

TITLE 28**Chapter 28:01****PREVIOUS CHAPTER****LABOUR ACT**

Acts 16/1985, 12/1992, 20/1994 (s. 19), 22/2001, 17/2002.

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AN ACT to declare and define the fundamental rights of employees; to define unfair labour practices; to regulate conditions of employment and other related matters; to provide for the control of wages and salaries; to provide for the appointment and functions of workers committees; to provide for the formation, registration, and functions of trade unions, employers organizations, and employment councils; to regulate the negotiation, scope and enforcement of collective bargaining agreements; to provide for the establishment and functions of the Labour Court; to provide for the prevention of trade disputes, and unfair labour practices; to regulate and control collective job action; to regulate and control employment agencies; and to provide for matters connected with or incidental to the foregoing.

[Date of commencement: 15th December, 1985.]

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Labour Act [Chapter 28:01].

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

2 Interpretation

In this Act—

“accreditation proceedings” means proceedings held in terms of section forty-one;

“agent union” means a trade union acting as an agent union in terms of section thirty-one;

“appropriate trade union”, in relation to any employees means—

(a) a trade union which is an agent union for the employees concerned; or

(b) where there is no agent union for the employees concerned, the trade

union which is registered or certified for interests which correspond most closely to those of the employees concerned;

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

“assessor” means a member of the Labour Court appointed in terms of section eighty-

four;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“association dues” means money levied by an employers organization in terms of section fifty-two;

“casual work” means work for which an employee is engaged by an employer for not more than a total of six weeks in any four consecutive months;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

[See Commentary under s.12 (3)]

“certificate of registration” means a certificate relating to the registration of an employment agency issued in terms of paragraph (a) of subsection (2) of section one hundred and fifteen;

“certified”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“Chairman”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“check-off scheme” means a scheme whereby an employer, with the consent of the employee concerned, deducts union dues directly from the remuneration of his employees and remits such dues to the trade union representing them;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“code”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“collective bargaining agreement” means an agreement negotiated in accordance with this Act which regulates the terms and conditions of employment of employees;

“collective job action” means an industrial action calculated to persuade or cause a party to an employment relationship to accede to a demand related to employment, and includes a strike, boycott, lock-out, sit-in or sit-out, or other such concerted action;

“compulsory arbitration” means compulsory arbitration in terms of section ninety-eight;

“contractor” means a person who renders to an employer services which are related to or connected with those of the employer’s undertaking;

“Deputy Chairman”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“designated agent” mean a person appointed to be a designated agent of an employment council in terms of section sixty-three;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“disciplined force” means—

- (a) a military, air or naval force;
- (b) a police force;
- (c) a prison service;
- (d) a person employed in the President’s Office on security duties;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“dispute” means a dispute relating to any matter concerning employment which is governed by this Act;

“dispute of interest” means any dispute other than a dispute of right;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

This is a dispute over which an employee has no legal claim and is usually settled through power play. A demand for a 100% salary increase during bargaining is a dispute of interest and while strikeable it is not adjudicable.

[See Commentary under s.104 (3) (f).]

“dispute of right” means any dispute involving legal rights and obligations, including any dispute occasioned by an actual or alleged unfair labour practice, a breach or alleged breach of this Act or of any regulations made under this Act, or a breach or alleged breach of any of the terms of a collective bargaining agreement or contract of employment;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“employee” means any person who performs work or services for another person for remuneration or reward on such terms and conditions that the first-mentioned person is in a position of economic dependence upon or under an obligation to perform duties for the second-mentioned person, and includes a person performing work or services for another person—

(a) in circumstances where, even if the person performing the work or services supplies his own tools or works under flexible conditions of service, the hirer provides the substantial investment in or assumes the substantial risk of the undertaking; or

(b) in any other circumstances that more closely resemble the relationship between an employee and employer than that between an independent contractor and hirer of services;

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

At common law various tests are used in identifying whether a person is an “employee” or “independent contractor”.

The control test

This test assumes that the worker is subject to the command and control of the employer as to the manner in which the work is done. The employer is entitled to prescribe not only what must be done and how it must be done but also when and where it must be done. The problem with this test is that, when used on its own, it cannot adequately assist in areas where the work done by certain persons such as doctors, scientists, and pilots cannot normally be controlled. However, the element of control is a very important factor particularly when considered with other factors that follow below.

Organisation test

The test is based on the assumption of whether the person is part and parcel of the organization, that is, the extent to which the person (worker) is integrated (made a part) into the company of the employer. This test is too vague for certainty and courts cannot rely exclusively on it without taking into account other factors.

The multiple or dominant impression test

It is clear that the Act has incorporated this test by the insertion of “in any other circumstances that more closely resemble the relationship between an employee and employer”. Where various indications point to an employee status the person will be deemed to be an employee in terms of the Act, and the contract in question will be taken to be a contract of service and not services. The factors that are considered under the dominant impression test are, inter alia:

- the right to supervision (whether the employer has a right to supervise the other person);
- how dependent the person is on employer in the performance of duties
- whether the person can perform work for other people at will
- whether the person is obliged to perform his or her duties personally (in the case of an independent contractor it does not matter who does the work as long as the work gets done)
- whether the worker provides his own tools or equipment (the new Act, however, shows that this factor is irrelevant)
- whether the employer has the right to discipline the person, (*Market Investigations Ltd v Min of Social Security* (1969) 2 QB 173). When all the above factors are considered together they create a dominant impression which shows that a person is a worker or not [*Smit v Workmen’s Compensation Commissioner* 1979 (1) SA 51 (A), see also *Ongevallekommissaris v Onderlinge Versekeringsnootskap AVBOB* (1976) 4 SA 446(A); *Cargo Carriers (Pty) Ltd v BP Zambia Ltd* HH 174-79 (1998); *S v Lyons Brooke Bond Ltd* (1981) ZLR 384 SC; *Chiworese v Rixi Taxi Services Coop* HH – 13-93 (HC) 848/92, *Southampton Assurance v Mutuma & anor* (1990) ZLR 12 HC; *Hall v Lorimer* (1994) IRLR 171 CA; and *Sec of state for Trade*

and industry v Bottrill (2000) 1 ALL ER CA).

The new Act requires the court to determine whether the person in question is “economically dependent ” on the alleged employer. In the USA they refer to this as the economic realities test and the court examines whether the worker (person) is financially dependent on the employer.

Lastly, where the alleged Employer is found to have provided the substantial investment and assumed the substantial risk of the undertaking, this will be an additional factor showing that the person is an employee.

“employer” means any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him, and includes—

(a) the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed; and

(b) the judicial manager of such person appointed in terms of the Companies Act [Chapter 24:03];

(c) the liquidator or trustee of the insolvent estate of such person, if authorised to carry on the business of such person by—

(i) the creditors; or

(ii) in the absence of any instructions given by the creditors, the Master of the High Court;

(d) the executor of the deceased estate of such person, if authorised to carry on the business of such person by the Master of the High Court;

(e) the curator of such person who is a patient as defined in the Mental Health Act [Chapter 15:12] (No. 15 of 1996), if authorised to carry on the business of such person in terms of section 88 of that Act;

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

“employers organization” means any association or organization formed to represent or advance the interests of any employers or groups thereof in respect of matters relating to employment;

“employment agency” means any business carried on for gain or reward in which employment of any nature whatsoever is either procured for persons seeking work or is offered to such persons on behalf of third parties, or in which advice in regard to such procurement or offering of employment is given to such persons or third parties, as the case may be;

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

“employment board”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“employment code” means an employment code of conduct registered in terms of section one hundred and one;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“employment council” means an employment council formed in terms of section fifty-six or fifty-seven;

“employment officer” means an officer designated as such in terms of his employment in the Public Service;

“equal remuneration”, for the purposes of subsection (2a) of section five, means rates of remuneration that have been established without differentiation on the basis of gender;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

What does “equal” mean?

We get the definition from the US Supreme Court in the case of Schultz v Wheaton Glass (1970) wherein it was held that “the equal work standard required only that jobs be substantively equal, not identical, the appropriate information to use when deciding if jobs are substantially equal”

Work of equal value means work that is similar or substantially similar skills, duties, responsibilities and conditions. Equal remuneration in our context means rates of

remuneration that have been established without differentiation on the basis of gender.

Employers should note, however, that differences in pay between men and women doing equal work are legal if these differences are based on: Seniority

- Merit or quality of performance
- Quality or quantity of production
- Some factor other than gender.

What “some factor other than gender” means?

This includes the following:

- Shift differentials, temporary assignments, bona fide training programmes, differences based on ability, training or experience.

Can pay discrimination exist in different pay rates for dissimilar jobs?

This question is answered in *Gunther v County of Washington*, US Sup. Ct. 451 US 161 (1981) the jail matrons claimed that their work was comparable to that performed by male guards. In this case matrons salaries were 70% that of the guards and the court held that this was discriminatory.

Can Employers rely on market forces as factors justifying unequal pay for work of equal value?

To some extent the answer is in the affirmative. In *Lemons v City and County of Denver*, nurse Lemons argued unsuccessfully that her job, held predominantly by women, was illegally paid less than the jobs held predominantly by men (tire servicemen, sign painters, tree trimmers) because hers required more education and skill and, therefore, paying more to male jobs because they commanded higher rates in local labour market was discriminatory. The court held that the employer was a price taker and hence there was no discrimination. Extreme caution must be taken before the above is followed by employers as it can be challenged. For example, where does the law end and market forces take over? Secondly, will the Labour Court not be persuaded by social justice considerations in making its decision?

Can employer justify pay differentials on the basis of different bargaining processes? No, “because this will help him circumvent the principle of equal” [*Enderby v Frenchay Health Authority*].

“federation” means a group of trade unions or employers organizations, each of which is representative of a single undertaking or industry;

“fixed date” means the 15th December, 1985;

“HIV/AIDS status”, in relation to any individual, means the presence or otherwise in that individual of the human immuno-deficiency virus;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“Labour Court means the Labour Court established by section eighty-four;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“labour officer” means a labour officer referred to in paragraph (b) of subsection (1) of section one hundred and twenty-one;

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

“managerial employee” means an employee whose contract of employment requires or permits him to hire, transfer, promote, suspend, lay off, dismiss, reward, discipline or adjudge the grievances of other employees;

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

“maximum wage notice” means a notice issued in terms of section twenty-two;

“member”, in relation to the Labour Court, means a President of the Labour Court or any assessor;

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

“membership fees”, in relation to a trade union or employers organization, means those fees chargeable by the trade union or employers organization concerned in respect of membership or renewal thereof;

“minimum wage notice” means a notice issued in terms of section twenty;

“Minister”, in relation to—

(a) every provision of this Act except for Part XI, means the Minister of Public Service, Labour and Social Welfare, or any other Minister to whom the President may, from time to time, assign the administration of this Act except for Part XI;

(b) Part XI, means the Minister of Justice, Legal and Parliamentary Affairs, or any other Minister to whom the President may, from time to time, assign the administration of Part XI;

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

“prescribed” means prescribed by regulations made in terms of section one hundred and twenty-seven;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“region” means any area within Zimbabwe declared by the Minister, by statutory instrument, to be a region for the purposes of this Act;

“Registrar” means the Registrar of Labour referred to in paragraph (a) of subsection (1) of section one hundred and twenty-one, and includes an Assistant Registrar referred to in that paragraph;

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

“relevant particulars” means such information and other particulars as are within the interests of a workers committee, trade union, employers organization or federation, as the case may be, and which relate to the issue that is legitimately before the organization requesting such information and other particulars;

“retrench” , in relation to an employee, means terminate the employee’s employment for the purpose of reducing expenditure or costs, adapting to technological change, reorganising the undertaking in which the employee is employed, or for similar reasons, and includes the termination of employment on account of the closure of the enterprise in which the employee is employed;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“Retrenchment Board” means the board established by regulations made in terms of section seventeen to consider matters related to the retrenchment of employees referred to it in terms of section twelve C;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“seasonal work” means work that is, owing to the nature of the industry, performed only at certain times of the year;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“technical or vocational education” means education provided at a technical or vocational institution;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“technical or vocational institution” means an institution registered as such in terms of the law relating to technical or vocational education;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

“trade union” means any association or organization formed to represent or advance the interests of any employees or class thereof in respect of their employment;

“Tribunal”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“unfair labour practice” means an unfair labour practice specified in Part III, or declared to be so in terms of any other provision of this Act;

“union agreement” means a collective bargaining agreement that has been negotiated by an appropriate trade union and an employer or employers organization;

“union dues” means money levied by a trade union in terms of section fifty-two;

“work of equal value”, for the purposes of subsection (2a) of section five, means work that involves similar or substantially similar skills, duties, responsibilities and conditions;

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

[See Commentary under definition of Equal remuneration]

“workers committee” means a workers committee appointed or elected in terms of

Part VI;

“works council” means a council composed of an equal number of representatives of an employer and representatives drawn from members of a workers committee.

2A Purpose of Act

(1) The purpose of this Act is to advance social justice and democracy in the workplace by—

(a) giving effect to the fundamental rights of employees provided for under Part II;

(b) giving effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organisation and as a member of or party to any other international organisation or agreement governing conditions of employment;

(c) providing a legal framework within which employees and employers can bargain collectively for the improvement of conditions of employment;

(d) the promotion of fair labour standards;

(e) the promotion of the participation by employees in decisions affecting their interests in the work place;

(f) securing the just, effective and expeditious resolution of disputes and unfair labour practices.

(2) This Act shall be construed in such manner as best ensures the attainment of its purpose referred to in subsection (1).

(3) In the event of inconsistency between this Act and any other enactment then, unless the enactment concerned expressly excludes or modifies the provision of this Act sought to be applied—

(a) this Act shall prevail over the enactment concerned to the extent of the inconsistency; and

(b) the enactment concerned shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with this Act.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

By setting out the purpose (s) of the statute the legislature sought to encourage a purposive approach to its implementation [Business South Africa v COSATU & anor. By “purposive approach” is meant a method of statutory interpretation that seeks to give effect to the general purpose of the Act and the specific purpose of the section under scrutiny [Ndlovu v Mullins No & anor]. In simple terms, this means the Act must be interpreted in a holistic manner, that is, by reading each provision in the light of the others. In some instances, however, it may be necessary to interpret a provision restrictively in order to give effect to the purpose underlying it

“Advancing social justice and democracy in the workplace ...”

Social justice according to M. Brassey¹ is concerned with the way in which benefits and burdens are distributed among members of society.

Democracy in the workplace¹ entails giving a greater say in the process of decision-making to those whom decisions relate, e.g. right to vote, right to be consulted or heard before a decision is taken.

Employers will be expected to observe these provisions in their dealings with employees and their representatives.

Section 2A(b) – ‘giving effect to the international obligations of the Republic of Zimbabwe as a member state of the ILO and as a member of or party to any other international organisation or agreement governing conditions of employment’.

This subsection is the same as that of the SA LR Act 1995 section 1 (b) page 2. The ILO was established by the Treaty of Versailles in 1919 and it establishes minimum labour standards by means of conventions that member states are invited to ratify. Ratification has the same effect as the conclusion of a treaty in international law and creates an obligation to take such action as is required to give the convention the force of domestic law. The ILO conventions binding in Zimbabwe (ratified) are as

follows:

1. Commentary on the LR Act (SA) 2000 @ A1:4-5 Juta
2. D du Toit et al (2000) Labour Relations Law – Juta @ 460

CONVENTION DATE RATIFIED

1. Weekly rest (Industry) Convention, 1921 No 14 6\6\1980
2. Equality of Treatment (Accident Compensation) Convention
1925 No. 19
3. Minimum Wage – Fixing Machinery Convention 1928 No. 26 16\9\93
4. Forced Labour Convention, 1930 No. 29 27\8\98
5. Underground Work (Women) Convention 1935 No. 45 6\6\80
6. Labour Inspection Convention 1947 No 81 16\9\93
7. Freedom of Ass & Protection of the Rights to Organise
Convention 1948 No 87 N\A
8. Right to organise & Collective Bargaining Convention,
1948 (No.98) 27\8\98
9. Equal Remuneration Convention, 1951 No 100 14\12\89
10. Abolition of Forced Labor Convention, 1957 No. 105 27\8\98
11. Discrimination (Employment & Occupation) Convention,
1958 No. 111 23\6\99
12. Labor Inspection (Agric) Convention, 1969 No.129 16\9\93
13. Workers’ Representatives Convention, 1971(No. 135) 27\8\98
14. Paid educational leave Convention, 1974 No 140 27\8\98
15. Tripartite Consultation (ILO Stds) Convention,
1976 No. 144 14\12\89
16. Labour Administration Convention 1978 No. 150 27\8\98
17. Vocational Rehabilitation & Employment
(Disabled Persons) Convention, 1983 (No. 159) 27\8\98
18. Chemicals Convention, 1990 No. 170 27\8\98
19. Worst Forms of Child Labour Convention, 1999 No. 182 Zimbabwe
Member since 1980 (20 conventions ratified and in force.) 11\2\00

Implications

In interpreting the provisions of the Act the Labour Court, where necessary is likely to refer to the above obligations of the Republic as a member state of the ILO.

3 Application of Act

(1) Subject to this section, this Act shall apply to all employers and all employees.

(2) In regard to employees of the State, this Act shall, subject to subsection (3), apply only to—

(a) members of the Public Service; and

(b) such other employees of the State, other than members of a disciplined force, as the President may designate by statutory instrument; and shall bind the State in its capacity as employer of the persons referred to in paragraphs (a) and (b).

(3) In the event of any dispute—

(a) between any member of the Public Service and the Public Service Commission involving misconduct or suspected misconduct on the part of the member, Part XII shall not apply to such dispute except for section ninety-seven, and, for the purposes of such dispute, the references in paragraphs (b) and (d) of subsection (1) of that section to an employment code shall be construed as being references to the appropriate service regulations prescribing the discipline of members of the Public Service made in terms of the Public Service Act [Chapter 16:04];

(b) between any member of the Public Service, or trade union, organisation, association or federation representing members of the Public Service, and the Public Service Commission, not being a dispute referred to in paragraph (a)—

(i) no person other than an employment council registered for the Public

Service or a designated agent of that employment council shall have jurisdiction in the matter; and

(ii) Part XII shall not apply to such dispute except for section ninety-seven, and then only upon completion of the procedures provided for the settlement of disputes or grievances by the appropriate service regulations made in terms of the Public Service Act [Chapter 16:04] or in terms of any collective bargaining agreement negotiated by the employment council registered for the Public Service.

(4) For the avoidance of doubt, nothing in this Act shall be construed as affecting the exclusive responsibility of the Public Service Commission under the Constitution and the Public Service Act [Chapter 16:04] for the creation or abolition of posts or grades in the Public Service, the appointment of persons to such posts or grades and the discipline of members of the Public Service.

(5) This Act shall not apply to or in respect of—

(a) members of a disciplined force of the State; or

(b) members of any disciplined force of a foreign State who are in Zimbabwe under any agreement concluded between the Government and the government of that foreign State.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

PART II

FUNDAMENTAL RIGHTS OF EMPLOYEES

4 Employees' entitlement to membership of trade unions and workers committees

(1) Notwithstanding anything contained in any other enactment, every employee shall, as between himself and his employer, have the following rights—

(a) the right, if he so desires, to be a member or an officer of a trade union;

(b) where he is a member or an officer of a trade, the right to engage in the lawful activities of such trade union for the advancement or protection of his interests;

(c) the right to take part in the formation and registration of a trade union;

(d) the same rights, mutatis mutandis, as are set out in paragraphs (a), (b), and (c) in relation to workers committees.

(2) Every employee shall have the right to be a member of a trade union which is registered, as the case may be, for the undertaking or industry in which he is employed if he complies with the conditions of membership.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) No term or condition of employment and no offer of employment shall include a requirement that an employee or prospective employee shall undertake—

(a) if he is a member or officer of a trade union or workers committee, to relinquish his membership or office of such trade union or workers committee; or

(b) not to take part in the formation of a trade union or workers committee;

and any such requirement shall be void.

(4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any infringement or threatened infringement of a right specified in subsection (1) shall be entitled to apply under Part XII for either or both of the following remedies—

(a) an order directing the employer or other party concerned to cease the infringement or threatened infringement, as the case may be;

(b) an order for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be.

Section 4 of the new Act now allows managerial employees by implication to be members or officers of a trade union. "Yellow dog" contracts of employment, that require an employee or prospective employees to renounce membership of a trade

union which in return for an offer of employment are unlawful (s4 (3)).

4A Prohibition of forced labour

(1) Subject to subsection (2), no person shall be required to perform forced labour.

(2) For the purposes of subsection (1) “forced labour ” does not include—

(a) any labour required in consequence of the sentence or order of a court;

or

(b) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court—

(i) is reasonably necessary in the interests of hygiene or for the maintenance or management of the place at which he is detained; or

(ii) is permitted in terms of any other enactment; or

(c) any labour required of a member of a disciplined force in pursuance of his duties as such or any labour required of any person by virtue of an enactment in place of service as a member of any such force or service; or

(d) any labour required by way of parental discipline; or

(e) any labour required by virtue of an enactment during a period of public emergency or in the event of any other emergency or disaster that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or disaster, for the purpose of dealing with that situation.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

5 Protection of employees against discrimination

(1) No employer shall discriminate against any employee or prospective employee on grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or, subject to the Disabled Persons Act [Chapter 17:01], any disability referred to in the definition of “disabled person” in that Act, in relation to—

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(a) the advertisement of employment; or

(b) the recruitment for employment; or

(c) the creation, classification or abolition of jobs or posts; or

(d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits; or

(e) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or

(f) the provision of facilities related to or connected with employment; or

(g) any other matter related to employment.

The new Act outlaws discrimination against any employee or prospective employee on grounds, inter alia, of HIV/AIDS status. In the case of *HOFFMAN v SA Airways* (2000) 21 ILJ 2357 (CC) the Constitutional court of South Africa found that Hoffman had been denied employment as a cabin attendant by the airline because of his HIV – positive status.

