

**AN INVESTIGATION TO ASSESS WHETHER OR NOT THE EMPLOYERS OF
DOMESTIC WORKERS DO COMPLY WITH THE MINIMUM CONDITIONS OF
EMPLOYMENT AS LAID DOWN IN: SECTORAL DETERMINATION 7:
DOMESTIC WORKER SECTOR**

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EXECUTIVE SUMMARY

This research set out to ascertain whether the employers of domestic workers within the Msunduzi Area do comply with the requirements of Sectoral Determination 7: Domestic Worker Sector.

For domestic workers who were exploited during the apartheid era, this determination was perceived as a mechanism that would liberate them (Department of Labour, 2005, p.7). Trade unions use collective bargaining as a tool to fight for employee rights. Domestic workers are unionised, but their trade unions are not as powerful as their counterparts in the private sector (Department of Labour, 2005, p.7).

According to Huber (2001, p.20), one of the reasons domestic workers were excluded from most labour laws was the belief that it would be difficult to check whether or not each individual employer complied with the laws. This problem still exists and needs to be solved. Government laws were meant to protect vulnerable workers from exploitation (mainly farm and domestic workers), but what is actually happening is that, rather than protecting employees from exploitation, they serve as corrective action. They are only implemented when there is a case between an employee and the employer.

The government has a responsibility to protect vulnerable employees such as domestic and farm workers. The mechanism instituted by the government to protect domestic workers was through the promulgation of Sectoral Determination 7: Domestic Service Sector, which lays down minimum working conditions for domestic workers (Department of Labour, 2005, p.9). The main aim was to alleviate exploitation of domestic workers by the employers due to the power imbalance between these two parties (Department of Labour, 2005, p.9).

This study compares what the employer offers to an employee in terms of wages, working hours, meal intervals and leave. From the observation of the research, little research has been done on the compliance or non-compliance with Sectoral Determination 7: Domestic Service Sector, within the Msunduzi Region. The outcome of the findings from this research were that the minimum salary for those employees who work more than five days are R727,60

instead of R861,90 and for those domestic workers who work for five days a week it is an average of R528,93 instead of R567, 79.

The results indicated that many of the standards set down by the government are clearly not being met by the employers of domestic workers, for example minimum wages are not being paid and maximum hours are being exceeded. The determination stipulated that the maximum hours that should be worked a week is 45 hours and a maximum of nine hours per day; this was not in line with the standards, seeing that the average amount of time worked per week by respondents was 46.9 hours and 9.3 hours per day.

As far as meals are concerned Sectoral Determination 7: Domestic Worker Sector, indicated that the standard should be an hour meal interval for every five hours worked. Respondents from this study disagreed that they were given an hour-long lunch time and reflected that the average time taken for meals was only 30 minutes.

Finally, domestic workers need to have annual leave of 21 consecutive days (Department of Labour, 2005, p.9). This standard was not being met, as the average number of days being given for annual leave is 16.5 days. Maternity leave should be given as four consecutive months for domestic workers. It was found that 89, 3% of domestic workers were given maternity leave of less than the stipulated four consecutive months. Domestic workers should be given five days' leave for family responsibility (Department of Labour, 2005, p.9). The respondents indicated that this was not adhered to, as the average number of days being given to the domestic workers for family responsibility was 1.4 days. Only 13, 8% of domestic workers were granted five days' family responsibility leave and approximately 67, 6% received less than five days for family responsibility leave.

The study recommended that there should be some kind of government policy of doing consistent spot checks in different areas in the Msunduzi Area and possibly the rest of the country. This will require the Department of Labour to increase its manpower. More labour inspectors will be needed to ensure that this whole area is sufficiently monitored. The study revealed that union officials need to devise means and ways of coming into contact with domestic workers. Employers were expected to have a copy of Sectoral Determination 7: Domestic Service Sector available, within easy access of domestic workers.

DECLARATION

Unless specified to the contrary, this dissertation is the result of my own work and has not been submitted in whole/part for any other qualification.

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“A person plans in his/her heart, but God directs his/her steps (Prov. 16:9)”

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LIST OF ABBREVIATIONS

AA	Affirmative Action
AIDS	Acquired Immune Deficiency Syndrome
BCEA	Basic Conditions of Employment Act
CCMA	Commission for Conciliation, Mediation and Arbitration
COIDA	Compensation for Occupational Injuries and Diseases Act
COSATU	Congress of South African Trade Unions
EEA	Employment Equity Act
ELDWU	East London Domestic Workers' Union
HIV	Human Immunology Virus
ICCO	Inter-church Organisation for Development Co-operation
ILO	International Labour Organisation
LRA	Labour Relations Act
LSM	Living Standard Measure
NEDLAC	National Economic and Development and Labour Council
NMC	National Manpower Commission
PEDWU	Port Elizabeth and East London Domestic Workers Union
SADWA	South African Domestic Workers' Association
SADWU	South African Domestic Workers' Union
SETAs	Sector Education and Training Authorities
UIF	Unemployment Insurance Fund

CHAPTER ONE: INTRODUCTORY CHAPTER

1.1 INTRODUCTION

In recent years there has been a debate in South Africa about the extent of employment and unemployment. Much of this debate is related to the impact of government policy – whether the effects of government policy have resulted in higher levels of employment or not. Three issues relevant to the present research have characterised this debate. First, interest groups have selectively manipulated some of the data to support their own policy objectives on aspects of either the employer or the employee (Employment and unemployment in South Africa, 2004, p.3). Second, it is apparent that questions may be asked about whether or not the labour market policy in South Africa is a reliable estimate of actual developments in employment and unemployment. Third, employment in the informal economy of South Africa is a key aspect of this lack of reliable implementation of policy issues (Employment and unemployment in South Africa, 2004, p.3).

The present research is concerned primarily with addressing the compliance or otherwise of Sectoral Determination 7: Domestic Worker Sector on informal employment in South Africa such as the domestic worker industry. This chapter looks at the statement of the problem, hypothesis of the study, the purpose, objectives and limitations of the study.

1.2 STATEMENT OF THE PROBLEM

Joubert (2001, p.27) defined labour law, “as the totality of rules in an objective sense which regulate legal relationships between employers and employees rendering service under the authority of the former, on the collective as well as the individual level, between employers mutually, and employees mutually, as well as between employers, employees and the state”.

Finnemore (1998, p.152) states that South African labour law consists of an amalgamation of common-law principles, legislation and the developing jurisprudence of special labour courts.

Van Aard (1994, p.55) states that “labour market segmentation was maintained until the mid-1980s, through statutory job reservation and the pass laws”. He explains that the apartheid system distorted labour markets through the differential treatment of white and black trade

unions and trade union federations, to the detriment of blacks and to the advantage of whites. This was reflected through:

- “The institution of rural segregation policies and influx control measures based on a pass system in 1873;
- The Mines and Works Act of 1911, which prohibited people of colour from obtaining blasting certificates, thus blocking their advancement in the mining industry.
- The Industrial Conciliation Act of 1924, which effectively excluded people of colour from participating in the formal labour relations system;
- The Native Service Contract Act of 1932, which enabled white farmers to force black employees and their families to provide labour services;
- The Representation of Natives Act of 1936, which entrenched national political segregation; and
- the “grand apartheid” legislation, which includes the Group Areas Act, 1966, the Reservation of Separate Amenities Act, 1953, the Population Registration Act, 1950, the Prohibition of Mixed Marriages Act, 1949, the Immorality Act, 1957, the Black Education Act, 1953, and the Prohibition of Political Interference Act, 1968” (Van Aard, 1994, p.91).

It is against this background that the government should try to protect vulnerable employees from exploitation by their employers. According to Ackermark (1997, p.51), protection means “to shield from danger, to defend and to strengthen”. Ackermark (1997, p.53) states that in this sense protection has a preventative rather than a corrective character.

The International Labour Organization (ILO) has produced recommendations and standards concerning domestic workers, hence the need for South Africa to extend its legislation to cover both domestic and farm workers. Originally the employment of domestic workers was regulated by the Common Law. “The Common Law lays down very broad requirements that must be met in a Contract of Employment and imposes duties and obligations on both the employer and the employee” (Huber, 2001, p.19). It should be noted that the Common Law is only applied where the statutes are unclear or do not deal with a particular issue. Statutory provisions deal with and regulate society in certain ways. Huber (2001, p.20) pointed out that, prior to 1994, domestic workers were excluded from most statute laws for the following reasons:

- this specific employment relationship is of a very personal nature;
 - it was believed that it would be difficult to check whether each individual employer complied with the laws;
 - it was believed that it could have a negative effect, for example if a very high minimum wage was introduced employers might dismiss their domestic workers, which would cause large-scale unemployment;
 - some aspects will be difficult to administer on an individual basis, for example if each person who employs a domestic worker has to deduct money from her wages and pay it over to the Unemployment Insurance Fund
- (Huber, 2001, p.20).

Domestic workers are still facing problems in terms of wages, working hours, meal intervals and leave. According to COSATU (2005, p.5), most domestic workers' employers are not implementing the Sectoral Determination 7: Domestic Worker Sector. The Department of Labour (2005, p.9) is fully committed to enforcing the Domestic Worker Sectoral Determination, emphasising that the determination applies to everyone and there are no exemptions (Department of Labour, 2005, p.11). According to the Minister of Labour "the enforcement of the Sectoral Determination presents unique challenges and called on domestic workers to help with the vigorous enforcement of this law and report any transgressions to the Department of Labour" (Department of Labour, 2003, p.8). But the current researcher is of the opinion that domestic workers' employers are not complying with what is stipulated by Sectoral Determination 7: Domestic Worker Sector and domestic workers are afraid to report such incidences to the Department of Labour, as is required by law.

Through the extension of the Basic Conditions of Employment Act, the Labour Relations Act, the Employment Equity Act and the Skills Development Act to the domestic service sector, the implications are such that the terms and conditions of the employment relationship are no longer based on just a mutual agreement between the employer and the employee. The employer is now expected to comply with all the rules and standards that are set by legislation, failing which penalties may be imposed (Department of labour, 2003, p.5). The present research is trying to establish whether or not the employers of domestic workers in the Msunduzi Municipal Area comply with the minimum requirements laid down in Sectoral Determination 7: Domestic Worker Sector.

1.3 HYPOTHESIS

This study compares what the employers do offer to employees in terms of wages, working hours, meal intervals and leave in relation to Sectoral Determination 7: Domestic Worker Sector. The present researcher believes that employers are not adhering to the stipulation of the Sectoral Determination 7: Domestic Worker Sector.

1.4 PURPOSE

The purpose of the study was to determine whether employers of domestic workers in the Msunduzi Area comply with the labour legislation for domestic service sector, as contained in Sectoral Determination 7: Domestic Worker Sector or do not offer what is stipulated by Sectoral Determination 7: Domestic Worker Sector.

1.5 OBJECTIVES

- To compare wages, working hours, meal intervals and leave with Sectoral Determination 7: Domestic Worker Sector
- To establish whether or not employers comply with the stipulation of Sectoral Determination 7: Domestic Worker Sector.
- To identify problems facing domestic workers in-terms of wages, working hours, meal intervals and leave.

1.6 MOTIVATION

In 2003, after a 15-year struggle, domestic workers in South Africa were finally brought under the Unemployment Insurance Act covering employed workers. This requires employers to register their domestic workers and pay a monthly levy to a fund (Department of Labour 2003, p.3). Workers also contribute. The Fund covers unemployment, maternity, sickness and death. Enforcement of the law is a problem, but there is evidence emerging of positive results in some areas. Statistics from the official disputes-resolution body, the Commission for Conciliation, Mediation and Arbitration (CCMA), show fairly extensive usage of the disputes-resolution machinery by the domestic sector. Latest statistics (April-December 2003) show that 12% of all referrals were from this sector, second only to the retail sector. The majority of cases referred are about dismissals – 85% between 1999 and 2003.

According to the Department of Labour (2003, par.3) most employers are not complying with the stipulation of the Labour Relations Act and domestic workers are still not covered in the Compensation for Occupational Injuries and Diseases Act. In addition, the process of

registering domestic workers is very cumbersome, as some employers are not co-operating with the department of labour (Department of Labour, 2003, par.4). Domestic workers are in isolated, individualised employment relationships, subjected to highly unequal power relations. As such, they are amongst the workers most in need of strong state intervention which protects their rights and which goes some way towards equalising the power relationship (Department of Labour, 2003, par.3). The aim of this research is to provide information on what the domestic workers are experiencing during this transitional period. Chapter Two will provide information on what has been achieved by the government intervention and some challenges that are faced by domestic workers and employers (Department of Labour, 2003, par.3).

1.7 OVERVIEW OF CHAPTERS

Chapter Two reviews some of the literature on the domestic workers in the Msunduzi Area within the context of Sectoral Determination 7: Domestic Worker Sector.

Chapter Three looks at the historical overview of the Msunduzi area and its population.

Chapter Four focuses on the research methodology which the study used. The population of the study, sample size, data collection instrument, face-to-face interview questionnaire, pre-testing, data collection procedure, data analysis, evaluation and validity of the method, were described

Chapter Five presents data in the form of graphs and tables.

Chapter Six discusses the findings of the research, whether or not the objectives of the study had been met and whether or not the study was able to answer the research questions. Chapter Five also looks at conclusions in relation to the research objectives of the study.

Chapter Seven presents recommendations based on the study. It also suggests areas related to the study which could be the subject of further investigation.

1.8 SUMMARY

Specific regulation serves a most basic role: it recognises domestic workers and the work that they perform. General forms of regulation might no longer specifically exclude domestic workers, but they often continue to perpetuate domestic workers' invisibility. For all intents and purposes, general regulation ignores domestic workers and, as a result, fails to protect them. Domestic workers have to distort their realities and fit themselves into regulations that do not expressly contemplate their needs. The South African government has introduced regulations that will protect the interests of domestic workers. Chapter Two will look at the regulations provided, general information on domestic workers and establish problems related to domestic work in South Africa.

CHAPTER TWO: DOMESTIC WORKERS AND LABOUR MARKET POLICY IN SOUTH AFRICA

2.1 INTRODUCTION

This chapter provides literature related to the current study and considers the policy concerning domestic workers in the labour market in South Africa. It reflects the content of the Basic Conditions of Employment Act of 1997. Other related Acts are discussed in relation to the present research.

2.2 DOMESTIC WORKERS

Domestic labour in South Africa originated in the 17th century, when Dutch settlers enslaved African women as household servants. According to Finnemore and van der Merwe (1996, p.59), women were channelled into lower-paying unskilled jobs and feminised professions for example nursing and teaching, as well as achieving lower educational qualifications. Finnemore and van der Merwe (1996, p.61) state that by the end of the eighteenth century slavery had become an integral practice in the Cape Colony. The nomadic Boer farmers carried these ideas into the interior, where blacks were expected to do manual labour. The channelling of blacks into the unskilled and semi-skilled labour force is seen as a result of labour practices since the earliest recorded South African history.

Domestic workers have been marginalized for a very long time. Their plight has been a motivating factor for many authors who have decided to do vast research on the working conditions of domestic workers (Palmer, 2003, p.13). These authors seek answers as to what steps have been taken by the government to address the domestic workers' grievances (Finnemore and van der Merwe, 1996, p.63). Another concern is whether or not government policies for this sector are being effectively implemented and what control mechanism the government has put in place to monitor the implementation of these policies.

A study conducted in a Bloemfontein suburb by Bothma and Campher (2003, p.35), on the impact of a minimum wage for domestic workers, concluded that the demand for domestic workers is decreasing and that imposing a minimum wages could aggravate this situation. In the following paragraphs this research reviews the position of domestic workers in different

countries, to assess the extent to which they are included or excluded under the protective labour laws of each country.

Palmer (2003, p.13) mentioned that, in addition to being exploited, domestic workers in America experience extreme degrees of discrimination. It is stated that first generation Irish teenagers worked as live-in domestics, whilst black women were often pushed to the fringes of hard, live-out, specialized tasks such as laundry or heavy spring cleaning. White women were moving to clerical and industrial work but black women still made up 60 % of all domestic workers. Motsei (1990, p.8) bears testimony that they were vulnerable because they were discriminated against racially (as blacks) and sexually (as women). Subsequently, that led to a low self-esteem and made them easy prey for employers to exploit domestic workers, as they were willing to accept whatever the employers offered (Motsei, 1990, p.8). Domestic workers were solely dependent on their employers not for wages only, but also for food and accommodation.

The South African market for domestic labour has always been the very model of a so-called "flexible labour market" – wage rates at the discretion of individual employers, limited worker organisation, great flexibility (both upwards and downwards) in the number of days and hours worked, task flexibility and no barriers to discretionary firing of workers (COSATU, 2005, p.3). The estimated number of domestic workers is 700 000, of whom 88% are estimated to be black and 96% women. It has been estimated that 35% of black women and 23% of Coloured women are employed as domestic workers. Transformation of this sector is thus directed at the poorest and most oppressed segment of the labour market. It is in this context that COSATU welcomed the call for public comment by the Department of Labour on minimum wages and conditions for domestic workers (COSATU, 2005, p. 3).

The present researcher noticed that almost 25 % the interviewed domestic workers had no knowledge of their rights. It was indicated by COSATU that domestic workers did not know their organizational rights and had not clearly understood the procedures to be followed in cases of an unfair treatment (COSATU, 2005, p.3).

2.3 CHARACTERISTICS OF THE DOMESTIC LABOUR MARKET

Fixed-term contract employees may be employed for a specific period, or to do a specific job. When the period expires or the job is completed, the employment relationship comes to an end (Smit and Grobler, 1998, p. 4). Domestic workers are also faced with environmental factors that need the attention of the labour market policy in South Africa. These factors are as follows:

2.3.1 Deprivation of a social life

According to Donovan (1993, p.3), by the middle and late eighteenth century, and particularly into the nineteenth century, historical circumstances, notably the industrial revolution, separated the work place from the home, isolating women in the domestic sphere.

Due to the fact that domestic workers work for long hours, they do not get time to socialise. The only time at their disposal is during meal breaks. Those who are fortunate enough to get leave, when they are free from work at their employers', cannot visit friends and relatives. They have to do domestic work at their homes and this adds to the exhaustion of their work load. They do not have time for their hobbies. They only manage to have conversations with other domestics when their employers are out. Mbatha (2002, p.19) states that domestic workers sometimes have limited rights to receive visitors and some are not allowed to receive visitors at all.

“Hidden in homes, working is isolation, domestic workers have always been amongst the most vulnerable workers, working under oppressive conditions, and subject to terrible pay and dehumanising racism and sexism” (Ally, 2004, p.50). In her book, Romero (1992, p.2), relates what she experienced whilst visiting a male colleague who had employed a young domestic worker. } *

Romero (1992, p.1), in her personal narrative on the development of the research problem, stated that:

“Although Juanita was of the same age as my colleague’s oldest daughter and but a few years older than his two sons, she was treated differently from the other teenagers in the house. She was expected to share her bedroom with the ironing board, sewing machine, and other spare-room types of objects. More importantly, she was assumed

to have different wants and needs. I witnessed the following revealing exchange. Juanita was poor. She had not brought toiletries with her from Mexico. Since she had not yet been paid, she had to depend on her employer for necessities. Yet instead of offering her a small advance in her pay so she could purchase the items herself and giving her a ride to the nearby supermarket to select her own toiletries, the employer handled Juanita's request for toothbrush, toothpaste, shampoo, soap, and the like in the following manner. In the presence of all the family and the house guest, he made a list of the things she needed. Much teasing and joking accompanied the encounter. The employer shopped for her and purchased only generic brand items, which were a far cry from the brand-name products that filled the bathroom of his sixteen-year-old daughter. Juanita looked at the toothpaste, shampoo, and soap with confusion; she may never have seen generic products before, but she obviously knew that a distinction had been made" Romero (1992, p.1).

This description indicates that the deprivation of a social life had become an issue to domestic workers as they are isolated and not living with their families. Discrimination is always depicted in the domestic workers' interaction with their employers (Romero, 1992, p.1).

2.3.2 Deprivation of a family life

Lessing (1994, p.174) supports this idea, stating that the separation of domestic workers from their families leads to great emotional hardships and sociological problems. According to Earnshaw and Cooper (2001, p.24), marriages and families may suffer if one member spends significant periods of time away from home. Earnshaw and Cooper (2001, p.30), state that the dual-career culture of the family creates problems, particularly for women, because they are expected by men to work the "double shift", in other words to pursue a job and also manage their home.

2.3.3 Privacy

Mbatha (2002, p.19) states that some live-in domestic workers have complained about lack of privacy. They are sometimes subjected to the inspection of their living quarters at any time. According to Romero (1992, p.2), live-in domestic workers who live in the spare bedroom in the main house are expected to share their bedroom with the ironing board, sewing machine, and other spare-room types of objects. "Although domestics are expected to create and to

respect the private space of employers and their families, they themselves are denied privacy” (Romero, 1992, p.117). This author also mentions that live-in domestics who sleep in the extra bedroom do not have privacy, as the employer and her family are likely to reserve the right to enter the room at any time.

2.3.4 Emotional role

Romero (1992, p.105) mentions that domestic workers can be hired not only for their physical labour but for emotional labour attached to mothering and other homemaking activities. Sometimes domestics are not paid just for housework but for being a companion for the aged. Romero (1992, p.107) states that one employer explained that it is worth much more to have her domestic’s loyalty and trust and the knowledge that she could count on her domestic to be there for her when she is sick. Domestics are expected to “mother” the employer’s children, as well as provide employers relief from child care duties (Romero, 1992, p.107).

2.3.5 Job insecurity

COSATU noted that many of the domestic workers did not know their organizational rights (COSATU, 2005, p.3). Union and government officials need to devise ways and means of coming into contact with domestic workers to educate them about their rights. Another hindering factor would be the fact that the union officials do need training themselves (COSATU, 2005, p.3). According to Naude (2003, p.1) in the region of this study (Msunduzi area) it transpired that, almost 15% of the domestic workers were unionised and belonged to SADWU.

“As this market currently stands, it is in direct competition with technological aids (employers may choose to use technological aids like washing machines, vacuum cleaners and microwave ovens) and day-care centres for children to which employers may resort” (Mbatha, 2003, p. 413).

