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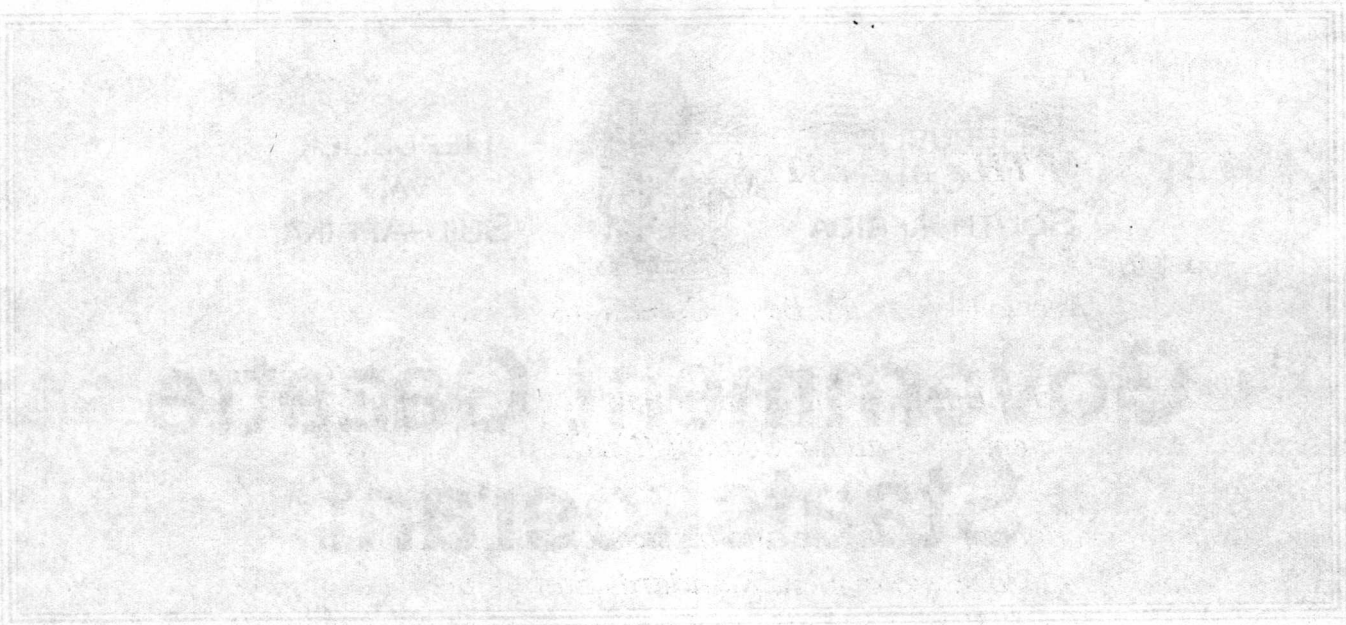
GENERAL NOTICE

DEPARTMENT OF LABOUR
NOTICE 718 OF 1997

BASIC CONDITIONS OF EMPLOYMENT BILL, 1997

Draft Bill published for public comment and submission to the National Economic, Development and Labour Council (NEDLAC) for negotiations

DEPARTMENT OF LABOUR
APRIL 1997



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GENERAL NOTICE

DEPARTMENT OF LABOUR

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DEPARTMENT OF LABOUR

APRIL 1997

A NOTE FROM THE MINISTER

The long wait is over! Here is the Basic Conditions of Employment Bill, 1997.

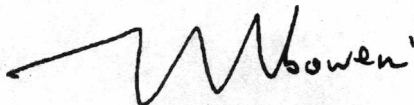
We are publishing this Bill for your comment as well as negotiations at the National Economic Development and Labour Council (NEDLAC).

The Bill is the product of the debate and discussions triggered by the Green Paper on Policy Proposals for an Employment Standards Statute published in February 1996. The discussions at NEDLAC have also had a major influence on this Bill for which we thank organised labour and business.

We urge you to comment on this Bill to further contribute to our positions as we finalise it before submission to Parliament later in the year. We would appreciate it if your comments could reach us by the end of May 1997.

Let this Bill be discussed and debated in every factory and mine, every farm and community hall, at the JSE and the Church, Mosque and Synagogue. In short let us enter into consultations.

Thank you very much



T T MBOWENI, MP
MINISTER OF LABOUR

A NOTE FROM THE MINISTER

INVITATION FOR PUBLIC COMMENTS

The public are invited to respond to the draft Basic Conditions of Employment Bill.

Written responses should reach the Department of Labour at the address below not later than 30 May 1997.

Written comments should be sent to:

Mr J Modibedi

Directorate: Minimum Standards

Department of Labour

Private Bag X117

PRETORIA, 0001

Fax: (012)309-4709 or (012)320-0799

E-mail: lomb@labourhq.pwv.gov.za

For further enquiries please phone: Joseph Modibedi at (012)309-4776 or Marinda Lombaard at (012)309-4119.

T. M. BOWEN MP
MINISTER OF LABOUR

BASIC CONDITIONS OF EMPLOYMENT BILL

SUMMARY OF PROVISIONS

Chapter 1 - Application of the Bill

1. Purpose of the Act (s.1)

The purpose of this Bill is to advance economic development and social justice by establishing and enforcing basic conditions of employment.

2. Application (s.2)

The Bill applies to all employees and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid charitable workers.

3. Inclusion of provisions in contracts of employment (s.4)

The basic conditions of employment established by the Bill form part of every contract of employment unless they have been replaced, varied or excluded in accordance with the Bill or unless the employee has contracted for more favourable terms of employment.

4. Invalidity of agreements (s.5)

A provision in an agreement which infringes a basic condition of employment established in terms of this Bill is invalid, unless the variation is permitted by the Bill.

Chapter 2 - Working Time

5. Arrangement of Working Time (s.6)

The working time of employees must be arranged so as not to endanger their health and safety and with due regard to their family responsibilities. The Minister of Labour will issue a Code of Good Practice on the Arrangement of Working Time to offer guidance with the implementation of these obligations.

6. Ordinary hours of work (s.8)

6.1 The maximum ordinary weekly hours for all employees are 45.

- 6.2 The maximum daily hours that an employee may work are nine for employees who work on five days or less a week, and eight for employees who work six days a week.

7. Overtime (s.9)

- 7.1 Overtime may only be worked by agreement. An employee may not work more than three hours overtime in a day or ten hours overtime in a week.

- 7.2 Overtime work must be compensated by paying the employee at 1,5 times the employee's normal wage or, if agreed, by granting the employee a period of paid time off equivalent to the value of the overtime pay.

8. Extended ordinary daily hours of work (s.10)

An agreement may permit an employee to work for up to 12 hours in a day without receiving overtime pay. The weekly limits continue to apply and the employee may not work on more than 5 days in a week.

9. Averaging of hours of work (s.11)

A collective agreement may permit the hours of work of an employee to be averaged over a period of up to four months. The average time worked over the agreed period must not exceed 45 ordinary hours and five hours overtime per week.

10. Determination of hours of work by Minister (s.12)

The Minister of Labour, on grounds of health and safety, may make regulations setting shorter maximum hours of work for any category of employees.

11. Meal intervals (s.13)

- 11.1 An employee must have a meal interval of at least 60 minutes after five hours. This may be reduced to 30 minutes by agreement.

- 11.2 An employee required to be available for work or to remain on the employer's premises during the meal interval must be paid.

12. Daily and weekly rest period (s.14)

- 12.1 An employee must have a daily rest period of at least 12 hours between ending work and starting work the following day.
- 12.2 Every employee must have a rest period of at least 36 consecutive hours each week. The rest period must include a Sunday, unless otherwise agreed. An employee may agree to have a longer rest period (60 hours) every two weeks.

13. Pay for work on Sundays (s.15)

An employee who works on a Sunday must receive double pay. However, an employee who normally works on a Sunday must be paid at 1,5 times the employee's normal wage. By agreement, an employer may compensate an employee for Sunday work by granting paid time off.

14. Night work (s.16)

- 14.1 The Bill contains protections for employees who work at night. Night work is defined as work performed between 18h00 and 06h00. Employees must be compensated by the payment of an allowance or by a reduction of working hours. Transportation must be available for employees.
- 14.2 Employers must inform employees who regularly work after 23h00 of the health and safety hazards of night work and on request provide employees with a free medical assessment.

15. Public holidays (s.17)

All employees must be paid their normal wage for a public holiday that falls on a working day. An employee may not be required to work on a public holiday unless by agreement. Work on a public holiday must be remunerated at double rates.

16. Exclusions (s.18)

The limits on hours of work do not apply to senior managers and travelling sales personnel. The Minister of Labour may exclude or vary the application of the provisions in Chapter 3 to employees earning above a certain amount.

17. Emergency work (s.19)

The limits on ordinary and overtime working hours and the requirements for meal intervals and rest periods do not prevent the performance of emergency work.

CHAPTER 3 - Leave**18. Annual leave (s.20 and s.21)**

18.1 Employees are entitled to three weeks' fully paid leave after every 12 months continuous employment. This may also be calculated as one days' leave for every 17 days of employment.

18.2 An employer must not pay an employee instead of granting annual leave. However, an employee whose employment is terminated must be paid out any leave pay due that the employee has not taken.

19. Sick leave (s.22 - 25)

19.1 An employee is entitled to six weeks' paid sick leave for every 36 months of continuous employment. However, during the first six months of employment an employee is entitled to only one days' paid sick leave for every 26 days worked.

19.2 An employer may require a medical certificate from an employee who is regularly away from work for more than two days before paying the employee for sick leave.

19.3 An employee's daily pay for sick leave may be reduced by agreement, provided the number of days sick leave is increased. The pay may not be reduced below 75% of ordinary pay.

20. Maternity leave (s.26)

20.1 A pregnant employee is entitled to 4 months maternity leave. This leave may begin up to four weeks before the expected date of birth, unless otherwise agreed or if the employee is required to do so for health reasons.

20.2 An employer may not require an employee to return to work for six weeks after the birth of a child. During this period, an employee may

elect to return to work if a medical doctor or midwife certifies that she is fit to do so.

- 20.3 An employee who has a still-born child or a miscarriage in the third trimester of pregnancy may remain on maternity leave for six weeks or for longer if a doctor certifies it necessary for her health.

21. Protection of employees before and after the birth of a child (s.27)

During pregnancy and for six months after birth, an employer must offer suitable alternative employment to an employee who works at night or whose work may endanger her health or safety or her child's.

22. Family responsibility leave (s.28)

- 22.1 An employee is entitled to three days paid family responsibility leave. This only applies to employees who work on four or more days in a week.

- 22.2 The employee may take this leave in the event of the birth of the employee's child, if the employee's child is sick or if a member of the employee's immediate family dies.

- 22.3 An employer may require reasonable proof of the purpose for which this leave is taken before paying the employee.

23. Leave in excess of entitlement (s.29)

The provisions of Chapter 3 do not apply to leave granted by an employer in excess of the requirements of the Bill.

24. Exclusions (s.30)

The provisions of Chapter 3 do not apply to employees who work less than 4 hours a week.

Chapter 4 - Remuneration, Deductions and Notice of Termination

25. Payment of remuneration and deductions (s.31-33)

- 25.1 An employer must pay an employee according to arrangements made between them. Payment may take place daily, weekly, fortnightly or monthly and must take place at the workplace unless otherwise agreed

and during, or within 15 minutes of, the employee's working time.

- 25.2 An employer may only deduct money from an employee's pay if permitted or required to do so by law, collective agreement, court order or arbitration award.
- 25.3 A deduction for loss or damage caused by the employee in the course of employment may only be made by agreement and after the employer has established by a fair procedure that the employee was at fault.
- 25.4 An employee may agree in writing to an employer deducting a debt specified in the agreement.

26. Termination of employment (s.34-36)

- 26.1 During the first four week's of employment, an employment contract may be terminated on one week's notice. The notice period during the remainder of the first year of employment is two weeks. It is 30 days for employees with more than a years' service.
- 26.2 The notice period for a farmworker or domestic worker who has worked for more than four weeks is one month.
- 26.3 The notice period may be varied by a collective agreement.
- 26.4 Notice must be given in writing. If the recipient cannot understand the notice it must be explained to the employee in a language he or she can understand.
- 26.5 An employer may pay the employee the remuneration for the notice period instead of giving notice. An employee who occupies accommodation situated on the employer's premises or supplied by the employer may elect to remain in the accommodation for the duration of the notice period.
- 26.6 The termination of employment by an employer on notice in terms of the Bill does not prevent the employee challenging the fairness or lawfulness of the dismissal in terms of the Labour Relations Act.

27. Exclusions (s.37)

The requirements with regard to remuneration, deductions and termination do not apply to employees who work less than 4 hours a week.

Chapter 5 - Administrative Obligations

28. Particulars of employment (s.38)

- 28.1 An employer must give the employee written particulars of employment when the employee starts employment. The Minister of Labour must prescribe the required particulars.
- 28.2 The employer must keep these particulars of employment for four years after the end of the contract of employment.

29. Information about remuneration (s.39)

An employer must give an employee information concerning remuneration, deductions and time worked with their pay.

30. Keeping of records (s.40)

An employer must keep a record of the time worked by each employee and their remuneration.

31. Informing employees of their rights (s.41)

Employers must display at the workplace a statement of employees rights under the Bill.

32. Certificate of service (s.42)

On termination of employment, an employee is entitled to a certificate of service.

33. Exclusions (s.43)

Simplified provisions apply to employers who have less than five employees and to employers of domestic workers.

Chapter 6 - Prohibition of Employment of Children and Forced Labour

34. Prohibition of employment of children (s.44-48)

- 34.1 Children under 18 may not be employed to do work inappropriate for

their age or that places them at risk.

34.2 No person may employ a child under 15 years of age.

34.3 The Minister of Labour may make regulations prohibiting or placing conditions on the employment of children over 15 years of age.

34.4 The Minister of Labour may make regulations concerning medical examinations for children in employment.

35. Prohibition of forced labour (s.49)

The use of forced labour is prohibited, unless it is permitted by any other law.

Chapter 7 - Variation of Basic Conditions of Employment

36. Variation by agreement (s.50)

36.1 A collective agreement concluded by a bargaining council, or between an employers' organisation and a trade union, may replace or exclude any basic condition of employment except-

- (a) the requirement to arrange working time with due regard to employees' health and safety;
- (b) the provisions concerning child labour, forced labour and maternity leave;
- (c) the provisions concerning sick-leave, except to the extent permitted by the Bill.

