

**ECONOMIC POLICY AND WOMEN'S WORK IN
SOUTH AFRICA: OVERLOOKING ATYPICAL
WORK?ⁱ**

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Introduction

An important development in the global economy since the 1970s has been the growth in atypical forms of employment, mainly informalisation and flexibilisation, in both the developed and developing worlds (see Standing 1999a, Portes et al, 1989). The gender implications of these developments are, as a number of studies have shown, profound with most studies confirming the predominance of women workers in informal and flexible work (see Beneria and Roldan 1987, Standing 1999a, 1999b, 1989). Research studies have explored a wide range of issues related to the gender dimensions of flexible and informal work. A number of studies have focussed on incorporating informal economy work into the national accounts (Chen et al 1999, Charmes 1998), while others have examined the form which flexibilisation and informalisation take in different contexts (see for example, Carr et al 2000 on homeworking, Lund and Skinner 1999 on street trading). A number of recent studies have examined these issues within a growing literature on globalisation (see, for example, Carr et al 2000, Standing 1999a and 1999b, United Nations 1999). The state's policy response to flexibilisation and informalisation, and more specifically, the gender implications of this, remains an under-researched area of this literature.

This paper attempts to make a contribution to redressing this gap by examining the nature of the regulatory environment and the incentive structure fashioned by the South African state, and drawing out how this relates to the issue of gender in informal and flexible work in South Africa. In order to make the issues tractable, we focus on trade and industrial policy and labour regulations. The paper outlines the growth and extent of atypical forms of employment in South Africa, and the gender dimensions of this. The paper then examines the character of the ANC government's trade and industrial policy and labour market policies, and analyses the extent to which these policies take account of, and how they impact on, women's position in the labour market and the growth of atypical forms of work.

The paper argues that, notwithstanding its progressive gender policies in other arenas, the trade and industrial policy of the South African state have not and do not take due cognisance of the structural position of women in the South Africa labour market. As a result, these policies fail to respond, appropriately, to the growth of informalisation and flexibilisation. The nature of labour market policy on the other hand displays a more nuanced appreciation for and an understanding of the insecure and exploitative nature of atypical forms of work that many women find themselves in.

The Incidence of Atypical Work in South Africa

Getting an accurate and reliable indication of the incidence of atypical work is difficult given the statistical problems associated with collecting these data. Further, the concepts and definitions of informality, flexibility and atypical work are chaotic, with different aspects and practices often collapsed into catchall categories. This paper is concerned with two forms of atypical work. Firstly, informal economy work, which is employment or work that is not recorded in the formal labour market dataⁱⁱ. This tends to take the form, in general, of elementary occupations such as street trading and many forms of homebased work, but could take the form of highly skilled occupations, which take place outside the formal economy. Second, the paper examines flexible work practices, which often takes the form of numerical or occupational flexibility (multi-skilling), subcontracting, some forms of homebased work, casualisation and part-time work.

Standard labour market data in South Africa is mainly based on Statistics South Africa's (Stats SA) quarterly survey of total employment and earning (STEE). A key weakness of these data is that it is based on a sample survey of formal economy businesses. The result is that the data describes a restricted labour market, that of the formal non-agricultural sector of the economy. The annual October Household Survey (OHS) also collects information on employment in South Africa. The OHS collects data on employment through visiting a probability sample of households, and is as a result able to show employment and work patterns in the informal economy. Pooling the data from these sources provides a fairly comprehensive picture of the South African labour market, as shown in Table 1 below, which provides key labour market variables for South Africa in recent years.

Table 1: Key Labour Market Variables for South Africa

Labour Market Variables		1996	1997	1998
		000	000	000
	Employment in the Formal Sector STEE survey	5 242	5 139	4 945
	Employment in Agriculture	759	717	935
	Employment in Formal Sector not covered by STEE (see i)	1 550	1 587	1 445
	Employment in the Informal Sector	996	1 136	1 316
	Employment in Domestic Service	740	668	749
A	Total Employed	9 287	9 247	9 390
B	Total Unemployed (official) (see ii)	2 224	2 451	3 163
	Total Unemployed (expanded)	4 566	5 202	5 634
C	Total Economically Active (A+B)	11 511	11 698	12 553
	Official Unemployment Rate	19.3%	21.0%	25.2%
	Expanded Unemployment Rate	33.0%	36.0%	37.5%

(Source: Stats SA: P0317, 2000)

Notes:

- i). The STEE does not collect information in certain formal sectors including restaurants etc, water and air transport, financial institutions, educational and health services, and certain social services.
- ii). The official unemployment rate includes only those out of work who have actively taken steps to either work or start some form of self-employment in the past four weeks, while the expanded definition excludes this criterion.
- iii). The trends shown by these data should be treated with some caution since the OHS sample size and clustering has not been consistent.

