

What are the powers and functions of Bargaining Councils?



Bargaining Councils exist in various industries in South Africa and may regulate the conditions of employment in specific industries. Employers should therefore be aware of these councils and their regulations.

A bargaining council is formed and established by one or more employer organisation and one or more trade union.

For a bargaining council to be functional, it must be registered under the Labour Relations Act 66 of 1995 (LRA) for a specific industry.

In this article, we will discuss in depth the role of Bargaining Councils and the benefits associated with being registered with one.

Formation and Registration of a Bargaining Council

The formation of a bargaining council is regulated by section 27 of the Labour Relations Act (LRA). A bargaining council can only be formed on application by one or more trade union and one or more employer organisation, and/or the state if the state is an employer in the specific sector and geographical area, and by–

- accepting a constitution that meets the requirements of section 30 of the LRA; and
- registration in terms of section 29 of the LRA.

A bargaining council is registered in accordance with section 29 of the LRA and by submitting an application in terms of the section 29 to the Registrar. The application of a bargaining council for registration may be declined on legal grounds if–

- the geographical area and sector in respect of which the application is made is not appropriate;
- the application did not meet the legal requirements in terms of section 29; or
- the applicant is not represented sufficiently in the sector and area to which the application relates.

What are the Powers and Functions of a Bargaining Council?

It is important to note that a bargaining council may only exercise and implement its powers and functions within the sector, industry and area in which it is registered.

These powers and functions are regulated in terms of section 28 of the LRA and include the following:

- o Establish and conclude collective agreements;
- o Enforce abovementioned collective agreements;
- o Prevent and resolve labour disputes ;
- o Perform dispute resolution functions;
- o Manage a dispute resolution fund;
- o Promote and initiate training and education schemes;
- o Initiate and administer schemes or funds to benefit its parties or members, such as pension, provident, medical aid, sick pay, holiday, unemployment and training schemes and/or funds;
- o submit proposals on policies and laws that govern the specific sector or area.

There are currently a large number of functioning bargaining councils in the South African labour sector. Some of these bargaining councils have the power and jurisdiction to preside over labour disputes in a specific industry where the CCMA does not have jurisdiction.

Is it compulsory for an employer to register with a Bargaining Council?

Should the employer's main scope of work fall within the scope of application of a specific bargaining council, then the employer will be legally obligated to register with that specific bargaining council. Each functioning bargaining council will have a collective agreement, i.e. a Main Agreement. The employer will therefore need to comply with the terms and conditions as set out in the collective/main agreement of the specific bargaining council. Hefty fines might be imposed should an employer fail to do so.

Although it is compulsory for employers to register with a bargaining council if the main scope of work falls within the scope of application of the bargaining council, *it is also important to note that each bargaining council's collective agreement will include an exemption clause which allows for an employer to apply for exemption.* The main purpose of these exemption clauses is to make provision for employers facing difficulties in complying with collective agreements. Each bargaining council will have a specific exemption procedure to be followed and the reason for seeking exemption will need to be fully motivated by the applicant.

What are the benefits for employers of being registered with the Bargaining Council?

Should disputes arise in companies which fall within the scope of a bargaining council, the Commissioners presiding over these disputes specialise in the specific industry and have extensive knowledge of and experience with the collective agreements in these industries. The parties to the disputes will therefore receive expert assistance from the Commissioners.

Employers are therefore advised that should there be a registered bargaining council in a specific industry they operate in, they will be required to register and comply with the collective agreement of that specific bargaining council.

SERR Synergy assists employers in determining whether they fall within the scope of application of a bargaining council in their industry and assist the company to register with the council. Our professional Labour Advisors further assist employers in the drafting and implementation of all relevant labour regulations in line with the bargaining council's main agreement in order to ensure due compliance. Should there be a need, our advisors can also assist employers with an application to the council for exemption.

About the Author: Dané Benadie joined SERR Synergy in January 2018 and is a Legal Advisor at our Pretoria Branch. She completed her Honours in Labour Relations at the North-West University, Potchefstroom and also holds a Post-Graduate Certificate in Advanced Labour Law.

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