

LABOUR

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.

Section 32 of the Mentally Retarded Coloured, Baster and Nama Children's Training Proclamation (AG 76/1978, which is brought into operation by AG 77/1978) concerns the application of this Act with regard to mentally retarded Coloured, Baster and Nama children.

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 except insofar as it applies to tertiary education by the Education Act 16 of 2001.)

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.

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.

Labour Act 6 of 1992.

Summary: This Act regulates the conditions of employment of employees. It also covers unfair dismissals and disciplinary actions; the termination of contracts of employment; the registration, rights and duties of trade unions and employers’ organisations; the settlement of disputes between employees or trade unions and employers or employers’ organisations; the appointment, powers, duties and functions of the Labour Commissioner and inspectors; the establishment of a Labour Advisory Council, a Labour Court, district labour courts and a Wages Commission; and the health, safety and welfare of employees. This Act is repealed by Labour Act 15 of 2004, which was not yet in force as of 31 December 2004.

The Act, with the *exception* of Part XI on health and safety and section 116 insofar as it relates to Part XI, came into force on 1 November 1992 (GN 134/1992, GG 491). The remaining portions of the Act came into force on 31 July 1997 (GN 155/1997, GG 1614).

Amendments: The National Vocational Training Act 18 of 1994 amends sections 8 and 116. The Affirmative Action (Employment) Act 29 of 1998 amends section 106. Act 6/2001 amends section 107 (exempting standards for physical and mental fitness with respect to the Namibia Defence Force and the Namibian Police Force from the operation of the section). The Appeal Laws Amendment Act 10 of 2001 amends sections 21-22.

Application of Act: 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.

Work by employees engaged in providing an essential service in a hospital, clinic, pharmacy, radiography, medical laboratory, mortuary, children's home or ambulance service is excluded from the prohibition against work on Sundays and public holidays by GN 100/1998 (GG 1856). This declaration was replaced by GN 301/1998 (GG 2010), which excluded the following from the prohibition: 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.

Security officers "who are engaged in the security services rendered by the security enterprises" are excluded from the prohibition against work on Sundays and public holidays by GN 49/2000 (GG 2280), which also revokes any previous exemptions granted to any security enterprise in respect of Sunday and holiday work.

Employees engaged in the continuous metallurgic process of Navachab Gold Mine are excluded from the prohibition against work on Sundays and public holidays by GN 248/2000 (GG 2426).

Employees engaged in diamond mining operations by vessel (referred to as the Ocean Diamond Mining System) are excluded from the prohibition against work on Sundays and public holidays by GN 249/2000 (GG 2426).

All work activities of employees of Anglo Base Namibia (Proprietary) Limited – Project are exempted from section 33(1) of the Act on the basis of section 33(2)(f) by GN 77/2002 (GG 2746).

All work activities of employees of Trans Hex Marine (Namibia) (Proprietary) Limited are exempted from section 33(1) of the Act on the basis of section 33(2)(f) by GN 116/2002 (GG 2765). Employees performing work in the course of operations of the pre-treatment facility plant of the Namdeb Diamond Corporation (Pty) Ltd are exempted from section 33(1) by GN 42/2003 (GG 2933). All employees performing work in the course of operations of Ramatex Textiles Namibia (Pty) Ltd are exempted from section 33(1) by GN 43/2003 (GG 2933).

Employees performing work in the course of operations in the industry of the Namdeb Diamond Corporation (Pty) Ltd – Pocket Beaches Project are exempted from section 33(1) by GN 38/2004 (GG 3161). Employees performing work in the course of operations of the Etosha Fishing Corporation (Pty) Ltd are exempted from section 33(1) by GN 141/2004 (GG 3237). Employees performing work in the course of operations in the Roads Authority: Roads Transport Inspection Services is

exempted from section 33(1) by GN 268/2004 (GG 3345). Employees performing work in the course of operations in NAMDEB Diamond Corporation (Pty) Ltd – Recovery Tailings Retreatment Plants, Sort House and No. 2 Plant are exempted from section 33(1) by GN 269/2004 (GG 3345).

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

Particulars for record-keeping are contained in GN 174/1992 (GG 533) and for payslips in GN 175/1992 (GG 533). 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 (GG3030).

The Rules of the District Labour Courts are contained in GN 138/1993 (GG 747). The Rules of the Labour Court are contained in GN 63/1994 (GG 841).

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).

