

# BASIC FACTS ABOUT GENDER AND THE LABOUR LAW



## FACT SHEET

Gender Research & Advocacy Project  
LEGAL ASSISTANCE CENTRE  
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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.

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 discrimination for an employer to give preference to a job applicant or employee on the basis of sex – unless the sex of the employee is an essential part of the job, or if the employer is applying 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 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.

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.



## Maternity leave

A pregnant woman who has been employed for at least 6 months in a row is entitled to maternity leave and maternity benefits. She 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 always possible to predict the due date precisely, this will mean that maternity leave will sometimes be longer than 12 weeks. SSC will pay her basic wage, up to a ceiling that is set by regulation. As of 2010, that ceiling was N\$7000.

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

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.

## Sexual harassment

"Sexual harassment" is unwarranted sexual behaviour towards an employee by the employer or a co-worker. There are two kinds of sexual harassment:



- (1) 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.
- (2) Another 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.

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.

### 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.

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