Hoffman applied to SAA for employment as a cabin attendant and went through a four – stage selection process and was found, together with two others to be a suitable candidate for employment. This decision was subject to a medical examination which included a blood test for HIV/AIDS. While found to be clinically fit, his blood test, however, showed that he was HIV positive. He was therefore regarded as unsuitable for employment as a cabin attendant and was not employed. Hoffman challenged the constitutionality of the refusal to employ him in the high court alleging the refusal to employ him constituted un fair discrimination in violation of his constitutional right to equality, human dignity and fair labour practices. SAA opposed the application

arguing that its flight crew had to be fit for world wide duty and this entitled having them inoculated against yellow fever but that persons who were HIV positive could react negatively to the vaccine and were not permitted to take it.

They could therefore contract yellow fever and pass it on to passengers in addition to contractive opportunistic diseases. The High Court found for SAA but Hoffman appealed directly to the constitutional court.

The court was satisfied that SAA discriminated against Hoffman because of his HIV status. The Medical evidence showed that not all persons leaving with HIV could not be vaccinated against yellow fever or are prone to contracting infectious diseases. Secondly it was observed that SAA's conduct was irreconcilable with the stated purpose of its practice in that existing cabin attendants were not tested for HIV AIDS, hence passing the same health safety and operation hazards as prospective cabin attendants.

While the court accepted the legitimate commercial requirements when determining whether to employ an individual or not, it held that stereotyping and prejudice must not be allowed to creep in under the guise of commercial interests. The court ordered SAA to instate Hoffman, that is, employ him as cabin attendant with effect from the date of the order.

(2) No person shall discriminate against any employee or prospective employee on the grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or, subject to the Disabled Persons Act [Chapter 17:01], any disability referred to in the definition of "disabled person" in that Act; in relation to—

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

- (a) the advertisement of employment; or
- (b) the recruitment of persons; or
- (c) the introduction of prospective employees for jobs or posts; or

any other matter related to employment.

(2a) No employer shall fail to pay equal remuneration to male and female employees for work of equal value.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any act or omission of an employer in contravention of subsection (1) shall be entitled to claim or apply under Part XII, as the case may be, for either or both of the following remedies—

(a) damages from the employer for any loss caused directly or indirectly as a result of the contravention;

(b) an order directing the employer to redress the contravention, including an order to employ any person, notwithstanding that the vacancy in question has already been filled and notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged.

(5) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any act or omission of any person in contravention of subsection (2) shall be entitled to claim or apply under Part XII, as the case may be, for either or both of the following remedies—

(a) damages from such person for any loss caused either directly or indirectly as a result of the contravention;

(b) an order directing such person to redress the contravention.

(6) For the purposes of this section, a person shall be deemed to have discriminated if his act or omission causes or is likely to cause persons of a particular race, tribe, place

of origin, political opinion, colour, creed or gender to be treated—

- (a) less favourably; or
- (b) more favourably;

than persons of another race, tribe, place of origin, political opinion, colour, creed or gender, unless it is shown that such act or omission was not attributable wholly or mainly to the race, tribe, place of origin, political opinion, colour, creed or gender of the persons concerned.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(6a) Where, notwithstanding that any act or omission referred to in subsection (6) is not attributable wholly or mainly to the race, tribe, place of origin, political opinion, colour, creed or gender of a person, it is nevertheless shown that any act, practice or requirement by an employer causes persons of a particular description by race, tribe, place of origin, political opinion, colour, creed or gender to be treated less favourably than persons of any other such description, it shall be presumed, unless the act, practice or requirement concerned can be justified on any of the grounds specified in subsection (7), that such person was unlawfully discriminated against.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(7) Notwithstanding subsections (1) and (2), no person shall be deemed to have discriminated against another person—

- (a) on the grounds of gender or pregnancy; where—
 - (i) in accordance with this Act or any other law, he provides special conditions for female employees; or
 - (ii) in accordance with this Act or any other law, or in the interests of decency or propriety, he distinguishes between employees of different genders; or
 - (iii) it is shown that the act or omission concerned was done or omitted to be done, as the case may be, by or on behalf of a men's or women's or boys' or girls' organization in the bona fide pursuit of the lawful objects of such organization;

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

- (b) on the grounds of political opinion or creed where it is shown that the act or omission concerned was done or omitted to be done, as the case may be, by or on behalf of a political, cultural or religious organization in the bona-fide pursuit of the lawful objects of such organization;

- (c) on the grounds of race or gender if the act or omission complained of arises from the implementation by the employer of any employment policy or practice aimed at the advancement of persons who have been historically disadvantaged by discriminatory laws or practices;

- (d) if the act or omission complained of arises from the implementation by the employer of any employment policy or practice aimed at assisting disabled persons as defined in the Disabled Persons Act [Chapter 17:01];

- (e) if any distinction, exclusion or preference in respect of a particular job is based on the narrowly defined inherent operational requirements, needs and necessities of that particular job.

[subparas (c), (d) and (e) inserted by Act 17 of 2002 with effect from 7th March, 2003.]

Meaning of “inherent requirements” and its implications?

In some jurisdictions the above is referred to as a “genuine occupational requirement or qualification”. The comparable text in the European Social Charter (which relates only to sex discrimination) allows departure from the principle of equality of opportunity and treatment for ‘those occupational activities.. for which, by reason of their nature or the context in which they are carried out, the sex of the worker constitutes a determining factor’. Therefore, refusal by an employer to appoint or promote a person who doesn't measure up to an inherent requirement of the job in question is justifiable and constitutes defense to a claim of unfair discrimination.

Examples

A person with extremely poor eyesight cannot be employed as an air line pilot, truck

driver, or sighter, but he/she may well be suited to a range of other occupations.

In *Whitehead v Woolworths (Pvty) Ltd* (1999) ‘inherent requirement’ was defined as an ‘indispensable attribute’ which must relate in an inescapable way to the performing of the job” e.g. age, race or gender. Thus sex and, less commonly, race, may be valid reasons for discrimination where it is essential to the nature of the job to employ a person of a particular sex or racial group. In *Etan plc v Rowan* (198), a male applicant for the post of Sales Assistant in a dress shop was rejected because considerations of decency and privacy precluded him from working in fitting rooms but the EAT said these aspects of the job could have been performed by women members of staff and that refusal to employ the applicant was therefore discriminatory.

In some instances indirect unfair discrimination can be established, for example, where the job area is designed in such a manner that people of a particular group would not be able to discharge it. That is, insistence of Air Hostesses being of a particular height so as to reach goods cabins, might be discriminatory to people of Chinese/Japanese extraction who are on average shorter than people from other groups.

Employers can use the defense of authenticity in justifying their discrimination, for example, in the interest of authenticity it would not be discriminatory to insist on a Chinese person to work as a chef in a Chinese restaurant. In *Fesel v Masonic Home of Delaware Inc.* it was held that male nurses could justifiably be excluded from a maternity hospital despite the presence of male gynecologists. It will not be discrimination to have only a female employee to do body searches or enter female toilets while they are in use [fair discrimination].

(8) It shall be no defence to a charge in respect of a contravention of subsection (1) or (2) to prove that—

(a) the employee or prospective employee concerned was not in fact taken into employment by the employer concerned or that such employee would, in any case, not have been taken into such employment for any other lawful reason; or

(b) the employee or prospective employee concerned has left or has not left the employment of the employer concerned; or

(c) the employee or prospective employee concerned has subsequently been taken into employment by the employer concerned in circumstances showing that he has not been discriminated against; or

(d) the employer concerned subsequently withdrew or did not fill the vacancy; or

(e) the person charged is no longer committing any contravention of subsection (1) or (2); or

(f) the employee or prospective employee concerned was party to the alleged contravention or did not complain about it; or

(g) it was in the business interests of the person charged to commit the contravention; or

(h) the contract or agreement which forms the subject of the charge was entered into prior to the fixed date.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

6 Protection of employees’ right to fair labour standards

(1) No employer shall—

(a) pay any employee a wage which is lower than that to fair labour specified for such employee by law or by agreement made under this Act; or

(b) require any employee to work more than the maximum hours permitted by law or by agreement made under this Act for such employee; or

(c) fail to provide such conditions of employment as are specified by law or as may be specified by agreement made under this Act; or

(d) require any employee to work under any conditions or situations which are below those prescribed by law or by the conventional practice of the

occupation for the protection of such employee's health or safety; or

(e) hinder, obstruct or prevent any employee from, or penalize him for, seeking access to any lawful proceedings that may be available to him to enable him lawfully to advance or protect his rights or interests as an employee.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

7 Protection of employees' right to democracy in the work place

(1) No person shall—

(a) hinder, obstruct or prevent any employee from forming or conducting any workers committee for the purpose of airing any grievance, negotiating any matter or advancing or protecting the rights or interests of employees;

(b) threaten any employee with any reprisal for any lawful action taken by him in advancing or protecting his rights or interests.

(2) Every employer shall permit a labour officer or a representative of the appropriate trade union or employment board, if any, to have reasonable access to his employees at their place of work during working hours for the purpose of—

(a) advising the employees on the law relating to their employment; and

(b) advising and assisting the employees in regard to the formation or conducting of workers committees and trade unions; and

(c) ensuring that the rights and interests of the employees are protected and advanced;

and shall provide such labour officer or representative of the appropriate trade union or employment board, if any, with reasonable facilities and access for the exercise of such functions.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(4) Notwithstanding subsection (3), nothing done to prevent any disruption of normal production processes, or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (1) or (2).

PART III

UNFAIR LABOUR PRACTICES

8 Unfair labour practices by employer

An employer of or, for the purpose of paragraphs (g) and (h), an employer or any other person commits an unfair labour practice if, by act or omission, he—

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(a) prevents, hinders or obstructs any employee in the exercise of any right conferred upon him in terms of Part II; or

(b) contravenes any provision of Part II or of section eighteen; or

[inserted by Act 22 of 2001 with effect from the 20th May, 2002.]

(c) refuses to negotiate in good faith with a workers committee or a trade union which has been duly formed and which is authorized in terms of this Act to represent any of his employees in relation to such negotiation; or

(d) refuses to co-operate in good faith with an employment council or employment board on which the interests of any of his employees are represented; or

(e) fails to comply with or to implement—

(i) a collective bargaining agreement; or

(ii) a decision or finding of an employment council or employment board on which any of his employees are represented; or

(iii) a decision or finding made under Part XII; or

(iv) any determination or direction which is binding upon him in terms of this Act;

or

(f) bargains collectively or otherwise deals with another trade union, where a registered trade union representing his employees exists.
[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(g) demands from any employee or prospective employee any sexual favour as a condition of—

(i) the recruitment for employment; or

(ii) the creation, classification or abolition of jobs or posts; or

(iii) the improvement of the remuneration or other conditions of employment of the employee; or

(iv) the choice of person for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or

(v) the provision of facilities related to or connected with employment; or

(vi) any other matter related to employment;

(h) engages in unwelcome sexually-determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace.

[paras (g) and (h) inserted by Act 17 of 2002 with effect from 7th March, 2003.]

S8(g) provides for what is called quid pro quo (something for something) type of sexual harassment and s8 (h) provides for the environmental type of sexual harassment. Not only an employee but also a prospective employee can be sexually harassed and employers should educate their employees about the new provisions that can attract numerous law suits.

9 Unfair labour practices by trade union or workers committee

A trade union or a workers committee commits an unfair labour practice if by act or omission it—

(a) prevents, hinders or obstructs an employee in the exercise of any right conferred upon him in terms of Part II; or

(b) contravenes any of its constitution; or

(c) fails to represent an employee's interests with respect to any violation of his rights under this Act or under a valid collective bargaining agreement, or under a decision or finding of an employment council or employment board, or under Part XII; or

(d) fails to comply with or to implement any decision or finding of an employment council or employment board, or any decision or finding made under Part XII, or any determination or direction under this Act which is binding upon it; or

(e) not being registered, purports to act as a collective bargaining agent in terms of Part X or participates in the collection of union dues; or

(f) recommends collective job action in contravention of a valid collective bargaining agreement; or

(g) except as may be authorized in terms of this Act, purports to act as the collective bargaining agent for employees, or calls for collective job action when another trade union has duly been registered to represent the employees concerned; or

(h) purports to enter upon an agency agreement or collective bargaining agreement when another trade union has been duly registered for the workers concerned.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

10 Minister may prescribe further unfair labour practices

(1) The Minister may, after consultation with the Labour Court, from time to time, prescribe by statutory instrument acts or omissions which constitute unfair labour practices, whether by employers, employees, workers committees or trade unions or otherwise and may from time to time vary, amend or repeal any such notice.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) Before exercising his powers in terms of subsection (1), the Minister shall publish in the Gazette notice of intent and shall call for any objections thereto within a period

specified in such notice.

PART IV

GENERAL CONDITIONS OF EMPLOYMENT

11 Employment of young persons

(1) Subject to subsection (3), no employer shall employ any person in any occupation—

- (a) as an apprentice who is under the age of thirteen years;
- (b) otherwise than as an apprentice who is under the age of fifteen years.

(2) Any contract of employment entered in contravention of subsection (1), and any contract of apprenticeship with an apprentice between the ages of thirteen and fifteen years which was entered without the assistance of the apprentice's guardian, shall be void and unenforceable against the person purportedly employed under such contract, whether or not (in the case of a contravention of paragraph (b) of subsection (1)) such person was assisted by his guardian, or was married or otherwise tacitly or expressly emancipated, but such person may enforce any rights that have accrued to him by or under such contract.

(3) A person under the age of fifteen years but not younger than thirteen years may—

(a) perform work other than work referred to in subsection (4) at a school or technical or vocational institution that is carried out as an integral part of a course of training or technical or vocational education for which the school or institution is primarily responsible;

(b) perform work in an undertaking, other than work referred to in subsection (4), that is carried out in conjunction with a course of technical or vocational education.

(4) No employer shall cause any person under the age of eighteen years to perform any work which is likely to jeopardise that person's health, safety or morals, which work shall include but not be limited to work involving such activities as may be prescribed.

(5) Any employer who employs any person in contravention of subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding thirty thousand dollars or to imprisonment not exceeding two years or to both such fine and such imprisonment.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

12 Duration, particulars and termination of employment contract

(1) Every person who is employed by or working for any other person and receiving or entitled to receive any remuneration in respect of such employment or work shall be deemed to be under a contract of employment with that other person, whether such contract is reduced to writing or not.

(2) An employer shall, upon engagement of an employee, inform the employee in writing of the following particulars—

- (a) the name and address of the employer;
- (b) the period of time, if limited, for which the employee is engaged;
- (c) the terms of probation, if any;
- (d) the terms of any employment code;
- (e) particulars of the employee's remuneration, its manner of calculation and the intervals at which it will be paid;
- (f) particulars of the benefits receivable in the event of sickness or pregnancy;
- (g) hours of work;
- (h) particulars of any bonus or incentive production scheme;
- (i) particulars of vacation leave and vacation pay;
- (j) particulars of any other benefits provided under the contract of employment.

(3) A contract of employment that does not specify its duration or date of termination, other than a contract for casual work or seasonal work or for the

performance of some specific service, shall be deemed to be a contract without limit of time:

Provided that a casual worker shall be deemed to have become an employee on a contract of employment without limit of time on the day that his period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months.

Implications

a) The new s12 (3) provides that a casual worker shall be deemed to have become a permanent worker on the day that his period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months. Employers must carry out audits to ascertain the status of their casual workers and also check whether such workers were working for the same employer through changing locations, departments or operating units.

Employees of independent contractors or labour brokers will find it less onerous to claim that because of their economic dependence [USA factor] on the Employer who is provided labour by the broker and which Employer provides the substantial investment or assumes the substantial risk of the undertaking, they are in reality employees of the Employer and not of the independent contractor/labour broker1(a). The use of labour brokers will become problematic and unlikely to add value under the Labour Act. The success of outsourcing will be providential.

Where Employers have not been differentiating between casual workers and contract workers most employees would claim to be the former in order to become permanent employees.

1(a) Our Act is now capturing the three types of employment contracts articulated by Prof. Onio Alain Supiot (ILO Review – Vol 138 No. 1 1999 @ 34-35 cited in Mazibuko P (2001) – “A comparison between the interpretation of the concept of employee and independent Contractor with specific reference to RSA and Zimbabwe” – LLM (Labour Law Treatise – UPE (RSA), that is, subordinated workers, genuine industrial entrepreneurs and legally independent but economically dependent ones. In the US the test of determining whether one is economically dependent on an employer is called Economic Realities Test [Donna Vizcaino v Microsoft and also see Lee Ting Sang v Chung Chi-Keung.

Section 12 (3) provides that where a contract of employment does not specify its duration or date of termination, it shall be deemed to be a contract without limit of time. Employers must make sure that contract of employment renewals are done on time and in writing so as to avoid any doubts as to the contract’s status as far as duration is concerned. Many employers forget to have contract workers complete renewal forms and sign for them rendering the whole relationship grey. Section 12(1) shows that even if there is no written employment contract it shall be deemed that such a person is an employee as long as such person can show that he/she is under a contract of employment.

Regular audits must be conducted by employers to ascertain the status or otherwise of their employees and those employees of labour brokers who happen to work at their companies.

(4) Except where a longer period of notice has been provided for under a contract of employment or in any relevant enactment, and subject to subsections (5), (6) and (7), notice of termination of the contract of employment to be given by either party shall be—

- (a) three months in the case of a contract without limit of time or a contract for a period exceeding two years;
- (b) two months in the case of a contract for a period exceeding one year but less than two years;
- (c) one month in the case of a contract for a period exceeding six months but less than one year;
- (d) two weeks in the case of a contract for a period of six months or less

or in the case of casual work or seasonal work.

(5) A contract of employment may provide in writing for a single, non-renewable probationary period of not more than—

- (a) one week in the case of casual work or seasonal work; or
- (b) three months in any other case;

during which notice of termination of the contract to be given by either party may be one week in the case of casual work or seasonal work or two weeks in any other case.

(6) Whenever an employee has been provided with accommodation directly or indirectly by his employer, the employee shall not be required to vacate the accommodation before the expiry of a period of one month after the period of notice specified in terms of subsection (4) or (5).

(7) Notwithstanding subsection (4) or (5), the parties to any contract of employment may, by mutual agreement, waive the right to notice:

Provided that where the termination is at the initiative of the employer, the employee shall have a right to payment for a period corresponding to the appropriate period of notice required in terms of subsection (4) or (5).

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

Casual workers

Shall be deemed to have become an employee on a contract of employment without limit of time on the day that his period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months. Six weeks is one month two weeks, and as such employers must be extra vigilant so as to avoid being caught unawares.

It must be remembered that a casual worker working for one employer in various of its depots countrywide is working for one employer.

Notice of termination of the contract of employment to be given by either party

Type of contract Notice Period

1. Contract without limit of time or for a contract for a period exceeding 2 years 3 months
2. Contract for a period exceeding on year but less than two years 2 months
3. Contract for a period exceeding 6 months but less than one year 1 month
4. Contract for a period of six months or less or in the case of casual work or seasonal work 2 weeks

Implications

All permanent employees would at least be subject to 3 months notice irrespective of their current individual contracts of employment or CBA. Casual and contract workers would now be entitled to notice period and this should be shown in their letters of appointment.

Retrenchment exercises are going to be more expensive because the cash in lieu of notice will now be three months in the case of permanent workers and an employee that resigns without giving notice will forgo an equivalent of 3 months leave days.

Termination of contracts of employment for employees on probation shall be subject to one week's notice period in the case of a casual worker and two weeks in any other case. While waiver of notice by mutual agreement is allowed the employee has a right to payment for a period corresponding to the appropriate period of notice required in terms of s 12(4) – (5) where termination of contract is initiated by the employer.

12A Remuneration and deductions from remuneration

(1) Remuneration payable in money shall not be paid to an employee by way of promissory notes, vouchers, coupons or in any form other than legal tender.

(2) Remuneration may be payable in kind only in industries or occupations where such payment is customary, and shall be subject to the following conditions—

- (a) any such payment shall be appropriate for the personal use and benefit of the employee and the employee's family;

- (b) the value attributed to such payment shall be fair and reasonable;
- (c) equipment or clothing required to protect the health and safety of the employee shall not be computed as part of the remuneration of the employee;
- (d) no payment shall be made in the form of liquor or drugs;
- (e) remuneration in kind shall not substitute entirely for remuneration in money.

(3) Subject to any collective bargaining agreement, wages shall be paid at regular intervals on working days at or near the workplace.

(4) Remuneration shall be paid directly to the employee except as otherwise provided by law or a collective bargaining agreement.

(5) All remuneration shall be accompanied by a written statement showing—

- (a) the name of the employer and employee; and
- (b) the amount of remuneration and the period in respect of which it is paid; and
- (c) the component of the remuneration representing any bonus or allowance; and
- (d) any deductions; and
- (e) the net amount received by the employee.

(6) No deduction or set-off of any description shall be made from any remuneration except—

- (a) where an employee is absent from work on days other than industrial holidays or days of leave to which he is entitled, the proportionate amount of his remuneration only for the period of such absence;
- (b) amounts which an employer is compelled by law or legal process to pay on behalf of an employee;
- (c) where an employee has received an advance of remuneration due, the amount of such advance, up to an amount not exceeding twenty-five per centum of the gross remuneration owed;
- (d) by written stop-order for contributions to insurance policies, pension funds, medical aid societies, building societies, burial societies and registered trade unions;
- (e) by written consent of an employee, for repayment of money lent by the employer on terms that have been mutually agreed to between the parties concerned;
- (f) an amount recovered for payments made in error.

This section virtually outlaws deductions effected by employers in recovering things like shortages, breakages, or damages incurred by employees. The employer will have to recover costs/damages caused by the employee's negligence, etc, through the courts as set-off is unlawful. Deductions cannot be effected while awaiting a court decision on the matter.

(7) The aggregate amount of permissible deductions that may be made from the remuneration of any employee in any pay interval shall not exceed twenty-five per centum of the employee's gross remuneration for that interval:

Provided that upon termination of an employee's service, an employer may deduct from the total remuneration due to the employee an amount equal to any balance which may be due to the employer in terms of paragraph (a), (c), (e) or (f).

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

12B Dismissal

(1) Every employee has the right not to be unfairly dismissed.