See also GN 298/1996 (GG 1444), which 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 published for comment in GN 217/2001 (GG 2637), and a collective agreement between these parties is 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.

Another collective agreement between the Metal and Allied Namibian Workers Union and the Construction Industries Federation of Namibia was published for comment in GN 231/2004 (GG 3312).

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.

Cases: 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 CDM (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 cases concern the Labour Act 6 of 1992-

Kröger v Transnamib Limited (Air Namibia) & Others 1995 NR 84 (HC)
Bourgwells Ltd v Shepalov & Others 1999 NR 410 (HC) (section 2(1))

Labour Court cases:

This list includes all District Labour Court and Labour Court judgements available as of 31 October 2001. Judgments in some cases heard prior to that date were still pending or could not be located. Judgments after that date are included only if they are reported in the Namibian or South African Law Reports.

General

arbitration proceedings:

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

constructive dismissal:

Transnamib Limited v Swartz (LCA 11/98)
Cymot (Pty) Ltd v McLoud 2002 NR 391 (LC)

costs of appeal:

Ikuambi v Tax Free Warehouse (LCA 26/99)

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)

“duress”:

Vlasiu v President of the Republic of Namibia & Others (LC 5/94; 1995.11.17), reported as 1994 NR 332 (LC)

employment contracts:

Vlasiu v President of the Republic of Namibia & Others (LC 5/94; 1995.11.17), reported as 1994 NR 332 (LC)
Kruger v The Council of the Municipality of Windhoek & Another (LC 4/96; 1996.11.15) (interpretation of Conciliation Board Agreement governing terms and conditions of employment with respect to retirement age)

jurisdiction:

K Golin t/a Golin Engineering v Cloete (LCA 7/94), reported as 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 & Namibia Resorts International (LC 1/96) (respective jurisdiction of district labour court and Labour Court)

“managerial prerogative”:

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia & Others (LC 2/94); reported as *CDM (Pty) Ltd v Mine Workers’ Union of Namibia & Others (1)* 1994 NR 180 (LC)

recognition agreements:

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia &

Others (LC 2/94); reported as *CDM (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 (LC 4/96; 1996.11.15) (determination of retirement age in view of changed pension fund agreement)

retrenchment:

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

rule nisi:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others (LC 11/97) (general: discharge of *rule nisi* when the underlying purpose for it has fallen away because strike has ended)

settlement agreements:

Mbome & Another v Foodcon Fishing Product (LCA 7/99)

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 (LCA 9/99)

Labour Act

section 1:

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

Smit v Standard Bank Namibia (LC 6/94), reported as 1994 NR 366 (LC) (“dispute”; “dispute of interests”; “dispute of rights”)

Paxton v Namib Rand Desert Trails (Pty) Ltd (LC 16/95), reported as 1996 NR 109 (LC) (“employee” and “employer”)

Kruger v Office of the Prime Minister & Another (LCA 2/96), reported as 1996 NR 321 (LC) (“remuneration”)

Smieër v Roos & Another (LC 3/97) (independent contractor not “employee”)

Municipality of Windhoek v Van Wyk & Others (LCA 6/98) (“overtime”), reported as 1999 NR 313 (LC)

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC); 2000 (4) SA 940 (NmLC) (judge does not fall within definition of “employee”)

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

section 18:

Smit v Standard Bank Namibia (LC 6/94), reported as 1994 NR 366 (LC) (jurisdiction)

Nyambe v City Savings (LC 5/95), reported as 1996 NR 31 (LC) (jurisdiction in terms of section 18(1))

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); 2000 (4) SA 940 (NmLC) (meaning of “employment” in section 18(1)(e))

section 18(1)(e):

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia (LC 4/93), reported as *CDM (Pty) Ltd v Mineworkers Union of Namibia* 1994 NR 360 (LC) (declaratory orders)

section 18(2):

