

# GENDER and the Labour Act 11 of 2007



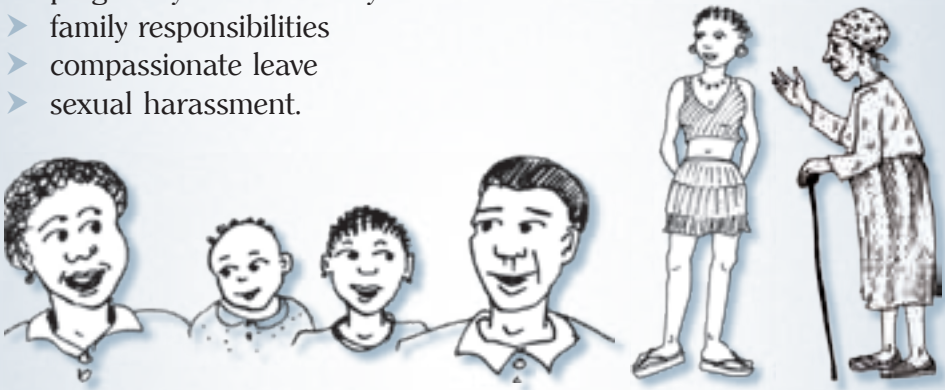
LEGAL ASSISTANCE CENTRE  
Namibia  
2009

# INTRODUCTION

The aim of the new labour law is to ensure that all employees receive the same basic rights and protections. This includes the need to prevent unfair discrimination against women and to ensure that both male and female employees are able to care for family members.

This booklet provides information on the following issues:

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



## **Who is covered by the Labour Act?**

The provisions in the Labour Act on discrimination and sexual harassment apply to all employees. The provisions on maternity leave and compassionate leave apply to all employees except members of the:

- Namibian Defence Force
- Namibian Police Force
- Municipal police services referred to in the Police Act of 1990
- Namibian Central Intelligence Service
- Prison Service.

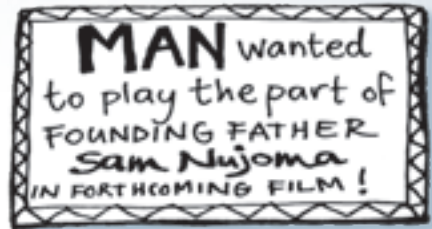
# DISCRIMINATION

The Labour Act states that an employer may not directly or indirectly treat employees differently on the basis of

- sex
- marital status
- family responsibilities
- 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 part of the job.



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



It is *not* discrimination to apply affirmative action to ensure that women have the same employment opportunities as men. It is *not* discrimination to ensure that women are equally represented in the workforce. The Constitution and the Labour Act allow for special measures to make up for the fact that women were disadvantaged in the labour market in the past.

## FAMILY RESPONSIBILITIES

### What is a family responsibility?

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



### What does the Labour Act say about family responsibilities?

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



# PREGNANCY AND MATERNITY LEAVE

## Can a woman be treated differently at work during pregnancy?

If you are pregnant, you may not be able to complete your usual tasks. Your employer may assign you different tasks. But your employer may not reduce your salary or benefits because of the pregnancy.

## Are all women entitled to 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.



## How long is maternity leave?

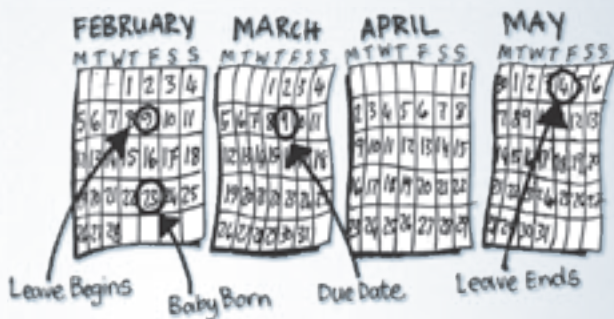
A pregnant woman is entitled to take 4 weeks of maternity leave *before* her expected due date and 8 weeks *after* the delivery of the baby. *Every woman must get at least 12 weeks of maternity leave in total.* But because it is not possible to predict the due date precisely, this will mean that maternity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

For example, suppose that one woman goes on leave 4 weeks

before her expected due date, but *the baby comes early*

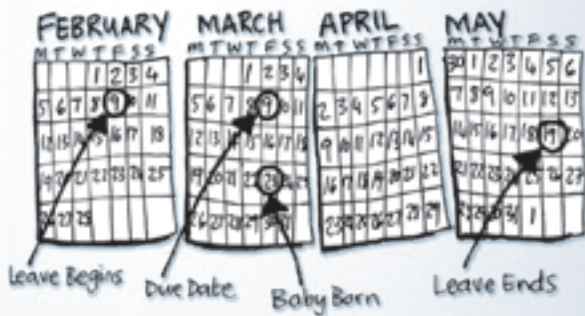
- after she has been on leave for only 2 weeks. This woman

must get 10 weeks of leave after the baby is born, to make her maternity leave total 12 weeks altogether.