(2) An employee is unfairly dismissed—

- (a) if, subject to subsection (3), the employer fails to show that he dismissed the employee in terms of an employment code; or
- (b) if, in the absence of an employment code, the employer fails to show that, when dismissing the employee, he had good cause to believe that the employee was guilty of—

- (i) any act, conduct or omission inconsistent with the fulfilment of the express or implied conditions of his contract;
- (ii) wilful disobedience to a lawful order given by the employer;
- (iii) wilful and unlawful destruction of the employer's property;
- (iv) theft or fraud;
- (v) absence from work for a period of five or more working days without leave for no reasonable cause;
- (vi) habitual and substantial neglect of his duties;
- (vii) gross incompetence or inefficiency in the performance of his work;
- (viii) lack of a skill which the employee expressly or impliedly held himself out to possess.

This introduces circumstances under which an employee would be found to have been unfairly dismissed as follows:

(g) – where an employee is not dismissed in terms of a Code of Conduct (where one exists);

(b) – in the absence of a Code, an employer fails to show that he has good cause to believe that the employee was guilty of –

- i) Any act, conduct or omission inconsistent with the fulfilment of the express or implied conditions of his contract;
- ii) Wilful disobedience to a lawful order given by the employer;
- iii) Wilful and unlawful destruction of the employer's property;
- iv) Theft or fraud;
- v) Absence from work for a period of 5 or more working days without leave for no reasonable cause;
- vi) Habitual and substantial neglect of his duties;
- vii) Gross incompetence or inefficiency in the performance of his work;
- viii) Lack of a skill, which the employee expressly or impliedly held himself out to possess.

- The fate of the other sections of SI 371\85 is unknown particularly s2(b) which allowed parties by mutual agreement to terminate a contract of employment.

Implications

The Codes of Conduct must be followed to the letter or else dismissals will be struck down for want of fairness.

(3) An employee is deemed to have been unfairly dismissed—

(a) if the employee terminated the contract of employment with or without notice because the employer deliberately made continued employment intolerable for the employee;

(b) if, on termination of an employment contract of fixed duration, the employee—

- (i) had a legitimate expectation of being re-engaged; and
- (ii) another person was engaged instead of the employee.

Deliberately making continued employment of an employee intolerable is tantamount to constructive dismissal. In such cases even if an employee resigns he would be able to launch a claim of constructive dismissal afterwards citing that actions of the employer drove him to leave not his resignation [ABI Ltd v Jonker.]

Some Forms of Constructive Dismissal

- Insistence by an employer that an employee comply with his contractual obligation to accept a transfer [Howell v The International Bank of Johannesburg; Tyikana v Reus.]

- Resign or you are fired. However, note that employers are entitled to change their work practices and deploy their human resources within operational requirements of the business, but must do so fairly. The employee must be consulted and the operational requirements of the company spelt out clearly.

The new section provides that it would be presumed that an employee had been unfairly dismissed if, on termination of an employment contract of fixed duration, the

employee:

- i) Had a legitimate expectation of being re-engaged; and
- ii) Another person was engaged instead of the employee.

This section has serious consequences and will put employers in a quandary when they try and manage the hiring and “releasing” of casual and contract workers. For flexibility employers boost their permanent establishment with casual and contract workers and to avoid a claim for permanence they regularly terminate contracts of such employees. It will now have to be done with extreme caution because where a contract is terminated and subsequently replaced by another of a different employee problems would arise.

In simple terms “legitimate expectations” means ‘fair and reasonable’ expectation. It is not necessary for the employer to share the same fair and reasonable expectation with the employee or former employee.

Examples

- Where the reason for entering into a fixed term contract was the uncertainty over continued funding, it was held that there was a reasonable [and probably legitimate] expectation that the employment would continue as long as the funding continues [Bronn v Univ. of Cape Town. Conversely, where an employer entered into a fixed-term contract because the employee was appointed to replace someone on leave, there was no reasonable expectation of renewal [Dierks v UNISA.]

Does it mean the specific provisions on the contract pertaining to duration are irrelevant?

The wording of the contract is important, but not conclusive [Malandoh v S A Broadcasting Corporation and also see Dierks case above]. Subsequent conduct may give rise to a fair and reasonable expectation, notwithstanding the declared intent of the parties [SAC & TWU v Mediterranean Woollen Mills (Pty).

Factors that play a part in determining a legitimate expectation

- The number of times that the contract has been renewed and the conduct of the employer at the time of concluding the contract and during the course of their relationship [Zwane case above].

Does a legitimate expectation of re-engagement include a legitimate expectation of permanent employment?

NO, unless the employee is specifically put on a fixed –term contract in order to determine his/her suitability for ‘permanent’ employment after the expiry of the fixed –term contract. Where an employee’s fixed-term contract expires and he remains in service without renewal and the employer continues to pay the agreed remuneration, the contract may be tacitly relocated and will continue on exactly the same terms and conditions as the previous fixed-term contract, except that the duration of the contract need not be the same as that of the original contract. The duration of the relocated contract must be determined in the light of the particular circumstances of each case [Braund v Baker, Baker & Co also see Redman v Colbeck. The exception obviously will be where a CBA or any Statutory Instrument provides otherwise.

How employers can avoid claims based on legitimate expectation?

1. Don’t employ casual or contract workers.
 2. In the event you hire them make sure the contract is specific on duration and base its duration on piecework where possible.
 3. Don’t, by conduct or otherwise, indicate that the contract would be renewed.
 4. Enter into a procedural agreement with your union or NEC and create a pool of casual/contract workers so that those on the pool can rotate to avoid complaints about terminating Betty’s contract and engaging Peter. Betty would not have lost because she would have given Peter his turn while she awaits hers. If she creates a different expectation other than re-engagement after Peter’s turn is up, such expectation under such circumstances would be manifestly unreasonable and unfair.
- (4) In any proceedings before a labour officer, designated agent or the Labour Court where the fairness of the dismissal of an employee is in issue, the adjudicating

authority shall, in addition to considering the nature or gravity of any misconduct on the part of the dismissed employee, consider whether any mitigation of the misconduct avails to an extent that would have justified action other than dismissal, including the length of the employee's service, the employee's previous disciplinary record, the nature of the employment and any special personal circumstances of the employee.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

12C Retrenchment

(1) An employer who wishes to retrench five or more employees within a period of six months shall—

(a) given written notice of his intention—

(i) to the works council established for the undertaking; or

(ii) if there is no works council established for the undertaking or if a majority of the employees concerned agree to such a course, to the employment council established for the undertaking or industry; or

(iii) if there is no works council or employment council for the undertaking concerned, to the Retrenchment Board, and in such event any reference in this section to the performance of functions by a works council or employment council shall be construed as a reference to the Retrenchment Board or a person appointed by the Board to perform such functions on its behalf;

and

(b) provide the works council, employment council or the Retrenchment Board, as the case may be, with details of every employee whom the employer wishes to retrench and of the reasons for the proposed retrenchment; and

(c) send a copy of the notice to the Retrenchment Board.

(2) A works council or employment council to which notice has been given in terms of subsection (1) shall forthwith attempt to secure agreement between the employer and employees concerned or their representatives as to whether or not the employees should be retrenched and, if they are to be retrenched, the terms and conditions on which they may be retrenched, having regard to the considerations specified in subsection (1).

(3) If, within one month after receiving notice in terms of subsection (1), a works council or employment council secures an agreement between the employer and employees concerned or their representatives on the matters referred to in subsection (2), the works council or employment council shall—

(a) send the employer its written approval of the retrenchment of the employees concerned in accordance with agreement; and

(b) send the Retrenchment Board a copy of the approval.

(4) If, within one month after receiving a notice in terms of subsection (1), a works council or employment council has failed to secure an agreement between the employer and the employees concerned or their representatives on the matters referred to in subsection (2), it shall refer the matter to the Retrenchment Board by sending the Board written notice of the disagreement, together with copies of all documents which the employer and employees concerned may have submitted to the works council or employment council and copies of the minutes of any proceedings and deliberations.

(5) No employer shall retrench any employee without affording the employee the notice of termination to which the employee is entitled.

(6) The Retrenchment Board shall consider any matter referred to it in terms of subparagraph (iii) of paragraph (a) of subsection (1), or subsection (4), and, having regard to the factors referred to therein, shall, within two weeks of the matter being referred to it, recommend to the Minister in writing whether or not the proposed retrenchment should be permitted and, if so, the terms and conditions upon which it should be effected.

(7) For the purpose of formulating recommendations in terms of subsection (6), the

Retrenchment Board may in its discretion invite and receive representations, whether oral or written, from any interested parties.

(8) If the Retrenchment Board fails to make a recommendation within the period specified in subsection (6), the Minister shall require the Board to forward to him all documents in the matter and shall, within two weeks, give his decision in the matter in terms of subsection (6).

(9) The Minister shall consider without delay any recommendation submitted to him by the Retrenchment Board and, having regard to the factors referred to in subsection (11), shall within two weeks—

(a) approve the proposed retrenchment, subject to such terms and conditions as he may consider necessary or desirable to impose; or

(b) refuse to approve the proposed retrenchment;

and shall cause the Retrenchment Board, the works council or employment council, as the case may be, to notify the employer and employees concerned in writing of the decision in the matter.

(10) If the Minister does not make a decision pursuant to subsection (8) or (9) within the time limits there specified, the proposed retrenchment shall be deemed to be approved.

(11) In deciding whether or not to approve the retrenchment of employees in terms of this section, due regard shall be paid—

(a) to the following general considerations—

(i) that the retrenchment of employees should be avoided so far as possible, where this can be done without prejudicing the efficient operation of the undertaking in which the employees concerned are employed;

(ii) that the consequences of retrenchment to employees should be mitigated so far as possible;

(b) to the following considerations in particular cases—

(i) the reasons put forward for the proposed retrenchment; and

(ii) the effect of the proposed retrenchment upon the employees involved, including their prospects of finding alternative employment and the terminal benefits to which they will become entitled.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

12D Special measures to avoid retrenchment

(1) Every employer shall ensure that, at the earliest possible opportunity, his employees are kept informed of and consulted in regard to any major changes in production, programmes, organisation or technology that are likely to entail the retrenchment of any group of five or more employees in a six-month period.

What does “consulted” mean?

There is no definition of the word in the Act and it appears it came from the SA LR Act 1995 s84(ii) and s189(i) (a). In *Atlantis Diesel Engines (Pty) Ltd v NUMSA* the Appellate Division held that consultation is a joint problem-solving exercise with the object of reaching consensus. It suggested that consultation should be understood as a process of seeking agreement by means of conciliation rather than through the adversarial cut and thrust of bargaining.

However, if our Labour Court gives no credence to the South African case law then it will probably use the standard connotation of the word. Consultation, under its standard connotation, is conventionally a process by which a person invites and considers the views of another before taking a decision.

The employer should in all good faith keep an open mind throughout and seriously consider proposals put forward³. Consultation is not negotiation and the ultimate decision to retrench is one which falls squarely within the competence and responsibility of management ACTING of course within the relevant confines of the law.

3. Brassey, M @ A8:43

(2) Subject to this section, before giving notice of the intention to retrench any

employees in terms of section twelve C, an employer may agree with the employees concerned, or with any workers committee, works council or employment council which represents the employees, to have recourse to either or both of the following measures for a period not exceeding twelve months—

(a) subject to subsection (4), placing the employees on short-time work;
or

(b) instituting a system of shifts as provided in subsection (5).

(3) An agreement entered into in terms of subsection (2) shall have effect notwithstanding anything to the contrary contained in any employment regulations, collective bargaining agreement or other contract or agreement applicable to the employees concerned.

(4) While an employee is on short-time work referred to in paragraph (a) of subsection (2), he shall be paid the hourly equivalent of his weekly or monthly wage for the hours he has actually worked:

Provided that an employee shall receive not less than fifty per centum of his current weekly or monthly wage, as the case may be.

(5) For the purposes of paragraph (b) of subsection (2), an employer may divide all or any of the employees concerned into shifts and may—

(a) require each shift to work on alternate half-days, days, weeks or months:

Provided that no shift shall be without work for more than one month at a time or for an aggregate of more than six months in any period of twelve months;

(b) pay each employee on shift for the hours, weeks or months he has actually worked.

(6) Before having recourse to any measure referred to in subsection (1), an employer shall give not less than seven days' written notice to every employee affected by the measure.

(7) Any time during which an employee is not engaged in full-time work as a result of a measure resorted to in terms of this section shall be regarded as unpaid compulsory leave and shall not be deemed to interrupt continuity of employment.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

13 Wages and benefits upon termination of employment

(1) Subject to this Act or any regulations made in terms of this Act, whether any person—

(a) is dismissed from his employment or his employment is otherwise terminated; or

(b) resigns from his employment; or

(c) is incapacitated from performing his work; or

(d) dies;

he or his estate, as the case may be, shall be entitled to the wages and benefits due to him up to the time of such dismissal, termination, resignation, incapacitation or death, as the case may be, including benefits with respect to any outstanding vacation and notice period, medical aid, social security and any pension, and the employer concerned shall pay such entitlements to such person or his estate, as the case may be, as soon as reasonably practicable after such event, and failure to do so shall constitute an unfair labour practice.

(2) Any employer who without the Minister's permission withholds or unreasonably delays the payment of any wages or benefits owed in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) The court convicting an employer of an offence in terms of subsection (2) may order him to pay—

(a) to the employee concerned; or

(b) to any person specified by it for the benefit of the employee

concerned;

in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.

(4) The court may at any time on the application of the employer, employee or specified person concerned, for good cause shown, vary an order made in terms of subsection (3).

(5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, mutatis mutandis, in relation to the amount specified in an order made in terms of subsection (3) as if such amount were a fine referred to in those sections.

(6) Nothing contained in this section shall be construed as precluding a person referred to in subsection (1) or his representative or the executor of his estate, as the case may be, from claiming over and above any wages or benefits to which he or his estate is entitled in terms of subsection (1), damages for any prejudice or loss suffered in connection with such dismissal, termination, resignation, incapacitation or death, as the case may be.

14 Sick leave

(1) Unless more favourable conditions have been provided for in any employment contract or in any enactment, sick leave shall be granted in terms of this section to an employee who is prevented from attending his duties because he is ill or injured or undergoes medical treatment which was not occasioned by his failure to take reasonable precautions.

(2) During any one-year period of service of an employee an employer shall, at the request of the employee supported by a certificate signed by a registered medical practitioner, grant up to ninety days' sick leave on full pay.

(3) If, during any one-year period of service of an employee, the employee has used up the maximum period of sick leave on full pay, an employer shall, at the request of the employee supported by a certificate signed by a registered medical practitioner, grant a further period of up to ninety days' sick leave on half pay where, in the opinion of the registered medical practitioner signing the certificate, it is probable that the employee will be able to resume duty after such further period of sick leave.

(4) If, during any one-year period of service, the period or aggregate periods of sick leave exceed—

(a) ninety days' sick leave on full pay; or

(b) subject to subsection (3), one hundred and eighty days' sick leave on full and half pay;

the employer may terminate the employment of the employee concerned.

(5) An employee who so wishes may be granted accrued vacation leave instead of sick leave on half pay or without pay.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

This simply means an employee who is denied permission or the chance to proceed on leave cannot forfeit his accrued days.

Implications

Managing business exigencies will be very expensive and some employers who had employees accruing less than 30 days per year will find themselves with additional financial obligations once the Bill is gazetted.

14A Vacation leave

(1) In this section—

“qualifying service”, in relation to vacation leave accrued by an employee, means any period of employment following the completion of the employee's first year of employment with an employer.

(2) Unless more favourable conditions have been provided for in any employment contract or in any enactment, paid vacation leave shall accrue in terms of this section to an employee at the rate of one twelfth of his qualifying service in each year of

employment, subject to a maximum accrual of ninety days' paid vacation leave:

Provided that, if an employee is granted only a portion of the total vacation leave which may have accrued to him, he may be granted the remaining portion at a later date, together with any further vacation leave which may have accrued to him at that date, without forfeiting any such accrued leave.

(3) All Saturdays, Sundays and gazetted public holidays falling within a period of vacation leave shall be counted as part of vacation leave.

(4) An employee who becomes ill or is injured during a period of vacation leave may cancel his vacation leave and apply for sick leave.

An employee falling sick while on vacation leave can cancel the former and take sick leave. Arguably an employee who has accrued 90 days vacation leave (and is allowed to take them instead of sick leave) can add the other 180 days of sick leave and be away from work for 9 months in any year.

(5) Where an employee has no vacation leave accrued, he may be granted vacation leave without pay.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

14B Special leave

Special leave on full pay not exceeding twelve days in a calendar year shall be granted by an employer to an employee—

(a) who is required to be absent from duty on the instructions of a medical practitioner because of contact with an infectious disease;

(b) who is subpoenaed to attend any court in Zimbabwe as a witness;

(c) who is required to attend as a delegate or office-bearer at any meeting of a registered trade union representing employees within the undertaking or industry in which the employee is employed;

(d) who is detained for questioning by the police;

(e) on the death of a spouse, parent, child or legal dependant;

(f) on any justifiable compassionate ground

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

14C Weekly rest and remuneration for work during public holidays

(1) Every employee shall be entitled to not less than twenty-four continuous hours of rest each week, either on the same day of every week or on a day agreed by the employer and employee.

(2) Subject to subsection (3), an employee shall be granted leave of absence during every public holiday, and shall be paid his current remuneration for that day if it occurs on a day on which he would otherwise have been required to work.

(3) Where an employee consents to work on a public holiday he shall be paid not less than twice his current remuneration for that day, whether or not that day is one on which he would otherwise have been required to work.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

15 Death of employer

Except where more favourable conditions have otherwise been provided for in the employment contract concerned or in terms of any relevant enactment, including any regulations made in terms of this Act, or in any agreement or determination made or given effect to in terms of any enactment, a contract of employment between an employee and an employer who is an individual shall not be terminated on the death of the employer but shall continue to have effect until the expiration of the period after which it would have terminated had due notice of termination been given on the day on which the employer died, and during such period the employee shall be entitled to such wages and other benefits as are provided for in the employment contract from the person legally representing the deceased employer in his capacity as such.

16 Rights of employees on transfer of undertaking

(1) Subject to this section, whenever any undertaking in which any persons are employed is alienated or transferred in any way whatsoever, the employment of such

persons shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are not less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

(2) Nothing in subsection (1) shall be deemed—

(a) to prevent the employees concerned from being transferred on terms and conditions of employment which are more favourable to them than those which applied immediately before the transfer, or from obtaining terms and conditions of employment which are more favourable than those which applied immediately before, or subsequent to, the transfer;

(b) to prevent the employees concerned from agreeing to terms and conditions of employment which are in themselves otherwise legal and which shall be applicable on and after the transfer, but which are less favourable than those which applied to them immediately before the transfer:

Provided that no rights to social security, pensions, gratuities or other retirement benefits may be diminished by any such agreement without the prior written authority of the Minister;

(c) to affect the rights of the employees concerned which they could have enforced against the person who employed them immediately before the transfer, and such rights may be enforced against either the employer or the person to whom the undertaking has been transferred or against both such persons at any time prior to, on or after the transfer;

(d) to derogate from or prejudice the benefits or rights conferred upon employees under the law relating to insolvency.

(3) It shall be an unfair labour practice to violate or evade or to attempt to violate or evade in any way the provisions of this section.

17 Regulatory powers of Minister

(1) Subject to the Constitution, this Act and the Labour Act [Chapter 28:01] the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section nineteen may make regulations providing for the development, improvement, protection, regulation and control of employment and conditions of employment.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) Where the Minister has made regulations in terms of subsection (1), every contract, agreement, arrangement of any kind whatsoever, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such regulations relate and which provides terms or conditions less favourable to the employee than those specified in the regulations, shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such regulations.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Without prejudice to the generality of subsection (1), the Minister may make regulations in terms of that subsection providing for—

(a) the rights of employees, including minimum wages, benefits, social security, retirement and superannuation benefits, and other conditions of employment;

(b) the deductions which may be made from the wages of employees;

(c) the hours of work of employees, including overtime, night and shift work and the remuneration therefor;

(d) rest and meal breaks, the provision of food and other services at work in special cases and the charges that may be made from wages therefor;

(e) leave, including sick leave, maternity leave and bereavement leave, that shall be granted to employees and the remuneration and allowances that shall be payable in respect thereof;

(f) the holidays that shall be granted to, or that may be withheld from, employees, and the remuneration and allowances that shall be payable in respect thereof;

(g) the establishment of pension, social security, sick, medical, holiday, provident, insurance and other funds for employees, and the levying of contributions thereto by employers and employees;

(h) the special conditions that shall be applicable to female, juvenile and disabled employees, including the prohibition of the employment of persons below the age of sixteen years;

(i) the restriction on the employment of juveniles and pregnant women in specified types and categories of employment or at specified hours, and the rights and privileges of mothers with suckling infants;

(j) the regulation and control of employment on contract, overtime, part-time, short-time or casual basis, including the conditions relating to any such employment;

(k) the encouragement of employment of disabled persons and the remuneration and allowances payable to, and the facilities which should be provided for, such persons;

(l) the settling of disputes in a category or class of employment by reference to specified officials or tribunals;

(m) the protection of the rights of employees in respect of wages, pensions, benefits and holidays where the employer terminates or transfers his undertaking;

(n) the implementation of any national or international standards of employment, including those related to the rights and obligations of employers and employees as to safety, health and compensation for occupational disablement;

(o) the recruitment and employment of unskilled, semi-skilled and skilled labour and apprentices in any occupation, including the regulation and control of the recruitment of citizens, non-citizens and residents for any type of employment within and outside Zimbabwe:

Provided that no regulations shall be made in terms of this paragraph without prior consultation with the Minister responsible for apprenticeship training;

(p) the employment of unemployed persons and persons released from penal institutions;

(q) regulating and restricting the circumstances in which employers may suspend or terminate the employment of any of their employees;

(r) specifying or otherwise restricting the circumstances in which contracts of employment may be terminated summarily or otherwise;

(s) the reinstatement of employees where they have been retrenched, whether voluntarily or otherwise in circumstances which are to their disadvantage, or which are contrary to the national interest;

(t) the regulation and control of persons recruiting labour or operating employment agencies, including the registration of such persons or employment agencies;

(u) any other matter relating to or connected with employment which it may be necessary to regulate.

