

LABOUR

Shop Hours Ordinance 15 of 1939

Summary: This Ordinance ([OG 796](#)) governs the hours of operation of certain shops.

Amendments: This Ordinance is amended by Ord. 4/1940 ([OG 840](#)), Proc. 34/1950 ([OG 1530](#)), Proc. 50/1950 ([OG 1552](#)), Ord. 10/1952 ([OG 1687](#)), Ord. 5/1957 ([OG 2072](#)), Ord. 39/1957 ([OG 2092](#)), Ord. 4/1959 ([OG 2185](#)) and Act 12/1986 ([OG 5221](#)), which was brought into force by AG Proc. 26 of 1986 ([OG 5226](#)) and which repealed the portions of the Ordinance relating to shop assistants.

Regulations: The Ordinance makes provision for regulations in section 18, but pre-independence regulations have not yet been researched.

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

Summary: This Act ([SA GG 2909](#)) 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. The Act came into force in South West Africa on 1 September 1956 when SA Proc. 173/1956 ([SA GG 5733](#)) brought the amendments made by Act 51 of 1956, including the insertion of section 109*bis*, into force – with that Proclamation explicitly stating that the portions of the Act on the right to compensation would also come into force in South West Africa on that date

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 ([OG 3680](#)). 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: The following pre-independence South African amendments were applicable to SWA –

- *Workmen's Compensation Amendment Act 27 of 1945* ([SA GG 3504](#))
- *Finance Act 48 of 1947* ([SA GG 3830](#))
- *Workmen's Compensation Amendment Act 36 of 1949* ([SA GG 4182](#))
- *Workmen's Compensation Amendment Act 5 of 1951* ([SA GG 4563](#))
- *SA Proclamation 147 of 1951* ([SA GG 4644](#))
- *SA Proclamation 63 of 1952* ([SA GG 4817](#))
- *Workmen's Compensation Amendment Act 51 of 1956* ([SA GG 5703](#))
- *SA Proclamation 170 of 1959* ([SA GG 6274](#))

- *Railways and Harbours Superannuation Fund Act 39 of 1960* ([SA GG 6431](#))
- *Workmen's Compensation Amendment Act 7 of 1961* ([SA GG 6649](#))
- *RSA Proclamation R.90 of 1962* ([RSA GG 229](#))
- *Workmen's Compensation Amendment Act 21 of 1964* ([RSA GG 746](#))
- *Bantu Laws Amendment Act 42 of 1964* ([RSA GG 801](#))
- *Workmen's Compensation Amendment Act 58 of 1967* ([RSA GG 1732](#))
- *Pension Laws Amendment Act 98 of 1969* ([RSA GG 2463](#))
- *Workmen's Compensation Amendment Act 9 of 1970* ([RSA GG 2647](#))
- *Second Black Laws Amendment Act 27 of 1970* ([RSA GG 2665](#))
- *Workmen's Compensation Amendment Act 60 of 1971* ([RSA GG 3156](#))
- *Insolvency Amendment Act 6 of 1972* ([RSA GG 3407](#))
- *RSA Proclamation R.98 of 1973* ([RSA GG 3856](#))
- *Workmen's Compensation Amendment Act 11 of 1974* ([RSA GG 4194](#))
- *Workmen's Compensation Amendment Act 28 of 1977* ([RSA GG 5465](#))
- *Workmen's Compensation Amendment Act 8 of 1979* ([RSA GG 6341](#))
- *RSA Proclamation 233 of 1979* ([RSA GG 6689](#))
- *Workmen's Compensation Amendment Act 24 of 1981* ([RSA GG 7453](#))
- *Workmen's Compensation Amendment Act 29 of 1984* ([RSA GG 9127](#))
- *Transfer of Powers and Duties of the State President Act 97 of 1986* ([RSA GG 10438](#))
- *Workmen's Compensation Amendment Act 35 of 1987* ([RSA GG 10888](#))
- *Workmen's Compensation Amendment Proclamation 45 of 1990* ([RSA GG 12328](#)), which makes substantial amendments to the Act in preparation for Namibian independence.

The Native Laws Amendment Proclamation, AG 3 of 1979 ([OG 3898](#)), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 9/1982 ([OG 4652](#)) makes minor amendments to section 70 of the Act.

Act 5 of 1995 ([GG 1038](#)), which was brought into force on 1 March 1995 by GN 52/1995 ([GG 1039](#)), amends the Act substantially and changes its name from the Workmen's Compensation Act to the Employees' Compensation Act.

Regulations: Pre-independence regulations have yet not been comprehensively researched.

Regulations are contained in RSA GN R.581/1961 (RSA GG 73), as amended by –

- RSA GN R.1580/1964 (RSA GG 922)
- RSA GN R.1474/1967 (RSA GG 1851)
- RSA GN R.1480/1970 (RSA GG 2808)
- RSA GN R.143/1972 (RSA GG 3380)
- RSA GN R.1354/1975 (RSA GG 4790)
- RSA GN R.837/1977 (RSA GG 4790)
- RSA GN R.908/1980 (RSA GG 6969)
- RSA GN R.1802/1981 (RSA GG 7741)
- RSA GN R.1551/1983 (RSA GG 8814)
- RSA GN R.2187/1984 (RSA GG 9449)
- RSA GN R.223/1988 (RSA GG 11140)
- RSA GN R.1134/1989 (RSA GG 11909)
- RSA Proc. 45/1990 (RSA GG 12328)
- GN 47/2004 ([GG 3169](#))
- GN 95/2012 ([GG 4919](#))
- GN 251/2013 ([GG 5291](#)).

