

LABOUR MANAGEMENT



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NAU - NLU



NNFU

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Preface

It is with great pleasure, gratitude and pride that the JPC presents this production manual.

After years of deliberations, careful planning, and a lot of dedication the NAMIBIA AGRICULTURAL UNION and the NAMIBIA NATIONAL FARMERS' UNION jointly embarked on the EMERGING COMMERCIAL FARMERS' SUPPORT PROGRAMME. This programme resulted from the realisation that the new group of emerging commercial farmers who, having been previously disadvantaged and mostly coming from the background of communal farming, were in dire need of basic (sophisticated) skills training to manage modern farming techniques. The planning phase entailed, amongst others, a need assessment way back in 2004/5, which clearly identified the areas of assistance required. After having analysed all the relevant data, the two unions set about structuring a two-year programme which would address the challenges faced by new farmers so that ultimately they would be able to deal with the daunting task of becoming successful commercial farmers. Besides a dedicated programme of lectures, training courses, study tours and mentoring, it was decided to also produce and publish a set of eight PRODUCTION MANUALS which would serve as valuable training guides with technical details, but would also be a source of reference for future everyday practical farming in Namibia.

It is with gratitude that we acknowledge the unrelenting support of many individuals, too numerous to name, and certain institutions which supported and still support the whole Emerging Commercial Farmers' Support Programme.

We sincerely hope that this initiative will make a lasting contribution to sustainable agricultural land utilisation and to the goals of land reform in Namibia.

On behalf of the JPC,

Ryno van der Merwe (President, Namibia Agricultural Union) Pintile Davids (President, Namibia National Farmers' Union)

Windhoek, 2009

Foreword

Agriculture as the backbone of Namibia's economy has a major role to play in achieving Vision 2030. However, to be able to make a significant contribution towards the growth of the economy and thus wealth creation, agricultural production/output has to increase manifold. For the realisation of such an increase the following crucial issues have to be addressed. Subsistence farming should become commercialised, e.g. landownership in some form or other should be allocated to individuals, underutilised areas should be developed and put into production and the problem of bush encroachment should be addressed and solved at national level.

Food production at competitive and affordable prices for the consumer is the biggest challenge that farmers worldwide have to face. With input costs increasing at a higher rate than the increase in prices realised for produce from the farm, it is clear that productivity and the production capacity on farms have to improve continuously. This also applies to Namibia's agricultural sector.

Furthermore, if we want to participate in international trade with our export commodities, currently being beef, mutton, Karakul pelts and grapes, we have to be able to compete worldwide against all the countries exporting the same commodities. Apart from being price competitive we also have to be competitive in satisfying the needs of the sophisticated consumer in terms of quality, health issues, traceability, animal welfare and other ethical production norms, e.g. personnel management, conservation of biodiversity/ecology (fauna, flora and water resources), etc.

Agricultural production is no longer just a matter of producing whatever the farmer is able and willing to produce and then expecting to achieve good prices for the product.

Farmers have to become more involved in the value chain, and should become much more market orientated by being sensitive to the needs and preferences of the consumer whom they want to serve. In addition they have to adhere to international trading rules and regulations as prescribed by the World Trade Organisation (WTO), and also comply with the Sanitary and Phytosanitary (SPS) requirements of the various countries with which they want to trade. Norway, for instance, has zero tolerance for salmonella in beef/mutton, which is imported into that country, thus making it very difficult to serve this lucrative market.

It is obvious that survival and growth in the agricultural sector can only be achieved if the farmer in future pays greater attention to the world around him, as has been the case in the past.

Skills development and training of farmers and their employees are becoming imperative, and are of national interest.

Being a farmer and thus the owner of agricultural land in Namibia should be regarded as a privilege. Not every citizen in Namibia, as in countries all over the world, can own agricultural land. There is just not enough land available. Therefore every farmer has a responsibility to use his piece of land in a productive but also a sustainable way. Productive means exploiting the full production potential of the farm, furthermore contributing towards job creation in the primary and secondary sector, towards food production on national and international level and towards revenue for Government in terms of taxes paid. Sustainable means preserving and even improving the production potential, so that the generations to come can still make a living from that land. It should be the aim of every landowner to leave behind a farm that is in a better condition than the one he started off with, including production capacity, infrastructure and natural resources, e.g. underground water, fauna (game) and flora (plants).

Commercial farmers in general are often perceived as being wealthy, which, however, is not the case. Becoming a successful farmer in Namibia may take years and even generations, and requires love for and dedication towards farming, hard work, good management skills, financial discipline, persistency and a positive attitude.

Climate (rainfall) and other external unforeseen events can have a major influence on the progress made on the farm, and can ruin achievements made over years within a matter of time.

To get an indication of the current gross/net income on a cattle farm, the following indicators could serve as a guideline.

The average stocking rate on cattle farms in Namibia is ± 25 kg biomass (live mass) per ha. In old terms this meant ± 14 ha for every animal on the farm. In a cow/ox production system the production of beef (live mass) should be about 35 % of the stocking rate.

This means that if no herd building takes place, the farmer has $25 \text{ kg} \times 35 \% = 8,75$ kg live mass/ha available for sale every year.

At an average selling price (cows, oxen, heifers combined) of N\$9.00/kg live mass he/she would be able to generate a gross income of $\text{N\$}9.00 \times 8,75 \text{ kg} = \text{N\$}78.75/\text{ha}$ ($\pm \text{N\$}80.00$).

The operational costs will be at least around 50 % of the gross income, which leaves a net income of $\text{N\$}80.00 \times 50 \% = \text{N\$}40.00/\text{ha}$.

On a 5 000 ha cattle farm the gross income will thus be $\pm \text{N\$}400\ 000$ and the net income, if operational expenditure is well managed, $\pm \text{N\$}200\ 000$. This amount is available for interest and capital repayments (Agribank), new improvements/replacements on the farm and private expenditures.

These indicators clearly show that a 5 000 ha cattle farm will not enable a farmer to become wealthy overnight. To the contrary, for those farmers to survive they often either create additional income with employment elsewhere, or they venture into diversification on the farm e.g. guest farms, hunting, crops, hay, olive and charcoal production, etc.

It is advisable not to diversify as long as the main production line is not well managed and exploited to its full potential.

Although the commercial farmer functions in isolation on his property and to a great extent depends on himself concerning the day-to-day activities and progress on the farm, it is still important to establish and maintain good relationships with the neighbours. The control of stock theft and illegal hunting, predator control and the maintenance of border fences, etc. require good and open communication with, and trust in the neighbours.

In conclusion, farming should be a constant process of learning. Even farmers with formal agricultural qualifications still have to keep in touch with the latest developments concerning farming practices, market requirements, consumer preferences, etc. It is advisable to make use of every opportunity to improve their own knowledge and skills, to enable themselves to adjust and therefore survive and prosper in an ever-changing world. Farmers' days, study groups and established successful farmers can be a good source of knowledge and new ideas and are often a stimulation to creative thinking.

INTRODUCTION

This manual summarises essential features of the legislation and regulations in Namibia with regard to labour management in the agricultural sector. It also provides some conventions of good practices which are not prescribed by law, but which facilitate the employer-employee relationship in many respects and help to prevent potential conflict.

Many acts and regulations are valid for this sector. The most important term of reference currently is the Labour Act (Act 11 of 2007). The Labour Act covers basic conditions of employment, dismissals, disciplinary actions, the rights and responsibilities of trade unions and employers' organisations, collective agreements and labour disputes. It also includes some general provisions on health and safety, and provides for the establishment of administrative and enforcement machinery (in the form of labour inspectors, conciliators, arbitrators and a Labour Court) and advisory bodies (a Labour Advisory Council and a Wages Commission).

The legislation of the current Labour Act provided in this manual with regard to the agricultural sector is supplemented by more detailed regulations and legislation as well as guidelines from key organisations in this field (e.g. the Agricultural Employers' Association, the Legal Assistance Centre, the Namibian Institute for Democracy, etc.).

IMPORTANT NOTICE

This manual should not be regarded or used as legal authority for any action taken. For further enquiries and assistance, the employer should contact the nearest labour office.

Some of the relevant documents are available, at a cost, from either the office of the Namibia Agricultural Union (NAU) or the Legal Assistance Centre (LAC).

We hope that this manual will serve to enhance awareness of the rights and duties of farmers and other employers and employees in the agricultural sector with regard to labour management, and thus help to decrease potential conflicts in this sector.

The manual is divided into several parts. The first part deals with the initial step of employment and the issues that an agricultural employer should know when he employs a new farm worker. Information about necessary contracts and guidelines as well as social security of the employee and health and safety is provided in this section. The second part describes the basic conditions of employment, mostly referring to the current Labour Act of 2007 and the Minimum Wage Agreement in the Agricultural Sector of 2009. Basic conditions of employment include, for example, maximum working hours and regulations with regard to overtime, leave and accommodation. The third part provides information about labour management in general while the fourth section describes in detail the legal steps to be followed in case of conflict between employer and employee.

CHAPTER 1

Employment

Getting good staff to work on a farm is an important precondition for the success of the farm business. Reliable workers save financial expenses and time and increase the productivity of the farm. The wrong worker, or a poorly trained worker, can lose valuable stock, damage machinery, misuse chemicals or drugs, cause crop losses or, worse still, can cause severe injuries to himself or others. Wrong recruitment decisions mean additional time and expense for training the newly hired and lost production during the time that the inferior employee worked, during the time the position was vacant, and while putting the new employee into the work routine. Thus, getting reliable workers for many years pays off much better than employing labourers for a couple of months, discovering that they are not reliable and employing new ones, even if one might pay them lower wages than the experienced farm worker working on the farm for decades.

1. Recruitment

Recruitment is not an easy process and some matters have to be borne in mind when recruiting new farm workers. The screening (see below) should be done very carefully in order to ensure that one finds the right person for the vacant position.

In order to get reliable staff, the employer should also seek to convince the workers that he is a competent and fair employer who can offer competitive wages and reasonable working conditions, with opportunities to develop their own skills and interests.

A good way to find reliable new staff is to ask long-term, trustworthy employees if they can recommend somebody they know who is looking for work. This also helps the new workers to integrate more easily; not just during working hours but also after work. If an employer cannot find new staff in this way, there is also the possibility of going to the local offices of the Ministry of Labour and Social Welfare. No new recruit will ever be perfect and one of the most important things the employer or the supervisors (farm managers, foremen) can do for the farm is to put effort into guiding new workers, training them in areas where they are inexperienced, explaining the occupational health and safety issues for the farm as well as the farm rules and the disciplinary code, and finding out just what the potential strengths and weaknesses of the new worker are.

Proper induction and training are very important. The new employee and the existing staff need to feel comfortable for employee morale to be maintained. The induction process should be detailed and although it takes time it will lead to fewer problems and be cost-effective in the long run.

Farming is a high-risk industry, so occupational health and safety is a vital step in the induction process. If new employees are not correctly trained from the outset and something goes wrong, the employer is likely to be held responsible.

2. Screening

When recruiting new staff, a farmer needs to consider for what kind of job the worker is needed. For instance, it requires specific skills to work as a guard for the livestock and other skills to do the general work. Thus, the employer should evaluate the applicant's skills, knowledge, and abilities as they relate to the actual requirements for the position. The agricultural employer must never discriminate against applicants on account of race, gender, health status or age. It is also important to find a personality that fits in with the current staff, especially if he/she will be a long-term, full-time member. This becomes particularly important if the farm hits hard times.

3. Job description

Written job descriptions are not required by law, but they are helpful in many aspects of farm labour management. Their most important benefits are realised through better management decisions and employer-employee relations. The process of developing job descriptions forces the employer to examine and decide what is specifically expected of the employee. Carefully prepared descriptions can inform workers as well as supervisors (farm managers and foremen) at various levels of planning, organising, leading and controlling. The job description is a practical, relatively simple tool that supports communication between employees, supervisors and employers every day. It is important to be aware that the job description must cover all the different duties that a particular employee can be expected to fulfil; otherwise he has the right to refuse to carry out certain jobs not covered by the job description. Most farm workers are general workers, who might have to fulfil a variety of duties. This fact should also be provided for in the job description.

A job description provides both employees and supervisors with –

- a job summary,
- qualifications needed,
- responsibilities, tasks and duties, and
- supervisory relationships.

A job description is used to –

- inform applicants about the job,
- help the employer identify the best candidates,
- maybe identify new employees' training needs,
- clarify employees' responsibilities to supervisors,
- evaluate job performance, and
- in the event of termination or other legal procedures.

Job descriptions should be one page long. The absolute minimum requirements that a job description should have consist of four parts:

- The job title,
- a brief one-or-two-sentence summary of the job,
- a list of the major tasks involved in the job summarised under three to seven general headings, and
- a list of the knowledge, skills and abilities necessary to do the job.

Job descriptions may include other information such as the supervisor, pay range, required licences or certificates, and location of the job.

The job description should be explained to the employee before he signs the contract of employment. The written job description should be issued to the employee with the contract of employment before he starts working. If applicable, it should also be issued to the supervisors.

4. Farm rules

In order to ensure that the farm management runs smoothly, every employer should carefully develop his own farm rules. The farm rules are the regulations which apply to the living arrangements of each employee as well as other persons who reside on the farm. These rules cover all aspects of their stay and employees take responsibility for the actions of the non-employees who live with them on the farm. The rules should be available in writing. The purpose of these guidelines is to ensure that all actions taken against employees and farm occupiers are conducted in a consistent and fair manner and that the procedures are transparent. The farm rules should be explained to the employee before he signs the contract of employment and the employee must confirm to a witness that he/she understands the contents of the rules. A written list of farm rules should be issued to the employee together with the contract of employment before he starts working.

The farm rules should clarify certain aspects, for example:

- The right and conditions to receive visitors (number of visitors, necessity to announce them beforehand, time frame of their visit).
- The individuals who are allowed to live with the employee in the house on a permanent basis, i.e. who are classified as dependants.
- Disturbance of peace, especially at night.
- Collection of firewood for private use.
- Hunting for own consumption (if applicable).
- Milking for own consumption (if applicable).
- Conditions of access to water, electricity, education, health.
- Regulations for waste disposal.
- Regulations for transport outside working hours, also for dependants.
- Rules about the keeping of livestock (if applicable and if not regulated in another specific document).
- Regulations for keeping pets and poultry (if applicable).
- The actions taken when transgressions of farm rules take place.

5. Contract of employment

An employer should enter into a contract with every employee. The contract must be read, understood and signed by the employee. If an employee is illiterate, this contract must be explained to him/her in the presence of a credible witness so that the latter can confirm that the employee understood and accepted the conditions of employment.

The contract should include the following information:

- Name and address of employer.
- Name, ID and Social Security number (see below) of employee.
- Job title.
- Commencement date.
- Duties (attach job description).

