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REPUBLIC OF SOUTH AFRICA

BASIC CONDITIONS OF EMPLOYMENT BILL

(As amended by the Portfolio Committee on Labour (National Assembly))

(MINISTER OF LABOUR)

[B 98B—97]

ISBN 0 621 27498 4

No. of copies printed 3 000

Creamer Media Pty Ltd +27 11 622 3744 polity@creamermedia.co.za www.polity.org.za Polity.org.za

BILL

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

———

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

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CHAPTER ONE

Definitions, purpose and application of this Act

Definitions

1. In this Act, unless the context indicates otherwise—
''agreement'' includes a collective agreement;
''area'' includes any number of areas, whether or not contiguous;

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

''basic condition of employment'' means a provision of this Act or sectoral determination that stipulates a minimum term or condition of employment;

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

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

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

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

(a) one or more employers;

(b) one or more registered employers' organisations; or

(c) one or more employers and one or more registered employers' organisation;

''Commission'' means the Employment Conditions Commission established by section 59(1);

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

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

''council'' includes a bargaining council and a statutory council;

''Department'' means the Department of Labour;

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

''dispute'' includes an alleged dispute;

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

(a) 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 or the disabled,

but does not include a farm worker;

''employee'' means—

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

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

and ''employed'' and ''employment'' have a corresponding meaning;[1]

''employers' organisation'' means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and employees or trade unions;

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

(a) The Unemployment Insurance Act, 1966 (Act No. 30 of 1966);

(b) the Manpower Training Act, 1981 (Act No. 56 of 1981);

(c) the Guidance and Placement Act, 1981 (Act No. 62 of 1981);

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

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

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

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

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

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1. ''Employee'' is given a specific meaning in section 82(1).

''labour inspector'' means a labour inspector appointed under section 63, and includes any person designated by the Minister under that section to perform any function of a labour inspector;
''Labour Relations Act, 1995'' means the Labour Relations Act, 1995 (Act No. 66 of 1995);
''medical practitioner'' means a person entitled to practise as a medical practitioner in terms of section 17 of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);
''midwife'' means a person registered or enrolled to practise as a midwife in terms of section 16 of the Nursing Act, 1978 (Act No. 50 of 1978);
''Minister'' means the Minister of Labour;
''month'' means a calendar month;
''NEDLAC'' means the National Economic, Development and Labour Council established by section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994);
''ordinary hours of work'' means the hours of work permitted in terms of section 9 or in terms of any agreement in terms of sections 11 or 12;
''overtime'' means the time that an employee works during a day or a week in excess of ordinary hours of work;
''prescribe'' means to prescribe by regulation and ''prescribed'' has a corresponding meaning;
''public holiday'' means any day that is a public holiday in terms of the Public Holidays Act, 1994 (Act No. 36 of 1994);
''public service'' means the public service referred to in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act, but excluding—
(a) the members of the National Defence Force;
(b) the National Intelligence Agency; and
(c) the South African Secret Service;
''registered employers' organisation'' means an employers' organisation registered under section 96 of the Labour Relations Act, 1995;
''registered trade union'' means a trade union registered under section 96 of the Labour Relations Act, 1995;
''remuneration'' means any payment in money or in kind, or both in money and in kind, made or owing to any person in return for that person working for any other person, including the State, and ''remunerate'' has a corresponding meaning;[2]
''sector'' means an industry or a service or a part of an industry or a service;
''sectoral determination'' means a sectoral determination made under Chapter Eight;
''senior managerial employee'' means an employee who has the authority to hire, discipline and dismiss employees and to represent the employer internally and externally;
''serve'' means to send by registered post, telegram, telex, telefax or deliver by hand;
''statutory council'' means a council established under Part E of Chapter III of the Labour Relations Act, 1995;
''temporary employment service'' means any person who, for reward, procures for, or provides to, a client, other persons—
(a) who render services to, or perform work for, the client; and
(b) who are remunerated by the temporary employment service;
''this Act'' includes the Schedules and any regulation made under this Act, but does not include the headings or footnotes;
''trade union'' means an association of employees whose principal purpose is to regulate relations between employees and employers, including any employers' organisations;
''trade union official'' includes an official of a federation of trade unions;
''trade union representative'' means a trade union representative who is entitled to exercise the rights contemplated in section 14 of the Labour Relations Act, 1995;

2. ''Remuneration'' is given a specific meaning in section 35(5).

''wage'' means the amount of money paid or payable to an employee in respect of ordinary hours of work or, if they are shorter, the hours an employee ordinarily works in a day or week;
''week'' in relation to an employee, means the period of seven days within which the working week of that employee ordinarily falls;
''workplace'' means any place where employees work;
''workplace forum'' means a workplace forum established under Chapter V of the Labour Relations Act, 1995.

Purpose of this Act

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

(a) to give effect to and regulate the right to fair labour practices conferred by section 23(1) of the Constitution—
  (i) by establishing and enforcing basic conditions of employment; and
  (ii) by regulating the variation of basic conditions of employment;
(b) to give effect to obligations incurred by the Republic as a member state of the International Labour Organisation.

Application of this Act

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

(a) members of the National Defence Force, the National Intelligence Agency and the South African Secret Service; and
(b) unpaid volunteers working for an organisation serving a charitable purpose.

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

(3) This Act, except section 41, does not apply to persons employed on vessels at sea in respect of which the Merchant Shipping Act, 1951 (Act No. 57 of 1951), applies except to the extent provided for in a sectoral determination.

Inclusion of provisions in contracts of employment

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

(a) any other law provides a term that is more favourable to the employee;
(b) the basic condition of employment has been replaced, varied, or excluded in accordance with the provisions of this Act; or
(c) a term of the contract of employment is more favourable to the employee than the basic condition of employment.

This Act not affected by agreements

5. This Act or anything done under it takes precedence over any agreement, whether entered into before or after the commencement of this Act.

CHAPTER TWO

Regulation of working time

Application of this Chapter

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

(a) senior managerial employees;
(b) employees engaged as sales staff who travel to the premises of customers and who regulate their own hours of work;
(c) employees who work less than 24 hours a month for an employer.

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

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

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

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

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

Regulation of working time

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

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

(b) with due regard to the health and safety of employees;

(c) with due regard to the Code of Good Practice on the Regulation of Working Time[3] issued under section 87(1)*(a)*; and

(d) with due regard to the family responsibilities of employees.

Interpretation of day

8. For the purposes of sections 9, 10 and 11, ''day'' means a period of 24 hours measured from the time when the employee normally commences work.

Ordinary hours of work

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

(a) 45 hours in any week; and

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

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

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

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

Overtime

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

(a) to work overtime except in accordance with an agreement;

(b) to work more than—

(i) three hours' overtime a day; or

(ii) ten hours' overtime a week.

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

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

3. The Code of Good Practice issued by the Minister of Labour under section 87(1)*(a)* will contain provisions concerning the arrangement of work and, in particular, its impact upon the health, safety and welfare of employees. Issues that would be included are shift work, night work, rest periods during working time, family responsibilities and work by children.

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

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

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

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

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

Compressed working week

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

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

(a) more than 45 ordinary hours of work in any week;

(b) more than ten hours' overtime in any week; or

(c) on more than five days in any week.

Averaging of hours of work

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

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

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

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

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

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

Determination of hours of work by Minister

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

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

(b) during a continuous period without a break.

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

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

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

(b) after consulting the Commission.

Meal intervals

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

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

(3) An employee must be remunerated—

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

(b) for any portion of a meal interval that is in excess of 75 minutes, unless the employee lives on the premises at which the workplace is situated.

