BASIC CONDITIONS OF EMPLOYMENT ACT
NO. 75 OF 1997

[View Regulation]

[ASSENTED TO 26 NOVEMBER, 1997]
[DATE OF COMMENCEMENT: 1 DECEMBER, 1998]

(Unless otherwise indicated)

(English text signed by the President)

This Act has been updated to *Government Gazette* 44137 dated 8 February, 2021.

as amended by

Basic Conditions of Employment Amendment Act, No. 11 of 2002

Intelligence Services Act, No. 65 of 2002

[with effect from 20 February, 2003]

Electronic Communications Security (Pty) Ltd Act, No. 68 of 2002

[with effect from 28 February, 2003]

General Intelligence Laws Amendment Act, No. 52 of 2003

[with effect from 28 February, 2003]

Skills Development Amendment Act, No. 37 of 2008

General Intelligence Laws Amendment Act, No. 11 of 2013

[with effect from 29 July, 2013]

Basic Conditions of Employment Amendment Act, No. 20 of 2013

Basic Conditions of Employment Amendment Act, No. 7 of 2018

Labour Laws Amendment Act, No. 10 of 2018

ACT

To give effect to the right to fair labour practices referred to in section 23 (1) of the Constitution by establishing and making provision for the regulation of basic conditions of employment; and thereby to comply with the obligations of the Republic as a member state of the International Labour Organisation; and to provide for matters connected therewith.

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DEFINITIONS, PURPOSE AND APPLICATION OF THIS ACT

1. Definitions.—In this Act, unless the context indicates otherwise—

"adoption order" means an adoption order as envisaged in the Children's Act, 2005 (Act No. 38 of 2005);

[Definition of "adoption order" inserted by s. 1 (a) of Act No. 10 of 2018 with effect from: 1 January, 2020.]

"adoptive parent" has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act No. 38 of 2005);

[Definition of "adoptive parent" inserted by s. 1 (a) of Act No. 10 of 2018 with effect from: 1 January, 2020.]

"agreement" includes a collective agreement;

"area" includes any number of areas, whether or not contiguous;

"bargaining council" means a bargaining council registered in terms of the Labour Relations Act, 1995, and, in relation to the public service, includes the bargaining councils referred to in section 35 of that Act;

"basic conditions of employment" means a provision of this Act or sectoral determination that stipulates a minimum term or condition of employment, and includes the national minimum wage;

[Definition of "basic conditions of employment" substituted by s. 1 (a) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

"CCMA" means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act, 1995;

"child" means a person who is under 18 years of age;

"code of good practice" means a code of good practice issued by the Minister in terms of section 87 of this Act;

"collective agreement" means a written agreement concerning terms and conditions of employment or any other matter of mutual interest concluded by one or more registered trade unions, on the one hand and, on the other hand—

one or more employers;

one or more registered employers' organisations; or

one or more employers and one or more registered employers' organisation;

"Commission" means the National Minimum Wage Commission established by section 8 of the National Minimum Wage Act, 2018;

[Definition of "Commission" substituted by s. 1 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

"compliance order" means a compliance order issued by a labour inspector in terms of section 69 (1);

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"council" includes a bargaining council and a statutory council;

"Department" means the Department of Labour;

"Director-General" means the Director-General of Labour;

"dispute" includes an alleged dispute;

"domestic worker" means an employee who performs domestic work in the home of his or her employer and includes—

a gardener;

a person employed by a household as driver of a motor vehicle; and

a person who takes care of children, the aged, the sick, the frail or the disabled, but does not include a farm worker;

"employee" means—

any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and

any other person who in any manner assists in carrying on or conducting the business of an employer,

and **"employed"** and **"employment"** have a corresponding meaning;1

"employers' organisation" means any number of employers associated together for the purpose, whether by itself or

with other purposes, of regulating relations between employers and employees or trade unions;

"employment law" includes this Act, any other Act the administration of which has been assigned to the Minister, and any of the following Acts:

The Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

the Skills Development Act, 1998 (Act No. 97 of 1998);

the Employment Equity Act, 1998 (Act No. 55 of 1998);

the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993); and

the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993);

[Definition of "employment law" substituted by s. 1 of Act No. 11 of 2002, by s. 1 (c) of Act No. 7 of 2018 and by Act No. 10 of 2018 with effect from: 1 January, 2020.]

"farm worker" means an employee who is employed mainly in or in connection with farming activities, and includes an employee who wholly or mainly performs domestic work in a home on a farm;

"Labour Appeal Court" means the Labour Appeal Court established by section 167 of the Labour Relations Act, 1995;

"Labour Court" means the Labour Court established by section 151 of the Labour Relations Act, 1995;

"labour inspector" means a labour inspector appointed under section 63, and includes any person designated by the Minister under that section to perform any function of a labour inspector;

"Labour Relations Act, 1995" means the Labour Relations Act, 1995 (Act No. 66 of 1995);

"medical practitioner" means a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"midwife" means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);

"Minister" means the Minister of Labour;

"month" means a calendar month;

"national minimum wage" means the national minimum wage envisaged in section 4 of the National Minimum Wage Act, 2018;

[Definition of "national minimum wage" inserted by s. 1 (d) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

"NEDLAC" means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);

"ordinary hours of work" means the hours of work permitted in terms of section 9 or in terms of any agreement in terms of sections 11 or 12;

"overtime" means the time that an employee works during a day or a week in excess of ordinary hours of work;

"prescribe" means to prescribe by regulation and **"prescribed"** has a corresponding meaning;

"prospective adoptive parent" means a person who complies with the requirements set out in section 231 (2) of the Children's Act, 2005 (Act No. 38 of 2005);

[Definition of "prospective adoptive parent" inserted by s. 1 (c) of Act No. 10 of 2018 with effect from: 1 January, 2020.]

"public holiday" means any day that is a public holiday in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);

"public service" means the public service referred to in section 1 (1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7 (4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding—

the members of the National Defence Force;

. . . . . .

[Para. (b) deleted by s. 53 of Act No. 11 of 2013.]

. . . . . .

[Para. (c) deleted by s. 53 of Act No. 11 of 2013.]

. . . . . .

[Para. (d) added by s. 40 (1) of Act No. 65 of 2002 (Editorial Note: s. 40 (1) substituted by s. 51 of Act No. 11 of 2013), substituted by s. 26 of Act No. 68 of 2002 (Editorial Note: s. 26 repealed by s. 23 of Act No. 52 of 2003) and deleted by s. 53 of Act No. 11 of 2013.]

. . . . . .

[Para. (e) added by s. 25 (2) of Act No. 52 of 2003 and deleted by s. 53 of Act No. 11 of 2013.]

"registered employers' organisation" means an employers' organisation registered under section 96 of the Labour Relations Act, 1995;

"registered trade union" means a trade union registered under section 96 of the Labour Relations Act, 1995;

"remuneration" means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and **"remunerate"** has a corresponding meaning;2

"sector" means an industry or a service or part of an industry or a service and, in respect of a sectoral determination made in terms of section 55 (8), means the employers and employees covered by that determination;

[Definition of "sector" substituted by s. 1 (a) of Act No. 20 of 2013.]

"sectoral determination" means a sectoral determination made under Chapter Eight;

"senior managerial employee" means an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally;

"**serve"** means to send by electronic mail, registered post, telegram, telefax or deliver by hand or any prescribed method of service;

[Definition of "serve" substituted by s. 1 (b) of Act No. 20 of 2013.]

"statutory council" means a council established under Part E of Chapter III of the Labour Relations Act, 1995;

"temporary employment service" means any person who, for reward, procures for, or provides to, a client, other persons—

who render services to, or perform work for, the client; and

who are remunerated by the temporary employment service;

"this Act" includes the Schedules and any regulation made under this Act, but does not include the headings or footnotes;

"trade union" means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations;

"trade union official" includes an official of a federation of trade unions;

"trade union representative" means a trade union representative who is entitled to exercise the rights contemplated in section 14 of the Labour Relations Act, 1995;

"Unemployment Insurance Act" means the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

[Definition of "Unemployment Insurance Act" inserted by s. 1 (e) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

"Unemployment Insurance Contributions Act" means the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);

[Definition of "Unemployment Insurance Contributions Act" inserted by s. 1 (e) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

"wage" means the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week;

"week" in relation to an employee, means the period of seven days within which the working week of that employee ordinarily falls;

"work-place" means any place where employees work;

"work-place forum" means a work-place forum established under Chapter V of the Labour Relations Act, 1995.

2. Purpose of this Act.—The purpose of this Act is to advance economic development and social justice by fulfilling the primary objects of this Act which are—

to give effect to and regulate the right to fair labour practices conferred by section 23 (1) of the Constitution—

(i)
by establishing and enforcing basic conditions of employment; and

(ii)
by regulating the variation of basic conditions of employment;

to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation.

3. Application of this Act.—(1) This Act applies to all employees and employers except—

members of the State Security Agency;

[Para. (a) substituted by s. 40 (1) of Act No. 65 of 2002 (Editorial Note: s. 40 (1) substituted by s. 51 of Act No. 11 of 2013) and by s. 53 of Act No. 11 of 2013.]

unpaid volunteers working for an organisation serving a charitable purpose;

. . . . . .

[Para. (c) added by s. 26 of Act No. 68 of 2002 (Editorial note: s. 26 repealed by s. 23 of Act No. 52 of 2003), by s. 25 (2) of Act No. 52 of 2003 and deleted by s. 53 of Act No. 11 of 2013.]

(2) This Act applies to persons undergoing vocational training except to the extent that any term or condition of their employment is regulated by the provisions of any other law.

(3) This Act, except section 41, section 62A and chapters 3, 4, 5 and 6, do not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies, except to the extent provided for in a sectoral determination and the National Minimum Wage Act, 2018, read with section 62A.

[Sub-s. (3) substituted by s. 2 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

4. Inclusion of provisions in contracts of employment.—A basic condition of employment constitutes a term of any contract of employment except to the extent that—

any other law provides a term that is more favourable to the employee;

the basic condition of employment has been replaced, varied, or excluded in accordance with the provisions of this Act; or

a term of the contract of employment is more favourable to the employee than the basic condition of employment.

5. This Act not affected by agreements.—This Act or anything done under it takes precedence over any agreement, whether entered into before or after the commencement of this Act.

CHAPTER TWO
REGULATION OF WORKING TIME

6. Application of this Chapter.—(1) This Chapter, except section 7, does not apply to—

senior managerial employees;

employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work;

employees who work less than 24 hours a month for an employer.

(2) Sections 9, 10 (1), 14 (1), 15 (1), 17 (2) and 18 (1) do not apply to work which is required to be done without delay owing to circumstances for which the employer could not reasonably have been expected to make provision and which cannot be performed by employees during their ordinary hours of work.

(3) The Minister must, on the advice of the Commission, make a determination that excludes the application of this Chapter or any provision of it to any category of employees earning in excess of an amount stated in that determination.

(Date of commencement: 21 March, 1998.)

[General Note: Determination, in terms of s. 6 (3), that all employees earning in excess of R211 596.30 per annum be excluded from ss. 9, 10, 11, 12, 14, 15, 16, 17 (2) and 18 (3) of the Act with effect from 1 March, 2021 under Government Notice No. 77 in *Government Gazette* 44137 dated 8 February, 2021.]

(4) Before the Minister issues a notice in terms of subsection (3), the Minister must—

publish in the *Gazette* a draft of the proposed notice; and

invite interested persons to submit written representations on the proposed notice within a reasonable period.

(Date of commencement: 21 March, 1998.)

7. Regulation of working time.—Every employer must regulate the working time of each employee—

in accordance with the provisions of any Act governing occupational health and safety;

with due regard to the health and safety of employees;

with due regard to the Code of Good Practice on the Regulation of Working Time3 issued under section 87 (1) (a); and

with due regard to the family responsibilities of employees.

8. Interpretation of day.—For the purposes of sections 9 to 16, "day" means a period of 24 hours measured from the time when the employee normally commences work, and "daily" has a corresponding meaning.

[S. 8 substituted by s. 2 of Act No. 11 of 2002.]

9. Ordinary hours of work.—(1) Subject to this Chapter, an employer may not require or permit an employee to work more than—

45 hours in any week; and

nine hours in any day if the employee works for five days or fewer in a week; or

eight hours in any day if the employee works on more than five days in a week.

(2) An employee's ordinary hours of work in terms of subsection (1) may by agreement be extended by up to 15 minutes in a day but not more than 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work.