- Trial period if applicable.
- Notice period.
- Working hours.
- Overtime regulations.
- Sunday and public holiday regulations.
- Remuneration package.
- Rules and regulations (attach farm rules, disciplinary code and grievance procedures).
- Leave and sick leave regulations.
- Accommodation, permitted dependants.
- Possible other provisions.

(See APPENDIX A: Draft contract of employment)

A written list of transgressions and actions to be taken (disciplinary code), a job description and a list of farm rules should be issued to the employee together with the contract of employment before the employee commences employment.

6. Social Security

The Social Security Act (Act 34 of 1994) created a system which provided protection through a series of public measures against economic and social distress that would otherwise be caused by the stoppage or substantial reduction of earnings resulting from sickness, pregnancy, injury, unemployment, disability, old age and death. The system also provides medical care and subsidies for families with children. Under the Act, a Social Security Commission (SSC) was established by Parliament. The main powers, duties and functions of the Commission are, among others:

- to administer the funds established by the Social Security Act, or by/under any other law, the administration of which is assigned to the Commission;
- to make recommendations to the Minister of Labour regarding the application of the Act, amendments thereto and the introduction of regulations.

The headquarters of the Social Security Commission are located in Windhoek and there are branch offices in towns across the country. The towns where branch offices are in operation are Oshakati, Otjiwarongo, Windhoek, Walvis Bay, Keetmanshoop and Rundu. The towns with satellite offices are Lüderitz, Katima Mulilo and Grootfontein.

The SSC has two funds in operation:

- Employees' Compensation Fund (ECF), established through the Employees' Compensation Act 1941 as amended (Amendment Act No 5 and No 51 of 1995) – contributions paid annually.
- Social Security Act 1994 [Amendment Section 142 (5) Labour Act No 11 of 2007 and Amendment to regulations, Amendment No 49 of 2009, Government Gazette No 4236], which provides for maternity leave, sick leave and death benefits – contributions paid monthly.

All forms applicable to this section on social security can be downloaded from the website www.ssc.org.na

6.1 Registration and membership

Section 20 of the Social Security Act stipulates that employers whose employees are younger than 60 years must register with the Commission as an employer and must register all the employees. The Commission issues a Certificate of Registration (including a registration number) to each registered employer and a Social Security Card (including a social security number) to each employee upon registration.

6.2 Contributions

6.2.1 Maternity Leave, Sick Leave and Death Benefit Fund (MSD)

- Contributions are calculated on a basic wage of not less than N\$300.00 and not more than N\$6,000.00 per month. Total contributions per month equal 1,8 % of the employee's basic wage, of which the employee pays half and the employer the other half.
- These contributions are paid to the SSC who manages the funds and pays the benefits.
- The employer must ensure that all contributions are paid to the Social Security Commission at the end of each month.
- Contributions are calculated from the first day of the month of employment and must be paid to the SSC within 30 days after every end of the month.
- A levy of 20 % is payable on contributions which are received late.

6.2.2 Employees' Compensation Fund (ECF)

In addition to the monthly MSD contributions, the employer is required to pay annual contributions to the Employees' Compensation Fund. The Social Security Commission calculates the correct amount to be paid and advises the employer of the amount to be paid.

6.3 Benefits

6.3.1 Maternity Leave, Sick Leave and Death Benefit Fund (MSD)

The MSD Fund provides the following benefits for employees (after six months of membership, provided his or her contributions have been paid in full):

- a) Maternity Leave Benefits
 - A female employee on maternity leave qualifies for 100 % of her basic wage with a minimum of N\$300.00 and a maximum of N\$6,000.00 per month (up to a ceiling of N\$7,000.00).
 - Maternity leave covers a period of 12 weeks, i.e. four weeks before the expected date of birth and eight weeks after the birth.
 - All claims must be submitted to the Commission not later than seven days before the expected date of confinement on the prescribed Form 13.
 - A birth certificate or a death certificate (if the child was still born or died within two weeks) must be submitted seven days after the actual date of confinement on the prescribed Form 14.
 - The Commission shall not pay the final maternity leave benefits due unless a declaration regarding employment status (Form 15) has been submitted.
- b) Sick Leave Benefits
 - Sick leave benefit is payable after an employee has exhausted the leave period given under the Labour Act (see above) or contract of employment.

- Sick leave benefit will amount to 75 % of an employee's basic wage with a minimum of N\$300.00 and a maximum of N\$6,000.00 (up to a ceiling of N\$7,000.00) per month for the first six months; thereafter 65 % of the basic wage for a further 18 months.
 - Claims must be submitted within 30 days after the expiry of paid sick leave, as provided under the Labour Act. The Commission shall not pay the final sick leave benefits due unless a declaration regarding employment status (Form 15a) has been submitted.
- c) Death, Disability and Retirement Benefits
- A single payment of N\$4,000.00 will be made upon the death of a fully paid member or upon retirement or permanent disability.
 - Claims for death benefit on the prescribed Form 17 must be submitted to the Commission not later than 30 days after the date on which the employee concerned died and must be accompanied by an affidavit (Form 18), if the claimant is not the spouse of the deceased.
 - Claim for retirement or disability benefit on the prescribed Form 19 must be submitted to the Commission not later than 30 days after the date on which the employee concerned retired or became permanently disabled.
- d) Future benefits
- A National Pension Fund, a National Medical Benefit Fund and a Development Fund could possibly be introduced in future. Additional contributions will be applicable if these benefits are introduced.

6.3.2 Employees' Compensation Fund (ECF)

- a) Medical expenses: Medical expenses incurred by or on behalf of an employee may be defrayed by the Fund, up to the limit of the NAMAF tariff.
- b) Transport of an injured employee: Reasonable expenses incurred for the transportation of an employee injured in an accident to a hospital or his/her residence will be refunded from the Fund.
- c) Temporary Total Disablement (TTD): Compensation is payable to an injured employee during TTD by way of periodical payments at the rate of 75 % of his/her monthly earning up to N\$5,000.00 per month. The maximum compensation for temporary total disablement will therefore be N\$3,750.00 per month.
- d) Permanent Disablement (PD): Compensation for permanent disablement, which is assessed at 30 % or less, takes the form of a lump sum, based on 15 times the employee's monthly earnings up to N\$3,000.00. Maximum permanent disablement payable will therefore be N\$45,000.00.
- e) Funeral/Burial expenses: An allowance not exceeding N\$3,120.00 may be paid from the Fund towards the necessary burial expenses.
- f) Compensation for survivors when an employee dies: If an employee dies as a result of an accident, the surviving spouse is entitled to receive a lump sum of N\$3,750.00 or twice the employee's monthly earnings, whichever is less; and a monthly pension equivalent to 40 % of the pension to which the employee would have been entitled if he/she had been totally and permanently (100 %) disabled. Each child under the age of 18 years is entitled to a monthly pension equal to 20 % of the pension which would have been payable to the employee if he/she had been totally and permanently disabled.

7. Namibia Agricultural Retirement Fund (NARF)

The situation of employees in the agricultural sector is in particular difficult when it comes to the time when they reach the age to retire. Very often, they don't have a place to go and no precautions were taken beforehand. Hence, a Retirement Fund, specifically designed for employees in the agricultural sector, was established in 2005.

The Fund is administered by Alexander Forbes Financial Services.

7.1 Membership

An employer who intends to register his employees with the Fund must register as a participating employer first. The criteria for registration are the following:

- owner of agricultural land,
- lease holder of agricultural land,
- part-time farmer, or
- primary agricultural developer.

Once an employer is registered, he should give his current employees a choice if they want to become part of the retirement scheme. For every new employee thereafter it will, however, be compulsory to become a member of the Fund. Thus, the employee's agreement to Fund membership will be part of the conditions for employment. The employer also has the option to register new employees after a certain probation period, e.g. three months.

The criteria for registration of employees are the following:

- working in the agricultural sector,
- between 16 and 65 years old, and
- permanently employed.

7.2 Contributions

Employees pay 6 % of their cash wage, while the employer pays 7 % calculated on their cash wage.

7.3 Retirement

The normal age for retirement is 65 years.

- Early retirement: With the approval of the employer, a member can apply for a pension if he wants to retire at age 55.
- Retirement for medical reasons: A member who is medically disabled may retire, but has to give sufficient proof of the medical reasons to the Fund's trustees.
- Late retirement: With the agreement of the employer, an employee may apply for extension of the pension pay-out, but not later than the last day of the month in which he turns 70.

7.4 Death of a member

The value of the member's pension account will be paid to his/her dependants if the employee dies while still in employment.

The Agricultural Retirement Fund does not pay additional death benefits.

7.5 Resignation benefits

In the event of an employee resigning or having been dismissed, the employee receives a payment equal to the value of the member's pension account. The employer may instruct the Trustees to withhold the payment of this benefit for a period of up to six months.

8. Health and safety

Following the Labour Act of 2007, there are general duties and rights of employers with regard to safety and health at the workplace.

8.1 Universal duties of employers and employees

8.1.1 All employers have the following duties to their employees:

- To provide a working environment that is safe, without risk to the health of employees and with adequate facilities and arrangements for the welfare of employees.
- To provide and maintain safe plants, machinery and systems of work, and work processes that are safe and without risk to the health of employees.
- To provide and maintain safe entry and exit from places of work.
- To provide employees with adequate personal protective clothing and equipment if reasonably necessary.
- To arrange for safe use, handling, storage and transport of articles and substances.
- To ensure that employees are given the necessary information, instructions, training and supervision to work safely and without risk to their health.
- To ensure that the organisation of work, including hours of work and mealtimes, do not adversely affect the safety or health and welfare of employees at work.
- To report accidents and diseases to a labour inspector, in accordance with any reporting requirements which are prescribed by regulation.

8.1.2 All employers have the following duties to persons other than their employees:

- To carry out their business in such a manner as to ensure (as far as reasonably possible) that persons other than their employees are not exposed to health and safety risks.
- To comply with any regulations which require them to furnish information about the effect of their business on the health and safety of persons other than their employees.

8.1.3 Every employee has the following duties:

- To take reasonable care for the health and safety of him/herself and of anyone else who might be affected by his/her actions.
- To cooperate with the employer to enable the employer to fulfil health and safety duties.

Every employee has the right to leave the workplace (or a particular part of the workplace) if he/she has reasonable cause to believe that his/her health or safety will be endangered, until the employer takes effective measures to deal with the situation.

Any employee who exercises this right has a duty to report the situation to the employer immediately.

8.2 HIV/AIDS

Namibia is among the countries with the highest HIV/AIDS prevalence rates in Southern Africa. The consequences of HIV/AIDS are visible in all economic sectors. Employers are confronted with increasing expenses for medical and social insurance. Training costs rise because of the loss of experienced staff. Employees retire earlier or are often absent because of illness or deaths in the family.

HIV is the Human Immunodeficiency Virus. The virus causes AIDS by weakening the body's defence against diseases (the immune system).

AIDS is the Acquired Immune Deficiency Syndrome. AIDS is caused by HIV, because the virus reduces the body's natural ability to fight diseases. AIDS is not one disease, but is the name given to a number of diseases and opportunistic infections that people infected with HIV normally get, such as certain forms of TB, pneumonia and others.

Most people become infected with HIV through practising unsafe sex (having sex without a condom or femidom). People can also contract HIV through direct contact with infected blood. Babies can get HIV from their mothers during pregnancy or delivery or from infected breast milk.

In cases where there is a risk of becoming infected in the workplace, the risk can be greatly reduced if proper precautions are taken. Employers must see to it that employees or people who are asked to clean up blood spills or to render first aid, are given gloves before they handle blood and that there are always cleaning materials available at the workplace.

People cannot get HIV through –

- normal contact with an employee living with HIV or AIDS, or
- sharing toilets, tea cups or showers with people who are HIV positive. HIV is not transmitted through sweat or saliva.

It is very important to know that if somebody has HIV, it does not mean that he/she is sick or that he/she cannot work. In fact, it takes many years for some people with HIV to develop AIDS. During this time, people with HIV can lead normal and productive lives. It is for this reason that the HIV status alone is not a good enough reason for a person to be refused employment or fired.

However, many people with HIV eventually do develop AIDS and become so sick that they are unable to work. In such a case, the law and policies are there to protect them and to make sure that they are treated in the same way as anyone else that becomes too sick to work.

8.2.1 Managing HIV/AIDS within the commercial agricultural sector

The Namibian Agricultural Union and the Namibian Farmworkers' Union, representing employers and employees in the commercial agricultural sector respectively, have developed and adopted a workplace policy on HIV and AIDS within the commercial agricultural sector. The essential issues and statements made in the Draft Policy with regard to labour management are summarised below:

The commercial agricultural sector, as the largest private employer in Namibia and a significant contributor to the economic development of Namibia, has a particular responsibility in dealing with the AIDS epidemic in a multifaceted and holistic manner.

In recognition of the crucial role that the commercial agricultural sector plays in this regard, the NAU and NAFWU, both membership-based organisations representing employers and employees respectively in the commercial agricultural sector, have committed themselves to developing policies and programmes aimed at managing and mitigating the impact of HIV/AIDS on the commercial agricultural sector.

a) Policy objectives and programmes

In order to reduce and manage the impact of HIV/AIDS in its workplaces and involved communities in accordance with applicable policy and legislation, and recognising the need to strike a balance between the rights and responsibilities of both employers and employees, the commercial agricultural sector as a whole, will implement HIV/AIDS policies and programmes that seek to –

- promote a non-discriminatory working environment in which people living with HIV/AIDS are free from victimisation and able to be open about their HIV status without fear of stigma or rejection,
- address the working conditions specific to the commercial agricultural sector that potentially render their employees more vulnerable to HIV infection and thus to limit the spread of HIV and other sexually transmitted diseases,
- provide access for their employees and their families to appropriate HIV/AIDS information and education programmes,
- provide affordable access to appropriate disease management, care, support and treatment for their employees and their families living with HIV/AIDS, and
- promote behaviour and lifestyle changes that are conducive to good health, and, conversely, discourage behaviour and practices that may lead to exposure to HIV infection.

b) Promoting a non-discriminatory working environment within the sector

The commercial agricultural sector is committed to ensuring that there will be no unfair discrimination against any of its current or prospective employees or its members' current or prospective employees on the basis of his/her HIV status. Neither its own, nor its members' employees who are living with HIV or AIDS will be victimised or unfairly discriminated against on account of their HIV or AIDS status in respect of access to or continued employment, training or promotion or access to pension/retirement/provident funds, medical aid, state benefits or sick leave.

c) Recruitment and selection

Employers in the commercial agricultural sector may require applicants for employment to undergo pre-employment medical examinations to ensure that any applicant is physically able to perform the duties for which he/she is to be employed. The pre-employment medical examination shall not, however, include an HIV test and no applicant for employment shall be required to undertake an HIV test in order to ascertain his/her HIV status.

d) Testing and counselling

Employers in the commercial agricultural sector shall not require an employee to undertake an HIV test in order to ascertain his/her HIV status for the purposes of continued employment, promotion, training or transfer.