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

(5) An agreement in writing may—

(a) reduce the meal interval to not less than 30 minutes;

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

Daily and weekly rest period

15. (1) An employer must allow an employee—

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

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

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

(a) who lives on the premises at which the workplace is situated; and

(b) whose meal interval lasts for at least three hours.

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

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

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

Pay for work on Sundays

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

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

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

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

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

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

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

Night work

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

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

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

(b) transportation is available between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift.

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

(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)*;

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

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

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

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

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

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

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

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

Public holidays[5]

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

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

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

(b) an employee who does work on the public holiday—

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

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

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

(a) the employee's ordinary daily wage; plus

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

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

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

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4. Section 90 protects the confidentiality of any medical examination conducted in terms of this Act.

5. In terms of section 2(2) of the Public Holidays Act, 1994 (Act No. 36 of 1994), a public holiday is exchangeable for any other day which is fixed by agreement or agreed to between the employer and the employee.

CHAPTER THREE

Leave

Application of this Chapter

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

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

Annual leave

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

(a) an employee's commencement of employment; or

(b) the completion of that employee's prior leave cycle.

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

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

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

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

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

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

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

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

(b) any period of notice of termination of employment.

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

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

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

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

(10) Annual leave must be taken—

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

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

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

(a) on termination of employment; and

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

Pay for annual leave

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

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

(b) in accordance with section 35.

(2) An employer must pay an employee leave pay—
(a) before the beginning of the period of leave; or
(b) by agreement, on the employee's usual pay day.

Sick leave

22. (1) In this Chapter, ''sick leave cycle'' means the period of 36 months' employment with the same employer immediately following—
(a) an employee's commencement of employment; or
(b) the completion of that employee's prior sick leave cycle.
(2) During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.
(3) Despite subsection (2), during the first six months of employment, an employee is entitled to one day's paid sick leave for every 26 days worked.
(4) During an employee's first sick leave cycle, an employer may reduce the employee's entitlement to sick leave in terms of subsection (2) by the number of days' sick leave taken in terms of subsection (3).
(5) Subject to section 23, an employer must pay an employee for a day's sick leave—
(a) the wage the employee would ordinarily have received for work on that day; and
(b) on the employee's usual pay day.
(6) An agreement may reduce the pay to which an employee is entitled in respect of any day's absence in terms of this section if—
(a) the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
(b) the employee's entitlement to pay—
(i) for any day's sick leave is at least 75 per cent of the wage payable to the employee for the ordinary hours the employee would have worked on that day; and
(ii) for sick leave over the sick leave cycle is at least equivalent to the employee's entitlement in terms of subsection (2).

Proof of incapacity

23. (1) An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.
(2) The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council established by an Act of Parliament.
(3) If it is not reasonably practicable for an employee who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment in terms of subsection (1) unless the employer provides reasonable assistance to the employee to obtain the certificate.

Application to occupational accidents or diseases

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

Maternity leave[6]

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

(2) An employee may commence maternity leave—

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

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

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

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

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

(a) commence maternity leave; and

(b) return to work after maternity leave.

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

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

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

(7) The payment of maternity benefits will be determined by the Minister subject to the provisions of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966).[7]

Protection of employees before and after birth of a child

26. (1) No employer may require or permit a pregnant employee or an employee who is nursing her child to perform work that is hazardous to her health or the health of her child.[8]

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

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

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

Family responsibility leave

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

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

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

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

(a) when the employee's child is born;

(b) when the employee's child is sick; or

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6. In terms of section 187(1)*(e)* of the Labour Relations Act, 1995, the dismissal of an employee on account of her pregnancy, intended pregnancy, or any reason related to her pregnancy, is automatically unfair. The definition of dismissal in section 186 of the Labour Relations Act, 1995, includes the refusal to allow an employee to resume work after she has taken maternity leave in terms of any law, collective agreement or her contract.

7. Sections 34 and 37 of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966), provide for the payment of maternity leave. Legislative amendments will be proposed to Cabinet to improve these benefits and to provide that the payment to an employee of maternity benefits does not adversely affect her right to unemployment benefits.

8. The Minister must issue a Code of Good Practice on the Protection of Employees during Pregnancy and after the Birth of a Child in terms of section 87(1)*(b)*.

(c) in the event of the death of—
(i) the employee's spouse or life partner; or
(ii) the employee's parent, adoptive parent, grandparent, child, adopted child, grandchild or sibling.

(3) Subject to subsection (5), an employer must pay an employee for a day's family responsibility leave—
(a) the wage the employee would ordinarily have received for work on that day; and
(b) on the employee's usual pay day.

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

(5) Before paying an employee for leave in terms of this section, an employer may require reasonable proof of an event contemplated in subsection (1) for which the leave was required.

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

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

CHAPTER FOUR

Particulars of employment and remuneration

Application of this Chapter

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

(2) Sections 29(1)*(n)*, *(o)* and *(p)*, 30, 31 and 33 do not apply to—
(a) an employer who employs fewer than five employees; and
(b) the employment of a domestic worker.

Written particulars of employment

29. (1) An employer must supply an employee, when the employee commences employment, with the following particulars in writing—
(a) the full name and address of the employer;
(b) the name and occupation of the employee, or a brief description of the work for which the employee is employed;
(c) the place of work, and, where the employee is required or permitted to work at various places, an indication of this;
(d) the date on which the employment began;
(e) the employee's ordinary hours of work and days of work;
(f) the employee's wage or the rate and method of calculating wages;
(g) the rate of pay for overtime work;
(h) any other cash payments that the employee is entitled to;
(i) any payment in kind that the employee is entitled to and the value of the payment in kind;
(j) how frequently remuneration will be paid;
(k) any deductions to be made from the employee's remuneration;
(l) the leave to which the employee is entitled;
(m) the period of notice required to terminate employment, or if employment is for a specified period, the date when employment is to terminate;
(n) a description of any council or sectoral determination which covers the employer's business;
(o) any period of employment with a previous employer that counts towards the employee's period of employment;
(p) a list of any other documents that form part of the contract of employment, indicating a place that is reasonably accessible to the employee where a copy of each may be obtained.

(2) When any matter listed in subsection (1) changes—
(a) the written particulars must be revised to reflect the change; and

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

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

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

Informing employees of their rights

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

Keeping of records

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

(a) The employee's name and occupation;
(b) the time worked by each employee;
(c) the remuneration paid to each employee;
(d) the date of birth of any employee under 18 years of age; and
(e) any other prescribed information.

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

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

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

Payment of remuneration

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

(a) in South African currency;
(b) daily, weekly, fortnightly or monthly; and
(c) in cash, by cheque or by direct deposit into an account designated by the employee.

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

(a) at the workplace or at a place agreed to by the employee;
(b) during the employee's working hours or within 15 minutes of the commencement or conclusion of those hours; and
(c) in a sealed envelope which becomes the property of the employee.

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

(a) the completion of the period for which the remuneration is payable; or
(b) the termination of the contract of employment.

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

Information about remuneration

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

(a) The employer's name and address;
(b) the employee's name and occupation;
(c) the period for which the payment is made;
(d) the employee's remuneration in money;
(e) the amount and purpose of any deduction made from the remuneration;
(f) the actual amount paid to the employee; and
(g) if relevant to the calculation of that employee's remuneration—

(i) the employee's rate of remuneration and overtime rate;
(ii) the number of ordinary and overtime hours worked by the employee during the period for which the payment is made;
(iii) the number of hours worked by the employee on a Sunday or public holiday during that period; and
(iv) if an agreement to average working time has been concluded in terms of section 12, the total number of ordinary and overtime hours worked by the employee in the period of averaging.

