

# Encouraging **EQUAL** **OPPORTUNITIES** in the Workplace



**LEGAL ASSISTANCE CENTRE**

Namibia

2016

Despite the constitutional provision that all people are equal in Namibia, data shows that in the workplace, this is often not the case. Data from the Employment Equity Commission for 2013-2014 shows that women fill just 22% of executive director positions and 32% of senior management positions. It is only at middle-management level that there starts to be gender parity.

Gender inequality exists for many reasons, one being the biological differences between men and women. Women bear children and can breastfeed, and these biological differences can result in strong cultural inequalities, such as the concept that women must take all of the responsibility for childcare even if they are also working. Cultural norms in Namibia also often encourage women to do most or all homemaking chores, as well as to bear the primary burden of care of ill and elderly family members.

Women who have to fulfil most of their household's family responsibilities may find it difficult to meet the demands of management-level positions. The rigid constraints of some working environments that do not recognise the need for flexibility when it comes to family responsibilities is another deterrent to women applying for, and retaining, management-level positions. This narrows the pool of candidates for key positions, with a resulting reduction in profit potential. However, with very little effort, steps can be taken to change this situation.

## Legal framework

The Namibian Constitution states that all people in Namibia are equal. This concept should be reflected in laws, policies and daily life - including in the workplace.

### **Equality and Freedom from Discrimination**

- (1) All persons shall be equal before the law.
- (2) No persons may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or social or economic status.

- Namibian Constitution, Article 10



The Constitution also provides for affirmative action for people who have suffered discrimination in the past, including women. This is to allow for situations where the involvement of women and other disadvantaged groups needs to be promoted to encourage gender equality.

### **Apartheid and Affirmative Action**

Nothing contained in Article 10 hereof shall prevent Parliament from enacting legislation providing directly or indirectly for the advancement of persons within Namibia who have been socially, economically or educationally disadvantaged by past discriminatory laws or practices, or for the implementation of policies and programmes aimed at redressing social, economic or educational imbalances in the Namibian society arising out of past discriminatory laws or practices, or for achieving a balanced structuring of the public service, the police force, the defence force, and the prison service.

In the enactment of legislation and the application of any policies and practices contemplated by Sub-Article (2) hereof, it shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and that they need to be encouraged and enabled to play a full, equal and effective role in the political, social, economic and cultural life of the nation.

**- Namibian Constitution, Article 23(2) and (3)**

## Promotion of the Welfare of the People

The State shall actively promote and maintain the welfare of the people by adopting, *inter alia*, policies aimed at the following:

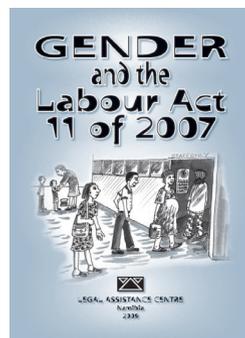
- (a) enactment of legislation to ensure equality of opportunity for women, to enable them to participate fully in all spheres of Namibian society; in particular, the Government shall ensure the implementation of the principle of non-discrimination in remuneration of men and women; further, the Government shall seek, through appropriate legislation, to provide maternity and related benefits for women;

- Namibian Constitution, Article 95

Namibia's labour laws require a range of measures to advance gender equality.

The **Labour Act 9 of 2007** contains detailed provisions relating to the realisation of equality in the workplace. This law addresses:

- discrimination on the basis of sex, family responsibilities or pregnancy;
- family responsibilities themselves;
- pregnancy and maternity leave;
- compassionate leave; and
- sexual harassment.



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The **Foreign Investments Act 27 of 1990** says that in considering an application for a Certificate of Status Investment, the Minister in question shall have special regard to the extent to which the enterprise in which the proposed investment is to be made will make provision for equal opportunities for women.

The **Co-operatives Act 23 of 1996** requires the participation of women in the management of any cooperative with more than five women amongst its members, or with women numbering more than one-third of its members (whichever is lesser).

The **Affirmative Action (Employment) Act 29 of 1998** is intended to improve the representation of racially disadvantaged people, women and disabled persons in the formal workforce. It requires “relevant employers” (currently defined as employers with 25 or more employees) to give preferential treatment to suitably qualified persons of one of these three designated groups when filling positions. Relevant employers must also submit three-year affirmative action plans setting out the measures they intend to take to increase the representation of members of the designated groups at all levels of employment.

## Labour Act provisions relating to gender equality

### Discrimination

The Labour Act states that an employer may not directly or indirectly discriminate against any person on the basis of sex, marital status, family responsibilities and previous, current or future pregnancy.

It is discrimination for an employer to treat employees who perform work of equal value differently just because one is a man and the other is a woman.