(3) Schedule 1 establishes procedures for the progressive reduction of the maximum ordinary hours of work to a maximum of 40 ordinary hours of work per week and eight ordinary hours of work per day.

9A. Daily wage payment.—(1) An employee or a worker as defined in section 1 of the National Minimum Wage Act, 2018, who works for less than four hours on any day must be paid for four hours work on that day.

(2) This section applies to employees or workers who earn less than the earnings threshold set by the Minister in terms of section 6 (3).

[S. 9A inserted by s. 3 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

10. Overtime.—(1) Subject to this Chapter, an employer may not require or permit an employee to work—

overtime except in accordance with an agreement;

more than ten hours' overtime a week.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 11 of 2002.]

(1A) An agreement in terms of subsection (1) may not require or permit an employee to work more than 12 hours on any day.

[Sub-s. (1A) inserted by s. 3 (b) of Act No. 11 of 2002.]

(2) An employer must pay an employee at least one and one-half times the employee's wage for overtime worked.

(3) Despite subsection (2), an agreement may provide for an employer to—

pay an employee not less than the employee's ordinary wage for overtime worked and grant the employee at least 30 minutes' time off on full pay for every hour of overtime worked; or

grant an employee at least 90 minutes' paid time off for each hour of overtime worked.

(4) (*a*) An employer must grant paid time off in terms of subsection (3) within one month of the employee becoming entitled to it.

(*b*) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

(5) An agreement concluded in terms of subsection (1) with an employee when the employee commences employment, or during the first three months of employment, lapses after one year.

(6) (*a*) A collective agreement may increase the maximum permitted overtime to 15 hours a week.

(*b*) A collective agreement contemplated in paragraph (a) may not apply for more than two months in any period of 12 months.

[Sub-s. (6) added by s. 3 (c) of Act No. 11 of 2002.]

11. Compressed working week.—(1) An agreement in writing may require or permit an employee to work up to twelve hours in a day, inclusive of the meal intervals required in terms of section 14, without receiving overtime pay.

(2) An agreement in terms of subsection (1) may not require or permit an employee to work—

more than 45 ordinary hours of work in any week;

more than ten hours' overtime in any week; or

on more than five days in any week.

12. Averaging of hours of work.—(1) Despite sections 9 (1) and (2) and 10 (1) (b), the ordinary hours of work and overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement.

(2) An employer may not require or permit an employee who is bound by a collective agreement in terms of subsection (1) to work more than—

an average of 45 ordinary hours of work in a week over the agreed period;

an average of five hours' overtime in a week over the agreed period.

(3) A collective agreement in terms of subsection (1) lapses after 12 months.

(4) Subsection (3) only applies to the first two collective agreements concluded in terms of subsection (1).

13. Determination of hours of work by Minister.—(1) Despite this Chapter, the Minister, on grounds of health and safety, may prescribe by regulation the maximum permitted hours of work, including overtime, that any category of employee may work—

daily, weekly or during any other period specified in the regulation; and

during a continuous period without a break.

(2) A regulation in terms of subsection (1) may not prescribe maximum hours in excess of those permitted in sections 9 and 10.

(3) A regulation in terms of subsection (1) may be made only—

on the advice of the chief inspector appointed in terms of section 27 of the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993), or the chief inspector appointed in terms of section 48 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996); and

after consulting the Commission.

14. Meal intervals.—(1) An employer must give an employee who works continuously for more than five hours a meal interval of at least one continuous hour.

(2) During a meal interval the employee may be required or permitted to perform only duties that cannot be left unattended and cannot be performed by another employee.

(3) An employee must be remunerated—

for a meal interval in which the employee is required to work or is required to be available for work; and

for any portion of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises at which the work-place is situated.

(4) For the purposes of subsection (1), work is continuous unless it is interrupted by an interval of at least 60 minutes.

(5) An agreement in writing may—

reduce the meal interval to not less than 30 minutes;

dispense with a meal interval for an employee who works fewer than six hours on a day.

15. Daily and weekly rest period.—(1) An employer must allow an employee—

a daily rest period of at least twelve consecutive hours between ending and recommencing work; and

a weekly rest period of at least 36 consecutive hours which, unless otherwise agreed, must include Sunday.

(2) A daily rest period in terms of subsection (1) (a) may, by written agreement, be reduced to 10 hours for an employee —

who lives on the premises at which the work-place is situated; and

whose meal interval lasts for at least three hours.

(3) Despite subsection (1) (b), an agreement in writing may provide for—

a rest period of at least 60 consecutive hours every two weeks; or

an employee's weekly rest period to be reduced by up to eight hours in any week if the rest period in the following week is extended equivalently.

16. Pay for work on Sundays.—(1) An employer must pay an employee who works on a Sunday at double the employee's wage for each hour worked, unless the employee ordinarily works on a Sunday, in which case the employer must pay the employee at one and one-half times the employee's wage for each hour worked.

(2) If an employee works less than the employee's ordinary shift on a Sunday and the payment that the employee is entitled to in terms of subsection (1) is less than the employee's ordinary daily wage, the employer must pay the employee the employee's ordinary daily wage.

(3) Despite subsections (1) and (2), an agreement may permit an employer to grant an employee who works on a Sunday paid time off equivalent to the difference in value between the pay received by the employee for working on the Sunday and the pay that the employee is entitled to in terms of subsections (1) and (2).

(4) Any time worked on a Sunday by an employee who does not ordinarily work on a Sunday is not taken into account in calculating an employee's ordinary hours of work in terms of section 9 (1) and (2), but is taken into account in calculating the overtime worked by the employee in terms of section 10 (1) (b).

(5) If a shift worked by an employee falls on a Sunday and another day, the whole shift is deemed to have been worked on the Sunday, unless the greater portion of the shift was worked on the other day, in which case the whole shift is deemed to have been worked on the other day.

(6) (*a*) An employer must grant paid time off in terms of subsection (3) within one month of the employee becoming entitled to it.

(*b*) An agreement in writing may increase the period contemplated by paragraph (a) to 12 months.

17. Night work.—(1) In this section, "night work" means work performed after 18:00 and before 06:00 the next day.

(2) An employer may only require or permit an employee to perform night work, if so agreed, and if—

the employee is compensated by the payment of an allowance, which may be a shift allowance, or by a reduction of working hours; and

transportation is available between the employee's place of residence and the work-place at the commencement and conclusion of the employee's shift.

(3) An employer who requires an employee to perform work on a regular basis after 23:00 and before 06:00 the next day must—

inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands—

(i)
of any health and safety hazards associated with the work that the employee is required to perform; and

(ii)
of the employee's right to undergo a medical examination in terms of paragraph (b);

at the request of the employee, enable the employee to undergo a medical examination, for the account of the employer, concerning those hazards—

(i)
before the employee starts, or within a reasonable period of the employee starting, such work; and

(ii)
at appropriate intervals while the employee continues to perform such work; and

transfer the employee to suitable day work within a reasonable time if—

(i)
the employee suffers from a health condition associated with the performance of night work; and

(ii)
it is practicable for the employer to do so.

(4) For the purposes of subsection (3), an employee works on a regular basis if the employee works for a period of longer than one hour after 23:00 and before 06:00 at least five times per month or 50 times per year.

(5) The Minister may, after consulting the Commission, make regulations relating to the conduct of medical examinations for employees who perform night work.4

18. Public holidays5.—(1) An employer may not require an employee to work on a public holiday except in accordance with an agreement.

(2) If a public holiday falls on a day on which an employee would ordinarily work, an employer must pay—

an employee who does not work on the public holiday, at least the wage that the employee would ordinarily have received for work on that day;

an employee who does work on the public holiday—

(i)
at least double the amount referred to in paragraph (a); or

(ii)
if it is greater, the amount referred to in paragraph (a) plus the amount earned by the employee for the time worked on that day.

(3) If an employee works on a public holiday on which the employee would not ordinarily work, the employer must pay that employee an amount equal to—

the employee's ordinary daily wage; plus

the amount earned by the employee for the work performed that day, whether calculated by reference to time worked or any other method.

(4) An employer must pay an employee for a public holiday on the employee's usual pay day.

(5) If a shift worked by an employee falls on a public holiday and another day, the whole shift is deemed to have been worked on the public holiday, but if the greater portion of the shift was worked on the other day, the whole shift is deemed to have been worked on the other day.

CHAPTER THREE
LEAVE

19. Application of this Chapter.—(1) This Chapter does not apply to an employee who works less than 24 hours a month for an employer.

(2) Unless an agreement provides otherwise, this Chapter does not apply to leave granted to an employee in excess of the employee's entitlement under this Chapter.

20. Annual leave.—(1) In this Chapter, "annual leave cycle" means the period of 12 months' employment with the same employer immediately following—

an employee's commencement of employment; or

the completion of that employee's prior leave cycle.

(2) An employer must grant an employee at least—

21 consecutive days' annual leave on full remuneration in respect of each annual leave cycle; or

by agreement, one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid;

by agreement, one hour of annual leave on full remuneration for every 17 hours on which the employee worked or was entitled to be paid.

(3) An employee is entitled to take leave accumulated in an annual leave cycle in terms of subsection (2) on consecutive days.

(4) An employer must grant annual leave not later than six months after the end of the annual leave cycle.

(5) An employer may not require or permit an employee to take annual leave during—

any other period of leave to which the employee is entitled in terms of this Chapter; or

any period of notice of termination of employment.

(6) Despite subsection (5), an employer must permit an employee, at the employee's written request, to take leave during a period of unpaid leave.

(7) An employer may reduce an employee's entitlement to annual leave by the number of days of occasional leave on full remuneration granted to the employee at the employee's request in that leave cycle.

(8) An employer must grant an employee an additional day of paid leave if a public holiday falls on a day during an employee's annual leave on which the employee would ordinarily have worked.

(9) An employer may not require or permit an employee to work for the employer during any period of annual leave.

(10) Annual leave must be taken—

in accordance with an agreement between the employer and employee; or

if there is no agreement in terms of paragraph (a), at a time determined by the employer in accordance with this section.

(11) An employer may not pay an employee instead of granting paid leave in terms of this section except—

on termination of employment; and

in accordance with section 40 (b) and (c).

21. Pay for annual leave.—(1) An employer must pay an employee leave pay at least equivalent to the remuneration that the employee would have received for working for a period equal to the period of annual leave, calculated—

at the employee's rate of remuneration immediately before the beginning of the period of annual leave; and

in accordance with section 35.

(2) An employer must pay an employee leave pay—

before the beginning of the period of leave; or

by agreement, on the employee's usual pay day.

22. Sick leave.—(1) In this Chapter, "sick leave cycle" means the period of 36 months' employment with the same employer immediately following—

an employee's commencement of employment; or

the completion of that employee's prior sick leave cycle.

(2) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

(3) Despite subsection (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.

(4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of subsection (2) by the number of days' sick leave taken in terms of subsection (3).

(5) Subject to section 23, an employer must pay an employee for a day's sick leave—

the wage the employee would ordinarily have received for work on that day; and

on the employee's usual pay day.

(6) An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this section if—

the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and

the employee's entitlement to pay—

(i) for any day's sick leave is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and

(ii) for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of subsection (2).

23. Proof of incapacity.—(1) An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.

(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.

(3) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subsection (1) unless the employer provides reasonable assistance to the employee to obtain the certificate.

24. Application to occupational accidents or diseases.—Sections 22 and 23 do not apply to an inability to work caused by an accident or occupational disease as defined in the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), or the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), except in respect of any period during which no compensation is payable in terms of those Acts.

25. Maternity leave6.—(1) An employee is entitled to at least four consecutive months' maternity leave.

(2) An employee may commence maternity leave—

at any time from four weeks before the expected date of birth, unless otherwise agreed; or

on a date from which a medical practitioner or a midwife certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee may work for six weeks after the birth of her child, unless a medical practitioner or midwife certifies that she is fit to do so.

(4) An employee who has a miscarriage during the third trimester of pregnancy or bears a still-born child is entitled to maternity leave for six weeks after the miscarriage or still-birth, whether or not the employee had commenced maternity leave at the time of the miscarriage or still-birth.

(5) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

commence maternity leave; and

return to work after maternity leave.

(6) Notification in terms of subsection (5) must be given—

at least four weeks before the employee intends to commence maternity leave; or

if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 2001 (Act No 63. of 2001).

[Sub-s. (7) substituted by s. 2 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

25A. Parental leave.—(1) An employee, who is a parent of a child, is entitled to at least ten consecutive days parental leave.

