

# LABOUR ACT [CHAPTER 28:01] AND SELECTED REGULATIONS

(Updated to incorporate all amendments in force as at 20th October, 2006)

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## INDEX OF CONTENTS

<i>Item</i>	<i>Page Nos.</i>
1. Labour Act [ <i>Chapter 28:01</i> ]	2 - 59
2. Labour Court Rules, 2006	60 - 77
3. Labour (Declaration of Essential Services) Notice, 2003	78 - 79
4. Labour Relations (Domestic Workers) Employment Regulations, 1992	80 - 86
5. Labour Relations (Employment Agencies) Regulations, 1985	87 - 91
6. Labour Relations (Employment Codes of Conduct) Regulations, 1990	92 - 93
6. Labour Relations (Employment of Children and Young Persons) Regulations, 1997	94 - 95
7. Labour Relations (General) Regulations, 1993	96 - 118
8. Labour Relations (HIV and AIDS) Regulations, 1998	119 - 121
9. Labour (National Employment Code of Conduct) Regulations, 2006	122 - 124
11. Labour Relations (Protection Against Any Acts of Interference Between Workers' Organisation and Employers' Organisation) Regulations, 2003	125
12. Labour Relations (Retrenchment) Regulations, 2003	126 - 129
13. Labour (Settlement of Disputes) Regulations, 2003	130 - 132
14. Labour Relations (Specification of Minimum Wages) Notice, 1996	137 - 138
15. Labour Relations (Terminal Benefits and Entitlements of Agricultural Employees Affected by Compulsory Acquisition) Regulations, 2002	139 - 141
16. Labour Relations (Workers Committees) (General) Regulations, 1985	142

**CHAPTER 28:01**

**LABOUR ACT**

*Acts 16/1985, 12/1992, 20/1994 (s. 19), 22/2001 (s. 4), 17/2002, 7/2005.*

**ARRANGEMENT OF SECTIONS**

**PART I**

PRELIMINARY

*Section*

1. Short title.
2. Interpretation.
- 2A. Purpose of Act.
3. Application of Act.

**PART II**

FUNDAMENTAL RIGHTS OF EMPLOYEES

4. Employees' entitlement to membership of trade unions and workers committees.
- 4A. Prohibition of forced labour.
5. Protection of employees against discrimination.
6. Protection of employees' right to fair labour standards.
7. Protection of employees' right to democracy in the work place.

**PART III**

UNFAIR LABOUR PRACTICES

8. Unfair labour practices by employer.
9. Unfair labour practices by trade union or workers committee.
10. Minister may prescribe further unfair labour practices.

**PART IV**

GENERAL CONDITIONS OF EMPLOYMENT

11. Employment of young persons.
12. Duration, particulars and termination of employment contract.
- 12A. Remuneration and deductions from remuneration.
- 12B. Dismissal.
- 12C. Retrenchment.
- 12D. Special measures to avoid retrenchment.
13. Wages and benefits upon termination of employment.
14. Sick leave.
- 14A. Vacation leave.
- 14B. Special leave.
- 14C. Weekly rest and remuneration for work during public holidays.
15. Death of employer.
16. Rights of employees on transfer of undertaking.
17. Regulatory powers of Minister.
18. Maternity leave.

**PART V**

ADVISORY COUNCILS AND WAGE AND SALARY CONTROL

19. Advisory councils.
20. Minimum wage notices.
21. Prohibition of termination of services of employee.
22. [Repealed].

PART VI

WORKERS COMMITTEES: FORMATION AND FUNCTIONS

23. Formation of workers committees.
24. Functions of workers committees.
25. Effect of collective bargaining agreements negotiated by workers committees.
- 25A. Composition, procedure and functions of works councils.
26. Minister may make regulations relating to workers committees.

PART VII

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

27. Right to form trade unions or employers organizations.
28. Requirements for formation of trade unions and employers organizations.
29. Registration of trade unions and employers organizations and privileges thereof.
30. Unregistered trade unions and employers organizations.
31. When trade union may act as agent union.
32. Agent union to disclose other agencies.
33. Application for registration.
34. Requirements of application for registration.
35. Requirements of constitution of registered trade unions or employers organizations.
36. Registration of trade unions, employers organizations and federations.
37. [Repealed].
38. [Repealed].
39. Application or proposal to vary, suspend or rescind registration.
40. Variation, suspension or rescission of registration.
41. Accreditation proceedings.
42. Notice of accreditation proceedings.
43. Procedure at accreditation proceedings.
44. Notification of decision made at accreditation proceedings.
45. Considerations relating to registration, variation, suspension or rescission of registration of trade unions or employers organizations.
46. Matters to be determined by Labour Court.
47. Right of appeal.
48. Notice of appeal.
49. Appeals before Labour Court.
50. Right of membership of registered trade unions and employers organizations.
51. Supervision of election of officers.
52. Right to union or association dues.
53. Restrictions on payment of union dues by employers.
54. Collection of union dues.
55. Minister may regulate union dues.

PART VIII

EMPLOYMENT COUNCILS

56. Voluntary employment councils.
57. Statutory employment councils.
58. Constitution of employment councils.
59. Registration of employment councils.
60. Employment councils to be bodies corporate.
61. Variation of registration of employment councils.
62. Duties of employment councils.
63. Designated agents of employment councils.

PART IX

[Part IX (sections 64 to 73) repealed by s. 25 of Act 17 of 2002.]

PART X

COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

- 74. Scope of collective bargaining agreements.
- 75. Obligation to negotiate in good faith.
- 76. Duty of full disclosure when financial incapacity alleged.
- 77. Representation of parties.
- 78. Ratification of collective bargaining agreements.
- 79. Submission of collective bargaining agreements for approval or registration.
- 80. Publication of collective bargaining agreements.
- 81. Amendment of registered collective bargaining agreements by Minister.
- 82. Binding nature of registered collective bargaining agreements.
- 82A. Copies of collective bargaining agreement.
- 82B. Codes of best practice, guidelines and model agreements

PART XI

LABOUR COURT

- 83. Administration of Part XI.
- 84. Establishment and composition of Labour Court.
- 85. Qualification for appointment as President of Labour Court.
- 86. Assessors.
- 87. Registrar of Labour Court.
- 88. Seal of Labour Court.
- 89. Functions, powers and jurisdiction of Labour Court.
- 90. Exercise of functions by Labour Court.
- 90A. Procedure and evidence in the Labour Court
- 91. Sittings of Labour Court.
- 92. Representation of parties.
- 92A. Contempt of Labour Court.
- 92B. Effective date and enforcement of decisions of Labour Court.
- 92C. Rescission or alteration by Labour Court of its own decisions.
- 92D. Appeals to the Labour Court not provided for elsewhere in this Act.
- 92E. Appeals to the Labour Court generally.
- 92F. Appeals against decisions of Labour Court

PART XII

RESOLUTION OF DISPUTES AND UNFAIR LABOUR PRACTICES

- 93. Powers of labour officers.
- 94. Prescription of disputes.
- 95. [Repealed].
- 96. [Repealed].
- 97. [Repealed].
- 98. Effect of reference to compulsory arbitration under Parts XI and XII.
- 99. [Repealed].
- 100. [Repealed].
- 101. Employment codes of conduct.

PART XIII

COLLECTIVE JOB ACTION

- 102. Interpretation in Part XIII.
- 103. Appeal against declaration of essential service.
- 104. Right to resort to collective job action.
- 104A. Picketing.
- 105. Lock-outs and actions connected therewith.
- 106. Show cause orders.
- 107. Disposal orders.
- 108. Protection of persons engaged in lawful collective action.

- 109. Liability of persons engaged in unlawful collective action.
- 110. Appeals.
- 111. Cessation of collective job action.
- 112. Offences under Part XIII.

#### PART XIV

##### EMPLOYMENT AGENCIES

- 113. Interpretation in Part XIV.
- 114. Employment agencies to be registered.
- 115. Application for registration, issue, variation and cancellation of certificates of registration.
- 116. Duties of persons conducting employment agencies.
- 117. Powers of employment officers.
- 118. Offences under Part XIV.
- 119. Minister may make regulations.

#### PART XV

##### GENERAL

- 120. Investigation of trade unions and employers organizations.
- 121. Officials.
- 122. Acquisition of undertakings by trade unions and trade union congress.
- 123. Minister may raise levies to meet certain expenses.
- 124. Protection against multiple proceedings.
- 125. Records to be kept by employers, principals and contractors.
- 126. Investigative powers of labour officers.
- 127. Regulations.
- 128. Offences by and in respect of labour officers, designated agents and officials.

**AN ACT to declare and define the fundamental rights of employees; to give 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 which Zimbabwe would have ratified; 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.**

[Long title as amended by section 44 of Act 17 of 2002 and by section 38 of Act 7 of 2005.]

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

#### PART I

##### PRELIMINARY

### 1 Short title

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

[Short title as amended by section 2 of Act 17 of 2002.]

### 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 for interests which correspond most closely to those of the employees concerned;
- “assessor” means a member of the Labour Court appointed in terms of section *eighty-four*;  
[Definition as inserted by section 2 of Act 17 of 2002.]
- “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;  
[Definition as inserted by section 2 of Act 17 of 2002.]
- “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”.....  
[Definition repealed by section 3 of Act 17 of 2002.]
- “Chairman”.....  
[Definition repealed by section 3 of Act 17 of 2002.]
- “check-off scheme” means a scheme whereby an employer, with the consent of the employees concerned, deducts union dues directly from the remuneration of his employees and remits such dues to the trade union representing them;  
[Definition as inserted by section 2 of Act 17 of 2002.]
- “code”.....  
[Definition repealed by section 3 of Act 17 of 2002.]
- “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”.....  
[Definition repealed by section 3 of Act 17 of 2002.]
- “designated agent” mean a person appointed to be a designated agent of an employment council in terms of section *sixty-three*;  
[Definition as inserted by section 2 of Act 17 of 2002.]
- “disciplined force” means—
- (a) a military, air or naval force;
  - (b) a police force;
  - (c) a prison service;
  - (d) persons employed in the President’s Office on security duties;
- [Definition as inserted by section 2 of Act 17 of 2002 and as amended by section 37 of Act 7 of 2005.]
- “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;  
[Definition as inserted by section 2 of Act 17 of 2002.]
- “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;  
[Definition as inserted by section 2 of Act 17 of 2002.]
- “employee” means any person who performs work or services for another person for remuneration or reward on such terms and conditions as agreed upon by the parties or as provided for in this Act, 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;
- [Definition as substituted by section 2 of Act 17 of 2002 and by section 2 of Act 7 of 2005.]
- “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;

[Definition as substituted by section 2 of Act 17 of 2002 and as amended by section 2 of Act 7 of 2005.]

“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;

[Definition as substituted by section 2 of Act 17 of 2002.]

“employment board” .....

[Definition deleted by section 3 of Act 17 of 2002.]

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

[Definition as inserted by section 2 of Act 17 of 2002.]

“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;

[Definition as inserted by section 2 of Act 17 of 2002.]

“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;

[Definition as inserted by section 2 of Act 17 of 2002.]

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

[Definition as inserted by section 2 of Act 17 of 2002.]

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

[Definition as substituted by section 2 of Act 17 of 2002.]

“legal practitioner” means a person registered as such in terms of the Legal Practitioners Act [Chapter 27:07];

[Definition inserted by section 2 of Act 7 of 2005.]

“managerial employee” means an employee who by virtue of his contract of employment or of his seniority in an organisation, may be required or permitted to hire, transfer, promote, suspend, lay-off, dismiss, reward, discipline or adjudge the grievances of other employees;

[Definition as substituted by section 2 of Act 7 of 2005.]

“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;

[Definition as substituted by section 2 of Act 17 of 2002.]

“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” means, subject to section 83, 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;

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LABOUR ACT [CHAPTER 28:01]

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[Definition as substituted by section 2 of Act 7 of 2005.]

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

[Definition as inserted by section 2 of Act 17 of 2002.]

“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;

“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;

[Definition as inserted by section 2 of Act 17 of 2002.]

“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*;

[Definition as inserted by section 2 of Act 17 of 2002.]

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

[Definition as inserted by section 2 of Act 17 of 2002.]

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

[Definition as inserted by section 2 of Act 17 of 2002.]

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

[Definition as inserted by section 2 of Act 17 of 2002.]

“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”.....

[Definition deleted by section 3 of Act 17 of 2002.]

“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;

[Definition as inserted by section 2 of Act 17 of 2002.]

“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 and a chairperson.

[Definition as amended by section 2 of Act 7 of 2005.]

## 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) ....

[Paragraph repealed by section 3 of Act 7 of 2005.]

- (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) This Act shall prevail over any other enactment inconsistent with it.

[Subsection as substituted by section 3 of Act 7 of 2005.]



[Section inserted by section 4 of Act 17 of 2002.]

### 3 Application of Act

(1) This Act shall apply to all employers and employees except those whose conditions of employment are otherwise provided for in the Constitution.

(2) For the avoidance of any doubt, the conditions of employment of members of the Public Service shall be governed by the Public Service Act [Chapter 16:04].

(3) 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; or
- (c) such other employees of the State as the President may designate by statutory instrument.

[Section as substituted by section 4 of Act 7 of 2005.]

## 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 for the undertaking or industry in which he is employed if he complies with the conditions of membership.

(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.

#### 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

[Paragraph as amended by section 37 of Act 7 of 2005.]

- (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.

[Section inserted by section 4 of Act 17 of 2002.]

## 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—

- (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.

[Subsection as amended by section 7 of Act 17 of 2002.]

(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—

- (a) the advertisement of employment; or
- (b) the recruitment of persons; or
- (c) the introduction of prospective employees for jobs or posts; or
- (d) any other matter related to employment.

[Subsection as amended by section 7 of Act 17 of 2002.]

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

[Subsection as inserted by section 7 of Act 17 of 2002.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(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.

[Subsection as amended by section 45 of Act 17 of 2002.]

(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.

[Subsection as amended by section 7 of Act 17 of 2002.]

(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

[Subparagraph as amended by sections 7 and 45 of Act 17 of 2002.]

(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;

(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;

[Paragraph as inserted by section 7 of Act 17 of 2002.]

(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];

[Paragraph as inserted by section 7 of Act 17 of 2002.]

(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.

[Paragraph as inserted by section 7 of Act 17 of 2002.]

(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.

## 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.

[Subsection as amended by section 4 of Act 22 of 2001.]

## **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, 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, if any, with reasonable facilities and access for the exercise of such functions.

[Subsection as amended by section 37 of Act 7 of 2005.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(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 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—

- (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

[Subsection as amended by section 4 of Act 22 of 2001.]

- (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 on which the interests of any of his employees are represented; or

[Paragraph as amended by section 37 of Act 7 of 2005.]

(e) fails to comply with or to implement—

- (i) a collective bargaining agreement; or
- (ii) a decision or finding of an employment council on which any of his employees are represented; or

[Subparagraph as amended by section 37 of Act 7 of 2005.]

- (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; or  
[Paragraph as amended by section 37 of Act 7 of 2005.]
- (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 persons 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;
- or  
[Paragraph inserted by section 7 of Act 17 of 2002 and as amended by section 37 of Act 7 of 2005.]
- (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.  
[Paragraph inserted by section 7 of Act 17 of 2002 and as amended by section 37 of Act 7 of 2005.]

## 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 the provisions of its constitution; or  
[Paragraph as amended by section 37 of Act 7 of 2005.]
- (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 under Part XII; or  
[Paragraph as amended by section 37 of Act 7 of 2005.]
- (d) fails to comply with or to implement any decision or finding of an employment council, or any decision or finding made under Part XII, or any determination or direction under this Act which is binding upon it; or  
[Paragraph as amended by section 37 of Act 7 of 2005.]
- (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.

## 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.

(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 into 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.

[Subsection as amended by section 4 of Act 7 of 2005.]

(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 level seven or to imprisonment not exceeding two years or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 7 of 2005.]

[Section as substituted by section 9 of Act 17 of 2002.]

## 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.

(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 of two years or more;
- (b) two months in the case of a contract for a period of one year or more but less than two years;
- (c) one month in the case of a contract for a period of six months or more but less than one year;
- (d) two weeks in the case of a contract for a period of three months or more but less than six months;
- (e) one day in the case of a contract for a period of less than three months or in the case of casual work or seasonal work.

[Subsection as substituted by section 6 of Act 7 of 2005.]

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

- (a) one day 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.

[Subsection as amended by section 6 of Act 7 of 2005.]

(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).

[Section as substituted by section 10 of Act 17 of 2002.]

## 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.

(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).

[Section as substituted by section 10 of Act 17 of 2002.]

## 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) in the absence of an employment code, the employer shall comply with the model code made in terms of section 101(9).

[Paragraph substituted by section 7 of Act 7 of 2005.]

- (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.

(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.

[Section as substituted by section 10 of Act 17 of 2002.]

## 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 the 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, give his decision in the matter in terms of subsection (9) as if the Board had made a recommendation in terms of subsection (6).

[Subsection as amended by section 8 of Act 7 of 2005.]

(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—

(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.

[Subsection as amended by section 8 of Act 7 of 2005.]

(10) .....

[Subsection repealed by section 8 of Act 7 of 2005.]

(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.

[Section as substituted by section 10 of Act 17 of 2002.]

## 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.

(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.

[Section as substituted by section 10 of Act 17 of 2002.]

### 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.

(1a) Wages and benefits payable to any person or to his or her estate in terms of this section shall not form part of or be construed as a retrenchment package which an employee is entitled to where his or her employment has been terminated as a result of retrenchment in terms of section 12C.

[Subsection inserted by section 9 of Act 7 of 2005.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

- (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.

[Section as substituted by section 11 of Act 17 of 2002.]

#### **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 public holidays falling within a period of vacation leave shall be counted as part of vacation leave.

[Subsection as amended by section 37 of Act 7 of 2005.]

(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.

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

[Section as inserted by section 11 of Act 17 of 2002.]

#### **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.

[Section as inserted by section 11 of Act 17 of 2002.]

#### **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.

[Section as inserted by section 11 of Act 17 of 2002.]

#### **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 this Act, 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.

[Subsection as amended by section 12 of Act 17 of 2002.]

(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.

[Subsection as substituted by section 12 of Act 17 of 2002.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(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-eight days on full pay to a female employee who has served for at least one year.

[Subsection as amended by section 10 of Act 7 of 2005.]

(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) .....

[Subsection repealed by section 10 of Act 7 of 2005.]

(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.

[Section as substituted by section 13 of Act 17 of 2002.]

## PART V

### ADVISORY COUNCILS AND WAGE AND SALARY CONTROL

[Heading amended by section 37 of act 7 of 2005.]

#### 19 Advisory councils

The Minister may, either on his or her own initiative or on the recommendation of any employer or employee of any association representing employers or employees, appoint advisory councils consisting of such persons as the Minister may deem fit, to investigate and make recommendations to him or her as to one or more of the following—

- (a) in connection with wages, salaries or benefits—
  - (i) the fixing of minimum wages and benefits for employees; or
  - (ii) any other matters to which minimum wage notices may relate;
- (b) the making or regulations in terms of section 17 or section 26;
- (c) the compilation of a list of arbitrators in terms of section 98(6);
- (d) the declaration of any service as an essential service in terms of the definition of “essential service” contained in section 102;
- (e) the code of picketing in term of section 104A;
- (f) any other matter as may give better effect to the provisions of this Act.

[Section as substituted by section 11 of Act 7 of 2005.]

#### 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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

## 22 .....

[Section repealed by section 12 of Act 7 of 2005.]

## 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.

[Subsection as inserted by section 14 of Act 17 of 2002.]

(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.

[Subsection as inserted by section 14 of Act 17 of 2002.]

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

- (a) be assisted by a labour 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.

[Subsection as amended by section 13 of Act 7 of 2005.]

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2), either party to the dispute may refer it to the labour officer mentioned in paragraph (a) of that subsection, or, in

the absence of such labour officer, any other labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection as substituted by section 13 of Act 7 of 2005.]

## 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) .....

[Paragraph repealed by section 14 of Act 7 of 2005.]

(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.

(6) Any person who is aggrieved by any determination or direction in terms of subsection (2) or any amendment of a collective bargaining agreement in terms of subsection (4) may appeal to the Labour Court.

[Subsection inserted by section 14 of Act 7 of 2005.]

### **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.

(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).

[Section as inserted by section 15 of Act 17 of 2002.]

### **26 Minister may make regulations relating to workers committees**

(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;
- (b) the tenure of office of members of workers committees;
- (c) the operation, management and conduct of the affairs of workers committees and works councils;

[Subsection as amended by section 45 of Act 17 of 2002.]

(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*.

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;
- (vi) of the members of the trade union, employers organization or federation; and
- (vii) the call and conduct of meetings of members or representatives of members of the trade union, employers organization or federation; and
- (viii) 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 Act [Chapter 17:01], any disability referred to in the definition of “disabled person” in that Act; and
- (ix) the amendment of the constitution; and
- (x) the winding up of the trade union, employers organization, or federation;

[Subparagraph as amended by section 45 of Act 17 of 2002.]

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 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) .....

[Subsection repealed by section 16 of Act 17 of 2002.]

- (4) Subject to this Act, a registered trade union or federation of such unions shall be entitled—
- (a) to be assisted by a labour officer or designated agent of the appropriate employment council in its dealings with employers; and  
[Paragraph as amended by section 15 of Act 7 of 2005.]
  - (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) .....  
[Paragraph repealed by section 15 of Act 7 of 2005.]
  - (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.

(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, either or both of the parties to the dispute may refer the matter to a labour officer who shall thereupon deal with it in terms of section 93.

[Subsection as inserted by section 16 of Act 17 of 2002 and proviso substituted by section 15 of Act 7 of 2005.]

- (5) Subject to this Act, a registered employers organization shall be entitled—
- (a) to be assisted by a labour officer or a designated agent of the appropriate employment council in its dealings with trade unions or workers committees; and  
[Paragraph as amended by section 15 of Act 7 of 2005.]
  - (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) ....  
[Paragraph repealed by section 15 of Act 7 of 2005.]
  - (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.

### **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 officer or a designated agent of any employment council.

[Paragraph as amended by section 16 of Act 7 of 2005.]

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

- (a) .....

[Paragraph repealed by section 16 of Act 7 of 2005.]

- (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.

[Paragraph as substituted by section 16 of Act 7 of 2005.]

### **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) 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 trade union representing the employees concerned has been registered or has re-acquired its competency to represent the employees concerned.

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

(6) 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.

### **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.

### **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—

- (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) .....

[Paragraph repealed by section 18 of Act 17 of 2002.]

- (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.

[Section as amended by section 18 of Act 7 of 2005.]

### **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.

### **37 .....**

[Section repealed by section 19 of Act 17 of 2002.]

### **38 .....**

[Section repealed by section 19 of Act 17 of 2002.]

### **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.

(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**

(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 of a trade union or employers organization.

[Subsection as amended by section 17 of Act 7 of 2005.]

(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 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 trade union or employers organization, as may be specified in the order of suspension.

[Subsection as amended by section 17 of Act 7 of 2005.]

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

(5) Any person who is aggrieved by any determination or decision made by the Registrar in terms of this section may appeal to the Labour Court.

[Subsection inserted by section 17 of Act 7 of 2005.]

#### **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) .....

[Paragraph repealed by section 20 of Act 7 of 2005.]

(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.

[Paragraph as amended by section 20 of Act 7 of 2005.]

#### **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 or 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—

(a) take into account—

(i) representations by—

- A. employers and employees who might be affected; and
- B. the Minister; and
- C. any member of the public or any section thereof likely to be affected;

and

[Subparagraph as amended by section 18 of Act 7 of 2005.]

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

[Subsection as amended by section 21 of Act 17 of 2002.]

(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), the burden of proving such assertion shall lie on such person.

[Subsection as amended by section 21 of Act 17 of 2002.]

#### **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.

#### **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]
- (e) to decline to hold accreditation proceedings;

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

[Section as amended by section 22 of Act 17 of 2002.]

#### **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) A notice of appeal in terms of subsection (1) shall not suspend the operation or effect of the decision appealed against.

[Subsection as substituted by section 19 of Act 7 of 2005.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

#### **49 Appeals before Labour Court**

(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 Labour Court 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 Labour Court 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.

#### **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.

#### **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.

(3) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court.

[Subsection inserted by section 20 of Act 7 of 2005.]

#### **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.

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]



### **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.

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

### **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 organization 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.

[Subsection as amended by section 23 of Act 17 of 2002.]

(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.

[Proviso as amended by section 23 of Act 17 of 2002.]

(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.

[Subsection as inserted by section 23 of Act 17 of 2002.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

### **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;
- (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.

[Subsection as inserted by section 4 of Act 22 of 2001.]

(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.

#### 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.

(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; 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*; 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.

[Subsection as inserted by section 4 of Act 22 of 2001.]

(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.

**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;

[Proviso to paragraph repealed by section 37 of Act 7 of 2005.]

- (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 or her certification of appointment, be authorised by the Registrar to redress or attempt to redress any dispute which is referred to the designated agent or has come to his or her attention; where such dispute occurs in the undertaking or industry and within the area for which the employment council is registered, and the provisions of Part XII shall apply, with the necessary changes, to the designated agent as they apply to a labour officer.

[Subsection as substituted by section 21 of Act 7 of 2005.]

(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.

[Subsection as inserted by section 24 of Act 17 of 2002.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(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**

[Part IX (sections 64 to 73) repealed by s. 25 of Act 17 of 2002.]

## **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:

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;  
[Paragraph as inserted by section 26 of Act 17 of 2002.]
- (l) housing and transport facilities or in their absence, an allowance for the same;  
[Paragraph inserted by section 22 of Act 7 of 2005.]
- (m) measures to combat workplace violence and handling its aftermath.  
[Paragraph inserted by section 22 of Act 7 of 2005.]

(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 dispute as to whether or not full disclosure has been made in terms of subsection (1), either party to the dispute may refer it to a labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection as substituted by section 23 of Act 7 of 2005.]

(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.

[Subsection as inserted by section 4 of Act 22 of 2001.]

### **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) .....

[Paragraph repealed by section 24 of Act 7 of 2005.]

(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) .....

[Paragraph repealed by section 25 of Act 7 of 2005.]

(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.

(5) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court.

[Subsection as inserted by section 25 of Act 7 of 2005.]

## **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.

[Subsection as amended by section 45 of Act 17 of 2002.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(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.

[Subsection as inserted by section 27 of Act 17 of 2002.]

## **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 any employee bound by its terms at the offices of the trade union that was a party to its negotiation.

[Subsection as inserted by section 28 of Act 17 of 2002.]

## **82B Codes of best practice, guidelines and model agreements**

The Minister shall publish in the Government *Gazette* codes of best practices, guidelines and model agreements which the employers and employees may have regard to when performing their duties but they are not obliged to follow them.

[Section inserted by section 26 of Act 7 of 2005.]

## **PART XI**

### **LABOUR COURT**

[Part (sections 83 – 92D) inserted by section 29 of Act 17 of 2002.]

### **83 Administration of Part XI**

In this Part “responsible Minister” means (except in section 89(1)(b), where reference to the responsible Minister is to the Minister as defined in section 2) the Minister responsible for justice or any other Minister to whom the President may, from time to time, assign the administration of this Part.

[Section as substituted by section 27 of Act 7 of 2005.]

### **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 and the responsible Minister 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.

[Subsection as substituted by section 28 of Act 7 of 2005.]

(2) The Senior President of the Labour Court may, in consultation with the responsible Minister, add or remove the name of any person from any list drawn up in terms of subsection (1).

[Subsection as amended by section 28 of Act 7 of 2005.]

(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 responsible Minister, with the consent of the Minister responsible for finance, may fix.

[Subsection as amended by section 28 of Act 7 of 2005.]

### **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 (6) of section *ninety-eight* to hear and determine an application;
- (d1) exercise the same powers of review as would be exercisable by the High Court in respect of labour matters;

[Paragraph as inserted by section 29 of Act 7 of 2005.]

(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) ....

[Paragraph repealed by section 29 of Act 7 of 2005.]