(4) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from 10th September, 2002]

(5) Unless in the opinion of the Minister the urgency of the situation demands otherwise, the Minister shall, before making regulations in terms of this section, cause to be published in the Gazette a notice setting forth the general purport of the proposed regulations and stating that the regulations shall be open for inspection at a

place specified in the notice, and calling upon persons who have any objections to the proposed regulations to lodge them in writing with the Minister within thirty days of the date of publication of such notice:

Provided that failure by the Minister to comply with this subsection shall not affect the validity of the regulations concerned.

18 Maternity leave

(1) Unless more favourable conditions have otherwise been provided for in any employment contract or in any enactment, maternity leave shall be granted in terms of this section for a period of ninety days on full pay to a female employee who has served for at least one year.

(2) On production of a certificate signed by a registered medical practitioner or State Registered Nurse certifying that she is pregnant, a female employee may proceed on maternity leave not earlier than the forty-fifth day and not later than the twenty-first day prior to the expected date of delivery.

(3) A female employee shall be entitled to be granted a maximum of three periods of maternity leave with respect to her total service to any one employer during which she shall be paid her full salary:

Provided that paid maternity leave shall be granted only once during any period of twenty-four months calculated from the day any previous maternity leave was granted.

(4) A female employee who has served for less than one year and who requires leave for maternity purposes, shall, at her request, be granted ninety days' maternity leave without pay:

Provided that if, during such leave, she completes one year's service, she shall be paid her full salary for so much of such leave as is taken during her second year of service, and the period for which she is so paid shall count as one of the periods of paid maternity leave referred to in subsection (3).

(5) Any maternity leave requested in excess of the limits prescribed in this section may be granted as unpaid maternity leave.

(6) Unless the employer grants sick leave for medical reasons other than maternity, sick leave may not be granted once paid maternity leave has begun or during a period of unpaid maternity leave.

(7) During the period when a female employee is on maternity leave in accordance with this section, her normal benefits and entitlements, including her rights to seniority or advancement and the accumulation of pension rights, shall continue uninterrupted in the manner in which they would have continued had she not gone on such leave, and her period of service shall not be considered as having been interrupted, reduced or broken by the exercise of her right to maternity leave in terms of this section.

(8) A female employee who is the mother of a suckling child shall, during each working day, be granted at her request at least one hour or two half-hour periods, as she may choose during normal working hours, for the purpose of nursing her child, and such employee may combine the portion or portions of time to which she is so entitled with any other normal breaks so as to constitute longer periods that she may find necessary or convenient for the purpose of nursing her child.

(9) Any person who contravenes this section shall be guilty of an unfair labour practice.

(10) Notwithstanding subsections (8) and (9), the grant of breaks during normal working time to a female employee for the purpose of nursing her child shall be made in accordance with all the exigencies of her employment and nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (8).

(11) A female employee shall be entitled to the benefits under subsection (8) for the period during which she actually nurses her child or six months, whichever is the

lesser.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

PART V

WAGE AND SALARY CONTROL

19 Advisory boards

The Minister may, either on his own initiative or on the recommendation of any employer or employee, or of any association representing employers or employees, appoint advisory boards consisting of such persons as he may deem fit, or request an employment board or employment council, to investigate and make recommendations to him as to—

- (a) the fixing of minimum wages and benefits for employees; or
- (b) the fixing of ceilings on wages or salaries or benefits; or
- (c) any other matters to which minimum wage notices or maximum wage

notices may relate.

20 Minimum wage notices

(1) The Minister may, by statutory instrument—

- (a) in respect of any class of employees in any undertaking or industry—

- (i) specify the minimum wage and benefits in respect of such class of employees;

- (ii) require employers to grant or negotiate increments on annual income of such minimum amount or percentage as he may specify;

- and prohibit the payment of less than such specified minimum wage, benefits or increments to such class of employees;

- (b) regulate or prohibit the making of deductions from the wages and benefits of an employee to whom such notice relates;

- (c) regulate or prohibit the withdrawal, reduction or alteration of any benefits to which an employee to whom such notice relates was entitled in respect of his employment immediately before the date of commencement of such notice;

- (d) give such other direction or make such other provision as he may deem necessary or desirable to ensure the payment of a minimum or other specified wage or benefits to any class of employees;

- (e) provide for exemptions from paragraphs (a), (b), (c) and (d).

(2) Where the Minister has issued a minimum wage notice in terms of subsection (1)—

- (a) every contract, agreement, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such minimum wage notice relates and which provides for wages, benefits or deductions from wages which are less favourable to the employee than those specified in the notice, shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such notice;

- (b) every agreement or arrangement of any kind whatsoever, express or implied, whether made before or after the date of commencement of such minimum wage notice by an employer or employee to whom such notice relates, which conflicts with such notice shall, to the extent of such conflict, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such notice.

(3) Any person who contravenes a notice issued in terms of subsection (1) shall—

- (a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and

- (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(4) The court convicting an employer of an offence in terms of paragraph (b) of subsection (3) may order him to pay—

(a) to the employee concerned; or

(b) to any person specified by it for the benefit of the employee concerned;

in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.

(5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [Chapter 9:07] shall apply, mutatis mutandis, in relation to the amount specified in an order made in terms of subsection (4) as if such amount were a fine referred to in those sections.

(6) Nothing contained in this section shall be construed as precluding an employee, notwithstanding an order made in terms of subsection (4), from recovering by civil proceedings any amount or additional amount by which he has been prejudiced as a result of any contravention of a minimum wage notice.

21 Prohibition of termination of services of employee

(1) No employer shall, otherwise than in terms of an exemption granted to him in terms of subsection (2), terminate the services of an employee solely on the ground of a requirement to pay him a minimum wage in terms of a minimum wage notice.

(2) Where the Minister considers that special circumstances exist, he may, by notice in writing, and on such terms and conditions as he may specify, grant an employer exemption from subsection (1).

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

22 Maximum wage notices

(1) The Minister may, by statutory instrument, after consultation with the Minister responsible for finance—

(a) fix a maximum wage, and the maximum amount that may be payable by way of benefits, allowances, bonuses or increments;

(b) require employers to grant or negotiate such increments on annual income up to such maximum amount or percentage as he may specify; in respect of employees generally or of any particular class of employees, and may prohibit the payment to and receipt by such employees of any amount greater than may be fixed or specified in terms of this subsection.

(2) In any notice made in terms of subsection (1) the Minister may provide for exemptions from any provisions of such notice.

(3) Any person who contravenes a notice issued in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

PART VI

WORKERS COMMITTEES: FORMATION AND FUNCTIONS

23 Formation of workers committees

(1) Subject to this Act and any regulations, employees employed by any one employer may appoint or elect a workers committee to represent their interests:

Provided that no managerial employee shall be appointed or elected to a workers committee, nor shall a workers committee represent the interests of managerial employees, unless such workers committee is composed solely of managerial employees appointed or elected to represent their interests.

(1a) Subject to subsection (1b), the composition and procedure of a workers committee shall be as determined by the employees at the workplace concerned.

(1b) Notwithstanding subsection (1a), if a trade union is registered to represent the interests of not less than fifty per centum of the employees at the workplace where a workers committee is to be established, every member of the workers committee shall

be a member of the trade union concerned.

[paras (1a) and (1b) inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(2) For the purposes of appointing or electing a workers committee, employees shall be entitled to—

(a) be assisted by a labour relations officer or a representative of the appropriate trade union; and

(b) reasonable facilities to communicate with each other and meet together during working hours at their place of work; and

(c) be provided by their employer with the names and relevant particulars of all employees employed by him;

so however, that the ordinary conduct of the employer's business is not unduly interfered with.

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2), the labour relations officer concerned or any other officer acting in a similar capacity, shall, after considering the representations of the parties concerned, make such fair and reasonable determination as he deems fit, and such determination shall be binding on the parties:

Provided that if any person is aggrieved by the determination of the labour relations officer or such other officer, he may appeal to a senior labour relations officer who, after taking into account the representations of the parties concerned, shall determine the matter and his decision shall be final.

Implications

Employers will have to confirm during Code of Conduct hearings that the workers' reps are also members of the representative union. The 50% threshold must be confirmed with salaries as regularly as possible. Where two unions are registered and both enjoy 50% representivity then this has to be taken into account.

24 Functions of workers committees

(1) A workers committee shall—

(a) subject to this Act, represent the employees concerned in any matter affecting their rights and interests; and

(b) subject to subsection (3), be entitled to negotiate with the employer concerned a collective bargaining agreement relating to the terms and conditions of employment of the employees concerned; and

(c) subject to Part XIII, be entitled to recommend collective job action to the employees concerned; and

(d) where a works council is or is to be constituted at any workplace, elect some of its members to represent employees on the works council.

(2) Subject to subsection (3), where a workers committee has been appointed or elected to represent employees, no person other than such workers committee and the appropriate trade union, if any, may—

(a) act or purport to act for the employees in negotiating any collective bargaining agreement; or

(b) direct or recommend collective job action to the employees.

(3) Where an appropriate trade union exists for any employees, a workers committee of those employees may negotiate a collective bargaining agreement with an employer—

(a) in the case where the trade union has no collective bargaining agreement with the employer concerned, only to the extent that such negotiation is authorized in writing by the trade union concerned; or

(b) in the case where there is a collective bargaining agreement, only to the extent permitted by such collective bargaining agreement; or

(c) where the Minister certifies in writing that—

(i) the issue in question was omitted from or included in the principal collective bargaining agreement when it should not have been so omitted or included; and

(ii) the parties to the principal collective bargaining agreement have failed or are not in a position to reach an agreement on such an issue.

25 Effect of collective bargaining agreements negotiated by workers committees

(1) Every collective bargaining agreement which has been negotiated by a workers committee shall be referred by the workers committee to the employees and the trade union concerned, and, if approved by the trade union and by more than fifty per centum of the employees, shall become binding on the employer and the employees concerned:

Provided that where there is any conflict between the terms and conditions of any such collective bargaining agreement and collective bargaining agreement negotiated by an appropriate trade union, the latter shall prevail unless the terms and conditions of the former collective bargaining agreement are more favourable to the employees concerned, in which case such last-mentioned terms and conditions shall prevail.

(2) Where a collective bargaining agreement which has been negotiated by a workers committee contains any provision which is, or has become—

(a) inconsistent with this Act or any other enactment; or

(b) inequitable to consumers or to members of the public generally or to any party to the collective bargaining agreement; or

(c) unreasonable or unfair, having regard to the respective rights of the parties;

the Minister may direct the parties to the agreement to negotiate, within such period as he may specify, an amendment to the agreement in such manner or to such extent as he may specify, and he may give such other directions relating to the operation of the agreement pending its amendment as he may deem fit, and such directions shall be binding on the parties.

(3) Where the Minister has made a direction in terms of subsection (2), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate an amendment to the agreement in good faith, and to report back to the Minister within the period specified in the direction the extent to which they have been able or unable to agree in amending the agreement.

(4) The Minister may, after considering any report submitted to him in terms of subsection (3), amend the collective bargaining agreement concerned in accordance with the report of the parties or in such other manner as he may deem necessary in the national interest, having regard to the considerations specified in paragraphs (a), (b) and (c) of subsection (2), and the agreement, as amended, shall, subject to this Act, be binding on the employer and the employees concerned.

(5) A collective bargaining agreement negotiated in terms of this section shall not be affected by—

(a) where the employer is a corporate body, a change in membership of the management or ownership of the employer; or

(b) a change in membership of the workers committee or the employees concerned; or

(c) a transfer of the undertaking or industry in which the employees concerned are employed.

25A Composition, procedure and functions of works councils

(1) In every establishment in which a workers committee representing employees other than managerial employees has been elected, there shall be a works council.

(2) A works council shall be composed of an equal number of members representing the employer and the workers committee.

(3) The procedure of a works council shall be as determined by the employer and the workers committee at the establishment concerned.

(4) Without prejudice to the provisions of any collective bargaining agreement that may be applicable to the establishment concerned, the functions of a works council shall be—

(a) to focus the best interests of the establishment and employees on the

best possible use of its human, capital, equipment and other resources, so that maximum productivity and optimum employment standards may be maintained; and

(b) to foster, encourage and maintain good relations between the employer and employees at all levels, and to understand and seek solutions to their common problems; and

(c) to promote the general and common interest, including the health, safety and welfare of both the establishment and its workers; and

(d) in general, to promote and maintain the effective participation of employees in the establishment, and to secure the mutual co-operation and trust of employees, the employer and any registered trade union representing employees in the establishment, in the interests of industrial harmony.

(5) Without prejudice to the provisions of any collective bargaining agreement that may be applicable to the establishment concerned, a works council shall be entitled to be consulted by the employer about proposals relating to any of the following matters—

(a) the restructuring of the workplace caused by the introduction of new technology and work methods;

(b) product development plans, job grading and training and education schemes affecting employees;

(c) partial or total plant closures and mergers and transfers of ownership;

(d) the implementation of an employment code of conduct;

(e) the criteria for merit increases or payment of discretionary bonuses;

(f) the retrenchment of employees, whether voluntary or compulsory:

Provided that any matter involving the retrenchment of five or more employees within a period of six months shall be governed by sections twelve C and twelve D, unless otherwise agreed by the employer with the members of the works council representing the workers committee.

Does it mean an employer can retrench 1 to 4 employees anytime without consulting the Works Council?

The answer appears to be in the negative for two reasons. Firstly, s25 A (5) (f), makes it imperative for the Works Council to be consulted by the employer about proposals relating to the retrenchment of employees, whether voluntary or compulsory. “Retrench” is defined in relation to an employee and not only to 5 or more employees and hence it is safe and reasonable to imply that the employer shall consult irrespective of the number being retrenched.

Secondly, s12c and s25 (5), are distinguishable in that s12c contemplates the action to be taken by an employer after consulting the Works Council about the proposal to retrench (s25 (5)), and this entails giving written notice of his intention to the Works Council. It will not be possible for the employer to give written notice before consulting, given the requirements of s25 (6) which entitles members of the Works Council a reasonable opportunity to make representations and to advance alternative proposals. The employer is required to attempt to reach consensus with the members of the Works Council. The employer is expected to approach the Works Council with an open mind.

It is strongly recommended that the Ministry of Labour promulgates a Statutory Instrument that shows the steps to be taken when 1 to 4 employees are to be retrenched, whether the Works Council composed of members representing the workers’ committee and the employer must sit and discuss a retrenchment matter pertaining to 5 or 6 managers to be retrenched within 6 months. The whole section on retrenchment and consultation is so riddled with unsaid things that it will cost many an employer dearly.

(6) Before an employer may implement a proposal relating to any matter referred to in subsection (5), the employer shall—

(a) afford the members of the works council representing the workers committee a reasonable opportunity to make representations and to advance

alternative proposals;

(b) consider and respond to the representations and alternative proposals, if any, made under paragraph (a) and, if the employer does not agree with them, state the reasons for disagreeing;

(c) generally, attempt to reach consensus with the members of the works council representing the workers committee on any matter referred to in subsection (5).

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

26 Minister may make regulations relating to workers committees and works councils

(1) The Minister may, after consultation with the appropriate advisory council, if any, appointed in terms of section nineteen, make such regulations as he considers necessary for the control of workers committees and works councils and, without derogation from the generality of his power in this regard, such regulations may provide for—

(a) the methods or procedures to be followed for the formation of workers committees and works councils;

(b) the tenure of office of members of workers committees and works councils;

(c) the operation, management and conduct of the affairs of workers committees and works councils;

(2) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed the penalties referred to in section one hundred and twenty-eight.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

PART VII

TRADE UNIONS, EMPLOYERS ORGANIZATIONS AND FEDERATIONS OF TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

27 Right to form trade unions or employers organizations

(1) Subject to this Act, any group of employees may form a trade union.

(2) Subject to this Act, any group of employers may form an employers organization.

(3) Subject to this Act, any group of trade unions or employers organizations may form a federation.

28 Requirements for formation of trade unions and employers organizations

(1) Every trade union, employers organization or federation shall—

(a) subject to subsection (2), before it raises funds from any source; and

(b) within six months of its formation;

adopt a written constitution which shall provide for—

(i) the qualifications for membership, including membership fees, if any;

and

(ii) the right of any person to membership if he is prepared to abide by the rules and conditions of membership; and

(iii) the number of officials and office bearers, their powers and functions and their appointment or election; and

(iv) the holding of annual general meetings; and

(v) the submission by any official or office bearer to re-appointment or re-election if a petition therefor is made—

A. within one year of his appointment or election, as the case may be, by not less than three quarters; or

B. later than one year of his appointment or election, as the case may be, by not less than one quarter;

of the members of the trade union, employers organization or federation; and

(vi) the call and conduct of meetings of members or representatives of

members of the trade union, employers organization or federation; and

(vii) the prohibition of discrimination against any members or class of members on grounds of race, tribe, place of origin, political opinion, colour, creed gender, pregnancy, HIV/AIDS status or; subject to the Disabled Persons [Chapter 17:01] any disability referred to in the definition of “disabled person” in that Act; [amended by Act 17 of 2002 with effect from 7th March, 2003.] and

(viii) the amendment of the constitution; and

(ix) the winding up of the trade union, employers organization, or federation;

and failure to so provide in the constitution shall constitute an unfair labour practice by the trade union, employers organization, or federation concerned.

(2) A trade union, employers organization or federation may, notwithstanding subsection (1) and before it has adopted a written constitution in terms of that subsection, raise funds in respect of membership fees to an amount not exceeding such amount as may be specified by the Minister by statutory instrument for the purposes of this subsection.

(3) Every trade union, employers organization or federation shall, within six months of its formation, submit two copies of its constitution to the Minister, and shall within one month of any amendment of its constitution submit copies of such amendment with a statement of the purpose thereof to the persons and authorities mentioned in this subsection.

(4) It shall be the duty of every official or office bearer of a trade union, employers organization or federation to ensure compliance with this section.

29 Registration and certification of trade unions and employers organizations and privileges thereof

(1) Subject to this Act, any trade union, employers organization or federation may, if it so desires, apply for registration.

(2) Every trade union, employers organization or federation shall, upon registration, become a body corporate and shall in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act or thing which its constitution requires or permits it to do, or which a body corporate may, by law, do.

(3)

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

(4) Subject to this Act, a registered trade union or federation of such unions shall be entitled—

(a) to be assisted by a labour relations officer or designated agent of the appropriate employment council in its dealings with employers; and

(b) through its duly authorized representatives, to the right of access to employees conferred by subsection (2) of section seven; and

(c) to be provided by employers with the names and other relevant particulars, including particulars as to wages of all employees who are employed in the industry or undertaking for which the trade union or federation is registered and who are members of the trade union or federation concerned; and

(d) to make representations to a determining authority or the Labour Court; and

(e) to be represented on any appropriate employment board; and

(f) to form or be represented on any employment council; and

(g) to recommend collective job action; and

(h) to levy, collect, sue for and recover union dues; and

(i) to act as an agent union in terms of section thirty-one; and

(j) to exercise any other right or privilege conferred by this Act on registered trade unions or federations thereof.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(4a) In addition to the privileges specified in subsection (4), an official or office-

bearer of a registered trade union or federation shall be entitled to take such reasonable paid or unpaid leave during working hours as may be agreed under a collective bargaining agreement for the purpose of enabling the official or office-bearer to perform the functions of his office:

Provided that if the parties negotiating a collective bargaining agreement fail to agree on the extent of paid or unpaid leave for the purposes of this subsection, the matter shall be referred by an appropriate authority as defined in section one hundred and two to compulsory arbitration as provided in section ninety-eight.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(5) Subject to this Act, a registered employers organization shall be entitled—

(a) to be assisted by a labour relations officer or a designated agent of the appropriate employment council in its dealings with trade unions or workers committees; and

(b) through its duly authorized representatives, to be provided by trade unions and workers committees with the names and other relevant particulars of all their members; and

(c) to make representations to a determining authority or the Labour Court; and

(d) to be represented on any appropriate employment board; and

(e) to form or be represented on any employment council; and

(f) to exercise any other right or privilege conferred by this Act on registered employers organizations.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

30 Unregistered trade unions and employers organizations

(1) No unregistered trade union or employers organization may in its corporate name—

(a) make representations to the Labour Court; or

(b) be assisted by a labour relations officer or a designated agent of any employment council.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) No unregistered trade union or employers organization may, whether in its corporate name or through any of its members—

(a) be represented on any employment board; or

(b) form or be represented on any employment council; or

(c) be entitled to be provided with the particulars specified in paragraph (c) of subsection (4) or paragraph (b) of subsection (5) of section twenty-nine.

(3) No unregistered trade union may, whether in its corporate name or otherwise—

(a) recommend collective job action; or

(b) have the right of access to employees conferred by subsection (2) of section seven; or

(c) levy, collect or recover union dues by means of a check-off scheme.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

31 When trade union may act as agent union

(1) Subject to subsection (2), a registered trade union may act as the agent union of employees in any undertaking or industry who are not otherwise represented by a registered trade union if—

(a) not less than fifty per centum of the employees concerned are in favour of such trade union representing them; or

(b) an unregistered trade union or a registered trade union which otherwise represents the employees concerned requests the registered trade union to act as its agent union; or

(c) the Minister so requests.

(2) Except where the Minister has requested a registered trade union to act as an agent union or has consented to such a request in terms of paragraph (c) of subsection (1), a registered trade union that desires so to act shall apply to the Minister in

writing, setting out the circumstances giving rise to the application.

(3) On receipt of an application in terms of subsection (2), the Minister may, after taking into account—

- (a) the extent to which the registered trade union appreciates the interests and needs of the employees concerned; and
 - (b) the views of any employers or employees who may be affected; and
 - (c) any levies or dues the registered trade union proposes to levy from the employees concerned; and
 - (d) the ability of the registered trade union to act as an agent union;
- grant or refuse the application.

(4) Regulations made in terms of subsection (1) shall have effect for the purposes of the Labour Act [Chapter 28:01] as if they a collective bargaining agreement registered in terms of section 79 of that Act.

(5) No registered trade union shall act as an agent union—

- (a) for a period of more than three years unless, before the expiry of three years after commencing so to act, the Minister extends such period; or
- (b) after a registered trade union representing the employees concerned has been certified or has re-acquired its competency to represent the employees concerned.