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

(a) at the workplace or at a place agreed to by the employee; and
(b) during the employee's ordinary working hours or within 15 minutes of the commencement or conclusion of those hours.

Deductions and other acts concerning remuneration

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

(a) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt specified in the agreement; or
(b) the deduction is required or permitted in terms of a law, collective agreement, court order or arbitration award.

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

(a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
(b) the employer has followed a fair procedure and has given the employee a reasonable opportunity to show why the deductions should not be made;
(c) the total amount of the debt does not exceed the actual amount of the loss or damage; and
(d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's remuneration in money.

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

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

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

(a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
(b) acknowledge receipt of an amount greater than the remuneration actually received.

Calculation of remuneration and wages

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

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

(a) 45 hours in a week, unless the employee ordinarily works a lesser number of hours in a week;
(b) nine hours in a day, or seven and a half hours in the case of an employee who works for more than five days a week, or the number of hours that an employee works in a day in terms of an agreement concluded in accordance with section 11, unless the employee ordinarily works a lesser number of hours in a day.

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

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

(a) the preceding 13 weeks; or

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

(5) For the purposes of calculating an employee's annual leave pay in terms of section 21, notice pay in terms of section 38 or severance pay in terms of section 41, an employee's remuneration—

(a) includes the cash value of any payment in kind that forms part of the employee's remuneration unless the employee receives that payment in kind; but

(b) excludes—

(i) gratuities;

(ii) allowances paid to an employee for the purposes of enabling an employee to work; and

(iii) any discretionary payments not related to the employee's hours of work or work performance.

CHAPTER FIVE

Termination of employment

Application of this Chapter

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

Notice of termination of employment

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

(a) one week, if the employee has been employed for four weeks or less;

(b) two weeks, if the employee has been employed for more than four weeks but not more than one year;

(c) four weeks, if the employee—

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

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

(2) A collective agreement may permit a notice period shorter than that required by subsection (1).

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

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

(b) If an employee who receives notice of termination is not able to understand it, the notice must be explained orally by, or on behalf of, the employer to the employee in an official language the employee reasonably understands.

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

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

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

(6) Nothing in this section affects the right—

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

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

Payment instead of notice

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

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

Employees in accommodation provided by employers

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

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

(b) in terms of section 38,

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

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

Payments on termination

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

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

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

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

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

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

Severance pay

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

(2) An employer must pay an employee who is dismissed for reasons based on the employer's operational requirements severance pay equal to at least one week's remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35.

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

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

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

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

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

(b) the CCMA, if no council has jurisdiction.

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

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

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

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

Certificate of service

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

(a) the employee's full name;

(b) the name and address of the employer;

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

(d) the date of commencement and date of termination of employment;

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

(f) the remuneration at date of termination; and

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

CHAPTER SIX

Prohibition of employment of children and forced labour

Prohibition of employment of children

43. (1) No person may employ a child—

(a) who is under 15 years of age; or

(b) who is under the minimum school-leaving age in terms of any law, if this is 15 or older.[9]

(2) No person may employ a child in employment—

(a) that is inappropriate for a person of that age;

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

(3) A person who employs a child in contravention of subsection (1) or (2) commits an offence.

Employment of children of 15 years or older

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

(2) A person who employs a child in contravention of subsection (1) commits an offence.

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9. Section 31(1) of the South African Schools Act, 1996 (Act No. 84 of 1996), requires every parent to cause every learner for whom he or she is responsible to attend a school until the last school day of the year in which the learner reaches the age of 15 or the ninth grade, whichever is the first.

Medical examinations

45. The Minister may, after consulting the Commission, make regulations relating to the conduct of medical examinations of children in employment.[10]

Prohibitions

46. It is an offence to—
(a) assist an employer to employ a child in contravention of this Act; or
(b) discriminate against a person who refuses to permit a child to be employed in contravention of this Act.

Evidence of age

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

Prohibition of forced labour

48. (1) Subject to the Constitution, all forced labour is prohibited.
(2) No person may for his or her own benefit or for the benefit of someone else, cause, demand or impose forced labour in contravention of subsection (1).
(3) A person who contravenes subsection (1) or (2) commits an offence.

CHAPTER SEVEN

Variation of basic conditions of employment

Variation by agreement

49. (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;
(2) A collective agreement, other than an agreement contemplated in subsection (1), may replace or exclude a basic condition of employment, to the extent permitted by this Act or a sectoral determination.
(3) An employer and an employee may agree to replace or exclude a basic condition of employment to the extent permitted by this Act or a sectoral determination.
(4) No provision in this Act or a sectoral determination may be interpreted as permitting—
(a) a contract of employment or agreement between an employer and an employee contrary to the provisions of a collective agreement;
(b) a collective agreement contrary to the provisions of a collective agreement concluded in a bargaining council.

10. Section 90(3) protects the confidentiality of any medical examination conducted in terms of this Act.

Variation by Minister

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

(a) any category of employees or category of employers; or

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

(i) the employer;

(ii) the registered employers' organisation;

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

(2) A determination in terms of 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.

(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*.

(4) The Minister may request the Commission—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) display a copy of the notice conspicuously at the workplace where it can be read by the employees to whom the determination applies;

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

(c) give a copy of the notice to every—

(i) registered trade union representing those employees;

(ii) trade union representative representing those employees; and

(iii) employee who requests a copy.

CHAPTER EIGHT

Sectoral determinations

Sectoral determination

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

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

Investigation

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

(2) The Minister must determine terms of reference for the investigation, which must include—

(a) the sector and area to be investigated;

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

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

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

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

(a) direct the Director-General to conduct an investigation; or

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

Conduct of investigation

53. (1) For the purposes of conducting an investigation in terms of section 52(1), the Director-General may—

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

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

(2) A person may not refuse to answer any relevant question by the Director-General that he or she is legally obliged to answer.[11]

Preparation of report

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

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11. An answer by a person to a question put to him or her by a person conducting an investigation may not be used in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement (s. 91).

(2) A copy of the report must be submitted to the Commission for its consideration.

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

(a) the report prepared in terms of subsection (1);
(b) the ability of employers to carry on their business successfully;
(c) the operation of small, medium or micro-enterprises, and new enterprises;
(d) the cost of living;
(e) the alleviation of poverty;
(f) conditions of employment;
(g) wage differentials and inequality;
(h) the likely impact of any proposed condition of employment on current employment or the creation of employment;
(i) the possible impact of any proposed conditions of employment on the health, safety or welfare of employees;
(j) any other relevant information made available to the Commission.

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

Making of sectoral determination

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

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

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

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

(a) set minimum terms and conditions of employment, including minimum rates of remuneration;
(b) provide for the adjustment of minimum rates of remuneration;
(c) regulate the manner, timing and other conditions of payment of remuneration;
(d) prohibit or regulate payment of remuneration in kind;
(e) require employers to keep employment records;
(f) require employers to provide records to their employees;
(g) prohibit or regulate task-based work, piecework, home work and contract work;
(h) set minimum standards for housing and sanitation for employees who reside on their employers' premises;
(i) regulate payment of travelling and other work-related allowances;
(j) specify minimum conditions of employment for trainees;
(k) specify minimum conditions of employment for persons other than employees;
(l) regulate training and education schemes;
(m) regulate pension, provident, medical aid, sick pay, holiday and unemployment schemes or funds; and
(n) regulate any other matter concerning remuneration or other terms or conditions of employment.

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

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

(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.

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

(a) covering employees and employers who are bound by a collective agreement concluded at a bargaining council;
(b) regulating any matter in a sector and area in which a statutory council is established and in respect of which that statutory council has concluded a collective agreement;
(c) regulating any matter regulated by a sectoral determination for a sector and area which has been in effect for less than 12 months.