(iv) .....

[Paragraph repealed by section 29 of Act 7 of 2005.]

(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 (ii) 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—

- (i) any such determination shall specify an amount of damages to be awarded to the employee concerned as an alternative to his reinstatement or employment;
- (ii) in deciding whether to award damages or reinstatement or employment, onus is on the employer to prove that the employment relationship is no longer tenable, taking into account the size of the employer, the preferences of the employee, the situation in the labour market and any other relevant factors;
- (iii) should damages be awarded instead of reinstatement or employment as a result of an untenable working relationship arising from unlawful or wrongful dismissal by the employer, punitive damages may be imposed;

[Proviso as substituted by section 29 of Act 7 of 2005.]

- (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 responsible Minister.

[Subsection as amended by section 37 of Act 7 of 2005.]

### **90A Procedure and evidence in the Labour Court**

(1) The Labour Court shall not be bound by the strict rules of evidence, and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party.

(2) Evidence may be adduced orally or in writing in any proceedings in the Labour Court, at the discretion of the presiding officer.

(3) The parties or their representatives to any proceedings in the Labour Court shall be entitled to question or cross-examine each other or any witness.

(4) It shall be the responsibilities of the presiding officer to ascertain the facts in any proceedings in the Labour Court, and for that purpose he or she may—

- (a) call any party or his or her representative;
- (b) question or cross-examine any party or his or her representative or witness; and
- (c) put any question to a party or his or her representative or witness which is suggested to him or her by any party.

[Section inserted by section 30 of Act 7 of 2005.]

### **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 level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 31 of Act 7 of 2005.]

### **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.

### **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.

### **92D Appeals to the Labour Court not provided for elsewhere in this Act**

A person who is aggrieved by a determination made under an employment code, may, within such time and in such manner as may be prescribed, appeal to the Labour Court.

[Section as substituted by section 32 of Act 7 of 2005.]

### **92E Appeals to the Labour Court generally**

(1) An appeal in terms of this Act may address the merits of the determination or decision appealed against.

(2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.

(3) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.

[Section inserted by section 32 of Act 7 of 2005.]

[Part XI (sections 83 – 92D) inserted by section 29 of Act 17 of 2002.]

## 92F Appeals against decisions of Labour Court

(1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.

(2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision leave to appeal that decision.

(3) If the President refuses leave to appeal in terms of subsection (2), the party may seek leave from the judge of the Supreme Court to appeal.

[Section inserted by section 32 of Act 7 of 2005.]

## PART XII

### RESOLUTION OF DISPUTES AND UNFAIR LABOUR PRACTICES

## 93 Powers of labour officers

(1) A labour officer to whom a dispute or unfair labour practice 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.

[Subsection as amended by section 33 of Act 7 of 2005.]

(2) If the dispute or unfair labour practice is settled by conciliation, the labour officer shall record the settlement in writing.

[Subsection as amended by section 33 of Act 7 of 2005.]

(3) If the dispute or unfair labour practice 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 or unfair labour practice.

[Subsection as amended by section 33 of Act 7 of 2005.]

(4) The parties to a dispute or unfair labour practice may agree to extend the period for conciliation of the dispute or unfair labour practice referred to in subsection (3).

[Subsection as amended by section 33 of Act 7 of 2005.]

(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 or unfair labour practice—

- (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 or unfair labour practice to compulsory arbitration; or
- (c) may refer the dispute or unfair labour practice to compulsory arbitration if the dispute or unfair labour practice is a dispute of right;

and the provisions of section ninety-eight shall apply to such reference to compulsory arbitration.

[Subsection as amended by section 33 of Act 7 of 2005.]

(6) .....

[Subsection repealed by section 33 of Act 7 of 2005.]

(7) If, in relation to any dispute or unfair labour practice—

- (a) after a labour officer has issued a certificate of no settlement in relation to the dispute or unfair labour practice, it is not possible for any reason to refer the dispute or unfair labour practice 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 or unfair labour practice 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 or unfair labour practice 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.

[Subsection as amended by section 33 of Act 7 of 2005.]

[Section substituted by section 30 of Act 17 of 2002.]

## 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.

(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.

[Section as amended by section 31 of Act 17 of 2002.]

**95** .....

[Section repealed by section 32 of Act 17 of 2002.]

**96** .....

[Section repealed by section 32 of Act 17 of 2002.]

**97** .....

[Section repealed by section 34 of Act 7 of 2005.]

**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, *ex officio* or designated agent whom he considers to be experienced or qualified in arbitration; and

[Paragraph as amended by section 35 of Act 7 of 2005.]

- (b) any other person whom he considers to be experienced or qualified in arbitration.

(7) In referring a dispute to compulsory arbitration by a person other than a labour officer, or a designated agent for the employment council which is registered to represent the undertaking or industry to which the parties belong, the Labour Court or labour officer shall determine the share of the costs of the arbitration to be borne by each party.

[Subsection as substituted by section 35 of Act 7 of 2005.]

(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) In hearing and determining any dispute an arbitrator shall have the same powers as the Labour Court.

[Subsection as substituted by section 35 of Act 7 of 2005.]

(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.

[Section as substituted by section 34 of Act 17 of 2002.]

**99 ....**

[Section repealed by section 34 of Act 17 of 2002.]

**100....**

[Section repealed by section 34 of Act 17 of 2002.]

### **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.

[Subsection as substituted by section 35 of Act 17 of 2002.]

(1a) Where an employment council has registered a code governing employers and employees represented by it, no works council may apply for the registration of a code in respect of any industry, undertaking or workplace represented by the employment council unless it first refers the code to the employment council for its approval.

[Subsection as inserted by section 35 of Act 17 of 2002.]

(1b) Where a 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 code, the 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.

[Subsection as inserted by section 35 of Act 17 of 2002.]

(1c) Where an employment council refuses to approve a 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.

[Subsection as inserted by section 35 of Act 17 of 2002.]

(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*.

(7) .....

[Subsection repealed by section 35 of Act 17 of 2002.]

(8) .....

[Subsection repealed by section 35 of Act 17 of 2002.]

(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.

[Section as amended by section 45 of Act 17 of 2002.]

## PART XIII

### COLLECTIVE JOB ACTION

#### 102 Interpretation in Part XIII

In this Part—

“appropriate authority” .....

[Definition repealed by section 36 of Act 17 of 2002.]

“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;

[Definition as amended by section 36 of Act 17 of 2002.]

“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 job action” .....

[Definition repealed by section 36 of Act 17 of 2002.]

#### 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.

### 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.

[Subsection as substituted by section 37 of Act 17 of 2002.]

(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*.

[Subsection as substituted by section 37 of Act 17 of 2002.]

(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;

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

- (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.

[Subsection as substituted by section 37 of Act 17 of 2002.]

(4) Nothing in subsection (1), (2) or (3) shall be deemed to prevent collective job action from being resorted to—

- (a) in order to avoid any occupational hazard which is reasonably feared to pose an immediate threat to the health or safety of the persons concerned:

Provided that—

- (i) the occupational hazard has not been deliberately caused by the persons resorting to the collective job action;
- (ii) the collective job action resorted to shall remain proportional in scope and locality to the occupational hazard in question;
- (iii) the collective job action shall diminish in proportion as such occupational hazard diminishes;

- (b) in defence of an immediate threat to the existence of a workers committee or a registered trade union.

[Paragraph as amended by section 37 of Act 7 of 2005.]

### 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.

(2) A registered trade union or workers committee may authorise a picket.

(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.

[Section as inserted by section 38 of Act 17 of 2002.]

### 105 Lock-outs and actions connected therewith

No employer or employers organization 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.

[Section as substituted by section 39 of Act 17 of 2002.]

### 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:

Provided that the Minister may call both parties to appear before him or her for submissions before he or she issues a show cause order if he or she deems it necessary that they appear.

[Proviso inserted by section 36 of Act 7 of 2005.]

(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.

[Section as substituted by section 40 of Act 17 of 2002.]

### 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, to take disciplinary action in terms of the code or law, or lay off or suspend with or without pay, specified employees or categories of employees engaged in the unlawful collective action;  
[Subparagraph as amended by section 37 of Act 7 of 2005.]
  - (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;
  - (vii) the taking of disciplinary action by the employer in the case of employees on collective job action, in terms of the code or any other sanction as the circumstances permit, in respect of defiance of a show cause order.  
[Subparagraph as inserted by section 37 of Act 7 of 2005.]
- (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.  
[Section as substituted by section 40 of Act 17 of 2002.]

### **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.

(5) An employer may not employ any person for the purpose of performing the work of an employee who is locked out.

[Section as substituted by section 40 of Act 17 of 2002.]

**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 to 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 or procures 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 to 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.

(7) 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.

[Section as substituted by section 40 of Act 17 of 2002.]

### 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.

- (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.

[Subsection as amended by section 45 of Act 17 of 2002.]

### 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 with—
- (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 account—

- (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.

[Section as substituted by section 4 of Act 22 of 2001.]

## 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.

### **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 fails to comply with—

- (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.

[Subsection as substituted by section 4 of Act 22 of 2001.]

#### **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).

(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;

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.

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

## 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.

[Section as substituted by section 41 of Act 17 of 2002.]

## 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; 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.

(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) .....

[Paragraph repealed by section 45 of Act 17 of 2002.]

(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  
[Paragraph as amended by section 45 of Act 17 of 2002.]
  - (b) the ability of any person or organization upon whom the levy is imposed to pay the levy.

#### **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) .....

[Subsection repealed by section 4 of Act 22 of 2001.]

#### **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.

(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.

(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; 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.

[Subsection as amended by section 4 of Act 22 of 2001.]

#### **126 Investigative powers of labour officers**

(1) A labour officer—

(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.

[Subsection as substituted by section 40 of Act 17 of 2002.]

## 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 employment councils.

[Paragraph as inserted by section 43 of Act 17 of 2002.]

(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.

[Subsection as amended by section 4 of Act 22 of 2001.]

## 128 Offences by and in respect of labour officers, designated agents and officials

(1) Any person who—

(a) .....

[Paragraph repealed by section 4 of Act 22 of 2001.]

(b) falsely holds himself out to be—

- (i) a labour officer; 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.

[Subsection as amended by section 4 of Act 22 of 2001.]

(2) .....

[Subsection repealed by section 4 of Act 22 of 2001.]

**Statutory Instrument 59 of 2006.**

[Date of publication : 3rd March, 2006.]

**Labour Court Rules, 2006**

ARRANGEMENT OF RULES

PART I

PRELIMINARY

*Rule*

1. Title.
2. Application.
3. Interpretation.
4. Computation of time and certain presumptions as to time.
5. Sittings and vacations of Labour Court.

PART II

SERVICE OF DOCUMENTS

6. Interpretation in Part II.
7. Address for service and change of address for service.
8. Persons who may effect service of documents and manner and time of service.
9. Service where person to be served prevents service or cannot be found.
10. Substituted service.
11. Proof of service.

PART III

DETERMINATION OF MATTERS BY LABOUR COURT

12. Informality of proceedings.
13. Labour Court Record Book.
14. Applications.
15. Appeals.
16. Reviews.
17. Interlocutory and other applications under these rules.
18. Assumption and renunciation of agency where either party represented by legal practitioner.
19. Heads of argument.
20. Settlements and withdrawals.
21. Set-down of matters.
22. Where party fails to file notice of response.
23. Witnesses.
24. Clarification of issues
25. Pre-hearing stage.
26. Departures from rules.
27. Joinder of parties and actions.
28. Hearings.
29. Adjournments and postponements.
30. Default judgement entered where party or witness fails to appear.
31. Consent to judgement.
32. Costs.
33. Applications for rescissions or alterations of judgements.
34. Stay of execution.

PART IV

GENERAL

35. Precedents and binding nature of decisions.
36. Leave to appeal against decisions of Court.

37. Forms.

**IT is hereby notified that the Presidents of the Labour Court have, in terms of section 90(3) of the Labour Court Act [Chapter 28:01] and with the approval of the Chief Justice and the Minister of Justice, Legal and Parliamentary Affairs, made the following rules:—**

PART I

PRELIMINARY

*1. Title*

These rules may be cited as the Labour Court Rules, 2006.

*2. Application*

These rules shall apply to all proceedings in the Labour Court, including, so far as is practicable, proceedings pending on the date of commencement of these rules.

*3. Interpretation*

In these rules—

“Court” means the Labour Court;

“form” means the appropriate form prescribed in the Schedule;

“party” means a person who is a party to a matter before the Court;

“President” means a President of the Court appointed in terms of section 84(2)(a) of the Act, and includes the Senior President;

“registrar” means the registrar of the Court;

“representative” means an official or employee of a registered trade union or employers organisation representing a party who is a member of that trade union or employers organisation;

“responsible individual”, in relation to the service of any document or summons under these rules, means an individual who appears reasonably likely, if he or she is given a document or summons that is required to be served in terms of these rules, either to deliver it to the person upon whom it is to be served, or otherwise to bring it to that person’s attention;

“Senior President” means the Senior President appointed as such in terms of section 84(2)(a) of the Act.

*4. Computation of time and certain presumptions as to time*

(1) Unless a contrary intention appears, where anything is required by these rules or in any order of the Court to be done within a particular number of days or hours, a Saturday, Sunday or public holiday shall not be reckoned as part of such period.

(2) A person shall be deemed to have received—

(a) service of documents on the day indicated by the appropriate proof of service mentioned in any of the paragraphs (a) to (e) of rule 11(1);

(b) for the purpose of rule 14(1)(a), a “certificate of no settlement” by the fourteenth day after the date indicated on that certificate as the date of issue thereof;

(c) for the purpose of rule 15(1)—

(i) a determination or direction of the Minister in terms of section 25, 40, 51, 79 or 82 of the Act, or in terms of any regulations made pursuant to section 17 of the Act, by the fourteenth day after the date indicated on that determination or direction as the date of issue thereof;

(ii) a determination made under an employment code in terms of section 101 of the Act, by the fourteenth day after the date indicated on that determination as the date of issue thereof;

(d) for the purpose of rule 16(1), notice of termination of—

(i) the investigation of a dispute or unfair labour practice by the fourteenth day after the date indicated on a “certificate of no settlement” as the date of issue thereof;

(ii) the conduct of any proceedings in terms of an employment code by the fourteenth day after the date indicated on a determination issued after those proceedings as the date of issue thereof;

and any person alleging otherwise shall bear the onus of proof to the contrary.

(3) The period of twenty-one days referred to in rules 14(1), 15(1) and 16(1) shall, in the case of—

(a) an application in terms of rule 14(1)(a), 15(1), be calculated from the last deemed date of receipt of the certificate, determination, direction or notice referred to in subrule (2)(b), (c) or (d), as the case may be;

- (b) an application in terms of rule 14(1)(b) or (where no certificate, determination or direction was issued in relation to the proceedings sought to be reviewed) 16(1), be calculated from the thirtieth day after—
- (i) the labour officer began to attempt to settle the dispute or unfair labour practice concerned in terms of section 93 of the Act; or
  - (ii) the applicant received notification that proceedings under an employment code were to be commenced against him or her in terms of section 101(3)(e) of the Act;
- as the case may be.

*5. Sittings and vacations of Labour Court*

(1) In each year the registrar shall, in consultation with the Senior President, publish a calendar of the sittings and vacations of the Court for the ensuing year.

(2) The registrar shall, by notice in the *Gazette* and in any other media he or she deems fit, publish the calendar referred to in subrule (1).

PART II

SERVICE OF DOCUMENTS

*6. Interpretation in Part II*

In this Part—

“address for service” means the address nominated by a person where documents may be served on him or her in terms of rule 7(1);

“commercial courier service” and “postal licensee” shall have the meanings given to those terms by the Postal and Telecommunications Act [*Chapter 12:05*].

*7. Address for service and change of address of service*

(1) Every party shall, at the time when he or she notes an appeal or makes any application, give an address at which he or she will accept service in terms of these rules.

(2) Where a party is represented by a legal practitioner or representative, the party’s address for service shall be that of his or her legal practitioner or representative.

(3) Where a party changes his or her address for service, he or she shall notify, in writing, the registrar and the other parties to the proceedings of his or her new address for service, and if he or she fails to make such notification, his or her address for service shall be deemed to be the address given under subrule (1).

(4) Where a party fails to specify his or her address for service, his or her last known residential address or the address of his or her last known place of business or employment shall be deemed to be his or her address for service and service at any such address shall be valid:

Provided that where the person to be served is detained in custody, service shall be by delivery or registered post to the person in charge of the place where that person is detained.

*8. Persons who may effect service of documents and manner and time of service*

(1) All documents not required in terms of these rules to be served by the registrar himself or herself may be served upon a person by—

- (a) the party who issued the documents; or
- (b) a party’s legal practitioner, representative, agent, messenger or courier; or
- (c) the deputy sheriff;
- (d) the messenger of court;

in any of the following ways—

- (e) registered post; or
- (f) delivery through a commercial courier service; or
- (g) personal delivery to that person or to his or her duly appointed agent; or
- (h) delivery to a responsible individual at that person’s place of work or residential address; or
- (i) telegraph; or
- (j) telefacsimile.

(2) Service of documents in terms of these rules shall not be valid if served between 10 p.m. and 6 a.m.:

Provided that the service of documents by post, telegraph, facsimile or courier shall be valid whenever served.

*9. Service where person to be served prevents service or cannot be found*

Where documents are to be served, and—

- (a) the person upon whom they are to be served avoids or prevents service; or

- (b) the person seeking to effect service of the documents is unable, after a diligent search at the residence, place of business or employment or address for service of the person to be served, to find that person or a responsible individual;

it shall be sufficient service to leave a copy of the documents in a letter box, at or affixed to or near the counter or principal door or gate, or in some conspicuous place at the residence, place of business or employment or address for service, as the case may be.

*10. Substituted service*

Where service cannot be effected in the manner prescribed in rules 8 and 9, the Court may, upon evidence of that fact, make an order allowing service to be effected in any manner as may be stated in such order.

*11. Proof of service*

(1) Where service of documents has been effected by—

- (a) registered post, the advice slip, or some other acceptable proof of delivery provided by the postal licensee;
- (b) the registrar, the registrar's out-going mail register or extract therefrom certified by the registrar;
- (c) hand-delivery or courier delivery, a certificate of service or affidavit by the person effecting service, or delivery slip, or a copy of the document served duly signed by the recipient;
- (d) telefacsimile, the electronic record of such service;
- (e) telegraph, a return from the postal licensee;

shall constitute proof of service.

(2) Where any document has been served on a responsible individual, the name of that individual shall be stated in the proof of service.

PART III

DETERMINATION OF MATTERS BY LABOUR COURT

*12. Informality of proceedings*

(1) Subject to these rules, the Court shall conduct any hearing in such manner as it considers most suitable to the clarification of the issues, the fair resolution of the matters, and generally the just handling of the proceedings before it.

(2) The Court shall, so far as appear to it appropriate, avoid formality in its proceedings and may, where circumstances warrant it, depart from any enactment or rule of law relating to the admissibility of evidence in proceedings before courts of law generally.

*13. Labour Court Record Book*

The Registrar shall, in respect of every matter for hearing or determination by the Court, keep an index book to be called the Labour Court Record Book in which the following shall be recorded—

- (a) the number of the case; and
- (b) the names of the parties; and
- (c) the nature of the case; and
- (d) the date and place of the hearing or determination of the case; and
- (e) the judgement of the Court; and
- (f) any subsequent proceedings and remarks.

*14. Applications*

(1) A party to a dispute who wishes to apply to the Court for an order referred to in section 89(2)(b), (c) or (d) of the Act shall, within twenty-one days from the date—

- (a) when the party received a “certificate of no settlement” issued by a labour officer in relation to the dispute in terms of section 93(3) of the Act; or
- (b) of expiry of the maximum 30-day period allowed for a labour officer to settle the dispute, where no settlement is achieved and the labour officer did not, for any reason, issue a “certificate of no settlement” in relation to the dispute in terms of section 93(3) of the Act;

do the following—

- (c) complete in three copies a notice of application in Form LC 1; and
- (d) if any of the documents referred to in subparagraph (i) or (ii) below are in the possession of the applicant, make three copies of—
  - (i) the minutes or record of any conciliation proceedings undertaken by the labour officer in connection with the dispute, whether the dispute was a dispute of interest or of right; and

- (ii) any supporting documentation produced in connection with conciliation proceedings referred to in subparagraph (i), if any;
  - and
  - (e) serve one copy of the notice of application, together with a copy of the documents, if any, referred to in paragraph (d), on the other party to the dispute (hereinafter in this rule and rules 15 and 16 referred to as the “respondent”); and
  - (f) file with the registrar one of the other copies of the notice of application, together with—
    - (i) a copy of the documents, if any, referred to in paragraph (d); and
    - (ii) proof (as required by rule 11) that the notice of application was served on the respondent;and
  - (g) retain a copy of the notice of application for himself or herself.
- (2) The registrar shall, within thirty days of receiving a notice of application in terms of subrule (1)(f), give notice in Part I of Form LC 2 to the respondent—
- (a) to complete in three copies a notice of response to the application in Part II of Form LC 2; and
  - (b) to do the following within fourteen days of the date when the registrar gives notice to the respondent under this subrule—
    - (i) serve one copy of the notice of response on the applicant; and
    - (ii) file with the registrar one of the other copies of the notice of response, together with proof (as required by rule 11) that the notice of response was served on the applicant; and
    - (iii) retain a copy of the notice of response for himself or herself;and
  - (c) if the notice of response indicates that the respondent wishes to contest the application, and if any of the documents referred to in subrule (1)(f) were not served on the respondent by the applicant and any such documents are in the possession of the respondent, to do the following within thirty days of the date when the registrar gives notice to the respondent under this subrule, or no later than five days before the date of the hearing set down in terms of rule 21, whichever is the earlier date—
    - (i) make three copies of such documents; and
    - (ii) serve a copy of the documents copied under subparagraph (i) on the applicant; and
    - (iii) file with the registrar one copy of the documents copied under subparagraph (i), together with proof (as required by rule 11) that a copy of the documents was served on the applicant; and
    - (iv) retain a copy of the documents for himself or herself.
- (3) A party to a dispute making an application under this rule who also wishes to seek a review of the proceedings in respect of which he or she makes the application shall, at the same time, complete in three copies of a notice of review in Form LC 4 and serve such notice and any other documentation referred to in rule 16 together with the notice of application under this rule.

#### 15. Appeals

- (1) A person wishing to appeal against any decision, determination or direction referred to in section 97(1)(a) or (b) of the Act, or on a question of law in connection with any arbitral award in terms of section 98(10) of the Act, shall, within twenty-one days from the date when the appellant receives the decision, determination or direction or award, do the following—
- (a) complete in three copies a notice of appeal in Form LC 3; and
  - (b) make three copies of any of the documents referred to in subparagraphs (i) to (iv) below as are relevant to the appeal, if they are in the possession of the appellant—
    - (i) the record of any charge against or allegation of misconduct on the part of the appellant that was served on the appellant, if any;
    - (ii) the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the appellant;
    - (iii) a minute or record of any decision, determination, direction or award made at the conclusion of any proceedings or hearing referred to in subparagraph (ii);
    - (iv) the letter of suspension or dismissal from employment, if any; and
  - (c) serve one copy of the notice of appeal, together with a copy of the documents, if any, referred to in paragraph (b), on the respondent; and
  - (d) file with the registrar one of the other copies of the notice of appeal, together with—
    - (i) a copy of the documents, if any, referred to in paragraph (b); and
    - (ii) proof (as required by rule 11) that the notice of appeal was served on the respondent;
  - (e) retain a copy of the notice of appeal, and of the documents, if any, referred to in paragraph (b), for himself or herself.



(2) The registrar shall, within thirty days of receiving a notice of appeal in terms of subrule (1)(d), give notice in Part I of Form LC 2 to the respondent—

- (a) to complete in three copies a notice of response to the appeal in Part II of Form LC 2; and
- (b) to do the following within fourteen days of the date when the registrar gives notice to the respondent under this subrule—
  - (i) serve one copy of the notice of response on the appellant; and
  - (ii) file with the registrar one of the other copies of the notice of response, together with proof (as required by rule 11) that the notice of response was served on the appellant; and
  - (iii) retain a copy of the notice of response for himself or herself; and
- (c) if the notice of response indicates that the respondent wishes to contest the appeal, and if the documents referred to in subrule (1)(b) were not served on the respondent by the appellant and any such documents are in the possession of the respondent, to do the following within 30 days of the date when the registrar gives notice to the respondent under this subrule, or no later than five days before the date of the hearing set down in terms of rule 21, whichever is the earlier date—
  - (i) make three copies of such documents;
  - (ii) serve a copy of the documents copied under subparagraph (i) on the appellant;
  - (iii) file with the registrar one copy of the documents copied under subparagraph (i), together with proof (as required by Part II) that a copy of the documents was served on the appellant; and
  - (iv) retain a copy of the documents for himself or herself.

(3) A person making an appeal under this rule who also wishes to seek a review of the proceedings in respect of which he or she makes the appeal shall, at the same time, complete in three copies of a notice of review in Form LC 4 and serve such notice together with the notice of appeal under this rule.

#### *16 Reviews*

(1) A person wishing to seek review of proceedings referred to in section 97(1)(c) or (d) of the Act shall, within twenty-one days from the date when the proceedings are concluded, do the following—

- (a) complete in three copies a notice of review in Form LC 4; and
- (b) make three copies of any of the documents referred to in subparagraphs (i) to (iv) below as are relevant to the review, if they are in the possession of the applicant—
  - (i) the record of any charge against or allegation of misconduct on the part of the applicant that was served on the applicant, if any;
  - (ii) the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the applicant;
  - (iii) a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in subparagraph (ii);
  - (iv) the letter of suspension or dismissal from employment, if any; and
- (c) serve one copy of the notice of review, together with a copy of the documents, if any, referred to in paragraph (b), on the respondent; and
- (d) file with the registrar one of the other copies of the notice of review, together with—
  - (i) a copy of the documents, if any, referred to in paragraph (b); and
  - (ii) proof (as required by rule 11) that the notice of review was served on the respondent;and
- (e) retain a copy of the notice of review, and of the documents, if any, referred to in paragraph (b), for himself or herself.

(2) The registrar shall, within 30 days of receiving a notice of review in terms of subrule (1)(d), give notice in Part I of Form LC 2 to the respondent—

- (a) to complete in three copies a notice of response to the application for review in Part II of Form LC 2; and
- (b) to do the following within fourteen days of the date when the registrar gives notice to the respondent under this subrule—
  - (i) serve one copy of the notice of response on the applicant; and
  - (ii) file with the registrar one of the other copies of the notice of response, together with proof (as required by rule 11) that the notice of response was served on the applicant; and
  - (iii) retain a copy of the notice of response for himself or herself;and
- (c) if the notice of response indicates that the respondent wishes to contest the application for review, and if the documents referred to in subrule (1)(b) were not served on the respondent by the applicant and any such documents are in the possession of the respondent, to do the following within thirty

days of the date when the registrar gives notice to the respondent under this subrule, or no later than five days before the date of the hearing set down in terms of rule 21, whichever is the earlier date—

- (i) make three copies of such documents;
- (ii) serve a copy of the documents copied under subparagraph (i) on the applicant;
- (iii) file with the registrar one copy of the documents copied under subparagraph (i), together with proof (as required by rule 11) that a copy of the documents was served on the applicant; and
- (iv) retain a copy of the documents for himself or herself.

*17. Interlocutory and other applications under these rules*

Where a party to any matter pending before the Court wishes to make an application to the Court in respect of any matter for which an application may be made in terms of these rules, then, unless—

- (a) a President or the Court otherwise directs; or
- (b) such application is made in the course of a hearing at which the other party to the application is present;

the applicant shall give not less than fourteen days' written notice of the application to the registrar and the other party, specifying the nature of the application and the grounds upon which it is made.

*18. Assumption and renunciation of agency where either party represented by legal practitioner*

(1) If a party is represented by a legal practitioner, the legal practitioner shall file a written notice of assumption of agency in Form LC 5 with the registrar and serve copies of the notice to the other party or that party's legal practitioner or representative.

