

J S E C

JOB SEEKERS EXEMPTION CERTIFICATE

Eustace Davie



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## Chapter one

### INTRODUCTION

The world is a frightening and unfriendly place for people who are unskilled and unemployed. How are they to feed, clothe and shelter themselves and their children when they have few or no qualifications for a job and no means to acquire a trade? This is the stark reality for a great many South Africans today. At least eleven million people, and possibly more than twelve million, are currently without work and have little hope of obtaining any. It is a problem of vast proportions for the government and for our society at large.

South Africa's labour laws are exacerbating this unemployment crisis. Written with the intention of protecting workers, they provide a high level of job security to those in employment and make favourable working conditions obligatory. Employers who do not meet the statutory requirements are subject to onerous penalties. However, a consequence of the laws is that they prohibit unemployed people from selling their labour on less favourable terms than the law prescribes, but which are nevertheless acceptable to them. This effectively deprives them of their only means of climbing on to the first rung of the employment ladder. The consequence in South Africa, is massive unemployment. The highest in the world for young people between the ages of 15 and 24 years, according to the ILO.

Many jobless people are thus condemned to living on welfare grants or relying on the charity of friends and family. While this may provide some measure of relief from the physical consequences of poverty, it does incalculable damage to the self-esteem of the unemployed and leads to feelings of hopelessness and desperation.

#### **What is to be done?**

When the first version of this booklet was published in 2003 there were reported to be 5 million unemployed people in the country. That figure, prior to the Covid-19 lockdown, had grown to 10.5 million. It is now estimated to be above 13 million. If drastic steps are not taken without delay to mitigate the situation, chaos is likely to result. The usual mitigating steps taken by governments, such as welfare payments and government make-work jobs will not resolve the situation. Decisive action *now* needs to be taken to get people working, earning, learning skills, and supporting their families. Above all, the steps taken must offer hope of economic betterment to the millions of South Africans who are jobless and unskilled. The purpose of this paper is to suggest a way in which this can be done.

The solution proposed here would be effective, easy to implement and politically 'saleable'. It would help those who need help – the unemployed – without affecting the statutory rights of the employed. And it would result in increased economic growth that would benefit all South Africans.

## Chapter two

# ALLOWING THE LABOUR MARKET TO WORK

### **The proposal**

People who have been unemployed for six months or longer should be entitled to a Job Seekers Exemption Certificate, which would a) grant them exemption from all labour legislation for a period of at least two years and b) protect any employer who hires them from prosecution under the labour laws.

This would allow the unemployed to accept work at less than the minimum wage, and to agree to less favourable employment conditions (such as longer working hours or less rigid employment termination procedures) than those mandated by the labour laws. The unemployed and unskilled can then acquire skills and build up an employment history. It is important to note that these individuals, while relinquishing statutory protections, would still have all the protections against abuse that are afforded by the common law.

Why create a two-tier system, with some workers subject to labour laws and others not? Why not simply allow freedom of contract between all employers and all employees? The simple answer is that neither the government nor the labour unions would agree to this. Most countries have, to a lesser or greater extent, sacrificed contractual freedom in labour markets in favour of worker protections. South Africa has embraced the global trend and appears unlikely to reduce the rigidity of the laws in the foreseeable future. The solution offered here is one that will disturb the existing labour dispensation as little as possible, yet allow the unemployed to find jobs, learn skills, take care of themselves and their families and increase the productive capacity of the country.

If a JSEC certificate were available, it would reduce unemployment rapidly and dramatically, and accelerate economic growth. These results would all be quantifiable. A less tangible, but equally important consequence, would be the improvement in the psychological health and emotional outlook of millions of people.

### **JSEC certificates would empower the unemployed, not the employer**

Organised labour is likely to oppose any labour law reform that reduces demands on business. This factor can be removed from the equation by placing the benefits of the reforms in the hands of the unemployed – in other words, by empowering the unemployed rather than the employer.

JSEC certificates would be issued to the unemployed, exempting them for a period of two years from the Basic Conditions of Employment Act, the Labour Relations Act and all other labour laws, particularly minimum wage laws, that restrict their ability to determine their own conditions of employment. The JSEC holder would become a free agent, entitled to make any form of employment arrangement she/he wishes with an employer, who would in turn be protected by the JSEC certificate from prosecution under the labour laws.