Note: GN 251/2013 refers to a previous amendment of the regulations by Government Notice 4919 of 2 April 2012. This appears to refer to Government Notice 95 of 2 April 2012, which was published in GG 4919.

Notices: RSA GN 1291/1989 ([RSA GG 11960](#)) varied certain amounts and percentages for the purposes of sections 38(1)(a), 38(4), 39(1)(a), 39(1)(c), 39(2), 40(1)(a), 40(2), 43bis(1) and 43bis(2) with effect from 1 July 1989. Proc. 45 of 1990 provides as follows in section 46(d): “In the application of the Act in the territory...paragraph 1(d) of Government Notice 1291 of 23 June 1989 shall, notwithstanding the provisions of section 43bis, be deemed not to be applicable in respect of any monthly pension which was payable by the State, including a Representative Authority as defined in section 1 of Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), in terms of section 39 or 40 of the Act immediately before 1 July 1989 in connection with the disablement or death of a workman in the service of a department established under section 3(1) of the Government Service Act, 1980 (Act 2 of 1980).”

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](#)). This amount is set at N\$76 000 with effect from 1 March 2012 (GN 66/2012, [GG 4891](#)), and at N\$81 300 with effect from 1 March 2013 (GN 250/2012, [GG 5291](#)).

The amounts of compensation for temporary, partial, total and permanent disablement and death are increased in GN 46/2004 ([GG 3169](#)), which is replaced by GN 96/2012 ([GG 4919](#)).

Notices of unclaimed payments are not listed here.

Fees: Tariffs of fees published in terms of the Act from time to time have not been recorded here.

Application of law: Sections 25(5) and 37 of the National Education Act 30 of 1980 ([OG 4358](#)), which is brought into force by AG 6/1981 ([OG 4430](#)), provided 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 ([GG 2673](#)) except insofar as it applies to tertiary education, and by the Teachers’ Education Colleges Act 25 of 2003 ([GG 3124](#)) insofar as it applies to teachers’ education colleges.

Cases: *Social Security Commission & Another v Coetzee* 2016 (2) NR 388 (SC) (section 54: timeframes and section 108: delegation; discussion of overall framework of Act in paras 9-24).

Natives Minimum Wage Proclamation 1 of 1944

Summary: This Proclamation ([OG 1088](#)), which is obviously both offensive and obsolete, provides for the payment of minimum wages to “natives”. It is not included in the database of annotated statutes as it has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.⁹⁴

Amendments: This Proclamation is amended by Proc. 5/1944 ([OG 1092](#)).

Regulations: The Proclamation makes no provision for regulations.

Development Brigade Corporation Act 32 of 1992

Summary: This Act ([GG 563](#)) 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 was brought into force on 1 February 1993 by GN 15/1993 ([GG 580](#)).

⁹⁴ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 54-ff.

Regulations: The Act makes no provision for regulations.

Notices: 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](#)) and in GN 171/2017 ([GG 6358](#)), which withdraws GN 113/1994.

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](#)).

Affirmative Action (Employment) Act 29 of 1998

Summary: This Act ([GG 1962](#)) 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 was brought into force, with the exception of section 2, sections 19-43 and sections 45-48, on 18 November 1998 by GN 278/1998 ([GG 1996](#)). The remaining sections were all brought into force on 6 August 1999 by GN 156/1999 ([GG 2161](#)).

Amendments: Act 6/2007 ([GG 3965](#)) amends sections 1, 10, 23, 24, 30, 44, 45 and 47. The Labour Act 11 of 2007 ([GG 3971](#)) amends section 45.

Regulations: Regulations are contained in GN 159/1999 ([GG 2161](#)).

Notices: A “relevant employer” for the purposes of the Act was initially 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 was replaced by GN 95/2006 ([GG 3658](#)), which defines “relevant employer” as an employer which employs 25 or more employees.

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.

Appointments: The appointment of members to the Employment Equity Commission is announced in GN 184/2018 ([GG 6680](#)).

Cases:

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

The Act is discussed in *dicta* in *Tlhoru v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 113C

See also *S v Nkeuene* 2010 (1) NR 301 (HC) (conviction on charge of failing to comply with section 27(2)(a) set aside on basis that servant of corporate body was not authorised to plead guilty on behalf of the body).

Commentary:

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

Daniel Motinga & Tjivingurura Mbuende, “Progress on Affirmative Action and Employment Equity: Still a Man’s World!”, Institute for Public Policy Research, 2003, available [here](#).

Related international agreements:

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999
SADC Protocol on Gender and Development, 2008.

Labour Act 11 of 2007

Summary: This Act ([GG 3971](#)) 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 ([GG 388](#)) and the Labour Act 15 of 2004 ([GG 3339](#)), 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 were brought into force on 30 November 2005 by GN 162/2005 ([GG 3545](#)). Section 118 and item 13(1) of Schedule 1 were brought into force on 27 January 2006 by GN 20/2006 ([GG 3582](#)).

All of the Act other than section 128 (prohibiting labour hire) was brought into force on 1 November 2008 by GN 260/2008 ([GG 4151](#)). Section 128 of the Act was brought into force on 1 March 2009 by GN 1/2009 ([GG 4192](#)).

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

The Labour Act 6 of 1992, which was repealed by this Act, repealed the Factories, Machinery and Building Work Ordinance 34 of 1952, the Wage and Industrial Conciliation Ordinance 35 of 1952, the Occupational Diseases in Mines and Works Act 78 of 1973 and the Conditions of Employment Act 12 of 1986 as well as a number of ethnic- and race-based laws relating to employment.