(2) A legal practitioner may for good cause renounce his or her agency.

(3) Where a legal practitioner renounces agency he or she shall give written notice of his or her renunciation to—

- (a) his or her client; and
- (b) the other party or the other party's legal practitioner or representative; and
- (c) the registrar; and
- (d) specify in that notice his or her client's last known address which shall be the address of service for his or her former client.

*19. Heads of argument*

(1) Where an applicant or appellant is to be represented by a legal practitioner at the hearing of the application, appeal or review, the legal practitioner shall—

- (a) within fourteen days of receiving a notice of response to the application, appeal or review, lodge with the registrar heads of argument clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite; and
- (b) immediately afterwards deliver a copy of the heads of argument to the respondent and lodge with the registrar proof of such delivery as required by rule 11.

(2) Where a respondent is to be represented by a legal practitioner at the hearing of the application, appeal or review, the legal practitioner shall—

- (a) lodge with the registrar heads of argument clearly outlining the submissions he or she intends to rely on and setting out the authorities, if any, which he or she intends to cite—
  - (i) within fourteen days of after receiving a copy of the heads of argument in terms of subrule (1)(b); or
  - (ii) at the time when the notice of response is filed with the registrar in terms of rule 14(2)(b)(ii), 15(2)(b)(ii) or 16(2)(b)(ii), if the applicant or appellant is not represented by a legal practitioner;

and

- (b) immediately afterwards, deliver a copy of the heads of argument to the applicant or appellant and lodge with the registrar proof of such delivery.

(3) Where heads of argument that are required to be lodged in terms of subrule (1) or (2) are not lodged on behalf of the applicant, appellant or respondent, as the case may be, within the period or at the time specified in those provisions—

- (a) the registrar shall nevertheless set down the application, appeal or review for hearing in terms of rule 21 unless, at any time before the matter is set down, the party who is not in default applies to a President of the Court in chambers for the application, appeal or review to be dismissed or granted, as the case may be;
- (b) the defaulting party shall (if no application under paragraph (a) is made or granted) be barred and the Court may deal with the matter on the merits.

(4) An application against a defaulting party under subrule (3)(a) may be made without notice to the defaulting party.

(5) Where an applicant, appellant or respondent is not to be represented at the hearing by a legal practitioner, he or she or his or her representative may, if he or she wishes, lodge heads of argument with the registrar, in which event he or she shall comply with subrule (1) or (3), as the case may be.

(6) After the heads of argument have been lodged with the registrar, no further papers may be lodged without the leave of the Court.

#### *20. Settlements and withdrawals*

(1) Where the parties to a matter pending before the Court agree on an out of court settlement or a party withdraws the matter, the parties or party shall—

- (a) in the case of a settlement, notify the registrar in writing of such settlement and withdraw the matter;
- (b) in the case of a withdrawal, notify the registrar in writing of such withdrawal.

(2) Where the registrar has received notification of a settlement or withdrawal in terms of subrule (1), the registrar shall refer the matter to a President who shall issue an appropriate order with regard to the settlement or withdrawal, as the case may be.

#### *21. Set-down of matters*

(1) Save where a President or the Court has directed otherwise, the registrar shall as far as reasonably possible set down matters on a first come first served basis:

Provided that in urgent cases or for other good cause shown the registrar may, at the request of one or more of the parties and in consultation with the Senior President, allocate a fixed date for the hearing of a case, whether in or out of term.

(2) Once a date becomes available for the hearing of a case, the registrar shall allocate the date for the case to be heard and shall give the parties notice of the date in Form LC 6:

Provided that all the parties shall receive not less than five days' notice of the date, time and place of the hearing.

(3) The registrar may for good cause, or after consultation with the parties, alter the date of set-down allocated under subrule (2) and shall give the parties notice in Form LC 6 of any such alteration.

#### *22. Where party fails to file notice of response*

Where notice has been given to a party to file a notice of response within the period specified in rule 14, 15 or 16 and that party fails to comply, the matter shall nevertheless be set down in terms of rule 21 and if, on the day of hearing, the defaulting party—

- (a) appears and shows good cause why he or she did not file a notice of response, the Court may according to the nature of the case, or as the justice of the case requires—
  - (i) postpone the matter to enable the defaulting party to comply; or
  - (ii) proceed to determine the matter;or
- (b) does not appear or show good cause why he or she did not file a response, the Court may, according to the nature of the case, or as the justice of the case requires—
  - (i) enter a default judgement against the defaulting party; or
  - (ii) proceed to determine the matter.

#### *23. Witnesses*

(1) Whenever it is required to obtain the attendance of any witnesses, the registrar shall issue a summons in Form LC 7.

(2) Part II applies to the service of a summons issued in terms of subrule (1).

(3) The service of any summons in terms of this rule may be effected by any person authorised to do so by the registrar.

#### *24. Clarification of issues*

(1) A President, through the registrar, may require a party who has lodged a notice of application, appeal or review, or a notice of response thereto, to submit to the registrar within fourteen days three copies of a written notice clarifying or amplifying any statement or contention contained in the notice lodged by the party.

(2) The registrar shall, upon receiving copies of the clarifying or amplifying notice submitted in terms of subrule (1), serve one copy upon the applicant, appellant or respondent, as the case may be.

(3) Where a party fails within the time specified to comply with a request in terms of subrule (1), the President may, according to the nature of the case, or as the justice of the case requires—

- (a) direct the registrar to refuse to set down for hearing the matter in respect of which clarification or amplification had been sought:  
Provided that the registrar shall notify the parties concerned, in writing, of the President's decision in this regard; or
- (b) postpone the hearing of the matter in respect of which clarification or amplification has been sought until the party concerned complies with request; or
- (c) direct the registrar to proceed with the setting down of the matter for hearing; or
- (d) enter default judgment against the defaulting party.

*25. Pre-hearing stage*

(1) A President may, before the hearing commences, call the parties and their legal practitioners or representatives, if any, into his or her chambers with a view to securing—

- (a) agreement on any matters likely to curtail the duration of the hearing; or
- (b) subject to subrules (2) and (3), a settlement of the matter through conciliation and or mediation:

(2) A President may attempt to settle the matter by conciliation or mediation under subrule (1)(b) unless, before the such conciliation or mediation begins, the parties do not agree to such conciliation or mediation:

Provided that if the parties agree to such conciliation or mediation but conciliation or mediation fails to settle the matter, the President shall proceed to hear the matter unless either or both of the parties object to the President hearing the matter.

(3) If a President succeeds in settling a matter at the pre-hearing stage through conciliation or mediation, rule 20 shall apply to such settlement.

*26. Departures from rules*

At any time before or during the hearing of a matter a President or the Court may—

- (a) direct, authorise or condone a departure from any of these rules, including an extension of any period specified therein, where the President or Court is satisfied that the departure is required in the interests of justice, fairness and equity;
- (b) give such directions as to procedure in respect of any matter not expressly provided for in these rules as appear to the President of the Court to be just, expedient and equitable.

*27. Joinder of parties and actions*

(1) A President, prior to a hearing or in the course of a hearing may, at his or her own instance or upon application by a party, order that two or more applications, appeals or reviews be consolidated or heard together and may give directions on all other matters related thereto so as to give effect to the order.

(2) A person who has an interest in the determination of a matter by the Court may apply to be joined as a party to the proceedings.

(3) Where in any matter before the Court a party wishes to join a third party who is not a party to the proceedings, he or she may apply to the Court to join that third party to the action.

*28. Hearings*

(1) The registrar shall refer every application, appeal or review to a President sitting in chambers, who may—

- (a) if the application, appeal or review is unopposed or if the parties thereto so agree, deal with the application, appeal or review on the papers in chambers; or
- (b) direct that the application, appeal or review be heard in open court; or
- (c) direct that the application, appeal or review be heard in chambers.

(2) At any time after the matter has been set down under rule 21 or during a hearing a President may, with the approval of the Senior President, order that such matter be referred for hearing or decision by two or more Presidents, in which event any reference to a President in this rule shall be construed as a reference to the President presiding over the Court.

(3) If, after a hearing has begun, the Court as reconstituted under subrule (2), it shall be competent for the Court as reconstituted to direct that any witness be recalled and to order further argument.

(4) The President during any hearing may appraise the parties of their rights and the correct procedures where he or she considers it necessary or desirable to do so, and, in so doing the President shall have due regard to the interests of any party who is not being advised or represented by a legal practitioner or representative.

(5) If a party is represented by a legal practitioner at the hearing of a matter, the legal practitioner shall not be precluded from making a submission or citing an authority that was not outlined or set out in the heads of argument lodged in terms of rule 19, unless the President considers that—

- (a) the submission or authority was omitted from the heads of argument with the intention of misleading the other party; or
  - (b) to permit the legal practitioner to make the submission or cite the authority would prejudice the other party in a manner that could not be remedied adequately by a postponement or an appropriate order of costs.
- (6) At the hearing of any matter—
- (a) unless the President otherwise orders, the applicant or appellant shall be heard in argument in support of the application, appeal or review, and thereafter the respondent's argument against the application, appeal or review shall be heard and the applicant or appellant shall be heard in reply;
  - (b) the President may allow oral evidence:  
Provided that if one of the parties has been barred the President shall deal with the application, appeal or review as though it were unopposed;
  - (c) the President may require any witness to give evidence on oath or affirmation;
  - (d) with the leave of the President, any party at a hearing may cross-examine witnesses called by the other party  
Provided that the President may curtail the cross-examination if he or she considers the cross-examination to be repetitive, irrelevant or time-wasting;
  - (e) with the leave of the President, the party calling a witness may re-examine the witness after cross-examination.

*29. Adjournments and postponements*

If for any reason it appears expedient to the Court that the hearing of any matter should be adjourned or postponed, the Court may make such orders as to adjournment as it considers necessary.

*30. Default judgment entered where party or witness fails to appear*

Where a party or witness fails to appear at a hearing, the Court may, according to the nature of the case, or as the justice of the case requires—

- (a) proceed with the hearing on the merits; or
- (b) postpone the matter; or
- (c) upon application by the party in attendance, enter default judgment.

*31. Consent to judgment*

A respondent may consent to judgment by delivery of a written memorandum to the Court to that effect stating—

- (a) that he or she so consents; and
  - (b) whether his or her consent is for the full claim or less.
- (2) If the consent is for less than the full claim—
- (a) he or she may continue his or her defence as to the balance of the claim; and
  - (b) notwithstanding a judgment upon such consent the action may proceed as to such balance and it shall in that event be in all subsequent respects an action for such balance.

*32. Costs*

The Court, in giving judgment or making any order, may make such order as to costs as it thinks just and equitable.

- (2) The costs of any appeal, application or review by the parties may be—
  - (a) awarded by the Court irrespective of the judgment in the cause; or
  - (b) made costs in the cause; or
  - (c) reserved to be dealt with at the conclusion of the action; or
  - (d) that each party bears its own costs; or
  - (e) denied.
- (3) Where a judgment or order for costs is made against two or more persons, it shall, unless the contrary is stated, have effect against such persons jointly and severally.
- (4) Where there is a dispute as to the bill of costs, either party may apply to the registrar for taxation and thereupon the registrar shall on notice to both parties set down the matter for taxation.
- (5) On taxation the registrar—
  - (a) shall allow all such costs, charges and expenses as appear to him or her to have been necessary or proper for the attainment of justice or for defending the rights of any party, but save as against the party who incurred the same, no costs shall be allowed which appear to the registrar to have been incurred or increased through overcaution, negligence or mistake;

- (b) may depart for good and sufficient reason from any of the prescribed tariffs where strict adherence to such provisions would be inequitable;
- (c) shall award a party who is not represented by a legal practitioner his or her disbursements in addition to necessary expenses.
- (6) The registrar's assessment shall be reviewable by a President at the instance of the aggrieved party.

*33. Applications for rescissions or alterations of judgments*

An application for the rescission or alteration of a determination, order or judgment of the Court on any of the grounds specified in section 92C(1)(a), (b) or (c) of the Act shall be made within thirty days from date the applicant became aware of the determination, order or judgment.

*34. Stay of execution*

Where a decision, order or determination has been registered in terms of section 92B (3) of the Act, the Court or a President sitting in chambers may, upon application, order a stay of execution of the decision, order or determination.

(2) In granting a stay of execution, the Court or President may fix any such terms as to security for the due performance of the decision, order or determination or any variation thereof as the Court or the President deems fit.

**PART IV**

GENERAL

*35. Precedents and binding nature of decisions*

(1) Where a case similar or identical to the one being heard by the Court has been previously decided, any principle established by that case shall have persuasive authority.

(2) Decisions of the Court shall be binding on all labour officers, arbitrators, disciplinary authorities and other determining authorities acting in terms of the Act.

*36. Leave to appeal against decisions of Court*

An application terms of section 92E(2) of the Act seeking leave to appeal from any decision of the Court shall be made to the President of the Court who made the decision within 30 days from the date of that decision.

*37. Forms*

(1) Subject to this rule, a person required to complete any form prescribed in the Schedule may improvise it by making such alterations to it as circumstances require.

(2) The registrar may refuse to accept any improvised form and require the party improvising it to submit another form substantially compliant with that prescribed in the Schedule if the registrar is of the opinion that the improvised form is not so compliant.

(3) Where a dispute arises as to the discretion exercised by the registrar under subrule (2), the registrar shall refer the matter to a President in chambers who may thereupon—

- (a) direct the registrar to accept the improvised form; or
- (b) direct the party who improvised the form to submit another form substantially compliant with that prescribed in the Schedule; or
- (c) give such other directions as to the manner in which the parties may proceed as the President thinks fit in the circumstances.

(4) All forms in terms of these rules that are out of print or otherwise unavailable may be issued by the registrar, who may omit any explanatory notes or other irrelevant matter therefrom.

**SCHEDULE (Rule 3)**

FORMS

*Arrangement of forms*

- LC 1. Notice of Application to Labour Court
- LC 2. Notice by Registrar to Respondent
- LC 3. Notice of Appeal to Labour Court
- LC 4. Notice of Application for Review by Labour Court
- LC 5. Notice of Assumption of Agency
- LC 6. Notification to Party to Attend Proceedings
- LC 7. Summons to Witness

LABOUR ACT [CHAPTER 28:01]
NOTICE OF APPLICATION TO LABOUR COURT

EXPLANATORY NOTES

- (i) Three copies of this notice must be completed by the applicant, one of which the applicant must serve on the respondent (the other party to the labour dispute); and the other the applicant must send to the registrar.
(ii) A person making an application on behalf of another person or body shall indicate on this form at which address process should be served.
(iii) A copy of the following documents should be attached to each copy of this notice of response, if they are available to the applicant:
A. the minutes or record of any conciliation proceedings undertaken by the labour officer in connection with the dispute, whether the dispute was a dispute of interest or of right;
B. any supporting documentation produced in connection with the conciliation proceedings.
(iv) An application must be served on the respondent and sent to the registrar within twenty-one (21) days:
A. of the date on which the applicant received a "certificate of no settlement" from a labour officer;
B. of the thirtieth (30th) day after the labour officer tried to settle the dispute through conciliation, if the labour officer fails or refuses to issue a "certificate of no settlement".

DATE OF APPLICATION .....

TO THE REGISTRAR OF THE LABOUR COURT

TO THE RESPONDENT

.....(Name)
.....
.....(Address)

DETAILS OF APPLICATION

I, .....
(Name of applicant)

of, .....
(Address of applicant)

am engaged in a labour dispute with the respondent named above.

The dispute was being conciliated/mediated by: .....
(Name of Labour Officer)

The date on which dispute began to be conciliated/mediated by the Labour Officer was: .....

The following are the brief details of the labour dispute (If the space provided below is inadequate, not more than two pages containing details of the dispute may be attached to this Form):

.....
.....
.....

The Labour Officer has failed to settle the dispute:

- [ ] and has issued the "certificate of no settlement" attached hereto; or
[ ] but has failed or refuses to issue a "certificate of no settlement" although thirty days have passed from the date on which s/he began to try to settle the dispute.

(Tick the appropriate box)

Accordingly I wish to apply to the Labour Court for the following relief (Tick the appropriate box; if you seek more than one form of relief from the Court, add "and", "or" or "and/or" at the end of the sentences opposite the boxes you have ticked)

- [ ] To remit the dispute to the same or a different Labour Officer with instructions directing that officer to attempt to resolve the dispute in accordance with such guidelines as the Court may specify
[ ] An order for back pay from the time when the dispute arose
[ ] (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 respondent (the employer) to the applicant (the employee or someone acting on his or her

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 applicant for any loss or prejudice suffered as a result of the unfair labour practice which gave rise to the dispute.

- Reinstatement or employment in a job or an amount of damages as an alternative to reinstatement or employment.
- Insertion into a seniority list at an appropriate point.
- Promotion or, if no promotion post exists, pay at a higher rate pending promotion.
- Payment of legal fees and costs connected with this application.
- Cessation of the unfair labour practice complained of in this application.
- Other relief (*specify*):.....

Name and address of legal practitioner or employee/employee representative of the applicant, if any:

.....  
.....  
.....

I wish to have summoned to attend the following persons as witnesses:

Name	Address	Notes
.....	.....	.....
.....	.....	.....
.....	.....	.....

Notice of this application was served on the Respondent on the.....by means of (*tick the mode of service used*)

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent
- delivery to a responsible individual at the Respondent's place of work or residential address
- telegraph
- telefacsimile

Proof of service is attached hereto.

Signature of person noting the application

.....

As Witness:

.....

**FOR OFFICIAL USE ONLY**

Received by the registrar on the

.....  
.....

(Registrar)

Form L.C. 2

**LABOUR ACT [CHAPTER 28:01]**

**PART I**

**NOTICE BY REGISTRAR TO RESPONDENT**

**TO THE RESPONDENT:**

..... (Name)

.....

..... (Address)

You are hereby required to complete in Part II of this Form, being the Notice of Response to the application/appeal by ..... notice of which was served to you on .....

N.B. If, as a party, you fail to respond, the hearing of the application may proceed without you to the possible detriment of your interests.

Given under my hand at ..... this.....day of ..... (year).....

(Registrar)



**PART II  
NOTICE OF RESPONSE TO APPLICANT/APELLANT**

**EXPLANATORY NOTES**

- (i) Three copies of this notice must be completed by the respondent, one of which the respondent must serve on the applicant/appellant, and the other the respondent must send to the registrar.
- (ii) A person making a response on behalf of another person or body shall indicate on this Form at which address process should be served.
- (iii) A copy of the following documents should be attached to each copy of this notice of response, if they are available to the respondent and if they were not received from the applicant/appellant:
  - A. the minutes or record of any conciliation proceedings undertaken by the labour officer in connection with the dispute, whether the dispute was a dispute of interest or of right;
  - B. any supporting documentation produced in connection with the conciliation proceedings.
- (iv) A Notice of Response must be served on the respondent and sent to the registrar within fourteen (14) days of the date when the registrar gives notice to the respondent under Part I of this Form, or no later than five days before the date of the hearing of this application, whichever is the earlier date.

**TO THE REGISTRAR OF THE LABOUR COURT  
TO THE APPLICANT/APELLANT:**

..... (Name)  
 .....  
 ..... (Address)

**DETAILS OF RESPONSE**

I, .....  
 (Name of respondent)  
 of .....  
 (Address of respondent)

The following in brief is my response to the application/appeal:.....  
 .....  
 .....

Name and address of legal practitioner or employee/employee representative of the respondent, if any:.....  
 .....  
 .....

I wish to have summoned to attend the following persons as witnesses:

Name	Address	Notes
.....	.....	.....
.....	.....	.....
.....	.....	.....

Notice of this application was served on the Respondent on the.....by means of (tick the mode of service used)

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent
- delivery to a responsible individual at the Respondent's place of work or residential address
- telegraph
- telefacsimile

Proof of service is attached hereto.

Signature of person noting the application

As Witness:

**FOR OFFICIAL USE ONLY**

Received by the registrar on the .....  
 .....  
 (Registrar)

LABOUR ACT [CHAPTER 28:01]
NOTICE OF APPEAL TO LABOUR COURT

EXPLANATORY NOTES

- (i) Three copies of this notice must be completed by the appellant, one of which the appellant must serve on the respondent (the other party to this appeal), and the other the applicant must send to the registrar.
(ii) a person making an appeal on behalf of another person or body shall indicate on this form at which address process should be served.
(iii) A copy of the following documents should be attached to each copy of this notice of application, if they are available to the appellant.
- the record of any charge against or allegation of misconduct on the part of the appellant that was served on the appellant, if any.
- the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the appellant.
- a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in the second bullet.
- the letter of suspension or dismissal from employment, if any.
(iv) An appeal must be served on the respondent and sent to the registrar within twenty-one (21) days of the date on which the appellant received the determination or direction.

TO THE REGISTRAR OF THE LABOUR COURT

TO THE RESPONDENT (Name)
(Address)

DETAILS OF APPEAL

I, (Name of appellant)
of (Address of appellant)
am aggrieved by (tick the appropriate box):

- Reverse or set aside the decision, order or action appealed against and, if appropriate, substitute its own decision or order.
Refer the matter that is the subject of this appeal back to the body, person or authority concerned for further consideration.
Payment of legal fees and costs connected with this appeal.
Other relief (specify):

Name and address of legal practitioner or employee/employee representative of the appellant, if any:

I wish to have summoned to attend the following persons as witnesses:

Table with 3 columns: Name, Address, Notes

Notice of this application was served on the Respondent on the... by means of (tick the mode of service used)

- registered post
delivery through a commercial courier service
personal delivery to the Respondent or to his or her duly appointed agent
delivery to a responsible individual at the Respondent's place of work or residential address
telegraph
telefacsimile

Proof of service is attached hereto.

Signature of person noting the application

As Witness:

**FOR OFFICIAL USE ONLY**

Received by the registrar on the .....

(Registrar)

Form L.C. 4

**LABOUR ACT [CHAPTER 28:01]**

**NOTICE OF APPLICATION FOR REVIEW BY LABOUR COURT**

**EXPLANATORY NOTES**

- (i) Three copies of this notice must be completed by the applicant, one of which the applicant must serve on the respondent (the other party to this application), and the other the applicant must send to the registrar after this notice has been served on the respondent.
- (ii) A person making an application for review on behalf of another person or body shall indicate on this Form at which address process should be served.
- (iii) A copy of the following documents should be attached to each copy of this notice of application, if they are available to the applicant:
  - the record of any charge against or allegation of misconduct on the part of the applicant that was served on the applicant, if any.
  - the minutes or record of any proceedings or hearing undertaken to inquire into any charge against or allegation of misconduct on the part of the applicant.
  - a minute or record of any decision taken at the conclusion of any proceedings or hearing referred to in the second bullet.
  - the letter of suspension or dismissal from employment, if any.
- (iv) An application for review must be served on the respondent and sent to the registrar within twenty-one (21) days of the date on which the applicant received the determination or direction.

**TO THE REGISTRAR**

**TO THE RESPONDENT** ..... (Name)

.....

..... (Address)

**DETAILS OF APPLICATION FOR REVIEW**

I, .....  
(Name of applicant)

of .....  
(Address of applicant)

am aggrieved that (tick the appropriate box):

- the labour officer or other authority concerned in the proceedings for which I seek review lacked jurisdiction to conduct them
- the labour officer or other authority concerned in the proceedings for which I seek review was an interested party to the proceedings or was motivated by bias, malice or corruption
- there was gross irregularity in the proceedings or the decision for which I seek review

The date(s) on which the proceedings were/was concluded and decision was made is/are: .....

The following in brief are facts and grounds on which this application for review is based (If the space provided below is inadequate, not more than two pages containing details of the grounds for review may be attached to this form):  
.....  
.....

Accordingly I wish the Labour Court to do the following (Tick the appropriate box; if you seek more than one form of relief from the Court, add "and", "or" or "and/or" at the end of the sentences opposite the boxes you have ticked):

- reverse or set aside the decision, order or action reviewed and, if appropriate, substitute its own decision or order
- refer the matter that is the subject of this application back to the body, person or authority concerned for further consideration
- payment of legal fees and costs connected with this application
- other relief (specify): .....

Name and address of legal practitioner or employee/employee representative of the applicant, if any: .....

..... I wish to have summoned to attend the following persons as witnesses:

LABOUR COURT RULES, 2006

Name	Address	Notes
.....	.....	.....
.....	.....	.....
.....	.....	.....

Notice of this application was served on the Respondent on the .....  
by means of (tick the mode of service used):

- registered post
- delivery through a commercial courier service
- personal delivery to the Respondent or to his or her duly appointed agent
- delivery to a responsible individual at the Respondent's place of work or residential address
- telegraph
- telefacsimile

Proof of service is attached hereto.

Signature of person noting the application for review

.....

As Witness:

.....

.....

**FOR OFFICIAL USE ONLY**

Received by the registrar on the .....

.....  
(Registrar)

Form L.C. 5

LABOUR ACT [CHAPTER 28:01]  
ASSUMPTION OF AGENCY

TO THE APPLICANT/APPELLANT/RESPONDENT .....(Name)  
.....  
..... (Address)

**COPY TO THE REGISTRAR OF THE LABOUR COURT**

I, .....  
(Name of legal practitioner)  
of .....  
(Address for service of legal practitioner)

am engaged with effect from the subscribed date to represent the applicant/  
appellant/respondent in the application/appeal/matter concerning .....

(Subject of application/appeal/matter in respect of which a notice of  
application/appeal/review was made on the)

..... and which you are  
party/to which you have been joined

Signature of legal practitioner:

.....

Date: .....

**FOR OFFICIAL USE ONLY**

Received by the registrar on the .....

.....  
(Registrar)

Form L.C. 6

LABOUR ACT [CHAPTER 28:01]  
NOTIFICATION TO PARTY TO ATTEND PROCEEDINGS

TO: .....  
(Name and address of Party)

You are hereby notified that the application/appeal/matter concerning .....

(Subject of application/appeal/matter in respect of which a notice of applica-  
tion/appeal/review was made on the)

..... and to which you are party/to which  
you have been joined as party **SHALL BE HEARD BEFORE THE LABOUR  
COURT AT**

.....  
(Specify address and location of Court)

BY

.....  
*(Name of President of Labour Court)*

on.....at the hour.....

**N.B. If, as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interests.**

Given under my hand at .....this ..... day of ..... (Year).....

.....  
**Registrar of Labour Court**

**Form L.C. 7**

**LABOUR ACT [CHAPTER 28:01]**

**SUMMONS TO WITNESS**

TO: .....  
.....  
.....

*(Name of witness and address)*

You are hereby required to appear in person before the LABOUR COURT on ..... at the hour ..... and on any subsequent day to which the proceedings may be postponed giving evidence respecting\*

You are to bring with you and then produce to

.....  
the several books, documents and/ or things to be produced—

1. ....
2. ....
3. ....

Given under my hand at .....this ..... day of ..... 20.....

.....  
**Registrar on behalf of Labour Court**

*\*Specify in what connection witness is required to give evidence.*

**Statutory Instrument 137 of 2003.**

[Date of publication : 13th June, 2003.]