(2) An employee may commence parental leave on—

the day that the employee's child is born; or

the date—

(i)
that the adoption order is granted; or

(ii)
that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child,

whichever date occurs first.

(3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

commence parental leave; and

return to work after parental leave.

(4) Notification in terms of subsection (3) must be given—

at least one month before the—

(i)
employee's child is expected to be born; or

(ii)
date referred to in subsection 2 (b); or

if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) The payment of parental benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

[S. 25A inserted by s. 3 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

25B. Adoption leave.—(1) An employee, who is an adoptive parent of a child who is below the age of two, is subject to subsection (6), entitled to—

adoption leave of at least ten weeks consecutively; or

the parental leave referred to in section 25A.

(2) An employee may commence adoption leave on the date—

that the adoption order is granted; or

that a child is placed in the care of a prospective adoptive parent by a competent court, pending the finalisation of an adoption order in respect of that child,

whichever date occurs first.

(3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

commence adoption leave; and

return to work after adoption leave.

(4) Notification in terms of subsection (3) must be given—

at least one month before the date referred to in subsection (2); or

if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) The payment of adoption benefits will be determined by the Minister, subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

(6) If an adoption order is made in respect of two adoptive parents, one of the adoptive parents may apply for adoption leave and the other adoptive parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two adoptive parents.

(7) If a competent court orders that a child is placed in the care of two prospective adoptive parents, pending the finalisation of an adoption order in respect of that child, one of the prospective adoptive parents may apply for adoption

leave and the other prospective adoptive parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two prospective adoptive parents.

[S. 25B inserted by s. 3 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

25C. Commissioning parental leave.—(1) An employee, who is a commissioning parent in a surrogate motherhood agreement is, subject to subsection (6), entitled to—

commissioning parental leave of at least ten weeks consecutively; or

the parental leave referred to in section 25A.

(2) An employee may commence commissioning parental leave on the date a child is born as a result of a surrogate motherhood agreement.

(3) An employee must notify an employer in writing, unless the employee is unable to do so, of the date on which the employee intends to—

commence commissioning parental leave; and

return to work after commissioning parental leave.

(4) Notification in terms of subsection (3) must be given—

at least one month before a child is expected to be born as a result of a surrogate motherhood agreement; or

if it is not reasonably practicable to do so, as soon as is reasonably practicable.

(5) The payment of commissioning parental benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

(6) If a surrogate motherhood agreement has two commissioning parents, one of the commissioning parents may apply for commissioning parental leave and the other commissioning parent may apply for the parental leave referred to in section 25A: Provided that the selection of choice must be exercised at the option of the two commissioning parents.

(7) In this section, unless the context otherwise indicates—

"commissioning parent" has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act No. 38 of 2005); and

"surrogate motherhood agreement" has the meaning assigned to it in section 1 of the Children's Act, 2005 (Act No. 38 of 2005).

[S. 25C inserted by s. 3 of Act No. 10 of 2018 with effect from: with effect from 1 January, 2020.]

26. Protection of employees before and after birth of a child.—(1) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.7

(2) During an employee's pregnancy, and for a period of six months after the birth of her child, her employer must offer her suitable, alternative employment on terms and conditions that are no less favourable than her ordinary terms and conditions of employment, if—

the employee is required to perform night work, as defined in section 17 (1) or her work poses a danger to her health or safety or that of her child; and

it is practicable for the employer to do so.

27. Family responsibility leave.—(1) This section applies to an employee—

who has been in employment with an employer for longer than four months; and

who works for at least four days a week for that employer.

(2) An employer must grant an employee, during each annual leave cycle, at the request of the employee, three days' paid leave, which the employee is entitled to take—

. . . . . .

[Para. (a) repealed by s. 4 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

when the employee's child is sick; or

in the event of the death of—

(i)
the employee's spouse or life partner; or

(ii)
the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

(3) Subject to subsection (5), an employer must pay an employee for a day's family responsibility leave—

the wage the employee would ordinarily have received for work on that day; and

on the employee's usual pay day.

(4) An employee may take family responsibility leave in respect of the whole or a part of a day.

(5) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in subsection (2) for which the leave was required.

[Sub-s. (5) substituted by s. 4 of Act No. 11 of 2002.]

(6) An employee's unused entitlement to leave in terms of this section lapses at the end of the annual leave cycle in which it accrues.

(7) A collective agreement may vary the number of days and the circumstances under which leave is to be granted in terms of this section.

CHAPTER FOUR
PARTICULARS OF EMPLOYMENT AND REMUNERATION

28. Application of this Chapter.—(1) This Chapter does not apply to an employee who works less than 24 hours a month for an employer.

(2) Sections 29 (1) (n), (o) and (p), 30, 31 and 33 do not apply to—

an employer who employs fewer than five employees; and

. . . . . .

[Para. (b) deleted by s. 5 of Act No. 11 of 2002.]

29. Written particulars of employment.—(1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing—

the full name and address of the employer;

the name and occupation of the employee, or a brief description of the work for which the employee is employed;

the place of work, and, where the employee is required or permitted to work at various places, an indication of this;

the date on which the employment began;

the employee's ordinary hours of work and days of work;

the employee's wage or the rate and method of calculating wages;

the rate of pay for overtime work;

any other cash payments that the employee is entitled to;

any payment in kind that the employee is entitled to and the value of the payment in kind;

how frequently remuneration will be paid;

any deductions to be made from the employee's remuneration;

the leave to which the employee is entitled;

the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;

a description of any council or sectoral determination which covers the employer's business;

any period of employment with a previous employer that counts towards the employee's period of employment;

a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

(2) When any matter listed in subsection (1) changes—

the written particulars must be revised to reflect the change; and

the employee must be supplied with a copy of the document reflecting the change.

(3) If an employee is not able to understand the written particulars, the employer must ensure that they are explained to the employee in a language and in a manner that the employee understands.

(4) Written particulars in terms of this section must be kept by the employer for a period of three years after the termination of employment.

30. Informing employees of their rights.—An employer must display at the work-place where it can be read by employees a statement in the prescribed form of the employee's rights under this Act in the official languages which are spoken in the work-place.

31. Keeping of records.—(1) Every employer must keep a record containing at least the following information:

The employee's name and occupation;

the time worked by each employee;

the remuneration paid to each employee;

the date of birth of any employee under 18 years of age; and

any other prescribed information.

(2) A record in terms of subsection (1) must be kept by the employer for a period of three years from the date of the last entry in the record.

(3) No person may make a false entry in a record maintained in terms of subsection (1).

(4) An employer who keeps a record in terms of this section is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

32. Payment of remuneration.—(1) An employer must pay to an employee any remuneration that is paid in money—

in South African currency;

daily, weekly, fortnightly or monthly; and

in cash, by cheque or by direct deposit into an account designated by the employee.

(2) Any remuneration paid in cash or by cheque must be given to each employee—

at the work-place or at a place agreed to by the employee;

during the employee's working hours or within 15 minutes of the commencement or conclusion of those hours; and

in a sealed envelope which becomes the property of the employee.

(3) An employer must pay remuneration not later than seven days after—

the completion of the period for which the remuneration is payable; or

the termination of the contract of employment.

(4) Subsection (3) (b) does not apply to any pension or provident fund payment to an employee that is made in terms of the rules of the fund.

33. Information about remuneration.—(1) An employer must give an employee the following information in writing on each day the employee is paid:

The employer's name and address;

the employee's name and occupation;

the period for which the payment is made;

the employee's remuneration in money;

the amount and purpose of any deduction made from the remuneration;

the actual amount paid to the employee; and

if relevant to the calculation of that employee's remuneration—

(i)
the employee's rate of remuneration and overtime rate;

(ii)
the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;

(iii)
the number of hours worked by the employee on a Sunday or public holiday during that period; and

(iv)
if an agreement to average working time has been concluded in terms of section 12, the total number of ordinary and overtime hours worked by the employee in the period of averaging.

(2) The written information required in terms of subsection (1) must be given to each employee—

at the work-place or at a place agreed to by the employee; and

during the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

33A. Prohibited conduct by employer.—(1) An employer must not—

require or accept any payment by or on behalf of an employee or potential employee in respect of the employment of, or the allocation of work to, any employee; or

require an employee or potential employee to purchase any goods, products or services from the employer or from any business or person nominated by the employer.

(2) Subsection (1) (b) does not preclude a provision in a contract of employment or collective agreement in terms of which an employee is required to participate in a scheme involving the purchase of specific goods, products or services, if the purchase is not prohibited by any other statute and—

the employee receives a financial benefit from participating in the scheme; or

the price of any goods, products or services provided through the scheme is fair and reasonable.

[S. 33A inserted by s. 2 of Act No. 20 of 2013.]

34. Deductions and other acts concerning remuneration.—(1) An employer may not make any deduction from an employee's remuneration unless—

subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or

the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

(2) A deduction in terms of subsection (1) (a) may be made to reimburse an employer for loss or damage only if—

the loss or damage occurred in the course of employment and was due to the fault of the employee;

the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;

the total amount of the debt does not exceed the actual amount of the loss or damage; and

the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.

(3) A deduction in terms of subsection (1) (a) in respect of any goods purchased by the employee must specify the nature and quantity of the goods.

(4) An employer who deducts an amount from an employee's remuneration in terms of subsection (1) for payment to another person must pay the amount to the person in accordance with the time period and other requirements specified in the agreement, law, court order or arbitration award.

(5) An employer may not require or permit an employee to—

repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

acknowledge receipt of an amount greater than the remuneration actually received.

34A. Payment of contributions to benefit funds.—(1) For the purposes of this section, a benefit fund is a pension, provident, retirement, medical aid or similar fund.

(2) An employer that deducts from an employee's remuneration any amount for payment to a benefit fund must pay the amount to the fund within seven days of the deduction being made.

(3) Any contribution that an employer is required to make to a benefit a fund on behalf of an employee, that is not deducted from the employee's remuneration, must be paid to the fund within seven days of the end of the period in respect of which the payment is made.

(4) This section does not affect any obligation on an employer in terms of the rules of a benefit fund to make any payment within a shorter period than that required by subsections (2) or (3).

[S. 34A inserted by s. 6 of Act No. 11 of 2002.]

[General Note: The Minister has in terms of s. 50 (1) (a) of this Act excluded the application of s. 34A of this Act to employers and employees in respect of the payment of contributions to any benefit fund that is covered by the provisions of the Pension Funds Act, No. 24 of 1956 published under Government Notice No. 1827 in *Government Gazette* 25846 dated 24 December, 2003.]

35. Calculation of remuneration and wages.—(1) An employee's wage is calculated by reference to the number of hours the employee ordinarily works.

(2) For the purposes of calculating the wage of an employee by time, an employee is deemed ordinarily to work—

45 hours in a week, unless the employee ordinarily works a lesser number of hours in a week;

nine hours in a day, or seven and a half hours in the case of an employee who works for more than five days a week, or the number of hours that an employee works in a day in terms of an agreement concluded in accordance with section 11, unless the employee ordinarily works a lesser number of hours in a day.

(3) An employee's monthly remuneration or wage is four and one-third times the employee's weekly remuneration or wage, respectively.

(4) If an employee's remuneration or wage is calculated, either wholly or in part, on a basis other than time or if an employee's remuneration or wage fluctuates significantly from period to period, any payment to that employee in terms of this Act must be calculated by reference to the employee's remuneration or wage during—

the preceding 13 weeks; or

if the employee has been in employment for a shorter period, that period.

(5) (*a*) The Minister may by notice in the *Gazette*, after consultation with the Commission and NEDLAC, determine whether a particular category of payment, whether in money or in kind, forms part of an employee's remuneration for the purpose of any calculation made in terms of this Act.

(*b*) Without limiting the Minister's powers in terms of paragraph (a), the Minister may—

(i)

determine the value, or a formula for determining the value, of any payment that forms part of remuneration;

(ii)
place a maximum or minimum value on any payment that forms part of remuneration; and

(iii)
for the purposes of any calculation, differentiate between different categories of payment and different sectors.

(*c*) Before the Minister issues a notice in terms of paragraph (a), the Minister must—

(i)
publish a draft of the proposed notice in the *Gazette*; and

(ii)
invite interested parties to submit written representations on the draft notice within a reasonable period.

[Sub-s. (5) substituted by s. 7 of Act No. 11 of 2002.]