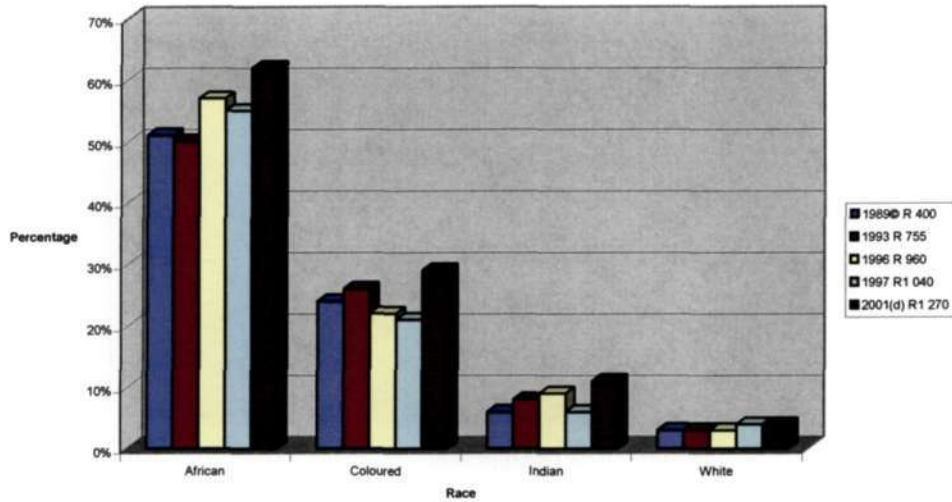
2.3.6 Market mechanism does not operate effectively

It is suggested that minimum wages will remedy these distortions. In South Africa there is a high supply of unskilled domestic workers in relation to its demand, with the result that, should the market conditions (law of demand and supply) determine the remuneration (wages), workers will earn relatively very low incomes (Department of Labour, 2005, p. 2). In addition, “Empirical studies indicate that the demand for especially disadvantaged groups

such as youths, blacks and women is much more elastic than that of other workers, which means that they will be worst affected by a minimum wage”(Barker, 1992, p.143). In order to protect the vulnerable domestic workers the government has put in place mechanisms for the determination of minimum wages in this sector, where wages cannot be negotiated through collective bargaining (Barker, 1992, p.143).

Barker (1992, p.142) argued that the market mechanism for the determination of remuneration (supply and demand) does not function effectively in the labour market and that there are distortions that need to be remedied. According to Hyman (1994, p.87), when the equilibrium wage is R4 per hour the quantity demanded and quantity supplied is 3 million labour hours per week. Hyman (1994, p.95) further mentions the fact that equilibrium wages for unskilled workers are usually lower than the minimum wage. According to Hyman (1994, p.95), minimum wages are an example of a price floor that governments establish for labour services. Governments enforce minimum wage laws by penalizing employers who pay less than the stipulated hourly wage.

FIGURE 1: Poverty incomes below the minimum living levels, 1989-2001



(South Africa Survey, 2001, p.15)

The poverty levels, as depicted in the poverty level graph for the period 1989-2001, show that in 2001 approximately 60% of blacks earned below R1 270 (which is below the minimum living level), in comparison to about 2% for whites, 10% for Indians and 28% for Coloureds South Africa Survey, 2001, p.15).

Figure 1 presented the statistics in 2001. The latest had not been published by the time the study was conducted. Lessing (1994, p.175) emphasised that the law of supply and demand operates to the benefit of those with economic and financial resources. She emphasised that the issue is not simply a matter of how much a domestic worker will work for, according to the law of supply and demand. She says the matter of greatest importance is how much she needs to support herself and her family in human decency.

2.3.7 The need for labour market policy in South Africa

Prior to the 1994 democratic elections, the South African labour arena was rife with all forms of discrimination (Finnemore and van Rensburg, 2000, p.132). The Government of National Unity was faced with a mammoth task of eradicating and addressing these imbalances. There was hence a need for the transformation of the labour market. According to Finnemore and van Rensburg, “The Commission envisaged that labour market policy in South Africa should

have two broad objectives: namely, the eradication of poverty (through job creation, security for workers and productivity enhancement) and the elimination of discrimination and disadvantages currently experienced in the labour market (through employment equity, education and training)” (Finnemore and van Rensburg, 2000, p.137).

According to Sarkar (2005, p.35), general problems faced by the female domestic servants at workplaces are:

- Domestic workers are not satisfied with their present wages and they expect more. It is true that the wage levels of domestic maids are much less than not only what they need, but also lower than their male counterparts who often do almost comparable work.
- Workers often express their grievances for being imposed upon with the extra work burden by the employers when guests come. The extra money for that additional work is not sufficient. A lump sum amount should be paid for extra work. Often the employer does not pay anything.
- A few employers have a tendency to deduct wage-money for absence from work.
- The employers do not permit any extra leave.
- Many workers face sexual harassment by their male employers. Verbal abuse by the male employers is something that is very common. This is one of those problems at the workplace that women face (Sarkar, 2005, p.35).

Labour market transformation was to be achieved through the formulation and implementation of Nedlac, the Labour Relations Act and the Employment Equity Act, the Affirmative Action Act, the Basic Conditions of Employment Act, the Wage Act and other relevant acts. There was external pressure in the form of sanctions that also necessitated speedy transformation of the South African labour dispensation, in order to conform to the standards of the International Labour Organisation (Department of Labour, 2003, p.5).

Individual labour law is concerned with the relationship between individual employer and individual employee, as is the case in the domestic service sector (Huber, 2001, p.30). The

roots of the individual labour law are found in the common law contract of employment and the content is established mainly through statute and collective bargaining. There is no clear distinction between individual and collective rights, as they overlap Huber (2001, p.30).

When two people agree that one will work for the other, and in return earn an income or payment in kind or both income and payment in kind, then this becomes binding and it is a Contract of Employment. It may be verbal or written. The relationship that exists between an employer and the domestic worker is one of employment. According to Huber (2001, p.32), an employer should furnish the following particulars to the employee as soon as she starts working:

- Full names and addresses of employer and employee.
 - The job title and description.
 - The commencement date of employment.
 - The employee's normal hours and days of work
 - The employee's wage, other payments and any payment in kind.
 - The frequency of payments, namely weekly/monthly.
 - The rate for overtime.
 - Any deductions from remuneration.
 - Leave entitlement.
 - Notice period.
 - Place(s) of work
- (Huber, 2001, p.32).

The employment relationship can take one of the following categories: "Permanent domestic workers live on the premises where they work, or live somewhere else and travel to work every day. A domestic worker who works for you once or twice a week, or more than 24 hours a month on a regular basis, is also a permanent domestic worker" (Smit and Grobler, 1998, p.4). These authors define casual workers as persons who do not work regularly. They are normally employed when help is needed with a specific task, such as mowing the lawn or tidying the garden. Casual workers usually work less than 24 hours a month.

2.3.8 HIV/AIDS and minimum standard of living

Most domestic workers are breadwinners who support extended families, HIV/AIDS orphans left by close relatives. They bear the responsibilities of clothing, feeding, providing shelter and educating these dependants. These are basic needs that they cannot do without. In order to be in a position to cater for these basic needs, they need a reasonable income. Baskin (1996, p.7) stated that, of the 3, 8 million unemployed in South Africa, 53, 3 % live in a household with no wage earner and 32,7 % live in households with only one wage earner.

Johannesburg based newspaper called IRIN News (2003, p.3) revealed that domestic workers in South Africa were frequently tested for HIV without their knowledge or consent, only to be immediately fired by employers without being given a reason (Plus News, 2003, p.1). South African law protects the rights of employees who are HIV positive on paper, forbidding them from being tested without prior consent and prohibiting employers from discriminating based on HIV status (Plus News, 2003, p.1). But the reality, especially for domestic workers who rarely enjoy the full benefits of the law, is that most of these laws did nothing for domestic workers. Often, employers who did not wish to make the reason for the firing apparent to the employee “constructive dismissal,” where domestic workers were harassed so much that they had no choice but to resign (Plus News, 2003, p.1). Most HIV-positive domestic workers tested without their knowledge or consent never learn their status, and were not given the benefit of counselling during the process. Many domestic workers – and employers as well – needed education about the country’s legal and policy regulations that protect the rights of people living with HIV/AIDS (Plus News, 2003, p.1).

2.4 DOMESTIC WORKERS UNDER THE COMMON LAW

Domestic service is the work done in and about the house to provide for the physical comfort of its occupants. It includes the labour of housekeepers, cooks, laundresses, chambermaids, waitrons, nurses, charwomen and personal attendants (Delpont, 1992, p.6).

According to common law stipulations, an employer is not compelled to provide his employee with any work to perform but is obliged to compensate the worker with the agreed wages (Delpont, 1992, p.7). The employer should obtain the employee’s approval should there be a need to vary any terms of the employment contract. The employer is expected to provide safe working conditions for his employee. Under common law the employer is not obliged to

provide accommodation for the employee, or pay for sick leave for temporary illness, unless that illness is the employer's fault (Lessing, 1994, p.174).

According to Delpont (1992, p.7), common law which involves domestic workers does not place a limit on normal hours of work or overtime. Lessing (1994, p.176) states that common law does not provide for maximum or fixed hours of work, minimum wages, holiday leave, maternity leave, sick leave, or sick pay. It is the employer's obligation to pay wages upon performance by an employee, even though there is no provision under common law for a minimum wage. Common law also prohibits unilateral deductions from wages of employees for breakages or damage to employers' property, even if the deduction happened with the employee's consent. With reference to the contents of the employment contract, parties may agree that the contract of employment should be for a definite fixed period or they may leave it as duration unspecified. Delpont (1992, p.10) states that if the contract runs for a definite fixed period, no notice is required, as the contract expires by effluxion of time. On the other hand, if the contract runs for an unspecified period the employee will have an expectation at all times of the continuity of the contract. Common law stipulates that for an employee, who is remunerated daily, twenty-four hours' notice is appropriate and, for an employee who is remunerated on a weekly basis, a week's notice of termination of employment should be served (Delpont, 1992, p.7). Monthly paid employees should be given a month's notice. Provision is also made for the employer not to furnish reasons for the termination of service if services are terminated by means of notice.

“Domestic workers face many problems, such as very low wages – often below legal minima where these exist; irregular flows of work associated with economic insecurity; and often anti-social working hours; health and safety problems, often affecting the whole family of the home worker; delays in payment and, on occasion, non-payment of wages; misinformation from employers about home workers' legal rights and status, and evasion of such regulations as may exist; and the threat of withdrawal of work used as a means to intimidate home workers and prevent them claiming their rights” (Huws,1995, p.2). According to Barker (1995, p.81), for the period 1985 to 1991 the average increase in real wages was 1,5 % per annum for black female domestic workers.

Common law provisions do not secure basic rights and protection for domestic workers, hence a need for the application of the Basic Conditions of Employment Amendment Act (BCEAA) 137 of 1993. This Act came into force on 1 January 1994 and it introduced long-awaited reforms in the domestic service sector. The Presidential Commission to Investigate Labour Market Policy (1996, p.6) was mandated to take into account the provisions of the Reconstruction and Development Programme (RDP), which called for a living wage for rural and urban workers and the reduction of wage differentials (1996, p.6). It does not specify what monthly figures constitute a "living wage". The Department of Labour (2003, p.7) tried to provide wage scales for domestic workers.

2.5 NEED FOR LABOUR RELATIONS POLICY

The National Manpower Commission (NMC) recommended that domestic workers be included under the provisions of the Labour Relations Act and argued that their inclusion would allow employers' organisations and trade unions in the domestic sector to register in terms of the Act (Lessing, 1994, p.177). The NMC envisaged that the protection of the unfair labour practice definition and victimisation provisions would be extended to domestic workers. This would result in access being gained to bargaining and dispute resolution forums (Lessing, 1994, p.177). Cebekhulu *et al.* (2005, p.56) support Barker, by stating that the market for domestic labour has always been the model of a flexible labour market, with wage rates at the discretion of individual employers, great flexibility (both upwards and downwards) in the number of days and hours worked, task flexibility and no barriers to discretionary firing of workers.

The Labour Relations Act became law in 1996 and all its provisions are applicable to domestic workers, namely:

- there may be no victimization of employees for belonging to a trade union;
- employers must treat employees fairly with respect to suspension, provision of benefits and any action by the employer, short of dismissal;
- an employer may never dismiss an employee for certain specified reasons and may otherwise only dismiss an employee for reasons relating to her conduct, capacity (poor performance or ill-health) or the employer's operational requirements;
- an employer must follow a fair procedure before dismissing an employee;

- if an employee believes any act, including dismissal, by the employer is unfair, she may refer this to the Commission for Conciliation Mediation and Arbitration (the CCMA), who may then, if the employee is successful, order the employer to reinstate, re-employ or compensate the employee (Huber, 2001, p.22).

The Labour Relations Act empowers employees and employers who complain of unfair or unlawful conduct by the other party or parties to seek relief from the industrial court. Anderson (1997, p.2) felt that the Constitution had reshaped South Africa and that the new Labour Relations Act will reshape the workplace.

In America the number of women employed as domestic workers declined due, to a large extent, to industrialization (Delpont, 1992, p.11). The opposite is happening in South Africa. According to Delpont (1992, p.19), the number of unskilled women seeking employment was simply too large and South Africa continued to employ domestic workers in the midst of the industrial expansion which had depleted the supply of domestic workers in other countries. Domestic workers were excluded from the following labour legislation: The Labour Relations Act 28 of 1956, The Basic Conditions of Employment Act 3 of 1983, the Wage Act 5 of 1957, the Unemployment Insurance Act 30 of 1966 and the Workmen's Compensation Act 30 of 1941 (Delpont, 1992, p.19).

It is a well-known fact that domestic workers are not highly unionised like employees in other sectors (Markham, 1987, p.26). This makes it difficult to bargain and fight for their rights. Markham (1987, p.26), in the South African Labour Bulletin, conducted an interview with Margaret Nhlapo, who is the general secretary of the Johannesburg branch of the South African Domestic Workers' Union (SADWU), to establish their activities pertaining to uniting and fighting for the rights of domestic workers.

According to Markham's study (1987, p.26), findings indicated that the regional domestic workers' unions (the Western Cape-based Domestic Workers' Association, and the Natal-based National Domestic Workers' Association, the Port Elizabeth and East London based PEDWU and ELDWU) merged to form the SADWU. This was an endeavour to form a strong union that would be able to represent and fight for the rights of domestic workers. SADWU was launched in Cape Town at the end of November in 1986 (Markham, 1987,

p.26). SADWU's priority was to fight for the inclusion of domestic workers in the country's labour legislation and this they achieved, as most labour laws are now inclusive of domestic workers 1986 (Markham, 1987, p.26). SADWU's other priority was to redress the present intolerable working conditions under which domestic workers find themselves. This is taken care of in Sectoral Determination 7: Domestic Service Sector, but the outcome of the present research conducted in the Msunduzi Municipality shows that employers of domestic workers do not yet comply with all the requirements of this determination. SADWU still has the task of monitoring the implementation and engaging with the labour inspectors to monitor whether the Department of Labour has monitored, and is monitoring, the enforcement of Sectoral Determination 7: Domestic Service Sector, Minister of Labour, in terms of section 51 (1) of the Basic Conditions of Employment Act, No. 75 of 1997, brought a Sectoral Determination which established conditions of employment and minimum wages for employees in the Domestic Worker Sector, South Africa and appears in the schedule hereto and determined on 1 September 2002 as the date from which the provisions of Sectoral Determination 7, was implemented. Sectoral Determination 7 was basically introduced with regard to wages and unfair practice which took place within the domestic worker sector; some domestic workers are poorly paid. Hence Sectoral Determination 7: Domestic Worker Sector lays down different minimum wages for Area A and B to cater for the affordability of payment by the employers (Department of Labour, 2005, p. 3).

Nyman's study (1997, p.35) entitled "The Death of SADWU: the birth of a new organisation?" presented SADWU's historical background, from inception up to when it was decided to dissolve it. SADWU's financial resources were mainly from members' subscriptions and sponsorship from the Dutch-based Interchurch Organisation for Development Co-operation (ICCO) (Nyman, 1997, p.35). SADWU resolved disputes through appealing to the goodwill of employers, because, at that stage, domestic workers were not covered by basic labour legislation (Markham, 1987, p.26). Where employers were not cooperative SADWU was obliged to follow the legal route to solve problems.

The downfall of SADWU resulted from poor financial management and a decline in members' subscriptions. Regional offices no longer deposited monies in the national account. Motsei (1990, p.12) recaps that, in response to the plight of domestic workers, the South African Domestic Workers' Association (SADWA) was launched in 1981. In 1986, SADWA

became the South African Domestic Workers' Union (SADWU), affiliated to the Congress of South African Trade Unions (Markham, 1987, p.26).

Motsei (1990, p.12) emphasised that domestic workers are subject to practices of inferiority, such as "servants' rations" and "servants' blankets". These are synonymous with cheap products of inferior quality. Domestic workers are also subjected to inferior living quarters and are prohibited from sharing plates, toilets and bathrooms with their employers.

Rees (1998, p.57) feels that organising and unionising domestic workers is a daunting task because they are not educated about their rights. He mentions that domestic workers need a union that will allow them to discuss and find solutions to their problems. COSATU was offering domestic workers advice offices (Rees, 1998, p.58). The idea of advice offices emanated from the view within COSATU that a domestic workers' union is not a viable venture, due to the fact that domestic workers are dependent on outside resources. According to Rees, unions face limitations when it comes to changing the laws, as well as challenging the class, race and gender oppression that domestic workers face (COSATU, 2005, p.9). Domestic workers are still excluded from the Compensation for Occupational Injuries and Diseases Act (COIDA) and their employers ignore the provisions of the Basic Conditions of Employment Act (COSATU, 2005, p.9).

Rees (1998, p.57) found that advice offices were reactive; they only intervened when there was a crisis between the domestic worker and her employer. Their intervention did not empower domestic workers to fight for their rights, as the advice offices act on behalf of the domestic worker. Prior to the implementation of a minimum wage, some domestic workers did earn wages that enabled them to satisfy part of their basic needs. With the regulation of the domestic service sector some domestic workers might not be fortunate enough to secure more than one job in order to earn a wage that is equal or higher to the one they were earning before the implementation of wage laws. They may be employed for fewer hours and earn less money and still have to pay for transport and other related costs. They might end up having problems with paying for their children's education, leading to their children not finishing elementary, education with the consequences of high unemployment rates and high crime rates in the future. Barker (1995, p.82) reasons that if wages were left entirely to market forces, many workers (especially the unskilled) could be exploited by unscrupulous

employers and would not be able to maintain a minimum standard of living, that is one that satisfies certain basic needs.

2.6 NEED FOR MINIMUM WAGE

According to the International Labour Office (1975, p11), the purposes of minimum wage fixing are to eliminate the “sweating of labour” through very low wages and bad conditions of employment, to improve the cost of living or living standards of workers due to the fact that many people live below the subsistence level and to promote rapid growth and equitable distribution of the national income.

Prior to 1 January 1994 domestic workers’ remuneration was calculated on a monthly basis. Sectoral Determination 7 prescribes how minimum wages for domestic workers should be calculated (Government Gazette-Labour Department, 2002, par.3). The wages of domestic workers should be calculated in accordance with the number of hours that they have worked. The rate per hour will differ, according to the area in which the domestic worker is employed. The areas are classified as A and B, the criterion being whether the area is urban or rural. Municipal boundaries are used for the demarcation of these areas (Government Gazette-Labour Department, 2002, par.3). Sectoral Determination 7 is innovative in the sense that those employees who do not have a full-time job (who work 27 hours or less per week) earn a slightly higher rate than those who are entitled to a full-time job (Government Gazette-Labour Department, 2002, par.3). This also applies to those domestic workers who work for less than four hours per day; they should be compensated for four hours (Government Gazette-Labour Department, 2002, par.3).

Finnemore (2000, p.130) points out that minimum wages that are set across the board do not take the unique circumstances of an organisation into account, in terms of profitability and geographic location and she assumed that this would lead to unemployment. Petersson (1998, p.56) supports this reasoning; when faced with higher minimum wages, non-party firms could react in five ways: reduce employment, “externalise the labour function” (through increased use of sub-contracting, etc.) or raise labour productivity to justify the higher wage. Alternatively, they could go out of business, ignore the minimum wage or apply for exemption. The World Bank warned that, if enforced, higher labour costs are likely to prevail in sectors such as agriculture and among domestic workers, with negative employment consequences among groups where the incidence of unemployment is already extraordinarily

high (Finance Week, 1997, p. 20). Finnemore (1998, p.55) emphasises that in most cases an employee is the sole breadwinner for a large, extended family, leading to additional demands for wage increases. Finnemore (1998, p.83) adds that domestic workers and those in farming operations, where union representation is most difficult, commonly earn less than R500 per month. Women comprise a large proportion of the low-paid workers and a significant number of unionised workers still earn less than R1 000 per month.

Employers of domestic workers are expected to give their staff an increase in wages of 8% on 1 November 2003 and 1 November 2004. The Department of Labour has the mandate to determine the rate by which to increase these wages if the inflation rate becomes higher than 10% and this will have to be gazetted accordingly (Government Gazette-Labour Department, 2002, par.4).

A provision has been made for those employers who cannot afford to pay the stipulated minimum wages (Government Gazette-Labour Department, 2002, par.4). They have the option of decreasing the hours of work, rather than retrenching their domestic workers. It is illegal to retrench a domestic worker if the employer cannot afford the stipulated minimum wage. It is also a criminal offence to pay a domestic worker an amount that is below the minimum (Government Gazette-Labour Department, 2002, par.4). The minimum stipulated wage from 1 November 2004 to 31 October 2005 was R4, 77 per hour (Government Gazette-Labour Department, 2002, par.4).

The NMC and the domestic workers' committee disagreed on the inclusion of domestic workers in this Act (Lessing, 1994, p.177). Two views were tabled; one view suggested that non-binding wage-guidelines should be drawn up by the Wage Board or a similar institution, while the other view was that domestic workers should be included under the Wage Act and that the setting of minimum conditions of employment, including the establishment of a minimum wage, should be debated by the Wage Board (Lessing, 1994, p.177).

