

2016 AREAS OF FOCUS



Employment relations

The Chamber's Employment Relations department strives to make a positive contribution to the creation and maintenance of a stable employment relations environment in the mining industry, and to create practical and sustainable value for key mining industry stakeholders in the employment relations sphere, by:

- Promoting and fostering sound and constructive relationships with key stakeholders, in particular government and labour.
- Providing a credible platform for knowledge development and sharing in critical areas that have a potential impact on employment relations in the mining industry and in South Africa generally.
- Being the trusted voice of the mining industry on employment relations-related policy and legislative matters.

WAGE NEGOTIATIONS

Gold

In 2015, the Chamber of Mines concluded three-year wage agreements with the NUM, United Association of South Africa (UASA) and Solidarity on behalf of AngloGold Ashanti, Evander Gold Mines, Harmony, Sibanye Gold and Village Main Reef. Regrettably, AMCU did not sign the 2015 wage agreements.

At AngloGold Ashanti and Harmony, where the NUM, Solidarity and UASA represented the majority of employees, the agreement reached with these unions was extended to all employees, irrespective of union affiliation, by virtue of Section 23(1)(d) of the Labour Relations Act (LRA). At Sibanye, increases were unilaterally implemented for all employees irrespective of union affiliation even though agreement had not been reached with the majority of employees (AMCU represented 42% of employees). This was done as the company felt that it would be prejudicial to those employees who are members of AMCU, and could have led to workplace tensions.

In 2016, the signatories to the wage agreements focused on implementing the various commitments made:

The parties established a task team to undertake research work on extending the retirement age for miners and underground artisans and officials from the current 60 years to 63 years. Two workshops were held:

- The focus of a workshop on 4 February 2016 was the impact (if any) which an extension of the retirement age would have on retirement funds to which these employees belong, as well as on the funds which compensate workers for occupational injuries and diseases, including lung diseases.
- The focus of the second workshop, held on 29 February 2016, was on the impact (if any) that an extension of the retirement age would have on employees' health and safety, as well as on the health and safety of their co-workers. The applicable legislation was examined and international comparative research was done.



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Ultimately, the task team recommended that the current normal retirement age for these employees be retained, but that individuals be afforded the option to extend their retirement age to 63 years, subject to certain conditions, such as passing company medical examinations and fitness-to-work assessments. The task team also recommended that the Mine Health and Safety Council (MHSC) should commission research to determine the health and safety impacts on employees who opt to extend their retirement age to 63 years. The signatories to the wage agreements accepted the task team's report and recommendations.

The parties to the wage agreements also implemented a clause which provided for an increase in funeral cover for miners, artisans and officials from R22,500 to R30,000 and for spouses from R10,000 to R30,000. In addition, funeral cover for the employees' children was also introduced. The funding of the funeral policy is done on a 50:50 contributory basis by the employer and employee.

AMCU was invited to participate in the implementation of the wage agreements, but chose not to. The union did, however, challenge the agreements on various grounds in different forums:

- It referred the wage agreement to the Employment Conditions Commission on what the union argued were unacceptable wage differentials. The Commission declined to engage on the issue.
- AMCU also challenged the Basic Conditions of Employment Act variations contained in the wage agreements and granted by the Department of Labour (DoL) in the Labour Court. A hearing date is awaited.
- AMCU referred an alleged unfair discrimination case to the Labour Court arguing that the differences in wages between the Categories 4-8 employees and miners, artisans and officials constituted unfair discrimination based on race. A hearing date is awaited.

AMCU's challenge to the lawfulness of the extension by AngloGold Ashanti, Harmony and Sibanye of the 2013–2015 wage agreements under the LRA to AMCU and its members. This was notwithstanding that the Labour Court, in June 2014, and the Labour Appeal Court, in March 2016, found in favour of the Chamber and the companies. The union appealed to the Constitutional Court and the matter was heard by the court on 24 November 2016 where judgment was reserved. Then, on 21 February 2017, the Constitutional Court ruled in favour of the Chamber of Mines and the gold producers.



Glencore's iMpunzi Mining Complex is a large export bituminous coal mining operation in Mpumalanga province



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Coal

In 2015, a two-year agreement on wages and terms and conditions of employment was reached between the participating coal companies and representative unions under the auspices of the Chamber of Mines. Centralised negotiations did therefore not take place during the period under review. While a number of the issues were dealt with at company level in terms of the wage agreement, the following two issues were dealt with by the Chamber.

- Migration between retirement funds: The parties agreed that this issue could not be fully implemented due to the postponement of the annuitisation provision as per the Revenue Laws Amendment Act No 2 of 2016 which would prevent migration from a pension fund to a provident fund.
- Extension of retirement age: The issue was resolved after the Chamber engaged with the Mineworkers' Provident Fund (MPF) and the Sentinel Retirement Fund. The two funds confirmed that their rules permit retirement at the age of 63 years. This paved the way for the coal companies and the employees who wish to retire at the age of 63 to conclude the necessary arrangements to do so.