- Hailemo v Security Force Services* (LCA 5/95), reported as 1996 NR 99 (LC)
(representation of parties in Labour Court)
- section 19(1)(a):
Namibia Development Corporation v Visagie (LCA 8/96; 1996.12.13)
- section 19(3):
Hailemo v Security Force Services (LCA 5/95), reported as 1996 NR 99 (LC)
(representation of parties in Labour Court)
- section 20:
President of the Republic of Namibia & Others v Vlasiu (LC 5/94;
1995.03.31); reported as 1996 NR 36 (LC)
Vlasiu v President of the Republic of Namibia & Others (LC 5/94;
1995.11.17), reported as 1994 NR 332 (LC)
Drysdale v Namibia Breweries Ltd & Namibia Resorts International (LC
1/96) (costs)
Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC)
- section 21(1)(a):
President of the Republic of Namibia & Others v Vlasiu (LC 5/94;
1995.03.31); reported as 1996 NR 36 (LC) (application for leave to
appeal; meaning of “questions of law”)
The Council of the Municipality of Windhoek & Another v Kruger (LC 4/96;
1998.06.11) (points in *limine* challenging authority of municipality to
apply for leave to appeal)
Visagie v Namibia Development Corporation (LCA 8/96; 1997.04.11)
(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)
Rumingo & Others v Van Wyk 1997 NR 102 (HC) (interpretation of “question
of law”)
- section 22:
Hailemo v Security Force Services (LCA 5/95), reported as 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)
- 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 (LCA 6/98) (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 (LCA 6/98) (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 (LCA 6/98) (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 (LCA 6/98) (non-active standby duty of firemen does not constitute work performed at night for the purposes of this section)

section 45:

Smit v Standard Bank Namibia (LC 6/94), reported as 1994 NR 366 (LC) (unfair dismissal)

Navachab Gold Mine v Izaaks (LC 2/95), reported as 1996 NR 79 (LC) (section 45(1): unfair dismissal; fair and valid reason for dismissal)

Hailemo v Security Force Services (LCA 5/95), reported as 1996 NR 99 (LC) (unfair dismissal)

Kamanya & Others v Kuiseb Fish Products Ltd (LCA 6/95), reported as 1996 NR 123 (LC) (effect of failure to employ fair procedure where there is a fair reason for dismissal)

Goagoseb v Arechenab Fishing and Development Co (LCA 9/95) (unfair dismissal)

Terblanche v Society for the Prevention of Cruelty to Animals (LCA 3/96), reported as 1996 NR 398 (HC) (unfair dismissal; procedure)

M Pupkewitz & Sons v Kankara (LCA 10/96), reported as 1997 NR 70 (LC) (unfair dismissal; substantive fairness)

Anguwo & Others v Northern Fishing Company (LCA 1/97) (reinstatement of some but not others following an illegal strike action constitutes *prima facie* case of unfair labour practice)

Swakopmund Hotel & Entertainment Centre v Karabib (LCA 6/97) (unfair dismissal; substantive fairness)

Rossam v Kraatz Welding Engineering Ltd (LCA 17/97), reported as 1998 NR 90 (LC) (unfair dismissal; procedural fairness)

Cross Country Carriers v Farmer (LCA 5/97) (employee’s failure to tender services does not constitute a “dismissal”)

Hartliet Continental Meat Products (Pty) Ltd v Mutota & Others (LCA 7/98) (unfair dismissal; procedural and substantive fairness)

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)

Mazian v Transnamib Transport (Pty) Ltd. (LCA 10/2000) (unfair dismissal; interpretation of section 45(1) and procedural unfairness)

Namibia Dairies (Pty) Ltd v Nafau & Others (LCA 16/2000) (unfair dismissal)
Oa-Eib v Swakopmund Hotel & Entertainment Centre v Karabib 1999 NR 137 (LC) (unfair dismissal; procedural and substantive fairness)

sections 45-46:

Du Toit v The Office of the Prime Minister (LCA 6/94), reported as 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 (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”; dicta: sections 45 and 46 (unfair dismissal) do not apply to contracts terminated in accordance with sections 48-50)