**Labour (Declaration of Essential Services) Notice, 2003**

**THE Minister of Public Service, Labour and Social Welfare hereby, in terms of paragraph (b) of section 102 of the Labour Relations Act [Chapter 28:01], publishes the following notice:—**

1. This notice may be cited as the Labour (Declaration of Essential Services) Notice, 2003.
2. The following services are hereby declared to be essential services in terms of section 102 of the Act—
  - (a) services provided by the fire brigade or any other fire services performed by—
    - (i) drivers;
    - (ii) control room attendants;
    - (iii) chief fire officers and assistants;
    - (iv) divisional officers and supervisors of fighters; and
    - (v) station officers;
  - (b) services relating to the supply and distribution of water and provided by—
    - (i) pump operators;
    - (ii) those responsible for water treatment;
    - (iii) plumbers;
    - (iv) electricians; and
    - (v) engineers;
  - (c) veterinary services provided by—
    - (i) laboratory technologists;
    - (ii) laboratory assistants;
    - (iii) veterinary surgeons and veterinary doctors;
    - (iv) persons employed in a disease surveillance unit;
    - (v) field branch personnel of the veterinary services department;
    - (vi) animal health inspectors;
    - (vii) veterinary livestock technicians;
    - (viii) the head of field veterinary services;involved in the diagnosis and control of rabies, foot- and-mouth disease and anthrax and the control of locusts and army worm;
  - (d) services provided by revenue specialists involved in the performance of security and health checks at, airports and other ports of entry on behalf of the Zimbabwe Revenue Authority established in terms of section 3 of the Revenue Authority Act [Chapter 23:11];
  - (e) health services provided by—
    - (i) ambulance drivers;
    - (ii) doctors;
    - (iii) nurses;
    - (iv) pharmacists;
    - (v) radiographers;
    - (vi) physiotherapists;
    - (vii) pharmacy technicians;
    - (viii) rehabilitation technicians;
    - (ix) dental therapists;
    - (x) medical laboratory scientists;
    - (xi) medical laboratory technologists;
    - (xii) laboratory assistants;
    - (xiii) laboratory technicians;
    - (xiv) dentists;
    - (xv) environmental health officers;
    - (xvi) environmental health technicians;
    - (xviii) electro cardiogram technicians;
    - (xix) hospital equipment technicians;
    - (xx) X-ray operators;
    - (xxi) dark room assistants;

- (xxii) occupational therapists;
- (f) transport and communication services provided by—
  - (i) telecommunication technicians, drivers and mechanics in the industry;
  - (ii) aircraft technician engineers;
  - (iii) air traffic controllers in the Civil Aviation Authority of Zimbabwe established in terms of section 4 of the Civil Aviation Act [*Chapter 13:16*];
  - (iv) meteorological technicians;
  - (v) road technicians and engineers;
  - (vi) engineers, signals officers and engine men at the National Railways of Zimbabwe established in terms of section 3 of the Railways Act [*Chapter 13:09*];
- (g) electrical services provided by a person licensed under the Electricity Act [*Chapter 13:19*] and performed by the operational staff and any staff of contractors hired by such person; and
- (h) services provided by any public broadcaster during a state of disaster declared in terms of section 27 of the Civil Protection Act [*Chapter 10:06*] or in an emergency likely to be declared a state of disaster in terms of that Act.

3. Any non-essential service may be declared an essential service by the Minister if a strike in a sector, service industry or enterprise persists to the point that the lives, personal safety or health of the whole or part of the population is endangered.

**Statutory Instrument 377 of 1992.**

[Date of publication : 30th October, 1992.]

**Labour Relations (Domestic Workers) Employment Regulations, 1992**

*S.Is 377/1992, 373/1993, 180/1997; 206/1994, 310/2001, 161/2003, 141/2004, 42/2005, 99/2006.*

ARRANGEMENT OF SECTIONS

1. Title.
2. Application.
3. Interpretation.
4. Grading and wages.
5. Hours of work.
6. Accommodation, transport, lights and fuel.
7. Conversion of rates.
8. Payments for overtime.
9. Deductions.
10. Payment of wages.
11. Part-time and casual employment.
12. Piece-work, task-work and work on a ticket system.
13. Vacation leave.
14. Public holidays.
15. Benefits during sickness.
16. Contract and notice.
17. Continuous service.
18. Record of service.
19. Protective clothing.
20. Gratuities on termination of employment.
21. General.

SCHEDULES

First Schedule : Grading and wages.

Second Schedule : Allowances.

**IT is hereby notified that the Minister of Labour, Manpower Planning and Social Welfare has, in terms of section 17, as read with subsection (2) of section 77 of the Labour Relations Act, [Chapter 28:01], made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (Domestic Workers) Employment Regulations, 1992.

*2. Application*

These regulations shall apply to—

- (a) all employers of domestic workers throughout Zimbabwe; and
- (b) persons in the area of Zimbabwe whose occupations are listed in the First Schedule.

*3. Interpretation*

In these regulations—

“allowance” means an allowance of any description, including any commission, bonus or overtime allowance, but does not include any refund of expenses incurred by a domestic worker in the course of his duties as such;

“baby minder” ....

[Definition repealed by s.i. 373 of 1993.]

“child-minder” means a domestic worker whose responsibilities include in any way and to any extent taking care of, or watching over, any child under the age of eleven years, regardless of whether or not the domestic worker is also employed as a garden worker and additionally, or alternatively, as a cook/housekeeper;

[Definition substituted by s.i. 373 of 1993.]



“casual worker” means a person whose engagement is for a period not exceeding six weeks in any three successive calendar months;

“cook/housekeeper” means any domestic worker whose main responsibilities include or involve house-keeping, house-cleaning, laundry, ironing, cooking, dish-washing, food-preparation or food-service, regardless of whether or not that person also acts as a garden worker but does not include any worker whose responsibilities include those of a child minder and additionally, or alternatively a disabled/aged-minder;

[Definition amended by s.i. 373 of 1993.]

“disabled/aged-minder” means a domestic worker whose responsibilities include in any way and to any extent taking care of, or watching over, any person who is so disabled as to be unable to take normal care of himself, regardless of whether the disability is physical, mental or related to advanced age;

[Definition inserted by s.i. 373 of 1993 and amended by s.i. 310/2001.]

“domestic worker” means a person employed in any private household to render services as a yard/garden worker, cook/housekeeper, child minder, qualified sick persons-minder or disabled/aged-minder, irrespective of whether or not the place of employment is in an urban or rural area;

[Definition substituted by s.i. 373 of 1993.]

“part-time worker” means a person employed on an hourly, daily or weekly basis and paid not less than double the hourly, daily or weekly rate specified in the First Schedule for his grade;

“piece-work” means any system by which earnings are calculated wholly on the quantity or output of work done irrespective of the time spent on such work;

“qualified sick persons minder” .....

[Definition repealed by s.i. 373 of 2002.]

“task-work” means a stated task which is set by an employer for a domestic worker and which has to be completed as a condition of earning a wage;

“ticket-system” means a system whereby an employee is engaged at a rate of wage calculated by reference to the completion of a ticket of an agreed number of days worked or a record based on the number of days worked;

“wage” means the basic wage payable to a domestic worker, excluding any allowance, overtime or bonus;

[Definition amended by s.i. 373 of 1993.]

“yard/garden worker” means a person whose duties are limited to taking care of any or all of the yard, lawn, shrubs, hedges, fences and garden of any private household or the property of a welfare organization.

#### 4. Grading and wages

(1) Every employer shall place a domestic worker in any of the grades specified in the First Schedule appropriate to his occupation, and shall pay a wage of at least the amount prescribed therein for the domestic worker’s grade, and no employee shall accept any amount less than the amount prescribed in respect of his grade.

(2) A domestic worker who, on the date these regulations came into operation, is in receipt of a higher wage for his occupation than the wage prescribed in terms of this section shall not, by reason of these regulations, suffer any reduction in his wage.

(3) On promotion to a higher grade, a domestic worker shall be paid not less than—

(a) the minimum wage applicable to such grade; or

(b) the wage which he has received prior to his promotion;

whichever is the greater.

(4) A domestic worker who is required to perform work in a lower grade than that in which he is normally employed shall be paid the wage applicable to the grade of work which he normally performs.

(5) A domestic worker who is required to perform work in a higher grade than that in which he is normally employed shall be paid for all the hours worked in such higher grade not less than -

(a) the minimum wage applicable to such higher grade; or

(b) the wage which he last received prior to working in such higher grade;

whichever is the greater.

(6) No employer shall reduce the wages of a domestic worker for any time not worked if the employee was able and willing to work and was present at his place of work but the employer was unable or unwilling to furnish him with work.

(7) ....

[Subsection repealed by s.i. 373 of 1993.]

*5. Hours of work*

(1) The ordinary hours of work for domestic workers shall be forty-nine hours per week:

Provided that the ordinary hours of work, exclusive of any breaks referred to in subsection (3), shall not exceed a total of nine and a half hours per day.

[Subsection amended by s.i. 206 of 1994]

(2) A domestic worker who does not reside on the premises of the employer shall not be required to work beyond seven o'clock on any evening unless he consents to do so.

[Subsection amended by s.i. 373 of 1993]

(3) Any period during which a domestic worker referred to in subsection (2) works after seven o'clock on any evening shall be regarded as overtime for the purposes of section 8.

[Subsection inserted by s.i. 373 of 1993.]

(4) No employer shall require or permit a domestic worker to work a continuous period of six and half hours without a meal-break of at least thirty minutes, a lunch-break of at least one hour and a tea-break of at least fifteen minutes.

(5) A domestic worker shall be entitled to at least one and half days off each week at least twenty-four hours of which shall be continuous:

Provided that where the domestic worker's or employer's religious belief requires that a particular day be a non-working day, the domestic worker may make up the required hours of work on any other mutually acceptable day.

*6. Accommodation, transport, lights and fuel*

A domestic worker—

- (a) who does not reside on the premises of his or her employer shall be entitled to the minimum allowances specified in the Second Schedule;
- (b) who resides on the premises of his or her employer shall be entitled to free lodging, free water for basic domestic needs in or about the area of the premises, free lights and free fuel for cooking or, if no water, lights or fuel are provided, to the minimum allowances specified in the Second Schedule in respect of water, lights and fuel for cooking.

[Subsection substituted by s.i. 99 of 2006]

*7. Conversion rates*

(1) For the purpose of converting a weekly wage to—

- (a) the hourly equivalent, the weekly wage shall be divided by forty-nine and a half; or
- (b) the daily equivalent, the weekly wage shall be divided by the number of days ordinarily worked in a week; or
- (c) the monthly equivalent, the weekly wage shall be multiplied by four and one-third.

(2) Computations analogous to those set out in subsection (1) shall be used when converting monthly rates.

*8. Payment for overtime*

(1) For each hour of overtime, or part of an hour in excess of fifteen minutes, worked by a domestic worker in any one week, the employer shall pay an overtime allowance at one and a half times the current hourly wage of the domestic worker.

(2) Notwithstanding subsection (1), for each hour, or part of an hour in excess of fifteen minutes, worked by a domestic worker on a day off, the employer shall pay an overtime allowance at double the domestic worker's current hourly wage.

(3) Notwithstanding subsection (1), and in addition to the payment referred to in subsection (2), for each hour, or part of an hour in excess of fifteen minutes, worked by a domestic worker on a public holiday, the employer shall pay an overtime allowance

[Amended by s.i. 373 of 1993.]

- (a) during the ordinary hours of work for the day of the week on which the public holiday falls, at one and a half times the domestic worker's current hourly wage; or
- (b) outside the ordinary hours of work for the day of the week on which the public holiday falls, at double the domestic worker's current hourly wage.

*9. Deductions*

No deduction or set-off of any description shall be made or allowed from any remuneration, other than a bonus due to an employee, except—

- (a) where an employee is absent from work on days other than paid holidays or vacation leave, a pro rata amount of his wage only for the period of such absence; or

- (b) by written stop-order for any contributions to insurance policies, pension funds and medical-aid societies; or
- (c) any amount which an employer is compelled by law or legal process to pay on behalf of an employee; or
- (d) for goods purchased by or services rendered, or domestic worker, or money lent to a domestic worker by his employer on the authority of a stop-order signed by the domestic worker for any amount up to but not exceeding twenty-five *per centum* of the gross wage due to such domestic worker, unless such goods have been purchased from, or the services have been rendered by, a supplier at the direction or dictation of the employer; or
- (e) an amount recovered for payments made in error or overpayment of wages; or
- (f) by a written stop-order for contributions to trade union dues.

*10. Payment of wages*

(1) Every employer shall pay all remuneration, including wages, overtime allowances, bonuses or any allowance specified in the Second Schedule, weekly or monthly, within three days of the due date:

Provided that, when a domestic worker's services are terminated, payment of all remuneration due shall be made within twenty-four hours of the termination of service.

(2) All remuneration shall be paid in cash or by cheque and shall be accompanied by a wage-slip showing—

- (a) the name of the domestic worker; and
- (b) the wage-rate; and
- (c) the total number of hours worked; and
- (d) any bonus or allowance; and
- (e) deductions for absence without leave, or other deductions permitted in terms of section 9; and
- (f) the net amount received by the domestic worker; and
- (g) the period for which payment is made.

*11. Part-time and casual employment*

(1) Any domestic worker employed on a part-time basis or as a casual employee shall, unless the Minister otherwise approves in writing, be employed on an hourly basis, and shall be paid not less than double the hourly rate specified in the First Schedule for his grade in respect of each hour or part thereof worked.

(2) Any domestic worker employed simultaneously in any given period in two or more private households for a maximum of thirty hours per week shall be deemed to be employed on a part-time basis or as a casual employee in respect of each household in which he is employed.

*12. Piece-work, task-work or work on a ticket system*

No employer shall give out, and no domestic worker shall perform work on—

- (a) a piece-work basis; or
- (b) a task-work basis; or
- (c) a ticket system;

unless the work concerned does not form part of the duties specified for his grade and is performed outside his normal hours of work.

*13. Vacation leave*

(1) A domestic worker shall accrue vacation leave at the rate of one and a half working days a month.

(2) Any portion of a month shall be regarded as a full month.

(3) A domestic worker in his first year of employment shall accumulate normal vacation leave but shall not proceed on such leave during that first year except with the consent of the employer.

(4) A domestic worker proceeding on vacation leave shall be paid his current wages for the period of such leave prior to his proceeding on leave.

(5) A domestic worker who has accumulated vacation leave may, with the consent of the employer, elect to be paid cash in lieu of any vacation leave or portion of any vacation leave in addition to his current wage, in place of proceeding on such leave.

(6) Every domestic worker whose employment is terminated for any reasons whatsoever shall be entitled to be paid the cash equivalent of accumulated leave.

(7) Any period of leave taken by a domestic worker in terms of this section, or any additional leave granted by the employer, whether paid or not, or any sick-leave taken in terms of section 15, shall not be counted for the purpose of calculating further leave.

*14. Public holidays*

(1) A domestic worker shall be granted leave of absence on public holidays and shall be paid his current daily wage for every public holiday:

Provided that where a domestic worker consents to work on a public holiday, he shall, in addition to the payment referred to in subsection (1), be paid allowances in terms of section 8 in respect of the time worked.

(2) Any public holiday worked by a domestic worker may not be set off against or exchanged for a regular work day without the consent of the domestic worker;

Provided that where a domestic worker gives his consent, he shall be entitled to at least two days off for each public holiday or half of a public holiday worked or a day off for any lesser part of the public holiday worked.

*15. Benefits during sickness*

(1) If a domestic worker, whilst at work, claims to be unfit for work owing to sickness or injury, the employer shall grant to the worker such facilities as may be necessary to enable the domestic worker to be examined by a medical practitioner.

(2) Upon being medically examined, a domestic worker shall obtain a medical certificate stating—

(a) whether or not he is fit for work; and

(b) if he is not fit for work, the period for which he is likely to be unfit for work;

and shall produce such certificate on his return to work, if requested to do so by his employer.

(3) If a domestic worker has obtained a certificate stating that he is unfit for work, he shall be entitled to his wages whilst he is unfit for work, for the period stated by the medical practitioner, but not exceeding, in aggregate, twenty-six working days in any one year of service.

(4) If a domestic worker—

(a) has been paid wages in terms of subsection (3) for a continuous period of twenty-six working days, or for a number of days aggregating twenty-six working days in any one year of service; and

(b) is, within that year of service, again certified by a medical practitioner as being unfit for work;

he shall be paid half his wage for such further period or periods as the medical practitioner may certify him to be unfit, but not exceeding, in aggregate, twenty-six working days within any one year of service.

(5) The employer shall, subject to the approval of the Minister, be entitled to terminate the contract of employment of a domestic worker who, within anyone year of service, is certified to be unfit for work for any period in excess of the periods referred to in subsections (2) and (3).

(6) A domestic worker shall not be entitled to any benefits in terms of this section if his sickness was self-induced or his injury was wilfully self-inflicted.

(7) A certificate issued by a State registered nurse or any other suitably qualified person shall be accepted in place of a certificate of a medical practitioner if such medical practitioner is not available.

*16. Contract and notice*

(1) An employer shall, on engagement, inform a domestic worker, in writing, of the nature of his contract, including—

(a) his grade; and

(b) his rate of pay and when it will be paid; and

(c) the free use of water for normal domestic use; and

(d) the period of notice required to terminate the contract of employment; and

(e) the hours of work; and

(f) the details of any bonus and accommodation, transport and lights allowances; and

(g) his benefits during sickness; and

(h) vacation leave.

(2) Subject to the Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations, 1985 every contract of employment shall provide that an equal period of notice to terminate such contract shall be given by either party, which period shall be not less than the interval of time separating one due date of payment of wages from the next:

Provided that—

(i) where a month's notice has been agreed to, it shall be taken to run from the first day of the month following the date on which notice is given; and

(ii) it shall not be necessary for a domestic worker to give notice where he is unable to do so due to any emergency or compelling necessity.

(3) No employer shall give notice of termination of employment to a domestic worker whilst the domestic worker is on sick leave, except in terms of subsection (5) of section 15.

(4) Neither an employer nor a domestic worker shall give notice of termination of employment whilst the domestic worker is on vacation leave.

(5) A domestic worker who has given or received notice to terminate employment shall not be required or be permitted to proceed on vacation leave during the currency of such period of notice except by mutual agreement which agreement shall be in writing.

(6) Nothing contained in this section shall affect the right of the employer to dismiss a domestic worker or he domestic worker to terminate his employment summarily on grounds recognized by law as justifying summary termination of employment.

(7) An employer may discharge his obligations by paying a domestic worker full wages and allowances for, and in place of, the period of notice required to be given in terms of this section.

(8) Any contract of employment which is for a specified period of time shall specify the date of commencement and the date of termination thereof and no further notice to terminate the contract on due date shall be required from either party.

(9) No employer shall give notice of termination of employment except with the prior written approval of the Minister.

#### *17. Continuous service*

(1) Continuous service shall be deemed to be broken only by the death, resignation, retirement or discharge of the domestic worker concerned:

Provided that a domestic worker who is discharged and re-engaged by the same employer within two months of such discharge shall be deemed not to have broken his continuous service.

(2) A period of absence without the permission of the employer, or a period of absence between discharge and re-engagement of less than two months, shall not be taken into consideration in calculating any benefit in terms of section 13 or 15.

#### *18. Record of service*

(1) A domestic worker whose services are terminated for any reason whatsoever may request and shall be granted a record of service from his employer.

(2) The record of service granted in terms of section (1) shall specify the period served by the domestic worker with the employer and the occupation in which he was employed.

#### *19. Protective clothing*

(1) An employer shall supply, free of charge, uniforms or other suitable protective clothing to a domestic worker who, in the course of his duties, is habitually exposed to inclement weather.

(2) Protective clothing supplied to a domestic worker shall become his property three months after the issue of the clothing to him if he is responsible for mending, washing or otherwise maintaining such clothing.

(3) Subject to subsection (2), a domestic worker who fails to return clothing supplied to him shall be liable for the cost of replacing such clothing and the employer may recover such amount from any money due to the domestic worker.

(4) An employer who recovers the cost of the replacement of clothing from a domestic worker in terms of subsection (3) shall, in the assessment of such cost, make due allowance for fair wear and tear.

#### *20. Gratuities on termination of employment*

(1) A domestic worker who has completed five or more years of continuous service shall, on termination of such employment, irrespective of the circumstances of such termination, be paid a gratuity of not less than the amount derived by multiplying the number of completed years of continuous service by the appropriate percentage, as set out in the Third Schedule, of his current monthly wage on termination.

(2) If a domestic worker who has completed five or more years of continuous service dies before receiving a gratuity in terms of subsection (1), there shall be paid to his estate the sum which the domestic worker would have received if his employment had been otherwise terminated on the date of his death.

(3) Notwithstanding the provisions of subsections (1) and (2), no gratuity shall be payable under this section if the employer has made provision for the domestic worker by way of a pension or gratuity scheme, registered as a fund in terms of the Pension and Provident Fund Act, 1976, which provides for benefits which are not less favourable than those prescribed in this section.

#### *21. General*

(1) For the avoidance of doubt, every female domestic worker shall, in terms of section 18 of the Labour Act 1985, be entitled to maternity leave.

(2) The provisions of section 18 of the Labour Relations Act, 1985 relating to maternity leave are set out in the Fourth Schedule.

**FIRST SCHEDULE**

GRADING AND WAGES

GRADE	MINIMUM WAGE			
	<i>Monthly</i>	<i>Weekly</i>	<i>Daily</i>	<i>Hourly*</i>
	\$	\$	\$	\$
<i>Grade 1:</i> Yard/garden worker	2 557 000	577 367	104 976	11 664
<i>Grade 2:</i> Cook/housekeeper (with or without Grade 1 Duties)	2 656 438	613 496	111 545	12 394
<i>Grade 3:</i> Child-minder or disabled/ aged minder (with or without grade 1 or grade 2 duties)	2 812 500	649 538	118 098	13 122
<i>Grade 4:</i> Disabled/aged minder with Red Cross Certificate or similar qualification (not including grade 1,2 or grade 3 duties)	2 968 750	682 624	124 465	13 851

\* *The hourly rate applies for each hour worked, and any part of an hour worked must be remunerated as a complete hour.*

[Schedule substituted by s.i. 99 of 2006]

**SECOND SCHEDULE**

MONTHLY MINIMUM ALLOWANCES

	\$
Accommodation	312 500
Transport	437 500
Lights	270 000
Fuel	187 500
Water	62 500

[Schedule substituted by s.i. 99 of 2006]

**THIRD SCHEDULE (Section 20)**

GRATUITIES

<i>Length of service</i>	<i>Percentage monthly wage on termination of employment</i>
5 – 10	15%
11 – 20	20%
21 – 30	25%
31 – 40	30%
41 – 50 and above	35%

[Schedule substituted by s.i. 180/1997.]

**FOURTH SCHEDULE (Section 21)**

PROVISIONS OF SECTION 18 OF ACT

*Note by Deputy Chairman, Law Development Commission*

(See section 18 of the Labour Act [Chapter 28:01])

**Statutory Instrument 370 of 1985.**

[Date of publication : 13th December, 1985.]

**Labour Relations (Employment Agencies) Regulations, 1985**

*S.Is 370/1985, 19/1999, 132/2002, 156/2004.*

**IT is hereby notified that the Minister of Labour, Manpower Planning and Social Welfare has, in terms of section 135 of the Labour Relations Act, 1985, made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (Employment Agencies) Regulations, 1985.

*2 Application*

These regulations shall apply in relation to—

- (a) persons who conduct private employment agencies; and
- (b) work-seekers.

*3. Interpretation*

In these regulations—

“agent” means a person who operates or conducts an employment agency;

“manager” means an individual who manages an employment agency on behalf of an agent;

[Definition inserted by s.i 19 of 1999.]

“work-seeker” means a person, whether employed or unemployed, who seeks the assistance of an employment agency to procure employment.

*4. Application for and considerations relating to registration*

(1) An application for the registration of an employment agency in terms of section 115 of the Act shall be made in form E.A. 1.

(2) A separate application shall be made in respect of each employment agency kept or conducted by one agent.

(3) In considering an application to register an employment agency the Registrar shall satisfy himself that—

- (a) the agent, or manager, has a minimum: qualification of a diploma in personnel management or a related field issued by an institution that is registered in Zimbabwe in terms of any law in force providing for the registration of technical vocational or other educational institutions;
- (b) that the premises of the employment, agency in respect of which the application is made have the following—
  - (i) a reception area; and
  - (ii) a waiting room with sufficient seating for a minimum of ten people; and
  - (iii) a private interviewing room; and
  - (iv) separate toilet facilities for male and female work-seekers; and
  - (v) such facilities for persons with disabilities as the Registrar may consider necessary.

(4) When the Registrar registers an employment agency, he shall issue to the agent a certificate of registration in form E.A. 2, and the certificate shall be renewed annually.

*5. Fees payable*

The fee—

- (a) in respect of the application for and inspection of an employment agency shall be ten thousand dollars, which will not be refunded in the event that the application is rejected;
- (b) for registration of each employment agency shall be five thousand dollars;
- (c) for the renewal of registration of each employment agency shall be five thousand dollars;
- (d) for the late renewal of registration of each employment agency, that is, renewal after a period of fourteen days when the previous certificate of registration of the agent expired, shall be three thousand dollars.

*6. Amendment of registration certificate and return thereof in certain circumstances*

(1) Whenever an agent wishes to—

- (a) move an employment agency to new premises; or
- (b) change the manager of an employment agency; or

(c) seek any other amendment to the certificate of registration; written application shall be made to the Registrar requesting the amendment of the certificate of registration.

(2) On the expiry of the certificate of registration, the certificate shall be returned to the Registrar for renewal or cancellation.

(3) An agent who intends to cease business as such or to transfer the ownership of the employment agency shall give written notice of at least one month to the Registrar before doing so.

[Subsection substituted by s.i. 132 of 2003.]

(4) In the event of a change of ownership or proposed change of ownership of an employment agency the certificate of registration of the agency shall be returned to the Registrar for cancellation and the new owner shall apply for registration in terms of section 4.

[Subsection inserted by s.i. 132 of 2002.]

{Section substituted by s.i. 19 of 1999.}

#### 7. *Records to be maintained*

Every agent shall maintain the following records—

(a) in the case of a vacancy notified by an employer—

- (i) the name, address and business of the employer;
- (ii) the type of employment offered;
- (iii) the qualifications and experience required of the person to fill the vacancy by the employer;
- (iv) the remuneration offered;
- (v) the date on which the vacancy was filled and the date on which employment commenced;
- (vi) the fee charged to the employer by the employment agency;

(b) in the case of a work-seeker—

- (i) the applicant's name, sex and address;
- (ii) the applicant's qualifications and experience;
- (iii) the name of the applicant's last employer;
- (iv) remuneration and terms of employment desired;
- (v) date of registration as a work-seeker;
- (vi) type of employment found;
- (vii) date of engagement by employer and name of employer;
- (viii) the placement fee charged to the work-seeker.

(2) A work-seeker shall submit a written application for registration at an employment agency on a form provided by the agent.

(3) The form provided in terms of subsection (2) shall include a certificate, to be signed by the work-seeker, indicating that he is aware of the conditions under which he is registering, including the placement fee to be paid.

(4) Subject to subsection (5), the records maintained in terms of subsection (1) and the applications submitted in terms of subsection (2) shall be treated as confidential, and the information contained therein shall not be used for any other purpose.

(5) The records maintained in terms of subsection (1) shall be made available to an investigating employment officer on the production of a letter of authority from the Registrar of employment agencies.

(6) Every agent registered under the Act shall retain the originals of all applications received from work-seekers for a period of three years subsequent to the receipt thereof.

#### 8. *Fees to be charged by an employment agency*

(1) The fees to be charged by an employment agency shall be—

- (a) in the case of a work-seeker, for placing him in employment, a maximum of five *per centum* of the remuneration earned by the work-seeker during his first month in employment or part thereof;
- (b) in the case of an employer for whom the services of an employee have been secured, a maximum of twenty *per centum* of the annual rate of remuneration to be paid to the employee;
- (c) in the case of any client, for the insertion of an advertisement in any publication, the actual cost of inserting the advertisement plus a maximum service charge of ten *per centum* of the cost;

Provided that, where an advertisement is inserted on behalf of a work-seeker, the provisions of this paragraph shall not apply, unless, before the insertion of the advertisement, the provisions of this paragraph have been explained to the work-seeker and he has given his written agreement to pay the charge concerned;

(2) Nothing contained in subsection (1) shall be construed as permitting any person to charge a fee or to receive any fee or any other payment or reward for the registration of a work-seeker with an employment agency.



*9. Exhibition of copy of these regulations*

(1) Every person keeping or conducting an employment agency shall exhibit a copy of these regulations in that agency in a place where the regulations will be clearly visible to, and can be studied by, any person seeking the services of the agency.

(2) A copy of the certificate of registration of the agent shall be displayed in a manner clearly visible to any person seeking the services of the agency.

[Subsection inserted by s.i. 132 of 2002.]

