

LABOUR ACT 6 OF 1992

(Prior to repeal by Act 11 of 2007)

[ASSENTED TO 26 MARCH 1992]
1992]

[DATE OF COMMENCEMENT: 1 NOVEMBER

(Unless otherwise indicated)

(Signed by the President)

as amended by

National Vocational Training Act 18 of 1994

National Transport Services Holding Company Act 28 of 1998

Affirmative Action (Employment) Act 29 of 1998

Labour Amendment Act 6 of 2001

Appeal Laws Amendment Act 10 of 2001

ACT

To make provision for the regulation of the conditions of employment of employees in Namibia; to prevent and remedy any unfair dismissals of, and unfair disciplinary actions against, employees; to regulate the termination of contracts of employment; to provide for the registration of trade unions and employers' organizations and to define the rights and obligations of trade unions and employers' organizations; to provide for the settlement of disputes between employees or registered trade unions and employers or registered employers' organizations; to provide for that purpose for the appointment, and to define the powers, duties and functions of a Labour Commissioner and inspectors; to establish for that purpose a Labour Advisory Council, a Labour Court, district labour courts and a Wages Commission; to provide for the constitution, and to define the powers, duties and functions of the said Labour Advisory Council, Labour

Court, district labour courts and Wages Commission; and to provide for the health, safety and welfare of employees at work; and to provide for incidental matters.

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Preamble

WHEREAS the Republic of Namibia is, in terms of Chapter 11 of the Namibian Constitution, bound to actively promote and maintain the welfare of the people of Namibia;

WHEREAS in so doing the Republic of Namibia has adopted in the labour field a policy aimed at enacting legislation, with due regard to the furtherance of labour relations conducive to economic growth, stability and productivity through the promotion of an orderly system of free collective bargaining, the improvement of wages and conditions of employment of employees and the advancement of persons who have been disadvantaged by past discriminatory laws and practices, the regulation, free from discrimination on grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status of conditions of employment, of all workers in Namibia and in particular-

- to ensure equality of opportunity for women, particularly, in relation to remuneration, and to provide for maternity leave to, and employment security for, women;
- to promote sound labour relations and fair employment practices by encouraging freedom of association by way of, inter alia, the formation of trade unions to protect workers' rights and interests, and to promote the formation of employers' organizations;
- to lay down certain obligatory minimum basic conditions of service for all employees without infringing or impairing the right to agree to conditions of service which are more favourable than such basic conditions;
- to ensure the protection of the health, safety and welfare of men and women at work and to prevent the abuse of child labour;

- where possible, to adhere and give effect to international labour conventions and recommendations of the International Labour Organization;

NOW, THEREFORE, BE IT HEREBY ENACTED by the National Assembly of the Republic of Namibia, as follows:-

PART I

INTRODUCTORY PROVISIONS (ss 1-2)

1 Definitions

In this Act, unless the context indicates otherwise-

"casual employee" means a day worker who is employed by the same employer on not more than two days in any week;

"collective agreement" means any agreement in writing, the terms of which are negotiated by, entered into between, and signed by or on behalf of-

(a) on the one hand-

(i) any employer or group of employers;

(ii) any registered employers' organization or group of registered employers' organizations;

(iii) any employer or group of employers and any registered employers' organization or group of registered employers' organizations; and

(b) on the other hand any registered trade union or group of registered trade unions,

in relation to any terms and conditions of employment and any other matter of mutual interest;

"Commission" means the Wages Commission established by section 84;

"Commissioner" means the Labour Commissioner appointed under section 3(1)(a), and includes the acting Labour Commissioner so appointed;

"committee", in relation to the Council, means any committee of the Council established under section 10(1);

"complaint" means a complaint of an alleged contravention of, or a failure to comply with, a provision of this Act or any term and condition of a contract of employment or a collective agreement by a complainant in relation to which a district labour court is empowered to exercise jurisdiction by virtue of any such provision;

"conciliation board" means a conciliation board established under section 75 or deemed to have been so established;

"Council" means the Labour Advisory Council established by section 7 and, in so far as any functions of the Council have, under paragraph (b) of subsection (1) of section 10, been assigned to a committee of the Council, includes any such committee;

"day worker" means any employee who is not a shift worker;

"dispute", for purposes of Part IX, means any dispute in any industry in relation to any labour matter between-

(a) on the one hand-

(i) one or more registered trade unions;

(ii) one or more employees;

(iii) one or more registered trade unions and one or more employees;

and

(b) on the other hand-

(i) one or more registered employers' organizations;

(ii) one or more employers;

(iii) one or more registered employers' organizations and one or more employers,

and includes any dispute relating to-

(aa) the application, or the interpretation, of any provision of this Act or of any term and condition of a contract of employment or a collective agreement, including the denial or infringement of any right conferred by or under any provision of this Act or any right conferred by any term and condition of a contract of employment or a collective agreement, or the recognition of a registered trade union as an exclusive bargaining agent or the refusal to so recognize any such trade union;

(bb) the existence or non-existence of a contract of employment or a collective agreement;

"dispute of interests" means any dispute in relation to any labour matter other than a matter referred to in paragraph (aa) or (bb) of the definition of "dispute";

"dispute of rights" means any dispute in relation to a matter referred to in paragraph (aa) or (bb) of the definition of "dispute", excluding any such dispute in respect of which a complaint has been lodged in accordance with the provisions of Part IV;

"district labour court" means any district labour court established by section 15(1)(b);

"employee" means any natural person-

(a) who is employed by, or working for, any employer and who is receiving, or entitled to receive, any remuneration; or

(b) who in any manner assists in the carrying on or the conducting of the business of an employer,

and "employed" and "employment" shall have corresponding meanings;

"employer" means any person, including the State-

(a) who employs, or provides work for, any person and who remunerates or expressly or tacitly undertakes to remunerate him or her;

(b) who permits any person to assist him or her in any manner in the carrying on, or conducting of, his or her business,

and "employ" and "employment" shall have corresponding meanings;

"employers' organization" means any number of employers in one or more industries associated principally for purposes of regulating relations in that industry between themselves or some of them and their employees or some of them;

"exclusive bargaining agent" means any registered trade union recognized in terms of section 58 as an exclusive bargaining agent;

"guard" means any employee charged with the guarding of property;

"industry" includes any undertaking, trade or occupation and includes a section or a portion of such undertaking, trade or occupation;

"inspector" means any person appointed as labour inspector under section 3(1)(b), and includes any person appointed under section 3(1)(c);

"Labour Court" means the Labour Court established by section 15(1)(a);

"lock-out" means-

(a) the exclusion by an employer of any number of or all of his or her employees from any premises on or in which work provided by him or her is or has been performed; or

(b) the total or partial discontinuance by him or her of his or her business or of the provision of work,

with a view to inducing his or her employees or any persons in the employ of any other employer or employers to agree to, or to comply with, any demands or proposals which relate to any dispute or to abandon any demand or modification of any such demand;

"medical practitioner" means a medical practitioner registered in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act 56 of 1974), or authorized to practise as a medical practitioner under the provisions of the Health Service Professions Proclamation, 1989 (Proclamation AG. 70 of 1989), and includes, for purposes of the provisions of sections 34 and 41, any person registered as a nurse or midwife under the provisions of the Nursing Act, 1978 (Act 50 of 1978), or authorized to practise as a registered nurse or midwife under the provisions of the said Health Service Professions Proclamation, 1989;

"Minister" means the Minister of Labour and Manpower Development;

"night work" means any work performed during any period between the hours 20h00 and 07h00;

"office-bearer", in relation to a trade union or employers' organization, means a person other than an official who holds any office in such trade union or employers' organization and includes a member of a committee of any such trade union or employers' organization;

"official", in relation to a trade union or employers' organization, means an employee of such trade union or employers' organization employed as secretary, assistant secretary or organizer of such trade union or employers' organization or in any other capacity, whether or not such employee is employed in a full-time capacity;

"ordinary working hours", in relation to-

(a) a security guard or a guard, means the working hours mentioned in sections 26(1)(a), 27(1)(a) and 28(1)(a);

(b) a shift worker who is employed for any purpose referred to in section 33(2), means the working hours mentioned in sections 26(1)(b) and 28(1)(b);

(c) a shift worker who is employed for any purpose other than a purpose referred to in section 33(2), means the working hours mentioned in sections 26(1)(b) and 28(1)(c);

(d) a casual employee, means the working hours mentioned in section 27(1)(b);

(e) a day worker other than a casual employee referred to in paragraph (d) who is a day worker, means the working hours mentioned in sections 26(1)(b) and 27(1)(c),

or means the said hours as extended in accordance with section 29, as the circumstances may require;

"overtime" means that portion of the time which an employee works for his or her employer which is in excess of the ordinary working hours applicable to such employee;

"Permanent Secretary" means the Permanent Secretary: Labour and Manpower Development;

"premises" includes any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, truck, vessel or aircraft;

"public holiday" means any public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1991 (Act 26 of 1991);

"registered", in relation to-

(a) a trade union or an employers' organization, means a trade union or an employers' organization, as the case may be, which is registered as such under the provisions of Part VII;

(b) a collective agreement, means a collective agreement registered in terms of section 68(3)(a);

"remuneration" means any payment in money made or owing to any employee by virtue of his or her employment, excluding-

(a) any payment made or owing to such employee by way of compensation for travelling and subsistence expenses incurred by such employee in the course of his or her employment;

(b) any payment made or owing to such employee by virtue of such employee's retirement from the employment of such employer or the termination of such employee's employment,

and "remunerate" shall have a corresponding meaning;

"security guard" means any employee who is charged with the supervision, or control over, a guard or the control of, or reporting on, the movement of persons or vehicles through a checkpoint or who may in the course of his or her employment be required to act as a guard or to perform any other security duty;

"shift worker" means an employee who works in shifts in or in connection with any industry in relation to which work is performed in two or more shifts per day;

"shop" means-

(a) any premises where articles are displayed for sale or where samples of articles are displayed for the sale of articles of the kind so displayed;

(b) any premises where-

(i) articles referred to in paragraph (a) are stored, unpacked or packed, or from where such articles are dispatched or delivered to customers;

(ii) articles intended for sale are stocked and from where orders for the supply of such articles to customers are executed;

(c) any premises used as a-

(i) restaurant, refreshment or tea room or an eating-house;

(ii) hairdresser's salon or barber's shop;

(iii) receiving depot for-

(aa) articles of clothing or other soft goods which are to be laundered, cleaned or dyed; or

(bb) shoes, boots or articles of clothing which are to be repaired;

or

(d) any premises where any other activities are performed which are connected with or incidental to any one or more of those mentioned in paragraph (a), (b) or (c);

"spread-over", in relation to an employee, means the period in any day reckoned from the time when such employee first commences work until he or she ceases to work for that day, and for the purposes of this definition "day" means a period of 24 consecutive hours reckoned from the time of the said commencement of work;

"State" includes-

(a) any body established by or under any law and-

(i) controlling or being entitled to control by virtue of any such law funds accruing or being entitled to accrue to it as a whole or in part from moneys-

(aa) appropriated for the purposes of those funds or of a loan to the credit of those funds or, in the case of a body with a share capital in which the State or Government of Namibia may, under the law in question, take up shares, the taking up of such shares;

(bb) loaned by virtue of a guarantee or approval granted in terms of any law by the President or any Minister;

(ii) which may levy fees for services rendered at a rate, tariff or scale approved or determined in terms of any law by the President or any Minister;

(b) any regional council contemplated in Article 103 of the Namibian Constitution;

(c) any local authority contemplated in Article 111 of the Namibian Constitution;

"strike" means the refusal or failure in concert by two or more employees of an employer to continue, whether completely or partially, to work or to resume their work or to comply with the terms and conditions of employment applicable to them, or the retardation by them of the progress of work, or the obstruction by them of work with a view to inducing such employer or any other employer to agree to, or to comply with, any demands or proposals which relate to any dispute or to abandon any demand or modification of any such demand;

"trade union" means any number of employees in one or more industries associated principally for purposes of regulating relations in that industry between themselves or some of them and their employers or some of their employers;

"wage order" means a wage order made under section 92;

"week", in relation to an employee, means the period of seven days within which the working week of that employee falls.

2 Application of Act

(1) Subject to the provisions of subsections (2) and (3), this Act shall apply in relation to every employer, including the State, and every employee in Namibia.

(2) Notwithstanding the provisions of subsection (1)-

(a) the provisions of this Act, except the provisions of Part XIII, shall not apply in relation to a person employed as a member of the Namibia Defence Force and the Namibian Police Force;

(b) the provisions of-

(i) the Apprenticeship Ordinance, 1938 (Ordinance 12 of 1938);

(ii) the Merchant Shipping Act, 1951 (Act 57 of 1951); and

(iii) any law on the employment of persons in the service of the State,

in so far as any such provisions relate to the remuneration and other conditions of service of persons employed in terms of those provisions, shall, subject to the provisions of subsection (3), not be affected by the provisions of this Act.

(3) Notwithstanding the provisions of subsection (2)(b)-

(a) the provisions of this Act shall apply in respect of any person referred to in the said subsection (2)(b) in so far as a provision of this Act-

(i) provides for any matter which is not regulated by or under any such provision of the said Apprenticeship Ordinance, 1938, the Merchant Shipping Act, 1951, or law referred to in that subsection in respect of any such person;

(ii) is not less favourable for such person than any provision of the said Ordinance, Act or law or any provision or condition of employment made thereunder;

(b) the Minister may from time to time by notice in the Gazette declare-

(i) that any provision of the Apprenticeship Ordinance, 1938 (Ordinance 12 of 1938), the Merchant Shipping Act, 1951 (Act 57 of 1951), or any law referred to in subsection (3) shall not apply in relation to any employee employed by or under such provision;

(ii) that any provision of this Act shall apply in relation to such person with such modifications as may be determined and specified by the Minister in such notice,

and may by like notice amend or withdraw any such notice.

PART II

ADMINISTRATION OF ACT (ss 3-6)

3 Appointment of Labour Commissioner and labour inspectors

(1) The Minister-

(a) shall, subject to the laws governing the public service, appoint a person to be known as the Labour Commissioner or, during the absence or incapacity of the Commissioner to exercise or perform his or her powers, duties or functions, an acting Labour Commissioner, who shall be assisted by such other officers as may from time to time be designated by the Permanent Secretary for such purpose, who shall respectively exercise or perform, subject to the direction and control of the Minister, the powers, duties and functions conferred or imposed upon the Commissioner by or under the provisions of this Act and such other functions as may be imposed upon any of them by the Minister;

(b) shall, subject to the laws governing the public service, appoint such number of persons to be known as labour inspectors as the Minister may deem necessary for purposes of the effective application of this Act, who shall exercise or perform, subject to the direction and control of the Minister, the powers, duties and functions conferred or imposed upon any inspector by or under the provisions of this Act and such other functions as may be imposed upon any such inspector by the Minister;

(c) may from time to time appoint such other persons on such terms and conditions as may be determined by mutual agreement for purposes of any particular examination or investigation under the provisions of this Act for such period as may be so determined.

(2) An inspector shall at the time of his or her appointment be furnished with a certificate signed by the Permanent Secretary stating that he or she has been appointed as an inspector.

4 Records and returns

(1) Every employer-

(a) shall keep at an address in Namibia a proper record in such form as may be determined by the Permanent Secretary and made known by notice in the Gazette or by notice in writing to such holder of such particulars as may be so specified in relation

to-

(i) the employees employed by him or her, including their sex and ages;

(ii) the date on which every such employee commenced his or her employment and the date on which any contract of employment was terminated and the reasons for such termination;

(iii) the remuneration payable to every employee other than a casual employee and the increment of such remuneration as may from time to time be granted;

(iv) the remuneration paid to each employee;

(v) any periods of annual leave, sick leave or maternity leave, and other periods of absence, granted to every employee other than a casual employee;

(vi) such other information and particulars as may be determined by the Permanent Secretary and specified in such notice;

(b) shall submit to the Permanent Secretary, within such period as may be determined by the Permanent Secretary by notice in the Gazette, such returns and containing such particulars and information contained in such employer's records kept in terms of paragraph (a) as may be so determined and specified.

(2) An employer shall retain all records kept in terms of subsection (1), or a microreproduction thereof, for a period of not less than five years.

(3) Subject to the provisions of section 5, the Permanent Secretary may from time to time compile, analyze and tabulate statistics collected by way of returns submitted in terms of this section and cause, subject to the directions of the Minister, such statistics, as so compiled, analyzed and tabulated, or abstracts therefrom to be published in such form as may be determined by the Permanent Secretary.

(4) Any employer who-

(a) contravenes or fails to comply with the provisions of subsection (1) or (2);

(b) in any record or return referred to in subsection (1) wilfully furnishes information which is false or misleading in any material respect,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R4000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

5 Preservation of secrecy

(1) The Permanent Secretary, the Commissioner, an inspector or any other officer employed in the Ministry of Labour and Manpower Development, whether or not engaged in carrying out the provisions of this Act, and any other person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon the Permanent Secretary, the Commissioner, inspector or such officer or person in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody, except in so far as any such communication-

(a) is required by, or may be made in terms of, this Act or any other law, or is required by an order of a competent court;

(b) is effected with the prior permission in writing of the person concerned, or of the Minister granted in respect of any matter which in the opinion of the Minister is of a general nature and may be disclosed in the public interest.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

6 Limitation of liability

No compensation shall be payable by the Permanent Secretary, the Commissioner, an inspector and any other officer employed in carrying out the provisions of this Act in respect of any act done in good faith under this Act.

PART III

LABOUR ADVISORY COUNCIL (ss 7-14)

7 Establishment of Labour Advisory Council

There is hereby established a council to be known as the Labour Advisory Council.

8 Functions of Council

(1) Subject to the provisions of this Act, the functions of the Council shall be to make such investigations as it may deem necessary, and to advise the Minister generally or in respect of any particular case in relation to-

(a) the formulation and implementation of a national policy relating to basic conditions of employment, including health, safety and welfare at work of employees;

[Para (a) amended by sec 53(1) of Act 18 of 1994.]

(b) the promotion of the relationship between employer and employee, including matters relating to collective bargaining;

(c) the amendment or application of the provisions of this Act or any other law relating to labour matters;

(d) the enactment of legislation, and matters, aimed at the achievement of the objects of Article 95 of the Namibian Constitution, including-

(i) any proposals or matters to be discussed at the International Labour Conference;

(ii) the ratification of international labour conventions;

(iii) the enforcement of any recommendations made by the International Labour Conference;

(iv) any matters which may be raised in reports to be made to the International Labour Office;

(e) the collection and compilation of information for purposes of the administration of the provisions of this Act and the publication of statistics in relation to such information;

(f) the prevention or reduction of unemployment;

(g) any power, duty or function which may or is required to be exercised or performed in terms of this Act after consultation with the Council;

(h) any other labour matter which in the opinion of the Council is necessary or expedient for purposes of achieving the objects of this Act, or which is referred to the Council by the Minister for any such purpose.

(2) For purposes of subsection (1), the Council shall investigate, on at least one occasion in every year, matters referred to in paragraphs (a), (b), (c), (d) and (e) of subsection (1) and report thereon to the Minister.

9 Constitution of Council

(1) The Council shall consist of-

(a) the Minister or a person designated by him or her during the Minister's pleasure, who shall be the chairperson of the Council;

(b) four persons appointed by the Minister to represent the interests of the State;

(c) eight other members appointed by the Minister of whom-

(i) four are, in the opinion of the Minister, representative of the interests of registered trade unions;

(ii) four are, in the opinion of the Minister, representative of the interests of registered employers' organizations,

and selected by the Minister from persons nominated in accordance with the provisions of subsection (2).

(2) For purposes of the appointment of members in terms of paragraph (c) of subsection (1), the Minister shall from time to time invite, by notice in writing, registered trade unions and registered employers' organizations to nominate such number of persons as may be specified in such notice who in the opinion of any such registered trade union or registered employers' organization represent their interests and are fit and proper persons to be appointed as members of the Council.

(3) The Council may co-opt, with the concurrence of the Minister, on such conditions as may be determined by the Minister and for such period, if any, as may be so determined from time to time, one or more persons to assist it in the performance of its functions or assist a committee in the performance of such committee's functions, but such person or persons shall not be entitled to vote on any matter before the Council or such committee.

10 Committees of Council

(1) The Council may-

(a) in its discretion establish one or more committees which shall consist of two or more members of the Council nominated for such purpose by the Council to advise it on any of its functions;

(b) assign to any such committee, with the approval of the Minister and subject to such conditions as he or she may prescribe (including conditions relating to reporting to the Council by any such committee), such functions of the Council, and give such directives in connection therewith, as the Council may deem expedient.

(2) For purposes of the provisions of this Act, any function performed by a committee referred to in subsection (1) by virtue of the provisions of paragraph (b) of that subsection shall be deemed to have been performed by the Council.

11 Terms of office and conditions of service of members of Council

(1) Subject to the provisions of section 12(2), a member of the Council other than the chairperson shall hold office for a period not exceeding three years, but may be re-appointed or redesignated, as the case may be, at the expiration of that period.

(2) A member of the Council who is not employed in the public service on a full-time basis shall be paid out of moneys appropriated by law such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the Council, such subsistence and travelling allowances as the Minister may, in concurrence with the Minister of Finance, determine.

(3) The remuneration and allowances determined under subsection (2), may differ according to the office held by the member of the Council concerned or the functions performed by him or her.

12 Vacation of offices of members of Council

(1) A member of the Council shall vacate his or her office, if-

(a) such member is by reason of his or her physical or mental illness or for any other reason incapable of acting as member of the Council;

(b) such member is convicted of an offence and sentenced to imprisonment without the option of a fine;

(c) such member, by writing under his or her hand addressed and delivered to the Permanent Secretary, resigns from his or her office as a member of the Council;

(d) such member has absented himself or herself from two consecutive meetings of the Council without the leave of the Council.

(2) Any casual vacancy on the Council caused by the death or vacation of office by any member of the Council shall, with due regard to the provisions of section 9, be filled for the unexpired portion of the period of office of the member of the Council who has died or vacated his or her office, as the case may be.

13 Meetings of Council and decisions

(1) Subject to the provisions of section 8(2) and subsection (2) of this section, a meeting of the Council shall be held at such time and place as may be determined by the chairperson of the Council.

(2) The chairperson of the Council shall on a reasoned request in writing of at least four members of the Council or, if the chairperson is not the Minister, on the request of the Minister convene a special meeting of the Council.

(3) The majority of the members of the Council shall form a quorum for a meeting of the Council.

(4) The chairperson of the Council shall preside at all meetings of the Council at which he or she is present.

(5) When the chairperson of the Council is absent from a meeting of the Council the members of the Council present shall elect a chairperson from among their number

to act as chairperson at that meeting, and while he or she so acts he or she shall have all the powers and shall perform all the duties of the chairperson.

(6) A decision of the majority of the members of the Council present at the meeting of the Council shall be a decision of the Council: Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(7) No decision taken by the Council or act performed under the authority of the Council shall be invalid by reason only of a vacancy on the Council, or by reason only of the fact that any person who is not entitled to sit as a member of the Council sat as a member of the Council when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the Council who were present at the time and entitled to sit as such members.

(8) The Council shall cause a record to be kept of the proceedings of the meetings of the Council.

(9) The Council may make rules in relation to the holding of, and procedure at, meetings of the Council.

14 Performance of administrative functions of Council

(1) The administrative and clerical work involved in the performance of the functions of the Council shall be performed by officers in the Ministry of Labour and Manpower Development made available by the Permanent Secretary for that purpose.

(2) The Permanent Secretary may designate an officer referred to in subsection (1) as secretary of the Council.

(3) The Council may, after consultation with the Permanent Secretary and on such conditions as may be mutually agreed upon, obtain the services of such persons as it may deem necessary to advise it in connection with the performance of its functions.

PART IV

LABOUR COURT AND DISTRICT LABOUR COURTS (ss 15-24)

15 Establishment of Labour Court and district labour courts

(1) There is hereby established-

(a) a Labour Court; and

(b) a district labour court for each district in respect of which a magistrate's court is established,

each of which shall be a court of record.