36.2 Other collective agreements and individual agreements may only replace or exclude basic conditions of employment to the extent permitted by the Bill.

36.3 A collective agreement may-

- (a) permit employees ordinary hours of work and overtime to be averaged over a period of up to four months (s.11(1));
- (b) vary the number of days and the circumstances under which family responsibility leave may be granted (s.28);

- (c) permit a shorter notice period for contracts of employment than is prescribed by section 34(1) (s.34(2));
- (d) provide for the resolution of disputes arising out of the Act by arbitration. A labour inspector may not issue a compliance order in respect of any employer who has concluded an agreement containing such a procedure (s.72(a)).

36.4 A collective agreement or an individual agreement may-

- (a) permit an employee's ordinary hours of work to be extended by up to 15 minutes in a day, but not more than 60 minutes in a week, to permit employees to continue serving members of the public after the completion of ordinary hours of work (s.8(2));
- (b) permit an employee to work three hours overtime in a day and ten hours overtime in a week (s.9(1)(a));
- (c) permit employees to be compensated for overtime work by the employer granting paid time off (s.9(3));
- (d) permit employees to work up to twelve hours in a day without receiving overtime pay (s.10(1));
- (e) provide that the meal interval of employees is reduced from 60 minutes to no less than 30 minutes and that an employee may work six hours per day without receiving a meal interval (s.13(6));
- (f) provide that an employee's weekly rest period does not include a Sunday (s.14(1)(b));
- (g) provide that employees have a rest period of 60 consecutive hours every two weeks instead of a weekly rest period or that the rest period in one week be reduced by eight hours if the rest period in the following week is increased equivalently (s.14(3) & (4));
- (h) permit employees to be compensated for Sunday work by the granting of paid time off (s.15(3));
- (i) vary the provisions for sick-pay by providing that the employee's sick pay for any day is reduced to not less than 75% of the employee's entitlement, provided the number of days of paid sick leave is increased at least proportionately (s.24).

37. Variation by the Minister (s.51)

37.1 The Minister of Labour may make a determination which varies or excludes any basic condition of employment.

37.2 A determination that applies to a category of employers or employees must be made on the advice of the Employment Conditions Commission. A determination that applies to the public sector must be made jointly by the Minister of Labour and the Minister of Public Service and Administration.

37.3 A determination requested by an employer or an employers' organisation may not be granted unless a trade union representing the employees has consented or has had the opportunity to make representations.

37.4 A copy of any determination must be displayed by the employer at the workplace and must be made available to employees.

Chapter 8 - Sectoral Determinations**38. Sectoral determination (s.52)**

The Minister of Labour may make sectoral determinations establishing basic conditions of employment for employees in unorganised sectors.

39. Investigation and report (s.53-56)

39.1 The Minister of Labour must direct a person in the public service to investigate conditions of employment in any sector and area in which it is proposed to make a sectoral determination.

39.2 The investigation must be publicised and written representations must be invited from the public.

39.3 The person conducting the investigation may require employers and employees to provide relevant information.

39.4 At the conclusion of the investigation, he or she must prepare a report proposing basic conditions of employment for the sector and area concerned. The report must be submitted to the Employment Conditions Commission for its consideration.

40. Making of sectoral determinations (s.57)

40.1 After considering the report and the advice of the Employment Conditions Commission, the Minister of Labour may make a sectoral determination by publishing it in the Government Gazette.

40.2 A sectoral determination may regulate any matter connected with terms and conditions of employment. It may set minimum rates of remuneration and make provision for their adjustment.

40.3 A sectoral determination may not cover employers and employees covered by a bargaining council agreement and may not regulate any matter dealt with in a collective agreement concluded by a statutory council.

41. Period of operation of sectoral determination (s.58)

A sectoral determination remains binding until the Minister of Labour cancels or suspends it or until it is replaced by a collective agreement concluded by a bargaining council or a statutory council.

42. Legal effect of sectoral determination (s.59)

Any basic condition of employment contained in a sectoral determination prevails over a provision in the Bill dealing with the same matter for employers and employees covered by the determination.

CHAPTER 9 - Employment Conditions Commission**43. Establishment of Employment Conditions Commission (s.60)**

The Employment Conditions Commission ("the Commission") is established to advise the Minister of Labour on the making of sectoral determinations, the impact of the policies of the government on employment and any matters arising out of the application of the Act.

44. Composition of the Commission (s.61)

The Commission consists of a chairperson and two or more members with knowledge about the labour market and basic conditions of employment, including the conditions of employment of vulnerable and unorganised workers.

45. Matters to be taken into consideration (s.62)

The matters that the Commission must consider before advising the Minister of Labour on the publication of a sectoral determination include the ability of employers to carry on their businesses successfully, the operation of SMME's and new businesses, the cost of living, the alleviation of poverty and the possible impact of basic conditions of employment on job creation and employees' health, safety or welfare.

46. Public hearings (s.63)

The Commission may hold public hearings at which members of the public may make oral representations.

47. Report by the Commission (s.64)

The Commission must prepare a written report for the Minister of Labour. The members of the Commission must seek to prepare a unanimous report.

Chapter 10 - Monitoring, Enforcement and Legal Proceedings**48. Appointment of labour inspectors (s.65)**

The Minister of Labour may appoint labour inspectors. Labour inspectors perform their functions subject to the direction and control of the Minister.

49. Functions of labour inspectors (s.66)

The function of labour inspectors is to promote, monitor or enforce compliance with employment laws. Labour inspectors must advise employees and employers on their rights and obligations in terms of employment laws. They may also conduct inspections, investigate complaints and secure compliance with an employment law.

50. Powers of entry (s.67)

50.1 A labour inspector may enter any workplace without notice or a warrant to conduct an inspection.

50.2 A labour inspector may only enter a home with the permission of the owner or in terms of a warrant issued by a Magistrate.

51. Powers to question and inspect (s.68)

A labour inspector may question persons and inspect, copy and remove records, documents and other relevant items.

52. Co-operation with labour inspectors (s.69)

Every person must answer any relevant questions put by a labour inspector and co-operate with them.

53. Securing an undertaking (s.70)

A labour inspector who reasonably believes that an employer is not acting in accordance with a provision of the Bill must try and secure an undertaking in writing from the employer to comply with the provisions. The labour inspector may seek to obtain an agreement between an employer and employee concerning any payment owing to the employee in terms of the Act.

54. Compliance order (s.71 - 73)

54.1 A labour inspector who reasonably believes that an employer is not acting in accordance with a provision of the Bill may issue a compliance order. The order must state what provision is not being complied with and indicate what steps the employer is required to take to comply with the provision.

54.2 An employer may make representations to the Director-General: Labour objecting to a compliance order. The Director-General, after receiving representations, may confirm, vary or set aside an order. If the employer does not object to or comply with an order, the Director-General may apply to the Labour Court for the compliance order to be made an order of court.

Part B: Legal Proceedings**55. Appeals from compliance order (s.74)**

An employer may appeal to the Labour Court against an order made by the Director-General. An appeal suspends the operation of an order. If the employer does not object to or comply with an order, it may be made an order of court. The maximum penalties that may be imposed are set out in Schedule One to the Bill.

56. Consolidation of proceedings (s.75)

A dispute about a breach of a provision of the Bill may be instituted jointly with a dispute concerning discrimination against an employee for exercising rights under the Bill, or with an unfair dismissal dispute.

57. Payment of interest (s.76)

A person who is not paid any amount that is due in terms of the Bill is entitled to interest at the prescribed rate from the date that the payment was due.

58. Proof of compliance (s.77)

In any proceedings, the employer must establish that a record maintained was accurate and show that there has been compliance with obligations in the Bill.

59. Jurisdiction of the Labour Court (s.78)

59.1 The Labour Court has jurisdiction in respect of all matters arising under the Bill, except criminal matters.

59.2 The Labour Court's jurisdiction includes reviewing the manner in which any person has performed a function provided for in the Bill.

59.3 The Labour Court has concurrent jurisdiction with the civil courts to hear matters concerning contracts of employment.

60. Institution of action to recover monies (s.79)

The provisions of this Bill do not prevent an employee from approaching the Small Claims Court to recover any amount of money owing in terms of a provision of the Bill.

Part C: Protection of Employees Against Discrimination**61. Protection of rights of employees (s.80 - 83)**

61.1 An employee may not be discriminated against by any person for exercising any right in terms of this Act including -

- (a) complaining to a trade union representative or fellow employee;

- (b) refusing to comply with an unlawful instruction or condition of employment;
- (c) participating in any proceedings in terms of the Bill;
- (d) inspecting, or requesting a trade union representative to inspect, any record kept in terms of this Bill.

61.2 A dispute concerning the exercise of these rights may be referred to a bargaining council or the Commission for Conciliation, Mediation and Arbitration (CCMA) for conciliation. If this does not resolve the dispute, it may be referred to the Labour Court.

Chapter 11 - General

62. Delegation (s.84)

Certain of the powers conferred on the Minister of Labour and the powers conferred on the Director-General: Labour may be delegated to officers in the public service. This does not apply to the power to make regulations or codes of good practice.

63. Deeming of employees (s.85)

Any person or category of persons may be deemed to be an employee by the Minister for purposes of the application of this Bill.

64. Regulations (s.86)

The Minister may make regulations necessary to achieve the objects of this Bill.

65. Obstruction, undue influence and fraud (s.90)

No person may hinder, oppose, obstruct or influence improperly another person performing a function in terms of this Bill.

66. Codes of good practice (s.93)

After consultation with NEDLAC, the Minister must issue a Code of Good Practice on the Arrangement of Working Time and a Code of Good Practice on the Protection of Employees during Pregnancy and After the Birth of a Child. The Minister may also issue other codes of good practice.

Transitional Provisions - Schedule 3**67. Application to merchant shipping (item 2)**

The provisions of the Bill do not apply to persons employed in the merchant shipping sector except as provided for in a sectoral determination.

68. Application to farmworkers (item 3)

The provisions of the Basic Conditions of Employment Act relating to the extension of the working hours of a farmworker and the termination of a farmworker's contract of employment continue to apply until these matters are regulated by a sectoral determination.

69. Ordinary hours of work (item 4)

69.1 The reduction of ordinary working hours to 45 per week will only apply six months after the Act comes into effect to farmworkers and mineworkers whose contracts of employment require them to work more than 45 hours.

69.2 The maximum ordinary weekly hours of security guards are reduced from 60 to 45 over 30 months after the Act comes into effect.

70. Leave (item 5-7)

Transitional provisions also regulate the entitlement of employees to annual leave, sick leave and maternity leave.

71. Exemptions (item 8)

Exemptions to the Basic Conditions of Employment Act in force at the time the Act comes into effect may remain in force for six months.

72. Wage determinations (item 9 and 10)

Any wage determination and any exemption to a wage determination, remains in operation for the period of operation of the determination.

73. Collective agreements (item 11)

Transitional provisions apply to collective agreements in force at the time the Act comes into effect.

BASIC CONDITIONS OF EMPLOYMENT BILL, 1997

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CHAPTER 1

PURPOSE, APPLICATION AND INTERPRETATION OF THIS ACT

1. Purpose of this Act

The purpose of *this Act*¹ is to advance economic development and social justice by—

- (a) establishing and enforcing *basic conditions of employment*;
- (b) regulating the variation of *basic conditions of employment*; and
- (c) giving effect to obligations incurred by the *Republic* as a member state of the International Labour Organisation.

2. Application

(1) *This Act* applies to all *employees* and employers except—

- (a) members of the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
- (b) unpaid volunteer workers working for a body or organisation serving a charitable or public purpose.

(2) The provisions of *this Act* apply to persons undergoing vocational training except to the extent that any term or condition of their employment is regulated by the provisions of any other law.

3. Interpretation of this Act

This Act must be interpreted—

- (a) so as to give effect to its purpose;

¹ An italicised word or phrase indicates that the word or phrase is defined in section 98 of this Act.

- (b) in compliance with the *Constitution*; and
- (c) in compliance with the public international law obligations of the *Republic*.

4. Inclusion of provisions in contracts of employment

A *basic condition of employment* constitutes a term of any contract of employment except to the extent that—

- (a) any other Act provides a term that is more favourable to the employee;
- (b) the *basic condition of employment* has been replaced, varied, or excluded in accordance with the provisions of Chapter 7; or
- (c) a term of the contract of employment is more favourable to the employee than the *basic condition of employment*.

5. Invalidity of agreements

A provision in an *agreement* that contradicts or limits any provision of *this Act* is invalid unless permitted by *this Act*.

CHAPTER 2

THE ARRANGEMENT OF WORKING TIME

6. Arrangement of working time

Every employer must arrange the working time of each *employee*—

- (a) in accordance with the provisions of this Chapter;
- (b) in accordance with the provisions of any Act regulating health and safety;
- (c) so as not to endanger the health and safety of *employees*;
- (d) with due regard to the Code of Good Practice on the Arrangement of Working Time² issued in terms of section 93; and
- (e) with due regard to the family responsibilities of employees.

7. Interpretation of day

For the purposes of sections 8, 9 and 10, "day" means a period of 24 hours measured from when the *employee* commences work.

8. Ordinary hours of work

- (1) Subject to the provisions of this Chapter, an employer may not require or permit an *employee* to work more than—
 - (a) 45 hours in any week;
 - (b) 9 hours on any day if the *employee* works on five days or fewer in any week; or

²

The Code of Good Practice must be issued by the Minister of Labour and will contain provisions concerning the arrangement of work and, in particular, its impact upon the health, safety and welfare of employees. Issues that would be included are shift work, night work, rest periods during working time, family responsibility and work by children.

- (c) 8 hours on any day if the *employee* works on six days in any *week*.
- (2) By *agreement*, an *employee's* *ordinary hours of work* in terms of subsection (1) may be extended by up to 15 minutes in a day or 60 minutes in a *week*, to permit an *employee* whose duties include attending to members of the public to continue performing those duties after the completion of *ordinary hours of work*.

9. Overtime

- (1) Subject to the provisions of this Chapter, an employer may not require or permit an *employee*—
 - (a) to work *overtime* except in accordance with an *agreement*;
 - (b) to work more than—
 - (i) three hours *overtime* on one day; or
 - (ii) ten hours *overtime* in one *week*; and
 - (c) by working *overtime*, to exceed the maximum hours of work determined by the *Minister* in terms of section 12.
- (2) An employer must pay an *employee* one and one-half times the *employee's* wage for any *overtime* worked.
- (3) Despite subsection (2), an *agreement* may provide for an employer to grant an *employee* who works *overtime* an amount of paid time off equivalent to the difference in value between the pay received for working *overtime* and the *overtime* pay that the *employee* is entitled to in terms of subsection (2).