Period of operation of sectoral determination

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

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

(3) The Minister may, by notice in the *Gazette*—
(a) cancel or suspend any provision of a sectoral determination, either in the sector and area as a whole or in part of the sector or in a specific area; or
(b) correct or clarify the meaning of any provision of a sectoral determination as previously published.

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

Legal effect of sectoral determination

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

Employer to keep a copy of sectoral determination

58. Unless a sectoral determination provides otherwise, every employer on whom the sectoral determination is binding must—
(a) keep a copy of that sectoral determination available in the workplace at all times;
(b) make that copy available for inspection by an employee; and
(c) give a copy of that sectoral determination—
(i) to an employee who has paid the prescribed fee; and
(ii) free of charge, on request, to an employee who is a trade union representative or a member of a workplace forum.

CHAPTER NINE

Employment Conditions Commission

Establishment and functions of Employment Conditions Commission

59. (1) The Employment Conditions Commission is hereby established.

(2) The functions of the Commission are to advise the Minister—
(a) on sectoral determinations in terms of Chapter Eight;
(b) on any matter concerning basic conditions of employment;
(c) on any matter arising out of the application of this Act;
(d) on the effect of the policies of the government on employment;
(e) on trends in collective bargaining and whether any of those trends undermine the purpose of this Act;
(f) and the Minister for Welfare and Population Development, on any matter concerning the employment of children, including the review of section 43;
(g) and the Minister for the Public Service and Administration, on any matter concerning basic conditions of employment in the public service.

(3) The Commission may draw up rules for the conduct of its meetings and public hearings.

(4) Subject to the laws governing the public service, the Minister must provide the Commission with the staff that the Minister considers necessary for the performance of its functions.

(5) The Minister must direct the Director-General to undertake research that is required to enable the Commission to perform its functions.

(6) The expenses of the Commission are to be met by money appropriated by Parliament for that purpose and which is subject to audit by the Auditor-General, referred to in section 188 of the Constitution.

Composition of Commission

60. (1) The Minister must, after consultation with NEDLAC, appoint as members of the Commission three persons who are knowledgeable about the labour market and conditions of employment, including the conditions of employment of vulnerable and unorganised workers, and designate one of them as the chairperson.

(2) The Minister must, in addition, appoint two more members to the Commission—

(a) one of whom must be nominated by the voting members of NEDLAC representing organised labour;

(b) one of whom must be nominated by the voting members of NEDLAC representing organised business.

(3) The chairperson and members of the Commission—

(a) must be citizens or permanent residents of the Republic;

(b) must act impartially when performing any function of the Commission;

(c) may not engage in any activity that may undermine the integrity of the Commission; and

(d) must recuse themselves from advising the Minister on any matter in respect of which they have a direct financial interest or any other conflict of interest.

(4) The Minister must determine—

(a) the term of office of the chairperson and members of the Commission, which may not be more than three years;

(b) with the concurrence of the Minister of Finance, the remuneration and allowances to be paid to members of the Commission; and

(c) any other conditions of appointment not provided for in this section.

(5) The Minister must appoint a member to act as chairperson whenever—

(a) the chairperson is absent from the Republic or from duty, or for any reason is temporarily unable to function as chairperson; or

(b) the office of chairperson is vacant.

(6) A person whose period of office as the chairperson or a member of the Commission has expired is eligible for reappointment.

(7) The chairperson or a member of the Commission may resign in writing.

(8) The Minister may remove the chairperson or a member of the Commission from office for—

(a) serious misconduct;

(b) permanent incapacity; or

(c) engaging in any activity that may undermine the integrity of the Commission.

Public hearings

61. The Commission may hold public hearings at which it may permit members of the public to make oral representations on any matter that the Commission is considering in terms of section 59(2).

Report by Commission

62. (1) The Commission's advice to the Minister must be in the form of a written report.

(2) The Commission must, when performing any function in terms of section 59(2)*(b)*

to *(e)*, take into account the considerations set out in section 54(3) to the extent that they are appropriate.

(3) The members of the Commission must endeavour to prepare a unanimous report to the Minister. If the members are not able to prepare a unanimous report, each member is entitled to have his or her views reflected in the report.

CHAPTER TEN

Monitoring, enforcement and legal proceedings

PART A

Monitoring and enforcement

Appointment of labour inspectors

63. (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.

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

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

(a) that the person is a labour inspector;

(b) which legislation that labour inspector may monitor and enforce; and

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

Functions of labour inspectors

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

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

(b) conducting inspections in terms of this Chapter;

(c) investigating complaints made to a labour inspector;

(d) endeavouring to secure compliance with an employment law by securing undertakings or issuing compliance orders; and

(e) performing any other prescribed function.

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

Powers of entry

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

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

(b) any premises used for training in terms of the Manpower Training Act, 1981 (Act No. 56 of 1981); or

(c) any private employment office registered under section 15 of the Guidance and Placement Act, 1981 (Act No. 62 of 1981).

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

(a) with the consent of the owner or occupier; or

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

(3) The Labour Court may issue an authorisation contemplated in subsection (2) only on written application by a labour inspector who states under oath or affirmation the

reasons for the need to enter a place in order to monitor or enforce compliance with any employment law.

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

Powers to question and inspect

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

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

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

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

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

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

(f) inspect or question a person about any work performed; and

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

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

(3) A labour inspector must—

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

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

(c) return anything removed within a reasonable period of time.

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

Co-operation with labour inspectors

67. (1) Any person who is questioned by a labour inspector in terms of section 66 must answer all relevant questions lawfully put to that person truthfully and to the best of his or her ability.[12]

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

Securing an undertaking

68. (1) A labour inspector who has reasonable grounds to believe that an employer has not complied with any provision of this Act must endeavour to secure a written undertaking by the employer to comply with the provision.

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

(a) may seek to obtain agreement between the employer and employee as to any amount owed to the employee in terms of this Act;

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

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

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

12. An answer by a person to a question of a labour inspector may not be used in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement (s. 91).

Compliance order

69. (1) A labour inspector who has reasonable grounds to believe that an employer has not complied with a provision of this Act may issue a compliance order.

(2) A compliance order must set out—

(a) the name of the employer, and the location of every workplace, to which it applies;

(b) any provision of this Act that the employer has not complied with, and details of the conduct constituting non-compliance;

(c) any amount that the employer is required to pay to an employee;

(d) any written undertaking by the employer in terms of section 68(1) and any failure by the employer to comply with a written undertaking;

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

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

(3) A labour inspector must deliver a copy of the compliance order to the employer named in it, and to each employee affected by it or, if this is impractical, a representative of the employees.

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

(5) An employer must comply with the compliance order within the time period stated in the order unless the employer objects in terms of section 71.

Limitations

70. A labour inspector may not issue a compliance order in respect of any amount payable to an employee as a result of a failure to comply with a provision of this Act if—

(a) the employee is covered by a collective agreement that provides for resolution by arbitration of disputes concerning amounts owing in terms of this Act;

(b) the employee is employed in a category of employees mentioned in section 6(1)*(a)* or in respect of which a notice has been issued in terms of section 6(3);

(c) any proceedings have been instituted for the recovery of that amount or, if proceedings have been instituted, those proceedings have been withdrawn; or

(d) that amount has been payable for longer than 12 months.

Objections to compliance order

71. (1) An employer may object to a compliance order by making representations in writing to the Director-General within 21 days of receipt of that order.

(2) If the employer shows good cause at any time, the Director-General may permit the employer to object after the period of 21 days has expired.

