

# LABOUR

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## Shop Hours and Shop Assistants Ordinance 15 of 1939.

**Summary:** This Ordinance governs shop hours and certain working conditions of shop assistants.

**Amendments:** This Ordinance is amended by Ord. 4/1940, Proc. 34/1950, Proc. 50/1950, Ord. 10/1952, Ord. 5/1957, Ord. 39/1957, Ord. 4/1959 and Act 12/1986.

***Employees' Compensation Act 30 of 1941***, as amended in South Africa prior to Namibian independence.

**Summary:** This Act makes provision for the compensation of workers or their dependants if the worker is injured or killed in the course of employment. It was previously known as the Workmen's Compensation Act.

**Applicability to SWA:** Section 109*bis* states "This Act and any amendment thereto shall apply also in the territory including the portion of the territory known as the 'Rehoboth Gebiet' and in relation to all persons in the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and defined in the First Schedule to Proclamation No. 28 of 1923 of the territory."

Section 109*bis* also provides that all proclamations and notices issued under the principal Act prior to the 1956 amendment that made it applicable to SWA shall automatically apply to SWA, unless their applicability is expressly limited to an area that excludes SWA.

Section 1 defines "employers' organization", "Gazette", "provincial or local division of the Supreme Court", "territory" and "Republic" appropriately to include South West Africa.

**Transfer of administration to SWA:** The relevant Transfer Proclamation is the Executive Powers (Labour) Transfer Proclamation, (AG 17/1977), dated 20 December 1977. However, section 3 of the transfer proclamation excluded this Act from the operation of Section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA.

**Amendments:** Act 9/1982 makes minor amendments to section 70 of the Act. Substantial amendments are made by RSA Proclamation 45 of 9 March 1990, in preparation for Namibian independence.

Act 5/1995, which came into force on 1 March 1995 (GN 52/1995, GG 1039), amends the Act substantially and changes its name from the Workmen's Compensation Act to the Employees' Compensation Act.

Sections 25(5) and 37 of the National Education Act 30 of 1980, which is brought into operation by AG 6/1981, provide that state teachers in South West Africa are to be deemed "workmen" while students at government schools may not be deemed "workmen". (However, this Act was repealed by the Education Act 16 of 2001 except

insofar as it applies to tertiary education, and by the Teachers' Education Colleges Act 25 of 2003 insofar as it applies to teachers' education colleges.)

**Regulations:** Regulations are contained in RSA GN R.581 of 1961, as amended by RSA Proc. 45/1990 (in addition to previous amendments which are not recorded here) and GN 47/2004 (GG 3169).

The amount referred to in section 3(2)(b) (exclusion of persons as employees) is set at N\$72 000 with effect from 1 March 2001 (GN 100/2001, GG 2544).

The amounts of compensation for temporary, partial, total and permanent disablement and death are increased in GN 46/2004 (GG 3169).

Tariffs of fees published in terms of the Act from time to time have not been recorded here. Notices of unclaimed payments have also not been recorded here.

### **Natives Minimum Wage Proclamation 1 of 1944.**

**Summary:** This Proclamation, which appears to be obsolete, provides for the payment of minimum wages to "natives".

**Amendments:** This Proclamation is amended by Proc. 5/1944.

### **Development Brigade Corporation Act 32 of 1992.**

**Summary:** This Act provides for the establishment of the Development Brigade Corporation, with the object of engaging in agricultural and other business activities for the purpose of providing training and skills development opportunities to unemployed persons. It came into force on 1 February 1993 (GN 15/1993, GG 580).

**Regulations:** Proc. 3/1993 (GG 577) and Proc. 20/1993 (GG 715) both relate to the designation of the Minister responsible for administering the Act.

**Appointments:** Directors are appointed in GN 113/1994 (GG 870).

**Commissions:** Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc.38/2004, GG 3221).

See also GN 132/2004 (GG 3221).

### **Namibia Qualifications Authority Act 29 of 1996.**

**Summary:** This Act establishes a Namibia Qualification Authority which deals with matters relating to occupational standards for any occupation, job, post or position in any career structure, as well as appropriate curriculum standards. It came into force on 1 June 1998, and the administration of the Act was assigned to the Ministry of Higher Education, Vocational Training Science and Technology (Proc. 11/1998, GG 1861).

**Amendments:** The State-owned Enterprises Governance Act 2 of 2006, which was brought into operation by Proc. 13/2006 (GG 3733), amends section 5, 6, 10 and 11.

The Vocational Education and Training Act 1 of 2008 amends sections 5 and 15.

**Regulations:** National Professional Standards for teachers are approved pursuant to section 3(c) in General Notice 356/2006 (GG 3739).

Regulations for the accreditation of persons, institutions or organisations are contained in GN 124/2006 (GG 3684).

Regulations relating to the evaluation of qualifications are contained in GN 182/2007 (GG 3914).

Regulations setting up the National Qualifications Framework for Namibia are contained in GN 125/2006 (GG 3685). Qualifications pursuant to this framework are registered as follows:

- Hospitality and Tourism - General Notice 129/2007 (GG 3850)
- Postal Services - General Notice 51/2010 (GG 4435)
- Business, Commerce and Management Studies - General Notice 53/2010 (GG 4435)
- Physical, Mathematical and Computer Sciences and Law, Military Science and Security - General Notice 54/2010 (GG 4435)
- Montessori Pre-primary and Primary Teaching Diplomas - General Notice 56/2010 (GG 4435) (Note that the heading of this notice is in error and might be misleading.)

Unit standards are registered as follows (in alphabetical order):

- Assessment - General Notice 132/2007 (GG 3850).
- Automotive Mechanics - General Notice 355/2006 (GG 3739), General Notice 134/2007 (GG 3850).
- Bricklaying - General Notice 355/2006 (GG 3739).
- Clothing Production - General Notice 355/2006 (GG 3739).
- Foundational Skills (Communication & Numeracy) – General Notice 299/2007 (GG 3914)
- HIV and AIDS Awareness – General Notice 296/2007 (GG 3914).
- Hospitality - General Notice 355/2006 (GG 3739).
- Hospitality and Tourism - General Notice 130-131/2007 (GG 3850).
- Information Communication Technology Fundamentals - General Notice 355/2006 (GG 3739).
- Information Communication Technology for Educators - General Notice 133/2007 (GG 3850).
- Mechanical Engineering-Metal Fabrication are registered in General Notice 135/2007 (GG 3850).
- Moderation of Assessment - General Notice 384/2007 (GG 3946)
- Office Administration - General Notice 355/2006 (GG 3739)
- Postal Services - General Notice 52/2010 (GG 4435) (Note that the heading of this notice is in error and might be misleading.)
- Road Construction and Maintenance - General Notice 66/2010 (GG 4435)
- Standards Setting - General Notice 55/2010 (GG 4435)

Accreditations of certain courses at certain institutions are published from time to time but have not been recorded here.