Voluntary pre- and post-test counselling and HIV testing for commercial agricultural sector employees shall, however, be promoted. Such testing shall be carried out by a suitably qualified person in a registered testing centre with the informed consent of the employee, in accordance with normal medical ethical rules and with pre- and post-test counselling.

The commercial agricultural sector shall seek to form partnerships with other non-governmental and AIDS service organisations to facilitate access by employees to voluntary counselling and testing services.

e) Screening

Should it be necessary to conduct HIV screening to gather epidemiological data on the prevalence of HIV in the workplace, such screening shall be undertaken on an anonymous, confidential and private basis and only after consultation with employees and their recognised representatives, where applicable, including trade unions, and with the full informed consent of the employees concerned.

f) Confidentiality and obligation to disclose

Employees with HIV/AIDS have the legal right to confidentiality about their HIV status in any aspect of their employment. An employee is under no obligation to inform his/her employer of his/her HIV status. Where an employee elects to share his/her HIV status with management or with a co-employee, this information shall be treated confidentially. To disclose the HIV status of an employee to any other person without his or her informed consent shall constitute a disciplinary offence.

The duty of confidentiality extends to trustees and other personnel of retirement or provident funds who may not divulge medical information or diagnoses to managers or coworkers without the express consent of the employee. The need to respect confidentiality with regard to the HIV status of an employee shall not be construed as promoting secrecy around issues related to HIV, nor will it be construed as detracting from the principle that voluntary testing, counselling and disclosure shall be promoted within the commercial agricultural sector.

g) Management of employees living with HIV or AIDS

An employee may not be dismissed simply because he/she is HIV positive. Employees within the commercial agricultural sector who are living with HIV or AIDS should continue to work under normal conditions in their current employment as long as they are medically fit to do so.

The same principles that govern other chronic medical conditions, and consistent with the laws and policies of the Republic of Namibia, shall apply to HIV/AIDS in dealing with –

- training and promotion,
- sickness and absenteeism,
- transfer to suitable alternative positions, and
- incapacity.

Should an employee become too ill to perform the duties for which he/she was employed, the employer shall investigate the extent of the incapacity and accommodate the employee in alternative employment as far as is reasonably possible. Should such accommodation not be reasonably possible, the employee's service may be terminated on grounds of medical incapacity, in which event the appropriate Retirement Fund/Provident Fund and Social Security rules governing ill health retirement will apply.

The contents of any medical reports obtained in the course of the assessment of an employee's capacity to continue in employment are strictly confidential and such reports may not be divulged to third parties without the written, informed consent of the employee.

Employers in the commercial agricultural sector shall, as far as reasonably possible, facilitate access to affordable treatment for HIV, including antiretroviral medicine for all employees who need it.

h) Promoting a safe working environment

The commercial agricultural sector is committed to providing and maintaining, as far as is reasonably possible, a safe working environment and to minimising the risk of HIV infection in the workplace.

The commercial agricultural sector recognises that employment in the commercial agricultural sector poses particular dangers to its employees as they are often engaged in strenuous and hazardous work involving sharp implements. Occupational accidents involving bodily fluids may occur. Should such accidents occur, the universal precautions outlined below (Universal Precautions) should be adhered to. Employers should provide their employees with adequate training in the use and application of universal precautions as well as with access to the equipment necessary to practise these precautions.

In the event of accidental exposure of an employee to HIV in the course and scope of employment, employers shall provide such employee with access to an appropriate health care facility in order to access short-term antiretroviral prophylaxis. Both employers and employees share the responsibility for ensuring that workplace accidents are reported and dealt with appropriately.

All persons employed in the commercial agricultural sector, as well as all blood, shall be treated as being potentially infected with HIV. That is to say, all persons employed in the sector shall be treated equally, with appropriate regard for their rights to freedom from discrimination and to the protection of their human dignity.

i) Employee benefits

Whilst it is recognised that employee benefits such as group life cover, retirement benefits and medical aid will be significantly affected by AIDS-related claims, employers shall ensure that there will be no unfair discrimination against employees living with HIV or AIDS in access to these benefits, where such benefits are offered. All employees in the sector should be provided with access to affordable medical/pension schemes, where such schemes exist.

j) Health and safety at work

There is often dangerous machinery and equipment at a workplace, which can lead to injuries and even the death of employees. With HIV or AIDS there is an additional risk. HIV is present in the blood of a person with HIV and it can be transmitted through contact with infected blood. If there is an injury at work resulting in an open wound, there is a possibility that HIV can be transmitted, particularly if there is a lot of blood.

Under the Labour Act, employers have a duty to take all the necessary steps to ensure the safety, health and welfare of employees at work. This includes having a safety plan, proper training in safety procedures and information on how to protect oneself from infection when there is a situation like the one mentioned above.

The Labour Act also requires employers to provide protective clothing and equipment. To prevent HIV infection, the employer should provide gloves and disinfectant to clean up blood. With the use of universal precautions in the workplace, the possibility of workplace HIV infection through blood spills and accidents will be greatly minimised.

Health and safety include –

- a safety plan,
- information on how to prevent infection in the workplace,
- training, and
- protective clothing and equipment.

8.2.2 Universal precautions to prevent the spread of HIV/AIDS in the workplace

- a) Blood, especially in large spills such as from nosebleeds, and old blood or bloodstains, should be handled with caution. Skin exposed accidentally to blood should be washed immediately with soap and running water. All bleeding wounds, sores, breaks in the skin, grazes and open skin lesions should ideally be cleaned immediately with running water and/or other antiseptics. If there is a biting or scratching incident where the skin is broken, the wound should be washed and cleansed under running water, dried, treated with antiseptic and covered with a waterproof dressing. Blood splashes to the face (mucous membranes of eyes, nose or mouth) should be flushed with running water for at least three minutes.
- b) Disposable bags must be made available to dispose of sanitary wear.
- c) All open wounds, sores, breaks in the skin, grazes and open skin lesions should at all times be covered completely and securely with a non-porous or waterproof dressing or plaster so that there is no risk of exposure to blood.
- d) All persons attending to blood spills, open wounds, sores, breaks in the skin, grazes, open skin lesions, body fluids and excretions should wear protective latex gloves or plastic bags over their hands to eliminate the risk of HIV transmission effectively. Bleeding can be managed by compression with material that will absorb the blood, e.g. a towel.
- e) If a surface has been contaminated with body fluids and excretions which could be stained or contaminated with blood (for instance tears, saliva, mucus, phlegm, urine, vomit, faeces and pus), that surface should be cleaned with running water and household bleach (1:10 solution), and paper or disposable cloths. The person doing the cleaning must wear protective gloves or plastic bags.
- f) Blood-contaminated material should be sealed in a plastic bag and incinerated or sent to an appropriate disposal firm. Tissues and toilet paper can readily be flushed down a toilet.
- g) If instruments (for instance scissors) become contaminated with blood or other body fluids, they should be washed and placed in a strong household bleach solution for at least one hour before drying and re-using.

8.2.3 Recommended content for first-aid kits

All first-aid kits should have the following contents:

- Two large and two medium pairs of disposable latex gloves
- Two large and two medium pairs of household rubber gloves (for handling blood-soaked material in specific instances such as when broken glass makes the use of latex gloves inappropriate)
- Absorbent material

- Waterproof plasters
- Disinfectant (such as hydrogen peroxide, iodine or bleach solution)
- Scissors
- Cotton wool
- Gauze tape
- Tissues
- Water containers
- Resuscitation mouthpiece or similar device with which mouth-to-mouth resuscitation can be applied without any contact being made with blood or other body fluids
- Protective eye wear
- Protective facemask to cover nose and mouth

Universal precautions are in essence barriers to prevent contact with blood or body fluids. Adequate barriers can also be established by using less sophisticated devices than those described above, such as –

- unbroken plastic bags on hands where latex or rubber gloves are not available, common household bleach for use as disinfectant [diluted one part bleach to ten parts water (1:10 solution)],
- spectacles instead of protective eye wear, and
- a scarf instead of a protective face mask.

Used items should be dealt with as indicated in paragraphs 8.2.2 f and g above.

8.2.4 The Social Security Act and HIV/AIDS

Employees who are paid-up members of the Social Security Fund are entitled to claim sick leave and disability benefits under the Act.

Employees are encouraged to first apply for sick leave benefits, which would give the employee part of her/his salary for two years. A person has to be booked off sick for more than a month before he/she can apply for sick leave benefits.

Disability benefits for HIV/AIDS are a once-off payment to the amount of N\$3,500.00, which is paid when the employee is too sick to continue working.

Namibian social security legislation does not provide for unemployment benefits.

8.2.5 The Employees' Compensation Act and HIV/AIDS

Under the Employees' Compensation Act, employees who earn less than N\$72,000.00 per year have the right to claim compensation from the fund for accidents and industrial illnesses that they get while working.

HIV/AIDS is not recognised as an occupational disease in this law. This means that persons who contract HIV through their employment are not entitled to claim employees' compensation under the Act.

Employees can, however, sue the employer for HIV infection in the workplace if negligence can be shown on the part of the employer.

Of course, if an employee sues an employer for negligence in respect of HIV infection at work, the employee will have to show that all the legal requirements to establish the employer's negligence were present, and that the accident gave rise to HIV infection.

The absence of proper first-aid equipment and the failure to train employees in the use of universal precautions (see above) can give rise to liability on the part of the employer.

8.2.6 Proving HIV infection to be a result of an accident at work

- Report the accident.
- The employee who has been accidentally exposed to potentially HIV infected body fluids should be encouraged to voluntarily have an HIV test as soon as possible after the exposure. This is to ascertain the employee's HIV status at the time of the accidental exposure.
- To make sure about the employee's status, he/she should take an HIV test again six weeks to three months later.
- The employee can claim compensation if he/she can show that
 - personal protective equipment was not available, and
 - infection was due to the negligence of the employer, who did not provide a safe workplace.
- A safe workplace is one in which universal precautions are taken.

9. Record-keeping

The keeping of certain records by an employer is mandatory in terms of the Labour Act No 11 of 2007. The accurate keeping of registers protects both the employer and the employee as facts regarding employment contracts are then clear and readily available should any dispute arise, especially in the process of arbitration where employers must have all the necessary documents up to date and at hand to be able to prove a case.

The following registers should be kept by an employer in respect of every employee in his service:

9.1 A register containing the following particulars

- a) Name, age, identity number (if any), sex of the 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 and fractions thereof) per day or per shift worked by the employee during the period referred to in paragraph c) in respect of –
 - ordinary working hours
 - overtime
 - night work
 - work on Sundays
 - work on public holidays.
- e) The number of hours worked by the employee during the period referred to in paragraph c) in respect of –
 - ordinary working hours
 - overtime
 - night work
 - work on Sundays
 - work on public holidays.
- f) Remuneration payable to the employee in respect of –
 - ordinary working hours
 - overtime
 - night work

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- work on Sundays
 - work on public holidays.
- g) The gross amount of remuneration payable to the employee.
- h) The particulars and amount of any deductions from the amount referred to in the previous point (g). (This should reflect the monthly Social Security Commission deduction of 0,9 %.)
- i) The net amount of remuneration payable to the employee.

9.2 A register relating to the granting of leave containing the following particulars

- a) Name, occupation and sex of employee.
- b) Date on which the employee commenced his/her employment.
- c) The period granted in respect of –
- annual leave
 - sick leave
 - maternity leave
 - occasional leave.
- d) The date on which such leave commenced.
- e) The date on which such leave ended.
- f) The number of days of such leave with full remuneration granted to the employee, and
- g) the number of days of such leave without remuneration granted to the employee.

9.3 A register for every employee who is not a Namibian citizen with the following details

- a) Name, nationality, date and place of birth.
- b) Date of employment.
- c) The capacity in which such an employee is employed.
- d) The period of the contract.
- e) A full description of academic, technical or professional qualifications and any special expertise of such an employee.
- f) The number and date of this issue of any permit in relation to such employment and the date of expiry of such a permit.

The employer shall retain all records kept for a period of not less than five years [Namibia Institute of Democracy (NID), 1998].

Reliable and long-term employees are almost indispensable for a successful farm business. They save money, energy and time. The interpersonal relationship between the employer, the management staff and the workers is decisive in this regard. Good relationships between employer and employee help to ensure the reliability of the worker. If the employee feels at home on the farm and responsible for the farm operation he will stay and do his best to ensure that the farm business is successful. He might then keep equipment in good repair, carry out the daily tasks without being told again and again and assist the employer in finding culprits of stock theft, for example.

1. Motivation and labour relations

The farmer's concern about farm workers' needs has a direct bearing on their performance. It means attending to their well-being, as both individuals and employees. Courteous and consistent treatment, job security, fair pay and safe working conditions are important for employees. If those needs are ignored, worker dissatisfaction may impede productivity. Trust is another important contributor to productivity. This builds gradually, as farmers, managers and employees learn that they can count on each other. Even after workers' trust has been won, management must continually nurture such trust if they are to retain it. The flow of trust cannot be turned on and off like irrigation water.

Employers generally expect personnel to –

- consistently produce high-quality work on a timely basis,
- take their responsibilities seriously, at times even going beyond the call of duty, and
- show concern for the welfare of the farming operation and for other employees.

Employees hope, in turn, that employers will –

- value their feelings and opinions,
- provide positive feedback for work well done,
- meet the agreed-upon terms and conditions of employment,
- be consistent and courteous, and
- provide a work environment where they can develop their potential over time (in terms of skills and earnings) [Billikopf 2003, (1994)].

It is in the interest of the employer to meet these expectations as far as possible in order to keep the human resources to maintain a well-operating farm. **Motivation** plays a crucial role. There is much a farmer can do to affect a worker's on-the-job motivation. One general principle is that the employer should always treat the worker fairly and with respect.

Money is not the only tool that increases the worker's effectiveness. **Performance appraisal** plays a significant part in motivating the worker to improve his/her work routine. A worker whose accomplishments and efforts are appreciated, will try to ensure that he/she maintains that quality the next time as well. He/she might become more motivated and even accomplish duties which are not part of his/her job description or outside the regular working hours. On

the way home a highly motivated worker might for example stop to fix a broken fence while another would just pass and ignore it.

Compensation is another method to increase the performance of workers. A **gradual increase in salary** and **other incentives** help to keep a reliable and trustworthy worker.

Incentive pay is generally given for specific performance results rather than simply for the time worked. Incentives help to increase workers' motivation and thus performance. Casual incentives are given at unexpected intervals and tell the employees that their efforts are noticed. But the worker never knows ahead when a reward will be given. In structured incentives, the employee knows the relationship between performance and incentive reward ahead of time [Billikopf, 2003 (1994)].

