
THE DIFFERENT WORLDS OF LABOUR AND COMPANY LAW: TRUTH OR MYTH?

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SUMMARY

Recently the South African company law landscape underwent a dramatic overhaul with the introduction of the *Companies Act 71* of 2008. Central to company law is the promotion of corporate governance. It is clear that companies are no longer accountable just to their shareholders but also to society at large. Leaders should, for example, direct company strategies and operations with a view to achieving the triple bottom-line (economic, social and environmental performance) and should thus also manage the business in a sustainable manner. An important question in company law still today is in whose interest the company should be managed. Different stakeholders of importance to companies include shareholders, managers, employees, creditors *etcetera*. The *Companies Act* aims to balance the rights and obligations of shareholders and directors within companies, and it encourages the efficient and responsible management of companies. When considering the role of employees in corporations it must be noted that the *Constitution* grants every person a fundamental right to fair labour practices. Social as well as political changes were evident after South Africa's re-entering the world stage in the 1990s. Changes in socio-economic conditions within a developing country were also evident. These changes had a major influence on the South African labour law dispensation. Like company law, labour law is to a large extent also codified. Like company law, no precise definition of labour law exists. It is clear from the various definitions of labour law that it covers both the individual and collective labour law and that various role-players are involved. Some of these role-players include trade unions, employers/companies, employees, and the state. The various relationships between these parties are ultimately what will guide a certain outcome if there is a power

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play between them. In 1995 the South African labour market was transformed with the introduction of the *Labour Relations Act 66* of 1995. The LRA remains the primary piece of labour legislation that governs labour law in South Africa. The notion of industrial democracy and transformation of the workplace are central issues in South African labour law. This is due to the constitutional changes that have taken place in South Africa, where the protection of human rights and the democratisation of the workplace are advanced. Before the enactment of the LRA, employee participation and voice was a much-debated topic not only locally but also internationally. It is therefore essential when considering employee participation to take due cognisance of both the labour and company law principles that may be pertinent, as well as the need for workers to have a voice in the workplace and for employers to manage their corporations. This article will attempt to indicate how the different functions, theories and models of labour and company law accommodate and promote the interests of employees in corporations and will also attempt to reconcile these differences.

KEYWORDS: corporate governance; corporate law; labour law; employee participation; employee voice; employees; employers; industrial democracy; collective bargaining; fairness, equality; decision-making; stakeholders; shareholders; managerial prerogative; social justice.