[General Note: Calculation of Employee's remuneration has been published under Government Notice No. 691 in *Government Gazette* 24889 of 23 May, 2003.]

CHAPTER FIVE
TERMINATION OF EMPLOYMENT

36. Application of this Chapter.—This Chapter does not apply to an employee who works less than 24 hours in a month for an employer.

37. Notice of termination of employment.—(1) Subject to section 38, a contract of employment terminable at the instance of a party to the contract may be terminated only on notice of not less than—

one week, if the employee has been employed for six months or less;

two weeks, if the employee has been employed for more than six months but not more than one year;

four weeks, if the employee—

(i)
has been employed for one year or more; or

(ii)
is a farm worker or domestic worker who has been employed for more than six months.

[Sub-s. (1) substituted by s. 8 of Act No. 11 of 2002.]

(2) (*a*) A collective agreement may not permit a notice period shorter than that required by subsection (1).

(*b*) Despite paragraph (a), a collective agreement may permit the notice period of four weeks required by subsection (1) (c) (i) to be reduced to not less than two weeks.

[Sub-s. (2) substituted by s. 8 of Act No. 11 of 2002.]

(3) No agreement may require or permit an employee to give a period of notice longer than that required of the employer.

(4) (*a*) Notice of termination of a contract of employment must be given in writing, except when it is given by an illiterate employee.

(*b*) If an employee who receives notice of termination is not able to understand it, the notice must be explained orally by,

or on behalf of, the employer to the employee in an official language the employee reasonably understands.

(5) Notice of termination of a contract of employment given by an employer must—

not be given during any period of leave to which the employee is entitled in terms of Chapter Three; and

not run concurrently with any period of leave to which the employee is entitled in terms of Chapter Three, except sick leave.

(6) Nothing in this section affects the right—

of a dismissed employee to dispute the lawfulness or fairness of the dismissal in terms of Chapter VIII of the Labour Relations Act, 1995, or any other law; and

of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

38. Payment instead of notice.—(1) Instead of giving an employee notice in terms of section 37, an employer may pay the employee the remuneration the employee would have received, calculated in accordance with section 35, if the employee had worked during the notice period.

(2) If an employee gives notice of termination of employment, and the employer waives any part of the notice, the employer must pay the remuneration referred to in subsection (1), unless the employer and employee agree otherwise.

39. Employees in accommodation provided by employers.—(1) If the employer of an employee who resides in accommodation that is situated on the premises of the employer or that is supplied by the employer terminates the contract of employment of that employee—

before the date on which the employer was entitled to do so in terms of section 37; or

in terms of section 38,

the employer is required to provide the employee with accommodation for a period of one month, or if it is a longer period, until the contract of employment could lawfully have been terminated.

(2) If an employee elects to remain in accommodation in terms of subsection (1) after the employer has terminated the employee's contract of employment in terms of section 38, the remuneration that the employer is required to pay in terms of section 38 is reduced by that portion of the remuneration that represents the agreed value of the accommodation for the period that the employee remains in the accommodation.

40. Payments on termination.—On termination of employment, an employer must pay an employee—

for any paid time off that the employee is entitled to in terms of section 10 (3) or 16 (3) that the employee has not taken;

remuneration calculated in accordance with section 21 (1) for any period of annual leave due in terms of section 20 (2) that the employee has not taken; and

if the employee has been in employment longer than four months, in respect of the employee's annual leave entitlement during an incomplete annual leave cycle as defined in section 20 (1)—

(i)

one day's remuneration in respect of every 17 days on which the employee worked or was entitled to be paid; or

(ii)
remuneration calculated on any basis that is at least as favourable to the employee as that calculated in terms of subparagraph (i).

41. Severance pay.—(1) For the purposes of this section, "operational requirements" means requirements based on the economic, technological, structural or similar needs of an employer.

(2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements or whose contract of employment terminates or is terminated in terms of section 38 of the Insolvency Act, 1936 (Act No. 24 of 1936) severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35.

[Sub-s. (2) substituted by s. 9 of Act No. 11 of 2002.]

(3) The Minister may vary the amount of severance pay in terms of subsection (2) by notice in the *Gazette*. This variation may only be done after consulting NEDLAC and the Public Service Co-ordinating Bargaining Council established under Schedule 1 of the Labour Relations Act, 1995.

(4) An employee who unreasonably refuses to accept the employer's offer of alternative employment with that employer or any other employer, is not entitled to severance pay in terms of subsection (2).

(5) The payment of severance pay in compliance with this section does not affect an employee's right to any other amount payable according to law.

(6) If there is a dispute only about the entitlement to severance pay in terms of this section, the employee may refer the dispute in writing to—

a council, if the parties to the dispute fall within the registered scope of that council; or

the CCMA, if no council has jurisdiction.

(7) The employee who refers the dispute to the council or the CCMA must satisfy it that a copy of the referral has been served on all the other parties to the dispute.

(8) The council or the CCMA must attempt to resolve the dispute through conciliation.

(9) If the dispute remains unresolved, the employee may refer it to arbitration.

(10) If the Labour Court is adjudicating a dispute about a dismissal based on the employer's operational requirements, the Court may inquire into and determine the amount of any severance pay to which the dismissed employee may be entitled and the Court may make an order directing the employer to pay that amount.

42. Certificate of service.—On termination of employment an employee is entitled to a certificate of service stating—

the employee's full name;

the name and address of the employer;

a description of any council or sectoral employment standard by which the employer's business is covered;

the date of commencement and date of termination of employment;

the title of the job or a brief description of the work for which the employee was employed at date of termination;

the remuneration at date of termination; and

if the employee so requests, the reason for termination of employment.

CHAPTER SIX
PROHIBITION OF EMPLOYMENT OF CHILDREN AND FORCED LABOUR

43. Prohibition of work by children.—(1) Subject to section 50 (2) (b), a person must not require or permit a child to work, if the child—

is under 15 years of age; or

is under the minimum school-leaving age in terms of any law.

(2) A person must not require or permit a child to perform any work or provide any services—

that are inappropriate for a person of that age;

that place at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

(3) A person who requires or permits a child to work in contravention of subsection (1) or (2) commits an offence.

[S. 43 substituted by s. 3 of Act No. 20 of 2013.]

(Date of commencement of s. 43: 21 March, 1998.)

44. Regulations on work by children.—(1) Subject to section 43 (2), the Minister may, on the advice of the Commission, make regulations to prohibit or place conditions on work by children who are at least 15 years of age and are no longer subject to compulsory schooling in terms of any law.

(1A) The Minister may, on the advice of the Commission, make regulations to give effect to South Africa's international law obligations dealing with work by children.

(2) A person who requires or permits a child to work in contravention of any regulation made in terms of this section commits an offence.

[S. 44 substituted by s. 4 of Act No. 20 of 2013.]

(Date of commencement of s. 44: 21 March, 1998.)

45. Medical examinations.—The Minister may, after consulting the Commission, make regulations relating to the conduct of medical examinations of children who perform work.8

[S. 45 substituted by s. 5 of Act No. 20 of 2013.]

(Date of commencement of s. 45: 21 March, 1998.)

46. Prohibitions.—It is an offence to—

assist any person to require or permit a child to work in contravention of this Act; or

[Para. (a) substituted by s. 6 of Act No. 20 of 2013.]

discriminate against a person who refuses to permit a child to work in contravention of this Act.

[Para. (b) substituted by s. 6 of Act No. 20 of 2013.]

(Date of commencement of s. 46: 21 March, 1998.)

47. Evidence of age.—In any proceedings in terms of this Act, if the age of any person is a relevant factor for which insufficient evidence is available, it is for the party who alleges that the work by that person complied with the provisions of this Chapter to prove that it was reasonable for that party to believe, after investigation, that the person was not below the permitted age in terms of section 43 or 44.

[S. 47 substituted by s. 7 of Act No. 20 of 2013.]

(Date of commencement of s. 47: 21 March, 1998.)

48. Prohibition of forced labour.—(1) Subject to the Constitution, all forced labour is prohibited.

(2) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subsection (1).

(3) A person who contravenes subsection (1) or (2) commits an offence.

(Date of commencement of s. 48: 21 March, 1998.)

CHAPTER SEVEN
VARIATION OF BASIC CONDITIONS OF EMPLOYMENT

49. Variation by agreement.—(1) A collective agreement concluded in a bargaining council may alter, replace or exclude any basic condition of employment if the collective agreement is consistent with the purpose of this Act and the collective agreement does not—

reduce the protection afforded to employees by sections 7, 9 and any regulation made in terms of section 13;

reduce the protection afforded to employees who perform night work in terms of section 17 (3) and (4);

reduce an employee's annual leave in terms of section 20 to less than two weeks;

reduce an employee's entitlement to maternity leave in terms of section 25;

reduce an employee's entitlement to parental leave in terms of section 25A;

[Para. (dA) inserted by s. 5 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

reduce an employee's entitlement to adoption leave in terms of section 25B;

[Para. (dB) inserted by s. 5 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

reduce an employee's entitlement to commissioning parental leave in terms of section 25C;

[Para. (dC) inserted by s. 5 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

reduce an employee's entitlement to sick leave in terms of sections 22 to 24;

conflict with the provisions of Chapter Six.

(2) A collective agreement, other than an agreement contemplated in subsection (1), may replace or exclude a basic condition of employment, to the extent permitted by this Act or a sectoral determination.

(3) An employer and an employee may agree to replace or exclude a basic condition of employment to the extent permitted by this Act or a sectoral determination.

(4) No provision in this Act or a sectoral determination may be interpreted as permitting—

a contract of employment or agreement between an employer and an employee contrary to the provisions of a collective agreement;

a collective agreement contrary to the provisions of a collective agreement concluded in a bargaining council.

50. Variation by Minister.—(1) The Minister may, if it is consistent with the purpose of this Act, make a determination to replace or exclude any basic condition of employment provided for in this Act in respect of—

any category of employees or category of employers; or

any employer or employee in respect of whom an application is made by—

(i)
the employer;

(ii)
the registered employers' organisation;

(iii)
the employer and the registered employers' organisation.

(2) A determination in terms of subsection (1)—

may not be made in respect of sections 7, 17 (3) and (4), 25, 43 (2), 44 or 48 or a regulation made in terms of section 13; and

may only be made in respect of section 43 (1) to allow the employment of children in the performance of advertising, sports, artistic or cultural activities.

[Sub-s. (2) substituted by s. 10 (a) of Act No. 11 of 2002.]

(2A) A determination in terms of subsection (1) may only be made in respect of section 9 if—

the employees' ordinary hours of work, rest periods and annual leave are on the whole more favourable to the employees than the basic conditions of employment in terms of sections 9, 10, 14, 15 and 20; and

the determination—

(i)
has been agreed to in a collective agreement;

(ii)
is necessitated by the operational circumstances of the sector in respect of which the variation is sought and the majority of employees in the sector are not members of a registered trade union; or

(iii)
applies to the agricultural sector or the private security sector.

[Sub-s. (2A) inserted by s. 10 (b) of Act No. 11 of 2002.]

(3) A determination in terms of subsection (1) (a) must—

be made on the advice of the Commission; and

be issued by a notice in the *Gazette*.

(4) The Minister may request the Commission—

to advise on any application made in terms of subsection (1) (b);

to prepare guidelines for the consideration of applications made in terms of subsection (1) (b).

(5) A determination in terms of subsection (1) that applies to the public service must be made by the Minister with the concurrence of the Minister for the Public Service and Administration.

(6) If a determination in terms of subsection (1) concerns the employment of children, the Minister must consult with the Minister for Welfare and Population Development before making the determination.

(7) (*a*) A determination in terms of subsection (1) (b) may be issued if the application has the consent of every registered trade union that represents the employees in respect of whom the determination is to apply.

(*b*) If no consent contemplated in paragraph (a) is obtained, a determination in terms of subsection (1) (b) may be issued if—

(i)
the employer or employers' organisation has served a copy of the application, together with a notice stating that representations may be made to the Minister, on any registered trade union that represents employees affected by the application; and

(ii)
in the case where the majority of employees are not represented by a registered trade union, the employer or employer's organisation has taken reasonable steps to bring the application and the fact that representations may be made to the Minister, to the attention of those employees.

