LABOUR

Shop Hours Ordinance 15 of 1939

Summary: This Ordinance (originally published in OG 796) governs the hours of operation of certain shops.

Repeals: The Ordinance repeals the Shop Hours Proclamation 9 of 1921, as amended, and the Half-Holiday Ordinance 8 of 1927, as amended.

Amendments: This Ordinance is amended by Ord. 4/1940 (OG 840), Proc. 34/1950 (OG 1530), Proc. 50/1950 (OG 1552), Ord. 10/1952 (OG 1687), Ord. 5/1957 (OG 2072), Ord. 39/1957 (OG 2092), Ord. 4/1959 (OG 2185) and the Conditions of Employment Act 12 of 1986 (OG 5221), which was brought into force by AG Proc. 26 of 1986 (OG 5226) and which repealed the portions of the Ordinance relating to shop assistants. The Conditions of Employment Act 12 of 1986 also changed the name of the Ordinance from the "Shop Hours and Shop Assistants Ordinance" to the "Shop Hours Ordinance".

Savings: There is no savings clause.

Regulations: The Ordinance makes provision for regulations in section 18. Regulations are contained in GN 133/1939 (OG 804). Additional regulations are contained in GN 303/1958 (OG 2171), as amended by AG GN 106/1985 (OG 5055).

Notices: Notices made in terms of section 3(2) regarding opening and closing hours in specific local authorities or for specific types of shops are not recorded here. Notices about the appointment of shop inspectors are also not recorded here.

Employees' Compensation Act 30 of 1941, as amended in South Africa prior to Namibian independence

Summary: This Act (originally published in SA GG 2909) makes provision for the compensation of workers or their dependants if the worker is injured or killed in the course of employment. It was previously known as the Workmen's Compensation Act. The Act came into force in South West Africa on 1 September 1956 when SA Proc. 173/1956 (SA GG 5733) brought the amendments made by the *Workmen's Compensation Amendment Act 51 of 1956*, including the insertion of section 109*bis*, into force – with that Proclamation explicitly stating that the portions of the Act on the right to compensation would also come into force in South West Africa on that date/

Repeals: The Act repeals the *Workmen's Compensation Act 59 of 1934* as amended. The *Workmen's Compensation Amendment Act 51 of 1956*, which made the Act applicable to SWA, additionally repeals the Workmen's Compensation (Accidents and Industrial Diseases) Proclamation 27 of 1924 (OG 148), as amended - which in turn repealed the "Imperial German- Enactment No. 25 of 7th June 1871 relating to compensation for deaths and bodily injuries occasioned in the working of railways, mines, etc., as amended by Section 42 of the Introductory Act to the German Civil Code of the 18th August 1896, together with so much of any other existing law as may be repugnant to or inconsistent with the provisions of this Proclamation".

Applicability to SWA: Section 109*bis* states "This Act and any amendment thereto shall apply also in the territory including the portion of the territory known as the 'Rehoboth Gebiet' and in relation to all persons in the Eastern Caprivi Zipfel referred to in section three of the South West Africa Affairs Amendment Act, 1951 (Act No. 55 of 1951) and defined in the First Schedule to Proclamation No. 28 of 1923 of the territory."

Section 109*bis* also provides that all proclamations and notices issued under the principal Act prior to the 1956 amendment that made it applicable to SWA shall automatically apply to SWA, unless their applicability is expressly limited to an area that excludes SWA.

Section 1 defines "employers' organization", "Gazette", "provincial or local division of the Supreme Court", "territory" and "Republic" appropriately to include South West Africa.

Transfer of administration to SWA: The relevant Transfer Proclamation is the Executive Powers (Labour) Transfer Proclamation, (AG 17/1977), dated 20 December 1977 (OG 3680). However, section 3 of the transfer proclamation excluded this Act from the operation of Section 3(1) of the General Proclamation, meaning that the administration of this Act was not transferred to SWA.

Amendments: The following pre-independence South African amendments were applicable to SWA –

