



Republic of Namibia
Annotated Statutes

Employment Services Act 8 of 2011

(GG 4764)

Part 1, Part 4 (except section 26(2)) and Part 5 brought into force on 1 September 2012 by GN 194/2012 (GG 5005); Part 3 brought into force on 15 September 2015 by GN 201/2015 (GG 5829); Part 2 and section 26(2) not yet in force

as amended by

Labour Amendment Act 2 of 2012 (GG 4925)

This amending Act was initially intended to be brought into force as a whole on 1 August 2012 by GN 136/2012 (GG 4958). However, GN 136/2012 was withdrawn on 1 August 2012 by GN 192/2012 (GG 5005). The amending Act was brought into force on 1 August 2012, *except for the provisions in section 10 insofar as they relate to section 26(2)(a)(ii) and (iii) of the Employment Services Act, by GN 193/2012 (GG 5005). The amendments made by the provisions not yet brought into force are not reflected here.*

ACT

To to provide for the establishment of the National Employment Service; to impose reporting and other obligations on certain employers and institutions; to provide for the licensure and regulation of private employment agencies; and to deal with matters incidental thereto.

[The *Government Gazette* repeats the word “to” at the beginning of the long title, as reproduced above.]

(Signed by the President on 14 July 2011)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

[The statement above normally appears below the **ARRANGEMENT OF SECTIONS**, but it appears above the **ARRANGEMENT OF SECTIONS** in the *Government Gazette* publishing this Act.]

ARRANGEMENT OF SECTIONS

PART 1 INTRODUCTORY PROVISIONS

1. Definitions

PART 2 NATIONAL EMPLOYMENT SERVICE

2. Establishment of Service
3. Employment Service Board
4. Functions of Board
5. Tenure of office and filling of vacancies
6. Vice-chairperson of Board
7. Meetings of Board
8. Committees of Board
9. Conduct of members and disclosure of interest
10. Administrative work of Board
11. Remuneration of Board members and expenses of Board
12. Reporting by Board
13. Employment Services Bureau
14. Integrated employment information system

PART 3 DESIGNATED EMPLOYERS AND INSTITUTIONS

15. Designation of employers
16. Designated employers to report vacancies and new positions
17. Designated employers to provide information to bureau
18. Designated institutions to provide information to bureau

PART 4 PRIVATE EMPLOYMENT AGENCIES

19. Private employment agencies to be licensed
20. Application for licence
21. Licence to operate private employment agency
22. Cancellation of licence
23. Appeal against Director's decision
24. Private employment agencies not to charge fees
25. Confidentiality of data collected
26. Obligations of private employment agencies when referring prospective employees
27. Transitional provision
28. Exemptions

PART 5 APPOINTMENT AND POWERS OF EMPLOYMENT OFFICERS AND ANCILLARY MATTERS

29. Appointment of employment officers
30. Power of employment officers
31. Offences relating to employment officers
32. Penalty for giving false information
33. Indemnity
34. Regulations
35. Short title and commencement

PART 1

INTRODUCTORY PROVISIONS

Definitions

1. In this Act, unless the context otherwise indicates -

“Board” means the Employment Service Board referred to in section 2(2)(a);

“bureau” means Employment Service Bureau referred to in section 2(2)(b);

“Director” means the director responsible for labour market services in the Ministry;

“employee” or “employer” means an employee or an employer as defined in section 1 of the Labour Act, 2007;

“employment officer” means a person appointed as such in terms of section 29;

“Labour Act, 2007” means the Labour Act, 2007 (Act No. 11 of 2007);

“licence” means a licence issued in terms of Part 4;

“Minister” means the Minister responsible for labour;

“Ministry” means the Ministry responsible for labour;

“integrated employment information system” means the system established pursuant to section 14;

“Permanent Secretary” means the Permanent Secretary of the Ministry responsible for labour;

“place” means to place, engage, refer, recruit, procure or supply an individual, to work for an employer or a prospective employer;

[definition of “place” inserted by Act 2 of 2012]