10. Extended ordinary daily hours of work

- (1) Despite section 8(1)(b), an *agreement* may require or permit an *employee* to work up to 12 hours in a day, including meal intervals, without receiving *overtime* pay.
- (2) An employer may not require or permit an *employee* who is bound by an *agreement* contemplated in subsection (1) to work—

- (a) more than 45 *ordinary hours of work* in any week;
 - (b) more than 10 hours *overtime* in any week;
 - (c) on more than five days in any week; or
 - (d) after 18h00 and before 06h00 the next day.
- (3) An agreement in terms of sub-section (1), other than a collective agreement, is not valid for longer than twelve months.

11. Averaging of hours of work

- (1) Despite sections 8(1) and 9(1)(b), the *ordinary hours of work* and *overtime* of an employee may be averaged over a period of four months or less in terms of a *collective agreement*.
- (2) An employer may not require or permit an employee who is bound by a *collective agreement* in terms of subsection (1) to work more than—
- (a) an average of 45 *ordinary hours of work* per week over the agreed period;
 - (b) an average of five hours *overtime* per week over the agreed period.
- (3) A *collective agreement* in terms of subsection (1) is not valid for longer than twelve months.

12. Determination of hours of work by Minister

- (1) Despite the provisions of this Chapter, the *Minister*, on grounds of health and safety and after consulting the Commission and the relevant health and safety authority, may determine by regulation, the maximum permitted hours of work, including *overtime*, for any employee.
- (2) A regulation in terms of subsection (1)—
- (a) may prescribe the maximum number of *ordinary hours of work* and *overtime* that may be worked—
 - (i) on one day;

- (ii) during one week; or
 - (iii) during a continuous period without a break; and
- (b) must not prescribe maximum hours in excess of those permitted in sections 8 and 9.

13. Meal intervals

- (1) An employer must not require or permit an *employee* to work continuously for more than five hours without a meal interval of at least 60 minutes.
- (2) For the purposes of subsection (1) work is continuous if it is not interrupted by an interval of at least 60 minutes.
- (3) An employer may not require or permit an *employee* to work during a meal interval unless the *employee's* duties are of such a nature that it is not practicable for that *employee* to leave those duties unattended.
- (4) An employer may not require or permit an *employee* to take a meal interval of longer than 75 minutes unless—
 - (a) the portion in excess of 75 minutes is counted as time worked for which the *employee* is remunerated; or
 - (b) the *employee* resides on the premises at which the workplace is situated.
- (5) An employer is required to remunerate an *employee* for a meal interval if—
 - (a) the *employee* works or the employer requires the *employee* to be available for work during the meal interval; or
 - (b) the *employee* is obliged to remain on the employer's premises during the meal interval.
- (6) An agreement may provide that—
 - (a) the meal interval required in terms of subsections (1) and (2) be reduced to no less than 30 minutes;
 - (b) an *employee* who works on less than six hours per day does not have a meal interval in terms of subsection (1).

14. Daily and weekly rest period

(1) An employer must allow an *employee*—

- (a) a daily rest period of at least 12 consecutive hours between ending and recommencing work; and
- (b) a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.

(2) A daily rest period in terms of subsection (1)(a) may be reduced to ten hours for an *employee*—

- (a) who resides on the premises at which the *workplace* is situated; and
- (b) whose meal interval extends for at least three hours.

(3) In place of the weekly rest period required in terms of subsection (1)(b), an *agreement* may provide for a rest period of at least 60 consecutive hours every two weeks.

(4) If required by the arrangement of shifts, an *agreement* may provide for an *employee's* weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended by at least an equivalent amount.

15. Pay for work on Sundays

(1) An employer must pay an *employee* who works on a Sunday at double the *employee's* wage, unless the *employee* ordinarily works on a Sunday, in which case the employer must pay the *employee* at one-and-a-half times the *employee's* wage.

(2) Despite subsection (1), an employer must pay an *employee* who works on a Sunday at least the *employee's* daily wage.

(3) Despite subsection (1) and (2), an *agreement* may permit an employer to grant an *employee* who works on a Sunday paid time off equivalent to the difference in value between the pay received by the *employee* for working

on the Sunday and the pay that the *employee* is entitled to in terms of subsection (1) and (2).

- (4) Any time worked on a Sunday by an *employee* who does not ordinarily work on a Sunday is not taken into account in calculating an *employee's* ordinary hours of work in terms of section 8(1)(a), but is taken into account in calculating the overtime worked by the *employee* in terms of section 9(1)(b)(ii).
- (5) If a shift worked by an *employee* falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.

16. Night work

- (1) In this section, "night work" means work after 18h00 and before 06h00 the next day.
- (2) An employer may not require or permit an *employee* to perform night work—
 - (a) except in accordance with an *agreement*;
 - (b) unless the *employee* is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and
 - (c) unless the *employee* is reasonably able to obtain transportation between their place of residence and the workplace.
- (3) An employer who requires an *employee* to perform work on a regular basis after 23h00 and before 06h00 the next day must—
 - (a) inform the *employee* of the hazards associated with night work;
 - (b) enable the *employee* to undergo a medical assessment concerning hazards associated with night work, at the request of the *employee* and at no cost to the *employee*; and
 - (c) transfer the *employee* to suitable day work within a reasonable time, if the *employee* suffers from a health condition associated with the performance of night work.

(4) For the purposes of subsection (3), an *employee* works on a regular basis if the *employee* works after 23h00 and before 06h00 at least five times per month or 50 times per year.

(5) The Minister, after consultation with the Commission, may make regulations concerning medical examinations for employees engaged in night work.

17. Public holidays³

(1) In this section—

(a) "public holiday" means any day that is a public holiday in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);

(b) "paid public holiday" means, in respect of an *employee*, a public holiday on a day on which that *employee* would ordinarily work.

(2) An employer must not require or permit an *employee* to work on a public holiday except in accordance with a provision of an *agreement*.

(3) An employer must pay an *employee* for a paid public holiday the amount that the *employee* would ordinarily have received for working on that day.

(4) If an *employee* works on a paid public holiday, the employer must pay the *employee* in terms of subsection (3) plus an amount that is the greater of—

(a) the amount paid to that *employee* in terms of subsection (3); or

(b) the amount earned by that *employee* for the actual time worked that day.

(5) If an *employee* works on a public holiday on which the *employee* would not ordinarily work, the employer must pay that *employee* an amount equal to—

(a) the amount that *employee* would ordinarily earn for a full day of work; plus

³ In terms of section 2(2) of the Public Holidays Act, 1994 (Act No. 36 of 1994) a public holiday is exchangeable for any other day which is fixed by agreement or agreed to between the employer and the employee.

- (b) the amount earned by that *employee* for the actual time worked that day.
- (6) An employer must pay an *employee* for a public holiday on the pay-day immediately following the public holiday.
- (7) (a) If only part of an *employee's* working time falls on a public holiday the provisions of this section apply if the greater part of that working time falls on that public holiday.
- (b) If the provisions of this section apply in terms of paragraph (a) to any portion of an *employee's* continuous working period, all work during that working period must be *remunerated* in accordance with this section.

18. Exclusions

- (1) The provisions of this Chapter, other than sections 6(b), (c), (d) and (e) do not apply to—
 - (a) senior managerial *employees* as defined in section 78 of the *Labour Relations Act*;
 - (b) employees engaged as sales personnel who travel to the premises of clients and who regulate their own hours of work;
 - (c) *employees* who work less than four hours per week.
- (2) The *Minister* may, on the advice of the *Commission*, make a determination to vary or exclude the application of any provision of this Chapter to *employees* earning in excess of an amount stated in that determination.

19. Emergency work

- (1) In this section "emergency work" means work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by *employees* during their *ordinary hours of work*.
- (2) The limits on hours of work required by section 8, 9(1), 13(1), 14(1) and 16(2) do not apply to emergency work.

CHAPTER 3

LEAVE

20. Annual leave

- (1) In this Chapter, "leave cycle" means—
 - (a) in respect of a new *employee*, the period of 12 months' *continuous employment* immediately following that *employee's* commencement of employment; and
 - (b) in respect of any other *employee*, the period of 12 months' *continuous employment* immediately following the completion of that *employee's* prior leave cycle.
- (2) In respect of each leave cycle, an *employee* is entitled to three *weeks'* annual leave on full *remuneration*.
- (3) An employer may comply with subsection (2) by granting an *employee* one day of leave on full remuneration for every 17 days on which—
 - (a) the *employee* worked; or
 - (b) the *employee* was absent from work for a reason contemplated by section 99(4)(a)-(e).
- (4) An *employee* may take the leave to which the *employee* is entitled in respect of a leave cycle in terms of subsections (2) and (3), consecutively.
- (5) An employer must grant annual leave in terms of subsections (2) or (3) within six months of the end of the leave cycle during which that leave was earned.
- (6) An employer must not require an *employee* to take annual leave during—
 - (a) any other leave to which the *employee* is entitled; or
 - (b) any period of notice of termination of employment.

- (7) Despite subsection (6), an employer may permit an *employee* to take leave during any period of unpaid leave.
- (8) An employer may reduce an *employee's* entitlement to leave in terms of subsections (2) or (3) by the number of days of occasional leave on full *remuneration* granted to the *employee* in that leave cycle.
- (9) If a paid public holiday falls on a day during an *employee's* annual leave, the employer must grant the *employee* an additional day of paid leave.
- (10) Except on termination of employment as provided in section 21(3), an employer must not give an *employee* leave pay instead of granting paid leave as required by this section.

21. Leave pay

- (1) An employer and an *employee* must agree on an *employee's* leave pay which must be at least equivalent to either—
 - (a) the *remuneration* that the *employee* would have received for working for a period equal to the period of leave, calculated at the *employee's* rate of *remuneration* immediately before the beginning of the period of leave; or
 - (b) in respect of each week of leave, 2% of the *employee's* total *remuneration* during the leave cycle in which the leave was earned.
- (2) An employer must pay an employee leave pay—
 - (a) before the beginning of the period of leave; or
 - (b) if the *employee* requests, on the first pay day after the period of leave.
- (3) On termination of employment for any reason, an employer—
 - (a) must pay an *employee remuneration* calculated in accordance with subsection (1) for any period of annual leave due in terms of section 20(2) or (3) in respect of a completed leave cycle, but which the *employee* has not taken; and
 - (b) in respect of the *employee's* annual leave entitlement during an

incomplete leave cycle, must pay an *employee* who has been in employment for longer than four months, an amount equal to 2% of the *remuneration* paid to the *employee* during the final incomplete leave cycle, multiplied by the number of *weeks* annual leave to which that *employee* would have been entitled in respect of the final leave cycle, had the *employee* completed that leave cycle; or

- (c) in the case of an *employee* referred to in section 20(3), one day's *remuneration* in respect of every 17 days on which a leave credit is earned.

22. Sick leave

- (1) In this Chapter, "sick leave cycle" means—

- (a) in respect of a new *employee*, the period of 36 months' *continuous employment* immediately following that *employee's* commencement of employment;
- (b) in respect of any other *employee*, the period of 36 months' *continuous employment* immediately following the completion of that *employee's* prior sick leave cycle.

- (2) During every sick leave cycle, an *employee* is entitled to an amount of paid sick leave equal to the number of *days* the *employee* would normally work during a period of six *weeks*.

- (3) Despite subsection (2), during the first six months of *continuous employment*, an *employee* is entitled to one day's paid sick leave for every 26 days worked.

- (4) During an *employee's* first sick leave cycle, an employer may reduce the *employee's* entitlement to sick leave in terms of subsection (2) by the number of days sick leave taken in terms of subsection (3).

- (5) The amount paid to an *employee* for a day's sick leave must be the same as the *remuneration* payable to the *employee* for the ordinary hours the *employee* would have worked on that day.

23. Proof of incapacity

- (1) An employer is not required to pay an *employee* in terms of section 22 if

the *employee* has been absent from work for more than two consecutive days or more than two occasions during an eight week period and, on request by the employer, does not produce a medical certificate stating that the *employee* was unable to work for the duration of the *employee's* absence on account of sickness or injury.

(2) The medical certificate must be signed by a medical practitioner or person who is certified to diagnose and treat patients and who is registered with a professional council.

(3) An employer who requests the production of a medical certificate must provide reasonable assistance to that *employee* to obtain the certificate if—

(a) the *employee* lives on the employer's premises; and

(b) it is not reasonably practicable for the *employee* to obtain a certificate.

24. Variation by agreement

An *agreement* may reduce the sick-pay to which an *employee* is entitled in respect of any day's absence in terms of section 22 if—

(a) the number of days of paid sick leave is increased at least proportionately to any reduction in the daily amount of sick-pay; and

(b) the *employee's* entitlement to sick pay for any day is not less than 75% of the *remuneration* payable to the *employee* for the ordinary hours the *employee* would have worked on that day.

25. Application to occupational accidents or diseases

Sections 22 to 24 apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) or the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973) only during any period in respect of which no compensation is payable in terms of those Acts.

26. Maternity leave ⁴

- (1) An *employee* is entitled to at least four months maternity leave which must be taken consecutively.
- (2) An *employee* may begin maternity leave four weeks before the expected date of birth, unless—
- (a) otherwise agreed; or
 - (b) a medical practitioner or midwife certifies that it is necessary for her health or that of the unborn child to do so earlier.
- (3) An *employee* who has given birth to a child—
- (a) must not be required to return to work for six weeks after the birth; and
 - (b) may not be permitted to return to work for six weeks after the birth unless a medical practitioner or midwife certifies that she is fit to do so.
- (4) An *employee* who bears a still-born child may remain on maternity leave for—
- (a) six weeks after the still birth; or
 - (b) a longer period if a medical practitioner certifies that it is necessary for her health and safety.
- (5) For the purpose of sub-section (4), "still-born child" includes a miscarriage during the third trimester of pregnancy.

⁴

In terms of section 187(1)(e) of the Labour Relations Act, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.

27. Protection of employees before and after birth of a child

- (1) No employer may require or permit a pregnant *employee* or an *employee* who is nursing her child to perform work that is hazardous to her health or that of her child.⁵
- (2) During an *employee's* pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if—
 - (a) the *employee* is employed on night work or her ordinary duties of work pose a danger to her health or safety or that of her child; and
 - (b) it is reasonably practicable for the employer to do so.

