

13.4 Limitations

The survey is highly vulnerable to selection bias and influences beyond the control of the researcher. The respondents who chose to respond to this survey are not representative of the entire South African population and the results can therefore not be generalised to the entire South African population. It is important to understand that these findings only apply to this particular set of respondents and that it should not be generalised to other populations. Due to the nature of selection, it is more difficult to identify differences between subgroups.

13.5 Rounding off

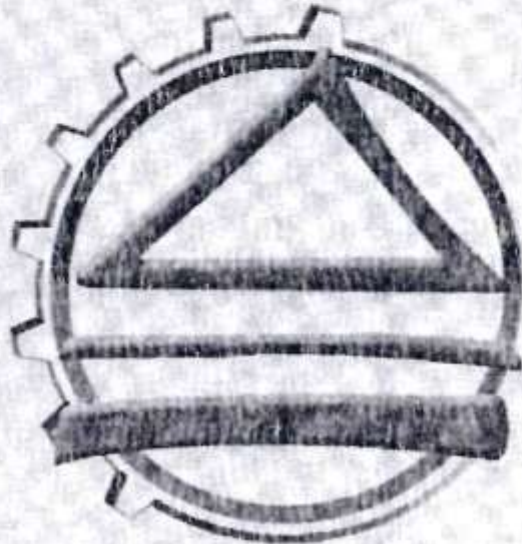
Where figures have been rounded off, discrepancies may occur between the sums of the component items and totals.

13.6 Additional information

The dataset can be made available on request. Please send requests to nielr@statssa.gov.za

NYN

ESSENTIAL AND MAINTENANCE SERVICES FREQUENTLY ASKED QUESTIONS



CCMA

COMMISSION FOR CONCILIATION, MEDIATION & ARBITRATION

'Revolutionising Workplace Relations'

CONCILIATION

MEDIATION

ARBITRATION

[Handwritten signature]

1. What is an essential service?

An essential service is defined in Section 213 of the Labour Relations Act 66 of 1995 (LRA). In terms of this Section, a service is deemed an essential service if it can be shown that the interruption of such a service would:

...endanger the life, personal safety or health of the whole or any part of the population?

It would have to be established that a clear and imminent threat to the life, personal safety or health of the whole or part of the population existed.

In terms of Section 71 (10) of the LRA the parliamentary service and the SAPS are deemed to have been designated as essential services in terms of Section 71. In addition to these, a number of other services have been determined as essential by the Essential Services Committee (see question 23 below).

2. What is the origin of the essential services concept?

The concept of essential service is not a locally developed concept. Essential services are recognised in most countries in which the right to strike is recognised.

3. What is maintenance service?

A maintenance service is defined in Section 213 of the Labour Relations Act. In terms of this Section a service is deemed as maintenance service if:

...the interruption of that service has the effect of material physical destruction to any working area, plant or machinery?

4. Are essential and maintenance services restricted to the public sector or could such services be designated in the private sector?

The Labour Relations Act does not distinguish between the public and private sectors with regards to the determination of essential or maintenance services. Services could be determined as either essential or maintenance services in both the public and private sectors. International experience suggests that such services (and essential services in particular) are mostly found in the public sector.

Experience in South Africa equally suggests that the majority of current designated services are in the public sector (Refer to question 23). More recently, there has been an increase in the number of referrals to the Essential Services Committee (ESC) from private sector employers too.

5. What is the Essential Service Committee and what are its powers?

The Minister of Labour, after consulting with NEDLAC, establishes an Essential Service Committee (ESC) in terms of Section 70 of the Labour Relations Act.

The Powers and functions of the Committee are described in this Section of the Act. It is mainly to:

Monitor the implementation and observance of essential service determinations, minimum service agreements, maintenance service agreements and determinations;

- Promote effective dispute resolution in essential services;
- Develop guidelines for the negotiation of minimum services;
- Decide on its own initiative or upon the request of any interested party to institute investigations into whether or not the whole or a part of any service is an essential service;
- Determine whether or not the whole or a part of any service is a maintenance service;
- Establish and appoint three (3) member panels to conduct investigations, designate essential services, determine disputes, ratify and determine Minimum Service Agreements;
- Ratify collective agreements that provides for the maintenance of minimum services in a service not designated as an essential service and to determine the minimum services required to be maintained in the service that is designated as an essential service.

