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I. INTRODUCTION

The Namibian Labour Act (Act 6 of 1992) contains extensive and detailed provisions relating to basic conditions of employment, and rules concerning termination of service, dismissal of workers, and disciplinary action.

These provisions set out the minimum conditions which apply to all contracts of employment between individual employers and their individual workers. Nevertheless, it should be clearly understood that the basic conditions laid down in the Labour Code are minimum conditions, and there is nothing to prevent an employer from granting, or agreeing to, more favourable conditions if he or she so wishes. Such agreements are often reflected in registered collective agreements between employers, or their organizations, and trade unions. The provisions contained in such agreements are enforceable in the same way as the basic conditions laid down in the Labour Code itself.

The Labour Act – or Labour Code as it is commonly known – also provides means by which persons who believe they are not receiving the minimum conditions applicable to their employment, are able to lodge complaints with the district labour courts and have the situation corrected. In cases of discrimination or harassment, complaints are dealt with by the Labour Court.

In circumstances where some infringement of these conditions is thought to have occurred, the assistance of Labour Inspectors employed by the Ministry of Labour and Human Resources Management can often resolve the problem without the need to bring the matter to court. This form of assistance is described later in this booklet.

Generally, any person, whether they be an employer or worker, who needs help or information concerning the basic conditions of employment dealt with in this booklet, should seek the assistance of their local Labour Inspector, or contact the Directorate of Labour, Ministry of Labour and Human Resources Development, in Windhoek.

The basic conditions of employment contained in the Labour Act are summarized in the remaining pages of this booklet.

2. BASIC CONDITIONS OF EMPLOYMENT

SECTION 26: Maximum weekly ordinary working hours

Security Guards – 60 hours (includes meal breaks).
All other employees – 45 hours (excludes meal breaks).

Exceptions: Overtime and Sunday work not included.

SECTION 27: Maximum daily ordinary working hours for day workers

Security Guards – 12 hours x 5 days, or 10 hours x 6 days.
Casual workers – 9 hours.
All other employees – 9 hours x 5 days, or 72 hours x 6 days, or 8 hours x 5 days plus 5 hours x 1 day.

Exceptions: Overtime and Sunday work not included.

SECTION 28: Maximum daily ordinary working hours for day workers

Security Guards – 12 hours x 5 shifts/week, or 10 hours x 6 shifts/week.
All other employees – 9 hours x 5 shifts/week, or 72 hours x 6 shifts/week, or 8 hours x 5 shifts plus 5 hours x 1 shift/week.

Exceptions: Overtime not included. Shift workers employed on Sundays and public holidays in accordance with Section 33, are limited to 72 hours per shift.

SECTION 29: Extensions of ordinary working hours

Working hours of shop employees may be extended by 15 minutes per day or shift to attend to customers after ordinary working hours, but aggregate extensions may not exceed 1 hour per week.

SECTION 30: Maximum spread-overs

“Spread-over” refers to the period in any day measured from the time an employee commences work until he or she ceases to work for that day.

Not more than 12 hours.

Exceptions: Emergency work, and work connected with arrival or departure of ships and aircraft, or vehicles transporting passengers, livestock or perishables.

SECTION 31: Meal interval

- 1 Hour meal interval after 5 hours continuous work.
Employer and employee may agree to reduce meal interval to not less than 30 minutes, subject to notice being given to the Permanent Secretary of Ministry of Labour and Human Resources Development.
- Meal intervals may not exceed 12 hours.

Exceptions:

- Emergency work
- Security guards
- Shiftworker engaged in any industry approved by the Minister to be continuous work.

SECTION 32: Overtime

- Overtime is all time worked in excess of ordinary working hours. (See also Section 33)
- Not more than 3 hours per day, or 10 hours per week.
- Remuneration paid at 12 times normal rate for overtime on ordinary week days, and double normal rate for overtime worked on Sundays and public holidays.

Exceptions: Maximum hours overtime can be exceeded on emergency work and work related to arrival and departure of ships and aircraft, or vehicles transporting passengers, livestock and perishables.

SECTION 33: Work on Sundays and public holidays

- No employee may be required to work on Sundays or public holidays.

Exceptions:

- Emergency work and work connected with arrival and departure of ships and aircraft, and vehicles transporting passengers, livestock or perishables.
- Shops, hotels, boarding-houses or hostels lawfully open on Sundays or public holidays.
- Private domestic work.

- Essential farming operations.
- Any industry approved by the Minister in which work is required to be performed continuously.
- Any other work approved by Permanent Secretary of the Ministry of Labour and Human Resources Development but only subject to concurrence of employees concerned.
- At the request of an employee, payment for work on Sundays and Public Holidays is to be either:
 - (a) double normal rate of remuneration for time actually worked; or
 - (b) 1.2 times normal rate of remuneration for time actually worked, plus equivalent time off in the succeeding week.