## **Affirmative Action (Employment) Act 29 of 1998.**

**Summary:** This Act establishes an Employment Equity Commission and provides for affirmative action measures to achieve equal opportunity in employment for racially disadvantaged persons, women and persons with disabilities. It came into force, with the exception of section 2, sections 19-43 and sections 45-48, on 18 November 1998 (GN 278/1998, GG 1996). The remaining sections all came into force on 6 August 1999 (GN 156/1999, GG 2161).

**Amendments:** Act 6/2007 amends sections 1, 10, 23, 24, 30, 44, 45 and 47. The Labour Act 11 of 2007 amends section 45.

**Regulations:** A “relevant employer” for the purposes of the Act is defined as an employer which employs 50 or more employees by GN 158/1999 (GG 2161), which also contains guidelines for calculation and interpretation of this rule. GN 158/1999 is replaced by GN 95/2006 (GG 3658), which defines “relevant employer” as an employer which employs 25 or more employees.

Regulations are contained in GN 159/1999 (GG 2161).

GN 157/1999 (GN 2161) provides that the first affirmative action report by “an Office, Ministry or Agency in the Public Service, or by a parastatal, identified as a relevant employer” must be submitted by 6 August 2000.

**Cases:** *Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC). The Act is discussed in *dicta* in *Thloro v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 113C.

**Articles:** Namibia Institute for Democracy, *Implementing Affirmative Action in Namibia: A summarised guide to the Affirmative Action (Employment) Act (Act 29 of 1998)*, third edition, 2000, available at [www.nid.org.na/pdf/publications/aff\\_action.pdf](http://www.nid.org.na/pdf/publications/aff_action.pdf).

**Related international agreements:**

*Convention on the Elimination of All Forms of Discrimination against Women, 1979*  
accession: 23 November 1992

*Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women*

effective date: 22 December 2000 (This is the date on which the Optional Protocol came into force internationally after being ratified by the first 10 countries, one of which is Namibia. The Namibian Parliament approved the Optional Protocol on 17 May 2000.)

Namibia has NOT agreed to the following amendment, which is not yet in force internationally:

\* *Amendment to article 20, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination Against Women, 1995.*

*SADC Protocol on Gender and Development, 2008*

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 17 August 2008 (source: SADC)

ratification approved by Parliament: 7 October 2009 (source: Parliament)

SADC list of ratifications dated 23 June 2010 does not show ratification by Namibia

## **Labour Act 11 of 2007.**

**Summary:** This Act consolidates and amends the labour law. It entrenches fundamental labour rights and protections, regulates the basic terms and conditions of employment, ensures the health, safety and welfare of employees, protects employees against unfair labour practices, regulates the registration of trade unions and employers' organizations, regulates collective labour relations, provides for the systemic prevention and resolution of labour disputes, establishes the Labour Advisory Council, Labour Court, Wages Commission and labour inspectorate, and provides for the appointment of the Labour Commissioner and Deputy Labour Commissioner.

This Act repeals both the Labour Act 6 of 1992 and the Labour Act 15 of 2004, which was brought only partially into force. There is an extensive Schedule of transitional provisions. Any reference to the 1992 Act in any law must be construed insofar as possible as a reference to the corresponding provision of this Act.

The Labour Act 15 of 2004 was intended to repeal the Labour Act 6 1992, but it never came into force in its entirety. Sections 75, 97(a), (b), (c), (e) and (h), 94(1) and (4), 98, 99, 100 and 101 and items 1 and 11(3) of Schedule 1 came into force on 30 November 2005 (GN 162/2005, GG 3534). Section 118 and item 13(1) of Schedule 1 came into force on 27 January 2006 (GN 20/2006, GG 3582).

All of the Act other than section 128 (prohibiting labour hire) came into force on 1 November 2008 (GN 260/2008, GG 4151). Section 128 of the Act came into force on 1 March 2009 (GN 1/2009, GG 4192).

**Application of Act:** Section 5 of the Act applies to all employers and employees. The remainder of the Act applies to all employers and employees except members of the Namibian Defence Force, the Namibian Police Force, municipal police services, the Namibian Central Intelligence Service or the Prison Service (unless the laws governing any of these services provide otherwise).

Application of the 1992 Act was addressed in the following:

Export processing zones are exempted from the operation of certain provisions of the Labour Act by section 8 of the Export Processing Zones Act 9 of 1995 (as amended by Act 6/1996).

Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 provides that the Labour Act will not apply to the administration of the Service or to its staff members, with the exception of sections 35, 39, 40, 41, 52, 106 and 107.

Section 40 of the Namibia Water Corporation Act 12 of 1997 provides that employees who would cause or prolong a disruption of water supply to a customer by withholding their services shall be deemed to be rendering an essential service for the purposes of section 79 of the Act.

**Exemptions:** The following work is exempted from the prohibition on work on Sundays and public holidays in section 33(1) of the 1992 Act:

- GN 100/1998 (GG 1856): work by employees engaged in providing an essential service in a hospital, clinic, pharmacy, radiography, medical laboratory, mortuary, children's home or ambulance service  
replaced by GN 301/1998 (GG 2010): nursing services, ambulance services, radiographic services, admission services,

porter's services, cleaning services, medical laboratory services, medical professional services, pharmacy services, health assistance (mortuary) services, child care services, Chief Children's Home Superintendent's services, driving services, Engineering Technician's services, Medical Assistant's services, Security Orderly's services and watchman's services.

- GN 49/2000 (GG 2280): security officers "who are engaged in the security services rendered by the security enterprises" (revoking any previous exemptions granted to any security enterprise in respect of Sunday and holiday work).
- GN 248/2000 (GG 2426): employees engaged in the continuous metallurgic process of Navachab Gold Mine
- GN 249/2000 (GG 2426): employees engaged in diamond mining operations by vessel (referred to as the Ocean Diamond Mining System)
- GN 77/2002 (GG 2746): all work activities of employees of Anglo Base Namibia (Proprietary) Limited Project
- GN 116/2002 (GG 2765): all work activities of employees of Trans Hex Marine (Namibia) (Proprietary) Limited, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 42/2003 (GG 2933): employees of the pre-treatment facility plant of the Namdeb Diamond Corporation (Pty) Ltd
- GN 43/2003 (GG 2933): employees of Ramatex Textiles Namibia (Pty) Ltd
- GN 38/2004 (GG 3161): employees of the Namdeb Diamond Corporation (Pty) Ltd – Pocket Beaches Project
- GN 141/2004 (GG 3237): employees of the Etosha Fishing Corporation (Pty) Ltd
- GN 268/2004 (GG 3345): employees of the Roads Authority: Roads Transport Inspection Services
- GN 269/2004 (GG 3345): employees in Namdeb Diamond Corporation (Pty) Ltd – Recovery Tailings Retreatment Plants, Sort House and No. 2 Plant
- GN 100/2005 (GG 3482): work activities in the farming division of WUM Properties
- GN 142/2005 (GG 3529): work performed in Namdeb Diamond Corporation (Pty) Ltd - Articulated Dump Truck Stripping Operations
- GN 1/2006 (GG 3573): work performed in petrol stations of Pupkewitz Motor Division in Ondangwa and Rundu, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 2/2006 (GG 3573): work in Okorusu Fluorspar (Pty) Ltd – Metallurgical Plants, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 83/2006 (GG 3647): work performed in Namdeb Diamond Corporation (Pty) Ltd – Marine Dredging Treatment Plant, exempted on the basis of section 33(2)(f) pertaining to continuous operations
- GN 3/2007 (GG 3771): work performed in Langer Heinrich Uranium (Pty) Ltd, exempted on the basis of section 33(2)(f) pertaining to continuous operations.
- GN 135/2007 (GG 3887): NAMPOST Ltd, exempted on the basis of section 33(2)(f) pertaining to continuous operations.
- GN 171/2008 (GG 4085): work in Reptile Uranium (Pty) Ltd.
- GN 172/2008 (GG 4085): work in PowerCom (Pty) Ltd-Customer Care Centre.