(2) The proceedings in the Labour Court and every district labour court shall be carried on in open court, except in so far as any such court has, in the interests of good order or public morals and subject to such conditions, if any, directed otherwise.

16 Constitution of Labour Court

(1) The Labour Court shall consist of a judge or acting judge of the High Court of Namibia designated by the Judge President for such purpose for the period of the hearing of, or for, such cases as may be determined by the Judge President, and who shall be the president of the Court.

(2) The president of the Labour Court may-

(a) on his or her own motion or on the request of any party to the proceedings in the Labour Court, appoint two or more assessors of whom an equal number shall be selected from amongst persons named in each of the lists compiled in terms of subsection (3);

(b) if he or she deems it desirable in the interests of justice, appoint any other person as assessor or such other number of persons as additional assessors as may be determined by him or her on account of his, her or their special knowledge and

experience in any field which is related to any matter to be adjudicated upon by the Labour Court in any such proceedings, whether or not the name of any such person is, or the names of such other persons are, contained in any of the lists referred to in the paragraph (a),

to advise the Labour Court on any matter to be adjudicated upon by the Labour Court in the proceedings in question.

(3) For purposes of the appointment of assessors referred to in paragraph (a) of subsection (2), the Minister shall-

(a) after consultation with such registered trade unions as in the opinion of the Minister may be representative of employees in Namibia;

(b) after consultation with such registered employers' organizations as in the opinion of the Minister may be representative of employers in Namibia,

compile separate lists, in respect of such employees and such employers, of persons containing on each list the names of such equal number of persons as the Minister may deem necessary for purposes of the provisions of this Part who in the opinion of the Minister are fit and proper persons to act, for purposes of subsection (2)(a), on account of their special knowledge and experience in the field of labour relations, as assessors.

(4) An assessor appointed in terms of subsection (2) who is not employed in the public service on a full-time basis shall be paid out of moneys appropriated by law, such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the Labour Court, such subsistence and travelling allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

17 Constitution of district labour courts

(1) A district labour court shall consist of a magistrate, designated by the Minister of Justice or any officer in the Ministry of Justice designated by him or her, who shall be the chairperson of the district labour court.

(2) The chairperson of the district labour court may-

(a) on his or her own motion or on the request of any party to the proceedings in the district labour court, appoint two assessors of whom one each shall be selected from amongst persons named in each of the lists compiled in terms of section 16(3);

(b) if he or she deems it desirable in the interests of justice, appoint any other person as assessor or such other number of persons as additional assessors as may be determined by him or her on account of his, her or their special knowledge and experience in any field which is related to any matter to be adjudicated upon by the district labour court in any such proceedings, whether or not the name of any such person is, or the names of such other persons are contained in any of the lists referred to in the paragraph (a),

to advise the district labour court on any matter to be adjudicated upon by such district labour court in the proceedings in question.

(3) A magistrate referred to in subsection (1) may be designated in respect of one or more district labour courts.

(4) Subsection (4) of section 16 shall apply mutatis mutandis in relation to a district labour court.

18 Jurisdiction and powers of Labour Court

(1) The Labour Court shall have exclusive jurisdiction-

(a) to hear and determine-

- (i) any appeal from any district labour court;
 - (ii) any appeal noted in terms of section 54(4), 68(7), 70(6), 95(4), 100(2) or 114(6);
- (b) to consider and give a decision on-
- (i) any application made to the Labour Court in accordance with the provisions of this Part in terms of any provisions of this Act;
 - (ii) any application to review and set aside or correct any decision taken by the Minister or the Permanent Secretary, the Commissioner, any inspector or any officer involved in the administration of the provisions of this Act;
- (c) to review the proceedings of any district labour court brought under review on the grounds mutatis mutandis referred to in section 20 of the High Court Act, 1990 (Act 16 of 1990);
- (d) to grant in any application referred to in paragraph (b) or (c) any urgent interim relief until a final order has been made in terms of the said paragraph (b) or (c);
- (e) to issue any declaratory order in relation to the application or interpretation of any provision of this Act, or any law on the employment of any person in the service of the State or any term or condition of any collective agreement, any wage order or any contract of employment;
- (f) to make any order which it is authorized to make under any provision of this Act or which the circumstances may require in order to give effect to the objects of this Act;
- (g) generally to deal with all matters necessary or incidental to its functions under this Act, including any labour matter, whether or not governed by the provisions of this Act, any other law or the common law.

(2) A party to any proceedings before the Labour Court may appear in person or be represented by a legal practitioner admitted to practise as an advocate in terms of

the Admission of Advocates Act, 1964 (Act 74 of 1964), or as an attorney in terms of the Attorneys Act, 1979 (Act 53 of 1979).

(3) Subject to the provisions of this section and sections 16 and 22, the Labour Court shall, in the exercise or performance of its powers and functions, have all the powers of the High Court of Namibia under the High Court Act, 1990 (Act 16 of 1990), as if its proceedings were proceedings conducted in, and any order made by it were an order of, the said High Court of Namibia.

19 Jurisdiction and powers of district labour courts

(1) A district labour court shall have jurisdiction-

(a) to hear all complaints lodged with such district labour court by an employee or employer (hereinafter referred to as the complainant) against an employer or employee (hereinafter referred to as the respondent) for an alleged contravention of, or alleged failure to comply with, any provision of this Act or any term and condition of a contract of employment or a collective agreement;

(b) to make any order against, or in respect of, the respondent or the complainant, as the case may be, which it is empowered to make under any such provision of this Act.

(2)(a) A district labour court may on the request of the respondent and with the consent of the complainant, or on its own motion, if it is of the opinion that the subject matter of the complaint relates to a dispute of interests, refer the complaint to the Commissioner.

(b) A complaint referred to the Commissioner in terms of paragraph (a) shall be deemed to be a dispute reported to the Commissioner in terms of section 74.

(c) If a complaint is referred to the Commissioner in terms of paragraph (a) the complainant shall, within a period of 14 days as from the date on which the complaint

has so been referred or such longer period as the Commissioner may on good cause shown allow, comply with the provisions of subsection (2) of section 74.

(3) Any complainant, if he or she so desires, may be represented in a district labour court by a person who shall be designated by the Permanent Secretary generally or in every particular case for such purpose, and any such complainant and any respondent may appear in person in such district labour court or be represented by his or her own legal practitioner admitted to practise as an advocate in terms of the Admission of Advocates Act, 1964 (Act 74 of 1964), or as an attorney in terms of the Attorneys Act, 1979 (Act 53 of 1979), or by any other person duly authorized by such complainant or respondent, as the case may be.

(4) Subject to the provisions of this section and sections 17 and 22, a district labour court shall, in the exercise or performance of its powers and functions, have all the powers of a magistrate's court under the Magistrates' Court Act, 1944 (Act 32 of 1944), as if its proceedings were proceedings conducted in, and any order made by it were a judgement of, a magistrate's court.

20 Orders of costs

The Labour Court or any district labour court shall not make any order as to any costs incurred by any party in relation to any proceedings instituted in the Labour Court or any such district labour court, except against a party which in the opinion of the Labour Court or district labour court has, in instituting, opposing or continuing any such proceedings, acted frivolously or vexatiously.

21 Appeals against judgement or orders of Labour Court or district labour courts

(1) Any party to any proceedings before-

(a) the Labour Court may appeal, with the leave of the Labour Court or, if such leave is refused, with the leave of the Supreme Court of Namibia granted on

application by way of petition to the Chief Justice, to the Supreme Court of Namibia, on any question of law against any decision or order of the Labour Court or any judgment or order of the Labour Court given on appeal from a judgment or order from a district labour court, as if such judgment or order were a judgment or order of the High Court of Namibia;

[Para (a) substituted by sec 7 of Act 10 of 2001.]

(b) any district labour court may appeal to the Labour Court against any judgement or order given by such district labour court, as if such judgement or order were a judgement or order of a magistrate's court.

(2) The noting of an appeal under subsection (1) shall not stay the execution of the Labour Court's or a district labour court's judgement or order, unless the Labour Court on application directs otherwise.

22 Rules of Labour Court and district labour courts

(1) There is hereby established a board to be known as the Labour Courts' Rules Board which shall consist of-

(a) the Judge President of the High Court of Namibia or any judge of that Court designated from time to time by the Judge President, who shall be the chairperson of the Labour Courts' Rules Board;

(b) one person practising as an advocate in Namibia and nominated by the professional organization representing the interests of advocates;

(c) one person practising as an attorney in Namibia and nominated by the professional organization representing the interests of attorneys;

(d) one person serving in the Ministry of Justice designated by the Minister of Justice;

(e) one person serving in the Ministry of Labour and Manpower Development designated by the Minister.

(2) A member of the Labour Courts' Rules Board other than the chairperson and the members referred to in paragraphs (d) and (e) of subsection (1) shall be paid out of moneys appropriated by law such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the Labour Courts' Rules Board, such subsistence and travelling allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

(3)(a) The majority of the members of the Labour Courts' Rules Board shall form a quorum for a meeting of that Board.

(b) A decision of the majority of the members of the Labour Courts' Rules Board present at a meeting thereof shall be a decision of that Board: Provided that in the event of an equality of votes the chairperson of that Board shall in addition to his or her deliberative vote have a casting vote.

(4) The Labour Courts' Rules Board may, after consultation with the Council, make rules separately in respect of the Court and the district labour courts in relation to-

(a) the conduct of the proceedings of the Labour Court and the district labour courts;

(b) the manner, including any matter relating to the admissibility of evidence, in which any matter to be heard and determined by the Labour Court or any district labour court shall be brought and continued before it with a view to effecting a speedy, fair and equitable disposal of any such matter;

(c) the tariff of fees chargeable by legal representatives;

(d) with the concurrence of the Minister of Finance, the fees payable in respect of the service or execution of any process of the Labour Court or any district labour court and the tariff of costs and expenses which may be allowed in respect of such service or execution;

(e) the taxation of bills of costs;

(f) the hours during which the office of the registrar of the Labour Court or the clerk of the district labour court shall be open for a transaction of business;

(g) the period within which and the manner in which an appeal from a decision of the Labour Court to the Supreme Court of Namibia or from any district labour court to the Labour Court shall be noted;

[Para (g) substituted by sec 8 of Act 10 of 2001.]

(h) generally, any matter which may be necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the proceedings of the Labour Court or any district labour court.

(5) Until such time as the rules referred to in subsection (4) are made under that subsection-

(a) in the case of the Labour Court, the Rules of the High Court of Namibia made in terms of section 39 of the High Court Act, 1990 (Act 16 of 1990);

(b) in the case of the district labour courts, the rules of magistrates' courts made in terms of section 25 of the Magistrates' Courts Act, 1944 (Act 32 of 1944),

shall apply mutatis mutandis in relation to the Labour Court or the district labour courts, as the case may be, as if the Labour Court were the High Court of Namibia and any district labour court were a magistrates court.

[a6y1992s23]23 Offences relating to orders of Labour Court or district labour courts

Any person who contravenes or fails to comply with an order of the Labour Court or district labour court shall be guilty of an offence and on conviction be liable to the penalties which may by law be imposed for contempt of court.

24 Limitation of institution of proceedings in Labour Court or lodging of complaints with district labour courts

Notwithstanding the provisions of any other law to the contrary, no proceedings shall be instituted in the Labour Court or any complaint lodged with any district labour court after the expiration of a period of 12 months as from the date on which the cause of action has arisen or the contravention or failure in question has taken place or from the date on which the party instituting such proceedings or lodging such complaint has become or could reasonably have become aware of such cause of action or contravention or failure, as the case may be, except with the approval of the Labour Court or district labour court, as the case may be, on good cause shown.

PART V

BASIC CONDITIONS OF EMPLOYMENT (ss 25-44)

25 Application of this Part

The provisions of this Part shall not be construed as preventing an employer from agreeing to, or granting, any condition of employment which is more favourable to any employee than any condition of employment referred to in this Part.

26 Maximum weekly ordinary working hours

(1) No employer shall require or permit-

(a) any security guard or a guard to work for more than 60 hours during any week;

(b) any employee other than a security guard or a guard to work for more than 45 hours during any week.

(2) In determining for purposes of subsection (1) the time worked by an employee during a week-

(a) any time worked by him or her on a Sunday shall, in the case of an employee employed for any purpose referred to in section 33(2), be disregarded;

(b) any time taken up by meal intervals which the employee was allowed during his or her spread-overs during that week shall-

(i) in the case of a security guard or guard, be regarded as time worked by him or her;

(ii) in the case of any other employee be disregarded;

(c) any overtime worked by him or her during that week and not exceeding the maximum weekly overtime mentioned in or fixed under section 32, shall be disregarded.

27 Maximum daily ordinary working hours in case of day workers

(1) No employer shall require or permit-

(a) a security guard or a guard who is a day worker and-

(i) who works not more than five days during a week, to work for more than 12 hours on any day; or

(ii) who works six days during a week, to work for more than 10 hours on any day;

(b) a casual employee to work for more than nine hours on any day; or

(c) any other employee-

(i) who works not more than five days during a week, to work for more than nine hours on any day; or

(ii) who works six days during a week, to work for more than seven and one-half hours on any day, unless the time worked by him or her on one day of the week does not exceed five hours, in which case the time worked by him or her on any one of the other days of that week shall not exceed eight hours.

(2) In determining for purposes of subsection (1) the time worked by an employee on a day-

(a) any time taken up by meal intervals which the employee was allowed during his or her spread-overs during that week shall-

(i) in the case of a security guard or guard, be regarded as time worked by him or her;

(ii) in the case of any other employee, be disregarded;

(b) any overtime worked by him or her on that day not exceeding the maximum daily overtime mentioned in or fixed under section 32, shall be disregarded.

28 Maximum ordinary working hours per shift in case of shift workers

(1) No employer shall require or permit-

(a) a security guard or a guard who is a shift worker and-

(i) who works not more than five shifts during a week, to work a shift of longer than 12 hours; or

(ii) who works six shifts during a week, to work a shift of longer than 10 hours;

(b) a shift worker who is employed for any purpose referred to in section 33(2), to work a shift of longer than seven and one-half hours; or

(c) any other shift worker-

(i) who works not more than five shifts during a week, to work a shift of longer than nine hours; or

(ii) who works six shifts during a week, to work a shift of longer than seven and one-half hours unless one of the shifts worked by him or her during any week does not exceed five hours, in which case none of the other shifts worked by him or her during that week shall exceed eight hours.

(2) In determining for purposes of subsection (1) the duration of a shift worked by an employee-

(a) any time taken up by a meal interval which the employee was allowed during the spread-over in which that shift was worked, shall-

(i) in the case of a security guard or a guard, be regarded as time worked by him or her;

(ii) in the case of any other shift worker, be disregarded;

(b) any overtime worked by him or her during the spread-over in which that shift was worked and not exceeding the maximum daily overtime mentioned in or fixed under section 32, shall be disregarded.

29 Extension of ordinary working hours

Where an employees employed in or in connection with a shop is required to attend to a customer after completion of the ordinary working hours mentioned in section 26, 27 or 28, according to whatever hours are applicable to the employee concerned, those working hours may be extended not more than 15 minutes per day or per shift, as the case may be, but in the aggregate by not more than one hour during any week.

30 Maximum spread-overs

(1) No employer shall require or permit an employee to work for a spread-over of more than 12 hours.

(2) The provisions of subsection (1) shall not apply in respect of an employee while he or she performs emergency work or work connected with the arrival, departure, provisioning, loading or unloading of a ship or aircraft used for the transportation of passengers or goods, or the arrival, departure, provisioning, loading or unloading of a truck or other heavy vehicle used for the transportation of passengers, livestock or perishable goods.

31 Meal intervals

(1) No employer shall require or permit an employee-

(a) to work for more than five hours continuously without a meal interval of not less than one hour, or, where subsection (2) has been applied, of not less than the agreed time;

(b) to perform any work during his or her meal interval.

(2) An employer may conclude an agreement with his or her employee to shorten such employee's meal interval to not less than 30 minutes, but any such agreement shall not be of any force and effect unless the employer has given written notice of such agreement to the Permanent Secretary.

(3) For the purposes of this section-

(a) a period of work interrupted by an interval of less than one hour, or, in the case of a meal interval regulated by an agreement under subsection (2), by an interval of less than the agreed time, shall be deemed to be uninterrupted;

(b) a driver of a motor vehicle who during his or her meal interval does no work other than being or remaining in charge of the motor vehicle, and its load, if any, shall be deemed not to be working during such interval;

(c) the time by which an employee's meal interval exceeds one hour and 30 minutes, shall be regarded as time worked by the employee.

(4) The provisions of this section shall not apply in respect of-

(a) an employee while he or she performs work referred to in section 30(2);

(b) a security guard or a guard; or

(c) a shift worker employed for any purpose referred to in section 33(2).

32 Overtime

(1) In this section "day" shall in the case of a shift worker mean a period of 24 consecutive hours reckoned from the time when such shift worker first commences work.

(2) No employer shall require or permit an employee to work overtime otherwise than in terms of an agreement concluded by him or her with the employee and provided such overtime does not exceed three hours on any day or 10 hours during any week, or, where subsection (4) has been applied, does not exceed the maximum overtime fixed under that subsection.

(3) An employer shall pay to an employee who works overtime an amount calculated at a rate of not less than-

(a) in the case of any day other than a Sunday or a public holiday, one and one-half times;

(b) in the case of a Sunday or a public holiday, double,

his or her remuneration for one hour in respect of the overtime so worked by him or her.

(4)(a) The Permanent Secretary may on application by an employer and with the concurrence of the employee or employees affected thereby by notice in writing to such employer and such employee or employees increase the maximum overtime mentioned in subsection (2) in relation to any one or more of or all the employees of that employer or any particular category of such employees mentioned in such notice.

(b) A notice under paragraph (a) shall be issued for such period and on such conditions as may be specified in such notice and may at any time be withdrawn or amended by the Permanent Secretary.

(5) The provisions of subsection (2) shall not apply in respect of an employee while he or she performs work referred to in section 30(2).

33 Work on Sundays and public holidays

(1) No employer shall require or permit an employee to perform any work on a Sunday or public holiday.

(2) The provisions of subsection (1) shall not apply to an employer who employs an employee for purposes of-

- (a) performing any work referred to in section 30(2);
- (b) carrying on business on a Sunday or public holiday in a shop, hotel, boarding house or hostel, which he or she lawfully keeps open on a Sunday or public holiday;
- (c) performing any work in domestic service in a private household;
- (d) performing, in the course of any farming operations, any essential work which is required to be performed on a Sunday or public holiday;
- (e) with the approval of the Permanent Secretary granted by notice in writing generally or in every particular case with the concurrence of the employee or employees concerned upon an application made to the Permanent Secretary by such employer in

such form as may be determined by the Permanent Secretary, performing any other work specified in such notice;

(f) performing any work, in the course of operations in any industry, which in the opinion of the Minister is, by reason of the nature of such work, required to be performed continuously and declared by notice in the Gazette by the Minister to be work to which the provisions of subsection (1) shall, subject to such conditions, if any, as may be determined by the Minister and specified in such notice, not apply.

(3) When an employee works for any period of time on a Sunday or public holiday as provided in subsection (1) his or her employer shall, on the request of the employee, either-

(a) pay to him or her an amount of not less than double his or her rate of remuneration in respect of the period of time actually worked by him or her on such Sunday or public holiday; or

(b) pay to him or her an amount of not less than one and one-half of such rate of remuneration and grant to him or her in respect of the period of time so worked on such Sunday or public holiday an equal period of time in the next succeeding week on which he or she is not required to work.

(4) When an employee does not work on a public holiday which falls on a day which otherwise is an ordinary working day for him or her, his or her employer shall pay to him or her, on the next succeeding payday, in respect of that public holiday an amount which shall be not less than the remuneration payable to him or her in respect of the time (excluding overtime) which is ordinarily worked by him or her on that day of the week.

(5) Any amount payable to an employee in terms of subsection (3)(a) shall be paid out to him or her not later than the payday next succeeding the day in respect of which such amount is payable.

(6) For the purposes of subsections (3) and (4) a shift worked by an employee which falls on a Sunday or public holiday as well as on another day shall be deemed to

have been worked on that Sunday or public holiday, but if the major part of the shift falls on that other day such shift shall be deemed to have been worked on that other day.

34 Night work

(1) No person shall require or permit any employee to work on night work-

(a) if such employee is under the age of 18 years;

(b) in the case of a female employee, during any period of eight weeks before the expected date of her confinement and eight weeks after such confinement or during such other period, whether before such date or after such confinement, certified in writing by a medical practitioner to be necessary for the health of such female employee or her child.

(2) When an employee other than an employee referred to in subsection (1) is employed on night work, his or her employer shall pay to such employee, in addition to the remuneration payable in respect of the time, excluding overtime, ordinarily worked by him or her on a weekday, an amount of not less than an amount calculated at a rate of six percent of such remuneration.

35 Calculation of remuneration

(1) For purposes of the provisions of this Act-

(a) the remuneration of an employee, other than an employee referred to in subsection (2), for one hour shall be calculated on the basis of the number of hours ordinarily worked by him or her during a week, but not exceeding the ordinary working hours mentioned in section 26 which are applicable to him or her, and the remuneration ordinarily received by him or her during a week in respect of that number of hours;

(b) the daily remuneration of an employee, other than an employee referred to in subsection (2), shall be calculated-

(i) in the case of an employee who works five days during a week, by dividing the remuneration ordinarily received by him or her during a week by five, and, in the case of an employee who works six days during a week, by dividing the remuneration ordinarily received by him or her during a week, by six; or

(ii) in the case of an employee other than an employee referred to in subparagraph (i), by multiplying his or her remuneration for one hour by the number of hours which he or she ordinarily works on a day, but not exceeding the ordinary working hours of such employee;

(c) the weekly remuneration of an employee, other than an employee referred to in subsection (2), who receives his or her remuneration fortnightly or monthly, shall be calculated by dividing the remuneration ordinarily so received by him or her, in the case of an employee who ordinarily receives his or her remuneration fortnightly, by two, and, in the case of an employee who ordinarily receives his or her remuneration monthly, by four and one-third; or

(d) the monthly remuneration of an employee other than an employee referred to in subsection (2), who receives his or her remuneration fortnightly or weekly, shall be calculated by multiplying the remuneration ordinarily received by him or her, in the case of an employee who ordinarily receives his or her remuneration by two and one-sixth, and, in the case of an employee who ordinarily receives his or her remuneration weekly, by four and one-third.

(2) For purposes of the provisions of this Act-

(a) the weekly remuneration of an employee who is remunerated on a basis other than in accordance with the time actually worked by him or her, shall be deemed to be the average weekly income received by him or her in respect of his or her employment with his or her employer for the preceding 13 weeks, or, if he or she has worked for a shorter period, for the number of completed weeks so worked;

(b) the remuneration of such an employee for one hour shall be calculated by dividing the weekly remuneration, as calculated in terms of paragraph (a), by 45; and

(c) the daily remuneration of such an employee shall be calculated-

(i) in the case of such an employee who works five days during a week, by multiplying the hourly remuneration, as calculated in terms of paragraph (b), by nine; and

(ii) in the case of an employee who works six days during a week, by multiplying the hourly remuneration, as calculated in terms of paragraph (b), by seven and one-half.

36 Payment of remuneration

(1) The remuneration payable to an employee, other than a casual employee, shall be paid to such employee weekly or, if the employer and his or her employee so agree, fortnightly or monthly, as the case may be, on the payday in respect of which that remuneration is payable or, in the case of an employee whose contract of employment is terminated before such payday, on the day on which such contract of employment is terminated, not later than one hour after the completion of the ordinary working hours of that employee.

(2) The remuneration payable to a casual employee shall be paid daily or, if the employer and his or her employee so agree, weekly, fortnightly or monthly, as the case may be, not later than the time contemplated in subsection (1).

(3) The remuneration payable to an employee-

(a) shall be handed over to such employee in a sealed envelope, or together with a statement, on which such particulars as may be determined by the Permanent Secretary by notice in the Gazette or by notice in writing addressed and delivered to the employer concerned are indicated, which remuneration and envelope or statement shall then become the property of that employee;

(b) may, on the written request by any employee other than a casual employee, be paid into a bank or building society or post office account, provided the statement referred to in paragraph (a) is handed over to such an employee.