28. Family responsibility leave

- (1) During each leave cycle, an *employee* who works four or more days per week for one employer is entitled to a period of three days paid leave which may be taken—
 - (a) when the *employee's* child is born;
 - (b) when the *employee's* child is sick; or
 - (c) in the event of the death of a member of the *employee's* immediate family.
- (2) Before paying an *employee* for leave in terms of this section, an employer may require reasonable proof of an event contemplated in subsection (1) for which the leave was taken.
- (3) An *employee's* unused entitlement to leave in terms of this section expires at the end of the leave cycle in which it accrues.
- (4) A *collective agreement* may vary the number of days and the circumstances under which leave is to be granted in terms of subsection (1).

⁵ The Minister must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child.

(5) For the purposes of this section, an *employee's* "immediate family" means—

- (a) the *employee's* spouse or any other person who cohabits with the *employee*; and
- (b) the *employee's* parent, adoptive parent, grandparent, *child*, adopted *child*, grandchild or sibling.

29. Leave in excess of entitlement

Unless an *agreement* provides otherwise, the provisions of this Chapter do not apply to leave granted to an *employee* in excess of the *employee's* entitlement under this Chapter.

30. Exclusions

The provisions of this Chapter do not apply to *employees* who work less than four hours a week for an employer.

CHAPTER 4

REMUNERATION, DEDUCTIONS AND NOTICE OF TERMINATION

31. Payment of remuneration

- (1) An employer must pay *remuneration* to each *employee* in accordance with arrangements between the employer and *employee* which must provide for any payment in money—
 - (a) to be made daily, weekly, fortnightly or monthly; and
 - (b) to be in cash, by cheque or by direct deposit into an account designated by the *employee*.
- (2) An employer must pay *remuneration* within seven days of —
 - (a) the completion of the period for which the *remuneration* is payable; or
 - (b) the termination of the contract of employment.
- (3) Despite the provisions of subsection (2)(b), any pension or provident fund payment to an *employee* that is part of the *employee's remuneration* may be paid in terms of the rules of the fund.
- (4) Any *remuneration* paid in money must be in South African currency and, if paid in cash or by cheque, must be made—
 - (a) at the *workplace* or at a place agreed to by the employer and the *employee*;
 - (b) during the *employee's* working hours or within 15 minutes of the commencement or conclusion of those hours; and
 - (c) in a sealed envelope.

32. Calculation of remuneration

For the purposes of calculating an *employee's remuneration*—

- (a) *daily remuneration* is calculated by multiplying the hourly *remuneration* by the number of hours the *employee* works on a day or by dividing the weekly *remuneration* by the number of days the *employee* works in a week;
- (b) *weekly remuneration* is calculated by multiplying the daily *remuneration* by the number of days that the *employee* works in a week or by dividing the monthly *remuneration* by four and one third.

33. Deductions and other acts concerning remuneration

- (1) An employer must not make any deduction from an *employee's remuneration* unless—
 - (a) *the employee* gives prior written agreement to the deduction in respect of a debt specified in the agreement; or
 - (b) the deduction is required or permitted in terms of a law, *collective agreement*, court order or arbitration award.
- (2) A deduction in terms of subsection (1)(a) may be made to reimburse an employer for loss or damage only if—
 - (a) the loss or damage occurred in the course of employment;
 - (b) the employer has established after a fair procedure that the loss or damage was due to the fault of the *employee*;
 - (c) the employer has given the *employee* a reasonable opportunity to show why the deduction should not be made;
 - (d) the total amount of the debt does not exceed the actual amount of the loss or damage; and
 - (e) the amount to be deducted, together with other deductions contemplated in this subsection, does not exceed one quarter of the *employee's remuneration* in money.
- (3) An employer who deducts an amount for payment to another person from

an *employee's remuneration* in terms of subsection (1) must pay the amount to the person in accordance with the time period and other requirements specified in the *agreement*, law, court order or arbitration award.

- (4) An employer must not require or permit an *employee* to—
- (a) repay any *remuneration* except for overpayments previously made by the employer resulting from an error in calculating the *employee's remuneration*; or
 - (b) acknowledge receipt of an amount greater than the *remuneration* actually received.

34. Notice of termination of employment

- (1) A contract of employment terminable at the instance of a party to the contract may only be terminated on notice of not less than—
- (a) one *week*, if the *employee* has been *continuously employed* for four *weeks* or less;
 - (b) two *weeks*, if the *employee* has been *continuously employed* for more than four *weeks* but not more than one year;
 - (c) 30 *days*, if the *employee* has been *continuously employed* for one year or more; or
 - (d) one month, if the *employee* is a *farmworker* or *domestic worker* who has been *continuously employed* for more than four *weeks*.
- (2) A *collective agreement* may permit a notice period shorter than that required by subsection (1).
- (3) No *agreement* may require or permit an *employee* to give a period of notice longer than that required of the employer.
- (4) Notice of termination of a contract of employment given by the employer must—
- (a) be given in writing; and
 - (b) if the recipient of the notice is not able to understand the notice, be

explained orally in a language the recipient understands;

(c) not be given during any period of leave to which the *employee* is entitled in terms of Chapter 3; and

(d) not run concurrently with any period of leave to which the *employee* is entitled in terms of Chapter 3, except sick leave.

(5) Nothing in this section—

(a) affects the right of a dismissed *employee* to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the *Labour Relations Act*; and

(b) affects the right of an employer or an *employee* to terminate a contract of employment without notice for any cause recognized by law.

35. Payment instead of notice

(1) Instead of giving an *employee* notice in terms of section 34, an employer may—

(a) pay the *employee* the *remuneration* the *employee* would have received if the *employee* had worked during the notice period; and

(b) provide the *employee* with all the benefits the *employee* would have received during the notice period.

(2) If an *employee* gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the *remuneration* and provide the benefits referred to in subsection (1), unless the employer and *employee* agree otherwise.

36. Employees in employer provided accommodation

(1) An *employee* who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer is entitled to remain in the accommodation for a period of 30 days or, if it is a longer period, until the contract of employment could lawfully have been terminated if the employer—

(a) terminates the contract of employment before the date on which the employer was entitled to terminate the contract in terms of section 34; or

(b) terminates the contract in terms of section 35.

(2) If an *employee* elects to remain in accommodation in terms of subsection (1) after the employer has terminated the *employee's* contract of employment in terms of section 35, the *remuneration* that the employer is required to pay in terms of section 35 is reduced by that portion of the *remuneration* that represents the agreed value of the accommodation for the period that the *employee* remains in the accommodation.

37. Exclusions

The provisions of this Chapter do not apply to *employees* who work less than four hours per week for any employer.

CHAPTER 5

EMPLOYER'S ADMINISTRATIVE OBLIGATIONS

38. Particulars of employment

- (1) An employer must give an *employee* written particulars of employment in the *prescribed* form when the *employee* commences employment⁶.
- (2) Written particulars in terms of subsection (1) must be kept by the employer for a period of four years after termination of the contract of employment.
- (3) In prescribing the written particulars that an employer is required to provide, the Minister may distinguish between different categories of employers and categories of *employees*.

39. Information about remuneration

- (1) An employer must give an *employee* the following information in writing on each day the *employee* is paid —

⁶ The prescribed form will require written particulars of employment to contain at least the following information—

- (a) the full names and addresses of the employer and the employee;
- (b) a description of any council or sectoral employment standard by which the employer's business is covered;
- (c) the title of the job, or a brief description of the work for which the employee is employed;
- (d) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
- (e) the date on which the employment began;
- (f) any periods of continuous employment with a previous employer that count towards the employee's period of continuous employment;
- (g) the employee's ordinary hours and days of work;
- (h) the employee's wage or the rate and method of calculating wages;
- (i) the rate of pay for overtime work;
- (j) any other cash payments that the employee is entitled to;
- (k) any payment in kind that the employee is entitled to;
- (l) how frequently remuneration will be paid;
- (m) any deductions to be made from the employee's remuneration;
- (n) any leave to which the employee is entitled;
- (o) the period of notice required to terminate employment or if employment is for a specified period, the date when it is to end;
- (p) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

An employer of less than five employees or domestic workers will not be required to supply (b), (f) and (p).

- (a) the employer's name and address;
- (b) the *employee's* name and occupation;
- (c) the period for which the payment is made;
- (d) the *employee's remuneration* in money;
- (e) the amount and purpose of any deduction made from the *remuneration*;
- (f) the actual amount paid to the *employee*; and
- (g) any other *prescribed* information.

(2) In addition to the information required in terms of subsection (1), an employer must give each *employee* the following information in writing on the day the *employee* is paid, if the information is relevant to the calculation of that *employee's remuneration*—

- (a) the *employee's* rate of *remuneration* and *overtime* rate;
- (b) the number of ordinary and *overtime* hours worked by the *employee* during the period for which the payment is made;
- (c) the number of hours worked by the *employee* on a public holiday during that period; and
- (d) if an agreement to average *working time* has been concluded in terms of section 11, the total number of ordinary and *overtime* hours worked by the *employee* in the period of averaging.

(3) The written information required in terms of subsections (1) and (2) must be given to each *employee*—

- (a) at the *workplace* or at a place agreed to by the employer and *employee*; and
- (b) during the *employee's ordinary working hours* or within fifteen minutes of the commencement or conclusion of those hours.

40. Keeping of records

- (1) Every employer must keep a record containing at least the following information—
 - (a) the time worked by each *employee*;
 - (b) the *remuneration* paid to each *employee*;
 - (c) in respect of *employees* who are under 18 years of age, each *employee's* name, occupation and *remuneration*; and
 - (d) any other *prescribed* information.
- (2) A record in terms of subsection (1) must be kept by the employer for a period of four years after the date of the last entry in the record.
- (3) An employer who fails to keep a record, or makes a false entry in terms of subsection (1) commits an offence.
- (4) An employer who keeps a record in terms of this section is not required to keep any other record of time worked and *remuneration* paid as required by an *employment law*.

41. Informing employees of their rights

An employer must display at the *workplace* where it can be read by *employees* a statement in the *prescribed* form of the *employee's* rights under *this Act*.

42. Certificate of service

On termination of employment an *employee* is entitled to a certificate of service in the *prescribed* form⁷.

43. Exclusions

⁷

The prescribed form will require the following information—

- (a) employee's full name;
- (b) name and address of employer;
- (c) a description of any council or sectoral employment standard by which the employer's business is covered;
- (d) date of commencement and date of termination of employment;
- (e) the title of the job or a brief description of the work for which the employee was employed at date of termination;
- (f) remuneration at date of termination;
- (g) where the employee requests it, the reason for termination of employment.

- (1) The provisions of sections 39 to 41 do not apply to —
- (a) an employer who employs fewer than five *employees*; and
 - (b) the employment of a *domestic worker*.
- (2) An employer contemplated in subsection (1) must provide an *employee* with written particulars of employment as prescribed in terms of section 38 which must be amended to reflect any changes agreed by the employer and *employee* concerning the *employee's* hours and days of work or *remuneration*.

- (b) any other prescribed information.
- (2) A record in terms of subsection (1) must be kept by the employer for a period of four years after the date of the last entry in the record.
- (3) An employer who fails to keep a record, or makes a false entry in terms of subsection (1) commits an offence.
- (4) An employer who keeps a record in terms of this section is not required to keep any other record of time worked and remuneration paid as required by an employment law.

41. Informing employees of their rights

An employer must display at the workplace where it can be read by employees a statement in the prescribed form of the employee's rights under this Act.

42. Certificate of service

On termination of employment an employee is entitled to a certificate of service in the prescribed form.

43. Exclusions

The prescribed form will require the following information —

- (a) employee's full name;
- (b) name and address of employer;
- (c) a description of any council or sectoral employment standard by which the employer's business is covered;
- (d) date of commencement and date of termination of employment;
- (e) the title of the job or a brief description of the work for which the employee was employed at date of termination;
- (f) remuneration at date of termination;
- (g) where the employee requests it, the reason for termination of employment.

CHAPTER 6

PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR

44. Prohibition of employment of children

- (1) No person may employ a *child* in employment that—
- (a) is inappropriate for a person of that age;
 - (b) places at risk the *child's* well-being, education, physical or mental health, or spiritual, moral or social development.
- (2) No person may employ a *child* who is—
- (a) under 15 years of age; or
 - (b) under the minimum school-leaving age in terms of any law, if this is 15 or older.

45. Employment of children of 15 or older

Subject to section 44(1), *the Minister*, after consulting the *Commission*, may make regulations to prohibit or place conditions on the employment of children who are at least 15 years of age and no longer subject to compulsory schooling in terms of any law.

46. Medical examination

The Minister, after consulting *NEDLAC* may make regulations concerning the conducting of medical examinations of children in employment.

47. Prohibitions

No person may—

- (a) assist an employer to employ a *child* in contravention of *this Act*; or
- (b) discriminate against an *employee* who refuses to permit a *child* to work, or render services, for any person.

48. Evidence of age

In any proceedings in terms of *this Act*, if the age of an *employee* is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the employment was lawful to prove that there was a reasonable belief, after investigation, that the person was not below the permitted age in terms of section 44.

49. Prohibition of forced labour

- (1) All forced labour is prohibited, unless it is permitted in terms of *this Act* or any other law.
- (2) No person may for their own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subsection (1).

CHAPTER 7

VARIATION OF BASIC CONDITIONS OF EMPLOYMENT

50. Variation by agreement

- (1) A provision of a *collective agreement* concluded in a *bargaining council* may replace or exclude any *basic condition of employment* to the extent that the provision does not conflict with—
 - (a) the provisions of section 6(b), (c), (d) and (e);
 - (b) any regulation made in terms of section 12;
 - (c) the provisions of Chapter 6;
 - (d) a *basic condition of employment* regulating maternity leave;
 - (e) a *basic condition of employment* regulating sick leave, except to the extent permitted by *this Act*.
- (2) The *Minister* may apply the provisions of subsection (1) to *collective agreements* concluded between any registered *employers' organisation* and any *registered trade union* in respect of employers and employees in a sector and area.
- (3) A provision of a *collective agreement*, other than an agreement contemplated in subsection (1), may replace or exclude a *basic condition of employment*, to the extent permitted by *this Act* or a *sectoral determination*.⁸
- (4) A provision of a contract of employment or any other *agreements* between an employer and an *employee* may replace or exclude a *basic condition of employment* to the extent permitted by *this Act* or a *sectoral determination*.