SECTION 34: Nightwork

- Nightwork is any work performed between 20:00 and 07:00.
- Remuneration payable at normal rate plus 6%.

Exceptions:

Persons under 18 years of age and females 8 weeks before and 8 weeks after their date of confinement may not be employed on night work.

SECTION 35: Calculation of remuneration

Sets out formula to be used in calculating various rates of remuneration for various purposes, namely:

- Hourly rate = Weekly wage ÷ ordinary working hours.
- Daily rate = Weekly wage ÷ number of days worked i.e. 5 or 6; or Hourly rate x number of hours worked.
- Weekly rate = Fortnightly rate ÷ 2; or Monthly rate ÷ 4.3.
- Monthly rate = Fortnightly rate x 2.6 or Weekly rate x 4.3.

Where remuneration is paid other than on the basis of time worked, the weekly rate is deemed to be the average weekly income received in preceding 13 weeks.

The hourly rate in this case is the average weekly income ÷ 45, and the daily rate is the hourly rate x 9 in case of a 5-day week, and hourly rate x 7.2 in case of a 6-day week.

SECTION 36: Payment of remuneration

- Remuneration payable is to be in a sealed envelope with statement of particulars.
- Must be paid within 1 hour of completion of ordinary working hours.
- May, at written request of employee, be paid into bank, building society or post office account, but statement must be handed to employee.
- Remuneration to be paid weekly, or by agreement, fortnightly or monthly.
- Casual employee to be paid daily, or by agreement, weekly, fortnightly or monthly.



Exceptions:

Casual employees not entitled to request payment into bank, building society or post office account.

SECTION 37: Prohibited acts relating to payment of remuneration

No deductions are permitted except:

- by court order or other legal provision;
- unauthorised absence;
- short time working (but not more than 3 of remuneration normally paid may be de-deducted for the period in question);
- amounts authorized by employees, up to one-third of total remuneration, for housing, loans, vacation, medical, insurance, savings, pension funds, and trade union membership fees or levies.

Employers may not require an employee to use an employer's shop or buy goods from an employer, or levy a fine except by way of disciplinary action lawfully undertaken.



SECTION 38: Employees required to live in at place of employment or other premises

- (a) Employer must provide reasonable housing, including sanitation and water for employee, and, where employee is required to live on agricultural land, for his/her spouse and dependent children.
- (b) Employees on agricultural land also may keep such livestock, and carry on cultivation to meet reasonable needs of self and dependants.

Exceptions:

- Point (b) will not apply where employer and employee agree that food or rations, or additional allowance, be provided in lieu
- “Dependants” means husband or wife of employee, whether or not married, and their dependant children.

SECTION 39: Annual leave

- 24 Consecutive days for each 12 months employment, extended by any public holidays falling on an ordinary working day within the period of leave.
- Leave must be granted within 4 months of completed leave cycle, or by written agreement of employee, within 2 further months.
- May not be granted concurrently with sick leave, maternity leave, or with a period of notice of termination.
- Casual employees are not excluded, but should be granted pro-rata leave in line with hours/days worked.



SECTION 40: Sick leave

- 5-Day week employees are entitled to 30 working days, and 6-day week employees to 36 working days, in each 36 months period of employment.
- Provided that during first 12 months to employment, 5-day week employees accrue 1 day for each 5 weeks of employment, other employees 1 day per month.
- Medical certificate required for sick leave in excess of 2 consecutive days, or more than 2 absences in eight weeks.
- Casual employees are not excluded, but should be granted pro-rata leave in line with hours/days worked.



SECTION 41: Maternity leave

- After 12 months continuous service, a female employee is entitled to four weeks leave before expected date of confinement, and at least eight weeks leave after the date of confinement.
- Date of confinement to be certified by medical practitioner.
- Leave is without remuneration.
- The rights of any female employee, including seniority, promotion, and other benefits shall continue uninterrupted during period of maternity leave.
- Termination during or at expiry of leave is not permitted where the job has become redundant or the employee is no longer capable of performing her previous work, unless reasonable steps to offer alternative employment have been taken, or such offer has been unreasonably refused.
- A female employee on maternity leave is entitled to Social Security Benefits.



SECTION 42: Child labour

- No child under 14 years may be employed for any purpose.
- No child under 15 may be employed in any mine or industrial undertaking.
- No child under 16 may be employed underground in any mine.

SECTION 43: Victimisation

- An employer shall not reduce an employee's remuneration, or impose terms and conditions of employment less favourable, or disadvantage an employee in relation to other employees, because the employee –
 - (a) has given information required by any person involved in the administration of the Labour Act, or given evidence in a labour court or to the Wages Commission;
 - (b) has refused or omitted to do anything required by his employer which is contrary to any provision of the Labour Act; and
 - (c) is or was a member of a trade union, or takes part outside working hours, or with the consent of the employer during ordinary working hours, in the formation or lawful activities of any trade union.