Amendments: Act 2/2012 ([GG 4925](#)) amends sections 1, 5, 82, 83, 89 and 128 and inserts sections 128A, 128B and 128C; these amendments relate to the issue of "labour hire". This amending Act was brought into force from 1 August 2012 by GN 136/2012 ([GG 4958](#)) – but GN 136/2012 was withdrawn by GN 192/2012 ([GG 5005](#)) on 1 August 2012. GN 193/2012 ([GG 5005](#)) provides that amending Act 2/2012 will come into force on 1 August 2012 – *except for* the provisions in section 10 in so far as they relate to section 26(2)(a)(ii)-(iii) of the Employment Services Act 8 of 2011.

The Whistleblower Protection Act 10 of 2017 ([GG 6450](#)), which has not yet been brought into force, amends section 84.

Regulations: Regulations made in terms of Acts repealed by the Labour Act 6 of 1992 survived in terms of section 116(2) of that Act, and continue to survive pursuant to section 142 of the current Act (read together with paragraph 2 of Schedule 1). However, pre-independence regulations have not been researched.

Regulations made in terms of the Labour Act 6 of 1992, which survive pursuant to section 142 of this Act are as follows –

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](#)). (See also the Namibian Electricity Safety Code contained in GN 200/2011 ([GG 4821](#)), which is to be read in conjunction with these regulations.)

Regulations made under this Act are as follows:

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

Regulations relating to domestic workers are contained in GN 257/2017 ([GG 6428](#)), which repeals GN 257/2014 ([GG 5638](#)). They require employers of domestic workers to submit a form annually to the Permanent Secretary of the labour ministry or to the Labour Office containing certain particulars about domestic workers.

These regulations are supplemented by a **Wage Order** setting a minimum wage and supplementary minimum conditions of employment for domestic workers, in GN 258/2017 ([GG 6428](#)), which repeals GN 258/2014 ([GG 5638](#)) (which was amended by GN 53/2016 ([GG 5978](#))).

General Notice 639/2018 ([GG 6767](#)) increased the minimum wage with effect from 1 October 2018, pursuant to the provisions of the Wage Order, which provides for an increase by 1% plus a percentage equal to the average of the increases in the inflation rates in respect of certain specified categories of goods and services published by the Namibia Statistics Agency for the 12 months preceding 1 October 2018. The minimum wage from 1 October 2018 is N\$1564.39/month, N\$361.29/week, N\$72.25/day or N\$9.03/hour, and N\$45.15/day for part-time domestic workers who work five hours or less on any day other than a Sunday or public holiday. The Wage Order's rates for minimum overtime pay and minimum pay for work on Sundays and public holidays were similarly increased by General Notice 639/2018.

The Wage Order also contains rules about transport allowances, accompanying employers on holiday, food and accommodation, health and safety, uniforms, trade union access and a written contract of employment. These rules remain unchanged.

Rules: Rules made by the Labour Courts' Rules Board in terms of the previous Act and surviving pursuant to section 14(4) of the current Act are as follows –

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.

Rules made under the current Act are as follows:

Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner are contained in GN 262/2008 ([GG 4151](#)), as amended by GN 69/2016 ([GG 5990](#)), which substitutes Annexure 1.

Labour Court Rules are contained in GN 279/2008 ([GG 4175](#)), which replaced GN 63/1994 ([GG 841](#)). The new rules became effective on 15 January 2009. Rules 6 and 14 are amended and Rule 22 is substituted by GN 92/2011 ([GG 4743](#)).

Codes: 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](#)).

A **Code of Ethics for Conciliators and Arbitrators**, issued in terms of section 137(1)(c) of the 2007 Act, is contained in GN 185/2020 ([GG 7301](#)).

Application of law: 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 ([GG 1069](#)) (as amended by Act 6/1996 ([GG 1337](#))).

Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)) 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 ([GG 1703](#)) 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.

Notices: Notices made under the previous Act which remain in force include the following (omitting those with no ongoing effect) –

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.

Guidelines and instructions pertaining to HIV/AIDS in employment were issued in GN 78/1998 ([GG 1835](#)), but these do not appear to remain in effect.

Other notices regarding specific topics are listed below.

Exemptions: Certain jobs at specific workplaces were exempted from the prohibition on work on Sundays and public holidays in terms of section 33(1) of the 1992 Act. These exemptions are not listed here.

Continuous operations: Certain work at specific workplaces has been declared to be “continuous operations” in terms of section 15 of the 2007 Act. These declarations are not listed here.

Essential services: Certain services are designated as essential services in terms of section 77(4) of the current Act -

- GN 314/2012 ([GG 5109](#)), repealed by GN 115/2017 ([GG 6309](#)),
- GN 94/2014 ([GG 5510](#))
- GN 115/2017 ([GG 6309](#))
- GN 178/2018 ([GG 6680](#)).

Variations: Certain provisions of Chapter 3 of the Act (sections 8, 18, 20, 21, 22 and 28) are varied in respect of **employers and employees in the tourism and hospitality industry** by GN 17/2011 ([GG 4660](#)).

Certain provisions of Chapter 3 of the Act (sections 16, 17, 18 and 20) are varied in respect of **fishers** (defined as persons “employed or engaged in any capacity or carrying out an occupation on board a fishing vessel, including persons working on board paid on the basis of a share of the catch but excluding pilots, naval personnel, shore-based persons carrying out work aboard a fishing vessel and fisheries observers”) by GN 250/2016 ([GG 6149](#)).