(6) A certified federation of registered trade unions may act, *mutatis mutandis*, as an agent union with respect to the members of one of its component unions or undertakings.

(7) The Minister may on his own initiative or on the application of any interested party, at any time, revoke the authority of a registered trade union or federation of trade unions to act as an agent union.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

32 Agent union to disclose other agencies

A registered trade union or federation of trade unions which is acting as an agent union for any employees may, in terms of section thirty-one, become the agent union for any other employees if it discloses to such other employees its prior agency.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

33 Application for registration

(1) Every application for registration by a trade union or employers organization or federation shall, subject to section thirty-four, be made to the Registrar in the prescribed form.

(2) The Registrar shall cause notice to be published in the Gazette of every application made in terms of this section, and in such notice shall invite any person who wishes to make any representations relating to the application to lodge such representations with the Registrar within such period, not being less than thirty days from the date of the notice, as may be specified in the notice, and to state whether or not he wishes to appear in support of his representations at accreditation proceedings.

34 Requirements of application for registration

An application for registration of a trade union or employers organization or federation shall contain the following information—

- (a) the name of the trade union or employers organization or federation; and
- (b) the names and relevant particulars of the persons intending to secure the registration; and
- (c) the coverage of the proposed trade union or employers organization or federation with regard to the undertakings or industries concerned, with such exclusions as may be intended; and
- (d) the affiliates to and the affiliations of the trade union or employers organization or federation, including international, national or local unions, organizations or workers communities; and
- (e) sources of funds and material, both current and anticipated, for

organizing the trade union or employers organization or federation, and the address of its bank;

and shall be accompanied by a copy of its constitution or operational rules.

35 Requirements of constitution of registered trade unions or employers organizations

The constitution of every registered trade union or employers organization or federation shall, in addition to the matters referred to in section twenty-eight, provide for—

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(a) consultation between the various governing bodies or branches of the trade union or employers organization and members thereof before such trade union or employers organization or federation—

- (i) enters upon a collective bargaining agreement; or
- (ii) recommends collective job action; or
- (iii) embarks upon any new programme which is likely to substantially affect the rights and interests of its members; or
- (iv) increases fees and other dues payable by its members; or
- (v) assigns an official to represent its members in a particular matter that is of considerable significance to its members;

and

(b) the keeping of books of accounts and the submission of such books of accounts for auditing within three months of the end of each financial year, and the making available to members of certified true copies of the audited accounts and the auditor's report thereon; and

(c) the prohibition of the use of union or association dues of the trade union or employers organization or federation for electioneering for the trade union or employers organization or federation or for political purposes; and

(d)

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

(e) the equitable sharing of the funds of the trade union or employers organization with any of its branches; and

(f) the maintenance of a register of members and a record of the fees, if any, paid by each member and the periods to which those fees relate; and

(g) the giving to any person who is refused membership or who is expelled of written reasons for such refusal or expulsion; and

(h) such other matters as may be prescribed.

36 Registration of trade unions, employers organizations and federations

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (2) of section thirty-three and after the holding of accreditation proceedings, if any, grant or refuse an application for the registration of a trade union or employers organization or federation.

(2) When granting any application for registration in terms of subsection (1), the Registrar may, after consultation with the applicant, increase or reduce the interests or area in respect of which the applicant applied for registration.

(3) Where the Registrar grants an application for registration of a trade union or employers organization, he shall enter in his register—

(a) the name of the trade union or employers organization; and

(b) every undertaking or industry in respect of which the trade union or employers organization is registered; and

(c) such other particulars as may be prescribed;

and shall issue the trade union or employers organization with a certificate of registration in the prescribed form.

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made by him in terms of this section.

Sections 37 and 38

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

39 Application or proposal to vary, suspend or rescind registration

(1) Any interested person, including the trade union or employers organization concerned, may apply to the Registrar for the variation, suspension or rescission of the registration of a trade union or employers organization.

(2) If a registered trade union or employers organization—

(a) no longer adequately represents the interests or area for which it was registered; or

(b) has failed to perform any of its functions in terms of this Act; the Minister may, after consultation with the trade union or employers organization concerned, direct the Registrar to hold accreditation proceedings to determine whether or not the registration of the trade union or employers organization concerned should be varied, suspended or rescinded.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) On receipt of an application in terms of subsection (1) or a direction in terms of subsection (2), the Registrar shall publish notice in the Gazette of the application or direction and shall, in such notice, invite any person who wishes to make any representations relating to such application or direction to lodge with him such representations within thirty days of the date of publication of the notice, and to state whether or not he wishes to appear in support of such representations at accreditation proceedings.

40 Variation, suspension or rescission of registration or certification

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (3) of section thirty-nine and after the holding of accreditation proceedings, if any, vary, suspend or rescind the registration or certification of a trade union or employers organization.

(2) The rescission of the certification of a trade union or employers organization shall have the effect of rescinding the registration of that trade union or employers organization, unless the Registrar otherwise directs.

(3) The suspension of the registration or certification of a trade union or employers organization shall have the effect of suspending that trade union or employers organization, as the case may be, from performing all or any of the functions of a registered or certified trade union or employers organization, as may be specified in the order of suspension.

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made in terms of this section.

41 Accreditation proceedings

Accreditation proceedings shall be held for the purposes of determining whether or not—

(a) a trade union or employers organization should be registered;

(b)

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

(c) the registration of a trade union or employers organization should be varied, suspended or rescinded;

in any case where—

(i) the Registrar considers that such proceedings should be held; or

(ii) the Minister directs that such proceedings should be held; or

(iii) any interested person has requested such proceedings, whether in relation to a trade union or employers organization which has already been registered or in relation to a trade union or employers organization which is proposed to be registered:

Provided that the Registrar may, in any case referred to in this subparagraph decline to hold accreditation proceedings.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

42 Notice of accreditation proceedings

(1) Whenever accreditation proceedings are proposed to be held, the Registrar shall give not less than thirty days' notice thereof—

- (a) in writing to the parties concerned; and
- (b) by publication of a notice in the Gazette and in such other publication as he thinks appropriate.

(2) A notice given in terms of subsection (1) shall specify—

- (a) the subject of the accreditation proceedings; and
- (b) the time and place of the accreditation proceedings;

and shall call upon all interested parties, who wish to do so, to submit any representations they wish to make to the Registrar and to advise him whether or not they will be attending the proceedings.

(3) Where the Registrar has received any representations relating to any matter to be considered at accreditation proceedings, he shall submit or make available a copy thereof to other interested parties as soon as practicable.

43 Procedure at accreditation proceedings

At the hearing of any accreditation proceedings—

- (a) the parties—
 - (i) may appear in person or by any duly authorized representative;
 - (ii) shall be given a reasonable opportunity of presenting their case;
- (b) the Registrar shall preside and shall, subject to any procedure that may

be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties and to carry out the objects of this Act.

44 Notification of decision made at accreditation proceedings

Upon the completion of any accreditation proceedings, the Registrar shall notify all interested party who appeared at the proceedings of his decision in writing and his reasons therefor.

45 Considerations relating to registration, variation, suspension or rescission of registration of trade unions or employers organizations

(1) In any determination of the registration of a trade union or employers organization or of the variation, suspension or rescission thereof, the Registrar shall—
[amended by Act 17 of 2002 with effect from 7th March, 2003.]

- (a) take into account—
 - (i) representations by—
 - A. employers and employees who might be affected; and
 - B. the Minister and any other Minister whose Ministry or Department may be affected; and
 - C. any member of the public or any section thereof likely to be affected;
 - and

(ii) the desirability of affording the majority of the employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests; and

(iii) the desirability of reducing, to the least possible number, the number of entities with which employees and employers have to negotiate; and

(iv) whether representations made in terms of subsection (3) of section thirty-nine or at any accreditation proceedings in terms of section forty-one indicate that the trade union or employers organization will not be substantially representative of the employees or employers it proposes to represent;
and

- (b) ensure compliance with the following requirements—

- (i) a trade union shall not represent employers;

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

The deletion of the words “or managerial employees” in (b)(i) implies that managerial employees can be represented by their unions.

(ii) an employers organization shall not represent employees other than managerial employees;

(iii) the constitution of a trade union or employers organization shall not be inconsistent with this Act.

(2) Where any person asserts that there should, in any particular case, be any departure from the general rule referred to in subparagraph (iv) of paragraph (a) of subsection (1) of subsection (1), the burden of proving such assertion shall lie on such person.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

46 Matters to be determined by Labour Court

In the event of any dispute as to—

(a) the extent or description of any undertaking or industry; or

(b) whether any employees are managerial employees;

the matter shall be referred to the Labour Court for determination.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

47 Right of appeal

Any person who is aggrieved by a decision of the Registrar—

(a) to register a trade union or employers organization; or

(b) not to register a trade union or employers organization; or

(c) to vary, suspend or rescind the registration of a trade union or employers organization or to decline such variation, suspension or rescission; or

(d)

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

(e) to decline to hold accreditation proceedings;

may, subject to this Part, appeal to the Labour Court.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

48 Notice of appeal

(1) A person who intends to appeal in terms of section forty-seven shall, within thirty days of the date on which he was notified of the decision against which he intends to appeal, in such form and manner as may be prescribed, give notice of appeal and of the grounds on which the appeal is based to the Registrar, and to every person who appeared at the accreditation proceedings, if any, concerned.

(2) Subject to subsection (3), the effect of giving notice of appeal in terms of subsection (1) shall be to suspend the operation or effect of the decision appealed against, pending the determination of the appeal.

(3) The Registrar may, on the application of any person, by notice in writing impose such reasonable restrictions as he considers necessary on the activity of any trade union or employers organization concerned in an appeal referred to in subsection (1) in order to protect the reasonable interests of the public and of persons concerned in the appeal.

(4) Any person upon whom restrictions have been imposed in terms of subsection (3) may, with due notice to the other persons concerned, make representations to the Registrar in respect thereof and the Registrar may, if he thinks fit, vary or revoke such restrictions.

(5) Any person upon whom restrictions have been imposed in terms of subsection (3) shall, if he fails to comply therewith, be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

49 Appeals before regional hearing officer

(1) On an appeal before the Labour Court in terms of section forty-seven—

(a) the parties thereto shall be given a reasonable opportunity of presenting their case:

Provided that the Tribunal may direct in any particular case that the parties shall be confined to submitting their representations in writing and, in such case, each party shall be given a reasonable opportunity of replying to the representations of the other party;

(b) the Tribunal shall, subject to such procedures as may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties, and to carry out the objects of this Act.

(2) On an appeal in terms of section forty-seven, the Labour Court may, subject to this Part, confirm, vary or set aside the decision of the Registrar appealed against, and may make such other order, whether as to costs or otherwise, as he thinks necessary or appropriate.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

50 Right of membership of registered trade unions and employers organizations

(1) Every employee shall be entitled to membership of any registered trade union which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

(2) Every employer shall be entitled to membership of any registered employers organization which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

51 Supervision of election of officers

(1) The Minister may, where the national interest so demands, cause to be supervised the holding of elections to any office or post in a registered trade union or employers organization.

(2) Without derogation from the generality of subsection (1) the Minister may, on the advice of the Registrar—

(a) set aside any election if the election was not properly conducted or if the result of the election did not represent the views of the electors;

(b) postpone, or change the venue of or procedure for, any election, if it is necessary to do so to ensure that the views of electors are given proper expression;

(c) assign responsibility for the conduct of any election to any trade union or employers organization;

(d) if the conduct of any election campaign by any person is leading to a misrepresentation of any issues involved in such election, and the consequences of such misrepresentation have serious implications for the national interest, prohibit any person from so conducting the election campaign;

(e) make regulations for controlling and regulating elections and for fixing the qualifications for officers of registered trade unions and employers organizations.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

52 Right to union or association dues

(1) For the purpose of fulfilling its obligation to represent the interests of its members employed or engaged in the undertaking or industry for which it is registered, a registered trade union or employers organization may, subject to this Act, levy, collect, sue for and recover union and association dues.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) Subject to this Act, a federation of trade unions or employers organizations shall not, unless permitted to do so in any particular case by the constitution of the member trade union or employers organization concerned, levy, collect or receive membership fees, union dues or association dues, as the case may be, from persons in their capacity as individual employers or employees.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from 10th September, 2002]

53 Restrictions on payment of union dues by employers

(1) No employer shall, without the consent of the Minister, pay on behalf of any employee any union dues other than to a registered trade union.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from 10th September, 2002]

54 Collection of union dues

(1) Union dues shall be collected by an employer from his employees and transferred to the trade union concerned—

(a) by means of a check-off scheme or in any other manner agreed between the trade union and the employees and the employer or employers organisation concerned; or

(b) failing such agreement as referred to in paragraph (a), by authorisation in writing of an employee who is a member of the trade union concerned.

[substituted by Act 17 of 2002 from 7th March, 2003]

(2) The Minister may, by notice in writing to any employer, prohibit or modify any arrangements made for the collection of union dues by the employer from his employees.

(3) The Minister may in terms of subsection (2) give directions—

(a) relating to a reduction or increase of the amount deductible by the employer;

(b) directing payment of the union dues by the employer into a trust fund and not to the trade union concerned;

(c) in respect of such other matters in connection with the payment of union dues as the Minister considers necessary or desirable in the interest of the employees concerned.

(4) Any person who is aggrieved by any direction given by the Minister in terms of subsection (3) may appeal to the Labour Court.

(5) On an appeal in terms of subsection (4) the Labour Court may confirm, rescind or amend the Minister's direction:

Provided that where the Minister certifies that the reason for the direction was that the registered trade union concerned had engaged or had threatened to engage in an unlawful collective job action, any ruling by the Labour Court rescinding or amending the Minister's direction shall not have effect for six months from the date of such direction.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(5a) No employer shall collect or pay any union dues in terms of this section to or on behalf of a trade union or federation—

(a) while its registration is suspended; or

(b) after its registration has been rescinded.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(6) Any employer who fails or refuses to collect union dues and transfer them to the trade union concerned in accordance with this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from 10th September, 2002]

55 Minister may regulate union dues

(1) The Minister may make regulations providing for the proper and systematic collection, management, application and disbursement of union dues by trade unions.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the maximum amount, and method of assessment, of union dues;

(b) the accounting procedures that shall be followed in connection with the collection, management, application and disbursement of union dues;

(c) the appointment of auditors and the keeping of books of accounts;

(d) the payment by trade unions of a percentage of union dues to any association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions in Zimbabwe;

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(e) limitations on the salaries and allowances that may be paid to employees of trade unions;

(f) limitations on the staff that may be employed, and the equipment and property that may be purchased, by trade unions;

(g) limitations on the matters on which and the extent to which union dues may be expended.

(3) The Minister may, in writing, direct any trade union to supply him with such information as he may require in connection with the acquisition and disbursement of union dues.

(3a) Any trade union that fails or refuses to comply with a direction in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from the 10th September, 2002.]

(4) The Minister may exercise the same powers as are conferred upon him in terms of subsections (1), (2) and (3), mutatis mutandis, in relation to association dues.

PART VIII

EMPLOYMENT COUNCILS

56 Voluntary employment councils

Any—

(a) employer, registered employers organization or federation of such organizations; and

(b) registered trade union or federation of such trade unions;

may, at any time, form an employment council by signing a constitution agreed to by them for the governance of the council, and by applying for its registration in terms of section fifty-nine.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

57 Statutory employment councils

(1) The Minister may, whenever the national interest so demands, request—

(a) any registered employers organization or federation of such organizations; and

(b) any registered trade union or federation of such trade unions;

to form an employment council and to apply for its registration in terms of section fifty-nine.

[amended Act 17 of 2002 with effect from 7th March, 2003.]

(2) If within three months of a direction being given in terms of subsection (1), the parties concerned have failed to apply for the registration of an employment council, the Minister may appoint such number of persons as he considers will represent the employers and employees concerned, and such persons shall, within such period as may be specified by the Minister, form an employment council by signing a constitution agreed to by them for the governance of the council and by obtaining registration of the council in terms of section fifty-nine.

58 Constitution of employment councils

The constitution of every employment council formed in terms of this Part shall provide for—

(a) a statement of the aims and objectives of the council; and

(b) the registered trade union concerned or federation of such trade unions to appoint fifty per centum of the members of the employment council, and the employers organization concerned or federation of such organizations to appoint the remaining members;

[amended by Act 17 of 2002 with effect from 7th March, 2003.] and

(c) the appointment of a chairman and vice-chairman of the employment council:

Provided that every constitution shall provide that if the chairman is

appointed by members representing the registered trade union or federation of trade unions, the vice-chairman shall be appointed by members representing the employers organization or federation of such organizations, and vice-versa; [amended by Act 17 of 2002 with effect from 7th March, 2003.] and

(d) the dues which are payable to the employment council by the members thereof; and

(e) the administration of the funds of the employment council; and

(f) the keeping of minutes and other records of the proceedings of the employment council; and

(g) the admission of new parties to the employment council; and

(h) the procedures for dealing with any disputes within the undertaking or industry represented by the parties to the employment council; and

(i) the amendment of the constitution; and

(j) the winding up of the employment council; and

(k) such other matters as may be prescribed.

59 Registration of employment councils

(1) Upon application for the registration of an employment council, the Registrar shall—

(a) if he is satisfied, having due regard to section sixty-one which shall apply, *mutatis mutandis*, that the employment council and its constitution comply with this Act, register the employment council;

(b) if he is not satisfied as provided in paragraph (a), refuse to register the employment council.

(2) Whenever the Registrar registers an employment council he shall furnish that employment council with a certificate of registration.

60 Employment councils to be bodies corporate

Every employment council shall, upon registration in terms of this Act, become a body corporate and in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act which its constitution requires or permits it to do, or which a body corporate may by law do.

61 Variation of registration of employment councils

(1) Whenever the Registrar is satisfied that—

(a) any employment council is not sufficiently representative of the undertaking or industry in respect of which it is registered; or

(b) any branch or section of the undertaking or industry in respect of which an employment council is registered has been included in the registration by oversight or mistake or that an employment council is not sufficiently representative of any such branch or section; or

(c) the character of any undertaking or industry in respect of which an employment council is registered is such that a particular branch or section thereof should no longer be included in such undertaking or industry; or

(d) it is in the interests of employers, employees or the public for a particular branch or section of any undertaking or industry in respect of which an employment council is registered, to form a separate employment council for that branch or section; or

(e) any branch or section of an undertaking or industry should be included within the undertaking or industry for which an employment council is registered; he may, after consultation with the employment council, vary the coverage in respect of which the employment council is registered and make the necessary variation in his register.

(2) If at any time the Registrar is satisfied that an employment council—

(a) is not sufficiently representative of any undertaking or industry in respect of which it is registered; or

(b) has failed to comply with this Act;

he may, after consultation with the employment council concerned, cancel the registration of that employment council.

(3) If the Registrar exercises any of the powers conferred upon him by subsection (1) or (2), he shall call upon the secretary of the employment council concerned to transmit to him the certificate of registration issued to it, and the secretary shall, within thirty days of being so called upon, transmit the certificate of registration to the Registrar.

(3a) A secretary of an employment council who fails or refuses to transmit the council's certificate of registration to the Registrar in accordance with subsection (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from the 10th September, 2002.]

(4) The Registrar shall, upon receipt by him of a certificate of registration of an employment council in terms of subsection (3)—

(a) make the necessary alterations therein and return it to the employment council concerned; or

(b) issue to the employment council concerned a fresh certificate of registration; or

(c) cancel the certificate of registration;
as may be appropriate.

(5) Any person aggrieved by any action taken by the Registrar in terms of this section may appeal to the Labour Court.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

62 Duties of employment councils

(1) An employment council shall, within the undertaking or industry and in the area in respect of which it is registered—

(a) assist its members in the conclusion of collective bargaining agreements or otherwise prevent disputes from arising, or settle disputes that have arisen or may arise between employers or employers organizations on the one hand and employees, workers committees or trade unions on the other, and shall take such steps as it may consider expedient to bring about the regulation or settlement of matters of mutual interest to such persons or bodies:

Provided that an employment council shall not take any steps in terms of this paragraph in respect of any matter which has been referred to an employment board, unless the Minister requests the employment council to do so;

(b) take such steps as it may consider expedient to ensure that any collective bargaining agreement and any regulations pertaining to an undertaking or industry with which it is concerned are being observed.

(2) The parties to an employment council registered in respect of any activity carried on by a local authority or statutory body shall have power to enter into an agreement such as is referred to in subsection (1), notwithstanding anything to the contrary contained in any law empowering the local authority or statutory body concerned to make provision with respect to any such agreement.

63 Designated agents of employment councils

(1) For the purpose of enabling it to exercise its powers and perform its functions in terms of this Act, an employment council may, and when so directed by the Registrar shall, advise the Registrar of persons whom it wishes to be appointed as its designated agents.

(2) If the Registrar approves of the persons advised in terms of subsection (1) he shall appoint them as designated agents of the employment council and shall issue them with certificates of appointment.

(3) A designated agent of an employment council may—

(a) require any employer in the undertaking or industry and within the area for which the employment council is registered—

(i) to grant him reasonable access to his employees for the purpose of advising and assisting them in relation to their rights of employment;

(ii) to grant him reasonable access to his premises and to the books, records and other documents relating to his employment for the purpose of examining and ascertaining matters relating to or affecting the employment of his employees who are represented by any trade union or federation of trade unions which is a member of the employment council concerned, and of ascertaining whether or not the terms of any relevant collective bargaining agreement and regulations are being observed;

(b) enter upon any premises of an employer in the undertaking or industry and within the area for which the employment council is registered for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Act or for the seizure of any property which is the subject matter of an offence in terms of this Act.

(3a) A designated agent of an employment council who meets such qualifications as may be prescribed shall, in his certificate of appointment, be authorised by the Registrar to redress or attempt to redress any dispute or unfair labour practice—

(a) occurring in the undertaking or industry and within the area for which the employment council is registered; and

(b) which has been referred to him by the employment council; whether such dispute or unfair labour practice is referred to him or has come to his attention, and the provisions of Part XII shall apply, *mutatis mutandis*, to the designated agent as they apply to a labour officer.