Empowering the unemployed person in this way would have several important benefits:

- no changes need be made to the current labour laws, except for a brief section exempting the unemployed and determining the conditions of the exemption;
- the job security of existing employees would not be affected;
- the concept is simple for unemployed people to understand and utilise; and
- potential employers, most of whom are likely to be small firms and households, would have a minimum of red tape to comply with.

Unemployed people would decide for themselves whether to apply for a JSEC: the choice would be entirely in their hands. After acquiring a certificate, they would remain in control of the situation and be able to choose any of the following options:

- refrain from using the JSEC certificate but keep it in reserve in case of need;
- use the JSEC certificate to get a job and stay in it for the full two-year term;
- use the JSEC certificate to job-hop and find the job that best suits them; or
- take back the JSEC certificate by agreement with the employer once they are firmly established in a job, thereby bringing all the labour laws into operation, but keep it to cover future contingencies.

The introduction of JSEC certificates would have major advantages for the jobless and no disadvantages. Employers would gain by having extra labour only for as long as conditions of employment remain mutually beneficial.

### **Conditions of issue of JSEC certificates**

The following conditions are proposed to satisfy potential critics while allowing the JSEC certificates to perform their intended function of helping the unemployed to get jobs:

#### **1. *People who have been unemployed for six months or longer should automatically qualify for certificates***

Ideally, all unemployed people should become eligible for JSEC certificates upon losing their jobs. However, critics may argue that immediate qualification would encourage employers to circumvent the labour laws by firing their workers and re-hiring them once they have obtained JSEC certificates. As it is not the purpose of this proposal to help people evade the labour laws, a method must be devised for identifying the genuinely unemployed. Whatever method is chosen must:

- not present opportunities for cheating.
- not present so many obstacles to qualification that unemployed people lose heart.

A waiting period is probably the simplest way of doing this. Initially, this period could be set at six months of unemployment, but it should be reviewed if it is found to be too long, or if government finds a better way of identifying the genuinely unemployed. A six-month wait for a JSEC certificate is better than having no prospect of getting a job, and most of the existing unemployed would in any case qualify immediately as they will already have been unemployed for longer than six months.

## **2. *A simple and quick procedure should be adopted for issuing JSEC certificates***

The task of identifying JSEC certificate qualifiers and issuing the certificates could be assigned to any agencies or institutions (such as local authorities) that operate or are available countrywide. Issuing the certificates would not necessarily have to be carried out by the Department of Labour. A simple procedure could be adopted, requiring an applicant to complete an application form and sign a declaration confirming the period for which she/he has been unemployed. All applicants would have to be made aware of the penalties for making false declarations. Placing an onerous and time-consuming burden of proof on applicants regarding the length of time they have been jobless would be unfair and should be avoided.

No official should have the discretionary power to refuse to issue a JSEC to a genuinely qualifying unemployed person: legislation should set objective criteria that will allow qualifying individuals to claim certificates as of right. No fees should be payable by the unemployed, and this fact should be widely advertised to avoid corruption.

Government would have to ensure that the certificates are issued expeditiously. Ideally, they should be issued immediately on receipt of applications and signed declarations.

## **3. *The exemption should cover all the labour laws***

If the certificates are to be effective, they should exempt the unemployed from all the laws and regulations under the jurisdiction of the Department of Labour. This would allow the certificate-holder to offer a prospective employer an agreement that is free of the possibility of inadvertent transgressions. Firms that currently do not hire labour because they are fearful of prosecution for breaking laws they are not aware of, or that avoid hiring because of the administrative complexity related to employing staff, would then be encouraged to hire holders of exemption certificates.

A partial exemption would compel prospective employers to study the legislation to determine their legal responsibilities. Such an exercise is beyond the capabilities of many potential employers, and it would tend to become another barrier to employment. The thrust of this proposal is that long-term unemployed people are better off being employed and protected by the common law than being unemployed and kept in that condition by laws providing a high level of job security to others.

No one can seriously contend that an unemployed person is better off remaining unemployed than relying on an employment contract and the common law as protection against a potentially unscrupulous employer. Reasonable employers significantly outnumber bad employers, but in any event the holder of an exemption certificate would also be in a better position than a non-holder to leave poor employment and find a better job. In fact, one of the primary purposes of the JSEC would be to give its holder the opportunity to change jobs more easily.

## **4. *Employee exemption must provide the employer with total protection***

While it is the employee and not the employer who enjoys the exemption from the labour laws, it does mean that employers of exempted employees are protected from the provisions of any legislation from which those employees have been exempted. The exemption should remain valid only as long as the employee chooses.