- *Workmen's Compensation Amendment Act 27 of 1945* (SA GG 3504)
- *SA Proclamation 95 of 1945* (SA GG 3485)
- *Finance Act 48 of 1947* (SA GG 3830)
- *Workmen's Compensation Amendment Act 36 of 1949* (SA GG 4182)
- *Workmen's Compensation Amendment Act 5 of 1951* (SA GG 4563)
- *SA Proclamation 147 of 1951* (SA GG 4644)
- *SA Proclamation 63 of 1952* (SA GG 4817)
- *Workmen's Compensation Amendment Act 51 of 1956* (SA GG 5703)
- *SA Proclamation 170 of 1959* (SA GG 6274)
- *Railways and Harbours Superannuation Fund Act 39 of 1960* (SA GG 6431)
- *Workmen's Compensation Amendment Act 7 of 1961* (SA GG 6649)
- *RSA Proclamation R.90 of 1962* (RSA GG 229)
- *Workmen's Compensation Amendment Act 21 of 1964* (RSA GG 746)
- *Bantu Laws Amendment Act 42 of 1964* (RSA GG 801)
- *Workmen's Compensation Amendment Act 58 of 1967* (RSA GG 1732)
- *Pension Laws Amendment Act 98 of 1969* (RSA GG 2463)
- *Workmen's Compensation Amendment Act 9 of 1970* (RSA GG 2647)
- *Second Black Laws Amendment Act 27 of 1970* (RSA GG 2665)
- *Workmen's Compensation Amendment Act 60 of 1971* (RSA GG 3156)
- *Insolvency Amendment Act 6 of 1972* (RSA GG 3407)
- *RSA Proclamation R.98 of 1973* (RSA GG 3856)
- *Workmen's Compensation Amendment Act 11 of 1974* (RSA GG 4194)
- *Workmen's Compensation Amendment Act 28 of 1977* (RSA GG 5465)
- *Workmen's Compensation Amendment Act 8 of 1979* (RSA GG 6341)
- *RSA Proclamation 233 of 1979* (RSA GG 6689)
- *Workmen's Compensation Amendment Act 24 of 1981* (RSA GG 7453)
- *Workmen's Compensation Amendment Act 29 of 1984* (RSA GG 9127)
- *Transfer of Powers and Duties of the State President Act 97 of 1986* (RSA GG 10438)
- *Workmen's Compensation Amendment Act 35 of 1987* (RSA GG 10888)
- *Workmen's Compensation Amendment Proclamation 45 of 1990* (RSA GG 12328), which makes substantial amendments to the Act in preparation for Namibian independence.

The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898), deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979), amends certain terminology.

Act 9/1982 (OG 4652) makes minor amendments to section 70 of the Act.

Act 5 of 1995 (GG 1038), which was brought into force on 1 March 1995 by GN 52/1995 (GG 1039), amends the Act substantially and changes its name from the Workmen's Compensation Act to the Employees' Compensation Act.

The Abolition of Payment by Cheque Act 16 of 2022 (GG 7995), which was brought into force on 15 March 2023 by GN 47/2023 (GG 8050), amends section 20.

Regulations: Regulations are contained in RSA GN R.581/1961 (RSA GG 73), as amended by –

RSA GN R.1580/1964 (RSA GG 922)
RSA GN R.1474/1967 (RSA GG 1851)
RSA GN R.1480/1970 (RSA GG 2808)
RSA GN R.143/1972 (RSA GG 3380)
RSA GN R.1354/1975 (RSA GG 4790)
RSA GN R.837/1977 (RSA GG 5549)
Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)
RSA GN R.908/1980 (RSA GG 6969)
RSA GN R.1802/1981 (RSA GG 7741)
RSA GN R.1551/1983 (RSA GG 8814)
RSA GN R.2187/1984 (RSA GG 9449)
RSA GN R.223/1988 (RSA GG 11140)
RSA GN R.1134/1989 (RSA GG 11909)
RSA Proc. 45/1990 (RSA GG 12328)
GN 47/2004 (GG 3169)
GN 95/2012 (GG 4919)
GN 251/2013 (GG 5291).[281]

> Note: GN 251/2013 refers to a previous amendment of the regulations by Government Notice 4919 of 2 April 2012. This appears to refer to Government Notice 95 of 2 April 2012, which was published in GG 4919.

Rules: Rules to facilitate the consideration of applications under section 43 are contained in SA GN 1623/1950 (SA GG 4426), in SA GN 1692/1956 (SA GG 5739) and in RSA GN 1980/1982 (RSA GG 8382). None of these sets of rules contain repeals.

Notices: SA GN 379/1942 (SA GG 3011) exempts the State, including Parliament, from the provisions of section 96(1) of the Act (requirement that employers must furnish the Commission with the prescribed particulars of their business).

RSA GN 1291/1989 (RSA GG 11960) varied certain amounts and percentages for the purposes of sections 38(1)(a), 38(4), 39(1)(a), 39(1)(c), 39(2), 40(1)(a), 40(2), 43*bis*(1) and 43*bis*(2) with effect from 1 July 1989. Proc. 45 of 1990 provides as follows in section 46(d):

> In the application of the Act in the territory…paragraph 1(d) of Government Notice 1291 of 23 June 1989 shall, notwithstanding the provisions of section 43*bis*, be deemed not to be applicable in respect of any monthly pension which was payable by the State, including a Representative Authority as defined in section 1 of Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980), in terms of section 39 or 40 of the Act immediately before 1 July 1989 in connection with the disablement or death of a workman in the service of a department established under section 3(1) of the Government Service Act, 1980 (Act 2 of 1980).