Considering what a specific employee needs or wants, incentives, apart from the gradual increase in salary, could be:

- Extra cash.
- Construction material.
- Food.
- Allowing workers to go home early, with full pay, when they have finished a job.
- An end-of-season bonus.

It is not only the employee who should pay attention to certain principles and rules as mentioned above. The employer may also have certain expectations or general principles that he/she would like the worker to follow. These can be general behavioural rules, for example:

- To treat each other with respect.
- To be polite with fellow employees.
- To greet each other first at the beginning of conversations.
- To be honest at all times.
- To take over responsibility.
- To perform tasks independently.
- To wear clean clothing and polished shoes (at least once a week, e.g. at the beginning of the working week).

There can also be more specific regulations written down, for example, in the farm rules. The employer must ensure that the principles he expects the worker to fulfil have been clearly explained to and understood by the worker.

2. Communication – giving orders and principles of execution

Communication plays a crucial role in the interpersonal relationship between employer, supervisor and employee and for the job performance of the employee. This is in particular significant in multilingual settings, in which the employer, supervisors and employees may have different mother tongues.

The employer has to ensure that supervisors and employees understand his orders and rules. Otherwise, he has no reason to complain about possible transgressions: An employee can only obey a rule he properly understood. An employer and the supervisors should talk slowly and use a vocabulary which the worker will understand without difficulty.

The employer should also have in mind that workers mostly prefer to be spoken to in a calm way and are offended by scolding, harsh words, shouting, and angry and quick speech. Employers and supervisors must guard against criticising workers unfairly for trivial details, or even threatening them. Supervisors should not rush through necessary explanations but take their time to explain in detail and make sure that the worker has understood the issue. The worker must get the feeling that he is allowed to ask questions in order to understand an order correctly.

CHAPTER 3

Basic Conditions of Employment

The Labour Act of 2007 sets forth the **minimum** conditions which must apply to all contracts of employment. Employers and workers can agree to **more favourable** conditions of employment, but they cannot agree to any conditions of employment which are **less favourable – not even by mutual consent.**

1. Important definitions

Annual leave means the period of 12 consecutive months' employment with the same employer immediately following –

- an employee's commencement of employment, or
- the completion of the last leave cycle.

Basic wage means, for the purpose of calculating any basic condition of employment, that part of an employee's remuneration in money including the cash equivalent of payment in kind, if any, paid in respect of work done during the hours ordinarily worked, but does not include –

- any allowances,
- overtime payment,
- additional pay for work on a Sunday or a public holiday,
- additional pay for night work, and
- payments for pension, annuity or medical/insurance benefits.

Employee means an individual, other than an independent contractor, who –

- works for another person and who receives, or is entitled to receive, remuneration for that work, or
- in any manner assists in carrying on or conducting the business of an employer.

Employer means any person, including the State who –

- employs or provides work for an individual and who remunerates or expressly or tacitly undertakes to remunerate that individual, or
- permits an individual to assist that person in any manner in the carrying on or conducting that person's business.

Incapacity means an inability to work owing to sickness or injury.

Monetary remuneration refers to that part of the remuneration that is paid in money.

Medical practitioner means an individual who is registered in terms of the Medical and Dental Professions Act and includes any individual who is registered as a nurse or midwife in terms of the Nursing Act.

Overtime means time worked in excess of the hours an employee ordinarily works in any ordinary working day but does not include any work done on –

- a Sunday, if it is not an ordinary working day for that employee, or
- a public holiday.

Remuneration means the total value of all payments in money or in kind made or owed to an employee arising from the employment of that employee.

Security Officer means an employee who –

- controls, checks and reports on the movement of individuals, vehicles and goods through a checkpoint or at any other place, or
- protects persons or property.

Sick leave means any period during which the employee is unable to work due to incapacity.

Sick leave cycle means the period of 36 consecutive months' employment with the same employer immediately following –

- an employee's commencement of employment, or
- the completion of the last sick leave cycle.

Spouse means a partner in a civil marriage or in a customary law union or other union recognised as a marriage in terms of any religion or custom.

Urgent work means –

- emergency work, which, if not attended to immediately, could cause harm or endanger the life, personal safety or health of any person or could cause serious damage or destruction to property, and
- work connected with the arrival, departure, loading, unloading, provisioning, fuelling or maintenance of a ship, aircraft or truck used to transport passengers, livestock or perishable goods.

Weekly interval means the interval between the end of one ordinary working week and the start of the next.

2. Absolute minimum conditions

The Labour Act of 2007 sets forth the **minimum** conditions which must apply to all contracts of employment. Employers and workers can agree to **more favourable** conditions of employment, but they cannot agree to any conditions of employment which are **less favourable – not even by mutual consent.**

3. Ordinary hours of work

An employee may not be required or permitted to work more than 45 ordinary hours in any week.

This means that an employee who works –

- 5 ordinary days a week, may work a maximum of 9 ordinary hours, and
- 6 ordinary days a week, may either work 7,5 hours each day OR the hours could be traded off (as long as it does not exceed 9 hours on one day).

Ordinary hours do not include a mealtime interval or any overtime.

Example

Employee working from Monday to Saturday: (6 days per week)

| | |
|------------------|------------------|
| Monday to Friday | 8 hours each day |
| Saturday | 5 hours |
| Total | 45 hours |

Where work on Sundays and public holidays is permitted, the hours worked on these days are not counted for the purpose of measuring ordinary weekly working hours.

4. Night work

If an employee is required to do any work between 20h00 and 07h00, it is regarded as night work.

In this case the employee is entitled to an additional payment of six percent of his/her hourly basic wage, excluding overtime, for each hour of work performed within that time.

A pregnant employee may not be required or permitted to do night work during the period of eight weeks before the expected confinement or eight weeks after her confinement. This period could even be extended if a medical practitioner certifies that it is necessary for the health of the employee or her child.

5. Daily spread-over and weekly rest period

A **spread-over** means the time from which an employee begins to work until he/she stops working in 24 consecutive hours. The **maximum spread-over** is **12 hours** (including lunch break and overtime).

An employer must not require or permit an employee to work without a weekly interval of at least 36 consecutive hours of rest.

The daily spread-over and the weekly rest period are not applicable to persons who perform urgent work, for example employees fighting a veldfire on a farm.

6. Meal intervals

There are two basic rules regarding meal intervals:

- No employee may work more than **five hours** without a break of at least **one hour** for meals.
- An employee cannot be required to do any work during his/her meal interval.

The employer may shorten the meal interval to no less than 30 minutes if –

- all employees agreed in writing, and
- a written notice has been given to the Permanent Secretary of the Ministry of Labour and Social Welfare (MoL).

An employee must be remunerated for any portion of a meal interval that is longer than 90 minutes. On farms where it is customary to take meal intervals of two to three hours due to the summer heat, the employer may ask the Permanent Secretary or the Ministry of Labour and Social Welfare for an exemption [in terms of Section 139 (1)] from this section of the Labour Act, No 11 of 2007.

All applications must be accompanied by form LM 34 which can be obtained from the permanent secretary of the Ministry of Labour and Social Welfare.

A driver of a motor vehicle who does not do work other than remain in charge of a vehicle or its load during a meal interval, is deemed not to be working during the interval.

This section does not apply to a security officer or to an employee who is engaged in urgent work.

7. Overtime

Overtime is allowed only if the employer and the employee have concluded an agreement about working overtime. This agreement does not have to be in writing; however, it should be included in the contract of employment.

An employee who performs urgent work may not refuse to work overtime. The provisions about maximum overtime do not apply to these employees, but the provisions about the rate of payment for overtime work do apply. This means, for example, that an employee on a farm may not refuse to help fight a fire that may well exceed overtime limits, but the employee must be remunerated at overtime tariffs for those hours worked.

Overtime cannot exceed three hours/day or ten hours/week (not applicable to persons doing urgent work).

An employer can make an application to the Permanent Secretary for authorisation for more overtime than the Labour Act allows if the employee concerned has agreed to this. If the Permanent Secretary approves a request for more overtime, a written notice of approval specifying the additional amount of overtime allowed will be issued to the employer and the employees who are affected.

All applications must be accompanied by form LM 34 which can be obtained from the permanent secretary of the Ministry of Labour and Social Welfare.

Payment of overtime

Employees who work overtime on ordinary working days (Monday to Saturday) must be paid 1½ times their normal hourly basic wage.

Employees who ordinarily work on Sundays and public holidays, and work overtime on that Sunday or public holiday, must receive double their basic hourly wage.

8. Work on Sundays and public holidays

Employees may not be required to work on Sundays or public holidays, except for employees who –

- perform urgent work,
- carry on a business or a shop, hotel, boarding house or hostel that lawfully operates on a Sunday,
- perform domestic service in a private household,
- provide health and social welfare care at residential facilities, including hospitals, hospices, orphanages and old age homes,
- work on a farm and certain work is required to be done on that day,
- work in continuous shifts, and
- are engaged in other activities approved by the Permanent Secretary.

An employer may ask permission from the Permanent Secretary to allow other work on Sundays if the employees who are affected by the application agree.

Payment for work done on Sundays or public holidays

- If an employee **usually works** on a Sunday or a public holiday, he/she must receive the normal daily remuneration plus the hourly basic wage for each hour worked.
- If an employee **does not usually work** on Sundays or public holidays and is asked to perform work on those days occasionally, then payment is either –
 - a) double the hourly basic wage for each hour worked, or
 - b) 1½ times pay plus time off in the following week equal to the amount of time worked on the Sunday or public holiday.

The employee has the right to choose which of the above options he/she prefers.

If an employee chooses the option of double pay, payment must be made on the first payday after the Sunday or public holiday in question.

- If a public holiday falls on a day that would otherwise have been an ordinary working day, for example a Monday, employees who are not required to work on that public holiday must be paid for the amount of time which they would ordinarily have worked on that day (excluding overtime). In other words, employees must be paid their usual wages for public holidays.

However, if an employee is **absent without good reason** on a working day immediately **before or after a public holiday**, the employer is not required to pay that employee the amount as otherwise required in this section.

- Employees in continuous shifts: Where an employee works a shift which is partly on a Sunday or a public holiday and partly on another day, the entire shift is considered as falling on whichever day the “major part” of the shift falls.

9. Payment of remuneration

An employer must pay any monetary remuneration to which the employee is entitled not more than one hour after completion of the ordinary hours of work on the normal payday as was agreed upon. The payment shall be cash, or at the employee’s option, by cheque, and the

payment must be either to the employee or by direct deposit into an account designated in writing by that employee. If payment is in cash or by cheque it must be in a sealed envelope.

In the case of an employee whose contract is terminated before payday, the employer must, on the day on which the contract is terminated, pay the employee the remuneration to which the employee is entitled in the manner set out above. Each payment contemplated above must not be made at a shop, bottle store or other place where intoxicating liquor is sold or stored, unless the employee is employed in that shop, bottle store or place.

The **particulars of payment** must be written on the envelope OR in a separate statement given to the employee together with the payment. The required particulars are –

- the employee’s **name** and **identity number** (if any),
- the name, postal and business address of the **employer**,
- the ordinary **scale of remuneration** of the employee,
- the **time period** for which the payment is made,
- **itemisation of amounts paid** in respect of remuneration, overtime, night work, work on Sundays, work on public holidays, and any other remuneration or allowances,
- **gross amount of remuneration**,
- details of any **deductions** made from the gross amount, and
- **net amount of remuneration**.

(See APPENDIX B – Draft salary advice)

Payment *in-kind*

For the purpose of paying basic wages, an employer may not pay an employee an in-kind payment except by agreement between the employer and the employee or in terms of a collective agreement.

Values for in-kind payments that are produced on the farm of the employer, such as meat, milk, vegetables, fruit, etc. must be derived from producer prices. The value of other products must be derived from wholesale prices.

10. Deductions and other acts concerning remuneration

An employer must not make any deduction from an employee’s remuneration unless the deduction is required or permitted in terms of a court order or under a collective agreement agreed to in writing. The deductions made must not in aggregate exceed one third of the employee’s remuneration.

Deductions by the employer (unless by court order or law) may only be made in respect of payment of the following:

- Rent in respect of accommodation supplied by the employer.
- Goods sold by the employer.
- A loan advanced by the employer to the employee.
- Contributions to the employee’s benefit funds.
- Subscriptions or levies to a registered trade union.

An employer who deducts an amount from an employee's remuneration for payment to another person must pay that person in accordance with the time period and other requirements specified by law, court, arbitration award or agreement. However, an employer may not –

- levy a fine on an employee unless it is authorised by statute or collective agreement,
- require an employee to buy goods from a shop owned by the employer or run on his/her behalf,
- require an employee to use the services rendered by the employer for reward,
- require an employee to pay for any goods supplied by the employer at a price exceeding an amount equal to the price paid by the employer for the goods plus any reasonable costs incurred by the employer in acquiring the goods,
- require or permit an employee to repay any remuneration duly paid to an employee, or
- require or permit an employee to acknowledge receipt of an amount bigger than the remuneration actually received.

Subject to any provision in a contract of employment or collective agreement to the contrary, an employer may, **by written notice** to the employee, reduce an employee's agreed number of ordinary hours of work for a period **no longer than three months** for operational reasons or other reasons recognised by law and correspondingly reduce that employee's remuneration, but by no more than **one half** of that employee's basic wage. The reduction of ordinary hours of work may be extended for additional periods not exceeding three months by written agreement between the employer and the employee's registered trade union, in the case of an exclusive bargaining agent.

11. Minimum wages

11.1 Minimum wage agreement

The first minimum wages for farm workers was introduced in 2003, following a collective agreement between the Agricultural Employers' Association (AEA), the Namibia National Farmers' Union (NNFU) and the Namibian Farm Workers' Union (NFWU) in November 2002. The agreed minimum wages determine the wage for the **entry level** of agricultural employees in the whole of Namibia, including agricultural contract employees and domestic workers on farms, game and hunting farms and lodges.

The minimum wage agreement sets the minimum wages paid for an unskilled farm worker **at the beginning** of his professional career. The minimum wage agreement does not stop employers from paying higher salaries. Especially experienced and skilled workers should be paid higher wages reflecting their obtained skills.

It is important to remember that the minimum wage agreement is only a "floor", not a "ceiling".

The minimum cash wage for entry levels of agricultural employees is determined at N\$2.87 per hour.