JSEC certificate-holders should have the right to cancel their exempt status at any time within the two- year validity period of the certificate, on giving appropriate notice to their employers in terms of their employment contracts. They may then either leave their employment or negotiate new contracts that are fully subject to the labour laws. However, there should be no requirement compelling employers to transfer exempted employees to regular employment contracts, as this would almost totally negate the contractual freedom that is the principal benefit of the JSEC certificates.

Exempted employees and their employers should be required to enter into simple straightforward written employment contracts detailing the essential terms of their agreements. Employers should further be required to retain certified copies of their exempted employees' JSEC certificates but should under no circumstances be entitled to keep the originals, which would be the exclusive property of the holders. The written contracts together with the copies of the JSEC certificates should be all that is necessary to protect employers from charges of infringing the labour laws.

#### **5. *Why JSEC certificates should be valid for at least two years***

Exemption terms for the JSEC certificates should be long enough for their holders to consolidate their positions on the job market. Firstly, the possession of an exemption certificate will not necessarily be a passport to an immediate job. Secondly, the exempted person may change jobs several times before finding suitable employment. Thereafter, the employee will need to build up an employment record that will satisfy potential future employers of her/his abilities and reliability, or to satisfy an existing employer that she/he deserves to be appointed to permanent formal employment.

Employers become understandably wary of employing people who have been without work for a long time. Unemployed people therefore need the opportunity to prove their worth. They need to be able to say to an employer, 'Give me a chance and I will show you what I can do!' The JSEC certificate would make that possible. Certificate-holders may, for example:

- agree to start at very low wages in order to learn skills on the job that they could not acquire under highly regulated circumstances;
- settle for low starting wages with periodic adjustments as they demonstrate their worth;
- change employers regularly as they find increasingly attractive employment and discover better ways to exploit their newly-learned skills;
- work long hours in order to get their feet on the first rung of the employment ladder; or
- engage in day-to-day employment terminable at 24 hours' notice from either side.

Experimenting with job opportunities and acquiring skills requires time and the kind of latitude provided by the proposed JSEC certificates. A period of at least two years is necessary to give exempted workers the time to develop the skills to assure them of being sufficiently experienced to obtain regular employment after the expiry of the certificate.

## **6. *Exempted persons should face a minimum of restrictions in their choice of employers***

Unemployment would decline most rapidly if no restrictions whatsoever were to be placed on the type of employer that exempt persons might choose to contract with. However, such an arrangement would be inclined to conflict with the interests of trade union members. Even if trade unions were to accept the exemption certificate concept in principle as a least-costly method of reducing unemployment and should they recognise the future benefits of an overall larger workforce, they would nevertheless probably wish to limit potential competition from JSEC certificate-holders.

The unions would probably suggest limitations on the size of the firms that would be entitled to employ such workers. There is no scientific way of determining what the 'right' size of a firm should be, as measured by number of employees, or who should qualify to employ exempted workers. Therefore, an arbitrary figure would have to be chosen, which should be as high as interested parties will allow. The greater the number of firms that are allowed to participate, the more rapidly the unemployment rate will decline.

One possibility is to allow all householders, and small, medium and micro enterprises (SMMEs) to employ holders of exemption certificates. The National Small Business Act, 1996 (as amended on 15 March 2019) has a complicated system for classifying businesses by number of employees and size of turnover. The classifications can nevertheless be used to determine the number of JSEC holders who could be legally added to the payrolls of businesses of various sizes. For instance, Household +2, Micro business +5, Small business +25 and Medium business +125 JSEC holders allowed to be added to their employee numbers.

Another possibility is not to exclude any firms at all but to adopt a reverse sliding scale, allowing very large firms to employ very small numbers of exempted unemployed as a percentage of their total workforce, increasing the percentage for smaller firms, to a point where the smallest firms are allowed to employ as many certificate-holders as they can afford. The formula could be devised in such a way that competition with unionised workers is reduced to a minimum.

## **7. *Basic, simple, employment contracts***

Written employment contracts between exempt employees and their employers should be obligatory so that there can be no doubt as to the basis of their agreements. In the interests of the employees, however, these should be as simple and uncomplicated as possible. Items that should appear in every agreement are:

1. Names of the parties to the contract together with identifying information such as identity numbers and company registration numbers.
2. Nature of the work to be performed by the employee.
3. Date of commencement of the contract.
4. Salary or wage payable per hour, day, week, or month.
5. Hours of work.
6. Overtime conditions and remuneration.
7. Day of the week or month upon which remuneration will be paid.
8. Annual leave conditions.