6. Who serves on the Essential Service Committee?

The Minister appoints to the Essential Services Committee, an independent Chairperson and a Deputy Chairperson, who must be a CICA Senior Commissioner, and six (6) persons who are nominated through NEOLAC as follows: two (2) members nominated by organised labour, two (2) members nominated by organised business and two (2) members nominated by Government. Members of the ESC are appointed for a three year term.

7. How are Essential and Maintenance service determined?

Whether a service is an essential or a maintenance service is determined by the Essential Services Committee (refer to 5 above). The Labour Relations Act ensured transparency by providing for any interested party to inspect or obtain a copy of any representations made to the Committee, once such an interested party has paid the prescribed fee. The Act furthermore requires that oral representations should be made in public.

Once a service or part of a service has been designated as essential, a notice of such must be published in the Government Gazette. It is important to note that a refusal to designate a service or part of a service as essential or not to ratify a minimum service agreement does not need to be published. The Committee is also not obliged to publish the reasons for its decisions, nor is required to publish a notice in the Government Gazette if a service has been designated as a maintenance service.

8. What parties are entitled to appear before the Committee?

A notice in the Government Gazette invites any interested parties to submit written representations and to state whether or not they require an opportunity to make oral representations. The Act does not define an interested party, which means that the process is open to any organisation or individual who has an interest in the matter.

9. What does an applicant have to prove when it applies to have a service declared essential?

- Our employment law requires an essential service to be restrictively interpreted. This means that:

- It is the service which is essential and not the employee, industry or the institution within which the service falls;
- Only those employees who are truly performing an essential service, may be prohibited from striking;
- This means that workers performing an essential service and those performing a non-essential service may work alongside each other in the same institution / organization.

Before the ESC can designate any service as essential, it must be satisfied that:

- It is a service, or part thereof, that is essential - not employees or a business or industry which is essential;
- There must be an interruption of service, irrespective of whether it is partial or total interruption;
- The interruption of the service must endanger life, personal safety or health. Endanger means "putting at risk", "imperi" or "jeopardise" - this implies that the prevailing conditions at the time that the designation is made must be considered, and not the potential circumstances that may occur at some future stage;
- If industrial action is unlikely to interrupt the service or if the interruption of service could be avoided (for example through replacement labour), the service will not be designated as an essential service;
- The endangerment must impact the population i.e. being human beings.

10. What process (es) does the ESC follow in arriving at a determination?

The functions of the ESC has largely been reactive in the past in that it responded to referrals either by advising that on the prospects of success or not, or by conducting an investigation. Following the recent amendments of the Labour relations Act, the ESC has taken a more proactive approach and facilitate discussions between parties most directly affected by the referral.

11. How does a party submit a referral to have a service determined as an essential or maintenance service?

Any party seeking to be determined as an essential or maintenance service should submit a referral on the prescribed forms i.e. LRA Form 4.2 for Essential Services and Form LRA 4.3 for a Maintenance Service. These can be downloaded from the CCMA website: www.ccm.org.za.

Once completed the form should be sent to:

The Chairperson
 Essential Service Committee
 Private Bag X94 Marshalltown, 2107
 Email: beverlyr@ccma.org.za
 Tel: 011 377 6953
 Fax: 011 834 7352 / 086 660 6132

Handwritten signature

12. What is a Minimum service?

The Labour Relations Act does not define a minimum service. It is however evident from Section 72 of the Act that a minimum service is to provide for a reduced number of employees who could provide an ongoing minimum service within a designated service. This means a 'reduced' number of employees who will be required to continue working, ensuring a minimum service during a strike, to ensure the service which is normally provided, does not cease entirely.

13. What is a minimum service agreement?

Section 72 of the Labour Relations Act provides for minimum service agreements (MSA). These agreements provide for parties to conclude collective agreements, which provide for minimum service through some employees who would continue working during a strike in an Essential Service.