⁸

The Act will contain a schedule summarising the provisions that may be replaced by a collective agreement in terms of section 50(2) or a contract of employment or other agreement in terms of section 50(3). This schedule will not have the force of law and is intended to assist readers of the Act.

- (5) No provision in *this Act* or a *sectoral determination* may be interpreted as permitting the conclusion of—
- (a) a contract of employment or *agreement* between an employer and an *employee* contrary to the provisions of a *collective agreement*;
 - (b) a *collective agreement* contrary to the provisions of a *collective agreement* concluded in a *bargaining council*.

51. Variation by the Minister

- (1) If it is consistent with the purpose of *this Act*, the *Minister* may make a determination to replace or exclude any *basic condition of employment* provided for in *this Act* in respect of —
- (a) any category of *employees* or category of employers; or
 - (b) any employer or *employee* in respect of whom an application is made by —
 - (i) any employer;
 - (ii) any registered *employers' organisation*;
 - (iii) any employer and any registered *employers' organisation*.
- (2) A determination in terms of subsection (1) may not be made in respect of section 44 or 49 or Chapters 8 and 10.
- (3) A determination in terms of subsection (1)(a)—;
- (a) must be on the advice of the *Commission*; and
 - (b) must be issued by notice in the Government Gazette.
- (4) A determination in terms of subsection (1) that applies to the *public service*, must be made by the *Minister* in consultation with the Minister of Public Service and Administration.
- (5) If a determination in terms of subsection (1)(a) concerns the employment of children, the *Minister* must consult with the Minister of Welfare before making the determination.

(6) A determination must not be issued in terms of subsection (1)(b) unless—

- (a) the application has the consent of any *registered trade union* that represents the *employees* in respect of whom the determination is to apply; or
- (b) if no consent has been obtained, the employer has *served* a copy of the application, together with a notice informing the *trade unions* that they may make representations to the *Minister*, on any *registered trade union* that represents *employees* affected by the application.

(7) A determination made in terms of subsection (1)(b)—

- (a) may apply generally or in respect of a particular employer or category of employers;
- (b) may be issued on any conditions and for a period determined by the *Minister*;
- (c) may take effect on a date earlier than the date on which the determination is given, but not earlier than the date on which application was made;
- (d) must be issued in a notice in the *prescribed* form if the determination is made in respect of an application made by an employer;
- (e) must be published in a notice in the Government Gazette if the determination is made in respect of an application made by an *employers' organisation*.

(8) An employer in respect of whom a determination has been made must—

- (a) display a copy of the notice conspicuously at the *workplace* where it can be read by the *employees* to whom the determination applies;
- (b) notify each *employee* in writing of the fact of the notice and where a copy of the notice has been displayed; and
- (c) give a copy of the notice to—

- (i) any registered trade union representing those employees;
- (ii) any trade union representative representing those employees; and
- (iii) any employee who requests a copy.

(b) if no consent has been obtained, the employer has served a copy of the application, together with a notice informing the trade unions that they may make representations to the Minister, on any registered trade union that represents employees affected by the application.

(7) A determination made in terms of subsection (1)(b) —

(a) may apply generally or in respect of a particular employer or category of employers;

(b) may be issued on any conditions and for a period determined by the Minister;

(c) may take effect on a date earlier than the date on which the determination is given, but not earlier than the date on which application was made;

(d) must be issued in a notice in the prescribed form if the determination is made in respect of an application made by an employer;

(e) must be published in a notice in the Government Gazette if the determination is made in respect of an application made by an employer's organisation.

(8) An employer in respect of whom a determination has been made must —

(a) display a copy of the notice conspicuously at the workplace where it can be read by the employees to whom the determination applies;

(b) notify each employee in writing of the fact of the notice and where a copy of the notice has been displayed; and

(c) give a copy of the notice to —

CHAPTER 8

SECTORAL DETERMINATIONS

52. Sectoral determination

- (1) The *Minister*, in accordance with the provisions of this Chapter, by notice in the Government Gazette, may make a *sectoral determination* establishing *basic conditions of employment* for employees in a *sector* and *area*.

53. Investigation

- (1) Before making a *sectoral determination*, the *Minister* must authorise a person in the *public service* to investigate conditions of employment in the *sector* and *area* concerned.
- (2) The *Minister* must determine terms of reference for the investigation, which must specify—
 - (a) the *sector* and *area* to be investigated;
 - (b) the categories or classes of *employees* to be included in the investigation; and
 - (c) the matters to be investigated, which may include any matter listed in section 57(2).
- (3) The *Minister* must publish a notice in the Government Gazette which sets out the terms of reference of the investigation and which invites written representations by members of the public.
- (4) If an organisation representing employers or *employees* in a *sector* and *area* makes a written request to the *Minister* to investigate conditions of employment in that *sector* and *area*, the *Minister* must either—
 - (a) authorise a person in the *public service* to conduct an investigation; or
 - (b) request the *Commission* to advise the *Minister* on whether the requested investigation ought to be conducted.

54. Collection of information

- (1) In sections 54 to 56, "authorised person" means the person authorised by the *Minister* in terms of section 53 to conduct an investigation.
- (2) The authorised person may require, in writing, any employer or *employee* in a *sector* and *area* that is being investigated or any other person to furnish information that is material to the investigation, within a reasonable period.
- (3) The authorised person may—
 - (a) subpoena any person who may be able to give evidence relevant to any investigation;
 - (b) subpoena any person who is believed to have possession or control of any book, document or object relevant to the investigation to be questioned or to produce that book, document or object;
 - (c) call any person who was or could have been subpoenaed for any purpose set out in this section to give evidence, and question that person about, any matter material to the investigation; and
 - (d) administer an oath or accept an affirmation from any person who is to give evidence.
- (4) A subpoena issued in terms of subsection (3) must—
 - (a) require the person named in it to appear before the authorised person;
 - (b) identify the books or documents to be produced; and
 - (c) state the date, time and place at which the person is to appear.
- (5) A person must not refuse to answer any relevant question put to them by the authorised person.⁹

⁹ An answer by a person to a question put to them by an authorised person may not be used in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement (s.89).

55. Labour inspectors

If an employer or *employee* fails or refuses to comply with a subpoena in terms of section 54(3), an inspector, on the direction of the authorised person, may—

- (a) inspect any document that the employer is required to maintain in terms of any *employment law* and that is relevant to the investigation;
- (b) copy and, if necessary, remove the documents so as to make it available to the authorised person.

56. Preparation of report

- (1) On completion of an investigation, and after considering any representations made by members of the public, the authorised person must prepare a report which must include proposals on what matters should be included in a *sectoral determination* for the *sector* and *area* concerned.
- (2) A copy of the report must be submitted to the *Commission* to consider in terms of section 60(1)(a).

57. Making of sectoral determination

- (1) After considering the report of the authorised person and the advice of the *Commission* in terms of section 60(1)(a), the *Minister*, by notice in the Government Gazette, may make a *sectoral determination* for the *sector* and *area*.
- (2) With respect to the *sector* and *area* concerned, a *sectoral determination* may—
 - (a) set minimum terms and conditions of employment, including rates of remuneration;

- (b) regulate the manner, timing and other conditions of payment of *remuneration*;
 - (c) prohibit or regulate payment in kind;
 - (d) require employers to keep employment records and to provide records to their *employees*;
 - (e) prohibit or regulate task-based work, piece work, home work and contract work;
 - (f) set minimum conditions for housing and sanitation for *employees* who reside on their employers' premises;
 - (g) regulate payment of travelling and other work-related allowances;
 - (h) specify conditions of employment applicable to trainees;
 - (i) specify conditions of employment for persons other than *employees* who work for another person;
 - (j) regulate training and education schemes;
 - (k) regulate pension, provident, medical aid, sick pay, holiday, unemployment schemes or funds; and
 - (l) regulate any other matter affecting or connected with the *remuneration* or other terms or conditions of employment of *employees*.
- (3) A *sectoral determination* may provide for the adjustment of specified minimum *remuneration*.
- (4) Any provision of a *sectoral determination* may apply to all or some of the employers and *employees* in the *sector* and *area* concerned.
- (5) The *Minister* may not publish a *sectoral determination* —
- (a) covering *employees* and employers who are bound by a *collective agreement* concluded at a *bargaining council*;
 - (b) regulating any matter in a *sector* and *area* in which a *statutory council* is established and in respect of which that *statutory council* has concluded a *collective agreement*;

- (c) regulating any matter regulated by a *sectoral determination* for a *sector* and *area* which has been in effect for less than twelve months.

58. Period of operation of sectoral determination

- (1) The provisions of a *sectoral determination* remain binding until they are amended or superseded by a new or amended *sectoral determination*, or they are cancelled or suspended by the *Minister*.
- (2) If a *collective agreement* contemplated by section 57(5)(a) or (b) is concluded, the provisions of a *sectoral determination* cease to be binding upon employers and *employees* covered by the agreement.
- (3) The *Minister*, by notice in the Gazette, may—
 - (a) cancel or suspend any provision of a *sectoral determination*, either in the *sector* and *area* as a whole or in part of the *sector* or in a specific *area*; or
 - (b) correct or clarify the meaning of any provision of a *sectoral determination* as previously published.
- (4) Before publishing a notice of cancellation or suspension in terms of subsection (3)(a), the *Minister*, by notice in the Government Gazette, must announce the intention to do so, and allow an opportunity for public comment.

59. Legal effect of sectoral determination

If a matter regulated in *this Act* is also regulated in terms of a *sectoral determination*, the provision in the *sectoral determination* prevails.

CHAPTER 9

EMPLOYMENT CONDITIONS COMMISSION

60. Establishment of Employment Conditions Commission

- (1) The Employment Conditions Commission is established to advise the Minister on—
 - (a) the making of *sectoral determinations*;
 - (b) any matter concerning *basic conditions of employment*;
 - (c) the impact of the policies of the government on employment; and
 - (d) any matter arising out of the application of *this Act*.
- (2) The Commission may advise the Minister and—
 - (a) the Minister of Welfare on any matter concerning the employment of children, including the review of section 44;
 - (b) the Minister for Public Service and Administration on any matter concerning conditions of employment in the *public service*.

61. Composition of the Commission

- (1) The Minister, after consultation with NEDLAC, must appoint a chairperson and at least two but not more than four other members of the Commission for a term of office to be determined by the Minister.
- (2) The chairperson and each member of the Commission appointed in terms of subsection (1)—
 - (a) must be knowledgeable about the labour market and conditions of employment, including the conditions of employment of vulnerable and unorganised workers;
 - (b) may not engage in any activity that may undermine the integrity of the Commission.

- (3) The *Minister* must appoint a member to act as chairperson whenever—
- (a) the chairperson is absent from the *Republic* or from duty, or for any reason is temporarily unable to function as chairperson; or
 - (b) the office of chairperson is vacant.

62. Matters to be taken into consideration

- (1) When advising the *Minister* on the publication of a *sectoral determination*, the *Commission* must consider any information made available to it, and in respect of the *sector* and *area* concerned—
- (a) the ability of employers to carry on their business successfully;
 - (b) the operation of small, medium or micro enterprises, and new enterprises;
 - (c) the cost of living;
 - (d) the alleviation of poverty;
 - (e) conditions of employment;
 - (f) wage differentials and inequality;
 - (g) the possible impact of any proposed condition of employment on current employment or the creation of employment;
 - (h) the possible impact of any proposed condition of employment on the health, safety or welfare of employees.
- (2) The *Commission*, when performing any other function, must take into account the considerations set out in subsection (1) to the extent that it is appropriate.

63. Public hearings

The *Commission* may hold public hearings at which it may permit members of the public to make oral representations on any matter that the *Commission* is considering in terms of section 60.

64. Report by the Commission

- (1) The *Commission*, when performing any of its functions, must endeavour to prepare a unanimous report to the *Minister*. If the members are not able to prepare a unanimous report, the *Commission* must prepare a report to the *Minister* in which all members are entitled to have their views reflected.
- (2) A report in terms of section 60(1)(a) must contain recommendations on what matters should be included in a *sectoral determination* for the relevant sector and area.

- (a) the ability of employers to carry on their business successfully;
- (b) the operation of small, medium or micro enterprises, and new enterprises;
- (c) the cost of living;
- (d) the alleviation of poverty;
- (e) conditions of employment;
- (f) wage differentials and inequality;
- (g) the possible impact of any proposed condition of employment on current employment or the creation of employment;
- (h) the possible impact of any proposed condition of employment on the health, safety or welfare of employees.

(2) The Commission, when performing any other function, must take into account the considerations set out in subsection (1) to the extent that it is appropriate.

63. Public hearings. The Commission may hold public hearings at which it may permit members of the public to make oral representations on any matter that the Commission is considering in terms of section 60.

CHAPTER 10

MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

PART A

MONITORING AND ENFORCEMENT

65. Appointment of labour inspectors

- (1) The *Minister* may appoint any person who meets the *prescribed* criteria to perform all or any of the functions of a *labour inspector*.
- (2) Any person appointed in terms of subsection (1) must perform their functions in terms of this Chapter, subject to the direction and control of the *Minister*.
- (3) The *Minister* must provide each *labour inspector* with a signed certificate in the *prescribed* form stating—
 - (a) that the person has been designated as a *labour inspector*,
 - (b) which legislation the *labour inspector* is empowered to monitor and enforce; and
 - (c) which of the functions of a *labour inspector* the person is empowered to perform.

66. Functions of labour inspectors

- (1) A *labour inspector* appointed in terms of section 65(1) may promote, monitor and enforce compliance with an *employment law* by—
 - (a) advising *employees* and employers of their rights and obligations in terms of an *employment law*;
 - (b) conducting inspections in terms of this Chapter;
 - (c) investigating complaints made to a *labour inspector*,

- (d) endeavouring to secure compliance with an *employment law* by securing undertakings or issuing compliance orders;
 - (e) performing any other *prescribed* function.
- (2) A *labour inspector* must not perform any function in terms of *this Act* in respect of an undertaking in respect of which the *labour inspector* has, or may reasonably be perceived to have, any personal, financial or similar interest.