(8) A determination made in terms of subsection (1) (b)—

may be issued on any conditions and for a period determined by the Minister;

may take effect on a date earlier than the date on which the determination is given, but not earlier than the date on which application was made;

must be issued in a notice in the prescribed form if the determination is made in respect of an application made by an employer;

[General Note: Determination made under Government Notice No. R.1383 in *Government Gazette* 24005 of 8 November, 2002, under Government Notice No. R.1384 in *Government Gazette* 24005 of 8 November, 2002, under Government Notice No. R.1385 in *Government Gazette* 24005 of 8 November, 2002, under Government Notice No. R.1534 in *Government Gazette* 24143 of 13 December, 2002, under Government Notice No. R.293 in *Government Gazette* 24941 of 28 February, 2003, under Government Notice Nos. 537, 538 and 539 in *Government Gazette* 40001 of 20 May, 2016, under Government Notice Nos. 623, 624 and 625 in *Government Gazette* 40041 of 3 June, 2016 and under Government Notice No. 692 in *Government Gazette* 42474 of 24 May, 2019.]

must be published in a notice in the *Gazette* if the determination is made in respect of an application made by an employers' organisation.

(9) (*a*) The Minister may on application by any affected party and after allowing other affected parties a reasonable opportunity to make representations, amend or withdraw a determination issued in terms of subsection (1).

(*b*) For the purposes of paragraph (a), an affected party is—

(i)
an employer or employer's organisation that is covered by the determination;

(ii)
a registered trade union representing employees covered by the determination, or an employee covered by the determination who is not a member of a registered trade union.

(10) An employer in respect of whom a determination has been made, or whose employees are covered by a determination in terms of subsection (1), must—

display a copy of the notice conspicuously at the work-place where it can be read by the employees to whom the determination applies;

notify each employee in writing of the fact of the determination and of where a copy of the notice has been displayed; and

give a copy of the notice to every—

(i)
registered trade union representing those employees;

(ii)
trade union representative representing those employees; and

(iii)
employee who requests a copy.

CHAPTER EIGHT
SECTORAL DETERMINATIONS

51. Sectoral determination.—(1) The Minister may make a sectoral determination establishing basic conditions of employment for employees in a sector and area.

(2) A sectoral determination must be made in accordance with this Chapter and by notice in the *Gazette*.

(Date of commencement of s. 51: 21 March, 1998.)

(3) If any sectoral determination at the date of the promulgation of the National Minimum Wage Act, 2018, prescribes wages that are higher than the national minimum wage, the wages in that sectoral determination and the remuneration and associated benefits based on those wages must be increased proportionally to any adjustment of the national minimum wage in terms of the National Minimum Wage Act, 2018.

[Sub-s. (3) added by s. 4 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(4) Notwithstanding the provisions of any sectoral determination, an employer must pay a learner an allowance as prescribed in Schedule 2 of the National Minimum Wage Act, 2018, as is adjusted from time to time, from the date that the National Minimum Wage Act, 2018, comes into force.

[Sub-s. (4) added by s. 4 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(5) For the purpose of subsection (4)—

"learner" means a learner as defined in Schedule 2 of the National Minimum Wage Act, 2018; and

"allowance" means an allowance as defined in Schedule 2 of the National Minimum Wage Act, 2018.

[Sub-s. (5) added by s. 4 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

52. Investigation.—(1) Before making a sectoral determination, the Minister must direct the Commission to investigate conditions of employment in the sector and area concerned.

[Sub-s. (1) substituted by s. 5 (a) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2) The Commission must, on its own accord or on the direction of the Minister, as contemplated in subsection (1), determine terms of reference for the investigation, which must include—

the sector and area to be investigated;

the categories or classes of employees to be included in the investigation; and

the matters to be investigated, which may include any matter listed in section 55 (4).

[Sub-s. (2) amended by s. 5 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(3) The Commission must publish a notice in the Gazette setting out the terms of reference of the investigation and inviting written representations by the public.

[Sub-s. (3) substituted by s. 5 (c) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(4) If an organisation representing employers or employees in a sector and area makes a written request to the Minister to investigate conditions of employment in that sector and area, the Minister must either—

direct the Commission to conduct an investigation; or

[Para. (a) substituted by s. 5 (d) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum

Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

request the Commission to advise the Minister on whether the requested investigation ought to be conducted.

(Date of commencement of s. 52: 21 March, 1998.)

53. Conduct of investigation.—(1) For the purposes of conducting an investigation in terms of section 52 (1), the Commission may—

question any person who may be able to provide information relevant to any investigation; or

require, in writing, any employer or employee in a sector and area that is being investigated or any other person to furnish any information, book, document or object that is material to the investigation within a specified period, which must be reasonable.

[Sub-s. (1) amended by s. 6 (a) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2) A person may not refuse to answer any relevant question by the Commission that he or she is legally obliged to answer.

[Sub-s. (2) substituted by s. 6 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(Date of commencement of s. 53: 21 March, 1998.)

54. Preparation of report.—(1) On completion of an investigation, and after considering any representations made by members of the public, the Commission must prepare a report.

[Sub-s. (1) substituted by s. 7 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2) A copy of the report must be submitted to the Director-General for his or her information and the Minister for consideration.

[Sub-s. (2) substituted by s. 7 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(3) When advising the Minister on the publication of a sectoral determination, the Commission must consider in respect of the sector and area concerned—

the report prepared in terms of subsection (1);

the ability of employers to carry on their business successfully;

the operation of small, medium or micro-enterprises, and new enterprises;

the cost of living;

the alleviation of poverty;

conditions of employment;

wage differentials and inequality;

the likely impact of any proposed condition of employment on current employment or the creation of employment;

the possible impact of any proposed conditions of employment on the health, safety or welfare of employees;

any other relevant information made available to the Commission.

(4) The Commission must prepare a report for the Minister containing recommendations on the matters which should be included in a sectoral determination for the relevant sector and area.

(Date of commencement of s. 54: 21 March, 1998.)

55. Making of sectoral determination.—(1) After considering the report and recommendations of the Commission contemplated in section 54 (4), the Minister may make a sectoral determination for one or more sector and area or as contemplated by subsection (8).

[Sub-s. (1) substituted by s. 8 (a) of Act No. 20 of 2013.]

(2) If the Minister does not accept a recommendation of the Commission made in terms of section 54 (4), the Minister must refer the matter to the Commission for its reconsideration indicating the matters on which the Minister disagrees with the Commission.

(3) After considering the further report and recommendations of the Commission, the Minister may make a sectoral determination.

(4) A sectoral determination may in respect to the sector and area concerned—

set minimum terms and conditions of employment, including minimum rates of remuneration;

provide for the adjustment of remuneration by way of—

(i)
minimum rates; or

(ii)
minimum increases;

[Para. (b) substituted by s. 8 (b) of Act No. 20 of 2013.]

regulate the manner, timing and other conditions of payment of remuneration;

prohibit or regulate payment of remuneration in kind;

require employers to keep employment records;

require employers to provide records to their employees;

prohibit or regulate task-based work, piecework, home work, sub-contracting and contract work;

[Para. (g) substituted by s. 8 (c) of Act No. 20 of 2013.]

set minimum standards for housing and sanitation for employees who reside on their employers' premises;

regulate payment of travelling and other work-related allowances;

specify minimum conditions of employment for trainees;

specify minimum conditions of employment for persons other than employees;

regulate training and education schemes;

regulate pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds;

[Para. (m) amended by s. 8 (d) of Act No. 20 of 2013.]

regulate any other matter concerning remuneration or other terms or conditions of employment.

taking into account the provisions of section 21 (8) of the Labour Relations Act, 1995, set a threshold of representativeness at which a trade union will automatically have the organisational rights contemplated in sections 12 and 13 of the Labour Relations Act, 1995, in respect of all workplaces covered by the sectoral determination; and

[Para. (o) added by s. 8 (d) of Act No. 20 of 2013.]

establish one or more methods for determining the conditions of service for labour tenants who has a right to occupy and to use a part of a farm as contemplated in section 3 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), for the purpose of section 4 (3);

[Para. (p) added by s. 8 (d) of Act No. 20 of 2013.]

(5) Any provisions of a sectoral determination may apply to all or some of the employers and employees in the sector and area concerned.

(6) A sectoral determination in terms of subsection (1)—

May not be made in respect of section 7, 43 (2), 44 or 48;

may only be made in respect of section 43 (1) to allow the employment of children in the performance of advertising, sports, artistic or cultural activities;

may not reduce the protection afforded to employees by sections 17 (3) and (4) and 25 or a regulation made in terms of section 13; and

may vary the basic conditions of employment in section 9 in the circumstances contemplated by section 50 (2A).

[Sub-s. (6) substituted by s. 11 of Act No. 11 of 2002.]

(7) The Minister may not publish a sectoral determination—

covering employees and employers who are bound by a collective agreement concluded at a bargaining council;

covering employees covered by a collective agreement concluded in a statutory council regulating any matter in respect of which that statutory council has concluded a collective agreement;

[Para. (b) substituted by s. 8 (e) of Act No. 20 of 2013.]

regulating any matter regulated by a sectoral determination for a sector and area which has been in effect for less than 12 months.

(8) Subject to the provisions of subsection (7), the Minister may publish a sectoral determination that applies to employers and employees who are not covered by any other sectoral determination.

[Sub-s. (8) added by s. 8 (f) of Act No. 20 of 2013.]

(Date of commencement of s. 55: 21 March, 1998.)

56. Period of operation of sectoral determination.—(1) The provisions of a sectoral determination remain binding until they are amended or superseded by a new or amended sectoral determination, or they are cancelled or suspended by the Minister.

(2) If a collective agreement contemplated in section 55 (6) (a) or (b) is concluded, the provisions of a sectoral determination cease to be binding upon employers and employees covered by the agreement.

(3) The Minister may, by notice in the *Gazette*—

cancel or suspend any provision of a sectoral determination, either in the sector and area as a whole or in part of the sector or in a specific area; or

correct or clarify the meaning of any provision of a sectoral determination as previously published.

(4) Before publishing a notice of cancellation or suspension in terms of subsection (3) (a) the Minister must, by notice in the *Gazette*, announce the intention to do so, and allow an opportunity for public comment.

(Date of commencement of s. 56: 21 March, 1998.)

57. Legal effect of sectoral determination.—If a matter regulated in this Act is also regulated in terms of a sectoral determination, the provision in the sectoral determination prevails.

(Date of commencement of s. 57: 21 March, 1998.)

58. Employer to keep a copy of sectoral determination.—Unless a sectoral determination provides otherwise, every employer on whom the sectoral determination is binding must—

keep a copy of that sectoral determination available in the work-place at all times;

make that copy available for inspection by an employee; and

give a copy of that sectoral determination—

(i)
to an employee who has paid the prescribed fee; and

(ii)
free of charge, on request, to an employee who is a trade union representative or a member of a work-place forum.

(Date of commencement of s. 58: 21 March, 1998.)

59. . . . . . .

[S. 59 repealed by s. 8 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

60. . . . . . .

[S. 60 repealed by s. 8 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

61. . . . . . .

[S. 61 repealed by s. 8 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

62. . . . . . .

[S. 62 repealed by s. 8 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

CHAPTER NINE
. . . . . .

[Chapter 9 repealed by s. 8 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

CHAPTER TEN
MONITORING, ENFORCEMENT AND LEGAL PROCEEDINGS

PART A

Monitoring and enforcement

62A. Definitions.—For the purpose of Chapter 10, an employee includes a worker as defined in section 1 of the National Minimum Wage Act, 2018.

[S. 62A inserted by s. 9 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

63. Appointment of labour inspectors.—(1) The Minister may—

appoint any person in the public service as a labour inspector;

designate any person in the public service, or any person appointed as a designated agent of a bargaining council in terms of section 33 of the Labour Relations Act, 1995, to perform any of the functions of a labour inspector.

(2) Any person appointed under subsection (1) must perform his or her functions in terms of this Chapter, subject to the direction and control of the Minister.

(3) The Minister must provide each labour inspector with a signed certificate in the prescribed form stating—

that the person is a labour inspector;

which legislation that labour inspector may monitor and enforce; and

which of the functions of a labour inspector that person may perform.

(Date of commencement of s. 63: 21 March, 1998.)

64. Functions of labour inspectors.—(1) A labour inspector appointed under section 63 (1) may promote, monitor and enforce compliance with an employment law by—

advising employees and employers of their rights and obligations in terms of an employment law;

conducting inspections in terms of this Chapter;

investigating complaints made to a labour inspector;

endeavouring to secure compliance with an employment law by securing undertakings or issuing compliance orders;

[Para. (d) amended by s. 10 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

referring disputes to the CCMA concerning failure to comply with this Act, the National Minimum Wage Act, 2018, the Unemployment Insurance Act and the Unemployment Insurance Contributions Act;

[Para. (dA) inserted by s. 10 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

appearing on behalf of the Director-General in any proceedings in the CCMA or Labour Court concerning a failure to comply with the legislation referred to in paragraph (dA); and

[Para. (dB) inserted by s. 10 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

performing any other prescribed function.