The following work is declared to be continuous operations in terms of section 15 of

the 2007 Act:

- GN 196/2009 (GG 4350): operations at Telecom Namibia, Customer Contact Centre and Information Communication Technology Technical Helpdesk
- GN 212/2009 (GG. 4371): Areva Resources Namibia
- GN 213/2009 (GG. 4371): Namib Mills (Pty) Ltd.

**Regulations:** Regulations, notices, declarations, registrations, collective agreements and exemptions from collective agreements made under the 1992 Act generally remain in force.

Regulations and notices made under the 1992 Act and still in force include the following:

GN 173/1992 (GG 533) sets 15 October 1991 as the relevant date for purposes of section 52(1)(a).

Particulars to be submitted by employers in the agricultural sector are contained in GN 115/2003 (GG 2990), which is replaced by GN 171/2003 (GG 3030); GN 89/2005 (GG 3465) again withdraws GN 115/2003 (although it was probably meant to replace GN 171/2003), and sets forth particulars to be submitted by employers in the agricultural sector.

Regulations relating to the health and safety of employees at work are contained in GN 156/1997 (GG 1617). The administration of these regulations is assigned to various ministers by Proc. 10/1997 (GG 1615).

Guidelines and instructions pertaining to HIV/AIDS in employment are issued in GN 78/1998 (GG 1835).

Regulations and notices made under the 2007 Act include the following:

General regulations are contained in GN 261/2008 (GG 4151), which replaces GN 174/1992 and GN 175/1992.

Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner are contained in GN 262/2008 (GG 4151).

**Registered collective agreements:** Registered collective agreements have been declared binding on three industries:

**Construction industry:** GN 298/1996 (GG 1444) contains an agreement between the Metal and Allied Namibian Workers Union and the Construction Industries Federation of Namibia (dealing with minimum wages and minimum productivity levels) which is binding on the entire industry. Another agreement between these two parties (dealing with minimum wages, minimum protective clothing, minimum productivity levels, performance standards, living away allowance, safety, stop order facilities, service allowance and shop steward training) is declared to be binding on the entire industry in GN 272/1997 (GG 1752), as extended by GN 300/1998 (GG 2010) and as amended in accordance with the subsequent agreement published in GN 135/1999 (GG 2144). The applicability of this agreement was extended indefinitely by GN 85/2000 (GG 2301). It will remain in force until replaced by a further collective agreement. A collective agreement between the Metal and Allied Namibian Workers Union and the Construction Industries Federation of Namibia was declared binding on the parties and (with the exception of certain clauses) on the entire construction industry in GN 39/2003 (GG 2927). This agreement sets minimum wages for various construction employees. It is amended by another registered collective agreement between these parties, which is declared binding on the entire construction industry (with the exception of employers and employees

engaged in any “labour-based project”) in GN 24/2005 (GG 3392). This agreement is amended by GN 224/2008 (GG 4115), which is amended by GN 129/2009 (GG 4271). The agreement sets minimum wages for different categories of employees in the construction industry, currently starting at N\$9.57/hour for a labourer (from 1 March 2010).

**Agricultural industry:** A registered collective agreement between the Agricultural Employers’ Association (AEA), the Namibian National Farmers’ Union (NNFU) and the Namibia Farm Workers’ Union (NFWU) is declared binding on the entire agricultural industry in GN 77/2003 (GG 2946). This agreement sets a minimum wage for agricultural employees at N\$2.20/hour for entry level, plus (where the employee is required to live on the premises) housing with sanitation and water, and either food rations sufficient for the employee and any dependants or a minimum supplementary allowance of N\$210/month. Alternatively, an employee who resides on agricultural land must be allowed to keep livestock and carry on cultivation as necessary for the reasonable needs of the employee and dependants. A new agreement which is binding on the industry is contained in GN 237/2009 (GG 4390). It raises the entry-level minimum wage for agricultural employees at N\$2.87/hour, and the supplementary allowance in the absence of food rations (which may not exceed 35% of the employee’s basic wages) to N\$300/month.

**Security industry:** A registered collective agreement relating to employers and employee in the security industry which is declared binding on the entire industry is contained in GN 132/2005 (GG 3516). This agreement sets a minimum wage for entry-level security guards, at N\$25 per 12-hour shift (N\$2.09/hour). It is amended by a Memorandum of Agreement contained in GN 202/2008 (GG 4112), which raises the minimum wage for security personnel to N\$3.00 per hour and addresses the provision of uniforms. A new agreement for this industry, which raises the minimum wage for entry level security officers to N\$3.80 per hour and N\$4.00 shift bonus, is contained in GN 190/2009 (GG 4342).

**Codes of Good Practice:** A Code of Good Practice on Industrial Action (Strikes and Lock-outs), issued in terms of section 137(1)(a) of the 2007 Act, is contained in GN 208/2009 (GG 4361).

A Code of Good Practice on Picketing, issued in terms of section 137(1)(a) of the 2007 Act, is also contained in GN 208/2009 (GG 4361).

**Labour Court Rules:** Labour Court Rules are contained in GN 279/2008 (GG 4175), repealing the rules contained in GN 63/1994 (GG 841). The new rules became effective on 15 January 2009.

The Rules of the District Labour Courts are contained in GN 138/1993 (GG 747). These courts no longer exist in Namibia (see section 16(b) of Schedule 1 of the Act), although pending cases before district labour courts are to be completed in terms of section 15(4) of Schedule 1 of the Act.

**Cases:** The following cases concern the current **Labour Act 11 of 2007-**

*Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia & Others* 2009(2) NR 596 (SC) (section 128 prohibiting labour hire struck down as unconstitutional).