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

Construction industry: The Collective Agreement on Conditions of Employment for Construction Industry, dated 15 November 2017, is set forth in full and extended to the entire construction industry in GN 65/2018 ([GG 6567](#)). It sets forth minimum wages, amongst other things, and amends the collective agreement contained in GN 319/2015 ([GG 5917](#)). This agreement is extended to 11 April 2021 by GN 72/2020 ([GG 7142](#)), and amended and extended for two years from the date of publication of the amendments (2 November 2021), by GN 241/2021 ([GG 7675](#)).⁹⁵

Agricultural industry: A registered collective agreement which was binding on the entire agricultural industry was contained in GN 237/2009 ([GG 4390](#)). It sets 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.⁹⁶ No further minimum wage increases have been gazetted for this sector, but it was reported in 2013 that the Agricultural Employers Association (AEA) has recommended as a guide that the minimum wage for entry-level farmworkers should be N\$3,44 per hour, which at full employment is N\$670 per month, as well as a food allowance at N\$345 per month, with housing and sanitation requirements being unchanged. The official rate has reportedly remained unchanged due to the absence of meetings of the Namibia Agricultural Labour Forum – which is composed of the Agricultural Employers’ Association, the Namibia National Farmers’ Union and the Namibia Farm Workers’ Union – for the past few years.⁹⁷ It was reported in the press in 2014 that the Agricultural Employers Association, Namibia National Farmers Union and Namibia Workers Union had signed an agreement making the lowest minimum wage N\$3,70/hour, or N\$888/month. The agreement also reportedly states that if an employee is required to live on the place of their employment or on any property of their employer, that worker must receive an additional N\$400 food allowance per month.⁹⁸ However no collective agreement has been published in the *Government Gazette* for this sector since 2009.⁹⁹

Security industry: A registered collective agreement extended to all employers and employees in the security industry was most recently published in GN 242/2017 ([GG 6414](#)). It sets the minimum wage for entry-level security officers at N\$8.75 per hour as of 1 January 2017 and provides for other wage adjustments. It also contains rules about the provision of uniforms.¹⁰⁰

⁹⁵ Past collective agreements in this industry were published in GN 298/1996 ([GG 1444](#)), GN 272/1997 ([GG 1752](#)) extended by GN 300/1998 ([GG 2010](#)); GN 135/1999 ([GG 2144](#)) extended by GN 85/2000 ([GG 2301](#)), GN 123/2000 ([GG 2340](#)), GN 217/2001 ([GG 2637](#)), GN 39/2003 ([GG 2927](#)), GN 24/2005 ([GG 3392](#)), GN 224/2008 ([GG 4115](#)), GN 129/2009 ([GG 4271](#)), GN 154/2012 ([GG 4970](#)) and GN 319/2015 ([GG 5917](#)).

⁹⁶ A previous collective agreement contained in GN 77/2003 ([GG 2946](#)) set 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.

⁹⁷ “New minimum wage for farmworkers”, *The Namibian*, 25 June 2013.

⁹⁸ “New minimum wage for farm workers”, *The Namibian*, 17 June 2014.

⁹⁹ A request to extend a collective agreement to the agricultural industry, and an invitation to submit objections to such extension, is published in GN 104/2014 ([GG 5522](#)). A request to extend a collective agreement to the agricultural industry, and an invitation to submit objections to such extension, is also published in GN 291/2021 ([GG 7712](#)).

¹⁰⁰ Past collective agreements in this industry were published in GN 132/2005 ([GG 3516](#)) as amended by a Memorandum of Agreement contained in GN 202/2008 ([GG 4112](#)), GN 190/2009 ([GG 4342](#)), GN 229/2012 ([GG 5031](#)) and GN 248/2014 ([GG 5628](#)).

Fuel industry: No minimum wage has been gazetted, but a 2014 news report stated that agreement was reached between the Namibia Fuel and Allied Workers Union (NAFAWU), the Metal and Allied Workers Union (MANWU), the Namibia Wholesalers and Retail Workers Union (NWRWU), the Namibia Food and Allied Workers Union and the Association of Service Station Owners (ASSO) for a N\$7.20/hour minimum wage for a basic minimum salary of N\$1 404 per month. According to the news report, the agreement covers petrol attendants, cashiers and shop attendants at service stations. The minimum amount does not include payment for Sundays, public holidays or overtime. It was expected to be implemented on 1 January 2015, and to be renegotiated after two years. The plan was to extend the agreement to the entire industry.¹⁰¹

Wages Commission: A Wages Commission was convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 135/2012 ([GG 4956](#)), which sets forth its terms of reference. The date for submission of this Commission's report, originally 15 February 2013, was extended to 15 April 2013 by GN 308/2012 ([GG 5109](#)) and to 30 May 2013 by GN 112/2013 ([GG 5188](#)).

A Wages Commission was again convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 28/2017 ([GG 6245](#)), which sets forth its terms of reference. The deadline for submission of this Commission's report is 23 March 2017.

A Wages Commission was convened for purposes of investigating a proposed **national minimum wage** by GN 26/2021 ([GG 7461](#)), which sets forth its terms of reference. The date for submission of this Commission's report, originally 30 September 2021, was extended to 31 March 2022 by GN 68/2022 ([GG 7758](#)).