It is discrimination for an employer to decide between equally qualified job applicants on the basis of their sex - unless the sex of the employee is an essential feature of the position, or unless the job is part of an affirmative action initiative for previously disadvantaged groups (including women).



The prohibitions on discrimination apply to all aspects of employment - including things such as promotions and demotions, transfers and selection for training programmes.

### **How can an employer put this provision into practice to encourage equal opportunities in the workplace?**

Data shows that fewer women are employed at senior and executive management level compared to men. Employers should be aware of this and include in their interview process a reflection on whether there is a bias for or against a job candidate due to sex.

There is a common perception that men are more assertive than women and are more suited to management jobs, whilst women are softer and less able to cope with management responsibilities. When women do exhibit more assertive traits, they may be criticised for this, whereas in a man, similar behaviour is applauded. Companies should take steps to recognise such biases and address them. Companies can offer leadership and mentoring programmes that clarify the characteristics of management-level staff that the company wants, regardless of sex. Companies can also offer training programmes to employees of both sexes on appropriate assertive behaviour.

## **Family responsibilities**

A family responsibility is a duty an employee has to provide care and support to a parent, child, husband, wife or some other dependant.

An employer may not discriminate against an employee on the basis of family responsibilities. Employers must make allowances for the family responsibilities of male and female employees.



### **How can an employer put this provision into practice to encourage equal opportunities in the workplace?**

Typically women take on the majority of childcare responsibilities, and so they often choose employers who positively implement the legal provisions on family responsibilities. In contrast, men often feel that they cannot request flexibility regarding family responsibilities even though the provisions apply equally to men and women.

Employers should encourage a family-friendly working environment to ensure that both male and female employees take responsibility for their families' needs. This could be as simple as having a "bring your child to work" hour during the school holidays to encourage male and female employees to link family and work.

Employers could also develop a family policy that clarifies flexibility - for example allowing employees who have to drop children at school in the morning to take a shorter lunchbreak, or allowing employees to work from home on days when childcare needs arise.

Employers should also consider providing or facilitating the opening of workplace crèches for children of male and female employees if there is sufficient employee interest.

## **Pregnancy and maternity leave**

Any woman who has worked for an employer for at least six months in a row is entitled to maternity leave and maternity benefits.

A pregnant woman is entitled to take 4 weeks of maternity leave *before* her expected due date and 8 weeks *after* the delivery of the baby. *Every woman must get at least 12 weeks of maternity leave in total.* But because it is not possible to predict the due date precisely, this will mean that maternity leave will sometimes be *longer* than 12 weeks in total.

The Social Security Commission will pay the employee's basic wage, up to a ceiling set by regulations. As of the beginning of 2016, the ceiling is N\$10,500.

The “basic wage” means the employee’s ordinary wages, without extras like S&T, housing allowances, and extra pay for overtime, night work or work on Sundays and public holidays. The employer must continue to pay for other benefits that the employee is entitled to, such as pension and medical aid. Some employers agree to make up the balance of the wages of employees who earn more than the ceiling set by the Social Security Commission.

### **How can an employer put this provision into practice to encourage equal opportunities in the workplace?**

Although the law currently provides only for maternity leave and not paternity leave as well, employers can choose to give their male employees a short period of paternity leave. This would benefit both male and female employees as it sends the message that family responsibilities are not to be borne by the mother alone, reducing the burden on the mother and giving her the confidence to re-enter the workplace after her leave knowing that both parents can take responsibility for childcare issues that inevitably arise down the line. It also sends a positive message to fathers that their workplace values them not just for the work they do but also for fulfilling their family responsibilities.

One dilemma for women is that the length of maternity leave does not correlate with the current World Health Organisation and Namibian recommendation that babies be breastfed exclusively for the first six months. Employers can support breastfeeding by: encouraging women to utilise annual leave after their maternity leave; allowing flexible hours for mid-day feedings where this is practically feasible; providing/facilitating workplace crèches; and providing spaces and facilities for the expression and storage of breastmilk.

## **Compassionate leave**

Compassionate leave is leave required because of death or serious illness in the family. For this leave, “family” is defined as including a child (and children adopted by law, custom or tradition), husband, wife, parent, grandparent, brother, sister, father-in-law or mother-in-law.

Compassionate leave is not part of sick leave or maternity leave. All employees are granted five days of compassionate leave at full pay in every year of continuous employment. Unused compassionate leave does not carry over from one year to another, and an employee is not entitled to any payment for unused leave if he or she leaves the job.

**How can an employer put this provision into practice to encourage equal opportunities in the workplace?**

This is another area where women may feel they can apply for compassionate leave whereas in the same situation, a man may not feel comfortable to make such a request. Again, employers should encourage a family-friendly working environment to ensure that both male and female employees feel they can request this option when the need arises.