No employer shall refuse to employ any person because the employer suspects or believes, whether rightly or wrongly, that the person is or was a member of any trade union, or takes part in the formation or lawful activities of any such union.

3. TERMINATION OF CONTRACTS OF EMPLOYMENT

Provisions concerning termination of service, including required periods of notice, the effect of death of employer or closure of a business or partnership, procedures to be followed in case of multiple dismissals for economic or other reasons, the payment of severance allowances, and providing certificates of employment, are summarized in the following section.

Upon acceptance of the contract of employment, rights and duties vest in both employers and employees. The Labour Act stipulates certain terms and conditions of this contract, and it seeks to ensure that both employers and employees keep their respective sides of the bargain.

There are basically four different ways in which a contract of employment comes to an end:

1. Termination of the contract by either party on notice given in terms of Section 47.
2. Termination of contracts by reason of death or insolvency of an employer or winding up of a company or dissolution of a partnership in terms of Section 48.
3. Collective termination of contracts of employment (“retrenchment”), in which case the specific procedure laid down in Section 50 needs to be followed by the employer. It is not required of an employer in terms of Section 50 to consult an employee before a decision is taken to terminate the employee’s contract of employment.
4. Dismissal – this issue will be dealt with in chapter 4. It must be noted at this stage that not every termination of a contract is a dismissal. Only if termination takes place on disciplinary grounds, or if the above procedures in respect of termination have not been followed by the employer, can it be argued that the termination amounted to a dismissal.

SECTION 47: Termination of contracts by notice

- Periods of notice required by either employer or employee:
 - (a) less than 4 weeks of service – 1 day;
 - (b) more than 4 weeks but less than 1 year of service – 1 week;
 - (c) more than 1 year of service – 1 month.

- Notice must be given in writing, except to or by illiterate employees.
- Notice must not be given during, or run concurrently, with annual, sick or maternity leave.
- Notice can be paid in lieu by either employer or employee.
- Remuneration may not be varied during period of notice.

SECTION 48: Termination of contracts by reason of death or insolvency of employer, or winding up of company or dissolution of partnership

- Where the employer dies, or becomes insolvent, a company is wound up, or partnership is dissolved, the contract of employment of any employees shall terminate at least 1 month after the date of death, insolvency, winding up, or dissolution.
- An employee to whom any remuneration and other moneys are payable, is a preferent creditor of a deceased or insolvent estate.

Exceptions:

An executor, administrator, trustee or liquidator may agree to a longer termination period than 1 month.

SECTION 49: Termination of contracts at place other than where recruited.

- An employee whose contract of employment has been terminated at a place other than where recruited must be provided with reasonable transportation, or an amount equal to costs of such transportation, to enable employee to return to place of recruitment.
- Applies only where termination is on initiative of employer, or if employer contravenes any provision of Labour Act or the contract of employment.

Exceptions:

- Not applicable if:
 - (a) employee has completed 12 months uninterrupted employment, or
 - (b) employee fails to comply with contract of employment, or if termination is for misconduct, insubordination or incapability, or
 - (c) employee refuses to be reinstated in comparable position after termination.

SECTION 50: Collective termination of contracts of employment

- Any employer who intends to terminate contracts of employment in respect of any or all of his/her employees for economic or technological reasons, re-organise or transfer the business, must inform:
 - (i) any trade union recognized as an exclusive bargaining agent for those employees, or
 - (ii) where no such union exists, the elected workplace union representative, not less than four weeks before the dismissals are to take place, of
 - (a) the employer's intentions,
 - (b) the reasons therefore,
 - (c) the number and categories of employees affected, and
 - (d) the date or period over which the dismissals are to be carried out.
- The Labour Commissioner must be advised in writing of all details of the proposed dismissals.
- The workers' representatives must be afforded an opportunity to negotiate on behalf of such employees, the conditions and circumstances under which the dismissals are to occur, with a view to minimizing or averting any adverse effects.

Note: Failure on the part of an employer to comply with these requirements may result in a fine of N\$4 000, or not more than 12 months' imprisonment, or both.

SECTION 51: Certificates of employment

- An employer must furnish any employee, on termination of his/her contract of employment, with a certificate of employment containing the following particulars:
 - (i) name and address of the employer;
 - (ii) nature of the employer's industry;
 - (iii) name and address of employee;
 - (iv) capacity in which employee was employed;
 - (v) employee's date of commencement and date of termination;
 - (vi) remuneration rate at date of termination; and
 - (vii) if requested by employee, the reason for termination.