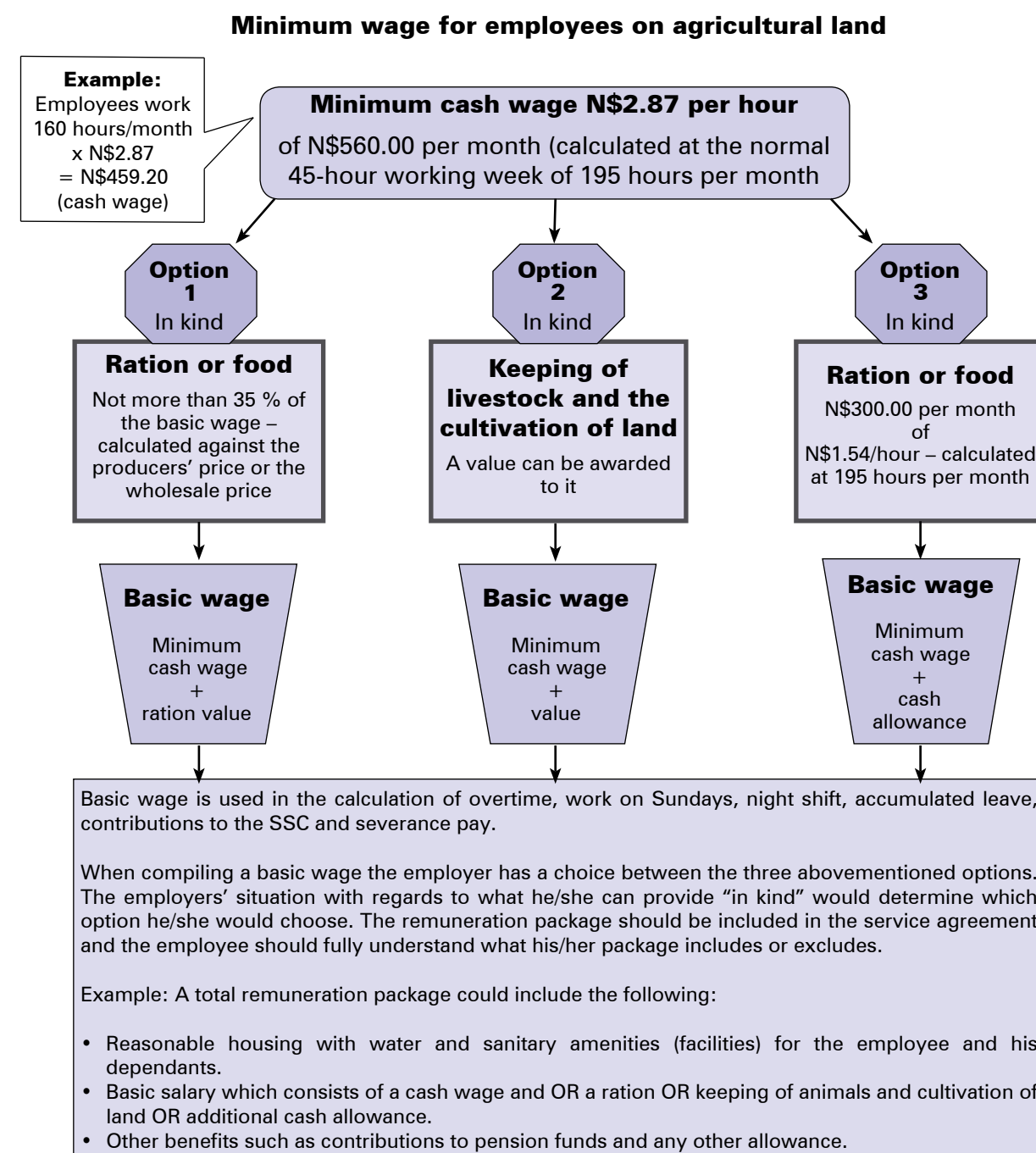
Furthermore, if the employee is by virtue of his/her employment required to live in or at the place of his/her employment or to reside on any premises of his/her employer, such an employer must –

- provide the employee with such housing, including sanitary and water facilities as complies with the reasonable requirements of such employees and, in the case of an employee who is required to live or reside on agricultural land, the reasonable requirements of his/her dependants, as mutually agreed by the individual employer and the employees,

- in the case of an employee who is required to live or reside on agricultural land, permit such an 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 him/herself and of his/her dependants, OR
- provide such an employee with food or rations for the reasonable needs of such employee and his/her dependants, OR
- provide such employee with an additional cash allowance of at least N\$300.00 per month.

For the purpose of this section a "dependant" means the spouse and the dependant children of the employee or of the spouse.

When providing food or rations, the value should not exceed the equivalent of 35 % of the employee's basic wage.



11.2 Wage Order

After considering the report and recommendations of the Wages Commission, the Minister may make a wage order determining remuneration and other conditions of employment for employees in any industry and area under special conditions. The Minister, after consulting the parties bound by a wage order, may suspend or cancel all or part of that by publishing a notice in the Gazette. In addition to publication of any information in the Gazette, the Minister must, where appropriate, publish the information through other available means, with a view of ensuring that the intended recipients of the information receive the information.

12. Annual leave

An “ordinary work week” means the number of days per week ordinarily worked by an employee.

Every employee is entitled to at least four consecutive weeks’ annual leave with full remuneration in respect of each annual leave cycle, calculated as follows:

| Number of days in ordinary work week | Annual leave entitlement in working days |
|--------------------------------------|------------------------------------------|
| 6 | 24 |
| 5 | 20 |
| 4 | 16 |
| 3 | 12 |
| 2 | 8 |
| 1 | 4 |

The number of leave days given above may be reduced by the number of days during the annual leave cycle which, **on request of the employee**, the employer granted that employee **as occasional leave on full remuneration**.

The employer can decide when to grant annual leave, but **leave must be granted within four months of the end of the leave cycle**. However, leave can be delayed for two more months if the employee has agreed to this in writing before the end of the first four months.

An employer cannot require or allow an employee to perform any work during leave.

An employer must pay the remuneration due to an employee in respect of annual leave **according to that employee’s regular pay schedule**. If the employee is paid by direct deposit or in any other case, he/she must be paid not later than the last working day before the commencement of the annual leave or not later than the first payday after the end of the leave period, if the employee requests such an extension in writing.

Annual leave must not overlap with sick leave or maternity leave. In other words, the employee is entitled to annual leave in addition to these other kinds of leave.

An employee cannot be given money in lieu of leave, **even if the employee agrees to this** (except where leave is owed to the employee when the employment relationship comes to an end).

If a public holiday falls during a leave period on a day which would otherwise have been an ordinary working day for the employee, **the leave period must be extended** by one full working day with full remuneration.

The amount which is paid in respect of leave must be based on the rate of remuneration immediately prior to the date on which the leave commences.

(See APPENDIX C – Draft leave application form)

13. Sick leave

One **sick-leave cycle** is a period of **36 consecutive months’ employment** with the same employer following an employee’s commencement of employment or the completion of the last sick leave cycle.

Sick leave is calculated as follows:

- An employee who works six ordinary days per week, is entitled to at least 36 working days sick leave in a sick leave cycle.
- An employee who works five ordinary days per week, is entitled to at least 30 working days sick leave per sick leave cycle.
- An employee who works fewer than five ordinary days per week is entitled to a number of working days calculated on a pro-rata basis.

An employee is entitled to one day’s sick leave for every 26 days worked during the first 12 months of employment.

Sick leave days for an employee who does not work a fixed number of days, must be calculated annually on the average number of days worked per week over the previous twelve months.

An employee is eligible for sick leave during any **incapacity**, which is defined as inability to work owing to any sickness or injury **other than** sickness or injury caused by an employee’s own misconduct.

Payment during sick leave

An employee is entitled to full remuneration during sick leave.

A **medical certificate** is required for sick leave of **more than two consecutive days**. The medical certificate must state the nature and duration of the incapacity, and it must be signed by a medical practitioner. If no medical certificate is produced, the employer is not obligated to remunerate the employee for the sick leave.

The **employer is not required to pay for sick leave** if the employee is entitled to payment in terms of the **Employees’ Compensation Act, 1941** (Act No. 30, 1941), if the employee is absent from work during any period of incapacity arising from an **accident or a scheduled disease**.

The employer and the employee can substitute a private arrangement for the sick leave provided by the Labour Act, if certain requirements are met. The employee can make a written request that the employer make a contribution to a fund or organisation designated by the employee, which guarantees payment during periods of incapacity

which is as good as or better than the sick leave provided for in the Labour Act; if the employer agrees to make contributions which are at least equal to those made by the employee, then the provisions relating to sick leave do not apply.

Sick leave does **not form part of annual, compassionate or maternity leave**, does **not entitle the employee to any additional remuneration on termination of employment** and, if not used during the sick leave cycle, **lapses** at the end of the cycle.

14. Maternity leave

Female employees who have completed at least **six months continuous service** with an employer are entitled to **not less than 12 weeks'** maternity leave, calculated as follows:

Before her confinement: She is entitled to maternity leave of **at least four weeks before** the expected date of confinement, as certified by her medical practitioner, and she is entitled to maternity leave for the entire time from the commencement of her maternity leave until her actual date of confinement.

After the date of confinement: She is entitled to at least eight weeks in any case and in the case of an employee whose date of confinement occurred less than four weeks after the commencement of her maternity leave, to the amount of additional time required to bring her total maternity leave to 12 weeks.

If a medical practitioner certifies that an employee experiences complications that arose from the pregnancy or delivery or that the employee's child experiences complications that arose from the birth or congenital conditions, the employer must grant extended maternity leave (more than the normal 12 weeks as stipulated by the Act) to the employee. The extended time will be either one month or the amount of accrued sick leave that the employee has at the time, whichever is the longer.

The expected date of confinement and the actual date of confinement must be certified in writing by a doctor, a nurse or a midwife.

During the period of maternity leave, the provisions of the contract of employment remain in force, and the employer must, during the period of maternity leave and extended maternity leave, pay the employee **the remuneration payable to that employee EXCEPT THE BASIC WAGE**.

The Social Security Commission (established by the Social Security Act No. 34 of 1994) must, during the period that an employee is on maternity leave, pay that employee 100 % of her basic wage.

The **rights** of female employees – including seniority, promotion and other benefits (e.g. medical aid, pension or retirement schemes) – **continue uninterrupted during maternity leave** (LM LAC).

An employer **may not retrench** a female employee during or at the end of her maternity leave. An employer **may not dismiss** a female employee during or at the end of her maternity leave on the grounds that she is incapable of continuing to carry out her work, unless the employer has taken all reasonable steps to offer her appropriate work, or she has unreasonably refused such an offer.

15. Compassionate leave

An employee is entitled to five working days compassionate leave during each 12 months of employment. The employee must receive full remuneration during this time.

Compassionate leave must be granted by the employer in the case of death or serious illness of an employee's family. In this context "family" is regarded as –

- child (including an adopted child in terms of any law, tradition or custom),
- spouse,
- parent, grandparent, brother or sister of the employee, and
- father-in-law or mother-in-law of the employee.

Compassionate leave –

- does not form part of annual, sick or maternity leave,
- does not entitle the employee to any additional remuneration on termination of employment, and
- lapses after every 12 months period if the employee has not used it.

The employee must apply for compassionate leave in writing on a prescribed form provided by the employer. The application must be accompanied by a death certificate, in the case of death, or a medical certificate, in the case of serious illness. The employee could also provide an affidavit, stating particulars of the death or serious illness together with any other proof that may be required by the employer.

If the employee is not able to apply for the leave as stated above due to an emergency, it is the duty of the employee to inform the employer of his/her absence within a reasonable time. On return, the employee must continue to apply for the leave as stated above.

If the employee fails to comply with the regulations, the employer will not be obliged to remunerate the employee for the time absent from work. The employer could also, in this case, consider taking disciplinary steps against the employee. Employers are, however, cautioned to be very sensitive and careful and to deal with each case on a merit basis.

16. Accommodation

If an employee is required to live in accommodation at the place of employment, or at other premises owned by the employer, the employer is required to provide **housing, sanitation and water** which will be sufficient to meet the "reasonable requirements" of the employee and his/her dependants.

For this section, "dependants" are defined as the employee's spouse and the dependent children of the employee and/or the spouse.

A guideline to define "dependent children" could possibly be children under the age of 18 or above 18 **only** if they are furthering their studies and are therefore still financially dependent on their parent/s.

An employer and employee can also enter into a mutual agreement (written down in the farm rules) in case other persons/family members than the abovementioned are allowed to stay with the employee.

If the employer terminates the employment of the employee for whatever reason (dismissal due to misconduct, retrenchment, retirement, disability, etc.) the employee must receive three months written notice to vacate the premises. The employer may make other arrangements with the employee in order to vacate the premises earlier.

If an employee is dismissed and reports a claim of unfair dismissal to the Labour Offices within a month of the dismissal, he/she may reside on the premises until such time that the dispute is resolved.

“Premises” includes any building or structure, or part of it, whether above or below the surface of the land or water, or any vehicle, truck, vessel or aircraft.

17. Livestock

If the employer permits an employee to keep livestock, whether it forms part of the minimum wage agreement or not, there should be a written agreement regarding the keeping of livestock, in which the numbers of animals and the conditions are defined.

Example:

Who is responsible for vaccinations?

What happens if the employee keeps more animals than agreed upon?

What happens if the animals damage property?

What happens if the employee does not look after his animals properly?

What happens to the animals when the worker is dismissed, if he/she resigns or retires?

(See APPENDIX D – Draft agreement to keep livestock)

18. Shops run by or on behalf of the employer

An employer may not require an employee to purchase goods or services from the employer or from a shop run by or on behalf of the employer.

However, if an employee does buy or receive goods from an employer, the value of these goods cannot be calculated at more than the price actually paid by the employer, plus the reasonable expenses incurred by the employer in acquiring the goods (such as transportation costs).

19. Child labour

Agricultural employers must be very careful not to employ children under any circumstances.

No child under the age of 14 may be employed for any purpose.

In respect of a child who is **at least aged 14, but under the age of 16 years**, a person –

- must not employ that child in respect of any work between the hours of 20h00 and 07h00, or
- must not employ that child on any premises where work is done underground or in a mine where construction or demolition takes place, where goods are manufactured, electricity is generated, transformed or distributed, machinery is installed or dismantled or any work-

related activities take place that may place the child’s health, safety, or physical, mental, spiritual, moral or social development at risk.

In respect of a child who is **at least aged 16, but under the age of 18 years**, except to the extent that the Minister by regulations stated below permits, a person –

- must not employ that child in respect of any work between the hours of 20h00 and 07h00, or
- must not employ that child on any premises where work is done underground or in a mine where construction or demolition takes place, where goods are manufactured, electricity is generated, transformed or distributed, machinery is installed or dismantled or any work-related activities take place that may place the child’s health, safety, or physical, mental, spiritual, moral or social development at risk.

It is an offence for any person to employ or require or permit a child to work in any of the circumstances described above as prohibited. A person who is convicted of the offence is liable to a **fine** and/or **imprisonment**.