The amount referred to in section 3(2)(b) (exclusion of persons as employees) is set at N$72 000 with effect from 1 March 2001 (GN 100/2001, GG 2544). This amount is set at N$76 000 with effect from 1 March 2012 (GN 66/2012, GG 4891), at N$81 300 with effect from 1 March 2013 (GN 250/2012, GG 5291) and at N$101 625 with effect from 1 March 2025 (GN 287/2024, GG 8461).[282]

The amounts of compensation for temporary, partial, total and permanent disablement and death are increased in GN 46/2004 (GG 3169), which is replaced by GN 96/2012 (GG 4919). The minimum

[281] These regulations rescind the regulations contained in SA GN 1580/1956 (SA GG 5733), which rescinded the regulations in SA GN 1622/1950 (SA GG 4426), which rescinded the regulations in SA GN 2448/1942 (SA GG 3120), which rescinded the first set of regulations promulgated under this Act in SA GG 378/1942 (SA GG 3011).
[282] Note that a previous version of GG 8461 contained erroneous notice numbers.

amount of compensation payable for permanent disablement in respect of the monthly pension is set at N$500 with effect from 1 March 2025 in GN 286/2024 (GG 8461).[283]

Notices of unclaimed payments are not listed here.

Fees: Tariffs of fees published in terms of the Act from time to time have not been recorded here.

Application of law: Sections 25(5) and 37 of the National Education Act 30 of 1980 (OG 4358), which is brought into force by AG 6/1981 (OG 4430), provided that state teachers in South West Africa are to be deemed "workmen" while students at government schools may not be deemed "workmen". However, this Act was repealed by the Education Act 16 of 2001 (GG 2673) except insofar as it applies to tertiary education, and by the Teachers' Education Colleges Act 25 of 2003 (GG 3124) insofar as it applies to teachers' education colleges. (The Education Act 16 of 2001 was subsequently repealed by the Basic Education Act 3 of 2020.)

Cases: *Social Security Commission & Another v Coetzee* 2016 (2) NR 388 (SC) (section 54: timeframes and section 108: delegation; discussion of overall framework of Act in paras 9-24); *Muhura NO & Another v Lewcor CC* 2019 (1) 288 (HC) (where case falls within ambit of section 7, suit against employer for common law damages is barred; meaning of "employee" and "accident").

Development Brigade Corporation Act 32 of 1992

Summary: This Act (GG 563) provides for the establishment of the Development Brigade Corporation, with the object of engaging in agricultural and other business activities for the purpose of providing training and skills development opportunities to unemployed persons. It was brought into force on 1 February 1993 by GN 15/1993 (GG 580).

Regulations: The Act makes no provision for regulations.

Notices: Proc. 3/1993 (GG 577) and Proc. 20/1993 (GG 715) both relate to the designation of the Minister responsible for administering the Act.

Appointments: Directors are appointed in GN 113/1994 (GG 870) and in GN 171/2017 (GG 6358), which withdraws GN 113/1994.

Commissions: Commission of Inquiry into the Activities, Affairs, Management and Operation of the former Amalgamated Commercial Holding (Pty) Ltd (AMCOM) Registration No. 93/261 and the former Development Brigade Corporation (DBC) Established Under Section 2 of the Development Brigade Corporation Act (Proc. 38/2004, GG 3221).
See also GN 132/2004 (GG 3221).

Affirmative Action (Employment) Act 29 of 1998

Summary: This Act (originally published in GG 1962) establishes an Employment Equity Commission and provides for affirmative action measures to achieve equal opportunity in employment for racially disadvantaged persons, women and persons with disabilities. It was brought into force, with the exception of section 2, sections 19-43 and sections 45-48, on 18 November 1998 by GN 278/1998 (GG 1996). The remaining sections were all brought into force on 6 August 1999 by GN 156/1999 (GG 2161).

[283] Note that a previous version of GG 8461 contained erroneous notice numbers.

Amendments: Act 6/2007 (GG 3965) amends sections 1, 10, 23, 24, 30, 44, 45 and 47. The Labour Act 11 of 2007 (GG 3971) amends section 45.

Regulations: Regulations are contained in GN 159/1999 (GG 2161).

Notices: A "relevant employer" for the purposes of the Act was initially defined as an employer which employs 50 or more employees by GN 158/1999 (GG 2161), which also contains guidelines for calculation and interpretation of this rule. GN 158/1999 was replaced by GN 95/2006 (GG 3658), which defines "relevant employer" as an employer which employs 25 or more employees. GN 95/2006 was replaced by GN 275/2022 (GG 7904), which defines "relevant employer" as an employer which employs 10 or more employees.

GN 157/1999 (GN 2161) provides that the first affirmative action report by "an Office, Ministry or Agency in the Public Service, or by a parastatal, identified as a relevant employer" must be submitted by 6 August 2000.

Appointments: The appointment of members to the Employment Equity Commission is announced in GN 184/2018 (GG 6680).

Cases:
Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)
The Act is discussed in *dicta* in *Tlhoro v Minister of Home Affairs* 2008 (1) NR 97 (HC) beginning at 113C
See also *S v Nkeuene* 2010 (1) NR 301 (HC) (conviction on charge of failing to comply with section 27(2)(a) set aside on basis that servant of corporate body was not authorised to plead guilty on behalf of the body).