9. Sick leave conditions.
10. Notice required for termination of the contract.
11. Date of issue of the applicable exemption certificate and the period for which it is valid.
12. Date and place of signature of the contract.
13. The signatures of the parties.

An example of a simple contract of employment is attached as an addendum.

## Chapter three

# CURRENT LABOUR POLICY AND ITS CONSEQUENCES

Labour laws that seek to increase the job security of those already in employment cannot avoid interfering with the contractual rights of both the unemployed and potential employers. If that were not so, there would be nothing to prevent job seekers from contracting freely with firms on mutually agreeable terms. Given unrestricted freedom of contract, no one should be unemployed other than those who are holding out for higher wages or better conditions.

Onerous termination requirements, minimum conditions of employment, compulsory minimum wages and other regulatory conditions imposed on employers, all serve to consign some people to the ranks of the permanently unemployed. This is because the total of their wages and the costs to the employer of complying with the labour regulations exceed the economic value of their expected production.

Compliance costs include the time required to understand the legislation and to implement and maintain the administrative processes needed to avoid contravening the laws, and the potential executive time, professional fees and other costs related to an inadvertent contravention.

Many small firms are incapable of dealing with the complexities of the regulations and respond by refraining from hiring staff. Compliance costs are similar for high-wage and low-wage employees, which means that the compliance costs constitute a greater percentage of the total cost of employing low-wage workers. They are therefore a greater deterrent to the employment of unskilled than skilled workers.

Wealthy countries tend to adopt more demanding labour laws than others and the detrimental consequences become increasingly visible over time. Even highly developed European countries are finding that they can no longer afford onerous labour laws and paying generous social grants (the dole) to the resultant unemployed. Germany, well known for its 'labour democracy', has in recent years revised its labour laws to try and reduce the cost and level of unemployment.

South Africa's labour laws are as inflexible as those of Germany, France and Italy, and considerably more inflexible than those of the United States, United Kingdom, New Zealand and Chile. Hong Kong, Singapore, and Taiwan, by comparison, have total freedom of contract in their labour markets. Comparisons of levels of inflexibility must be viewed in context, in light of circumstances prevailing in the countries being measured. Effects vary according to the strictness of enforcement. For instance, whereas the labour laws of some countries appear to provide job security at a similar level to that in South Africa, the consequences are very different if they have weaker and less demanding labour unions and the laws are not strictly applied, while South Africa's unions are politically powerful and demanding.

According to the International Monetary Fund (IMF), South Africa's labour laws are not more inflexible than those of the Organisation for Economic Co-operation and Development (OECD) countries. However, that does not mean that they are appropriate for our circumstances. For one thing, South Africa has an appreciably higher number of unskilled and semi-skilled people than the

OECD member states. Since the administration and labour law compliance costs of employing an unskilled worker can be equal to or higher than the costs of employing a skilled person, prospective employers often conclude that these costs are too high in relation to the benefit they would receive from hiring an unskilled person. In this way, regulation creates a serious bias against the employment of the unskilled.

Countries such as South Africa that have many low-skilled job seekers usually also have large numbers of existing and potential low-skilled employers, who do not have the capacity to administer and comply with the requirements of complex labour laws. Inflexible labour laws then have a doubly retarding effect on the employment of labour: not only do they price unskilled people out of the labour market, they also prevent low-skilled people from becoming employers. Relief for both employees and employers at the lower end of the South African job market could consequently bring about both a significant reduction in unemployment and an increase in the number of labour-intensive firms.

### **Problematic laws**

Legislated restrictions on termination of employment contracts (generally referred to as “unjustifiable dismissal” provisions), and compulsory minimum wages without doubt represent the greatest statutory barriers to employment. Together, these two measures create a formidable obstacle to employment for South Africa’s jobless. Employers dare not ignore the laws because the penalties are substantial.

#### **1. Onerous termination procedures**

When employers face onerous procedures for the termination of contracts of employment (unjustifiable or wrongful dismissal procedures), such as requirements for written notices to employees, internal disciplinary hearings, and potential hearings before the Commission for Conciliation, Mediation and Arbitration (CCMA) and possibly the Labour Court, they understandably become more careful about hiring. Some employers will even cease hiring altogether if they believe that the level of statutory intervention has become unbearable.

Most of the cases coming before the CCMA are for alleged wrongful dismissal and of these, the great majority involve small businesses. This is not surprising as the procedural requirements demand careful study of the legislation and meticulous attention to detail – skills that are not generally found in small firms.