SECTION 52: Severance allowances

- An employee who has completed at least 12 months' uninterrupted employment, and whose contract of employment is terminated by the employer, shall be paid one weeks' remuneration for each completed period of 12 months uninterrupted employment.
- Payment is to be calculated at the rate of remuneration applicable to the employee immediately prior to termination.
- Severance allowance is also payable where an employee has completed 12 months' continuous service, and
 - (i) elects to terminate his/her contract at any time after attaining 65 years of age, or
 - (ii) dies, in which case the allowance is paid to any surviving spouse, or if there is no spouse, to any children, and if no children, to the employee's estate.
- The amount of severance payment may be reduced or offset by -
 - (i) the actuarial equivalent of any pension or annuity to which the employee may be entitled from the date of termination;
 - (ii) any lump sum payable on termination by way of gratuity, insurance policy or savings scheme, insofar as this provision has been made by the employer.
- Persons employed on seasonal work for two or more successive years by the same employer are to be regarded as continuously employed for the purpose of qualifying for severance payments, but only the time actually worked shall be taken into account when calculating the payment to be made.

Exceptions:

Not applicable if -

- (a) deceased employer's heirs,
- (b) surviving partner, and
- (c) new owner of a transferred business or company.

In such cases, service with previous employer is deemed to be continuous with service with new employer, and must be counted as service for purposes of any subsequent entitlement to severance payment. Employees who are lawfully dismissed are not entitled to a severance allowance.

4. UNFAIR DISMISSALS AND UNFAIR DISCIPLINARY ACTION

The Labour Code contains some very detailed provisions which are intended to enable workers, who feel that they have been unfairly dismissed or disciplined, to seek redress in the district labour courts.

Disciplinary action must be substantively fair (the reason why the employee is dismissed must be fair, eg. theft, assault on employer, employee has consistently ignored written warnings, etc) and also procedurally fair (the employee must be informed of the charge against him, and be given a sufficient opportunity to respond to it and state his/her own side of the story). Misconduct which is not serious, eg. arriving 10 minutes late for work does not warrant dismissal. In cases of serious misconduct, eg. assaulting the employer / fellow employees, refusing to obey reasonable orders or theft, an employee may be “summarily” dismissed, but it is advisable to hold a disciplinary hearing in all cases involving serious misconduct.

Briefly, any such actions must, if they are to be fair, be taken for valid and fair reasons, and in compliance with a fair procedure. Several reasons are automatically regarded as unfair, and the procedures followed must be consistently applied in comparable circumstances.

When hearing complaints lodged under these provisions, the district labour courts are required to take all the circumstances into account, and may make any order that these circumstances may require.

SECTION 45: Meaning of unfair dismissals and/or disciplinary actions

- Any dismissal (whether or not notice has been given in accordance with the Labour Act or any contract or collective agreement) or disciplinary action taken, without a valid reason, and not in compliance with a fair procedure, shall be regarded as having been taken unfairly.
- In relation to any such actions, the following reasons shall not be regarded as valid or fair.



- Giving information to any person involved in the administration of the Labour Act, or complying with any lawful requirement of such a person.
- Giving evidence before a Labour Court, district labour court, or Wages Commission, or any other court of law.
- Refusing to do anything contrary to any provision in this Act, a collective agreement, or wage order.
- Participating in trade union activity as a member or otherwise.
- Reasons based on an employee's sex, race, colour, ethnic origin, religion, creed, or social or economic status, political opinion or marital status.
- The performance of any act or an omission permitted by this Act or any collective agreement, or the exercise of any right conferred on the employee by the Act or collective agreement.

SECTION 46: Powers of district labour courts in relation to unfair dismissals or unfair disciplinary actions.

Where it is proved that an employee has been dismissed or disciplined, the employer must prove that such action was not taken unfairly.

- If a district labour court is satisfied that an employee has been unfairly dismissed, it may issue an order:
 - (i) to reinstate employee in same or comparable position;
 - (ii) to pay an amount equal to any losses suffered through dismissal (whether employee is reinstated or not); and
 - (iii) imposing a disciplinary penalty if the court deems this to be just and equitable in the circumstances.

- If a district labour court is satisfied that unfair disciplinary action has been taken against an employee, it may issue an order:
 - (i) setting aside such action;
 - (ii) imposing an alternative penalty which the court considers appropriate; and
 - (iii) referring the matter back to the employer for reconsideration in the light of any directions specified by the court.

- In considering complaints under Section 45, the court is required to have regard to:
 - (i) the procedure by which the employer reached his/her decision to dismiss or discipline employee;

- (iii) referring the matter back to the employer for reconsideration in the light of any directions specified by the court.
- In considering complaints under Section 45, the court is required to have regard to:
 - (i) the procedure by which the employer reached his/her decision to dismiss or discipline employee;
 - (ii) the manner in which this procedure has been followed in comparable circumstances;
 - (iii) the conduct and capability of the employer;
 - (iv) the extent to which the employer has complied with the relevant provisions of the Labour Act or any collective agreement; and
 - (v) the extent to which the employee has contributed to or caused his/her dismissal or disciplinary action.
- The district labour court must, in making an order, have regard to its practical enforceability.

5. COMPLAINTS

Any employee or employer, who feels that they have been adversely affected by a contravention of, or non-compliance with, any provision of the Labour Act relating to basic conditions of employment, termination of service, or unfair dismissals and unfair disciplinary action, may lodge a complaint with a district labour court.