[a6y1992s37]37 Prohibition of certain acts relating to payment of remuneration

No employer shall-

(a) require or permit an employee to pay or repay to him or her any remuneration payable or paid to that employee in accordance with this Act or any order made in terms of this Act in relation to the payment of remuneration;

(b) do any act or permit any act to be done as a direct or indirect result of which an employee is deprived of the benefit or of any portion of the benefit of any remuneration so payable or paid;

(c) require or permit an employee to give a receipt for, or otherwise to represent that he or she received, more than he or she actually received by way of remuneration;

(d) require an employee-

(i) to make use of any shop held by or on behalf of such employer or of services rendered by or on behalf of such employer; or

(ii) to buy or otherwise acquire from such employer any goods acquired by such employer for purposes of resale or provision to his or her employees, at any price or other consideration exceeding an amount equal to the price paid by such employer for such goods plus the reasonable expenses incurred by such employer in so acquiring such goods;

(e) pay any employee, other than an employee employed in a shop, bottle store or other place where intoxicating liquor is stored or sold or any place of amusement, in any such shop, bottle store or place;

(f) levy a fine against an employee for any act or omission committed by such employee in the course of his or her employment otherwise than by way of disciplinary action lawfully taken against such employee;

(g) deduct from an employee's remuneration any amount, except-

(i) an amount of which the deduction is to be made in terms of an order of court or is authorized by any legal provision;

(ii) when an employee is for any cause not recognized by law as sufficient absent from work, an amount not exceeding the remuneration which would have been payable to him or her had he or she not been so absent from work;

(iii) when an employee is so absent from work on any working day before or after a public holiday, an amount not exceeding the remuneration which would have been payable to him or her in respect of the said working day and the said public holiday had he or she not been so absent;

(iv) when an employer for any cause recognized by law as sufficient by written notice to any employee, other than a casual employee, require that that employee on any succeeding day or days should work, as a temporary measure, less hours than the ordinary working hours or should perform no work, an amount equal to the difference between the remuneration which would have been payable to that employee in respect of the day or days in question had he or she worked the total number of ordinary working hours and the amount payable to him or her in respect of the number of hours, if any, actually worked by him or her, or an amount equal to one-third of the remuneration which would have been payable to him or her had he or she worked the total number of ordinary working hours, whichever amount is the lesser;

(v) an amount authorized by that employee in writing which is not greater than an amount equal to one-third of the remuneration of that employee and which-

(aa) is due to the employer in respect of housing furnished by the employer to the employee, goods sold by the employer to the employee or any loan or advance on his or her remuneration granted by the employer to the employee;

(bb) the employer has paid or has undertaken to pay in connection with any loan granted to such employee in order to acquire a dwelling, or in connection with the hiring of a dwelling or other accommodation;

(cc) is due by the employee to a vacation, sick, medical, insurance, savings, provident or pension fund; or

(dd) subject to the provisions of section 60, is due by the employee to any registered trade union in respect of any fees, subscriptions, contributions, special levies or other moneys by virtue of such employee's membership of such trade union.

38 Employees required to live in on place of employment or other premises of employer

(1) If an employee is by virtue of his or her employment required to live in on the place of his or her employment or to reside on any premises of his or her employer, such employer shall-

(a) provide such employee with such housing, including sanitary and water facilities, as may comply with the reasonable requirements of such employee and, in the case of an employee who is required to live in or reside on agricultural land, of his or her dependants;

(b) permit, in the case of an employee who is required to live in or reside on agricultural land, such employee, in addition, to keep such livestock and to carry on such cultivation on such land as may be necessary for such employee to provide for the reasonable needs of himself or herself and of his or her dependants.

(2) The provisions of paragraph (b) of subsection (1) shall not apply in relation to an employee who is provided by his or her employer, on such basis as may be determined by mutual agreement, with food or rations or an additional allowance to provide for the reasonable needs of such employee and of his or her dependants.

(3) For purposes of this section "dependants" mean, in relation to an employee, such employee's husband or wife, as the case may be, whether or not such employee is married to him or her, and their or his or her dependent children.

39 Annual leave

(1)(a) An employer shall grant an employee at least 24 consecutive days' leave of absence on full remuneration in respect of each period of 12 consecutive months for which the employee is employed by him or her (hereinafter referred to as a leave cycle): Provided that the period of leave may be reduced by the number of days on which the employee was during the relevant leave cycle granted occasional leave on full remuneration at his or her request.

(b) No employer shall during an employee's leave referred to in paragraph (a) require or permit that employee to perform any work as his or her employee.

(2) The leave referred to in subsection (1)(a)-

(a) shall be granted by the employer as from a date determined by him or her, but not later than four months after the expiration of the leave cycle concerned: Provided that if an employee has agreed thereto in writing before the expiration of the said period of four months, his or her employer may grant such leave to him or her as from a date not later than two months after the expiration of the said period of four months;

(b) shall not be granted by the employer to be concurrent with any period of sick leave granted in terms of section 40 or maternity leave granted in terms of section 41 or with a period of notice of termination of the contract of employment;

(c) shall for each public holiday which falls within the employee's period of leave and which falls on a day which otherwise would have been an ordinary working day for such employee, be extended by one working day with full remuneration.

(3) An employer shall pay an employee to whom leave is granted in terms of subsection (1), the remuneration in respect of his or her leave not later than the last working day of the employee before the commencement of his or her leave, or, at the written request of the employee, not later than the first payday for such employee after the expiration of his or her leave.

(4) Upon termination of an employee's employment his or her employer shall pay to him or her-

(a) his or her full remuneration in respect of any leave which accrued to him or her, but was not granted before the date of termination of his or her employment; and

(b) an amount not less than one-quarter of his or her weekly remuneration in respect of each completed month of employment with the employer after the date on which he or she last became entitled to leave in terms of subsection (1), or, in the case of an employee who has been employed for less than 12 months, after the date of commencement of his or her employment: Provided that an employer shall not be obliged to pay such an amount in terms of this paragraph to an employee who leaves his or her employment without having given the required notice of termination of his or her contract of employment in terms of section 47 and having worked during such a period of notice, unless in failing to give such notice or to work during such period he or she was acting within his or her rights:

Provided that an employer may deduct from any amount payable in terms of this subsection, any amount paid to the employee concerned in respect of any day on which he or she was granted occasional leave at his or her written request.

(5) The amount to be paid to an employee in terms of subsection (3) or (4) shall be calculated at least at the rate of the remuneration which the employee was receiving

immediately prior to the date upon which his or her leave commenced or his or her employment terminated, as the case may be.

(6) Any period during which an employee-

(a) is on leave by virtue of subsection (1);

(b) is on sick leave by virtue of section 40(1);

(c) is absent from work on the instructions or on the request of the employer,

amounting in the aggregate in any leave cycle to not more than 12 weeks in respect of the periods referred to in paragraphs (a), (b) and (c) shall, for the purposes of subsections (1) and (4), be deemed to be employment with his or her employer.

(7) In this section "employer" includes-

(a) where the employer has died, the executor of his or her estate;

(b) where the estate of the employer is sequestrated or liquidated or his or her business is transferred, the executor, the administrator, trustee, liquidator or new owner of the business,

if any such executor, administrator, trustee, liquidator or new owner continues to employ the employee concerned.

(8) For the purposes of this section a leave cycle shall be deemed to commence on-

(a) the date on which the employee entered the employer's employment;

(b) a day one year prior to the commencement of this Act; or

(c) the date on which the employee under a provision of this Act or a law repealed by this Act or of any law on the employment of persons in the service of the State, in so far as that Act or any such law relates to the remuneration and other conditions of service of persons employed in terms of that Act or any such law, last became entitled to annual leave on full remuneration,

whichever is the latest.

(9) Subject to the provisions of subsection (4), no employer shall agree with an employee to pay to him or her any amount in lieu of leave to which he or she is entitled in terms of subsection (1), or pay any such amount to him or her.

40 Sick leave

(1) An employer shall grant an employee who is absent from work through incapacity-

(a) in the case of an employee who works not more than five days during a week, not less than 30 working days; or

(b) in the case of any other employee, not less than 36 working days,

sick leave in the aggregate on full remuneration during each period of 36 consecutive months for which the employee is employed by him or her (hereinafter referred to as a sick leave cycle): Provided that during the first 12 consecutive months of employment an employee shall not be entitled to sick leave on full remuneration at a rate of more than, in the case of an employee who works not more than five days during a week, one working day in respect of each completed period of five weeks employment, and, in the case of every other employee, one working day in respect of each completed month of employment.

(2) The amount to be paid in terms of subsection (1) to an employee in respect of a day's sick leave on full remuneration, shall not be less than the remuneration payable to him or her in respect of the time (excluding overtime) ordinarily worked by him or her on that day of the week.

(3) An employer shall not be bound in terms of subsection (1) to pay to an employee an amount in respect of any absence from work for a period covering more than two consecutive days, unless the employee produces a medical certificate signed by a medical practitioner and stating the nature and duration of the employee's

incapacity: Provided that if an employee has during any period of up to eight weeks received payment in terms of that subsection on two or more occasions without having produced such a certificate to his or her employer, his or her employer shall during the period of eight weeks immediately succeeding the last such occasion not be bound to pay the said amount to the employee in respect of any absence from work, unless he or she produces such a certificate.

(4) The provisions of subsection (1) shall not apply in respect of-

(a) an employee at whose written request an employer makes contributions, at least equal to those made by the employee, to any fund or organization designated by the employee, which fund or organization guarantees to the employee in the event of his or her incapacity the payment to him or her of not less than the equivalent of his or her remuneration for 30 working days in each period of 36 months of employment, if he or she works not more than five days during a week, or 36 working days in each such period if he or she works six days during a week;

(b) any period of incapacity of an employee in respect of which the employer is by or under a provision of any law required to pay to the employee an amount of not less than the equivalent of his or her remuneration;

(5) For the purposes of this section-

(a) any period during which an employee-

(i) is on leave by virtue of section 39;

(ii) is on sick leave by virtue of subsection (1) of this section;

(iii) is absent from work on the instructions or on the request of his or her employer,

amounting in the aggregate in any sick leave cycle to not more than 36 weeks in respect of the periods referred to in subparagraphs (i), (ii) and (iii) shall be deemed to be employment with his or her employer;

(b) any continuous employment which an employee has had with the same employer at the commencement of this Act, shall be taken into account, and any sick leave on full remuneration granted by the employer to the employee during that period of continuous employment, shall be deemed to have been granted under this section;

(c) "incapacity" shall mean inability to work owing to any sickness or injury other than sickness or injury caused by an employee's own misconduct: Provided that any inability to work caused by an accident or a scheduled disease as defined in section 2 of the Workmen's Compensation Act, 1941 (Act 30 of 1941), shall only be regarded as incapacity during any period in respect of which no compensation is payable in terms of that Act.

41 Maternity leave

(1) A female employee who has completed at least 12 months continuous service in the employment of an employer shall, with a view to her confinement, be entitled to at least four weeks maternity leave before the expected date of her confinement, certified in writing by a medical practitioner to be such expected date, and ending at least eight weeks after the date of such confinement, so certified to be such date of confinement.

(2)(a) A female employee referred to in subsection (1) shall not be deprived of any rights which vested in her by virtue of her employment on the date immediately before the date on which her maternity leave commences, and such rights, including any rights in relation to seniority, promotion and any benefits to which she is entitled by virtue of her membership of a medical scheme or fund or a pension scheme or other retirement scheme, shall continue as if her period of employment were not interrupted during the period of any maternity leave granted to her in terms of that subsection.

(b) The provisions of paragraph (a) shall not be construed as conferring any right upon the female employee concerned to receive any remuneration during the period of her maternity leave, but such female employee may be entitled to receive during such

period such compensation as may be provided for in any law governing security of employment.

(3) An employer shall not terminate any contract of employment of a female employee referred to in subsection (1) during any period of her maternity leave or at the expiry of such leave-

(a) on account of the re-organization of the business carried on by such employer or for economic or technological reasons; or

(b) on account of such female employee being incapable of continuing to perform the work she performed on the date immediately before her maternity leave commenced,

unless such employer has taken all reasonable steps to offer her another appropriate work or such female employee has unreasonably refused to accept any such offer.

42 Child labour

No person shall-

(a) employ any child under the age of 14 years for any purpose whatsoever;

(b) employ any child between the ages of 14 and 15 years-

(i) in or on any mine or other work performed with a view to mining or winning, or prospecting for, any minerals;

(ii) in or on any premises where-

(aa) an article or part of an article is made, manufactured, built, assembled, compiled, printed, processed, treated, adapted, repaired, renovated, rebuilt, altered, ornamented, painted, including spray painted, polished, finished, cleaned, dyed, washed, broken up, disassembled, sorted, packed or put into a container, chilled, frozen or stored in cold storage;

(bb) electricity is generated, transformed or distributed;

(cc) a building, bridge, dam, canal, road, railway line, street, runway, sewer or water reticulation system or anything similar is built, constructed, maintained, altered, renovated, repaired, demolished or dismantled;

(dd) machinery is installed, erected or dismantled;

(c) employ any child between the ages of 15 and 16 years underground in any mine;

(d) employ any child referred to in paragraph (b) or (c) in or on such other place, work or premises as may from time to time be determined by the Minister by notice in the Gazette, or contrary to such restrictions or conditions as may be so determined.

43 Prohibition on victimisation and protection of freedom of association

(1) No employer shall reduce the rate of remuneration of an employee, or alter the terms and conditions of his or her employment to terms or conditions less favourable to him or her, or alter his or her position relative to other employees employed by that employer to his or her disadvantage, by reason of the fact or because the employer suspects or believes, whether or not the suspicion or belief is justified or correct, that such employee-

(a) has given information to the Minister, the Permanent Secretary, the Commissioner, an inspector or any other person involved in the administration of the provisions of this Act which in terms of this Act he or she is required to give or which relates to terms and conditions of his or her employment or to those of any other employee of his or her employer, or has complied with a lawful requirement of the Minister, the Permanent Secretary, the Commissioner, an inspector or any other person involved in the administration of the provisions of this Act, or has given evidence before the Labour Court, a district labour court, the Commission or any other court of law;

(b) has refused or omitted to do any act which the employer required or permitted him or her to do contrary to a provision of this Act;

(c) belongs or has belonged to any trade union the object of which is or was to protect or promote the interests of employees in relation to their employers, or takes or has taken part outside his or her ordinary working hours or, with the consent of the employer, during his or her ordinary working hours in the formation or lawful activities of any such union.

(2) No employer shall refuse to employ any person by reason only of the fact or because the employer suspects or believes, whether or not the suspicion or belief is justified or correct, that such employee belongs or has belonged to any trade union the object of which is or was to protect or promote the interests of employees in relation to their employers, or takes or has taken part outside his or her ordinary working hours or, with the consent of the employer, during his or her ordinary working hours in the formation of lawful activities of any such union.

44 Powers of district labour courts in respect of contraventions of or failure to comply with provisions of this Part

(1) If, upon a complaint lodged with a district labour court in accordance with the provisions of Part IV by an employee, such district labour court is satisfied that the employer of such employee has contravened or failed to comply with the provisions of section 26(1), 27(1), 28(1), 29, 30(1), 32(2) or (3), 33(1), 34(1) or (2), 35(1) or (2), 36(1), (2) or (3)(a), 37, 38(1), 39(1), (2), (3) or (4), 40(1), 41(1), 42 or 43 such district labour court may-

(a) in the case of a contravention of or failure to comply with the provisions of section 26(1), 27(1), 28(1), 29, 30(1), 31(1), 32(2) or (3), 33(1), 34(1) or (2) or 35(1) or (2), issue an order in terms of which the employer concerned is ordered-

(i) in the case of a continuing contravention or failure of the provisions of any such section, to discontinue any such contravention or failure to the extent specified in such order;

(ii) to remunerate the employee concerned in respect of any hours worked in excess of any hours referred to in any such section as if such employee has worked overtime in accordance with the provisions of section 32;

(iii) in the case of a contravention of, or failure to comply with, the provisions of subsection (2) of section 32, to remunerate in addition the employee concerned in accordance with the provisions of subsection (3) of that section in respect of any hours worked in terms of the said subsection (2);

(iv) in the case of a contravention of, or failure to comply with, the provisions of subsection (1) of section 34, to remunerate in addition the employee concerned in accordance with the provisions of subsection (2) of that section in respect of any hours worked in terms of the said subsection (1);

(v) in the case of a contravention of, or failure to comply with, the provisions of subsection (1) of section 35, to remunerate in addition the employee concerned in accordance with the provisions of subsection (2) of that section in respect of any hours worked in terms of the said subsection (1);

(b) in the case of a continuing contravention of, or failure to comply with, the provisions of subsection (1), (2) or (3)(a) of section 36, issue an order in terms of which the employer concerned is ordered to discontinue any such contravention or failure to the extent specified in such order;

(c) in the case of a contravention of, or a failure to comply with, the provisions of subsection (1) of section 37, issue an order in terms of which the employer concerned is ordered-

(i) in the case of a continuing contravention or failure of the said subsection (1), to discontinue any such contravention or failure to the extent specified in such order;

(ii) to repay any amount received by way of-

(aa) a repayment referred to in paragraph (a) of the said subsection (1);

(bb) a fine referred to in paragraph (f) of the said subsection (1);

(iii) to restore any benefit referred to in paragraph (b) of the said subsection (1);

(d) in the case of a contravention of, or a failure to comply with, the provisions of subsection (1) of section 38, issue an order in terms of which the employer concerned is ordered-

(i) in the case of a continuing contravention or failure of the said subsection (1), to discontinue any such contravention or failure to the extent specified in such order;

(ii) to provide the employee concerned with the housing or facilities or to permit such employee to keep the livestock and to carry on the cultivation referred to in the said subsection (1) to the extent specified in such order;

(e) in the case of a contravention of, or failure to comply with, the provisions of subsection (1), (2), (3) or (4) of section 39, issue an order in terms of which the employer concerned is ordered-

(i) in the case of a continuing contravention or failure of the said subsection (1), to discontinue any such contravention or failure to the extent specified in such order;

(ii) to grant to the employee concerned leave referred to in the said subsection (1) as provided in subsection (2);

(iii) to pay to such employee the remuneration referred to in the said subsection (3) or (4);

(f) in the case of a contravention of, or failure to comply with, the provisions of subsection (1) of section 40, issue an order in terms of which the employer concerned is ordered-

(i) in the case of a continuing contravention or failure of the said subsection (1), to discontinue any such contravention or failure to the extent specified in such order;

(ii) to grant to the employee concerned leave referred to in the said subsection (1);

(iii) to pay to such employee the remuneration referred to in the said subsection (1);

(g) in the case of a contravention of, or failure to comply with, the provisions of subsection (1) of section 41, issue an order in terms of which the employer concerned is ordered-

(i) in the case of a continuing contravention or failure of the said subsection (1), to discontinue any such contravention or failure to the extent specified in such order;

(ii) to grant to the employee concerned leave referred to in the said subsection (1);

(h) in the case of a continuing contravention of, or failure to comply with, the provisions of section 42, issue an order in terms of which the employer concerned is ordered to discontinue any such contravention or failure to the extent specified in such order-

(i) in the case of a contravention of, or failure to comply with, the provisions of section 43, issue an order in terms of which the employer concerned is ordered to restore the employee concerned in the position in which he or she would have been had such employer not contravened or failed to comply with the provisions

section 43, subject to such conditions, if any, as the court may deem just and equitable in the circumstances;

(i) make such other order as the circumstances may require.

(2)(a) Any employer-

(i) in respect of whom it is alleged that any remuneration, allowance or other amount is payable by him or her to an employee who is employed by him or her, by virtue of any contract of employment or any provision of this Act, whether or not any complaint has been lodged or other proceedings have been instituted in a district labour court or the Labour Court in terms of the provisions of this Act in relation to any such remuneration, allowance or other amount and who admits that such remuneration, allowance or other amount is, whether wholly or partly, payable by him or her to such employee;

(ii) who is by virtue of an order made by a district labour court or the Labour Court in terms of the provisions of this Act required to pay any remuneration, allowance or other amount to any employee,

may pay such remuneration, allowance or amount to the Permanent Secretary for payment to the employee concerned.

(b) If the remuneration, allowance or amount paid to the Permanent Secretary under paragraph (a) is not paid within six months as from the date on which the Permanent Secretary has received it to the employee concerned, the Permanent Secretary shall forthwith pay such remuneration, allowance or amount into the State Revenue Fund.

(c) On application by the Permanent Secretary made at any time within a period of three years as from the date of payment of the remuneration, allowance or amount referred to in paragraph (b) into the State Revenue Fund, such remuneration, allowance or amount shall be refunded to the Permanent Secretary for payment to the employee concerned.

PART VI

TERMINATION OF CONTRACTS OF EMPLOYMENT AND UNFAIR DISCIPLINARY ACTIONS (ss 45-53)

45 Meaning of unfair dismissals and unfair disciplinary actions

(1) For purposes of the provisions of section 46, but subject to the provisions of subsection (2)-

(a) any employee dismissed, whether or not notice has been given in accordance with any provision of this Act or any term and condition of a contract of employment or of a collective agreement;

(b) any disciplinary action taken against any employee,

without a valid and fair reason and not in compliance with a fair procedure, shall be regarded to have been dismissed unfairly or to have been taken unfairly, as the case may be.

(2) For purposes of the provisions of subsection (1), an employee shall not be regarded to have been dismissed or to have been imposed a disciplinary penalty for a valid and fair reason, if such employee is dismissed or such penalty is imposed-

(a) by reason of the fact or because the employer concerned suspects or believes, whether or not the suspicion or belief is justified or correct, that such employee-

(i) has given information to the Minister, the Permanent Secretary, the Commissioner, an inspector or any other person involved in the administration of the provisions of this Act which in terms of this Act, a collective agreement or a wage order he or she is required to give or which relates to terms and conditions of his or her employment or to those of any other employee of his or her employer, or has complied with a lawful requirement of the Minister, the Permanent Secretary, the Commissioner, an inspector or any other person involved in the administration of the provisions of this

Act, or has given evidence before the Labour Court, a district labour court, the Commission or any other court of law;

(ii) has refused or omitted to do any act which the employer required or permitted him or her to do contrary to a provision of this Act, a collective agreement or wage order;

(iii) belongs or has belonged to any trade union or any other organization of employees the object of which is or was to protect or promote the interests of employees in relation to their employers, or takes or has taken part outside his or her ordinary working hours or, with the consent of the employer, during his or her ordinary working hours in the formation or lawful activities of any such union or organization;

(b) by reason of such employee's sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status;

(c) by reason of any act performed or omission committed by such employee which is by or under any provision of this Act or any term and condition of a contract of employment or collective agreement, authorized or permitted, or the exercise of any right conferred upon such employee by or under any such provision or term and condition.

46 Powers of district labour courts in relation to unfair dismissals from employment, or unfair disciplinary action taken against employees

(1) If, upon a complaint lodged in accordance with the provisions of Part IV by an employee who has been dismissed from his or her employment or against whom any disciplinary action has been taken, as the case may be, a district labour court is satisfied that such employee has been so dismissed unfairly or that such disciplinary action has been so taken unfairly, the district labour court may-

(a) in the case of an employee who has been so dismissed, issue an order in terms of which such employer is ordered-

(i) to reinstate such employee in the position in which he or she would have been had he or she not been so dismissed;

(ii) to re-employ such employee in work comparable to that to which he or she was engaged immediately before his or her dismissal from such date and on such conditions of employment as may be specified in such order;

(iii) to pay, whether or not such employee is re-instated or re-employed, to such employee an amount equal to any losses suffered by such employee in consequence of such dismissal or an amount which would have been paid to him or her had he or she not been so dismissed;

(b) in the case of an employee against whom disciplinary action has been so taken, issue an order in terms of which-

(i) such disciplinary action is set aside;

(ii) any disciplinary penalty, if any, imposed upon such employee is replaced with any other penalty which the court may deem just and equitable;

(iii) the matter is referred back to the employer to reconsider any disciplinary action or disciplinary penalty to be taken or imposed upon such employee in accordance with any guideline, if any, laid down by the court and specified in such order;

(c) make such other order as the circumstances may require.