Cases: The following cases were decided after the **Labour Act 11 of 2007** became the operative law –

General

arbitration proceedings (generally):

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC) (recusal of arbitrator)

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (basis for appeal of arbitrator's award)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC) (Labour Court Rules and Conciliation and Arbitration Rules must be read together; at para 25: "perhaps consideration should in future be given to creating greater harmony between the different sets of rules, or by co-ordinating matters so that both sets of rules do not regulate the same matters")

City of Windhoek v Katuuu & Others 2016 (2) NR 529 (LC) (arbitrator finding "unfair labour practices" under section 50(1) should indicate which paragraph of that section is relevant; arbitration is not competent in respect of disputes of interest)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (approach to overtime claims in arbitration proceeding)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC) (approach to finding of procedurally and substantively unfair dismissal in arbitration proceedings)

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (criteria for interfering with arbitrator's award on appeal)

Standard Bank Namibia Ltd. v Gaseb & Another 2017 (1) NR 121 (LC) (appeal against arbitrator's award on questions of law may overturn a factual finding of the arbitrator if there is no evidence that could reasonably support the finding of fact in question, or if no reasonable arbitrator could have made such a finding of fact on the evidence at hand)

¹⁰¹ "Minimum wage for Namibia's fuel sector", *Namibian Sun*, 29 September 2014. A request to extend a collective agreement to the Fuel Retail Industry, and an invitation to submit objections to such extension, is published in GN 309/2015 ([GG 5910](#)).

condonation:

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

consistency in disciplinary sanctions:

Standard Bank Namibia Ltd. v Gaseb & Another 2017 (1) NR 121 (LC) (principle of consistency when imposing disciplinary sanctions is part of Namibian labour law, but an employer may show valid reasons for differentiating between employees who are guilty of the same offence)

constructive dismissal:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (burden of proving constructive dismissal lies with employee)

Kvekatora v Transnamib Holdings Ltd & Another 2012 (2) NR 443 (LC)

contract of employment:

Namrights Inc v Nicodemus & Others 2016 (2) NR 596 (LC) (contract of employment is *void ab initio* and cannot be basis for any benefits where concluded with refugee in absence of work permit or exemption from work permit requirements)

prescription:

Namibia Development Corporation v Mwandangi & Others 2013 (3) NR 737 (LC) (*Prescription Act 68 of 1969* applies to labour-related claims arising under this Act).

sexual harassment:

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (*dicta* at paras 61-62: “Sexual harassment is after all a serious matter. The legislature has provided for sexual harassment in the workplace in ch 2 of the Act, where special remedies are also provided for discrimination in an employment setting. This is a clear indication of the seriousness with which sexual harassment at the workplace is viewed by the legislature and rightly so. Being subjected to unwanted and unwarranted conduct of a sexual nature not only creates a barrier to equality in employment as is stressed in s 2 of the Act, but it also violates an employee’s constitutional right to dignity and of the person. The seriousness of sexual harassment in employment is reinforced by the fact that the failure on the part of an employer to prevent it may even attract delictual liability.”)

team misconduct:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

unfair labour practice:

Wilderness Air Namibia v Janse van Rensburg 2012 (2) NR 764 (LC); *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC)

unfair dismissal:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (arbitrators’ finding of unfair dismissal overturned)

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC) (court overturns factual conclusion of arbitrator on grounds that no arbitrator could reasonably have found dismissal unfair; procedural defects can be overlooked if there is substantial fairness)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC)

Labour Act 11 of 2007

section 1:

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (definition of “employee”)

section 9:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 9(3))

Namibia National Teacher’s Union v Government of the Republic of Namibia & Others NO 2018 (2) NR 403 (LC) (collective agreements interpreted against backdrop of section

50(1)(e) in successful appeal against arbitrator's award)

section 10:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

sections 11-12:

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)

Chapter 8, Part B (conciliation) and Part C (arbitration):

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (differences between statutory schemes for conciliation and arbitration discussed at length)

section 33:

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC)

Management Science for Health v Kandungure & Another 2013 (3) NR 632 (LC) (minimum requirements of fair disciplinary hearing set forth at para 5)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

Namibia Custom Smelters (Pty) Ltd v Mupetami & Another 2015 (3) NR 859 (LC) (section 33(1)(a))

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC)

Jurgens v Geixob & Others 2017 (1) NR 160 (LC) (section 33(1) requires an employer to show both a valid and fair reason for dismissal and a fair procedure in order to establish a fair dismissal; an arbitrator has unfettered discretion to make an appropriate award in the case of an unfair dismissal even if there was a fair substantive reason for a dismissal which lacked procedural fairness, and a court will interfere with the arbitrator's exercise of discretion in this regard only if no reasonable arbitrator could have come to the same conclusion)

section 34:

Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

section 35:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (amount prescribed in section 35(3) is a minimum and does not preclude court from ordering a higher amount of severance pay)

section 37:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

section 49:

Kandukira v Shingudja & Another 2013 (4) NR 903 (LC) (section 41(1)(d), read with sections 51(1) and 121(1)(a), includes an unfair labour practice between a trade union and its members, which can be referred to a Labour Commissioner as a dispute)

section 50:

Namibia National Teacher's Union v Government of the Republic of Namibia & Others NO 2018 (2) NR 403 (LC) (collective agreements interpreted against backdrop of section 9 in successful appeal against arbitrator's award)

section 51:

Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC)

section 65:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (application of section discussed in light of Constitutional right of assembly and its limitations)

section 74:

Namibia National Teachers Union & Others v Kayec Trust & Others 2018 (1) NR 21 (HC) (longer time period for notice of strike in collective agreement that binds parties under section 70(1) constitutes compelling reason for departing from 48-hour rule in section 74(1)(d))

section 79:

Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC)

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC)

section 82:

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (section 82(9)(c); no constitutional bar to service of notice of conciliation or arbitration by a Labour Commissioner or an official who conducts conciliation or arbitration proceedings)

section 85:

Roads Contractor Company v Nambahu & Others 2011 (2) NR 707 (LC) (section 85(6): includes guidelines for arbitration to satisfy constitutional right to fair hearing)

Note that the case erroneously refers to the statute as the “Labour Court Act”.

section 86:

Nedbank Ltd v Louw 2011 (1) NR 217 (LC) (section 86(2))

Paulo v Shoprite Namibia (Pty) Ltd & Others 2013 (1) NR 78 (LC) (section 86(15): interpretation of term “re-instatement”)

National Housing Enterprise v Hinda-Mbazira & Others 2013 (1) NR 19 (LC) ((section 86(2); six-month time period for referral of a dispute involving a dismissal in section 86(2)(a) begins to run when the dispute has crystallised, after exhaustion of internal remedies, and not from the date of the dismissal, finding that this section must be read intertextually with sections 82(7), (8) and (9)); interpretation confirmed on appeal in *National Housing Enterprise v Hinda-Mbazira* 2014 (4) NR 1046 (SC)

Classic Engines CC v Nghikofa 2013 (3) 659 (HC) (not applicable to an action for damages for breach of an employment contract, since conciliator and arbitrator have no power to award damages); see also *Nghikofa v Classic Engines CC* 2014 (2) NR 314 (SC) (section 86(2) of Act does not require that breach of contract claim be referred to Labour Commissioner, discussed in course of considering prospects of success on merits in condonation application)

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (section 86(2)(c) is peremptory and allows for no power of amelioration)

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (section 86(7))

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 86(16)(a))

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (section 86(18): consequence of non-compliance when arbitration award delivered after 30-day time limit); see also *Torbitt & Others v International University of Management* 2017 (2) NR 323 (SC) (discussed below)

Shaama v Roux 2015 (1) NR 24 (LC) (application of section 86(2))

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (various provisions of section 86 considered, including section 86(7))

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (section 86(15))

International University of Management v Torbitt & Others 2015 (3) NR 698 (LC), overturned on appeal in *Torbitt & Others v International University of Management* 2017 (2) NR 323 (SC) (interpretation of “must” in section 86(18) requires substantial rather than rigid compliance with the stated time period for issue of arbitration awards; it would be unjust in the circumstances of the case at hand to treat an award issued 21 days late as a nullity, but the 30-day time limit “must still be regarded as the guiding objective when awards are to be issued by arbitrators”)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (section 86(18))

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC)

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC) (section 86(16))

section 87:

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 87(1)(b): Labour Court not required to make an arbitration award an order of court)

section 89:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section 89(18))

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (LC) (appeal against arbitration award); *Paulo v Shoprite Namibia (Pty) Ltd & Others* 2013 (1) NR 78 (LC) (where arbitrator’s award adverse to employer is suspended pending appeal under section

89(6)-(8), employer has no obligation to remunerate employee unless employee has invoked section 89(9)(b)(ii).

Nedbank Ltd v Louw 2011 (1) NR 217 (LC)

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (section 89(2); confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

House and Home (a trading division of Shoprite (Pty) Ltd v Majiedt & Others 2013 (2) NR 333 (LC) (section 89(1)(a): question of law v question of fact)

Purity Manganese (Pty) Ltd v Shikongo NO & Others 2013 (2) NR 473 (LC) (section must be read in conjunction with Arts 12 and 18 of Constitution)

Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)

Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with *Lungameni & Others v Hagen & Another* 2014 (2) NR 352 (LC))

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Atlantic Chicken Co (Pty) Ltd v Mwandangi & Another 2014 (4) NR 915 (SC) (gross irregularities by arbitrator)

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (gross irregularity by arbitrator)

Walvis Bay Municipal Council v Kangumu 2014 (4) NR 978 (LC) (appeal against award of arbitrator can be made on *any* question of law, and is not limited to questions of law raised by party in conciliation and subsequent arbitration)

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (determination of dispute in terms of s. 89(10)(a), overturning referral of dispute back to arbitrator in *National Housing Enterprise v Hinda-Mbazira & Others* 2013 (1) NR 19 (LC))

Shaama v Roux 2015 (1) NR 24 (LC) (appeal v review of arbitrator's decision; questions of law versus questions of fact under section 89(1) and defects in arbitration proceedings under section 89(4))

Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal Labour Court decision required under section 18(2)(c) of High Court Act 16 of 1990 when Court refused condonation in appeal against arbitration award in terms of this section of the Labour Act)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (section 89(1)(a): question of law v question of fact)

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC) (section 89(1)(a): question of law)

Swartbooi & Another v Mbengela NO & Others 2016 (1) NR 158 (SC) (review of arbitration proceedings confined to defects set forth in s. 89(5); Art 18 of the Namibian Constitution does not apply to arbitration tribunals)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (ambit of question of law in section 89(1)(a); overrules *Paulo v Shoprite Namibia (Pty) Ltd & Others* 2013 (1) NR 78 (LC) on interpretation of "question of law *alone*" in section 89(1)(a))

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (section 89(1)(a); application of test from *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC))

section 91:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (parties may agree to private arbitration only after a dispute has arisen if this is not covered in a collective agreement)

section 117:

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC) (section 117(1); jurisdiction to intervene in disciplinary proceedings should miscarriage of justice otherwise occur)

Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC) (interpretation of section 117(1)(e))

Kamati v Namibia Rights and Responsibilities Inc 2013 (2) NR 452 (LC) (Labour Court jurisdiction under section 117(1))

Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC) (anomaly of section 117(1)(d) discussed; section 117(1)(e) interpreted)

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC)

Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another 2015 (4) NR 1161 (SC) (urgent relief under section 117(1)(e) is temporary in nature and not a final order)

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (High Court sitting as such does not have jurisdiction under section 117(1)(i) which confers exclusive jurisdiction on the Labour Court; enforcement of arbitration award encompassed within reference to “any labour matter”)

section 118:

Namibia Seaman and Allied Workers Union v Tunacor Group Ltd 2012 (1) NR 126 (LC)

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC)

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC); *TM-S v Namibia Estate Agents Board & Another* 2016 (4) NR 1030 (SC)

Onesmus v Namibia Farm Workers’ Union 2018 (4) NR 922 (LC) (“frivolous or vexatious”)

Namibia Tourism Board v Kankondi & Another NO 2018 (4) NR 931 (LC)

section 119:

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC) (section 119(3))

section 128:

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); see also *Government of Namibia v Africa Personnel Services* 2010 (2) NR 537 (HC) (interlocutory order staying implementation of section 128 pending appeal) (court’s approach discussed in Felicity !Owoses-/Goagoses, “Reading down words in a statute, the courts’ role, and the place of Parliament: The approach of the Namibian courts”, *Namibia Law Journal*, Volume 4, Issue 1, 2012)

Africa Labour Services (Pty) Ltd v The Minister of Labour and Social Welfare & Another 2013 (4) NR 1175 (HC) (upholding constitutionality of section 128 as substituted by Act 2 of 2012)

section 128A:

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC)

section 129:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section 89(18))

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

section 134:

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC); *TM-S v Namibia Estate Agents Board & Another* 2016 (4) NR 1030 (SC).

section 137:

Namibia National Teachers Union & Others v Kayec Trust & Others 2018 (1) NR 21 (HC) (**Code of Good Practice on Industrial Action (Strikes and Lock-outs)** issued pursuant to this section)

The following cases concern the **Labour Court Rules 2008** in GN 279/2008 –

Rule 6(24):

Dr Matti Kimberg Practice v Mwafufya-Shikongo NO & Others 2014 (3) NR 799 (LC)

Rule 6(26):

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC)

Rule 10:

Namibia Development Corporation v Mwangingi & Others 2013 (3) NR 737 (LC) (discussed *obiter* as being possibly *ultra vires*)

- Rule 14:
Shaama v Roux 2015 (1) NR 24 (LC)
- Rule 15:
First National Bank Namibia Ltd v Van der Westhuizen & Another 2012 (1) NR 195 (LC)
Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)
Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with
Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC))
- Rule 16:
Onesmus v Namibia Farm Workers' Union 2018 (4) NR 922 (LC) (rule 16(5); order is obtained
in error for purposes of this rule if it contradicts a provision of the Act)
- Rule 17:
Municipal Council of Windhoek v Esau 2010 (2) NR 414 (LC)
Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (rule 17(23)
takes precedence over Practice Directives, which apply only where there is no specific
rule covering the matter which is at variance with the Practice Directives; rule 17(25)
requires application for condonation even if parties have agreed to extension of time,
but should be re-examined in light of fact that duty to provide record lies with
adjudicator and not with appellant)
Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)
Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)
Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)
- Rule 18:
Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (rule 18(1)).

The following cases concern the **Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner** in GN 262/2008 –

- Rule 5:
Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (meaning of term
“must”)
Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)
Simana v Agribank of Namibia 2016 (4) NR 913 (SC)
- Rule 13:
Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)
- Rule 14(2):
Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC)
- Rule 18:
Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR
782 (LC)
- Rule 23:
Standard Bank Namibia v Grace 2011 (1) NR 321 (LC)
Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)
Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)
- Rule 27:
Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR
782 (LC)
- Rule 29:
Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR
782 (LC)
- Rule 34:
Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR
782 (LC)

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); *Kröger 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)

Overberg Fishing (Pty) Ltd v Docompo 2012 (1) NR 285 (LC) (termination of fixed term contract by effluxion of time)

fair trial and specificity of complaint:

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC)

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”) (see Lameck Mukondomi, “Dispute of right vis-à-vis dispute of interest: An analysis of *Smit v Standard Bank of Namibia*”, *UNAM Law Review*, Volume 2, Issue 1, 2014, available at <http://unamlawreview.info>)

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 Ackermans (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)

Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC) (“remuneration”)

Hugo v Council of Municipality of Grootfontein 2015 (1) NR 73 (SC) (“dispute of interests” versus “dispute of rights”)

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 15(1):

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (status of Labour Court as lower court)

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)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (possibility of proceeding under section 18(1) does not oust jurisdiction of High Court under Art 18 of Constitution)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC) (costs orders)

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 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (section 19(1)(a); not discussed in appeal case *Visagie v Namibia Development Corporation* 1999 NR 219 (HC))

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* 18 Indus. L.J. (Juta) 657 (1997), 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* 2004 (4) NLLP 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)
- Onesmus v Minister of Labour & Another* 2010 (1) NR 187 (HC) (amendment of section 21(1) by Act 10/2001 does not affect status of Labour Court as lower court)
- Namibia Breweries Ltd v Kaeka & Another* 2011 (1) NR 16 (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 Company 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 37(b):
Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC)
- 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 Ackermans (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)