A number of patterns emerge in the labour market. Firstly, employment in the formal sector of the economy is declining. Second, related to this, the already high rates of unemployment are increasing further, in both official terms and in terms of the expanded definition. Third, employment in the informal economy is increasing. Fourth, in 1998, over 2 million workers, some 22% of those employed, are active in the informal economy (including domestic service).

There is a tendency internationally, and certainly in South Africa, to overstate the growth of informalisation and flexibilisation, and also to see these developments as very recent, and unconnected to historical trajectories in the labour market. Though the

developments outlined below suggest that new forms of informalisation and flexibilisation are beginning to emerge in South Africa, and segmenting the workforce in new ways, it is important to note that the labour market in South Africa has historically been characterised by high levels of flexibility and informality. A key characteristic of the apartheid system, and the racial pattern of South Africa's industrialisation, was the highly flexible system of contract labour and migrant labour (see, among others, Wolpe 1972, Legassick 1974, Hindson 1987). Several micro-level studies in the early 1980s have suggested extremely high levels of informal economy activity. In KwaNgele, near Durban, Cross and Preston-Whyte (1983) found that over half the households relied on both the formal and informal economy for their incomes. In another Durban area, KwaMashu, Wellings and Sutcliffe (1984) found that over half the households had at least one member engaged in informal economy activities. Webster's (1984) study in Soweto reported that over 30 percent of households were engaged in the informal economy, in one way or another.

The Informalisation of Work in South Africa

Tables 2 to 6 (see appendix), based on the 1998 OHS provide a picture of employment patterns in the informal economy. Tables 2 and 3 show that women make up 57% of those in the informal economy. Africans, 83% of all people active in the informal economy, dominate the sector. 49% of those active in the informal economy are African women. Domestic work forms the largest component of the informal, or unrecorded, economy. Table 4 compares the activities of women and men in the informal economy. Whereas most women are domestic workers (55% of women in the informal economy) or, to a lesser extent, own account workers (26% of women), large numbers of men (49%) operate in the informal economy as employees. A large number of men are also own account workers (36%). From Table 5 we are able to see that most informal economy work occurs in the domestic economy (in private households) (37%), and in trade and commercial services (25%). Men's work in the informal economy is spread across the various industries, with some concentration in trade, construction and agriculture. Women, on the other hand, are concentrated in domestic work and trade, with very little representation in other industries. In terms of occupations in the informal economy, Table 6 shows that most work in the informal economy is of a low-skill nature in domestic work and elementary occupations. This is particularly so for women, with 70% of women in the informal economy in domestic and elementary occupations. Men, on the other hand, appear to have some representation in more skilled operator (11% of men) and craft-related occupations (26% of men). These patterns of activity in the informal economy are consistent with those identified by Pat Horn, who through a more micro-level engagement with the informal economy was able to conclude that:

In the informal economy, which is not homogenous, women occupy the low-income, low-skill occupations. Often when activities undertaken by women in the informal sector start to become more profitable they are gradually taken over by men. The women remain in the subsistence-level activities, while the men are often able to move beyond subsistence to accumulate capital for more ambitious projects (1994:80).

Flexibilisation of Work in South Africa

In the formal segment of the labour market, a number of recent developments suggest that new forms of segmentation, driven primarily by new flexibilisation, are beginning to