(2) An order referred to in subparagraph (i) or (ii) of paragraph (a) of subsection (1) may be made subject to such conditions as the district labour court may deem just and equitable in the circumstances and may include a condition providing for the imposition of an appropriate disciplinary penalty.

(3) When in any proceedings in terms of this section it is proved that an employee was dismissed from his or her employment or that any disciplinary action has been taken against such employee, it shall be presumed that, unless the contrary is proved by the employer concerned, such employee has been dismissed unfairly or that such disciplinary action has been taken unfairly against such employee.

(4) In considering-

(a) whether an employee has been dismissed unfairly or whether any disciplinary action has been taken unfairly against such employee, the district labour court shall have regard-

(i) to the procedure in accordance with which the employer has reached his or her decision to dismiss the employee concerned or to take such disciplinary action against such employee;

(ii) to the manner in which such procedure has been followed in comparable circumstances in respect of other employees before and after such employee has been dismissed or such disciplinary action has been taken against such employee;

(iii) to the conduct and capability of the employee concerned during the period of his or her employment;

(iv) to the extent to which the employer concerned has complied with the relevant provisions of this Act and any terms and conditions contained in the contract of employment or a collective agreement;

(b) the nature of an order to be made in the event of the district labour court finding that the employee concerned has been dismissed unfairly or that disciplinary action has been taken unfairly against such employee, the district labour court shall have regard-

(i) to the order prayed for or the relief sought by the employee;

(ii) to the circumstances in which the employee concerned has been dismissed or such disciplinary action has been taken against such employee, including the extent to which such employee has contributed to or caused his or her dismissal or disciplinary action;

(iii) to the practical enforceability of any such order.

47 Termination of contracts of employment by notice

(1) Subject to the provisions of this section, an employer or employee who intends terminating a contract of employment on a date, whether before or after a date on which it would ordinarily have expired by virtue of any provision contained in such contract of employment, shall-

(a) during the first uninterrupted period of four weeks of employment, give the other party at least one working day's notice of termination of such contract, whether or not such employee is remunerated on a weekly or monthly basis;

(b) during any uninterrupted period after the expiration of the first four weeks of employment and before the expiration of 12 months, give the other party at least one week's notice of termination of such contract, whether or not such employee is remunerated on a daily or monthly basis;

(c) during any uninterrupted period of 12 months or longer, give the other party at least one month's notice of termination of such contract, whether or not such employee is remunerated on a daily or weekly basis.

(2) Subject to the provisions of subsection (3), a notice in terms of subsection (1) shall, except when given by an illiterate employee, be given in writing, and shall-

(a) contain the date on which such notice is given;

(b) in the case of a notice referred to in subsection (1)(a), be given on any working day;

(c) in the case of a notice referred to in subsection (1)(b), be given on or before the usual payday of the employee concerned and shall run from the day after such payday;

(d) in the case of a notice referred to in subsection (1)(c), be given on or before the first or the fifteenth day of a month and shall run from such first or fifteenth day, as the case may be.

(3) A period of notice given in terms of subsection (1) shall not run concurrently with, and shall not be given during, an employee's period of absence on leave granted in terms of section 39, 40 or 41.

(4) Notwithstanding the provisions of subsection (1)-

(a) an employer may terminate a contract of employment without giving notice to an employee provided he or she pays to the employee an amount which is not less than the appropriate remuneration which he or she would have been required to pay to the employee had he or she terminated the contract of employment with the notice referred to in subsection (1);

(b) an employee may terminate a contract of employment without giving notice to the employer, provided he or she pays to the employer an amount which is not less than the appropriate remuneration which the employer would otherwise have been required to pay to him or her had he or she terminated the contract of employment with the notice referred to in subsection (1).

(5) If notice of termination of a contract of employment is given in terms of subsection (1), the employer shall pay to the employee as his or her remuneration in respect of the period of notice an amount which is not less than an amount equal to the amount he or she would otherwise have been paid in respect of the period of such notice had the contract of employment not been terminated.

(6) The provisions of this section shall not be construed as preventing-

(a) any of the parties to a contract of employment from providing in such contract for a period of notice of equal duration for both parties which is longer than the period referred to in subsection (1);

(b) any employer from waiving any right conferred upon him or her by the provisions of subsection (1) or (4);

(c) any of the parties from terminating the contract of employment without the notice referred to in subsection (1) for any cause recognized by law as sufficient.

(7) For purposes of the provisions of this section, the employment of an employee shall not be regarded to have been interrupted during any period-

(a) during which an employee is absent from work on any leave of absence granted for a reason as provided in this Act or granted by such employee's employer for any other reason;

(b) during which an employee is absent from work on account of his or her suspension, whether with or without remuneration, pending any disciplinary action taken or to be taken against such employee in terms of the contract of employment entered into by such employee or of any collective agreement on account of such employee's alleged misconduct;

(c) in the case of an employee whose contract of employment has been terminated and who has been re-instated in accordance with the provisions of this Act or the terms and conditions of any collective agreement, as from the date on which such contract of employment has been terminated until the date immediately before he or she has been so re-instated;

(d) during which action has been taken by way of a strike or lock-out in accordance with the provisions of this Act, whether or not such employee has participated in such strike or was involved in such lock-out.

(8) For purposes of the calculation of any uninterrupted period of employment referred to in this section, any period referred to in subsection (7) shall be included in

any such uninterrupted period of employment to be determined for purposes of this section, except any period during which action has been taken by way of a strike or lock-out as contemplated in paragraph (d) of the said subsection (7) in relation to an employee so referred to who has participated in the strike in question or has been involved in the lock-out in question.

48 Termination of contracts of employment by death or insolvency of employer or, in case of company or juristic person, winding up of company or juristic person or, in case of partnership, dissolution of partnership

(1) A contract of employment shall terminate on a date at least one month-

(a) in the case of a contract of employment between an employee and an employer who is a natural person, as from the date of the death or sequestration of such natural person;

(b) in the case of a contract of employment entered into between an employee and an employer which is a company or other juristic person as from the date on which such company or juristic person is wound up;

(c) in the case of a contract of employment entered into between an employee and an employer which is a partnership, as from the date on which such partnership is dissolved,

as if such employee were employed by the executor of the estate of such deceased person on behalf of such estate, by the administrator, trustee or liquidator of such company or juristic person in his or her capacity as administrator, trustee or liquidator of such company or juristic person or by each partner of such partnership, as the case may be, or such longer period as may be provided for in such contract of employment or a collective agreement, or, in the case of a company or juristic person, such longer period, subject to the provisions of section 50, as such company or juristic person continues, notwithstanding its winding up, to carry on business.

(2) Notwithstanding anything to the contrary contained in any other law, an employee referred to in subsection (1) shall, in respect of the remuneration and other moneys payable to such employee by virtue of the provisions of that subsection, and who has proved a claim against the deceased or insolvent estate of the employer concerned, be deemed to be a preferent creditor of such estate.

(3) The provisions of this section shall not be construed as prohibiting the executor, administrator, trustee, liquidator or partner referred to in subsection (1) from terminating any such contract on any other date, whether or not during the month referred to in the said subsection (1), in accordance with any other provision of this Act or any provision contained in a collective agreement.

49 Termination of contracts of employment at places other than places where employees are recruited

(1) Where a contract of employment is terminated, whether with or without notice, at any place other than the place where any employee has been recruited, the employer shall-

(a) if such contract has been terminated by such employer for any reason; or

(b) if such contract has been terminated by the employee by reason thereof that the employer has contravened or failed to comply with any provision of this Act or any term or condition of such contract of employment,

provide such employee with such reasonable transportation or an amount equal to the costs of such transportation to enable him or her to return to the place where he or she has so been recruited.

(2) The provisions of subsection (1) shall not apply-

(a) in relation to an employee who, at the time of the termination of the contract of employment in question, has completed in terms of that contract of employment a period of more than 12 months of uninterrupted employment, reckoned

from the date, whether before or after the commencement of this Act, on which such contract of employment commenced;

(b) if such termination has taken place on account of-

(i) the employee's refusal to comply with the provisions of this Act, in so far as it relates to the labour relations between him or her and his or her employer, or any term and condition of the contract of employment in question or a collective agreement, or his or her insubordination or misconduct; or

(ii) the employee's own incapability; or

(c) if such employee unreasonably refuses to be re-instated by the employer under such terms and conditions which are not less favourable than the terms and conditions which were applicable to such employee immediately before such termination.

(3) The provisions of section 47(7) and (8) shall apply mutatis mutandis in relation to the determination of a period of uninterrupted employment referred to in subsection (2)(a).

50 Collective termination of contracts of employment

(1) Any employer who intends to terminate any or all of the contracts of employment of his or her employees on account of the re-organization or transfer of the business carried on by such employer or to discontinue or reduce such business for economic or technological reasons, such employer shall-

(a) inform-

(i) the registered trade union recognized by him or her as an exclusive bargaining agent in respect of such employees; or

(ii) if no such trade union exists, the workplace union representative elected in terms of section 65,

on a date not later than four weeks before such contracts of employment are so terminated or such other period as may in the circumstances be practicable, of his or her intentions, the reasons therefor, the number and categories of employees to be affected by such intended termination and the date on which or the period over which such terminations are to be carried out;

(b) afford such trade union, workplace union representative or the employees concerned an opportunity to negotiate on behalf of such employees the conditions on which, and the circumstances under which such terminations ought to take place with a view to minimizing or averting any adverse effects on such employees;

(c) notify the Commissioner in writing of his or her intentions and the reasons therefor, the number and categories of employees to be affected by such intended termination and the date on which or the period over which such terminations are to be carried out.

(2) Any employer who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding R4000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

51 Certificates of employment

(1) On the termination of a contract of employment, an employer shall furnish such employee with a certificate of employment containing no particulars other than-

- (a) the name and address of the employer concerned;
- (b) the nature of the industry in which such employer is involved;
- (c) the name and address of the employee concerned;
- (d) the capacity in which such employee was employed by the employer concerned;

(e) the date of the commencement and the date of termination of the contract of employment in question;

(f) the remuneration to which such employee was entitled immediately before the termination of the contract of employment in question;

(g) if the employee concerned so requests, the reason for the termination of such contract of employment.

(2) The provisions of subsection (1) shall not be construed as prohibiting an employer from furnishing an employee whose contract has been terminated with a testimonial or other certificate of character.

52 Severance allowances

(1) Subject to the provisions of subsection (2), an employer shall, upon-

(a) the termination of a contract of employment on or after the date of commencement of this Act or on such other date (which may be a date not longer than six months before the date on which this Act is published in the Gazette) as may be determined by the Minister by notice in the Gazette, by an employer in respect of an employee who has at the time of such termination completed in terms of that contract of employment a period of at least 12 months of uninterrupted employment, reckoned from the date, whether before or after the commencement of this Act, on which such contract of employment commenced;

(b) the termination of a contract of employment by an employee, on or after the date or other date referred to in paragraph (a) and at any time after he or she has attained the age of 65 years, who has at the time of such termination completed in terms of that contract of employment a period of at least 12 months of uninterrupted employment, reckoned from the date, whether before or after the commencement of this Act, on which such contract of employment commenced and who has attained the age

of 65 years;

(c) the death of an employee on or after the date of commencement of this Act who has at the time of his or her death completed in terms of that contract of employment a period of at least 12 months of uninterrupted employment, reckoned as provided in paragraph (a),

pay to such an employee or, in the case of an employee referred to in paragraph (c), to such employee's surviving spouse or, if there is no such spouse, such employee's children or, if there are no such children, such employee's estate, in addition to any amount paid to such employee by virtue of the provisions of section 47(4)(a), by way of allowance, an amount equal to the deficiency between-

(i) an amount of one week's remuneration for each completed period of 12 months of uninterrupted employment in the employment of that employer calculated at the rate at which such remuneration were paid to such employee immediately before such termination; and

(ii) an amount, if any,-

(aa) in the case of a person referred to in paragraph (b) or (c) of subsection (1) who is as from the date of the termination of his or her contract of employment entitled to a pension or annuity by reason of such termination, equal to the value, determined with due regard to general accepted actuarial practices, of such pension or annuity on the date of such termination;

(bb) in the case of any such person or any other person referred to in paragraph (a), provided by that employer by way of, a gratuity, an insurance policy, a savings or other bank account or any other investment which is payable in a lump sum to such employee in the event of or at the time of the termination of the contract of employment in question or the death of such employee, in so far as such provision has been made at the expense of such employer,

which is less than the amount calculated in terms of paragraph (i).

(2) The provisions of subsection (1) shall not apply-

(a) if such termination has taken place in a fair manner and for a fair reason on account of the employee's misconduct or incapability;

(b) if such employee unreasonably refuses to be re-instated by the employer under such terms and conditions which are not less favourable than the terms and conditions which were applicable to such employee immediately before such termination;

(c) in the case of an employee employed by a natural person, if the contract of employment of such employee is terminated by reason of the death of such person and the employee enters, without interruption or within one month as from the date of the death of such employer, in the employment of the widow, widower, heir, dependant or successor in title of such person, or he or she unreasonably refuses to be employed by such widow, widower, heir, dependant or successor in title on such terms and conditions which are not less favourable than the terms and conditions which were applicable to such employee immediately before such termination; or

(d) in the case of an employee employed by a partnership, if the contract of employment of such employee is terminated by reason of the dissolution of such partnership and such employee enters, without interruption or within one month as from the date of such dissolution, in the employment of one or more of the former partners of such partnership, or unreasonably refuses to be employed by any one or more of such partners on such terms and conditions which are not less favourable than the terms and conditions which were applicable to such employee immediately before such termination.

(3) For purposes of the provisions of subsection (1)-

(a) an employee-

(i) who was employed by a natural person and whose contract of employment was terminated by reason of the death of such person;

(ii) who was employed by a partnership and whose contract of employment was terminated by reason of the dissolution of such partnership; or

(iii) who was employed by a person carrying on any business and whose contract of employment was terminated by reason of the transfer of such business to any other person,

and who enters without any interruption or within a period of one month as from the date of the death of such person or of such dissolution or transfer into the employment of the widow, widower, heir, dependant or other successor in title of such person or of any one or more of the former partners of such partnership or person to whom the business in question was transferred, as the case may be, shall be deemed to have been in the uninterrupted employment of such widow, widower, heir, dependant or successor in title or such one or more partners or such person, as the case may be, as from the date on which such employee has commenced his or her employment in the employment of such deceased person, partnership or person;

(b) in the case of an employer who is engaged in an industry in which it is necessary or expedient to employ employees continuously on a seasonal basis for any particular period during succeeding years, the period of employment of any employee employed on such basis during two or more successive years shall be deemed not to have been interrupted by any period between any seasons in such successive years during which any such employee was not so employed by such employer, provided that, for purposes of the calculation of any period of uninterrupted employment, only such periods during which such employee was actually so employed shall be taken into account for such purpose.

(4) The provisions of section 47(7) and (8) shall apply mutatis mutandis in relation to the determination of a period of uninterrupted employment referred to in subsection (1).

53 Powers of district labour courts in respect of contraventions of, or failure to comply with, provisions of this Part

If, upon a complaint lodged with a district labour court in accordance with the provisions of Part IV by an employee, such district labour court is satisfied that the employer of such employee has contravened or failed to comply with the provisions of section 47(1) or (5), 49(1), 51(1) or 52(1), such district labour court may-

(a) in the case of a contravention of, or a failure to comply with, the provisions of subsection (1) or (5) of section 47, issue an order in terms of which the employer concerned is ordered-

(i) to restore the employee concerned in the position in which he or she would have been had such employer not contravened or failed to comply with the provisions of the said subsection (1) subject to such conditions, if any, as the court may deem just and equitable in the circumstances;

(ii) to pay to such employee any remuneration payable in terms of the said subsection (5);

(b) in the case of a contravention of, or failure to comply with, the provisions of subsection (1) of section 49, issue an order in terms of which the employer concerned is ordered to pay to such employee the amount of any costs payable in terms of the said subsection (1);

(c) in the case of a contravention of, or a failure to comply with, the provisions of subsection (1) of section 51, issue an order in terms of which the employer concerned is ordered to furnish the certificate of employment referred to in the said subsection (1) within such period as may be specified in such order;

(d) in the case of a contravention of, or a failure to comply with, the provisions of subsection (1) of section 52, issue an order in terms of which the employer concerned is ordered to pay to the employee concerned the allowance payable in terms of the said subsection (1);

- (e) make such other order as the circumstances may require.

PART VII

TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS (ss 54-67)

54 Registration of trade unions and employers' organizations

(1) Any trade union or employers' organization may apply for registration to the Commissioner in such form as may be determined by the Commissioner.

(2) Any application referred to in subsection (1) shall be accompanied-

(a) by three copies of the constitution of such trade union or employers' organization, as the case may be, duly certified by its chairperson and secretary as a true and correct copy of such constitution;

(b) by such other information or documents as may be required by the Commissioner by notice in writing addressed and delivered to such trade union or employers' organization within such period as may be determined by the Commissioner and specified in such notice.

(3) If after considering any application made under subsection (1), the Commissioner is satisfied-

(a) that such trade union or employers' organization has complied with the requirements of this section;

(b) that the constitution of such trade union or employers' organization-

(i) is not in conflict with the fundamental human rights and freedoms enshrined in Chapter 3 of the Namibian Constitution or with any other law;

(ii) complies with the provisions of section 55;

(iii) is not calculated to obstruct, hinder, prevent or evade the achievement of the aims of this Act or any other law,

the Commissioner shall register such trade union or employers' organization, as the case may be, and furnish such trade union or employers' organization with a certificate of registration in such form as may be determined by the Commissioner.

(4)(a) If an application for the registration of a trade union or employers' organization made in terms of subsection (1) has been refused by the Commissioner, the trade union or employers' organization in question may note, in accordance with the provisions of Part IV, an appeal to the Labour Court.

(b) The Labour Court may in an appeal referred to in paragraph (a)-

(i) set aside the decision of the Commissioner refusing the application for registration of the trade union or employers' organization in question if the Labour Court is satisfied that grounds exist by virtue of which such trade union or employers' organization ought to be registered, and order the Commissioner to register such trade union or employers' organization subject to such conditions, if any, as may be determined by the Labour Court;

(ii) dismiss such appeal.

55 Matters to be included in constitutions of trade unions and employers' organizations

In order to be registered, the constitution of a trade union or employers' organization shall, in addition to any other provisions which may be contained therein, contain provisions as to-

(a) its name;

(b) its objects;

(c) the industry or industries in which its activities will be carried on on behalf of its members;

(d) the requirements for admission to membership;

(e) the entrance fees, membership fees or other moneys which are required or may be paid by members or the method of determining any such fees or other moneys;

(f) the circumstances and the manner in which the membership of a member may be terminated upon having been afforded an opportunity to be heard;

(g) the circumstances in which a member shall cease to be entitled to the benefits of membership;

(h) the body or bodies to which a member shall have the right to appeal against a decision given on any matter referred to in paragraph (f) or (g) by a committee or other similar body having the power to give such a decision in terms of its constitution and the manner and procedure in which such appeal shall be prosecuted and determined;

(i) the procedure to be followed in the appointment or election of officials;

(j) the conditions of employment of its officials and employees;

(k) the procedure in terms of which its meetings, including general meetings open to all members or duly elected delegates, shall be convened and conducted and the manner in which minutes of such meetings shall be kept;

(l) its financial year;

(m) the purposes for which its funds may be utilized;

(n) the investment of any of its funds not required for immediate use;

(o) the acquisition and control of property;

(p) the procedure to be followed in the nomination of candidates for election as office-bearers by members in good standing;

(q) the powers and duties of office-bearers and officials;

(r) the circumstances under and the manner in which office-bearers and officials may be removed from office;

(s) the manner in which a ballot shall be conducted;

(t) the taking of a ballot for the election of office-bearers whenever more than one candidate has been duly nominated for any office, and the election of workplace union representatives and workplace safety representatives;

(u) the procedure in terms of which representatives on any conciliation board or for purposes of the list contemplated in section 16 shall be elected;

(v) the manner of amalgamation with any other trade union, workers' union or employers' organization, as the case may be;

(w) the affiliation with, the participation in the affairs of, or the acceptance of any financial or other assistance from, any other workers' or employers' organization whether within or outside Namibia;

(x) the substitution of its constitution for a new constitution or the alteration thereof;

(y) its winding up.

56 Effect of registration of trade unions and employers' organizations

(1) Any trade union or employers' organization shall upon registration in terms of section 54 become, under the name by which it is so registered, a juristic person, and shall be capable in law of suing or being sued and subject to the provisions of this Act and of any other law prohibiting or restricting the acquisition or holding of land as

defined for the purposes of such other law, of purchasing or otherwise acquiring, holding or alienating property, moveable or immovable, and of doing all such things as may be necessary for or incidental to the exercise of its powers or the performance of its duties or functions in terms of its constitution.

(2) Unless it is otherwise provided by the constitution of a registered trade union or registered employers' organization, no person shall, by reason only of the fact that he or she is a member, office-bearer or official of that union or organization, be liable for any of the liabilities and obligations of that union or organization.

57 Rights of registered trade unions and of members of registered trade unions

Subject to the provisions of this Act, a registered trade union shall have the right-

(a) to bring any application or to lodge any complaint which may in terms of any provision of this Act be brought to, or lodged with, the Labour Court or any district labour court by any of its members;

(b) in the case of an exclusive bargaining agent, to negotiate with the employer concerned or the registered employers' organization in question the terms of, and enter into, a collective agreement;

(c) to enter, during reasonable periods and on reasonable conditions, upon any premises under the control of such employer where such employees are employed or housed in order to perform thereon or therein such functions as may be necessary in order to achieve the objects of its constitution;

(d) to receive any membership fees, subscription, contribution, special levy or other moneys payable by its members by way of the deduction of an amount in respect of such membership fees, subscription, contribution, special levy or other moneys by an employer from the remuneration payable to any employee who is a member of such trade union;

(e) to report to the Commissioner any dispute which has arisen between any employer and his or her employees who are members of such trade union;

(f) to form with any other registered trade union or group of registered trade unions a federation of registered trade unions, or to participate in the activities of, or affiliate with, any other registered trade union, group of registered trade unions or federation of registered trade unions;

(g) to participate in the activities of, or affiliate with, any international workers' organization and to make, subject to the laws governing exchange control, financial and other contributions to any such organization and to so receive any such financial or other contributions from any such organization.

58 Recognition of registered trade unions as exclusive bargaining agents

(1) A registered trade union or group of registered trade unions which represents the majority of employees who fall within a bargaining unit, defined by it, and who are employed by any employer, may, upon an application in writing made, in accordance with the provisions of subsection (2), to such employer or a registered employers' organization of which such employer is a member, be recognized by such employer or employers' organization to act, for purposes of negotiating with such employer or employers' organization a collective agreement or on any matter of mutual interest, as the exclusive bargaining agent on behalf of the employees within the bargaining unit in question, whether or not such employees in such bargaining unit are members of such trade union or group of trade unions.

(2) An application referred to in subsection (1) shall be accompanied by-

(a) a copy of the constitution of the trade union or group of trade unions in question;

(b) a copy of the registration certificate of such trade union or group of trade unions;

(c) a description of the bargaining unit on whose behalf such trade union or group of trade unions desire to act as exclusive bargaining agent;

(d) a motivated report containing the facts on which it is alleged-

(i) that such trade union or group of trade unions represent the majority of the employees within the bargaining unit in question; or

(ii) that the majority of such employees desire such trade union or group of trade unions to act on their behalf as an exclusive bargaining agent for purposes of this section,

and a copy of such application shall simultaneously be submitted to the Commissioner.