Commentary:
Namibia Institute for Democracy, *Implementing Affirmative Action in Namibia: A summarised guide to the Affirmative Action (Employment) Act (Act 29 of 1998),* third edition, 2000
Daniel Motinga & Tjivingurura Mbuende, "Progress on Affirmative Action and Employment Equity: Still a Man's World!", Institute for Public Policy Research, 2003, available here.

Related international agreements:
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979
Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999
SADC Protocol on Gender and Development, 2008.

Labour Act 11 of 2007

Summary: This Act (originally published in GG 3971) consolidates and amends the labour law. It entrenches fundamental labour rights and protections, regulates the basic terms and conditions of employment, ensures the health, safety and welfare of employees, protects employees against unfair labour practices, regulates the registration of trade unions and employers' organizations, regulates collective labour relations, provides for the systemic prevention and resolution of labour disputes, establishes the Labour Advisory Council, Labour Court, Wages Commission and labour inspectorate, and provides for the appointment of the Labour Commissioner and Deputy Labour Commissioner. All the sections of the Act *other than* section 128 (prohibiting labour hire) were brought into force on 1 November 2008 by GN 260/2008 (GG 4151). Section 128 of the Act was brought into force on 1 March 2009 by GN 1/2009 (GG 4192).

Repeals: The Act repeals both the Labour Act 6 of 1992 (GG 388) and the Labour Act 15 of 2004 (GG 3339), which was brought only partially into force. There is an extensive Schedule of transitional

provisions. Any reference to the 1992 Act in any law must be construed insofar as possible as a reference to the corresponding provision of this Act. Regulations, notices, declarations, registrations, collective agreements and exemptions from collective agreements made under the 1992 Act generally remain in force.

> The **Labour Act 6 of 1992**, which was repealed by this Act, repealed the Factories, Machinery and Building Work Ordinance 34 of 1952 (OG 1741), the Wage and Industrial Conciliation Ordinance 35 of 1952 (OG 1741), the Validation of Native Service Contracts Ordinance 3 of 1958 (OG 2141), the *Occupational Diseases in Mines and Works Act 78 of 1973* (RSA GG 3970), the Kavango Labour Act 2 of 1974, the National Labour Council Act 9 of 1986 (OG 5215) and the Conditions of Employment Act 12 of 1986 (OG 5221).
>
> The **Labour Act 15 of 2004** was intended to repeal the Labour Act 6 1992, but Act 15 of 2004 never came into force in its entirety. Sections 75, 97(a), (b), (c), (e) and (h), 94(1) and (4), 98, 99, 100 and 101 and items 1 and 11(3) of Schedule 1 were brought into force on 30 November 2005 by GN 162/2005 (GG 3545). Section 118 and item 13(1) of Schedule 1 were brought into force on 27 January 2006 by GN 20/2006 (GG 3582). Section 139 of Act 15 of 2004, which concerns repeals, was never brought into force, but (unlike the current Act) would have repealed *only* the Labour Act 6 of 1992.

Amendments: Act 2/2012 (GG 4925) amends sections 1, 5, 82, 83, 89 and 128 and inserts sections 128A, 128B and 128C; these amendments relate to the issue of "labour hire". This amending Act was brought into force as of 1 August 2012 by GN 136/2012 (GG 4958) – but GN 136/2012 was withdrawn by GN 192/2012 (GG 5005) on 1 August 2012. GN 193/2012 (GG 5005) provides that amending Act 2/2012 will come into force on 1 August 2012 – *except for* the provisions in section 10 in so far as they relate to section 26(2)(a)(ii)-(iii) of the Employment Services Act 8 of 2011.

The Whistleblower Protection Act 10 of 2017 (GG 6450), which has not yet been brought into force, amends section 84.

The Abolition of Payment by Cheque Act 16 of 2022 (GG 7995), which was brought into force on 15 March 2023 by GN 47/2023 (GG 8050), amends section 11.

Savings: In terms of Item 2(2) of Schedule 1 to this Act concerning transitional provisions -

> Any regulation promulgated in terms of the previous Act [Labour Act 6 of 1992] or the 2004 Act [Labour Act 15 of 2004] remains in force as if it had been promulgated under this Act as from the effective date.

The Schedule to this Act also sets out details about other continuities in respect of notices, exemptions and other matters.

Section 116(2) of the previous Labour Act 6 of 1992 provides as follows:

> Subject to the provisions of subsections (3), (4) and (5) -
>
> (a) any appointment made;
> (b) any conciliation board established;
> (c) any regulation made;
> (d) any exemption granted; and
> (e) anything else done,
>
> under any provision of any law repealed by subsection (1) and which was in force on the date immediately before the commencement of this Act, shall be deemed to have been made, established, granted or done, as the case may be, under the corresponding provision of this Act.