The following cases were decided when the **Labour Act 6 of 1992** was the operative law-

#### General

arbitration proceedings:

*Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia* 1993 NR 270 (LC)

change in conditions of employment:  
*Thiro v M & Z Motors NLLP* 2002 (2) 370 NLC

constructive dismissal:  
*Transnamib Limited v Swartz NLLP* 2002 (2) 60 NLC  
*Cymot (Pty) Ltd v McLoud* 2002 NR 391 (LC)

costs of appeal:  
*Ikuambi v Tax Free Warehouse NLLP* 2002 (2) 273 NLC

delay in challenging lawfulness of dismissal:  
*Kröger v Transnamib Limited (Air Namibia) & Others* 1995 NR 84 (HC);  
*Krüger v Transnamib Limited (Air Namibia) & Others* 1996 NR 168 (SC) (Note: The spellings of *Kröger/Krüger* are inconsistent between the High Court case and the supreme court case in the hard copy of the Namibian Law Reports.)

disciplinary code:  
*City Council of Windhoek v Pieterse* 2000 NR 196 (LC) (effect of Industrial Relations Code as an internal disciplinary code, considered in the context of an application for rescission of a default judgement, on the issue of whether appellant showed a *bona fide* defence with some *prima facie* prospect of success)

disciplinary hearing:  
*Namibia Tourism Board v Kauapirura-Angula* 2009 (1) NR 185 (LC)

“duress”:  
*Vlasiu v President of the Republic of Namibia & Others* 1994 NR 332 (LC)

employment contracts:  
*Vlasiu v President of the Republic of Namibia & Others* 1994 NR 332 (LC)  
*Kruger v The Council of the Municipality of Windhoek & Another NLLP* 1998 (1) 157 NLC; 2002 (2) 114 NLC (interpretation of Conciliation Board Agreement governing terms and conditions of employment with respect to retirement age)  
*Bucher v Kalahari Express Airlines NLLP* 2002 (2) 104 NLC (letter of appointment)  
*Ocean Diamond Mining SA v Louw NLLP* 2002 (2) 276 RSA HC (C) (ruling by High Court of South Africa on restraint of trade provision in employment contract between Namibian employee and Namibian subsidiary)  
*Van Rooyen v University of Namibia* 2004 NR 150 (LC) (effect of mistake in respect of employment contract)

failure to exhaust internal grievance procedures:  
*Van Heerden v Municipal Council of Walvis Bay NLLP* 2002 (2) 306 NLC

jurisdiction:  
*K Golin t/a Golin Engineering v Cloete* 1995 NR 254 (LC) (jurisdiction of district labour court and Labour Court after parties have reached a settlement in respect of alleged unfair dismissal)  
*Drysdale v Namibia Breweries Ltd & Another* 1996 NR 301 (LC) (respective jurisdiction of district labour court and Labour Court)  
*CIC Holdings Ltd v Beukes & Another* 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)  
*Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP* 2004 (4) 18 NHC (High Court versus district labour court as appropriate forum)  
*Reilly v Namibian Ports Authority* 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

*National Union of Namibian Workers v Naholo* 2006 (2) NR 659 (HC)  
(jurisdiction of district labour court, Labour Court and High Court)  
*Kiggundu & Others v Roads Authority & Others* 2007(1) NR 175 (LC)  
(jurisdiction of Labour Court and district labour court)

“managerial prerogative”:

*Consolidated Diamond Mines (Pty) Ltd v Mine Workers’ Union of Namibia & Others (1)* 1994 NR 180 (LC)

natural justice in disciplinary proceedings:

*National Union of Namibian Workers v Naholo* 2006 (2) NR 659 (HC)

recognition agreements:

*Consolidated Diamond Mines (Pty) Ltd v Mine Workers’ Union of Namibia & Others (1)* 1994 NR 180 (LC)

retirement age:

*Kruger v The Council of the Municipality of Windhoek & Another* NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (determination of retirement age in view of changed pension fund agreement)

retrenchment:

*Schutte & Others v Telecom Namibia Ltd* (LC 2/98) (meaning of retrenchment)

*Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC) (meaning of retrenchment)

*Kruger & Others v Namibian Broadcasting Corporation* 2006 (1) NR 233 (LC), *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC) (voluntary retrenchment)

rule *nisi*:

*SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others* NLLP 1998 (1) 199 NLC (discharge of rule *nisi* when underlying purpose for it has fallen away because strike has ended)

sanctions for misconduct:

*Foodcon (Pty) Ltd v Schwartz* NLLP 2002 (2) 181 NLC

settlement agreements:

*Mbome & Another v Foodcon Fishing Product* NLLP 2002 (2) 202 NLC

sex discrimination (staff housing scheme):

*Van Heerden v Municipal Council of Walvis Bay* NLLP 2002 (2) 306 NLC

stay of District Labour Court judgement pending appeal:

*Rössing Uranium Ltd v Cloete & Another* 1999 NR 98 (LC)

“transfer” versus “promotion”:

*Northern Fishing (Pty) v Tsuseb* NLLP 2002 (2) 253 NLC

unfair labour practice:

*Minister of Works Transport and Communication v Namupembe* 2003 NR 90 (LC)

## Labour Act 6 of 1992

section 1:

*African Granite Co v Mineworkers Union of Namibia & Others* 1993 NR 91 (LC) (“remuneration”)

*Smit v Standard Bank Namibia* 1994 NR 366 (LC) (“dispute”; “dispute of interests”; “dispute of rights”)

*Paxton v Namib Rand Desert Trails (Pty) Ltd* 1996 NR 109 (LC) (“employee” and “employer”)

*Kruger v Office of the Prime Minister & Another* 1996 NR 321 (LC) (“remuneration”)

*Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (“overtime”)

*Hannah v Government of the Republic of Namibia* 2000 NR 46 (LC) (judge does not fall within definition of “employee”)

*Ameib Ranch Guest Farm v Matrefu & Others* 2002 NR 311 (LC) (“strike”)

*De Wee v Ackermanns (Pty) Ltd* 2004 NR 30 (LC) (“casual employee”)

*Engelbrecht & Others v Hennes* 2007 (1) NR 236 (LC) (“employee” versus agent)

*Van Wyk & Another v Rumingo & Others* NLLP 2004 (4) 1 NLC; 1997 NR 102 (HC) (“employee” v independent contractor)

section 2:

*Bourgwells Ltd v Shepalov & Others* 1999 NR 410 (HC) (section 2(1))

section 4:

*Thiro v M & Z Motors* NLLP 2002 (2) 370 NLC

section 18:

*Smit v Standard Bank Namibia* 1994 NR 366 (LC) (jurisdiction)

*Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia* 1994 NR 360 (LC) (declaratory orders)

*Nyambe v City Savings* 1996 NR 31 (LC) (jurisdiction in terms of section 18(1))

*Hailemo v Security Force Services* 1996 NR 99 (LC) (representation of parties in Labour Court)

*Pietersen v Ohlthaver & List Retirement Fund & Another* 1996 NR 255 (LC) (jurisdiction to make declaratory orders)