(3) An employer or registered employers' organization referred to in subsection (1) shall, within a period of 30 days as from the date of the receipt of an application referred to in that subsection-

(a) if such employer or employers' organization is satisfied that such trade union or group of trade unions represents the majority of the employees within the bargaining unit in question, recognize such trade union or group of trade unions;

(b) if-

(i) such employer or employers' organization is not so satisfied;

(ii) such employer or employers' organization is of the opinion that the employees within the bargaining unit to which the application relates is not an appropriate group of employees to be represented, for purposes of this Act, by an exclusive bargaining agent,

refuse to so recognize such trade union or group of trade unions,

and such employer or employers' organization shall forthwith inform such trade union or group of trade unions by notice in writing of such decision and submit a copy of such notice simultaneously to the Commissioner.

(4) It shall be the duty of any registered trade union or group of registered trade unions recognized in terms of this section as an exclusive bargaining agent in respect of the bargaining unit in question to represent, for the purposes referred to in subsection (1), the interests of every employee falling in that bargaining unit, whether or not any such employee is a member of such trade union.

(5)(a) If, upon an application, made to the Labour Court in accordance with the provisions of Part IV, by a trade union or group of trade unions referred to in subsection (1) whose application in terms of that subsection for the recognition as an exclusive bargaining agent has been refused by an employer or employers' organization on any grounds contemplated in subsection (3)(b)(ii), the Labour Court is satisfied that such application for recognition has been refused unfairly or on grounds which are not reasonable or that grounds exist by virtue of which such trade union or group of trade unions ought to be recognized, the Labour Court may-

(i) issue an order setting aside the decision of the employer or employers' organization in question refusing to recognize such trade union or group of trade unions as an exclusive bargaining agent, and ordering such employer or employers' organization to recognize such trade union or group of trade unions as an exclusive bargaining agent subject to such conditions, if any, as may be determined by the Labour Court;

(ii) make such other order as the Labour Court may deem necessary in order to promote proper and orderly collective bargaining.

(b) In any application referred to in paragraph (a) where the appropriateness of a bargaining unit, as defined by the trade union or group of trade unions in question, is in dispute, the Labour Court shall have regard to the organizational structure of the undertaking, trade or occupation in which the employer concerned is involved with a view to promote orderly and effective collective bargaining with a minimum amount of fragmentation of such structure.

(6) If, upon an application, made to the Labour Court in accordance with the provisions of Part IV, by-

(a) an employer or registered employers' organization referred to in subsection (1), a registered trade union or group of registered trade unions recognized in terms of that subsection or any other registered trade union or group of registered trade unions representing any employees within a bargaining unit, the Labour Court is satisfied-

(i) that the majority of the employees within a bargaining unit is no longer represented by the trade union or group of trade unions in question;

(ii) that there no longer exist any reasons on the grounds of which such employees ought to be represented by an exclusive bargaining agent,

the Labour Court may-

(aa) issue an order in terms of which any such recognition is withdrawn with effect from a date specified in such order;

(bb) make such order as it may deem necessary in relation to the continuance or cessation of any collective agreement which has been entered into between such trade union and any employer or registered employers' organization;

(cc) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of this subsection;

(b) any registered trade union, registered employers' organization or other interested person, the Labour Court is satisfied that such person or any other person is an employee or an employee falling within a bargaining unit, the Labour Court may make an order in terms of which it is declared that such person or any other person is such an employee or is an employee falling within such bargaining unit.

(7) The provisions of-

(a) subsection (3) shall not be construed as prohibiting any registered trade union or group of registered trade unions from submitting, at any time after an application referred to in subsection (2) has been refused on any ground contemplated

in paragraph (b)(i) of the said subsection (3), proof of its allegation that it represents the majority of the employees within the bargaining unit in question obtained by way of-

(i) a ballot amongst such employees held under supervision of the Commissioner; or

(ii) any other manner determined by mutual agreement between the trade union or group of trade unions in question and the employer or employers' organization in question,

whereupon the employer or employers' organization in question shall reconsider such application;

(b) this section shall not be construed as prohibiting-

(i) any employer from consulting with his or her employees in relation to any matter of mutual interest relating to their employment which is not calculated to hinder or undermine the objects of any registered trade union or group of registered trade unions recognized in terms of this section;

(ii) any employee within the bargaining unit in question from being assisted by any registered trade union other than a registered trade union which has been recognized in terms of this section in relation to any matter relating to his or her employment in respect of which he or she feels aggrieved or which relates to any disciplinary action taken against him or her by his or her employer.

59 Rights of access of registered trade unions to enter upon premises of employers

(1) Subject to the terms and conditions of a collective agreement, an office-bearer, official or other authorized representative of a registered trade union-

(a) shall, in the case of a registered trade union recognized in terms of section 58 as an exclusive bargaining agent in respect of employees employed by an employer, have the right of access, subject to such reasonable conditions as may be determined,

with due regard to the effective performance of any operations to be carried out in the course of such employer's industry, by such employer, to any premises under the control of any such employer where any such employees are employed or housed at such time and during such period as may be determined by mutual agreement between the employer and such trade union, in order to enable such office-bearer, official or person to perform any of his or her functions in terms of this Act, the constitution of such trade union or a relevant collective agreement;

(b) may, in the case of any other registered trade union, be granted permission, which permission shall not be unreasonably withheld and may be granted subject to any conditions referred to in paragraph (a), by the employer of any employees who are members of such trade union, to enter any premises under the control of any such employer where such employees are housed or are present outside working hours in order to enable such office-bearer, official or person to recruit employees as members of such trade union or to otherwise perform any of his or her functions in terms of this Act, the constitution of such trade union or a relevant collective agreement.

(2) The provisions of subsection (1) shall not be construed as prohibiting or preventing any employer-

(a) from determining a condition that the right of access referred to in paragraph (a) of subsection (1) shall be exercised;

(b) from granting the permission referred to in paragraph (b) of subsection (1), for purposes of holding meetings of members of the registered trade union in question, only during such hours which are not ordinary working hours of such members.

(3) Any office-bearer, official or person referred to in subsection (1) shall, upon the request of the employer concerned, furnish to such employer such proof as may be reasonably necessary to prove that he or she is such office-bearer, official or person and is duly authorized to perform any function contemplated in this subsection.

(4) The provisions of this section shall not be construed as preventing any employer or registered employers' organization of which such employer is a member and any registered trade union referred to in subsection (1) from agreeing by way of a collective agreement or otherwise to extend or to give better effect to such provisions in so far as they relate to the right of any office-bearer or official of such trade union to enter any premises on which any such employees are employed.

(5) If, upon an application, made to the Labour Court in accordance with the provisions of Part IV, by a registered trade union referred to in subsection (1), the Labour Court is satisfied that any employer referred to in that subsection has failed to comply with any provision of that subsection, the Labour Court may-

(a) issue an order in terms of which such employer is ordered, subject to such conditions, if any, as may be specified in such order, to comply with such provision to the extent set out in such order;

(b) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of that subsection.

60 Collection of membership fees of registered trade unions by way of deductions from remuneration of employees

(1) An employee who is a member of a registered trade union may by notice in writing authorize his or her employer to deduct from any remuneration payable to him or her by virtue of his or her employment by such employer on the payday in respect of which any such employee's remuneration is payable to him or her or at such intervals as may be determined by mutual agreement or specified in any collective agreement, any membership fees, subscriptions, contributions, special levies or other moneys owing by him or her to such trade union by virtue of his or her membership, and may by like notice of not less than one month to such employer and the trade union in question, withdraw any such authorization.

(2) An employer referred to in subsection (1)-

(a) shall, in the case of an employee who is a member of a registered trade union recognized in terms of section 58 as an exclusive bargaining agent;

(b) may, in the case of an employee who is a member of any other registered trade union,

deduct from the remuneration of the employee concerned any amount which represents the membership fees, subscriptions, contributions, special levies or other moneys in question.

(3) An employer who has deducted from the remuneration of an employee any amounts referred to in subsection (1) shall-

(a) pay over, subject to the provisions of paragraph (c) any amounts so deducted to the registered trade union in question not later than seven days after the date on which it was so deducted or such later date as may be determined by mutual agreement between the employer concerned and the trade union in question;

(b) submit together with such payment a return containing-

(i) the names of the employees in respect of whom any deductions has been made in terms of subsection (2);

(ii) the amounts collected in respect of every such employee and the nature of such amount;

(c) be entitled to retain, as a collection fee, an amount not exceeding five percent of the total amount so deducted.

(4) The provisions of this section shall not be construed as preventing any employer or registered employers' organization of which such employer is a member and any employees of such employer or registered trade union of which such employees are members from agreeing by way of a collective agreement or otherwise to extend or to give better effect to such provisions in so far as they relate to any deductions made or to be made from the remuneration of any employee employed by any such employer.

(5) If, upon an application, made to the Labour Court in accordance with the provisions of Part IV, by an employee referred to in subsection (1) or a registered trade union of which employees referred to in that subsection are members, the Labour Court is satisfied that any employer referred to in that subsection has failed to comply with any provision of that subsection, the Labour Court may-

(a) issue an order in terms of which such employer is ordered, subject to such conditions, if any, as may be specified in such order, to comply with such provision to the extent set out in such order;

(b) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of that subsection.

61 Obligations of registered trade unions and registered employers' organizations

(1) A registered trade union or registered employers' organization shall-

(a) maintain a register of members showing their names, the membership fees, if any, paid by each member, the periods to which those payments relate and such other information as may be determined by the Commissioner by notice in writing addressed and delivered to such trade union or employers' organization, as the case may be;

(b) keep proper books of account;

(c) prepare at least once a year a statement of income and expenditure during its last preceding financial year and a balance sheet showing its financial position at the end of that financial year;

(d) cause its books of account to be audited at least once a year by a public accountant or, if the Commissioner approves, by some other person;

(e) submit a statement of income and expenditure and balance sheet referred to in paragraph (c) at least once every calendar year to a meeting or meetings of

members or representatives of members in terms of its constitution and make available by publication or otherwise for examination by members in good standing copies of the said statement of income and expenditure and balance sheet;

(f) subject to the provisions of subsection (2), not substitute or alter its constitution without the approval of the Commissioner.

(2) An application by a registered trade union or registered employers' organization for the approval of the Commissioner referred to in paragraph (f) of subsection (1) shall be made to the Commissioner in such form as may be determined by the Commissioner and shall be accompanied by three copies of any resolution passed in relation to the substitution or alteration of its constitution, containing the wording of the proposed new constitution or proposed alteration thereof, as the case may be, together with a certificate under the hand of its chairperson certifying that such resolution has been passed in accordance with the requirements of its constitution.

(3) If, after considering any application made under subsection (2), the Commissioner is satisfied that the proposed new constitution or the proposed alteration complies mutatis mutandis with the requirements contemplated in section 54(3) he or she shall-

(a) approve such new constitution or alteration;

(b) return one of the copies of the resolution in question to the secretary of the trade union or employers' organization in question on which his or her approval is indicated by way of a certificate under the hand of the Commissioner and the date on which such approval has been granted;

(c) in the case of an alteration relating to a change of the name of such trade union or employers' organization, issue a new certificate of registration in which the new name is reflected and the date on which such alteration has been approved,

and thereupon such new constitution or alteration shall be deemed to have been substituted or altered, as the case may be, as from that date.

62 Rights and obligations of members of registered trade unions and registered employers' organizations

(1) Notwithstanding anything to the contrary contained in the constitution of a registered trade union or registered employers' organization-

(a) no person shall be entitled to vote in the election of office-bearers or to nominate a candidate for any office in such trade union or employers' organization or to be nominated as such a candidate, unless he or she is a member in good standing;

(b) no person who has been convicted of any offence of which dishonesty is an element and for which he or she has been sentenced to imprisonment, whether suspended or not, without the option of a fine, shall be eligible for election or nomination as an office-bearer of a registered trade union or registered employers' organization within a period of five years as from the date on which such period of imprisonment has expired, or any office-bearer who has been so sentenced shall vacate his or her seat as such an office-bearer;

(c) a general meeting of members of such trade union or employers' organization shall be convened at least once every two years;

(d) any general meeting of members of such trade union or employers' organization shall be open to all members or to all representatives of members elected on a regional or local basis;

(e) no payment other than salaries of officials and employees of such trade union or employers' organization or expenses incurred by any of them in the course of their duties or functions shall be made to any such official or employee, except with the prior approval of its governing body granted in writing under the hand of its chairperson.

(2) For purposes of this section-

(a) a member of a registered trade union or registered employers' organization shall be deemed to be in good standing if he or she has paid any entrance

fee laid down in the constitution of such trade union or employers' organization, and is not more than three months in arrear with the payment of the membership fees, if any, payable in terms of that constitution;

(b) "membership fees" means that fee the periodical payment of which is a condition of membership, but does not include any separate fee, subscription or contribution which entitles any member to any financial benefit, nor any special levy imposed for a particular purpose.

63 Powers of Commissioner in relation to trade unions and employers' organizations

(1) The Commissioner may at any time, if he or she has reason to believe that the constitution of any trade union or employers' organization-

(a) is in conflict with the fundamental human rights and freedoms enshrined in Chapter 3 of the Namibian Constitution or with any other law;

(b) in the case of the constitution of a registered trade union, is in conflict with the provisions of section 55;

(c) is calculated to obstruct, hinder, prevent or evade the achievement of the aims of this Act or any other law,

by notice in writing addressed and delivered to such trade union or employers' organization order such trade union or employers' organization to effect such alteration in its constitution as may be specified in such notice within such period as may be so specified.

(2) The Commissioner shall not issue an order referred to in subsection (1) unless he or she-

(a) has notified the trade union or employers' organization in question of his or her belief and has afforded such trade union or employers' organization in question by notice in writing addressed and delivered to it, an opportunity to make, within such

reasonable period as may be specified in such notice, representations and, if it so desires, proposals in relation to such belief;

(b) has taken into account any representations or proposals so made.

(3) If a trade union or employers' organization referred to in subsection (1) fails to comply with an order issued under the said subsection (1), the Labour Court may, upon an application made to it by the Commissioner in accordance with the provisions of Part IV-

(a) issue an order in terms of which-

(i) any of the provisions contained in the constitution of such trade union or employers' organization specified in such order or all such provisions is or are struck out;

(ii) any provision or provisions specified in such order is or are substituted for any other provision or provisions set out in such order;

(iii) any provision or provisions so specified is or are added to, or inserted in, such constitution;

(iv) such trade union or employers' organization is ordered-

(aa) to substitute a new constitution for its constitution;

(bb) to alter any or all the provisions of its constitution by the substitution for any such provision or provisions for, a provision or provisions containing terms specified in such order;

(cc) to add to, or insert in, such constitution a provision or provisions containing terms specified in such order,

within such period as may be so specified;

(v) in the case of a registered trade union or registered employers' organization, the registration of such registered trade union or employers' organization is-

(aa) cancelled as from a date specified in such order;

(bb) suspended as from a date specified in such order until such time as it complies with any condition determined by the Labour Court in such order;

(vi) the cancellation of such registration is suspended with effect from a date specified in such order until a date so specified on condition that it complies within such period and on such conditions as may be determined in such order;

(b) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of this Act.

(4) upon the cancellation of the registration of a trade union or employers' organization in terms of an order made under subsection (3) such trade union or employers' organization shall as from the date specified in such order, for purposes of this Act, be deemed not to have been registered.

64 Returns to be submitted by registered trade unions and registered employers' organizations

(1) A registered trade union and a registered employers' organization shall submit annually, not later than six months after the end of its financial year, a return in such form as may be determined by the Commissioner setting out-

(a) the address of its head office and its postal address;

(b) the name and postal address of every office-bearer and official and the designation of the office held by every such office-bearer or official;

(c) the number of its members in good standing.

(2) The provisions of section 62(2) shall apply mutatis mutandis in relation to the return referred to in subsection (1) in so far as it relates to members in good standing of the registered trade union or registered employers' organization in question.

(3) If a registered trade union or a registered employers' organization contravenes or fails to comply with the provisions of subsection (1), the Labour Court may, upon an application made to it by the Commissioner in accordance with the provisions of Part IV-

(a) issue an order in terms of which the registration of any such trade union or employers' organization-

(i) is cancelled with effect from a date specified in such order;

(ii) is suspended as from a date specified in such order until such time as it complies with any condition determined by the Labour Court in such order;

(b) issue an order in terms of which an order ordering the cancellation of such registration is suspended with effect from a date specified in such order until a date so specified on condition that it complies within such period and on such conditions as may be determined in such order;

(c) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of this section.

(4) Upon the cancellation of the registration of a trade union or employers' organization in terms of an order made under subsection (3) such trade union or employers' organization shall as from the date specified in such order, for purposes of this Act, be deemed not to have been registered.

65 Workplace union representatives

(1) Any group of employees consisting of not less than 10 employees who are members of a registered trade union and who are employed by an employer at any

particular undertaking or portion of an undertaking shall have the right to elect from among their number-

(a) in the case of a group of employees consisting of at least 10 employees, but not more than 25 employees, one employee;

(b) in the case of a group of employees consisting of more than 25 employees, but not more than 50 employees, two employees;

(c) in the case of a group of employees consisting of more than 50 employees, but not more than 100 employees, three employees;

(d) in the case of more than 100 employees, three employees plus an additional employee in respect of every additional 100 employees,

to act as their workplace union representative or as their workplace union representatives, as the case may be, who shall have the rights and perform the duties referred to in this section.

(2) A workplace union representative shall hold office for a period of two years, but shall at the expiration of his or her period of office be eligible for re-election.

(3) An employer referred to in subsection (1) shall furnish at the place where any employees so referred to are employed, such facilities as are reasonably necessary for purposes of an election of any workplace union representative as provided in the said subsection (1).

(4) Subject to the terms and conditions of any collective agreement, it shall be the function of a workplace union representative-

(a) to make representations to the employer on any matter in relation to-

- (i) the terms and conditions of employment of employees;
- (ii) disciplinary actions taken or about to be taken against any employees;

(iii) the termination of the contract of employment of any employees, in respect of whom he or she has been elected;

(b) to collect and receive information and make representations in relation to the dismissal of employees referred to in section 50;

(c) to perform such other duties as may be determined by mutual agreement between the registered trade union in question and the employer concerned or may be contained in a collective agreement.

(5) Subject to the terms and conditions of a collective agreement, an employer shall, with due regard to the effective performance of any operations to be carried out in the course of such employer's industry-

(a) grant a workplace union representative such reasonable leave of absence, without any loss of remuneration, as may be necessary in order to enable such workplace union representative to perform his or her duties referred to in subsection (4);

(b) grant a workplace union representative such special leave, with or without remuneration in the discretion of the employer, in order to enable such workplace union representative to attend meetings and training courses of the registered trade union in question or meetings or training courses attended by that trade union which are connected with or incidental to the duties of workplace union representatives.

(6) The provisions of this section shall not be construed as preventing any employer or registered employers' organization of which such employer is a member and any employees of such employer or registered trade union of which such employees are members from agreeing by way of a collective agreement or otherwise to extend or to give better effect to such provisions in so far as they relate to the election, number, duties and rights of workplace union representatives.

(1) If, upon an application, made to the Labour Court in accordance with the provisions of Part IV, by the Commissioner or any interested person, the Labour Court is satisfied-

(a) that the provisions of the constitution of a registered trade union or registered employers' organization which is to be wound up are inadequate in so far as it relates to its winding up;

(b) that in consequence of a failure to comply with any provision of any such constitution has resulted in such trade union or employers' organization being unable to function in accordance with its constitution due-

(i) to the non-existence of its governing body;

(ii) to the failure to fill any vacancy in its governing body in accordance with the requirements of its constitution;

(iii) to any other circumstances arising from such failure,

the Labour Court may-

(aa) issue an order in terms of which such trade union or employers' organization may be wound up as if the terms of such order were contained in its constitution;

(bb) issue an order in terms of which the registration of any such trade union or employers' organization is cancelled with effect from a date specified in such order or is suspended as from a date specified in such order until such time as it complies with any condition laid down by the Labour Court in such order;

(cc) issue an order in terms of which an order ordering the cancellation of such registration is suspended with effect from a date specified in such order until a date so specified on condition that it complies within such period with such conditions as may be laid down in such order;

(dd) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of this section.

(2) Upon the cancellation of the registration of a registered trade union or registered employers' organization in terms of an order made under subsection (1) such trade union or employers' organization shall as from the date specified in such order, for purposes of this Act, be deemed not to have been registered.

(3) If, upon an application, made to the Labour Court in accordance with the provisions of Part IV, by the Commissioner or a member of a registered trade union or registered employers' organization, the Labour Court is satisfied that any such trade union or employers' organization or any office-bearer or official of such trade union or employers' organization has failed to comply with any provision of its constitution, the Labour Court may issue-

(a) an order in terms of which any such trade union or employers' organization, office-bearer or official is ordered to comply with any such provision or to comply with any such provision to the extent indicated in such order;

(b) such other order as the Labour Court may deem necessary in order to ensure proper compliance with such provisions.

(4)(a) If, upon an application made to the Labour Court by any interested person, the Labour Court is satisfied-

(i) that any material irregularity has occurred in connection with any election held in terms of the constitution of a registered trade union or registered employers' organization, as the case may be;

(ii) that such trade union or employers' organization or any office-bearer, official, member or other person, as the case may be, has failed to observe any provision of such constitution, or has acted unlawfully or has attempted to affect the outcome of such election by means of fraud, threat, bribery or other unlawful means,

the Labour Court may make-

(aa) an order in terms of which such election is declared to be null and void;

(bb) an order in terms of which the holding of a further election is ordered to be held on a date specified in such order;

(cc) an order, if any, in terms of which interim arrangements in relation to the management of the affairs of such trade union or employers' organization, as the case may be, are laid down pending the outcome of any such further election;

(dd) such other order as the Labour Court may deem necessary to achieve the aims of this Act.

(b) Any further election held in terms of an order referred to in paragraph (a) shall be deemed to be an election held in terms of the constitution of such trade union or employers' organization, as the case may be.

67 Miscellaneous powers of Labour Court in relation to certain acts

The Labour Court may, upon an application made to it by any registered trade union, registered employers' organization, employee, employer or other interested person in accordance with the provisions of Part IV, if it is satisfied-

(a) that any registered trade union, employer or registered employers' organization or any group of such trade unions or employers' organizations refuses or fails to negotiate where such trade union, employer, employers' organization or group have a duty in terms of this Act or a collective agreement to do so;

(b) that any registered trade union, employer or registered employers' organization or any group of such trade unions or employers' organizations refuses or fails to negotiate in good faith;

(c) that any registered trade union recognized as an exclusive bargaining agent fails to comply with its duty as provided in section 58(4);

(d) that any registered trade union, employer or registered employers' organization or any group of registered trade unions or registered employers' organizations performs any act which is subversive of orderly and proper collective bargaining;

(e) that any employer, registered employers' organization or group of employers' organizations controls or attempts to control any registered trade union or group of registered trade unions, whether or not by way of financial or other means;

(f) that any employer has unilaterally altered the conditions of employment of any of his or her employees;

(g) that any person commits or attempts to commit an act whereby any employee or employer or member, office-bearer or official of any registered trade union or registered employers' organization is intimidated to agree or not to agree to any action which affects the relationship between an employer and an employee;

(h) that any employee, acting in concert with one or more other employees employed by his or her employer, is performing any act or is failing to perform any act whereby his or her work is stopped, delayed or not performed with the efficiency ordinarily required to perform such work in a proper manner with a view to achieving any object other than a legitimate labour related interest of employees or any registered trade union,

issue such order against any such trade union, employer, employers' organization, group or person, as the case may be, as the circumstances may require.

PART VIII

COLLECTIVE AGREEMENTS (ss 68-73)

68 Registration of collective agreements

(1) Any person who is a party to a collective agreement may submit such collective agreement to the Commissioner for registration.