emerge (Kenny and Webster 1999). Various forms of flexibilisation have been occurring. Functional flexibility, endeavouring to eliminate rigid job functions so that workers perform a number of different tasks in the workplace (multi-skilling and multitasking) or introducing different work hours through, for example, shift work, has become an important aspect of the South African labour market. More evident, however, has been the growth of numerical flexibility, the practice of being able to increase or reduce the workforce rapidly, and without due process. This has taken the form of increased employment of workers as temporary workers, independent contract workers and part-time and casual workers. A number of recent studies show that there is an increasing trend towards flexibilisation in South Africa. Horwitz and Franklin (1996), in a survey of 626 South African organisations find that a marked growth in numerical flexibility as a means to reducing labour costs. They also find evidence of functional flexibility. The ILO's 1995 South African Enterprise Flexibility Survey (SAEFS) found that 85% of firms sampled employed temporary workers, 43% employed contract workers, and 26% used part-time workers (Standing et al 1996:341). A number of micro-level case studies have recorded an increase in flexibilisation in a range of industries including: retailing (Valodia 1991, Kenny and Webster 1999) mining (Kenny and Webster 1999, Bezuidenhout and Kenny 1998), petrochemicals (Klerck 1994), shipping (Hemson 1996), electronics (Ray 1997) and clothing (Altman 1995, Kesper 1999, Netshitomboni 1998, Motala 2000, Fakude 2000). The case studies show that, except in industries which employ very few women (mining, petrochemicals), the majority of informal or flexible workers tend to be women.

A feature of flexibilisation in the recent period has been the growth in labour-broking and subcontracting (see Klerck 1994, Naidoo 1996, Standing et al 1996). One prominent and controversial example of these practices is the emergence on an organisation, the Confederation of Employers of South Africa (COFESA). The organisation advises employers on restructuring their production such that employment contracts be converted into service contracts, and employees becoming independent contractors. The firm is then run as a network of contractors. COFESA's activities has been concentrated largely, though not exclusively, in the clothing industry. The activities of COFESA and similar organisations are aimed mainly at bypassing minimum standards labour legislation and collective bargaining agreements.

The SAEFS found a relatively high incidence of homebased working in the manufacturing industries. The survey found that 8% of sampled firms in the metal industry, 22% of firms in clothing, 2% of firms in chemicals, 2% of firms in printing and 8% of firms in other manufacturing industries used homebased workers (figures in Ray 1997:25). Budlender and Theron (1995), in South Africa's first survey of homebased work, found that seven of every ten households interviewed had at least one homebased worker, with 60% of homebased workers being women. But only 3% of homebased workers were doing sub-contracted work. Most homebased workers were involved in fairly elementary businesses, mainly selling and sewing, with more than half of the workers earning below R200 per weekⁱⁱⁱ. There is evidence in the survey results of segmentation by gender and race. Whereas men's activities, though concentrated in selling, were wide-ranging women's activities clustered into selling (34%) and tailoring (28%).

There are clearly high levels of informal and flexible work in the South African labour market. The form and growth of atypical work in South Africa is consistent with international trends in the labour market. Following Kenny and Webster (1999), we are

seeing a re-segmentation of the labour market, away from the apartheid-based racial segregation, toward those in the primary labour market and those in atypical forms of work in the secondary labour market. Women, as our discussion above shows, are over-represented in the secondary labour market, and, within this, they tend to occupy the most vulnerable and least lucrative strata, the so-called survivalist activities (see Valodia 1996, Makgetla 1995).

Economic Policy in post-apartheid South Africa

The most important piece of economic policy to emerge from the South African government has been the Growth, Employment and Redistribution strategy (GEAR). Since it was first publicly announced in 1996, GEAR has been highly controversial, and it continues to be so. Much of this controversy has related to whether the strategy was consistent with the ANC's 1994 election manifesto, outlined in the Reconstruction and Development Programme (RDP), or whether it marked a break with the RDP and an embracing of the neo-liberal economic ideas (see Michie and Padayachee, 1997).

Whilst government may still point to a consistent policy development process from the RDP to GEAR, it is now increasingly argued and accepted, by both critics and supporters of GEAR, that the key features of GEAR – a rapid liberalisation of trade and finance, deregulation, privatisation, a pre-occupation with deficit reduction, pegging expenditure and taxation as fixed proportions of GDP, a 'crowding-out' stance towards the effects of government expenditure, and support for a tight and narrow approach to inflation control are increasingly out of line with the vision of a post-apartheid South Africa that characterised the RDP (see Fine and Padayachee, 2000).