The Act requires such Minimum Service Agreements (MSA) to be ratified by the ESC.

The primary purpose of the ratification is to ensure that the interest of the Public is considered. A workable collective agreement is required to ensure the basic needs of the Public are met, so that the interruption of services as a result of strike action, does not endanger the life, personal safety or health of any individual or any part of the population.

14. What are the consequences for parties to a minimum services agreement if the Committee does not ratify?

Section 72 of the LRA gives the Committee the discretion whether or not to ratify a minimum service agreement. In so doing, the Committee has to ensure that broader public interests are taken into account and that an MSA does not relate the determination of the service as an essential service. Simply put, the safety, health and lives of people put at risk as a consequence of a minimum service agreement, has to be ratified.

Only when the Minimum service agreement has been ratified by the Committee would the agreed minimum service be regarded as an essential service.

Consequently, if an MSA has not been ratified, the agreement has no force and effect and the services that were designated as essential, remain intact and unchanged.

15. In general terms, what information should be included in a minimum services agreement?

The Committee will be entitled to decline ratification of minimum services agreements for various procedural/administrative and substantive reasons which could include:

- Agreements not affixed to the LRA 4.8 form;
- All pages of the agreement not initialed by all parties;
- Unclear or illegible text;
- Agreements included employees employed in services not designated as essential;
- Copies of the original agreements were not submitted;
- The periods of agreement concluded were not specified and left for indefinite periods;
- Specific essential services were not specified;

Handwritten signature or initials

- The number of employees engaged in the essential services were not specified;
- Actual numbers of employees were not indicated or used - the use of percentages is not acceptable.

Minimum services agreements should have the following characteristics:

- The actual original MSA agreement must be affixed to a LRA 4.8 form;
- The agreement must be clear and unambiguous;
- The actual original agreement must be submitted to the ESC;
- Each page of the agreement must be initialed by all parties;
- Agreements have to be signed in full by all the parties;
- Agreements must be for a specific/definite period – recommended to be no longer than for five years;
- Only designated services could conclude a MSA.

16. How prevalent is minimum service agreements in South Africa?

To date there has not been a large number of minimum service agreements ratified by the Committee.

Where a party wants to conclude a minimum service agreement, it is entitled to make a proposal to the party(ies). Where it does so, and in the event such negotiations fail, any party may refer a dispute to conciliation and failing resolution of the dispute through settlement, to interest arbitration.

17. What rights do essential service workers have to strike?

The Labour Relations Act recognises the constitutional right to strike, subject to a number of limitations. One of these limitations are that no person may partake in a strike if that person is engaged in an essential service.

Because the right to strike is such a fundamental right, a limitation of this kind needs to be justified and, to be justified, it requires among other things, to be limited. The Labour Relations Act provides the balance between the right to strike and the limitations associated with the right to strike.

18. Why are essential services workers prohibited from striking?

Whereas the right to strike is a fundamental right, there is an equally important need to balance this right with other fundamental rights, such as those relating to health care, food, water and social security which are also enshrined in the Bill of Rights.

19. If essential services workers are prohibited from striking, aren't their constitutional rights violated?

The essential services limitation on the right to strike in the Labour Relations Act has not been subjected to constitutional challenge and in the view of many experts, it is unlikely that it will be.

The Constitution permits rights in the Bill of Rights to be limited in terms of laws of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

m-a

20. If essential services workers are in dispute over wages and conditions of employment, and their rights to strike are limited, how is the dispute resolved?

In terms of Section 74 of the LRA, a party engaged in an essential service (and consequently prohibited from striking) must refer its dispute to conciliation at the CCMA or relevant Bargaining Council. If the conciliation fails, the dispute has to be referred for arbitration.

Special provisions prevail in the implementation of arbitration awards in the Public service essential services. Such awards become binding only 14 days from the date of the award. Unless a Minister has tabled the award in Parliament during that period, if Parliament resolves that the award is not binding within 14 days of the date on which it is tabled, then the award is not binding and the dispute is referred back to the CCMA for further conciliation, and if that process fails, to arbitration once again.