(2) A labour inspector may not perform any function in terms of this Act in respect of an undertaking in respect of which the labour inspector has, or may reasonably be perceived to have, any personal, financial or similar interest.

(Date of commencement of s. 64: 21 March, 1998.)

65. Powers of entry.—(1) In order to monitor and enforce compliance with an employment law, a labour inspector may, without warrant or notice, at any reasonable time, enter—

any workplace or any other place where an employer carries on business or keeps employment records, that is not a home;

. . . . . .

[Para. (b) deleted by s. 11 (a) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

any place at which any person provides or purports to provide any employment services as defined in terms of the Employment Services Act, 2014 (Act No. 4 of 2014);

[Sub-s. (1) substituted by s. 17 of Act No. 37 of 2008. Para. (c) substituted by s. 11 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2) A labour inspector may enter a home or any place other than a place referred to in subsection (1) only—

with the consent of the owner or occupier; or

if authorised to do so in writing in terms of subsection (3).

(3) The Labour Court may issue an authorisation contemplated in subsection (2) only on written application by a labour inspector who states under oath or affirmation the reasons for the need to enter a place in order to monitor or enforce compliance with any employment law.

(4) If it is practical to do so, the employer and a trade union representative must be notified that the labour inspector is present at a workplace and of the reason for the inspection.

(Date of commencement of s. 65: 21 March, 1998.)

66. Powers to question and inspect.—(1) In order to monitor or enforce compliance with an employment law, a labour inspector may—

require a person to disclose information, either orally or in writing, and either alone or in the presence of witnesses, on any matter to which an employment law relates, and require that the disclosure be made under oath or affirmation;

inspect, and question a person about, any record or document to which an employment law relates;

copy any record or document referred to in paragraph (b), or remove these to make copies or extracts;

require a person to produce or deliver to a place specified by the labour inspector any record or document referred to in paragraph (b) for inspection;

inspect, question a person about, and if necessary remove, any article, substance or machinery present at a place referred to in section 65;

inspect or question a person about any work performed; and

perform any other prescribed function necessary for monitoring or enforcing compliance with an employment law.

(2) A labour inspector may be accompanied by an interpreter and any other person reasonably required to assist in conducting the inspection.

(3) A labour inspector must—

produce on request the certificate referred to in section 63 (3);

provide a receipt for any record, document, article, substance or machinery removed in terms of subsection (1) (c) or (e); and

return anything removed within a reasonable period of time.

(4) The powers provided for in this Part are in addition to any power of a labour inspector in terms of any other employment law.

67. Co-operation with labour inspectors.—(1) Any person who is questioned by a labour inspector in terms of section 66 must answer all relevant questions lawfully put to that person truthfully and to the best of his or her ability.9

(2) Every employer and each employee must provide any facility and assistance at a workplace that is reasonably required by a labour inspector to perform the labour inspector's functions effectively.

68. Securing an undertaking.—(1) A labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act, the National Minimum Wage Act, 2018, the Unemployment Insurance Act or the Unemployment Insurance Contributions Act may endeavour to secure a written undertaking by the employer to comply with the provision.

[Sub-s. (1) substituted by s. 9 (a) of Act No. 20 of 2013 and by s. 12 (a) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(1A) A labour inspector may endeavour to secure a written undertaking by the employer to comply with subsection (1) either by—

meeting with the employer or a representative of the employer; or

serving a document, in the prescribed form, on the employer.

[Sub-s. (1A) inserted by s. 13 of Act No. 11 of 2002.]

(2) In endeavouring to secure the undertaking, the labour inspector—

may seek to obtain agreement between the employer and employee as to any amount owed to the employee in terms of this Act or the National Minimum Wage Act, 2018;

[Para. (a) substituted by s. 12 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

may arrange for payment to an employee of any amount paid as a result of an undertaking;

may, at the written request of an employee, receive payment on behalf of the employee; and

must provide a receipt for any payment received in terms of paragraph (c).

(3) If an employer fails to comply with a written undertaking given by the employer in terms of this section, the Director-General may request the CCMA to make the undertaking an arbitration award.

[Sub-s. (3) added by s. 9 (b) of Act No. 20 of 2013 and substituted by s. 12 (c) of Act No. 7 of 2018 with effect from a

date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

69. Compliance order.—(1) A labour inspector who has reasonable grounds to believe that an employer has not complied with a provision of this Act, the National Minimum Wage Act, 2018, the Unemployment Insurance Act or the Unemployment Insurance Contributions Act may issue a compliance order.

[Sub-s. (1) substituted by s. 13 (a) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2) A compliance order must set out—

the name of the employer, and the location of every work-place, to which it applies;

the provision of this Act and any other Act referred to in subsection (1) that the employer has not complied with, and details of the conduct constituting non-compliance;

[Para. (b) substituted by s. 13 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

any amount that the employer is required to pay to an employee, or in the case of a failure to pay the national minimum wage, the amount that the employer is required to pay to an employee in terms of section 76A;

[Para. (c) substituted by s. 13 (b) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

. . . . . .

[Para. (d) deleted by s. 10 (a) of Act No. 20 of 2013.]

any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken; and

the maximum fine that may be imposed upon the employer in accordance with Schedule Two for a failure to comply with a provision of this Act.

(2A) . . . . . .

[Sub-s. (2A) inserted by s. 10 (b) of Act No. 20 of 2013 and deleted by s. 13 (c) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(3) (*a*) A copy of the compliance order must be served on the employer named in it, and on each employee affected by it or, if this is impractical, on a representative of the employees.

[Para. (a) substituted by s. 10 (c) of Act No. 20 of 2013.]

(*b*) The failure to serve a copy of a compliance order on any employee or any representative of employees in terms of paragraph (a) does not invalidate the order.

[Sub-s. (3) substituted by s. 14 of Act No. 11 of 2002.]

(4) The employer must display a copy of the compliance order prominently at a place accessible to the affected employees at each work-place named in it.

(5) An employer must comply with the compliance order within the time period stated in the order, unless the employer refers a dispute concerning the compliance order to the CCMA within that period.

[Sub-s. (5) substituted by s. 10 (d) of Act No. 20 of 2013 and by s. 13 (d) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(6) A dispute referred to the CCMA by the employer in terms of subsection (5) must be dealt with in terms of section 73.

[Sub-s. (6) added by s. 13 (e) of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

70. Limitations.—A labour inspector may not issue a compliance order in respect of any amount payable to an employee as a result of a failure to comply with a provision of this Act or the National Minimum Wage Act, 2018, if—

. . . .

the employee earns in excess of the threshold prescribed by the Minister in terms of section 6 (3);

any proceedings have been instituted for the recovery of that amount in the CCMA or a court, unless those proceedings have been withdrawn; or

that amount has been made payable by the employer to the employee for longer than 36 months before the date on which a complaint was made to a labour inspector by or on behalf of the employee or, if no complaint was made, the date on which a labour inspector first endeavoured to secure a written undertaking by the employer in terms of section 68 or issued a compliance order in terms of section 69.

[S. 70 amended by s. 11 of Act No. 20 of 2013 and by s. 15 of Act No. 11 of 2002 and substituted by s. 14 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

71. . . . . . .

[S. 71 repealed by s. 12 of Act No. 20 of 2013.]

72. . . . . . .

[S. 72 repealed by s. 12 of Act No. 20 of 2013.]

73. Order may be made an arbitration award.—(1) The Director-General may apply to the CCMA for a compliance order to be made an arbitration award if the employer has not complied with the order.

(2) The CCMA may issue an arbitration award in terms of subsection (1) requiring the employer to comply with the compliance order, if it is satisfied that—

the compliance order was served on the employer; and

the employer has not referred a dispute in terms of section 69 (5).

[S. 73 amended by s. 16 of Act No. 11 of 2002 and substituted by s. 13 of Act No. 20 of 2013 and by s. 15 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

73A. Claims for failure to pay any amount.—(1) Despite section 77, any employee or worker as defined in section 1 of the National Minimum Wage Act, 2018, may refer a dispute to the CCMA concerning the failure to pay any amount owing to that employee or worker in terms of this Act, the National Minimum Wage Act, 2018, a contract of employment, a sectoral determination or a collective agreement.

(2) Subsection (1) does not apply to employees or workers earning in excess of the threshold prescribed by the Minister in terms of section 6 (3).

(3) An employee or worker, other than the employee or worker referred to in subsection (1), may institute a claim concerning the failure to pay any amount contemplated in subsection (1) in either the Labour Court, the High Court or, subject to their jurisdiction, the Magistrates' Court or the small claims court.

(4) The CCMA must appoint a Commissioner in terms of section 135 of the Labour Relations Act, to attempt to resolve by conciliation any dispute that is referred to the CCMA in terms of subsection (1).

(5) The CCMA must commence the arbitration of a dispute contemplated in subsection (1) immediately after certifying that the dispute remains unresolved in terms of section 135 (5).

[S. 73A inserted by s. 16 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

PART B

Legal proceedings

74. Consolidation of proceedings.—(1) A dispute concerning a contravention of this Act or the National Minimum Wage Act, 2018, may be instituted jointly with proceedings instituted by an employee under Part C of this Chapter.

[Sub-s. (1) substituted by s. 17 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2) If an employee institutes proceedings for unfair dismissal, the Labour Court or the arbitrator hearing the matter may also determine any claim for an amount that is owing to that employee in terms of this Act or the National Minimum Wage Act, 2018.

[Sub-s. (2) substituted by s. 17 of Act No. 11 of 2002, amended by 14 (*a*) and (*b*) of Act No. 20 of 2013 and substituted by s. 17 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

(2A) No compliance order may be issued or enforced and no other legal proceedings may be instituted or enforced in respect of any claim that has been determined in terms of this subsection (2).

[Sub-s. (2A) inserted by s. 14 (c) of Act No. 20 of 2013.]

(3) A dispute concerning any amount that is owing to an employee as a result of a contravention of this Act or the National Minimum Wage Act, 2018, may be initiated jointly with a dispute instituted by that employee over the entitlement to severance pay in terms of section 41 (6).

[Sub-s. (3) substituted by s. 17 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

75. Payment of interest.—An employer must pay interest on any amount due and payable in terms of this Act or the National Minimum Wage Act, 2018, at the rate of interest prescribed in terms of section 1 of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), to any person to whom a payment should have been made.

[S. 75 substituted by s. 18 of Act No. 11 of 2002 and by s. 18 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

76. Proof of compliance.—In any proceedings concerning a contravention of this Act, the National Minimum Wage Act, 2018, or any sectoral determination, it is for an employer—

to prove that a record maintained by or for that employer is valid and accurate; or

who has failed to keep any record required by this Act or the National Minimum Wage Act, 2018, that is relevant to those proceedings, to prove compliance with any provision of this Act.

[S. 76 substituted by s. 19 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

76A. Fine for not complying with national minimum wage.—(1) Subject to section 76, a fine that may be imposed on an employer who paid an employee less than the national minimum wage, is an amount that is the greater of—

twice the value of the underpayment; or

twice the employee's monthly wage.

(2) For second or further non-compliances, a fine that may be imposed on the employer is an amount that is greater of—

thrice the value of the underpayment; or

thrice the employee's monthly wage.

(3) The Minister may issue guidelines on the determination of whether a non-compliance is a second or further non-compliance, as envisaged in subsection (2).

(4) The Department must maintain and publish on its official website, on a quarterly basis, a list of all employers who were issued with compliance orders.

[S. 76A inserted by s. 20 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

77. Jurisdiction of Labour Court.—(1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act.

[Sub-s. (1) substituted by s. 15 (a) of Act No. 20 of 2013.]

(1A) The Labour Court has exclusive jurisdiction to grant civil relief arising from a breach of sections 33A, 43, 44, 46, 48, 90 and 92.

[Sub-s. (1A) inserted by s. 15 (b) of Act No. 20 of 2013.]

(2) The Labour Court may review the performance or purported performance of any function provided for in this Act or any act or omission of any person in terms of this Act on any grounds that are permissible in law.

(3) The Labour Court has concurrent jurisdiction with the civil courts to hear and determine any matter concerning a contract of employment, irrespective of whether any basic condition of employment constitutes a term of that contract.

