological assumptions***

Maree and Van Der Westhuizen (2009) suggest that ontology assumes that reality may be understood from both an internal and external point of view. Ontology is a system of belief that reflects an interpretation of an individual about what constitutes a fact. It is the study of being and the nature of reality.

Ontology involves what is supposed to exist in some world. It refers to a branch of philosophies which articulates the nature and makeup of the world. Ontology describes the world in question (Killam, 2013).

The realist position indicates that theories exist for a reason and that reality is of an objective nature or that reality can be understood merely through words and names created by the mind and within levels of individual consciousness. In short Ontology is concerned with what we believe constitutes social reality (Grix, 2002).

The ontological assumption in this study is to be acquainted with and to gain a thorough understanding about the nature of this study. The scenery of this study leads to the supposition that, the amendments concerning equal treatment of fixed term contract employees relative to their permanent counterparts can influence employment in a business.

### **1.5.3 *Methodological assumptions***

Methodological assumptions are all about the best approach or method to be used in the research study (Babbie, 2008, Roberts, 2002).

Methodological assumptions consist of the assumptions which the researcher makes during the research process regarding the methods to be used in the process of qualitative research (Creswell 2013). The methods used by the researcher are inductive and usually based on the researcher's individual familiarity in gathering, analysing and interpreting research data. The research study will more often than not be the product of the principles of the researcher. Through an inductive approach, unrefined textual information is reduced into a concise summary structure. Obvious links are conventional between research objectives and summary findings derived from the unrefined data (Crowther and Lauesen 2017).

For the purposes of this study, the following is implicit regarding methodological assumptions:

- This subject has not been studied previously therefore an exploratory design will be most ideal for the study.
- Information may be obtained from participants by means of in - depth interviews.

The researcher has opted to make use of participants who are employed in the HR Department of an incorporated pension and provident fund company for a convincing sample. Any and all indispensable information was obtained by the researcher through conducting in - depth interviews with the participants to the study. Information and knowledge collected was analysed and compared to the views and opinions of authors in the literature review chapters.

#### **1.5.4 *Axiological assumptions***

Axiological assumptions refer to the philosophical value, ethics and worth of a research study, it is concerned with what is important and valuable in research. It is the commonly known term for ethics, moral values and aesthetics. Research studies that depend largely on notions of worth are similar to what is called value theory research. Ethics in axiological assumptions investigates the concepts of what is accurate or correct and what is worthy or virtuous in individual and social conduct. Aesthetics deals primarily with the theory or concepts of accord and harmony (Grix, 2002).

For the purposes of this study, the researcher will attempt to detail the principles regarding value with arithmetic and scientific rigor.

## **1.6 RATIONALE FOR THE STUDY**

Landis and Grossett (2014) state that, the changes to the LRA, particularly changes to section 198B of the LRA, are justly contentious and that there are many corresponding and contradictory viewpoints on the topic. The rationale behind this study lies in determining the specific implications that the amendments to legislation regarding fixed-term contracts of employment have on a pension and provident fund company in Gauteng, South Africa.

The intention is to gain an understanding of the skills required of dealing with the changes from a human resources and organisational point of view. The experiences of dealing with the legislative changes will give guidance to organisations and their HR Departments to strategically manage the changes in order to remain effective and efficient. New insight will be provided into the field of Labour Relations as a result of the legislative changes and as a result of this study.

## **1.7 THESIS STATEMENT**

The changes to section 198B of the LRA in relation to fixed term contract employment will have implications on organisations and the workforce at large. The HR Managers of these

organisations would need to plan and organise strategically in order to meet the demands of the legislative changes.

## **1.8 DISCIPLINARY CONTEXT OF THE STUDY**

### **1.8.1 Main discipline: Human resource management**

Kaila (2005) defines HR Management as a part of the process that helps an organisation to achieve its strategic objectives. After the general direction and strategy has been established, the next phase would be to develop organisational objectives in the form of action plans. These objectives cannot be attained without the people who would be the human resources required to achieve the set objectives (de Janasz & Crossman 2018).

HR Management is essentially a process which determines what people are required within an organisation, how to obtain them, utilise them and how to manage them effectively. It should be fully integrated with all other managerial functions (Sparrow & Cooper, 2017).

Randhawa (2007) defines Human Resources as the people who work within an organisation. HR Management refers to the policies, procedures and practices concerned in carrying out the HR functions of recruitment, screening, training, rewards appraisals and attending to labour relations issues.

### **1.8.2 Sub-discipline: Labour relations/industrial relations**

Finnemore and Joubert (2013) refer to labour relations as encompassing the continuing processes of communication and power testing between parties which may include the state, employers and their organisations as well as employees and their trade unions.

Labour relations are the relations between an employer and an employee wherever people are employed to do work. It may entail a simple interpersonal process involving

two people or between groups at a workplace such as between management and a group of shop stewards (Bendix, 2000).

Swanepoel and Slabbert (2012) define Labour Relations as the field of study concerned with the theory and practice of labour relations. It is sometimes called “Industrial Relations”, “Employee Relations” or “Employment Relations”

Bendix (2010) suggests that labour relations are primarily concerned with the collective relations between the employer and its employees or employee representatives in a particular industry or a national economy. We may refer to it as the study and practice of managing unionised employment relationships.

This research will necessitate the changes of section 198B of the LRA and the connotations of these changes on a pension and provident fund entity in South Africa, Gauteng. In this research, HR management, labour relations management and the changes to the LRA in terms of equal treatment of both fixed term and permanent employees will form the respective focus of this study.

## **1.9 SUMMARY**

The background to the research problem, motivation and objectives with regard to the assumptions and disciplines used were elaborated on in this chapter.

Chapter 2 and 3 comprise of a literature review which serves as an information pedestal with regard to the perceptions of employees in the HR Department of an integrated pension and provident fund company, who have been exposed to the implications of the amendments to section 198B of the LRA. The chapter finishes off with a chapter outline.

## **1.10 CHAPTER LAYOUT**

<b>CHAPTER</b>	<b>TITLE OF CHAPTER</b>	<b>BRIEF CONTENT</b>
Chapter 1	General introduction	A discussion of the background, motivation for the study, problem statement, research question, objectives of the study, assumptions, rationale for the study, thesis statement, disciplinary context of the study and the layout of the dissertation
Chapter 2	History of labour relations in South Africa	A general review of the background and origins of labour relations in South Africa prior to and after democracy
Chapter 3	Section 198 of the LRA	A generic review of academic journals, books and research reports on the topic
Chapter 4	Methodology and research design	A discussion of the research design, population, sample, data collection and analysis, ethical considerations and measures to ensure research trustworthiness
Chapter 5	Data results and discussion	The research data presentation, observations and responses of the participants are detailed
Chapter 6	Conclusion, limitations and recommendations	Responses to the research question, findings and implications, limitations of the

		research study and suggestions for further research are indicated
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## **CHAPTER 2**

### **HISTORY OF LABOUR RELATIONS IN SOUTH AFRICA**

#### **2.1 INTRODUCTION**

This chapter focuses on South Africa's labour legislation prior to and following democracy, it also deals with the genesis of this legislation and the implications that the International Labour Organisation (ILO) might have on it.

In order to deal with the current labour related difficulties experienced in South Africa, it becomes critical to consider past labour experiences and challenges and to ponder over how labour legislation has developed over time so as to attempt to overcome difficulties that continue to exist till today.

For the purpose of this study, it is deemed necessary to discuss the birth of South Africa's labour related legislation. Finnemore, Koekemoer and Joubert (2019) suggest that South Africa's labour challenges have existed since long ago and continue to exist to date. The history of South Africa's labour legislation might set the framework for the rationale for the introduction of the amendments to section 198B of the LRA.

## **2.2 LABOUR LEGISLATION IN SOUTH AFRICA**

Landis and Grossett (2014) state that the amendments to the LRA, in particular, section 198B have been brought into existence particularly to deal with the current challenges, inequalities and concerns that labour, government and business have to contend with. As aforementioned, these challenges may be traced back to pre-colonial times.

Labour relationships in South Africa are provisioned for by the LRA. This piece of legislation came about as a result of endless consultations and negotiations between employers, employees and government. It gives effect to fair labour practices as regulated in section 23 of the Constitution of South Africa (Sibanyoni, 2012).

The primary principle of the LRA is to progress economic growth, social fairness, and labour peace. It additionally aims to eradicate despicable labour policies, racial discrimination and union repression (Burchill, 2014).

In the next section of this chapter, the history of South Africa's Labour Relations system will be discussed. In order to deal with the current labour challenges experienced in the country, it is critical to consider and to reflect on past labour experiences and challenges and to look at how labour legislation has developed over time so as to deal with the challenges that continue to exist.

## **2.3 SOUTH AFRICA'S LABOUR LEGISLATION PRIOR TO DEMOCRACY**

### **2.3.1 The colonial stage (1652 – 1870)**

In the 1600s, a refreshment station was opened in the Cape which saw a steady displacement and defeat of the Khoi and San people who occupied the area for long periods before the Europeans embarked on commercial voyages around the world. The arrival of the British at the Cape changed the lives of the people that were already living in the region (Bendix, 2010).

According to Finnemore et al. (2019), since 1652 when the Dutch settlers came to the Cape, the need for labour has been in huge demand. The native inhabitants were forced to provide labour for the settlers. In 1658, the Cape Colony participated unswervingly in the East African and East Indies slave trade.

Colonialism brought with it slavery and the forced labour model. This model was brought about by the Dutch in 1652 and subsequently exported from the Western Cape to the Afrikaner Republic of the Orange Free State (Reddy, 2015).

Dutch settlers brought with them the Roman Dutch Law which South Africa has generally adopted over time. One of the first pieces of legislation introduced in the 17<sup>th</sup> century predominantly catered for the needs of the settlers and not the native people (Finnemore et al, 2019).

The Dutch farmers passed the notion of slavery into the rest of South Africa where black people were constrained to work for white farmers. Their labour was rewarded by squatting rights on the farmer's lands. Black people were driven into the unskilled and semi-skilled labour force sectors due to inequality and unfair discrimination in the labour relations system of the country and the prevalent practice of slavery that existed preceding the advent of industrialisation (Finnemore et al, 2019).

The discovery of diamonds around Kimberly in the Cape in the 19<sup>th</sup> century in 1867 and later of gold in the Transvaal lead to emigration of entrepreneurs to South Africa and rapid urbanisation and industrialisation of the country. These entrepreneurs were limited by a lack of access to capital and a shortage of skilled and unskilled labour (Swanepoel & Slabbert, 2012). In the late 1800s, well before the unearthing of gold in South Africa, diminutive beginnings of the creation of the working class had begun. European settlers planned and focused on upsetting customary ways of social organisation of the African native population (Bendix, 2010).

### **2.3.2 The industrialisation phase (1871 – 1947)**

The discovery of diamonds in 1867 and gold in 1886 brought about industrialisation in South Africa and dramatically altered the economic and political structure of the country. Europeans came to South Africa in hopes of making fortunes from the valuable resources that the country had to offer. They had the mining know how and experience, eventually taking over the leadership of the mines and employing black labour at cheap rates to generate maximum profits (Swanepoel & Slabbert, 2012; Venter, Conradie & Holtzhausen, 2009).

The mining activities the Europeans engaged in required substantial financial investment in machinery and skilled labour. In order to deal with the high overhead costs, cheap black labour was not only seen as a priority but a necessity. The mining industry was predominantly characterised by large scale employment of black cheap labour (Reddy, 2015).

In order to recruit skilled labour, mine bosses recruited Europeans and Australians and paid them substantial salaries for skills which were scarce in South Africa. One of the first pieces of legislation was developed during this era, the “Industrial Conciliation Act of 1924” which protected the interests and rights of the skilled white workers but excluded the rights of black employees (Finnemore et al, 2019).