## **Sexual harassment**

“Sexual harassment” is unwarranted sexual behaviour towards an employee by the employer or a co-worker.

There are two possible ways to identify sexual harassment.

- One is where the employee has indicated that the conduct is unwelcome. For example, it might not be sexual harassment for one employee to ask another employee to go out on a date - but it would be unacceptable to keep making such requests after being asked to stop.
- Another situation is where any reasonable person would find the conduct unacceptable. An example would be where an employee attempts to fondle another employee’s breasts or buttocks in the workplace. Any reasonable person should realise that this is unacceptable conduct, without having to be told.

It is illegal for employers to engage in sexual harassment of their employees. Employers are also expected to take reasonable steps to make employees safe from sexual harassment by their co-workers. An employee who is forced to leave his or her job to escape sexual harassment might be entitled to subsequent re-employment in addition to compensation for the losses suffered.

### **How can an employer put this provision into practice to encourage equal opportunities in the workplace?**

Employers should ensure that the concept of sexual harassment is recognised. This can be achieved through a workplace policy that outlines what is and is not acceptable - ideally developed with input from all employees. Employers should exhibit zero tolerance of sexual harassment and make sure that all employees, male and female, are aware of the steps to follow if they are experiencing sexual harassment. Occasional workshops explaining what sexual harassment is and what to do about it can also be very useful, as the concept is not yet widely understood in Namibia.

## **How can companies provide equal opportunities in the workplace?**

The first step to providing equal opportunities in the workplace is to ensure that your company follows the provisions of the Labour Act. But in reality, a company needs to go beyond the basic provisions to make equality in the workplace a reality. The benefits of achieving equal opportunities in the workplace are far greater than the time or effort needed to implement such procedures.

### **Assess**

Companies should assess their staff complement. This includes the hiring of staff, promotions, resignations and pay levels.

Employers can also ask employees for feedback about equality in the workplace. Many employees may not speak out about the challenges they face unless they are asked. Remember that some employees may prefer to give anonymous feedback.

Staff input should also include feedback about employees' personal situations: what are their motivators and challenges?

## Optimise the working environment

Based on the feedback you receive, adapt the workplace. If you see bias in your staff complement, you may need to set employment targets to recruit more women - or men - for future positions. Review the feedback from your staff and consider what can be easily done to respond to their concerns. This could include making training available to give staff the skills they think they are lacking, setting up mentoring opportunities, or instituting more practical interventions such as flexible working practices.

## Evaluate

A few months after making changes to optimise your working environment, evaluate the impact. Not all changes will necessarily have the intended effect. For example, you may set up training opportunities and find that participation is low, but this may not be due to lack of interest; it could be due to the overall burden of working mothers who have the majority of childcare responsibilities. A small change, such as holding the training at a different time or splitting it into shorter sessions, might increase participation. Alternatively, men may still feel unable to fulfil family responsibilities even if a family-friendly policy is in place. It may take leadership from top management, such as top male managers' recognition of family responsibilities, to implement new policies and practices meaningfully. Also, as staff may need individual encouragement, employers should make time to get to know their staff's family situations to see what particular individuals need to optimise their work and family situations. One simple but very informative activity is to ask staff to complete a time-use chart (perhaps anonymously). This can help employers to understand their staff's family responsibilities and how men and women use their time.

TIME OF DAY	TASK
05h00 - 06h00	
06h00 - 07h00	
07h00 - 08h00	
08h00 - 09h00	
Etc.	
<b>Question:</b> If the workload in your family is uneven, are there changes that you could make?	

# How to develop a family policy for your workplace

Possible areas to cover:

- **Maternity leave:** Can you provide additional benefits? The current provision is small compared to international standards. A longer maternity leave has benefits for the employer as the employee will be less likely to miss work if she returns when her child is older than 8 weeks.
- **Breastfeeding:** The World Health Organisation and the Government of Namibia recommend that babies be exclusively breastfed for the first six months after birth. Thereafter, breastfeeding can continue along with solid food, with some people continuing to breastfeed their babies up to two years of age or longer. Is it practical for your company to provide flexible arrangements for female staff to encourage continued breastfeeding after the end of maternity leave?
- **Paternity leave:** Can you provide a short period of paternity leave? This will benefit both male and female employees at only a small time-cost to the company.
- **Flexible working hours:** Is it practical to allow staff to work flexible hours according to childcare and family needs?
- **Working from home:** Is it practical to allow some staff to work from home on a regular or occasional basis according to childcare and family needs?

The Constitution of Namibia provides for the equality of all people, but in reality this can be difficult to implement, particularly in the workplace. Employers can take steps to encourage equal opportunities in their workplace, and in doing so, can increase productivity and profit.



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