(4) Subsection (1) does not prevent any person relying upon a provision of this Act to establish that a basic condition of employment constitutes a term of a contract of employment in any proceedings in a civil court or an arbitration held in terms of an agreement.

(5) If proceedings concerning any matter contemplated in terms of subsection (1) are instituted in a court that does not have jurisdiction in respect of that matter, that court may at any stage during proceedings refer that matter to the Labour Court.

77A. Powers of Labour Court.—Subject to the provisions of this Act, the Labour Court may make any appropriate order, including an order—

. . . . . .

[Para. (a) deleted by s. 21 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

condoning the late filing of any document with, or the late referral of any dispute to, the Labour Court;

. . . . . .

[Para. (c) deleted by s. 21 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

reviewing the performance or purported performance of any function provided for in terms of this Act or any act or omission by any person or body in terms of this Act, on any grounds permissible in law;

making a determination that it considers reasonable on any matter concerning a contract of employment in terms of section 77 (3), which determination may include an order for specific performance, an award of damages or an award of compensation;

imposing a fine in accordance with Schedule 2 to this Act or for any contravention of any provision of this Act for which a fine can be imposed; and

dealing with any matter necessary or incidental to performing its functions in terms of this Act.

[S. 77A inserted by s. 19 of Act No. 11 of 2002.]

PART C

Protection of employees against discrimination

78. Rights of Employees.—(1) Every employee has the right to—

make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an employer to comply with this Act or the National Minimum Wage Act, 2018;

discuss his or her conditions of employment with his or her fellow employees, his or her employer or any other person;

refuse to comply with an instruction that is contrary to this Act, the National Minimum Wage Act, 2018, or any sectoral determination;

refuse to agree to any term or condition of employment that is contrary to this Act, the National Minimum Wage Act, 2018, or any sectoral determination;

inspect any record kept in terms of this Act or the National Minimum Wage Act, 2018, that relates to the employment of that employee;

participate in proceedings in terms of this Act;

request a trade union representative or a labour inspector to inspect any record kept in terms of this Act and that relates to the employment of that employee.

(2) Every trade union representative has the right, at the request of an employee, to inspect any record kept in terms of this Act or the National Minimum Wage Act, 2018, that relates to the employment of that employee.

[S. 78 substituted by s. 22 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

79. Protection of rights.—(1) In this section, "employee" includes a former employee or an applicant for employment.

(2) No person may discriminate against an employee for exercising a right conferred by this Part and no person may do, or threaten to do, any of the following:

Require an employee not to exercise a right conferred by this Part;

prevent an employee from exercising a right conferred by this Part; or

prejudice an employee because of a past, present or anticipated—

(i)
failure or refusal to do anything that an employer may not lawfully permit or require an employee to do;

(ii)
disclosure of information that the employee is lawfully entitled or required to give to another person; or

(iii)
exercise of a right conferred by this Part.

(3) No person may favour, or promise to favour, an employee in exchange for the employee not exercising a right conferred by this Part. However, nothing in this section precludes the parties to a dispute from concluding an agreement to settle the dispute.

80. Procedure for disputes.—(1) If there is a dispute about the interpretation or application of this Part, any party to the dispute may refer the dispute in writing to the CCMA.

(2) The party who refers a dispute must satisfy the CCMA that a copy of the referral has been served on all the other parties to the dispute.

(3) The CCMA must attempt to resolve a dispute through conciliation.

(4) If a dispute remains unresolved, any party to the dispute may refer it to the CCMA for arbitration.

(5) In respect of a dispute in terms of this Part, the relevant provisions of Part C of Chapter VII of the Labour Relations Act, 1995, apply with the changes required by the context.

(6) For the purposes of this section, a party to a dispute includes a labour inspector.

[S. 80 substituted by s. 23 of Act No. 7 of 2018 with effect from a date immediately after the National Minimum Wage Act, No. 9 of 2018, has taken effect: 1 January, 2019.]

81. Burden of proof.—In any proceeding in terms of this Part—

an employee who alleges that a right or protection conferred by this Part has been infringed, must prove the facts of the

conduct said to constitute such infringement; and

the party who allegedly engaged in the conduct in question must then prove that the conduct did not infringe any provision of this Part.

CHAPTER ELEVEN
GENERAL

82. Temporary employment services.—(1) For the purposes of this Act, a person whose services have been procured for, or provided to, a client by a temporary employment service is the employee of that temporary employment service, and the temporary employment service is that person's employer.

(2) Despite subsection (1), a person who is an independent contractor is not an employee of a temporary employment service, nor is the temporary employment service the employer of that person.

(3) The temporary employment service and the client are jointly and severally liable if the temporary employment service, in respect of any employee who provides services to that client, does not comply with this Act or a sectoral determination.

83. Deeming of persons as employees.—(1) The Minister may, on the advice of the Commission and by notice in the *Gazette*, deem any category of persons specified in the notice to be—

employees for purposes of the whole or any part of this Act, any other employment law other than the Unemployment Insurance Act, 2001 (Act No. 63 of 2001), or any sectoral determination; or

contributors for purposes of the whole or any part of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001).

[Sub-s. (1) substituted by s. 20 of Act No. 11 of 2002 and by s. 6 of Act No. 10 of 2018 with effect from: 1 January, 2020.]

(2) Before the Minister issues a notice under subsection (1), the Minister must—

publish a draft of the proposed notice in the *Gazette*; and

invite interested persons to submit written representations on the proposed notice within a reasonable period.

83A. Presumption as to who is employee.—(1) A person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present:

The manner in which the person works is subject to the control or direction of another person;

the person's hours of work are subject to the control or direction of another person;

in the case of a person who works for an organisation, the person is a part of that organisation;

the person has worked for that other person for an average of at least 40 hours per month over the last three months;

the person is economically dependent on the other person for whom that person works or renders services;

the person is provided with tools of trade or work equipment by the other person; or

the person only works for or renders services to one person.

(2) Subsection (1) does not apply to any person who earns in excess of the amount determined by the Minister in terms of section 6 (3).

(3) If a proposed or existing work arrangement involves persons who earn amounts equal to or below the amounts determined by the Minister in terms of section 6 (3), any of the contracting parties may approach the CCMA for an advisory award about whether the persons involved in the arrangement are employees.

[S. 83A inserted by s. 21 of Act No. 11 of 2002.]

84. Duration of employment.—(1) For the purposes of determining the length of an employee's employment with an employer for any provision of this Act, previous employment with the same employer must be taken into account if the break between the periods of employment is less than one year.

(2) Any payment made or any leave granted in terms of this Act to an employee contemplated by subsection (1) during a previous period of employment must be taken into account in determining the employee's entitlement to leave or to a payment in terms of this Act.

85. Delegation.—(1) The Minister may in writing delegate or assign to the Director-General or any employee in the public service of the rank of assistant director or of a higher rank, any power or duty conferred or imposed upon the Minister in terms of this Act, except the Minister's powers in terms of sections 6 (3), 55 (1), 60, 83, 87 and 95 (2) and the Minister's power to make regulations.

(2) A delegation or assignment in terms of subsection (1) does not limit or restrict the Minister's authority to exercise or perform the delegated or assigned power or duty.

(3) Any person to whom a power or duty is delegated or assigned in terms of subsection (1) must exercise or perform that power or duty subject to the direction of the Minister.

(4) The Minister may at any time—

withdraw a delegation or assignment made in terms of subsection (1); and

withdraw or amend any decision made by a person exercising or performing a power or duty delegated or assigned in terms of subsection (1).

(5) The Director-General may in writing delegate or assign any power or duty conferred or imposed upon the Director-General by Chapter Ten of this Act to any employee in the Department of the rank of assistant director or of a higher rank.

(6) Subsections (2), (3) and (4) apply with changes required by the context to any delegations or assignments by the Director-General under subsection (5).

86. Regulations.—(1) The Minister may by notice in the *Gazette*, after consulting the Commission, make regulations regarding any matter that may be necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) A regulation regarding state revenue or expenditure may be made only with the concurrence of the Minister of Finance.

87. Codes of Good Practice.—(1) The Minister, after consulting NEDLAC—

must issue a Code of Good Practice on the Arrangement of Working Time;

must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child;

may issue other codes of good practice; and

may change or replace any code of good practice.

(2) Any code of good practice or any change to or replacement of a code of good practice must be published in the *Gazette*.

(3) Any person interpreting or applying this Act must take into account relevant codes of good practice.

(4) A Code of Good Practice issued in terms of this section may provide that the Code must be taken into account in applying or interpreting any employment law.

[Sub-s. (4) added by s. 22 of Act No. 11 of 2002.]

88. Minister's power to add and change footnotes.—The Minister may, by notice in the *Gazette*, add to, change or replace any footnote in this Act.

89. Representation of employees or employers.—(1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party:

In its own interest;

on behalf of any of its members;

in the interest of any of its members.

(2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of this Act if one or more of its members is a party to these proceedings.

90. Confidentiality.—(1) It is an offence for any person to disclose information which that person acquired while exercising or performing any power or duty in terms of this Act and which relates to the financial or business affairs of any other person, except if the information is disclosed in compliance with the provisions of any law—

to enable a person to perform a function or exercise a power in terms of an employment law;

for the purposes of the proper administration of this Act;

for the purposes of the administration of justice.

(2) Subsection (1) does not prevent the disclosure of any information concerning an employer's compliance or non-compliance with the provisions of any employment law.

(3) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only—

in accordance with the ethics of medical practice;

if required by law or court order; or

if the employee has in writing consented to the release of that information.

91. Answers not to be used in criminal prosecutions.—No answer by any person to a question by a person conducting an investigation in terms of section 53 or by a labour inspector in terms of section 66 may be used against that person in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement.

92. Obstruction, undue influence and fraud.—It is an offence to—

obstruct or attempt to influence improperly a person who is performing a function in terms of this Act;

obtain or attempt to obtain any prescribed document by means of fraud, false pretences, or by presenting or submitting a false or forged document;

pretend to be a labour inspector or any other person performing a function in terms of this Act;

refuse or fail to answer fully any lawful question put by a labour inspector or any other person performing a function in terms of this Act;

refuse or fail to comply with any lawful request of, or lawful order by, a labour inspector or any other person performing a function in terms of this Act;

hinder or obstruct a labour inspector or any other person performing a function in terms of this Act.

93. Penalties.—(1) Any magistrates' court has jurisdiction to impose a penalty for an offence provided for in this Act.

(2) Any person convicted of an offence in terms of any section mentioned in the first column of the table below may be sentenced to a fine or imprisonment for a period not longer than the period mentioned in the second column of that table opposite the number of that section.

OFFENCES AND PENALTIES

Section under which convicted	*Maximum term of imprisonment*
Section 33A	3 years
Section 43	6 years
Section 44	6 years
Section 46	6 years
Section 48	6 years
Section 90 (1) and (3)	1 year
Section 92	1 year

[Table substituted by s. 16 of Act No. 20 of 2013.]

94. This Act binds the State.—This Act binds the State except in so far as criminal liability is concerned.

95. Transitional arrangements and amendment and repeal of laws.—(1) The provisions of Schedule Three apply to the transition from other laws to this Act.

(2) The Minister may for the purposes of regulating the transition from any law to this Act add to or change Schedule

Three.

(3) Any addition or change to Schedule Three must be tabled in the National Assembly and takes effect—

if the National Assembly does not pass a resolution that the addition or change is not binding within 14 days of the date of the tabling; and

on publication in the *Gazette*.

(4) Section 186 of the Labour Relations Act, 1995, is hereby amended by the deletion of subparagraph (ii) of paragraph (c).

(5) The laws mentioned in the first two columns of Schedule Four are hereby repealed to the extent indicated opposite that law in the third column of that Schedule.

(6) The repeal of any law by subsection (5) does not affect any transitional arrangement provided for in Schedule Three.

96. Short title and commencement.—This is the Basic Conditions of Employment Act, 1997, and comes into effect on a date to be fixed by the President by proclamation in the *Gazette*.

SCHEDULE ONE
PROCEDURES FOR PROGRESSIVE REDUCTION OF MAXIMUM WORKING HOURS

1. Goal.—This Schedule records the procedures to be adopted to reduce the working hours of employees to the goal of a 40 hour working week and an eight hour working day—

(*a*)
through collective bargaining and the publication of sectoral determinations;

(*b*)
having due regard to the impact of a reduction of working hours on existing employment and opportunities for employment creation, economic efficiency and the health, safety and welfare of employees.