The Unemployment Insurance Act 30 of 1966 and the Workmen's Compensation Act 30 of 1941 states that it was recommended that domestic workers should be included under the provisions of these Acts, as this would provide them with basic social securities. A specially appointed technical working committee was investigating the intricacies of their inclusion.

According to Huws (1995, p.2), the demand and supply side factors have produced a situation in which home workers are frequently so desperate for work that they will accept very poor wages and conditions. In some labour markets (Castle, 1992, p.1), labour supply exceeds demand for labour and this leads to unemployment and lower wages. Mbatha (2003, p.408) stated that the employment of domestic workers in a household liberates the members of the household, usually women, from performing domestic work and so enhances their own competitiveness in the labour market. However, Barker (1995, p.82) maintains that the higher wages would lead to improvements in the workers' morale and nutrition, which at the same time would bring about improvements in productivity.

Romero (1992, p.30) stresses that by hiring a domestic worker a middle-class woman is freed to pursue her own occupation, that is employment that earns a salary much higher than the amount she pays the worker. In her study, Lessing (1994, p.175) portrays a household as a production unit seeking to maximize its own welfare through minimizing labour costs. She states that there is a conflict of interest between higher worker wages and the maximization of household welfare. Lessing (1994, p.175) suggests that the most obvious method of protecting domestic workers from exploitation would be the setting of an acceptable limit on household profit-making by ensuring that the domestic worker receives a wage of not less than a statutory fixed minimum amount and by setting out other minimum conditions of employment.

Finnemore and van Rensburg (2000, p.144) indicate that there are considerations that should be taken into account when deciding on a minimum wage:

- Fair wages and decent conditions of employment
- The financial circumstances of the employer
- The social conditions and economic prospects of the specific sector or geographic location
- The employment implications

(Finnemore and van Rensburg, 2000, p.144).

There are issues that were not covered and regulated in the Sectoral Determination 7: Domestic Sector, South Africa, namely transport allowances, bonuses and increases. Therefore such issues were open to negotiation among the parties (Government Gazette-

Labour Department, 2002, par.4). Finnemore and van Rensburg (2000, p.144) raised the issue that minimum wages are not considered as part of social conditions.

If minimum wages are enforced leading to employers having to use domestic workers for a limited period only, the domestic workers will incur extra costs Lessing (1994, p.181). They have to cater for transport costs to and from their place of work Lessing (1994, p.180). Some domestic workers reside far from their place of work, this might lead to inconvenience due to transport problems and having to travel long distances in order to be on time for work. Lessing (1994, p.180) stated that employing someone once or twice a week usually means the loss of free board and lodging for the domestic worker.

2.7 WORKING HOURS

Domestic workers should work a maximum of 45 ordinary hours per week (a maximum of nine hours per day for those who work for five days a week, and a maximum of 8 hours per day for those who work for more than 5 days a week). An employer may not require a domestic worker to work more than 15 hours overtime a week or more than 12 hours, including overtime on any day (Government Gazette-Labour Department, 2002, par.4). South Africa has a large number of poorly paid domestic workers who work under extremely unfavourable working conditions (Finnemore, 1998, p.53). They work long hours, receive low pay, pension rights do not exist for them and generally they do not enjoy protection under the new labour laws. Irrespective of these conditions they continued to work in order to try to alleviate poverty and for fear of unemployment (Finnemore, 1998, p.53).

If a domestic worker happens to work for longer than the maximum prescribed hours per day or per week, then she should be compensated for overtime. The overtime rate should at least be one and one-half times the normal wages that the domestic worker is paid (Government Gazette-Labour Department, 2002, p.21). This clause is flexible, because it allows room for negotiation between the employer and employee on the mode of payment. For work on Sundays and public holidays the domestic worker is entitled to double her normal wage (Government Gazette-Labour Department, 2002, p.21).

Domestic workers should be also allowed a daily rest period of 12 consecutive hours and a weekly rest period of 36 consecutive hours, which must include Sunday (Government Gazette-Labour Department, 2002, p.21). A domestic worker who is on standby, who works between 20:00 and 06:00 the next day, must be compensated by the payment of an allowance

of at least R20 per shift. Having worked for five hours, a domestic worker is then entitled to an hour's meal break (Government Gazette-Labour Department, 2002, p.21).

2.8 LEAVE

Full-time workers are entitled to annual leave of not less than three weeks that must be granted not later than six months after completion of the period of 12 consecutive months of employment (Government Gazette-Labour Department, 2002, p.19). The stipulation is such that this leave must not run concurrently with any period of sick leave, nor with a period of notice of termination of the contract of employment. An employer may not expect a domestic worker to work during any period of annual leave or pay a domestic worker instead of granting paid leave, except on termination of employment (Government Gazette-Labour Department, 2002, p.19).

During the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked. If the employee requests her employer to pay for her medical fees, her employer can deduct such fees from her wages. An employee will be expected to produce a medical certificate if she is absent from work for more than two consecutive days, failing which the employer will not be liable to grant paid sick leave (Government Gazette-Labour Department, 2002, p.19).

The employee is entitled to at least four consecutive month's maternity leave (Government Gazette-Labour Department, 2002, p.17). The employer is not obliged to pay the domestic worker for the period, she is off work due to her pregnancy, but with effect from 1 April 2003, the Unemployment Insurance Act, 2001, has covered domestic workers and they are entitled to claim maternity benefits in terms of this Act (Government Gazette-Labour Department, 2002, p.19).

Employees who have been employed for longer than four months and for at least four days a week are entitled to take five days' paid family responsibility leave during each leave cycle, when the employee's child is born or sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling. The employer must pay the domestic worker for a day's family responsibility leave, being that wage the domestic worker would normally have received for work on that day (Government Gazette-Labour Department, 2002, p.17).

2.9 DEDUCTIONS

An employer is prohibited from making deductions from an employee's wages without her written permission (Government Gazette-Labour Department, 2002, p.19). An employer can deduct 10% from her employee's wages for accommodation, provided that the accommodation is kept in good condition and has at least a window and a lockable door and there is access to a bathroom. The Government Gazette-Labour Department, (2002, p.10)

An employer may not receive any payment directly or indirectly, or withhold any payment from a domestic worker in respect of –

- the employment or training of that domestic worker;
- the supply of any work equipment or tools;
- the supply of any work clothing; or
- any food supplied to the domestic worker while the domestic worker is working or is at the workplace.

An employer may not require a domestic worker to purchase any goods from the employer or from any person, shop or other business nominated by the employer.

An employer may not levy a fine against a domestic worker.

An employer may not require or permit a domestic worker to –

- (a) repay any pay except for overpayments previously made by the employer resulting from an error in calculating the domestic worker's pay; or
- (b) acknowledge receipt of an amount greater than the pay actually received.

(Government Gazette-Labour Department, 2002, p.10)

2.10 GOVERNMENT INTERVENTION IN THE DOMESTIC LABOUR MARKET

Finnemore (1998, p.53) pointed out that approximately 19 million people are classified as living below the poverty line and this she attributed to past apartheid policies, which deprived blacks of access to land, education, jobs and political rights. This resulted in extremely skewed income distribution, among the most unequal in the world. Barker (1992, p.141) emphasised that minimum wages will eliminate the exploitation of employees and will make sure that they are paid enough to maintain a certain minimum standard of living.

In the past, many employment laws excluded domestic workers. According to Smit and Grobler (1998, p.1), this situation changed with the introduction of the Basic Conditions of Employment Amendment Act in 1993 and the Labour Relations Act 66 of 1995. Smit and Grobler (1998, p.1) state that the Basic Conditions of Employment Act of 1998 sets standards for conditions of employment and it shifts the emphasis from merely regulating the relationship between the employer and the employee, to positively promoting certain employment standards. Such standards include the planning of employees' working time so as to not endanger their health and safety and taking into account the employee's family responsibility. Earnshaw and Cooper (2001, p.23) raise concern that long working hours required in many jobs appear to take a toll on employee health.

According to Lessing's report (1994, p.177), in 1984 the National Manpower Commission (NMC), investigated the possible statutory measures to regulate the conditions of employment of farm workers and domestic workers; it had to examine the question of whether or not there were circumstances justifying the continued exclusion of these workers from the provisions of important labour legislation (Lessing, 1994, p.177). The report indicated that the NMC suggested that the exclusion of the private household sector from the Basic Conditions of Employment Act 3 of 1983, the Labour Relations Act 28 of 1956 and certain provisions of the Machinery and Occupational Safety Act 60 of 1983 could no longer be maintained" (Joubert, 2001, p.186).

According to Lessing (1994, p.177), on 21 June 1990 the Minister of Manpower requested the acting chairman of the National Manpower Commission to investigate the possibility of extending legislative protection to domestic workers. The following are some of the major interventions that the South African government introduced, such as:

2.10.1 Skills development Act

The aim of the Skills Development Act is to develop the skills of the South African labour force (Skills Development Act no. 97 of 1998, p. 11), through the establishment of institutions such as the National Skills Authority, the National Skills Fund, Sector Education and Training Authorities (SETAs) and labour centres (Skills Development Act no. 97 of 1998, p. 7). Domestic workers are accommodated under a special chamber in the Sector Education and Training, which caters for the cleaning sector. This SETA aims to establish standards against which domestic workers' existing skills can be measured (Skills Development Act no. 97 of 1998, p. 7).

In this regard the Department of Labour (Pietermaritzburg), in conjunction with ICESA, offered domestic workers workshops. These workshops were conducted during October 2004, where domestic workers were offered training on cooking, cleaning and ironing skills (Kuzwayo, 2005). Only a handful of domestic workers benefited from these workshops, because they were not well advertised.

Under existing law, the Wage Board was entitled to make recommendations on minimum wages and employment standards in a sector. In practice the wage board reproduced the provisions of the Basic Conditions Employment Act (BCEA) and very seldom made recommendations to vary employment standards to fit the particular requirements of the sector.

The Department envisages that a restructured Wage Board (Employment Standards Commission) will provide a mechanism to vary employment standards to suit the needs of particular sectors. In 1993 and 1994 the BCEA was extended to cover farm and domestic workers. A large number of provisions that apply specifically to these sectors were included into the Act. The provisions applicable to agriculture were agreed between agricultural employer's organisations and trade unions representing farm workers as a part of the process of extending labour legislation to the agricultural sector. The provisions applicable to domestic workers were the result of recommendations by the National Manpower Commission (Department of Labour, 2003, par.15).

2.10.2. Code of conduct and information brochure

According to Delpont (1992, p.20), the NMC should provide an information brochure elucidating and simplifying the provisions of the relevant Acts. Delpont (1992, p.20) suggested that the brochure should also contain a summary of the Basic Conditions of Employment Act and Guidelines pertaining to certain conditions of employment. During the 1993 parliamentary sessions, Labour statutes had been extended to cover farm workers, domestic workers, teachers and certain public sector employees

2.10.3 The basic conditions of employment Act 3 of 1983

The Basic Conditions of Employment Act of 1997 was provided to give effect to the right to fair labour practices, as referred to in section 23(1) of the Constitution of South Africa, by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith (Department of labour, 2003, p. 3).

Duties of the employer:

- paying wages
- providing work
- ensuring safety
- not requiring an employee to work hours in excess of those permitted by the Act
- not requiring an employee to work overtime, otherwise than in terms of the agreement
- granting stipulated leave
- terminating the contract of employment by giving the stipulated notice

(Huber, 2001, p.19).

With the introduction of the new labour legislation there was speculation that employees would lose their jobs (Department of labour, 2003, p. 2). Employees themselves viewed these labour laws as something that was going to negatively affect the employer-employee relationship (Huber, 2001, p.20). They were not confident enough to stand and fight for their rights, due to the fear of losing their jobs. To prevent employers from arbitrarily dismissing their employees the BCEA provides employment security by requiring the employer to give

an employee adequate notice, depending on the period of employment by the current employer. These are the requirements needed from employers of domestic workers:

- to furnish a certificate of service
- to apply employment prohibitions duly
- not to make unlawful deductions
- to keep records
- to keep copies or summaries of BCEA on the premises within ease of access of the employee
- to co-operate with an inspector

(Huber, 2001, p.21)

The aim of the BCEA is to legally enforce adherence to certain minimum standards of work by specifying how rates of pay should be calculated according to the number of hours worked, notably with respect to overtime pay (Department of labour, 2003, p. 3).

This Act applies to the employment of all domestic workers in the Republic of South Africa including domestic workers,

- employed or supplied by employment services
- employed as independent contractors

(Department of labour, 2003, p. 3).

The Minister of Labour also has the power, in terms of Section 51, to make a Sectoral Determination, which establishes basic conditions of employment for employees in a sector (Annali, Marylyn, and le Roux, 2000, p.117).

Domestic workers were excluded from all labour law protection until January 1994 and November 1995, when the Basic Conditions of Employment Act 3 of 1983 and the Labour Relations Act of 1956, respectively, were extended to cover domestic workers. "Since 1994, South Africa has scrapped the apartheid-era labour laws that denied domestics legal rights and left them with little recourse if they were mistreated. A new wave of legislation entitles full-time domestic workers to a 45-hour work week, overtime pay, sick leave, maternity leave and two weeks of paid vacation every year. They have the right to enter into a written contract with their employers and the right to file complaints against employers" (Department of Labour, 2003, p.4).

The inclusion of domestic workers under the provisions of this Act would place a limit on their daily and weekly working hours. The Basic Conditions of Employment Act of 1997 was provided to give effect to the right to fair labour practices, as referred to in section 23(1) of the Constitution of South Africa, by establishing and making provision for the regulation of basic conditions of employment, and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith (Department of labour, 2003, p. 3).

The minimum standards regulated include the following:

- Maximum daily and weekly ordinary working hours.
- A required rest period per day and per week.
- Meal breaks.
- Maximum overtime hours worked per day and per week.
- Payment for overtime on normal working days, Sundays and public holidays.
- Night work.
- Annual leave.
- Maternity leave.
- Family responsibility leave.
- Sick leave.
- Notice periods for termination of contracts of employment.
- Certificates of Service

(Huber, 2001, p.22).

This Act prohibits the employment of persons under the age of 15, requiring an employee to work more than 45 hours per week (excluding any overtime work), making unacceptable deductions from an employee's salary and withholding wages (Huber, 2001, p.22).

2.11 SECTORAL DETERMINATION 7: DOMESTIC WORKER SECTOR

Ally (2004, p.50) states that in 2002 a more specific regulation was introduced with a landmark sectoral determination, establishing a compulsory minimum wage, annual increases and employment contracts. The Minister of Labour applied the power vested in him to establish Sectoral Determination 7: Domestic Worker Sector. He had initially given a directive that the commission should investigate the working conditions of domestic workers. It was after of this investigation that he realised that domestic workers are still being exploited; hence he saw a need to protect them. Mbatha (2003, p.408) states that the Minister made a sectoral determination for the domestic sector (Sectoral Determination 7: Domestic Worker Sector, GN R1068 GG 23732 of 15 August 2002, Reg Gaz 7434), effective from 1 November 2002.

From the literature it is evident that the position of domestic workers is similar in most countries. Dancaster (2003, p.109) explains that the picture of domestic work that emerges is one of people – mainly women – entering domestic service not by choice, but rather as a means to alleviate poverty. They experience exploitation, poor working conditions and very little or no protection by the countries' labour laws. They are generally excluded from most labour laws. Their profile is mostly black women who have no educational qualifications to fall back on, who are illegal immigrants and who depend on wages for survival (Dancaster, 2003, p.108).

The government intervention promulgated that domestic workers should not work more than 27 hours a week (excluding overtime). Table 1 present's minimum wages stipulated in Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2005, p. 6).

Table 1a: Minimum Wages

		Minimum Wages		
		Per Hour	Per Week	Per Month
Urban Areas	1 Nov 2003 – 31 Oct 2004	R 4.42	R 198.90	R 861.90
	1 Nov 2004 – 31 Oct 2005	R 4.77	R 214.65	R 930.15
Rural Areas	1 Nov 2003 – 31 Oct 2004	R 3.59	R 161.55	R 700.05
	1 Nov 2004 – 31 Oct 2005	R 3.87	R 174.15	R 754.65

Annual Wage Increases (Department of Labour, 2005, p. 6)

Workers who work for fewer than 27 hours a week (excluding overtime):

Table 1b: Minimum Wages

		Minimum Wages		
		Per Hour	Per Week	Per Month
Urban Areas	1 Nov 2003 – 31 Oct 2004	R 4.87	R 131.49	R 569.79
	1 Nov 2004 – 31 Oct 2005	R 5.25	R 141.75	R 614.25
Rural Areas	1 Nov 2003 – 31 Oct 2004	R 3.95	R 106.65	R 462.15
	1 Nov 2004 – 31 Oct 2005	R 4.26	R 115.02	R 498.42

Annual Wage Increases (Department of Labour, 2005, p. 6)

Workers must receive an annual increase of at least 8% every year on 1 November (Department of Labour, 2003, p. 6). Minimum wages covering South Africa's estimated one million domestic workers became effective in November 2002, another million or so wholesale and retail trade workers were covered as of February 2003 and most recently, on 1 March 2003 minimum wages were extended to roughly 800 000 farm workers (Department of Labour, 2003, p. 6). These are significant policy initiatives, reflecting a commitment on the part of the ANC-led Government to raise the wages and improve the conditions of employment of the nation's lowest-paid workers (Department of Labour, 2003, p.7).

The compensation offered to domestic workers is twofold: wages and payment in kind. Normally they stay at their employers' premises rent-free. Taking into consideration the current housing shortage in South Africa, this, in part, is a solution to those employees who cannot provide a stable shelter for themselves.

If minimum wages are enforced, leading to employers having to use domestic workers for a limited period only, the domestic workers will incur extra costs. They will now have to cater for transport costs to and from their place of work. Some domestic workers reside far from their place of work. This might lead to inconvenience due to transport problems and having to travel long distances in order to be on time for work. Food is also granted, plus clean water free of substances that are hazardous to their health, and other extras. Lessing (1994, p.180) stated that employing someone once or twice a week usually means the loss of free board and lodging for the domestic worker.

2.8 SUMMARY

From the literature review it is evident that some domestic workers are being exploited and it is not easy to mobilise them in order to form a union that would serve as their voice. This is due to the nature of the relationship that exists between the employer and employee and the fact that they work and stay on their employers' premises. Due to the imbalance of power between employer and employee and the fact that Common Law favoured the employer more than the employee, the Government had to intervene, by legislating protective labour laws that would ensure that employers of domestic workers adhere to certain minimum working conditions. It is the purpose of this research to investigate whether the employers of domestic workers do comply with this determination. This research needs to assess whether the Department of Labour is doing enough to monitor the extent to which employers and employees are conversant with the contents of this document. Equally important is the issue of monitoring whether this document is being implemented. This chapter reviewed the literature on the domestic workers within the context of Sectoral Determination 7: Domestic Worker Sector, labour market policy and governmental interventions within South Africa. Chapter Three will look at the historical overview of the Msunduzi area.

CHAPTER THREE: HISTORICAL OVERVIEW

3.1 INTRODUCTION

Pietermaritzburg was established by the pioneering Voortrekkers to serve as their capital. Having defeated the Zulus after a series of bloody encounters in 1838, they were intent on settling down to a peaceful farming life in Natal. The town was named after two leaders, Piet Retief and Gert Maritz (Department of Labour, 2005, p.7). In 1843 the town was taken over by the British as the administrative seat of their government in Natal and Fort Napier was built to house a garrison. In 1893 Natal was granted self-government, with a parliament located in Pietermaritzburg. The Voortrekker and British presence is evident in the city's many historical buildings, while the eastern influence provided by descendants of the Indian labourers, who came to Natal in the 1860s to work on the vast sugar estates, can be seen in the Hindu temples, Muslim mosques, colourful saris of the women and their religious festivals and traditions (Department of Labour, 2005, p.7).

This chapter will look at the historical overview of the Pietermaritzburg area that is Msunduzi Municipality and its population.

3.2 CURRENT SITUATION

After the December 2000 election, five previously independent entities were amalgamated to form the Msunduzi Municipality: the Pietermaritzburg-Msunduzi and Ashburton Transitional Local Councils, rural Vulindlela, Claridge and Bishopstowe. What was once entirely a municipal area now contains parts which fall under both a municipal and a tribal authority (Msunduzi Municipality, 2006, p.2). Although the Municipality is responsible for all service provision, the actual service providers are authorities other than the City, for example Eskom, uMngeni Water and the Provincial Roads Department.

The current situation is characterised by a marked dissimilarity between the sophisticated amenities offered by the City of Pietermaritzburg and the adjacent developed areas, and the extreme underdevelopment of the rural areas. For example, the level and variety of education and library services offered in the City is extremely good, whereas very few of the rural areas are adequately provided for (Msunduzi Municipality, 2006, p.4). Again, although the health care services in the Municipality are relatively well established, the density specifications of

national health requirements are not met in Slangspruit, the KwaMpande/Nxamalala area and Vulindlela (Msunduzi Municipality, 2006, p.3). This is a particularly urgent matter, as health issues of concern to the Municipality include HIV/Aids, tuberculosis, the ills attendant on unregulated urbanisation and major inadequacies in the provision of sanitation.

Of a population of 521 805 living in the Municipality, 41% are of working age. However, 40% of this group are unemployed (Msunduzi Municipality, 2006, p.7). About half of the households in Msunduzi fall into the low-income category, with about 14% having no income, and 35.6% earning less than R1 500 a month. Approximately 60% of Msunduzi's residents, the majority of whom are below the age of 20, live in Edendale and Vulindlela. People living in these areas are seriously affected by low income, lack of access to, and money to pay for, basic services; lack of education and information; and lack of basic services, including refuse disposal. Social problems in these underdeveloped areas include crime, rape and child abuse (Msunduzi Municipality, 2006, p.7).

The estimated backlog in housing provision in the Pietermaritzburg and Greater Edendale areas is 17 000 units. A number of informal settlements are to be incorporated in areas that have been set aside for low income housing purposes: 49 such areas have so far been identified (Msunduzi Municipality, 2006, p.11).

