

**NO. 137 OF 1993: BASIC CONDITIONS OF EMPLOYMENT AMENDMENT
ACT, 1993**

STATE PRESIDENT'S OFFICE

No. 1856.

8 October 1993

NO. 137 OF 1993: BASIC CONDITIONS OF EMPLOYMENT AMENDMENT ACT, 1993

ACT

To amend the Basic Conditions of Employment Act, 1983, so as to insert or amend certain definitions; and to institute basic conditions of employment for domestics and to provide for matters connected therewith.

(English text signed by the Acting State President.)

(Assented to 24 September 1993.)

Amendment of section 1 of Act 3 of 1983, as amended by section 1 of Act 27 of 19 and section 1 of Act 104 of 1992

1. Section 1 of the Basic Conditions of Employment Act, 1983 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution in subsection (1) for the definition of "casual employee" of the following definition:

" 'casual employee' means a day worker who is employed by the same employer on not more than three days in any week, but does not include a regular day worker;"

(b) by the insertion in subsection (1) after the definition of "Director General" of the following definitions:

" 'domestic worker' means an employee charged wholly or mainly with the performance of domestic work on dwelling premises, and includes-

(a) a gardener;

(b) a person employed by a household as driver of a motor vehicle and

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

'dwelling premises' means any premises being used wholly or mainly by a household for dwelling purposes-";

(c) by the substitution in the definition of "factory" in subsection (1) for the words following upon paragraph (f) of the following words:

"but does not include any premises where activities are carried or or work is performed) which on account of the nature and extent thereof cannot reasonably be considered to be activities other than farming activities or domestic work;"

(d) by the substitution in subsection (1) for the definition of "farm worker" of the following definition:

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

(e) by the substitution in subsection (1) for the definition of "guard" of the following definition:

" 'guard' means an employee charged with the guarding of property but shall not include a domestic worker or a farm worker also charged with the guarding of poultry or livestock;"

(f) by the insertion in subsection (1) after the definition of "insurance agent" of the following definition:

" 'live-in domestic worker' means a domestic worker who resides on the dwelling premises of the household by which he is employed;"

(g) by the insertion in subsection (1) after the definition of "public holiday" of the following definition:

" 'regular day worker' means a domestic worker employed on not more than three days in any week by the same employer for a period of not less than four consecutive weeks;"

(h) by the substitution in subsection (1) for paragraph (d) of the definition of "shop" of the following paragraph:

"(d) any premises where any other activities are carried out which are connected with or incidental to any one or more of those mentioned in paragraphs (a) to (c), but does not include dwelling premises or premises on a farm on which a farm stall is operated in which mainly products from such farm are sold;"

(i) by the substitution in subsection (1) for the definition of "wage" of the following definition:

"'wage' means the amount of money paid or payable to an employee in terms of the agreement between him and his employer in respect of the ordinary working hours, or, if an employee ordinarily works less than the ordinary working hours, the amount of money paid or payable to him in terms of the agreement in respect of the hours so ordinarily worked by him, or, if an employee is regularly paid a higher amount of money than the amount agreed upon in respect of the ordinary working hours or, as the case may be, the hours so ordinarily worked by him, such higher amount, except where such higher amount was erroneously paid to the employee, and in the case of a farm worker or a domestic worker, includes payment in kind the value of which shall be determined as prescribed;" and

(j) by the deletion of paragraph (c) of subsection (2).

Amendment of section 3 of Act 3 of 1983, as amended by section 3 of Act 114 of 1992

2. Section 3 of the principal Act is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) No employer shall require or permit an employee, other than a farm worker or a live-in domestic worker, to work for a spread-over of more than 12 hours: Provided that if overtime is worked the said maximum spread-over may be extended to the extent to which the ordinary working hours mentioned in section 4 or 5, according to whatever hours are applicable to the employee concerned,

plus any overtime worked by him which does not exceed the maximum daily overtime mentioned in or fixed under section 8 plus the time taken up by a meal interval which the employee is allowed under section 7, exceed 12 hours during any day (according to the meaning of 'day' in the definition of 'spread-over')."; and (b) by the substitution for subsection (A) of the following subsection:

"(A) No employer shall require or permit a farm worker or a live-in domestic worker to work for a spread-over of more than 14 hours."

Substitution of section 6A of Act 3 of 1983, as inserted by section 6 of Act 104 of 1992

3. The following section is hereby substituted for section 6A of the principal Act:

"Extension of working hours of farm worker and domestic worker 6A. (1) An employer may conclude a written agreement with a farm worker or a domestic worker, signed by both parties, in terms of which the ordinary working hours of the farm worker or the domestic worker for a period agreed upon, but- (a) in the case of a farm worker, not exceeding four months; and (b) in the case of a domestic worker, not exceeding 26 days, in any continuous period of 12 months, are extended, but not by more than four hours per week: Provided that the ordinary working hours of the farm worker or the domestic worker shall be reduced by a corresponding number of hours during a period of the same duration as that during which the extended hours were in force, and in the same period of 12 months. (2) An employer who concludes an agreement contemplated in subsection (1) shall furnish the farm worker or domestic worker concerned with a copy thereof.

(3) An agreement contemplated in subsection (1) shall not have the effect that the ordinary daily working hours of-

(a) the farm worker are extended to more than 10 hours on any day; or (b) the domestic worker are extended to more than 12 hours on any day

(4) An agreement contemplated in subsection (1) shall contain the following provisions, namely-

(a) the employer shall pay the farm worker or the domestic worker for the duration of the period during which he works extended or reduced hours the wage he would have received if he had worked ordinary working hours;

(b) if the ordinary working hours of the farm worker or the domestic worker have not yet been reduced as contemplated in subsection (1) after the period of 12 months mentioned in the said subsection has elapsed or on the termination of his contract of employment, the employer shall pay him an amount, calculated at the rate mentioned in section 9(1), in respect of the extended working hours he worked by virtue of the agreement; and

(c) the domestic worker shall not work overtime on the day on which he works extended working hours."