(2) In order to be registered, a collective agreement-

(a) shall contain a provision-

(i) providing for the procedures or methods for settling disputes, including the referral of any dispute to, a conciliation board or for, mediation or arbitration, unless provided for in any other registered collective agreement;

(ii) in which the date on which such collective agreement shall come into force is stated or provision is made for its coming into force;

(iii) indicating, whether or not, the registered trade union or group of registered trade unions in question has been recognized by the employer or registered employers' organization in question as an exclusive bargaining agent and the purposes in relation to which such trade union or group of trade unions has been so recognized;

(b) may contain a provision providing for-

(i) the procedures or methods for preventing disputes;

(ii) the right of any office-bearer or official of a registered trade union to enter any premises on which any employees are employed;

(iii) the deductions made or to be made from the remuneration of any employee employed by any such employer;

(iv) the election, number, duties and rights of workplace union representatives;

(v) the interpretation, application and administration of the terms of such collective agreement;

(vi) generally, but without derogating from the generality of any other matter referred to in this subsection, as to any matter affecting or connected with

remuneration or other terms and conditions of employment of all employees or category of employees or as to any matter whatsoever of mutual interest to employers and employees.

(3) The Commissioner shall upon receipt of a collective agreement in terms of subsection (1) consider the terms and conditions thereof and-

(a) shall, within a period of 14 days as from the date of receipt of the collective agreement so submitted, subject to the provisions of subsection (5), register such collective agreement by entering such particulars as may be determined by him or her in a register kept in such form as may be so determined;

(b) may, within the period referred to in paragraph (a), refer the collective agreement on not more than one occasion back to the parties to the agreement by notice in writing with such directions as may be specified in such notice which in the opinion of the Commissioner is necessary to ensure proper compliance with the provisions of this Act.

(4) A collective agreement referred to in subsection (3)(b) may at any time after receipt thereof again be submitted to the Commissioner for registration-

(a) with such amendments as may be agreed upon between the parties therein with due regard to the directions referred to in the said subsection (3)(b);

(b) with such other amendments as may be so agreed upon;

(c) with such comments as the parties may wish to render with reference to such directions,

whereupon, such agreement shall, for purposes of this section, be deemed to have been submitted in terms of subsection (1).

(5) The Commissioner shall not register a collective agreement in terms of subsection (3)(a) if any term and condition contained in such collective agreement are in conflict with the provisions of Chapters 3 and 11 of the Namibian Constitution or of any provision of this Act or any other law.

(6) The Commissioner shall upon registration of a collective agreement in terms of this section as soon as practicable publish such collective agreement by notice in the Gazette or in such other manner as the Commissioner may deem reasonable or expedient.

(7)(a) If the registration of a collective agreement has been refused by the Commissioner in terms of subsection (5), the registered trade union, employee or registered employers' organization or interested person in question may note, in accordance with the provisions of Part IV, an appeal to the Labour Court.

(b) The Labour Court may in an appeal referred to in paragraph (a)-

(i) set aside the decision of the Commissioner to refuse the registration of the collective agreement in question, if the Labour Court is satisfied that grounds exist by virtue of which such collective agreement ought to have been registered, and order the Commissioner to register such collective agreement subject to such conditions, if any, as may be determined by the Labour Court;

(ii) dismiss such appeal.

69 Effect of registration of collective agreements

(1) A collective agreement which has been entered into between an employer or employers' organization and a registered trade union or group of registered trade unions which has been recognized by such employer or employers' organization as an exclusive bargaining agent in relation to the matters contained in such agreement and which has been published as provided in section 68(6) shall be binding upon-

(a) the employer concerned;

(b) if such collective agreement has been entered into by a registered employers' organization, all employers who are members of such employers' organization and who become members of such employers' organization after the date on which such collective agreement has come into force; and

(c) the employees falling within the bargaining unit referred to in section 58, whether or not they are members of the trade union in question,

to the extent set out in such collective agreement, with effect from the date specified in such collective agreement or determined in terms of such collective agreement, whether or not such date is a date before or after such registration.

(2) Any matter contained in a registered collective agreement relating to the terms and conditions of employment of any employee concerned shall, for purposes of the provisions of this Act, be deemed to have been incorporated-

(a) in any contract of employment of such employee, whether entered in orally or in writing; or

(b) in the case of employees whose conditions of employment are provided for by law, in such law.

(3) The Minister may at any time after the registration of a collective agreement in terms of section 68, if, upon the request in writing by any employer or employee-

(a) on whom such collective agreement is binding by virtue of the provisions of this section; and

(b) who is not a member of any registered employers' organization or registered trade union which were parties to such collective agreement,

he or she is satisfied that special circumstances exist in the interests of such employer or employee, exempt by notice in writing, subject to such conditions or exceptions as may be determined by the Minister and specified in such notice, such employer or employee from any or all of the provisions of such collective agreement.

70 Binding effect of registered collective agreements upon persons other than persons referred to in section 69

(1) Subject to the provisions of subsection (2), the Minister may, upon the request in writing by any party to a registered collective agreement by notice in the Gazette declare all the provisions of such collective agreement or such provisions thereof as may be specified by him or her in such notice, to be binding, subject to such conditions, exceptions or exemptions as the Minister may deem necessary or just, upon every employer and employee or upon such category of employers or employees as may be so specified, employed in the industry to which such collective agreement relates or in any portion thereof as may be so specified as from a date and for a period, if any, fixed by him or her and specified in such notice.

(2) The Minister shall, before publishing a notice referred to in subsection (1), cause to be published in the Gazette a notice notifying all interested persons of the request referred to in that subsection, calling upon persons who may have objections to the proposed notice or the provisions of the registered collective agreement in question notice of not less than 30 days from the date of the publication of such notice.

(3) The Minister shall not issue a notice referred to in subsection (1)-

(a) unless he or she has considered any objections submitted in terms of subsection (2);

(b) if any other registered collective agreement is in force in respect of any employer or employee in relation to any matter contained in the collective agreement in question;

(c) if in the opinion of the Minister such collective agreement, having regard to all the terms and conditions of such collective agreement, is less favourable to any employee concerned than any conditions of employment applicable to such employee immediately before the date of such request.

(4) When the Minister has published a notice referred to in subsection (1) or (2) he or she or, on the authority of the Minister, the Commissioner may from time to time on the request of the parties in question and if he or she deems it expedient to do so, by notice in the Gazette-

(a) extend the period fixed in such notice by such further period as he or she may fix in the new notice;

(b) if the period fixed in such notice has expired, declare that the provisions of such notice shall be effective from a date and for a further period fixed by him or her in the new notice.

(5) The Minister may at any time after the publication of a notice referred to in subsection (1), if, upon the request in writing by any employer or employee-

(a) on whom such collective agreement is binding by virtue of the provisions of this section; and

(b) who is not a member of any registered employers' organization or registered trade union which were parties to such collective agreement,

he or she is satisfied that special circumstances exist in the interests of such employer or employee, exempt by notice in writing, subject to such conditions or exceptions as may be determined by the Minister and specified in such notice, such employer or employee from any or all of the provisions of such collective agreement.

(6)(a) If-

(i) a notice has been issued in terms of subsection (1);

(ii) a request made in terms of subsection (1) or (4) has been refused by the Minister,

the party, employer or employee concerned, registered trade union, registered employers' organization or other interested person in question may note, in accordance with the provisions of Part IV, an appeal to the Labour Court.

(b) The Labour Court may in an appeal referred to in paragraph (a)-

(i) set aside the decision of the Minister to publish or to refuse to publish the notice in question or to refuse to exempt the person concerned, if the Labour Court is

satisfied that grounds exist by virtue of which such notice ought to have been or not to have been issued or that such exemption ought to have been granted, and-

(aa) order the Minister to publish such notice or to grant such exemption subject to such conditions, if any, as may be determined by the Labour Court;

(bb) make an order in terms of which such notice is set aside and declared to be null and void;

(ii) dismiss such appeal.

71 Amendment or rectification of registered collective agreements

(1) When any collective agreement registered and published in terms of section 68 is amended or replaced by a further collective agreement, the provisions of this Part shall apply in relation to such further agreement.

(2) The Commissioner shall, on the request of the parties to a registered collective agreement, effect the rectification of such collective agreement in order-

(a) to correct any error or ambiguity contained in such collective agreement;

(b) to include any matter which has been agreed upon and which has inadvertently been omitted from such collective agreement;

(c) to delete any matter which has not been agreed upon and which has inadvertently been included in such collective agreement,

if the Commissioner is satisfied that such correction, inclusion or deletion is not in conflict with any provision of this Act.

(3) The Labour Court may upon an application made by any party to a registered collective agreement, order the rectification of any such collective agreement to the extent specified in such order, if the Labour Court is satisfied-

(a) that such collective agreement contains an error or ambiguity;

(b) that any matter agreed upon has inadvertently been omitted from such collective agreement;

(c) that any matter not agreed upon has inadvertently been included in such collective agreement.

72 Binding effect of collective agreements not registered in terms of section 68

A collective agreement, whether or not registered, between an employer or registered employers' organization and any other registered trade union other than a registered trade union referred to in section 69(1) shall be binding upon-

(a) the employer concerned;

(b) if such collective agreement has been entered into by a registered employers' organization, all employers who are members of such employers' organization and who become members of such employers' organization after the date on which such collective agreement has come into force;

(c) the employees falling in the category of employees to which such collective agreement relates who are members of the trade union in question and who become members of such trade union after the date of commencement of such collective agreement,

to the extent set out in such collective agreement, with effect from the date specified in such collective agreement or determined in terms of such collective agreement, whether or not such date is a date before or after such registration.

73 Interpretation of collective agreements for purposes of this Part

The provisions of a collective agreement shall not be construed as prohibiting or preventing, or limiting the right of, any employer from entering in good faith, without impairing or undermining collective bargaining and the status of any registered trade

union involved, into any contract of employment which contains conditions of employment which are more favourable than any term and condition contained in a collective agreement.

PART IX

DISPUTES BETWEEN EMPLOYERS OR REGISTERED EMPLOYERS' ORGANIZATIONS AND EMPLOYEES OR REGISTERED TRADE UNIONS (ss 74-83)

74 Reporting of disputes

(1) Any person who is a party to any dispute may report such dispute by notice in writing under his or her hand to the Commissioner in such form as may be determined by the Commissioner, and shall submit a copy of such notice to all other parties involved in such dispute.

(2) A notice referred to in subsection (1) shall contain-

- (a) the names and addresses of the parties to any such dispute;
- (b) the subject matter of the dispute and the facts and circumstances which gave rise to the dispute;
- (c) if it is alleged that the dispute is a dispute of rights, the grounds on which it is so alleged;
- (d) the steps, if any, which have been taken to resolve or settle such dispute,

and shall, if and when required by the Commissioner, be accompanied by copies of any collective agreement, contracts of employment or other documents which relate to such dispute.

(3)(a) An employer who is a party to a dispute referred to in subsection (1) relating to the alteration or intended alteration of any condition of employment by such employer shall, upon receipt of the notice referred to in subsection (1), restore, if such

notice has been received on a date not later than 30 days after any such alteration has been effected, such condition of employment as from the date on which such alteration has been effected or refrain from effecting such intended alteration until such dispute is resolved or settled in accordance with the provisions of this Part or is otherwise disposed of.

(b) An employer who contravenes or fails to comply with the provisions of paragraph (a) shall be guilty of an offence and on conviction be liable to the penalties which may be imposed by law for contempt of court.

75 Establishment of conciliation boards

(1) Subject to the provisions of subsections (2) and (3), the Commissioner shall, upon the receipt of a notice referred to in section 74(1), as soon as practicable after the date of such receipt, establish a conciliation board for such period as may from time to time be determined by the parties to the dispute by mutual agreement, consisting of-

(a) a person determined by the parties to the dispute by mutual agreement or, in the absence of any such agreement, the Commissioner or a person designated by him or her who is not a party to the dispute, who shall be the chairperson of the conciliation board; and

(b) such equal number of other persons as may be determined by such parties by mutual agreement and nominated by each party to the dispute from amongst their number or otherwise or, in the absence of any such agreement, three persons from amongst each one of such parties nominated by such parties or, in the absence of such nomination, by the Commissioner.

(2) Any casual vacancy on the conciliation board caused by the death or vacation of office by any member of the conciliation board shall be filled mutatis mutandis in accordance with the provisions of subsection (1).

(3) The Commissioner shall not establish a conciliation board as provided in subsection (1), unless he or she is satisfied that the parties to the dispute have taken all reasonable steps to resolve or settle the dispute in question or until such time as he or she is so satisfied.

(4) A member of a conciliation board, including the chairperson if he or she is a person who is not employed in the public service on a full-time basis, shall be paid out of moneys appropriated by law, such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the conciliation board, such subsistence and travelling allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

(5) The administrative and clerical work involved in the performance of the functions of a conciliation board shall be performed by officers in the Ministry of Labour and Manpower Development made available by the Permanent Secretary for that purpose.

76 Terms of reference of conciliation boards

The Commissioner shall, after consultation with the parties to the dispute, with due regard to the subject matter of the dispute set out in the notice referred to in section 74(2), determine the terms of reference of the conciliation board.

77 Meetings of conciliation boards

(1) The first meeting of a conciliation board shall be held at such time and place as the chairperson may determine, and any meeting thereafter shall be held at such time and place as may be determined by the conciliation board.

(2) A conciliation board may make rules in relation to the holding of, and procedure at, meetings of the conciliation board.

(3) No communication made by any person in the course of any proceedings during a meeting of a conciliation board shall be admissible in evidence in any court proceedings instituted or any arbitration proceedings held in terms of the provisions of this Act, except with the consent in writing of the person who has made such communication.

78 Resolved disputes

If the parties to any dispute resolve or settle such dispute, whether before or after the establishment of a conciliation board, the parties shall prepare a memorandum of agreement in which the terms and conditions upon which such dispute has been resolved or settled are set out, and either party to such agreement or such parties jointly may, if such party or parties so desire, submit a copy of such agreement to the Commissioner for registration mutatis mutandis in accordance with the provisions of this Act as if such agreement were a collective agreement.

79 Unresolved disputes

(1) If a conciliation board has failed to resolve or settle any dispute within the period determined in terms of section 75-

(a) in the case where the dispute in question is a dispute of rights-

(i) any party to such dispute other than a party who has refused or failed to take part in the proceedings of such conciliation board shall have the right to apply;

(ii) a party who has refused or failed to participate in any proceedings of such conciliation board may with the special permission of the Labour Court granted on good cause shown, apply,

to the Labour Court in accordance with the provisions of Part IV for an order in terms of subsection (3) of this section;

(b) the parties to any dispute may, whether before or after the institution of any proceedings in the Labour Court in accordance with the provisions of Part IV, by mutual agreement refer the matter, subject to the provisions of subsection (4), to arbitration; or

(c) in the case where the dispute in question is a dispute of interests-

(i) in the case of any party referred to in subsection (2)(a)(ii), the parties shall, subject to the provisions of subsection (4), refer the matter to arbitration;

(ii) any party to such dispute shall, subject to the provisions of subsection (2), have the right to take action in accordance with the provisions of section 81 by way of strike or lock-out.

(2)(a) The provisions of paragraph (c)(ii) of subsection (1) shall not apply-

(i) to any party to a dispute-

(aa) which relates to a dispute of rights;

(bb) which has been referred to arbitration in terms of paragraph (b) of that subsection or in respect of which a decision has been given on arbitration in terms of subsection (4)(a);

(ii) to any party to a dispute who is involved, whether as employer or employee, in the rendering of any essential service to whomsoever which, if interrupted or continually interrupted, would endanger the life, health or personal safety of the whole or any part of the residents of Namibia or any part of Namibia;

(iii) to any party who has not complied with the provisions of section 81(1).

(3)(a) Subject to the provisions of this Act, the Labour Court may, upon an application referred to in subsection (1)(a), enquire in a summary manner into and

determine any question relating to the subject matter of any dispute to which such application relates and may issue such order as the circumstances may require.

(b) Any decision of the Labour Court made in terms of paragraph (a) shall be final and binding on all parties to the dispute in question.

(4)(a) Subject to the provisions of paragraph (b) of this subsection and the terms and conditions of any arbitration agreement entered into between the parties to any dispute pursuant to the provisions of paragraph (b) of subsection (1), the provisions of the Arbitration Act, 1965 (Act 42 of 1965), shall apply in relation to any arbitration referred to in the said paragraph (b) or (c)(i) of that subsection as if this Act is an arbitration agreement defined in section 1 of that Act.

(b) In the application of the provisions of paragraph (a)-

(i) any reference in the said Arbitration Act, 1965, to the High Court of Namibia, shall be construed as including a reference to the Labour Court;

(ii) in the case of any party to arbitration proceedings held by virtue of the provisions of paragraph (b) or (c)(i) of subsection (1) who has failed to take, within a period of 14 days as from, in the case of a party referred to in the said paragraph (b), the date on which the matter was referred to arbitration or, in the case of a party referred to in the said paragraph (c)(i), the date on which the parties have agreed to refer the matter to arbitration, any steps required for purposes of the arbitration contemplated in that paragraph, the Commissioner shall, upon any application in writing by any such party, have the right to appoint an arbitrator for such purposes and to determine the terms of conditions of such arbitrator;

(iii) any party to arbitration proceedings held by virtue of the provisions of paragraph (b) or (c)(i) of subsection (1) shall have the right to appear in such proceedings or to be presented as if such proceedings were proceedings instituted in a district labour court.

(c) Any award made on arbitration in terms of this section shall be final and binding on all parties to the arbitration agreement.

(d) Notwithstanding the provisions of section 35 or 36 of the said Arbitration Act, 1965, no costs shall be awarded in relation to the expenses incurred in relation to any arbitration contemplated in this section, except in so far as the parties to the arbitration proceedings have by mutual agreement determined otherwise.

80 Powers of Minister in relation to essential services

The Minister may apply to the Labour Court in accordance with the provisions of Part IV for an order-

(a) declaring any particular service rendered by any person to be an essential service contemplated in section 79(2)(a)(ii);

(b) prohibiting any employer or employee involved in such essential service from taking any action by way of strike or lock-out.

[a6y1992s81]81 Strikes, lock-outs and picketing

(1) Any party to a dispute who has, by virtue of the provisions of section 79(1)(c)(ii), the right to take action by way of strike or lock-out and who wishes to take such action shall give notice of such intention to all other parties to the dispute on a date at least 48 hours before such party commences such action, and shall simultaneously submit a copy of such notice to the Commissioner.

(2) Notwithstanding the terms and conditions of a collective agreement or of any contract of employment, the terms and conditions of any such collective agreement or contract of employment shall not be regarded to have been breached or repudiated by reason only of any action lawfully taken in terms of this section by way of strike or lock-out.

(3) Notwithstanding the provisions of any other law to the contrary, it shall be lawful for any employee, office-bearer or official of any registered trade union to be, whether with or without the permission of the employer concerned, at or near the place of employment in question for the purposes of peacefully communicating information or

peacefully persuading any other person to perform any work or not to so perform any work, provided such action is in furtherance of a strike by virtue of the provisions of section 79(1)(c)(ii).

(4) The provisions of this section shall not be construed as imposing any liability or obligation on any employer to remunerate any employee who has participated in any action lawfully taken in terms of this section by way of a strike, for services which he or she has not rendered during any period in which such action has taken place.

(5) Any employee who has participated in any strike by virtue of the provisions of section 79(1)(c)(ii) shall be entitled to return to his or her employment after such strike has ended if such employee presents himself or herself for duty within a period of three days as from the date on which such strike has so ended or the date on which such employee has become or could reasonably have become aware that such strike has ended or within such further period as may be reasonable in the circumstances relating to such employee, unless such employee's contract of employment has been fairly terminated on account of the re-organization of the business carried on by such employer or for economic or technological reasons or for any other valid or fair reason.

(6) Notwithstanding any provisions contained in any term and condition of a contract of employment or a collective agreement to the contrary, an employee who is not participating in any strike referred to in subsection (1) shall not be required to perform any duties, functions or work which he or she would not have been required to perform had any other employee not participated in such strike, unless the performance of such duties, functions or work is necessary to prevent the life, health or safety of any person being endangered.

82 Limitation of applications for interim interdicts in relation to strikes or lock-outs

Notwithstanding anything to the contrary contained in any law, no interim interdict shall be granted against any person involved in any manner whatsoever in any strike or lock-out referred to in section 81(1), unless-

(a) such application has been served on all parties to such application; and

(b) such application has been so served within a reasonable period of not less than 48 hours before any application for such interdict is set down for hearing,

except where the court considering such application is satisfied that the life, health or safety of any person will be endangered if compliance with the provisions of this section is required.

83 Limitation of liability of registered trade unions

No civil proceedings shall be instituted in any court of law, including the Labour Court or a district labour court, against any employee, employer, registered trade union or registered employers' organization or any officer, office-bearer or official of a registered trade union or registered employers' organization in connection with any action taken by virtue of the provisions of section 79(1)(c)(ii) by way of strike or lock-out or in connection with any wrongful act or omission other than defamation or other act which, in addition to civil liability, constitutes, whether in terms of the common law or any other law, a criminal offence performed or committed by such employee, employer, officer, office-bearer or official or such trade union or employers' organization in the furtherance of, or within, the course of such action.

PART X

WAGES COMMISSION (ss 84-95)

84 Establishment of Wages Commission

There is hereby established a commission to be known as the Wages Commission which may be constituted by the Minister, either on his or her own motion or on the request of any registered trade union or registered employers' organization, from time to time as circumstances may require and for such period, if any, as may be

determined by the Minister, in order to enquire into and report to the Minister on any matter contemplated in section 85(1).

85 Terms of reference of Commission

(1) It shall be the duty of the Commission to enquire into and report to the Minister on any matter determined, subject to the provisions of subsection (2), by the Minister by notice in the Gazette in relation to-

- (a) the remuneration and other conditions of service paid or granted to-
 - (i) any employee or employees or any category of employees;
 - (ii) any employee or employees or category of employees employed in any industry or category of industries;
 - (iii) any employee or employees or category of employees employed in any industry or category of industries in any particular area or areas;
- (b) the amendment of any wage order.

(2) The Commission shall not be competent to enquire into any matter contained in-

- (a) a registered collective agreement;
- (b) any wage order made within a period of 12 months immediately before the date of the notice referred to in subsection (1).

(3) A notice referred to in subsection (1) may, in addition to the matters referred to in that subsection, contain-

- (a) the names and such other particulars as may be determined by the Minister, of the members of the Commission appointed for purposes of the enquiry into the matters specified therein;

(b) the period, if any, within which the enquiry is required to be completed and the report thereon is required to be submitted;

(c) the persons to whom, the manner in which, and the period within which, representations may be made for consideration by the Commission in relation to any matter to which the enquiry relates.

(4) The provisions of the Commissions Act, 1947 (Act 8 of 1947), shall apply mutatis mutandis in relation to the Commission as if it were a commission referred to in section 1 of that Act.

(5) The chairperson, any member of the Commission or any other person authorized thereto by the Commission in writing under the hand of the chairperson of the Commission shall have the powers referred to in paragraph (a) of section 104(2) as if the chairperson or such member or person were an inspector.

86 Constitution of Commission

(1) Subject to the provisions of subsection (2), the Commission shall consist of-

(a) a chairperson appointed by the Minister; and

(b) two other members so appointed of whom-

(i) one shall be a person nominated by the registered trade union concerned;

(ii) one shall be a person nominated by the registered employers' organization or employer concerned.

(2) Notwithstanding the provisions of subsection (1), the Minister may, in the case of an enquiry in relation to the amendment of a wage order, appoint the persons or any one or more of them who were the members of the Commission which enquired into and reported on matters which have given rise to that wage order.

(3)(a) The administrative and clerical work involved in the performance of the functions of the Commission shall be performed by officers in the Ministry of Labour and Manpower Development made available by the Permanent Secretary for that purpose.

(b) The Permanent Secretary may designate an officer referred to in paragraph (a) as secretary of the Commission.

(c) The Commission may, after consultation with the Permanent Secretary and on such conditions as may be mutually agreed upon, obtain the services of such persons as it may deem necessary to advise it in connection with the exercise or performance of its powers and duties.

87 Terms of office and conditions of service of members of Commission

(1) Subject to the provisions of section 88, a member of the Commission shall hold office during the Minister's pleasure.