The LRA is however unclear as to whether or not, the second arbitration ruling is binding on the state, or, whilst the award has once again be tabled in Parliament and resolved to be non-binding, which could prompt a further process again?

21. Who conducts conciliations and arbitrations in the case of essential service disputes?

In terms of Section 74 of the Labour Relations Act, any party to a dispute in an essential service must refer the dispute to the bargaining council which covers the sector in question or to the CCMA where no bargaining council exists.

The council or CCMA will appoint the conciliator and/or arbitrator to deal with the dispute.

22. Which services have been designated as essential services in South Africa?

The Committee has for the past fifteen years carried out its mandate and duties. It has, after due notice and public investigation, designated a large number of services as essential services. These include:

1. The regulation and control of air traffic and the related services in support of air traffic and navigation control services.
2. The following services provided at all ports in South Africa have been designated as essential services:
 - a) electrical services at airports,
 - b) safety services at airports,
 - c) security services and the maintenance of security at the parking areas at all airports.

B

1. Blood transfusion services including the collection, processing, testing, and distribution of blood.

SOUTH AFRICAN MARKET INSIGHTS

< GDP Animations

SA Economic History >

South Africa's Economic Structure

Category: Economics

This page is provides users with a detailed look into South Africa's economic structure. (For animated graphic on South Africa's economic structure over time click here: Animation)

The information will go a long way into providing users with a better understanding of the relative importance of each province, the importance of each industry per province and the relative importance of each industry to South Africa's GDP (and how this has changed over time).

The pie chart below gives details on not only each province's contribution to South Africa's GDP, but also supplies information on which industries are contributing most to each province's economy (click on a province to get more details on each industry's contribution to that province's economy).



Related Topics

- [Animated Pie Chart of South Africa's GDP over time](#)
- [Animated Pie Chart of Western Cape's GDP over time](#)
- [Animated Pie Chart of Eastern Cape's GDP over time](#)
- [Animated Pie Chart of Northern Cape's GDP over time](#)
- [Animated Pie Chart of North West's GDP over time](#)
- [Animated Pie Chart of Free State's GDP over time](#)



mm

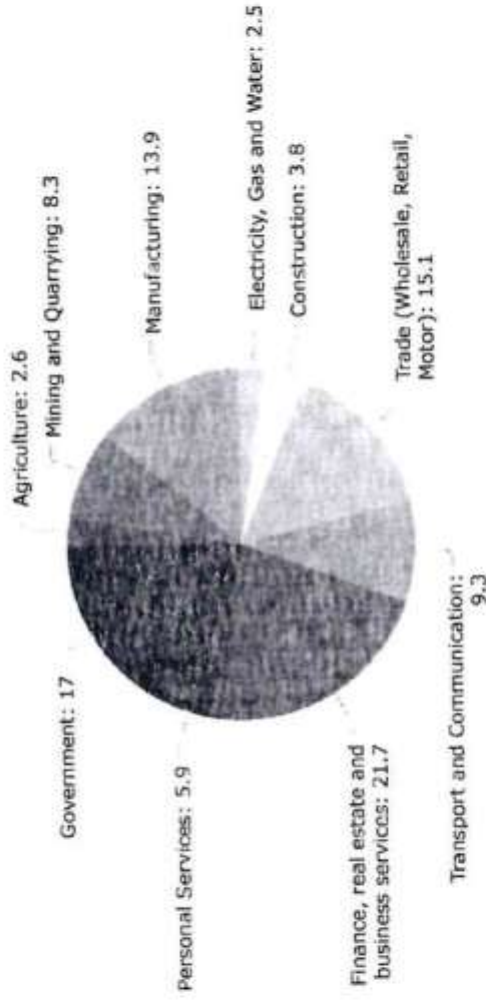
SOUTH AFRICAN MARKET INSIGHTS

Home Blog Economics Stock in Focus Online Calculators Contact

About Search

Note this figures represent total value added at basic prices (so this excludes the net effect from subsidies - taxes).

Contribution per Industry to South Africa's GDP



All Industries