67. Powers of entry

- (1) In order to promote, monitor or enforce compliance with an *employment law*, a *labour inspector* may, without warrant or notice, at any reasonable time, enter—
- (a) any *workplace* and any other place where an employer carries on business or keeps records, that is not a home;
 - (b) any premises used for training in order to promote, monitor and enforce compliance with the Manpower Training Act, 1981 (Act No. 56 of 1981);
 - (c) any private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act No. 62 of 1981)
- (2) A *labour inspector* may only enter a home or any place other than a place referred to in subsection (1)—
- (a) with the consent of the owner or occupier; or
 - (b) if authorised to do so by warrant.
- (3) A Magistrate may issue a warrant contemplated in terms of subsection (2) only on written application by a *labour inspector* who states under oath or affirmation the need to enter a place to monitor or enforce compliance with an *employment law*.
- (4) If it is practicable to do so, a *labour inspector* must, after entering the *workplace*, notify—
- (a) the employer or a representative of the employer;
 - (b) a *trade union representative*.

68. Powers to question and inspect

- (1) In order to monitor or enforce compliance with an *employment law*, a *labour inspector* may—
 - (a) require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on a matter to which an *employment law* relates, and require that the disclosure be under oath or affirmation;
 - (b) inspect, and question a person about, any record or document to which an *employment law* relates;
 - (c) copy any record or document referred to in paragraph (b) or remove these to make copies or extracts;
 - (d) require a person to produce or deliver to a place specified by the *labour inspector* any record or document referred to in paragraph (b) for inspection;
 - (e) inspect, question a person about, and if necessary remove, any article, substance or machinery present at a place referred to in section 67;
 - (f) inspect or question a person about any work performed; and
 - (g) perform any other *prescribed* function.
- (2) When performing any function, a *labour inspector* may be accompanied by either an interpreter or any other person reasonably required to assist in conducting the inspection, or both.
- (3) A *labour inspector* must—
 - (a) produce the certificate referred to in section 65(3) if asked to do so by any person;
 - (b) provide a receipt for any record or document removed in terms of subsection 1(c) or any item removed in terms of subsection 1(e); and

- (c) return any removed record, document or item within a reasonable period of time.
- (4) The powers provided for in this Part are in addition to any power of a *labour inspector* in terms of an *employment law*.

69. Co-operation with labour inspectors

- (1) Any person who is questioned by a *labour inspector* in terms of section 68 must answer all relevant questions truthfully and to the best of their ability.¹⁰
- (2) Every employer and each *employee* must provide any facility at a *workplace* that is reasonably required by a *labour inspector* to perform the *labour inspector's* functions effectively.

70. Securing an undertaking

- (1) A *labour inspector* who has reasonable grounds to believe that an employer has not complied with any provision of *this Act* must endeavour to secure a written undertaking by the employer to comply with the provision.
- (2) In endeavouring to secure the undertaking, the *labour inspector* may—
 - (a) seek to obtain agreement between the employer and *employee* as to any amount owed to the *employee* in terms of the provisions of *this Act*; and
 - (b) arrange for payment to, and receive payment on behalf of, an *employee* of any amount paid as a result of an undertaking.

71. Compliance order

- (1) A *labour inspector* who has reasonable grounds to believe that an employer has not complied with a provision of *this Act* may issue a compliance order.

¹⁰

An answer by a person to a question put to them by an authorised person may not be used in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement (s.89).

- (2) A compliance order issued in terms of subsection (1), must set out—
- (a) the name of the employer, and the location of every *workplace*, to which it applies;
 - (b) the provision of *this Act* that the employer has not complied with, and details of the conduct constituting non-compliance;
 - (c) any amount that the employer is required to pay, including interest, either to the *employee* or to the *Department*;
 - (d) any written undertaking by the employer in terms of section 70(1) and any failure by the employer to comply with a written undertaking;
 - (e) any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken; and
 - (f) the maximum fine that may be imposed, upon the employer in accordance with Schedule 1 for a contravention of a provision of *this Act*.
- (3) A *labour inspector* must deliver a copy of the compliance order to the employer named in it, and to each *employee* affected by it or, if this is impractical, a representative of the *employees*.
- (4) The employer must display a copy of the order prominently at each *workplace* named in it.
- (5) An employer must comply with the compliance order within the time period stated in the order unless the employer objects in terms of section 73.
- (6) If an employer does not comply with the order in terms of subsection (5) and does not object in terms of section 73(1), the *Director-General* may

apply to the *Labour Court* to make the compliance order an order of the *Labour Court* in terms of section 158(1) of the *Labour Relations Act*.

72. Limitations

Despite a contravention of a provision of *this Act*, a *labour inspector* may not issue a compliance order in respect of any amount payable to an *employee* as a result of the contravention if—

- (a) the *employee* is covered by a *collective agreement* that provides for resolution by arbitration of *disputes* concerning amounts owing in terms of *this Act*;
- (b) the *employee* is employed in a category of employment listed in section 18(1)(a) or in respect of which a notice has been issued in terms of section 18(2);
- (c) any proceedings have been instituted for the recovery of that amount or, if proceedings have been instituted, those proceedings have been withdrawn; or
- (d) that amount has been payable for longer than 12 months.

73. Objections to compliance order

- (1) An employer may, within 21 days of receipt of a compliance order, object to that order by making representations in writing to the *Director-General*.
- (2) If the employer shows good cause at any time, the *Director-General* may permit the employer to appeal after the 21-day time limit has expired.
- (3) The *Director-General*, after considering any representations by the employer and any other relevant matter—
 - (a) may confirm, vary or cancel an order or any part of an order; and
 - (b) must specify the time period within which any part of an order that is confirmed or varied must be complied with.
- (4) In considering the employer's representations, the *Director-General* must take into account—

- (a) any evidence concerning the employer's compliance record presented by the employer, a *labour inspector* or any other person;
 - (b) the likelihood that the employer would have been aware of the relevant provision; and
 - (c) the steps taken by the employer to ensure compliance with the relevant provision.
- (5) The *Director-General* must serve a copy of the order on the employer and, if the *Director-General* confirms or varies the order or any part of the order, the employer must comply with that order within the time period specified in that order.
- (6) If an employer does not comply with an order by the *Director-General* in terms of subsection (3) and does not object to the decision in terms of section 74(1), the *Director-General* may apply to the *Labour Court* for that order to be made an order of the *Labour Court* in terms of section 158(1)(c) of the *Labour Relations Act*.

PART B

LEGAL PROCEEDINGS

74. Appeal from compliance order

- (1) An employer, within 21 days of receipt of the *Director-General's* order in terms of section 73(3), may appeal against that order to the *Labour Court*.
- (2) The order is suspended pending the final determination of the appeal by the *Labour Court* or any appeal from the *Labour Court*.
- (3) If the employer shows good cause at any time, the *Labour Court* may permit the employer to appeal after the 21-day time limit has expired.

75. Consolidation of proceedings

- (1) A dispute concerning a contravention of *this Act* may be instituted jointly with proceedings instituted by that *employee* under Part C of this Chapter.
- (2) If an *employee* institutes proceedings for unfair dismissal, the *Labour*

Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that *employee* arising from any contravention of *this Act* but not for any amount in respect of which a compliance order has been made.

76. Payment of interest

An employer must pay interest in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975) to any person, including the *Department* of Labour, to whom a payment should have been made, from the date that the payment was due until the date that the original payment and interest have been paid to that person.

77. Proof of compliance

- (1) In any proceedings concerning a contravention of *this Act* or any *sectoral determination* it is for an employer—
 - (a) to prove that a record maintained by or for that employer is valid and accurate;
 - (b) who has failed to keep any record required by *this Act* that is relevant to those proceedings, to prove compliance with any provision of *this Act*.

78. Jurisdiction of the Labour Court

- (1) Subject to the *Constitution* and the jurisdiction of the Labour Appeal Court, and except where *this Act* provides otherwise, the *Labour Court* has jurisdiction in respect of all matters, except criminal matters, in terms of *this Act*.
- (2) The *Labour Court* may review the performance or purported performance of any function provided for in *this Act* or any act or omission of any person in terms of *this Act* on any grounds that are permissible in law.
- (3) The *Labour Court* has concurrent jurisdiction with the High Court and the Magistrates' Court referred to in section 168 of the *Constitution* to hear and determine any matter concerning a contract of employment.
- (4) If proceedings concerning any matter contemplated in terms of

subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, the court may at any stage during proceedings refer that matter to the *Labour Court*.

79. Institution of action to recover monies

The provisions of *this Act* do not prevent the institution of any action to recover any monies owing in terms of *this Act* in the Small Claims Court established in terms of the Small Claims Court Act, 1984 (Act No. 61 of 1984) or by arbitration in terms of an agreement.

PART C

PROTECTION OF EMPLOYEES AGAINST DISCRIMINATION

80. Rights of employees

(1) Every *employee* has the right to—

- (a) complain to a fellow *employee*, a *trade union representative* or *trade union official* or a *labour inspector* concerning any failure or refusal by an employer to comply with *this Act*;
- (b) discuss their conditions of employment with their fellow *employees*, a *trade union representative*, their employer or any other person;
- (c) refuse to comply with an instruction that is contrary to *this Act* or any *sectoral determination*;
- (d) refuse to agree to any term or condition of employment that is contrary to *this Act* or any *sectoral determination*;
- (e) inspect any record kept in terms of *this Act* that relates to the employment of that *employee*;
- (f) participate in proceedings in terms of *this Act*;
- (g) request a *trade union representative*, or a *labour inspector* to inspect any record kept in terms of *this Act* and that relates to the employment of that *employee*.

- (2) Every *trade union representative* has the right, at the request of an *employee*, to inspect any record kept in terms of *this Act* that relates to the employment of that *employee*.

81. Protection of rights

- (1) In this section "employee" includes a former *employee* or an applicant for employment.
- (2) No person may discriminate against an *employee* for exercising a right conferred by this Part and no person may do, or threaten to do, any of the following—
- (a) require an *employee* not to exercise a right conferred by this Part;
 - (b) prevent an *employee* from exercising a right conferred by this Part; or
 - (c) prejudice an *employee* because of a past, present or anticipated—
 - (i) failure or refusal to do anything that an employer may not lawfully permit or require an *employee* to do;
 - (ii) disclosure of information that the *employee* is lawfully entitled or required to give to another person; or
 - (iii) exercise of a right conferred by this Part.
- (3) No person may advantage, or promise to advantage, an *employee* in exchange for the *employee* not exercising a right conferred by this Part. However, nothing in this section precludes the parties to a *dispute* arising out of an alleged breach of a right conferred by this Part from concluding an agreement to settle the *dispute*.

82. Procedure for disputes

- (1) If there is a *dispute* about the interpretation or application of this Part, any party to the *dispute* may refer the *dispute* in writing to—

- (a) a *council*, if the parties to the *dispute* fall within the registered scope of that *council*, or
 - (b) the CCMA, if no *council* has jurisdiction.
- (2) The party who refers a *dispute* must satisfy the *council* or the CCMA that a copy of the referral has been served on all the other parties to the *dispute*.
- (3) The *council* or the CCMA must attempt to resolve a *dispute* through conciliation.
- (4) If a *dispute* remains unresolved, any party to the *dispute* may refer it to the *Labour Court* for adjudication.
- (5) In respect of a *dispute* in terms of this Part, the relevant provisions of Part C of Chapter VII of the *Labour Relations Act* apply, with the changes required by context.

83. Burden of proof

In any proceeding in terms of this Part—

- (a) an *employee* who alleges that a right or protection conferred by this Part has been infringed must prove the facts of the conduct said to constitute such infringement; and
- (b) the party who engaged in the conduct in question must then prove that the conduct did not infringe any provision of this Part.

CHAPTER 11

GENERAL

84. Delegation

- (1) The *Minister*, in writing, may delegate any power conferred upon the *Minister* in terms of *this Act* to any officer in the *public service*.
- (2) A delegation in terms of subsection (1) does not limit or restrict the *Minister's* authority to exercise the delegated power.
- (3) Any person to whom a power is delegated in terms of subsection (1) may exercise that power subject to the direction of the *Minister*.
- (4) At any time, the *Minister* may—
 - (a) withdraw a delegation made in terms of subsection (1); and
 - (b) withdraw or amend any decision made by a person exercising a power delegated in terms of subsection (1).
- (5) The provisions of this section do not apply to the *Minister's* powers—
 - (a) in terms of section 18(2) and 51(1)(a) and Chapter 8; and
 - (b) to make regulations, schedules and *codes of good practice*.
- (6) The *Director-General*, in writing, may delegate any power conferred upon the *Director-General* by Chapter 10 of *this Act* to any officer in the *public service*.
- (7) Subsections (3) and (4) apply to any delegations by the *Director-General* in terms of subsection (6).

85. Deeming of employees

The *Minister*, on the advice of the *Commission* and by notice in the *Government Gazette* may deem any person or any category of persons specified in the notice to be an *employee* for the purposes of *this Act* or any provision of *this Act*.

86. Regulations

- (1) The *Minister*, after consulting *NEDLAC*, by notice in the Government Gazette, may make regulations regarding any matter that—
- (a) *this Act* requires or permits to be *prescribed*; and
 - (b) the *Minister* considers necessary or expedient in order to achieve the objects of *this Act*.
- (2) A regulation relating to state revenue or expenditure may only be made with the concurrence of the member of the Cabinet responsible for Finance and the member of the Cabinet responsible for State Expenditure.

87. Minister's power to add and change schedules

- (1) The *Minister*, after consulting *NEDLAC*, by notice in the Government Gazette, may add to, change or replace any schedule of *this Act* except schedules 1, 2, 4 and 5.
- (2) The *Minister*, by notice in the Government Gazette, may add to, change or replace any page header or footnote in the published version of *this Act*.

88. Confidentiality

- (1) A person who, in the performance of any function or exercise of any power in terms of *this Act*, acquires any information relating to the financial or business affairs of any other person may not disclose that information to anyone else, except—
- (a) to a person who requires that information in order to perform a function or exercise a power in terms of an *employment law*;
 - (b) on the order of a court of law; or
 - (c) in compliance with the provisions of any law.
- (2) Subsection (1) does not prevent the disclosure of any information concerning an employer's compliance or non-compliance with the provisions of an *employment law*.

89. Answers not to be used in criminal prosecutions

No answer by any person to a question by an authorised person in terms of section 54 or by a *labour inspector* in terms of section 68 may be used against that person in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement.