“prescribe” means prescribe by regulation made under this Act;

“private employment agency” means any natural or juristic person, except the State, which provides one or more of the following labour market services -

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationship which may arise therefrom;
- (b) services consisting of engaging individuals with a view to placing them to work for an employer, which assigns their tasks and supervises the execution of those tasks; or
- (c) other services relating to job-seeking that do not set out to match specific offers of and applications for employment, such as providing of information;

[definition of “private employment agency” amended by Act 2 of 2012;
not all of the changes are indicated by amendment markings]

“registered employers organization” or “registered trade union” means an employers’ organisation or a trade union that is registered in terms of section 57 of the Labour Act, 2007; and

“this Act” includes any regulation or notice made or issued under this Act.

PART 2 NATIONAL EMPLOYMENT SERVICE

[Part 2 of the Act, comprising sections 2-14, has not yet been brought into force.]

Establishment of Service

2. (1) There is established the National Employment Service to provide professional labour market services for the purpose of achieving full, productive and decent employment in Namibia.

- (2) The National Employment Service consists of -
- (a) the Employment Services Board; and
 - (b) the Employment Services Bureau.

Employment Services Board

3. (1) The Board consists of the following 14 individuals, appointed by the Minister in accordance with this section -

- (a) the Chairperson;
- (b) three members to represent the interests of the State, of which at least one member is female;
- (c) two members to represent the interests of registered trade unions, of which at least one member is female;
- (d) two members to represent the interests of registered employers’ organizations, of which at least one member is female;
- (e) not more than four members, who in the opinion of the Minister, possess specialised knowledge in labour and employment, immigration and education matters;

[The word “possess” is misspelt in the *Government Gazette*, as reproduced above.]

- (f) one member representing the interests of persons living with disabilities; and
- (g) one member of the National Youth Council established by section 2 of the National Youth Council Act, 2009 (Act No. 3 of 2009).

(2) With the approval of the Minister, the Board may co-opt other individuals to assist in the performance of its functions, but those individuals may not vote at meetings of the Board.

(3) Before appointing a member to the Board in terms of subsection (1)(c), (d), (f) or (g), the Minister must, by notice in writing, invite nominations from -

Employment Services Act 8 of 2011

- (a) registered trade unions, if the member is to represent their interests;
- (b) registered employers' organisations, if the member is to represent their interests;
- (c) an organisation which, in the opinion of the Minister, represents the interests of disabled persons; and
- (d) the Board of the National Youth Council, established by section 2 of the National Youth Council Act, 2009 (Act No. 3 of 2009).

Functions of Board

4. The functions of the Board are to -
- (a) investigate and advise the Minister on the provision of employment services and the attainment of other objectives of this Act;
 - (b) assist the Minister in monitoring and analysing labour market developments concerning occupations and occupational segments in particular, including vocational training;
 - (c) advise the Minister on legislation pertaining to the provision of employment services and regulation of private employment agencies;
 - (d) facilitate and coordinate multi-sectoral cooperation to achieve the objectives of this Act;
 - (e) advise the Minister from time to time on the applicable fees to be collected in terms of this Act;
 - (f) advise the Minister on the performance of the bureau in providing labour market services; and
 - (g) advise on any other employment matter that the Board considers useful to achieve the objects of this Act or is referred to the Board by the Minister.

Tenure of office and filling of vacancies

5. (1) A member of the Board is appointed for three years and may be reappointed at the end of the term of office.

(2) Despite subsection (1), the Minister must remove a member from office if the member -

- (a) has resigned in writing and delivered the resignation to the Permanent Secretary;
- (b) no longer represents the interests contemplated in section 3(1) in respect of which the member was appointed;
- (c) is absent from three consecutive meetings of the Board without permission or good cause;
- (d) is declared insolvent; or
- (e) is convicted of an offence and sentenced to prison without an option of a fine.

Employment Services Act 8 of 2011

(3) Despite subsection (2), the Minister may, after affording a member an opportunity to make representations on the matter, remove a member from office if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of that member's office or for good cause.