Regulations: Regulations made in terms of Acts repealed by the Labour Act 6 of 1992 survived in terms of section 116(2) of that Act, and continue to survive pursuant to section 142 of the current Act (read together with item 2(2) of Schedule 1). However, pre-independence regulations have not been comprehensively researched.

Regulations could have been made under the following enactments:

- the Factories, Machinery and Building Work Ordinance 34 of 1952 (OG 1741)
- the Wage and Industrial Conciliation Ordinance 35 of 1952 (OG 1741)
- the *Occupational Diseases in Mines and Works Act 78 of 1973* (RSA GG 3970)
- the National Labour Council Act 9 of 1986 (OG 5215)
- the Conditions of Employment Act 12 of 1986 (OG 5221)

Regulations made in terms of the **Labour Act 6 of 1992**, which survive pursuant to section 142 of this Act are as follows –

> **Regulations relating to the health and safety of employees at work** are contained in GN 156/1997 (GG 1617). The administration of these regulations is assigned to various ministers by Proc. 10/1997 (GG 1615). (See also the Namibian Electricity Safety Code contained in GN 200/2011 (GG 4821), which is to be read in conjunction with these regulations.)[284]

Regulations made under **this Act** are as follows:

> **General regulations** are contained in GN 261/2008 (GG 4151), which replaces GN 174/1992 (GG 533) and GN 175/1992 (GG 533).
>
> **Regulations relating to domestic workers** are contained in GN 257/2017 (GG 6428), which repeals GN 257/2014 (GG 5638). They require employers of domestic workers to submit a form annually to the Permanent Secretary of the labour ministry or to the Labour Office containing certain particulars about domestic workers.
>
> **Regulations relating to fishers** are contained in GN 308/2025 (GG 8785).

Rules: Rules made by the Labour Courts' Rules Board in terms of the previous Act and surviving pursuant to section 14(4) of the current Act are as follows –

> **Rules of the District Labour Courts** are contained in GN 138/1993 (GG 747). These courts no longer exist in Namibia (see section 16(b) of Schedule 1 of the Act), although pending cases before district labour courts are to be completed in terms of section 15(4) of Schedule 1 of the Act.

Rules made under the current Act are as follows:

> **Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner** ("Con-Arb Rules") are contained in GN 262/2008 (GG 4151), as amended by GN 69/2016 (GG 5990), which substitutes Annexure 1.
>
> **Labour Court Rules** are contained in GN 279/2008 (GG 4175), which replaced GN 63/1994 (GG 841). The new rules became effective on 15 January 2009. Rules 6 and 14 are amended and Rule 22 is substituted by GN 92/2011 (GG 4743).

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[284] Note that the Labour Act 6 of 1992 (section 116 read together with the Schedule) repealed the **Employment Bureaux Regulations** contained in RSA GN R.323/1972 (RSA GG 3742), as amended by RSA Proc. R.17/1976 (RSA GG 4981), GN 5/1977 (OG 3657), AG Proc. 33/1978 (OG 3758) and AG Proc. 48/1978 (OG 3782). The Employment Bureaux Regulations were originally made in terms of section 38 of the South-West Africa Constitution Act 39 of 1968, which was repealed by the Labour Act 6 of 1992. Pursuant to section 142 of the Labour Act 11 of 2007, the Employment Bureaux Regulations are deemed to have been made under that Act.

The Labour Act 6 of 1992 also repealed the following ethnic-based regulations:

- Labour Enactment for Owambo, Enactment 6 of 1972 (Owambo Legislative Council Enactment 6 of 1972), (published in RSA GN R.1416/1972, RSA GG 3633), as amended by the Owambo Labour Amendment Enactment 12 of 1973.
- Employment Bureaux Regulations for Namas, RSA Proc. R.32/1973 (RSA GG 3780)
- Namaland Employment Bureau Regulations, RSA Proc. R.65/1976 (RSA GG 5102).

Codes: A **Code of Good Practice on Industrial Action (Strikes and Lock-outs)**, issued in terms of section 137(1)(a) of the Act, is contained in GN 208/2009 (GG 4361).

A **Code of Good Practice on Picketing**, issued in terms of section 137(1)(a) of the Act, is contained in GN 208/2009 (GG 4361).

A **Code of Ethics for Conciliators and Arbitrators**, issued in terms of section 137(1)(c) of the Act, is contained in GN 185/2020 (GG 7301).

A **Code of Good Practice for Labour Inspectors**, issued in terms of section 137(1)(a) of the Act, is contained in GN 306/2024 (GG 8485).

Application of law: Section 5 of the Act applies to all employers and employees. The remainder of the Act applies to all employers and employees except members of the Namibian Defence Force, the Namibian Police Force, municipal police services, the Namibian Central Intelligence Service or the Prison Service (unless the laws governing any of these services provide otherwise).