(3) After considering any representations by the employer and any other relevant information, the Director-General—

(a) may confirm, modify or cancel an order or any part of an order; and

(b) must specify the period within which the employer must comply with any part of an order that is confirmed or modified.

(4) The information that the Director-General must consider includes—

(a) any evidence concerning the employer's compliance record;

(b) the likelihood that the employer was aware of the relevant provisions; and

(c) the steps taken by the employer to ensure compliance with the relevant provision.

(5) The Director-General must serve a copy of the order made in terms of subsection (3) on the employer and on each employee affected by it or, if this is impractical, on a representative of the employees.

(6) If the Director-General confirms or modifies the order or any part of the order, the employer must comply with that order within the time period specified in that order.

Appeals from order of Director-General

72. (1) An employer may appeal to the Labour Court against an order of the Director-General within 21 days of receipt of that order.

(2) The order is suspended pending the final determination of the appeal by the Labour Court or any appeal from the Labour Court.

(3) If the employer shows good cause at any time, the Labour Court may permit the employer to appeal after the period of 21 days has expired.

Order may be made order of Labour Court

73. (1) The Director-General may apply to the Labour Court for a compliance order to be made an order of the Labour Court in terms of section 158(1)*(c)* of the Labour Relations Act, 1995, if the employer has not complied with the order and has not lodged an objection against the order in terms of section 71(1).

(2) The Director-General may apply to the Labour Court for an order of the Director-General in terms of section 71(3) to be made an order of the Labour Court in terms of section 158(1)*(c)* of the Labour Relations Act, 1995, if the employer has not complied with the order and has not appealed against the order in terms of section 72(1).

(3) For the purposes of section 158(1)*(c)* of the Labour Relations Act, 1995, a compliance order or an order in terms of section 71(3) is deemed to be an arbitration award.

PART B

Legal proceedings

Consolidation of proceedings

74. (1) A dispute concerning a contravention of this Act may be instituted jointly with proceedings instituted by an employee under Part C of this Chapter.

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

(a) the claim is referred in compliance with section 191 of the Labour Relations Act, 1995;

(b) the amount has not been owing to the employee for longer than one year; and

(c) no compliance order has been made and no other legal proceedings have been instituted to recover the amount.

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

Payment of interest

75. An employer must pay interest on any amount due and payable in terms of the Prescribed Rate of Interest Act, 1975 (Act No. 55 of 1975), to any person to whom a payment should have been made.

Proof of compliance

76. (1) In any proceedings concerning a contravention of this Act or any sectoral determination it is for an employer—

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

(b) who has failed to keep any record required by this Act that is relevant to those proceedings, to prove compliance with any provision of this Act.

Jurisdiction of Labour Court

77. (1) Subject to the Constitution and the jurisdiction of the Labour Appeal Court, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters in terms of this Act, except in respect of an offence specified in sections 43, 44, 46, 48, 90 and 92.

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

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

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

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

PART C

Protection of employees against discrimination

Rights of employees

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

(a) make a complaint to a trade union representative, a trade union official or a labour inspector concerning any alleged failure or refusal by an employer to comply with this Act;

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

(c) refuse to comply with an instruction that is contrary to this Act or any sectoral determination;

(d) refuse to agree to any term or condition of employment that is contrary to this Act or any sectoral determination;

(e) inspect any record kept in terms of this Act that relates to the employment of that employee;

(f) participate in proceedings in terms of this Act;

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

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

Protection of rights

79. (1) In this section, ''employee'' includes a former employee or an applicant for employment.

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

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

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

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

(i) failure or refusal to do anything that an employer may not lawfully permit or require an employee to do;
(ii) disclosure of information that the employee is lawfully entitled or required to give to another person; or
(iii) exercise of a right conferred by this Part.

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

Procedure for disputes

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

(a) a council, if the parties to the dispute fall within the registered scope of that council; or
(b) the CCMA, if no council has jurisdiction.

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

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

(4) If a dispute remains unresolved, any party to the dispute may refer it to the Labour Court for adjudication.

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

Burden of proof

81. In any proceeding in terms of this Part—

(a) an employee who alleges that a right or protection conferred by this Part has been infringed, must prove the facts of the conduct said to constitute such infringement; and
(b) the party who allegedly engaged in the conduct in question must then prove that the conduct did not infringe any provision of this Part.

CHAPTER ELEVEN

General

Temporary employment services

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

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

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

Deeming of persons as employees

83. (1) The Minister may, on the advice of the Commission and by notice in the *Gazette*, deem any category of persons specified in the notice to be employees for purposes of this Act or any sectoral determination.

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

(a) publish a draft of the proposed notice in the *Gazette*; and
(b) invite interested persons to submit written representations on the proposed notice within a reasonable period.

Duration of employment

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

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

Delegation

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

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

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

(4) The Minister may at any time—

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

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

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

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

Regulations

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

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

Codes of Good Practice

87. (1) The Minister, after consulting NEDLAC—

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

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

(c) may issue other codes of good practice; and

(d) may change or replace any code of good practice.

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

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

Minister's power to add and change footnotes

88. The Minister may, by notice in the *Gazette*, add to, change or replace any footnote in this Act.

Representation of employees or employers

89. (1) A registered trade union or registered employers' organisation may act in any one or more of the following capacities in any dispute to which any of its members is a party:

(a) In its own interest;

(b) on behalf of any of its members;

(c) in the interest of any of its members.

(2) A registered trade union or a registered employers' organisation is entitled to be a party to any proceedings in terms of this Act if one or more of its members is a party to these proceedings.

Confidentiality

90. (1) It is an offence for any person to disclose information which that person acquired while exercising or performing any power or duty in terms of this Act and which relates to the financial or business affairs of any other person, except if the information is disclosed in compliance with the provisions of any law—

(a) to enable a person to perform a function or exercise a power in terms of an employment law;

(b) for the purposes of the proper administration of this Act;

(c) for the purposes of the administration of justice.

(2) Subsection (1) does not prevent the disclosure of any information concerning an employer's compliance or non-compliance with the provisions of any employment law.

(3) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only—

(a) in accordance with the ethics of medical practice;

(b) if required by law or court order; or

(c) if the employee has in writing consented to the release of that information.

Answers not to be used in criminal prosecutions

91. No answer by any person to a question by a person conducting an investigation in terms of section 53 or by a labour inspector in terms of section 66 may be used against that person in any criminal proceedings except proceedings in respect of a charge of perjury or making a false statement.

Obstruction, undue influence and fraud

92. It is an offence to—

(a) obstruct or attempt to influence improperly a person who is performing a function in terms of this Act;

(b) obtain or attempt to obtain any prescribed document by means of fraud, false pretences, or by presenting or submitting a false or forged document;

(c) pretend to be a labour inspector or any other person performing a function in terms of this Act;

(d) refuse or fail to answer fully any lawful question put by a labour inspector or any other person performing a function in terms of this Act;

(e) refuse or fail to comply with any lawful request of, or lawful order by, a labour inspector or any other person performing a function in terms of this Act;

(f) hinder or obstruct a labour inspector or any other person performing a function in terms of this Act.

Penalties

93. (1) Any magistrates' court has jurisdiction to impose a penalty for an offence provided for in this Act.

(2) Any person convicted of an offence in terms of any section mentioned in the first

column of the table below may be sentenced to a fine or imprisonment for a period not longer than the period mentioned in the second column of that table opposite the number of that section.

OFFENCES AND PENALTIES

Section under which convicted	Maximum term of imprisonment
Section 43	3 years
Section 44	3 years
Section 46	3 years
Section 48	3 years
Section 90(1) and (3)	1 year
Section 92	1 year

This Act binds the State

94. This Act binds the State except in so far as criminal liability is concerned.

Transitional arrangements and amendment and repeal of laws

95. (1) The provisions of Schedule Three apply to the transition from other laws to this Act.