- (4) Whenever a vacancy occurs on the Board, the Minister must -
- (a) appoint a member to fill that vacancy for the unexpired term of office; and
 - (b) comply with section 3(3) when doing so.

Vice-chairperson of Board

6. (1) At the first meeting of the Board and thereafter as the occasion arises the members of the Board must elect from among their number a vice-chairperson to hold office for such period as may be determined by the Board at the time of the election.

(2) If for any reason the chairperson is absent or unable to perform his or her functions, the vice-chairperson must act in the chairperson's stead.

(3) If both the chairperson and the vice-chairperson are absent or unable to preside at any meeting of the Board, the members present must elect one from among their number to preside at that meeting and the person so elected to preside must during that meeting and until the chairperson or vice-chairperson resumes duty, perform all the functions of the chairperson.

(4) If the office of the vice-chairperson becomes vacant, the members of the Board must elect from among their number a vice-chairperson for the unexpired portion of the period of office for which his or her predecessor was elected.

Meetings of Board

7. (1) The Board must meet at least once every three months and -
- (a) the first meeting of the Board must be held at a date, place and time determined by the Minister;
 - (b) any meeting of the Board thereafter must be held at a date, place and time determined by the Board.

(2) If for any reason a meeting of the Board cannot take place, the secretary designated in terms of section 10 with the concurrence of the chairperson, must convene the next meeting of the Board.

- (3) The chairperson -
- (a) may at any time convene a special meeting of the Board;
 - (b) must convene a special meeting of the Board if requested thereto by the Minister or at least three members of the Board.

(4) The chairperson must cause reasonable notice of every meeting of the Board to be given to the members of the Board.

Employment Services Act 8 of 2011

(5) A majority of the members of the Board constitutes a quorum for a meeting of the Board.

(6) The decision of the majority of the members of the Board present and entitled to vote at a meeting thereof constitutes a decision of the Board and in the event of an equality of vote relating to any matter, the member presiding at the meeting has a casting vote in addition to his or her deliberative vote.

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

(8) The Board -

(a) must cause written records to be kept of the proceedings of its meetings; and

(b) may make rules relating to the holding of, and the procedures at its meetings.

Committees of Board

8. (1) The Board may establish one or more committees to -

(a) advise the Board, and to investigate and report to the Board on any matter the Board may refer to the committee for that purpose; and

(b) exercise any power or perform any function of the Board which the Board may delegate or assign to the committee.

(2) A committee consists of at least one member of the Board, and other persons, as the Board may determine.

(3) The Board must designate one of the members to chair the committee.

(4) The chairperson of the Board may attend meetings of any committee.

(5) The Board may at any time dissolve or reconstitute a committee.

(6) The Board is not divested or relieved of a power or function which it has delegated or assigned to a committee.

Conduct of members and disclosure of interest

9. (1) A member of the Board, and a member of any committee who is not a member of the Board, may not -

(a) engage in an activity that may undermine the integrity of the Board or a committee;

(b) participate in any investigation or decision concerning a matter in respect of which the member has a financial or other personal interest; or

(c) use any confidential information obtained in the performance of his or her functions as a member to obtain, directly or indirectly, a financial or other advantage for himself or herself or any other person.

Employment Services Act 8 of 2011

(2) A member of the Board and a member of any committee who is not a member of the Board, must in writing disclose to the Minister any direct or indirect financial interest which the member has or acquires in any business carried on in Namibia or elsewhere or in any body corporate carrying on any business in Namibia or elsewhere.

(3) A member of the Board or of any committee who has or acquires any financial or other personal interest, either directly or indirectly, in any matter which is before the Board or a committee for discussion and determination must -

- (a) immediately and fully disclose the interest to the Board or the committee, as the case may be; and
- (b) withdraw from any further discussion or determination by the Board or committee, as the case may be, of that matter.

Administrative work of Board

10. (1) The Permanent Secretary -

- (a) must make staff members in the Ministry available to perform administrative and clerical work for the Board in the performance of its functions; and
- (b) may designate a staff member in the Ministry to serve as a secretary to the Board.

