

MAKING THE LABOUR BILL MORE GENDER-SENSITIVE

Dianne Hubbard, Legal Assistance Centre, 2004

The new Labour Bill introduced into Parliament this week included some great things for women – such as a strong prohibition on sex discrimination and a new and improved provision on maternity leave. Namibian women should applaud. But there is still more to be done to make the Labour Bill truly gender sensitive.

PREGNANCY DISCRIMINATION

Pregnancy discrimination is not the same as sex discrimination. Yet we hear that women applying for jobs in Namibia are still sometimes asked if they are pregnant – or even if they intend to become pregnant in the near future. Perhaps some employers want to avoid the inconvenience of dealing with maternity leave. But this should be treated as a form of discrimination that disadvantages women in the labour market. Discrimination in employment practices on the grounds of current or expected future pregnancy should be explicitly forbidden.

SEXUAL HARASSMENT

Sexual harassment in the workplace is a widespread problem in Namibia, even though only a few women have been willing to stand up and speak out about this problem so far. In 1998, Mr Uutoni Nujoma, Chairman of the Law Reform and Development Commission, told the SADC Conference On Prevention Of Violence Against Women that “almost all women have encountered it; either in the workplace, at universities and colleges, or on the street.”

The Labour Bill makes brief mention of harassment – but only as an employment practice in which there must be no discrimination! Clearly there was not really any intention to make sure that men and women receive equal harassment. But why leave this question in a state of confusion? We believe that there should be a special section devoted to sexual harassment, defining it clearly and forbidding it in no uncertain terms.

MATERNITY LEAVE

The Labour Bill gives welcome clarity on what happens to maternity leave when babies do not arrive exactly when expected – which is the case more often than not. The Bill makes it clear that no mother will get less than 12 weeks, even if the baby comes early, and that there will always be at least 8 weeks of leave after the birth, even if the baby comes late. It also provides for extended leave where the mother or the baby suffers complications. This is sensible policy in light of the purposes of maternity leave, and good for both mother and child. But maternity benefits under the Social Security Act must be brought in line with the clarified and extended time limits. Leave without the accompanying leave benefits would not be a useful right for most working women.

The Bill should also give clarity on three other questions about maternity leave which the Legal Assistance Centre has encountered in practice.

(1) What if an employee in a job which poses no health problems for the pregnancy would prefer to take all 12 weeks of leave *after* the date of confinement so as to have a longer period to establish breastfeeding? If the employee desires it and her doctor approves it, is the employer permitted to agree to this request? We vote for giving new mothers as much flexibility as possible.

(2) What happens to maternity leave if the baby is stillborn or dies shortly after birth? In such a case, there will probably be health implications for the mother -- such as the need for treatment to dry up breast milk -- in addition to the emotional trauma involved. We suggest that maternity leave following the birth should be given as usual in such circumstances.

(3) What about maternity leave for adoptive mothers? Not many people realise that it is possible in some cases, with a little medical intervention, for adoptive mothers to breastfeed. And even if this is not the case, the period after the arrival of an adopted child is very important for bonding. We would suggest that mothers who adopt children under the age of one should be entitled to 8 weeks of maternity leave following the date on which the baby enters their care.

FAMILY RESPONSIBILITY LEAVE

What does an employee do when her child suddenly falls ill? What does she do when her elderly mother needs to go to the clinic for emergency treatment? Will she be able to get leave for the funeral when her aunt dies? Many employers are sympathetic to such family crises, but this is not always the case. And since women are often the caretakers of the young and the sick, this is a gender-based problem.

Many countries allow paid or unpaid leave for family responsibilities. This is leave designed to allow an employee to deal with illness or emergency involving a family member or dependent. It could also be used for arranging or attending funerals.

The Legal Assistance Centre suggests that the Namibian Labour Bill provide for three to five days of paid leave each year for assisting when close family members die, fall ill, give birth or suffer injuries – or when the usual arrangements for care of a close family member fall through. To prevent abuse of this entitlement, proof of the event in question could be required, in the same way that doctor's certificates are required for sick leave. If paid leave is not acceptable to employers, the bill should provide for unpaid leave at the very least, so that employees can deal with genuine emergencies without fear of losing their jobs.

WHO IS A SPOUSE?

The Labour Bill refers to "spouses" in several places without defining this term. We suggest defining it clearly to leave no doubt that it covers partners in a customary marriage as well as a civil one. This is particularly important when it comes to matters like entitlement to share employee accommodation, or to receive severance pay on behalf of a deceased employee.

PUTTING WOMEN ON THE LABOUR ADVISORY COUNCIL

The Labour Bill requires that the Labour Advisory Council have a balance of representation from government, trade unions and employer organisations – but there is no requirement for balanced representation of men and women. There should be an affirmative action provision reserving some places on the Council for women, to help ensure that all labour matters are dealt with in a gender-sensitive fashion.

Refining the Labour Bill to take care of these concerns would help to advance the constitutional goal of equality of opportunity for women.

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is unwelcome conduct of a sexual nature where

- the recipient has indicated to the perpetrator that he or she finds the behaviour offensive; OR
- the perpetrator should reasonably have known that the behaviour is regarded as unacceptable, taking into account the respective positions of the parties in the workplace, and the nature of the workplace.

It can include

- **physical conduct of a sexual nature**, such as inappropriate touching, grabbing, fondling, kissing or attempts to do these things
- **verbal forms of sexual harassment**, such as unwelcome innuendoes, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or directed toward them, inappropriate enquiries about a person's sex life, and whistling directed at a person or group of persons.
- **non-verbal forms of sexual harassment**, such as lewd gestures, indecent exposure, inappropriate emails or faxes, and the unwelcome display of sexually explicit pictures and objects.

The most common forms of sexual harassment are

- **quid pro quo harassment**, where an employee is forced to provide sexual favours in exchange for some job-related benefit, such as being hired, promoted or given a raise.
- **hostile work environment harassment**, where unwelcome sexual actions or attentions make working life difficult or uncomfortable for an employee
- **sexual favouritism**, where a person who is in a position of authority rewards only employees who respond to sexual advances, whilst other deserving employees are disadvantaged or overlooked.