Whereas the RDP envisaged an integrated and unified labour market, the emphasis of GEAR is on a more flexible labour market, and by implication, the development of a dual labour market, one with high minimum standards and relatively good wages, and the other with low standards and no minimum wage. This emphasis on a flexible labour market would, GEAR claimed, reduce firm's labour costs, increase investment, and generate new employment opportunities. While trade liberalisation, in line with orthodox economic thinking, has been a key feature of the ANC government's economic strategy, even left critics of government macroeconomic policy would readily concede that labour market policy in the early years of the democratic government exemplified significant departures from neo-liberal thinking (see Michie and Padayachee 1997, Fine and Padayachee 2000). A fierce debate, led by the progressive trade union movement, is currently being engaged in over perceived threats to earlier labour market gains. These two areas of policy-making therefore offer potentially diverse and interesting grounds for analysis.

This section examines the nature of South African trade and industrial policy in the post-1994 period, drawing out the manner in which these policies relate to women in informal and flexible employment. We begin by examining trade and industrial policy. Thereafter, we examine policy that links more directly to the informal economy, small business development.

i) Trade and Industrial Policy

The key policy thrust of the South African Department of Trade and Industry (DTI) has been to foster international competitiveness of the South African economy. Trade liberalisation and a set of supply side measures aimed at assisting firms to adjust to lower levels of protection have been the primary policy instruments that the DTI has applied.

The international evidence on the relationship between trade policy and employment of women is mixed. While some, Joeke (1995), for example, find that trade liberalisation generally advantages women workers, Standing (1989) points to the fact that women are being relegated into precarious and low-paying employment.

An International Labour Organisation (ILO) sponsored study by Bell and Cataneo (1996) explores the employment effects of South Africa's trade in manufactured goods and the likely effects of the trade reform policies on employment in the manufacturing sector. They conclude that, "import liberalisation in particular is likely to have significant adverse effects on manufacturing employment, including employment in relatively low-wage sectors and regions." (1996:27). Bell and Cataneo find that South Africa's comparative advantage in international trade lies in capital-intensive manufactures, and not, as is traditionally argued, in labour-intensive manufactures. As such, trade reform is leading to a growth in capital-intensive manufacturing, and a decline in the labour-intensive industries of the manufacturing sector.

Valodia (1996) examines the possible impact on women of trade liberalisation in South Africa. He argues that, given the structure of protection in South Africa, in the short to medium term employment of women is likely to fall as a result of trade liberalisation. As Valodia (1996) also shows, the labour-intensive industries of manufacturing (e.g. clothing, leather) are the industries with the highest levels of feminisation of the workforce. Two key trends from South Africa's trade liberalisation experience are relevant for the purposes of this paper. First, the employment effects are impacting most negatively on those sectors of the economy that employ large numbers of women. The restructuring processes in these labour-intensive industries have resulted in massive job losses in sectors that have traditionally employed large numbers of women. A recent ILO study (1999), for example, estimated an 18% fall in employment in the clothing and textile industries between 1994 and 1997. The negative employment effects are being generated primarily through processes of rationalisation and downsizing in industrial enterprises (see ILO 1999), processes which, a number of case studies have shown (see Fakude 2000, Motala 2000, among others) are increasingly leading to informalisation and flexibilisation of women's work. Second, the longer-term trajectory of the South African economy is being shifted toward capital intensive production, thereby favouring the employment of men in the formal sector of the economy. The pattern that seems to be emerging is therefore that the short-term costs of trade liberalisation are being borne disproportionately by women, whilst the potential longer-term employment benefits of the liberalisation process are likely to favour men.

Whilst the nature of interactions between the formal and informal economies remains a bit of a black box (see Valodia et al 2000), Cross et al (2000) suggest that the industrial restructuring process is shifting women who are already in the informal economy, into lower-income and less-secure segments of informal work. Cross et al document instances where women in homebased work are forced into less-secure street trading activities. This occurs either because male members of the household, recently retrenched from the

formal economy, move into homebased work, or lower levels of income in the local area results in higher levels of competition in homebased trading activities.

The DTI's package of supply-side policies is aimed at pressurising and supporting producers to reduce their costs of production, to rapidly improve levels of productivity, and thereby to improve their international competitiveness. A range of support measures, including tax holidays, technology upgrading schemes, incentives to promote multi-shifts, support for innovation and R&D, accelerated depreciation allowances, have been implemented to achieve these objectives.

