

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
BASIC CONDITIONS OF
EMPLOYMENT BILL**

[B 98—97]

(As agreed to by the Portfolio Committee on Labour (National Assembly))

[B 98A—97]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WETSONTWERP OP BASIESE
DIENSVOORWAARDES**

[W 98—97]

(Soos goedgekeur deur die Portefeuljekomitee oor Arbeid (Nasionale Vergadering))

[W 98A—97]

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AMENDMENTS AGREED TO
BASIC CONDITIONS OF EMPLOYMENT BILL
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CLAUSE 1

1. On page 6, after line 43, to insert:
“serve” means to send by registered post, telegram, telex, telefax or deliver by hand;

CLAUSE 17

1. On page 11, from line 9, to omit paragraph (a) and to substitute:
 - (a) inform the employee in writing, or orally if the employee is not able to understand a written communication, in a language that the employee understands—
 - (i) of any health and safety hazards associated with the work that the employee is required to perform; and
 - (ii) of the employee’s right to undergo a medical examination in terms of subparagraph (b);
2. On page 11, in line 12, after “examination” to insert:
, for the account of the employer,

CLAUSE 22

1. On page 13, in line 29, before “over” to insert “for sick leave”.

CLAUSE 25

1. On page 14, after line 21, to add the following subsection:
(7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966).

CLAUSE 29

1. On page 15, in line 53, after “language” to insert “and in a manner that”.

CLAUSE 36

1. On page 18, in lines 22 and 23, to omit “four hours a week” and to substitute “24 hours in a month”.

CLAUSE 37

1. On page 18, in line 30, to omit “one month” and to substitute “four weeks”.

CLAUSE 49

1. On page 21, from line 23, to omit subsection (1) and to substitute the following:
 - (1) A collective agreement concluded in a bargaining council may alter, replace or exclude any basic condition of employment if the collective agreement is consistent with the purpose of this Act and the collective agreement does not—
 - (a) reduce the protection afforded to employees by sections 7, 9 and any regulation made in terms of section 13;
 - (b) reduce the protection afforded to employees who perform night work in terms of section 17(3) and (4);
 - (c) reduce an employee’s annual leave in terms of section 20 to less than two weeks;
 - (d) reduce an employee’s entitlement to maternity leave in terms of section 25;
 - (e) reduce an employee’s entitlement to sick leave in terms of sections 22 to 24;
 - (f) conflict with the provisions of Chapter Six;

CLAUSE 50

1. On page 22, from line 6, to omit subsection (2) and to substitute:
 - (2) A determination in terms of section (1)—
 - (a) may not be made in respect of sections 7, 9, 17 (3) and (4), 43(2), 44 or 48 or a regulation made in terms of section 13;
 - (b) may only be made in respect of section 43(1) to allow the employment of children in the performance of advertising, sports, artistic or cultural activities.
2. On page 22, after line 7, to insert the following subsection:
 - (3) A determination in terms of subsection 1(a) must—
 - (a) be made on the advice of the Commission; and
 - (b) be issued by a notice in the *Gazette*.
3. On page 22, in line 9, to omit “(1)” and to substitute “(1)(b)”.
4. On page 22, in line 11, to omit “(1)” and to substitute “(1)(b)”.
5. On page 22, in line 18, to omit “(1)” and to substitute “(1)(b)”.
6. On page 22, in line 19, to omit “any” and to substitute “every”.
7. On page 22, from line 27, to omit subparagraph (ii) and to substitute:
 - (ii) in the case where the majority of employees are not represented by a registered trade union, the employer or employer’s

organisation has taken reasonable steps to bring the application and the fact that representations may be made to the Minister, to the attention of those employees.”.

8. On page 22, in line 31, to omit “(1)” and to substitute “(1)(b)”.
9. On page 22, in line 43, to omit subparagraph (i) and to substitute the following subparagraph:
 - (i) an employer or employer’s organisation that is covered by the determination;
10. On page 22, in line 47, after “made”, to insert:

, or whose employees are covered by a determination in terms of subsection (1),
11. On page 22, in line 52, after “to” to insert “every”.
12. On page 22, in line 53, to omit “any”.
13. On page 22, in line 54, to omit “any”.
14. On page 22, in line 55, to omit “any”.