*10. Monthly statistical returns*

An employment agency shall submit monthly statistical returns to the Registrar in form E.A. 3.

*11. General*

An agent shall not refer a work-seeker to an employer unless he has made all such enquiries as are reasonably practicable for the purpose of ascertaining that—

- (a) the work-seeker and the prospective employer are aware of any conditions imposed by the Act which must be satisfied by the work-seeker or the prospective employer before the work-seeker commences the employment in question; and
- (b) the employment of the work-seeker by the prospective employer would not contravene any other duty or conditions imposed by the Act; and
- (c) the work-seeker and the prospective employer are aware of any conditions and charges for services rendered by the employment agency; and
- (d) the work-seeker has such qualifications as persons in such employment are reasonably expected to have.

*12 Offences*

An agent who or employment agency which—

- (a) operates without a valid certificate of registration issued in terms of section 4; or
  - (b) operates without a qualified agent or manager in contravention of paragraph (a) of subsection (3) of section 4; or
  - (c) fails to return an expired certificate of registration to the Registrar as required by subsection (2) or (4) of section 6 or to notify the Registrar of any cessation of business or change of ownership of the agency as required by subsection (3) of that section; or
  - (d) fails to maintain records in the manner required by section 7; or
  - (e) charges excessive fees or charges fees for registering a work-seeker in contravention of section 8; or
  - (f) fails to submit monthly statistical returns as required by section 10;
- shall be guilty of an offence.

[Section inserted by s.i. 132 of 2002.]

FORMS

E.A. 1

LABOUR RELATIONS ACT, 1985  
APPLICATION FOR THE REGISTRATION OF AN  
EMPLOYMENT AGENCY

Place .....  
Date .....

To: The Registrar of Employment Agencies,  
Private Bag 7707,  
Causeway.  
Harare.

I ....., hereby apply for  
the registration of an employment agency in terms of section 131 of the  
Labour Relations Act, 1985, and submit the following particulars in regard  
thereto:

1. Full name of applicant .....
2. Residential address of applicant (where applicable) .....
3. Postal address of applicant .....
4. Telephone number of applicant .....
5. Full name of manager of the employment agency (if different from  
(1) .....
6. Address of premises where the business of employment agency will be  
conducted .....
7. Description of premises (number of rooms, waiting-room, et cetera)  
.....
8. Class or classes of employment for which the employment agency  
proposes to cater .....
9. Name by which the employment agency will be known .....
10. Date on which business will commence .....

I/We hereby declare that the information contained above is true and  
correct.

I enclose herewith the prescribed fee of \$ .....

.....  
*Signature of applicant(s)*

.....  
*Date*

E.A. 2.

LABOUR RELATIONS ACT, 1985  
EMPLOYMENT AGENCIES REGULATIONS, 1985  
CERTIFICATE OF REGISTRATION OF AN  
EMPLOYMENT AGENCY

This is to certify that .....  
has/have, in terms of section 131 of the Labour Relations Act, 1985, been  
granted permission to keep or conduct an employment agency at the  
premises situated at .....

.....  
known as .....  
for a period of twelve months, commencing on the .....  
day of ....., 19.....

Area in respect of which business may be conducted .....

Class or classes of persons or employment covered .....

Conditions subject to which business may be conducted .....

.....  
*Registrar*

.....  
*Date*

**Note.**

At the expiry of the period for which this certificate is issued, it must  
be returned to the Registrar for renewal or cancellation.

MONTHLY STATISTICAL RETURN

Name of Employment Agency .....  
 Address .....  
 Telephone number .....  
 Form completed by ..... Title ..... Date .....  
 Employment return for the month of .....

**Table 1: Job Orders Received During the Month**

Occupation	Number of position(s) by location	Salary range offered	Education, training and experience

**Table 2: Job Orders Filled During the Month**

Occupation	Number and location of position(s) filled	Positions filled				Salary range offered	Education, training and experience
		Local		Expatriate			
		Male	Female	Male	Female		

**Table 3: Job Orders Still Open at the End of the Month**

Occupation	Number of position(s) by location	How long position(s) have been open by location	Salary range offered	Education, training and experience required

**Statutory Instrument 379 of 1990.**

**Labour Relations (Employment Codes of Conduct) Regulations, 1990**

*S.Is 379/1990, 56/1992.*

ARRANGEMENT OF REGULATIONS

1. Title
2. Interpretation
3. Registration and amendment of codes
4. Provisions to be included in codes
5. Codes to be accessible

**IT is hereby notified that the Minister of Labour, Manpower Planning and Social Welfare, in terms of section 17 of the Labour Relations Act, 1985, has made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (Employment Codes of Conduct) Regulations, 1990.

*2. Interpretation*

In these regulations—

“authority” means—

- (a) an employment council; or
- (b) ....

[Definition repealed by s.i. 56 of 1992.]

- (c) a works council as defined in section 2 of the Labour Relations (Workers Committees)(General) Regulations, 1985, published in Statutory Instrument 372 of 1985;

“code” means an employment code of conduct agreed in accordance with these regulations.

*3. Registration and amendment of codes*

(1) For the purpose of settling any dispute or unfair labour practice at a workplace, undertaking or industry, an authority may apply to the Registrar in the form prescribed in the Schedule for the registration of a code that shall be binding in respect of that workplace, undertaking or industry.

Provided that—

- (a) a works council may apply for the registration of a code notwithstanding that an employment council has applied or proposes to apply for the registration of a code governing employers and employees represented on the works council;
- (b) where more than one code is registered pursuant to proviso (a), the code registered on application by the works council shall be binding in respect of the particular workplace, undertaking or industry for which it was registered.

[Proviso inserted by s.i. 56 of 1992.]

(2) An application in terms of subsection (1) shall be accompanied by two copies of the proposed code, and each such copy shall contain a space for the endorsement of the Registrar’s signature thereon.

(3) On application being made in terms of subsection (1) the Registrar shall, if he is satisfied that the code complies with section 4—

- (a) return to the applicant one of the copies of the code endorsed with his signature; and
- (b) issue to the applicant a certificate of registration of the code in the form prescribed in the Schedule.

(4) The Registrar may in writing request such further information from an applicant in terms of this section as may be relevant to his application.

(5) An authority may, at any time after the registration of a code, apply to the Registrar in the form prescribed in the Schedule to register any amendment to the code, and subsections (2), (3) and (4) shall apply, *mutatis mutandis*, in relation to that amendment.

(6) A code or an amendment to a code shall come into operation on the date specified in the certificate of registration relating to it.

(7) The copy of the code or an amendment to it that is endorsed by the Registrar in terms of paragraph (a) of subsection (3) shall be the authentic copy of such code or amendment.

*4. Provisions to be included in codes*

- (1) A code shall provide the following matters—
- (a) rules of conduct to be observed at the workplace, undertaking or industry concerned, including the precise definition of those acts or omissions that shall constitute misconduct, and the categorization of those acts or omissions according to their seriousness; and
  - (b) the procedures for settling any grievances that may arise between or against employees, managerial employees or the employer; and
  - (c) the procedures to be followed in the event of any breaches of the code, including a requirement that any breach be investigated before any proceedings are commenced against an employee;
  - (d) the penalties for any breaches of the rules or procedures of the code, which may include oral or written warnings, fines, reductions in pay for a specified period, demotion, suspension with or without pay or on reduced pay for a specified period, and dismissal from employment; and
  - (e) the person, committee or authority which will be responsible for implementing and enforcing the rules, procedures and penalties of the code; and
  - (f) the notification in writing to any person who is alleged to have breached any of the rules or procedures of the code of the nature of the misconduct or breach alleged against him and the date when proceedings are to be commenced against him; and
  - (g) the right of a person referred to in paragraph (f) to have his case heard by the appropriate person, committee or authority referred to in paragraph (e) before any decision in his case is made; and
  - (h) a written record or summary to be made of any proceedings and decisions taken in terms of the code, which record or summary shall be made at the time such proceedings and decisions are taken, and shall be kept for a period of not less than 12 months; and
  - (i) a procedure for an appeal within a specified period to such person, committee or authority as may be specified.
- (2) No proceedings commenced in terms of a code in respect of any misconduct or breach of the rules and procedures of the code shall continue beyond 14 days from the date of their commencement without a decision being reached.

*5. Codes to be accessible*

- (1) Where a code is registered in terms of section 3 it shall be displayed in a place accessible to all employees at each workplace to which it applies, with a translation provided in Shona and Ndebele.
- (2) Every person, committee or authority responsible for enforcing the rules, procedures and penalties of a code shall be furnished with authentic copies of the code and any amendments to it referred to in subsection (7) of section 3..

**Statutory Instrument 72 of 1997.**

[Date of publication : 14th March, 1997.]

**Labour Relations (Employment of Children and Young Persons) Regulations, 1997**

*SIs 72/1997, 155/1999.*

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of section 17 of the Labour Relations Act [Chapter 28:01], has made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (Employment of Children and Young Persons) Regulations, 1997.

*2. Interpretation*

In these regulations—

“child” means any person under the age of sixteen years;

“education” means attendance at a school as provided for in the Education Act [Chapter 25:74] or participation in a vocational or training programme approved by the Minister of Higher Education;

“hazardous substance” means a hazardous substance as defined in the Hazardous Substances and Articles Act [Chapter 15:05];

“light work” means work which is not likely to jeopardise the education, health, safety, rest or the social, physical or mental development of a child;

“young person” means any person who has attained the age of sixteen years but has not attained the age of eighteen years.

*3. Employment of children and young persons*

(1) No person shall employ any child or young person in an activity set out in the Schedule.

(2) No person shall employ a child under the age of fifteen years.

(3) No person shall employ a child or young person except as is provided for in subsection (4) or (5).

(4) A child who is thirteen years of age or more may perform light work where such work—

(a) is an integral part of a course of education or training for which the school or training institution is primarily responsible; and

(b) does not prejudice such child’s education, health, safety, social or mental development.

(5) A young person may be employed in an activity in which he receives adequate specific instructions or vocational training in that activity.

[Section amended by s.i. 155 of 1999.]

*4. Hours of works*

(1) No employer shall require a child or young person to work—

(a) more than six hours in any one day, or

(b) for a continuous period of three hours without a break of at least fifteen minutes.

(2) No employer shall require or permit a child or young person to work overtime.

(3) A child or young person shall be entitled to at least one and a half days off each week, at least twenty-four hours of which shall be continuous.

*5. Contracts of employment*

(1) Every employer of child or young person shall specify in the contract of employment for such child or young person—

(a) the wages to be paid; and

(b) the hours of work; and

(c) the days off work; and

(d) any other benefits that may be provided for in any applicable collective bargaining agreement or employment regulations.

(2) A contract for the employment of a child or young person shall not be valid unless it is entered into by or with the consent of the parent or guardian of the child or young person.

(3) A child or young person shall not be employed to work during a school term, as fixed in terms of the Education Act [Chapter 25:04], unless the contract of employment concerned has been approved by the Minister.

*6. Records to be kept*

(1) An employer who employs a child or young person shall keep the following records in respect of such child or young person—

(a) the name and age of the child or young person:

Provided that, where there is insufficient evidence available on the age of any child or young person, an employer shall ensure that an affidavit certifying the age of the child or young person is obtained; and

(b) the name and address of the parent, guardian or social Welfare Officer of that child or young person; and

(c) the details of the terms of the contract of employment as required by section 5.

(2) Every employer of a child or young person shall keep the records referred to in subsection (1) for a period of not less than three years and, on request, shall produce such records to—

(a) a labour relations officer, or

(b) a designated-agent of an employment council.

*7. Offences*

Any person who contravenes these regulations shall be guilty of an offence and liable to a fine not exceeding two thousand dollars or imprisonment for a period not exceeding twelve months or to both such fine and imprisonment.

**SCHEDULE (Section 3(1))**

PROHIBITED EMPLOYMENT ACTIVITIES IN RESPECT OF CHILDREN AND YOUNG PERSONS

1. Any work which is likely to jeopardise or interfere with the education of the child or young person.
2. Any work involving contact with any hazardous substance, article or process including ionising radiation.
3. Any work involving underground mining.
4. Any work that exposes a child to electrical cutting or grinding blades.
5. Any work that exposes a child to extremes of heat, cold, noise or whole body vibration.
6. Any night shift work.

**Statutory Instrument 31 of 1993.**

[Date of publication : 15th January, 1993.]

**Labour Relations (General) Regulations, 1993**

*S.Is 31/1993, 154/2003.*

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

*Section*

1. Title.
2. Interpretation.

PART II

TRADE UNIONS, EMPLOYERS' ORGANIZATIONS, EMPLOYMENT COUNCILS, EMPLOYMENT BOARDS AND ADVISORY BOARDS

3. Registered and unregistered trade unions and employers' organizations.
4. Employment councils.
5. Meetings of employment councils.
6. Employment council agreements.
7. Recovery of dues by employment councils.
8. Designated agents of employment councils.
9. [Repealed].
10. Advisory board.

PART III

COLLECTIVE JOB ACTION

12. Show cause and disposal orders.
13. Appeals against show cause orders or disposal orders.

PART IV

GENERAL

14. Summonses.
15. Inspection of documents.
- 15A. Inspection of premises.
16. Availability of forms.
17. Repeal and transitional.

SCHEDULE

Forms.

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 141 of the Labour Relations Act, 1985, made the following regulations:—**

PART I

PRELIMINARY

*1. Title*

These regulations may be cited as the Labour Relations (General) Regulations, 1993.

*2. Interpretation*

(1) In these regulations—

“form” means the appropriate form prescribed in the First Schedule.

(2) Any reference to a trade union or employers' organization may also be construed as a reference to a federation of such trade unions or employers' organizations.



PART II

TRADE UNIONS, EMPLOYERS' ORGANIZATIONS, EMPLOYMENT COUNCILS, EMPLOYMENT BOARDS AND ADVISORY BOARDS

3. *Registered and unregistered trade unions and employers' organizations*

(1) An application for registration in terms of section 33 of the Act shall be made in duplicate and shall, in the case of—

- (a) a trade union, be in form L.R. 1; and
- (b) in the case of an employers' organization, be in form L.R. 2.

(2) Every trade union or employers' organization shall, within six months of the date of its formation, forward to the Registrar two copies of its constitution for submission to the Minister in terms of subsection (3) of section 28 of the Act, whether or not such trade union or employers' organization makes an application in terms of subsection (1):

Provided that if it does make an application in terms of subsection (1), the copies of its constitution shall be forwarded at the same time as the application.

(3) .....

[Subsection repealed by s.i. 154 of 2003.]

(4) The certificate of registration of a trade union or employers' organization shall be in form L.R.5.

[Subsection amended by s.i. 154 of 2003.]

(5) An application for a variation of scope of registration in terms of section 39 of the Act shall be made in duplicate and shall, in the case of a trade union—

- (a) be in form L.R.7; and
- (b) in the case of an employers' organization, be in form L.R.8.

(6) A registered trade union or employers' organization may, upon written application to the Registrar accompanied by the current certificate of registration held by such trade union or employers' organization, change its name, and a new certificate incorporating the change shall be issued by the Registrar in form L.R.9.

(7) The constitution of every registered trade union and employers' organization shall provide that the official charged with receiving membership and other fees shall issue a receipt from a duplicate receipt book showing the amount and the nature of the fees received.

(8) The register of members required in terms of section 35 of the Act shall be kept in form L.R.10 in respect of each month of the year, and such register shall be of durable material, and entries therein shall be in writing, in legible characters and in ink.

(9) Every trade union which acts as an agent union in terms of section 31 of the Act shall maintain a separate register of the members of each trade union it represents.

(10) Every registered trade union or employers' organization shall furnish to the Registrar at the end of the financial year a statement of the union or association dues collected by it in each month during that year.

(11) Every trade union or employers' organization—

- (a) whose application in terms of subsection (1) or (3) was unsuccessful; or
- (b) which, within fourteen days of receiving a written inquiry from the Registrar, indicates that it wishes to remain unregistered, or fails to make any indication whatever;

shall, if it does not voluntarily wind up, be deemed to be an unregistered trade union or employers' organization and shall forthwith complete and forward to the Registrar certain particulars in form L.R.11.

(12) The Registrar may at any time request an unregistered trade union or employers' organization to forward to him—

- (a) additional particulars of all officials and office-bearers, including branch officials and office bearers; and
- (b) any of the following documents—
  - (i) the minute-book of the trade union or employers' organization;
  - (ii) membership records;
  - (iii) a statement of income and expenditure; or
  - (iv) cash-book and supporting receipts.

(13) Every unregistered trade union or employers' organization shall furnish to the Registrar before the 31st January in each year a return of membership for the preceding year in form L.R.12.

(14) Every trade union or employers' organization shall, whether or not it is registered, keep a record in ink of the minutes of all its meetings.

(15) Every trade union or employers' organization shall, whether or not it is registered, within thirty days of adopting any amendment to its constitution, forward to the Registrar two copies of such amendment for submission to the Minister in terms of subsection (3) of section 28 of the Act.

(16) A federation of trade unions or employers' organizations may not be registered in terms of this section until its constituent members have been registered.

[Subsection amended by s.i.154 of 2003.]

#### 4. *Employment councils*

(1) An application for the registration of an employment council in terms of section 62 of the Act shall be made—

- (a) by trade unions in form L.R.13;
- (b) by employers' or employees' organizations in form L.R.14.

(2) The certificate of registration of an employment council shall be in form L.R.15.

(3) The constitution of every registered employment council shall provide for the appointment or election of a secretary for the council.

(4) A registered employment council may, upon written application to the Registrar accompanied by a copy of the current certificate of registration held by such employment council, change its name, and a new certificate incorporating the change shall be issued by the Registrar in form L.R.16.

(5) A registered employment council may, after taking into account the consideration set out in subsection (1) of section 67 of the Act, apply its own initiative for a variation of the coverage of its registration in form L.R.17.

(6) Where the Registrar cancels the certificate of registration of an employment council in terms of paragraph (c) of subsection (4) of section 67 of the Act, he shall forthwith notify the secretary of the council, in writing, of such action.

(7) This section and sections 5, 6, 7 and 8 shall, *mutatis mutandis*, apply to a statutory employment council formed in terms of section 63 of the Act.

#### 5. *Meetings of employment councils*

(1) The secretary of an employment council shall give not less than seven days' written notice by hand or by post to a senior labour relations officer setting forth the date, place, time and business of any ordinary meeting of the council, or, in the case of a special meeting, sufficient notice to enable a labour relations officer authorized in writing by a senior labour relations officer to attend.

(2) Whenever an employment council has, by reason of a lack of quorum at any meeting, been unable to transact business, the secretary of the council shall send by hand or by post to the usual or last known address of each member of such council, notice, in writing, setting forth the date, place and time of a new meeting of the council.

(3) The secretary of every employment council shall, not later than twenty-one days after the close of a meeting of the council or of any committee exercising any of the functions of the council, forward to the Registrar six copies of the minutes of such meeting or such lesser or greater number of copies as the Registrar may specify.

#### 6. *Employment council agreements*

(1) Whenever an employment council has negotiated a collective bargaining agreement, the secretary of the council shall—

- (a) in the case of an agreement specified in paragraph (a) of subsection (1) of section 84 of the Act, forward to the Registrar fifteen copies of such agreement;
- (b) in the case of an agreement specified in paragraph (b) of section 84 of the Act, forward to the Registrar for submission to the Minister fifteen copies of such agreement;

or such lesser or greater number of copies as the Registrar may specify.

(2) Upon receipt of the copies of the documents specified in subsection (1), the Registrar shall, subject to subsection (2) of section 84 of the Act, register the collective bargaining agreement and, in terms of section 85 of the Act, the Minister shall publish the agreement in a statutory instrument.

(3) Subject to subsection (4) of section 79 of the Act, a request by an employment council for an extension of the period for which a collective bargaining agreement shall remain binding in terms of section 87 of the Act shall be in form L.R.18.

#### 7. *Recovery of dues by employment councils*

Whenever an employment council wishes to recover any dues referred to in paragraph (d) of section 64 of the Act, it shall send to the person concerned at his last known address a formal communication by registered post requiring payment of the dues owed by him within seven days, and, if no payment is made within that period, the council may proceed to recover the whole or part of dues owed by action in a competent court.

*8. Designated agents of employment councils*

(1) A request by an employment council to appoint a person nominated by it to be a designated agent in terms of subsection (1) of section 69 of the Act shall be made to the Registrar in form L.R.19.

(2) The certificate of appointment of a designated agent in terms of subsection (2) of section 69 of the Act shall be made in form L.R.20.

(3) Subject to section *sixty-three* of the Act, a person shall be qualified to hold office as a designated agent if he holds a university degree relevant to the industry.

[Subsection inserted by S.I. 154 of 2003.]

9. ....

[Section repealed by S.I. 154 of 2003.]

*10. Advisory boards*

(1) Any advisory board appointed in terms of section 19 of the Act shall be composed of—

(a) a chairman, a secretary and three other persons appointed by the Minister who shall be public officers in the Ministry of Public Service, Labour and Social Welfare;

(b) one representative from each of the following Ministries, nominated, in writing, by the Secretaries therefor and appointed by the Minister responsible for—

(i) finance;

(ii) trade and commerce;

(iii) agriculture; and

(iv) mines;

(c) two representatives nominated by any employers' organization generally representative of commerce and industry and appointed by the Minister;

(d) two representatives nominated by a federation of trade unions and appointed by the Minister;

(e) one representative of welfare or educational institutions appointed by the Minister.

(2) A member of an advisory board shall hold office for such period, not exceeding two years, as the Minister may fix on his appointment, and shall be eligible for re-appointment as a member on the expiry of his term.

(3) The Minister shall fix the date, time and place of the first meeting of an advisory board, and thereafter the board shall meet as often as it considers necessary to fulfil its functions in terms of the Act.

(4) Except as herein prescribed, an advisory board may regulate its own procedure.

(5) At any meeting of an advisory board—

(a) the members present may elect one of their number to preside as chairman in the absence of the chairman of the board;

(b) six members shall form a quorum;

(c) all acts, matters or things authorized or required to be done by the board shall be decided by a majority of the members present;

(d) the chairman may, with the approval of the board, invite any person to attend who has special knowledge or experience on any matters under discussion:

Provided that such person shall not vote on any question before the board;

(e) the chairman of the board or the person presiding shall, in the event of an equality of votes, have a casting vote in addition to a deliberative vote.

(6) A member of an advisory board who is not in the full time employment of the State shall be paid an allowance for attendance at a meeting of the board and such allowance shall be fixed from time to time by the Minister.

*11. Appeals against decision of Registrar*

(1) A person who wishes to appeal against a decision of the Registrar in terms of section 47, 65 or 67 of the Act may, within thirty days of the date on which he was notified of such decision, note an appeal, in form L.R.31, and section 10 of the Labour Relations (Settlement of Disputes) Regulations, 1993, shall, *mutatis mutandis*, apply:

Provided that where other persons were present at any accreditation proceedings held in terms of section 41 of the Act, the person making the appeal shall complete and send to those other persons such extra copies of form L.R.31 as are necessary to notify them of the appeal.

(2) In the case of an appeal in terms of subsection (1) against a decision made in terms of section 65 or 67 of the Act, the person noting the appeal and the Registrar shall at the same time specify the names and addresses of any witnesses they wish to have summoned to attend the proceedings.

(3) In the case of an appeal in terms of subsection (1) against a decision specified in section 47 of the Act, the person making such appeal and the Registrar shall, at the same time, if no accreditation proceedings were held on the matter of the appeal, specify the names and addresses of any witnesses they wish to have summoned to attend the appeal:

Provided that if accreditation proceedings were held on the matter of the appeal no person may be named as witness unless he was a witness at or party to those accreditation proceedings and was notified of the appeal in terms of the proviso to subsection (1).

(4) Upon receipt of a notice of appeal in terms of subsection (1), the Registrar, subject to the directions of the chairman or vice chairman of the Tribunal shall, as soon as is practicable, notify the parties to the appeal of the date, time and place of the hearing of the appeal and at the same time issue summonses in Form LR.32 to the witnesses, if any, requested to attend the appeal.

### PART III

#### COLLECTIVE JOB ACTION

##### *12. Show cause and disposal orders*

(1) The Minister may, in terms of section 106 of the Act, issue through an appropriate authority, a show cause order in form L.R.29 to be served on the parties concerned by hand or by post.

[Subsection amended by s.i. 154 of 2003.]

(2) The Labour Court may, in terms of section 107 of the Act, issue a disposal order in form L.R.30 to be served on the parties concerned by hand or by post.

[Subsection amended by s.i. 154 of 2003.]

##### *13. Appeals against show cause orders or disposal orders*

A party who is aggrieved by the issuance of a show cause or disposal order in terms of section 12 may note an appeal against the order, within the prescribed time, to the Labour Court.

[Section substituted by s.i. 154 of 2003.]

### PART IV

#### GENERAL

##### *14. Summonses*

(1) Summons issued to a witness in terms of these regulations may be served on the person summoned—

(a) by delivering a copy thereof to him; or

(b) by leaving a copy thereof at his place of abode or business or employment with some responsible person; or

(c) by dispatching copy thereof by registered post in an envelope on which are written his name and address which is his place of abode or business or employment, or his post office box number.

(2) The service of any summons in terms of this section may be effected by any person authorized thereto by the person who has signed it.

(3) Any person who, after being served with a summons, fails without sufficient cause to attend at the time and place specified in the summons shall be guilty of an offence.

##### *15. Inspection of documents*

(1) Any member of the public may, during the hours when the office concerned is normally open, inspect or copy—

(a) at the office of the Registrar, any constitution or amendment to any constitution of any trade union, employment council or employers' organization submitted to the Registrar, and any collective bargaining agreement registered by him in terms of section 84 of the Act;

(b) at the office of any labour relations officer, any record of a settlement, determination or order made by such officer.

(2) Any party to a registered employment council or its duly authorized representative may inspect or copy at the office of the Registrar during the hours when that office is normally open, the certificate of registration or certification of any trade union or employers' organization.

(3) The Registrar may, on application being made to him, furnish to any member of the public, on payment of a fee calculated at the rate of twenty cents for each sheet or part thereof, certified copies of any collective bargaining agreement, decision of the Tribunal or draft statutory instrument proposed to be made by the Minister in terms of subsection (2) of section 10 of the Act or subsection (5) of section 17 of the Act.

*15A. Inspection of premises*

(1) A labour officer may, in terms of section 126 of the Act, enter an establishment where workers are employed and inspect the premises for conditions of employment, child labour, occupational health and safety, gender and other matters incidental thereto.

(2) The details and findings of the inspection specified in subsection (1) shall be recorded by the labour officer in triplicate and shall be in Form L.R. 33.

[Section inserted by s.i. 154 of 2003.]

*16. Availability of forms*

Any form referred to in these regulations which is out of print may be issued, in writing, by the Registrar, senior labour relations officer or labour relations officer, as may be appropriate, who may omit any explanatory notes or other irrelevant matter therefrom.

*17. Repeals and transitional*

(1) Subject to section 30 of the Labour relations Amendment Act 1992 (No. 12 of 1992), the Labour Relations (General) Regulations, 1985, published in Statutory Instrument 368 of 1985, are repealed.

(2) Any matter which was commenced in terms of the repealed regulations and which is pending before a hearing officer, regional hearing officer or chief hearing officer immediately before the coming into operation of these regulations shall be deemed to be pending before a labour relations officer or a senior labour relations officer, as may be appropriate.

*Note by Deputy Chairman, Law Development Commission*

FORMS

(1) The Labour Relations (General) (Amendment) Regulations, 2003 (No. 1) (Statutory Instrument 154 of 2003) repealed forms L.R. 3, L.R 4 and L.R 6.

(2) Due to a numbering error in the Labour Relations (General) Regulations, 1993, (Statutory Instrument 31 of 1993) numbers L.R 23 to L.R 28 were not allocated.

(3) Form L.R. 33 was inserted by the Labour Relations (General) (Amendment) Regulations, 2003 (No. 1) (Statutory Instrument 154 of 2003).