(3b) Where a designated agent is authorised to redress any dispute or unfair labour practice in terms of subsection (3a), no labour officer shall have jurisdiction in the matter.

[paras (3a) and (3b) inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(4) Any person who hinders or obstructs a designated agent of an employment council in the exercise of his powers or the performance of his duties in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(5) Notwithstanding subsection (4), nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (3).

PART IX

EMPLOYMENT BOARDS

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

PART X

COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

74 Scope of collective bargaining agreements

(1) This Part shall apply to collective bargaining agreements negotiated by registered trade unions, employers and employers organizations or federations thereof:

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

Provided that nothing in this Part contained shall prevent an unregistered trade union or employers organization from negotiating a collective bargaining agreement.

(2) Subject to this Act and the competence and authority of the parties, trade unions and employers or employers organizations may negotiate collective bargaining agreements as to any conditions of employment which are of mutual interest to the parties thereto.

(3) Without derogation from the generality of subsection (2), a collective bargaining agreement may make provision for—

- (a) rates of remuneration and minimum wages for different grades and types of occupations;
- (b) benefits for employees;
- (c) deductions which an employer may make from employees' wages, including deductions for membership fees and union dues, and deductions which an employer may be required or permitted by law or by order of any competent court to make;
- (d) methods of calculating, or factors for adjusting rates of pay, and the dates, times and modes of payment;
- (e) all issues pertaining to overtime, piece-work, periods of vacation and vacation pay and constraints thereon;
- (f) the demarcation of the appropriate categories and classes of employment and their respective functions;
- (g) the conditions of employment for apprentices;
- (h) the number of hours of work and the times of work with respect to all or some of the employees;
- (i) the requirements of occupational safety;
- (j) the maintenance of, and access by the parties to, records of employment and pay;
- (k) procedures for dealing with disputes within an undertaking or industry.

[para (k) inserted by Act 17 of 2002 with effect from 7th March, 2003.]

Employers are urged to use this new para (k) in coming up with Procedural Agreements to cover picketing, strikes, contract workers, retrenchment, etc. It must be noted that where a registered CBA provides s92 (3) as a procedure for conciliation and arbitration of any category of dispute, that procedure shall be the exclusive procedure for the determination of disputes within that category.

(4) Nothing contained in any collective bargaining agreement shall prevent either or both of the parties from seeking to renegotiate or amend the agreement after twelve months of its operation in order to take account of changed circumstances in the industry or undertaking concerned.

(5) A collective bargaining agreement shall not contain any provision which is inconsistent with this Act or any other enactment, and any collective bargaining agreement which contains any such provision shall, to the extent of such inconsistency, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with this Act or such other enactment.

(6) The existence of a collective bargaining agreement shall not preclude an employer and his employees from agreeing to the introduction of higher rates of pay or other more favourable conditions of employment before the expiry of such collective bargaining agreement, so however that the rights and interests of the employees are not thereby diminished or adversely affected:

Provided that the collective bargaining agreement shall be endorsed to reflect such higher rates of pay or other more favourable conditions of employment.

75 Obligation to negotiate in good faith

(1) All parties to the negotiation of a collective bargaining agreement shall—

- (a) disclose all information relevant to the negotiation, including information contained in records, papers, books and other documents; and
- (b) make no false or fraudulent misrepresentations in regard to matters relevant to the negotiation; and
- (c) earnestly and expeditiously endeavour to arrive at a successful conclusion in the negotiation;

so as to ensure that the entire negotiation is conducted in absolute good faith.

(2) It shall constitute an unfair labour practice to fail to negotiate in absolute good faith, or in any way to bring about a situation that undermines the basis of negotiating

in absolute good faith.

76 Duty of full disclosure when financial incapacity alleged

(1) When any party to the negotiation of a collective bargaining agreement alleges financial incapacity as a ground for his inability to agree to any terms or conditions, or to any alteration of any terms or conditions thereof, it shall be the duty of such party to make full disclosure of his financial position, duly supported by all relevant accounting papers and documents, to the other party.

(2) Where there is any disagreement as to whether or not full disclosure has been made in terms of subsection (1), the matter shall be referred to the senior labour officer who may make such determination as he deems fit, and such determination shall, unless appealed against to the Labour Court be final and binding upon the parties.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Any person who fails or refuses to comply with a determination that is binding upon him in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from the 10th September, 2002.]

77 Representation of parties

The parties to the negotiation of a collective bargaining agreement may be represented by committees, delegates or agents:

Provided that—

(i) the powers of such committees, delegates or agents shall be specified in writing and certified by the parties they represent;

(ii) copies of such documents shall be served by each party on the other party or parties prior to the commencement of negotiations.

78 Ratification of collective bargaining agreements

(1) Every collective bargaining agreement which has been negotiated by a party and which is required to be ratified by the members thereof or by a constituent branch or other party thereto shall be deemed not to have been ratified unless every portion of the collective bargaining agreement has been ratified.

(2) Notwithstanding subsection (1), where the national interest so demands, the Minister may direct that any portion of a collective bargaining agreement which has not been ratified shall be put into effect prior to the ratification of the other portions of the collective bargaining agreement:

Provided that where a collective bargaining agreement itself stipulates that it shall not be valid unless ratified in toto, the Minister shall not exercise his powers in terms of this subsection except in relation to provisions dealing with wages and benefits which have been ratified.

79 Submission of collective bargaining agreements for approval or registration

(1) After negotiation, a collective bargaining agreement shall be submitted to the Registrar for registration.

(2) Where any provision of a collective bargaining agreement appears to the Minister to be—

(a) inconsistent with this Act or any other enactment; or

(b) inequitable to consumers or to members of the public generally, or to any party to the collective bargaining agreement; or

(c) unreasonable or unfair, having regard to the respective rights of the parties;

he may direct the Registrar not to register such collective bargaining agreement until it has been suitably amended by the parties thereto.

(3) Where a collective bargaining agreement is not registered or approved in terms of subsection (2) until it has been amended, it shall be the duty of the parties concerned to negotiate for such amendment in absolute good faith and to duly participate in proceedings necessary therefor, and failure to do so shall constitute an unfair labour

practice.

80 Publication of collective bargaining agreements

(1) Upon registration of a collective bargaining agreement the Minister shall publish the agreement as a statutory instrument.

(2) The terms and conditions of a registered collective bargaining agreement shall become effective and binding—

- (a) from the date of publication of the agreement in terms of subsection (1); or
- (b) from such other date as may be specified in the agreement.

81 Amendment of registered collective bargaining agreements by Minister

(1) Where a collective bargaining agreement which has been registered contains any provision which is or has become—

- (a) inconsistent with this Act or any other enactment; or
- (b) inequitable to consumers or to members of the public generally or to any party to the collective bargaining agreement; or
- (c) unreasonable or unfair, having regard to the respective rights of the parties;

the Minister may direct the parties to the agreement to negotiate within such period as he may specify for the amendment of the agreement in such manner or to such extent as he may specify.

(2) Where the Minister has made a direction in terms of subsection (1), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate in absolute good faith for the amendment of the agreement and to report back to the Minister within the period specified in the direction as to the extent to which they have been able or unable to agree in amending the agreement.

(3) Upon receipt of the report of the parties in terms of subsection (2), the Minister shall consider the same and may thereafter amend the collective bargaining agreement in accordance with the report of the parties or in such other manner as is consistent with the considerations specified in paragraphs (a), (b) and (c) of subsection (1).

(4) Where the Minister amends a collective bargaining agreement in terms of subsection (3), he shall direct the Registrar to register such amendment and section eighty shall apply, *mutatis mutandis*, in relation thereto.

82 Binding nature of registered collective bargaining agreements

(1) Where a collective bargaining agreement has been registered it shall—

(a) with effect from the date of its publication in terms of section eighty-five, or such other date as may be specified in the agreement, be binding on the parties to the agreement, including all the members of such parties, and all employers, contractors and their respective employees in the undertaking or industry to which the agreement relates;

(b) remain binding despite—

- (i) a change of employer; or
- (ii) a change of ownership of the undertaking or industry concerned; or
- (iii) a change in the membership or structure of the trade union or employers organization;

(c) remain binding until—

- (i) it is replaced by a substitute agreement, notwithstanding any provision therein contained that it shall expire by lapse of time;

(ii) it is terminated by the mutual agreement of the parties thereto.

(iii)

[repealed by Act 17 of 2002 from 7th March, 2003.].

(2) This section shall apply, *mutatis mutandis*, in respect of any part of a collective bargaining agreement.

(3) Any person who fails to comply with a collective bargaining agreement which is binding upon him shall, without derogation from any other remedies that may be

available against him for its enforcement—

(a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and

(b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

(4) If a registered collective bargaining agreement provides a procedure for the conciliation and arbitration of any category of dispute, that procedure is the exclusive procedure for the determination of disputes within that category

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

82A Copies of collective bargaining agreement

(1) Each party to the negotiation of a collective bargaining agreement shall be provided with a copy of the agreement.

(2) A copy of a collective bargaining agreement in force shall be posted in a conspicuous place in every undertaking in respect of which it applies.

(3) A copy of a collective bargaining agreement in force shall be made available for examination free of charge on request by an employee bound by its terms at the offices of the trade union that was a party to its negotiation.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

PART XI

LABOUR COURT

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

83 Administration of Part XI

This Part shall be administered by the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Part.

84 Establishment and composition of Labour Court

(1) There is hereby established a court, to be known as the Labour Court, which shall be a special court for the purposes of section 92 of the Constitution and a court of record.

(2) The Labour Court shall consist of—

(a) the Senior President of the Labour Court and such number of Presidents of the Labour Court as the President may consider necessary after consultation with the Judicial Service Commission; and

(b) subject to subsection (1) of section ninety, such assessors as are provided for in this Act.

(3) A person referred to in paragraph (a) of subsection (1) shall be appointed on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension benefits, as the President, on the recommendation of the Judicial Service Commission, may fix.

(4) Assessors shall be chosen in terms of section ninety, whenever required, from the list prepared in terms of section eight-six.

85 Qualification for appointment as President of Labour Court

A person shall not be qualified for appointment as a President of the Labour Court unless he—

(a) is a former judge of the Supreme Court or the High Court; or

(b) is qualified to be judge of the High Court; or

(c) has been a magistrate in Zimbabwe for not less than seven years

86 Assessors

(1) The Senior President of the Labour Court, in consultation with the Minister—

(a) shall prepare a list of the names of not less than ten persons who have knowledge or experience in labour relations and who may appropriately be appointed as assessors of the Labour Court; and

(b) may from time to time add names to or remove names from the list

referred to in paragraph (a).

(2) The Senior President of the Labour Court may, in consultation with the Minister, add or remove the name of any person from any list drawn up in terms of subsection (1).

(3) Before entering upon his duties for the first time, an assessor shall take an oath before the Senior President of the Labour Court that he will faithfully perform his duties as a member of the Labour Court.

(4) An assessor shall be paid such remuneration and allowances as the Minister responsible for justice, with the consent of the Minister responsible for finance, may fix.

87 Registrar of Labour Court

(1) There shall be a registrar of the Labour Court whose office shall be a public office and form part of the Public Service.

(2) The registrar of the Labour Court shall be responsible for—

(a) filing applications, references, appeals, records and other documents lodged with the Labour Court; and

(b) safeguarding the records of the Labour Court; and

(c) notifying parties of the dates and times at which matters are set down for hearing by the Labour Court; and

(d) performing such other functions as may be prescribed or as may be necessary for the proper functioning of the Labour Court.

(3) In the performance of his functions as registrar of the Labour Court, the registrar of the Labour Court shall be subject to the directions of the Senior President of the Labour Court.

88 Seal of Labour Court

(1) The Labour Court shall have and use as occasion may require a seal in a design approved from time to time by the President.

(2) The registrar of the Labour court shall have custody of the seal of the Labour Court.

89 Functions, powers and jurisdiction of Labour Court

(1) The Labour Court shall exercise the following functions—

(a) hearing and determining applications and appeals in terms of this Act or any other enactment; and

(b) hearing and determining matters referred to it by the Minister in terms of this Act; and

(c) referring a dispute to a labour officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;

(d) appointing an arbitrator from the panel of arbitrators referred to in subsection (5) of section ninety-eight to hear and determine an application;

(e) doing such other things as may be assigned to it in terms of this Act or any other enactment.

(2) In the exercise of its functions, the Labour Court may—

(a) in the case of an appeal—

(i) conduct a hearing into the matter or decide it on the record; or

(ii) confirm, vary, reverse or set aside the decision, order or action that is appealed against, or substitute its own decision or order; or

(iii) exercise the same powers of review as would be exercisable by the High Court in relation to the decision, order or action that is appealed against or any proceedings connected therewith; or

(iv) refer the matter back to the body, person or authority concerned for further consideration;

(b) in the case of an application made in terms of subparagraph (i) of subsection (7) of section ninety-three, remit it to the same or a different labour officer with instructions directing that officer to attempt to resolve it in accordance with such

guidelines as it may specify;

(c) in the case of an application made in terms of subparagraph (i) of subsection (7) of section ninety-three, make an order for any of the following or any other appropriate order—

(i) back pay from the time when the dispute or unfair labour practice arose;

(ii) in the case of an unfair labour practice involving a failure or delay to pay or grant anything due to an employee, the payment by the employer concerned to the employee or someone acting on his behalf of such amount, whether as a lump sum or by way of instalments, as will, in the opinion of the Labour Court, adequately compensate the employee for any loss or prejudice suffered as a result of the unfair labour practice;

(iii) reinstatement or employment in a job:

Provided that any such determination shall specify an amount of damages to be awarded to the employee concerned as an alternative to his reinstatement or employment;

(iv) insertion into a seniority list at an appropriate point;

(v) promotion or, if no promotion post exists, pay at a higher rate pending promotion;

(vi) payment of legal fees and costs;

(vii) cessation of the unfair labour practice;

(d) in the case of an application other than one referred to in paragraph (b) or (c), or a reference, make such determination or order or exercise such powers as may be provided for in the appropriate provision of this Act;

(e) subject to subsections (3) and (4), make such order as to costs as the Labour Court thinks fit.

(3) The costs in connection with any proceedings before the Labour Court shall be payable in accordance with the scale of costs for the time being in use in the court of a magistrate in civil cases, unless the person presiding over the Labour Court directs that the scale of costs for the time being in use in the High Court shall apply.

(4) Any costs awarded by the Labour Court shall be taxed by the registrar of the Labour Court in terms of subsection (3) and the taxation of such costs shall be subject to review by a President of the Labour Court at the instance of any interested party.

(5) For the purpose of taking evidence on any question before it, the Labour Court shall have the same powers as the High Court to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of books, plans and documents.

(6) No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1).

90 Exercise of functions by Labour Court

(1) The functions of the Labour Court may be exercised by one or more Presidents sitting by themselves or with one or more assessors chosen from the list prepared in terms of subsection (1) of section eighty-six.

(2) Subject to subsection (3), all questions that fall to be decided by the Labour Court sitting with more than one member shall be decided by a majority of the members:

Provided that—

(i) where the opinions of the members of the Labour Court are equally divided on any question, the decision of the person presiding over the Labour Court shall be the decision of the Labour Court;

(ii) no assessor shall have a voice in the decision of—

A. any question of law; or

B. any question as to whether a matter for decision is a question of fact or of law; or

C. any question as to the admissibility of evidence.

(3) Subject to this Part, the Presidents of the Labour Court may make rules for the

Court providing for—

- (a) the practice, procedure and rules of evidence to be followed, including the determination of any preliminary point in any proceedings;
- (b) the service of notices and other documents required for the purpose of any proceedings;
- (c) the forms to be used for the purpose of any proceedings;
- (d) the fees to be paid in respect of the service or examination of documents and the doing of any other thing by the registrar of the Labour Court or any officer of the Labour Court in connection with any proceedings;
- (e) the tariff of fees which may be charged by legal practitioners or a registered trade union or employers organisation for the purpose of paragraph (b) of section ninety-two in respect of any matter relating to the Labour Court;
- (f) allowances and other payments to witnesses summoned to give evidence or to produce any book or document in any proceedings;
- (g) any other matter which the Presidents of the Labour Court consider should be provided for in rules in order to ensure or facilitate the proper dispatch and conduct of the business of the Labour Court:

Provided that in any case not covered by the rules referred to in this subsection, the Labour Court shall act in such manner as it considers best fitted to do substantial justice and effect and carry out the objects of this Act, and for that purpose the Labour Court may give instructions on the course to be pursued which shall be binding on the parties to the proceedings.

(4) Rules in terms of subsection (3) shall not have effect until they have been approved by the Chief Justice and the Minister responsible for justice and published in a statutory instrument.

91 Sittings of Labour Court

The Labour Court shall sit at such places and at such times as may be prescribed or as the Senior President of the Labour Court may direct.

92 Representation of parties

A party to a matter before the Labour Court may appear in person or be represented and appear by—

- (a) a legal practitioner registered in terms of the Legal Practitioners Act [Chapter 27:07]; or
- (b) an official or employee of a registered trade union or employers organisation of which the party is a member.

92A Contempt of Labour Court

(1) If any person, at a sitting of the Labour Court, wilfully insults any member of the Court or wilfully interrupts the proceedings of the Court or otherwise wilfully disturbs the peace or order of the proceedings, the member presiding may order the person to be removed and detained in custody until the rising of the Court.

(2) Any person referred to in subsection (1) shall be guilty of an offence and liable, in addition to any removal and detention in terms of that subsection, to a fine not exceeding three thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

92B Effective date and enforcement of decisions of Labour Court

(1) The Labour Court may fix the date from which any decision, order or determination made by it shall operate, which date may be an earlier or later date than the date of the decision, order or determination.

(2) The President of the Labour Court who made the decision, order or determination shall submit sufficient certified copies of it to the registrar of the Labour Court to enable the registrar to furnish a copy to each of the parties affected by it.

(3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter

been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.

(4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(5) If any order which has been registered in terms of subsection (4) has been rescinded or altered by the Labour Court in terms of section ninety-two C, the clerk or registrar of the court concerned shall make the appropriate adjustment in his register.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

92C Rescission or alteration by Labour Court of its own decisions

(1) Subject to this section, the Labour Court may, on application, rescind or vary any determination or order—

(a) which it made in the absence of the party against whom it was made;
or

(b) which the Labour Court is satisfied is void or was obtained by fraud or a mistake common to the parties; or

(c) in order to correct any patent error.

(2) The Labour Court shall not exercise the powers conferred by subsection (1)—

(a) except upon notice to all the parties affected by the determination or order concerned; or

(b) in respect of any determination or order which is the subject of a pending appeal or review.

(3) Where an application has been made to the Labour Court to rescind or vary any determination or order in terms of subsection (1), the Labour Court may direct that—

(a) the determination or order shall be carried into execution; or

(b) execution of the determination or order shall be suspended pending the decision upon the application;

upon such terms as the Labour Court may fix as to security for the due performance of the determination or order or any variation thereof.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

92D Appeals against decisions of Labour Court

An appeal on a question of law shall lie to the Supreme Court from any decision of the Labour Court

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

93 Powers of labour officers

(1) A labour officer to whom a dispute has been referred, or to whose attention it has come, shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration.

(2) If the dispute is settled by conciliation, the labour officer shall record the settlement in writing.

(3) If the dispute is not settled within thirty days after the labour officer began to attempt to settle it under subsection (1), the labour officer shall issue a certificate of no settlement to the parties to the dispute.

(4) The parties to a dispute may agree to extend the period for conciliation of the dispute referred to in subsection (3).

(5) After a labour officer has issued a certificate of no settlement, the labour officer, upon consulting any labour officer who is senior to him and to whom he is responsible in the area in which he attempted to settle the dispute—

(a) shall refer the dispute to compulsory arbitration if the dispute is a dispute of interest and the parties are engaged in an essential service; or

(b) may, with the agreement of the parties, refer the dispute to compulsory arbitration; or

(c) may refer the dispute to compulsory arbitration if the dispute is a dispute of right;

and the provisions of section ninety-eight shall apply to such reference to compulsory

arbitration.

(6) Notwithstanding the issuance of a certificate of no settlement, the labour officer who attempted to conciliate the dispute remains seized with the dispute and shall continue to attempt to settle the dispute in accordance with any guidelines published by the Minister in terms of section one hundred and twenty-seven.

(7) If, in relation to any dispute—

(a) after a labour officer has issued a certificate of no settlement in relation to the dispute, it is not possible for any reason to refer the dispute to compulsory arbitration as provided in subsection (5); or

(b) a labour officer refuses, for any reason, to issue a certificate of no settlement in relation to any dispute after the expiry of the period allowed for conciliation under subsection (3) or any extension of that period under subsection (4); any party to the dispute may, in the time and manner prescribed, apply to the Labour Court—

(i) for the dispute to be disposed of in accordance with paragraph (b) of subsection (2) of section eighty-nine, in the case of a dispute of interest; or

(ii) for an order in terms of paragraph (c) of subsection (2) of section eighty-nine, in the case of a dispute of right.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

PART XII

DETERMINATION OF DISPUTES AND UNFAIR LABOUR PRACTICES

94 Prescription of disputes

(1) Subject to subsection (2), no labour officer shall entertain any dispute or unfair labour practice unless—

(a) it is referred to him; or

(b) has otherwise come to his attention;

within two years from the date when the dispute or unfair labour practice first arose.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

(2) Subsection (1) shall not apply to an unfair labour practice which is continuing at the time it is referred to or comes to the attention of a labour officer.

(3) For the purpose of subsection (1), a dispute or unfair labour practice shall be deemed to have first arisen on the date when—

(a) the acts or omissions forming the subject of the dispute or unfair labour practice first occurred; or

(b) the party wishing to refer the dispute or unfair labour practice to the labour officer first became aware of the acts or omissions referred to in paragraph (a), if such party cannot reasonably be expected to have known of such acts or omissions at the date when they first occurred.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

Sections 95 and 96.

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

97 Appeals to Labour Court

(1) Any person who is aggrieved by—

(a) any determination or direction of the Minister in terms of section twenty-five, forty, fifty-one, seventy-nine or eighty-two, or in terms of any regulations made pursuant to section seventeen;

(b) a determination made under an employment code in terms of section one hundred and one; or

(c) the conduct of the investigation of a dispute or unfair labour practice by a labour officer; or

(d) the conduct of any proceedings in terms of an employment code; may, within such time and in such manner as may be prescribed, appeal against such determination or conduct to the Labour Court.