Being kept unemployed by laws that would protect them from dismissal if they were ever employed is what some economists call a ‘negative benefit’ for the jobless. If unemployed people realised that the unjustifiable or wrongful dismissal provisions constitute such a major barrier to their employment, it is likely that the majority of them would readily forego this doubtful privilege in exchange for the right to contract freely with potential employers.

In his monograph *Unjustifiable dismissal – The economics of an unjust employment tax: The New Zealand Employment Contracts Act*, Professor Charles W. Baird concluded (Baird, 1998, 56) that –

While the proponents of those (unjustifiable dismissal) restrictions may have been well intentioned, the economic effects of the regulations are lamentable. On purely theoretical grounds we can infer that the economic effects of unjustifiable dismissal regulations include:

- Less efficiency in the management and deployment of labour resources.
- Higher information costs in labour markets.
- The founding of fewer start-up firms and the expansion of fewer existing firms.
- The hiring of fewer high-risk employees.
- Diminished opportunities for entry-level work and on-the-job training.
- Decreased productivity of many already-hired employees.
- Lower real compensation paid to workers.
- Less employment opportunities in general.
- Increased inequality in the distribution of income.

At least half these effects have detrimental consequences for the unemployed.

## **2. Minimum wage laws**

Minimum wage laws appear to be compassionate but have cruel consequences for workers who lose their jobs and those who cannot get jobs because of such laws.

South Africa's minimum wage laws affect predominantly the lowest-income families and cause great social harm. The laws are generally touted as a means to relieve poverty but they either induce or exacerbate poverty among the most vulnerable people in our society. A study carried out for the Department of Labour prior to the introduction of minimum wages for domestic and farm workers estimated that as many as 240,252 domestic service jobs and 70,747 farm jobs could be lost at the wage levels being considered at the time. The minimums in both sectors were eventually set R100 above the figures on which these estimates were based, increasing the barriers to entry into the job market for an unskilled person. In this way, regulation creates a serious bias against the employment of the unskilled. Job losses caused by minimum wages in these sectors could consequently be far higher than 300,000.

Some of the consequences of minimum wage laws are:

- The lowest-skilled people in the country lose their jobs or are unable to find jobs.
- Opportunities for on-the-job training decline, as do the fringe benefits offered by employers.
- If a significant differentiation is not made between wage rates in rural and urban areas and between other existing high-wage and low-wage areas of the country and sectors of the economy, unemployment in the poorer areas will rise, further increasing their levels of poverty.
- Skilled workers replace unskilled workers, part-time workers replace full-time workers, and machines replace people.

The author of *South Africa's War Against Capitalism*, economist Walter Williams, described how minimum wages were used to exclude blacks from jobs during the apartheid era:

... white unionists argued that 'in the absence of statutory minimum wages, employers found it profitable to supplant highly trained (and usually highly paid) Europeans by less efficient but

cheaper non-whites.’ One South African union leader said, ‘There is no job reservation left in the building industry, and in the circumstances, I support the rate for the job (minimum wages) as the second best way of protecting our white artisans.’ (Cato Institute, 2003)

Those unionists were clear and open about their objectives, which is unusual. Most often, the call for minimum wages is disguised as a method to assist low-paid workers and reduce poverty.

The effects of the labour laws on the unemployed are similar to the effects that the 1913 Land Act had on black sharecroppers. Sol Plaatje documented in *Native life in South Africa* how they trekked along South Africa’s roads with their livestock, searching in vain for land to hire or for alternative partners to replace those who had suddenly told them that they would in future have to work for wages and could no longer trade their labour for a share in the crops. What they failed to realise was that legislation had been adopted that made it an offence, punishable by a substantial fine, for a white landowner to sell or lease land to a black person, or to farm in partnership with black farmers.

Neither those early landowners nor current-day firms dare disobey the laws in view of the sizable penalties for transgressing. While the 1913 farmers trudged futilely from farm to farm looking for places to settle and resume farming, the jobless now trudge futilely from firm to firm looking for jobs, unaware of the nature of the problem that causes doors to be shut in their faces.

### **A politically palatable alternative**

The approach that is proposed in this booklet will provide the currently unemployed with job experience and saleable skills at no cost to the taxpayer. It will not drain resources from the existing formal sector, nor will it pose a significant threat to unionised labour. However, it will introduce a two-tier labour market, as mentioned in Chapter 2.