90. Obstruction, undue influence and fraud

- (1) No person may hinder, oppose, obstruct or attempt to influence improperly another person who is performing a function in terms of *this Act*.
- (2) No person may obtain or attempt to obtain any *prescribed* document by means of fraud, false pretences, or by presenting or submitting a false or forged document.
- (3) No person may—
 - (a) pretend to be a *labour inspector*,
 - (b) refuse or fail to answer fully any relevant question put to them by a *labour inspector* who is performing a function in terms of *this Act*,
 - (c) refuse or fail to comply with any lawful request of, or order by, a *labour inspector* who is performing a function in terms of *this Act*, or
 - (d) hinder or obstruct a *labour inspector* who is performing a function in terms of *this Act*.

91. Penalties

- (1) Any person convicted of an offence in terms of any section mentioned in column 1 of Schedule 2 may be sentenced to a fine or imprisonment for a period mentioned in column 2 of that schedule opposite the number of that section.
- (2) A magistrate's court has jurisdiction to impose a penalty for an offence provided for in *this Act*.

92. Representation of employees or employers

- (1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party—
- (a) in its own interest;
 - (b) on behalf of any of its members;
 - (c) in the interest of any of its members.
- (2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of *this Act* if one or more of its members is a party to these proceedings.

93. Codes of good practice

- (1) The Minister, after consultation with NEDLAC—
- (a) must issue a Code of Good Practice on the Arrangement of Working Time;
 - (b) must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child;
 - (c) may issue other *codes of good practice*; and
 - (d) may change or replace any *code of good practice*.
- (2) Any *code of good practice* or any change to or replacement of a *code of good practice* must be published in the Government Gazette.
- (3) Any person interpreting or applying *this Act* must take into account relevant *codes of good practice*.

94. Sectoral determination to be kept by employer

Unless a *sectoral determination* provides otherwise, every employer on whom the *sectoral determination* is binding must—

- (a) keep a copy of that *sectoral determination* available in the *workplace* at all times;

- (b) make that copy available for inspection by an *employee*; and
- (c) give a copy of that *sectoral determination*—
 - (i) to an *employee* who has paid the *prescribed fee*; and
 - (ii) free of charge, on request, to an *employee* who is a *trade union representative* or a member of a *workplace forum*.

95. Interpretation

The provisions of *this Act* bind the State except insofar as criminal liability is concerned.

96. Transitional arrangements and amendment and repeal of laws

- (1) The provisions of Schedule 3 apply to the transition from other laws to *this Act*.
- (2) Each of the laws referred to in Schedule 4 is amended to the extent indicated in that schedule.
- (3) The laws mentioned in the first two columns of Schedule 5 are each repealed to the extent indicated opposite that law in the third column of that Schedule.
- (4) The repeal of any law in terms of subsection (3) does not affect any transitional arrangement provided for in Schedule 3.

97. Short title and commencement

- (1) *This Act* is called the Basic Conditions of Employment Act, 1997.
- (2) *This Act* comes into effect on a date to be fixed by the President by proclamation in the Government Gazette.

CHAPTER 12

DEFINITIONS

98. Definitions

In *this Act*, unless the context indicates otherwise—

"agreement" includes a contract of employment, any agreement between an employer and an employee, and a *collective agreement*;

"area" includes any number of areas, whether or not contiguous;

"bargaining council" means a *bargaining council* registered in terms of the *Labour Relations Act* and, in relation to the *public service*, includes the *bargaining councils* referred to in section 35 of that Act;

"basic condition of employment" means a provision of *this Act* or *sectoral determination* that stipulates a minimum term or condition of employment;

"CCMA" means the Commission for Conciliation, Mediation and Arbitration established in terms of Section 112 of the *Labour Relations Act*;

"child" means a person who is under 18 years of age;

"code of good practice" means a code of good practice issued by the *Minister* in terms of section 93 of *this Act*;

"collective agreement" means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more *registered trade unions*, on the one hand and, on the other hand—

(a) one or more employers;

(b) one or more registered *employers' organisations*; or

(c) one or more employers and one or more registered *employers' organisations*;

"Commission" means the Employment Conditions Commission established in terms of section 60(1);

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 188 of 1996);

"continuous employment" means continuous employment in terms of section 99;

"council" includes a *bargaining council* and a *statutory council*;

"Department" means the Department of Labour;

"Director-General" means the Director-General: Labour;

"dispute" includes an alleged dispute;

"domestic worker" means an *employee* who performs domestic work in the home of their employer or on the property on which the home is situated and includes—

- (a) a gardener;
- (b) a person employed by a household as driver of a motor vehicle; and
- (c) a person who takes care of children, the aged, the sick, the frail or the disabled,

but does not include a *farm worker*,

"employee" means—

- (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any *remuneration*; and
- (b) any other person who in any manner assists in carrying on or conducting the business of an employer,

and "employed" and "employment" having meanings corresponding to that of "employee";

"employers' organisation" means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and *employees* or *trade unions*;

"employment law" means any provision of *this Act* or of any of the following

Acts—

- (a) Unemployment Insurance Act, 1966 (Act No. 30 of 1966);
- (b) Manpower Training Act, 1981 (Act No. 56 of 1981);
- (c) Guidance and Placement Act, 1981 (Act No 62 of 1981);
- (d) Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);
- (e) Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
- (f) any other Act, the administration of which has been assigned to the *Minister*;

"farm worker" means an *employee* who is employed mainly in or in connection with farming activities, and includes an *employee* who wholly or mainly performs domestic work in a home on a farm;

"Labour Court" means the labour court established in terms of Section 151 of the *Labour Relations Act*;

"labour inspector" means a labour inspector appointed in terms of section 65;

"Labour Relations Act" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"lock-out" means a lock-out as defined in section 213 of the *Labour Relations Act*;

"Minister" means the Minister of Labour;

"NEDLAC" means the National Economic Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"ordinary hours of work" means the hours of work permitted in terms of section 8 or in terms of any agreement in terms of sections 10 or 11;

"overtime" means the time that an *employee* works during a day, or a week, in excess of *ordinary hours of work*.

"prescribed" means prescribed from time to time by regulation in terms of section 86;

"public service" means the public service referred to in section 1(1) of the Public Service Act, 1994 (promulgated by Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding——

- (a) the members of the National Defence Force;
- (b) the National Intelligence Agency; and
- (c) the South African Secret Service;

"registered trade union" means a *trade union* that has been registered in terms of section 96 of the *Labour Relations Act*;

"registered employers' organisation" means an *employers' organisation* that has been registered in terms of section 96 of the *Labour Relations Act*;

"remuneration" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person who in any manner assists in carrying on or conducting the business of an employer, including the State, but for the purpose of calculating notice pay in terms of section 35 or any leave pay it excludes ——

- (a) gratuities;
- (b) allowances paid to an *employee* for the purpose of performing work; and
- (c) any money paid at the discretion of the employer and that is not related to the *employee's* working hours or work performance

and "remunerate" has a corresponding meaning;

"Republic"——

- (a) when used to refer to the State as a constitutional entity, means the Republic of South Africa as defined in section 1 of the Constitution; and
- (b) when used in the territorial sense, means the national territory of the *Republic* as defined in section 1 of the Constitution;

"sector" means an industry or a service or a part of an industry or service;

"sectoral determination" means a sectoral determination published in terms of Chapter 8;

"statutory council" means a council established in terms of Part E of Chapter III of the *Labour Relations Act*;

"strike" means a strike as defined in section 213 of the *Labour Relations Act*;

"this Act" includes the section numbers, the schedules and any regulations made in terms of *this Act*, but does not include the page headers, the headings or footnotes;

"trade union" means an association of *employees* whose principal purpose is to regulate relations between *employees* and employers, including any *employers' organisations*;

"trade union official" includes an official of a federation of trade unions;

"trade union representative" means a trade union representative who is entitled to exercise the rights contemplated in section 14 of the *Labour Relations Act*.

"Wage Act" means the Wage Act, 1957 (Act No 5 of 1957);

"wage" means the amount of money paid or payable to an *employee* in terms of an *agreement* in respect of *ordinary hours of work* or the hours an *employee* ordinarily works;

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

"workplace" means any place where *employees* work.

"workplace forum" means a *workplace forum* established in terms of Chapter V of the *Labour Relations Act*.

99. Continuous employment

- (1) In *this Act* "continuous employment" means an *employee's* period of uninterrupted employment with the same employer or, subject to the provisions of section 197 of the *Labour Relations Act*, with an employer and another employer to whom the contract of employment is transferred.

- (2) *Continuous employment* begins from the first day on which an *employee* begins to work for an employer and continues until termination of employment.
- (3) It is presumed, unless the contrary is shown, that employment with an employer is continuous whether or not the *employee* does the same job for the employer.
- (4) An *employee's continuous employment* is not interrupted during the time that an *employee* is absent from work——
 - (a) in terms of an entitlement to leave in terms of *this Act* or an *agreement*;
 - (b) due to suspension, with or without pay, unless the *employee* is lawfully and fairly suspended without pay;
 - (c) due to termination of employment and for a period for which the *employee* is reinstated;
 - (d) due to action in pursuance of a *strike* or *lock-out* in which the *employee* did not participate; or
 - (e) on a public holiday.
- (5) Any absence contemplated in subsection (4) is counted for the purpose of calculating the length of that *employee's* continuous period of employment.
- (6) Any period during which an *employee* is absent from work on account of any of the following reasons does not interrupt the *employee's* continuity of employment, but is not counted for the purposes of calculating the length of *continuous employment*——
 - (a) the *employee* was lawfully and fairly suspended without pay;
 - (b) the *employee* was temporarily absent by agreement with the employer for a reason not referred to in subsection (4);
 - (c) the *employee* participated in a lawful *strike* or was excluded as a result of a lawful *lock-out*;
 - (d) the *employee* is employed at certain seasons of the year and for successive seasons;

- (e) the employee is employed intermittently but for a total of eight months in any 12-month period or a total of 15 months in any 24-month period.

SCHEDULE 1

MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR CONTRAVENING THE ACT

- (1) This schedule sets out the maximum fine that may be imposed in terms of Chapter 10 for a contravention of a provision of *this Act*.

(2) Maximum fine

The maximum fine that may be imposed is——

- (a) for a contravention not involving a failure to pay an amount owing to an *employee* in terms of any *basic condition of employment*, the fine determined in terms of Table 1;
- (b) for a contravention involving a failure to pay an amount due to an *employee*, the greater of the amount determined in terms of Table 1 or Table 2.

TABLE 1: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

| | |
|---|--|
| No previous contravention | R100 per employee in respect of whom the contravention occurs up to a maximum of R4000 |
| A previous contravention in respect of the same provision | R200 per employee in respect of whom the contravention occurs up to a maximum of R8000 |
| A previous contravention within the previous 12 months or two previous contraventions in respect of the same provision within 3 years | R300 per employee in respect of whom the contravention occurs up to a maximum of R12 000 |
| Three previous contraventions in respect of the same provision within 3 years | R400 per employee in respect of whom the contravention occurs up to a maximum of R16 000 |
| Four previous contraventions in respect of the same provision within 3 years | R500 per employee in respect of whom the contravention occurs up to a maximum of R20 000 |

TABLE 2: MAXIMUM PERMISSIBLE FINE FOR A CONTRAVENTION INVOLVING UNDERPAYMENT

| | |
|--|---|
| No previous contravention | 25% of the amount due, including any interest owing on the amount at the date of the order |
| A previous contravention in respect of the same provision within 3 years | 50% of the amount due, including any interest owing on the amount at the date of the order |
| A previous contravention in respect of the same provision within a year or two previous contraventions in respect of the same provision within 3 years | 75% of the amount due, including any interest owing on the amount at the date of the order |
| Three previous contraventions in respect of the same provision within 3 years | 100% of the amount due, including any interest owing on the amount at the date of the order |
| Four or more previous contraventions in respect of the same provision within 3 years | 200% of the amount due, including any interest owing on the amount at the date of the order |

SCHEDULE 2

CRIMINAL OFFENCES AND PENALTIES

| Section under which convicted | Maximum term of imprisonment |
|-------------------------------|------------------------------|
| Section 44 | 3 years |
| Section 47 | 3 years |
| Section 49 | 3 years |
| Section 88(1) | 1 year |
| Section 90 | 1 year |

SCHEDULE 3

TRANSITIONAL PROVISIONS

1. Definitions—

For the purposes of this Schedule—

"Basic Conditions of Employment Act" means the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983)

"farm worker" means an employee who is employed mainly in or in connection with farming activities, and includes an employee who wholly or mainly performs domestic work in a home premises on a farm;

"mineworker" means an employee employed at a mine whose hours of work are prescribed in terms of the Regulations to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

"security guard" means an *employee* defined as a 'guard' or a 'security guard' in terms of the *Basic Conditions of Employment Act*;

"this Act" means the Basic Conditions of Employment Act, 1997;

"Wage Act" means the Wage Act, 1957 (Act No. 5 of 1957).

2. Application to merchant shipping

The provisions of *this Act* do not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act 57 of 1951) applies except to the extent provided for in a *sectoral determination* published by the *Minister* in terms of Chapter 8.

3. Application to farmworkers

Sections 6A, 10(2A) and 14(4A) of the *Basic Conditions of Employment Act* continue to apply to the employment of a *farmworker* until such time as the matters regulated by those provisions are regulated by a *sectoral determination* applicable to that *farmworker*.

4. Ordinary hours of work

A provision in a contract of employment that permits an employee who is employed as a *farmworker*, a *mineworker* or a *security guard* to work ordinary hours of work in excess of those prescribed by that section may remain valid for the period specified in column 2 of figure 1, provided that-

- (a) any condition in column 2 of figure 1 is complied with;
- (b) the employee and his or her employer do not conclude an agreement in terms of section 9 or 10.

TABLE 1

| | |
|-------------------------------|---|
| <i>Farm workers</i> | For a period of 6 months after the commencement date of this Act provided the employee's ordinary hours of work do not exceed 48 hours per week. |
| <i>Mineworkers</i> | For a period of 6 months after the commencement date of this Act, provided that the employee's total hours of work do not exceed any limit on hours of work prescribed in the Regulations to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996). |
| <i>Security Guards</i> | For a period of 6 months after the commencement date of this Act provided that employees' ordinary hours of work do not exceed 60 hours per week, and thereafter for a further period of 12 months, provided that the employee's ordinary hours of work do not exceed 55 hours per week; and thereafter for a further period of 12 months provided that the employee's ordinary hours of work do not exceed 50 hours per week . |

5. Leave pay

- (1) The entitlement in terms of section 20(2) of an employee employed continuously before and after commencement of *this Act* takes effect on the date which, but for the enactment of *this Act*, the employee would next have commenced a leave cycle in terms of section 12 of the *Basic Conditions of Employment Act* or any wage determination.
- (2) Any accrued leave to which an employee was entitled in terms of section 12 of the *Basic Conditions of Employment Act*, or a wage determination, but which has not been granted by the date section 20(2) takes effect with respect to that employee, must be added to the paid leave earned by that employee in terms of *this Act*.