EMPLOYEE INDEBTEDNESS

Indebtedness remains a concern in all spheres of South African society and, as economic circumstances deteriorate and job losses rise, the situation is likely to intensify. Ironically, mining employees are vulnerable to formal and informal lenders as they have a stable, good income, and have access to banking systems and other documentation.

Employee indebtedness is known to have been a catalyst contributing to unreasonable wage demands and industrial action in 2012 and 2013, and is understood to be fuelling more recent expectations. Dealing with indebtedness was a feature of the 2013 gold and the 2014 platinum wage settlements, and is an area where unions and management have worked together, constructively. For more information, see the case study on page 38.

MIGRANT LABOUR

The Chamber initiated engagements with all key stakeholders, including government and organised labour, in order to find amicable solutions to existing challenges and guarantee the continued employment of the approximately 60,000 migrant workers who are employed in the mining industry. In 2016, the Chamber's Employment Relations Department addressed three key issues relating to the employment of foreign migrant workers.

- Temporary residence permits: The Department of Home Affairs (DHA) issued a directive in terms of the Immigration Act and the 2014 Immigration Regulations, to change the current practice of issuing temporary residence permits to foreign nationals working in the South African mining industry. The effect of this change would have been that mineworkers from the neighbouring countries of Mozambique, Lesotho, Botswana and Swaziland, would have had to apply for their temporary residence permits at the foreign missions in their home countries, and not at the ports of entry as is current practice. This change, which would have had a profound negative impact on the foreign mineworkers, on the mining companies and the economies of the affected neighbouring countries, was averted when the Chamber and the DHA reached an agreement to postpone its implementation indefinitely, in order to afford the parties an opportunity to jointly develop a workable alternative system for the issuing of temporary residence permits to foreign nationals working in the South African mining industry.




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- **Corporate visas:** The Chamber's Employment Relations Department also engaged with the DHA on the impact of the provisions in the immigration regulations relating to corporate visas. The new regime requires mining companies to convert from corporate work permits that are of unlimited duration, to three-year corporate visas. At the expiry of the three years, mining companies would be required to undertake a burdensome process to apply for new corporate visas should they wish to continue with the employment of current foreign mine workers. Through engagements, the DHA and the Chamber agreed to conclude a Memorandum of Understanding (MoU) to exempt the mining industry from some of the stringent requirements of the corporate visa application process. The parties are working on the details of the MoU.
- **Green Paper on International Migration:** The Chamber's Employment Relations Department participated in the NEDLAC task team on International Migration, as part of the Business Unity South Africa (BUSA) delegation. The task team was established to engage with the DHA on the Green Paper on International Migration (Green Paper). The Green Paper seeks to address the identified shortcomings in the current policy and legislative framework governing international migration, and to promote the orderly, safe and secure movement of people across South Africa's borders. The Chamber drafted submissions on the Green Paper on behalf of its members, and these were incorporated into the BUSA submissions that were presented at NEDLAC.

HOUSING AND ACCOMMODATION

In 2016, the Chamber's Accommodation Task Team compiled a housing and accommodation fact sheet that outlines the work that Chamber members have done in the provision of housing for employees, as well as the investments made in bulk infrastructure and social amenities in the mines' host communities. The fact sheet was published on the Chamber website and is updated biannually.

 <http://www.chamberofmines.org.za/industry-news/publications/fact-sheets/send/3-fact-sheets/377-housing-and-accommodation>

Through the Chamber's facilitation, a number of member companies entered into collaborative arrangements with the Department of Human Settlements in providing housing and in facilitating integrated human settlements in some of the mining communities. The programmes included the provision of land, bulk service infrastructure and the building of social, health and recreational facilities in the identified communities. The Chamber also facilitated engagements and collaboration between some mining companies and the PIC, an initiative that resulted in the building of a massive housing programme in the Rustenburg area.

LABOUR POLICY COMMITTEE

The Employment Relations Department oversees and coordinates the Chamber's Labour Policy Committee (LPC), a forum that brings together senior employment relations and human resources managers from Chamber members across all commodities, including mining contracting companies.

This forum seeks to influence policy and legislation affecting the mining industry through advocacy initiatives, engagements and participation in relevant debates and processes. The LPC

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develops and mandates industry positions on relevant issues, which in turn feed into national debates and processes, either directly or through other structures such as BUSA and NEDLAC.

A number of key issues that were discussed and mandated by the LPC during the period under review included migrant labour, social security and retirement and immigration.