Two-tier labour markets result when governments attempt to deal with the negative consequences of special privileges granted by legislation to the upper tier. Because of the political disadvantages associated with any attempt to reduce privileges once granted, governments tend to confine themselves to reducing regulation at the lower end of the employment market, usually by granting exemptions to SMMEs, while leaving the upper end intact, thus creating a situation in which slightly-less-regulated and highly regulated labour markets operate uneasily side by side.

Traditionally, all regulation is aimed at curbing employers, and insufficient attention is paid to the detrimental effects of such laws on the providers of low-value labour, who are often either unskilled, young, old, or handicapped, and who have no political influence either individually or collectively.

In the absence of regulatory prohibitions and barriers to employment, unemployed people would knock on the doors of employers and eventually find some form of work under a mutually beneficial arrangement. Given the right conditions, not only would existing firms use more labour-intensive methods but new firms would be created to utilise the available labour. This does not currently happen because the labour laws prevent the lower end of the employment market from functioning efficiently.

## Chapter four

### THE ROLE OF SMALL FIRMS IN EMPLOYMENT

Small firms have a key role to play in reducing unemployment in South Africa. As we have noted, studies show that in most countries they employ the largest percentage of the total workforce.

According to a report by the World Bank, “Small and Medium Enterprises (SMEs) play a major role in most economies, particularly in developing countries. SMEs account for the majority of businesses worldwide and are important contributors to job creation and global economic development. They represent about 90% of businesses and more than 50% of employment worldwide. Formal SMEs contribute up to 40% of national income (GDP) in emerging economies. These numbers are significantly higher when informal SMEs are included.” They also report that, “In emerging markets, most formal jobs are generated by SMEs, which create 7 out of 10 jobs.”

The OECD expressed similar views. They reported that, “SMEs (small and medium-sized enterprises) account for 60 to 70 per cent of jobs in most OECD countries, with a particularly large share in Italy and Japan, and a relatively smaller share in the United States. Throughout they also account for a disproportionately large share of new jobs, especially in those countries which have displayed a strong employment record, including the United States and the Netherlands. Some evidence points also to the importance of age, rather than size, in job creation: young firms generate more than their share of employment. However, less than one-half of start-ups survive for more than five years and only a fraction develop into the high-growth firms which make important contributions to job creation.”

In the absence of regulatory barriers, unskilled people do not generally look to large firms or the government for employment. They usually approach small firms, which are more accessible, often more conveniently situated in relation to their homes, more likely to take on staff for trial periods to test their capabilities, and more inclined to provide on-the-job training in a diversity of disciplines. Once they have gained skills and experience in small firms, workers are in a better position to secure employment in large organisations.

Some employees may in time become part owners of the small firms employing them, or break away to start their own businesses. Yet without adequate entry points – that is, without an adequate number of small firms able and prepared to employ them – job-seekers face the unenviable reality of too many applicants for too few jobs. And if they are unskilled, or have other characteristics that reduce the demand for their labour, they will be forced to settle for wages and working conditions that reflect the value in labour they are able to deliver. This may mean having to accept compensation that is well below what would be considered a ‘living wage’. An unemployed person or first-time jobseeker would accept such a job for several reasons, including the opportunity to learn skills and build up an employment history, or for the most basic reason of all, expressed in the old adage that ‘half a loaf is better than none’.

#### **Small firms hire fewer people when the laws become onerous**

Small firms, including some that hire relatively large numbers of workers, often do not have personnel departments. An owner or other senior member of the firm does the hiring, and if the



position to be filled does not require special skills, CVs and references may be dispensed with. The person doing the hiring will rely on his or her personal judgement, or on recommendations from existing staff, thus reducing the cost of hiring. However, when the small firm is subjected to onerous labour laws and the dismissal of an unsuitable person can be very costly, the firm has to change its hiring system and possibly its entire approach to labour utilisation.

If the firm decides it needs to create a personnel department to handle labour law requirements, it will have less money available for employing productive workers, which will reduce its output and efficiency. It may outsource the work previously done by certain categories of employees, or alternatively, utilise machines and technology operated by fewer more highly skilled workers. Another alternative would be for the firm to shut down its labour-intensive divisions altogether.

All approaches to the problem of reducing the 'hassle factor' created by the labour laws, especially in the employment of unskilled people, entail a reduction in the numbers employed. Job losses are even greater than is superficially apparent because of the many potential new firms that may have been started, and that may have employed unskilled people, but never do so. The latter are the 'invisible' or 'unseen' job losses that are not quantifiable and tend to be overlooked.