A protest action by the skilled white English speaking population led to the appointment of white Afrikaans speaking workers who were employed as supervisors due to their extensive experience of supervising and managing black people on farms. Chinese, Black and other non-Europeans workers became more skilled as a result of continuous protest action by the white European workers who were motivated by a fear of losing their jobs and employment status (Swanepoel & Slabbert, 2012; Venter et al., 2009).

The white Europeans had the Transvaal Industrial Dispute Prevention Act 20 of 1909 and the Mines and Works Act of 1911 enacted to protect their interests, they wanted to disallow non Europeans from performing certain jobs in the mines (Wilson, 2011).

In 1928 the Federation of Non-European Trade Union was formed to consolidate worker power in various industries. The growth of the manufacturing industry during this period increased the power of African unions till the great depression led to these unions slowly dissolving away (Bendix, 2010).

By the 1940's, gold mining was seen to have been surpassed by manufacturing in terms of the size of the sector and the number of workers employed. Employees united with trade unions in the numbers and craft unions were obligatory in order to allow membership of semi-skilled workers. White women also began to join the lines of the industrial working class (Bendix, 2010).

Black unions were not recognised under the Industrial Conciliation Act and struggled to endure under the rule of dejection and repression. In 1930 the South African Trades and

Labour Council was formed from a coming together of unions with vastly different traditions (Finnemore & Van Rensburg, 2002; Venter et al., 2009).

The Non-European Trade Union and African Mineworkers Union together with the African National Congress went on strike in 1946 with roughly 70 000 people participating in the strike. The concept of apartheid was formed primarily as a result of white Europeans relentlessly fearing that they would lose their employment status and racial dominance (Wilson, 2011).

### **2.3.3 The apartheid phase (1948 – 1990)**

Racial segregation and oppression increased significantly in the 1950's more especially after the Nationalist Party came into power in 1948. Racially oppressive laws adversely affected every aspect of black life. The apartheid government did everything possible to keep the capitalist system alive and to crush all opposition who were in conflict with the oppressive laws introduced in the country (Swanepoel & Slabbert, 2012).

Labour laws such as the Bantu Labour Act 48 of 1953, Settlement of Disputes Act 48 of 1953, Industrial Conciliations Act 28 of 1956 and the Wage Act 5 of 1957 were implemented during this era, all primarily geared at protecting the interests of white people through racial prejudice, segregation and oppression (Wilson, 2011).

Labour relations in this era was characterised by limitations on the free movement system. The increased underpayment of non-whites contributed to high levels of disposable income for the white population. The apartheid government managed to create a system in which black people were forced to the margins of their land through the imposition of the Land Act of 1913. This consequently resulted in many black people being unskilled, illiterate and having a low standard of life (Finnemore & Van Rensburg, 2002; Venter et al., 2009).

As stated previously, the 1950's were years of increased repression and resistance in South Africa, during this period, World War 2 had devastating implications on South Africa. The manufacturing industry did not grow as anticipated. People living in the country could not be sustained by the reserves which created problems for the continued justification of the cheap labour system. The apartheid policies of the National Party would ensure greater control of the working class for the capitalists to maintain and increase their profits (Bendix, 2000).

The increase in union movement in the 1950's brought about more labour legislation amendments. The changes to the Industrial Conciliation Act of 1956 were geared toward gaining more control over black workers due to the increase in striking campaigns against unfair labour legislation towards black workers (Bendix, 2010).

The 1960's was a phase of extraordinary fiscal growth in South Africa as the country became more attractive to foreign direct investment. The political and labour market atmosphere was also favourable to high rates of profitability. It is during this decade that the industrial pedestal of the economy was to be increased and consolidated as the government embarked on programs of expansion through the development of parastatals. This is also the phase when there was a boost in the number of monopolies and multinational companies. Union organisations were subjugated by white racist trade unions and traditional multi-racial bodies (Swanepoel & Slabbert, 2012).

The increased growth in the economy resulted in a scarcity of skilled labour. Government subsequently started to invest in the education of black people in an attempt to address the skills shortage in the country. Trade union movements increased in the 1970's. The Congress of South African Trade Unions (Cosatu) was established in 1985 due to constant union oppression by the government. Industrial action increased after the establishment of COSATU which resulted in the apartheid government retaliating by changing labour legislation to limit strike action (Buhlungu & Tshoamedi, 2012).

The Wiehahn Commission of Inquiry was established in 1979 with the primary function of investigating the labour state of affairs in South Africa. The most momentous commendation made by the commission was the extension of freedom of association to all persons irrespective of race or sex. This meant that trade unions representing black people would be able to utilise the full machinery of the LRA of 1956 (Swanepoel & Slabbert, 2012).

In the late 1980's, the economy of the country was in a recession and the country was politically secluded. Substantial economic losses occurred as a result of sanctions, disinvestments, capital flights and general disruptions. The apartheid system was starting to collapse. The cost of maintaining apartheid and sustaining a police state became impossible (Finnemore et al, 2019).

## **2.4 SOUTH AFRICAN LABOUR LEGISLATION AFTER DEMOCRACY**

### **2.4.1 The first decade of democracy in South Africa (1994 -2004)**

In the early 1990's, apartheid was put to an end following immense pressure from local political parties, trade union alliances and international entities. This brought about change in labour legislation and the constitution of the country (Finnemore et al, 2019).

The ANC won the 1994 national elections led by former president Nelson Mandela, this government adopted similar strategies to Australia, Canada and New Zealand in trying to transform social inequalities in South Africa. Democracy created many opportunities for previously disadvantaged individuals but had its challenges as well. The country found itself with a socioeconomic imbalance, large wage gaps and uneven employment distribution (Finnemore et al, 2019).

The socio economic implications of apartheid had been extensive and wide ranging. The apartheid system resulted in racial divisions, wage gaps, poorly educated employees, exploitation of workers, crime, widespread poverty and exceptionally high unemployment levels (Bendix, 2000).

In the post-apartheid era, the new government set about changing the entire governmental structure of labour relations in order to give effect to the new constitution which was aligned to international standards of the international labour organisation. This brought about the Labour Relations Act (LRA), the Basic Conditions of Employment Act (BCEA), the Employment Equity Act (EEA) and the Skills Development Act (SDA) (Swanepoel & Slabbert, 2012).

The downfall of apartheid and uplifted sanctions opened South Africa to the world of globalisation. The collapse of apartheid and amended labour laws considerably enhanced the standing and rights of all workers in the country (Barker, 2011).

Hentz (2005) states that in the apartheid era, South African labour relations was geared towards corporatism and was used to depoliticise the globalisation process. In post-apartheid, labour used its involvement in the National Economic, Development and Labour Council (NEDLAC) to obtain institutional weight in order to counter the implications and power of globalisation.

After the 1994 democratic elections, the evolve of a new labour policy administration for South Africa was implemented by the Department of Labour's first five year Ministerial Programme of Action. On 5 May 1995, NEDLAC came into existence through Act 35 of 1994. Nedlac's primary role was to facilitate social dialogue between the tripartite alliances of labour, government and business (Erasmus & Schenk, 2008).

During 1991 to 1994, South Africans saw the beginning of a new democratic South Africa. During these years, the Interim Constitution, Act 200 of 1993, came into effect. This act was important because it completely changed the constitutional foundation of the South African legal system (Erasmus & Schenk, 2008).

In 1994, the Department of Labour appointed a ministerial legal task team to draft new labour legislation and the LRA 66 of 1995 was born and came into effect on 11 November

1996. This act was hailed as the first piece of post-apartheid legislation which focused on a democratic industrial relations system accepted by the tripartite alliance being labour, employers and the state (Hentz, 2005).

In the post-apartheid years, unemployment levels continued to rise in South Africa. This undesired situation led to the new government investigating ways of improving the economic situation in order to counter the effects of unemployment. The new government emphasized affirmative action in the workplace and a social responsibility to uplift previously disadvantaged communities and individuals. However, because of problems with economic growth, employment did not increase in real terms and mass retrenchments continued (Swanepoel & Slabbert, 2012).

The ANC won the second democratic election in 1999 with an even greater percentage than in the first democratic elections, winning by 66.35% although it was claimed that fewer voters had turned up than in previous elections. Thabo Mbeki took over from Nelson Mandela but inherited problems that continued to exist such as racial divisions, wage gaps, poorly educated employees and increasing unemployment levels (Swanepoel & Slabbert, 2012; Nel et al, 2013).

Labour legislation which was promulgated in the period of 1994 to 2004 is viewed as one of the most comprehensive labour systems in the world. The legislation has truly done a lot in dealing with historic inequalities and imbalances. Following the democratic elections in South Africa, the country had slowly moved forward in establishing a democratic array. Labour has been a primary and critical tool in ensuring that this change occurs through prevalent socioeconomic and political regeneration in workplaces (Buhlungu & Tshoaedi, 2012).

The primary proposition of the new political system for labour relations in South Africa was the emphasis on worker rights, workplace democracy, affirmative action and the restructuring of education and training. Labour relations in South Africa were now conducted in an essentially new context where the challenge was to stabilise labour and capital in order to achieve industrial peace and to improve productivity (Hentz, 2005).

The Broad Based Black Economic Empowerment (BBBEE) strategy was brought into effect in 2003 with a view to further the economic advancement of black people in the country. Other amendments in this era included the introduction of the Unemployment Insurance Contributions Act 4 of 2002 and the BCEA of 2002. Sectoral determinations were brought into existence in the farm and domestic workers sector which sets minimum wages for workers in an attempt to curb exploitation of workers (Swanepoel & Slabbert, 2012).

The National Skills Development Strategy was implemented in February 2001. It was during the period of 1999 to 2004 that various Sector Education and Training Authorities (SETAs) were established as part of the initiative to improve skills development in the country. The President of the country at the time, Thabo Mbeki, instructed the Department of Labour to review labour laws to deal with the economic and labour problems in the country. This led to amendments to various aspects of labour legislation through processes of consultation via Nedlac (Erasmus & Schenk, 2008).

#### **2.4.2 The second decade of democracy in South Africa (2004 - 2014)**

On the 14<sup>th</sup> April 2004, South Africa held its third democratic elections marking a decade of democracy. A total of 20.6 million people registered to cast their vote, the African National Congress won the votes by a staggering 67.7%. President Thabo Mbeki was elected unopposed promising to fight poverty, unemployment, inequality and to improve job opportunities for all South Africans (Barker, 2011).

On 15<sup>th</sup> May 2004, the then President of the Federation of International Football Association (FIFA), Joseph "Sepp" Blatter, announced that South Africa would be hosting the 2010 Soccer FIFA World Cup. This was positive for the economic and labour situation in the country as it was perceived that numerous jobs would be created as a result of the soccer world cup (Swanepoel & Slabbert, 2012).

Business Unity South Africa (BUSA) was brought into effect in 2004 by bringing Business South Africa (BSA) and the Black Business Council (BBC) together. Finnemore and Joubert (2013, p. 153) defines BUSA as a “confederation of chambers of commerce and industry, professional associates, corporate associates and employers’ organisations”. The primary aim of BUSA is to assist with economic transformation and growth in South Africa. It also aims to eradicate poverty and high unemployment levels in the country.

BBC is the ambient confederation that represents black business associations and chambers. The principal function of BBC is to engage government on policy interrelated matters and to play a supportive role where policies are in place to accelerate the involvement of black business in the conventional economy. The BBC addresses difficulties faced by black businesses through a series of interventions including seminars, consultative workshops, stakeholder engagement and outreach programmes (Madi, 2015).

South Africa faced serious challenges entering the country’s second decade of democracy. The labour related problems persisted throughout the first and second half of this period. High levels of income poverty and limited access to knowledge, technology and markets characterised the second decade of democracy. It was further characterised by poor labour conditions and informal work relations (Erasmus & Schenk, 2008).