*Drysdale v Namibia Breweries Ltd & Another* 1996 NR 301 (LC) (Labour Court’s lack of jurisdiction to hear a case of first instance concerning constructive dismissal)

*Hannah v Government of the Republic of Namibia* 2000 NR 46 (LC) (meaning of “employment” in section 18(1)(e))

*CIC Holdings Ltd v Beukes & Another* 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)

*Cronje v Municipality Council of Mariental* NLLP 2004 (4) 129 NSC (jurisdiction of Labour Court and district labour court)

*Hitula v Chairperson of District Labour Court Windhoek & Another* 2005 NR 83 (LC)(section 18(1)(c))

*Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC) (jurisdiction of Labour Court)

*Reilly v Namibian Ports Authority* 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

*Kiggundu & Others v Roads Authority & Others* 2007 (1) NR 175 (LC)

*Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC) (review of decision of Permanent Secretary)

*Kurtz v Nampost Namibia Ltd & Another* 2009 (2) NR 696 (LC) (section 18(1)(e); right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

See also cases generally discussing jurisdiction in labour matters, listed above.

section 19:

*Hailemo v Security Force Services* 1996 NR 99 (LC) (section 19(3); representation of parties in Labour Court)

*Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (section 19(1)(a))

section 20:

*Vlasiu v President of the Republic of Namibia & Others* 1994 NR 332 (LC)

*President of the Republic of Namibia & Others v Vlasiu* 1996 NR 36 (LC)

*Pietersen v Ohlthaver & List Retirement Fund & Another* 1996 NR 255 (LC)  
*Drysdale v Namibia Breweries Ltd & Namibia Resorts International* 1996 NR 301 (LC)

*Louw v The Chairperson of the District Labour Court & Another (Case 1)* NLLP 2002 (2) 147 NLC (appeal versus review of costs order under this section)

*Beukes v Peace Trust* NLLP 2004 (4) 102 NLC

*Cronje v Municipality Council of Mariental* NLLP 2004 (4) 129 NSC

*Transnamib Holdings Limited v Carstens* NLLP 2004 (4) 209 NLC

*Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC)

*Kruger & Others v Namibian Broadcasting Corporation* 2006 (1) NR 233 (LC), *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC)

*Commercial Investment Corporation (Pty) Ltd v Namibian Food and Allied Workers Union & Others* 2007 (2) NR 467 (LC)

*National Housing Enterprise v Beukes & Others* 2009 (1) NR 82 (LC)

*Kurtz v Nampost Namibia Ltd & Another* 2009 (2) NR 696 (LC)

section 21:

*President of the Republic of Namibia & Others v Vlasiu* 1996 NR 36 (LC) (application for leave to appeal; meaning of “questions of law”)

*The Council of the Municipality of Windhoek & Another v Kruger* NLLP 1998 (1) 161 NLC (points in limine challenging authority of municipality to apply for leave to appeal)

*Rumingo & Others v Van Wyk* 1997 NR 102 (HC) (interpretation of “question of law”)

*Visagie v Namibia Development Corporation* NLLP 1998 (1) 182 NLC (application for leave to appeal; meaning of “questions of law”);  
*Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (questions of law versus findings of fact)

*Beukes v Peace Trust* NLLP 2004 (4) 102 NLC

*Cronje v Municipality Council of Mariental* NLLP 2004 (4) 129 NSC

*Namibian Broadcasting Corporation v Mubita* NLLP 2004 (4) 114 NLC

*Transnamib Holdings Limited v Carstens* NLLP 2004 (4) 209 NLC

*S v Koch* 2006 (2) NR 513 (SC) (section discussed in *dicta* at 526)

*Cymot (Pty) Ltd v Cloete & Another* 2007 (1) NR 320 (LC)

section 22:

*Hailemo v Security Force Services* 1996 NR 99 (LC) (representation of parties in Labour Court)

section 24:

*Poolman & Others v Transnamib Ltd* 1997 NR 89 (HC); *Transnamib Ltd v Poolman & Others* 1999 NR 399 (SC)

*Karuaihe-Martin v Telecom Namibia* NLLP 2002 (2) 267 NLC

*Van Heerden v Municipal Council of Walvis Bay* NLLP 2002 (2) 306 NLC

*Thiro v M & Z Motors* NLLP 2002 (2) 370 NLC

*Jansen van Vuuren v Namibia Water Corporation Limited* 2006 (2) NR 607 (LC)

section 25:

*Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia* 2000 NR 70 (LC)

section 28 (shift work):

*Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute shift work for the purposes of this section)

- Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia* 2000 NR 70 (LC) (effect when read together with section 25)
- section 32 (overtime):
- Poolman & Others v Transnamib Ltd* 1997 NR 89 (HC) (calculation of “day”)
- Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (parties can enter into an agreement about what constitutes “work” for purposes of overtime payment; non-active standby duty of firemen does not constitute “work” for the purposes of this section)
- section 33 (Sundays and public holidays):
- Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute “work” for the purposes of this section)
- Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia* 2000 NR 70 (LC) (meaning of “remuneration” in section 33(3)(a))
- section 34 (night work):
- Municipality of Windhoek v Van Wyk & Others* 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute work performed at night for the purposes of this section)
- section 39:
- Erundu Stevedoring (Pty) Ltd v Namibia Seaman & Allied Workers Union* NLLP 2004 (4) 187 NLC (meaning of “on full remuneration”; leave to appeal to Supreme Court granted)
- Municipal Council, City of Windhoek v Swarts* 2006 (1) NR 341 (LC)
- section 45:
- Smit v Standard Bank Namibia* 1994 NR 366 (LC) (unfair dismissal)
- Navachab Gold Mine v Izaaks* 1996 NR 79 (LC) (section 45(1): unfair dismissal; fair and valid reason for dismissal)
- Hailemo v Security Force Services* 1996 NR 99 (LC) (unfair dismissal)
- Kamanya & Others v Kuiseb Fish Products Ltd* 1996 NR 123 (LC) (effect of failure to employ fair procedure where there is a fair reason for dismissal)
- Society for the Prevention of Cruelty to Animals v Terblanche* 1996 NR 398 (HC) (unfair dismissal; procedure)
- M Pupkewitz & Sons v Kankara* 1997 NR 70 (LC) (unfair dismissal; substantive fairness)
- Rossam v Kraatz Welding Engineering Ltd* 1998 NR 90 (LC) (unfair dismissal; procedural fairness)
- Goagoseb v Arechenab Fishing and Development Co* NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (unfair dismissal)
- Anguwo & Others v Northern Fishing Company* NLLP 1998 (1) 196 NLC (reinstatement of some but not others following an illegal strike action constitutes *prima facie* case of unfair labour practice)
- Swakopmund Hotel & Entertainment Centre v Kariab* NLLP 1998 (1) 213 NLC (unfair dismissal; substantive fairness)
- Cross Country Carriers v Farmer* NLLP 1998 (1) 226 NLC; NLLP 2002 (2) 34 NLC (employee’s failure to tender services does not constitute a “dismissal”)
- Njathi v Permanent Secretary, Ministry of Home Affairs* 1998 NR 167 (LC) (dismissal by operation of section 24(5) of Public Service Act is for fair and valid reason and in accordance with fair procedure)
- Oa-Eib v Swakopmund Hotel & Entertainment Centre* 1999 NR 137 (LC) (unfair dismissal; procedural and substantive fairness)

