



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 24 February 2011

No. 4660

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## Government Notice

### MINISTRY OF LABOUR AND SOCIAL WELFARE

No. 17

2011

#### NOTICE OF VARIATION OF THE PROVISIONS OF THE LABOUR ACT: LABOUR ACT, 2007

I give notice in terms of section 139(3)(d) of the Labour Act, 2007 (Act No. 11 of 2007) that I have, in terms of subsection (8) of that section, after consultation with the Labour Advisory Council and satisfying myself that all the requirements of that section have been met, varied certain provisions of Chapter 3 of the Labour Act in their application to employers and employees in the hospitality and tourism industry as set out in the Schedule for a period of one year from the date of publication of this notice.

**I. NGATJIZEKO**

**MINISTER OF LABOUR AND SOCIAL WELFARE**

Windhoek, 3 February 2011

### SCHEDULE

#### Variation of section 8 of the Act

1. Section 8 of the Act is varied by the addition of the following definitions in subsection (1) -

- (cc) “hospitality or tourism employee” means an employee who is employed to work outside of a municipality, town or village as defined in the Local Authorities Act, 1992 (Act No. 23 of 1992) or a settlement as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992) at a hotel or by an operator;
- (cd) “hotel” includes an accommodation establishment which is classified as registrable under the Regulations Relating to the Registration of Accommodation Establishments published under Government Notice No. 139 of 14 July 2004;
- (ee) “operator” means an operator of a regulated business as contemplated in the Regulations Relating to the Registration of Regulated Businesses published under Government Notice No. 138 of 14 July 2004; and
- (ff) “regulated business” means the business of activity operator, air charter operator, booking agent, conference centre operator, foreign tour operator, shuttle and transport service operator, tour facilitator, tour and safari operator, trophy-hunting operator or vehicle rental operator as described in the Declaration of Tourism Regulated Sectors published under Government Notice No. 136 of 14 July 2004.”

### **Variation of section 18 of the Act**

**2.** Section 18 of the Act is varied in subsection (4) by the substitution for paragraph (c) of the following paragraph -

- “(c) a hospitality or tourism employee must be remunerated for any portion of a meal interval that is longer than 180 minutes, except that the employee must consent in writing to an unpaid meal interval of 180 minutes instead of 90 minutes.”

### **Variation of section 20**

**3.** Section 20 of the Act is varied by -

- (a) the substitution for subsection (1) of the following subsection -

“(1) No employer may require or permit a hospitality or tourism employee, other than an employee who is performing urgent work, to work a spread-over of more than 16 hours, except that the employee must give written consent to work a spread-over in excess of 12 hours.”; and

- (b) the addition of the following subsection -

“(3) Despite subsection (2), an employer of a hospitality or tourism employee may reduce or eliminate the weekly interval for a maximum period of four consecutive weeks, upon the written consent of the employee, subject to the following conditions -

- (a) the number of hours of the 36-hour weekly intervals reduced or eliminated must be accumulated, and the employer must grant to the employee an equivalent continuous rest interval immediately after the end of the said period; and
- (b) an employee who works for three or four consecutive weeks respectively, without a weekly 36 consecutive hours interval, must be paid an additional amount equal to one or two normal working day’s basic wage, respectively.”

**Variation of section 21 of the Act**

4. Section 21 of the Act is varied in subsection (2) by the substitution for paragraph (b) of the following paragraph -

- “(b) carrying on the business of -
- (i) a shop, hotel, boarding house or hostel;
  - (ii) an operator,

that lawfully operates on a Sunday;”

**Variation of section 22 of the Act**

5. Section 22 of the Act is varied in subsection (2) by the substitution for paragraph (b) of the following paragraph -

- “(b) carrying on the business of -
- (i) a shop, hotel, boarding house or hostel;
  - (ii) an operator,

that lawfully operates on a public holiday;”

**Variation of Section 28**

6. Section 28 of the Act is varied -

(a) in subsection (4) by the substitution for paragraphs (a) and (b) of the following paragraphs:

- “(a) in the case of a hospitality or tourism employee residing on agricultural land, the employer gives to the employee three months’ written notice to vacate or the employer and employee agree in writing that the employer may pay the employee three months’ remuneration in lieu of notice; or
- (b) in the case of all other hospitality or tourism employees, the employer gives to the employee at least one month’s written notice to vacate or the employer and employee agree in writing that the employer may pay one months’ remuneration in lieu of notice.”

(b) by the addition of the following subsections after subsection (4) -

“(4A) An agreement between an employer and employee for payment of remuneration in lieu of notice to vacate contemplated in subsection (4) does not preclude the employee from lodging a complaint of unfair dismissal at the office of the Labour Commissioner or obtaining a remedy of reinstatement and back pay as a result of an unfair dismissal.

(4B) If the employer and employee agree to the payment of remuneration in lieu of notice to vacate the premises of the employer as contemplated in subsection (4) -

- (a) the employer must transport the employee and the employee’s family, if they reside on the employer’s premises, to a location in Namibia designated by the employee;

- (b) in the case of an employee employed on agricultural land, the employer must afford the employee the full period of notice to remove the employee's livestock from the employer's premises or negotiate with the employee the conditions under which the employee will remove the livestock prior to the expiration of the notice period."
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