In April 2004, the country gave a strengthened mandate to the Government’s incumbents responsible for reconstruction and development and for the entrenchment of rights extolled in the Constitution, to reduce high unemployment levels and poverty by 2014 (Swanepoel & Slabbert, 2012).

Subsequent to the democratic elections in April 2004, Thabo Mbeki was selected to a second term in office as the President of South Africa, a position he later relinquished in September 2008 following the determination of the National Executive Committee (NEC) of the ANC to recall him. Parliament elected Kgalema Motlanthe as President of South Africa on 25 September 2008 (Wilson, 2011).

In 2009, the economy of South Africa was beginning to steady but unemployment and poverty were still a prevalent problem. The country witnessed the birth of xenophobic attacks on foreign nationals by displeased citizens who were tired of unemployment, poverty, poor service and living conditions (Bendix, 2010).

The ANC government faced many challenges in trying to increase labour intensity and competitiveness. HIV/AIDS was a further challenge that the government had to contend with. According to Nel et al. (2013), the number of people living with HIV/AIDS amplified from 0.9% in 1990 to 29% in 2010. This was very unfavourable for the South African economy and labour because individuals who were infected were between the ages of 15 and 50 and unswervingly contributed to the economy of the country. The HIV/AIDS epidemic has and continues to have massive implications in reducing household and national income.

In June 2014, the platinum mining sector was in the midst of a devastating strike that was almost five months long. Practically all attempts to bring the strike to an end including intervention by the Commission for Conciliation, Mediation and Arbitration (CCMA) and involvement by a Labour Court judge and the newly appointed Minister of Mineral Resources were unable to assist in getting the parties to the strike to a settlement (Buhlungu & Tshoaedi, 2012). The strike had erupted only a year after tumultuous labour relations on Western Cape wine farms which resulted in strikes and eighteen months after the atrocious carnage of forty four miners at Lonmin's Marikana mine in August 2012. These and many other events are symbolic of the crisis into which labour relations in post-apartheid South Africa has descended (Buhlungu & Tshoaedi, 2012).

Venter et al. (2012) state that an organisation which operates in a globally competitive environment characterised by cost efficiency, product quality and productivity cannot afford out of control politically motivated labour unrest which may potentially have disastrous implications for the national economy of South Africa, such as loss of foreign investment, loss of investor confidence and an inability to compete globally.

The South African Government needs to focus on answering the negative effects of the slow economic growth in the country. A balanced leadership approach towards economic growth and development should be aimed for. The underlying rationale is that an organisation is an integral part of the broader community in which it operates and cannot operate in an unstable community characterised by poverty, unemployment and crime (Barker, 2011).

The second decade of democracy has seen numerous economic and labour related challenges which remain unresolved. The enormity of these challenges is most certainly greater because of the long standing racial divisions and the inequitable allocation of wealth amongst the population in the country. Given the weakness of the political opposition in South Africa, the role of social society in holding the government accountable is of utmost importance (Holtzhausen, 2008).

Employment relations in South Africa have and remain focused on the collective relationship between unions, employees and employers. These relationships are largely fractious and conflict driven. History has a large part to play in the development of these circumstances but things are not changing. Conflict, labour unrest and endless disputes remain a constant employment related challenge in the country (Buhlungu & Tshoaedi, 2012).

## **2.5 SUMMARY**

This chapter deals with the history of employment relations in South Africa, the different phases that employment relations have gone through throughout the years and the factors that influenced constant changes to labour related legislation.

Considering the above discussions, it becomes clear that employment relations in the country have always been in turmoil. Unemployment levels remain on the increase and

remain one of the biggest challenges that both the old and the new government have and continue to struggle with.

Chapter 3 deals with amendments to legislation regulating fixed term contract workers including the arguments for and against the amendments put into place.

## **CHAPTER 3**

### **SECTION 198 OF THE LRA**

#### **3.1 INTRODUCTION**

Throughout the history of the amendments in South Africa's economy with regard to the international labour organisation, industrialisation as well as globalisation, changes to labour legislation has become necessary.

With regard to the amendments to section 198 of the LRA, it can be argued that some changes were politically motivated, unnecessary and have been orchestrated by the ANC, SACP and COSATU (Nel et al., 2013).

This chapter will therefore seek to define and discuss the implications that the changes to the LRA, 66 of 1995, more specifically section 198B (legislative changes related to fixed-term contracts) will have on different companies in South Africa. The chapter will further elaborate on changes to various subsections of section 198B and will detail arguments for and against the changes to fixed term contracts of employment.

#### **3.2 DEFINITION OF FIXED TERM CONTRACT OF EMPLOYMENT**

Truter (2015) defines a fixed term contract as a contract of employment that terminates on the occurrence of a specified event, the completion of a specified task or project or a fixed date other than an employees' normal or agreed retirement age.

A fixed term contract of employment is precisely what it suggests to be. It is a contract which runs from one specified date to another, upon the second date being realised, the contract and thus the employment relationship is terminated and the employee subsequently becomes unemployed (Swanepoel & Slabbert, 2012).

The actual implications of the amendments to section 198B relate to fixed term contracts of employment that extend beyond three months. There are certain prerequisites for contracts of this nature to be recognised, such as, the nature of the work having to be of a definite or limited duration and that the fixed term contract of employment ought to be in writing and must specify the justifiable reason(s) for fixing the term of a contract (Truter, 2015).

### **3.3 BACKGROUND ON FIXED TERM CONTRACT EMPLOYMENT IN SOUTH AFRICA**

The use of fixed term contracts of employments can be traced back to the industrial era which was brought on by the discovery of diamonds in 1876. Black people were sourced as unskilled labourers in the rural areas by means of strict mechanisms introduced by the government in the form of tax on their property and land in order to force them to work to pay for these taxes (Finnemore & Van Rensburg, 2004).

Unskilled employees were employed on fixed term contracts to carry out the functions and responsibilities of unskilled workers primarily on the mines (Holtzhausen, 2008). Mavunga (2010) states that fixed term contracts were used during the industrialisation era where workers were recruited in Southern Africa on fixed term contracts of employment on the mines and other businesses.

Some employers make use of fixed term contracts of employment as a means of eluding their statutory responsibilities in terms of the Basic Conditions of Employment Act, the LRA and the Employment Equity Act. They attempt to save money by refusing fixed term employees the opportunity of benefits in the form of medical aid, pension and provident fund benefits. In the event of retrenchments, these employees would not be paid their notice and severance pay (Workman-Davies, 2012).

#### **3.3.1 Permanent employees contrasted with fixed term employees**

The LRA focuses on two types of employment relationships, specifically permanent and non-permanent employees. For the purposes of this study, it is required to distinguish among these two types of employment contracts because their jurisdictional protection differs.

Full time employees are given permanent employment contracts with benefits that are most probably negotiated between the employee and the employer. Atypical employees who may be part time, temporary or fixed term employees are employed on a temporary or fixed term basis with restricted benefits which are either accepted or not accepted by the employee (Venter et al., 2012).

According to the Government Gazette of 2014, all employees who are on a fixed term or temporary contract of employment are considered to be permanent employees after working three months of continuous service with an employer. If an employee has worked for more than three months and the employer cannot demonstrate good reasons for fixing the term of their contract, then, that employee is inevitably deemed to be a permanent employee of the employer.

The onus lies completely with the employer to prove that the employee is not a permanent employee by demonstrating both a justifiable reason for fixing the term of the employment contract and that the employee understood the nature of their employment upon the commencement of their contract (Stelzner, Harrison, Patterson & Ebrahim, 2018).

While getting miniature or no protection at all from trade unions, atypical employees including seasonal workers are also largely not well protected by legislation. The use of atypical employees is exceptionally prominent in the agricultural sector especially among women farm workers (Fletcher & Kubik, 2016).

The heightened usage of atypical employees or non-permanent workers may be seen as a reaction to labour market institutions. This practice allowed organisations to evade increased labour costs. However, the practice may have negative implications on the

protection and remuneration of this form of labour which may ultimately collapse the very existence of bargaining councils (OECD, 2010).

Relatively speaking, temporary workers are paid less and receive fewer or no benefits as compared to permanent employees. They are literally paid well below the poverty line and often only work for a few hours in the day. They have no access to medical aid, retirement fund schemes nor do they experience feelings of job security and stability (Schepers, 2015).

Research in South Africa has placed focus on the rise of atypical or non-standard forms of employment as a trend that reflects the opening up of the economy to international organisations. Studies in sectors with a high concentration of atypical employment such as the retail and agriculture sectors show significant wage gaps between temporary and permanent employees (Fletcher & Kubik, 2016).

Landis and Grossett (2014) state that, the amendments to the LRA, in particular section 198B, have been brought into existence particularly to deal with the current challenges, inequalities and concerns that labour, government and business have to contend with.

From the abovementioned discussions, it becomes clear that a fixed term contract of employment is quite similar to a contract of permanent employment. The primary difference is that, a fixed term contract of employment will specify the contract end date, duration and purpose of the contract whereas a permanent contract of employment would not.

### **3.4 CHANGES TO SECTION 198 OF THE LRA**

Amid the amendments to the LRA, particularly with specific reference to section 198, labour brokers have been hugely condemned in negotiations between the tripartite role players being the government, trade unions and employers organisations. An accord was

concluded to introduce and implement changes to section 198 of the LRA (Grogan, Maserumule & Govindjee, 2015).

#### **3.4.1 Section 198A of the LRA**

The focus of this section is on temporary employment service (TES). Jordaan (2009) suggests that, a temporary employee is an individual who is employed for a time not exceeding three months and is employed for the purpose of replacing an employee who is provisionally absent from the workplace.

An employee rendering temporary services for a client can be seen as an employee of the TES, except if the employee's services exceeds a period of three months or if the employee is not regarded as a substitution employee, in which case, the client of the temporary employee will be the employer.

Stelzner et al., (2018) states that an employee who is considered to be an employee of the client must be treated on the whole not less favourably than an employee of the client performing the same or work of similar value, unless there is a justifiable reason for the difference in treatment.

#### **3.4.2 Section 198B of the LRA**

Section 198B focuses on fixed-term contracts and is also the focus of this intended study. A fixed-term contract is an employment contract with specific sections which include an explicit event and a specific end date, tasks, assignments or projects. The provisions dealing with fixed term contracts of employment only relate to employees who earn beneath the threshold prescribed by the Minister of Labour (R205 433.30 per annum). Section 198B further excludes employers who employ less than 10 employees and employers who employ less than 50 employees and whose business has been in operation for less than two years (Grogan et al., 2015).

A company may employ an employee on a fixed term contract or even successive fixed term contracts for a period longer than three months, provided that the nature of the work for which the employee is employed is of a limited or definite duration or the employer can show permissible reasons for fixing the term of the contract (Stelzner et al., 2018).

Providing justifiable reasons would be acceptable for the deployment of fixed term contract employees. Without restricting the generality of these laws, some of the justifiable reasons would include the below mentioned (Government Gazette, 2014).

- If an employee is employed for the purposes of replacing another employee who is not present at work for a short period or temporary basis.
- The employee is employed for the purpose of a momentary increase in work volume which is not anticipated to last more than 12 months.
- If an employee is employed to work entirely on a definite assignment that has a restricted or definite duration.
- If an employee is employed who is a non-resident of South Africa afforded a work permit for a distinct period.
- An employee is employed to perform seasonal work.
- An employee is employed for the purpose of an official public works scheme or similar public job creation scheme.

The regulation of this section with regards to fixed-term contracts, concludes that fixed-term contracts with periods longer than three months are only allowed if the work that needs to be done is only for a limited period and only if the employer can give a valid reason as prescribed by section 198B (b) of the LRA (Grogan et al., 2015; Brand et al., 2012).