Parts of the Municipal area are serviced with piped, potable water, available mainly in the area of the City. The Municipality has made efforts to provide water via standpipes to informal settlements around Pietermaritzburg and Greater Edendale. Water-borne sewerage is provided in the City area, while the informal settlements use pit latrines (Msunduzi Municipality, 2006, p.11). Extensions to the existing sewer network are required to increase capacity. A small area of sewerage is provided in Merrivale, but the rest of the area is dependent on either pit latrines or septic tanks and soak ways.

While waste disposal in the City is provided by a variety of effective services, and Ashburton and Lynfield Park have weekly refuse collection, households in the Greater Vulindlela and Claridge areas have no waste disposal services. A matter of particular concern to the Municipality is the need to encourage the participation of communities, especially rural communities, in local government matters, to ensure that their needs are heard and addressed (Msunduzi Municipality, 2006, p.8).

3.3 KEY DEVELOPMENT OBJECTIVES AND STRATEGIES

An overarching objective of Msunduzi Municipality is to take local government to the people, in order to empower them, invite their participation and ensure that services meet the needs of communities (Msunduzi Municipality, 2006, p.8). Community involvement is to be assisted by the establishment of ward committees and of administrative service centres in all areas. Objectives concerning the provision of basic services to those areas of the Municipality that lack them include the following (Msunduzi Municipality, 2006, p.8):

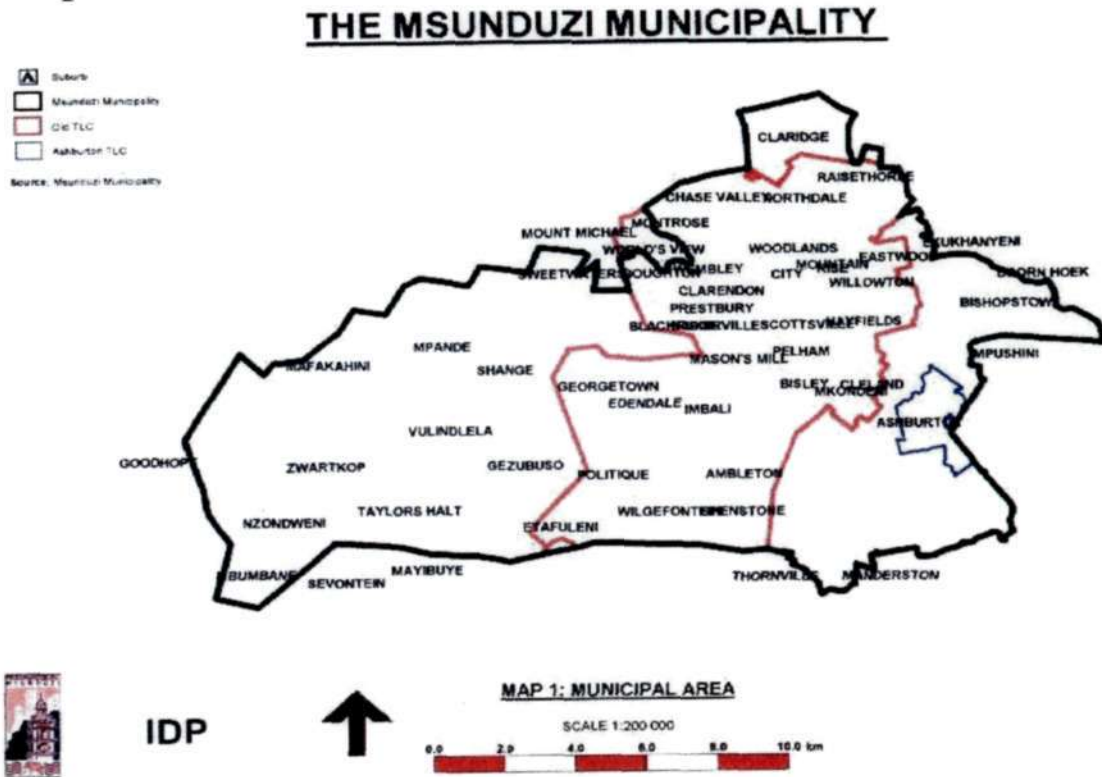
- The Municipality aims to deliver 5 000 housing units a year. It also intends to develop a master plan for water provision that covers the entire Municipal area; to replace all water standpipes with individual connections; and to reduce unaccounted-for water use to 20%. On the issue of sanitation, Msunduzi aims to develop a master plan to replace all conservancy tanks and informal pit latrines and to ensure that all existing and new industrial areas are fully reticulated.
- Standards and mechanisms for the supply of free electricity are to be established. Immediate objectives in waste management are the identification of a hazardous waste disposal site and a 10% reduction in the source of refuse per annum. On the issue of transport infrastructure, the Municipality's objectives are to complete limited extensions to the present highway network, construct roads to new nodes, industrial and housing areas and establish new and improved public transport interchange facilities.
- With regard to the provision of social services, Msunduzi has identified particular objectives in safety and security and in health services. A specific strategy to improve the level of security is to supply fire and emergency services to Edendale, Vulindlela and Northdale and to rationalise and decentralise the facilities that already exist. The Municipality also plans to achieve a 20% reduction in crime per annum by means of municipal policing. A Disaster Management Plan has already been drawn up and approved.
- A general objective for the health services was to provide access to basic health services to all citizens resident in the Municipality. Among the strategies planned are

to aim for 100% reportage of all notifiable diseases, to respond within 24 hours to any report of a notifiable disease and to contain any such outbreak of disease within two weeks. More specifically, the Municipality aims to improve the tuberculosis cure rate to 80% and to halve the HIV infection rate (from 40% to 20% of the sexually active age group). Another strategy relating to HIV/Aids is to raise awareness of the disease, promote greater social acceptance of people living with HIV/Aids and ensure that all infected and affected children receive appropriate food, shelter, schooling, care and support. A key objective for Msunduzi is to co-ordinate approaches to conservation and environmental matters by adopting an Environmental Management Plan. A special project in current environmental planning is the development of the Bisley-Mpushini Game Reserve
(Msunduzi Municipality, 2006, p.8).

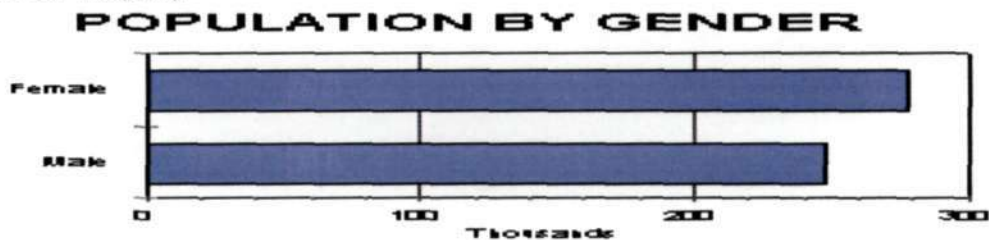
3.4 POPULATION OF THE AREA RESEARCHED

FIGURE 2: Msunduzi municipality map

Map 1



Population 523 470
 Gender
 Males ± 246 030 (47%)
 Females ± 277 440 (53%)



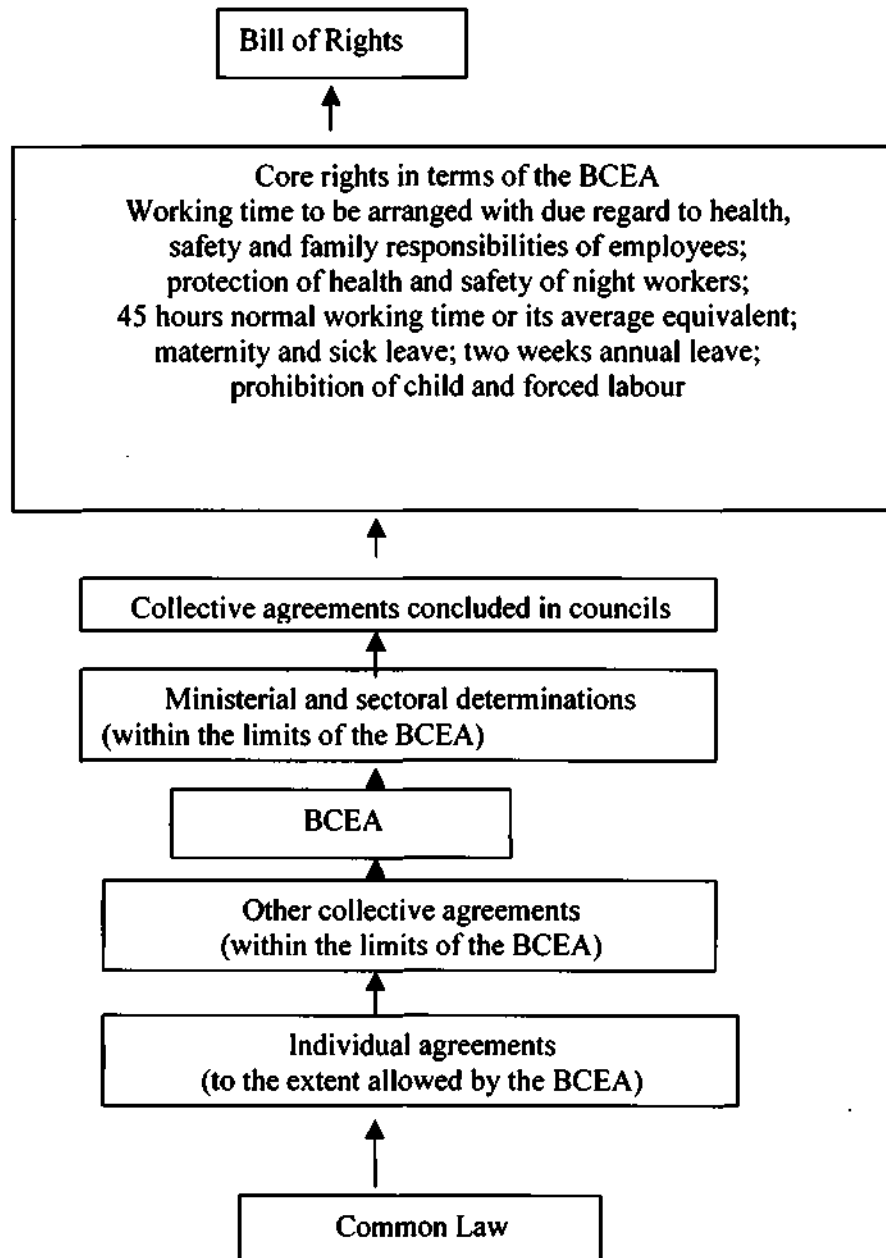
(Msunduzi Municipality, 2004, p.9)

Delport (1992, p.181) mentions that, in a report of the Commission that was tasked to investigate the development of a comprehensive labour market policy, it was stated that in South Africa the wage structure has been greatly affected by apartheid, which significantly determined the racial and gender composition of employment in the various grades and occupations. The current situation in South Africa is confirming the need for this kind of

research, as most industrial action is taking a toll on salary increments or wages, e.g. Pick'n Pay, municipal workers, mine workers and South African Airways. The present research attempts to make a contribution to address this gap by examining the nature of the regulatory environment and the incentive structure fashioned by the South African state and showing how this relates to the issue of gender in informal and flexible work in South Africa.

3.5 GENDER REGULATIONS

FIGURE 3: Lexical order hierarchy



Extracted from du Plessis, Fouche and van Wyk (2002)

According to Figure 3, the Bill of Rights, which is contained in the South African Constitution, reigns supreme over all other legislation (du Plessis *et al.*, 2002, p.4). du Plessis *et al.* (2002, p.6) looked at a specific sector of Acts which take precedence over other illustrated sources, with the exception of the Bill of Rights. Therefore, in the case of the domestic service sector, Sectoral Determination 7 takes precedence over these other acts, as long as it does not violate the employee labour rights, as laid down in the Bill of Rights, as well as if it does not contradict what is laid down in the Basic Conditions of Employment Act. It is the law of the country. The Labour Relations Act's main purpose is to protect the rights of workers and to protect workers from unfair treatment (du Plessis *et al.*, 2002, p.6). The BCEA deals mainly with the working conditions of workers. It does not set parameters within which to regulate these conditions (du Plessis, *et al.*, 2002, p.7).

“The state carries the responsibility of protecting vulnerable workers. Domestic workers enjoy protection under the Basic Conditions of Employment Act, 1997” (Department of Labour, 2003, p. 1).

Smit and Grobler (1998, p.3) state that there are more than one million domestic workers employed throughout South Africa. According to Barker (1992, p.177), legislation such as job reservation, which reserved certain jobs for whites only, influx control which limited access to urban areas, the Group Areas Act, which limited the availability of housing for blacks and also restricted social interaction, and several other pieces of legislation resulted in the entrenchment of discriminatory practices.

The Department of Labour certainly cannot overlook the inherently exploitative nature of hiring an economically less favoured woman, who is likely to come from a historically disadvantaged racial group and/or from an undeveloped country, to do work that remains socially undervalued (Department of labour, 2003, p. 3). Coyle and Skinner (1988, p.1) raise the concern that there is an overwhelming concentration of women in low-paid, low status work, which is segregated from men's work and where the real contribution women make is systematically undervalued and marginalised. However, specific regulation starts a different, dynamic process. It begins to expose the actual nature of the work, the workplace and the worker. It forces those who pay for the work, those who regulate the work, and even those who do the work, to think about work in a radically different manner (Coyle and Skinner, 1988, p.1).

Through that dynamic process, specific, and ultimately more accurate, regulation has the potential to restore some respect and dignity to domestic work. Coyle and Skinner (1988, p.1) challenge this by stating that it is a myth that with formal legislative equality the position of women in the employment structure is getting better – if anything it has become worse. Mobilization of workers into trade unions or domestic workers' associations, and garnering favourable public support, are essential to the process of preventing or countering regulation that would further disenfranchise domestic workers. In addressing discriminatory practices on domestic workers the South African government provided guide-lines either from the Labour Relations Act or Labour Market Policies.

3.6 SUMMARY

This chapter looked at the area of the current study's background and its population, regulations and acts that relate to domestic workers. Chapter four will view the research methodology.

CHAPTER FOUR: RESEARCH METHODOLOGY

4.1 INTRODUCTION

Chapter Four looks at the statement of the problem, and procedures for collecting data in an investigation to assess whether or not the employers of domestic workers comply with the minimum conditions of employment, as laid down in Sectoral Determination 7: Domestic Worker Sector. The chapter commences with the research design. Sampling and analysis of data were used to provide accurate results and a greater chance of reliability and validity.

4.2 STATEMENT OF THE PROBLEM

Domestic workers are still facing problems in terms of wages, working hours, meal intervals and leave. According to COSATU (2005, p.5), most domestic workers' employers are not implementing the Sectoral Determination 7: Domestic Worker Sector. The Department of Labour (2005, p.9) is fully committed to enforcing the Domestic Worker Sectoral Determination, emphasising that the determination applies to everyone and there are no exemptions (Department of Labour, 2005, p.11). According to the Minister of Labour "the enforcement of the Sectoral Determination presents unique challenges and called on domestic workers to help with the vigorous enforcement of this law and report any transgressions to the Department of Labour" (Department of Labour, 2003, p.8). But the current researcher is of the opinion that domestic workers' employers are not complying with what is stipulated by Sectoral Determination 7: Domestic Worker Sector and domestic workers are afraid to report such incidences to the Department of Labour, as is required by law.

Through the extension of the Basic Conditions of Employment Act, the Labour Relations Act, the Employment Equity Act and the Skills Development Act to the domestic service sector, the implications are such that the terms and conditions of the employment relationship are no longer based on just a mutual agreement between the employer and the employee. The employer is now expected to comply with all the rules and standards that are set by legislation, failing which penalties may be imposed (Department of labour, 2003, p.5). The present research is trying to establish whether or not the employers of domestic workers in the Msunduzi Municipal Area comply with the minimum requirements laid down in Sectoral Determination 7: Domestic Worker Sector.

4.3 RESEARCH QUESTIONS

- Are the domestic workers' wages, working hours, meal intervals and leave according to Sectoral Determination 7: Domestic Worker Sector?
- What problems do domestic workers face in terms of wages, working hours, meal intervals and leave?

4.4 HYPOTHESIS

The study compares what the employers offer to employees in terms of wages, working hours, meal intervals and leave in relation to Sectoral Determination 7: Domestic Worker Sector. The present researcher believes that employers are not adhering to the stipulation of the Sectoral Determination 7: Domestic Worker Sector.

4.5 RESEARCH DESIGN

The following subsections describe the steps that were taken to collect data through interviews, explaining the population where the sample size was determined in relation to data collection instrument, the approach to data analysis and also the limitations of the study.

4.5.1 Data collection instrument

A questionnaire was administered to domestic workers at taxi ranks in order to distinguish between what is stipulated by the minimum conditions, as set out in Sectoral Determination 7, and what is actually being done by employers of domestic workers. This method of data collection seemed most suitable in this instance due to the fact that most domestic workers are illiterate. Self-administered questionnaires were prepared for the study but the researcher decided to carry out interviews so that she could explain or clarify when the language barrier emerged. Two hundred and twenty questionnaires, consisting of closed questions, were used. Face-to-face interviews with the aid of a questionnaire were used to gather relevant data about the working conditions of domestic workers pertaining to wages, working hours, meals and leave. The interviews were conducted with domestic workers who are employed on a five-day week, as well as those who work a six-day week. Face-to-face interviews were held with domestic workers in May 2005.

4.5.2 Population

The study unit for this research consisted of domestic workers who worked in the Msunduzi Municipality Region (Area A). Of a population of 521 805 living in the Municipality, 41% are of working age. However, 40% of this group are unemployed. About half of the households in Msunduzi fall into the low-income category, with about 14% having no income and 35.6% earning less than R1 500 a month, this was also where the researcher categorised domestic workers according to the Sectoral Determination 7: Domestic Worker Sector that stipulates the average salary of R861.90 which is below R1500.00

4.5.3 Sample

The research sample size was two hundred and twenty (220) domestic workers who worked in the Msunduzi Municipality demarcation. A nonprobability convenience sampling method was used for data collection. According to Hair *et al.* (2003, p.340) convenience sampling is a method in which samples are drawn based on convenience, for example mall-intercept interviewing of individuals at shopping malls or other high-traffic areas is a common method of generating a convenience sample. The researcher collected data at various taxi ranks within the Msunduzi Municipality. According to Hair *et al.* (2003, p.340) the disadvantage of convenience samples is that the data are not generalisable to the defined target population. Durrheim and Terreblance (1999, p.380) suggest that taking cases on the basis of their availability is referred to as “convenience” or “opportunistic” sampling as was the case with the current study. Domestic workers were interviewed as they were waiting to board taxis after working hours.

4.6 Data collection procedure

The data collection took place over a period of three weeks, due to the fact that the researcher used self administered questionnaires but decided to interview respondents for the purpose of interpreting and writing problems which were anticipated in some of the respondents, as some of the respondents cannot read and write. It took ten minutes for each respondent to answer questions.

4.6.1 Pre-testing

A pre-test of the questionnaire was carried out at four taxi ranks, with nine domestic workers. Dane (1990, p.127) finds pre-testing as the most important phase of survey research. No survey data can be trusted unless it can be ensured that the respondents understand the instrument and provide appropriate responses. Pre-testing involved surveying a small group of people who have similar characteristics to those to be surveyed. Pre-testing ensures relevance, effectiveness and clarity. Dane (1990, p. 127) describes the purpose of the pre-test as to “fine tune the instrument in much the same way that a bench check allows a technician to evaluate a part before installing it”. Pre-testing ensures that the respondents understand and respond to the instrument appropriately. It is done to allow the research to identify those items that might be misunderstood, are poorly constructed or are irrelevant.

The domestic workers were identified from the taxi ranks in the suburbs of Chase Valley, Montrose, Hayfields and Northdale. As they were being interviewed by the researcher, ambiguity and irrelevant questions were noted and corrected for the purpose of the study.

4.7 DATA ANALYSIS

Alreck and Settle (1995, p.267) describe data analysis as “the use of statistical tools in order to reduce the amount of details in the data, summarising it and making the most important facts and relationships apparent”. Descriptive data analysis statistics were used to analyse the two hundred and twenty questionnaires. Mean, mode, median and Standard Deviation are important components of statistical analysis. The presentation of the study used bar and pie charts. For the hypothesis test the T-test (one sample) and the chi-square test were used and the use of SPSS (11.5) for data analysis was used. Statistics were used to determine the extent to which the employers of domestic workers comply with the stipulations of Sectoral Determination 7: Domestic Worker Sector.

The hypothesis was tested using the T-test and chi-square: the T-test was used to compare two (estimated) variables or population means and its purpose was to evaluate the difference between two means (Terre Blanche et al, 1999, p.143) The present study compared the stipulated Sectoral Determination 7: Domestic Worker Sector wage, hours per week, and earning per stand-by, i.e. what the employer offers to an employee (Department of Labour, 2005, p.9). The chi-square test worked by comparing observed and expected frequencies. It

underpinned many multivariate forms of categorical or nominal data analysis (Tredoux and Durrheim, 2002, p.232).

4.8 VALIDITY OF THE STUDY

This study was carried out using a quantitative research method, with the language of measurement as numbers. Durrheim (1999, p. 42) describes quantitative research as collecting data in the form of numbers and using statistical types of data analysis. The process “begins with a series of predetermined categories, usually embodied in standardised quantitative measures, and uses this data to make broad and generalisable comparison” (Durrheim, 1999, p. 42).

For validity purposes, the questions were tested through pre-testing and verified by informants with the same level of understanding as those who were involved in the study. This was to identify ambiguous questions and to establish whether or not they measured what they were supposed to measure and whether they elicited the information that was required for the study (Powell, 1991, p.87).

4.9 RELIABILITY

The convenience sampling method used in this study was appropriate because of its relatively low cost, in terms of time and money, work when compared to other methods that could have been used although the researcher had to spend time waiting for domestic when they come back. The representivity of the sample cannot be measured because sampling error estimates cannot be calculated (Hair *et al.*, 2003, p.340). The data collection took place over three weeks. The use of the self-administered questionnaire in the form of an interview allowed respondents to express themselves and the research to find more required information. However, it should be noted that the use of the self-administered questionnaire without interviews do not permit any follow-up, in terms of examples, clarifying of ambiguous responses. According to Hair *et al.* (2003, p.340) given self selection and voluntary nature of participating in the data collection, researchers should consider the impact of non-response error. T-test and Chi square tests were used to test the hypothesis.