(2) The Board may, after consultation with the Permanent Secretary and with the approval of the Permanent Secretary as to the conditions of appointment, appoint other persons to assist it in the performance of its functions.

Remuneration of Board members and expenses of Board

11. (1) A member of the Board or of any committee who is not in full time employment of the State is entitled to be paid such remuneration or allowances, as well as such other benefits, as the Minister, with the concurrence of the Minister responsible for finance, may determine.

(2) The remuneration or allowances determined under subsection (1) may differ according to the office held, or the functions performed, by a member.

(3) The remuneration or allowances payable under subsection (1) and any other expenses incurred by the Board in the performance of its duties and functions are payable from money appropriated for that purpose by Parliament and made available to the Ministry.

Reporting by Board

12. (1) The Board must before 30 June in each year compile and submit a report to the Minister on its activities for the past year.

(2) The Minister must lay the report referred to in subsection (1) before the National Assembly within 30 days after receiving it, if the National Assembly is then in session, or if the National Assembly is not then in session, within 14 days after the commencement of its next session.

Employment Services Act 8 of 2011

(3) The Minister may, in addition to the report referred to in subsection (1), submit to the National Assembly a report on any matter which the Board wishes to bring to the attention of the National Assembly.

(4) The Permanent Secretary may, on such terms or conditions that he or she may impose, make available for sale to the public, copies of a report referred to in subsection (1).

Employment Services Bureau

13. (1) The Employment Services Bureau consists of the Director who is the head of the bureau, and all the employment officers of the Ministry.

(2) The functions of the bureau are to -

- (a) register job-seekers;
- (b) register vacancies in the public and private sector;
- (c) assist job-seekers to find suitable employment and to recommend suitably-qualified job seekers to prospective employers;
- (d) provide vocational guidance, career and labour market information to job-seekers and other interested persons;
- (e) regulate and control the use of psychometric tests for selection and recruitment purposes in accordance with the Social Work and Psychology Act, 2004 (Act No. 6 of 2004);
- (f) liaise with the Ministry responsible for education in respect of educational and vocational training institutions on vocational attachments and internship;
- (g) develop career guidance and related programmes aimed at helping persons to gain market orientated competencies;
- (h) maintain the integrated employment information system in term of section 14;
- (i) assist and facilitate research for the Board on employment-related matters;
- (j) keep a list of non-Namibian citizens granted work permits in terms of the Immigration Control Act, 1993 (Act No. 7 of 1993), and to advise the Minister accordingly on the training of Namibians in those occupations;
- (k) keep a register of private employment agencies;
- (l) collect, analyze and disseminate statistical information related to employment in accordance with other relevant laws; and
- (m) perform any other such functions as may be assigned to it by or under this Act or by the Minister.

Integrated employment information system

14. (1) The bureau must establish and operate an integrated employment information system to collect, store and update information concerning -

- (a) names, qualifications and occupations of job-seekers;
- (b) vacancies in the labour market;
- (c) training opportunities for retrenched workers and jobseekers;
- (d) specialized skills and qualifications possessed by Namibian citizens and permanent residents;
- (e) specialized skills and qualifications skills possessed by non-citizens residing in Namibia; and
- (f) employers in Namibia.

(2) The bureau must record and store on the integrated employment information system such other information or material as may be prescribed.

PART 3 DESIGNATED EMPLOYERS AND INSTITUTIONS

[Part 3 of the Act, comprising sections 15-18, has not yet been brought into force.]

Designation of employers

15. (1) In this Part -

“designated employer” means an employer designated under subsection (2); and

“prospective employer” means the person referred to in section 16(2).

(2) The Minister may, after consultation with the Board, by notice in the *Gazette* or by regulation designate employers, classes of employers or categories of employers to whom the provisions of this Part apply.

(3) A notice or regulation issued or made under subsection (2) must indicate the date from which the employer or employers are required to comply with the provisions of this Part.