This section also stipulates that employees on fixed term contracts may not be treated on less favourable terms than other permanent employees doing the same type of work. Fixed term contracts must be in writing. Employees working for longer than three months must be awarded the opportunity to also apply for internal vacancies (Grogan et al., 2015; Brand et al., 2012).

Finnemore and Joubert (2013) suggest that a fixed term contract of employment completed or renewed in contravention to subsection 3 of the Labour Relations Amendment Act is deemed to be of an indistinct duration. The act recommends that, when a fixed term employee is employed, the offer of employment and respective terms and conditions of employment be in writing and must state the reasons for the fixed term contract.

Finkin and Mundlak (2015) suggest that if it is relevant in any proceedings, an employer must prove that there was a justifiable reason for fixing the term of an employees' employment contract as contemplated by the act and that the term of the contract was agreed to between the employer and the employee. An employee employed in terms of a fixed term contract of employment for longer than three months must not be treated less favourably than an employee employed on a permanent basis performing the same or similar work unless justifiable reasons exist.

According to OECD (2015), as from the commencement of the Labour Relations Amendment Act, an employer must provide an employee employed in terms of a fixed term contract and an employee employed on a permanent basis with equal access to opportunities to apply for vacancies.

An employee employed on a legitimate fixed term contract of employment for longer than 24 months is entitled to severance pay of at least one week's pay for every completed year of service. An employee is not entitled to severance pay if he or she unreasonably refuses an offer of employment should the employer prior to the expiry of the fixed term

contract, offer the employee employment or procures employment for the employee with a different employer which commences at the expiry of their contract and on the same or similar terms (OECD, 2015).

“An employee may not, for example, claim to have been constructively dismissed if a contract was not in existence at the time of the employee’s resignation. Nor may an employee claim to have been dismissed on the basis of non-renewal of a fixed term contract or on the basis of selective non-reemployment if a contract did not exist at some stage” (Grogan, 2014:18).

The failure by the employer to restore a fixed term contract would not robotically terminate an employment relationship, even when the employee does not claim a reasonable expectation of renewal. If the employer allows an employee to go on with working after expiry of a fixed term contract, the contract may be deemed to have been renewed on the same terms except that the contractual relationships would now be of an indefinite nature unless justifiable circumstances exist (Grogan, 2014).

### **3.4.3 Section 198C of the LRA**

Section 198C of the LRA refers to part-time employees, Borat, Hirsh, Kanbur and Ncube (2014) suggest that, during an employee’s initial three months of continuous employment, also taking into consideration the working hours of the part-time employee and regardless of when the part-time employee was employed, an employer must treat a part-time employee on the whole, not less favourably than a similar full-time employee doing the same work. If a difference in treatment exists, there ought to be understandable reasons for the difference in treatment.

According to Wilkinson, Wood and Deeg (2014), the employer must afford a part-time employee with training opportunities and skills useful to a comparable full-time employee. Following the commencement of the Labour Relations Amendment Act of 2014, it is provisioned that an employer ought to provide part-time employees with equal access to

opportunities to apply for positions, as is the case with full-time employees (Wilkinson, Wood & Deeg 2014, Borhat et al, 2014).

For the purposes of identifying a comparable full-time employee, consideration must be given to a full-time employee who is employed by the employer on the same type of employment relationship and who performs the same work. If there is no comparable full-time employee who works in the same workplace, a comparable full-time employee employed by the employer in any other workplace may be considered (Government Gazette, 2014).

#### **3.4.4 Section 198D of the LRA**

This section states that any dispute arising from the interpretation or application of sections 198A, 198B and 198C may be referred to the CCMA or respective Bargaining Council with jurisdiction for conciliation, and if needs be, arbitration (Government Gazette, 2014).

A justifiable reason for the difference in treatment in relation to section 198A (5), 198B (8) and 198C (3) (a) includes the following:

- Seniority, experience or length of service.
- Merit.
- The quality or quantity of work performed.
- Any other reason criteria of a similar nature.

A party to a dispute, other than a dispute about a dismissal in terms of section 198A(4), may refer the dispute in writing to the CCMA or to the respective bargaining council within six months of the act coming into effect. The party that refers the dispute needs to satisfy

the CCMA or bargaining council that a copy of the referral has been served on the opposing parties to the dispute (Wilkinson *et al.*, 2014).

According to Finkin and Mundlak (2015), if a dispute remains unresolved after conciliation, a party to the dispute may refer it to the CCMA or respective bargaining council for arbitration within 90 days. The CCMA or respective bargaining council may at any stage, permit a party to the dispute to show good cause to refer a dispute after the relevant time frames as provisioned for in subsection (3) or (5) of section 198D of the Labour Relations Amendment Act.

### **3.4.5 The South African government's rationale for amending section 198 of the LRA**

According to Fletcher and Kubik (2016), the amendments to the LRA seek to protect three categories of non-permanent employees, specifically employees employed by TES, employees on fixed term contracts of employment and part-time employees. Sections 198A, 198B and 198C extend significant protection, in particular, to employees earning below the BCEA salary threshold.

Some of these provisions only apply to employees after being in employment for six months or more. This helps fashion a sense of balance between the need to protect vulnerable employees and the need to consent to short-term flexibility (Fletcher & Kubik, 2016).

According to Brodie, Busby and Zahn (2016), the aim of amending section 198 of the LRA is not merely about the creation of jobs but also the creation of jobs which are of an acceptable standard and quality. The quantity of employment may not be detached from its quality.

Another significant aim of the amendments to section 198 is to assist in devising social and economic systems which help ensure job security and employment whilst being able to adapt to rapidly changing circumstances in a highly competitive global market (Fletcher

& Kubik, 2016). Wilkinson et al, (2014) state that, the amended LRA seeks to restrict the employment of the more vulnerable lower paid workers by a TES to situations of genuine and relevant temporary work.

According to Brodie et al., (2016), all societies have a notion of decent work, section 198 retains the general provision or notion that the TES is the employer and that the TES and its client are jointly and severally liable for contraventions in relation to the Labour Relations Amendment Act. The rights of atypical employees are protected in that they are afforded the same benefits and pay. Brodie et al., (2016) further state that the amendments clarify that when jointly and severally liable, an employee may institute action against either the TES or the client or even both and may enforce any award against the TES or the client. The amendments seek to better the employment conditions of employees. This is deemed fair and understandably necessary.

It is important to realise that the LRA, section 198, seeks to prevent corporate structures from trouncing the intentions of the LRA. It also seeks to compel joint and several liability on persons found to be employers for any failures to comply with an employer's obligations under section 198. The primary aim is to restrict arrangements that are intended to disguise the identity of the true employer (Finnemore & Joubert, 2013).

### **3.5 THE ARGUMENTS AGAINST CHANGES TO FIXED TERM CONTRACTS IN SOUTH AFRICA**

According to Landis and Grossett (2014), the subject of the labour amendments, particularly in relation to section 198B of the Labour Relations Amendment Act is justly a contentious issue. There are many corresponding and contradictory viewpoints on the topic. Bdlive (2015) suggests that from 4,546 job contracts for January 2015, 47% of these contracts have been terminated, 30% of employees retained in longer contracts and 23% of the employees were employed in a permanent capacity by end of January 2015.

Businesses argue that wage employment suppleness is estimated at 0.7%. An increase in the cost of employment in terms of wages and benefits of for interest sake 1% would likely mean a decline of 0.7% in overall employment. Given such numbers, one could give a ballpark figure that at least 215 150 jobs were shed as an undeviating consequence of the amendments to the LRA (Donnelly, 2012).

Barker (2011:130) states that “job security is an important social advance but is far from cost free, as it often incurs costs and may make employers reluctant to engage new workers”. All readings with reference to the Labour Relations Amendment Act, in particular section 198B points towards the increasing cost of employment which is the primary implication of the survival of any organisation.

Benjamin, Borat and Van Der Westhuizen (2010) have found that the changes to section 198 and more in particular section 198B of the LRA will have substantial financial implications on small and medium sized organisations. These organisations will find it difficult from a financial perspective to convert the employment status of temporary employees to permanent employees. The changes to section 198B of the LRA will undoubtedly lead to higher permanent employment figures but also higher unemployment figures.

According to Carmen (2015), employers who utilise fixed term contracts ought to evaluate their employment policies, practices, terms and renewals of fixed contracts where employees earn less than R 205 433.30 per year. This undoubtedly creates more work for organisations. Furthermore, employers should be careful not to do or say anything directly or indirectly which might steer an employee to anticipate a restitution of a fixed term contract of employment. Even precise phrasing in a contract would not support an employer where the actual behaviour led to a rational expectation of a contract renewal on the part of the employee (Carmen, 2015).

If a fixed term contract of employment is renewed without the circumstances being appropriate or justifiable, the meager rebirth of the contract may be inclined to have implied that its temporary nature was not genuinely meant. The danger of using fixed term

contracts for longer than three months including renewals is dual, to start with, unfair discharges or terminations and secondly, the change of a fixed term contract into an indefinite period one. Both risks may be mitigated provided that the contract is used for a suitable reason having regard to the list of justifiable reasons as per the Labour Relations Amendment Act (Carmen, 2015).

The implications of the labour legislative changes seem to be economic. The unemployment rate is likely to increase drastically as a result of changes to section 198. Government has decided to keep the large trade union federation COSATU happy, by implementing the new labour legislation on temporary workers but they appear to be ignoring the unemployment possibility that influence its employment targets. Employment statistics of the Adcorp employment index showed job losses of approximately 118 397 in February 2014 of which 104 593 where permanent employment and 26 832 where temporary employment cuts (SAPA, 2012).

COSATU went on a countrywide protest in 2012 regarding e-tolls and labour legislative changes. This was a very victorious protest and the entire country became aware on how serious the campaign for labour amendments and e-toll systems were (Ensor, 2013).

Following the 1994 democratic elections, the focus has moved from job preservation and preferential treatment of white people to the prohibition of unfair discrimination for all, this includes actions taken to further affirmative action and employment equity within workplaces. The changes brought about in South Africa's labour legislation have caused some degree of concern and uncertainty more especially among employers (Outtz, 2010). In the next section, the arguments for changes to fixed term contracts in South Africa will be discussed.

### **3.6 THE ARGUMENTS FOR CHANGES TO FIXED TERM CONTRACTS IN SOUTH AFRICA**

According to Naicke (2015), it is a very noble aim of the amendments in Labour Relations to legislate that permanent and fixed term employees be treated equally. Part-time employment was to a large extent unfettered. It is unmistakable that fixed term employment is frequently associated with a lack of benefits and job security, low pay and a deprivation of status in employment. Part-time employees often do not enjoy union protection as they are not covered by collective agreements. This essentially leaves them vulnerable and prone to much exploitation (Theron, 2014).

As a result of the legislative changes, part-time employees will have better job security and the enhanced ability to enforce their statutory rights in terms of equal treatment in employment by evoking enforcement mechanisms such as the CCMA, labour courts and bargaining councils with jurisdiction to arbitrate matters (Singh, 2013).

The intention of section 198B of the Labour Relations Amendment Act is to protect all fixed term employees and not just those earning below the threshold. Employers are encouraged to carefully consider extending interventions that benefit part-time employees and to provide such employees with equal benefits similar to that provided to full-time employees (Naicke, 2015).

Naidoo (2012) stated that the amendments are in line with international trends and standards of regulation of part-time employees. It is for employers to take these amendments seriously and to ensure that they comply as required by legislation.

South Africa is part of the International Labour Organisation which sets standards that must be adhered to, such as improved opportunities for men and women to obtain decent work, equality, job security and the enhancement of social protection, trade union formulation and freedom of association (Venter et al., 2012).