4.10 SUMMARY

Chapter Three outlined the methodology used in this survey research. The chapter covered areas such as research design, population, data collection procedure, the data collection instrument, pre-test, data analysis and reliability. The next chapter presents the data that was generated. Frequency tables were generated to express percentages and charts were used to graphically display categorical distribution.

CHAPTER FIVE: PRESENTATION OF RESULTS

5.1 INTRODUCTION

The previous chapter looked at the methodology used to gather data. Chapter Five presents the findings using graphs and tables.

Chapter Two showed that there was a power imbalance between the employer and the employee. Normally the employer had more power than the employee. It was also evident that Common Law tended to favour the employer and it did not provide enough protection for employees' rights. In order to try to strike a balance of power between these two parties, protective legislation had been put in place by the Department of Labour. This was done with the intention of protecting employees from being exploited by their employers. Nevertheless, Common Law was the source of labour law. Common Law was reviewed in relation to other labour legislation and determined which of these takes precedence in certain circumstances.

There was thus a need for the promulgation of sector-specific determinations. It should also be noted that Sectoral Determinations were only made when there was no bargaining council regulating an industry, as was the case with the domestic service sector. For the regulation of the domestic service sector there was Sectoral Determination 7: Domestic Worker Sector, which had been promulgated (Department of labour, 2005, p.9). Sectoral Determination 7: Domestic Worker Sector laid down the minimum conditions such as, but not limited to, working hours, leave, meals and remuneration (Department of labour, 2005, p.9).

Chapter Four presents the data that has been collected to compare wages, hours of work, leave and meal intervals which the respondents received from the employment aspect and that provided by the Sectoral Determination 7: Domestic Worker Sector.

5.2 SAMPLE PROFILE

The study sampled respondents between the ages of 30 and 65 years. The respondents were all from the Pietermaritzburg, Msunduzi Area. The following section gives detailed information on the demarcation of different areas. The survey was analysed per question in relation to the stipulations of Sectoral Determination 7: Domestic Worker Sector.

5.3 AREAS THAT WERE RESEARCHED

Question 1.1 What is the name of the area that you are working in?

Question 1 tried to locate the geographical area of the employee and to identify if the respondent belonged to the researched area. It aimed to compare wages of the respondents and to ascertain which areas were implementing Sectoral Determination 7: Domestic Worker Sector.

The purpose of this question was to try to include a representative sample of domestic workers who are working within the whole Msunduzi area (Area A). Table 1 presents names of places and percentages:

TABLE 1: Msunduzi areas, where research was conducted

Places	Frequency	Percent	Places	Frequency	Percent
Alex	4	1.8	Glenwood	2	.9
Allandale	2	.9	Eastwood	3	1.4
Ashdown	15	6.8	Machibisa	7	3.2
Athlone	9	4.1	Madubisa	1	.5
B.Ridge	3	1.4	Montrose	14	6.4
Bisley	2	.9	Northdale	10	4.5
Bombay	1	.5	Napierville	2	.9
Heights					
BombayH.	1	.5	Newholme	3	1.4
C. Valley	21	9.5	North.M	1	.5
Prestbury	1	.5	Oak Park	4	1.8
C.Valley	1	.5	Oribi	2	.9
Central M.	14	6.4	Panorama	1	.5
Clarendon	6	2.7	Pelham	7	3.2
Cleland	2	.9	Richmond	2	.9
Edendale	4	1.8	S.Gate	1	.5
Epworth	1	.5	Scottsville	18	8.2
Hayfields	8	3.6	Townbush	4	1.8
Hilton	13	5.9	Wembley	12	5.5
Hilton.G.	4	1.8	Westgate	2	.9
Imbali	8	3.6	Winterskloof	1	.5
L.Meade	2	.9	Woodlands	3	1.4
Total	220	100.0			

Table 1 above, gives an indication of respondents per area, within Area A (Msunduzi). The number of respondents varies from each area researched. It became evident that urban areas such as Chase Valley had a high response percentage in comparison to rural areas such as Machibisa. This is due to the fact that most people who stay in urban areas are employed (middle-class), very busy and in need of, and can afford to pay, domestic workers. People who live in areas such as Machibisa are mostly domestic workers and very few can afford to employ a domestic worker.

Question 1.2 What is your age?

This demographic information was required as it was the intention of this question to investigate whether or not employers of domestic workers comply with the prohibition of child labour. It transpired that there were no minors employed as domestic workers in the Msunduzi Municipality Area.

Figure 4: Average age of domestic workers

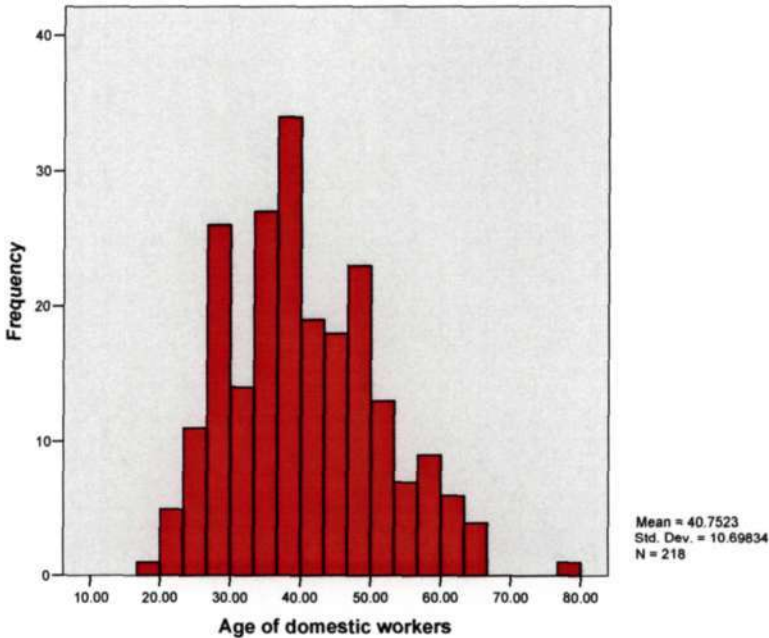


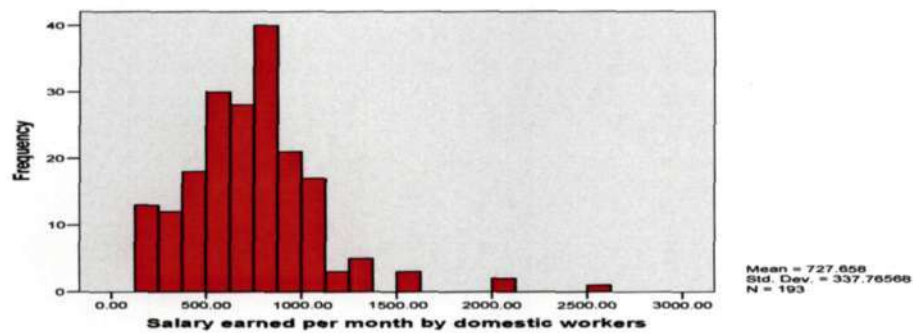
Figure 4, shows that the average age of domestic workers is 40.8 years. The findings of this research were that there are no employers who use child labour in the area studied.

5.3.1 Wages

Question 2.1 What is your salary per month?

The purpose of this question was to get an idea of how much domestic workers were earning, in comparison to the amount of R861, 90 that they are supposed to be earning, as laid down by Sectoral Determination 7: Domestic Worker Sector, as indicated in the literature review: (Table 1a, p.34) of this study.

Figure 5: Average monthly salary earned by domestic workers



According to Figure 5, the average salary that is earned by domestic workers is R727.70 and this is clearly below the standard that they are supposed to be earning, which is currently R861.90.

Question 2.2 Do you get an annual increase?

Figure 6: Percentage of domestic workers who get an annual increment

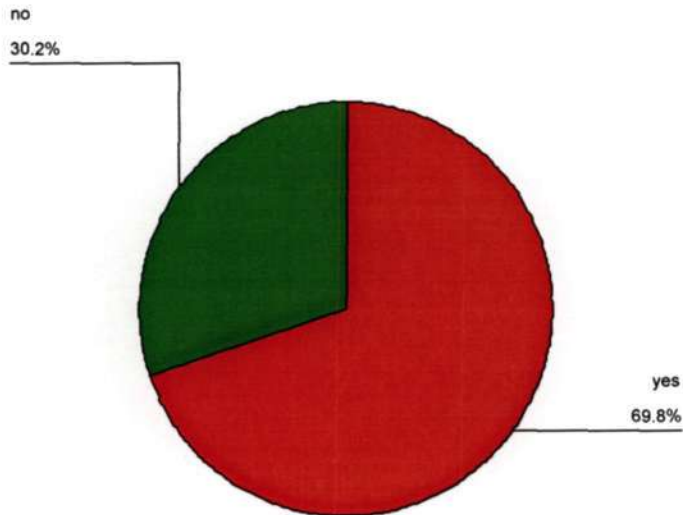
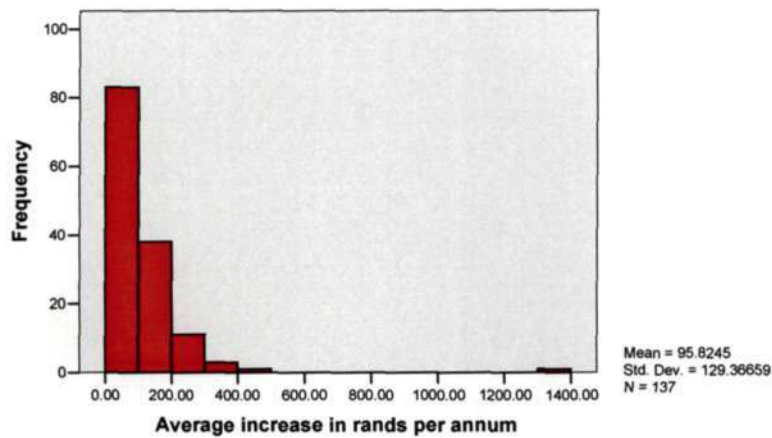


Figure 6, shows that almost 70% of domestic workers do get an annual salary increment, but approximately 30% of domestic workers do not get an annual salary increment. Sectoral Determination 7: Domestic Worker Sector stipulated that domestic workers were entitled to an 8% salary increment from 1 November 2003 and 1 November 2004. Subsequently, the increase should be added every year on 1 November. If the inflation rate is higher than 10% then the wage increase of 8% will be adjusted by the Department of Labour.

Employers who cannot afford to pay the new minimum wage have an option of reducing the hours of work, instead of retrenching the employee.

Figure 7: Average increase in rands (per annum)

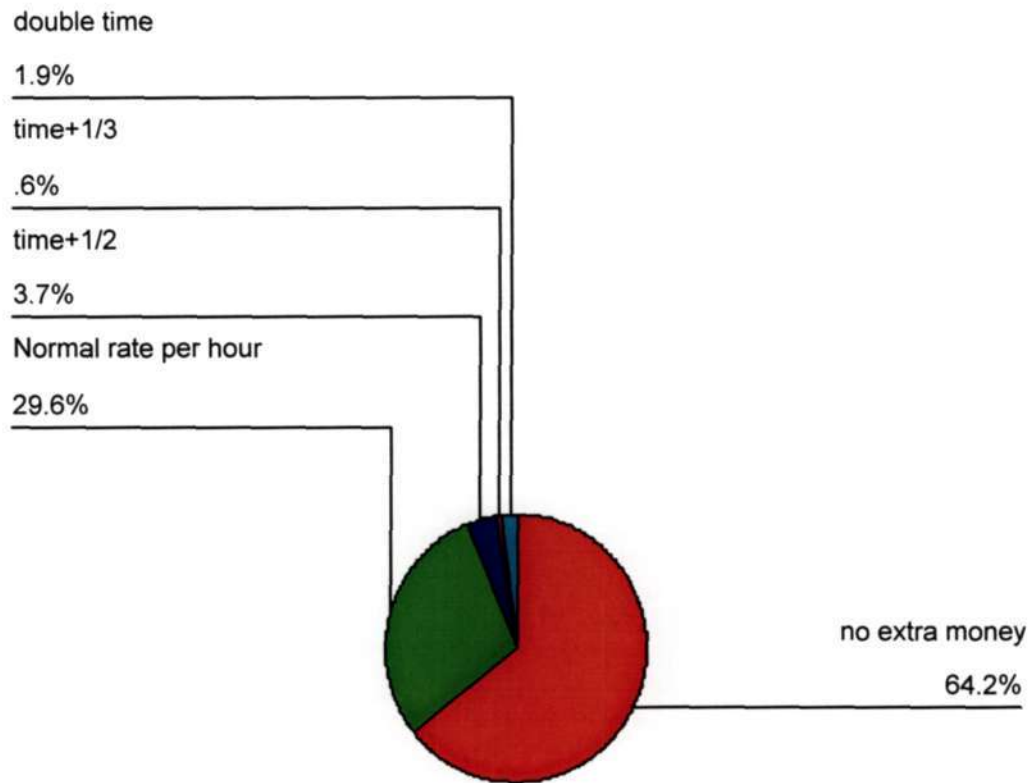


The histogram (Figure 7) shows an average increase of R95.80. The percentage was calculated from the expected monthly wages divided by the average increase mentioned above, which approximately 5 % is paid to domestic workers by the employer. Although the stipulated 8% (as indicated in Sectoral Determination 7 in Appendix 3) increase that they were entitled to get per annum.

Question 2.3 How much do you earn for overtime?

The aim of this question was to assess whether or not domestic workers are remunerated for overtime work at a rate that is 1.5 times their normal pay.

Figure 8: Average overtime earnings (percentages)



The research presented in Figure 8 found that only 3.7% of domestic workers who work overtime are getting the stipulated overtime earnings of normal pay times 1.5. A very large portion of the sample (64.2%) does work overtime but gets no extra pay.

Question 2.4 Is your salary reduced because of accommodation deduction?

According to Sectoral Determination 7: Domestic Worker Sector, an employer may deduct not more than 10% off the employee's wage for accommodation (Department of Labour, 2005, p.9). There is also a prerequisite for the accommodation provided. It should be in a good condition, should have at least one window and a door, which can be locked, and have a bathroom.

Figure 9: Deduction for accommodation purpose

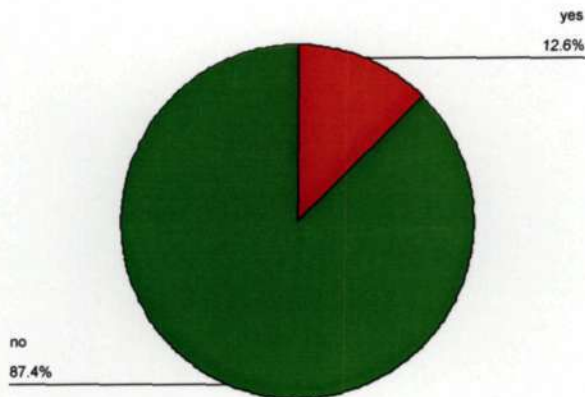
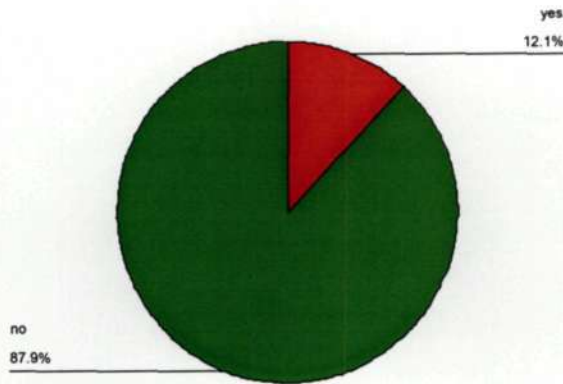


Figure 9 shows that most employers (87, 4%) do not deduct any money for accommodation from their employees. According to Sectoral Determination 7: Domestic Worker Sector an employer may deduct not more than 10% off the employee's wage for accommodation (Department of Labour, 2005, p.11). It is clear from this presentation that most employers do not deduct the stipulated percentage for accommodation. When the above percentage is calculated from the stipulated wage for domestic workers the average deduction is R90.30 per month. The data presented above reflects that only 12.6% of domestic workers who are provided with accommodation by their employer do pay for it and 87, 4% stay rent-free. Though a small fraction of domestic workers do pay for accommodation, on average they pay 12.4% of their wages which is more than the 10% stipulated in the Determination (Department of Labour, 2005, p.6).

Question 2.5 Do you get a night work allowance if you work after 18:00 or before 06:00?

Sectoral Determination 7: Domestic Worker Sector stipulates that domestic workers should get an allowance if they work at night (Department of labour, 2005, p.6).

Figure 10: Domestic workers who get a night allowance (percentage)



The percentage was calculated from the stipulated wage of domestic workers and it transpired that the average night allowance was R30.30. Figure 10 showed that only 12.1% of domestic workers who work at night get a night allowance and 87.9% of domestic workers who work at night get nothing. According to the Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2005, p.14) domestic workers should have an allowance if they work at night, and also that “night work” means work performed after 18:00 and before 06:00 the next day. In this case an employer may only require or permit a domestic worker to perform night work, if agreed in writing and if the domestic worker is compensated by the payment of an allowance; and the domestic worker resides at the workplace or transport is available between the domestic worker’s place of residence and the workplace at the beginning and end of the domestic worker’s shift (Department of Labour, 2005, p.14).

Question 2.6 Do you get a payslip every week/month with all the information/deductions reflected on it?

Domestic workers should get payslips with all the necessary details so that they know how much they are earning and what the deductions are from their wages (Department of labour, 2005, p.9). They also need to know how much they were paying for items such as UIF.

Figure 11: Domestic workers who get a payslip and those who do not get a payslip (percentages)

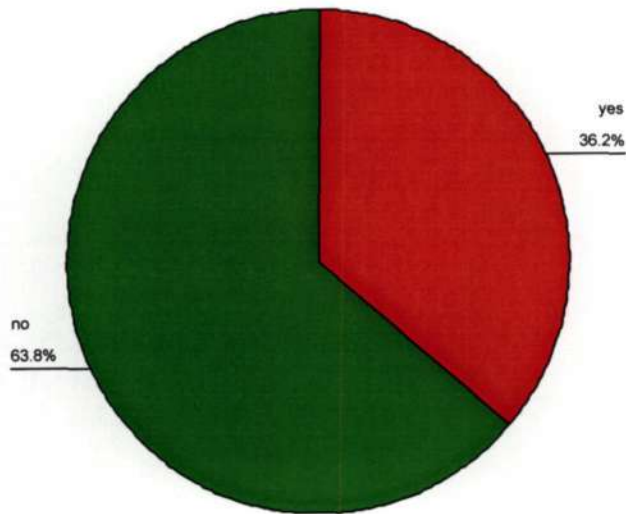


Figure 11 illustrates that 63.8% of employers do not provide their domestic workers with payslips and only 36.2% of employees receive pay- slips.

Question 2.7 Does your boss keep copies of this pay slip?

Employers are expected to keep copies of their employees' payslips for availability when, for example, Department of Labour officials carry out spot checks (Department of labour, 2005, p.9).

Figure 12: Employers who keep copies of a payslip and those who do not (percentages)

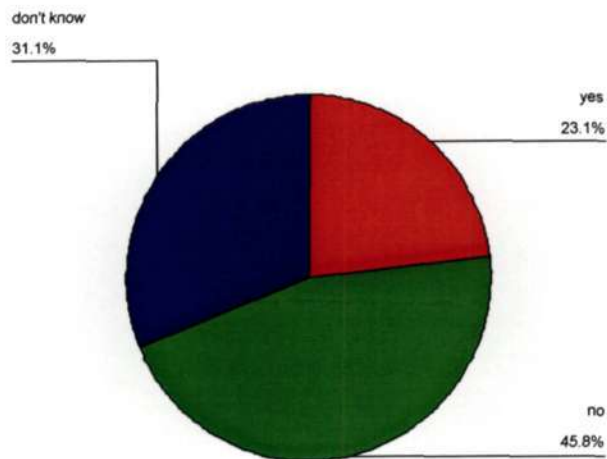


Figure 12 shows that 45.8% of employers do not keep copies of their employees' payslips and only 23.1% do keep these copies, as indicated by domestic workers.

5.3.2 Working hours

Question 3.1 How many hours do you work per week?

The Determination stipulates that domestic workers should work a maximum of 45 hours per week (Department of Labour, 2003, p.3).

TABLE 2: Average hours worked by domestic workers per week

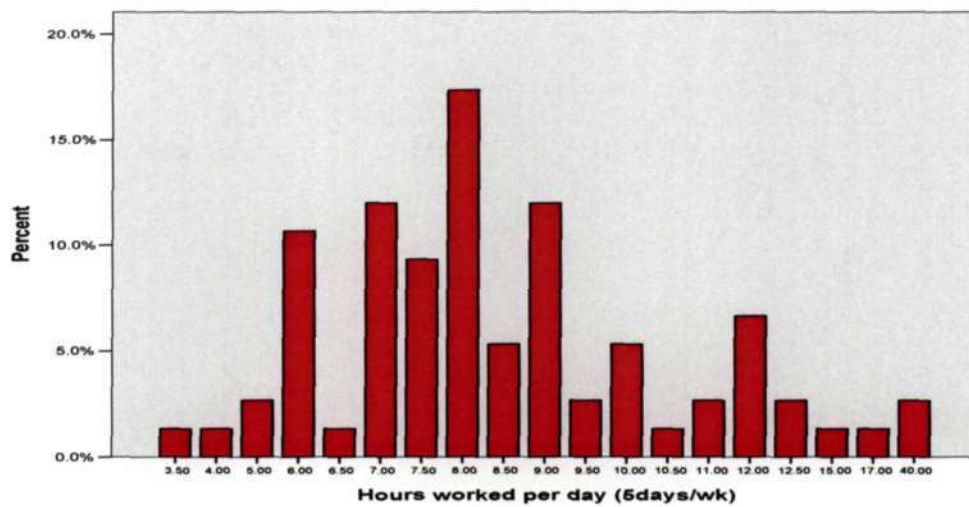
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 45 hrs	100	45.5	45.9	45.9
	45-55 hrs	52	23.6	23.9	69.7
	56-66 hrs	29	13.2	13.3	83.0
	67-77 hrs	17	7.7	7.8	90.8
	> 78 hrs	20	9.1	9.2	100.0
	Total	218	99.1	100.0	
Missing	System	2	.9		
Total		220	100.0		

Table 2 indicates that 46% of domestic workers work more than 45 hours per week. What was also noted was that more than 50% worked more than the stipulated hours, with nearly 10% working almost double.