### **Utilising the job-creating potential of small firms**

Government can facilitate the creation of a great number of additional jobs in South Africa by making the regulatory environment more conducive to employment. A more entrepreneurial and business-friendly regulatory framework would allow for the creation of many more jobs while lifting the economic growth rate, potentially to the 6.1% per annum growth rate posited by government's Growth, Employment and Redistribution (GEAR) policy document. The GEAR target and even higher growth is possible but this will not happen if government continues to increase the regulatory burden on business, especially in the labour field, contrary to the stated intention in GEAR, and subsequent policy programmes, which promised 'greater labour market flexibility'.

To rapidly absorb the unemployed into the labour market, South Africa needs spectacular growth in the order of 7.2% per annum for an extended period, which is the growth level required to double the country's GDP every ten years. Other countries, such as South Korea and China averaged higher growth rates for decades and there is no reason why South Africa should not do the same. However, the full wealth-creation and job-creation potential of all firms, but especially small firms, must be utilised to make this possible.

No special dispensation for small business is required in a low-tax, low-regulation environment. But when taxes are high and regulations onerous, small firms need special treatment to reduce the competitive disadvantage that they otherwise suffer because of their higher regulatory compliance costs per worker. The compliance cost per worker has been shown to average as much as 60% more for small firms than for large firms. The reason is that in a big company the costs are spread over a larger number of workers. The average cost then constitutes a much greater percentage of the wages of employees of small firms and is particularly high in the case of low-wage workers.

For instance, if the average compliance cost per worker is R1,000 for a small firm and it hires one worker at R1,000 per month and another at R10,000 per month, the compliance cost is 100% of the monthly wage for the first worker and only 10% for the second, creating a substantial disincentive against the hiring of low-paid workers. Based on a 60% higher cost for small firms, the comparable

compliance costs of a large firm in respect of workers earning the same wages would be 62.5% and 6.25% of the monthly wages respectively.

The bias against small firms caused by high government-imposed costs should be removed or reduced, either by reducing such costs for all firms or by exempting small firms from some of the laws and regulations. Small firms in some instances become the victims of laws and regulations that are specifically intended to regulate the activities of large companies. Identifying and exempting small firms from such 'all-encompassing' regulatory requirements should be a relatively simple matter, and instituting measures to ensure that small firms are not accidentally ensnared by future legislation should also be easily accomplished.

By reducing regulation on small firms in tandem with the granting of a special dispensation to the unemployed, government can bring about the most rapid possible reduction in unemployment. It will allow unemployed people and small employers to 'find' each other quickly, without barriers to employment intervening in the process. Small firms are primary job generators; all that is needed is for jobs and workers to be left to find a match with each other as fast as possible. No other policy proposal has the potential to reduce unemployment as rapidly and permanently as the policies proposed in this booklet.

## Chapter five

# CONCLUSION – A JSEC INSPIRED LABOUR REVOLUTION WOULD TRANSFORM SOUTH AFRICA

The Job Seekers Exemption Certificates (JSECs) described in this paper are the result of a great deal of thought and numerous discussions with unemployed people. The proposal recognises the realities of the current labour dispensation and accepts that labour unions will protect their members with every instrument available to them, including the statutes that are biased in their favour, even if this has unfortunate consequences for the unemployed. That is their job. Levelling the playing field to provide the unemployed with a fairer dispensation is the responsibility of Parliament.

Job Seekers Exemption Certificates (JSECs) would reduce unemployment considerably without reducing job security for existing workers. They would also provide a major boost to the economy. If six million additional people were to be employed at an average low wage of R1,500 per month, their incomes would add R108 billion per annum to the economy and that would be only part of the positive contribution they would make. That would merely be the starting point. Add another three million of the current 10 million-plus unemployed people to the labour force at the same low average wage of R1,500 per month, and it would add a further R54 billion to the economy, making a total of R162 billion per annum. As their knowledge and experience grows, their contributions to the economy will rapidly multiply. The potential for growth at a very low earnings rate is enormous. The potential for socio-economic change is impossible to predict or quantify but it will certainly be substantially positive.

The foregoing calculations deliberately use an extremely low monthly wage rate to illustrate the enormity of the potential for vastly improving the lives of people in the cities, towns, and villages throughout the country. The transformation can be done at very low cost if the Job Seekers Exemption certificates are made readily available in all these places. The cost will be the cost of printing the JSEC certificates, the affidavits to be signed to confirm that the applicant has been unemployed for more than six months, and the application forms for requesting the JSEC. Municipalities should be able to cope with the process very easily.