Singh (2013) is of the view that, the amendments have stopped abusive practices by unprincipled employers. The amendments are reasonable and focused on reshuffling

dispute resolution mechanisms, expounding the span of unfair discrimination and focusing attention on the implications of non-compliance with the act.

Jones (2014) opined that some employers are under the impression that fixed term workers ought to be remunerated the same as their permanent counterparts. According to Jones (2014), it is impracticable for all employees to earn the same salary and obtain equal benefits when taking into account their varying skill levels, length of service and years of experience. Varying performance levels should also be considered when deciding employee salaries and benefits. Not everyone is equal and the law takes this into account.

Craven (2016) states that the National Union of Metal Workers South Africa (NUMSA) won a landmark victory for its members in the CCMA, the employees were employed by the CCMA as part time contractors. A dispute was declared when they challenged their contracts. NUMSA claimed that the employees ought to be deemed as employed indefinitely in terms of section 198B of the LRA. The presiding commissioner ruled in the employees' favour. This took place approximately three months after the changes to the LRA came into effect.

The amendments in relation to section 198B of the LRA are intended to avoid the abuse of fixed term contract employees, in circumstances where employers attempt to circumvent their statutory obligations under the employment laws. Employers are encouraged to take great care in defining the nature and term of the duration of any fixed term contract. There should be no room for doubt about the occurrence of a specified event or the sectional completion or final completion of a particular project (Wilken, 2016).

According to Theron (2014), the changes to legislation in relation to fixed term contract employees, were motivated by aspects such as the fact that there is a disproportion of power between workers in an employment relationship and their employers. Labour laws protect workers in an employment relationship for precisely this reason. The basic way of addressing the imbalance of power between workers and their employers is through trade

union organisations in the workplace. Trade unions are mostly effectively able to do this where they bargain collectively in the respective industry. A fixed term worker should be as effectively protected against unfair dismissals as a worker employed in a permanent capacity (Theron, 2014).

The employer of fixed term contract workers must provide these workers with access to training and skills development on the same basis as comparable full time employees. Fixed term contract workers must be given the same opportunity to apply for vacancies as is provided to employees employed on a full time basis. Social justice and the democratisation of the workplace are not possible as long as workers in non standard employment have no place in the labour relations system (Naidoo, 2012).

The High Court has in some instances provided guidelines on non renewal of fixed term contracts. In *Federation of Governing Bodies of SA vs. MEC for the Department of Basic Education, Eastern Cape*, the court held that the department acted unlawfully by not reinstating teaching contract positions because it had budgeted for the contracts in the preceding financial year. It had also failed to proclaim the province's 2011 teacher establishment by September of the previous year and the non renewal of the contracts deprived thousands of students of their constitutional right to basic education (Grogan, 2014).

The failure by the employer to restore a fixed term contract would not automatically terminate an employment relationship, even when the employee does not claim a reasonable expectation of contract renewal. If the employer allows an employee to continue working after the expiry of a fixed term contract, the contract will be deemed to have been renewed on the same terms and the contractual relationship would now be of an indefinite nature unless justifiable circumstances exist (Grogan, 2014).

Brodie et al, (2016) suggest that the aim of amending section 198B of the LRA is not purely about the creation of jobs but the creation of jobs which are of satisfactory standard and quality. The quantity of employment may not be divorced from its quality.

Another significant aim of the amendments to section 198B is to assist to devise social and economic systems, which help ensure job security and employment whilst being able to adapt to rapidly changing circumstances in a highly competitive global market (Fletcher & Kubik, 2016).

### **3.7 FIXED TERM CONTRACTS OF EMPLOYMENT IN NAMIBIA**

The changes to legislation introduced in South Africa in relation to fixed term contracts, have great resemblance to that of legislation introduced in Namibia in 2012. How Namibia handled their legislative transition could be of great educational benefit to South Africa.

For the purposes of this study, the researcher decided to look at a nearby country like Namibia who have the experience and possibly the expertise of dealing with legislative changes in relation to fair and equal treatment of fixed term employees.

According to Mavunga (2010), unfair and discriminatory labour practices were prevalent in Namibia in the 1900s. Innate Namibians were often exposed to unfair treatment by employers for numerous years. Employees were refused decent and proper employment which then resulted in a lot of contract labour.

The highest source of black labour was as a result of the infamous contract labour system, which saw almost all workers employed on a temporary basis on fixed term contracts to be demoted to the unemployment lines at the end of their contract term (Ngatjizeko, 2012). Williams and Hackland (2015) confirmed this by adding that more than fifty percent of all black workers in Namibia were employed on a fixed term basis. The duration of these contracts of employment differed from six to twelve months for employees employed in the Police Zone and ranged to up to even thirty months for workers employed in the northern regions of Namibia. Some employees have worked continuously for years on short term fixed renewable contracts without recourse to protection against unfair dismissal (Ngatjizeko, 2012). These unfair labour practices produce a force of low paid

vulnerable workers without legal protection who are trapped in poverty. Such practices also contributed to the extreme income inequality of Namibia (Fudge & Strauss, 2013).

Section 128C of the Namibian Labour Law which was introduced in 2012 institutes a legal presupposition that an employer may not employ an employee on a fixed term contract in the absence of the employer's good faith business justification for fixing the term of the contract (Parker, 2012). Employers who hire employees on fixed term contracts of employment for genuine reasons such as the need to employ employees for a specific project or to upsurge the workforce during peak periods ought not to be concerned. Section 128C of the Namibian Labour Law does not apply to managerial employees (Fudge & Strauss, 2013).

From the discussions above, it becomes evident that there are slight similarities between the legislative changes to fixed term contracts of employment in both Namibia and in South Africa, in terms of protection of employees against unfair dismissal and that justifiable reason ought to exist for the employment of fixed term contract workers. According to Parker (2012), the labour legislative changes in Namibia and in South Africa are aligned to the provisions of the International Labour Organisation.

### **3.8 FUTURE OF FIXED TERM CONTRACTS IN SOUTH AFRICA**

The amendments to the LRA are tailored to promote the achievement of the primary objectives of the act, which are to help to ensure that employment rights provisioned for in the Constitution are given to all employees more especially those that are perceived to be vulnerable such as fixed term contract employees (Stander & Jordaan, 2012).

Employers who make use of employees on fixed term contracts of employment and other nonstandard forms of employment for justifiable business reasons, will not experience challenges with the amendments to section 198B of the LRA (Stander & Jordaan, 2012). Naidoo (2012), states that the amendments to the LRA are in line with global labour

developments and standards. Employers simply have to take these amendments sincere and ensure compliance.

Countries such as the United Kingdom, Switzerland and Germany have implemented similar amendments to those implemented in South Africa. If South Africa intends to compete with global organisations, we need to have internationally aligned labour legislation (Jones, 2014).

Fixed term contracts are a popular form of employment used in many sectors of the economy. This is largely because of the employment flexibility it provides in comparison to other forms of employment contracts. Previously, fixed term contracts were largely unregulated and there were no special requirements regulating this form of employment (Jones, 2014).

It is principle of the Labour Relations Amendment Act to legislate that permanent and fixed term employees be treated similarly. Part-time employment was to a large extent unregulated. It is evident that fixed term employment is commonly linked with a lack of benefits and job security, low pay and a deprivation of status in employment. This essentially leaves them vulnerable and prone to much exploitation (Naicke, 2015).

A fixed term agreement would not always necessarily mean that the employer can continually rely on a contract end date. As a result of the conduct of the parties to the employment relationship, it can be possible that the relationship between the employer and the employee could be construed as a permanent one, irrespective of an official description to the contrary in an agreement (Stander & Jordaan, 2012).

The above discussions strongly suggest that there is a future for fixed term contract employment in South Africa. It cannot be ignored that businesses in various industries will continue to have a need for seasonal or project based workers.

The fact that labour legislation has been changed to specifically address inequalities and unfairness in fixed term contract employment is a further sign that the practice of employing workers on a fixed term contract basis is not about to come to an end. No or limited research has been done on the implications that changes to section 198B of the LRA has on an organisation and its employees. There is therefore a need for this research study.

### **3.9 SUMMARY**

The above discussions clearly indicate that fixed term contracts of employment play a pivotal role in the economy of the country by creating large scale employment. Businesses argue that the changes to section 198B of the LRA will have substantial financial implications on small and medium sized organisations.

The argument is that these organisations will find it difficult from a financial perspective to convert the employment status of fixed term employees to permanent, which will undoubtedly lead to higher permanent employment figures but also higher unemployment figures (Donnelly 2012).

The counter argument to the debate is that fixed term contracts of employment are usually associated with a lack of benefits, job insecurity, low pay and a deprivation of status in employment. These fixed term employees often do not enjoy union membership protection because they are not covered by collective agreements. This essentially leaves them vulnerable and prone to exploitation (Wilken, 2016).

Namibia has recently implemented similar labour legislation to that introduced in South Africa, in terms of employing fixed term contract employees for genuine reasons and for a specific project which is expected to last for a short term period. South Africa can benefit from Namibia's experience of having to implement similar legislative changes.

Chapter 4 will be dealing with the methodology and research design used in this research project.

## **CHAPTER 4**

### **METHODOLOGY AND RESEARCH DESIGN**

#### **4.1 INTRODUCTION**

In chapter two and three, the researcher placed emphasis on the literature review which has shaped the theoretical structure for this study.

Chapter four deals with the methodology and research design followed in the research study. Creswell (2013) suggests that a research design involves the philosophical assumptions and procedures of inquiry that the researcher brings to the research study. Research designs may involve quantitative, qualitative or mixed methods research. Welman et al, (2005) state that a research design primarily concerns plans to obtain participants and appropriate data for investigating the research hypothesis or the research question.

The researcher will express the specific actions that he has participated into reach a finding or conclusion to the research study. This research study is qualitative in nature. It involved interviewing participants and obtaining an understanding of their perceptions to attempt to learn more about the possible implications of the changes to section 198B of the LRA on an integrated pension and provident fund company and its employees.

The research design in this study was completed through a qualitative research approach. It includes the research question, the objectives of the study, the technique used for gathering information, the samples used and the explanation of the data collected from the research participants. The findings and outline of the research will also be included in the study.

The researcher has selected individuals from the HR department based on their experience and resourcefulness to assist in the research. In snowball sampling, a few

individuals from the relevant population are approached (Boeije, 2009). These individuals then act as informants and identify other members from the same population for inclusion in the sample (Boeije, 2009). The HR Manager of the organisation where the research was conducted was the point of contact for the researcher.

## **4.2 RESEARCH METHODOLOGY**

Research methodology can be described as the methodical and academic analysis of the methods which are applied to a field of study. It comprises of the theoretical scrutiny of the body of methods and ideologies associated with a branch of knowledge. Research methodology is the justification for using a particular research method (Kothari, 2013).

The research methodology used in this study was aimed at investigating the implications that the amendments to section 198B of the LRA have on employees and the organisation in an incorporated pension and provident fund company in Gauteng, South Africa. The research was conducted using a qualitative approach, making use of individual interviews with employees in the HR department who occupied various positions and who are experts in the field of study. The researcher's interest lied in the participant's individual perceptions regarding the legislative changes to section 198B of the LRA.

### **4.2.1 Qualitative research**

According to Lincoln and Guba (1985) as mentioned in Babbie and Mouton (2001), the key criterion or principle of good qualitative research is found in the trustworthiness or the neutrality of its findings. Patton (2014) suggests that qualitative research is investigative in nature, it helps to develop a hypothesis for potential quantitative research and it is used to gain an understanding of the underlying reasons and insights into the problem under investigation.