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)
- section 46:
Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC)
- section 46(1):
Navachab Gold Mine v Izaaks (LC 2/95), reported as 1996 NR 79 (LC) (remedies)
Terblanche v Society for the Prevention of Cruelty to Animals (LCA 3/96), reported as 1996 NR 398 (HC) (remedies)
M Pupkewitz & Sons v Kankara (LCA 10/96), reported as 1997 NR 70 (LC) (section 46(1)(a)(iii); remedies)
- section 46(3):
Hailemo v Security Force Services (LCA 5/95), reported as 1996 NR 99 (LC) (standard of proof of fair dismissal by employer is balance of probabilities)
Namibia Development Corporation v Visagie (LCA 8/96; 1996.12.13) (employer's duty to lead evidence first in accordance with burden of proof as stated in this section)
Swakopmund Hotel & Entertainment Centre v Karabib (LCA 6/97) (employer's burden of proving fair dismissal not discharged)
- section 46(4):
M Pupkewitz & Sons v Kankara (LCA 10/96), reported as 1997 NR 70 (LC) (section 46(4)(b); nature of order in respect of unfair dismissal)
Rossam v Kraatz Welding Engineering Ltd (LCA 17/97), reported as 1998 NR 90 (LC) (appropriate relief for unfair dismissal)
- section 46(4):
Hailemo v Security Force Services (LCA 5/95), reported as 1996 NR 99 (LC) (considerations relevant to determining fairness)
- section 47(1):
African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (notice requirements)
- section 47(5):
African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) ("remuneration")
- section 50:
African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (requirements of notice of intention to retrench)
Namibia Development Corporation v Visagie (LCA 8/96; 1996.12.13) (employer's duties concerning intended retrenchment); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (discussing meaning of "intends")
Anguwo & Others v Northern Fishing Company (LCA 1/97) (dismissal following illegal strike action cannot be categorised as retrenchment)
- section 50(1)(b):
African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (retrenchment; meaning of "opportunity to negotiate")
Goagoseb v Arechenab Fishing & Development Co (LCA 9/95) (retrenchment)
Namibia Development Corporation v Visagie (LCA 8/96) (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 "negotiate", and overturning finding of Labour Court on compliance with section 50(1)(b))

- section 52(1):
Namibia Wholesale and Retail Workers Union (NWRWU) & Others v Democratic Media Holdings (LC 7/98), reported as 1998 NR 109 (LC) (deduction of employer's contribution to pension fund from severance allowance following retrenchment)
- section 58(1):
PEP Stores Namibia (Pty) Ltd v Iyambo & Others 2001 NR 211 (LC)
- section 79(2)(a)(i)(aa):
Smit v Standard Bank Namibia (LC 6/94), reported as 1994 NR 366 (LC) (lock-outs)
- section 81(1):
SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others (LC 11/97) (notice of strike action need not include exact date and time of intended strike)
- section 81(3):
Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia & Others (LC 14/95), reported as 1995 NR 225 (LC) (right to picket)
SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others (LC 11/97) (confirmation of *Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia* (LC 14/95) re: interpretation of right to picket)
- section 81(6):
Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia (LC 4/93), reported as CDM (Pty) Ltd v Mineworkers Union of Namibia 1994 NR 360 (LC) (duties of employees not participating in strike)
- section 82(b):
SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others (LC 11/97) (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)

Labour Court Rules

- Rule 1:
Nyambe v City Savings (LC 5/95), reported as 1996 NR 31 (LC)
- Rule 4(3):
Hailemo v Security Force Services (LCA 5/95), reported as 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 (LC 18/98)
- Rule 6(27):
Nyambe v City Savings (LC 5/95), reported as 1996 NR 31 (LC)
- Rule 9(b):
Nyambe v City Savings (LC 5/95), reported as 1996 NR 31 (LC)
- Rule 12:
Vlasiu v President of the Republic of Namibia & Others (LC 5/94; 1995.11.17), reported as 1994 NR 332 (LC).
Nyambe v City Savings (LC 5/95), reported as 1996 NR 31 (LC)

District Labour Court Rules

general:

Heyn v de Bruyn (LCA 18/99) (frivolous and vexatious non-compliance with District Labour Court Rules; appeal against dismissal of complaint withdrawn)

Rule 7:

Anguwo & Others v Northern Fishing Company (LCA 1/97) (effect of failure of respondent to oppose)

Rule 10(1):

Transnamib Holdings Ltd v Lourens (LCA 5/2001)

Rule 13:

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

Rule 19(2):

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

ILO Conventions

ILO Convention 158:

Namibia Development Corporation v Visagie (LCA 8/96; 1996.12.13) (Article 13)

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).

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).

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.

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.

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.*

Labour Act 15 of 2004.

Summary: This Act regulates the conditions of employment of employees. It also ensures the health, safety and welfare of employees, provides protection from 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 directorate, and provides for the appointment of the Labour Commissioner and the Deputy Labour Commissioner. This Act repeals the Labour Act 6 1992. It had not come into force as of 31 December 2004.

Regulations: Regulations made under the previous legislation remain in force in terms of section 2 of Schedule 1 to the Act.

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 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 concerning Minimum Age, 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* (LCA 8/96; 1996.12.13)
(Article 13).

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 (**POSTS AND TELECOMMUNICATIONS**).

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**).