*Hartlief Continental Meat Products (Pty) Ltd v Mutota & Others* NLLP 2002 (2) 45 NLC (unfair dismissal; procedural and substantive fairness)

*Links v Cross Country Carriers* NLLP 2002 (2) 291 NLC (effect of failure to employ fair procedure where there is a fair reason for dismissal)

*Namibia Dairies (Pty) Ltd v Nafau & Others* NLLP 2002 (2) 314 NLC (unfair dismissal)

*Mazian v Transnamib Transport (Pty) Ltd* NLLP 2002 (2) 352 NLC (unfair dismissal; interpretation of section 45(1) and procedural unfairness)

*Kurtz v Nampost Namibia Ltd & Another* 2009 (2) NR 696 (LC) (fair procedure; right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

sections 45-46:

*Du Toit v The Office of the Prime Minister* 1996 NR 52 (LC) (holding: sections 45 and 46 (unfair dismissal) do not apply to termination of employment by notice in terms of a contract or a collective agreement in terms of section 47 if sections 47, 49, 51 and 52 read with sections 69-72 are complied with; dicta: sections 45 and 46 on unfair dismissal do not apply to fixed term contracts which expire by the effluxion of time, with the possible exception of cases where there is an “expectation of tenure”)

*PEP Stores Namibia (Pty) Ltd v Iyambo & Others* 2001 NR 211 (LC) (principle of collective guilt not a fair basis for dismissal)

*Hailulu v Council of the Municipality of Windhoek* 2002 NR 305 (LC) (unfair dismissal)

*Model Pick ‘n Pay Family Supermarket v Mwaala* 2003 NR 175 (LC) (dismissal for theft/dishonesty; when courts will interfere with decision of employer to impose sanction of dismissal)

*Shiimi v Windhoek Schlachtereij (Pty) Ltd* NLLP 2002 (2) 224 NLC (appropriate award to employee in respect of unfair dismissal)

*PEP Stores (Namibia) (Pty) Ltd. v Iyambo & Others* NLLP 2002 (2) 336 NLC

*Swartbooi v Heunis* NLLP 2002 (2) 367 NLC

*Namibia Beverages v Hoaës* NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)

*Meintjies v Joe Gross t/a Joe’s Beerhouse* 2003 NR 221 (HC); confirmed in *Joe Gross t/a Joe’s Beerhouse v Meintjies* 2005 NR 413 (SC) (sections 45 and 46 on unfair dismissal apply to contracts terminated in accordance with sections 47-53)

*Kausiona v Namibian Institute of Mining & Technology (NIMT)* NLLP 2004 (4) 43 NLC

*De Wee v Ackermanns (Pty) Ltd* 2004 NR 30 (LC) (unfair dismissal of an employee in a situation with a lower degree of permanency but which does not meet the statutory definition of “casual employee”)

*Metropolitan Namibia Ltd v Haimbili* NLLP 2004 (4) 110 NLC (dismissal upheld in case involving employee dishonesty)

*Van den Heever v Imcor Zinc (Pty) Ltd* NLLP 2004 (4) 257 NLC (procedural and substantive fairness of dismissal)

*Kahoro & Another v Namibia Breweries Limited* 2008 (1) NR 382 (SC) (in the absence of a fair procedure, the employer bears the onus of proving that there was nevertheless a fair and valid reason for a dismissal)

*LL Diamonds (Pty) Ltd v Thobias* 2009 (1) NR 346 (LC) (dismissal of employee on probation requires proper enquiry into employee’s work performance)

section 46:

*Navachab Gold Mine v Izaaks* 1996 NR 79 (LC) (section 46(1)-remedies)

*Hailemo v Security Force Services* 1996 NR 99 (LC) (section 46(3)-standard of proof of fair dismissal by employer is balance of probabilities; section 46(4); considerations relevant to determining fairness)

*Drysdale v Namibia Breweries Ltd & Another* 1996 NR 301 (LC)

*Society for the Prevention of Cruelty to Animals v Terblanche* 1996 NR 398 (HC) (section 46(1)-remedies)

*M Pupkewitz & Sons v Kankara* 1997 NR 70 (LC) (section 46(1)(a)(iii)-remedies; section 46(4)(b)-nature of order in respect of unfair dismissal)

*Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (section 46(3)-employer's duty to lead evidence first in accordance with burden of proof as stated in this section)

*Swakopmund Hotel & Entertainment Centre v Kariab* NLLP 1998 (1) 213 NLC (section 46(3)-employer's burden of proving fair dismissal not discharged)

*Rossam v Kraatz Welding Engineering Ltd* 1998 NR 90 (LC) (section 46(4); appropriate relief for unfair dismissal)

*Engelbrecht v Transnamib Holdings Ltd* 2003 NR 40 (LC); *Transnamib Holdings Ltd v Engelbrecht* 2005 NR 372 (SC) (meaning of the term "reinstatement" in section 46(1)(a)(i))

*Commercial Bank of Namibia Ltd. v Van Wyk* NLLP 2004 (4) 250 NLC (grounds for dismissal upheld)

*Model Pick 'n Pay Family Supermarkets v Mukosho* NLLP 2004 (4) 219 NLC (grounds for dismissal upheld)

*Josob v Namibia Breweries (Pty) Ltd* 2008 (1) NR 117 (LC) (onus of proof)

*Parcel Force Namibia (Pty) Ltd v Tsaeb* 2008 (1) NR 248 (LC) (unfair dismissal and appropriate remedies; order for reinstatement confirmed despite long passage of time)

*Pioneerspark Service Station v Afrikaner & Another* 2008 (1) NR 353 (LC) (dismissal on ground of dishonest conduct held to be fair despite fact that employee did not benefit from the dishonesty)

section 47:

*African Granite Co v Mineworkers Union of Namibia & Others* 1993 NR 91 (LC) (section 47(1)-notice requirements; section 47(5)-"remuneration")

*Meintjies v Joe Gross t/a Joe's Beerhouse* 2003 NR 221 (HC); confirmed in *Joe Gross t/a Joe's Beerhouse v Meintjies* 2005 NR 413 (SC) (termination of contract by notice in terms of section 47 constitutes a dismissal as contemplated by section 45)

*Kiggundu & Others v Roads Authority & Others* 2007 (1) NR 175 (LC) (termination of contract with pay in lieu of notice constitutes a dismissal as contemplated by section 45 and requires a fair procedure)

section 50 (retrenchment):

*African Granite Co v Mineworkers Union of Namibia & Others* 1993 NR 91 (LC) (requirements of notice of intention to retrench; meaning of "opportunity to negotiate")