One of the important aspects is that application for a JSEC will be entirely voluntary. Those who do not want a JSEC will merely not apply for it.

Would JSEC certificate-holders be vulnerable to exploitation? Although poor treatment of employees is the exception, some exempted people may well be ill-treated by unscrupulous employers. However, whether the ill-treatment is physical or relates to breach of contract, employees would be able to call on the law to protect them.

Would they be reluctant to seek legal redress because of the fear of losing their jobs, even if their circumstances are appalling? JSEC certificate-holders would not have the same fears that the unskilled have today, because their exemption certificates would allow them to find other jobs more easily.

It is likely that they would not put up with ill-treatment but would look for other employment without delay.

Would JSEC certificate-holders voluntarily agree to wages and working conditions that appear to the observer to be exploitative, and should they be prevented from doing so? This is the crux of the problem to which we are trying to find a solution. It is precisely because the law prevents the unemployed from making their own choices, determining their own agreements, and entering freely and voluntarily into contracts of employment based on those agreements, that we now have mass unemployment in South Africa.

No one should have the right to deny unemployed people the opportunity to choose their own working conditions, no matter how unattractive those conditions may appear to those who enjoy better circumstances. JSEC certificates will largely overcome potential problems because they will give their holders the protection of written contracts and allow them to change jobs more freely.

This proposal is submitted in the hope that it can be utilised to improve the lives and alleviate the poverty of the millions of people who want to work but cannot, for reasons that they do not understand and are beyond their control.

In the final analysis, the law must stop preventing unemployed people from deciding that poorly paid jobs and poor working conditions, if that is all they can find, are better than no jobs at all.

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# ADDENDUM

Example of a simple contract of employment:

## CONTRACT OF EMPLOYMENT

(entered into by the holder of a Job Seekers Exemption Certificate)

between

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(Employee)

and

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(Employer)

## PREAMBLE

This contract is entered into in terms of the requirements of Job Seekers Exemption Certificate Number \_\_\_\_\_ held by the employee, which entitles her/him to negotiate and enter into agreements with employers on terms that do not conform to the standard labour legislation and regulations.

## CONDITIONS OF EMPLOYMENT

1. This contract commences on \_\_\_\_\_.
2. Remuneration will be \_\_\_\_\_.
3. The total number of ordinary working hours per day/week (delete whichever is not applicable) will be \_\_\_\_\_ hour(s) and the maximum number of working hours in any one day will be \_\_\_\_\_ hour(s).
4. The rate of pay for overtime will be \_\_\_\_\_ times the rate of pay for normal time worked.
5. The number of paid working days leave per year will be \_\_\_\_\_ days.
6. The number of paid working days sick leave will be \_\_\_\_\_ day(s) for every month worked with a maximum of \_\_\_\_\_ day(s) in any cycle of \_\_\_\_\_ months.
7. Normal hours of work will be from \_\_\_\_\_ to \_\_\_\_\_ from Monday to Friday (with a \_\_\_\_\_ lunch break) and from \_\_\_\_\_ to \_\_\_\_\_ on Saturdays.
8. This contract is subject to a probation period of \_\_\_\_\_ month(s) after which notice of termination will be at least \_\_\_\_\_ calendar week(s) by either party.
9. During the first period of \_\_\_\_\_ month(s) the contract may be terminated by either party by giving the other party 24 hours' notice of termination.

## **JOB SEEKERS EXEMPTION CERTIFICATE (JSEC)**

It is agreed that the employer will be entitled to make and retain a certified copy of the JSEC as evidence that the employee is empowered to enter into this contract but shall hand over this copy on demand to the employee on termination of the contract. It is further agreed that at the expiry of the term of the JSEC this contract will terminate automatically, and further employment will be subject to negotiation between the parties.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

\_\_\_\_\_  
**Employee**

\_\_\_\_\_  
**Employer**

\_\_\_\_\_  
**Witness**

# J S E C

## JOB SEEKERS EXEMPTION CERTIFICATE

We cannot allow such a large number of South Africans to remain unemployed. We need to take decisive action *now* to promote job creation, and to offer the hope of economic betterment to the millions who are jobless and unskilled. The purpose of this paper is to suggest a way in which this can be done.

The solution proposed here would be effective, easy to implement and politically 'saleable'. It would help those who need help – the unemployed – without affecting the statutory rights of the employed. And it would result in economic growth that will benefit all South Africans.