20. Forced labour

Forced labour includes –

- any work or service performed or rendered involuntarily by an individual **under threat of any penalty, punishment or other harm** to be imposed or inflicted on or caused to that individual by any other individual, if the first-mentioned individual does not perform the work or render the service,
- any work **performed by an employee’s child under the age of 18** if the work is performed in terms of an arrangement or scheme in any undertaking between the employer and the employee,
- any work performed by any individual because that individual is for any reason **subject to the control, supervision or jurisdiction of a traditional chief or headman** in that chief’s or headman’s capacity as chief or headman.

It is an offence for any person to directly or indirectly cause, permit or require an individual to perform forced labour. A person who is convicted of the offence is liable to a **fine** and/or **imprisonment**.

CHAPTER 4

Termination of Contracts and Disciplinary Actions

Not every termination of a contract is a dismissal. Only if termination takes place on disciplinary grounds, can the termination be regarded as a dismissal.

1. Termination of employment

There are three other ways in which a contract of employment comes to an end:

- Termination of the contract by either party on notice (see notice periods below).
- Termination of contracts by reason of death or insolvency of the employer or winding up of a company or dissolution.
- Collective termination of contracts of employment (“retrenchment”), in which case the specific procedure laid down in Section 50 of the Labour Act needs to be followed by the employer.

2. Notice periods

The termination of an employment contract can only be undertaken if either party gives sufficient notice. Both an employer who ends the contract of an employee and an employee who wants to quit are required to give each other notice.

The notice periods are as follows:

- During the **first four weeks** of uninterrupted employment – **one working day’s notice** which can be given on any working day.
- For an employee who has worked uninterruptedly for **more than four weeks but less than 12 months** – **one week’s notice** given on or before the usual payday and running from the day after payday.
- For an employee who has worked uninterruptedly for **more than 12 months** – **one month’s notice** given on or before the first or the fifteenth of the month and running from the first or the fifteenth (as the case may be).

An employer and an employee may agree to a longer notice period than stated above, provided that it is of equal duration for both parties.

A notice of termination must be given in writing (only an illiterate employee may give notice orally), stating the reasons for termination, if the termination is of the employer, and the date on which the notice is given. An employer must not give notice of termination during any period of leave to which the employee is entitled or to run concurrently with any such period of leave.

Nothing stated above affects the right of a dismissed employee to dispute the lawfulness or fairness of the dismissal or to terminate the contract without notice for any reason recognised

by the law, or to make payment instead of the notice (see below). Nothing described above prevents an employer or an employee from waiving any right to notice conferred by this section.

3. Payment instead of notice

An employer has the right to end the contract of an employee without notice if the employer pays the employee the amount which would have been earned during the notice period at the usual rate of remuneration.

If an employee gives notice of termination of employment, the employer may waive the notice but in that case, must pay the employee the remuneration as stated above.

Instead of giving an employer notice an employee may pay the employer the remuneration the employer would have paid if the employee had worked during the period of notice.

4. Automatic termination of contracts of employment

Subject to a notice described below a contract of employment terminates automatically –

- one month after the death or sequestration of the employer, if the employer is an individual,
- on the date on which the employer is wound up, if the employer is a juristic person, or
- on the date on which the partnership is dissolved, if the employer is a partnership, or
- at the end of a longer period provided for in the contract of employment or a collective agreement or during which the employer continues to carry on business.

At any time during the period described above an executor, administrator, liquidator or a partner may give notice to terminate an employee’s contract of employment in accordance with the Labour Bill.

5. Unfair dismissal

An employer must not, whether given notice or not, dismiss an employee without valid and fair reasons and without following a fair procedure.

The basic principles of all disciplinary actions and dismissals must be **substantially fair**, i.e. based on a valid and fair reason, and **procedurally fair**, i.e. implemented through a fair procedure.

These requirements of substantive fairness relate only to termination of employment by an employer. An employee can resign for any reason.

The following instances do **NOT** constitute valid and fair grounds for dismissal or disciplinary action (i.e. they are substantively invalid or unfair):

- The employee has given information to any persons involved in the administration or enforcement of the Labour Act No 11 of 2007.
- The employee has refused or failed to do something which is forbidden under the Labour Act, even if this involves disobeying the employer’s order or request.

- The employee is or was a member of a trade union, or participated in trade union activities outside working hours (or, with the employer's consent, during working hours).
- The dismissal relates to the employee's sex, race, colour, ethnic origin, religion, creed, social status, economic status, political opinion or marital status.
- An act or omission by the employee which is authorised by the Labour Act No 11 of 2007, the terms and conditions of the employment contract, or the terms and conditions of a collective agreement negotiated with the employer.

In any proceedings concerning dismissal – if the employee establishes the existence of the dismissal – it is presumed unless the contrary is proven by the employer, that the dismissal is unfair.

Common Law

Prior to the introduction of the Labour Act, there was no legal concept of fairness and unfairness in labour matters in Namibia. However, guidelines to the rules which are likely to develop in Namibian law in the future can be drawn from Namibian common law, from similar cases in South Africa and from internationally accepted standards.

Dismissals must usually be based on relatively serious misconduct, but consideration must be given to all the surrounding factors, including the individual's employment record. Less serious misconduct (e.g. coming to work late) may in itself be trivial, but may be considered more serious if it is repeated after warnings have been given.

The following instances are usually regarded as **fair and valid grounds for dismissal** by the employer:

- Failure or refusal to work.
- Deliberate absenteeism (i.e. absenteeism which is not for illness or any other valid reason).
- Gross negligence.
- Serious incompetence.
- Refusal to carry out reasonable orders.
- Repeated unpunctuality.
- Incapacity of the employee (i.e. illness or disability).
- Dishonesty outside the sphere of work (if sufficient to cast serious doubts on the employee's trustworthiness).
- Disloyalty to the employer (e.g. leaking confidential information).
- Drunkenness on the job.
- Assault on a fellow employee.
- Intimidation of a fellow employee.
- Gross insubordination or insolence (i.e. actions which undermine the authority of a superior).
- Incompatibility (i.e. the employee does not fit in), especially where the employment relationship is a close one (e.g. an employee in a private home or in a small workplace).

A dismissal (or a disciplinary action) would probably be regarded as being substantively **unfair** if –

- the dismissed employee was unaware of the rule which was broken,
- the reason for dismissal or disciplinary action is not clear,
- the expectations of the employer were unreasonable or unlawful,
- there was insufficient proof of misconduct,

- there was no consideration of special circumstances, such as the previous record of the employee,
- the sanction imposed on the employee is inconsistent with sanctions imposed on other employees who committed identical or equivalent offences,
- the sanction is more severe than the offence warrants,
- the dismissal/disciplinary action constitutes victimisation, and
- the dismissal/disciplinary action contradicts a law or a contract of employment.

6. Summary dismissal

Contracts of employment may generally be terminated only upon notice, but notice is not required in cases of **gross misconduct** by either the employee or the employer subsequent to Section 28 (4) of the Labour Act No 11 of 2007.

7. Dismissal arising from collective termination or redundancy

If the reason for an intended dismissal is the **reduction of the workforce** rising from a reorganisation or transfer of business or the discontinuance or reduction of the business for economic or technological reasons, an employer must, **at least four weeks before** the intended dismissals are to take place, **inform the Labour Commissioner and any trade unions** which the employer has recognised as the exclusive bargaining agents in respect of the employees, of the intended dismissals, the reasons for the reduction of the workforce, the number and categories of employees affected and the date of the dismissals.

If there is no recognised trade union in respect of the employees, the employer must give the information to the elected workplace representatives and the employees at least four weeks before the intended dismissals.

The employer must disclose all relevant information (if it is not legally privileged, prohibited by law and order to disclose it or confidential, i.e. might cause harm to the employer if disclosed) to the trade unions or workplace representatives to engage effectively in the negotiations over the intended dismissals.

The employer must negotiate in good faith with the trade union or workplace union representatives on alternatives to dismissals, the criteria for selecting the employees for dismissal, how to minimise the dismissals, the conditions on which the dismissals are to take place and how to avert the adverse effects of dismissals and select the employees according to selection criteria that are fair and objective.

An employer may inform the trade union and workplace representative of the intended dismissals in less than four weeks if it is not practicable to do so within the period of four weeks.

If, after the negotiations, the parties do not reach an agreement, either party may, within one week after the periods stated above, refer the matter to the Labour Commissioner, who must appoint a conciliator to assist the parties to resolve their dispute.

After appointment, the conciliator must as soon as reasonably possible, in an attempt to resolve the dispute, convene a meeting of the parties and may convene additional meetings as may be necessary up to a maximum period of four weeks as from the date that the dispute was referred to the Labour Commissioner.

If there is a **disguised transfer or continuance** of an employer's operation which employs or employed employees who are to be dismissed or were dismissed as described above, the employees or their collective bargaining agent have the right to apply to the Labour Court for appropriate relief including an order, directing the restoration of the operation, directing the reinstatement of the employees, or awarding lost and future earnings.

Disguised transfer or continuance includes any practice or situation whereby the employer who runs or operates any business purports to have gone out of business or to have discontinued all or part of its business operations, when in fact those business operations are continued under another name or form or carried out at another location, without the employer disclosing the full facts to the affected employees or their collective bargaining agent.

An employer who contravenes or fails to comply with the above described procedures commits an offence and is liable to a **fine** and/or **imprisonment**.

8. Disciplinary code and procedures for farm employees

The following disciplinary procedure ensures the fairness of the disciplinary action.

8.1 Disciplinary code

Every business must have rules to maintain the discipline and order in the workplace. These rules are called the disciplinary code (see concept in Appendix E, to be adjusted by every employer to suit his own business situation). A disciplinary code is a list of transgressions and disciplinary actions to be carried out accordingly. The purpose of these guidelines is to ensure that all actions taken against employees are conducted in a consistent and fair manner and that the procedures are transparent. The disciplinary code should be explained to the employee before he signs the contract of employment and the employee must confirm to a witness that he/she understands the contents of the code. A written list of transgressions and actions taken should be issued to the employee together with the contract of employment before he starts working.

A disciplinary code provides employees with a guideline to the conduct that is expected of them within the workplace as well as the actions that will be taken in the case of any misconduct on their side. An employer develops the disciplinary code within a fair and legal framework and the duties of the respective parties with reference to this code are as follows:

Employers

- Apply the code fairly and consistently to all employees.
- Ensure that all employees are aware what standards and acceptable behaviour are expected of them within the workplace.
- Treat all employees with respect and dignity.

Employees

- Comply with the disciplinary code and procedures.
- Treat other persons and their property with respect.
- Be familiar with the requirements regarding the expected standards in the workplace.

It is not possible to include every type of conduct in a disciplinary code and it should therefore not prevent an employer from taking disciplinary measures in such a case, following the fair and substantial procedure.

Disciplinary procedures are not used to address poor work performance. Counselling should be done initially where an employee's work performance is not up to standard.

(See APPENDIX E – Draft disciplinary code)

8.2 Disciplinary procedure

Employees who commit serious transgressions and/or repeatedly commit less serious transgressions are exposed to the risk of being dismissed (after the correct disciplinary procedures).

A fair dismissal should follow the following steps:

- a) **Verbal warning** – less serious transgressions receive a verbal warning. The immediate supervisor of the transgressor warns him/her that a repeat of this offence could lead to a more serious disciplinary action. A verbal warning must be recorded by way of an informal letter that is filed in the employee's personal file – not to be confused with a written warning.
- b) **Written warning** – disciplinary hearing: A written warning is issued when a serious transgression took place or if the action taken in step one did not bring the desired results. The employer should conduct an investigation before issuing a written warning to the employee. If an employee is found guilty at a hearing he/she should be notified in writing of the nature of the offence and should also be warned that a repeat of the same offence could lead to a more serious disciplinary action.
- c) **Final written warning** – disciplinary hearing: In the case of a serious transgression or if the actions taken before did not have the desired results a final written warning is issued to the employee. Before issuing this final written warning a formal hearing should be held to determine whether the employee is in fact guilty.
- d) **Dismissal** – if a serious offence occurred or if an offence reoccurs after a final written warning was issued, it could lead to a dismissal. No dismissal can take place without a formal hearing. If the formal hearing was held and if the accused was found guilty, the following circumstances should be taken into consideration before dismissal:
 - Is the dismissal substantial and fair?
 - Was subsistent action taken in the past with the same offence?
 - The service period and record of the accused.
 - Are there any other extenuating or aggravating circumstances?

The employee should be notified in writing of the reasons for his/her dismissal should it be the decision.

8.3 The disciplinary hearing

The Labour Law is binding on all employers and employees regardless the size of their business. It can be a large company or a farm with one or two employees.

The complaint against the accused must be stated clearly. The accused must be notified of the hearing **48 hours in advance** and must be informed of his/her rights.

These **rights** are:

- To be represented by any other employee of his/her choice.
- To defend his/her case and to plead for any extenuating circumstances.
- To call on witnesses to strengthen his/her case.
- To cross-examine any other witnesses.
- To appeal to have a translator present.

All facts and witnesses must be considered and heard during the hearing.

Participants of the hearing:

- The employee that is charged – defendant.
- The employee’s representative (if applicable).
- A neutral third party that can act as chairman (e.g. neighbour, farm manager, etc.).
- The employer’s representative (if applicable).
- Witnesses of both parties.
- A person that takes minutes.
- A translator (if applicable).

In case the employee does not show for the meeting, the employer can decide to reschedule the meeting or go ahead with the meeting depending on the circumstances.

Procedure during a hearing:

- a) The chairman must state the charge to the defendant and ask whether he/she pleads guilty or not.
- b) If the defendant pleads guilty, the chairman will listen to any mitigating or aggravating circumstances and thereafter decide on the correct disciplinary action.
- c) If the defendant pleads not guilty, then witnesses and evidence must be presented:
The employer (or his representative) will state his case and try to prove beyond a doubt that the employee is guilty.
The employee (or his representative) will then be given the opportunity to question the employer and his witnesses.
The employee is then given the opportunity to state his case.
The employee’s witnesses give their testimony.
The employer questions the employee and his/her witnesses.
The chairman makes a decision whether the employee is guilty or not.
- d) If the chairman decides that the employee is not guilty, it is the end of the case.
- e) If the chairman decides that the employee is guilty, he will listen to aggravating and mitigating circumstances from both parties and thereafter decide which disciplinary action to take.
- f) The chairman can announce his decision that same day or not later than the next day. The decision should be in writing and must include reasons for the decision.
- g) The employee must be aware of his right to an appeal if he/she has valid reasons.

The hearing must be recorded either through minutes or audio equipment. The chairman has to be neutral and could not have been involved in the case beforehand or have had any access to the employee’s file before the hearing.

As a result the accused should be found guilty or not guilty as charged. If the accused is found guilty, he/she should receive a written final warning that clearly warns the employee that a repeat of this transgression can lead to a dismissal.