*Goagoseb v Arechenab Fishing & Development Co* NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (section 50(1)(b)-retrenchment)

*Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (employer's duties concerning intended retrenchment; interpretation of section 50(1)(b) as providing only for an opportunity to negotiate in relation to the effects of the proposed retrenchment); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (discussing

- meaning of “intends” and “negotiate”, and overturning finding of Labour Court on compliance with section 50(1)(b))
- Anguwo & Others v Northern Fishing Company NLLP* 1998 (1) 196 NLC (dismissal following illegal strike action cannot be categorised as retrenchment)
- HS Contractors v Vihanga NLLP* 2002 (2) 138 NLC (compliance with section 50(1) and procedure in respect of criminal offences under section 50(2))
- Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC) (section 50(1)(b)-validity of purported retrenchment)
- Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC)
- Seebach v Tauber & Corssen Trading (Pty) Ltd & Another* 2009 (1) NR 339 (LC)
- section 52:
- Namibia Wholesale and Retail Workers Union (NWRWU) & Others v Democratic Media Holdings* 1998 NR 109 (LC) (section 52(1)-deduction of employer’s contribution to pension fund from severance allowance following retrenchment)
- Lalandii (Pty) Ltd v Butshingi NLLP* 2002 (2) 409 NLC (section has no application to person with whom there was no subsisting employment contract)
- section 54:
- Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP* 2002 (2) 173 NLC
- section 58:
- PEP Stores Namibia (Pty) Ltd v Iyambo & Others* 2001 NR 211 (LC)
- Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP* 2002 (2) 173 NLC
- Namibia Seaman and Allied Workers Union (NASAWU) v Lalandi Fishing (Pty) Ltd & Others* 2003 NR 71 (LC)
- NASAWU v Lalandi Fishing (Pty) Ltd & Others NLLP* 2004 (4) 76 NLC
- section 67:
- Namdeb Diamond Corporation (Pty) Ltd v Mineworkers Union of Namibia NLLP* 2002 (2) 188 NLC (duty to bargain and good faith negotiation)
- Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 257 (LC) (in relation to jurisdiction of Labour Court)
- section 74:
- Jansen van Vuuren v Namibia Water Corporation Limited* 2006 (2) NR 607 (LC)
- Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC)
- section 79:
- Smit v Standard Bank Namibia* 1994 NR 366 (LC) (section 79(2)(a)(i)(aa)-lock-outs)
- section 81:
- Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia* 1994 NR 360 (LC) (section 81(6)-duties of employees not participating in strike)
- Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia & Others* 1995 NR 225 (LC) (section 81(3)-right to picket)
- SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP* 1998 (1) 199 NLC (section 81(1)-notice of strike action need not include exact date and time of intended strike; confirmation of *Navachab Joint Venture t/a Navachab Gold Mine v*

*Mineworkers Union of Namibia* 1995 NR 225 (LC) on section 81(3)-  
interpretation of right to picket)

section 82:

*SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others* NLLP 1998 (1) 199 NLC (interpretation of endangerment of “life, health or safety of any person”)

section 107:

*Nanditume v Minister of Defence* 2000 NR 103 (LC) (exclusion of applicant from the NDF solely on the basis that he was found to be HIV positive constitutes unfair discrimination in terms of section 107)

*Kiggundu & Others v Roads Authority & Others* 2007 (1) NR 175 (LC) (does not cover discrimination on the grounds of nationality)

section 111:

*Hitula v Chairperson of District Labour Court Windhoek & Another* 2005 NR 83 (LC)(section 111(1)(c))

The following cases concern the **Labour Court Rules 1994** contained in GN 63/1994 (GG 841) and now repealed, and the **District Labour Court Rules** contained in GN 138/1993 (GG 747).

#### Labour Court Rules 1994

Rule 1:

*Nyambe v City Savings* 1996 NR 31 (LC)

Rule 4(3):

*Hailemo v Security Force Services* 1996 NR 99 (LC) (Rule 4(3) held to be *ultra vires* section 22 of the Labour Act)

Rule 6(16)-(17)

*Mineworkers Union of Namibia (MUN) v CSO Valuations (Pty) Ltd* 2002 (2) 208 NLC

Rule 6(23):

*Namibia Food and Allied Workers Union v Cadilu Fishing (Pty) Ltd* 2005 NR 113 (LC)

*Beukes & Others v National Housing Enterprise* 2007 (1) NR 142 (LC)

Rule 6(25):

*Van Rooyen v University of Namibia* 2004 NR 150 (LC)

Rule 6(27):

*Nyambe v City Savings* 1996 NR 31 (LC)

Rule 8(1):

*Van Rooyen v University of Namibia* 2004 NR 150 (LC)

*Hitula v Chairperson of District Labour Court Windhoek & Another* 2005 NR 83 (LC)

Rule 9(b):

*Nyambe v City Savings* 1996 NR 31 (LC)

Rule 12:

*Vlasiu v President of the Republic of Namibia & Others* 1994 NR 332 (LC)

*Nyambe v City Savings* 1996 NR 31 (LC)

Rule 15(2):

*Elio & Another v Permanent Secretary of Education & Another* 2008 (2) NR 532 (LC)

Rule 18:

*Shiimi v Windhoek Schlachtereij (Pty) Ltd* NLLP 2002 (2) 224 NLC

*Windhoek Optics (Pty) Ltd v De Jager* NLLP 2004 (4) 22 NLC

*Ministry of Regional and Local Government and Housing v Muyunda* 2005 NR 107 (LC)

Rule 19(2):

*Ministry of Basic Education, Sports & Culture v Sauer* NLLP 2004 (4) 192 NLC.

District Labour Court Rules

Rule 4:

*Town Debt Collecting CC & Another v Boois & Another* NLLP 2002 (2) 392 NLC

Rule 6:

*Transnamib Holdings Ltd v Garoeb* NLLP 2004 (4) 68 NLC

Rule 7:

*Anguwo & Others v Northern Fishing Company* NLLP 1998 (1) 196 NLC  
(effect of failure of respondent to oppose)

*Thiro v M & Z Motors* NLLP 2002 (2) 370 NLC

*De Wee v Ackermanns (Pty) Ltd* 2004 NR 30 (LC)

*Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos* NLLP 2004 (4) 35 NLC

Rule 10:

*Transnamib Holdings Ltd v Lourens* NLLP 2002 (2) 360 NLC

*Transnamib Holdings Ltd v Cartstens* 2003 NR 213 (LC)

*Louw v The Chairperson of the District Labour Court & Another (Case 1)*  
NLLP 2002 (2) 147 NLC (stated in *dicta* that because spirit of rule is to avoid formality, unsworn translations may be received into evidence)

*Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos* NLLP 2004 (4) 35 NLC

*Transnamib Holdings Ltd v Garoeb* NLLP 2004 (4) 68 NLC

*Transnamib Holdings Limited v Carstens* NLLP 2004 (4) 209 NLC

*Hitula v Chairperson of District Labour Court Windhoek & Another* 2005 NR 83 (LC)