On the other hand, suppose that another woman goes on leave 4 weeks before her expected due date, but *the baby comes late* - after she has already been on leave for 6 weeks.

This woman must still get 8 weeks leave after the baby's birth. Her maternity leave will be 14 weeks in total.



Every new mother needs a minimum of 8 weeks after the birth to allow for breastfeeding and caring for the newborn.

Before going on maternity leave, you must provide your employer with a doctor's certificate confirming the expected date of birth. When you return from leave, you must provide a doctor's certificate confirming the date on which the baby was actually born.

### **Is a woman paid during maternity leave?**

The Social Security Commission will pay your basic wage, up to a ceiling which is set by regulations. As of the beginning of 2009, that ceiling was N\$6000. The "basic wage" means your 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 you are 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.

All employers must register their employees with the Social Security Commission for maternity, sickness and death benefits.

### **What happens if the mother or the baby has special health problems?**

Maternity leave may be extended if you or the baby have unusual health problems. The additional maternity leave can be for one month, or for the amount of sick leave you have accumulated - whichever is longer. You must provide a doctor's certificate explaining why the extended maternity leave is necessary.

## Can an employer dismiss a woman because she is pregnant?

Your employer may not dismiss you for reasons related to pregnancy, delivery or the resulting family responsibilities. But suppose that you are unable to do your usual job because of your situation. Your employer is required to offer you comparable work at the same wage. If you refuse to accept a reasonable alternative, then you could be dismissed.



## COMPASSIONATE LEAVE

### What is compassionate leave?

Compassionate leave is leave required because of death or serious illness in the family. "Family" is defined for this leave as including your child (including children adopted by law, custom or tradition), husband or 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 you are not entitled to any payment for unused leave if you leave the job.



### **How can you apply for compassionate leave?**

You should apply for compassionate leave in advance if possible. In emergencies, you can make the formal application for compassionate leave immediately upon your return to work. But you must make reasonable efforts to let your employer know what has happened and how long you will be away from work.

You must give your employer a death certificate or a doctor's certificate or some other acceptable evidence of the family problem either before or after taking compassionate leave.

# SEXUAL HARASSMENT

*A person must not, in any employment decision or in the course of an employee's employment, directly or indirectly sexually harass an employee.*

Labour Act, section 5(8)

## What is 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 one 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.



### **What is an employer's responsibility in cases of sexual harassment?**

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. If you were forced to leave your job to escape the sexual harassment, you might be entitled to get your job back later on or to get compensation for the losses you suffered.

# GETTING HELP

## **What can you do if you think your employer has violated the Labour Act?**

- Collect evidence that supports your case.
- Make a complaint to your employer.
- If your employer does not resolve the issue, you can make a complaint to a labour inspector or the Labour Commissioner.

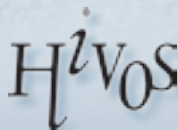
## **What are the consequences when an employer fails to follow the Labour Act?**

An employer could be asked to:

- reinstate an employee who was unfairly dismissed
- pay compensation to the employee
- take other steps ordered by a labour inspector or the Labour Court.

## **Where can I find out further information?**

- Contact the Ministry of Labour and Social Welfare (061-2066111)
- Contact the Legal Assistance Centre (061-223356).



This leaflet was prepared by  
**Dianne Hubbard** and  
**Rachel Coomer.**

Design and layout was by  
**Perri Caplan**

A pdf (Acrobat) version  
of this booklet is posted  
on the LAC website.



Funded by **HIVOS** and **UNDP**

**Legal Assistance Centre**  
4 Körner Street, Windhoek  
PO Box 604, Windhoek, Namibia  
Tel: 061-223356  
Fax: 061-234953  
Email: [info@lac.org.na](mailto:info@lac.org.na)  
Website: [www.lac.org.na](http://www.lac.org.na)