The supply-side support measures have been aimed primarily at larger industrial enterprises in the formal economy, and thus have little, if any, direct impact on the informal economy. These measures have, however, promoted a rapid and widespread process of firm-level restructuring which has resulted in both extensive job losses in the formal economy, and increasing use of flexible labour at the enterprise level (see Valodia, 1996, Standing et al, 1996, Altman 1995, Fakude 2000, Fine and Padayachee 2000, Kenny and Webster 1999). Women workers, being in the most vulnerable occupations are likely to have borne the brunt of this restructuring.

Trade and industrial policy in the post-1994 period has, very rapidly, exposed the industrial sector to international competition, and is beginning to shift the economy onto a path of capital intensification. This has been accompanied by extensive employment losses, particularly in sectors which employ large numbers of women thereby shifting large numbers of women workers out of relatively protected formal sector employment into the informal economy. Associated with this, firms have been undergoing a process of internal restructuring, characterised by an increasing use of flexible forms of labour.

ii) Small Business Development Policy

In its policy proposals, the small business sector is often seen by the South African government as the panacea for South Africa's employment and growth problems. The DTI is charged with the responsibility of developing and implementing policy for the small, medium and microenterprise sector (SMME) The government White Paper (WP) on the SMME sector distinguishes four categories of SMMEs; medium enterprises (assets of about R5-million), small enterprises (employ between 5 and 50), micro-enterprises (involving owner, some family members and one or two employees) and survivalist enterprises (activities by people unable to find a job). The WP recommends that different support strategies are required for each category of the SMME sector. Whilst outlining concrete proposals for the small, medium and micro categories, the WP is mute on support strategies for the survivalist category.

Support to the SMME sector is implemented through three institutions. The Centre for Small Business Promotion in the DTI is responsible for co-ordinating and implementing the small business development strategy. The Ntsika Enterprise Promotion Agency (NEPA) provides non-financial assistance to the SMME sector. The Khula Enterprise Finance Facility (Khula) provides wholesale finance to the SMME sector.

NEPA provides a range of facilities to small business including a management and entrepreneurship schemes, technology transfer schemes, market access and business development programmes. An important component of these schemes is facilitating small business access to government procurement. All of these services are aimed primarily at the

small and medium, and to a lesser extent the micro components of the SMME sector. None of the schemes are aimed directly, or have any real positive impact on, the survivalist segment of the SMME sector.

Similarly, the Khula finance schemes have little, if any, relevance for most women in the informal economy. Khula operates as a wholesaler of finance to the retail banking sector. A critical barrier for women in survivalist enterprises is a lack of finance. The retail banks in South Africa have in the recent period been moving out of the black residential areas, as they consolidate their activities in response to greater levels of competition in the commercial centres of the economy. The result is that survivalist operators have even less access to the commercial finance system. Khula's attempts at developing viable retail financial institutions aimed at the SMME sector have been impeded by its overzealous insistence on over-regulation (see Roussous and Ferrand 1999). On the other hand, due to under-regulation in terms of the Usury Act, many informal economy workers have been caught in a web on debt arising out of the operations of the emerging private micro-finance industry. The Usury Act excludes loans below R 10 000 from an interest rate ceiling thereby exposing those with the lowest incomes and least access to other forms of credit to the micro-finance industry which has become notorious for excessively high levels of interest, poor customer services and probably illegal forms of securitisation (see Black Sash 1999)

Whilst the government's WP on small business recognises that the survivalist sector has the largest concentration of women and lists as one of its key objectives, to "support the advancement of women in all business sectors", the DTI offers very little, if any, support to women. Lund (1998:11) argues that "it would seem that the SMME policy... has little relevance for the survivalist sector – in particular for women street traders and home-based workers. What is seen by policy makers as a micro-enterprise is not micro enough. And though the government espouses policy support for the development of micro-enterprise, little in the way of material support has been allocated so far" (see also Valodia, 1996).

Labour Market Policy

South Africa's labour legislation has, since 1994, undergone widespread change. Through the Department of Labour (DoL), government has implemented changes to the system of labour relations (the Labour Relations Act of 1995), basic employment conditions (the Basic Conditions of Employment Act of 1997), and employment equity (the Employment Equity Act 1998)^{iv}. We examine each of these in turn.

i) Labour Relations

The objective of the Labour Relations Act (LRA) is to govern the relationships between employers and employees and their representative organisations, i.e. trades unions and employer organisations. The Act regulates the system of collective bargaining. Whilst the Act has been an important means of entrenching organised workers rights, it excludes a vast majority of unorganised workers – almost all women in the informal economy and large numbers of workers in flexible work.