Boeije (2009) suggests that in qualitative research study methods, data anthology takes place by means of semi structured measuring instruments which are tailored to the

research topic. During the data analysis process, the textual accounts of interviews and observations were analysed and searched for common themes and regularities.

Sullivan (2011) states that the analysis of data in qualitative research is language orientated and geared towards the interpretation of human experiences and behaviour. Language in such studies is considered an important means of expressing meaning.

The researcher made use of individual in-depth interviews asking semi structured descriptive questions of the participant's perceptions regarding the implications that the amendments to section 198B of the LRA have on employees and the organisation in an integrated pension and provident fund company in Gauteng, South Africa.

#### **4.2.1.1 Motivation for conducting qualitative research**

Qualitative research comparatively focuses on a much smaller research sample. It does not take into account isolating research variables and the results of the research study are most of the time nearly impossible to regenerate. Qualitative methods are epistemologically similar to quantitative research methods and may regularly bring about important insight which may not be found in quantitative studies (Flick, 2014).

For the purposes of this study, the researcher decided on focusing on the perceptions of employees in the HR department to resolve the research problem. The theoretic explanation of qualitative research as indicated in the above point 4.2.1 permits the researcher to focus on the participants' perceptions of the research problem and to interpret these correctly in order to gain a better understanding of the research study. The researcher adopted an inquisitorial and an explorative approach because no or limited studies had been formerly done to allow the researcher to follow a quantitative research advance.

#### **4.2.1.2 Characteristics and assumptions of qualitative research**

According to Klenke (2008), any researcher who partakes in a qualitative study agrees to the fundamental academic assumptions and principles of qualitative research. Researchers are required to meaningfully contribute to the research studies that they decide to take part in and they have to clearly outline the path of their selected research study. Creswell (2013) states the following philosophical assumptions (which were discussed in detail in chapter 1):

- Ontological assumptions refer to the nature of actuality or reality and the characteristics thereof. A researcher should accept the notion of manifold realities and report on these by exploring several forms of facts from varying individual perspectives and experiences.
- Epistemological assumptions primarily deal with the methodology and techniques used by researchers to know what they know. Researchers would collect subjective evidence based on an individual's perspective and experience in a particular topic.
- Axiological assumptions refer to the role of values in research. Researchers should make their values known in the study and keenly describe these and any biases in their writing.
- Methodological assumptions describe the methods and various techniques used by the researcher in the research study.

De Vos, Strydom, Fouché, and Delport, (2013), as well as Struwig and Stead (2011) identify the following as critical characteristics and assumptions of qualitative research:

- The researcher would like to gain a thorough comprehension of what is being researched from the view of the participant.
- The environment in which the research is conducted plays a critical role and ought to be considered.

- Prior events and experiences play a part in any research study. The researcher should be skilled and experienced enough to correctly construe these experiences.
- The researcher is the mechanism of the research which makes impartiality difficult.
- The experiences and perceptions of participants are properly analysed, creating an understanding relative to mere explanations of the theory.

#### **4.2.1.3 Advantages and disadvantages of qualitative research**

According to Denzin and Lincoln (2017), qualitative research is considered a more cost effective and holistic approach to research because participation is primarily based on research observations and interactions within the environment.

The following are some of the advantages of qualitative research (Denzin & Lincoln 2017, De Vos et al., 2013).

- The research topic and problem may be evaluated in thorough detail.
- Interviews are not completely restricted to specific questions and can be possibly guided by researchers in actual time.
- The information gathered depends on personal experiences, which makes it more credible and quite convincing as opposed to data gathered through quantitative research.
- The findings of the research can be transferred to another research setting.

- Qualitative research permits the researcher to have a logical plan on what to anticipate from the research project. Information is gathered with the purpose of linking it to the bigger picture.
- Interaction with the participants occurs with a definite experience of what is being researched.
- It is a more holistic procedure for the reason that the participants are observed in their ordinary surroundings and in real time.
- Interface with and interpretations of participants unlock novel dimensions for further research.
- Qualitative research allows for a more flexible interview process because the researcher can choose what questions are suitable.
- Qualitative research allows for a more controlled research environment which helps to improve privacy.

The following are some of the disadvantages of qualitative research (Denzin & Lincoln 2017, De Vos et al., 2013).

- The eminence of the research is profoundly reliant on the expertise of the researcher and may be easily influenced by individual eccentricities and biases of the researcher.
- The magnitude of data or information makes the interpretation and analysis process time-consuming.
- Qualitative research is sometimes not accepted and understood especially within scientific communities.

- The presence of the researcher in the process of data collection is inescapable and may therefore influence the responses of participants.
- Matters of discretion and secrecy can create some tribulations during the presentation of findings.
- The process of interviews may take days to complete, the scheduling of participants must also be taken into account. At times, participants postpone scheduled interviews and may not always be readily available.
- The researcher may sometimes be biased when interviewing participants and when collecting, interpreting and making sense of the research data.
- There is often slight comparable literature on the topic being researched. This could lead to the researcher not being objective.

Section 4.3 of this study will explain how the limitations of qualitative research were taken into account and minimised.

#### **4.2.2 Grounded theory research**

Birks and Mills (2015) suggest that grounded theory may be explained as the systematic method in social sciences concerning the expansion of theory through the process of data analysis. Grounded theory is a research methodology which functions more or less in a reverse manner from social science research in the positivist tradition.

Charmaz (2014) states that grounded theory methods consist of methodical but flexible strategies for collecting and analysing qualitative data in order to construct theories from the data collected. For the purposes of this study, the researcher has followed an organised approach by constructing theories grounded in the data collected from the

interviews which were held with participants to the research. The researcher has collected and analysed all the data before making a conclusion and forming a theory.

The grounded theory principle entails interactive strategies of moving back and forth between data analysis using comparative methods with the intent of constructing theories from the data itself (Charmaz, 2014). It is the discovery of emerging patterns in the data which leads to the generation of theories. Grounded theory is not owned by any discipline, it has directed the researcher on the data collection process and features meticulous procedures for data analysis (Given, 2008).

David and Sutton (2004) suggest that grounded theory is a logical methodology which entails the construction of theories through the analysis of data. A research study by means of grounded theory would probably commence with an inquiry or even just with the collection of qualitative data.

For the purposes of this study, the researcher has reviewed the data, concepts and repeated ideas collected. As concepts emerge and become more apparent, they have been marked with codes by the researcher. The more the data was collected and reviewed, the more the codes could be grouped into concepts and categories. These categories might become the basis for a new theory (Birks & Mills, 2015).

A grounded theory approach has been used because the researcher prefers extensive comprehension of the issues at hand. The researcher has obtained an in-depth understanding of the participants' opinions, perceptions and beliefs, by listening and carefully observing their behaviour during the interview process to uncover and develop an integrated theoretical explanation (Maree & Van Der Westhuizen, 2009).

The researcher has used grounded theory as a research tool. This enabled him to search for and conceptualise the underlying social patterns and structures of the area of research interest through the process of constant comparison. The researcher has used an inductive approach to generate substantive codes from the data collected and has

developed theories which suggest to the researcher where to go next to collect data and which more direct questions to ask. This is the deductive phase of grounded theory processes (Maree & Van Der Westhuizen, 2009).

#### **4.2.3 Content analysis**

Content analysis may be defined as a technique for rationally unfolding the meaning of qualitative research data or information. It is completed by classifying research material according to categories of a coding structure (Schreier, 2012). It is the quantitative investigation of qualitative research information which entails collecting and analysing information by way of generating codes, phrases or words to form an understanding of the study (Struwig & Stead, 2011; Welman et al., 2005).

In this study, the researcher made use of digital recordings of individual interviews held at an integrated pension and provident fund company in South Africa, with employees in the HR department who are employed in different divisions at the company. The digital recordings have been transcribed into normal text so as to interpret it through data coding (Maree et al., 2012).

#### **4.2.4 Descriptive design**

Descriptive research design is a systematic process which involves observing and unfolding the behaviour of participants without influencing them in any way. It is centered on specific social settings, social relationships or circumstances with open-ended and inquisitive questions (De Vos et al. 2013).

The researcher has made use of descriptive facets of research design by soliciting undefined probing questions to the research participants. An inquisitorial approach allows the researcher to gain a better understanding of what is being researched.

The data which was collected from the individual interviews were used to develop a detailed research report. The researcher refrained from interfering with the research interviews and the participants to this study were free to answer questions the way they saw fit.

#### **4.2.5 Exploratory design**

According to Struwig and Stead (2011), exploratory research is conducted for research problems that have not been studied more thoroughly. It is usually carried out when there is little or no previous studies to refer to or rely upon in order to predict a particular outcome. The focus of such a study is on gaining insight and familiarity for later possible investigations to be undertaken when research problems are at a preliminary stage.

It was the researchers' interest to obtain a thorough appreciation of the research phenomenon. This is one of the reasons an exploratory research approach was elected. The legislative amendments to section 198B of the LRA are a fairly new discussion, hence there has been inadequate literature or no research previously conducted on the topic. The researcher engaged participants to the study by posing open ended and probing questions which enabled him to conclude the research with potential prospects for further studies on the topic (De Vos et al., 2013).

#### **4.3 POSSIBLE BIAS IN THIS RESEARCH STUDY**

According to Schmidt and Hunter (2014), research bias is a type of an error that affects research investigations and misrepresents the measurement and findings process. It is an inclination that prevents an impartial consideration of a research question. In qualitative research, bias will occur when a systematic error is introduced into the sample by encouraging one result over the other. Bias greatly affects the credibility, validity and reliability of a research project.

A prejudiced study loses validity in relation to the degree or extent of the bias. While some study designs are more prone to bias, its occurrence is widespread. It is difficult or even next to impossible to completely eliminate bias. Babbie, (2011, p. 248) defines bias as "Any property of questions that encourages respondents to answer in a particular way".

Probable bias subsisted in this study since the researcher utilised purposive sampling and has analysed the data collected from the interviews. The researcher had an implied view on the legislative changes to fixed term contracts of employment because of his background knowledge on the subject.

To reduce the potential bias, the researcher used participants who voluntarily took part in the interviews. The participants were selected by the contact person to ensure that the researcher had the best possible candidates to answer the research questions. The researcher also involved his immediate line manager with the analysis of the data obtained with the view to eliminate any biased perceptions, proclamations and or recommendations.

#### **4.4 RESEARCH METHODS**

The population, sampling, data gathering and data analysis used in this study are explained below.

##### **4.4.1 Population**

A population may be defined as a research or study object and may consist of persons, groups, organisations, human products, human events or the circumstances to which they are exposed to. It is in addition acknowledged as a greatly distinct anthology of individuals or objects known to have comparable characteristics. All the individuals or objects within the population have a universal and binding attribute or character (Welman et al., 2005). The population in this study consists of employees in the HR department in the selected integrated pension and provident fund company. The incumbents interviewed are from

the population that comprised all units of analysis (Welman et al., 2005). The individual interviews were conducted at a company which comprises of approximately 850 employees.

#### **4.4.2 Sample**

The research sample in this study is a non-probability sample. In non-probability sampling, the likelihood that the units of analysis will be integrated in a non-probability sample cannot be specific. In some cases, some members may have no chance at all of being included in such a sample because it is impracticable for the researcher to locate the entire population with an expedient sampling approach (Babbie, 2011).

For the purposes of this study, the researcher elected to use purposive and snowball sampling (Boeije, 2009). Purposive sampling is the most significant form of non-probability sampling. The researcher relied on familiarity, resourcefulness and preceding research findings to deliberately obtain units of analysis in such a manner that the sample obtained may be regarded as being representative of the relevant population (Given, 2008). The researcher selected individuals from the HR department based on their experience and resourcefulness to assist in the research.