(4) The Labour Relations (General) (Amendment) Regulations, 2003 (No. 1) (Statutory Instrument 154 of 2003) amended—

(a) Form L.R. 30 by the substitution of “the Labour Court” for “appropriate authority”,

(b) Form L.R. 31 by—

(i) the substitution of “Labour Court” for Tribunal”,

(ii) the deletion of “the senior labour relations officer”.

SCHEDULE (Section 2(I))

FORMS

Form L.R. 1

LABOUR RELATIONS ACT, 1985

Application for the Registration of a Trade Union

- N.B.*— (i) This application must be submitted in duplicate.  
 (ii) The requirements prescribed by the Act are indicated in this form, and careful completion is essential to avoid undue delay.  
 (iii) Areas may be defined by stating definite boundaries, or by giving a centre, such as a post office, and the radius therefrom in kilometres.  
 (iv) This application is also valid for the registration of a federation of trade unions: where application is made in respect of a federation, delete, where appropriate, any reference to a "trade union" and substitute "federation".

Name of trade union .....

Address .....

The Registrar of Labour Relations,  
 Private Bag 7707,  
 Causeway.

Date .....

Sir,

1. We hereby, in terms of section 33 of the Labour Relations Act, 1985, and in accordance with a resolution adopted at a meeting held on the ..... 19....., apply for the registration of this trade union in respect of—  
 (a) the interests of employees engaged or employed as .....

- (b) in .....  
*(State the one particular undertaking, industry, trade or occupation and define such undertaking, industry, trade or occupation on reverse hereof.)*

- (c) in the area .....

2. Two copies of the constitution and rules of the trade union including all amendments, duly authenticated by the signature of the chairman and secretary as being true copies, are attached.

3. The following are the particulars of the members of the governing body of the trade union:

<i>Designation</i>	<i>Name</i>	<i>Address</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

4. The under-mentioned persons are officials or office-bearers of the trade union:

<i>Designation</i>	<i>Name</i>	<i>Address</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

5. The following particulars are supplied in accordance with section 34 of the Labour Relations Act, 1985—

- (a) name(s) and address(es) of person(s) applying for the registration of the trade union .....

- (b) name(s) and address(es) of the organization(s) to which the trade union is affiliated .....

- (c) sources of funds: membership fees and/or union dues (*delete inapplicable*); specify any other source .....

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

6. The information with respect to membership given in the following table is correct as at the above date.

*	1	2	3	4
Area/Name of trade union: (see Note (1) below)	Trade or occupation	Number of members	Number of members whose subscriptions are more than 3 months in arrear	Estimated number of persons eligible for membership but not enrolled
TOTAL				

\*Notes.—(1) In the case of a registration of a trade union, specify each sub-area or branch separately; in the case of a registration of a federation, state only the name of each constituent trade union.  
 (2) The information required in columns 1, 2, 3 and 4 must be in respect of each separate area or branch of the trade union or, in the case of a federation, in respect of each constituent trade union.

Yours faithfully,

As Witnesses:

1. \_\_\_\_\_ Chairman  
 2. \_\_\_\_\_ Secretary

Date \_\_\_\_\_, 19\_\_\_\_\_

Form L.R. 2

LABOUR RELATIONS ACT, 1985

Application for the Registration of an Employer's Organization

- N.B.*— (i) The application must be submitted in duplicate.  
 (ii) The requirements prescribed by the Act are indicated in this form, and careful completion is essential to avoid delay.  
 (iii) Areas may be defined by stating definite boundaries, or by giving a centre, such as a post office, and the radius therefrom in kilometres.  
 (iv) This application is also valid for the registration of a federation of employers' organizations: where application is made in respect of a federation, delete, where appropriate, any reference to an "employers' organization" and substitute "federation".

Name of employers' organization \_\_\_\_\_

Address \_\_\_\_\_

The Registrar of Labour Relations, \_\_\_\_\_ Date \_\_\_\_\_  
 Private Bag 7707,  
 Causeway.

Sir,

- We hereby, in terms of section 33 of the Labour Relations Act, 1985, and in accordance with a resolution adopted at a meeting held in the \_\_\_\_\_ 19\_\_\_\_\_, apply for the registration of this employers' organization in respect of—
  - the interests of the employers' engaged in \_\_\_\_\_
  - in \_\_\_\_\_  
 (*State the one particular undertaking, industry, trade or occupation and define such undertaking, industry, trade or occupation on the reverse hereof.*)
  - in the area \_\_\_\_\_
- Two copies of the constitution and rules of the employers' organization including all amendments, duly authenticated by the signatures of the chairman and secretary as being true copies, are attached.
- The following are the particulars of the members of the governing body or the employers' organization:

<i>Designation</i>	<i>Name</i>	<i>Address</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

4. The under-mentioned persons are officials or office-bearers of the employers' organization:

Designation	Name	Address
.....	.....	.....
.....	.....	.....

5. The following particulars are supplied in accordance with section 34 of the Labour Relations Act, 1985—

- (a) name(s) and address(es) of person(s) applying for the registration of the employers' organization .....
- (b) name(s) and address(es) of the organization(s) to which the employers' organization is affiliated .....
- (c) sources of funds: membership fees and/or association dues (*delete inapplicable*); specify any other source .....

6. The information with respect to membership given in the following table is correct as at the above date.

1*	1	2	3	4
Area/Name of employers' organization (see Note (1) below)	Enterprise	Number of members	Number of members whose subscriptions are more than 3 months in arrear	Estimated number of persons eligible for membership but not enrolled
<b>TOTAL</b>				

- \*Notes.—(1) In the case of a registration of an employers' organization, specify each sub-area or branch separately; in the case of a registration of a federation, state only the name of each constituent employers' organization.
- (2) The information required in columns 1, 2, 3 and 4 must be in respect of each separate area or branch of the employers' organization or in the case of a federation, in respect of each constituent employers' organization.

Yours faithfully,

As Witnesses:

- 1. .... Chairman
- 2. .... Secretary

Date ....., 19.....

Form L.R. 5

Certificate No. ....

**LABOUR RELATIONS ACT, 1985**

**Certificate of Registration of a Trade Union or an Employers' Organization, or of a Federation of Trade Unions or Employers' Organizations**

Original date of registration .....

This is to certify that .....

(name of trade union, employers' organization or federation)

has been registered as a trade union/an employers' organization/a federation of trade unions/a federation of employers' organizations/in terms of section 33 of the Labour Relations Act, 1985, in respect of the interests as set out in Table "A" in the

(undertaking, industry, trade or occupation)

within the area as set out in Table "C".

"D". This certificate is subject to any variations shown in Table "B" or Table

Dated at Harare this ..... day of ....., 19.....

Registrar of Labour Relations

**TABLE "A"  
INTERESTS REGISTERED**




LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

**TABLE "B"**  
**VARIATION OF INTERESTS**

The scope of registration of the within-named trade union/employers' organization has, in terms of section 39 of the Labour Relations Act, 1985, been varied by—

Interests	Date of variation	Registrar of Labour Relations
1. ....		
2. ....		
3. ....		

**TABLE "C"**  
**AREA REGISTERED**

.....

.....

.....

**TABLE "D"**  
**VARIATION OF AREA**

The scope of registration of the within-named trade union/employers' organization has, in terms of section 39 of the Labour Relations Act, 1985, been varied by—

Interests	Date of variation	Registrar of Labour Relations
1. ....		
2. ....		
3. ....		

Form L.R. 7

**LABOUR RELATIONS ACT, 1985**

**Application for Variation of Scope of Registration of a Trade Union**

- N.B.*— (i) This application must be submitted in duplicate.  
(ii) The requirements prescribed by the Act are indicated in this form, and careful completion is essential to avoid delay.  
(iii) Areas may be defined by stating definite boundaries, or by giving a centre, such as a post office, and the radius therefrom in kilometres.

Name of trade union .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

1. We hereby, in terms of section 39 of the Labour Relations Act, 1985, and in accordance with a resolution adopted at a meeting of ..... held on the ....., 19....., apply for a variation of the scope of registration of this trade union.
2. (a) The interests in respect of which the trade union seeks to delete from or add to those already set forth in its certificate of registration are:

.....

.....

.....
- (b) in the .....  
(undertaking, industry, trade or occupation)
- (c) the area(s) in respect of which (a) is/are concerned are—  

.....

.....

.....

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

3. The information with respect to membership given in the following table is correct as at the above date.

*	1	2	3	4
Area: state each sub-area or branch separately	Trade or occupation	Number of members	Number of member whose subscriptions are more than 3 months in arrear	Estimated number of persons eligible for membership but not enrolled
TOTAL				

\*The information required in columns 1, 2, 3 and 4 must be in respect of each separate area and branch.

Yours faithfully,

As Witnesses:

1. .... Chairman

2. .... Secretary

Date ....., 19.....

Form L.R. 8

LABOUR RELATIONS ACT, 1985

Application for Variation of Scope of Registration of an Employers' Organization

- N.B.*— (i) This application must be submitted in duplicate.  
(ii) The requirements prescribed by the Act are indicated in this form, and careful completion is essential to avoid delay.  
(iii) Areas may be defined by stating definite boundaries, or by giving a centre, such as a post office, and the radius therefrom in kilometres.

Name of employers' organization .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

1. We hereby, in terms of section 39 of the Labour Relations Act, 1985, and in accordance with a resolution adopted at a meeting of .....
- held on the ....., 19....., apply for a variation of the scope of registration of this employers' organization.
2. (a) The interests in respect of which the employers' organization seeks to delete from or add to those already set forth in a certificate of registration are .....
- (b) in the .....
- (undertaking, industry, trade or occupation)*
- (c) the area(s) in respect of which (a) is concerned is/are— .....

*	1	2	3	4
Area: state each sub-area or branch separately	Enterprise	Number of members	Number of members whose subscriptions are more than 3 months in arrear	Estimated number of persons eligible for membership but not enrolled
TOTAL				

\*The information required in columns 1, 2, 3 and 4 must be in respect of each separate area and branch.

Yours faithfully,

As Witnesses:

1. .... Chairman

2. .... Secretary

Date ....., 19.....

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

Form L.R. 9

Certificate No. ....

**LABOUR RELATIONS ACT, 1985**

**Certificate of Registration of a Trade Union or an Employers' Organization, or of a Federation of Trade Unions or Employers' Organizations, on Change of Name**

This is to certify that .....  
formerly registered on the .....  
as the .....

*(old name of trade union, employers, organization or federation)*

has been registered under the first-mentioned name as a trade union/an employers' organization/a federation of trade unions/a federation of employers' organizations/in terms of section 33 of the Labour Relations Act, 1985, in respect of the interests as set out in Table "A" in the .....

*(undertaking, industry, trade or occupation)*

within the area as set out in Table "C".

This certificate is subject to any variation shown in Table "B" or "D"

Dated at Harare this ..... day of ....., 19.....

.....  
*Registrar of Labour Relations*

**TABLE "A"  
INTERESTS REGISTERED**

.....  
.....  
.....

**TABLE "B"  
VARIATION OF INTERESTS**

The scope of registration of the within-named trade union/employee organization has, in terms of section 39 of the Labour Relations Act, 1985, been varied by—

Interests	Date of variation	Registrar of Labour Relations
1. ....		
2. ....		
3. ....		

**TABLE "C"  
AREA REGISTERED**

.....  
.....  
.....

**TABLE "D"  
VARIATION OF AREA**

The scope of registration of the within-named trade union/employers' organization has, in terms of section 39 of the Labour Relations Act, 1985, been varied by—

Area	Date of variation	Registrar of Labour Relations
1. ....		
2. ....		
3. ....		

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

TOTAL					Number	
					Name	
				Address		
				Trade or occupation		
				Date of joining		
				Arrears	JANUARY	
			Sub			
			Fine			
			Levies			
			Arrears	FEBRUARY		
			Sub			
			Fine			
			Levies			
			Arrears	MARCH		
			Sub			
			Fine			
			Levies			
			Arrears	APRIL		
			Sub			
			Fine			
			Levies			
			Arrears	MAY		
			Sub			
			Fine			
			Levies			
			Arrears	JUNE		
			Sub			
			Fine			
			Levies			
			Arrears	JULY		
			Sub			
			Fine			
			Levies			
			Arrears	AUGUST		
			Sub			
			Fine			
			Levies			
			Arrears	SEPTEMBER		
			Sub			
			Fine			
			Levies			
			Arrears	OCTOBER		
			Sub			
			Fine			
			Levies			
			Arrears	NOVEMBER		
			Sub			
			Fine			
			Levies			
			Arrears	DECEMBER		
			Sub			
			Fine			
			Levies			
				Arrears as at 31st December, 19.....		

MEMBERSHIP RECORD

YEAR 19 .....

Form L.R. 10.

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

Form L.R. 11

LABOUR RELATIONS ACT, 1985

Statement to be Furnished by Unregistered Trade Unions or Unregistered Employers' Organizations, or by Unregistered Federations of Trade Unions or Employers' Organizations

*N.B.*—This statement must be submitted in duplicate.

Name of unregistered trade union/unregistered employers' organization/federation of unregistered trade unions/federation of unregistered employers' organizations .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

In terms of subsection (11) of section 4 of the Labour Relations (General) Regulations, 1985, we hereby supply the following information:

1. (a) The unregistered trade union/unregistered employers' organization/unregistered federation of trade unions/unregistered federation of employers' organizations operates in the area(s) of .....

(b) in respect of the employees/employers engaged in .....

2. Two copies of the constitution and rules of the unregistered trade union/unregistered employers' organization/unregistered federation of trade unions/unregistered federation of employers' organizations, including all amendments, duly authenticated by the signatures of the chairman and secretary as being true copies, are attached.

3. The following particulars of the members of the governing body/executive committee are supplied:

<i>Designation</i>	<i>Name</i>	<i>Address</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....

4. The under-mentioned persons are officials or office-bearers of the unregistered trade union/unregistered employers' organization/unregistered federation of trade unions/unregistered federation of employers' organizations:

<i>Designation</i>	<i>Name</i>	<i>Address</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....

5. The information with respect to membership given in the following table is correct as at the above date.

* Area/Name of trade union or employers' organization (see Note (1) below)	1 Trade or occupation	2 Number of members	3 Number of members whose subscriptions are more than 3 months in arrear	4 Estimated number of persons eligible for membership but not enrolled
<b>TOTAL</b>				

\*Notes.—(1) In the case of an unregistered trade union or employers' organization, specify each sub-area or branch separately; in the case of an unregistered federation, state only the name of each constituent trade union or employers' organization.

(2) The information required in columns 1, 2, 3 and 4 must be in respect of each separate area and branch or, in the case of a federation, in respect of each constituent trade union or employers' organization.

Yours faithfully,

As Witnesses:

1. ....  
2. ....

.....  
Chairman  
.....  
Secretary

Date ....., 19.....

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

Form L.R. 12

**LABOUR RELATIONS ACT, 1985**

**Return of Membership of Unregistered Trade Union or  
Employers' Organization or of Unregistered Federation of  
Trade Unions or Employers' Organizations**

*N.B.*—This statement must be submitted in duplicate

Name of unregistered trade union/employers' organization/federation of trade unions/federation of employers' organizations.....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

The number of members/member trade unions/member employers' organizations and other information in respect of the membership of this unregistered trade union/employers' organization/federation of trade unions/federation of employers' organizations, in terms of subsection (13) of section 3 of the Labour Relations (General) Regulations, 1993, as at the 31st December, 19....., or at the date specified by the Registrar, is as detailed on the attachment. We, the undersigned, being chairman and secretary of the unregistered trade union/employers' organization/federation of trade unions/federation of employers' organizations, hereby certify that the information given in this return in respect of .....

*(undertaking, industry, trade or occupation, or, in the case of a federation undertakings, industries, trades or occupations covered by member trade unions/employers' organizations)*

is in accordance with the records of this unregistered trade union/employers' organization/federation of trade unions/federation of employers' organizations.

Yours faithfully,

As Witnesses:

1. .... Chairman

2. .... Secretary

Date ....., 19.....

**RETURN OF MEMBERSHIP**

Table to be completed by an unregistered trade union/employers' organization/federation of trade unions/federation of employers' organizations.

*	1	2	3	4
Area/Name of trade union or employers' organization (see Note (1) below)	Interests or enterprises represented	Number of members	Number of members in column 2 who are more than 3 months in arrear	Estimated number of persons eligible for membership but not enrolled

Form L.R. 13

**LABOUR RELATIONS ACT, 1985**

**Application by a Trade Union for Registration of an  
Employment Council**

*N.B.*—A separate form must be completed in duplicate on behalf of each trade union which is a party to the employment council and submitted to the secretary of the employment council for transmission to the Registrar.

Name of trade union .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

1. In pursuance of an agreement reached with other interested bodies, we hereby apply, in terms of section 62 of the Labour Relations Act, 1985, on behalf of this trade union, for the registration of an employment council for the .....

*(state the undertaking, industry, trade or occupation, and define such undertaking, industry, trade or occupation on reverse hereof)*

in the area of .....

2. We certify that the following members or full-time officials were duly appointed by the trade union in terms of its constitution to represent it on the employment council:

<i>Representatives</i>	<i>Alternates</i>
(1) .....	.....
(2) .....	.....
(3) .....	.....
(4) .....	.....
(5) .....	.....
(6) .....	.....
(7) .....	.....
(8) .....	.....
(9) .....	.....
(10) .....	.....

3. The trade union represents the interests set out on the reverse hereof.

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

4. The address of the headquarters of the employment council, until further notice, will be .....
5. We certify that the information in respect of the industry given in the following table is in accordance with the records of the trade union as at the above date.

*	1	2	3	4
Area/State each sub-area of registration separately	Interests represented	Number of members	Number of members in column 2 who are more than 3 months in arrear	Estimated number of persons eligible for membership but not enrolled
<b>TOTAL</b>				

*\*The information required in columns 1, 2, 3 and 4 must be in respect of each separate area.*

Yours faithfully,

As Witnesses:

1. ....  
Chairman of the trade union
2. ....  
Secretary of the trade union

*Note.*—Form to be suitably modified when applicant is a branch of a trade union, and to be endorsed by the chairman and secretary of the trade union at headquarters.

Form L.R. 14

**LABOUR RELATIONS ACT, 1985**

**Application by an Employers' Organization for  
Registration of an Employment Council**

*N.B.*—This form should be suitably modified when application is made by an individual employer.

A separate form must be completed in duplicate on behalf of each employers' organization or individual employer, as the case may be, which or who is a party to the employment council, and submitted to the secretary of the employment council for transmission to the Registrar.

Name of employers' organization .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

1. In pursuance of an agreement reached with other interested bodies, we hereby apply, in terms of section 62 of the Labour Relations Act, 1985, on behalf of this employers' organization, for the registration of an employment council for the .....

*(state the undertaking, industry, trade or occupation, and define such undertaking, industry, trade or occupation on the reverse hereof)*  
in the area of .....

2. We certify that the following members or full-time officials were duly appointed by the employers' organization in terms of its constitution to represent it on the employment council:

	<i>Representatives</i>	<i>Alternates</i>
(1)	.....	.....
(2)	.....	.....
(3)	.....	.....
(4)	.....	.....
(5)	.....	.....
(6)	.....	.....
(7)	.....	.....

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

- (8) .....
- (9) .....
- (10) .....
3. The employers' organization represents the interests set out on the reverse hereof.
4. The address of the headquarters of the employment council until further notice will be .....
5. We certify that the information in respect of the ..... industry given in the following table is in accord with the records of this employers' organization as at the above date.

*	1	2	3	4
Area :State each sub-area of registration separately	Enterprises represented	Number of members	Number of members included in column 2 who are more than 3 months in arrear	Estimated umber of persons eligible for membership but not enrolled
TOTAL				

**M\***The information required in columns 1, 2, 3 and 4 must be in respect of each separate area.

Yours faithfully,

As Witnesses:

1. ....  
Chairman  
of the employers' organization
2. ....  
Secretary  
of the employers' rganization

*Note.*—Form to be suitably modified when applicant is a branch of an employers' organization, and to be endorsed by the chairman and secretary of the employers' organization at headquarters.

Form L.R. 15

LABOUR RELATIONS ACT, 1985

Certificate of Registration of an Employment Council

- A. This is to certify that the .....  
 .....  
(name of employment council)  
 has, in terms of section 65 of the Labour Relations Act, 1985, been registered as an employment council for the .....  
(undertaking, industry, trade or occupation)  
 as set out on the reverse hereof, in .....  
(area)  
 with effect from the ....., 19.....  
 Date ....., 19.....  
Registrar of Labour Relations
- B. The scope of registration of the above-named employment council has, in terms of section 67 of the Labour Relations Act, 1985, been varied. With effect from the ....., 19....., the employment council is registered for the .....  
(undertaking, industry, trade or occupation)  
 as set out on the reverse hereof, in .....  
(area)  
Registrar of Labour Relations  
 Date ....., 19.....



LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

Form L.R. 16

Certificate No. ....

LABOUR RELATIONS ACT, 1985

Certificate of Registration of an Employment Council:  
Change of Name

A. I hereby certify that the .....  
.....  
*(new name of employment council)*  
formerly registered on the .....  
as the .....  
*(old name of employment council)*  
was registered by me, in terms of section 65 of the Labour Relations Act,  
1985, under its new name, with effect from the ....., 19.....  
The scope of registration of the said employment council for the .....  
*(undertaking, industry, trade or occupation)*  
as set out on the reverse hereof, in .....  
*(area)*  
Date ....., 19.....

*Registrar of Labour Relations*

B. The scope of registration of the above named employment council has, in  
terms of section 67 of the Labour Relations Act, 1985, been varied. With  
effect from the ....., 19....., the employment  
council is registered for the .....  
*(undertaking, industry, trade or occupation)*  
as set out on the reverse hereof, in .....  
*(area)*  
*Registrar of Labour Relations*  
Date ....., 19.....

Form L.R. 17

LABOUR RELATIONS ACT, 1985

Application for Variation of Scope of Registration of an Employment Council

**N.B.**—This application must be submitted in duplicate, and be accompanied by  
information and tables similar to that required to be furnished by para-  
graphs 3 and 5 of form L.R. 13 in respect of each trade union and by  
paragraphs 3 and 5 of form L.R. 14 in respect of each employers' orga-  
nization which is party to the employment council.

Name of employment council .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,  
We hereby, in pursuance of a resolution adopted by the above-mentioned  
employment council, apply, in terms of section 67 of the Labour Relations Act,  
1985, for the variation of the scope of registration of this employment council by  
the inclusion/exclusion of .....

.....  
.....  
.....

in .....  
.....  
*(area)*

Yours faithfully,

As Witnesses:  
1. ....  
2. ....  
Chairman  
Secretary

LABOUR RELATIONS ACT, 1985

Extension of Agreement

*N.B.—This application must be submitted in duplicate.*

Name of employment council .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private 7707,  
Causeway.

Sir,

1. In terms of section 87 of the Labour Relations Act, 1985, we hereby request that the agreement dated the ....., 19....., shall be extended for a period of ..... months, from the ..... of the agreement, 19....., being the present expiry date.
2. The subjoined statement of the number of employers and employees engaged in the industry to which the agreement relates is in accordance with the records of this employment council as at the ..... 19.....,

*	1	2
Area: State each sub-area of registration separately	Number of employers	Number of employees
TOTAL . . . . .		

*\*The information required in columns 1 and 2 must be in respect of each separate area.*

Yours faithfully,

..... } Signature of the Chairman, Vice-Chairman and Secretary, or three duly authorized representatives of the employment council

As Witnesses:

1. ....
2. ....

LABOUR RELATIONS ACT, 1985

Request for Appointment of a Designated Agent

Name of employment council .....

Address .....

Date .....

The Registrar of Labour Relations,  
Private Bag 7707,  
Causeway.

Sir,

My employment council has directed me to request you to appoint the person concerning whom particulars are given below as the designated agent of the employment council in terms of section 69 of the Labour Relations Act, 1985.

1. Name of nominee .....
  2. Address of nominee .....
  3. Period of service with employment council .....
  4. Standard of education .....
  5. State whether at any time convicted of a criminal offence.....  
If so, give date(s) and particulars .....
  6. Name of previous employer .....
- Three recent testimonials as to the character of the above-mentioned person, from persons of standing, are attached.

Yours faithfully,

Date ....., 19 .....

Secretary

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

Form L.R. 20

LABOUR RELATIONS ACT, 1985

Certificate of Appointment of Designated Agent

This is to certify that ... has, in terms of section 69 of the Labour Relations Act, 1985, been appointed by the Registrar as a designated agent of the ... (name of employment council)

Dated at Harare this ... day of ..., 19...

Registrar of Labour Relations

Form L.R. 22

LABOUR RELATIONS ACT, 1985

Notification to Party to Attend Proceedings

To ... Name and address of party

You are hereby notified that the matter/appeal concerning ... (subject of appeal/matter) in respect of which a notice of appeal/reference was made on the ... and to which you are a party/to which you have been joined as a party/shall be heard before ... (specify the Tribunal, or the name designation of the Officer, as the case may be) at ... (place) on ... at the hour ... m.

N.B.—If, as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interests.

Given under my hand at ... this ... day of ..., 19...

Registrar on behalf of Tribunal\* Senior Labour Relations Officer\* Labour Relations Officer\*

\* Delete inapplicable.

Form L.R. 29

LABOUR RELATIONS ACT, 1985

Show Cause Order

To ... Name or designation and address of party

You are hereby directed to appear before ... (name and designation of appropriate authority)

at ... (place) on ... (date) at the hour ... m., to show cause why the collective job action/lock-out threatened/anticipated/initiated/by you/against you/on ... (date of notification of action in terms of section 120 (2) of the Act, or date of commencement of action)

and involving ... (Name or designation and, if applicable address, of employer, undertaking, trade or occupation affected by action)

should not be disposed of in terms of section 123 of the Act. Pending the determination of this matter I further direct that the collective job action/lock-out— (a) be terminated/postponed/suspended; or (b) be reduced to the following extent

N.B.—If you fail to show cause at the time and place notified, you shall be guilty of an offence, and liable to a fine not exceeding two thousand dollars or to imprisonment not exceeding one year or to both such fine and such imprisonment.

(Signature of Minister/ Signature and designation of appropriate authority acting on behalf of Minister)

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

Form L.R. 30

LABOUR RELATIONS ACT, 1985

Disposal Order

*N.B.*— (i) Three copies of this form shall be completed by the Appropriate authority, of which one shall be retained by him and the others shall be served on the parties to the dispute.  
 (ii) Any party who does not comply with the whole or any part of this disposal order shall be guilty of an offence, and liable to a fine not exceeding two thousand dollars or to imprisonment not exceeding one year or to both such fine and such imprisonment.

Name, designation and address of appropriate authority making the disposal order .....

Names and addresses of parties to the dispute .....

Return day of show cause order .....

Facts of dispute to which disposal order relates .....

Order by appropriate authority to dispose of dispute .....

Date of disposal order ....., 19.....

Served on parties by hand/posted to parties concerned on 19.....

(Appropriate authority)

Form L.R. 31

LABOUR RELATIONS ACT, 1985

Notice of Appeal to Labour Court

*N.B.*— (i) This notice must be completed in triplicate by the appellant; two copies shall be sent to the Registrar, one which shall be served on the respondent.  
 (ii) A person noting an appeal on behalf of another person or body, shall indicate on this form at which address process should be served.  
 (iii) A copy of the decision, determination or order being appealed against must be attached to this notice.  
 (iv) An appeal against decision of the Registrar in terms of section 47, 65 or 67 of the Act as read with section 11 of the Labour Relations (General) Regulations, 1993, must be lodged within *thirty days* of the date on which the appellant was notified of the decision.

To the Registrar,

I, .....  
 (name of the person noting the appeal)

of .....  
 (address of the above)

hereby note an appeal to the Court from the attached decision/determination/order/show cause order/disposal order (*delete inapplicable*) of /the Minister/the Registrar/the Works Council/the National Employment Council/the appropriate authority named therein (*delete inapplicable*).

I note this appeal on my own behalf/on behalf of .....

(name and address of person or body on whose behalf acting)

in my capacity as .....