Application of the 1992 Act was addressed in the following:

> Export processing zones are exempted from the operation of certain provisions of the Labour Act by section 8 of the Export Processing Zones Act 9 of 1995 (GG 1069) (as amended by Act 6/1996 (GG 1337).
>
> Section 35 of the Namibia Central Intelligence Service Act 10 of 1997 (GG 1699) provides that the Labour Act will not apply to the administration of the Service or to its staff members, with the exception of sections 35, 39, 40, 41, 52, 106 and 107.
>
> Section 40 of the Namibia Water Corporation Act 12 of 1997 (GG 1703) provides that employees who would cause or prolong a disruption of water supply to a customer by withholding their services shall be deemed to be rendering an essential service for the purposes of section 79 of the Act.

Notices: Notices made under the previous Act which remain in force include the following (omitting those with no ongoing effect) –

> **Particulars to be submitted by employers in the agricultural sector** are contained in GN 115/2003 (GG 2990), which is replaced by GN 171/2003 (GG 3030); GN 89/2005 (GG 3465) again withdraws GN 115/2003 (although it was probably meant to replace GN 171/2003), and sets forth particulars to be submitted by employers in the agricultural sector.
>
> **Guidelines and instructions pertaining to HIV/AIDS in employment** were issued in GN 78/1998 (GG 1835), but these do not appear to remain in effect.

Other notices regarding specific topics are listed below.

Wage Orders: GN 258/2017 (GG 6428) contains a Wage Order for Setting Minimum Wage and Supplementary Minimum Conditions of Employment for Domestic Workers. The minimum wage set out in this order was increased by General Notice 639/2018 (GG 6767). However, GN 218/2024 (GG 8409) supersedes this Wage Order for Domestic Workers insofar as it relates to minimum wage.

GN 218/2024 (GG 8409) contains a **Wage Order** setting a minimum wage for all employees of N$18.00 per hour, with effect from 1 January 2025 – but provides gradual steps to this minimum wage for domestic workers and agricultural workers, who will reach the same minimum wage as of 1 January 2027.[285] This Wage Order supersedes the existing Wage Order for Domestic Workers in GN 258/2017

[285] GN 258/2017 in turn repealed GN 258/2014 (GG 5638), which was amended by GN 53/2016 (GG 5978).

(GG 6428) and the Collective Agreement between the Agricultural Employer's Association and the Namibian Farmers' Union *insofar as these relate to the rate of minimum wage*. This Wage Order was amended by GN 6/2025 (GG 8562) to provide gradual steps to the minimum wage for "security workers", who will reach the minimum wage of N$18.00 per hour as of 1 January 2027, along with domestic workers and agricultural workers. It is further amended by GN 265/2025 (GG 8762), which substitutes paragraph 6.

Exemptions: Certain jobs at specific workplaces were exempted from the prohibition on work on Sundays and public holidays in terms of section 33(1) of the 1992 Act. These exemptions are not listed here.

Continuous operations: Certain work at specific workplaces has been declared to be "continuous operations" in terms of section 15 of the 2007 Act. These declarations are not listed here.

Essential services: Certain services are designated as essential services in terms of section 77(4) of the current Act -

- GN 314/2012 (GG 5109), repealed by GN 115/2017 (GG 6309),
- GN 94/2014 (GG 5510)
- GN 115/2017 (GG 6309)
- GN 178/2018 (GG 6680).

Variations: Certain provisions of Chapter 3 of the Act (sections 8, 18, 20, 21, 22 and 28) are varied for a one-year period in respect of employers and employees in the **tourism and hospitality industry** by GN 17/2011 (GG 4660).

Certain provisions of Chapter 3 of the Act (sections 16, 17, 18 and 20) are varied for a five-year period in respect of **fishers** (defined as persons "employed or engaged in any capacity or carrying out an occupation on board a fishing vessel, including persons working on board paid on the basis of a share of the catch but excluding pilots, naval personnel, shore-based persons carrying out work aboard a fishing vessel and fisheries observers") by GN 250/2016 (GG 6149).

Certain provisions of Chapter 3 of the Act (sections 16, 17, 18 and 20) are varied for a five-year period in respect of employers and employees in the **fisheries industry** by GN 38/2023 (GG 8040).

Registered collective agreements: Registered collective agreements have been declared binding on three industries –

> **Construction industry:** The Collective Agreement on Conditions of Employment for Construction Industry, dated 15 November 2017, is set forth in full and extended to the entire construction industry in GN 65/2018 (GG 6567). It sets forth minimum wages, amongst other things, and amends the collective agreement contained in GN 319/2015 (GG 5917). This agreement is extended to 11 April 2021 by GN 72/2020 (GG 7142), and amended and extended for two years from the date of publication of the amendments (2 November 2021), by GN 241/2021 (GG 7675). GN 241/2021 is then amended and extended in accordance with the Collective Agreement on Minimum Wages and Conditions of Employment: Construction Industry contained in GN 156/2025 (GG 8377), which applies for two years from its date of publication (6 June 2024).[286]
>
> **Agricultural industry:** A registered collective agreement relating to minimum wage which is binding on the entire agricultural industry is published in GN 141/2024 (GG 8369), applicable for a period of

[286] Past collective agreements in this industry were published in GN 298/1996 (GG 1444), GN 272/1997 (GG 1752) extended by GN 300/1998 (GG 2010); GN 135/1999 (GG 2144) extended by GN 85/2000 (GG 2301), GN 123/2000 (GG 2340), GN 217/2001 (GG 2637), GN 39/2003 (GG 2927), GN 24/2005 (GG 3392), GN 224/2008 (GG 4115), GN 129/2009 (GG 4271), GN 154/2012 (GG 4970) and GN 319/2015 (GG 5917).