There are district labour courts for each magistrate's district, and the appropriate court to lodge a complaint with is the one for the district in which the transgression has taken place.

The powers of the district labour courts in relation to complaints, are essentially to make orders requiring respondents to remedy whatever transgressions have occurred – i.e. to abide by the relevant conditions or provisions in the Labour Act, or any relevant collective agreement or contract of employment. If these orders are obeyed, there is no further penalty. On the other hand, if the order is not obeyed, the respondent will be in contempt of court and may be penalised for that offence if found guilty.



The jurisdiction and specific powers of the district labour courts in relation to the various provisions of the Code are not repeated here, but may be studied by reference to the Labour Act. The relevant sections of the Act are:

Jurisdiction and powers of district labour courts	Section 19
Powers of district labour courts relating to contraventions, etc. of basic conditions of employment	Section 44

Powers of district labour courts
relating to unfair dismissals and
unfair disciplinary action

Section 46

Powers of district labour courts
relating to termination of
contracts of employment

Section 53

It is worth noting that any failure to comply with the provisions of Section 50 – Collective Termination of Contracts of Employment – is not handled by the labour court, but by a magistrate's court at district or regional level. This is because any transgression of this Section is a criminal offence punishable by fine, or imprisonment, or both.

Complaints on any matter must be lodged in accordance with the procedures and rules of the district labour courts.

A complainant or respondent may be represented in a district labour court by any one of the following persons:

- (i) Himself or herself.
- (ii) An advocate or attorney.
- (iii) Any person duly authorized by the complainant.
- (iv) If a complainant so desires, he or she may be represented by an officer of the Ministry of Labour nominated by the Permanent Secretary.

6. THE COMPLAINTS PROCEDURE

The rules of the district labour courts came into operation on 19 November 1993. These rules regulate the conduct of proceedings in the district labour courts.

All the rules are important to take note of, a few of which are highlighted here:

- Complaints must be lodged at the Clerk of the Court in the district where the complaint arose or where the respondent resides or carries on business. (Rule 3)
- The Clerk of the Court will fill in the relevant forms which must then be served on the respondent.
- The Clerk of the Court will then also fix a trial date which must be no earlier than 30 days and not later than 60 days from the date of lodging of the complaint. (Rule 5(1)(b))
- The Clerk of the Court will also refer the matter to a labour inspector, and a conference should take place before the date of hearing. The labour inspector will inform the complainant and respondent of the date on which the conference will be held and at the conference, he will attempt to settle the matter, or investigate the matter further. (Rule 6)
- If the respondent wishes to defend a complaint, he must put his reasons for opposing the complaint in writing on the prescribed form, and serve it on the complainant within 14 days of his receiving the complaint. The original form and proof of service on the complainant must be then filed at the office of the Clerk of the Court.
- If the respondent wishes to institute a counter complaint (a claim against the complainant), he must then deliver this together with his reply in terms of Rule 7. (Rule 8)
- A complainant or respondent may ask the Clerk of the Court to summon any witness they may need, or ask the Clerk of the Court to notify a person to produce certain documents, books of account or registers at the hearing.
- If the matter has not been settled at the pre-trial conference, the matter goes to court. If the respondent is duly served with a copy of the complaint and a notice of hearing, and he fails to attend the hearing, the court may

make an order against him for the amount or performance claimed. (Rule 10(4)) If the complainant fails to attend the hearing, the court may dismiss the claim. (Rule 10(5))

- Once the parties are in court and the case is called, the complainant usually starts by giving evidence in the witness box. (If the complainant was dismissed, the respondent starts, as he must show that the dismissal was fair.)

The court will swear the complainant in, and then the witness will be required to present his side of the story. The complainant's evidence should include the following:

- (i) the date he/she started working for the respondent,
- (ii) his/her salary at date of termination,
- (iii) the post in which he was employed, and the duties he/she was required to perform,
- (iv) the circumstances surrounding the termination of his employment,
- (v) the nature of his/her claim, and why he/she is claiming the specific amounts in question: leave pay, severance allowance, etc.
- (vi) the complainant should also provide the court with any relevant documentation if required, eg. a letter of appointment or salary slips.

It is necessary to provide the court with as many specific details in regard to the claim as possible, as the court needs these details to work out or double-check the monetary value of the claim.

- The respondent or his/her representative may then ask the complainant questions. After this, the court will excuse the complainant from the witness box and the complainant may go and sit down. The complainant may then call his witnesses, if he has any. When the complainant has finished his case, the respondent starts his case by giving evidence. The complainant may then question him, when the court gives him, permission, and question any of his witnesses who may testify.
- When the witnesses of the respondent have finished testifying, the court may ask the complainant and respondent for any arguments or remarks they may have in light of the evidence presented. Thereafter the court will make an order.
- If an order for the payment of money is made against one of the parties, and such party does not pay within the time ordered by the court, such party can be proceeded against in terms of the normal debt recovery procedures mention in the Magistrate's Court Act (Rule 23). A party failing to abide by the order of a district labour court can also be charged with contempt of court.