In snowball sampling, a few individuals from the relevant population are approached. These individuals then act as informants and identify other members from the same population for inclusion in the sample (David & Sutton, 2004). For example, the HR manager has provided contact details of other participants who were able to be part of the study and the participants also provided contact details of other participants who could form part of the study. The sample varied with respect to the age, experience and gender of the participants, this enabled the researcher to evaluate the responses from the participants across an array of societal settings. The participants in this research study all work in different departments of the same company which helps to enhance the credibility and trustworthiness of this study (Welman, et al., 2005).

The participants were selected from the HR department since they are directly involved with the changes to legislation regarding equal treatment of fixed term employees compared to their permanent counterparts. Individual interviews were held and the sample size was six delegates. This allowed for the satisfactory authority for the envisioned data analysis techniques used in the study. The researcher experienced data saturation after the sixth individual interview. No new data was obtained during this last interview which signaled the adequacy of the sample (Welman, et al., 2005).

According to Babbie and Mouton (2001), a realistic sample size that deemed to be acceptable for South African qualitative research studies at master's level is between five and twenty five. It is generally accepted that on the basis of the data that has been collected and analysed hitherto, further data collection and analysis are superfluous. The sample size in this study was sufficient after data saturation was reached (Saunders, B., Sim, J., Kingstone, T. et al., 2018).

#### **4.4.2.1 Criteria for selection of participants**

The criterion used for the selection of participants in this study is as follows:

- Participants would have had to form part of the HR department.
- Participants would have had to work in the integrated pension and provident fund company based in Gauteng.
- Participants would require experience dealing with fixed term contract employees.
- Participants would require knowledge of section 198B of the LRA.
- Participants would need to voluntarily be willing to be individually interviewed.

#### **4.4.2.2 Biographical characteristics of participants**

The biographical particulars of the participants in the individual interviews are documented and presented in table 4.1 below.

*Table 4.1 Biographical characteristics of participants*

Individual Interviews: Biographical characteristics of participants								
No.	Race	Age	Gender	Language	Religion	Marital status	Job designation	Number of years' service in the HR Department
1.	Coloured	24	Male	English	Christian	Single	Senior HR Administrator	3 years
2.	White	43	Female	Afrikaans	Christian	Single	Payroll Manager	22 years
3.	White	56	Female	English	Christian	Married	HR Manager	20 years
4.	Coloured	37	Male	Afrikaans	Christian	Married	Senior HR Trainer	10 years
5.	Coloured	38	Female	English	Christian	Married	Senior HR Trainer	10 years
6.	Black	32	Male	Zulu	Christian	Single	HR Practitioner	3 years

#### 4.4.3 Data collection

Data collection is a primary and critical process of research. According to Creswell (2007), this process entails a variety of activities as depicted in figure 4.1 below.

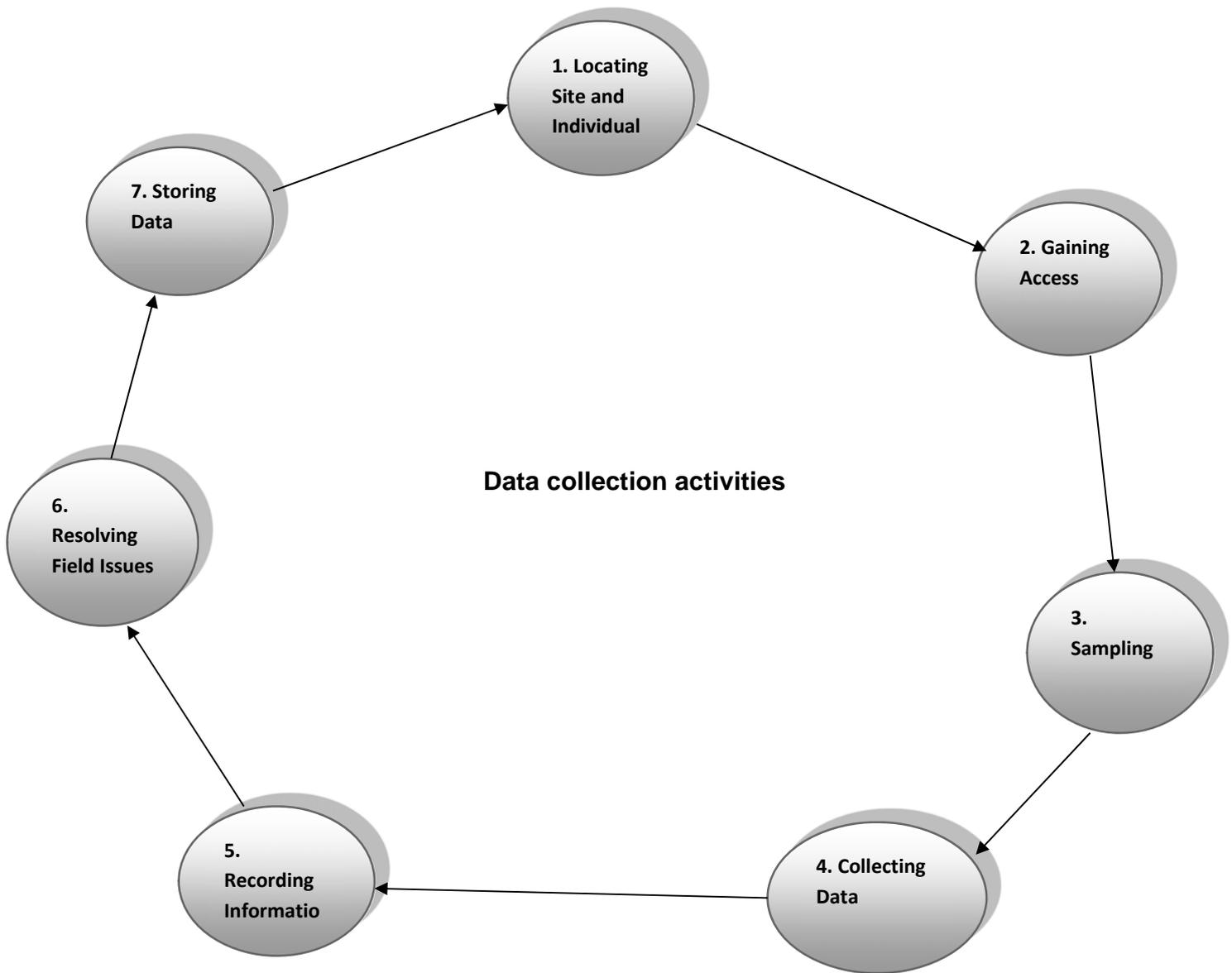


Figure 4.1 Data collection activities (Source: Creswell, 2007, p. 118)

- *Locating site and individual*

The researcher identified an incorporated pension and provident fund company that makes use of fixed term contract employees. The researcher identified incumbents from the company's HR division who work in different sections and who would have the most suitable experience relevant to the study.

- *Gaining access*

The researcher had access to a contact person in the HR department who assisted him to gain access to the company's premises, resources and participants. The contact person provided important information of prospective participants and assisted with some of the scheduling of the individual interviews.

- *Sampling*

The researcher identified six individuals from the HR department who all voluntarily agreed to participate in the study. Individual face to face interviews were held with the participants who all signed consent forms. The participants were not in any way compelled to participate in the study.

- *Collecting data*

The measuring and data collecting procedures in this research was based on systematic observation. This implies that the research conducted is entirely replicable. In other words, independent observers other than the researcher should be able to observe and report the same as that observed and reported by the researcher (Braun, 2016).

The researcher has used semi-structured in-depth interviews with the aim of collecting information so as to prove the hypothesis of the study. Interviewees were given the opportunity to talk freely about events, behaviour and beliefs in relation to the topic at hand. The researcher still directed the interviews by asking certain questions that had to be responded to.

Six participants from the HR department of the integrated pension and provident fund company were individually interviewed on different days at the premises of the company which is based in Gauteng, South Africa. The researcher conducted interviews until data saturation was reached. Each individual interview took approximately 60 minutes to complete. All interviews were recorded digitally. The researcher made written observation notes during the individual face-to-face interviews. The interview questions are set out in section 4.4.3.2 below (also see annexure B).

- *Recording information*

The researcher has made use of detailed notes, recordings and observations during the interview process for the purposes of recording data. In order to properly analyse the unrefined notes, the researcher needed to ensure that they have been sufficiently processed. This process involved converting annotations into transcripts which are comprehensible products that can be read, reviewed for accuracy, commented on and analysed. Things that occurred in the interview which do not reflect in the recording will be noted and used in text (Braun, 2016).

Flick (2009) suggests that the process of data collection should be documented in context protocols, research diaries and field notes. With such procedures, the relations studied were transformed into texts which formed the basis for the actual analysis of the study.

The researcher has further recorded the spoken words of the interviewees by using a recorder and has transcribed the recordings. During the individual interviews, the recorder was placed between the interviewer and the interviewee. The actions and interactions of participants were carefully documented. A contextual enrichment of statements and activities were an integral part of the data collection process (Flick, 2009).

- *Resolving field issues*

Field issues in this research study comprised of the time period it took the researcher to gain access to the research facility, collecting information from the participants and compiling the research report. The researcher has ensured that field notes were compiled into meaningful write ups (Welman, et al., 2005). The researcher commenced with data analysis from the interviews and after the interviews, all field notes and recordings were transcribed into write ups.

The researcher made arrangements around the time periods of having to collect research data and has taken into account all ethical issues pertaining to the research project. Gathering qualitative data can be time consuming (Creswell, 2007). The researcher has therefore kept regular contact with the contact person at the company where the research was conducted in order to arrange access to the department with various appointments scheduled for the purposes of concluding the individual interviews.

- *Storing data*

The researcher will store all the research data on his personal computer which will be safeguarded by a password. The research information will be kept for approximately five years after which time it will be discarded. The researcher will also destroy all the information from the recycle bin of his personal computer. Any research transcripts, interview notes and any other research documentation will also be destroyed five years after the research is completed.

#### **4.4.3.1 Data collection process**

The researcher is employed at the company where the research was conducted. The company provides administration services for various industry funds. The company's core business is to administer the funds of employers and employees in the Steel and Engineering Industries. The company provides administration services for the following funds: Engineering Industries Pension Fund, Metal Industries Provident Fund, Metal and

Engineering Industries Permanent Disability Scheme and the Metal and Engineering Industries Bargaining Council Sick Pay Fund.

The administration services offered include the administration of retirement, withdrawal, death, housing and permanent disability benefits for industry employees who are members of the funds. The researcher is aware of the possibility of potential conflict of interest and the possibility of undue influence. The researcher has obtained written consent from the HR Manager to utilise the company information on fixed term contracts of employment as well as any other information relevant to the research.

The researcher was interested in conducting research at this company and was introduced to a contact person who could assist with the scheduling of the individual in-depth interviews. An arranged place and time was made with the interviewees and all six individual interviews were privately held at the offices of the participants. The interviews took approximately 60 minutes to complete and were concluded between March 2018 and July 2018.

Participants were well informed that participation in the research was voluntary and that any personal details would be kept confidential. All six participants to the research were informed of the purpose of the research and have signed consent forms prior to the commencement of the individual interviews. The researcher recorded all the individual interviews and made field and observation notes during the process. Due to the credibility and experience of the participants, the researcher accepted the interviews and perceptions thereof as true and valid.

#### **(a) The researcher as instrument**

The researcher was the instrument used for gathering information through individual in-depth interviews (Welman et al., 2005). The researcher has used semi-structured in-depth interviews with the aim of collecting information, the interviews commenced with a general question asking the participants about the research topic and then probing questions were raised to get more specific information. Open ended question were also raised, questions

such as asking the participants to tell the researcher about their perceptions of the implications of section 198B of the LRA on their organisation. The participants had ample opportunity to adequately respond to the questions asked, to deliberate, clarify and provide specific information in relation to the subject topic.