One area where the LRA has advanced the rights of flexible workers relates to the governing of some aspects of subcontracted labour. Prior to 1995 employers who used subcontracted labour through labour brokers were not considered to be liable for compliance with minimum standards. In terms of the 1995 LRA, companies using labour brokers are deemed to be jointly liable with the labour broker for compliance. Although

this statutory provision is important it may not be sufficient as subcontracted workers do not have institutional voice to further their interests.

An important concept, around which much of South Africa's labour relations system is developed, is that of voice regulation. Voice regulation refers to the constructive role that collective bargaining between employees and employers plays in resolving disputes, and thereby promoting productivity and economic growth. Voice regulation in the labour market provides a mechanism to balance the often conflictual interests of employers and employees. It is often argued that excessively bureaucratic regulation is inimical to governing the labour market, while an over-reliance on market forces is incompatible with labour market security, and may result in increased inequalities. Voice regulation, by legitimising and institutionalising labour market conflict, provides the best means of charting labour market policies^v.

A key problem with current labour regulations is that it only seeks to regulate employment relationships where there exists a clear and concise employment relationship between an employer and an employee. The Labour Relations Act defines the term "employee" as any person who works for another person or is entitled to receive remuneration. This standard definition results in many workers in the informal economy (those working at home and on the streets in casual and atypical employment relationships) falling outside the scope of labour regulation and voice regulation bargaining systems. This leaves informal economy workers outside the net of bargaining systems even though there are often conflicts related to informal economy workers' workplaces which lend themselves to resolution through systems of collective bargaining.

A useful mechanism for incorporating the informal economy into the labour relations system may be the establishment of one or more bargaining councils similar to those that currently function in terms of the LRA. The Councils which may be composed of employers (including contractors and sub-contractors), workers and government would be charged with the responsibility of concluding appropriate collective agreements within the informal economy, handling disputes and promoting training and other policy on the informal economy. The main objective of these councils would be the promotion of a culture of collective bargaining and voice regulation, and avoiding the more violent forms of dispute resolution that currently characterise the informal economy in South Africa. It should be stressed that there are a number of role models for the establishment of this type of collective bargaining. In India, for example, a number of decentralised tripartite boards are charged with the responsibility of concluding collective bargaining agreements on issues such as street vending and sub-contracted labour.

ii) Minimum Standards

The Basic Conditions of Employment Act (BCEA) provides for minimum standards for those who are not subject to collective bargaining, and is therefore of particular importance to workers in the informal economy and in flexible jobs.

The BCEA, 1997 is a vast improvement on the former legislation and ought to have a particularly positive impact on the lives of women workers who are often unorganised and unable to negotiate conditions that would suit their circumstances. The act covers all workers and thus recognises groups of vulnerable workers such as farm and domestic workers and makes provision for establishing minimum wages and conditions. It also covers part-time and contract workers including workers of sub-contractors, except

workers working for less than 8 hours per week for a given employer. Public service workers will be covered from May 1 2000.

The key aspect of the BCEA is the issue of working time. The new act states that the maximum number of hours a worker can be compelled to work is 45 hours a week. This is a three-hour reduction for shift, mine and farm workers. There is also an increase in overtime pay from a time-and-a-third to time-and-a-half. Lisa Seftel, Chief Director of the Labour Relations Chief Directorate, is optimistic that the new overtime rate will serve as an incentive to employ more workers rather than pay them for overtime (see Newton et al, 1999).

The Act's intentions are good, especially for women who have both work for pay and run households and would therefore benefit from a working hour reduction which the Act provides for.

The important provision of the Act relates to the rights of pregnant women. Maternity leave has been improved from 12 weeks to four months and extended to include women who have a stillborn child. Women also have greater choice as to when they take leave around the birth of their child - they are no longer obliged to take a months' maternity leave before the birth. The act has been criticised for remaining silent on the issue of maternity benefits, which are still catered for by the Unemployment Insurance Act.

There are several other positive features which may be good for women. First is the introduction of a new form of leave called family responsibility leave. Workers are now entitled to three days paid leave a year to be present at the birth of their child or attend to illness of their children or the death of an immediate family member. Second, the Act allows for employers and workers to arrange working time to suit their individual or collective circumstances. Workers on an individual or collective basis can agree to a 'compressed work week whereby workers can agree to work for longer hours on four days of a week, in exchange for not working on the fifth day. On a collective basis only, workers can agree to averaging their working hours over four months provided that the average over the period is not more than 45 hours per week. These provisions may benefit women if their interests are represented when such flexible working arrangements are negotiated.