7. AFFIRMATIVE ACTION AND COMPLAINTS IN RELATION TO UNFAIR DISCRIMINATION OR HARASSMENT IN EMPLOYMENT

The Labour Code includes special provisions to protect actions which may be taken by employers to provide for the advancement of persons who have been disadvantaged in the labour field by discriminatory laws or practices prior to Namibia's independence. These provisions derive their authority from Section 23 of Namibia's Constitution.

In addition, the Labour Code provides that the Labour Court, where it is satisfied that any person or group of persons has been, is, or are about to be, discriminated against or harassed in relation to employment or occupation, may issue an order remedying the situation in whatever way the Court deems to be appropriate.

These provisions are summarized on the following pages.

SECTIONS 106: Affirmative action

Any employment policy or practices aimed at the advancement of persons who have been disadvantaged in the labour field by discriminatory laws or practices which were enacted or practised before Namibia's independence may be implemented, provided that they fall within the limits set by Section 23 of Namibia's Constitution.

SECTION 107: Unfair discrimination or harassment in employment or occupation.

- (a) Sex, race, colour, ethnic origin, religion, creed, social or economic status, political opinion, marital status, sexual orientation, family responsibilities or disability, may not be used as grounds for discriminating against, or harassing any person, in relation to employment or occupation.
- (b) Any advertisement or notice which indicates an intention to discriminate unfairly in employment or occupation on the grounds set out in (a) is unlawful.



- (c) Unfair discrimination on grounds of sex shall be regarded to have taken place if any term or condition of employment contained in a contract of employment, or offered to a person, is less favourable than that granted or offered to a person of the opposite sex for work of equal value.
- (d) Any action or requirement by an employer in relation to a group of persons which has an adverse affect on that group by comparison to any other group defined in terms of (a), is presumed to be unfair discrimination unless he contrary is proved.
- (e) Unfair discrimination shall not be regarded as having occurred -
 - (i) where a person is selected for employment according to reasonable criteria such as ability, capacity, productivity or conduct of that person, or the operational requirements of the occupation or industry concerned;
 - (ii) in the case of pregnant females or disabled persons, where the pregnancy or disability renders the person unable to perform the duties of the work concerned, or where employment of such persons is prohibited by law.
- (f) In applying these provisions -

“disability” means any physical or mental disability which restricts a person’s preparation for, entry into, or participation in employment.

“employment or occupation” includes access to vocational guidance, training and placement services; to employment, occupation or work; promotion, demotion, and transfer’ remuneration and conditions of employment; disciplinary actions; any other benefits, facilities or services.

“families responsibilities” means any responsibilities which a person has toward dependant children in need of care which may impair a person’s access to employment or occupation.



“work of equal value” means work, which, compared to any other work, is of a broadly similar nature and as such does not justify different conditions of employment as between employees of different sexes.

8. REGISTERS

The keeping of certain registers by an employer is mandatory in terms of the Labour Act. It is an offence, punishable by a maximum fine of N\$4 000.00 and/or 12 months imprisonment, if such registers are not kept. It is important to note that the accurate keeping of registers protects both the employer and the employee as facts regarding employment contracts are then clear and readily ascertainable should any dispute arise.

In terms of Section 4 of the Labour Act, Government Notice 174 of 1992 stipulates that the following registers shall be kept by every employer in respect of every employee in his service.

1. A register containing the following particulars:
 - (a) the name, age, identity number (if any) and sex of employee;
 - (b) the ordinary hourly, daily, weekly, fortnightly or monthly scale of remuneration of an employee;
 - (c) the period in respect of which such remuneration is payable;
 - (d) the time (in hours or fractions thereof) per day or per shift worked by the employee during the period referred to in paragraph (c) in respect of-
 - (i) ordinary working hours
 - (ii) overtime
 - (iii) night work
 - (iv) work on Sundays
 - (v) work on Public Holidays
 - (e) the number of hours worked by the employee during the period referred to in paragraph (c) in respect of -
 - (i) ordinary working hours
 - (ii) overtime
 - (iii) night work
 - (iv) work on Sundays
 - (v) work on Public Holidays
 - (f) remuneration payable to the employee in respect of-
 - (i) ordinary working time
 - (ii) overtime
 - (iii) night work
 - (iv) work on Sundays
 - (v) work on Public Holiday
 - (vi) any other amount or allowances