Question 3.2 How many hours do you work per day (if you work 5 days per week)?

Domestic workers who work 5 days per week are expected to work a maximum of 9 hours per day (Department of Labour, 2003, p.3).

Figure 13: Average hours per day for domestic workers who work a five-day week



From Figure 13 it is clear that, on average, domestic workers who work a 5-day week work 9.3 hours per day, which is almost in line with the stipulation of the Determination which laid down a maximum of 9 hours per day.

Question 3.3

How many hours do you work per day (if you work for more than 5 days per week)?

The domestic workers who work for more than 5 days per week should not be expected to work more than 8 hours per day (Department of Labour, 2003, p.5). This is the stipulation laid down in the Determination.

Figure 14: Average hours per day for domestic workers who work for more than five days per week

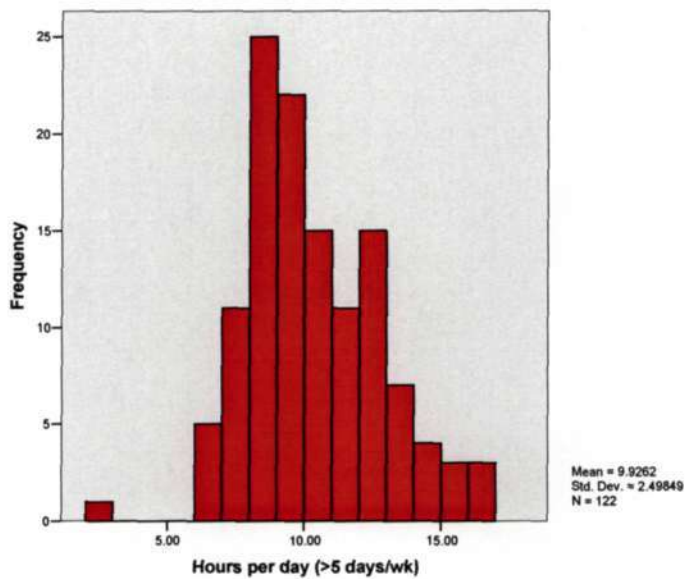
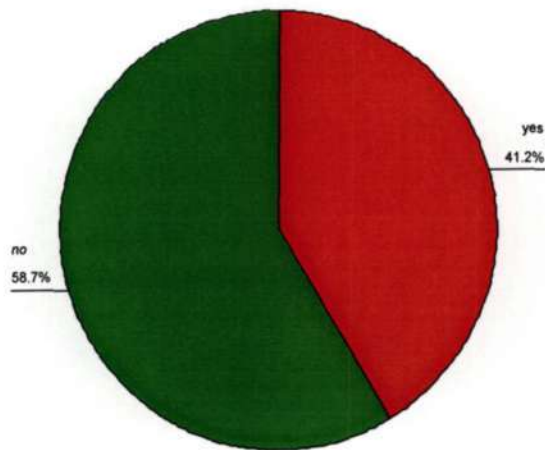


Figure 14 shows that the average hours worked by domestic workers is 9.9 hours for those who work more than 5 days per week. They are supposed to work a maximum of 8 hours per day (Department of Labour, 2003, p.5).

Question 3.4 Do you work on standby?

The purpose of this question was to check whether domestic workers do work on standby.

Figure 15: Domestic workers who work on standby

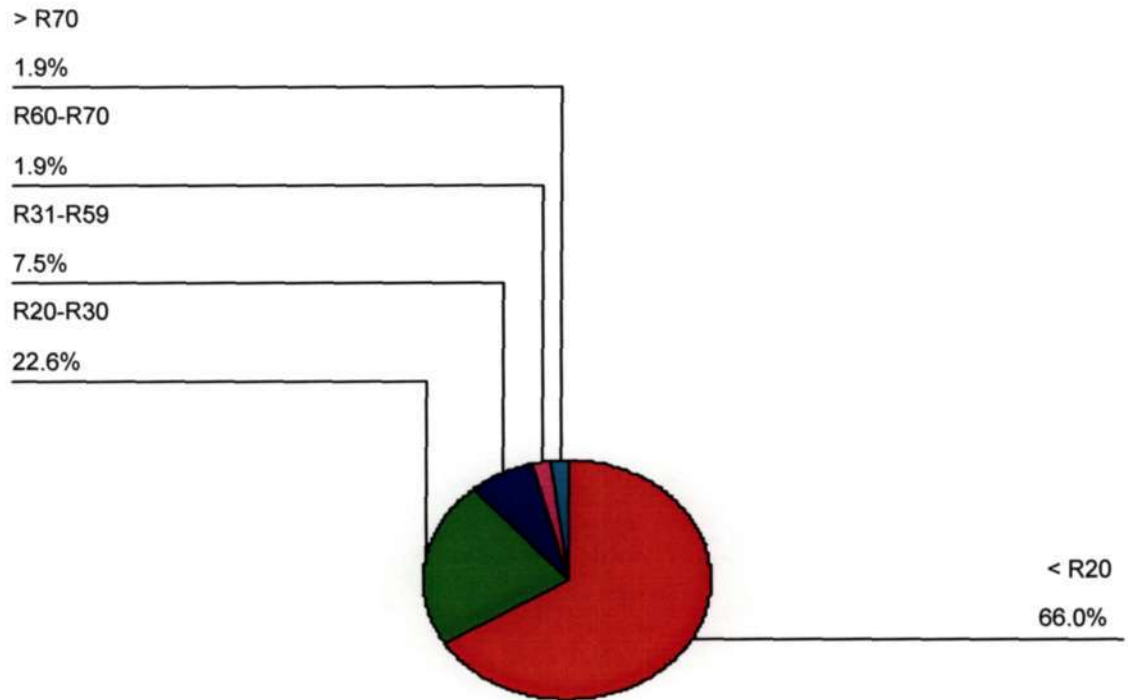


Standby means working between 20:00-06:00, as mentioned in Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2003, p.2). The result of this question is that 41.2% of the domestic workers surveyed do work on standby.

Question 3.5: Average standby earnings per shift

Domestic workers should be paid at least R20 per shift if they work on standby. This research will evaluate the following tables and figures to see whether employers of domestic workers comply with this stipulation. For the 30 % who do work on standby the average amount earned per shift is R13.20. This is below the minimum of R20 stipulated in the Determination.

Figure 16: Average standby earnings per shift



According to Figure 16, approximately 66% of domestic workers who work on standby earn less than R20 per shift.

Question 3.6 If you work on Sundays, how much do you earn?

According to Sectoral Determination 7: Domestic Worker Sector, work on Sunday is voluntary and if the domestic worker works on a Sunday she should be paid double the daily wage.

An average of R22 is earned on a Sunday for those who work on Sundays. They should be paid double their normal wages, as is stipulated in Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2003, p.5).

Table 3: Average earnings for work on Sunday

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No extra money	43	19.5	59.7	59.7
	Normal wage	22	10.0	30.6	90.3
	Wage+1/2	4	1.8	5.6	95.8
	Double wage	3	1.4	4.2	100.0
	Total	72	32.7	100.0	
Missing	System	148	67.3		
Total		220	100.0		

Figure 17: Average earnings for work on Sunday (percentages)

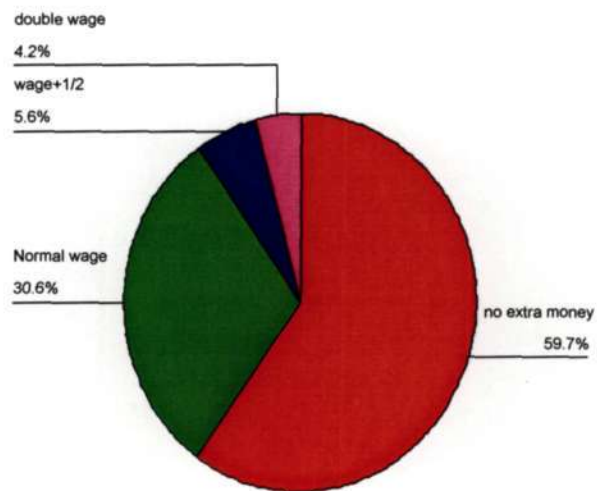


Figure 17 shows that only 4.2% of domestic workers who work on Sunday are remunerated double their daily wage, 59.7% of these domestic workers who work on Sunday do not earn any extra money.

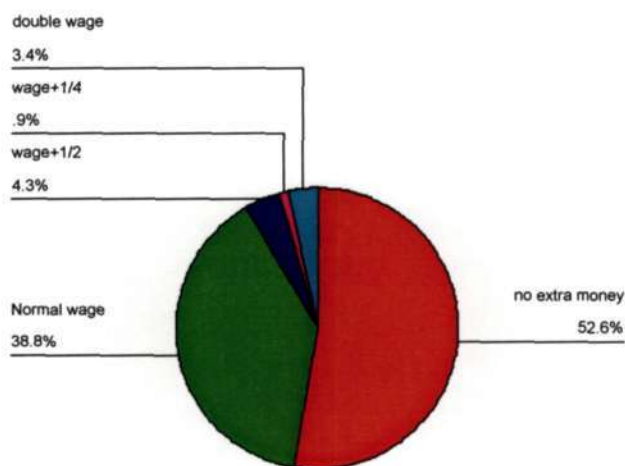
Question 3.7 If you work on Public Holidays, how much do you earn for that day?

Working on Public Holidays is voluntary, just like working on Sunday. The aim of this question was to assess whether domestic workers who work on Public Holidays are paid double their normal days' wages (Department of Labour, 2003, p.3).

Table 4: Average Public Holiday pay

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	no extra money	61	27.7	52.6	52.6
	Normal wage	45	20.5	38.8	91.4
	Wage+1/2	5	2.3	4.3	95.7
	Wage+1/4	1	.5	.9	96.6
	Double wage	4	1.8	3.4	100.0
	Total	116	52.7	100.0	
Missing	System	104	47.3		
Total		220	100.0		

Figure 18: Average Public holiday pay (percentages)



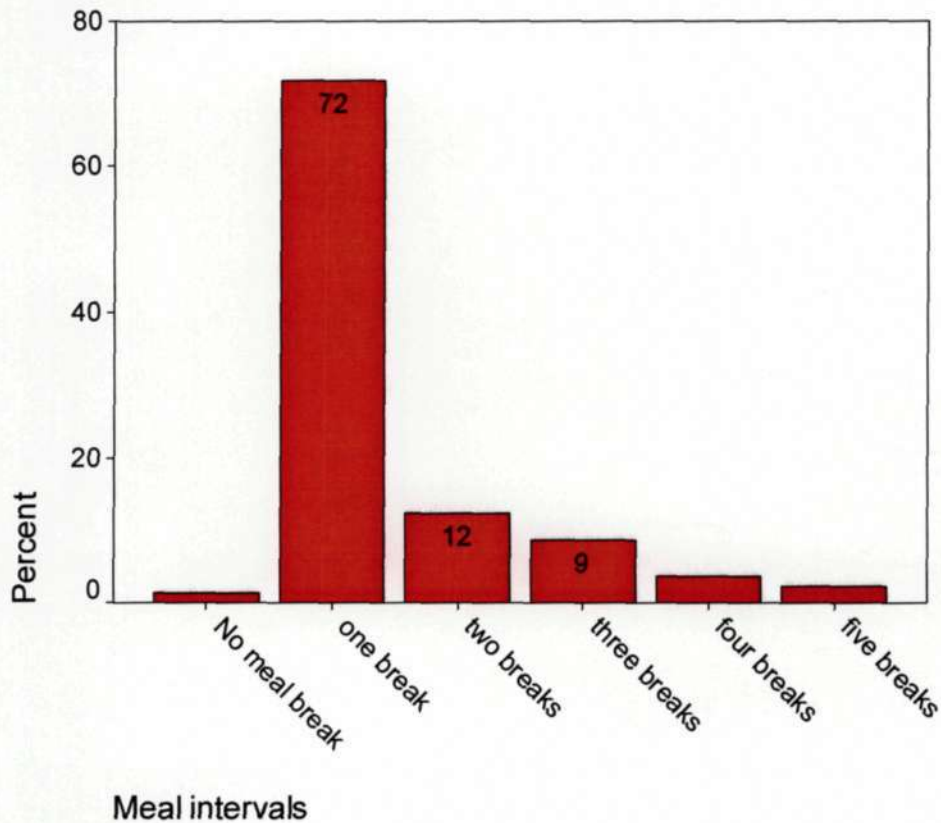
From Figure 18 it is evident that only 3.4% of domestic workers who work on a Public Holiday are compensated double their daily wages, 52.6% of domestic workers who avail themselves for work on a Public Holiday do not earn any extra income.

5.3.3 Meal intervals

Question 4.1 How many meal intervals do you have per day?

The minimum stipulation is such that an employee is entitled to a meal interval per day. If a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes (Department of Labour, 2005, p.17)

Figure 19: Average meal intervals per day

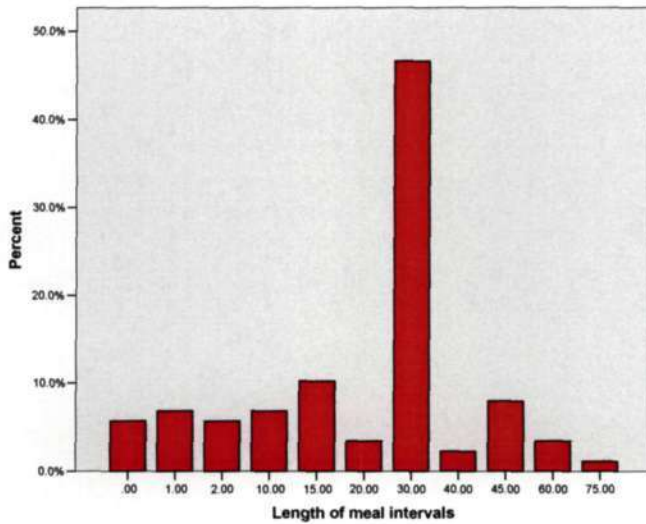


On average the majority (72%) of respondents indicated that they had one meal interval per day, 12% of respondents had two intervals, 9% mentioned that had three meal intervals per day and almost 6.5% had four to five meal intervals per day and less than one percent had no meal interval per day.

Question 4.2 How long are these meal intervals?

The aim of this question was to evaluate whether domestic workers are given an hour's break for a meal after not more than five hours' work (Department of labour, 2005, p.9).

Figure 20: Average duration of meal interval



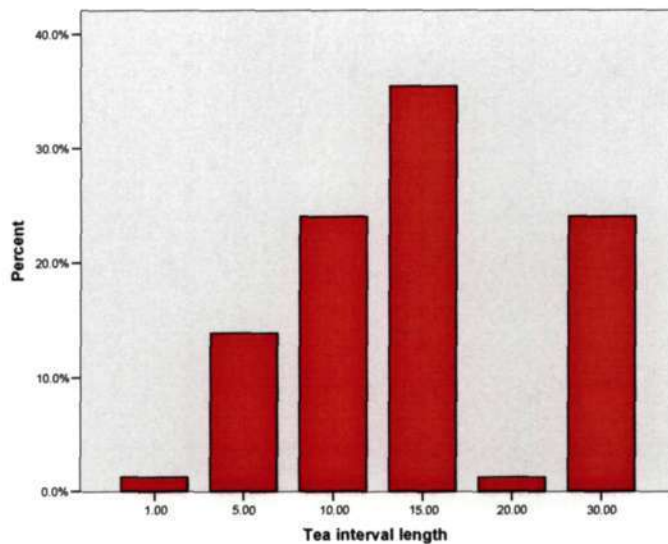
On average, domestic workers are granted and expected to enjoy their lunch in 30 minutes. This is violating their entitlement to at least an hour's meal interval in terms of Sectoral Determination 7 (Department of Labour, 2005, p.2).

Question 4.3 Do you take tea intervals?

According to the Basic Guide to Working Hours “Workers are entitled to two 15 minute tea breaks in the mid morning and afternoon” (Department of Labour, 2005, p.1).

Question 4.4 How long are these tea intervals?

Figure 21: Average duration of tea interval



According to Figure 21, on average, employees are granted 15.9 minutes tea interval. The findings conformed to the stipulated requirement of Basic Guide to Working Hours (Department of Labour, 2005, p.1).

5.3.4 Leave

Question 5.1 Do you get annual leave?

Employees are entitled to annual leave. In this question the present research evaluated whether or not domestic workers do get their entitled annual leave (Department of Labour, 2005, p.20). According to Sectoral Determination 7: Domestic Worker Sector, an employer must grant a domestic worker at least three weeks annual leave on full pay in respect of each 12 months of employment (the 'annual leave cycle'), by agreement, at least one day of annual leave on full pay for every 17 days on which the domestic worker worked or was entitled to be paid; or, by agreement, one hour of annual leave on full pay for every 17 hours for which the domestic worker worked or was entitled to be paid (Department of Labour, 2005, p.18). An employer must grant a domestic worker an additional day of paid leave if a Public Holiday falls on a day during a domestic worker's annual leave, on which the domestic worker would otherwise have worked (Department of Labour, 2005, p.18). An employer may reduce a domestic worker's entitlement to annual leave by the number of days of occasional leave on

full pay granted to the domestic worker at the domestic worker's request in that annual leave cycle (Department of Labour, 2005, p.18).

Figure 22: Average number of domestic workers who are granted annual leave (percentages)

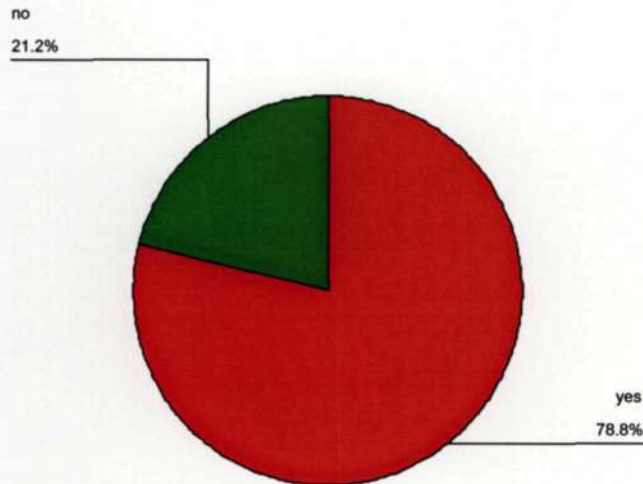


Figure 22 shows that 78.8% of domestic workers are allowed annual leave and only 21.2% of domestic workers are not granted annual leave.

Respondents were asked: "If yes, how many days do you get for annual leave?"

Annual leave may not be less than three weeks per year for full-time workers (Department of Labour, 2005, p.19). The purpose of this question was to evaluate whether domestic workers get three weeks per year as annual leave. An employer must grant at least three weeks annual leave on full pay in respect of each 12 months of employment (the 'annual leave cycle'), not later than six months after the end of the annual leave cycle or the year in which the leave was earned; the leave earned in one year over a continuous period, if requested by the domestic worker (Department of Labour, 2005, p.18).

TABLE 5: Average number of days granted for annual leave

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 14 days	36	16.4	22.6	22.6
	14-20 days	43	19.5	27.0	49.7
	21 days	60	27.3	37.7	87.4
	22-30 days	16	7.3	10.1	97.5
	> 30 days	4	1.8	2.5	100.0
	Total	159	72.3	100.0	
Missing	System	61	27.7		
Total		220	100.0		

Approximately 49.6% of domestic workers do not get 21 days annual leave, 37.7% did get the stipulated leave. According to Sectoral Determination 7: Domestic Worker Sector (Department of labour, 2005, p.11), leave benefits are three weeks per year/or 1 day for 17 days worked/1 hour for 17 hours worked (Department of Labour, 2005, p.19).

Question 5.2 Do you get sick leave?

Figure 23: Percentage domestic workers who are granted sick leave

The purpose of this question was to investigate whether or not domestic workers were granted sick leave (Department of labour, 2005, p.10).

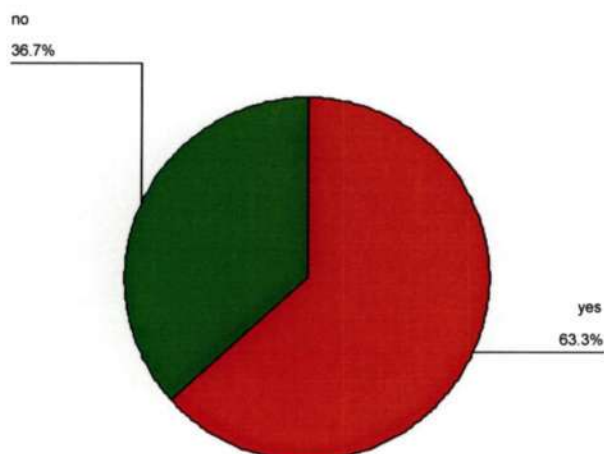


TABLE 6: Average number of domestic workers who are granted sick leave

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	119	54.1	63.3	63.3
	No	69	31.4	36.7	100.0
	Total	188	85.5	100.0	
Missing	System	32	14.5		
Total		220	100.0		

Figure 23 shows that 63.3% of domestic workers are granted sick leave and only about 36.7% do not get sick leave.

Respondents were asked: “If yes, how many days do you get for sick leave?”