(2) The Minister may for the purposes of regulating the transition from any law to this Act add to or change Schedule Three.

(3) Any addition or change to Schedule Three must be tabled in the National Assembly and takes effect—

(a) if the National Assembly does not pass a resolution that the addition or change is not binding within 14 days of the date of the tabling; and

(b) on publication in the *Gazette*.

(4) Section 186 of the Labour Relations Act, 1995, is hereby amended by the deletion of subparagraph (ii) of paragraph *(c)*.

(5) The laws mentioned in the first two columns of Schedule Four are hereby repealed to the extent indicated opposite that law in the third column of that Schedule.

(6) The repeal of any law by subsection (5) does not affect any transitional arrangement provided for in Schedule Three.

Short title and commencement

96. This is the Basic Conditions of Employment Act, 1997, and comes into effect on a date to be fixed by the President by proclamation in the *Gazette*.

SCHEDULE ONE

PROCEDURES FOR PROGRESSIVE REDUCTION OF MAXIMUM WORKING HOURS

Goal

1. This Schedule records the procedures to be adopted to reduce the working hours of employees to the goal of a 40 hour working week and an eight hour working day—

(a) through collective bargaining and the publication of sectoral determinations;

(b) having due regard to the impact of a reduction of working hours on existing employment and opportunities for employment creation, economic efficiency and the health, safety and welfare of employees.

Collective bargaining

2. When during negotiations on terms and conditions of employment, a party to the negotiations introduces the reduction of maximum working hours as a subject for negotiation, the parties must negotiate on that issue.

Role of Employment Conditions Commission

3. The Commission may investigate the possibility of reducing working hours in a particular sector and area and make recommendations to the Minister thereon.

Investigation by Department of Labour

4. (1) The Department of Labour must, after consultation with the Commission, conduct an investigation as to how the reduction of weekly working hours to a level of 40 hours per week may be achieved.

(2) The investigation must be completed and the report submitted to the Minister not later than 18 months after the Act has come into operation.

Reports

5. (1) The Department of Labour must, after consultation with the Commission—

(a) monitor and review progress made in reducing working hours;

(b) prepare and publish a report for the Minister on the progress made in the reduction of working hours.

(2) The Department must publish reports every two years.

(3) The reports must be tabled at Nedlac and in Parliament by the Minister.

(4) The Minister may prescribe the returns to be submitted by employers, trade unions and councils on any matter concerning this Schedule.

SCHEDULE TWO

MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR FAILURE TO COMPLY WITH THIS ACT

1. This Schedule sets out the maximum fine that may be imposed in terms of Chapter Ten for a failure to comply with a provision of this Act.

2. The maximum fine that may be imposed—

(a) for a failure to comply with a provision of this Act not involving a failure to pay an amount due to an employee in terms of any basic condition of employment, is the fine determined in terms of Table One or Table Two;

(b) involving a failure to pay an amount due to an employee, is the greater of the amount determined in terms of Table One or Table Two.

TABLE ONE: MAXIMUM PERMISSIBLE FINE NOT INVOLVING AN UNDERPAYMENT

No previous failure to comply	R100 per employee in respect of whom the failure to comply occurs
A previous failure to comply in respect of the same provision	R200 per employee in respect of whom the failure to comply occurs
A previous failure to comply within the previous 12 months or two previous failures to comply in respect of the same provision within three years	R300 per employee in respect of whom the failure to comply occurs
Three previous failures to comply in respect of the same provision within three years	R400 per employee in respect of whom the failure to comply occurs
Four previous failures to comply in respect of the same provision within three years	R500 per employee in respect of whom the failure to comply occurs

TABLE TWO: MAXIMUM PERMISSIBLE FINE INVOLVING AN UNDERPAYMENT

No previous failure to comply	25% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within three years	50% of the amount due, including any interest owing on the amount at the date of the order
A previous failure to comply in respect of the same provision within a year, or two previous failures to comply in respect of the same provision within three years	75% of the amount due, including any interest owing on the amount at the date of the order
Three previous failures to comply in respect of the same provision within three years	100% of the amount due, including any interest owing on the amount at the date of the order
Four or more previous failures to comply in respect of the same provision within three years	200% of the amount due, including any interest owing on the amount at the date of the order

SCHEDULE THREE

TRANSITIONAL PROVISIONS

Definitions

1. For the purposes of this Schedule—

''Basic Conditions of Employment Act, 1983'' means the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983);

''domestic worker'' means an employee defined as a ''domestic servant'' in section 1(1) of the Basic Conditions of Employment Act, 1983;

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

''mineworker'' means an employee employed at a mine whose hours of work are prescribed in terms of any regulation that is in force in terms of item 4 of Schedule 4 to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996);

''security guard'' means an employee defined as a ''guard'' or a ''security guard'' in terms of the Basic Conditions of Employment Act, 1983;

''Wage Act, 1957'' means the Wage Act, 1957 (Act No. 5 of 1957);

''wage determination'' means a wage determination made in terms of section 14 of the Wage Act, 1957.

Application to public service

2. This Act, except section 41, does not apply to the public service for 18 months after the commencement of this Act, unless a bargaining council concludes a collective agreement that a provision of this Act will apply from an earlier date.

Application to farm workers

3. (1) Sections 6A, 10(2A) and 14(4A) of the Basic Conditions of Employment Act, 1983, continue to apply to the employment of a farm worker until such time as the matters regulated by those provisions are regulated by a sectoral determination applicable to the farm worker.

(2) Until regulated by a sectoral determination, section 17(3) applies to farmworkers who work after 20:00 and before 04:00 at least five times per month or 50 times per year.

Payment in kind of domestic workers and farm workers

4. (1) The definition of "wage" in section 1(1) of the Basic Conditions of Employment Act, 1983, and the definition of "payment in kind" in the regulations published under that Act continue to apply to the employment of domestic workers and farm workers, until regulated by a sectoral determination.

(2) The Minister may, by notice in the *Gazette*, amend any cash amount prescribed in the definition of "payment in kind" in accordance with section 37 of the Basic Conditions of Employment Act, 1983, as if that section had not been repealed.

Ordinary hours of work

5. An employer may require or permit an employee who is employed as a farm worker, mineworker or security guard to work ordinary hours of work in excess of those prescribed by section 9(1) and (2) for the period specified in column two of Table One: Provided that—

(a) any condition in column two of Table One is complied with;

(b) the employee's hours of work do not exceed any limit on hours of work in any law or any wage-regulating measure applicable to that category of employee immediately before this Act came into effect;

(c) the employee and his or her employer do not conclude an agreement in terms of section 11 and 12.

TABLE ONE

Farm workers	For a period of 12 months after the commencement date of this Act, provided that the employee's ordinary hours of work do not exceed 48 hours per week.
Mineworkers	For a period of 12 months after the commencement date of this Act, provided that the employee's total hours of work do not exceed any limit on hours or work prescribed in any applicable regulation that is in force in terms of item 4 of Schedule 4 to the Mine Health and Safety Act, 1996 (Act No. 29 of 1996).
Security guards	For a period of 12 months after the commencement date of this Act provided that the employee's ordinary hours of work do not exceed 55 hours per week; and thereafter for a further period of 12 months, provided that the employee's ordinary hours of work do not exceed 50 hours per week.

Leave pay

6. (1) The entitlement in terms of section 20(2) of an employee employed continuously before and after the commencement of this Act takes effect on the date on which, but for the enactment of this Act, the employee would next have commenced a leave cycle in terms of section 12 of the Basic Conditions of Employment Act, 1983, or any wage determination.