(See APPENDIX F - Draft notice to appear at a hearing)

8.4 Appeal

If an employee feels that the hearing was not concluded in a fair manner or that new evidence has come up, he/she may note an appeal about the decision of the chairman.

8.5 Criminal proceedings regarding the same misconduct

Even if criminal charges have been laid against an employee for conduct which may warrant dismissal (e.g. theft), the employer should still hold a separate disciplinary enquiry. The standard of proof for dismissal is not the same as for a criminal conviction, and the two proceedings do not have to reach the same outcome.

9. Payments upon termination

On termination of employment, an employer must pay all the remuneration due to the employee for –

- work done before the termination,
- any paid time that the employee is entitled to for work on Sundays and public holidays,
- any period of annual leave due for any completed annual leave cycle (see above: annual leave),
- any annual leave pay to which the employee is entitled for any incomplete annual leave cycle (see annual leave),
- any severance pay the employee is entitled to (if applicable),
- any notice pay to which the employee is entitled, and
- any transport allowance to which the employee is entitled.

An employee is not entitled to the accrued annual leave pay if the employee – without good cause – fails to give notice of termination and to work the full period of notice or to pay the employer the remuneration instead of working for the period of notice.

If a contract of employment is terminated, the remuneration owing must be paid on or before the first payday after the termination.

Severance pay

There are three basic circumstances in which an employee qualifies for severance pay IF the employee has already completed at least 12 months’ uninterrupted service:

- The employee is DISMISSED (**retrenchment/incapacity**).
- The employee RETIRES/RESIGNS on reaching the age of 65.
- The employee DIES (in which case the severance pay goes to the spouse, the children or the estate of the deceased).

The requirements to receive severance pay are not fulfilled if –

- there was a fair dismissal based on the employee’s misconduct or “incapability”,
- the employee unreasonably refuses reinstatement on comparable terms after the dismissal,
- dismissal results from the death of the employer, and the employee is employed on comparable terms by the employer’s heir or successor in title within one month of the date of death, or where the employee unreasonably refuses such an offer of employment,
- dismissal results from the dissolution of a partnership, and the employee is employed on comparable terms by one or more of the former partners within one month of the date of dissolution, or where the employee unreasonably refuses such an offer of employment.

Severance pay equals one week's remuneration for every 12 months' uninterrupted employment, calculated at the rate of pay immediately prior to dismissal.

If the contract of employment is terminated as a result of the **death of the employee** and in the absence of a will, the employer must pay the severance pay to the employee's surviving spouse or, if there is no spouse, to the employee's children or, if there are no children, to the employee's estate.

The payment of severance pay does not affect an employee's right to any other amount that the employer is obliged to pay the employee.

The following rules govern what qualifies as "uninterrupted employment" for the purposes of calculating eligibility for severance pay and the amount of service for which severance pay is due:

- The period of service is counted from the date on which the employee began work.
- A temporary interruption in employment because of the death of the employer or the transfer of the business (where the employment is re-employed by the heir or successor within one month) will not be considered as interruption of continuous employment for the purpose of severance pay.
- Employees who work for the same employer on a seasonal basis year after year will be considered to be in continuous employment for the purpose of qualifying for severance pay, but only the time which is actually worked will be counted for the purpose of calculating the amount of severance pay.

The following instances do not count as "interruptions":

- Leaves of absence granted under the terms of the Labour Act or with the employer's permission (including annual leave, sick leave and maternity leave).
- Suspensions pending disciplinary action.
- A situation where an employee was dismissed and then reinstated in terms of the Act or a collective agreement.
- Strikes or lockouts (whether or not the employee in question actually participated or was affected).

Any period of time when the employee was absent from work for any of the above reasons is counted as time worked for the purpose of calculating the employee's period of service, with one exception: If there was a strike or a lock-out which actually affected the particular employee in question, that employee's service is not considered to have been interrupted – but the time away from work because of the strike or lock-out is not counted in the calculation of the period of service.

However, it should be noted that all claims in terms of the Act **expire 12 months** after they have arisen, or after the person in question could reasonably have become aware of them.

10. Transportation costs upon dismissal

If an employee who was recruited at a place other than the place of employment is dismissed, or quits because the employer has failed to comply with the Labour Act or the contract of employment, the employer must provide reasonable transportation or an amount to cover the costs of reasonable transportation back to the place of recruitment.

This requirement does not apply to –

- persons employed without interruption for more than 12 months,
- employees who unreasonably refuse to be reinstated on comparable terms after a dismissal.

11. Certificates of employment

If an employee quits or is dismissed, the employer must furnish a certificate of employment which contains the following, and only the following, particulars:

- Name and address of employer.
- Nature of business.
- Name of employee.
- Employee's job description.
- Dates when employment began and ended.
- Remuneration at date of termination of employment.
- Reason for termination of employment, but only if the employee requests this.

The employer is free to provide a separate testimonial or other certificate of character.

(See APPENDIX G – Draft service certificate)

12. Grievance procedures

When an employee feels seriously dissatisfied with aspects relating to his/her workplace, he/she formally communicates to a superior (foreman, manager or employer), that he/she is unhappy.

Providing employees with a formal channel through which they can communicate with superiors creates an open climate that encourages trust and security. Some issues are serious and, if not dealt with properly, could escalate and promote unrest. Managers can identify and remove genuine causes of dissatisfaction or conflict and thereby minimise similar future grievances. Channels for communication promote a positive worker morale.

The absence of grievance procedures –

- reduces production,
- increases workplace accidents and injuries,
- increases theft and other forms of misconduct, and
- could lead to legal actions by employees.

An employee lodges a grievance with the lowest level of management. In the farming environment "management" could be the foreman, supervisor, manager or employer. If the lowest level of management cannot resolve the matter to the satisfaction of the employee the latter must raise the grievance to the next level of management within two days, and so forth.

An employee is at all times entitled to have a representative within the business to handle his/her grievance. The employee must lodge a complaint/grievance on the appropriate documents provided. If he/she cannot write, another person can draft the complaint on the aforesaid document.

When dealing with the grievance, the employer should –

- listen to the complaint in detail – get all the facts and take them seriously,
- be open-minded,
- involve all parties, and
- not be prejudicial.

13. Prevention and resolution of disputes

The Labour Act of 2007 makes provision for the prevention and resolution of disputes through a process of conciliation and arbitration. Labour cases will no longer be dealt with by a District Labour Court.

Conciliation and arbitration is a complicated matter and employers should make an effort to study this further and even attend courses to be fully informed. The main points on conciliation and arbitration are highlighted below:

13.1 Important definitions

A **dispute** means any discord regarding labour matters between an employer or employers' organisation on the one hand and an employee or union on the other hand.

There are two types of disputes, namely

- disputes regarding interests, and
- disputes regarding rights.

A **dispute regarding interests** is connected to matters such as the improvement or change of working conditions, like increases, etc. These matters are not prescribed by the Labour Act.

A **dispute regarding rights** deals with the compliance, interpretation and implementation of contracts, basic conditions of employment and other requirements within the Labour Act.

Conciliation is the process whereby different parties to a dispute involve an independent third party to –

- identify the matter of difference,
- consider the various options and alternatives, and
- endeavour to facilitate an agreement between the parties.

The conciliator plays an advisory role with regard to the contents of the dispute as well as the solution thereof. The conciliator does not make any decisions, but leaves the decisions to the different parties. The conciliation process is informal.

Arbitration is a formal process and is regulated through legislation. Two or more parties to a dispute use an independent third party to rule a decision in order to resolve a dispute.

The arbitrator does not advise the parties, but makes a decision that is binding on all parties involved. Arbitration, with the guidance of a qualified arbitrator, is a welcome alternative to the District Labour Court.

13.2 In what instances do conciliation and/or arbitration take place?

Conciliation is used when parties have a dispute regarding **interests**.

When a **dispute regarding interests** occurs, a process of **conciliation** will take place initially and if the parties cannot come to an agreement by themselves, a process of **arbitration** will follow.

Arbitration is used when there is a dispute regarding rights, such as an unfair dismissal, non-compliance with a contract of employment or non-compliance with a basic condition of employment.

13.3 How are conciliation and arbitration arranged?

For the purpose of this chapter, the focus will be on disputes regarding rights, because this type of dispute is most likely to occur in the agricultural sector between an employer and an employee.

If an employee and employer have a disagreement over a contract of employment, the dispute must be reported in writing to the office of the Labour Commissioner or the Labour Offices.

VERY IMPORTANT

A dispute regarding an unfair dismissal must be reported **within six months** from the date of dismissal, but any other dispute can be reported within one year after the incident.

The Labour Commissioner will provide the parties with a list of qualified arbitrators and the parties will have to agree on a particular person to act as arbitrator in the case.

The Labour Commissioner will, thereafter –

- appoint the arbitrator,
- determine the time, date and venue where the process will take place, and
- inform the parties on the above.

An arbitrator will usually try to resolve a case through conciliation first, and if it does not succeed, the process of arbitration will proceed.

If the State appoints an arbitrator, there are usually no costs involved for the parties, unless the arbitrator finds one of the parties (or their representative) to be frivolous and vexed.

In some instances, a party may appeal to the Labour Court against a decision from an arbitrator who was appointed by the State. If parties agree to a private arbitrator, however, the decision is final and no appeal is allowed.

REFERENCES

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- LAC and SSD. 1996. *The Living and Working Conditions of Domestic Workers in Namibia*. Windhoek: Gender Research Project (LAC) Social Science Division (UNAM).
- NID. 1998. *The Labour Act in Practice: Guideline for Employers and Employees*. Windhoek: Namibian Institute for Democracy (NID).
- SSC. *Employees' Compensation Act, 1941* (Act No. 30 of 1941). Windhoek: Social Security Commission (SSC).
- Tweya, T. 2003. *Extending social security coverage: An overview of social security in Namibia*, Vol. 2007: International Social Security Association.

Labour Act, No. 11 of 2007

Additional documents that are strongly recommended

Labour Act, Act 11 of 2007
Code of good practice – Conciliation and Arbitration

Contacts and addresses

Legal Assistance Centre, 4 Koerner Street, PO Box 604, Windhoek, Tel. 061 223356
Namibian Agricultural Union, 114 Robert Mugabe Avenue, Windhoek, Tel. 061 237838
Social Security Commission, Andrew Kloppers Street, Khomasdal, Private Bag 13223, Windhoek, Tel. 061 280 7076, Fax. 061 280 7121

Appendix A

CONTRACT OF EMPLOYMENT FOR A PERMANENT FARM EMPLOYEE

It is hereby agreed that a contract shall be entered into between

Name: _____ (hereafter called the "Employer")

Address: _____

and

Name: _____ (hereafter called the "Employee")

Identity number: _____ Social Security number: _____

THE PARTIES HAVE AGREED TO THE FOLLOWING TERMS AND CONDITIONS:

1. JOB TITLE

The Employee shall be employed as: _____

2. COMMENCEMENT DATE

The Employee shall commence his/her employment on _____ (date)

3. DUTIES

The Employee will perform all duties as agreed upon with the Employer.

The Employee confirms that he/she is capable of carrying out these said duties and that he/she shall also carry out any other duties which the Employer may require from time to time and that are within the capability and knowledge of the Employee and which relate to agricultural/farm/domestic duties.

(Attach job description as an annex – not compulsory)

4. TRIAL PERIOD

A trial period of _____ weeks is applicable.

5. NOTICE PERIOD

Each party has the right to end this agreement as determined by the Labour Law. During the first four weeks of uninterrupted service, at least one day notice. Between four weeks and 12 months of uninterrupted service, at least one week notice and after 12 months or longer of uninterrupted service, at least one month notice.

6. WORKING HOURS

The following NORMAL working hours shall apply and may not exceed 45 hours per week (to a maximum of nine hours per day):

| Summer | Winter |
|-------------------------------------|-------------------------------------|
| Monday to Friday | Monday to Friday |
| Morning from _____ to _____ | Morning from _____ to _____ |
| Afternoon from _____ to _____ | Afternoon from _____ to _____ |
| Saturday from _____ to _____ | Saturday from _____ to _____ |

The Employer may change the working hours from time to time to suit the needs of the business, provided that sufficient notice is given to the Employee.

7. OVERTIME

The Employee agrees to work overtime whenever required by the Employer, subject to payment as stipulated in the Labour Act.

8. SUNDAYS AND PUBLIC HOLIDAYS

The Employee agrees to work on Sundays and public holidays when requested by the Employer, subject to the payment as stipulated in the Labour Act.

9. REMUNERATION PACKAGE

9.1 The Employee’s basic cash wage shall be N\$ ____ (per hour/day/week/month) and shall be paid in cash on _____

9.2 The Employee shall, in addition to his/her basic cash wage, be entitled to the following:

Cash ration allowance of N\$ _____ (per hour/day/week/month)

AND/OR

Farm-produced foods to the value of N\$ _____ (per hour/day/week/month)

AND/OR

Keeping livestock and cultivating land to the value of N\$ _____ (Attach agreement to keep animals if applicable)

AND/OR

Other (if applicable): _____

10. RULES AND REGULATIONS

The Employee undertakes to obey the farm rules (as explained to him/her) and to take notice of the Disciplinary Code and Grievances Procedure (appendixes).

11. LEAVE

The employee is entitled to four continuous weeks of leave for every 12 months completed and uninterrupted service.

12. SICK LEAVE

The Employee is entitled to 36 working days paid sick leave during a 36-month cycle if working for six days per week.

The Employee is entitled to 30 working days paid sick leave during a 36-month cycle if working for five days per week.

During the first 12 months of employment the Employee is entitled to one day for every 26 days’ work.

The Employee undertakes to notify the employer of his/her absence from work as a result of sickness. If such notice cannot be done within a reasonable time, the Employee is required to supply the Employer with sufficient acceptable reasons why it could not be done. Should the Employee be absent as a result of sickness for more than two consecutive days or a day before or after a day off, a weekend, a public holiday or a payday, the Employee is required to supply the Employer with an official medical certificate signed by a medical doctor or a registered nurse on his/her return to work. Should this documentation not be available, the Employer is not required to pay the Employee for the absent days. Disciplinary actions may be considered against the Employee.

13. COMPASSIONATE LEAVE

The Employee is entitled to five working days compassionate leave within a 12-month period. This leave may only be taken in the case of serious illness or the death of the Employee’s immediate family.

The Employee is required to make a written application for compassionate leave on a form as supplied by the Employer. The application must be made either before the Employee takes leave, or, if not possible, immediately upon the Employee’s return to work. If the Employee cannot make the application before going on leave, the Employee must make reasonable efforts to notify the Employer of his/her absence for compassionate reasons and the intended duration thereof.

The application for leave must be accompanied by a death certificate of the deceased, in the case of death, or a medical certificate, in the case of serious illness, or an affidavit of the Employee testifying to the death or serious illness, or, in all cases, such other evidence of death or illness as may be acceptable to the Employer.