6. Sick-pay

- (1) Table 2 applies in respect of any employee, as defined in the *Basic Conditions of Employment Act*, in employment at commencement of *this Act*.
- (2) An employee listed in Column 1 who was in continuous employment before the commencement of *this Act* for the period set out in Column 2 becomes entitled to the rights under section 22(2) on the date listed in Column 3 and section 22(3) on the date listed in Column 4.

TABLE 2:**TRANSITIONAL ARRANGEMENTS IN RELATION TO SICK LEAVE**

| Employees as defined in the <i>Basic Conditions of Employment Act</i> . | Period of continuous employment before commencement date of <i>this Act</i> | Date of entitlement to 6 weeks paid sick leave over 36 month sick leave cycle - in terms of section 22(2). | Date of entitlement to 1 days paid sick leave every 26 days worked during the first six consecutive months of employment in terms of section 22(3) |
|---|---|--|--|
| | | | |

| | | | |
|---|-------------------------|--|---|
| Employees and regular day workers | Less than 6 months | Six months after commencement date of employment | Date on which employee began employment |
| Casual employees | Less than 6 months | Six months after commencement date of <i>this Act</i> | Commencement date of <i>this Act</i> |
| Regular day workers and casual employees | More than 6 months | Commencement date of <i>this Act</i> | Not applicable |
| Employees (other than casual workers and regular day workers) | Between 6 and 12 months | Commencement date of <i>this Act</i> | Not applicable |
| Employees | More than 12 months | At conclusion of current sick leave cycle in terms of section 13(1) of the <i>Basic Conditions of Employment Act</i> . | Not applicable |

(3) Any period of paid sick leave granted to an *employee* in accordance with Table 2, may be deducted from that *employee's* entitlement in terms of either section 22(2) or (3) if—

- (a) it was taken before the commencement of *this Act*; or
- (b) it was taken during the period that the relevant section was in effect with respect to that employee.

7. Maternity

The provisions of section 26 do not apply to an employee who began maternity leave before the commencement of *this Act*.

8. Exemptions

Any exemption granted under section 34 of the *Basic Conditions of Employment Act* in force immediately before the commencement of *this Act* remains in force for a period of six months after the commencement of *this Act* unless it expires or it is withdrawn by the *Minister*, as if the provisions of that Act had not been repealed, before the end of that period.

9. Wage Determinations

Any wage determination made in terms of section 14 of the *Wage Act* and any amendment to a determination made in terms of section 15 of that Act in force immediately before the commencement of *this Act* remains in force for the period of its operation in terms of section 18 of that Act, as if the provision of that Act had not been repealed.

10. Exemptions to wage determination

Any licence of exemption granted to a wage determination in terms of section 19 of the *Wage Act* in force immediately before the commencement of *this Act* remains in force for the period of operation of the determination, or until withdrawn in terms of section 19(5) of that Act, as if that Act had been repealed.

11. Collective Agreements

Any provision in a *collective agreement* concluded in a bargaining council or between one or more registered *employers' organisations* and one or more registered *trade unions* that was in force immediately before *this Act* came into effect shall remain in effect for—

- (a) six months after the commencement date of *this Act* in the case of a provision contemplated by subsections (a) - (d) of section 50(1);
- (b) eighteen months after the commencement date of *this Act* in the case of a provision contemplated by subsection (e) of section 50(1).

SCHEDULE 4

LAWS AMENDED BY SECTION 96(2)

LABOUR RELATIONS ACT, 1995 (ACT NO. 66 OF 1995)

1. Amend section 44 of Act 66 of 1995

- (1) A *statutory council* that is not sufficiently representative within its *registered scope* may submit a *collective agreement* on any of the matters mentioned in section 43(1)(a), (b) or (c) to the *Minister*. The *Minister* must treat the *collective agreement* as a recommendation made by the **[wage board]** Employment Conditions Commission in terms of the **[Wage Act]** Basic Conditions of Employment Act, 1997.
- (2) The *Minister* may promulgate the *statutory council's* recommendations as a sectoral determination under the **[Wage Act]** Basic Conditions of Employment Act, 1997, if satisfied that the *statutory council* has complied with sections **[7 and 9 of the Wage Act]** 62 and 63 of the Basic Conditions of Employment Act, 1997. For that purpose the provisions of sections **[7 and 9 to 12 of the Wage Act]** 62 to 64 of the Basic Conditions of Employment Act, 1997, read with the changes required by the context, apply to the *statutory council* as if it was the **[wage board]** Employment Conditions Commission.

2. Amend section 198(4) of Act 66 of 1995

The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any of its *employees*, contravenes——

- (a) a *collective agreement* concluded in a *bargaining council* that regulates terms and conditions of employment;
- (b) a binding arbitration award that regulates terms and conditions of employment;
- (c) the *Basic Conditions of Employment Act, 1997*; or
- (d) a *sectoral determination* made in terms of the **[Wage Act]** Basic Conditions of Employment Act, 1997.

3. Amend section 186(c) of Act 66 of 1995:

- (c) an employer refused to allow an *employee* to resume work after she— [i]
took maternity leave in terms of any law, *collective agreement* or her
contract of employment[; or]
- [ii] was absent from work for up to four weeks before the
expected date, and up to eight weeks after the actual date, of
the birth of her child]

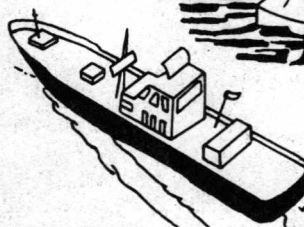
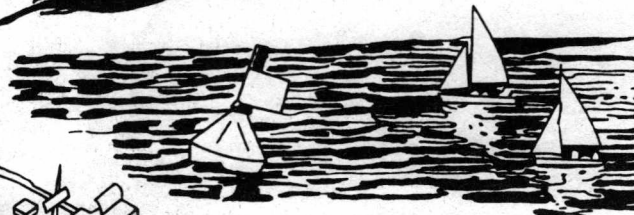
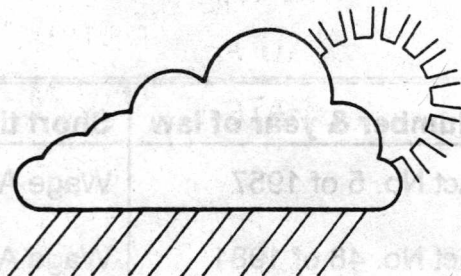
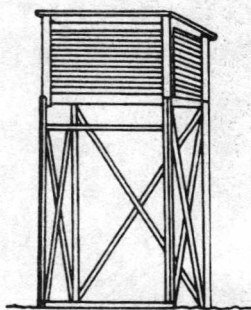
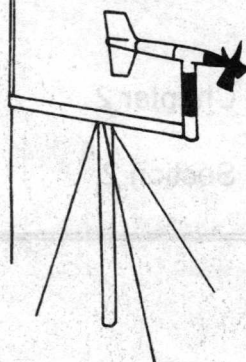
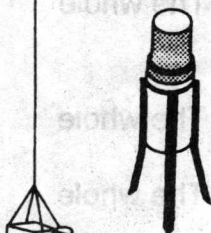
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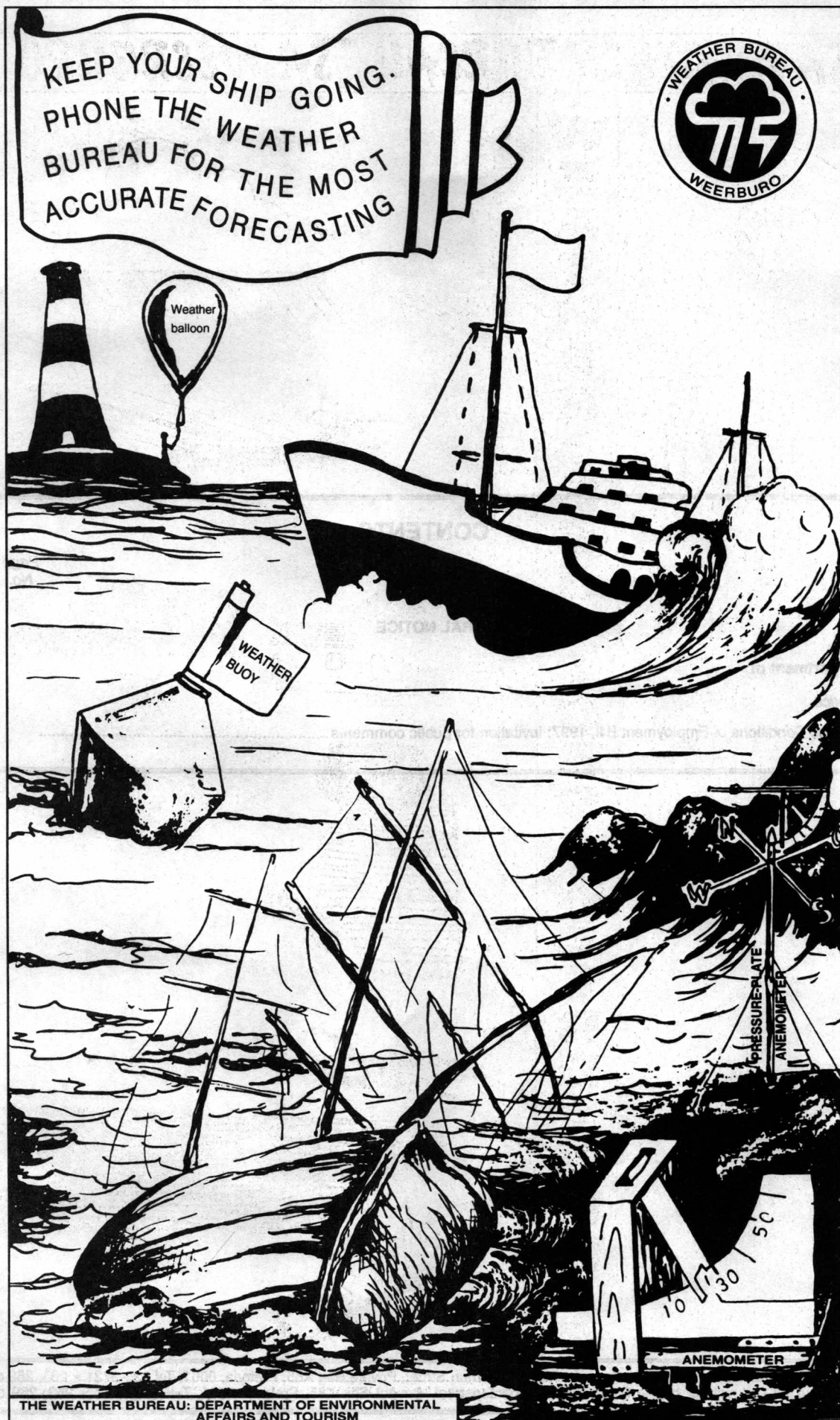
LAWS REPEALED BY SECTION 96(3)

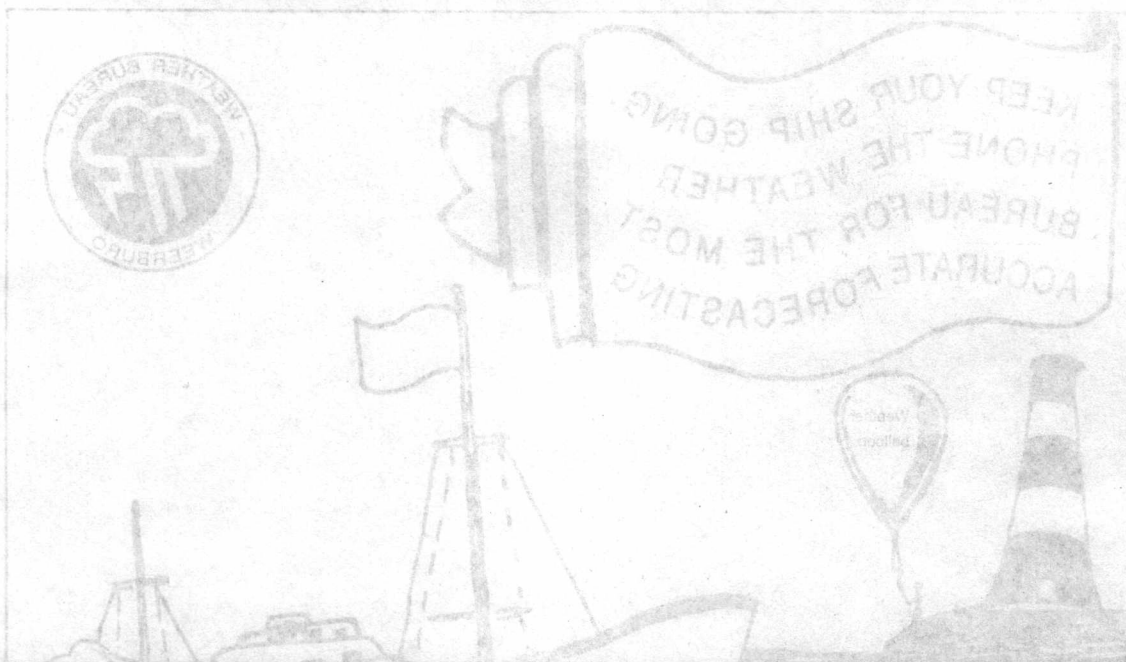
| Number & year of law | Short title | Extent of repeal |
|----------------------|--|------------------|
| Act No. 5 of 1957 | Wage Act, 1957 | The whole |
| Act No. 48 of 1981 | Wage Amendment Act, 1981 | The whole |
| Act No. 3 of 1983 | Basic Conditions of Employment Act, 1983 | The whole |
| Act No. 26 of 1984 | Wage Amendment Act, 1984 | The whole |
| Act No. 27 of 1984 | Wage Amendment Act, 1984 | The whole |
| Act No. 104 of 1992 | Basic Conditions of Employment Amendment Act, 1992 | The whole |
| Act No. 137 of 1993 | Basic Conditions of Employment Amendment Act, 1993 | The whole |
| Act No. 147 of 1993 | Agricultural Labour Act, 1993 | Chapter 2 |
| Act No. 50 of 1994 | Agricultural Labour Amendment Act, 1994 | Section 2 |

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