For the purposes of the study, the researcher has followed a process whereby a set of similar questions were prepared and answered by all interviewees. Additional and probing questions were raised during the interviews merely to clarify points or to offer the opportunity for interviewees to expand on certain issues.

The researcher had an open mind when leading interviews and desisted from exhibiting disagreements in any form when perspectives articulated by interviewees were in contradiction to the researcher's own viewpoints. The interviews were held in a relaxed environment which was free from pressure or influence (Mann, 2016). The researcher had unswerving control over the flow of the principal data collection process. Interviews provided the opportunity to clarify discussions and issues and further provided an enhanced comprehension of the subject matter at hand (Braun, 2016).

According to Seidman (2015), the essential characteristics of research interviews include the researcher being knowledgeable, structured, lucid, kind and sensitive. These traits are critical in the interview process and the researcher aimed at all times to uphold these traits during the interviews. The researcher's pre- and postgraduate studies in HR and his experience working with the LRA and fixed term contract workers gave him the necessary knowledge and exposure required for this study. The HR supervisory and generalist skills of the researcher permitted him to be structured, clear, gentle, sensitive and critical.

#### **(b) Schedule of questions**

The researcher devised open-ended questions that were used in the semi structured individual in-depth interviews to collect research data on the perceptions, views and beliefs of the participants. This made it possible for him to obtain additional information on the research subject. The open-ended questions used in this study are detailed in

section 4.4.3.2 below, and a duplicate of the list of questions is included in this research study as annexure B.

#### 4.4.3.2 Individual interviews

The study involved recorded individual semi structured interviews which took about an hour to complete. The researcher has focused on questions such as the below indicated, the questions were similar for each individual interviewee:

- What is your understanding of the labour related changes, specifically changes to section 198B of the LRA?
- In your view, what positive impacts, if any, do the legislative changes to fixed term contracts of employment have on the organisation?
- In your view, what positive impacts, if any, do the legislative changes to fixed term contracts of employment have on employees?
- In your view, what negative impacts, if any, do the legislative changes to fixed term contracts of employment have on the organisation?
- In your view, what negative impacts, if any, do the legislative changes to fixed term contracts of employment have on employees?

The researcher has audio recorded the individual interviews using a digital recorder and has numbered the interviews by giving each participant a number for instance, interviewee 1, interviewee 2 and so on so forth. The interviews were typed out as indicated below and the recordings were translated verbatim by a certified transcriber.

INTERVIEWEE 1	
A1	Researcher: Okay, and if I may ask, what are the implications,

A2	the possible cost implications of the legislative changes to fixed term contracts of
A3	employment on your company? How would you comment on that
A4	Participant 1: My opinion is that there are major cost implications for
A5	the company because fixed term contract employees now receive benefits
A6	like the pension fund, medical aid and study related benefits which they
A7	previously did not receive before the changes came into effect. Regards the
A8	MIBFA pension fund, the company contributes 12% of the employee's basic
A9	salary towards the benefit and the employee contributes 7.5%
A10	With medical aid, the contributions are split in half. After the
A11	changes, the company had to incur that additional cost of having to provide
A12	employees with benefits which they previously did not receive. My
A13	predictions are that the costs and the implications may easily be in the
A14	region of millions over a period of just a year.
A15	Researcher: Over a million, you say?

<b>INTERVIEWEE 2</b>	
B1	Researcher: What are the possible cost implications
B2	of the legislative changes to fixed term contracts of employment
B3	on your company, the possible cost implications for the company, if any?
B4	If any?
B5	Participant 2: The cost implications, there definitely would be cost
B6	implications because you are going to afford fixed term contracts the
B7	same benefits that your permanent employees have,
B8	so, it means there is going to be an increased cost
B9	because now, we've got to pay 50% of their medical aid
B10	contributions, we are going to have to pay a portion of their pension

B11	contributions as well. We are going to have to pay sick pay fund contributions for
B12	them as well, so there is definitely a cost implication for the company.
B13	Researcher: Is it significantly low or is it going to be tolerable?
B14	I would think it is a significant cost because you are
B15	literally going from, let's look at an example of a permanent staff compliment of 650 and that is now increased by 100. So, I would say that is a significant cost implication.

<b>INTERVIEWEE 3</b>	
C1	Researcher: In your view, what are the possible cost
C2	implications of the legislative changes to fixed term contracts of
C3	employment on your company? The possible cost implications of the legislative
C4	changes to fixed term contracts of employment
C5	on your company?
C6	Participant 3: Okay, because fixed term contract workers now
C7	have to be treated equally or the same as permanently employed people,
C8	that means that they would also now need to be covered by medical
C9	aid, pension fund and have access to study assistance offered by the
C10	company. I would say that the cost implications on the company are
C11	that for those additional people they would now have to pay
C12	additional medical aid contributions, they would have to pay pension fund
C13	contributions and they would also have to make study assistance in the form of money and in the form of study leave available to fixed term contract workers. I think that is where the cost implication comes in for the company.

<b>INTERVIEWEE 4</b>	
D1	Researcher: Okay, and in your view, what negative impacts, if any,

D2	do the legislative changes to fixed term contracts of employment have on the
D3	organisation?
D4	Participant 4: Not all organisations, particularly smaller organisations
D5	have been in a financial position to make a transition to provide all
D6	employees with equal benefits. In my view this has led to a large
D7	majority of employers withdrawing benefits altogether. So, where they may
D8	have provided for medical aid benefits previously they no longer do so.
D9	Researcher: What negative impacts, if any, do the
D10	legislative changes to fixed term contracts of employment have on employees
D11	Participant 4: Possibly few opportunities for employment especially
D12	for local individuals. Employers, specifically international concerns may
D13	prefer to outsource services altogether even internationally so as to reduce
D14	risks and costs. I think a lot of companies are afraid of disputes and having to
D15	deal with large majority of disputes which could arise from the changes.

<b>INTERVIEWEE 5</b>	
E1	Researcher: The first question to you is, can you
E2	please tell us what your understanding of the labour related changes are,
E3	specifically changes to section 198B of the LRA?
E4	Participant 5: Okay, section 198B is concerned with fixed term contract workers.
E5	It is intended to regulate terms and conditions of employment. When an employer
E6	decides that they are going to employ fixed term contract workers, they need
E7	to ensure that the contracts are in writing and that they are for

E8	a particular period of time and for good or justifiable reasons. Such contracts are
E9	usually for three months but the legislation also does say you can extend that
E10	three months' period based on certain criteria, in that it has to be for a fixed
E11	duration, the employee has to be aware of it, it has to be in writing and for good
E12	reason. So in a nutshell, section 198B of the LRA is just basically to regulate
E13	fixed term contracts and to make sure that everyone is fairly treated.
E14	Researcher: Okay, thank you for that. In your opinion, what is the definition
E15	of a fixed term contract of employment?

<b>INTERVIEWEE 6</b>	
F1	Researcher: In your view what positive impacts,
F2	if any, do the legislative changes to fixed term contracts of
F3	employment have on the organisation? You might argue that this question is
F4	a bit similar to the one previously raised in terms of the benefits for the
F5	company. If you do have anything to add in relation to that, by all means.
F6	Participant 6: I would just think that at the end of the day the
F7	the company will get more skilled employees or more suited employees for a
F8	certain project or a certain job spec than what they would have gotten using,
F9	as I said, a labour broker or some other kind of service provider.
F10	Researcher: Okay, and any additional positive impacts for employees
F11	as a result of the changes? Remember we spoke about the benefits
F12	for the company and benefits for the employees. So, this is now merely
F13	positive impacts. In a way it is in addition to the question that I raised,

F14	Participant 6: Fixed term contracts workers are protected from exploitation.
F15	Researcher: Okay, negative impacts of the changes to the organisation?

The researcher has opted to use individual in-depth interviews to gather research data purposively. The audio recordings were transcribed so that the researcher could easily conduct his analysis of the research data. The researcher ensured that the typed lines were numbered accordingly, which resulted in the data analysis process made a bit easier. The first line of the first interview was typed A1, the second line was then typed A2, the third line was typed A3 and so on so forth. The first line of the second interview was typed B1, the second line was typed B2, the third line was typed B3 and so on so forth. The researcher then compared the answers of the participants and identified reasons for different answers to questions. The researcher further identified crucial keywords and the meaning of the identified keywords used by the incumbents in the interview (Mann, 2016).

#### **4.4.3.3 Individual interviews and field notes**

Research data was collected from participants by means of individual in-depth interviews.

##### *a) Qualitative research interviews*

In this section, the researcher will discuss in detail, the interview methods and processes followed in the study. The researcher will further discuss the benefits and challenges of interviews as a data collection method.

##### *(i) Definition of an interview*

The researcher has carried out the study using in-depth interviews for the purpose of collecting qualitative data. In-depth interviews consist of interviewees that come together for the primary purpose of exerting their opinions on a precise set of open questions (Cresswell, 2013). According to (Gillham, 2001) interviews are the primary method used to collect qualitative research information.

The researcher has made use of individual interviews with elected members of the HR division of the said integrated Pension and Provident Fund Company to collect information on their experiences and perceptions regards the changes legislation has on the organisation and its employees in relation to fixed term contracts of employment.

*(ii) Interview methods*

Research interview methods may be structured, unstructured or semi structured. Structured interviews usually have a set of questions which the researcher must strictly adhere to whilst semi structured interviews consists of open ended questions which allow participants the opportunity to introduce additional thoughts and discussions to the interview (Gillham, 2001).

Unstructured interviews are usually much more casual and unceremonious. They are based on the interviewees' perceptions and experiences, the way they respond and how they feel guides the questions which are raised by the interviewer. With semi – structured interviews, the researcher would prepare the same set of questions which are then raised to all interviewees (De Vos et al., 2013; Welman et al., 2005).

In this study, the researcher decided to use semi-structured interviews with a list of pre-prepared questions that were raised to all participants for a response. Individual interviewees had to share their experiences, perceptions and understanding of the research questions which were related to the changes to legislation in relation to fixed term contracts of employment. Individual interviewee answers were recorded and transcribed accordingly.

*(iii) Advantages of interviews as a data collection method*

According to Seidman (2015), interviews are most suitable in research studies where diminutive information exist about the study phenomenon or where meticulous insight is

required from individual participants. Some researchers believe that interviews are appropriate for exploring sensitive topics where participants might not necessarily want to openly engage about the research topic in a group environment.

The main advantages of interviews are that, they provide the researcher with the opportunity to use a variety of open ended questions which allow the respondents the opportunity to provide a thorough response to the questions raised and also allows the researcher to clarify questions asked. Prompting may be included with the questions and participants may elect to not respond to questions which they may feel are inappropriate. Information on why no responses were given by the interviewee may be recorded (David & Sutton, 2004).

Interviews are important because they can assist the researcher to investigate the views, experiences and philosophies of individual participants to the study. Interviews may be considered a more reliant form of data collection as it allows the researcher to observe the non verbal cues, reactions and behaviour of human interactions. Interviews allow room for flexibility as the researcher can change the structure and or flow of the interview as and when needed. Participants are able to respond to questions immediately and even uneducated individuals may take part in the process if and where necessary. Researchers usually choose a desirable environment to hold the interviews, an environment which is private, confidential and provides for a relaxed mood (Wengraf, 2001).

*(iv) Disadvantages of interviews as a data collection method*

According to Klenke (2008), interviews do not actually allow for anonymity because they are conducted on a face-to-face basis, the interviewer can only make assurances of confidentiality to participants. Certain factors such as the age, gender, social background and personal circumstances of both the interviewer and interviewee could influence the responses given in the interview process. It is also possible for the researcher to misunderstand some of the responses provided by participants. Interviewee responses may also not be as trustworthy because participants may easily change their opinions or