(2) A member of the Commission who is not employed in the public service on a full-time basis shall be paid out of moneys appropriated by law, such remuneration and allowances, if any, and in respect of a journey undertaken for purposes of the business of the Commission, such subsistence and travelling allowances as the Minister may, in concurrence with the Minister of Finance, determine.

(3) The remuneration and allowances determined under subsection (2) may differ according to the office held by the member of the Commission concerned or the functions performed by him or her.

88 Vacation of offices by members of Commission

(1) A member of the Commission shall vacate his or her office, if-

(a) such member is by reason of his or her physical or mental illness or for any other reason incapable of acting as member of the Commission;

(b) such member is convicted of an offence and sentenced to imprisonment without the option of a fine;

(c) such member, by writing under his or her hand addressed and delivered to the Permanent Secretary, resigns from his or her office as a member of the Commission;

(d) such member has absented himself or herself from two consecutive meetings of the Commission without the leave of the chairperson.

(2) Any casual vacancy on the Commission caused by the death or vacation of office by any member of the Commission shall be filled mutatis mutandis in accordance with the provisions of section 86.

89 Meetings of Commission and decisions

(1) Subject to the provisions of subsection (2), a meeting of the Commission shall be held at such time and place as may be determined by the chairperson of the Commission.

(2) The majority of the members of the Commission shall form a quorum for a meeting of the Council.

(3) The chairperson of the Commission shall preside at all meetings of the Commission at which he or she is present.

(4) The decision of a majority of the members of the Commission present at the meeting of the Commission shall be a decision of the Commission: Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

(5) No decision taken by the Commission or act performed under the authority of the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that any person who is not entitled to sit as a member of the

Commission sat as a member of the Commission when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the Commission who were present at the time and entitled to sit as such members.

90 Consideration of matters relating to terms of reference

The Commission shall in the course of its enquiry and with a view to its report and recommendations have regard to the aims of Article 95 of the Namibian Constitution in so far as it relates to labour matters, all representations and other information submitted to it in the course of its enquiry and all matters which are relevant or connected with any matter to which such enquiry relates, including, but without derogating from the generality of this section-

(a) the ability of the employer or employers or category of employers involved in the industry or area in question to carry on his or her or their businesses on a profitable basis in the event that any proposed recommendation is carried into effect;

(b) the cost of living in Namibia or in any particular area in which the industry in question is situated;

(c) the minimum subsistence level in any such area;

(d) the value of any board, lodging or other benefits provided by any employer or employers or category of employers to any employee or employees or category of employees in the industry in question;

(e) any other matter determined by the Minister.

91 Reports of Commission

(1) The Commission shall as soon as practicable after it has completed its enquiry into the matters in question submit a report to the Minister signed by the

members of the Commission or, in the event of a majority decision, by the majority of such members, together with any minority report, if any, prepared by the member holding a minority view on any matter relating to the enquiry and considered by the Commission.

(2) A report referred to in subsection (1) shall, in addition to the Commission's findings, contain the Commission's recommendations, in so far as it is relevant, on-

(a) the minimum remuneration which ought to be paid and granted to any employee or employees or category of employees;

(b) the amount by which or the extent to which any remuneration paid or granted to any employee or employees or category of employees ought to be increased or reduced;

(c) the basis upon which any such remuneration ought to be determined;

(d) the deductions made from any such remuneration which ought to be prohibited or ought to be required to be so made;

(e) the date and time on which, the place where, and manner in which, the payment of remuneration ought to take place, and the statements which ought to be furnished by any employer or employers or category of employers together with such payment and the containers in which such remuneration ought to be contained and the particulars which ought to be noted on such containers;

(f) the records which ought to be kept by any employer or employers or category of employers of work performed by any employee or employees or category of employees and the form of any such records;

(g) the prohibition on, or regulation of remuneration of, the giving out or performance by any employee or employees or category of employees of certain kinds of work which ought to be imposed or carried out;

(h) the prohibition on the performance of work on or in certain kinds of premises or on or in any premises other than certain kinds of premises which ought to be imposed;

(i) the prohibition on the payment of remuneration otherwise than in money;

(j) generally and without derogating from the generality of paragraphs (a) to (i), as to any matter connected with or incidental to any matter to which the enquiry relates which in the opinion of the Commission is necessary or desirable to make any recommendation on.

(3) The Minister may publish in such manner or form as may be determined by him or her any report submitted to him or her in terms of subsection (1) or any information, excluding information relating to the financial statements or trade practices of any particular employer, contained in such report or extracts therefrom or summary thereof.

92 Wage orders

(1) Upon consideration of a recommendation of the Commission submitted in terms of section 91, the Minister may, if he or she deems it expedient to do so, make a wage order, which shall be in accordance with such recommendation.

(2) After making any such wage order, the Minister shall cause to be published in the Gazette a notice stating that fact and setting forth the provisions of the wage order and the date as from which such provisions shall be binding, and the said provisions shall be binding as from that date on all employers in the industry in question to which such wage order relates.

(3) The Minister shall, if he or she decides not to issue any wage order by virtue of the powers vested in him or her by subsection (1), table in the National Assembly, within 14 days as from the date on which he or she has so decided, if the National

Assembly is then in session or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session-

- (a) the report and recommendation of the Commission referred to in section 91; and
- (b) a report setting out his or her reasons for not making any wage order.

93 Cancellation or suspension of wage orders

The Minister may, if he or she deems it expedient to do so, and after consultation with all parties bound by a wage order, by notice in the Gazette, and as from a date or for a period and in respect of any area specified in that notice, from time to time cancel or suspend one or more or all of the provisions of such wage order.

94 Period of operation of wage orders

The provisions of a wage order shall, subject to a suspension in terms of section 93, remain binding until they are cancelled in terms of that section or until they are amended or superseded by a new wage order or by a registered collective agreement.

95 Exemptions from provisions of wage orders

(1) When application is made in such form and manner as may be determined by the Minister for the exemption of any person or category of persons from all or any of the provisions of a wage order which is binding in terms of this Act and the Minister is of the opinion-

- (a) that the terms and conditions of employment of such person or category of persons are substantially not less favourable to him or her or such category than the terms and conditions of employment prescribed by that wage order; or

(b) special circumstances exist which justify, in the interests of such person or category of persons, an exemption of that persons or category of persons under this section,

he or she may, if he or she deems it expedient, grant exemption from all or any of the provisions of the wage order in question to or in respect of that person or category of persons, for such period (which period may commence on a date prior to the date on which it is granted, but not earlier than the date on which the application was made) and subject to such terms and conditions as he or she may determine.

(2) The terms and conditions of an exemption granted under subsection (1) shall be incorporated in a licence of exemption signed by the Minister and a copy thereof shall be transmitted to the persons exempted and persons affected by the exemption.

(3) The Permanent Secretary shall furnish on the request of any person and upon payment of such fee as may be determined by the Minister to any such person a copy of a licence of exemption issued under subsection (3).

(4)(a) Any person who feels himself or herself aggrieved by the granting of an exemption in terms of this section may note, in accordance with the provisions of Part IV, an appeal to the Labour Court.

(b) The Labour Court may in an appeal referred to in paragraph (a)-

(i) set aside the decision of the Minister to grant such exemption, if the Labour Court is satisfied that grounds exist by virtue of which such exemption ought not to have been granted, and make an order in terms of which such exemption is set aside;

(ii) dismiss such appeal.

PART XI

HEALTH SAFETY AND WELFARE OF EMPLOYEES AT WORK (ss 96-103)

(Date of commencement of Part XI: 31 July 1997.)

96 Duties of employers on health safety and welfare at work of employees

(1) It shall be the duty of every employer or person in charge of any premises or place where employees are employed to take, free of charge to such employees, all such steps as may be prescribed by regulation under section 101, in order to ensure the safety, health and welfare at work of all employees in his or her employment.

(2) Without derogating from the generality of the provisions of subsection (1), the duty referred to in that subsection shall include the duty-

(a) to provide and maintain plant, machinery and systems of work and processes which are safe and without hazards to health;

(b) to arrange and ensure safety and absence of hazards to health in connection with the use, handling, storage and transport of articles and substances;

(c) to provide such information, instruction, training and supervision as are necessary to ensure the safety and health at work of all of his or her employees;

(d) to maintain all places of work in a condition which is safe and without hazards to health and to provide and maintain such means of access to, and egress from, such places as are safe and without such hazards;

(e) to provide and maintain a working environment for his or her employees which is safe without hazards to health and adequate in relation to facilities and to arrange for their welfare at work;

(f) to provide employees with such adequate personal protective clothing and equipment as may be reasonably necessary;

(g) to ensure that the work organization, particularly with regard to hours of work and meal intervals, does not adversely affect the safety and health of his or her employees;

(h) to report in such manner as may be prescribed by regulation under section 101 to an inspector the occurrence of any accident at any place where employees are employed by him or her or the contraction of any disease so prescribed at any such place.

[Date of commencement of sec 96: 31 July 1997.]

97 Duties of employers on health and safety to persons other than employees

(1) It shall be the duty of every employer to carry on his or her business in or on his or her premises in such a manner so as to ensure, in so far as it is reasonably practicable and in such manner as may be prescribed by regulation under section 101, that persons not in his or her employment who may be affected thereby are not exposed to hazards to their safety or health.

(2) An employer shall in such circumstances and manner as may be prescribed by regulation under section 101 give such information as may be so prescribed in relation to the manner in which he or she is carrying on his or her business to persons other than his or her employees whose health and safety may be affected by such business and the manner in which their health and safety may be affected thereby.

[Date of commencement of sec 97: 31 July 1997.]

98 Rights and duties of employees at work

(1) It shall be the duty of every employee at work-

(a) to take reasonable care for the health and safety of himself or herself and of other persons who may be affected by his or her acts or omissions at work;

(b) in relation to a duty imposed upon his or her employer by or under this Act, to co-operate with and assist such employer in so far as it is necessary to enable such employer to perform such duty or to comply therewith.

(2) An employee at work shall have the right to remove himself or herself from any place where he or she is employed when he or she has reasonable cause to believe that his or her safety or health will be endangered at such place until such time as effective measures have been taken to ensure his or her safety or health, provided such employee shall forthwith report the reasons for his or her belief to his or her employer.

[Date of commencement of sec 98: 31 July 1997.]

99 Election of workplace safety representatives and establishment of workplace safety committees

(1)(a) Any group of employees consisting of not less than 10 employees, whether or not they are members of a trade union, who are employed by an employer at any particular place shall have the right to elect from among their number one employee and, in the case of a group of employees consisting of more than 100 employees, in respect of every additional 100 employees one additional employee to act as their workplace safety representative who shall have the rights and perform the duties referred to in this section.

(b) An employer shall, on the request of a workplace safety representative or, in the absence of a workplace safety representative, at least 10 employees in his or her employ, establish a workplace safety committee consisting of-

(i) the workplace safety representatives referred to in paragraph (a) or, in the absence of any workplace safety representatives, such employee or employees as may be elected *mutatis mutandis* in accordance with the provisions of paragraph (a);

(ii) an equal number of persons nominated by the employer;

(iii) such other persons as may be determined by mutual agreement between the workplace safety representatives or employees, as the case may be, referred to in subparagraph (i) and the persons referred to in subparagraph (ii),

the function of which shall be to observe the application of the regulations made under section 101 and the rules made under section 103 in or at places where employees are employed by the employer and to advise the employer concerned on any matter which in its opinion is necessary to achieve at such place the objects of this Part and to perform such other functions as may be agreed upon between the employer concerned and the workplace safety committee.

(2)(a) The provisions of sections 65(2), (3), (5) and (6) and 66(4) shall apply mutatis mutandis in relation to the election of workplace safety representatives.

(b) Subject to the terms and conditions of any collective agreement, it shall be the duty of a workplace safety representative-

(i) to carry out inspections at places where employees represented by him or her are employed, to investigate potential hazards and dangerous occurrences at any such places or where persons other than employees have access and to examine the causes of accidents and diseases at such places;

(ii) to investigate complaints by any such employees relating to such employees' health, safety or welfare at work;

(iii) to make representations to the employer on any matter referred to in subparagraph (i) or (ii) or, generally, on any other matter relating to the health, safety or welfare at work of employees represented by him or her;

(iv) to collect and receive information and make representations in relation to the health, safety and welfare at work of employees referred to in subsection (1);

(v) to make representations to, and consult with, any inspector in relation to any matter relating to his or her functions;

(vi) to perform such other duties as may be determined by mutual agreement between the workplace safety committee and the employer concerned or may be contained in a collective agreement.

(c) It shall be the duty of an employer-

(i) to provide a workplace safety representative with sufficient information on health, safety and welfare at work of employees relating to the place where employees are employed who are represented by such workplace safety representative, to enable him or her to examine any matter relating to his or her functions, and to encourage any workplace safety representative to improve or maintain conditions relating to the health, safety or welfare at work of such employees;

(ii) to consult with a workplace safety representative when considering his or her policy in relation to health, safety and welfare at work of employees represented by such workplace safety representative;

(iii) to consult with a workplace safety representative in planning any alterations of work processes, work content or organization of work which may affect the health, safety or welfare at work of employees represented by such workplace safety representative;

(iv) to allow workplace safety representatives to inspect-

(aa) at such reasonable times as may be agreed upon, any place where employees represented by him or her are employed;

(bb) at such reasonable times as circumstances may allow, any place where an accident has occurred or a disease has been contracted;

(v) to permit a workplace safety representative access to an inspector.

(d) The provisions of this subsection shall not be construed as requiring an employer to disclose information to any workplace safety representative which-

(i) is not related to health, safety or welfare at work of employees represented by any such workplace safety representative;

(ii) he or she is by virtue of the provisions of this Act or any other law not empowered to disclose;

(iii) relates to a particular employee or other (person without the consent of such employee or person;

(iv) could, for reasons other than reasons affecting the health, safety or welfare at work of any employee, be detrimental to the business carried on by such employer;

(v) was obtained by the employer for purposes of instituting, opposing or defending any legal proceedings to which he or she is a party.

(3) A workplace safety committee may make rules in relation to the holding of, and procedure at meetings of that committee, including the election or designation of its chairperson.

(4) If, upon an application made to the Labour Court in accordance with the provisions of Part IV by an employee referred to in paragraph (a) of subsection (1), a workplace safety representative or a registered trade union of which employees referred to in that subsection are members, the Labour Court is satisfied that any employer referred to in subsection (2) has failed to comply with any provision of that subsection, the Labour Court may-

(a) issue an order in terms of which such employer is ordered, subject to such conditions, if any, as may be specified in such order, to comply with such provision to the extent set out in such order;

(b) make such other order as the Labour Court may deem necessary to ensure proper compliance with the provisions of that subsection.

[Date of commencement of sec 99: 31 July 1997.]

100 Powers of inspectors to issue certain orders

(1) An inspector may, if he or she has reason to believe that any employer or other person in charge of any premises or place where employees are employed-

(a) is contravening any provision of this Part or any regulation made under section 101 or the rules made under section 103;

(b) has contravened any such provision in circumstances where it is likely that such contravention will be continued or repeated,

by notice in writing addressed and delivered to such employer or person issue an order-

(i) stating the provision which is in his or her belief so contravened; and

(ii) setting out the facts and grounds on which such belief is based; and

(iii) requiring such employer to remedy within such period as may be specified in such notice any matter so specified which has arisen in consequence of such contravention; or

(iv) ordering such employer to refrain from carrying out or to carry out, any actions specified in such notice which are required to be carried out or not to be carried out by any such provision.

(2)(a) An employer or person in respect of whom an order referred to in subsection (1) has been issued, may note, in accordance with the provisions of Part IV, an appeal to the Labour Court.

(b) The Labour Court may in an appeal referred to in paragraph (a)-

(i) set aside the decision of the inspector concerned;

(ii) amend such order subject to such directions, if any, as the circumstances may require;

(iii) dismiss such appeal;

(iv) refer the matter back to the inspector concerned subject to such directions as the circumstances may require.

(c) An order referred to in paragraph (a) shall-

(i) in the case of an order contemplated in paragraph (iii) of subsection (1), be stayed;

(ii) in the case of an order contemplated in paragraph (iv) of subsection (1), not be stayed,

unless the Labour Court, upon an application by the inspector, directs otherwise.

[Date of commencement of sec 100: 31 July 1997.]

101 Regulations on health and safety of employees at work

(1) The President may, after consultation with the Council, make regulations in relation to any matter which by any provision of this Part is required or permitted to be prescribed by regulation and, generally, any matter which the President considers necessary or expedient in order to achieve the objects of this Part.

(2) Without derogating from the generality of subsection (1) any regulation made under subsection (1) may include any matter relating to-

(a) the measures to be taken to secure the safety and the preservation of the health and welfare of employees at work, including sanitation, ventilation and lighting in, on or about premises where machinery is used or building, excavation or any other work is performed by employees;

(b) the duties of occupiers of such premises, users of such machinery, builders, excavators and employers and employees in connection therewith;

(c) the accommodation facilities and conveniences to be provided on such premises by occupiers for employees while they are working, resting or eating therein;

(d) the clothing, safety devices and protective articles to be provided by employers, builders, excavators, occupiers of premises and users of machinery for employees who handle specified articles in the course of their work or who are employed in specified activities under specified conditions;

(e) the first-aid equipment to be provided by occupiers of premises, users of machinery, builders and excavators, and the employment of persons who hold specified qualifications in first-aid, and the provision of ambulances and other health care facilities;

(f) the steps to be taken by the owners of premises used or intended for use as factories or places where machinery is used, or by occupiers of such premises or by users of machinery in connection with the structure of such buildings or otherwise in order to prevent or extinguish fires, and to ensure the safety, in the event of fire, of persons in such buildings;

(g) the medical examination of persons in relation to occupational health;

(h) the conditions of work of employees in, on or about any premises where in the opinion of the Minister concerned special provision is necessary to safeguard the physical, moral or social welfare of such employees;

(i) the returns, statistics, information and reports which shall be furnished in relation to premises, machinery, building work, excavation work, and employees, and the times at which, the manner in which, and the persons by whom such returns, statistics, information and reports shall be furnished, and the records which shall be kept;

(j) the conditions governing the erection, installation, working and use of any machinery and the duties, responsibilities and qualifications of the user or person in charge of or erecting, such machinery;

(k) the reporting of accidents, the submission of notices of dangerous occurrences and occupational diseases, the manner of holding inquiries in connection therewith and the procedure to be followed at such inquiries;

(l) the conditions governing the construction, erection, alteration or taking down of scaffolding or cranes;

(m) the conditions governing building work and excavations work, including the steps to be taken in connection with timbering, underpinning and shoring up;

(n) the precautions to be taken by builders or employees to prevent persons being injured by falling articles;

(o) the lighting of building work and the safeguards to be used in connection with electrical equipment;

(p) the stacking of material on or near the site;

(q) the necessary qualifications of a crane driver or hoisting appliance operator;

(r) the provision of equipment and the precautions necessary where persons employed on building or excavation work are in risk of drowning;

(s) safety, health, hygiene, sanitation and welfare of persons employed in or about mines, including sea-bed operations, and generally of persons, property and public traffic;

(t) the grant, cancellation and suspension of certificates of competency to employees in certain industries in respect of operations to be performed by them;

(u) the submission of notices of commencement and cessation of any operations;

(v) the submission of notices of appointment of employees in industries to which the provisions of paragraph (t) applies;

(w) the functions of officers acting in the administration of this Act;

(x) the making and keeping of plans of any premises relating to health and safety measures in, on or about such premises and the depositing of copies thereof in such office as may be specified in such regulations;

(y) the protection and preservation of the surface of land and of buildings, roads, railways and other structures and enclosures on or above the surface of the land, and the conditions under which any such buildings, roads, railways, structures and enclosures may be undermined or excavated;

(z) the prohibition or restrictions in relation to the making or use of roads or railways or other travelling ways over, or the erection or use of buildings or other structures over areas which have been undermined or excavated;

(aa) the making safe of undermined ground and of dangerous slimes and tailings dams, dams, waste dumps, ash dumps, shafts, holes, trenches or excavations of whatever nature made in the course of prospecting or mining operations, posing a risk to safety and health, the imposition of monetary and other obligations in connection with such safe-making on persons who are or were responsible for the undermining of such ground or the making of such slimes and tailings dams, dams, waste dumps, ash dumps, shafts, holes, trenches or excavations or for the dangerous condition thereof, who will benefit from such safe-making;

(ab) the assumption by the State of responsibility or co-responsibility for such safe-making as mentioned in paragraph (aa) in particular cases;

(ac) the conditions upon which machinery may be erected or used;

(ad) the generation, transformation, transmission, distribution and use of electricity;

(ae) the prevention of outbreak of fire and precautions to be taken against heat, dust, noise and vibration in, on or about any premises or in connection with any operations;

(af) the precautions to be taken against irruption or inrush of water or other liquid matter into workings;

(ag) the transport, handling, storage and application of explosives in connection with any operations and the mixing of substances to make explosives in any working place which are not contrary to the provisions of any other law;

(ah) the conveyance of persons and material;

(ai) the movement of vehicles;

(aj) the fees to be payable by persons applying for any of the certificates mentioned in paragraph (t) or on their admission to an examination for any such certificate;

(ak) the participation of workers in safety and health management;

(al) the provision of disaster management and rescue services;

(am) the prevention and combating of pollution of the air, water, land or sea which arises or may possibly arise in the course of any operations involved in any works or after such operations have ceased, and the imposition of monetary and other obligations;

(an) the conservation, rehabilitation and safemaking of land disturbed by any operations;

(ao) the disposal of waste rock, its stabilisation, prevention of run off and land reclamation;

(ap) the fees which shall be payable for any inspection under these Regulations;

(aq) the regulation or prohibition of noise and vibration generated in the workplace;

(ar) the manufacture, storage, transport and labelling of chemicals and other hazardous substances;

(as) the registration or licensing of industries specified in such regulations for purposes of securing the health and safety of employees employed in such industries.

(3) Different regulations may be made under subsection (1) or (2) in respect of different industries or different employees employed in such industries.

(4) The regulations may-

(a) prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;

(b) provide for the exemption by the Minister concerned, subject to such conditions, if any, as may be determined by that Minister, of any person from any or all of such regulations.

[Date of commencement of sec 101: 31 July 1997.]

102 Administration of regulations

(1) The President may by proclamation in the Gazette assign the administration of the provisions of any regulation to any other Minister or partly to one Minister and partly to another Minister, or assign to different Ministers the administration of the said regulations in so far as they relate to different specified actions, and may in such proclamation prescribe the powers and functions which shall be exercised and performed by the several Ministers, and may further prescribe that any power and duty conferred or imposed by the said regulations upon the Minister shall be exercised or performed by one Minister acting after consultation with, or with the concurrence of, another Minister.

(2) The President may from time to time vary or amend any such proclamation.

[Date of commencement of sec 102: 31 July 1997.]

103 Rules to ensure proper administration of this Part and regulations

(1) Any Minister to whom the administration of any regulations made under section 101 has been assigned may, in so far as it has been so assigned, make rules, not inconsistent with this Part or any such regulations, for the maintenance of health and safety and the prevention of accidents in or on any place where employees are employed in any industry.

(2) The Minister referred to in subsection (1) may from time to time cause such rules to be published by such persons and in such manner and in such languages as may be determined by that Minister.

[Date of commencement of sec 103: 31 July 1997.]

PART XII

POWERS OF INSPECTORS (ss 104-105)

104 Powers of inspectors

(1) The provisions of this section, in so far as they provide for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of an employer's home, correspondence or communications, are enacted upon the authority conferred by that Sub-Article.