(2) An appeal in terms of subsection (1) may—

(a) address the merits of the determination or decision appealed against;

(b) seek a review of the determination or decision on any ground on which the High Court may review it;

(c) address the merits of the determination appealed against and seek its review on a ground referred to in paragraph (b).

(3) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.

(4) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

98 Effect of reference to compulsory arbitration under Parts XI and XII

(1) In this section, “reference to compulsory arbitration”, in relation to a dispute, means a reference made in terms of paragraph (d) of subsection (1) of section eighty-nine or section ninety-three.

(2) Subject to this section, the Arbitration Act [Chapter 7:15] shall apply to a dispute referred to compulsory arbitration.

(3) Before referring a dispute to compulsory arbitration, the Labour Court or the labour officer, as the case may be, shall afford the parties a reasonable opportunity of making representations on the matter.

(4) In ordering a dispute to be referred to compulsory arbitration, the Labour Court or labour officer, as the case may be, shall determine the arbitrator’s terms of reference after consultation with the parties to the dispute.

(5) In referring a dispute to compulsory arbitration—

(a) the Labour Court; or

(b) the labour officer, after consulting any labour officer who is senior to him and to whom he is responsible in the area in which he attempted to conciliate the dispute;

as the case may be, shall appoint as an arbitrator a person whose name appears on a list referred to in subsection (6):

Provided that the labour officer who attempted to conciliate the dispute which is referred to arbitration shall not be appointed as the arbitrator in that dispute.

(6) The Minister, in consultation with the Senior President of the Labour Court and the appropriate advisory council, if any, appointed in terms of section nineteen, shall from time to time prepare a list of arbitrators consisting of—

(a) any labour officer or designated agent whom he considers to be experienced or qualified in arbitration; and

(b) any other person whom he considers to be experienced or qualified in arbitration.

(7) Subject to any agreement by the parties concerned, the Labour Court or the labour officer, as the case may be, shall, in referring a dispute to compulsory arbitration, determine the share of the costs of the arbitration to be borne by each party.

(8) Where a party to a dispute referred to compulsory arbitration is made up of more than one employer, employee, employers organisation, or trade union, the costs of the arbitration shall be paid in the proportions agreed upon by the constituent members of the party or, failing agreement, in the proportions determined by the arbitrator or arbitrators.

(9) An arbitrator appointed by the Labour Court shall, in hearing and determining any dispute, determine it as if the arbitrator was the Labour Court.

(10) An appeal on a question of law shall lie to the Labour Court from any decision of an arbitrator appointed in terms of this section.

(11) Where the Labour Court or a labour officer has referred a dispute to compulsory arbitration, no employee, workers committee, trade union, employer or employers organisation shall engage in collective job action in respect of the dispute.

(12) Any person who contravenes subsection (11) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not

exceeding two years or to both such fine and such imprisonment.

(13) At the conclusion of the arbitration the arbitrator shall submit sufficient certified copies of his arbitral award to each of the parties affected by it.

(14) Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection (13) to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court.

(15) Where arbitral award has been registered in terms of subsection (14) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

Sections 99 and 100

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

101 Employment codes of conduct

(1) An employment council or, subject to subsections (1a), (1b) and (1c), a works council, may apply in the manner prescribed to the Registrar to register an employment code of conduct that shall be binding in respect of the industry, undertaking or workplace to which it relates.

(1a) Where an employment council has registered an employment code governing employers and employees represented by it, no works council may apply for the registration of an employment code in respect of any industry, undertaking or workplace represented by the employment council unless it first refers the employment code to the employment council for its approval.

(1b) Where an employment code is registered by a works council in respect of any industry, undertaking or workplace represented by an employment council and the employment council subsequently registers its own employment code, the employment code registered by the employment council shall supersede that of the works council unless the works council refers it to the employment council for approval.

(1c) Where an employment council refuses to approve an employment code made by a works council in terms of subsection (1a) or (1b), the works council may refer the matter to a labour officer, and the determination of the labour officer on the matter shall be final unless the parties agree to refer it to voluntary arbitration.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

(2) On application being made in terms of subsection (1), the Registrar shall, if he is satisfied that the employment code concerned provides for the matters referred to in subsection (3), register the employment code in the manner prescribed.

(3) An employment code shall provide for—

(a) the disciplinary rules to be observed in the undertaking, industry or workplace concerned, including the precise definition of those acts or omissions that constitute misconduct;

(b) the procedures to be followed in the case of any breach of the employment code;

(c) the penalties for any breach of the employment code, which may include oral or written warnings, fines, reductions in pay for a specified period, suspension with or without pay or on reduced pay, demotion and dismissal from employment;

(d) the person, committee or authority that shall be responsible for implementing and enforcing the rules, procedures and penalties of the employment code;

(e) the notification to any person who is alleged to have breached the employment code that proceedings are to be commenced against him in respect of the alleged breach;

(f) the right of a person referred to in paragraph (e) to be heard by the

appropriate person, committee or authority referred to in paragraph (d) before any decision in his case is made;

(g) a written record or summary to be made of any proceedings or decisions taken in terms of the employment code, which record or summary shall be made at the time such proceedings and decisions are taken.

(4) An applicant referred to in subsection (2) may, at any time after the registration of an employment code, apply in the manner prescribed to the Registrar to register any amendment to the employment code, and subsection (3) shall apply, mutatis mutandis, in relation to that amendment.

(5) Notwithstanding this Part, but subject to subsection (6), no labour officer shall intervene in any dispute or matter which is or is liable to be the subject of proceedings under an employment code, nor shall he intervene in any such proceedings.

(6) If a matter is not determined within thirty days of the date of the notification referred to in paragraph (e) of subsection (3), the employee or employer concerned may refer such matter to a labour officer, who may then determine or otherwise dispose of the matter in accordance with section ninety-three.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(7)

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

(8)

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

(9)

The Minister may, after consultation with representatives of trade unions and employers organizations, by statutory instrument publish a model employment code of conduct.

(10) An employment council or works council may, by making application in terms of subsection (1), adopt the model employment code referred to in subsection (9), subject to such modifications as may be appropriate to the industry, undertaking or workplace concerned.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

PART XIII

COLLECTIVE JOB ACTION

102 Interpretation in Part XIII

In this Part—

“appropriate authority”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

“disposal order” means an order made in terms of section one hundred and seven;

“essential service” means any service—

(a) the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public; and

(b) that is declared by notice in the Gazette made by the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section nineteen, to be an essential service.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

“lawful collective job action” means collective job action which is not prohibited in terms of subsection (3) of section one hundred and four;

“lock-out” means any one or more of the following acts or omissions by any person who is or has been an employer—

(a) the exclusion by him of any person or number of persons, who are or have been in his employ, from any premises on which work provided by him is or has been performed; or

(b) the total or partial discontinuance by him of his business or of the provision of work; or

(c) the breach or termination by him of the contracts of employment of

any person or number of persons in his employ; or

(d) the refusal or failure by him to re-employ any person or number of persons who have been in his employ;

if that exclusion, discontinuance, breach, termination, refusal or failure is in consequence of a dispute regarding conditions of employment or other matters, and the purpose of that exclusion, discontinuance, breach, termination, refusal or failure is to induce or compel any persons who are or have been in his employ or in the employ of other persons to agree to or comply with any demands concerning conditions of employment or re-employment or other matters made by him or on his behalf or by or on behalf of any other person who is or has been an employer;

“show cause order” means an order made in terms of section one hundred and six;

“unlawful collective job action”

[repealed by Act 17 of 2002 with effect from 7th March, 2003.]

103 Appeal against declaration of essential service

Any person who is aggrieved by any statutory instrument by the Minister declaring any service or occupation to be an essential service may appeal against such notice to the Labour Court, and the Labour Court may vary or revoke the statutory instrument as it deems just.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

104 Right to resort to collective job action

(1) Subject to this Act, all employees, workers committees and trade unions shall have the right to resort to collective job action to resolve disputes of interest.

(2) Subject to subsection (4), no employees, workers committee, trade union, employer, employers organisation or federation shall resort to collective job action unless—

(a) fourteen days’ written notice of intent to resort to such action, specifying the grounds for the intended action, has been given—

(i) to the party against whom the action is to be taken; and

(ii) to the appropriate employment council; and

(iii) to the appropriate trade union or employers organisation or federation

in the case of members of a trade union or employers organisation or federation partaking in a collective job action where the trade union or employers organisation or federation is not itself resorting to such action;

and

(b) an attempt has been made to conciliate the dispute and a certificate of no settlement has been issued in terms of section ninety-three.

(3) Subject to subsection (4), no collective job action may be recommended or engaged in by—

(a) any employees, workers committee, trade union, employer, employers organisation or federation—

(i) if the persons concerned are engaged in an essential service; or

(ii) if the issue in dispute is a dispute of right; or

(iii) if the parties to the dispute have agreed to refer the dispute to arbitration;

Collective job action is not allowed if the parties to the dispute have agreed to refer the dispute to arbitration; or if the issue in dispute is a dispute of right; or if a secret ballot in support of the strike has not been conducted, or if the CBA procedures have not been complied with.

or

(b) any employees, workers committee or employer, if there is in existence a registered trade union or employers organisation which represents the interests of the employees or employers concerned and that trade union or employers organisation has not approved or authorised the collective job action; or

(c) any trade union, employers organisation or federation unless the trade union, employers organisation or federation is registered; or

(d) any workers committee, if there is in existence a union agreement which provides for or governs the matter in dispute, and such agreement has not been complied with or remedies specified therein have not been exhausted as to the issue in dispute; or

This is the only type of dispute that seems strikeable under the new Act given s104 (3) (b), which effectively prohibits a strike\striking where the issue in dispute is a dispute of right.

A dispute of interest is one over which an employee has no legal claim, for example, a demand for 100% salary increase during collective bargaining.

This is, however, a complicated area as disputes of interest can easily migrate over borders and become disputes of right. Employers should seek advice whenever confronted by such problems.

(e) any workers committee, trade union or employers organisation, except with the agreement of the majority of the employees or employers, as the case may be, voting by secret ballot.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

104A Picketing

(1) In the section—

“picket” means a gathering of members and supporters of a trade union or workers committee for either or both of the following purposes—

- (a) demonstrating peacefully—
 - (i) in support of any collective job action; or
 - (ii) in opposition to any lock-out;
- and

(b) peacefully persuading other members of the trade union or workers committee or employees of the industry, undertaking or workplace represented by the trade union or workers committee to take part in the collective job action or demonstration.

This section was uplifted from the South African Labour Relations Act 1995 section 69 and it also allows members and supporters of a trade union or workers committee to demonstrate peacefully in support of any collective job action or in opposition to any lock-out, and peacefully persuade other members of the trade union or workers committee or employees of the industry, undertaking or workplace represented by the trade union or workers committee to take part in the collective job action or demonstration.

The objects of a picket

Its proper object is to persuade people not to cross the picket line. Persuasion can, however, easily become intimidation and intimidation soon shades into violence. It is important to note that any trade union or workers committee can call for a picket, as the Act does not restrict it to the union whose members are on strike.

(2) A registered trade union or workers committee may authorise a picket.

The form of authorisation above is not given by the Act, nor is any provision made for the giving of notice to the strike-hit employer or (when they differ) the employer being picketed. This places employers in a quandary, for they have no institutional means of discovering whether a picket enjoys union sanction.

Does it mean employees can picket against the delivery of “hot-cargo”?

Yes – employees of any employer can picket against the delivery of products from strike-hit employers in support of the strikers or else they engage supporters to do so.

Meaning of “members and supporters”

The members of the union need be employees of neither the picketed employer nor the employer against whom the strike is directed. The section, moreover, makes the issue of membership a practical irrelevance since members will in any event be supporters of the union. In fact anyone can be a supporter just as anyone can be the supporter of a football team. It entails no more than a committed state of mind, a condition that will certainly be present in the ranks of those who take the trouble to

join the picket line. Relatives, children and friends of the strikers can be expected to swell their ranks, but so can employees working for third parties. At this point there is a convergence between picketing and secondary striking and it may be very difficult to determine into which category such employees fall. Categorising them is important since their rights and duties differ – secondary strikers, for instance, can be told to go back to work but pickets cannot, and the issue of secondary strikers is further complicated by the fact that the Act does not deal with them. Secondly, collective job action is not defined and this will make issues complicated when a decision is to be made on whether pickets, picketing against a strike-hit employer are embarking on collection job action against their employer and the same time picketing against hot-cargo.

Can managerial employees falling outside the bargaining unit of striking or picketing employees picket in support of the later?

Yes – because they can call themselves supporters of the union. Also it should be remembered that employees can continue to picket either as supporters or friends of striking employees.

(3) Notwithstanding any other law regulating the right of assembly, a picket authorised in terms of subsection (2) may be lawfully conducted—

(a) outside the premises of an employer or in any place to which the public has access; and

(b) if so authorised by a collective bargaining agreement, or a code of picketing agreed between the Minister and the appropriate advisory council, if any, appointed in terms of section nineteen, and prescribed by regulations made in terms of section one hundred and nineteen, inside the premises of the employer concerned in any area that does not substantially affect production.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

Where can picketing be carried out?

It can be carried out outside the premises of an employer or in any place to which the public has access and if so authorised by a CBA, or a code of picketing agreed between the Minister and the appropriate advisory council (s19) and prescribed by regulations made in terms of s119, inside the premises of the employer concerned in any area that does not substantially affect production. I don't know of an area inside the employer's premises that does not substantially affect production when picketed from. Even picketing inside toilets will affect production in some way and in any event pickets cannot picket where they will not persuade any employee but space.

105 Lock-outs and actions connected therewith

(1) No employer or employers organisation shall—

(a) threaten, recommend or engage in a lock-out, except in accordance with sections one hundred and two and one hundred and four; or

(b) without the consent of the Minister, lay off, suspend or dismiss any employee or withhold wages or benefits due to any employee as a consequence of or in connection with a lock-out.

(2) No employer or employers organisation or federation, or official or office-bearer of such employers organisation or federation, shall threaten, recommend, encourage, incite, organise or engage in an unlawful collective job action referred to in paragraph (b) of the definition of that term in section two.

(3) Where more than one person referred to in subsection (2) threatened, recommended, encouraged, incited, organised or engaged in the unlawful collective job action, their liability therefor shall be joint and several.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

106 Show cause orders

(1) Whenever a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereafter in this section called a “responsible person”) threatens, recommends, encourages, incites, organises or engages in any collective action referred to in subsection (1) of section

one hundred and nine (hereinafter in this section and section one hundred and seven called an “unlawful collective action”), the Minister, acting on his own initiative or upon the application of any person affected or likely to be affected by the unlawful collective action, may issue an order calling upon the responsible person to show cause why a disposal order should not be made in relation thereto.

(2) A show cause order—

(a) shall specify—

(i) the date, time and place at which the responsible person must appear before the Labour Court to show cause why a disposal order should not be made; and

(ii) the order or action desired or proposed;

(b) may direct that pending the issuance of a disposal order, the unlawful collective action concerned be terminated, postponed or suspended.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

107 Disposal orders

(1) On the return day of a show cause order the Labour Court shall, at the time and place specified in the order, inquire into the matter and shall afford the parties concerned an opportunity of making representations in the matter.

(2) After conducting an inquiry in terms of subsection (1), the Labour Court may issue a disposal order directing that—

(a) the unlawful collective action be terminated, postponed or suspended;

or

(b) the issue giving rise to the unlawful collective action concerned be referred to another authority to be dealt with in terms of Part XII and that, pending the determination of the issue in terms of that Part, the unlawful collective action concerned be terminated, postponed or suspended.

(3) Without derogation from the generality of the powers conferred upon the Labour Court in terms of subsection (2) to make a disposal order, such order may provide for—

(a) in the case of an unlawful collective action other than a lock-out—

(i) discharge or suspension of an employer’s liability to pay all or part of the wages or benefits due to specified employees or categories of employees engaged in the unlawful collective action, in respect of the duration of such collective action or part thereof;

(ii) the employer, in his discretion, to dismiss summarily, or lay off or suspend with or without pay, specified employees or categories of employees engaged in the unlawful collective action;

(iii) the lay off or suspension, with or without pay, of specified employees or categories of employees not engaged in the unlawful collective action for such period as may be specified where such lay off or suspension is necessitated by the collective action;

(iv) the dismissal of specified employees or categories of employees engaged in the unlawful collective action;

(v) the prohibition of the collection of union dues by any trade union concerned for such period as may be specified;

(vi) the suspension or rescission of the registration of the trade union involved in the collective job action;

(b) in the case of an unlawful collective action consisting of a lock-out—

(i) where wages or benefits due to employees have been withheld or suspended, the payment of such wages or benefits;

(ii) the resumption of the normal operations of the undertaking concerned;

(iii) where any employees have been laid off, suspended or dismissed, the reinstatement of such employees with all necessary wages, compensation and other related benefits;

(iv) the suspension or dismissal of specified managerial employees who are responsible for or have provoked, or contributed to, the lock-out.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

108 Protection of persons engaged in lawful collective action

(1) In this section and section one hundred and nine—

“lawful collective action” means any collective job action that complies with this Part in respect of its notification and other matters provided for under this Part, and “unlawful collective action” shall be construed accordingly.

(2) It shall not be a delict or breach of contract for any workers committee, registered trade union, registered employers organisation or registered federation of registered trade unions or employers organisations (hereinafter in this section called a “protected person”) to threaten, recommend or engage in a lawful collective action, and no protected person shall be liable to any civil liability or proceedings therefor other than as specified in this Part:

Provided that such immunity from suit shall not extend to wilful acts or omissions threatening or resulting in the destruction of, or damage to, property other than the perishing of goods caused by employees’ absence from work on account of such collective action.

(3) All individual employees and officials or office-bearers of a protected person, shall be entitled to the same immunity as is conferred upon a protected person in terms of subsection (2) and, in addition, his employment shall not be terminated on the ground that he has threatened, recommended or engaged in any lawful collective action.

(4) An employer is not obliged to remunerate an employee for services that the employee does not render during the lawful collective action except where the employee’s remuneration includes payment in kind by way of accommodation, the provision of food and other basic amenities of life, in which event the employer shall not discontinue such payment in kind unless the employee declines such remuneration:

Provided that, at the conclusion of the collective action, the employer may recover the monetary value of such remuneration by action instituted in the Labour Court.

S108 Protection of persons engaged in lawful collective job action

An employer is not obliged to remunerate an employee for service that the employee does not render during the lawful collective job action except where the remuneration includes payment in kind by way of accommodation, the provision of food and other basic amenities of life, in which event the employer shall not discontinue such payment in kind unless the employee declines such remuneration.

Such remuneration’s monetary value is recoverable by action instituted in the Labour Court after the job action.

(5) An employer may not employ any person for the purpose of performing the work of an employee who is locked out.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

This effectively means an employer can’t replace strikers with strike-breakers.

If an employer, union, workers committee member(s) incites, recommends, advises, encourages, threatens, commands, aids, procures, organises, or engages in any collective job action which is prohibited in terms of s104 (3), he/she shall be guilty of an offence and liable to a fine or imprisonment for a period not exceeding 5 years or both such fine and such imprisonment.

109 Liability of persons engaged in unlawful collective action

(1) If a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereinafter in this section called a “responsible person”), or any individual employer or employee or group of individual employers or employees, recommends, advises, encourages, threatens, incites, commands, aids, procures, organises or engages in any collective action which is prohibited in terms of subsection (3) of section one hundred and four, the responsible person, and every official or office-bearer of the responsible person, or, as the case may be, individual employer or employee or group of individual employers or

employees, shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

(2) Any person other than a person referred to in subsection (1) who recommends, advises, encourages, threatens, incites, commands, aids, procures, organises or engages in any collective action which is prohibited in terms of subsection (3) of section one hundred and four, with the intention or realising that there is a risk or possibility of bringing about such collective action, shall be guilty of an offence and liable to a fine not exceeding level fourteen or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

The test referred to in section 3 of the Public Order and Security Act [Chapter 11:17] shall apply to determining whether or not the person whose conduct is in issue realised that there was a risk or possibility that his conduct might bring about the collective action referred to in this subsection.

(3) The Minister may, by order in writing served on—

(a) a trade union or employers organisation which he believes on reasonable grounds to be in contravention of subsection (1); and

(b) the employment council to which the trade union or employers organisation referred to in paragraph (a) is a party; and

(c) any employer who is party to a collective bargaining agreement with the trade union referred to in paragraph (a);

suspend for such period, not exceeding twelve months, as shall be specified in the order, the right of the trade union to levy, collect or recover union dues by means of a check-off scheme, or the right of the employers organisation to collect membership fees.

(4) An order referred to in subsection (3) may be issued together with, or independently or instead of, a show cause order.

(5) If—

(a) criminal proceedings against a trade union or employers organisation referred to in paragraph (a) of subsection (3)—

(i) are not instituted within thirty days of the date of service of the order referred to in subsection (3) on the trade union or employers organisation; or

(ii) end otherwise than in conviction;

or

(b) the Labour Court declines to grant a disposal order;

the order shall be deemed to have been cancelled with effect from the last day for the institution of criminal proceedings in terms of paragraph (a), or the date of acquittal or withdrawal of the criminal proceedings, or the date when the Labour Court declined to grant an order referred to in paragraph (b), whichever is the earliest date.

(6) In addition to any penalty that may be imposed under subsection (1) or (2) and without derogation from any other remedy available under any other law—

(a) a responsible person, and every official or office-bearer of the responsible person, and every individual employer or employee who participates in any unlawful collective action; or

(b) a person referred to in subsection (2);

as the case may be, shall be jointly and severally liable, at the suit of any injured party, for any injury to or death of a person, loss of or damage to property or other economic loss, including the perishing of goods caused by employees' absence from work, caused by or arising out of or occurring during such collective action.