- (g) the gross amount of remuneration payable to the employee
 - (h) the particulars and amount of any deductions from the amount referred to paragraph
 - (g) *(and this should reflect the monthly Social Security Commission deduction of 0.9% with a minimum deduction of N\$2.70 which amount deducted should be accompanied by the same payment by the employer and forwarded on a monthly basis in arrears to the Social Security Commission)*
 - (i) the nett amount of remuneration payable to the employee.
2. A register relating to the granting of leave shall be kept by every employer of every employee in his or her employment containing the following particulars, namely-
- (a) the name, occupation and sex of the employee;
 - (b) the date on which the employee commenced his or her employment;
 - (c) the period granted in respect of-
 - (i) annual leave
 - (ii) sick leave
 - (iii) maternity leave
 - (iv) occasional leave;
 - (d) the date on which such leave commenced;
 - (e) the date on which such leave ended;
 - (f) the number days of such leave with full remuneration granted to the employee; and
 - (g) the number days of such leave without remuneration granted to the employee
3. A register shall be kept by every employer of every employee in his or her employment who is not a Namibian citizen containing the following particulars, namely-
- (a) the name, nationality, date and place of birth of such employee;
 - (b) the date of employment of such employee;
 - (c) the capacity in which such employment is employed;
 - (d) the period of the contract of employment of such employment of such employee, if any;
 - (e) a full description of academic, technical or professional qualifications and any special expertise of such employee; and
 - (f) the number and date for this issue of any permit in relation to such employment of such employment of such employee and the date of expiry of such permit.

Each employee is entitled to receive their remuneration in a sealed envelope with the following details listed below to be indicated on the envelope or on the accompanying statement-

- (a) the name and identity number (if any) or employee;
- (b) the name and postal and business address of employer;
- (c) ordinary hourly, daily, weekly, fortnightly or monthly scale of remuneration of employee;
- (d) the period in respect of which such remuneration is payable;
- (e) the amount paid to the employee in respect of -
 - (i) his or her remuneration
 - (ii) overtime
 - (iii) night work
 - (iv) work on Sundays
 - (v) work on Public Holidays
 - (vi) any other remuneration or allowances
- (f) the gross amount of remuneration payable to the employee;
- (g) the particulars and amount of any deduction from the amount referred in paragraph (f); and
- (h) the nett amount of remuneration payable to the employee.

In terms of Section 4(2), an employer shall retain all records kept, or a micro-reproduction thereof, for a period not less than five years.

SUMMARY OF THE MAIN ACTIVITIES OF THE NID

The *Namibia institute for Democracy* (NID) was founded in December 1991 and commenced operation in January 1992. The NID is registered as an association not for gain formed to promote the general acceptance of democratic values, practice, principles and norms related to a democratic state in Namibia. The NID aims to encourage all Namibian citizens to commit themselves and adhere to the democratic principles embodied in the Constitution of the Republic of Namibia.

The mission of the NID is promote and protect the values and principles of multi-party democracy through education and to nurture political tolerance and a spirit of national reconciliation in Namibia. The NID therefore, zealously guards its political neutrality and objectivity.

Through the NID's representatives, the immediate surroundings of Windhoek, Keetmanshoop, Oshakati, and Rundu are covered intensively with personal contact. The eastern parts of the country, coastal areas and the Caprivi are covered from Windhoek and Rundu respectively on an ad hoc basis. The NID has pursued this mission on a national level via media programmes through the national media.

PREVIOUS NID PROJECTS AND ACTIVITIES INCLUDE:

Local conferences

- 1992 "Affirmative Action"
A final report with recommendations regarding possible future legislation of affirmative action was forwarded to Government.
- 1993 "Women's Right and Democracy"
- 1993 "Ethnicity, Nation- Building and Democracy"
- 1994 "The Impact of taxation or Investment and Development in the Southern African Region" (in co-operation with SAFER Zimbabwe)
- 1994 "The Rule of Law"
(in co-operation with Konrad Adenauer Foundation and the Law Society of Namibia)
- 1995 "The Role of Trade Unions in a Democracy"
(in co-operation with the National Unions of Namibian Workers)
- 1995 "Engendered Leadership and Democracy"
(in co- operation with the Department of Women Affairs and Women's Action for Development)

- 1996 Regional councils consultative Conference
(in co-operation with the Association of Regional Councils)
- 1996 “Government and Opposition in Namibia: Perceptions and Performance”
(in co-operation with the Konrad Adenauer Foundation)
- 1997 “Accountability and Corruption in Namibia: Challenges for 1997”
(in co-operation with the Office of the Auditor-General)

Projects

- 1993 Represented on a committee for the implementation of a civic education subject in Namibian schools by the Ministry of Basic Education and Culture.
- 1993 Advocacy training Project (in co-operation with Namibian Development Trust)
- 1995 Teachers Civic Education Project
(in co-operation with the U.S. Embassy and the Ministry of Basic Education and Culture)
A report documenting problem and possible recommendations regarding civic education in schools was forwarded to the Ministries of Basic Education and Culture and Tertiary Education and Vocational Training.
- 1995 Crime Alert Project
(in co- operation with Namibian Police)
- 1996 The Role of Trade Unions in Democracy
(in co-operation with the Westminster Foundation for Democracy)
- 1997 The Role of Trade Unions in a Democracy
(in co-operation with the Westminster Foundation for Democracy)
- 1997 Multi-media campaign on violence against women and children-
Responsible for producing five TV spots and 12 newspaper advertisements
(in co-operation with the Ministry of Information and Broadcasting and the U.S. Embassy)