(2) Subject to the provisions of subsection (3), an inspector may, for purposes of the administration of this Act-

(a) mutatis mutandis in accordance with the provisions of Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), at any reasonable time and without prior notice-

(i) enter any premises which he or she has reason to believe is occupied or used by any employer in connection with any matter to which this Act relates;

(ii) search for any book, writing or other document so used by any employer or any container in which money paid by an employer by way of remuneration is contained or any money or container containing money to be so paid to any employee or any statement furnished in connection with any such remuneration;

(iii) seize, or make any copy of, or extract from, any such book, writing, document, container, excluding any money contained therein, or statement,

as if such inspector were a police official referred to in that Act and such book, writing or other document were concerned in the commission of any offence;

(b) question any person who is present on any premises so entered upon, in connection with any matter to which this Act relates;

(c) direct that such premises or any part thereof or anything therein or thereon be left undisturbed, whether generally or in any particular respects, for as long as it is reasonably necessary to search such premises for any book, writing, other document, container or statement prepared or used in connection with any matter to which this Act relates;

(d) require any person who has control over, or custody of, any such book, writing, other document, container or statement prepared or used in connection with any matter to which this Act relates, to produce such book, writing, other document, container or statement to him or her forthwith or at such time and place as may be determined by such inspector by notice in writing addressed and delivered to such person;

- (e) examine any such book, writing, other document, container or statement;
- (f) require from any person referred to in paragraph (d) an explanation of any entry in any such book, writing, other document or statement or on such container;
- (g) order any person by notice in writing addressed and delivered to such person to appear before him or her at such time and place as may be specified in such notice in connection with any matter to which this Act relates and question any such person on any such matter;
- (h) require an employer to hand over in such inspector's presence to an employee any amount payable to such employee by way of remuneration;
- (i) give directions in connection with the posting of any notices required under this Act to be posted in or on any premises;
- (j) assist any employee in presenting any application or appeal to the Labour Court or any complaint to any district labour court in terms of the provisions of this Act or in settling any matter which relates to such complaint, application or appeal;
- (k) take such measurements, recordings and photographs and make such readings as he or she considers necessary for the purposes of an examination or investigation;
- (l) take samples of any article or substance found on any premises which he or she has power to enter, and of the atmosphere in or in the vicinity of any premises, and in the case of an article or substance which appears to him or her to be likely to cause immediate danger to health or safety to cause it to be dismantled or subjected to any process test, and to take possession of it for so long as is necessary for the purposes of examining it and doing anything which he or she is empowered to do with it;
- (m) require a member of the Namibian Police Force, or request any other person, to assist him or her as an interpreter or otherwise in exercising or performing his or her powers, duties or functions under this Act.

(3) When an inspector exercises or performs a power or duty under this Act in the presence of any person affected thereby, the inspector shall on demand by any such person produce to him or her the certificate issued to such inspector in terms of section 3(2).

(4) A member of the Namibian Police Force required, or any other person requested, by an inspector to assist him or her as provided in paragraph (m) of subsection (1) may accompany such inspector in the exercise of his or her powers or the performance of his or her duties or functions under this Act as if such member or person were an inspector.

(5) An employer, every employee employed by such employer and any other person in charge of any premises on which persons are employed, shall at all times furnish such facilities as are reasonably required by an inspector in order to enable him or her to exercise or perform effectively the powers and duties to be exercised or performed by him or her under this Act on or in any premises occupied or used by such an employer or other person.

(6) Whenever any work has been given out on contract to any person by a principal or contractor, any inspector may exercise in relation to that principal or contractor all the powers conferred upon an inspector by this section in relation to an employer.

105 Offences in relation to inspectors

Any person who-

(a) hinders or obstructs an inspector in the exercise of his or her powers or the performance of his or her duties or functions;

(b) refuses or fails to comply to the best of his or her ability with any requirement made by an inspector in the exercise of his or her powers or the performance of his or her duties or functions;

(c) refuses or fails to answer to the best of his or her ability any question which an inspector in the exercise of his or her powers or the performance of his or her duties or functions has put to him or her;

(d) wilfully furnishes to an inspector information which is false or misleading;

(e) falsely gives himself or herself out as an inspector,

shall be guilty of an offence and on conviction be liable to a fine not exceeding R4000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

PART XIII

AFFIRMATIVE ACTION AND COMPLAINTS IN RELATION TO UNFAIR DISCRIMINATION OR HARASSMENT (ss 106-107)

106 Affirmative action

(1) Nothing contained in this Part or in any other provision of this Act shall be construed as prohibiting any employer or person from implementing any employment policies and practices-

(a) aimed at the advancement of persons who have been disadvantaged in the labour field by discriminatory laws or practices which have been enacted or practised before the independence of Namibia; or

(b) in terms of the Affirmative Action (Employment) Act, 1998.

[Subsec (1) substituted by sec 49 of Act 29 of 1998.]

(2) The provisions of this Part, in so far as they provide for the implementation of a policy or practice which may diminish or derogate from the fundamental rights contemplated in Article 10 of the Namibian Constitution of any employer or employee other than an employer or employee referred to in subsection (1), are enacted upon the authority of Article 23 of the Namibian Constitution.

107 Unfair discrimination or harassment in employment or occupation

(1) Subject to the provisions of section 106 and subsection (2) of this section, if, upon an application made to the Labour Court in accordance with the provisions of Part IV by any person, the Labour Court is satisfied-

(a) that any person has discriminated or is about to discriminate in an unfair manner, or is so discriminating against him or her on the grounds of his or her sex, race, colour, ethnic origin, religion, creed, social or economic status, political opinion or marital status or his or her sexual orientation, family responsibilities or disability, in relation to his or her employment or occupation;

(b) that in his or her employment he or she has been, is being or is or is about to be subjected by any other person to any harassment by virtue of his or her sex, race, colour, ethnic origin, religion, creed, social or economic status, political opinion or marital status or his or her sexual orientation, family responsibilities or disability;

(c) that any person has published or displayed or caused to be published or displayed or is about to publish or display any advertisement or notice which indicates an intention to unfairly discriminate in the employment or occupation of persons on the grounds of sex, race, colour, ethnic origin, religion, creed, social or economic status, political opinion or marital status or his or her sexual orientation, family responsibilities or disability,

the Labour Court may-

(i) issue an order in terms of which such person is ordered-

(aa) in the case of continuing acts of unfair discrimination or harassment, to discontinue any such acts as may be specified in such order;

(bb) to perform, or to refrain from performing, any act specified in such order;

(cc) to discontinue any such publication or display or to refrain from publishing or displaying any such advertisement or notice;

(ii) make any such other order as the circumstances may require.

(2) For purposes of the provisions of subsection (1), a person shall not be regarded to have been unfairly discriminated against, if-

(a) any person is selected for purposes of employment or occupation according to reasonable criteria, including but not limited to, the ability, capacity, productivity and conduct of that person or in respect of the operational requirements and needs of the particular occupation or work in the industry in question;

(b) in the case of a female person who is pregnant or a disabled person, such female person or disabled person is, in consequence of such female person's pregnancy or such person's disability, incapable of performing the duties or functions connected to the occupation or work in question or is so prohibited by law.

(3) For purposes of the provisions of subsection (1) a person shall be regarded to have been or about to be unfairly discriminated against on the grounds of sex, if in terms of any term and condition contained in a contract of employment entered into with an employer, such person is by virtue of his or her employment entitled to any condition of employment which is less favourable than any condition of employment to which any other person of the opposite sex is entitled for work of equal value.

(4) When in any proceedings in terms of the provisions of this section, it is proved that any act performed or any requirement by an employer in relation to the employment or occupation of any person or group of persons affected thereby, has, an adverse effect on such person or group of persons if such effect of any such act or requirement

is, compared with the effect thereof on any person or group of persons, who is of a different sex, race, colour, ethnic origin or who has a different religion, creed, social or economic status, political opinion, marital status, sexual orientation or who has no family responsibilities or who is not disabled, it shall be presumed, unless the contrary is proved, that such employer has unfairly discriminated against such person or group of persons as contemplated in subsection (1).

(5) For purposes of the provisions of this section-

(a) "disability", in relation to any person, includes any physical or mental disability which impairs or restricts such person's preparation for, entry into or participation or advancement in, employment or occupation;

(b) "employment or occupation", in relation to any person, includes such person's-

(i) access to vocational guidance, training and placement services;

(ii) access to employment, occupation or work;

(iii) promotion, demotion and transfer;

(iv) remuneration or other conditions of employment;

(v) discipline, suspension or termination of employment;

(vi) access to any other benefits, facilities or services,

(c) "family responsibilities", in relation to any person, means the responsibilities of any person towards his or her dependent children in need of his or her care and support which impairs such person's preparation for, entry into or participation or advancement in, employment or occupation;

(d) "work of equal value", in relation to an employee, means work-

(i) which is of the same or compared with any other work is broadly of a similar nature which, having regard to any frequency with which any differences in

relation to such first-mentioned work and such other work occur and the natural extent of such differences, does not justify the determination of conditions of employment which differs from the conditions of employment prevailing in respect of any employee of the opposite sex performing such work;

(ii) which requires skills, abilities, responsibilities, working environment or other requirements which are of equal value to employees belonging to any sex.

(6) Notwithstanding anything to the contrary in this Act, or in any law, this section shall, in so far as it relates to the standards of physical or mental fitness required for selection of persons for appointment to the Namibia Defence Force or to the Namibian Police Force, not apply to the Namibia Defence Force or to the Namibian Police Force.

[Subsec (6) added by sec 1 of Act 6 of 2001.]

PART XIV

MISCELLANEOUS OFFENCES, PENALTIES AND EVIDENCE (ss 108-110)

108 Forced labour

(1) Any person who causes, permits or requires any other person to perform forced labour shall be guilty of an offence and on conviction be liable to the penalties which may be imposed by law for abduction.

(2) Subject to the provisions of Article 9(3) of the Namibian Constitution, in this section "forced labour" includes-

(a) any work or service performed or rendered involuntarily by any person under threat of any penalty, punishment or other harm to be imposed or inflicted upon, or caused to such person by any other person in the event of such first-mentioned person not performing or rendering any such work or service;

(b) any work performed by any child under the age of 18 years of any employee of an employer in terms of any arrangement or scheme in any undertaking who is for any reason required to perform such work in the interest of such employer;

(c) any work performed by any person by reason only of the fact that such person is for any reason subjected to the control, supervision or jurisdiction of a traditional chief or headman in his or her capacity as such chief or headman.

109 Offences, or contraventions of, or failures to comply with, provisions of Act by managers, agents or employees

(1) When any manager, agent or employee of any employer performs or fails to perform any act which would be an offence in terms of, or a contravention of, or a failure to comply with, any provision of this Act for an employer to so perform or to fail to perform any such act then, unless it is proved-

(a) that in performing or failing to perform such act the manager, agent or employee was acting without the connivance or permission of the employer;

(b) that all reasonable steps were taken by the employer to prevent the performance of or failure to perform any such act; and

(c) that it was not under any condition or in any circumstances within the scope of the authority or in the course of the employment of the manager, agent or employee to perform or fail to perform such act,

the employer himself or herself shall be presumed to have performed or failed to perform such act, and shall be liable in respect thereof, and the fact that he or she issued instructions forbidding the performance or failure to perform such act shall not, of itself, be accepted as sufficient proof that he or she took all reasonable steps to prevent such performance or failure.

(2) When any manager, agent or employee of any employer performs or fails to perform any act referred to in subsection (1) he or she shall be liable in respect thereof as if he or she were the employer.

(3) Any manager, agent or employee may be so liable in addition to the employer.

110 Evidence

(1) In the absence of satisfactory proof of age, the age of any person shall in any legal proceedings in terms of this Act, including any proceedings in the Labour Court or a district labour court, be presumed to be that stated by an inspector to be in his or her opinion the probable age of that person, but any interested person who is dissatisfied with that statement of opinion may, at his or her expense require that a person whose age is in question appear before and be examined by a medical practitioner, and a statement contained in a certificate by such medical practitioner who examined that person as to what in his or her opinion is the probable age of that person shall, but only for the purposes of the said proceedings be conclusive proof of the age of that person.

(2) In any legal proceedings in terms of this Act, including any proceedings in the Labour Court or a district labour court, any statement or entry contained in any book or document kept by any employer or by his or her manager, agent or employee, or found upon or in any premises occupied by that employer, and any copy or reproduction (whether obtained by microfilming or any other process or by the use of a computer) of any such statement or entry, shall be admissible in evidence against him or her as an admission of the facts set forth in that statement or entry, unless it is proved that that statement or entry was not made by that employer, or by any manager, agent or employee of that employer in the course of his or her work as manager, or in the course of his or her agency or employment.

(3) In the event of any complaint under a provision of this Act or under a condition subject to which exemption was granted to a person under this Act in which it

is alleged that such person has failed to pay to any person employed by him or her during any period at the rate of remuneration at which in respect of that period he or she was required to pay that person in terms of such provision or condition, it is proved that that person was employed by the employer during any period to which the complaint relates and that in terms of the said provision or condition the employer was required to pay to that person as the minimum rate of remuneration a certain amount in respect of that period, it shall be presumed, until the contrary is proved that the employer did not pay that amount to that person.

PART XV

MISCELLANEOUS PROVISIONS (ss 111-117)

111 Contracts entered into by State for provision of goods or services

(1) No licence, permit, grant or concession shall be issued, granted or awarded to any employer in terms of any law on mining and minerals or fisheries, and no contract for the provision to the State of any goods or services shall be entered into with any employer, unless such employer has undertaken in writing to ensure that any employees employed by him or her for purposes of exercising any rights under any such licence, permit, grant or concession or for purposes of the provision of such goods or services, is employed subject to terms and conditions not less favourable than such terms and conditions prevailing for work of the same nature in the industry in question in the district in which such employees are employed or, if no such terms and conditions so prevail in such district, in the nearest appropriate district where such terms and conditions prevail.

(2) If, upon an application made in accordance with the provisions of Part IV by the Minister, an employee, a registered trade union or a registered employers' organization, the Labour Court is satisfied that the employer of an employee is failing to comply with the undertaking given in terms of subsection (1), the Labour Court may-

- (a) issue an order in terms of which the employer concerned is ordered to comply to the extent set out in such order with any such undertaking;
- (b) make such other order as the circumstances may require.

112 Guidelines and instructions to ensure proper administration of Act

The Minister may from time to time-

- (a) issue guidelines in relation to the application of any provision of this Act by the Permanent Secretary, the Commissioner, inspector or other person engaged in the administration of this Act, including employers and employees, and instructions, not inconsistent with the provisions of this Act, to such persons in order to effect the proper administration of the provisions of this Act;
- (b) cause such guidelines and instructions to be published by such persons and in such manner and in such languages as may be determined by the Minister.

113 Service of documents

(1) Any document, notice or other communication required or authorized under the provisions of this Act to be given or delivered to any person by the Minister, the Permanent Secretary, the Commissioner, an inspector or any officer authorized thereto shall be deemed to have been given or delivered-

- (a) if delivered to such person personally;
- (b) if dispatched by registered or any other kind of post addressed to such person at his or her last known address which may be any such place or office as is referred to in paragraph (c) or his or her last known post office box number or private bag number or that of his or her employer;

(c) if left with some adult person apparently residing at or occupying or employed at his or her last known abode or office or place of business;

(d) in the case of a company-

(i) if delivered to the public officer of the company;

(ii) if left with some adult person apparently residing at or occupying or employed at its registered address;

(iii) if dispatched by registered or any other kind of post addressed to the company or its public officer at its or his or her last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his or her last known post office box number or private bag number or that of his or her employer;

(iv) if transmitted by means of a facsimile transmission to the person concerned at the registered office of the company.

(2) Any document, notice or other communication referred to in subsection (1) which has been given or delivered in the manner contemplated in paragraph (b) or (d)(iii) of that subsection shall, unless the contrary is proved, be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post have arrived at the place to which it was addressed.

114 Exemptions

(1) The Minister may, for such period and on such conditions as may be determined by him or her, exempt any employer or category of employers generally or in relation to any particular employee or category of employees in respect of whom this Act applies, from any provision of Part V, except sections 25, 42, 43 and 44, and from section 52.

(2) The period for which exemption may be granted under subsection (1) may commence on a date earlier than the date on which exemption is granted, but not earlier than the date on which application for such exemption was made to the Minister.

(3) An exemption under subsection (1) shall-

(a) in the case of an exemption of a particular employer, be granted by issuing to such employer a certificate of exemption in which his or her name and the period and conditions of the exemption and the name of the employee or a description of the category of employees in relation to whom exemption is granted are specified;

(b) in the case of the exemption of a category of employers, be granted by notice in the Gazette in which that category of employers is described and the period and conditions of the exemption and a description of the category of employees in relation to whom exemption is granted are specified.

(4) A certificate of exemption contemplated in paragraph (a) of subsection (3) and the notice contemplated in paragraph (b) of that subsection may at any time be amended or withdrawn by the Minister.

(5) An exemption under subsection (1) shall lapse-

(a) upon termination of the period for which it was granted;

(b) upon withdrawal of the relevant certificate of exemption or notice under subsection (4).

(6)(a) Any person who feels himself or herself aggrieved by the granting of an exemption in terms of this section may note, in accordance with the provisions of Part IV, an appeal to the Labour Court.

(b) The Labour Court may in an appeal referred to in paragraph (a)-

(i) set aside the decision of the Minister to grant such exemption, if the Labour Court is satisfied that grounds exist by virtue of which such exemption ought not

to have been granted, and make an order in terms of which such exemption is set aside;

- (ii) dismiss such appeal.

115 Delegation of powers

(1) The Minister, the Permanent Secretary or the Commissioner may delegate to any officer employed in the Ministry of Labour and Manpower Development any power conferred upon him or her other than the powers referred to in this section and sections 2(3) and 112.

(2) No delegation under subsection (1) shall prevent the exercise of the relevant power by the Minister, the Permanent Secretary or the Commissioner himself or herself.

116 Repeal of laws and savings

(1) The laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column of that Schedule.

(2) Subject to the provisions of subsections (3), (4) and (5)-

- (a) any appointment made;
- (b) any conciliation board established;
- (c) any regulation made;
- (d) any exemption granted; and
- (e) anything else done,

under any provision of any law repealed by subsection (1) and which was in force on the date immediately before the commencement of this Act, shall be deemed to have

been made, established, granted or done, as the case may be, under the corresponding provision of this Act.

(3)(a) Notwithstanding the provisions of subsection (2), but subject to the provisions of paragraph (b) of this subsection, any trade union or employers' organization which has been registered under the provisions of the Wage and Industrial Conciliation Ordinance, 1952, or deemed to have been so registered and which was so registered immediately before the commencement of this Act, shall be deemed to have been registered under the corresponding provisions of this Act.

(b) A trade union or employers' organization referred to in paragraph (a) shall, within a period of six months as from the commencement of this Act apply for its registration in accordance with the provisions of this Act.

(c) The registration of any trade union or employers' organization referred to in paragraph (a) shall, upon the expiry of the period of six months referred to in paragraph (b), as from the date of such expiry or the date on which any application for registration referred to in paragraph (b) has been disposed of, whichever date is the later date, be deemed not to be registered.

(4) Any-

(a) application for the registration of a trade union or employers' organization or for the approval to alter its constitution;

(b) proceedings before any arbitrator or conciliation board,

which have not been disposed of on the date immediately before the commencement of this Act shall continue as if such application were made or such proceedings have commenced under the corresponding provisions of this Act.

(5) Any decision of any court of law given after the date of commencement of this Act in any proceedings which have commenced before such date in relation to any dispute between any employer or employers' organization and any employee or trade union, shall, for purposes of this Act, be deemed to be a decision of the Labour Court.

[Sec 116 amended by sec 53(1) of Act 18 of 1994.]

[Date of commencement of sec 116: 31 July 1997.]

117 Short title and commencement

(1) This Act shall be called the Labour Act, 1992, and shall come into operation on a date to be determined by the President by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to such provision.

Schedule

LAWS REPEALED OR AMENDED

(Section 116)

[Schedule amended by sec 53(1) of Act 18 of 1994 and by sec 19(1) of Act 28 of 1998.]

Column 1	Column 2	Column 3
No. and year of law	Title of law	Extent of repeal or amendment
Ordinance 34 of 1952	Factories, Machinery and Building Work Ordinance, 1952	The repeal of the whole
Ordinance 35 of 1952	Wage and Industrial Conciliation Ordinance, 1952	The repeal of the whole

Ordinance 28 of 1957	Factories, Machinery and Building Work Amendment Ordinance, 1957	The repeal of the whole
Ordinance 3 of 1958	Validation of Native Service Contracts Ordinance, 1958	The repeal of the whole
Ordinance 29 of 1960	Factories, Machinery and Building Work Amendment Ordinance, 1960	The repeal of the whole
Ordinance 40 of 1967	Factories, Machinery and Building Work Amendment Ordinance, 1967	The repeal of the whole
Ordinance 20 of 1968	Mines, Works and Minerals Ordinance, 1968	The repeal of-
	(a) section 93; and	
	(b) the whole, in so far as it relates to the health and safety of workers employed in or in connection with mining and prospecting operations	
Act 47 of 1972	Mines, Works, and Minerals in South West Africa Amendment Act, 1972	The repeal of section 11
Enactment 6 of 1972	Labour Enactment for Owambo, 1972	The repeal of the whole
Proclamation R323 of 1972	Employment Bureaux Regulations, 1972	The repeal of the whole
Act 12 of 1973	Owambo Labour Amendment Act, 1973	The repeal of the whole
Proclamation R32 of 1973	Employment Bureaux Regulations for Namas, 1973	The repeal of the whole
Act 78 of 1973	Occupational Diseases in Mines and Works Act, 1973	The repeal of the whole
Proclamation R259 of 1973	Amendment of Proclamation R32 of 1973	The repeal of the whole
Act 2 of 1974	Kavango Labour Act, 1974	The repeal of the whole
Act 27 of 1974	Occupational Diseases in Mines and Works Amendment Act, 1974	The repeal of the whole
Act 67 of 1974	Occupational Diseases in Mines and Works Amendment Act, 1974	The repeal of the whole

Act 45 of 1975	Occupational Diseases in Mines and Works Amendment Act, 1975	The repeal of the whole
Proclamation R17 of 1976	Amendment of Proclamation R323 of 1972	The repeal of the whole
Proclamation R65 of 1976	Namaland Employment Bureau Regulations, 1976	The repeal of the whole
Proclamation AG. 5 of 1977	General Law Amendment Proclamation, 1977	The repeal of section 14
Act 117 of 1977	Occupational Diseases in Mines and Works Amendment Act, 1977	The repeal of the whole
Act 30 of 1978	Occupational Diseases in Mines and Works Amendment Act, 1978	The repeal of the whole
Proclamation AG. 33 of 1978	Employment Bureaux Amendment Proclamation, 1978	The repeal of the whole
Proclamation AG. 45 of 1978	Wage and Industrial Conciliation Amendment Proclamation, 1978	The repeal of the whole
Proclamation AG. 48 of 1978	Second Employment Bureaux Amendment Proclamation, 1978	The repeal of the whole
Act 83 of 1979	Occupational Diseases in Mines and Works Amendment Act, 1979	The repeal of the whole
Act 2 of 1980	Public Service Act, 1980	The amendment of section 27 by the substitution for paragraph (c) of subsection (1) of the following paragraph:
	<p>"(c) not more than four officers or employees in the public service who shall be nominated by registered trade unions which are in the opinion of the Commission representative of such officers and employees."</p>	
Act 83 of 1980	Occupational Diseases in Mines and Works Amendment Act, 1980	The repeal of the whole
Act 85 of 1981	Occupational Diseases in Mines and Works Amendment Act, 1981	The repeal of the whole
Act 106 of 1983	Occupational Diseases in Mines and Works Amendment Act, 1983	The repeal of the whole

Act 123 of 1984 2, 3, 4 and 9	Pension Laws Amendment Act, 1984	The repeal of sections
Act 105 of 1985 1, 2 and 6	Pension and Related Matters Amendment Act, 1985	The repeal of sections
Act 9 of 1986	National Labour Council Act, 1986	The repeal of the whole
Act 12 of 1986	Conditions of Employment Act, 1986	The repeal of the whole
Act 106 of 1986	Pension Laws Amendment Act, 1986	The repeal of section 12
Act 21 of 1987		
Act 24 of 1987	Conditions of Employment Amendment Act, 1987	
Act 88 of 1987	Pension Laws Amendment Act, 1987	
Act 89 of 1988 up to and including 14	Pension Laws Amendment Act, 1988	The repeal of sections 7
Act 79 of 1989	Pension Laws Amendment Act, 1989	The repeal of the whole