(2) Any accrued leave to which an employee was entitled in terms of section 12 of the Basic Conditions of Employment Act, 1983, or a wage determination, but which has not been granted by the date on which section 20(2) takes effect with respect to that employee, must be added to the paid leave earned by that employee in terms of this Act.

(3) Section 22(3) does not apply to any leave earned by the employee in respect of any period prior to the date on which this Act takes effect.

Pay for sick leave

7. (1) Table Two applies in respect of any employee, as defined in the Basic Conditions of Employment Act, 1983, in employment at the commencement of this Act.

(2) An employee listed in column one who was in continuous employment before the commencement of this Act for the period set out in column two becomes entitled to the rights under section 22(2) on the date listed in column three and section 22(3) on the date listed in column four.

TABLE TWO

TRANSITIONAL ARRANGEMENTS IN RELATION TO SICK LEAVE

Employees as defined in the Basic Conditions of Employment Act, 1983	**Period of continuous employment before commencement date of this Act**	**Date of entitlement to six weeks' paid sick leave over 36-months sick leave cycle in terms of section 22(2)**	**Date of entitlement to one day's paid sick leave every 26 days worked during the first six consecutive months of employment in terms of section 22(3)**
Employees and regular day workers	Less than six months	Six months after commencement date of employment	Date on which employee began employment
Casual employees	Less than six months	Six months after commencement date of employment	Commencement date of this Act
Regular day workers and casual employees	More than six months	Commencement date of this Act	Not applicable
Employees (other than causal workers and regular day workers)	Between six and 12 months	Commencement date of this Act	Not applicable
Employees	More than 12 months	At conclusion of current sick leave cycle in terms of section 13(1) of the Basic Conditions of Employment Act, 1983	Not applicable

(3) Any period of paid sick leave granted to an employee in accordance with Table Two, may be deducted from the employee's entitlement in terms of either section 22(2) or section 22(3), if—

(a) it was taken before the commencement of this Act; or

(b) it was taken during the period that the relevant section was in effect with respect to that employee.

Exemptions

8. Any exemption granted under section 34 of the Basic Conditions of Employment Act, 1983, in force immediately before the commencement of this Act remains in force for, 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.

Wage determinations

9. Any wage determination and any amendment to a wage determination made in terms of section 15 of the Wage Act, 1957, in force immediately before the commencement of this Act remains in force for the period of its operation in terms of section 18 of that Act, and may be extended or amended as if that Act had not been repealed.

Exemptions to wage determination

10. Any licence of exemption granted to a wage determination in terms of section 19 of the Wage Act, 1957, in force immediately before the commencement of this Act remains in force for the period of operation of the determination, or until withdrawn in terms of section 19(5) of that Act, as if that Act had not been repealed.

Agreements

11. (1) Any agreement entered into before the commencement of this Act which is permitted by this Act remains valid and binding.

(2) Any provision in a collective agreement concluded in a bargaining council that was in force immediately before this Act came into effect remains in effect for—

(a) six months after the commencement date of this Act in the case of a provision contemplated by section 49(1)*(a)* to *(d)*; and

(b) 18 months after the commencement date of this Act in the case of a provision contemplated by section 49(1)*(e)*.

SCHEDULE FOUR

LAWS REPEALED BY SECTION 95(5)

Number and year of law	Short title	Extent of repeal
Act No. 5 of 1957	Wage Act, 1957	The whole
Act No. 48 of 1981	Wage Amendment Act, 1981	The whole
Act No. 3 of 1983	Basic Conditions of Employment Act, 1983	The whole
Act No. 26 of 1984	Wage Amendment Act, 1984	The whole
Act No. 27 of 1984	Basic Conditions of Employment Amendment Act, 1984	The whole
Act No. 104 of 1992	Basic Conditions of Employment Amendment Act, 1992	The whole
Act No. 137 of 1993	Basic Conditions of Employment Amendment Act, 1993	The whole
Act No. 147 of 1993	Agricultural Labour Act, 1993	Chapter 2
Act No. 50 of 1994	Agricultural Labour Amendment Act, 1994	Section 2
Act No. 66 of 1995	Labour Relations Act, 1995	Section 196

MEMORANDUM ON THE OBJECTS OF THE BASIC CONDITIONS OF EMPLOYMENT BILL, 1997

1. Purpose of the Bill

The purpose of the Basic Conditions of Employment Bill, 1997 (''the Bill'') is to advance economic development and social justice by giving effect to and regulating the right to fair labour practices referred to in section 23(1) of the Constitution.

The primary objectives of the Bill are—

* to ensure that working conditions of unorganised and vulnerable workers meet minimum standards that are socially acceptable in relation to the level of development of the country;
* to remove rigidities and inefficiencies from the regulation of minimum conditions of employment and promote flexibility.

The problems the Bill addresses include—

* inadequate protection of vulnerable workers such as farm, domestic and part-time workers;
* poverty in employment;
* child labour;
* excessive working hours, particularly in sectors such as security and transport;
* gender discrimination, particularly in relation to maternity leave;
* outdated legislation.

The Bill proposes to reform previous legislation so that legislation on basic conditions of employment is in line with the macro-economic strategy of government and the new legal order, as reflected in the Constitution and the Labour Relations Act, 1995 (Act No. 66 of 1995).

The Bill seeks to replace the Basic Conditions of Employment Act, 1983 (Act No. 3 of 1983), and the Wage Act, 1957 (Act No. 5 of 1957), which no longer meet the current economic, social and political requirements of South Africa. These laws are rigid, outdated and complex and do not adequately cover significant sectors of the work force. The Bill seeks to establish, enforce and regulate the variation of basic conditions of employment. It creates a national set of minimum standards but permits the application of these standards to be varied. There are four mechanisms for variation namely, collective bargaining, sectoral determinations, contracts of employment and variation determinations made by the Minister of Labour. This approach permits sufficient flexibility for the variation of basic conditions of employment while at the same time creating appropriate safeguards to avoid extremes of exploitation.

2. Application of the Bill

The Bill proposes to apply to all employees and employers except members of the National Defence Force, National Intelligence Agency, South African Secret Service and unpaid volunteers working for an organisation with a charitable purpose.

The basic conditions of employment proposed in the Bill take precedence over any agreement, whether entered into before or after the commencement of the Act.

3. Regulation of working time

In Chapter Two, the following basic conditions of employment are guaranteed:

3.1. Working time must be regulated with due regard to employees' health and safety and family responsibilities (clause 7).

3.2. The maximum ordinary hours of work for all employees are 45 in a week. The maximum daily hours of work are nine for employees who work on five days or less a week, and eight for employees who work six days a week (clause 9). In this clause, reference is made to Schedule One, which sets out procedures for the progressive reduction of maximum working hours to the goal of a 40-hour working week and an eight-hour working day.

3.3. An employee can, by agreement, work up to three hours overtime in a day or ten hours overtime in a week. Overtime work must be paid at 1,5 times the employee's normal wage, or an employee may agree to receive paid time off (clause 10). An employee may agree to work up to 12 hours in a day without receiving overtime pay in order to work a compressed work week.

3.4. A collective agreement may permit the hours of work to be averaged over a period of up to four months (clause 12).

3.5. An employee must have a meal interval of at least 60 minutes after five hours continuous work. This may be reduced to 30 minutes by agreement (clause 14).

3.6. An employee must have a daily rest period of at least 12 hours and a weekly rest period of at least 36 consecutive hours each week. The weekly rest period must include Sunday, unless otherwise agreed (clause 15).