(4) In addition to publication in the *Gazette*, the Permanent Secretary must take such other steps as may be prescribed to ensure that a designation made under subsection (2) is brought to the attention of the affected employer or employers.

(5) The Minister may at time amend or revoke a designation made under subsection (2).

(6) The Minister may on his or her own initiative or on application by any person in the prescribed form and manner, by notice in the *Gazette* or by regulation, exempt employers, classes of employers or categories of employers from the application of the provisions of this Part, in whole or in part.

(7) An exemption granted in terms of subsection (6) must -

- (a) be in the prescribed form signed by the Minister, which must include a description of the employers, category of employers or class of employers affected by the exemption;

- (b) include any conditions under which the exemption is granted;
- (c) state the period of the exemption, which may be made retrospective to a date no earlier than the date of application for the exemption; and
- (d) if it is granted through regulation or by notice to a class or category of employers, be published in the *Gazette*.

Designated employers to report vacancies and new positions

16. (1) Every designated employer must within the prescribed time period and in the prescribed manner, notify the bureau of any vacancy or new position, whether temporary or non-temporary, in its employment establishment.

(2) Every person who intends to operate a new employment establishment whereby he or she or it would become a designated employer must notify the bureau on the prescribed form and within the prescribed time period before employing persons.

(3) If a designated employer or prospective employer -

(a) intends to fill any vacant or new position, he or she or it must notify the bureau in the prescribed form and manner and within the prescribed time period and indicate -

- (i) the date by which he or she or it intends to employ persons to fill the vacant or new position;
- (ii) the minimum qualifications and requirements for employment in such a position; and
- (iii) the number of persons to be employed in each position,

(b) advertises for applications for any position referred to in paragraph (a), the designated employer or prospective employer must notify the bureau no later than the date on which he or she or it places an advertisement for applications.

(4) After the bureau has received a notification of a vacant or new position in terms of subsection (3), the bureau must -

- (a) ascertain whether suitably-qualified job-seekers are registered with the integrated employment information system and are available for work; and
- (b) refer the particulars of such job-seekers to the designated employer or prospective employer within the prescribed period, if such job-seekers are registered with the integrated employment information system and available for work.

(5) No designated employer or prospective employer may fill a vacancy or a new position without considering in good faith any suitably-qualified job-seeker referred to him or her or it by the bureau in terms of subsection (4).

(6) If the bureau is unable to refer suitably-qualified job-seekers within the time period required by the employer in terms of subsection (3)(a) then subsection (5) only applies if the position remains vacant and the bureau refers suitably-qualified job-seekers after the date specified by the employer.

(7) If the bureau refers a job-seeker to any designated employer or prospective employer for employment, the employer must report to the bureau whether it employed the job-seeker or not and provide such additional information as may be prescribed.

(8) Any person who contravenes or fails to comply with subsection (1), (2), (3), (5) or (7) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Designated employers to provide information to the bureau

17. (1) Every designated employer must, in the prescribed manner and within the prescribed period, submit to the bureau a profile of its establishment, including the following information -

- (a) the number of positions according to occupation, including apprenticeships, job attachments and vacancies;
- (b) the number of employees who are Namibian citizens or permanent residents by sex, age, occupation, identity number or birth certificate number;
- (c) the number of employees who are not Namibian citizens by sex, age, occupation, passport number or birth certificate number;
- (d) the salary or salary range for each occupation;
- (e) available skills development loans, bursaries and scholarships offered by the employer;
- (f) any other information that may be prescribed.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Designated institutions to provide information to bureau

18. (1) The Minister may, after consultation with the Board, by notice in the *Gazette* or by regulation designate educational, training or other institutions which are required to comply with the requirements of this section and he or she may amend or revoke such designation.

(2) The bureau may direct a designated institution to submit, in the prescribed form and within the period determined by the bureau, information in respect of -

- (a) persons who completed accredited educational programmes;
- (b) persons who are currently in such programmes;
- (c) courses offered; and
- (d) any matter that may be prescribed.