Amendment of section 7 of Act 3 of 1983, as amended by section 7 of Act 104 of 1992

4. Section 7 of the principal Act is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) An employer may conclude an agreement with his employee to shorten such employee's meal interval to not less than 30 minutes, but such agreement shall not be of any force and effect unless the employer, excluding the employer of a domestic worker, has given written notice of such agreement to an inspector.";

(b) by the insertion after paragraph (b) of subsection (3) of the following paragraph:

"(bA) a domestic worker who, during his meal interval, does not work other than to take care of children, the aged, the sick, the frail and the disabled, shall be deemed to have worked during such meal interval;" and

(c) by the substitution for paragraph (c) of subsection (3) of the following paragraph:

" (c) the time by which an employee's, other than a farm worker's or a domestic worker's, meal interval exceeds one hour and 15 minutes shall be regarded as time worked by the employee." . Amendment of section 8 of Act 3 of 1983, as amended by section 2 of Act 27 of 1984 and section 8 of Act 104 of 1992

5. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No employer shall require or permit an employee to work overtime otherwise than in terms of an agreement concluded by him with the employee and provided such overtime does not exceed three hours on any day or 10 hours in any week, or, where subsection (2) has been applied, does not exceed the maximum overtime fixed under that subsection: Provided that in the case of a domestic worker who takes care of children, the aged, the sick, the frail and the disabled, such overtime may not exceed 14 hours in any week."

Amendment of section 12 of Act 3 of 1983, as amended by section 3 of Act 27 of 1984

6. Section 12 of the principal Act is hereby amended-

(a) by the substitution for subparagraph (ii) of paragraph (a) of subsection

(1) of the following subparagraph:

"(ii) any other employee, excluding a regular day worker, at least 14 consecutive days,"; and

(b) by the addition of the following paragraph to subsection (1):

"(c) Every employer of a regular day worker shall grant such regular day worker one working day's leave of absence on full pay in respect of every 26 working days for which he has been employed by such employer."

Amendment of section 13 of Act 3 of 1983, as amended by section 4 of Act 27 of 1984 and section 10 of Act 104 of 1992

7. Section 13 of the principal Act is hereby amended-

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"An employer shall, subject to subsection (1A), grant an employee who is absent from work through incapacity-"; and

(b) by the insertion of the following subsection after subsection (1):

"(1A) Every employer of a regular day worker shall grant such regular day worker who is absent from work through incapacity, one working day's sick leave on full pay in respect of every 26 working days for which he has been employed by such employer.".

Amendment of section :14 of Act 3 of 1983, as amended by section 5 of Act 27 of 1984 and section 11 of Act 104 of 1992

8. Section 14 of the principal Act is hereby amended-

(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) at any time after the expiration of the first four weeks of employment, he shall give the other party-

(i) in the case of a weekly employee, one week's notice; and

(ii) in the case of a monthly employee, two weeks' notice;

(iii) if he is a farm worker, one month's notice; or

(iv) if he is a domestic worker paid otherwise than weekly, one month's notice, of termination of such contract: Provided that if any written contract of employment provides for a period of notice of equal duration for both parties which is longer than one week, in the case of a weekly employee, or two weeks, in the case of a monthly employee, or one month, if he is a farm worker or a domestic worker, notice shall in accordance with such contract be given over such longer period."; and

(b) by the substitution in subsection (S) for the words preceding paragraph (a) of the following words:

"The provisions of this section shall not apply in respect of a casual employee and a regular day worker and shall not affect-".

Amendment of section 16 of Act 3 of 1983, as amended by section 12 of Act 104 of 1992

9. Section 16 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) For the purposes of subsections (1) and (2) any extended or reduced working hours worked by a farm worker or a domestic worker in accordance with section 6A shall not be taken into account "

Amendment of section 20 of Act 3 of 1983

10. Section 20 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"An employer shall, subject to section 20A, keep records in the prescribed form and manner, or in such form and manner as may be approved by an inspector in writing, with respect to-".

Insertion of section 20A in Act 3 of 1983

11. The following section is hereby inserted in the principal Act after section 20:

"Records to be kept by employer of domestic worker 20A. (1) An employer of a domestic worker shall not be obliged to keep records contemplated in section 20(1) if such employer and such domestic worker have concluded a written agreement, signed by both parties, in which are mentioned-

- (a) the ordinary working hours of the domestic worker; and
- (b) the wage payable to the domestic worker per month, per week or per day, as the case may be.

(2) If a domestic worker works hours other than those specified in the agreement contemplated in subsection (1), such other hours shall be recorded in the prescribed form.

(3) An agreement contemplated in subsection (1) shall not be amended, unless-

- (a) both parties agree thereto;
- (b) the amendment is made in writing on the existing agreement, and
- (c) both parties have initialled the amendment."

Substitution of section 21 of Act 3 of 1983

12. The following section is hereby substituted for section 21 of the principal Act:

"Certain summaries and extracts to be kept available by employers 21. An employer, except an employer of a domestic worker, shall keep such summaries of or extracts from the provisions of this Act as may be prescribed available on his premises and shall at the request of an employee make such summaries or extracts available to him for perusal."

Short title and commencement

13. (1) This Act shall be called the Basic Conditions of Employment Amendment Act 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.