3.7. An employee who works on a Sunday must receive double pay. However, if an employee is hired to ordinarily work on a Sunday, he or she must be paid at 1,5 times the normal wage for Sunday. An employee may agree to receive paid time off in return for working on a Sunday (clause 16).

3.8. The Bill contains protections for employees who work at night (between 18:00 and 06:00). Employees who work at night must be compensated by the payment of an allowance or by a reduction of working hours (clause 17).

3.9. Employees must be paid their normal wage for any public holiday that falls on a working day. Work on a public holiday is by agreement and is paid at double rate (clause 18).

4. Leave

Chapter Three provides the following basic conditions of employment:

4.1. Employees are entitled to 21 consecutive days' annual leave. An employer must not pay an employee instead of granting annual leave (clauses 20 and 21).

4.2. An employee is entitled to six weeks' paid sick leave in every 36 months. An employer may require a medical certificate before paying an employee who is frequently absent (clauses 22 — 24).

4.3. A pregnant employee is entitled to four consecutive months of maternity leave (clause 25). An employer of a pregnant employee or employee nursing her child is not allowed to permit her to perform work that is hazardous to her or her child (clause 26).

4.4. Full time employees are entitled to three days paid family responsibility leave annually (clause 27).

5. Particulars of employment and remuneration

Chapter Four provides for the following:

5.1. An employer must supply an employee with written particulars of employment when the employee starts employment. These must be revised if the terms of employment change (clause 29).

5.2. Employers must display at the workplace a statement of employees' rights under the Bill in official languages used at the workplace (clause 30).

5.3. Employers must keep a record of the time worked by each employee and their remuneration (clause 31).

5.4. The Bill seeks to set out the manner in which employees must be paid and to protect employees from unlawful deductions from their wages. The rules for calculating remuneration and wages are set out (clauses 32 — 35).

6. Termination of employment

Chapter Five establishes the following basic conditions of employment for the termination of employment:

6.1. Minimum notice periods for terminating employment by employers or employees. This ranges from one week's notice during the first four weeks of employment to one month for employees with more than one year's service (clauses 37 and 38).

6.2. The termination of employment by an employer on notice in terms of the Bill does not prevent the employee challenging the fairness or lawfulness of the dismissal in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), or any other law (clause 37(6)).

6.3. An employee who is dismissed for reasons based on the employer's operational requirements is entitled to one week's severance pay for every year of service (clause 41). (This provision is currently contained in section 196 of the Labour Relations Act, 1995.)

6.4. On termination of employment, an employee is entitled to a certificate of service (clause 42).

7. Prohibition of employment of children and forced labour

Chapter Six provides for the following:

7.1. It is an offence to employ a child under 15 years of age or who is under the minimum school leaving age in terms of any law, if this is 15 or older (clause 43(1)).

7.2. Children under 18 may not be employed to do work inappropriate for their age or that places them at risk (clause 43(2)).

7.3. The use of forced labour is prohibited and is an offence (clause 48).

8. Variation of basic conditions of employment

8.1. A collective agreement concluded by a bargaining council may replace or exclude any basic condition of employment except certain core rights. The core rights that cannot be varied are the following:

* The duty to arrange working time with due regard to the health, safety and family responsibility of employees;
* two weeks of annual leave;
* maternity leave;
* sick leave, except to the extent permitted by the Act;
* to inform employees (who work for a period of longer than one hour after 23h00 and before 06h00 at least five times per month or 50 times per year) of the health and safety hazards associated with night work, enable them to undergo medical examinations at appropriate intervals and to transfer them to suitable day work if the employee suffers from a health condition associated with the performance of night work;
* the prohibition of child and forced labour (clause 49).

8.2. Other collective agreements and individual agreements may only replace or exclude basic conditions of employment to the extent permitted by the Bill.

8.3. The Minister of Labour may make a determination to vary or exclude a basic condition of employment. This can also be done on application by an employer or employer organisation (clause 50).

8.4. The Minister of Labour and the Minister of Public Service and Administration (clause 50(4)) must make a determination applying to the public sector.

8.5. A determination may be issued if a trade union representing the employees has consented to the variation or has had the opportunity to make representations to the Minister. A copy of any determination must be displayed by the employer at the workplace and must be made available to employees (clause 50(6)).

9. Sectoral determinations

9.1. The Minister of Labour may, after an investigation, make sectoral determinations establishing basic conditions of employment, including minimum wages for employees in unorganised sectors.

9.2. The Minister must act on the advice of the Employment Conditions Commission.

9.3. The Commission must consider the ability of employers to carry on their businesses successfully, the operation of small, medium and micro enterprises and new businesses, the cost of living, the alleviation of poverty and the impact of proposed conditions of employment on job creation and other factors before advising the Minister on the publication of a sectoral determination (clause 54).

9.4. A sectoral determination can regulate any matter concerning remuneration and conditions of employment.

9.5. A sectoral determination may not cover employers and employees covered by a bargaining council agreement (clause 55).

10. Employment Conditions Commission

10.1. The Employment Conditions Commission is established to advise the Minister of Labour on the making of sectoral determinations and other matters arising out of the application of the Bill (clause 59).

10.2. In addition the Commission can advise the Minister on trends in collective bargaining which undermine the purpose of the Act (clause 59(2)*(e)*).

10.3. Three members of the Commission are appointed by the Minister after consultation with NEDLAC. These members must be knowledgeable about the conditions of employment of vulnerable and unorganised workers (clause 60(1)).

10.4. A further two members are appointed by the Minister after being nominated by the voting members of NEDLAC representing organised labour and business (clause 60(2)).

11. Monitoring, enforcement and legal proceedings

11.1. The Minister of Labour may appoint labour inspectors to promote, monitor or enforce compliance with employment laws (clause 63).

11.2. Labour inspectors must advise employees and employers on their rights and obligations in terms of employment laws. They may also conduct inspections, investigate complaints and may question persons and inspect, copy and remove records and other relevant documents (clauses 64 — 65).

11.3. An inspector may serve a compliance order on an employer who is not complying with a provision of the Bill. The employer may object against the order to the Director-General: Labour, who after receiving representations, may confirm, modify or set aside an order. This decision is subject to appeal to the Labour Court (clauses 69 — 73).

11.4. The maximum penalties that may be imposed for failure to comply with the Bill are set out in Schedule Two.

11.5. The Labour Court has exclusive jurisdiction in all matters arising under the Bill, except where jurisdiction is given to another body and in criminal matters. The Labour Court has concurrent jurisdiction with the civil courts to hear disputes concerning contracts of employment (clause 77).

11.6. Employees may not be discriminated against for exercising rights in terms of this Bill (clauses 78 — 81).

12. General

The Bill includes a number of general provisions including the following:

12.1. A temporary employment service and the client are jointly and severally liable if the temporary employment service does not comply with the Act (clause 82).

12.2. The Minister may, on the advice of the Commission and by notice in the *Gazette*, deem any category of persons to be employees for the purposes of the Act (clause 83).

12.3. The Minister may, after consulting NEDLAC, issue Codes of Good Practice, including ones on the regulation of working time and the protection of employees during pregnancy and the birth of a child (clause 87).

13. Transitional Provisions

Schedule Three contains provisions to regulate the transition from other laws to the Bill. These include the following:

* The provisions of the Bill will not apply to the public service for a period of eighteen months from its commencement date;

* the reduction of ordinary working hours to 45 per week will only apply to farmworkers and mineworkers twelve months after the Act comes into effect (item 5);
* the maximum ordinary weekly hours of security guards must be reduced from 60 to 45 over 30 months (item 5).

The Department of Labour and the State Law Advisers are of the opinion that the Bill should be dealt with in terms of section 75 of the Constitution.

Printed by Creda Press

ISBN 0 621 27498 4