(6) Subject to Part XIX of the Criminal Procedure and Evidence Act [Chapter 9:07], a court which has convicted a person of any offence in terms of subsection (1) that involves any loss, damage, injury or death for which that person is liable in terms of this section shall forthwith award compensation to any person who has suffered personal injury or whose right or interest in property of any description has been lost or diminished as a direct result of the offence.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

110 Appeals

(1) Any person who is aggrieved by—

(a) a show cause order or the refusal to make such order; or

(b) a disposal order made by an appropriate authority or by the refusal of any such authority to make such order;
may appeal to the Labour Court.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) The lodging of an appeal in terms of subsection (1) shall not affect any order appealed against:

Provided that pending the determination of the appeal, the Minister or the appropriate authority may give such directions to, or impose such restrictions on, any of the parties as he considers fair and reasonable, taking into account the respective rights of the parties and the public interest.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

111 Cessation of collective job action

Whenever—

(a) the underlying cause of any collective job action or lock-out which is threatened, anticipated or in force has been removed; or

(b) the issue, dispute or complaint giving rise to any collective job action or lock-out which is threatened, anticipated, or in force has been determined or resolved in terms of Part XII or this Part; or

(c) any collective job action by a workers committee or trade union is threatened, anticipated or in force and the executive of such workers committee or trade union or federation thereof, acting in terms of its constitution, has ordered the suspension of such collective job action; or

(d) the termination, postponement or suspension of any collective job action or lock-out is directed in any show cause order or disposal order which has been given;

any person who is or might become involved in such collective job action or lock-out shall, as the case may be, forthwith cease or refrain from participating in or threatening such collective job action or lock-out.

112 Offences under Part XIII

(1) Any person who contravenes or fails to comply withæ

(a) subsection (2) or (3) of section one hundred and four; or

(b) section one hundred and five; or

(c) a direction made in terms of paragraph (b) or (c) of subsection (2) of section one hundred and six; or

(d) the terms of a disposal order; or

(e) section one hundred and eleven;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) When imposing any penalty or sentence upon conviction for an offence in terms of subsection (1), the court shall take into accountæ

(a) the terms of any show cause order or disposal order which has been made relating to the offence concerned, and the extent to which the convicted person has complied with it; and

(b) the extent to which the dispute concerned has been resolved.

[substituted by Act 22 of 2001 with effect from the 10th September, 2002.]

PART XIV

EMPLOYMENT AGENCIES

113 Interpretation in Part XIV

(1) In this Part, “registrar” means the registrar of employment agencies referred to in section one hundred and twenty-one.

(2) The registrar shall keep a register of employment agencies which have been registered in terms of this Act, and shall perform such other functions as are imposed or conferred upon him under this Act.

(3) The registrar may, subject to the directions of the Minister, delegate any of his functions to any other person employed by the State.

114 Employment agencies to be registered

(1) No person shall—

(a) conduct an employment agency; or

(b) charge or recover any payment or reward for or in connection with the procurement of employment through an employment agency; unless that employment agency is registered under this Act.

(2) No person shall hold himself out as conducting an employment agency, unless that employment agency is registered under this Act.

115 Application for registration, issue, variation and cancellation of certificates of registration

(1) Application for the registration of an employment agency shall be made to the registrar in the prescribed form.

(2) Upon an application made to him in terms of subsection (1), if the registrar—

(a) is satisfied that the premises concerned are suitable for use as an employment agency, and that having regard to any other relevant matters the application should be granted, he shall grant the application and issue to the applicant a certificate of registration;

(b) is not so satisfied as to the matters specified in paragraph (a), he shall refuse the application and give reasons for his refusal.

(3) A certificate of registration shall specify—

(a) the name of the person to whom the certificate is issued; and

(b) the premises at which the business is to be conducted; and

(c) the period for which the certificate shall be in force; and

(d) the area, including any foreign country, in respect of which the business may be conducted; and

(e) the class or classes of persons or employment in respect of which the business may be conducted; and

(f) any conditions subject to which the business may be conducted.

(4) The registrar may cancel the registration of an employment agency or vary the terms or conditions of any certificate of registration—

(a) after due inquiry and for good cause, if he has notified the holder of the certificate of his intention to do so, and has given the holder the opportunity of making representations to him, and has considered any representations which the holder has made; or

(b) on the application of the holder of the certificate.

(5) Any person aggrieved by a decision of the registrar made in the exercise of his functions under this section may appeal against such decision to the Labour Court, which may determine the matter in such manner as it deems just.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

116 Duties of persons conducting employment agencies

(1) Every person who conducts or is in charge of an employment agency registered under this Act shall—

(a) retain any record which by regulations made under this Act he is required to make for a period of three years subsequent to the occurrence of the event recorded; and

(b) on demand by an employment officer made at any reasonable time during the said period of three years, produce the said record for inspection; and

(c) furnish to the registrar such statistical information at such times and in such manner as may be prescribed.

(2) No person shall charge or receive in respect of anything done or to be done at an

employment agency—

(a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area and class of business; or

(b) any fee or other payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act:

Provided that this subsection shall not apply to a business consultant carrying on business at the same place as an employment agency in respect of anything done in the course of such business other than the procurement of employment for clients.

117 Powers of employment officers

(1) An employment officer may, without previous notice and at any reasonable time during the day, enter upon any premises of an employment agency for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Part.

(2) In the exercise of the powers conferred upon him by subsection (1) an employment officer may—

(a) require from any person conducting an employment agency the production of any books or documents which relate to his business and which are or have been upon the premises or in his possession or custody, or under his control; and

(b) at any place require from any person who has the possession or custody or control of any books or documents relating to the business of any person who is or was conducting an employment agency, the production of such books or documents; and

(c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b); and

(d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); and

(e) seize any book or document referred to in paragraph (a) or (b) that, in his opinion, may afford evidence of the commission of any offence under this Act:

Provided that in the exercise of the powers conferred by this subsection, an employment officer shall exercise such reasonable care as to ensure that the smooth and efficient running of an employment agency is not unduly interfered with.

(3) Every employer in connection with whose employment agency any premises are occupied or used, and every person employed by him, shall at all reasonable times during the day, furnish such reasonable facilities as may be required by an employment officer for entering the premises for the purpose of inspecting or examining the books and documents kept in the premises, or for making any inquiry in relation thereto.

(4) No person shall—

(a) make a false statement—

(i) in any representations to an employment officer; or

(ii) when giving evidence to or before an employment officer investigating a case in terms of this section;

which he knows to be false in any material particular, or which he has no reason to believe to be true; or

(b) refuse to answer any question which an employment officer, in the exercise of his functions in terms of this section, has put to him; or

(c) refuse to comply to the best of his ability with any requirement made by an employment officer in the exercise of his functions in terms of this section; or

(d) hinder an employment officer in the exercise of his functions in terms of this section.

118 Offences under Part XIV

(1) Any person who contravenes or fails to comply withæ

(a) subsection (1) or (2) of section one hundred and fourteen; or
(b) any condition in a certificate of registration specified pursuant to paragraph (f) of subsection (3) of section one hundred and fifteen;
shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who contravenes—

(a) subsection (1) or (2) of section one hundred and sixteen; or
(b) subsection (4) of section one hundred and seventeen; or
(c) any regulations made in terms of section one hundred and nineteen;
shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[substituted by Act 22 of 2001 with effect from the 10th September, 2002.]

119 Minister may make regulations

(1) The Minister may make such regulations as he deems necessary or expedient for the purpose of giving effect to, or for the better administration of, this Part.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the form in which an application is to be made for a certificate of registration;
(b) the fee to be paid for a certificate of registration or copies thereof;
(c) the fees which may be charged in respect of the business of an employment agency;
(d) the surrender of certificates of registration where the conditions thereof are to be varied or where such certificates are to be cancelled;
(e) the records to be kept in respect of an employment agency.

PART XV

GENERAL

120 Investigation of trade unions and employers organizations

(1) If the Minister has reasonable cause to believe that the property or funds of any trade union, employers organization or federation are being misappropriated or misapplied, or that the affairs of any trade union, employers organization or federation are being conducted in a manner that is detrimental to the interests of its members as a whole, the Minister may order that such trade union, employers organization or federation be investigated.

(2) For the purpose of any investigation referred to in subsection (1), the Minister shall appoint in writing an investigator who shall, at all reasonable times and without prior notice, have power—

(a) to enter any premises; and
(b) to question any person employed on the premises; and
(c) to inspect and make copies of and take extracts from any books, records or other documents on the premises;
connected with or related to the trade union, employers organization or federation under investigation.

(3) An investigator appointed in terms of subsection (2) shall report the results of his investigation to the Minister as soon as practicable and, in so doing, may recommend, having regard to all the circumstances of the case, that—

(a) in the case of an unregistered trade union, employers organization, or federation such trade union or employers organization or federation be wound up; or
(b) in the case of a registered trade union, employers organization or registered federation such trade union, employers organization or federation—
(i) be de-registered and wound up; or
(ii) be administered in terms of subsection (7).

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(4) During the period of investigation of a trade union, employers organization or

federation no person who is or has been an office-bearer of the trade union, employers organization or federation concerned shall, without the consent of the investigator, in any way expend or dispose of any property of the trade union, employers organization or federation concerned.

(5) An investigator shall not refuse to grant consent in terms of subsection (4) in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the trade union, or employers organization or federation concerned.

(6) Where the Minister accepts a recommendation made in terms of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (3), he shall—

(a) in the case of an unregistered trade union, employers organization or federation make application to the High Court; or

(b) in the case of a registered trade union, employers organization or federation make application to the Labour Court

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

for the trade union, employers organization or federation concerned to be wound up in terms of its constitution.

(7) Where the Minister accepts a recommendation made in terms of subparagraph (ii) of paragraph (b) of subsection (3), he shall make application to the Labour Court to appoint an administrator and such assistants as the administrator may require, to administer the affairs of the trade union, employers organization or federation in respect of which the recommendation was made:

Provided that an administrator may not be appointed for more than six months or until the next annual general meeting of the trade union, employers organization or federation concerned whichever is the later.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the trade union, employers organization or federation concerned in such a manner as to rectify the matters for the rectification of which he was appointed and, in so doing, may make an order—

(a) prohibiting any person who is or has been an office-bearer of the trade union, employers organization or federation concerned from—

(i) expending, disposing of or in any way dealing with any property of the trade union, employers organization or federation concerned; or

(ii) operating any account with any bank, building society or other financial institution on behalf of the trade union, employers organization or federation concerned:

Provided that the administrator shall authorize any transaction or expenditure which he is satisfied forms part of the ordinary and lawful course of business of the trade union, employers organization or federation concerned;

(b) directing any person who is or has been an office-bearer of the trade union, employers organization or federation concerned to refund or return to such trade union, or employers organization or federation any property which he has misappropriated from such trade union, employers organization or federation.

(9) The administrator shall submit for registration any order made in terms of subsection (8) to whichever court would have had jurisdiction to make such an order had the matter been determined by it.

(10) Where an order has been registered in terms of subsection (9), it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(11) Any person who—

(a) makes any false representation to, or otherwise hinders or obstructs, an investigator or administrator in the performance of his functions under this section; or

(b) contravenes subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[inserted by Act 22 of 2001 with effect from the 10th September, 2002.]

121 Officials

(1) For the purposes of this Act, there shall be—

(a) a Registrar of Labour and such number of Assistant Registrars of Labour as may be necessary for carrying out the functions assigned to such officers in terms of this Act; and

(b) such number of labour officers and employment officers as may be necessary for carrying out the functions assigned to such officers in terms of this Act; whose offices shall form part of the Public Service.

(2) With the approval of the Minister, the Registrar may delegate to any other officer referred to in subsection (1) any of the functions conferred upon him by this Act, other than such power of delegation.

(3) the Minister may give directions of a general nature to any officer referred to in subsection (1) as to the performance of his functions in terms of this Act.

(4) An officer referred to in subsection (1) shall be issued with a certificate signed by the Registrar stating his official title.

[inserted by Act 17 of 2002 with effect from 7th March, 2003.]

122 Acquisition of undertakings by trade unions and trade union congress

(1) Whenever—

(a) an undertaking which employs persons who are members of one or more registered trade unions or a federation thereof is to be discontinued;

[amended by Act 17 of 2002 with effect from 7th March, 2003.] and

(b) it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued;

the Minister may, subject to this section, direct all or any of the trade unions or the federation concerned to endeavour in good faith to acquire the undertaking from their funds.

(2) Where the employees of an undertaking referred to in subsection (1) are not members of a registered trade union, the Minister may, if it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued, subject to this section, direct any federation, association or congress of trade unions to endeavour in good faith to acquire the undertaking from the funds of such association or congress.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Before making any direction in terms of subsection (1) or (2), the Minister shall consult the employees and any trade union, federation, association or congress of trade unions concerned.

(4) When making any direction in terms of subsection (1) or (2), the Minister shall include therein such directions as to the repayment by the employees concerned of such of the costs and expenses of the federation, association or congress of trade unions concerned as the Minister thinks fit.

123 Minister may raise levies to meet certain expenses

(1) Subject to subsection (2), the Minister may, after consultation with the Minister responsible for finance, by statutory instrument provide for the imposition and payment of levies on employees, employers organizations, trade unions and federations thereof for the purpose of meeting the expenses of all or any of the following—

(a)

[repealed by Act 17 of 2002 from 7th March, 2003.]

(b) the Labour Court; and

(c) employers organizations or any federation, association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions; and

(d) employers organizations recognized by the Minister as being representative of all or most registered employer organizations.

(2) In imposing levies in terms of subsection (1), the Minister shall take into account—

(a) the extent to which any person upon whom the levy is imposed has utilized or ought to utilize the services of the Labour Court, federation, association or congress of trade unions concerned; and

(b) the ability of any person or organization upon whom the levy is imposed to pay the levy.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

124 Protection against multiple proceedings

(1) Where any proceedings in respect of any matter have been instituted, completed or determined in terms of this Act, no person who is aware thereof shall institute or cause to be instituted, or shall continue any other proceedings, in respect of the same or any related matter, without first advising the authority, court or tribunal which is responsible for or concerned with the second-mentioned proceedings of the fact of the earlier proceedings.

(2)

[repealed by Act 22 of 2001 with effect from the 20th May, 2002.]

125 Records to be kept by employers, principals and contractors

(1) Every employer upon whom any agreement, determination or regulation is binding under this Act in relation to remuneration to be paid, time to be worked or such other particulars as may be prescribed shall at all times keep, in respect of all persons employed by him, records of the remuneration paid, of the time worked and of those other particulars.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(2) The form and manner in which the records referred to in subsection (1) shall be kept as prescribed:

Provided that the Registrar may in writing authorize the keeping of such records in some other form if the records so kept will, in his opinion, enable a labour officer or designated agent to ascertain therefrom the required particulars.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Whenever any agreement, determination or regulation regulates the rates at which or the principles upon which payment shall be made by a principal or contractor to any person to whom any work is given out on contract by that principal or contractor, every such principal or contractor shall at all times keep records of payments made by him to any person to whom he has so given out work on contract and of such other particulars as may be prescribed, and every such person to whom work has so been given out on contract shall at all times keep records of payments received by him from any such principal or contractor in respect of such work and such other particulars as may be prescribed.

(4) Every person who is or has been an employer or principal or contractor, as the case may be, shall retain the records referred to in subsections (1) and (3) for a period of three years and shall produce these records on demand made at any time during that period by—

(a) a labour officer;

[amended by Act 17 of 2002 with effect from 7th March, 2003.] or

(b) a designated agent acting within the scope of his authority, in terms of subsection (3) of section sixty-three.

(5) If an employer fails to keep or retain the records referred to in this section or falsifies any such record, it shall be presumed for the purposes of this Act that every employee employed by him during the relevant period was engaged throughout that period for not less than the ordinary hours of work applicable to that employee in terms of any agreement, determination or regulation under this Act.

(6) Where it is proved that any statement or entry contained in any record is false, the person required in terms of this section to keep that record shall be presumed, until the contrary is proved, wilfully to have falsified that record.

(7) Any person who fails to comply with any of the provisions of this section applicable to him or who wilfully falsifies any record referred to in this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

126 Investigative powers of labour relations officers

(1) A labour officer —

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

(a) may without previous notice enter upon any premises in which any person is being employed; and

(b) in respect of matters relating to wages, hours or conditions of work, may question, either apart from or in the presence of others, any person who is or has been upon or in any premises in which any person is being employed; and

(c) may require from any person who is or has been upon or in any premises in which any person is being employed the production then and there, or at a time and place fixed by the labour officer, of all relevant books and documents which are or have been upon or in the premises or in the possession or custody or under the control of any employer by whom the premises are occupied or used, or of any employee of that employer; and

(d) may at any time and at any place require from any person who has the possession or custody or control of any relevant book or document relating to the business of any person who is or was an employer, the production then and there, or at a time and place fixed by the labour officer, of that book or document; and

(e) may examine and make extracts from and copies of all books and documents produced to or examined by him, and may require an explanation of any entries in any such books or documents; and

(f) may seize any such books or documents as he believes on reasonable grounds may afford evidence of any offence under this Act.

(2) Any employer in connection with whose business any premises are occupied or used, and every person employed by him, shall at all times furnish such facilities as are required by a labour officer for the purpose of exercising any of the powers conferred by subsection (1).

(3) Where any work is given out on contract to any person by a principal or contractor who is himself an employer in or is engaged in the undertaking, industry, trade or occupation concerned, a labour officer may exercise in relation to that principal or contractor any or all of the powers conferred by subsection (1).

(4) Any labour officer exercising a power or performing a duty conferred or imposed upon him by this section shall on demand produce the certificate furnished to him in terms of subsection (3) of section one hundred and twenty-one.

(5) Any person who—

(a) refuses or fails to answer any question which a labour officer in the exercise of his functions puts to him; or

(b) makes a false statement—

(i) in any representations to a labour officer; or

(ii) when giving evidence to or before a labour officer investigating a case in terms of this Part:

which he knows to be false in any material particular, or which he has no reason to believe to be true; or

(c) refuses or fails to comply with any request made by a labour officer in the exercise of his functions; or

(d) hinders a labour officer in the exercise of his functions;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment

[amended by Act 22 of 2001 with effect from the 10th September, 2002, and

substituted by Act 17 of 2002 with effect from 7th March, 2003.]

127 Regulations

(1) The Minister may make regulations prescribing anything which, in terms of this Act, is to be prescribed or which in his opinion, is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form of applications, notices or orders in terms of this Act;
- (b) the procedures to be followed in making applications or appeals and the procedures to be followed by any official, board, tribunal or authority upon which functions are conferred in terms of this Act;
- (c) the examination and inspection of the books, records and documents of workers committees, trade unions and employers organizations;
- (d) the requirement by workers committees, trade unions and employers organizations to submit returns concerning their affairs to the Minister or such officials as may be specified;
- (e) the duties and functions of officers in terms of this Act;
- (f) the fees payable in respect of the registration and variation of registration of a trade union or employers organisation or federation thereof and the registration of an employment council.

[para (f) inserted by Act 17 of 2002 with effect from 7th March, 2003.]

(3) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[amended by Act 22 of 2001 with effect from the 10th September, 2002.]

128 General offences and penalties

(1) Any person who—

- (a)

[repealed by Act 22 of 2001 with effect from the 20th May, 2002.]

- (b) falsely holds himself out to be—

- (i) a labour officer;

[amended by Act 17 of 2002 with effect from 7th March, 2003.] or

- (ii) a designated agent of an employment council; or
- (iii) an official of a trade union or employers organization; or

(c) being an officer, agent or official referred to in paragraph (b), falsely represents that he is authorized by the Minister, an employment council or a trade union or employers organization to collect any moneys when he is not so authorized; shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2)

[repealed by Act 22 of 2001 with effect from the 20th May, 2002.]

Savings and transitional provisions – enacted by the Labour Relations Amendment Act No.17 of 2002 – which affect members of the Public Service:-

[published herein at the end of the principal Act for good order sake - Editor.]

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(1) Any regulations governing the negotiation of terms and conditions of service by or on behalf of members of the Public Service which, immediately before the date of commencement of this Act [which is the 7th March, 2003 – Editor.] were in force under the Public Service Act [Chapter 16:04] shall continue in force until an employment council for the Public Service is registered in terms of section 59 of the principal Act, and, until such employment council is registered, any council established for the negotiation of such terms and conditions immediately before the date of commencement of this Act under the Public Service Act [Chapter 16:04] shall be deemed to be an employment council for the purposes of the principal Act.

(2) Any regulations and circulars governing the terms and conditions of service of members of the Public Service which, immediately before the date of commencement of this Act, [which is the 7th March, 2003 – Editor.] were in force under the Public Service Act [Chapter 16:04] shall continue in force until amended, varied or repealed by a collective bargaining agreement, and in the event of any inconsistency between such regulations and circulars and any law governing the terms and conditions of employees generally, the former shall prevail.

(3) Subsection (2) shall not be construed so as to compromise the exclusive responsibility of the Public Service Commission under the Constitution and the Public Service Act [Chapter 16:04] for the making or regulations and circulars governing the creation or abolition of posts or grades in the Public Service, the appointment of persons to such posts or grades and the discipline of members of the Public Service.

(4) Nothing contained in this Act [Labour Relations Amendment Act No.17 of 2002 – Editor] or the Labour Act [Chapter 28:01] shall be construed to affect the application or operation of the following Acts—

- (a) the Pensions and Other Benefits Act [Chapter 16:02];
- (b) the Pensions (Increases and Adjustments) Act [Chapter 16:02];
- (c) the Pensions Review Act [Chapter 16:03];
- (d) the State Service (Disability Benefits) Act [Chapter 16:05].

(5) Any proceedings that were commenced in terms of Part XII of the principal Act before the date of commencement of the Labour Relations Amendment Act, 2002 [which is the 7th March, 2003 – Editor.] or were pending before the Labour Relations Tribunal on that date, shall be deemed to have been commenced in terms of the appropriate provisions of the principal Act as amended by the Labour Relations Amendment Act, 2002, and shall be proceeded with accordingly.

(6) A person who, at the date of commencement of this Act [which is the 7th March, 2003 – Editor.], was a member of the Labour Relations Tribunal appointed in terms of the principal Act shall, after such date, be deemed to be a duly appointed President of the Labour Court notwithstanding anything contained in the principal Act.

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