Peace Trust v Beukes 2010 (1) NR 134 (HC) (both procedural requirements and existence of valid and fair reasons for dismissal considered)

Rosh Pinah Zinc Corporation v Muronga 2013 (2) NR 595 (LC) (applied to dismissal on grounds of incapacity; acceptable for employer to offer to accommodate employee in new position at lower remuneration as alternative)

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 18 Indus. L.J. (Juta) 657 (1997), 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; not discussed in appellate case *Visagie v Namibia Development Corporation* 1999 NR 219 (HC))

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)
Pinks Family Outfitters (Pty) Ltd t/a Woolworths v Hendricks 2010 (2) NR 616 (LC) (application of section 46(1)(a)(iii))

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 18 Indus. L.J. (Juta) 657 (1997), 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)
National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (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 (now repealed), and the **District Labour Court Rules** contained in GN 138/1993 (such courts no longer being in existence) –

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(24):

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (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 16:
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (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(1):
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (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 Ackermans (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 the spirit of rule 10 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)
Woermann Brock & Co (Pty) Ltd v Shaanika & Others 2011 (1) NR 98 (LC) (procedure relating to 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
Tjihuiua 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)
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)
- Rule 22:
Transnamib Holdings Ltd v Carstens 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** ([OG 5221](#)) –

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 discusses **ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982** –

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (Article 13; not discussed in appeal case *Visagie v Namibia Development Corporation* 1999 NR 219 (HC)).

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Ute Dieckmann & Theodor Muduva, *Namibia’s Black Gold?: Charcoal Production, Practices and Implications*, Legal Assistance Centre, 2010, available [here](#).

Employment Services Act 8 of 2011

Summary: This Act ([GG 4764](#)) establishes a National Employment Service aimed at achieving full employment in Namibia. The Service consists of an Employment Services Board which plays an advisory role, and an Employment Services Bureau which registers job vacancies and job-seekers, amongst other functions. The Act also requires designated employers to report vacancies and new positions and to provide information about the composition and training of their workforces. It also provides for the licencing of private employment agencies and for the appointment of employment officers to enforce the Act. Portions of the Act were brought into force on 1 September 2012 by GN 194/2012 ([GG 5005](#)): Part 1, Part 4 (except section 26(2)) and Part 5. Part 3 of the Act was brought into force on 15 September 2015 by GN 201/2015 ([GG 5829](#))

Note that the short title in section 35(1) of the Act (as promulgated in *Government Gazette*) is the “Employment Services Act”. However, the headings and contents section in the *Gazette* refer to it as the “Employment Service Act” (with “Service” being singular instead of plural).

Amendments: Act 2/2012 ([GG 4925](#)) amends sections 1, 24 and 26, in relation to “labour hire”. This amending Act was brought into force as of 1 August 2012 by GN 136/2012 ([GG 4958](#)) – but GN 136/2012 ([GG 4958](#)) was withdrawn by GN 192/2012 ([GG 5005](#)) on 1 August 2012, while GN 193/2012

([GG 5005](#)) provides that amending Act 2/2012 will come into force on 1 August 2012, *except for the provisions in section 10 insofar as they relate to section 26(2)(a)(ii)-(iii) of the Employment Service Act.*

Regulations: Employment Service Regulations are contained in GN 62/2013 ([GG 5147](#)).

A separate set of regulations regarding employment services is published in GN 42/2015 ([GG 5702](#)).

Notices: Designations of employers and institutions under section 15(2) of the Act are contained in GN 202/2015 ([GG 5829](#)) (each employer employing 25 or more employees is identified as a designated employer).

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 14/1995 ([GG 1020](#)), as amended by GN 55/1995 ([GG 1044](#)).

INTERNATIONAL LAW

Charter of Fundamental Social Rights in SADC, 2003

†*Constitution of the International Labour Organization (ILO), 1919*

**Instrument of Amendment of the ILO Constitution, 1986*

Instrument of Amendment of the ILO Constitution, 1997

ILO Convention 29 concerning Forced or Compulsory Labour, 1930

Protocol of 2014 to the Forced Labour Convention, 1930

ILO Convention 81 concerning Labour Inspection in Industry and Commerce, 1947

ILO Convention 87 concerning the Freedom of Association and the Right to Organise, 1948

ILO Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949

ILO Convention 100 concerning Equal Remuneration, 1951

ILO Convention 105 concerning the Abolition of Forced Labour, 1957

ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, 1958

ILO Convention 122 concerning Employment Policy, 1964

ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973

ILO Convention 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976

ILO Convention 150 concerning Labour Administration: Role, Functions and Organisation, 1978

ILO Convention 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978

ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982

ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999

ILO Convention 188 concerning Work in the Fishing Sector, 2007

Note: In this list, the numbers of the respective ILO Conventions have been placed at the front of their respective names to make searches for each of these conventions easier. Technically, the numbers appear at the end. For example, what is listed here as “*ILO Convention 29 concerning Forced or Compulsory Labour, 1930*” is in fact “*ILO Convention concerning Forced or Compulsory Labour (No. 29), 1930*”.

****SADC Protocol on Employment and Labour, 2014**

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

See also Whistleblower Protection Act 10 of 2017 (**CRIMINAL LAW AND PROCEDURE**).

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

See also Atomic Energy and Radiation Protection Act 5 of 2005 (**ENVIRONMENT**).

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 (conditions of service of employees of the posts and telecommunications companies (**MEDIA AND COMMUNICATION**)).

See also **PUBLIC SERVICE**.

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

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