Attached to the BCEA are several Codes of Good Practice which are meant to address some of the difficulties experienced by women in the labour market. The first is the Code of Good Practice for Pregnant and Breastfeeding women. The second is the Code of Good Practice on Working time and Night Work provisions which provides that affordable transportation must be made available for those who work night shifts.

From the perspective of informal, flexible and other atypical and vulnerable workers, a key flaw of the BCEA is that it provides for downward variation of minimum standards by agreement between employers and employees, or by a ministerial determination. The promulgation of the BCEA was met by a fierce argument mainly from employers that the BCEA was too onerous, particularly for small business. Arising out of this, a Task Team appointed by the Minister of Labour recommended the downward variation of the new BCEA for all firms employing less than 10 people in respect of the overtime rate, the maximum overtime hours, averaging of hours and family responsibility leave. In November last year, accepting the recommendations of the task team, a ministerial determination was passed providing for downward variation in the four areas above.

This variation will have a significantly negative effect on women in atypical work since a large number of these workers are employed in small enterprises. For example, it would mean that domestic workers would be required to work longer hours of overtime at lower pay. It also effectively removes workers rights to family responsibility leave.

It is somewhat ironic that the minimum standards provisions are open to downward variation, and in so doing, effectively removes minimum standards protection for the most vulnerable and insecure workers, precisely those that most need the minimum standards provisions. It is important to note that the rights of unorganised workers are particularly undermined since they do not have the institutional mechanisms or the confidence to resist downward variation of their rights.

In late July 2000, following a review of the labour legislation, the DoL released, for discussion, a set of proposed amendments to the labour legislation. The proposals are geared mainly at increasing the level of flexibility in the labour market, and thus aspects of the amendments related closely to issues of informalisation and flexibilisation of work. The trade union movement has, very vociferously, opposed some aspects of the proposed amendments to the legislation.

The DoL is proposing to amend the section of the LRA that deals with contracts of employment when ownership of a business is transferred. This section (S197) of the LRA was intended, originally, to protect the interests of workers in the event of a transfer of ownership. A number of amendments to this section have been proposed, but for the purposes of this paper, four proposals are germane. Firstly, the amendments clarify that firms can sell a part of their operations, provided that it is a distinct economic entity. This provision will allow firms to sell of a part of their operations, and could significantly increase the incidence of subcontracting of non-core functions. Second, although the provision guarantees employment contracts, it allows employers to dismiss employees if this is based on *operational requirements*. These provisions taken together may well see a growth of subcontracting and associated informalisation of work. In it interesting to note that the DoL justifies these proposed amendments as “provid(ing) ...greater certainty and flexibility to local and foreign investors who may want to acquire local businesses...” (DoL, 2000:6). Third, a probationary period of six months is proposed, during which some regulations governing the dismissal of employees is relaxed. This provision, like the downward variation in the BCEA, removes protection from vulnerable workers, those entering the labour market for the first time, or those now in the informal economy, re-entering the formal labour market. Fourth, an important mechanism through which vulnerable workers are protected by labour legislation is through extensions, to non-parties, of collective bargaining agreements. This has met with vociferous argument from small business that these extensions are too onerous on small business. The proposed amendments give small business concerns more weight in decisions on extensions, and will dilute the rights of vulnerable workers.

The proposed amendments to the BCEA relate mainly to creating flexibility in working hours, by removing the premium on Sunday pay and extending the minimum working week. These proposals will increase the incidence of flexibilisation in sectors such as retailing. The proposals also give the Minister of Labour the right to vary (through the downward variation provision) all aspects of the BCEA, thus removing entrenchment of any minimum standards in law. On the positive side, the amendments aim to control the widespread practice of converting employment contracts into flexible service provision

contracts, such as that practised by COFESA. This is done through instituting a series of rebuttal presumptions as to whether or not an employment contract exists. These rebuttals are fairly restrictive, with, for example, the presumption that an employment contract exists where “the person is economically dependent on the person for whom he or she works or provides services”. This is an important ‘tightening’ of the legislation and will significantly increase the number of atypical and vulnerable workers who receive basic protection from the labour legislation.

iii) Employment Equity

The Employment Equity Act aims to achieve equity in the workplace by promoting equal opportunity and fair treatment. The Act provides for positive measures to redress the previous disadvantages in employment experienced by black people, women and people with disabilities.