A request to extend a collective agreement to the construction industry, and an invitation to submit objections to such extension, is published in GN 25/2024 (GG 8326), which withdraws a previous request of the same nature in GN 396/2023 (GG 8280).

twelve months starting from 1 October 2023. It sets the minimum entry-level cash wage for agricultural employees at N$6.00 per hour, with additional requirements for employees who are required to live at the place of employment.[287]

Security industry: A registered collective agreement extended to all employers and employees in the security industry was most recently published in GN 242/2017 (GG 6414). It sets the minimum wage for entry-level security officers at N$8.75 per hour as of 1 January 2017 and provides for other wage adjustments. It also contains rules about the provision of uniforms.[288]

Fuel industry: No minimum wage has been gazetted, but a 2014 news report stated that agreement was reached between the Namibia Fuel and Allied Workers Union (NAFAWU), the Metal and Allied Workers Union (MANWU), the Namibia Wholesalers and Retail Workers Union (NWRWU), the Namibia Food and Allied Workers Union and the Association of Service Station Owners (ASSO) for a N$7.20/hour minimum wage for a basic minimum salary of N$1 404 per month. According to the news report, the agreement covers petrol attendants, cashiers and shop attendants at service stations. The minimum amount does not include payment for Sundays, public holidays or overtime It was expected to be implemented on 1 January 2015, and to be renegotiated after two years. The plan was to extend the agreement to the entire industry.[289]

Wages Commission: A Wages Commission was convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 135/2012 (GG 4956), which sets forth its terms of reference. The date for submission of this Commission's report, originally 15 February 2013, was extended to 15 April 2013 by GN 308/2012 (GG 5109) and to 30 May 2013 by GN 112/2013 (GG 5188).

A Wages Commission was again convened for the purpose of investigating the terms and conditions of employment of **domestic workers** by GN 28/2017 (GG 6245), which sets forth its terms of reference.

A Wages Commission was convened for purposes of investigating a proposed **national minimum wage** by GN 26/2021 (GG 7461), which sets forth its terms of reference.

Cases: The following cases were decided after the **Labour Act 11 of 2007** became the operative law –

General

arbitration proceedings (generally):

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC) (recusal of arbitrator)

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (basis for appeal of arbitrator's award)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC) (Labour Court Rules and Conciliation and Arbitration Rules must be read together; para 25: "perhaps consideration should in future be given to creating greater harmony between the different sets of rules, or by co-ordinating matters so that both sets of rules do not regulate the same matters")

City of Windhoek v Katuuo & Others 2016 (2) NR 529 (LC) (arbitrator finding "unfair labour practices" under section 50(1) should indicate which paragraph of that section is relevant; arbitration is not competent in respect of disputes of interest)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (approach to overtime claims in arbitration proceeding)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC) (approach to finding of

[287] Past collective agreements in this industry were published in GN 237/2009 (GG 4390) and GN 77/2003 (GG 2946.

[288] Past collective agreements in this industry were published in GN 132/2005 (GG 3516) as amended by a Memorandum of Agreement contained in GN 202/2008 (GG 4112), GN 190/2009 (GG 4342), GN 229/2012 (GG 5031) and GN 248/2014 (GG 5628).

[289] "Minimum wage for Namibia's fuel sector", *Namibian Sun*, 29 September 2014. A request to extend a collective agreement to the Fuel Retail Industry, and an invitation to submit objections to such extension, is published in GN 309/2015 (GG 5910).

procedurally and substantively unfair dismissal in arbitration proceedings)

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (criteria for interfering with arbitrator's award on appeal)

Standard Bank Namibia Ltd. v Gaseb & Another 2017 (1) NR 121 (LC) (appeal against arbitrator's award on questions of law may overturn a factual finding of the arbitrator if there is no evidence that could reasonably support the finding of fact in question, or if no reasonable arbitrator could have made such a finding of fact on the evidence at hand)