*Mdaka v Gendev of Namibia* 2005 NR 483 (LC)

Rule 13:

*Stahn t/a HS Contractors v Kapuka & Others* 2000 NR 133 (LC) (joint complaint)

Rule 18:

*Namibia Beverages v Hoaës* NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)

Rule 19:

*Uazeua & Others v Smith t/a Jakaranda Restaurant* 2001 NR 227 (LC)

*Shiimi v Windhoek Schlachtereij (Pty) Ltd* NLLP 2002 (2) 224 NLC

*Thiro v M & Z Motors* NLLP 2002 (2) 370 NLC

*Tjihiua v Windhoek Municipality* NLLP 2002 (2) 413 NLC

*Windhoek Optics (Pty) Ltd v De Jager* NLLP 2004 (4) 22 NLC

*Kausiona v Namibian Institute of Mining & Technology (NIMT)* NLLP 2004 (4) 43 NLC

Rule 21:

*Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC)

Rule 22:

*Transnamib Holdings Ltd v Cartstens* 2003 NR 213 (LC)

*Town Debt Collecting CC & Another v Boois & Another* NLLP 2002 (2) 392 NLC

*Transnamib Holdings Ltd v Garoeb* NLLP 2004 (4) 68 NLC

*Transnamib Holdings Limited v Carstens* NLLP 2004 (4) 209 NLC

*Hitula v Chairperson of District Labour Court Windhoek & Another* 2005 NR 83 (LC) (*obiter* noting problems of construction),

The following are post-independence cases dealing with the previous **Conditions of Employment Act 12 of 1986-**

*Namib Wood Industries (Pty) Ltd v Mutiltha & Another* 1991 NR 158 (HC)  
*Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others* 1991 NR 417 (HC)  
*Nangombe & Others v Ackermans Ltd* 1992 NR 10 (HC)  
*Engels v Allied Chemical Manufacturers (Pty) Ltd* 1992 NR 372 (HC).

The following case concerns **ILO Convention 158:**

*Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC  
(Article 13)

**Articles:**

Herbert Jauch, *ILO Fact Boxes: Namibia's Labour Act, No 11 of 2007*, South Africa: ILSSA Project, International Labour Office (ILO), available from the Labour Resource and Research Institute (LaRRI), Windhoek

Nico Horn and Kaijata Kanguuehi, "*African Personnel Services v Government of Namibia & Others*, decided on 1 December 2008. Case No. A4/2008", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available at [www.namibialawjournal.org](http://www.namibialawjournal.org)

Fritz Nghiishililwa, "The banning of labour hire in Namibia: How realistic is it?", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available at [www.namibialawjournal.org](http://www.namibialawjournal.org).

## **COMMISSIONS**

Commission of Inquiry into Labour Matters in South West Africa (AG 32/1987).

Commission of Inquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees (Proc. 1/1995, GG 1020).

See also GN 14/1991 (GG 1020), as amended by GN 55/1995 (GG 1044).

## **INTERNATIONAL LAW**

*Except where otherwise indicated, this data comes from the database of the Washington (USA) office of the International Labour Organisation, which is available at <http://usa.ilo.org/aboutilo/convent.html>.*

### ***African Regional Protocol Concerning Distribution of Seats in the Governing Body of the ILO***

accession: 17 October 1997 (source: Ministry of Foreign Affairs)

### ***Instrument of Amendment of ILO, 1986***

accession: 17 October 1997 (source: Ministry of Foreign Affairs)

### ***Instrument of Amendment of ILO, 1997***

(not yet in force internationally as of 27 February 2003)

ratification: 27 January 1999

### ***ILO Convention 29 concerning Forced Labour, 1930***

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

### ***ILO Convention 87: Freedom of Association and the Right to Organise, 1948***

accession: 3 January 1995

***ILO Convention 98: Right to Organise and Collective Bargaining, 1949***

accession: 3 January 1995

***ILO Convention 105 on the Abolition of Forced Labour, 1957***

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

***ILO Convention 100 on Equal Remuneration, 1951***

accession approved by Parliament: 10 March 2010 (source: Parliament)

accession: 6 April 2010 (source: [www.ilo.org](http://www.ilo.org))

***ILO Convention 111: Convention concerning Discrimination (Employment and Occupation), 1958***

accession (without protocol): 3 November 2000 (with proviso relating to “national extraction”); 23 October 2001 (with no proviso) (source: Parliament)

***ILO Convention 138 on the Minimum Age for Admission to Employment and Work, 1973***

accession: 15 November 2000 (source: ILOLEX, <http://ilolex.ilo.ch:1567/cgi-lex/>)

***ILO Convention 144: Tripartite Consultation (International Labour Standards), 1976***

accession: 3 January 1995

***ILO Convention 150: Labour Administration, 1978***

accession: 28 June 1996

***ILO Convention 158: Termination of Employment, 1982***

accession: 28 June 1996

***ILO Convention 182 on the Prohibition and Immediate Elimination of the Worst Forms of Child Labour, 1999***

ratification: 15 November 2000 (source: Ministry of Foreign Affairs)

***ILO Convention 184 and Recommendation 192 on Safety and Health in Agriculture, 2001***

ratification: 8 November 2001 (source: Parliament)

Cases: *Namibia Development Corporation v Visagie* NLLP 1998 (1) 166 NLC (Article 13).

***Charter of Fundamental Social Rights in SADC, 2003***

*This Charter enters into force upon signature by member states, without ratification.*

(entered into force within SADC on 26 August 2003) (source: SADC)

signature: 26 August 2003 (source: SADC)

***SADC Protocol on the Facilitation of Movement of Persons, 2005***

(not yet in force within SADC as of 23 June 2010) (source: SADC)

signature: 18 August 2005

not ratified by Namibia as of 23 June 2010 (source: SADC)

See also articles on child labour listed under **CHILDREN**.

See also National Vocational Training Act 20 of 1994 (**EDUCATION**).

See also Petroleum (Exploration and Production) Act 2 of 1991 (regulations on health, safety and welfare of employees) (**MINING AND MINERALS**)

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 with regard to the conditions of service of employees of the posts and telecommunications companies (**COMMUNICATIONS**).

See also **PUBLIC SERVICE**.

See also as examples of municipal regulations on trading: Windhoek Municipality: Amendment of Street and Traffic Regulations (General Notice 27/1994, GG 797) (including rules regarding hawking by children), Walvis Bay Municipality: Regulations on informal trading (General Notice 291/1998, GG 2000), and Windhoek Municipality: Street Trading Regulations (General Notice 252/1999, GG 2179) (**REGIONAL AND LOCAL GOVERNMENT**).

See also Social Security Act 34 of 1994 (**SOCIAL SECURITY**).

See also Export Processing Zones Act 9 of 1995 (**TRADE AND INDUSTRY**).