(specify interest in appeal)

The grounds on which this appeal is noted are as follows:

.....  
 .....  
 .....

I wish to have summoned to attend the appeal the following persons as witnesses:

Name	Address	Notes
.....	.....	.....
.....	.....	.....
.....	.....	.....

(Signature of person noting appeal)

As Witnesses:

1. ....

2. ....

For official use only

Received by the Registrar on the ....., 19.....

Registrar

\* Delete inapplicable.

LABOUR RELATIONS ACT, 1985

Summons

To ..... Name of witness and address  
 .....  
 .....

You are hereby required to appear in person before\* .....  
 ..... at .....  
 ..... (place)

on ..... (date)

at the hour ..... m., and on any subsequent day to which the proceedings may be postponed, giving evidence respecting†

You are to bring with you and then produce to\* .....  
 .....

the several books, documents and/or things specified in the list hereunder.  
 List of books, documents or things to be produced—

1. ....
2. ....
3. ....

*N.B.—If you fail to appear in person as witness at the time and place notified, you shall be guilty of an offence and liable to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.*

Given under my hand at ..... this ..... day of ....., 19.....

Registrar on behalf of Tribunal‡  
 Senior Labour Relations Officer‡  
 Labour Relations Officer‡

\*State body or person concerned.

†Specify in what connexion witness is required to give evidence.

‡Delete whichever is inapplicable.

LABOUR RELATIONS ACT [CHAPTER 28:01]  
 LABOUR INSPECTORATE  
 INSPECTION FORM

*N.B.—*

- (a) This form shall be completed in triplicate.
- (b) All copies of this form shall be signed by the labour officer/inspector and the employer/his or her representative.
- (c) Any contravention shall be noted with a direction to rectify in the space for comments/action taken provided on this form.

Name and address of employer (physical): .....

.....

Tel: .....

Telefax: .....

Inspection date: .....

Industry classification: .....

State: .....

(a) Collective Bargaining Agreement: S.I. No.: .....

(b) Employment Regulations: S.I. No.: .....

(c) Works Council/Plant level Agreement: .....

I. Employees Profile:

Nature of Contract	Number of employees		
	Totals	Males	Females
(i) Permanent			
(ii) Fixed Term Contract			
(a) Seasonal			
(b) Casual			
(iii) Employees under 15 years			

LABOUR RELATIONS (GENERAL) REGULATIONS, 1993

**2.1 General Conditions of Employment**

Conditions of employment	Tick if in compliance	Comments by labour officer/inspector and action taken to rectify
(i) Grading and wages		
(ii) Hours of work		
(iii) Short time work		
(iv) Special/Annual/Casual leave		
(v) Vacation leave		
(vi) Sick leave		
(vii) Maternity leave		
(viii) Overtime		
(ix) Deductions		
(x) Incentive production bonus scheme		
(xi) Industrial holidays		
(xii) Gratuities		
(xiii) Pension scheme		
(xiv) Accommodation		

**2.2 General Conditions of Employment: Health and Safety**

Conditions of employment	Provided for/ Not provided for	Comments by labour officer/inspector and action taken
(i) Protective clothing		
(ii) N SSA—workman's compensation		
(iii) Health and safety committee		

**3. Operational Institutions/Instruments under the Labour Act**

Institution/Instrument	Functional/ Existence		Comments by labour officer/inspector and action taken
	Functional/ Existence	Non-existent	
(i) Workers Committee			
(ii) Works Council			
(iii) Trade Unions: (a) Registered (b) Unregistered			
(iv) Employers Organisations: (a) Registered (b) Unregistered			
(v) Employment Council			
(vi) Employment Code of Conduct: (a) Works Council (b) NEC			

**4. Evidence of any offence/contravention:**

Books or documents/records seized as evidence of offence:

- (i) .....
- (ii) .....

**5. General observations:**

.....

.....

.....

Signed: .....  
*Employer/Representative* ..... *Labour officer/Inspector*

Date: .....

**OFFICIAL USE ONLY**

SUPERVISOR: INSPECTORATE UNIT: .....	DATE: .....
COMMENTS: .....	
.....	
PROVINCIAL HEAD: PLO: .....	
COMMENTS: .....	
.....	

**Statutory Instrument 202 of 1998.**

[Date of publication : 14th February, 1998.]

**Labour Relations (HIV and AIDS) Regulations, 1998**

*S.Is 202/1998, 90/1999*

ARRANGEMENT OF REGULATIONS

1. Title.
2. Interpretation.
3. Education of employees on HIV and AIDS.
4. Medical testing on recruitment.
5. Testing of employees for HIV and confidentiality.
6. Job status and training.
7. Eligibility for employee benefits.
8. Sick and compassionate leave.
9. HIV risk management.
10. Copy of regulations for each employee.
11. Offence and penalty.

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of section 17 of the Labour Relations Act [Chapter 28:01], has made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (HIV and AIDS) Regulations, 1998.

*2. Interpretation*

In these regulations—

“AIDS” means acquired immuno-deficiency syndrome and includes the AIDS-related complex;

“HIV” means human immuno-deficiency virus;

“testing” in relation to HIV includes—

- (a) any direct analysis of the blood or other body fluid of a person to determine the presence of HIV or antibodies to HIV; or
- (b) any indirect method, other than the testing of blood or other body fluid, through which an inference is made as to the presence of HIV;

“related communicable disease” means any communicable disease whose transmission may be linked with HIV due to its transmission through body fluids or whose risk of clinical disease may be increase due to the presence of HIV;

“medical practitioner” means a person registered as a medical practitioner in terms of the Medical, Dental and Allied Professions Act [Chapter 27:08].

*3 Education of employees on HIV and AIDS*

(1) Every employer shall cause to be provided for the benefit of every person employed by him, and at such place and time during normal working hours as he may appoint, education and information relating to—

- (a) the promotion of safe sex and risk-reducing measures in relation to sexually transmitted diseases; and
- (b) the acquiring and transmission of HIV; and
- (c) the prevention of the spread of HIV and AIDS; and
- (d) counselling facilities for HIV and AIDS patients.

(2) Education and information shall be provided in terms of subsection (1) by persons who have proven sound knowledge and expertise in matters relating to HIV and AIDS, and who are able to communicate information with consistency and accuracy.

(3) The design of the education programmes shall be in accordance with guidelines approved by the relevant employer and employee organizations, in consultation with the Ministry of Health and Child Welfare and any other organization with expertises in HIV and AIDS-related matters.

(4) The provision of the education referred to in subsection (1) shall be at such intervals as the relevant employer and employee organizations may agree.

*4. Medical testing on recruitment*

(1) No employer shall require, whether directly or indirectly, any person to undergo any form of testing for HIV as a precondition to the offer of employment.

(2) Subsection (1) shall not prevent the medical testing of persons for fitness for work as a precondition to the offer of employment.

*5. Testing of employees for HIV and confidentiality*

(1) It shall not be compulsory for any employee to undergo, directly or indirectly, any testing for HIV.

(2) No employer shall require any employee, and it shall not be compulsory for any employee, to disclose, in respect of any matter whatsoever in connection with his employment, his HIV status.

(3) No person shall, except with the written consent of the employee to whom the information relates, disclose any information relating to the HIV status of any employee acquired by that person in the course of his duties unless the information is required to be disclosed in terms of any other law.

*6. Job Status and training*

(1) No employer shall terminate the employment of an employee on the grounds of that employee's HIV status alone.

(2) No employee shall be prejudiced in relation to—

(a) promotion; or

(b) transfer; or

(c) subject to any other law to the contrary, any training or other employee development programme; or

(d) status;

or in any other way be discriminated against on the grounds of his HIV status alone.

*7. Eligibility for employee benefits*

(1) Subject to any other law to the contrary, the HIV status of an employee shall not affect his eligibility for any occupational or other benefit schemes provided for employees.

(2) Where in terms of any law the eligibility of a person for any occupational or other benefit scheme is conditional upon an HIV or AIDS test, the conditions attaching to HIV and AIDS shall be the same as those applicable in respect of comparable life-threatening illnesses.

(3) Where any HIV testing is necessary in terms of subsection (2), the employer shall ensure that the employee undergoes appropriate pre- and post-HIV test counselling.

(4) Where an employee who opts not to undergo an HIV testing for the purposes of subsection (2), no inferences concerning the HIV status of the employee may be drawn from such exercise by the employee of the option not to undergo the testing.

(5) Where an employee undergoes an HIV testing for the purposes of subsection (2), the employer shall not, unless the occupational or other benefit scheme concerned is operated by the employer, be entitled to information concerning the HIV status of the employee concerned.

*8. Sick and compassionate leave*

Any employee suffering from HIV or AIDS shall be subject to the same conditions relating to sick leave as those applicable to any other employee in terms of the Act.

*9. HIV risk management*

(1) Where a person is employed in an occupation or is required to provide services where there may be a risk of transmitting or acquiring HIV or AIDS, the employer shall provide appropriate training, together with clear and accurate information and guidelines on minimising the hazards of the spread of HIV or AIDS and related communicable diseases.

(2) The working conditions and procedures in relation to occupations referred to in subsection (1) shall be designed to ensure optimal hygienic precautions to prevent the spread of HIV or AIDS and related communicable diseases to employees and members of the public.

(3) Personal protective devices shall be issued, free of charge, by the employer to persons employed in occupations referred to in subsection (1).

(4) The employer shall cause to be reviewed, for safety and efficacy, the use of any equipment, devices, procedures, including first-aid procedures used, or guidelines followed, in any occupation referred to in subsection (1).

*10. Copy of regulations for each employee*

An employer shall provide every employee with a copy of these regulations.



*11. Offence and penalty*

Any person who contravenes any provision of these regulations shall be guilty of an offence and liable to a fine not exceeding two thousand dollars or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

**Statutory Instrument 15 of 2006.**

[Date of publication : 27th January, 2006.]

**Labour (National Employment Code of Conduct) Regulations, 2006**

*S.Is 15/2006, 232/2006.*

ARRANGEMENT OF SECTIONS

*Section*

1. Title.
2. Interpretation.
3. Objectives of the code.
4. Misconduct.
5. Termination of Contract of Employment.
6. Disciplinary Procedure.
7. Penalties.
8. Appeals.
9. Repeal.

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 101(9) of the Labour Act [Chapter 28:01] made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour (National Employment Code of Conduct) Regulations, 2006.

*2. Interpretation*

In these regulations—

“Act” means the Labour Act [Chapter 28:01];

“disciplinary committee” means a committee set up at a workplace/establishment composed of employer and employees representatives, to preside over and decide over disciplinary cases and/or worker grievancies;

“disciplinary authority” means a person or authority or such disciplinary committee dealing with disciplinary matters in an establishment or at a workplace;

“superior” means a person responsible for the supervision of staff of a section and includes such other superiors in the establishment or organisation;

“misconduct” means offences as given in section 4 of these regulations.

*3. Objectives of the code*

The objectives of the code shall, among other issues include the following—

- (a) to provide machinery for careful investigation of offences before corrective/disciplinary action can be administered; or
- (b) to ensure consistency and prompt action by the responsible/administering official or committee on issues concerning discipline; or
- (c) to ensure equating an offence to the resultant corrective action allowing for mitigation or aggravating factors; or
- (d) to provide guidelines on procedural and substantive fairness and justice in handling disciplinary matters at the workplace.

*4. Misconduct*

An employee commits a serious misconduct if he or she commits any of the following offences—

- (a) any act of conduct or omission inconsistent with the fulfilment of the express or implied conditions of his or her contract; or
- (b) wilful disobedience to a lawful order; or
- (c) wilful and unlawful destruction of the employer’s property; or
- (d) theft or fraud; or
- (e) absence from work for a period of five or more working days without leave or reasonable cause in a year; or

[Paragraph amended by s.i. 232 of 2006.]

- (f) gross incompetency or inefficiency in the performance of his or her work; or

- (g) habitual and substantial neglect of his or her duties; or
- (h) lack of a skill which the employee expressly or implied held himself or herself to possess.

*5. Termination of contract of employment*

No employer shall terminate a contract of employment with an employee unless—

- (a) the termination is done in terms of an employment code which is registered in terms of section 101(1) of the Act; or
- (b) in the absence of the registered code of conduct mentioned in (a), the termination in terms of the National Employment Code of Conduct provided for under these regulations; or
- (c) the employer and employee mutually agree in writing to the termination of the contract; or
- (d) the employee was engaged for a period of fixed duration or for the performance of a specific task and the contract of employment is terminated on the expiry of such period or on the performance of such task.

[Paragraph amended by s.i. 232 of 2006.]

[Paragraph amended by s.i. 232 of 2006.]

*6. Disciplinary procedure*

(1) Where an employer has good cause to believe that an employee has committed a misconduct mentioned in section 4, the employer may suspend such employee with or without pay and benefits and shall forthwith serve the employee with a letter of suspension with reasons and grounds of suspension.

(2) Upon serving the employee with the suspension letter in terms of subsection (1), the employer shall, within 14 working days investigate the matter and conduct a hearing into the alleged misconduct of the employee and, may, according to the circumstances of the case—

- (a) serve a notice, in writing, on the employee concerned terminating his or her contract or employment, if the grounds for his or her suspension are proved to his or her satisfaction; or
- (b) serve a notice, in writing, on the employee concerned removing the suspension and reinstating such employee if the grounds for suspension are not proved.

(3) A determination or order served in terms of subsection 2(b) shall provide for backpay and benefits from the time of the summary suspension.

(4) At a hearing in terms of subsection (2), an employee shall have the right to—

- (a) at least three working days notice of the proceedings against him or her and the charge he or she is facing;
- (b) appear in person before the employer or the employer's representative or disciplinary authority as the case may be and be represented by either a fellow employee, worker's committee member, trade union official/officer or a legal practitioner;
- (c) call witnesses and have them cross-examined;
- (d) be informed of the reasons for a decision;
- (e) address in mitigation before the ultimate penalty is imposed.

*7. Penalties*

(1) In general, disciplinary action should, in the first instance, be educational and then corrective. Punitive action should only be taken when the said earlier steps have proved ineffective.

(2) As far as is possible similar offences committed in similar circumstances should be treated equitably through the award of similar penalties allowing for mitigating and aggravating circumstances.

(3) The dismissal penalty to be imposed for an offence in section 4 is not obligatory but is meant as a guide to employers and an employer may, at his or her discretion apply a lesser penalty for example, a written warning.

(4) For offences which do not warrant dismissal an employer may issue a verbal or written warning as the case may be.

*8. Appeals*

[Heading substituted by s.i. 232 of 2006.]

(1) Depending on the size and circumstances of an establishment or a workplace, an employer may appoint a person in his or her employment as an Appeals Officer or with the agreement of his or her employees or worker representatives, an Appeals Committee to preside over and decide on appeals.

(2) Any internal appeal structures shall be limited to not more than two appeals authorities.

[Subsection amended by s.i. 232 of 2006.]

(3) A person or party who is aggrieved by a decision made in terms of section (2) may, in writing, note an appeal within seven working days with the Appeals Officer or Appeals Committee.

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LABOUR (NATIONAL EMPLOYMENT CODE OF CONDUCT) REGULATIONS, 2006

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(4) The Appeals Officer or Appeals Committee, as the case may be, may call for a formal hearing to hear the appeal or decide from the record submitted.

[Subsection amended by s.i. 232 of 2006.]

(5) An Appeals Officer or Appeals Committee, as the case may be, shall have 14 working days from the date of receipt of the appeal, to dispose of the appeal.

[Subsection substituted mended by s.i. 232 of 2006.]

(6) A person or party who is aggrieved by a decision or manner in which an appeal is handled by his or her employer or the Appeals Officer or Appeals Committee, as the case may be, may refer the case to a Labour Officer or an Employment Council Agent, as the case may be, within seven working days or receipt of such decision.

[Subsection substituted mended by s.i. 232 of 2006.]

(7) The Labour Officer or an Employment Council Agent to whom a case has been so referred shall process the case as provided for under section 93 of the Act.

[Subsection amended by s.i. 232 of 2006.]

*Repeal*

The Labour Relations (General Conditions of Employment) (Termination of Employment) Regulations, 2003, published in Statutory Instrument 130 of 2003, are repealed..

**Statutory Instrument 131 of 2003.**

[Date of publication : 23rd May, 2003.]

**Labour Relations (Protection Against Any Acts of Interference Between Workers'  
Organisation and Employers' Organisation) Regulations, 2003**

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of section 17 (1) of the Labour Act [Chapter 28:01], has made the following regulations—**

*1. Title*

These regulations may be cited as the Labour Relations (Protection Against any Acts of Interference Between Workers' Organisation and Employers' Organisation) Regulations, 2003.

*2. Interpretation*

In these regulations—

“workers' organisation” means a trade union, staff association or workers' committee as defined in the Act.

*3. Protection against acts of interference*

(1) Workers' and employers' organisations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration.

(2) No employer or employers' organisations shall interfere with a workers' organisation or its agents or members with respect to the establishment, function or administration of the worker's organisation.

(3) It shall be an act of interference in terms of subsection (2) for an employer or employers' organisation to promote the establishment of workers' organisation under the domination of the employer or employers' organisation, or to support a workers' organisation by financial or other means, with the object of placing such organisation under the control of the employer or employers' organisation.

(4) Any employer or representative of an employers' organisation or workers' organisation who contravenes subsection (3) 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 imprisonment.

**Statutory Instrument 186 of 2003.**

[Date of publication : 12th September, 2003.]

**Labour Relations (Retrenchment) Regulations, 2003**

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 17 of the Labour Relations Act [Chapter 28:01], made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (Retrenchment) Regulations, 2003.

*2. Interpretation*

In these regulations—

“form” means the appropriate form prescribed in the Schedule:

“retrenchment board” means the retrenchment board established in terms of section 4;

“works council” means a works council as defined in section 2 of the Labour Relations (Workers Committees) (General) Regulations, 1985, published in Statutory Instrument 372 of 1985.

*3. Retrenchment of employees*

(1) An employer who wishes to retrench five or more employees shall do so in terms of section 12C of the Act.

(2) An employer who wishes to retrench less than five employees shall—

(a) give written notice of his intention to the works council established for the undertaking or if there is no such works council to the employment council established for the undertaking or industry; and

(b) provide the works council with details of every employee whom he wishes to retrench and the reasons for the proposed retrenchment.

(3) The works council or employment council shall forthwith attempt to secure agreement between the employer and the 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 (11) of section 12C of the Act.

(4) If, within one month after receiving notice in terms of subsection (1), the 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 the employment council shall send the employer its written approval, in Form LRR2, of the retrenchment of the employees concerned in accordance with the agreement and the works council or employment council shall send another copy to the retrenchment board.

(5) If, within one month after receiving notice, in terms of subsection (1), the 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), the works council or employment council shall refer the matter together with all documents which the employer and the employees concerned may have submitted to the works council or employment council and copies of the minutes of any proceedings or deliberations, to the retrenchment board which shall deal with the matter in terms of section 12C of the Act.

(6) In an establishment or undertaking where there is no works council or employment council the employer shall—

(a) give written notice to the employee(s) concerned of his intention to retrench them, together with the reasons for the proposed retrenchment; and

(b) attempt to secure an agreement with the employee(s) concerned on whether or not the employee(s) should be retrenched and the terms and conditions on which they may be retrenched having regard to the considerations specified in subsection (11) of the section 12C of the Act.

(7) If the employer secures an agreement with the employee(s) concerned on the matters referred to in paragraph (b) of subsection (6) the employer shall send a copy of the agreement signed by all parties concerned, to the retrenchment board.

(8) If within one month after giving notice in terms of paragraph (a) of subsection (6) the employer had failed to secure an agreement with the employee(s) concerned on the matters referred to in paragraph (b) of subsection (6), the employer shall refer the matter to the retrenchment board which shall deal with the matter in terms of section 12C of the Act.

*4. Retrenchment board*

(1) There is hereby established a board, to be known as the retrenchment board, consisting of the following members appointed by the Minister—

- (a) two persons employed in the Ministry of Public Service, Labour and Social Welfare, one of whom shall be designated by the Minister as the chairman of the retrenchment board; and
- (b) one person nominated by the Minister of Finance and Economic Development; and
- (c) one person nominated by the Minister of Industry and International Trade; and
- (d) two persons appointed from a list of not less than four names submitted by such employers' organizations or federation of employers' organizations as the Minister may recognise for the purposes of this paragraph; and
- (e) two persons appointed from a list of not less than four names submitted by such trade unions or federation of trade unions as the Minister may recognise for the purposes of this paragraph.

(2) Members of the retrenchment board shall hold office for such period, not exceeding three years, as the Minister may fix on their appointment and, on the expiry of their term of office, shall be eligible for reappointment.

(3) If at any meeting of the retrenchment board the chairman is absent, the members present may elect one of their number to preside at the meeting as chairman.

(4) Five members of the retrenchment board shall constitute a quorum at any meeting of the board.

(5) All acts, matters or things authorised or required to be done by the retrenchment board may be decided by a majority vote at a meeting of the retrenchment board at which a quorum is present.

(6) At all meetings of the retrenchment board each member present shall have one vote on each question before the board and, in the event of an equality of votes, the chairman or person presiding shall have a casting vote in addition to a deliberate vote.

(7) Except as otherwise provided in this section, the procedure for the convening and conduct of meetings of the retrenchment board shall be as fixed from time to time by the board.

(8) The Minister shall assign such officer in his Ministry as may be necessary to act as secretary of the retrenchment board and otherwise to assist the board in the performance of its functions.

*5. Retrenchment deemed approved in terms of subsection 10 of section 12C of the Act*

Where the proposed retrenchment is deemed approved in terms of subsection 10 of section 12C of the Act and no prior agreement has been made as to the terms and conditions of the retrenchment, the matter shall be referred to the Labour Court which shall give a ruling as to the terms and conditions of the retrenchment.

*6. Forms*

The forms specified in the Schedule shall be used for the purposes of giving effect to the above and the provisions of section 12C of the Act.

*7. Repeal*

The Labour Relations (Retrenchment) Regulations, 2003, published in Statutory Instrument 132 of 2003, are repealed.

SCHEDULE (Section 6)

Form LRR1

NOTICE OF INTENTION TO RETRENCH

TO: .....  
(insert name of works council/employment council/retrenchment board)

Kindly take note that I/We\* .....  
(Insert name of employer)

of .....  
(insert address of employer)

intend to retrench the employees whose names are listed in Annexure 1 and seek approval to effect such retrenchment. My/Our\* reasons for the retrenchment are listed in Annexure 2 to this notice.

.....  
Employer

\*delete inapplicable

NOTES:

1. The name of every employee whom the employer seeks to retrench must be listed on a separate sheet of paper which should be marked "Annexure 1" and attached to this notice.
2. The reasons for the retrenchment must be stated on a separate sheet of paper which should be marked "Annexure 2" and attached to this notice.

Form LRR2

APPROVAL OF RETRENCHMENT OF EMPLOYEES

THE .....  
(insert name of employment board/employment council/works council granting approval)

hereby grants approval to:.....  
(insert name and address of employer to whom approval is granted)

to retrench the employees whose names are listed in Annexure 1 to this form on .....  
(insert date on which retrenchment is to take effect)

subject to the terms and conditions which are listed in Annexure 2.

.....  
Secretary

.....  
Chairman

NOTES:

1. The name of every employee whose retrenchment is approved must be listed on a separate sheet of paper which should be marked "Annexure 1" and attached to this notice of approval.
2. Any terms and conditions subject to which the employees concerned may be retrenched must be listed on a separated sheet of paper which should be marked "Annexure 2" and attached to this notice of approval.
3. This notice of approval should be signed by the chairman and secretary of the employment council or works council which grants approval.
4. This notice of approval must be sent to the employer and the employees concerned, and a copy of it, together with a copy of each annexure, must be sent to the retrenchment board.



LABOUR RELATIONS (RETRENCHMENT) REGULATIONS, 2003

Form LRR3

REFERENCE OF RETRENCHMENT APPLICATION TO RETRENCHMENT BOARD

TO: The Secretary,  
Retrenchment Board,  
Ministry of Public Service, Labour and Social Welfare,  
Private Bag 7707, Causeway.

FROM: .....  
(insert name of employment board/employment council/works council)

On the ..... (date), this board/council  
received a notice from: .....  
.....  
(insert name and address of employer concerned)

stating his intention to retrench certain employees. This board/council has been  
unable to reach agreement on the following issues: .....  
.....  
(state issues on which agreement has not been reached)

and the matter is therefore referred to you in terms of subsection (4) of section  
12C of the Act. Copies of the relevant documents are attached hereto.

.....  
Secretary

.....  
Chairman

NOTES:

1. This form must be accompanied by copies of all documents submitted to the board or council by the employer and employees concerned, together with copies of the minutes of the proceedings and deliberations of the board or council.
2. This form must be signed by the chairman and secretary of the board or council concerned.

Form LRR4

NOTICE OF MINISTER'S DECISION REGARDING RETRENCHMENT OF EMPLOYEES

IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of subsection 9 of section 12C of the Act, has considered the proposal of—

.....  
.....  
(insert name and address of employer)

to retrench the employees whose names are listed in Annexure 1 of this Authority, and—

- (a) has approved the proposed retrenchment, subject to the terms and conditions which are listed in Annexure 2.
- (b) has refused to approve the proposed retrenchment.

.....  
Secretary for Public Service, Labour and Social Welfare

NOTES:

1. The name of every employee whose retrenchment is authorized must be listed on a separate sheet of paper, which should be marked "Annexure 1" and attached to this notice.
2. Delete paragraph (a) or (b), as appropriate.
3. Any terms and conditions subject to which the employees concerned may be retrenched must be listed on a separated sheet of paper, which should be marked "Annexure 2" and attached to this notice.
4. Copies of this notice, together with its annexures, must be sent to the retrenchment board, the employment board/employment council/works council which considered the matter, and the employer concerned.

**Statutory Instrument 217 of 2003.**

[Date of publication : 24th October, 2003.]

**Labour (Settlement of Disputes) Regulations, 2003**

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare has, in terms of section 17 of the Labour Relations Act [Chapter 28:01], made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour (Settlement of Disputes) Regulations, 2003.

*2. Interpretation*

In these regulations—

“form” means the appropriate form prescribed in the Schedule.

*3. Powers of labour officers to settle disputes or unfair labour practices*

(1) For the purposes of this section and section *ninety-three* of the Act, “attempt to settle” shall refer to—

- (a) any form of communication by the labour officer to either party in respect of the dispute or unfair labour practice; or
- (b) any form of notification for the parties to attend any proceedings in respect of the dispute or unfair labour practice; or
- (c) any hearing that the labour officer may conduct in respect of the dispute or unfair labour practice.

(2) After due inquiry, a labour officer shall, in respect of any matter arising from a dispute or unfair labour practice, attempt to settle the matter through conciliation, and if the parties come to an agreement on the matter, set down, in writing, the terms of the agreement in form LR 1.

(3) If within thirty days from the date the labour officer attempted to settle the dispute or unfair labour practice, the parties have failed to come to an agreement, the labour officer shall issue a certificate of no settlement in form LR 2.

(4) Where a labour officer has issued a certificate of no settlement, the parties to the dispute may, notwithstanding the issuance of the certificate, agree to extend the period of conciliation, which agreement shall be in form LR 3.

(5) The agreement specified in subsection (4) shall be communicated to the labour officer who shall not refer the dispute or unfair labour practice to arbitration but shall continue in his or her attempt to settle the matter through conciliation.

(6) A labour officer to whom a dispute or unfair labour practice has been referred, or to whose attention it has come, shall not spend more than ninety days before attempting to settle it.

*4. Representation of parties*

A party to a matter before a labour officer may be represented by a fellow employee, an official of a registered trade union, employers organization or a legal practitioner.

*5. Reference to arbitration*

(1) After a labour officer has issued a certificate of no settlement and the parties to the dispute have not agreed to extend the period of conciliation, the labour officer shall, in terms of subsection (5) of section 93 of the Act, refer the dispute to compulsory arbitration in form LR 4.