CLAUSE 52

1. On page 23, in line 17, to omit “55(2)” and to substitute “55(4)”.

CLAUSE 54

1. On page 23, in line 43, to omit “(2)” and to substitute “(1)”.

CLAUSE 55

1. On page 24, after line 41, to insert the following subsection:
 - (6) A sectoral determination in terms of subsection (1)—
 - (a) may not be made in respect of sections 7, 43(2) or 44;
 - (b) may only be made in respect of section 43(1) to allow the employment of children in the performance of advertising, sports, artistic or cultural activities;
 - (c) may not reduce the protection afforded to employees by sections 9 and 17 (3) and (4) or a regulation made in terms of section 13.

CLAUSE 59

1. On page 25, in line 44, to omit “from a fund established” and to substitute “by money appropriated by Parliament”.

CLAUSE 63

1. On page 26, from line 49, to omit subsection (1) and to substitute the following subsection:
 - (1) The Minister may—
 - (a) appoint any person in the public service as a labour inspector;
 - (b) designate any person in the public service, or any person appointed as a designated agent of a bargaining council in terms of section 33 of the Labour Relations Act, 1995, to perform any of the functions of a labour inspector.

CLAUSE 77

1. On page 30, in line 38, after “jurisdiction” to insert “with the civil courts”.

CLAUSE 84

1. On page 32, from line 33, to omit all the words after “year” up to and including “pay” in line 34.
2. On page 32, after line 34, to add the following subsection:
 - (2) Any payment made or any leave granted in terms of this Act to an employee contemplated by subsection (1) during a previous period of employment must be taken into account in determining the employee’s entitlement to leave or to a payment in terms of this Act.

CLAUSE 85

1. On page 32, in line 42, after “delegated” to insert “or assigned”.
2. On page 33, in line 5, after “delegations” to insert “or assignments”.

SCHEDULE ONE

1. On page 36, in item 5, to omit subitem (2) and to substitute the following subitem:
 - (2) The Department must publish reports every two years.
2. On page 36, in item 5, subitem (3), after “tabled” to insert “at Nedlac and”.

SCHEDULE TWO

1. On page 37, in Table One, the second column, the second line, to omit “, up to a maximum of R4 000”.
2. On page 37, in Table One, the second column, the fourth line, to omit “, up to a maximum of R8 000”.
3. On page 37, in Table One, the second column, the sixth line, to omit “, up to a maximum of R12 000”.

4. On page 37, in Table One, the second column, the eighth line, to omit “, up to a maximum of R16 000”.
5. On page 37, in Table One, the second column, the tenth line, to omit “, up to a maximum of R20 000”.

SCHEDULE THREE

1. On page 37, in the definition of “mineworker”, the second line, to omit “the regulations” and to substitute:

any regulation that is in force in terms of item 4 of Schedule 4
2. On page 38, in item 2, the first line, to omit “40” and to substitute “41”.
3. On page 38, in item 3, to add the following subitem:

(2) Until regulated by a sectoral determination, section 17(3) applies to farmworkers who work after 20:00 and before 04:00 at least five times per month or 50 times per year.
4. On page 38, in item 5, paragraph (c), the second line, to omit “10 and 11” and to substitute “11 and 12”.
5. On page 38, in Table One, the second column, opposite “Mineworkers”, in the fourth line, to omit “the regulations” and to substitute:

any applicable regulation that is in force in terms of item 4 of Schedule 4
6. On page 38, in Table One, in the second column, opposite “Security guards”, from the first line, to omit “of”, up to and including “months” in the fifth line, and to substitute:

12 months after the commencement date of this Act
7. On page 39, in item 6, in subitem (3), in the first line, to omit “21(3)” and to substitute “22(3)”.
8. On page 40, in item 8, from the third line, to omit “for” up to and including “period” in the fifth line and to substitute:

,for the period for which the exemption was granted, or if the exemption was granted for an indefinite period, for a period of six months after the commencement of this Act as if that Act has not been repealed, unless it is withdrawn by the Minister, before the end of such period
9. On page 40, in item 9, the fourth line, after “extended” to insert “or amended”.
10. On page 40, in item 11, subitem (2), paragraph (a), the second line, to omit “(b)” and to substitute “(d)”.
11. On page 40, in item 11, subitem (2), paragraph (b), the second line, to omit “49(1)(c)” and to substitute “49(1)(e)”.