(3) Any person who or designated institution that fails to comply with a directive issued under subsection (2) commits an offence and on conviction is liable to a fine not

exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

PART 4 PRIVATE EMPLOYMENT AGENCIES

Private employment agencies to be licensed

19. (1) A person may not operate or conduct the business of a private employment agency unless he or she or it -

- (a) is in possession of a licence issued under this Part except if he or she or it has been exempted from the provisions of this Part pursuant to section 28; and
- (b) complies with the requirements of this Act and any prescribed requirements and criteria.

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Application for licence

20. (1) Subject to section 27, a person operating or intending to operate a private employment agency must, in the prescribed form and manner, apply to the Director for a licence to operate a private employment agency.

(2) An application made under subsection (1) must be accompanied by such fees as may be prescribed.

(3) On receipt of an application made under this section the Director must consider the application and -

- (a) if satisfied that the applicant meets the requirements of this Part and any prescribed criteria or requirements, approve the application; or
- (b) if not so satisfied, refuse the application.

(4) If the Director refuses an application for a licence, the Director must give written notice of that decision, containing the reasons therefore, to the applicant.

Licence to operate private employment agency

21. (1) On approval of an application for a licence to operate as a private employment agency the Director must, on the payment of the prescribed fee, issue the licence for the prescribed period of time and subject to any conditions that the Director may impose.

(2) A licence issued under subsection (1) may be renewed.

(3) The Director must maintain and keep a record of all licensed private employment agencies.

Cancellation of licence

22. (1) The Director may cancel the licence of any private employment agency that fails to comply with this Act, any condition of the licence or any prescribed requirements or criteria.

(2) If the Director has reason to believe that a private employment agency is not complying with this Act, any condition of the licence or any prescribed criteria or requirements and accordingly that its registration should be cancelled, the Director must before cancelling the licence -

- (a) notify the agency of the intention to cancel the licence and the reasons for doing so;
- (b) give the agency 30 days from the date of the notice to make representations on why its registration should not be cancelled; and
- (c) take those representations into account in reaching a decision.

(3) If the Director cancels the licence of a private employment agency, the Director must give written notice of that decision, containing the reasons therefor, to the private employment agency.

Appeal against Director's decision

23. (1) Any person aggrieved by a decision of the Director in terms of section 20 or 22 may, within 30 days of the date of the Director's decision, appeal against that decision to the Labour Court contemplated in section 116 of the Labour Act, 2007.

(2) An appeal under subsection (1) must be prosecuted as if it were an appeal from the decision of the Labour Commissioner under the Labour Act, 2007, and the rules of the Labour Court apply to such an appeal.

(3) The Labour Court may, on good cause shown, extend the period within which a person may note that appeal.

Private employment agencies not to charge fees

24. (1) A private employment agency may not charge a fee directly or indirectly to any individual using its services to be placed with an employer or a prospective employer or whom it has so placed.

[subsection (1) substituted by Act 2 of 2012]

(1A) A user enterprise may not deduct or withhold from the remuneration of an individual placed with it by a private employment agency an amount equivalent to the fee paid by the user enterprise to the private employment agency for the placement of the employee or any portion thereof.

[subsection (1A) inserted by Act 2 of 2012]

(2) Any person who contravenes or fails to comply with subsection (1) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Confidentiality of data collected

25. (1) Subject to subsection (2), the processing of personal data of job-seekers by a private employment agency must -

- (a) be done in a manner that protects this data and ensures respect for the person's privacy;
- (b) be limited to matters related to the qualifications and professional experience of the persons concerned and any other directly relevant information.

(2) A private employment agency -

- (a) may only provide information to a prospective employer concerning a job-seeker in accordance with subsection (1)(b); and
- (b) must provide information to the bureau as requested by it, with due regard to the confidential nature of such information.