The average number of days given for sick leave is 5.82 days per year, as determined by the present study, which indicates that domestic workers were not given the stipulated days, that is 12 days per year (Department of Labour, 2005, p.13). Sectoral Determination 7: Domestic Worker Sector states that during every sick leave cycle, a domestic worker is entitled to an amount of paid sick leave equal to the number of days the domestic worker would normally work during a period of six weeks (Department of Labour, 2005, p.11). Despite sub-clause (2) during the first six months of work, a domestic worker is entitled to one day’s sick leave for every 26 days worked (Department of Labour, 2005, p.11).

TABLE 7: Average days granted for sick leave

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 14 days	69	31.4	81.2	81.2
	14-20 days	4	1.8	4.7	85.9
	21 days	6	2.7	7.1	92.9
	22-30 days	2	.9	2.4	95.3
	> 30 days	4	1.8	4.7	100.0
	Total	85	38.6	100.0	
Missing	System	135	61.4		
Total		220	100.0		

85.9% got less than the stipulated days for sick leave.

Question 5.3 Do you get maternity leave?

The aim of this question was to investigate whether or not employers of domestic workers grant them maternity leave (Department of Labour, 2005, p.22). A domestic worker is entitled to at least four consecutive months of maternity leave. A domestic worker may commence maternity leave at any time from four weeks before the expected date of birth, unless otherwise agreed; or on a date from which a medical practitioner or a midwife certifies that it is necessary for the domestic worker's health or that of her unborn child (Department of Labour, 2005, p.22).

Figure 24: Average number of domestic workers who are granted maternity leave (percentages)

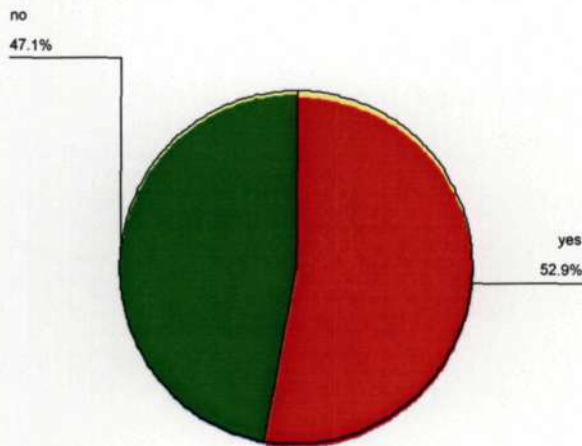


TABLE 8: Average number of domestic workers who are granted maternity leave

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	74	33.6	52.9	52.9
	No	66	30.0	47.1	100.0
	Total	140	63.6	100.0	
Missing	System	80	36.4		
Total		220	100.0		

Table 8 showed that 52.9% of respondents were granted maternity leave and 47.1% did not get or apply for maternity leave to which they were entitled.

Respondents were then asked: “If yes, how many consecutive months do you get for maternity leave?” According to Sectoral Determination 7: Domestic Worker Sector (Department of labour, 2005, p.13), employees are entitled to four consecutive months maternity leave (Department of Labour, 2005, p.22). This question investigated whether or not domestic workers are granted four consecutive months maternity leave

TABLE 9: Average months granted for maternity leave

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 1 month	3	1.4	4.0	4.0
	1 month	31	14.1	41.3	45.3
	2 months	9	4.1	12.0	57.3
	3 months	24	10.9	32.0	89.3
	4 months	2	.9	2.7	92.0
	5 months	1	.5	1.3	93.3
	> 5 months	5	2.3	6.7	100.0
	Total	75	34.1	100.0	
Missing	System	145	65.9		
Total		220	100.0		

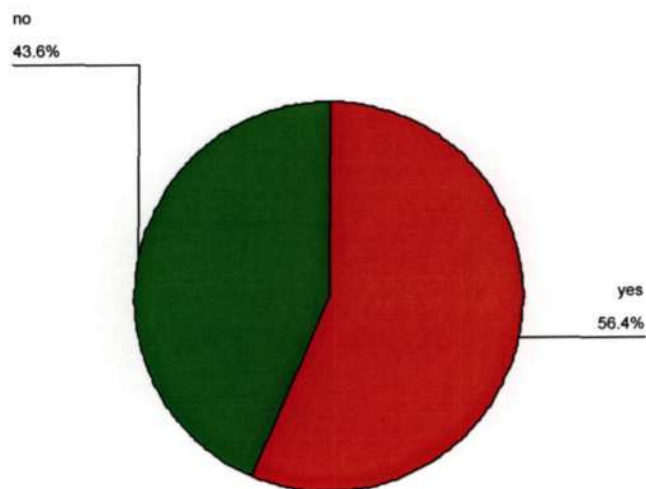
Table 9 shows that the average number of months for maternity leave was 3.2, which is below the four consecutive months stipulated by Sectoral Determination 7: Domestic Worker

Sector. Approximately 89.3% of domestic workers are given maternity leave of less than 4 months and only an average of 2.7% got 4 months maternity leave.

Question 5.4 Do you get leave for family responsibility?

Employees are entitled to family responsibility leave for incidences such as the birth of a child, or when the employee's child is sick or in the event of the death of the employee's spouse or life partner or parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling (Department of Labour, 2005, p.21). This question investigated whether domestic workers are granted family responsibility leave.

Figure 25: Average number of domestic workers who are given family responsibility leave (percentages)



Of the number sampled, the present research found that 56.4% of domestic workers were given family responsibility leave, whereas 43.6% were not granted family responsibility leave (Figure 25). Employees employed for longer than four months and for at least four days a week are entitled to take five days' paid family responsibility leave during each leave cycle, on a yearly basis (Department of Labour, 2005, p.21)

TABLE 10: Average number of days given for family responsibility leave

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	< 3 days	26	11.8	32.5	32.5
	3 days	23	10.5	28.8	61.3
	4 days	5	2.3	6.3	67.5
	5 days	11	5.0	13.8	81.3
	6 days	2	.9	2.5	83.8
	7 days	8	3.6	10.0	93.8
	> 7 days	5	2.3	6.3	100.0
	Total	80	36.4	100.0	
Missing	System	140	63.6		
Total		220	100.0		

Average consecutive number of days for family responsibility was 1.4 days. This is way below the five days' family responsibility leave they are entitled to. According to Table 10, only 13,8% of domestic workers are granted 5 days' family responsibility leave and approximately 67,6% get fewer than 5 days.

5.3.5 Other

Question 6.1 Are you registered for UIF by your boss?

Employers are legally obliged to register their employees for UIF (Department of Labour, 2005, p.1). The purpose of this question was therefore to investigate whether or not employers abide by this stipulation. According to the Unemployment Insurance Act No. 63 of 2001 Information, it applies to all employers and workers, but not to -

- workers working less than 24 hours a month for an employer;
- learners;
- public servants;
- foreigners working on contract;
- workers who get a monthly State (old age) pension; or
- workers who only earn commission.

Domestic employers and their workers have been included under the Act since 1 April 2003 (Department of Labour, 2005, p.1).

Figure 26: Average number of domestic workers who are registered for UIF (percentages)

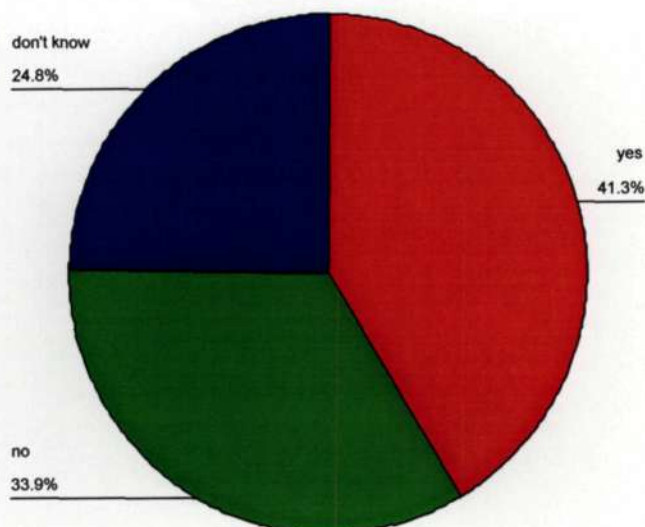


TABLE 11: Average number of domestic workers registered for UIF

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	90	40.9	41.3	41.3
	No	74	33.6	33.9	75.2
	Don't know	54	24.5	24.8	100.0
	Total	218	99.1	100.0	
Missing	System	2	.9		
Total		220	100.0		

Figure 26 shows that 41.3% of domestic workers agreed that they have been registered by their employers for UIF, 33.9% said they are not registered for UIF and 24.8% said they do not know whether they are registered or not. The latter statistic is not good at all because there should be transparency and everything should be done through consultation between employer and employee.

5.5 SUMMARY

Chapter Four presented data from the researched areas and in Chapter Five the findings will be discussed.

CHAPTER SIX: DISCUSSION

6.1 INTRODUCTION

Chapter Five discusses the findings of this study in view of its objective, which was to evaluate whether or not employers of domestic workers within the Msunduzi Area comply with the minimum conditions of employment, as stipulated in Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2003, p.6). The chapter discusses the findings on wages, working hours, meal intervals and leave and will identify problems facing domestic workers in-terms of wages, working hours, meal intervals and leave. Conclusions are presented and findings discussed in view of the objectives of the study. Generally, the chapter discussed the results in relation to the following study objectives:

6.2 OBJECTIVES OF THE STUDY

- Are the domestic workers' wages, working hours, meal intervals and leave according to Sectoral Determination 7: Domestic Worker Sector?
- What problems do domestic workers face in terms of wages, working hours, meal intervals and leave?

These two objectives are interchangeably discussed in the following sections on wages, working hours, meal intervals and leave.

6.3 TO ESTABLISH WHETHER OR NOT EMPLOYERS COMPLY WITH THE STIPULATION OF SECTORAL DETERMINATION 7: DOMESTIC WORKER SECTOR

6.3.1 Wages

The results indicate that many of the standards set down by the government are clearly not being met by the employers of domestic workers. The salary that should be R861.90 for domestic workers who work more than five days a week is not being paid (Department of Labour, 2003, p.5). The average salary for this category, as reflected in Figure 5(p.53), is R727. 70. The salary for domestic workers who work five days a week is set out as R569.79. The survey shows that the average salary earned by domestic workers who work five days a week is not R569. 79. Workers must receive an annual increase of at least 8% on 1 November (Department of Labour, 2003, p.6). Domestic workers who work on standby

should be earning R20 per shift. This was not the case. (Figure 16, p.65) showed that 66% earn less than R20 per shift. Wages should be double on Sundays (Department of Labour, 2003, p.5).

Table 3 shows that only 4.2% of domestic workers who work on a Sunday earn double their daily wage. The majority of the domestic workers who worked on Sundays and Public Holidays were earning a normal wage or no extra money at all. Conditions of payment for Sundays and Public Holidays were not met (Figure 17, p.66). Almost 59.7% of respondents did not earn any extra income for Sunday work. Figure 16 indicated that only 3.4% of domestic workers who work on a Public Holiday received double their normal wage and 52.6% did not get any extra income.

The minimum wage stipulation is that those employers, who cannot afford to pay the specified minimum wages to their domestic workers, should consider employing them for a shorter period that is less than certain minimum hours per day or week (Department of Labour, 2003, p.5). The present researcher feels that this is fair, but the duties performed by domestic workers have not been examined. Domestic workers could be required to take care of small children and the aged. If an employer cannot afford to pay the stipulated minimum wage it does not mean that she does not need the services of her domestic worker during certain times. She needs the domestic worker almost always. Some employers of domestic workers could not afford to pay them the stipulated minimum wage, due to the fact that they were pensioners themselves.

Figure 5 (p.53) showed that the salary earned by domestic workers was R727.70. This is below the stipulated amount of R861.90. Sectoral Determination 7: Domestic Worker Sector stipulates that domestic workers are entitled to an 8% salary increment commencing 1 November 2003 and 1 November 2004. Eldring's (2001, p.35) research revealed that domestic workers are paid low remuneration, are badly treated and non-unionised.

6.3.2 Hours

The Determination stipulates that the maximum hours that should be worked a week is 45 hours and a maximum of nine hours per day (Department of Labour, 2003, p.2). This is not in line with the existing situation, as the average amount of time worked per week by respondents is 46.9 hours and 9.3 hours per day (Figure 13, p.62). The maximum amount of time set out by the law for domestic workers who work more than five days a week is eight

hours. This is clearly not the case (Figure 14, p.63), as the average number of hours worked by this category of workers is 9.9 hours. Sectoral Determination 7: Domestic Worker Sector (Department of labour, 2005, p.22), stipulates that domestic workers should work a maximum of 45 ordinary hours per week - a maximum of nine hours per day for those who work for five days a week, and a maximum of 8 hours per day for those who work for more than 5 days a week (Department of Labour, 2003, p.21). An employer may not require a domestic helper to work more than 15 hours overtime a week, or more than 12 hours, including overtime, on any day (Government Gazette-Labour Department, 2002, p. 19).

South Africa has a large number of poorly paid domestic workers who labour under extremely unfavourable working conditions (Finnemore, 1998, p.53). They work long hours, receive low pay, pension rights do not exist for them and generally they do not enjoy the protection of the new labour laws. Irrespective of these conditions, they continue to work to try to alleviate poverty and for fear of unemployment (Finnemore, 1998, p.53). Earnshaw and Cooper (2001, p.23) were concerned that the long working hours required in many jobs appeared to take a toll on employee health, as was the case with most domestic workers.

6.3.3 Meals

As far as meals are concerned, Sectoral Determination 7: Domestic Worker Sector indicated that the standard should be an hour's meal interval for every five hours worked. Figure 20 (p.69) shows that respondents on average are granted and expected to finish their lunch within 30 minutes. This violates their entitlement to at least an hour's meal interval (Department of Labour, 2005, p.21). On average the majority (72%) of respondents indicated that they had one meal interval per day (Figure 19, p.68).

The minimum stipulation is that employees are entitled to a meal interval per day. If a second meal interval is required because of overtime worked, it may be reduced to not less than 15 minutes (Department of Labour, 2005, p.17).

According to the Basic Guide to Working Hours, "Workers are entitled to two 15-minute tea breaks, in the mid-morning and afternoon" (Department of Labour, 2005, p.1).

6.3.4 Leave

Domestic workers need to have annual leave of 21 days (Department of Labour, 2005, p.7). Approximately 49.6% of domestic workers do not get 21 days annual leave, 37.7% did get the stipulated leave (Table 5, p.72). During the first six months of employment an employee is entitled to one day's paid sick leave for every 26 days worked. If the employee requests her employer to pay for her medical fees, her employer can deduct such fees from her wages. An employee will be expected to produce a medical certificate if she has been absent from work for more than two consecutive days, failing which the employer will not be liable to grant paid sick leave (Government Gazette-Labour Department, 2002, p.19).

Maternity leave should be given as four consecutive months for domestic workers. This is not being met, as the average number of months being granted to the workers for maternity leave is 3.2 months (Table 9, p.75). It was found that 89, 3% of domestic workers were given maternity leave of less than the stipulated four consecutive months. Table 9 (p.75), shows that only 2.7% of domestic workers did get four months maternity leave.

Domestic workers should be given five days leave for family responsibility (Department of Labour, 2005, p.22). The findings indicated that this was not adhered to, as the average number of days being given to the workers for family responsibility was 1.4 days. Table 10 (p.77) indicated that only 13, 8% of domestic workers were granted 5 days' family responsibility leave and approximately 67, 6% received less than five days for family responsibility leave.

6.4 CONCLUSION

Mbatha (2003, p.412) mentions that the laws that apply to domestic workers are not clear-cut and uncontroversial and their implementation will not be without a hitch. One problem may well be the resistance of a certain group of people – the employers of domestic workers.

Common Law failed to cater for the needs of employees, hence the government's focus on protective policies to solve power imbalances between employer and employee. The government uses Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2005, p.12) as its tool to provide better working conditions and decent living conditions for vulnerable domestic workers.

Conversely, legislation can hinder the mobilisation of domestic workers, as union representatives are not allowed access to the property of employers without the employers' consent (Joubert, 2001, p.146). Joubert (2001, p.146) expresses concern that office-bearers and officials of a representative trade union are entitled to enter the workplace of the employer to recruit members, to communicate with them and to look after their interests. However, these rights are subject to any condition which is reasonable and necessary to protect property and life, or prevent work disruption. Thus access rights in the domestic sector do not include the right to enter the home of the employer unless the employer consents thereto. Studies that will provide mechanisms to unionise domestic workers without any victimisation and any kind of threat from the employers should be developed.

Employees work very long hours, beyond those recommended, and this makes their stress levels extremely high. They do not have sufficient resting time (Department of Labour, 2005, p.16). This, coupled with the employers' expectations that they should be readily available when needed, is de-motivating them. On how to address the gap between legislation and implementation, the Grawitzky (2003, p.48), points out that the Department of Labour cannot be everywhere, so it is essential for workers to be educated on current legislation and changes. The proposed legislation for domestic and farm workers will rely heavily on workers to ensure that employers implement the new labour laws (Department of Labour, 2005, p.3).

In the study conducted by Hertz (2004, p.6), hours of work appeared to have fallen, but earnings were up compared to the current study. Moreover, there did not appear to have been a negative employment response, although further econometric work was required to check this conclusion and to get a better picture of the full distributional impact of these policies (Hertz, 2004, p.6).

6.5 SUMMARY

Chapter Five dealt with the key findings of the study and provided information that led to the recommendations and conclusions which will be discussed in Chapter 6.

CHAPTER SEVEN: RECOMMENDATIONS AND FURTHER SUGGESTIONS

7.1 INTRODUCTION

Chapter Six provides recommendations arising from this study.

7.2 RECOMMENDATIONS

The following recommendations are viewed in the light of the different levels of involvement, such as the government (Department of Labour in this case), trade unions and employees (domestic workers).

7.2.1 Department of Labour

In this study it became clear that most employers were not implementing the stipulations of Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2005, p.12) on issues of wages, hours of work, leave and meal intervals. Therefore the study recommends:

- That stricter fines or even jail sentences should be issued to employers who contravene these standards and rules that were spelled out by the Department of labour. Department of Labour inspectors conducted blitz inspections in the Eastern Cape, to assess compliance with the provisions of the Sectoral Determination for Domestic Workers and the provisions of the Unemployment Insurance Act relating to domestic workers (Department of Labour, 2005, p.1). According to Department of Labour (2005, p.3) the total of 10 610 inspections were conducted on domestic worker sector during August 2005. High levels of compliance were experienced which were largely attributed to the process of implementation, from consultations at the beginning to the advocacy work preceding the inspections. Domestic employers proved to be the friendliest sector to inspect.
- Employers are also expected to have a copy of Sectoral Determination 7: Domestic Service Sector (Department of labour, 2005, p.22) or available, within easy access of domestic workers (Department of Labour, 2005, p.12). The employment contract should be accessible to domestic workers, as inspectors use the prescribed checklist and scrutinise the necessary documents, e.g. a copy of the Sectoral Determination and particulars of employment such as contracts and pay slips. Employment contracts

should be available, but due to the fact that most domestic workers were illiterate, they did not understand the contents of the contract. It is recommended that employees should be orientated about their basic rights as laid down in Sectoral Determination 7: Domestic Service Sector (Department of Labour, 2005, p.8). Employers in the Msunduzi Area were not complying with the majority of the laws and this needed to be addressed more seriously.

- There should be some kind of government policy on doing regular spot checks in different areas in the Msunduzi Area and possibly the rest of the country. This will require the Department of Labour to increase its manpower. The government should consider offering employers of domestic workers some incentives such as tax relief for complying with the contents of Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2005, p 2).
- The government should investigate the possibility of running workshops that are geared towards employee education. Employees are illiterate and do not know their rights, how to exercise their rights and the procedure to follow when their rights are violated. Ally (2004, p. 50) states that domestic service is now also recognised as skilled work through the introduction of certified training by the Domestics Chamber of the Services Sector Education and Training Authority. The Department of Labour is the primary source of government funding for training. The Skills Development Act of 1998 established a system of sector education and training authorities (SETAs) (Department of Labour, 2005, p.1). Employers need to be educated on how to make such a personal relationship work, for the benefit of both the employer and employee. Employers need to be really aware of the consequences of non-compliance. All employers must register their employees for the Unemployment Insurance Fund and are advised to sign an employment contract with their domestic worker. A committee of representatives from the National Skills Authority, various women's organisations, the South African Domestic Workers' Union (SADWU) and other labour movements, training providers and the Labour Department have already made progress in planning for the provision of proper skills development and employment prospects (Dispatch online, 2000, p.1).
- More labour inspectors are needed to ensure that this whole area is sufficiently monitored. Another alternative could be to offer the current labour inspectors some

incentives that will entice them to be willing to go the extra mile in monitoring compliance (Mills, 2002, p.1210). Grawitzky (2003, p.45) is concerned that the government does not have the capacity or resources to police such laws, hence the shift towards self-policing and voluntary compliance. He argues that self-policing will depend on the extent to which these laws are seen to benefit society, their affordability and whether there is a deterrent on the administrative side of ensuring compliance. Mills (2002, p. 1210), states that the Department of Labour is thus tasked with finding a balance between decent employment standards (including the setting of minimum wages), flexibility to meet the needs of the employers within the sector and maintaining or increasing existing levels of employment. Therefore the study suggests that a monitoring system should be developed by the Department of Labour to evaluate and implement policies concerning the domestic worker sector.

7.2.2 Unions

- Eldring (2001, p.38) mentions that it has so far proven very difficult to unionise domestic workers, due to the difficulties with reaching this fragmented group and a lack of organisational strategies from unions. Mbatha (2003, p.408) states that the private nature of the working environment has negatively affected the pace of its development, in that the enforcement and monitoring of the applicable laws are usually compromised by inaccessibility of the workplace to labour authorities and unions. Mbatha (2003, p.412) emphasises that the general lack of interest and support from employers in trade unions activities negatively affects mobilisation of this sector.

7.2.3 Employees

- It is time that domestic workers take charge of their destiny. They should seize the initiative and start by organising themselves through the formation of simple structures such as street committees (Dispatch online, 2000, p.1). Then they can proceed by choosing representatives who will liaise between them and the union officials. The employees should plan convenient times for regular meetings to discuss and share problems, ideas and possible solutions. The present researcher is of the opinion that during such gatherings they could invite union officials to attend and will be able to impart knowledge and educate domestic workers about their rights and how to fight for what is legally stipulated in Sectoral Determination 7: Domestic Worker Sector.