In terms of unfair discrimination, the Act stipulates that “no person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.”

In terms of pregnancy, the Act stipulates that discrimination on the grounds of pregnancy is unfair. Pregnancy is defined by the Act as including “intended pregnancy, termination of pregnancy and any medical circumstances related to pregnancy.” This is a positive move in light of the fact that a higher percentage of younger women, who are more likely to fall pregnant, are unemployed than men in the same age category.

One key weakness of the Bill that it states that “it is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.” Given the pervasive nature of sexual stereotyping, this clause will undermine the purpose of anti-discrimination legislation as employers have stereotyped ideas about which jobs should or could be performed by men and women.

The Act stipulates that employers must submit employment equity plans which introduce affirmative action measures to address the disadvantage suffered by women, black people and the disabled. The Act applies to employers with 50 or more employees, and requires the employer to draft and implement a plan in consultation with unions or employee representatives. Employers are thus expected to analyse their workforce according to race, gender and disability and where “under-representation” within any job category exists, a plan must be drawn up incorporating numerical goals and a timetable for ensuring reasonable progress. The drawing up of the equity plan is supposed to be a consultative process involving all interest groups in the workplace.

While the Act will have a positive impact on some women, it is unlikely to have a positive impact on vulnerable workers in the informal economy and unskilled and unemployed workers on the periphery of the formal economy since it applies only to firms employing 50 or more workers. “At best, the Bill can be expected to change the complexion and gender profile of a new breed of managers and skilled workers” (Ray 1998:53). Further concerns have been raised about DoL’s capacity to monitor the implementation of the Act (see Newton et al, 1999).

The overall picture that emerges in the area of labour legislation is mixed. Whereas, government's attempts to develop a more flexible labour market, in government's terms regulated flexibility, exposes many workers to the threat of higher levels of flexibility, and lower minimum standards. This is particularly the case in the so-called small business sector which is characterised by high levels of flexibilisation and informalisation. The system of collective bargaining leaves many workers outside the protective net of voice regulation. On the other hand, as is evident in the proposed amendments to the legislation with respect to subcontracting, the DoL is attempting to confront the growth of flexibilisation and informalisation.

Conclusion

Global trends in informal and flexible labour have highlighted the marked transformation that is taking place in the labour market. Labour market patterns in South Africa are consistent with those that have been documented internationally. We have outlined the growth of informal and flexible work in South Africa. Women workers in South Africa have been most disadvantaged by the developments, although the shift to more insecure forms of work has also affected men significantly.

This paper has attempted to examine how the state, through its control of the regulatory environment and its ability to alter the incentive structures in the economy, is shaping and responding to the growth of informalisation and flexibilisation. The overall picture that emerges with respect to South Africa is mixed. In terms of economic policy, the ANC government's trade and industrial policy are shifting the economy onto a path of capital intensification. Allied to this, firms are undergoing a process of extensive restructuring. These developments are promoting the growth of flexibilisation and informalisation, and thereby disadvantaging women. We have also argued that whilst government offers a vast package of support measures to large business, its policy is largely irrelevant to the survivalist segment of small business, where most women in the informal economy are to be found. The picture for labour legislation is more diverse. Aspects of the labour legislation are promoting the growth of a dual labour market, whilst there seems to be some tightening up of practices aimed at by-passing aspects of the protection provided to workers.

Research and advocacy with respect to the informalisation and flexibilisation of work has to date concentrated on describing, analysing and resisting the growth of atypical work. Valodia (1996) shows that government, through its control of regulatory mechanisms in the economy and through the extensive range of incentives offered, presently plays a critical role in shaping what might be termed a 'corporate welfare state' by supporting, and reducing the risks of, large corporations. This paper suggests that, likewise, government policy through its control of the regulatory environment and incentives could, and is, shaping the form, growth and extent of atypical work. These, often hidden, factors need to be challenged in order to ensure that public policy, in areas such as industrial and labour market incentives and regulations, shifts its focus more toward those in atypical and other insecure forms of work and employment.