Should this documentation not be available, the Employer is not forced to pay the Employee for the absent days. Disciplinary action may be taken against the Employee.

14. MATERNITY LEAVE

The Employee is entitled to 12 weeks maternity leave if already employed by the Employer for six months.

The Employee is entitled to maternity leave four weeks before her expected date of confinement, and may take another eight weeks leave after the date of her confinement.

The Employee must provide the Employer with a certificate signed by a medical practitioner confirming

A – the expected date of confinement

B – the actual date of confinement on her return from leave

15. HOUSING

Housing is available for the Employee and listed persons for the time that the Employee is in the service of the Employer.

Subject to the farm policy, the following persons may live in the allocated house:

- 1. _____ 2. _____
- 3. _____ 4. _____
- 5. _____ 6. _____

The Employer reserves the right to recover rent from the Employee for the said housing for the period that the Employee is in temporary service of the Employer (as agreed upon entrance of service). This rent is also applicable if the Employer terminates the service of the Employee and the latter occupies the housing. The Employer will reserve the right to recover the rent from the final settlement that is due to the Employee. The Employer reserves the right to recover the cost of electricity, etc. used by the Employee.

16. OTHER PROVISIONS

17. DECLARATION

The employee declares that –

- The contract of employment was read.
- The contract of employment was explained.
- The contents of the basic employment rules are understood.
- The contract of employment was accepted.

If this contract or any part thereof is contradictory to the Labour Law, the latter will be binding.

SIGNED ON THIS _____ DAY OF _____ 200 _____

SIGNATURE OF EMPLOYER

SIGNATURE OF EMPLOYEE

WITNESS

WITNESS

Appendix B

| REMITTANCE | | | |
|-----------------------------------------------------------|---------------------------------------------------|-------------------------|-----------|
| Name of employer: | | | |
| Name of employee: | | | |
| Remuneration period: | | from to | |
| <hr/> | | | |
| 1. Basic salary: | hours worked (.....) x hourly wage (N\$) | N\$ | |
| 2. Overtime: | hours (.....) x hourly wage (N\$) x 1,5 | N\$ | |
| 3. Nightshift: | hours (.....) x hourly wage (N\$) + 6 % | N\$ | |
| 4. Sunday/Public holiday: | hours (.....) x hourly wage (N\$) x 2 | N\$ | |
| 5. Bonus: | type..... | N\$ | |
| 6. Allowance: | type..... | N\$ | |
| | (e.g. clothing allowance) | N\$ | |
| | ration allowance | N\$ | |
| GROSS (A) | | | N\$ |
| MINUS | | | |
| 1. PAYE: | | N\$ | |
| 2. Pension fund: | | N\$ | |
| 3. Medical aid: | | N\$ | |
| 4. Insurance: | | N\$ | |
| 5. Social Security: | | N\$ | |
| 6. Shop: | | N\$ | |
| 7. Other debt: | (loan or rent) | N\$ | |
| Unpaid leave: | days @ N\$ | N\$ | |
| SUB-TOTAL (B) | | | N\$ |
| NETTO (A-B) | | | N\$ |
| PAYMENT IN KIND (e.g. ration, clothes) | | | |
| | Value | | Value |
| 1. | N\$ | 5. | N\$ |
| 2. | N\$ | 6. | N\$ |
| 3. | N\$ | 7. | N\$ |
| 4. | N\$ | 8. | N\$ |
| <hr/> | | | |
| Herewith I, the undersigned, receive the amount of | | | |
| N\$ Date: Signature: | | | |
| FOR OFFICE USE: | | | |
| LEAVE | | SICK LEAVE | |
| Balance brought forward | | Date of employment | |
| Credit leave for this period | | Balance brought forward | |
| Days taken this period | | Days taken this period | |
| Balance | | Balance | |
| Comments: | | | |

Appendix C

| LEAVE APPLICATION | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|------|----------------|
| SURNAME: _____ | | | |
| INITIALS: _____ | | | |
| Application for paid/unpaid leave as indicated below: | | | |
| Number of days credit | | | |
| PERIOD | | DAYS | Type of leave* |
| From | To | | |
| | | | |
| | | | |
| | | | |
| * Indicate holiday/sick/maternity/study leave. Attach medical certificate if absent due to illness for longer than two days or if sick leave was taken immediately before or after a weekend or a public holiday. | | | |
| Relief arrangements: _____ | | | |
| Address during leave: _____ | | | |
| Contact number: _____ | | | |
| DATE OF APPLICATION: _____ | | | |
| SIGNATURE OF EMPLOYEE: _____ | | | |
| LEAVE GRANTED _____ Employer's signature | LEAVE NOT GRANTED _____ Employer's signature | | |
| Comments: _____ | | | |
| | | | |
| | | | |
| | | | |

Appendix D

| AGREEMENT REGARDING THE KEEPING OF LIVESTOCK | |
|-----------------------------------------------------------------------------------------------------------------------|-------|
| AGREEMENT ENTERED INTO BY AND BETWEEN: | |
| EMPLOYER: | _____ |
| Identity number: | _____ |
| Postal address: | _____ |
| | _____ |
| | _____ |
| Physical address: | _____ |
| and | |
| EMPLOYEE: | _____ |
| Identity number: | _____ |
| Postal address: | _____ |
| | _____ |
| | _____ |
| Physical address: | _____ |
| RE: THE KEEPING OF LIVESTOCK ON THE FARM | |
| The employer herewith grants permission to the employee to keep the following livestock on the farm: | |
| _____ | |
| _____ | |
| _____ | |
| THE CONDITIONS FOR KEEPING LIVESTOCK ARE AS FOLLOWS: | |
| 1. The employer has the right to decide where the livestock may be kept on the farm, i.e. in which camp(s). | |
| 2. The livestock have free access to grazing, lick and water, which shall be calculated as a benefit to the employee. | |

Appendix E

3. The livestock shall have the same inoculations against various diseases as the livestock of the employer. The necessary vaccines shall be provided by the employer.

4. The employer has the right to adjust the number of animals on the farm from time to time, depending on grazing conditions.

5. If the number of animals has to be reduced, the employer must notify the employee 30 days in advance in order to give him/her time to make the necessary arrangements.

6. In the case of the employee leaving the farm for whatever reason, he must be given 30 days to remove his/her animals.

7. When livestock is sold the income generated thereof is exclusively to the advantage of the employee and his/her household, however, the employer is to be notified of such sale(s).

8. All animals must be marked clearly.

9. The employee is obliged to assist with the maintenance and supervision of such livestock during the week, as well as during weekends and holidays. The necessary planning and rotation of duty must be arranged with the employer.

10. If any animal(s) damage the property (e.g. cultivated land) of the employer, the employee can be asked to remove such animal(s) from the farm within three (3) days thereof.

11. No friends, family or any acquaintance of the employee may keep animals on the farm.

12. If the employee is in breach of this agreement in any way, he/she forfeits any right to keep livestock on the farm and shall have seven (7) days thereof to remove these animals.

13. No animal abuse shall be tolerated. If equines have wounds on the back or any other injuries whatsoever and are ridden or used in any other way, it shall be regarded as an offence.

14. The employer shall provide no medicine or vaccines for equines. The employee is responsible to provide this him/herself.

15. _____

16. _____

17. _____

EMPLOYER _____ EMPLOYEE _____

DATE _____

CONCEPT (example) DISCIPLINARY CODE AND PROCEDURES FOR FARM EMPLOYEES

DETAIL

1. Name of farm: _____

2. Area: _____

3. Owner(s) of the farm: _____

4. Date coming into force: _____

5. Signature(s) of owner(s) or authorised representative(s):

1. CONCEPT DISCIPLINARY CODE

The disciplinary code is a list of transgressions and disciplinary actions to be taken accordingly. It is used in an effort to change the behaviour of an employee if he/she, regardless of numerous instructions and training, still acts in a manner that does not promote the interests of the business.

| | Nature of transgression | First transgression | Second transgression | Third transgression |
|----|------------------------------------------------------------------|---------------------|----------------------|---------------------|
| 1 | Assault or attempted assault | Dismissal | | |
| 2 | Unauthorised hunting and setting of traps | Dismissal | | |
| 3 | Illegal dealings in or in possession of alcohol and narcotics | Dismissal | | |
| 4 | Participation in illegal strikes | Dismissal | | |
| 5 | Arson, instigating and threats to commit arson | Dismissal | | |
| 6 | Instigating illegal action | Dismissal | | |
| 7 | Gross neglect or improper performance of duties | Dismissal | | |
| 8 | Failing to carry out reasonable and safe instructions | Dismissal | | |
| 9 | Absent from work for five days or more | Dismissal | | |
| 10 | Causing bush fires due to negligence | Dismissal | | |
| 11 | Theft, fraud, forging and any other dishonest acts | Dismissal | | |
| 12 | Unauthorised possession of dangerous weapons | Dismissal | | |
| 13 | Unauthorised possession or removal of company property | Dismissal | | |
| 14 | Wilfully damaging property | Dismissal | | |
| 15 | Gross insubordination or insolence | Final warning | Dismissal | |
| 16 | Failing to carry out safety instructions | Final warning | Dismissal | |
| 17 | Under the influence of alcohol or narcotics during working hours | Final warning | Dismissal | |
| 18 | Failing to report an accident | Final warning | Dismissal | |
| 19 | Refusal to receive necessary training | Final warning | Dismissal | |
| 20 | Any form of victimisation/discrimination | Final warning | Dismissal | |
| 21 | Sleeping during working hours | Final warning | Dismissal | |
| 22 | Failing to use the toilets | Final warning | Dismissal | |

| | | | | |
|----|-------------------------------------------------------------------------------------|---------------------------|---------------|-------------------------|
| 23 | Selling rations | Final warning | Dismissal | |
| 24 | Absent from work for less than five days | Warning | Final warning | Dismissal |
| 25 | Housing unauthorised persons | Warning | Final warning | Dismissal |
| 26 | Cruelty to animals | Warning | Final warning | Dismissal |
| 27 | Wasting water | Verbal warning | Warning | Final warning/dismissal |
| 28 | Unauthorised dumping | Warning | Warning | Final warning/dismissal |
| 29 | Wasting of any material (wire, steel, cement, etc.) | Warning | Warning | Final warning/dismissal |
| 30 | Under-average work performance, loafing and coming late for work on a regular basis | Corrective counselling | Warning | Final warning/dismissal |
| 31 | Losing tools due to negligence | Replace tools at own cost | Warning | Final warning/dismissal |

The transgressions listed above are the most common ones. A worker could therefore also be charged with other transgressions that are not mentioned here.

Warnings must be issued in writing unless otherwise stated.

2. DISCIPLINARY PROCEDURE

The purpose of these guidelines is to ensure that all actions taken against employees are conducted in a consistent and fair manner.

The employer is responsible to maintain discipline and should attempt to implement corrective actions when necessary.

Employees who commit serious transgressions and/or repeatedly commit less serious transgressions are exposed to the risk of being dismissed (after the correct disciplinary procedures).

Steps of the disciplinary procedure

- **Verbal warning (Step 1)**

Less serious transgressions receive a verbal warning. The immediate supervisor of the transgressor warns him/her that a repeat of this offence could lead to a more serious disciplinary action.

- **Written warning – Disciplinary hearing (Step 2)**

A written warning is issued when a serious transgression took place or if the action taken in Step 1 did not bring about the desired results.

The employer should conduct an investigation before issuing a written warning to the employee.

If an employee is found guilty at a hearing he/she should be notified in writing of the nature of the offence and should also be warned that a repeat of that same offence could lead to more serious disciplinary action.

- **Final written warning – Disciplinary hearing (Step 3)**

In the case of a serious transgression or if the actions taken in Step 2 did not have the desired results a final written warning is issued to the employee.

Before this final written warning is issued a formal hearing should be held to determine whether the employee is, in fact, guilty.

3. THE DISCIPLINARY HEARING

The complaint against the accused must be stated clearly.

The accused must be notified of the hearing 48 hours in advance and must be informed of his/her rights.

The rights of the accused:

- The right to be represented by any other employee of his/her choice.
- The right to defend his/her case and to plead for any extenuating circumstances.
- The right to call on witnesses to strengthen his/her case.
- The right to cross-examine any other witnesses.
- The right to appeal.
- The right to have a translator present to present his/her case in the mother tongue.

All facts and witnesses must be considered and heard during the hearing.

As a result the accused should be found guilty or not guilty as charged.

If the accused is found guilty, he/she should receive a written final warning that clearly warns the employee that a repeat of this transgression can lead to a dismissal.

4. DISMISSAL

If a serious offence occurred or when an offence reoccurs after a final written warning was issued it could lead to a dismissal.

No dismissal can take place without a formal hearing.

The formal hearing should be held as described in *Step 3* and if the accused is found guilty, the following circumstances should be taken into consideration before dismissal:

- Was the dismissal substantial and fair (was the employee aware of the rule that he/she broke)?
- Was subsistent action taken in the past with the same offence?
- The service period and record of the accused.
- Were there any extenuating or aggravating circumstances?

The employee should be notified in writing of the reasons for his/her dismissal should this be the decision.

5. APPEAL

Everybody has the right to appeal if he/she is not satisfied with the outcome of a hearing.

Appendix F

NOTICE TO APPEAR AT A HEARING

Hereby notice to who is employed by
..... to appear at a formal disciplinary hearing.

Place:

Date:

Time:

The hearing shall investigate the following complaint(s) against you:
[Name the complaint(s) and date(s) of the complaint(s)]

.....
.....
.....

During the hearing you will have the following rights:

- To give your side of the story.
- To be represented by a fellow worker of your choice (if necessary).
- To call witnesses.
- To cross-question the prosecutor's witnesses.
- To appeal against the outcome of the hearing within 24 hours if you have valid reasons for an appeal.
- You may use a translator if necessary. This must be arranged with the chairman of the hearing in advance.

IMPORTANT NOTICE

- If you do not attend the hearing, it may proceed in your absence – then you will not be able to appeal against the findings of the chairman.
- It is your duty to arrange for a fellow worker to represent you, if necessary.
- It is your duty to prepare for the abovementioned hearing.

NOTICE GIVEN BY: NOTICE RECEIVED BY:

DATE AND TIME: DATE AND TIME:

SIGNATURE: SIGNATURE:

Appendix G

SERVICE CERTIFICATE FOR FARM EMPLOYEES

1. Details of employer

Name of farm: _____

Full name of employer: _____

Address of employer: _____

2. Details of employee

I hereby certify that _____

was employed by the abovementioned employer in the capacity and period mentioned herein:

Date that employment started: _____

Position filled/Job description: _____

Wage/Salary at time of termination of employment: N\$ _____

Date of termination of employment: _____

SIGNATURE OF EMPLOYER

DATE