Voter Education (in co-operation with the Directorate of Elections)

- 1992 Regional and Local Authorities Elections
- 1994 National and Presidential Elections
- 1994 Voter’s Trainers Education
- 1997 Voter’s Trainers Training Conference

Democracy Competitions

- 1992 Inter class competition on democracy in schools
- 1995 Democratic Choice Competition
- 1996 Married Person Equality Act Competition
- 1997 The Election Process for Local Authorities Elections

Radio Programmes

NBC Windhoek	Otjiherero Service
	German Service
NBC Keetmanshoop	Damara>Nama Service
	Afrikaans Service
NBC Rundu	Rukwangali Service
NBC Oshakati	Oshiwambo Service
NBC Katima Mulilo	Lozi Service
Radio 99	Parliamentary Report (1995)

Grassroots Civic Education Programmes

Weekly seminars in all regions of NID representation.

Publications available at the NID

Compiled and published by the NID:

- | " Democracy and You : A Guide to Better Understanding"
- | " The Namibian Citizen : Rights and Duties (also available in Afrikaans, Oshiwambo, Otjiherero)
- | "The Namibian Government" (also available in Afrikaans, Oshiwambo, Otjiherero)
- | "The Association of Regional Councils Consultative conference, Swakopmund."
- | The Labour Act: Basic Conditions of Employment and Termination of Service"
- | "Government and Opposition in Post-Independence Namibia: Perceptions and Performance" by Dr. J. Diescho
- | "The Namibian Constitution in Perspective" by Dr J.Diescho"
- | Portfolio of partnership: An Analysis of Labour Relations in a Transitional Society" by Dr J.W.F van Rooyen
- | "Building Democracy: Perceptions and Performance of Government and Opposition in Namibia"
- | "Glossary of Electoral Terms and related Concepts"
- | "Accountability and Corruption in Namibia - Challenges for 1997"
- | "The Married Persons Equality Act"
- | NID stickers and pamphlets as well as Annual Reports are available.

OBJECTS OF THE LAW SOCIETY OF NAMIBIA

The objects of the Law Society are -

- (a) to maintain and enhance the standards of conduct and integrity of all members of the legal profession;
- (b) to present the views of the legal profession;
- (c) to further the development of law as an instrument of social engineering and social justice;
- (d) to encourage and promote efficiency in and responsibility in relation to the profession;
- (e) to promote the education of lawyers at all stages and levels. with particular emphasis on the broadening of such education;
- (f) to make recommendations to interested parties in relation to the training of lawyers;
- (g) to define and enforce correct and uniform practice and discipline among members;
- (h) to give all necessary assistance to the effective implementation on any legal aid scheme established and governed by or under any law;
- (i) to promote social intercourse among members;
- (j) to consider and deal with all matters affecting the professional interest of members;
- (k) to co-operate with the representative bodies of other professional bodies;
- (l) to promote applied research in the development of the law and participate in the reform of the law by the Government and other agencies;
- (m) to seek the enhancement of the Rule of Law and promote the protection of human rights;
- (n) to represent, protect and assist members with regard to their conditions of practice and related matters.

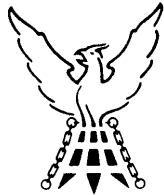
THE LABOUR ACT (Act 6 of 1992)

THE LABOUR ACT IN PRACTICE

GUIDELINES FOR EMPLOYERS & EMPLOYEES

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Contents by the Ministry of Labour and Human Resources Development.
Amendments and additions by Rudi Cöhrssen and Clinton Light.



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PREFACE

This booklet summarizes the essential features of the Namibian Labour Code – that is, the Labour Act 1992 (Act 6 of 1992).

The booklet, which is made available to employers and employees free of charge, is intended to explain in simple terms the provisions of the Labour Code relating to Basic Conditions of Employment and Termination of Service, as well as what is required by employers and employees in terms of the Labour Act.

However, the booklet should not be regarded or used as legal authority for any action taken or contemplated in terms of the Labour code. It is recommended that every interested person should obtain a copy of the Labour Act to enable the relevant provisions to be properly studied and understood.

We trust that this booklet will contribute effectively to the dissemination of information about the Labour Code amongst all participants in the Namibian economy, whether in the public or private sectors. May it serve to enhance awareness of our rights and duties at the work-place and generally promote equity, social justice and productivity in the interest of our entire nation.

We wish to thank the Ministry of Labour and Human Resources Development for the permission to reprint sections of this book.

We are also grateful to Mr Rudi Cohrssen and Adv. Clinton Light for their valuable inputs.

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