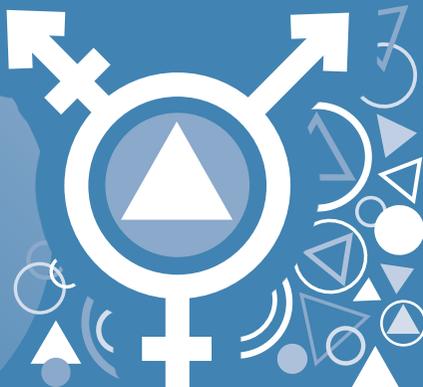


# LGBT RIGHTS in Namibia Labour

Namibia's Labour Act says that an employer may not directly or indirectly discriminate against an employee on grounds such as *sex, marital status and family responsibilities*. This applies to all aspects of employment – promotions, transfers, selection for training programmes, etc.

The Act does not specifically prohibit discrimination on the basis of sexual orientation or gender identity. Namibia's first post-independence labour law provided protection from discrimination on the basis of *sexual orientation*, but this was removed from later versions of the labour law. However, discrimination on the basis of sexual orientation or gender identity might fall under the prohibition on sex discrimination. Courts in other countries have found sex discrimination in cases where workers were disadvantaged because they did not fit gender stereotypes about how men or women should look or act, and where workers were dismissed because they were openly transgender.

LGBT =  
lesbian,  
gay,  
bisexual,  
transgender



## Sexual harassment

“Sexual harassment” is any **unwarranted conduct of a sexual nature towards an employee which constitutes a barrier to equality in employment**. It could be conduct by the employer or by a co-worker.

There are two ways to identify sexual harassment in the workplace:

- Where the **employee has indicated that the conduct is unwelcome** – for example, where an employee keeps asking another employee to go out on a date after being asked to stop.
- Where **any reasonable person would consider the conduct unacceptable** – for example, where an employee attempts to fondle another employee's breasts or buttocks in the workplace, which is obviously inappropriate.

**Sexual harassment can take place regardless of the sex or the sexual orientation of the victim or perpetrator.** It must involve sexual conduct, but this conduct does not have to be connected to sexual attraction. The victim and perpetrator can be of the same sex or different sexes.

For example, sexual harassment cases in other countries have involved situations where a man was sexually mocked by his male co-workers for not acting “manly” enough, and where a female employer touched female employees in a sexual way and tried to get them to wear sexy clothing to attract more customers.

Even if employers are not engaging in the harassment themselves, they have a duty to take reasonable steps to make the workplace free from sexual harassment.

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

## Family responsibilities

A family responsibility is a **duty to provide care and support to a parent, a husband or wife, a child or a “dependant”**.

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

The Labour Act 11 of 2007 does not define “dependant”, but the concept is broad enough to include a same-sex partner, and children being cared for within a same-sex partnership. An employer may be reluctant to apply the law in this way, but you can assert your right to have “dependant” defined fairly for this purpose.



## Compassionate leave

Compassionate leave is **leave required because of a death or serious illness in the family**.

For this purpose, the Labour Act defines “family” as being limited to a child (including children adopted by law, custom or tradition), a husband or wife, a parent or grandparent, a brother or sister, and a father-in-law or mother-in-law. This means that compassionate leave is not legally required in the case of the death or illness of a partner in a same-sex relationship. (It is also not legally required in the case of the death or illness of a partner in an opposite-sex relationship where the partners are not married.)

## Severance pay

Severance pay is **paid when an employee who has been with the same employer for more than 12 months –**

- **is unfairly dismissed;**
- **resigns or retires after reaching age 65; or**
- **dies in the course of employment.**

The severance pay must be at least one week's pay for each year of continuous service with that employer.

If an employee dies during the course of employment without leaving a will, the law says that the money must be paid to the employee's spouse, or to the employee's children if there is no spouse. A same-sex partner is not entitled to receive this pay in the absence of a will. (The same is true for opposite-sex partners who were not married.)

For this reason, amongst many others, couples who are not married should be sure to make wills.

## Employees who live and work on agricultural land

The Labour Act says that an employer of farmworkers **must provide sufficient housing, sanitation and water for the farmworkers as well as their dependants.** The employer must also provide food, money to buy food, or the use of land for livestock or crops which is sufficient to meet the reasonable needs of the farmworkers and their dependants.

For this purpose, "dependants" are defined as including only a farmworker's spouse, and any dependent children of the farmworker or the farmworker's spouse. This means that a farmworker cannot insist on housing and food to meet the needs of a same-sex partner. (The employer would also have no obligation to provide for an opposite-sex partner if the couple are not married.)

## Death benefits

All employers and employees are required to pay into the Social Security Commission's **Maternity, Sick Leave and Death Benefit Fund.** A single (once-off) payment is made out of this fund when an employee dies, retires or is classified as disabled.

If a benefit is paid out of this fund when the employee dies, the payment will be made to a dependant of the employee. The definition of "dependant" for this purpose is broad. It includes anyone who can show that he or she was *dependent upon the deceased for maintenance* – even if the deceased had no legal duty to support the dependant. This could include a same-sex partner. If the deceased had a dependent spouse or children, the death benefit will go to these persons before a same-sex partner or other dependant.

## Employees' compensation for accidents in the workplace

The Employees' Compensation Act provides for compensation in the case of an employee's temporary or permanent disablement or death due to an accident which occurs in the course of his or her employment. This compensation is available only for employees who earn a monthly wage which is below the wage ceiling set by government from time to time.

If a benefit is paid out of the Employees' Compensation Fund when the employee dies, the payment will be made to a dependant of the employee. The definition of "dependant" for this purpose is broad. It includes anyone who can show that he or she was *wholly or partially dependent upon the deceased for the necessities of life* – which could include a same-sex partner. If the deceased employee had a dependent spouse or children, the death benefit will go to these persons before a same-sex partner or other dependant.

## 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; or
- take other steps ordered by a labour inspector or the Labour Court.

## Where can you find further information?

- Contact the **Ministry of Labour, Industrial Relations and Employment Creation** (061-2066111).
- Contact the **Legal Assistance Centre** (061-223356).



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