(3) Any person who contravenes or fails to comply with any provision of this section commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Obligations of private employment agencies when referring prospective employees

26. (1) A private employment agency may not -

(a) discriminate in the advertisement of positions for employment placement or in the recruitment or referral of persons for prospective employment with employers on the grounds of -

- (i) race, colour, or ethnic origin;
- (ii) sex, marital status or family responsibilities;
- (iii) religion, creed or political opinion;
- (iv) social or economic status;
- (v) degree of physical or mental disability;
- (vi) AIDS or HIV status; or
- (vii) previous, current or future pregnancy,

(b) refer persons for prospective employment to an employer that -

- (i) has an outstanding compliance order issued by a labour inspector pursuant to the Labour Act, 2007;
- (ii) is not in good standing in respect of contributions to the Social Security Commission; or
- (iii) is a designated employer within the meaning of the Affirmative Action (Employment) Act, 1998 (Act No. 29 of 1998) but is not in possession of a certificate of compliance issued by the Employment Equity Commission.

Employment Services Act 8 of 2011

(2) A private employment agency may not place an individual with an employer or a prospective employer –

(a) unless the employer or prospective employer undertakes to ensure that every individual is employed on terms and conditions not less favourable than –

(i) those that are applicable to its incumbent employees who perform the same or similar work or work of equal value;

(ii)

[subparagraph (ii) to be inserted by Act 2 of 2012, but this portion of Act 2 of 2012 has not yet been brought into force:

(ii) those provided for in a collective agreement in that industry or those prevailing for similar work in the industry and region in which the employees are employed; or]

(iii)

[subparagraph (ii) to be inserted by Act 2 of 2012, but this portion of Act 2 of 2012 has not yet been brought into force:

(iii) those prevailing in the nearest appropriate region, if similar work is not performed in the region.]

b) during or in contemplation of a strike or lockout at the facilities of the employer or prospective employer; or

(c) within six months after the employer or prospective employer has dismissed employees in terms of section 34 of the Labour Act, 2007.

[subsection (2) substituted by Act 2 of 2012, but part of the amending Act (as indicated above) has not yet come into force]

[Subsection 26(2) as a whole has not yet been brought into force. See GN 194/2012 (GG 5005).]

(3) Any person who contravenes or fails to comply with subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Transitional provision

27. Despite sections 19 and 20, a person who immediately before the date of commencement of this Act was operating or conducting the business of employment agency must, if he or she or it wishes to continue operating or conducting the business, within six months from the date of commencement of this Act apply for the issue of a licence as provided for in this Part.

Exemptions

28. (1) The Minister may exempt any person or category of persons from the provisions of this Part.

(2) A person who wishes to be exempted from the application of this Part must, in the prescribed form and manner, apply for such exemption to the Minister.

(3) On receipt of an application made in terms of subsection (2), the Minister must consider the application and if satisfied that there are good reasons for such exemption and that such exemption is in the public interest, in writing, grant such exemption.

PART 5
APPOINTMENT AND POWERS OF EMPLOYMENT
OFFICERS AND ANCILLARY MATTERS

Appointment of employment officers

29. (1) Subject to the laws governing the public service, the Minister may appoint employment officers to enforce this Act or any decision or order made in terms of this Act.

(2) The Permanent Secretary must issue each appointed employment officer with a certificate confirming the appointment.

(3) The Minister may suspend or withdraw an appointment made in terms of subsection (1).

Powers of employment officers

30. (1) The Director or any employment officer appointed in terms of this Act may enter and inspect any place of employment or a private employment agency for the purpose of this Act and may exercise the powers conferred upon a labour inspector in terms of section 125 of the Labour Act, 2007.

(2) An employment officer may, without notice and at any reasonable time during the day, enter upon any premises of an employer or of a private employment agency for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Act.

(3) In the exercise of the powers conferred upon an employment officer by this section, an employment officer may, subject to subsection (4) -

- (a) require an employer or a person conducting a private employment agency to produce any books or documents which relate to his or her business and which are or have been in his or her premises or in his or her possession or custody, or under his or her control;
- (b) at any place require any person who has the possession, custody or control of any books or documents relating to the business of any employer or of any person who is or was conducting a private employment agency, to produce the books or documents;
- (c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b);
- (d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b);
- (e) seize any book or document referred to in paragraph (a) or (b) that, in his or her opinion, may afford evidence of the commission of an offence under this Act; or
- (f) require a member of the Namibian Police to assist in the exercise of the powers referred to in this subsection; and

- (g) request any individual to assist as an interpreter or otherwise in the exercise of the powers referred to in this subsection.