MINERALS AND PETROLEUM BOARD

The Chamber nominated its Head of Employment Relations as a member of the Minerals and Petroleum Board, which was reconstituted in the last quarter of 2016. The Board is appointed by the Minister of Mineral Resources in terms of the MPRDA. The Board's primary functions are to advise the Minister on the sustainable development of the country's mineral and petroleum resources and on the transformation and downscaling of the minerals and petroleum industries. One other key role of the Board is to conduct investigations into the circumstances where economic conditions impact negatively on mining companies' profits and in cases where individual mining companies are likely to retrench 10% of their workforces or 500 employees, whichever is the greater. The Board is required in terms of Section 52 of the MPRDA to make recommendations to the Minister after the completion of its investigations. In the three months of its existence, the Board's Section 52 sub-committee completed one investigation and submitted recommendations to the Minister.

TRANSFORMATION OF THE LABOUR RELATIONS ENVIRONMENT

In his State of the Nation Address of 17 June 2014, the President called for social partners to deliberate on the state of labour relations in the country and to address low wages, wage inequalities, and the upsurge in violent and protracted strikes. This was done in the format of an indaba, under the auspices of NEDLAC and the stewardship of the Deputy President, and culminated in the Ekurhuleni declaration, which was signed by all the stakeholders on 4 November 2014.

A multi-stakeholder NEDLAC technical task team was created to implement the various objectives set out in the Declaration (the Chamber's Employment Relations Department is involved in the task team). The task team commenced work in January 2015 and was engaged in negotiations until the end of 2016. Labour pushed for a national minimum wage (NMW) to be introduced. The Deputy President established a panel of experts tasked with doing the necessary research on the matter and preparing a report with recommendations. The panel presented its findings to the Deputy President in December 2016 and *inter alia* recommended a NMW of R3,500 per month. The findings will be considered by the Committee of Principles which represent the leadership of business and labour.

Following two years of negotiations in NEDLAC, the task team ultimately managed to develop a Code of Good Practice on Collective Bargaining and on Industrial Action which is aimed at promoting respectful and professional negotiations as well as peaceful industrial action. Amendments to the LRA which provide for advisory arbitration by an independent panel in the event of prolonged and/or violent strike action, have also been drafted. These proposed amendments are supported by all the parties in NEDLAC and it is hoped that the proposed amendments to the LRA will be passed by Parliament in the first half of 2017.



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Employees at Glencore's iMponzi Mining Complex, which consists of two underground mines and an open cast mine

CASE STUDY

INDEBTEDNESS

The Chamber and its members are not alone in understanding that indebtedness by employees and the unemployed is a major social problem in South Africa. However mineworkers who have secure jobs have been a particular target of unscrupulous lenders and often take on debt that they cannot readily service or repay. Lenders have resorted to emolument attachment orders (EAOs) commonly known as garnishee orders that have legally obliged employers to deduct debt payments from employees' wages.

The industry-level indebtedness task team, consisting of the Chamber, company and union representatives, held its first Employee Indebtedness Workshop in 2016. The workshop was well attended and was indicative of the seriousness of indebtedness and the crucial role employers are playing to assist employees.

The indebtedness task team identified the urgent need to address the financial literacy of employees, as well as the management of the EAOs issued by unscrupulous lenders against such employees. The Chamber advocated a number of legislative changes *inter alia*, provisions of the National Credit Act (NCA), amendments to the Magistrate Court Act and issues related to the NCA, to address this issue in its engagements with Treasury, the Department of Trade and Industry (DTI), the National Credit Regulator (NCR) and other stakeholders.

In line with this, members of the Chamber have developed frameworks and financial education programmes to address employee indebtedness, including the management of emolument attachment and administrative orders, free financial support, assistance with legal queries and provision of employee financial literacy training. The training initiatives include features such as pay structure, benefits and deductions, overall impact on net pay, managing budgets and debt consolidation. The training initiatives have resulted in a decrease in employee indebtedness with many success stories including decreases in EAOs; more employees becoming eligible for home loans and an increase in responsible debt management.

The task team hopes that the combined effort of these actions will alleviate some of the debt pressure felt by employees.

Furthermore, the Chamber of Mines also represents its members on various NEDLAC task teams to work on proposals to further assist indebted employees to reduce their debt.

Though it did not affect the mining industry directly, in July 2015 in a landmark case, the Western Cape High Court ruled that EAOs levied against farm workers were illegal as they did not take into consideration the employees' financial positions or their ability to service the debt. The same could be extended to mineworkers, and the Chamber is reviewing this possibility and, particularly, the legality of EAOs that have been issued.

The Chamber's view and that of its members is that prevention is better than a cure, and human resources personnel across the industry are being instructed in how to handle the application of EAOs. On individual company levels, employers have also introduced training to help employees better understand the implications of taking on unaffordable debt and on how to escape from the debt trap.