- According to Eldring (2001, p.38), thousands of workers will need assistance and information on wage issues. If a union could offer this, it could create the basis for developing an efficient and strong domestic workers' union. According to the Sectoral Determination 7: Domestic Worker Sector (Department of Labour, 2005, p.14) domestic workers should have an allowance if they work at night, and also that "night work" means work performed after 18:00 and before 06:00 the next day. In this case an employer may only require or permit a domestic worker to perform night work, if agreed in writing and if the domestic worker is compensated by the payment of an allowance; and the domestic worker resides at the workplace or transport is available between the domestic worker's place of residence and the workplace at the beginning and end of the domestic worker's shift (Department of Labour, 2005, p.14).
- Huws (1995, p.3) states that individuals must be aware of their rights. Dancaster (2003, p. 121) emphasises the fact that there can be no doubt that Sectoral Determination 7 will have far-reaching consequences for the employers of domestic workers. Whether the employers of domestic workers will acquaint themselves sufficiently with the content of Sectoral Determination 7 will depend, to a large extent, on the education that accompanies the new changes and the enforcement by the inspectors of the provisions of Sectoral Determination 7: Domestic Worker Sector. It is recommended that educational programmes on regulations and policies concerning domestic workers should be delivered to employees and employers.
- It will also be a good platform to mandate union officials to take domestic workers' grievances forward to labour inspectors of the Department of Labour. Domestic workers should empower each other during such gatherings, to eliminate the fear that they have of their employers. This they can accomplish by being educated about their rights and by being aware that employers can no longer dismiss them as and when the employers wish (Dispatch online, 2000, p.1).

7.3 FURTHER SUGGESTIONS

The lack of effectiveness of the Department of Labour in terms of implementation of policies made regulating and negotiating within this sector difficult, especially since there were few representative bodies for domestic workers and none for their employers (COSATU, 2005, p.4). Nevertheless, the proposed minimum wages could be seen as employer-friendly, in that domestic workers can be employed on an hourly basis, thus making continued employment possible where the full wage is considered too high (Department of Labour, 2005, p.25).

Dancaster (2003, p.109) states that domestic workers, as members of a community service sector, tend to exhibit similar characteristics, globally: isolation, invisibility and a low level of organisation. They find themselves in a highly individualised employment relationship, subjected to unequal power relations, which contribute towards their vulnerability. The study suggests that further research should be conducted for live-in domestic workers to be provided with accommodation that enables them to host family members and to be freely visited by their friends or whoever they feel should visit after working hours.

This study recommends a collaborative programme between the Department of Labour and local governments to carry out education and publicity on the rights of domestic workers. Furthermore, the Department should conduct a study focusing on the harmonisation between different institutions (existing and envisaged) which will be involved in the regulation and financial management of the domestic sector; as well as the institutionalisation of collective bargaining in the sector.

7.4 LIMITATIONS OF THE SURVEY

Due to the sensitive nature of this study some domestic workers were not co-operative; they feared that if they divulged certain information they might lose their jobs. It was evident during data collection that some employers had intimidated their employees. The survey was not at all easy to carry out, because when domestic workers were asked to participate in the survey they were either too intimidated to do so or they said that they were strongly advised by their employers not to speak to anyone about their working conditions, but to refer questions to their employers. This was clearly a limitation of the study.

Most of the domestic workers were illiterate and could not fill in the questionnaire by themselves. Employers capitalized on their illiteracy by saying that whoever needed information pertaining to their employment contract should be referred to a written contract that is kept at the employer's premises. It could be possible that all that was written in the contract were in-line with the minimum requirements of Sectoral Determination 7, but it might not be complied with by the employer.

According to Sectoral Determination 7: Domestic Worker Sector, the interviewer had to get the employer's permission to interview the employee and, on most occasions, employers would merely say they do not have a domestic worker and dismiss the interviewer (Department of Labour, 2005, p. 28).

As a last resort, employees were interviewed randomly at taxi ranks. The major problem encountered here was that most of them were in a hurry to get transport home. At times the interviewer would interview one or two employees and as soon as a taxi arrived the others would board the taxi and leave.

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APPENDIX 1: QUESTIONNAIRE

As part of my MBA degree, I am required to do a survey on the Sectoral Determination 7: Domestic Worker Sector. It is herewith confirmed that whatever information is submitted regarding this survey, will be treated in the strictest possible confidence. No information will be divulged to any other person.

QUESTIONNAIRE (Domestic Workers Survey)

1. PROFILE

1.1 What is the name of the area that you are working in? _____

1.2 What is your age? _____

2. WAGES

2.1 What is your salary per month? _____

Less than R1000	R1000-R2999	R3000-R4999	R5000-R5999	R6000 and more
-----------------	-------------	-------------	-------------	----------------

2.2 Do you get an annual increase?

Yes	No
-----	----

If yes, how much is this increase (in Rands)? _____

2.3 How much do you earn for overtime? _____

No extra money	Normal rate per hour	Time+1/2	Time+1/3	Time+1/4	Double time
----------------	----------------------	----------	----------	----------	-------------

2.4 Is your salary reduced because of accommodation deduction?

Yes	No
-----	----

If yes, how much is this deduction? _____

2.5 Do you get a pay slip every week/month with all the information/deductions reflected on it?

Yes	No
-----	----

2.6 Does your boss keep copies of this pay slip?

Yes	No	Don't know
-----	----	------------

3. WORKING HOURS

3.1 How many hours do you work per week? _____

Less than 45 hours	45-55 hours	56- 66 hours	67-77 hours	More than 78 hours
--------------------	-------------	--------------	-------------	--------------------

3.2 How many hours do you work per day (if you work for only 5 days per week)?

Less than 9 hours	9-12 hours	13- 16 hours	17-20 hours	More than 20 hours
-------------------	------------	--------------	-------------	--------------------

3.3 How many hours do you work per day (if you work for more than 5 days per week)?

Less than 8 hours	8-11 hours	12- 15 hours	16-19 hours	More than 19 hours
-------------------	------------	--------------	-------------	--------------------

3.4 Do you work on standby?

Yes	No
-----	----

If yes, how much do you earn per shift? _____

Less than R20	R20-R30	R31- R59	R60-R70	More than R70
---------------	---------	----------	---------	---------------

3.5 Do you get a night work allowance if you work after 18h00 or before 6h00?

Yes	No
-----	----

If yes, how much is this allowance? _____

3.6 If you work on Sundays, how much do you earn? _____

No extra money	Normal wage	Wage +1/2	Wage +1/3	Wage +1/4	Double wage
----------------	-------------	-----------	-----------	-----------	-------------

3.7 If you work on Public Holidays, how much do you earn for that day? _____

No extra money	Normal wage	Wage +1/2	Wage +1/3	Wage +1/4	Double wage
----------------	-------------	-----------	-----------	-----------	-------------

4. MEAL INTERVALS

4.1 How many meal intervals do you have per day? _____

4.2 How long are these meal intervals? _____

Less than 10 min	10-15min	16-44 min	45-59 min	1 hour	More than 1 hour
---------------------	----------	-----------	-----------	--------	---------------------

4.3 Do you take tea intervals?

Yes	No
-----	----

4.4 How long are these tea intervals? _____

Less than 10 min	10-15min	16-44 min	45-59 min	1 hour	More than 1 hour
---------------------	----------	-----------	-----------	--------	---------------------

5. LEAVE

5.1 Do you get annual leave?

Yes	No
-----	----

If yes, how many consecutive days do you get for annual leave? _____

Less than 14 days	14-20 days	21 days	22-30 days	More than 30 days
----------------------	------------	---------	------------	----------------------

5.2 Do you get sick leave?

Yes	No
-----	----

If yes, how many consecutive days do you get for sick leave? _____

Less than 14 days	14-20 days	21 days	22-30 days	More than 30 days
----------------------	------------	---------	------------	----------------------

5.3 Do you get maternity leave?

Yes	No
-----	----

If yes, how many consecutive months do you get for maternity leave? _____

Less than 1 month	1 month	2 months	3 months	4 months	5 months	More than 5 months
----------------------	---------	----------	----------	----------	----------	-----------------------

5.4 Do you get leave for family responsibility?

Yes	No
-----	----

If yes, how many consecutive days leave do you get for family responsibility? _____

Less than 3 days	3 days	4 days	5 days	6 days	7 days	More than 7 days
---------------------	--------	--------	--------	--------	--------	---------------------

6. OTHER

6.1 Are you registered for UIF by your boss?

Yes	No	Don't know
-----	----	------------

THANK YOU FOR YOUR TIME AND EFFORT

APPENDIX 2: DESCRIPTIVE STATISTIC

Statistics

	N		Mean	Median	Mode	Variance	Minimum	Maximum
	Valid	Missing						
Q12	193	27	727.6580	715.0000	800.00	114085.653 28	140.00	2550.00
Q12B	218	2	1.1468	1.0000	1.00	.12582	1.00	2.00
Q13	202	18	1.3020	1.0000	1.00	.21184	1.00	2.00
Q13B	137	83	95.8245	60.0000	50.00	16735.7150 0	1.80	1365.00
Q21	184	36	46.8397	45.0000	45.00	518.78973	4.00	135.00
Q21B	218	2	2.1055	2.0000	1.00	1.72614	1.00	5.00
Q22	75	145	9.2667	8.0000	8.00	31.51577	3.50	40.00
Q22B	105	115	1.6476	1.0000	1.00	.94194	1.00	5.00
Q23	122	98	9.9262	9.5000	8.00	6.24245	2.00	17.00
Q23B	145	75	1.8897	2.0000	2.00	.75163	1.00	5.00
Q24	22	198	16.8182	10.0000	10.00	267.20346	.00	50.00
Q24B	162	58	1.4815	1.0000	1.00	.73568	1.00	6.00
Q25	160	60	1.5875	2.0000	2.00	.24387	1.00	2.00
Q25B	44	176	13.1743	.0000	.00	615.81702	.00	116.67
Q25C	53	167	1.5094	1.0000	1.00	.75472	1.00	5.00
Q26	9	211	22.2222	20.0000	.00	530.19444	.00	61.00
Q26B	72	148	1.6250	1.0000	1.00	1.19542	1.00	6.00
Q27	13	207	27.4615	10.0000	.00	1160.26923	.00	100.00
Q27B	116	104	1.6810	1.0000	1.00	1.10607	1.00	6.00
Q28	190	30	1.8737	2.0000	2.00	.11094	1.00	2.00
Q28B	20	200	90.2500	52.5000	2.00	11524.6184 2	1.00	403.00
Q29	116	104	1.8793	2.0000	2.00	.10705	1.00	2.00
Q29B	16	204	30.3125	17.5000	1.00	2850.62917	1.00	220.00
Q210	213	7	1.6385	2.0000	2.00	.23191	1.00	2.00
Q211	212	8	2.0802	2.0000	2.00	.53856	1.00	3.00
Q31	203	17	1.2562	1.0000	1.00	.43901	.00	5.00
Q32	88	132	24.4432	30.0000	30.00	252.57145	.00	75.00
Q32B	198	22	3.5909	3.0000	5.00	2.21251	1.00	6.00
Q33	217	3	1.1014	1.0000	1.00	.09153	1.00	2.00
Q34	79	141	15.8987	15.0000	15.00	77.01525	1.00	30.00
Q34B	195	25	2.0051	2.0000	2.00	.51028	1.00	5.00

Q41	198	22	1.2121	1.0000	1.00	.16797	1.00	2.00
Q41B	60	160	16.5167	14.0000	14.00	99.57599	1.00	56.00
Q41C	159	61	2.4277	3.0000	3.00	1.05644	1.00	5.00
Q42	188	32	1.3670	1.0000	1.00	.23356	1.00	2.00
Q42B	51	169	5.8235	5.0000	3.00	37.30824	1.00	30.00
Q42C	85	135	1.4471	1.0000	1.00	1.10728	1.00	5.00
Q43	140	80	1.4714	1.0000	1.00	.25098	1.00	2.00
Q43B	18	202	5.2778	3.0000	3.00	27.03595	1.00	14.00
Q43C	75	145	3.1867	3.0000	2.00	2.18090	1.00	7.00
Q44	179	41	1.4358	1.0000	1.00	.24725	1.00	2.00
Q44B	24	196	2.9583	2.0000	1.00	9.08514	.00	14.00
Q44C	80	140	2.8000	2.0000	1.00	3.73165	1.00	7.00
Q51	218	2	40.7523	40.0000	36.00	114.45449	19.00	78.00
Q52	218	2	1.8349	2.0000	1.00	.63620	1.00	3.00

There are three measures that we use to describe the center of a data set. The first and probably the best known is the **arithmetic mean**, which we will refer to simply as the mean. The mean is also known as the **average**. Summing the observations and dividing by the number of observations calculate the mean. The median of a sample designated by m , is defined by its property that the number of sample members exceeding m equals the number less than m . The median is calculated by placing all the observations in order (ascending or descending) and the observation that falls in the middle is the median. The sample size, n , is important in working out the median because n could be even or n could be odd. In both cases the median is worked out differently. The mode is the most frequently occurring observation i.e. the observation with highest frequency when the data is arranged in either ascending or descending order.

The pre-eminent measure of dispersion in a sample is the variance with its square root, the **standard deviation**. This gives us a measure of variability from one observation to another.

APPENDIX 3: SECTORAL DETERMINATION SEVEN: DOMESTIC WORKER SECTOR

(Department of Labour, 2005).

Summary

Part A

APPLICATION OF THE SECTORAL DETERMINATION

The determination covers the following employees:

- All domestic workers in South Africa
- Persons employed by employment services
- Independent contractors
- A person doing gardening in a private home
- Persons who look after children, the aged, the sick, the frail or the disabled in a private household
- A person employed to drive the car taking the children of the household to school

Part B

MINIMUM WAGE SETTING

All domestic workers must be paid for every hour or part of an hour they have worked.

Different wage are prescribed depending on:

- where the domestic worker works
- the number of hours worked per week

Wages according to areas

Wages are prescribed for two areas, namely Area A and Area B. Municipal boundaries have been used to distinguish between the two areas.

Area A

The following municipalities

Bergrivier, Breederivier, Buffalo City, Cape Agulhas, Cederberg, City of Cape Town, City of Johannesburg, City of Tshwane, Drakenstein, Ekurhuleni, Emalahleni, Emfuleni, Ethekwini Unicity, Gamagara, George, Hibiscus Coast, Karoo Hoogland, Kgatelopele, Khara Hais, Knysna, Kungwini, Kouga, Langeberg, Lesedi, Makana, Mangaung, Matzikama, Metsimaholo, Middelburg, Midvaal, Mngeni, Mogale, Mosselbaai, Msunduzi, Mtubatuba, Nama Khoi, Nelson Mandela, Nokeng tsa Taemane, Oudtshoorn, Overstrand, Plettenbergbaai, Potchefstroom, Randfontein, Richtersveld, Saldanha Bay, Sol Plaatjie, Stellenbosch, Swartland, Swellendam, Theewaterskloof, Umdoni, uMhlathuze and Witzenberg

Area B

The rest of South Africa

Wages will be payable according to number of hours worked per week.

If a domestic worker works for 27 ordinary or less hours in any week he/she will be entitled to a slightly higher wage. This is to compensate the worker, as he/she does not have a full time job.

Applicable wages

Area A

If a worker works less than 27 ordinary hours per week his/her hourly wage is R4.51 per hour.
If a worker works more than 27 ordinary hours per week his/her hourly wage is R4.10 per hour.

Area B

If a worker works 27 ordinary hours or less per week his/her hourly wage is R3.66 per hour.
If a worker works more than 27 ordinary hours per week his/her hourly wage is R3.33 per hour.

OTHER IMPORTANT PROVISIONS AFFECTING WAGES

Guaranteed minimum rate

Depending on circumstances some domestic workers might work for less than four hours per day. Should this be the case, he/she should then be paid for four hours worked.

Annual increase

Wages will go up by 8% on 1 November 2003 and 1 November 2004 respectively.

If the inflation rate is higher than 10% then the wage increase of 8% will be adjusted by the Department of Labour.

CALCULATING THE MINIMUM WAGES

Employers who cannot afford to pay the new minimum wage have an option of reducing the hours of work, instead of retrenching the employee.

It is illegal to pay lower than the prescribed hourly rate. If you pay more than the prescribed hourly rate you may not reduce the rate because it will be an unfair labour practice.

WORKING HOURS PER WEEK

Domestic workers are allowed to work a maximum of 45 ordinary hours per week

- Maximum of 9 hours per day if working for 5 days a week
- Maximum of 8 hours per day if working more than 5 days a week

CALCULATION OF OVERTIME

Overtime is payable when the domestic worker works longer than the ordinary hours prescribed per day or per week.

When he/she is on standby and works for longer than three hours, overtime rates are payable.

Overtime payment: one and a half times the hourly wage

(Area A – 27+ hours per week - $R4.10 + R2.05 = R6.15$)

(Area B – 27+ hours per week – $R3.33 + R1.66 = R4.99$)

INFORMATION CONCERNING PAY

Any payment can be in cash, by cheque or direct deposit into an account designated by an employee. The payment must be given at the workplace, during working hours and in a sealed envelope, which becomes the property of the employee. A payslip must be given at all times.

The employer must keep the payslips for three years.

Details on pay slip to include:

- the employer's name and address;
- the domestic worker's name and occupation;
- the period in respect of which payment is made;
- the domestic worker's wage rate and overtime rate;
- the number of ordinary hours worked by the domestic worker during that period;
- the number of overtime hours worked by the domestic worker during that period;
- the number of hours worked by the domestic worker on a public holiday or on a Sunday;
- the domestic worker's full wage;
- details of any other pay arising out of the domestic worker's employment;
- details of any deductions made;
- the actual amount paid to the domestic worker.

PROHIBITED ACTS CONCERNING PAYMENT OF WAGES

The determination deals with deductions, which are permissible and impermissible.

Permissible deductions

- Medical insurance
- Savings
- Pension fund
- Trade union subscription
- Order of account payment to a financial institution
- Rentals

- Loan or advance (not more than 10% of total wage)

Impermissible deductions

- Amount greater than the actual remuneration received
- Breakages (crochery, electrical appliances)
- Damages (ironing)
- Meals provided during working time
- Clothing
- Work equipment

Deductions for accommodation

This may be deducted from wages (not more than 10% of total wage) on condition that:

- The room is weatherproof and in good condition
- The room has at least one window and door that can be locked
- The room is fitted with a toilet, a bath/shower or has access to another bathroom

Part C

PARTICULARS OF EMPLOYMENT

The sectoral determination compels the employer to issue the domestic worker with written particulars of employment.

The determination explains what information should be contained in such a document, how to communicate the information, what happens when conditions of employment change and how long it should be kept.

An employer must supply a domestic worker, when he/she starts work, with the following particulars in writing:

- (a) The full name and address of the employer

- (b) The name and occupation of the domestic worker, or a brief description of the work for which he/she is employed
- (c) The place of work, and where he/she is required or permitted to work
- (d) Date of employment
- (e) The domestic worker's ordinary hours of work and days of work
- (f) The domestic worker's wage or rate and method of payment
- (g) The rate of pay for overtime work
- (h) Any other cash payments he/she is entitled to
- (i) Any payment in kind he/she is entitled to and the value of payment in kind
- (j) How frequently wages will be paid
- (k) Any deductions to be made from wages
- (l) The leave he/she is entitled to
- (m) The period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate

Both parties must agree and sign the particulars. The particulars should be reviewed annually.

Part D

KEY ASPECTS ON WORKING TIME

The sectoral determination refers to the following working time matters: hours of work, overtime, payment for overtime, night work, standby, meal intervals, rest periods, payment for work on Sundays and public holidays.

Key aspects to remember:

- Ordinary working hours = a maximum of 45 hours per week
- Maximum nine hours per day when working five days
- Maximum eight hours per day when working more than five days
- Overtime not more than three hours in any day
- Not more than 15 hours overtime per week (5 days x 3 hours per day)
- Standby from 20:00 – 06:00 – payment R20-00 per shift
- Meal interval of one hour if employee worked continuously for more than five hours

- Rest periods daily 12 consecutive hours weekly 36 consecutive hours

Part E

LEAVE PROVISION

The different types of leave an employee is entitled to.

Annual Leave	Three weeks per year/or 1 day for 17 days worked/1 hour for 17 hours worked
Sick Leave	Cycle 36 months = number of days worked during six week period
Maternity Leave	Four consecutive months of unpaid leave
Family Responsibility Leave	year

Part F

PROHIBITION OF CHILD AND FORCED LABOUR

The Basic Conditions of Employment Act 1997 prohibits child and forced labour and the sectoral determination enforces the same.

No child under the age of 15 years may be employed.

Part G

TERMINATION OF EMPLOYMENT

A contract of employment may be terminated only on **notice** of not less than **one week** if the domestic worker has been **employed** for **six weeks** or **less**.

Notice of **four weeks** is required if the domestic worker has been **employed** for **six months** or **more**.

Live-in domestic workers are allowed to stay on the premises for a month (notice period) or may agree to pay for the accommodation.

An employer who has to dismiss an employee due to a change in his/her economic, technological or structural set-up, called **operational** requirement in the determination is responsible for **severance** pay to the employee.

Severance pay is payable only, if there was no **alternative** employment. At least **one weeks** pay for every completed **twelve months** of continuous service.

On termination of employment an employee is entitled to a **certificate of service**.

Part H

Miscellaneous

Keeping of the sectoral determination

All employers must keep a copy of the sectoral determination or an official summary. This can be obtained from the website of the Department of Labour or the Government Printer in Pretoria.

Social Security

The Unemployment Insurance Act has been amended to include domestic workers. Once promulgated domestic workers will be expected to contribute 1% of their wage towards the fund.

The Department of Labour will investigate the implementation of a provident fund in the next few years.

Enforcement

The inspectors of the Department of Labour will handle any contraventions of the sectoral determination. They will first attempt to solve the complaint telephonically, thereafter they will try and secure an undertaking and finally issue compliance orders if he/she is of the view that the law has been contravened. If still unresolved the case will go to the labour court.

Unsatisfied employers may object to a compliance order.