(4) An employment officer may enter premises and conduct a search in terms of subsection (1) and (2), only if it is done in accordance with Chapter 2 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and as if-

- (a) an employment officer is a police official; and
(b) any book, document or object is concerned with the commission of any offence

(5) An employment officer must in the exercise of powers conferred by the subsection (2) exercise such reasonable care as to ensure that the smooth and efficient running of an employer's business or a private employment agency is not unduly interfered with.

[The word "the" in the phrase "the subsection (2)" is superfluous.]

(6) Where an employment officer seizes a register, record, book or other document in the performance of the employment officers' duties, the employment officer must give to the employer or private employment agency or his or her or its representative a receipt in respect of such register, record, book or other document in the prescribed form.

(7) An employer whose premises are used for employment purposes and a private employment agency whose premises are used as a private employment agency, and any person employed by the employer or private employment agency, must at all reasonable times during the day, furnish such reasonable facilities as may be required by an employment officer for entering the premises for the purpose of inspecting or examining the books and documents kept in the premises, or for making any inquiry in relations thereto.

(8) Any member of the Namibian Police Force required to assist in terms of this section, or any individual requested to assist in terms of subsection (3), may accompany the employment officer as if that member or individual were an employment officer.

(9) In so far as this section authorises the interference with a person's right to privacy, and the privacy of that person's home as guaranteed by the article 13 of the Namibian Constitution, this section is enacted on the authority of sub-article 2 of that article.

[The word "the" in the phrase "the article 13" is superfluous.]

Offences relating to employment officers

31. A person who -

- (a) makes a false statement -
(i) in any representation to an employment officer; or
(ii) when giving evidence to or before an employment officer investigating a case under this Act which that person knows to be false in any material particular;
(b) refuses to answer any question which an employment officer, in the exercise of his or her functions under this section, asks him or her;

Employment Services Act 8 of 2011

- (c) refuses to comply, to the best of his or her ability, with any requirement of the employment officer in the exercise of his or her functions under this Act; or
- (d) hinders an employment officer in the exercise of his or her functions under this Act,

commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Penalty for giving false information

32. Any person who, when required or requested to give information under this Act other than in circumstances contemplated in section 31, knowingly makes a false statement or gives false information commits an offence and on conviction is liable to a fine not exceeding N\$20 000 or to imprisonment not exceeding two years or both such fine and imprisonment.

Indemnity

33. The Minister, Permanent Secretary, Director, chairperson or member of the Board, employment officer and any other staff member of the Ministry are not personally liable in respect of anything done in good faith under this Act.

Regulations

- 34.** (1) The Minister may, after consultation with the Board, make regulations -
- (a) relating to any matter required or permitted to be prescribed under this Act;
 - (b) prescribing forms to be used in order to achieve the purposes of this Act;
 - (c) relating to the registration of job seekers;
 - (d) relating to the licensing of private employment agencies; and
 - (b) generally on any matter which the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this Act.

[The paragraphs are incorrectly lettered in the *Government Gazette*, as reproduced above; the last paragraph should be lettered as (e) instead of (b).]

(2) Regulations made under subsection (1) may prescribe penalties, of a fine not exceeding N\$5 000 or imprisonment for a period of six months or to both such fine and imprisonment, for any contravention of or failure to comply with any provision thereof.

Short title and commencement

35. (1) This Act is called the Employment Services Act, 2011 (Act No. 8 of 2011) and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

[Although the short title of the Act is given here as the “Employment Services Act”, the headings and contents section of the original *Government Gazette* refer to it as the “Employment Service Act”, with “Service” being singular instead of plural. The Labour Amendment Act 2 of 2012 correctly refers to the “Employment Services Act”.]

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (2) in relation to that particular provision.