2. Collective bargaining.—When during negotiations on terms and conditions of employment, a party to the negotiations introduces the reduction of maximum working hours as a subject for negotiation, the parties must negotiate on that issue.

3. Role of Employment Conditions Commission.—The Commission may investigate the possibility of reducing working hours in a particular sector and area and make recommendations to the Minister thereon.

4. Investigation by Department of Labour.—(1) The Department of Labour must, after consultation with the Commission, conduct an investigation as to how the reduction of weekly working hours to a level of 40 hours per week may be achieved.

(2) The investigation must be completed and the report submitted to the Minister not later than 18 months after the Act has come into operation.

5. Reports.—(1) The Department of Labour must, after consultation with the Commission—

(*a*)
monitor and review progress made in reducing working hours;

(*b*)
prepare and publish a report for the Minister on the progress made in the reduction of working hours.

(2) The Department must publish reports every two years.

(3) The reports must be tabled at Nedlac and in Parliament by the Minister.

(4) The Minister may prescribe the returns to be submitted by employers, trade unions and councils on any matter concerning this Schedule.

SCHEDULE TWO

MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR FAILURE TO COMPLY WITH THIS ACT

1. This Schedule sets out the maximum fine that may be imposed in terms of Chapter Ten for a failure to comply with a provision of this Act.

2. The maximum fine that may be imposed—

(*a*)
for a failure to comply with a provision of this Act not involving a failure to pay an amount due to an employee in terms of any basic condition of employment, is the fine determined in terms of Table One or Table Two;

(*b*)
involving a failure to pay an amount due to an employee, is the greater of the amount determined in terms of in terms of any basic condition of employment, is the fine determined in terms of Table One or Table Two.

TABLE ONE: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R300 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R600 per employee in respect of whom the failure to comply occurs.
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R900 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R1200 per employee in respect of whom the failure to comply occurs
Four previous failures to comply in respect of the same provision within three years	R1500 per employee in respect of whom the failure to comply occurs

[Table One substituted by s. 17 of Act No. 20 of 2013.]

TABLE TWO:
MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply	200% of the amount due, including any

in respect of the same provision within three years	interest owing on the amount at the date of the order

SCHEDULE THREE
TRANSITIONAL PROVISIONS

[Schedule 3 amended by GNR 195 of 25 February, 2000.]

1. Definitions.—For the purposes of this Schedule—

"Basic Conditions of Employment Act, 1983" means the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

"domestic worker" means an employee defined as a "domestic servant" in section 1 (1) of the Basic Conditions of Employment Act, 1983;

"farm worker" means an employee who is employed mainly in or in connection with farming activities, and includes an employee who wholly or mainly performs domestic work in home premises on a farm;

"mineworker" means an employee employed at a mine whose hours of work are prescribed in terms of any regulation that is in force in terms of item 4 of Schedule 4 to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

"security guard" means an employee defined as a "guard" or a "security guard" in terms of the Basic Conditions of Employment Act, 1983;

"Wage Act, 1957" means the Wage Act, 1957 (Act No. 5 of 1957);

"wage determination" means a wage determination made in terms of section 14 of the Wage Act, 1957.

2. Application to public service.—This Act, except section 41, does not apply to the public service for 18 months after the commencement of this Act, unless a bargaining council concludes a collective agreement that a provision of this Act will apply from an earlier date.

3. Application to farm workers.—(1) Sections 6A, 10 (2A) and 14 (4A) of the Basic Conditions of Employment Act, 1983, continue to apply to the employment of a farm worker until such time as the matters regulated by those provisions are regulated by a sectoral determination applicable to the farm worker.

(2) Until regulated by a sectoral determination, section 17 (3) applies to farmworkers who work after 20:00 and before 04:00 at least five times per month or 50 times per year.

4. Payment in kind of domestic workers and farm workers.—(1) The definition of "wage" in section 1 (1) of the Basic Conditions of Employment Act, 1983, and the definition of "payment in kind" in the regulations published under that Act continue to apply to the employment of domestic workers and farm workers, until regulated by a sectoral determination.

(2) The Minister may, by notice in the *Gazette*, amend any cash amount prescribed in the definition of "payment in kind" in accordance with section 37 of the Basic Conditions of Employment Act, 1983, as if that section had not been repealed.

5. Ordinary hours of work.—An employer may require or permit an employee who is employed as a farm worker, mineworker or security guard to work ordinary hours of work in excess of those prescribed by section 9 (1) and (2) for the period specified in column two of Table One: Provided that—

any condition in column two of Table One is complied with;

the employee's hours of work do not exceed any limit on hours of work in any law or any wage-regulating measure applicable to that category of employee immediately before this Act came into effect;

the employee and his or her employer do not conclude an agreement in terms of section 11 and 12.

TABLE ONE

Farm workers	For a period of 12 months after the commencement date of this Act, provided that the employee's ordinary hours of work do not exceed 48 hours per week.
Mineworkers	For a period of 12 months after the commencement date of this Act, provided that the employee's total hours of work do not exceed any limit on hours or work prescribed in any applicable regulation that is in force in terms of item 4 of Schedule 4 to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).
Security guards	For a period of 12 months after the commencement date of this Act, provided that the employee's ordinary hours of work do not exceed 55 hours per week; and thereafter for a further period of 12 months, provided that the employee's ordinary hours of work do not exceed 50 hours per week.
Security guards in the private security sector	Despite the preceding sentence, for a period of 12 months after the commencement date of a sectoral determination for the private security sector, provided that the employee's ordinary hours of work do not exceed 55 hours per week; and thereafter for a further period of 12 months, provided that the employee's ordinary hours of work do not exceed 50 hours per week.

6. Leave pay.—(1) The entitlement in terms of section 20 (2) of an employee employed continuously before and after the commencement of this Act takes effect on the date on which, but for the enactment of this Act, the employee would next have commenced a leave cycle in terms of section 12 of the Basic Conditions of Employment Act, 1983, or any wage determination.

(2) Any accrued leave to which an employee was entitled in terms of section 12 of the Basic Conditions of Employment Act, 1983, or a wage determination, but which has not been granted by the date on which section 20 (2) takes effect with respect to that employee, must be added to the paid leave earned by that employee in terms of this Act.

(3) Section 22 (3) does not apply to any leave earned by the employee in respect of any period prior to the date on which this Act takes effect.

7. Pay for sick leave.—(1) Table Two applies in respect of any employee, as defined in the Basic Conditions of Employment Act, 1983, in employment at the commencement of this Act.

(2) An employee listed in column one who was in continuous employment before the commencement of this Act for the period set out in column two becomes entitled to the rights under section 22 (2) on the date listed in column three and section 22 (3) on the date listed in column four.

TABLE TWO

TRANSITIONAL ARRANGEMENTS IN RELATION TO SICK LEAVE

Employees as defined in the Basic Conditions of Employment Act, 1983	*Period of continuous employment before commencement date of this Act*	*Date of entitlement to six weeks' paid sick leave over 36 months sick leave cycle in terms of* section 22 (2)	*Date of entitlement to one day's paid sick leave every 26 days worked during the first six consecutive months of employment in terms of* section 22 (3)
Employees and regular day workers	Less than six months	Six months after commencement date of employment	Date on which employee began employment
Casual employees	Less than six months	Six months after commencement date of employment	Commencement date of this Act
Regular day workers and casual employees	More than six months	Commencement date of this Act	Not applicable
Employees (other than causal workers and regular day workers)	Between six and 12 months	Commencement date of this Act	Not applicable
Employees	More than 12 months	At conclusion of current sick leave cycle in terms of section 13 (1) of the Basic Conditions of Employment Act, 1983	Not applicable

(3) Any period of paid sick leave granted to an employee in accordance with Table Two, may be deducted from the employee's entitlement in terms of either section 22 (2) or section 22 (3), if—

it was taken before the commencement of this Act; or

it was taken during the period that the relevant section was in effect with respect to that employee.

8. Exemptions.—Any exemption granted under section 34 of the Basic Conditions of Employment Act, 1983, in force immediately before the commencement of this Act remains in force for the period for which the exemption was granted, or if the exemption was granted for an indefinite period, for a period of six months after the commencement of this Act as if that Act has not been repealed, unless it is withdrawn by the Minister, before the end of such period.

9. Wage determinations.—(1) Any wage determination and any amendment to a wage determination made in terms of section 15 of the Wage Act, 1957, in force immediately before the commencement of the Basic Conditions of Employment Amendment Act, 2002 (hereafter referred to as a "wage determination") is deemed to be a sectoral

determination made in accordance with section 55 of this Act.

(2) Any provision in a wage determination stipulating a minimum term or condition of employment is deemed to be a basic condition of employment defined in section 1 of this Act.

(3) The Minister may amend, cancel, suspend, clarify or correct any wage determination in accordance with Chapter Eight of this Act.

(4) The provisions of a wage determination may be enforced in accordance with Chapter Ten of this Act.

(5) Any prosecution concerning a contravention of, or failure to comply with, a binding wage determination or licence of exemption from 1 November 1998 until the commencement of the Basic Conditions of Employment Amendment Act, 2002, which prosecution commenced prior to or within three months of the commencement date of the Basic Conditions of Employment Amendment Act, 2002, must be dealt with in terms of the Wage Act, 1957, as if the Wage Act, 1957, had not been repealed.

(6) The Director of Public Prosecutions having jurisdiction is deemed to have issued a certificate in terms of section 23 (3) (a) of the Wage Act, 1957, in respect of any contravention or failure contemplated in subitem (5) in respect of which no prosecution is commenced within three months of the commencement date of the Basic Conditions of Employment Amendment Act, 2002.

[Item 9 substituted by s. 23 (a) of Act No. 11 of 2002.]

10. Exemptions to wage determination.—Any licence of exemption granted in respect of a wage determination in terms of section 19 of the Wage Act, 1957, in force immediately before the commencement of this Act is deemed to be withdrawn as from a date six months after the commencement date of the Basic Conditions of Employment Amendment Act, 2002.

[Item 10 substituted by s. 23 (b) of Act No. 11 of 2002.]

11. Agreements.—(1) Any agreement entered into before the commencement of this Act which is permitted by this Act remains valid and binding.

(2) Any provision in a collective agreement concluded in a bargaining council that was in force immediately before this Act came into effect remains in effect for—

six months after the commencement date of this Act in the case of a provision contemplated by section 49 (1) (a) to (d); and

18 months after the commencement date of this Act in the case of a provision contemplated by section 49 (1) (e).

SCHEDULE FOUR

LAWS REPEALED BY SECTION 95 (5)

Number and year of law	*Short title*	*Extent of repeal*
Act No. 5 of 1957	Wage Act, 1957	The whole
Act No. 48 of 1981	Wage Amendment Act, 1981	The whole
Act No. 3 of 1983	Basic Conditions of Employment Act, 1983	The whole
Act No. 26 of 1984	Wage Amendment Act, 1984	The whole

Act No. 27 of 1984	Basic Conditions of Employment Amendment Act, 1984	The whole
Act No. 104 of 1992	Basic Conditions of Employment Amendment Act, 1992	The whole
Act No. 137 of 1993	Basic Conditions of Employment Amendment Act, 1993	The whole
Act No. 147 of 1993	Agricultural Labour Act, 1993	Chapter 2
Act No. 50 of 1994	Agricultural Labour Amendment Act, 1994	Section 2
Act No. 66 of 1995	Labour Relations Act, 1995	Section 196

Footnotes

1
"Employee" is given a specific meaning in section 82 (1).

2
"Remuneration" is given a specific meaning in section 35 (5).

3
The Code of Good Practice issued by the Minister of Labour under section 87 (1) (a) will contain provisions concerning the arrangement of work and, in particular, its impact upon the health, safety and welfare of employees. Issues that would be included are shift work, night work, rest periods during working time, family responsibilities and work by children.

4
Section 90 protects the confidentiality of any medical examination conducted in terms of this Act.

5
In terms of section 2 (2) of the Public Holidays Act, 1994 (Act No. 36 of 1994), a public holiday is exchangeable for any other day which is fixed by agreement or agreed to between the employer and the employee.

6
In terms of section 187 (1) (e) of the Labour Relations Act, 1995, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.

7
The Minister must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child in terms of section 87 (1) (b).

8
Section 90 (3) protects the confidentiality of any medical examination conducted in terms of this Act.

9
An answer by a person to a question of a labour inspector may not be used in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement (s. 91).