(2) Before referring a dispute to arbitration, the labour officer shall afford the parties a reasonable opportunity of making representations either orally or in writing on the matter:

Provided that the labour officer shall refer the dispute to compulsory arbitration not later than fourteen days from the expiry of the thirty days referred to in subsection (3) of section 93 of the Act.

(3) The labour officer upon consulting any labour officer who is senior to him or her and to whom he or she is responsible in the area in which he attempted to conciliate the dispute, may appoint an arbitrator in form LR 5.

(4) In referring a dispute to compulsory arbitration, the labour officer may determine the share of costs of the arbitration to be borne by each party:

Provided that the labour officer shall as much as possible endeavour to ensure equity between the parties.

*6. Procedure after reference to arbitration*

(1) Upon reference of a dispute to arbitration, an arbitrator shall notify parties to the dispute of the date, time and place of hearing of the dispute in form LR 6.

(2) After hearing both parties the arbitrator shall make an appropriate award in form LR 7 to settle the matter which award shall be served on both parties.

(3) An appeal on a question of law from any award by an arbitrator shall lie with the Labour Court and shall be made in form LR 8.

(4) An appeal in terms of subsection (3) shall be made not later than fourteen days from the date the appellant becomes aware of the award.

(5) Any party to whom an arbitral award relates may submit for registration a copy of the award together with a certificate specified in form LR 9 to the court of any magistrate which would have 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 the Magistrates Court, to the High Court.

(6) Where the arbitral award has been registered in terms of subsection (5) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

#### *7. Absence of party to dispute*

If a party to a dispute referred to arbitration fails to appear at the hearing, the arbitrator may nevertheless proceed with the hearing in his or her absence.

#### *8 Voting by secret ballot*

(1) Where employees or employers intend to resort to collective job action to resolve disputes in terms of section 104 of the Act, and the collective job action is to be engaged in after voting by secret ballot in terms of paragraph (e) of subsection (3) of section 104 of the Act, the chairman and the secretary of the workers' committee, trade union or employers' organization, as the case may be, shall, before the secret ballot is conducted, inform the employees or employers concerned, in writing, of the reasons for the ballot and the proposed collective job action.

(2) The secret ballot shall be conducted at the work place, before the expiry of the period of notice of the intention to resort to collective job action, and inside working hours:

Provided that this shall not be disruptive to normal production processes or will not interfere with the efficient running of the undertaking or industry.

(3) The chairman or secretary of the workers' committee, trade union or employers' organization, as the case may be, shall provide each person with a voting slip to be placed in the ballot box.

(4) The voting shall proceed in the presence of a labour officer or designated agent and each person shall be entitled to one vote only.

(5) The counting shall be done openly by the labour officer or designated agent, one of whom shall record the result of the ballot.

(6) The simple majority outcome shall prevail and in the case of a deadlock there shall not be a collective job action.

(7) In the case of an industry-wide action the secret ballot shall be conducted at the different establishments or enterprises and the Secretary General of the trade union or employers' organization, as the case may be, shall collect all the results of the ballot from the chairmen of the respective workers' committees or employers' organizations, as the case may be, in the different enterprises.

(8) The Secretary General shall record the results of the ballot which result shall be binding on every person in the industry concerned.

(9) The result of the ballot shall be of those who actually cast their vote and not of the total membership of the trade union or employers' organization, and those who do not vote shall forfeit their right to vote.

(10) The trade union or employers' organization shall as much as possible endeavour to organize the ballot to cover all undertakings within their scope of coverage in the industry concerned and to make sure that all eligible employees or employers take part in the balloting.

(11) The trade union or employers' organization, as the case may be, shall keep records of the ballot for three years from the date of closure of the ballot.

#### *9. Picketing authority*

Where a registered trade union or workers' committee authorises a picket in terms of section 104A of the Act, the authorization shall be in form LR 10.

#### *10. Transitional provisions*

Any case pending before a labour officer or a senior labour officer immediately before the date of commencement of the Labour Relations Act, 2002, No. 17 of 2002, shall be proceeded with in terms of these regulations.

11. Repeals

The Labour Relations (settlement of Disputes) Regulations, 1993 published in Statutory Instrument 30 of 1993, are repealed.

SCHEDULE (Section 2)

Form L.R. 1

LABOUR RELATIONS ACT [CHAPTER 28:01]

Certificate of Settlement

N.B.: Three copies of this form shall be completed by the officer concerned, of which one shall be retained by him and the others shall be given to the parties in the matter.

Case number .....

PART I

CERTIFICATE BY CONCILIATING AUTHORITY

I, ..... , certify that the dispute between:  
(conciliating authority)

..... and .....  
(employee party) (employer party)

referred to conciliation on:

.....  
(date)

concerning

.....  
.....  
.....  
(issues in dispute)

was resolved by agreement of the parties on the ..... and further  
(date)

that the terms of the agreement are as follows:.....  
.....  
.....  
(annex agreement if necessary)

Name of officer: .....

Signature of officer: .....

Date and place: .....

PART II

CONFIRMATION BY PARTIES

We, the undersigned, being parties to the above dispute do hereby confirm having agreed as indicated above.

Signed: ..... Date: .....  
(employee party)

Signed: ..... Date: .....  
(employer party)

Form L.R. 2

LABOUR RELATIONS ACT [CHAPTER 28:01]

Certificate of No Settlement

N.B.: Three copies of this form shall be completed by the officer concerned, of which one shall be retained by him and the others shall be given to the parties in the matter.

Case number .....

I, ..... , certify that the dispute between:  
(conciliating authority)

..... and .....  
(employee party) (employer party)

referred to conciliation on:

.....  
(date)

concerning

.....

LABOUR (SETTLEMENT OF DISPUTES) REGULATIONS, 2003

.....  
.....  
.....  
(issues in dispute)  
remains unresolved as at .....  
(date)  
Name of officer: .....  
Signature of officer: .....  
Date and place: .....

Form L.R. 3

LABOUR RELATIONS ACT [CHAPTER 28:01]

Agreement of Parties to Extend Period for Conciliation

**N.B.:** Three copies of this form shall be completed by the parties concerned, of which one shall be retained by each of the parties and one sent to the conciliation authority.

Case number .....

We, the undersigned, being parties to the dispute referred to: .....

..... on ..... hereby agree to  
(conciliating authority) (date)

extend the conciliation period for a further ..... days to give ourselves more time to endeavour to reach an agreement.

Signed: ..... Date: .....  
(employer party)

Witnessed by: ..... Date: .....

Signed: ..... Date: .....  
(employee party)

Witnessed by: ..... Date: .....

Form L.R. 4

LABOUR RELATIONS ACT [CHAPTER 28:01]

Reference to Arbitration

Three copies of this form shall be completed by conciliating authority or designated agent concerned, of which—

- (i) one copy shall be delivered by hand or by post to the arbitrator;
- (ii) one copy each shall be given to the parties to the arbitration.

Compulsory/Voluntary Arbitration

To: .....

.....  
(name and address of person/body arbitrating)

I, ..... , being .....  
(name of referring authority) (designation)

hereby refer to arbitration by .....  
(name of arbitrating authority)

the matter between:

..... and .....  
(name of parties)

concerning .....

(subject matter for arbitration)

in accordance with the wishes of the parties/in accordance with the arbitration clause contained in terms of section 93 (5) (a) and 93 (5) (c).

(specify collective bargaining agreement, or other agreement or contract in which contained and relevant section of Labour Act)

LABOUR (SETTLEMENT OF DISPUTES) REGULATIONS, 2003

The issue(s) to be arbitrated upon is/are as follows: .....  
.....  
.....  
.....

Signed: .....  
(referring authority)

Form L.R. 5

LABOUR RELATIONS ACT [CHAPTER 28:01]

Appointment of Arbitrator

TO: .....  
.....  
.....  
(name and address of person/body arbitrating)

You are hereby appointed in terms of section 98 (5) as an arbitrator in the matter of .....  
(name of aggrieved party)

and

.....  
(name of other party)

and the following shall be the terms of reference: .....  
.....  
.....

Signed: .....  
(labour officer/designated agent)

Form L.R. 6

LABOUR RELATIONS ACT [CHAPTER 28:01]

Notification to Party to Attend Proceedings

TO: .....  
.....  
.....  
(name and address of party)

You are hereby notified that the matter concerning: .....

(subject matter)

in respect of which reference was made on the ..... and to

which you are a party shall be heard before .....  
(specify the name of the arbitrator or arbitration board)

at .....  
(place)

on .....  
(date)

at ..... a.m./p.m.

**N.B.:** If as a party, you fail to attend the hearing at the time and place notified, the hearing may proceed without you to the possible detriment of your interest.

GIVEN under my hand at ..... this day of ..... 20 .....

.....  
(arbitrating authority)

LABOUR RELATIONS ACT [CHAPTER 28:01]

Arbitration Award

Three copies of this form shall be completed by the arbitrator concerned, of which—

- (i) one copy shall be retained by the arbitrator;
(ii) the others shall be served on the parties to the arbitration.

Name, designation and address of arbitrator

.....
.....
.....

Name and address of parties to matter in dispute:

.....
.....

Dates on which matter heard .....

Issue(s) in dispute:

.....
.....
.....

award by arbitrator[s]:

.....
.....
.....

(name of arbitrator(s))

(signature of arbitrator)

Date: ..... and place: .....

LABOUR RELATIONS ACT [CHAPTER 28:01]

Appeal Against Arbitration Award

In the matter between

(name and address of aggrieved party)

and

(name of other party)

NOTICE OF APPEAL AGAINST ARBITRATION AWARD

Please take note that.....(name of aggrieved party) hereby notes an appeal on a question of law in terms of section 98 (10) of the Labour Relations Act, against the Award handed down by.....(name of arbitrator) on.....(date) and the following are the grounds of Appeal—

- 1.
2.
3.

Signed: .....

.....

(name and address of aggrieved party)

LABOUR (SETTLEMENT OF DISPUTES) REGULATIONS, 2003

To: .....  
(name of arbitrator)

And to: .....  
.....  
(name and address of other party)

And to: .....  
.....  
(Registrar of Labour Court)

Form L.R. 9

LABOUR RELATIONS ACT [CHAPTER 28:01]

Certificate in Terms of Section 98 (13) of the Labour Relations Act

In terms of section 98 (13) of the Labour Relations Act, I hereby certify that the attached arbitration award is a true copy of the award issued by me on.....  
.....  
(date)

In the matter involving ..... and .....  
(parties to the dispute)

and that the award is registrable with the Magistrate's/High Court

.....  
(name of arbitrator)

.....  
(signature of arbitrator)

Date: ..... Place: .....

Form L.R. 10

LABOUR RELATIONS ACT [CHAPTER 28:01]

Picketing Authority

To: .....  
(members or supporters of a trade union or workers' committee)

WHEREAS .....  
is engaged in/is to be engaged in a Lawful Collective Job Action/Lock out as from  
.....  
(date)

This serves as authority for you to picket in respect of the said Collective Job Action/Lock out, in terms of section 104A (2) of the Labour Relations Act [Chapter 28:01].

Picketing shall be conducted by .....  
e.g. (placards, song, dance etc.)

as from ..... (time and date) to ..... (date)

At/Along ..... (venue)

Peacefully and (without obstructing traffic users/shoppers etc.)

Issued by ..... (name of trade union)

A duly registered Trade Union/Workers' Committee Register number .....

Date: ..... 20 ..... at ..... (place)

Signed: .....  
(Secretary-General)



**Statutory instrument 70 of 1996.**

[Date of publication : 17th May, 1996.]

**Labour Relations (Specification of Minimum Wages) Notice, 1996**

*S.Is 307A/2001, 335/2001, 160/2003; 140/2004, 41/2005, 98/2006.*

**THE Minister of Public Service, labour and Social Welfare, in terms of section 20 of the Labour Act [Chapter 28:01], hereby makes the following notice:—**

*1. Title and date of commencement*

- (1) This notice may be cited as the Labour Relations (Specification of Minimum Wages) Notice, 1996.
- (2) This notice shall come into operation on the 1st June, 1996.

*2. Application*

This notice shall apply to all employers and employees (other than independent contractors)—

- (a) to whom no National Employment Council agreement or employment regulations apply; and
- (b) of a class specified in Part II of the Schedule, notwithstanding any less favourable specification of minimum wages in any National Employment Council agreement or employment regulations.

[Section substituted by s.i. 307A of 2001.]

*3. Effect of minimum wages*

(1) Nothing in this notice shall be construed as permitting an employer to pay an employee a wage that is less than the wage to which that employee is entitled in terms of—

- (a) a contract or an agreement or arrangement of any kind whatsoever, express or implied; or
- (b) an agreement, determination or regulations made in terms of any enactment;

whether entered into or made before, on or after the 1st June, 1996.

(2) This notice shall apply, notwithstanding any other law or agreement providing for a wage less than that prescribed by this notice.

*4. Interpretation*

In this notice—

“agrobased industry” means an industry in which persons are engaged in the processing of timber or an agricultural product, including fruit, meat, sugar, tea, coffee and other food crops or livestock products;

[Definition inserted by s.i.335 of 2001]

“casual employee” means an employee whose engagement is for a period of not more than six weeks in any three successive months;

“employment enactment” means any enactment, or agreement made under the provisions of an enactment, whereby the terms of service between employers and employees have been fixed.

*5. Minimum wages*

(1) Subject to this notice, every employer of an employee of a class specified in the Schedule shall pay that employee, with effect from the 1st June, 1996, wages not less than those specified therein.

(2) In determining an employee’s entitlement to a minimum wage in terms of this notice, no account shall be taken of any other remuneration not forming part of an employee’s fixed or ordinary wage.

(3) A casual employee shall be paid not less than twice the amount of the hourly, daily or weekly wage, calculated in accordance with section 9, by reference to the wage specified in the Schedule.

*6. Deductions*

No employer of an employee who is being paid the minimum wage in terms of this notice shall deduct or set off any amount from the wages of such employee, except—

- (a) in the case of an employee to whom the provisions of any employment enactment apply, as an amount which may be lawfully deducted or set off in terms of that employment enactment;
- (b) in the case of any other employee—
  - (i) where the employee is absent from work without the leave of his employer, a pro rata amount of his wage for the period of such absence; or
  - (ii) contributions to a holiday fund, benevolent fund, provident fund or sick-benefit fund, medical-aid or insurance policies; or

- (iii) with the consent of the employee, any amount in respect of money owing for goods supplied or services rendered to the employee by the employer or for the repayment of money lent to the employee by the employer; or
- (iv) any amount which the employer is compelled by law or legal process to pay on behalf of the employee; or
- (v) any amount recovered for payments made in error or overpayment of wages.

*7. Withdrawal and reduction of benefits*

Except with the written consent of the Minister, no employer shall withdraw, reduce or alter any benefit granted to an employee immediately prior to the 1st June, 1996, if such withdrawal, reduction or alteration will reduce the total payment to the employee to a sum less than that specified in the Schedule.

*8. Prohibition of discrimination*

The minimum wages prescribed by this notice shall be paid without discrimination on the grounds of race, sex or age.

*9. Conversion of rates*

- (1) For the purposes of ascertaining the minimum wage to be paid to—
  - (a) a fortnightly paid employee, the minimum wage specified in the Schedule as appropriate to that employee shall be divided by two and one-sixth.
  - (b) a weekly paid employee, the minimum wage specified in the Schedule as appropriate to that employee shall be divided by four and one-third;
  - (c) a daily paid employee, the minimum wage specified in the Schedule as appropriate to that employee shall be divided by—
    - (i) twenty-two, in the case of employees who work a five-day week;
    - (ii) twenty-six, in the case of employees who work a six-day week;
  - (d) an hourly paid employee, the weekly wage calculated in terms of paragraph (b) shall be divided by the number of hours normally worked in a week.
- (2) An employee whose wages are paid in accordance with this section shall be deemed to be receiving the minimum monthly wage specified in the Schedule.

*10. Exemption from provisions of this notice*

- (1) An employer or employee may apply to the Minister for exemption from all or any of the provisions of this notice or for a variation of the Schedule in so far as this notice or the Schedule hereto affects him.
- (2) An application made under subsection (1) shall clearly show the wages paid to the employee by the employer concerned immediately prior to the 1st June, 1996, and on the date of the application, and shall be accompanied or supplemented by such other information relevant to the application as the Minister may require.

**SCHEDULE**

**PART I**

	<i>Per month</i>
	\$
For all employees whose remuneration is not fixed by or in terms of any agreement, determination or regulations made under the Act.	6 8700 000

(2) The minimum wage referred to in Part I of the Schedule to the principal notice shall take effect from the 1st March, 2006.

(3) Where the wage paid to an employee referred to in Part I of the Schedule to the principal notice in respect of his or her employment as such from the 1st March, 2006, to the date of commencement of this notice was less than the wage prescribed for his or her grade in that Schedule, as substituted by subsection (1) of this section, the employer shall pay him or her the difference, not later than two months after the date of commencement of this notice.

[Schedule substituted by s.i. 98 of 2006]

**Statutory Instrument 6 of 2002.**

**Labour Relations (Terminal Benefits and Entitlements of Agricultural Employees Affected  
by Compulsory Acquisition) Regulations, 2002**

*S.Is 6/2002, 101/2002, 232/2002, 233/2006.*

**IT is hereby notified that the Minister of Public Service, Labour and Social Welfare, in terms of section 17 of the Labour Relations Act [Chapter 28:01], has made the following regulations:—**

*1. Title*

These regulations may be cited as the Labour Relations (Terminal Benefits and Entitlements of Agricultural Employees Affected by Compulsory Acquisition) Regulations, 2002.

*2 Interpretation*

In these regulations—

“acquiring authority” has the meaning given to that term by section 2 of the Land Acquisition Act [Chapter 20:10];

“agricultural industry” means the industry in which employers and employees are associated for the commercial production of crops, including forestry, livestock, poultry and fish, and their produce, and includes the complementary processing of agricultural products on the property of the employer where such livestock or crops are produced or on the property of any other agricultural employers;

“Agricultural Industry Agreement” means the Collective Bargaining Agreement for the Agricultural Industry published in Statutory Instrument 323 of 1993, as amended from time to time;

“Committee” means the Agricultural Employees’ Compensation Committee established in terms of section 5;

“employee” means any person employed by, or working for, any employer in the agricultural industry, and receiving or entitled to receive any remuneration in respect of such employment or work;

“employer” means any person who employs or provides work for another person in the agricultural industry and remunerates or expressly or tacitly undertakes to remunerate him, and includes the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed;

“farm” means any piece of rural land on which employees are employed;

“terminal benefits and entitlements”, in relation to an employee, means the benefits and entitlements specified in paragraphs (a) to (f) of subsection (1) of section 3.

*3. Terminal benefits and entitlements of agricultural employees affected by compulsory acquisition*

(1) Notwithstanding any other statutory instrument, arrangement or agreement to the contrary, if it becomes necessary for an employer to terminate the employment of any employee because any farm or part of a farm belonging to the employer has been compulsorily acquired for resettlement or other purposes in terms of the Land Acquisition Act [Chapter 20:10], the following amounts shall be payable by the employer to each employee whose employment is so terminated—

(a) severance pay equivalent to the full wages of the employee for a period of three months as shall be calculated using the wage rate at the time when the employer’s property was evaluated by the Ministry of Lands; and

[Paragraph amended by s.i. 232 of 2006.]

(b) wages in lieu of notice under the contract of employment or Agricultural Industry Agreement; and

(c) an amount equivalent to twice the employee’s current monthly wage for each completed year of continuous service with the employer as shall be calculated using the wage rate at the time when the employer’s property was evaluated by the Ministry of Lands; and

[Paragraph amended by s.i. 232 of 2006.]

(d) an amount of one month’s pay in respect of the relocation of the employee; and

[Paragraph amended by s.i. 232 of 2006.]

(e) the gratuity on termination of employment payable to the employee in terms of section 23 of the Agricultural Industry Agreement; and

(f) the cash equivalent of any vacation leave accumulated by the employee in the year in which the termination of his employment occurred.

LABOUR RELATIONS (TERMINAL BENEFITS AND ENTITLEMENTS OF AGRICULTURAL EMPLOYEES  
AFFECTED BY COMPULSORY ACQUISITION) REGULATIONS, 2002

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(2) Where an employee is paid otherwise than monthly, the monthly equivalent of his weekly, daily or hourly wage shall be calculated in accordance with section 9 of the Agricultural Industry Agreement.

(3) For the purpose of paragraph (c) of subsection (1), continuous service shall be construed in accordance with the Agricultural Industry Agreement.

*4. When employment deemed to have been terminated because of compulsory acquisition*

If, at any time after a preliminary notice is served on an employer in terms of paragraph (b) of subsection (1) of section 5 of the Land Acquisition Act [*Chapter 20:10*] the employment of any person on the farm, or part of a farm referred to in that notice is terminated, then it shall be presumed for the purposes of section 3 that such employment was terminated because of such acquisition, unless the contrary is proved by the employer concerned.

*5. Agricultural Employees Compensation Committee*

(1) There is hereby established a committee, to be known as the Agricultural Employees' Compensation Committee, which shall consist of the Secretary of the Ministry responsible for Public Service, Labour and Social Welfare or his nominee, who shall be the chairman of the Committee, and the following members appointed by the Minister—

- (a) an additional representative of the Ministry responsible for Public Service, Labour and Social Welfare chosen by the Minister; and
- (b) a person nominated by the Minister responsible for agriculture; and
- (c) a person nominated by the Minister responsible for local government; and
- (d) a person nominated by the employer representatives in the National Employment Council for the Agricultural Industry; and
- (e) a person nominated by the employee representatives in the National Employment Council for the Agricultural Industry.

(2) Each member of the Committee may appoint a person as an alternate member of the Committee, and any such alternate member may act as a member during any period that a substantive member is unable to exercise his functions.

(3) The function of the Committee shall be to determine what terminal benefits and entitlements, if any, are due to any employee of an employer in respect of whom the Committee receives notification of payment of compensation for land compulsorily acquired in terms of section 6.

(4) The Committee shall hold its first meeting on such date and at such place as the Minister may fix, and thereafter the Committee shall meet for the dispatch of business as often as is necessary or expedient and may adjourn, close and otherwise regulate its meetings and procedure as it thinks fit:

Provided that at all meetings of the Committee each member present shall have one vote on each question before the Committee and, in the event of an equality of votes, the chairman shall have a casting vote in addition to a deliberative vote

(5) The quorum at any meeting of the Committee shall be four members.

(6) With the approval of the other members the chairman may invite any person to attend a meeting of the Committee, where the chairman considers that the person has special knowledge or experience in any matter to be considered by the Committee at that meeting.

(7) A person invited to attend a meeting of the Committee in terms of subsection (6) may take part in the proceedings of the Committee as if he were a member thereof, but shall not have a vote on any question before the Committee.

(8) The Committee shall cause minutes of all proceedings of and decisions taken at all meetings of the Committee to be entered in books kept for the purpose.

(9) The Minister, with the approval of the Public Service Commission, may assign any person employed in his Ministry to act as secretary to the Committee.

[Section substituted by s.i. 101 of 2002.]

*6. Terminal benefits and entitlements due may be deducted from compensation payable to employer*

(1) The acquiring authority shall, before making to an employer any advance payment of compensation in terms of section 25 of the Land Acquisition Act [*Chapter 20:10*] or any payment of compensation in terms of section 29C of that Act, notify the Committee in writing of that fact.

(2) If, within thirty days of receiving notification in terms of subsection (1), the Committee—

- (a) certifies in writing that the employer has paid the terminal benefits and entitlements of his employees, the acquiring authority shall proceed to pay the compensation to the employer; or

LABOUR RELATIONS (TERMINAL BENEFITS AND ENTITLEMENTS OF AGRICULTURAL EMPLOYEES  
AFFECTED BY COMPULSORY ACQUISITION) REGULATIONS, 2002

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- (b) certifies in writing that the employer has not paid the terminal benefits and entitlements of his employees or any part of them, the acquiring authority shall deduct from the amount of the compensation payable a sum equivalent to the terminal benefits and entitlements or any part of them that is certified by the Committee in terms of subsection (2a) to be due, and pay such amount to the Committee for disbursement to the employees concerned:

Provided that the Committee shall not make any disbursement in terms of this paragraph before affording the employer a reasonable opportunity to make representations in the matter; or

[Paragraph amended by s.i. 101 of 2002.]

- (c) fails to make any certification in terms of paragraph (a), or (b), the acquiring authority shall proceed to pay the compensation to the employer.

(2a) For the purpose of paragraph (b) of subsection (2), the Committee shall make a recommendation to the Minister of the amount of terminal benefits and entitlements, if any, that in its opinion is due to any employee or group of employees in terms of these regulations, and thereupon—

- (a) the Minister may accept the recommendation or refer it back to the Committee for re-evaluation; and  
(b) if the Minister accepts the recommendation or a recommendation made after re-evaluation, the Committee shall certify that the amount is due.

[Subsection inserted by s.i. 101 of 2002.]

(3) For the avoidance of doubt, nothing in this section shall preclude an employer from paying the terminal benefits and entitlements of his employees prior to receiving any advance payment of compensation in terms of section 25 of the Land Acquisition Act [*Chapter 20:10*] or any payment of compensation in terms of section 29C of that Act.

(4) For the avoidance of doubt it is declared that this section shall apply in respect of every employer to whom any payment of compensation referred to in subsection (1) is due, whether a preliminary notice referred to in section 4 was served upon him before or after the date of commencement of these regulations, and whether or not the employment of any of his employees was terminated before or after such date on account of the compulsory acquisition of his farm.

[Subsection inserted by s.i. 232 of 2002.]

**Statutory Instrument 372 of 1985.**

[Date of publication : 13th December, 1985.]

**Labour Relations (Workers Committees) (General) Regulations, 1985**

**IT is hereby notified that the Minister of Labour, Manpower Planning and Social Welfare has, in terms of section 26 of the Labour Relations Act, 1985, made the following regulations:—**

*1. Title and operation*

(1) These regulations may be cited as the Labour Relations (Workers Committees) (General) Regulations, 1985.

(2) These regulations shall come into operation on?? 1985.

*2. Interpretation*

In these regulations—

“works council means a council composed of an equal number of employer representatives and employee representatives who are members of a workers committee.

*3.®*

(1) Every employee shall have the right to participate in the formation of a workers committee and to undertake tasks on behalf of a workers committee.

(2) A workers committee shall be formed when a group of employees of any one employer appoint or elect some of the employees to represent them at their place of work.

(3) Employees of one employer shall form only one workers committee.

(4) A workers committee shall comprise of not less than three and not more than fifteen members who shall be representative of the different sections of the undertaking concerned.

(5) Members of a workers committee shall, from among themselves, elect—

(a) a chairman who shall be responsible for presiding over all the meetings;

(b) a secretary who shall be responsible for taking minutes in a meeting, and for keeping any records that the chairman may require to be kept.

*4. Tenure of office*

(1) The term of office of, a workers committee shall be two years after which new elections or appointments will have to take place.

(2) A member of a workers committee shall be eligible for re-appointment or re-election.

(3) On the death of, or vacation of office by a member, the workers shall appoint or elect a person to fill the vacancy:

Provided that if the workers committee would have continued to exist for less than three months, the employees need not appoint or elect a person to fill the vacancy.

*5. Meetings*

(1) The procedure to be followed by a workers committee, at its meetings shall be as simple and as informal as possible and a workers committee shall act in such manner and on such principles as it deems best suited to represent the interests of the workers whom it represents.

(2) Fifty *per cent*, attendance at any meeting of a workers committee shall form a quorum.

(3) Matters requiring to be decided by a workers committee shall be decided by a majority, and in the event of an equality of votes, the chairman shall have a casting vote in addition to his deliberative vote.

(4) Meetings shall be held at l once a week outside the normal working hours.

(5) The chairman shall cause minutes of all proceedings and decisions taken at every meeting of the workers committee to be entered in books kept for the purpose by the secretary.

*6. Works Council*

A workers committee shall elect some of its members to represent the employees on a works council at the request of the chairman of a works council.

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® Note by Deputy Chairman, Law Development Commission – The regulations omitted to give the heading for section 3.