Imene v Namdeb Diamonds (Pty) Ltd & Others 2019 (2) NR 426 (LC) (arbitration award in case concerning theft of 77,324 carat diamond set aside due to irregularities involving inadequate charge sheet, failure to capture inspection *in loco* as part of record, hearsay evidence by witnesses, failure to examine relevant CCTV footage and presence of an unidentified "observer" at the arbitration proceedings whose role was unclear); see also *Namdeb Diamond Corporation (Pty) Ltd v Coetzee* 2022 (2) NR 578 (SC), which concerns another arbitration proceeding arising from this alleged theft (arbitration award set aside because (1) not procedurally unfair to hold disciplinary hearing in absence of employee when employee set demands and conditions for his participation; (2) company disciplinary code is a guide regarding procedure, but not immutable; (3) evidence was sufficient to show breakdown of trust between employer and employee)

Germanus v Dundee Precious Metals Tsumeb & Others 2019 (2) NR 453 (LC) (various grounds of appeal against arbitrator's award considered and rejected)

Angula v Stuttaford Van Lines & Another 2019 (2) NR 461 (LC) (arbitrator wrong to refuse to order reinstatement after finding unfair dismissal and finding that continuation of employment relationship was reasonable)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (arbitration award rescinded because it gives effect to an act done in violation of a legislative enactment; award thus void *ab initio*)

Smith v Desert Fruit Namibia (Pty) Ltd & Others 2021 (2) NR 393 (LC) (what constitutes a reviewable irregularity on the part of the arbitrator)

Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (person who is not an admitted legal practitioner has no right to represent another person at arbitration proceedings (at para 11); stated *obiter* that arbitration proceedings are not ordinarily public hearings (at para 51))

condonation:

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (explication of general legal principles applicable to applications for condonation; confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

consistency in disciplinary sanctions:

Standard Bank Namibia Ltd. v Gaseb & Another 2017 (1) NR 121 (LC) (principle of consistency when imposing disciplinary sanctions is part of Namibian labour law, but an employer may show valid reasons for differentiating between employees who are guilty of the same offence)

constructive dismissal:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (burden of proving constructive dismissal lies with employee)

Kvekotora v Transnamib Holdings Ltd & Another 2012 (2) NR 443 (LC)

Council of the City of Windhoek v Brandt 2023 (4) NR 1070 (SC)

contract of employment:

Namrights Inc v Nicodemus & Others 2016 (2) NR 596 (LC) (contract of employment is *void ab initio* and cannot be basis for any benefits where concluded with refugee in absence of work permit or exemption from work permit requirements)

"double jeopardy" in disciplinary proceedings:

Eises v First National Bank (Namibia Holdings) Ltd & Another NO 2020 (3) NR 670 (LC) (no exceptional circumstances present to justify violation of principle forbidding double jeopardy)

First National Bank of Namibia Ltd v Nghishidivali & Another 2021 (4) NR 1125 (SC) ("double jeopardy" found where new disciplinary hearing held after imposition of final warning, in absence of new information)

fiduciary duty of employee to employer:

Shoprite Namibia (Pty) Ltd v Petrus 2019 (1) NR 175 (HC) (fiduciary duty of employee not to work against employer's interests)

jurisdiction of Labour Court and High Court:

Nghikofa v Classic Engines CC 2014 (2) NR 314 (SC) (Labour Act does not exclude jurisdiction of High Court in respect of common-law claims for damages arising from contracts of employment)

Masule v Prime Minister of the Republic of Namibia & Others 2022 (1) NR 10 (SC) (Labour Court is a division of the High Court and not a lower or separate court (para 47); it is a misdirection for a High Court judge to decline to hear a matter on the basis that it falls within the "exclusive jurisdiction" of the Labour Court; if a matter is brought before a High Court judge instead of in the Labour Court, that judge should hear the matter, consider whether it is the kind of dispute covered by the Labour Act, whether it was brought in terms of the rules of court governing labour disputes and whether the remedies sought are competent under the Labour Act (para 53); however, the principle of subsidiarity requires that the procedures and remedies set out in the relevant legislation must be "the litigants first port of call")

Swakop Uranium v Employees of Swakopmund Uranium 2022 (4) NR 1195 (SC) (High Court has jurisdiction to hear a claim arising from a contract of employment, to which the time limits in section 86 do not apply, but in this case the claim arose from the right to overtime in section 17 of the Act read with section 8 and not from the employment contract; the High Court thus lacked jurisdiction to hear the matter and the time limits in section 86(2)(b) were applicable)

Namibia Water Corporation Ltd v Tjipangandjara 2025 (3) NR 716 (SC) (High Court has no jurisdiction to hear a cause of action arising under s. 50(1) of the Labour Act as opposed to a civil claim based on the employment contract; discussion and application of the *Nghikofa*, *Masule* and *Swakop Uranium* cases cited above)

legal representation:

Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (person who is not an admitted legal practitioner has no right of audience in Labour Court and is not entitled to represent any person other than himself or herself (at para 11))

prescription:

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (*Prescription Act 68 of 1969* applies to labour-related claims arising under this Act).

sexual harassment:

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (*dicta* on sexual harassment at paras 61-62)

> Sexual harassment is after all a serious matter. The legislature has provided for sexual harassment in the workplace in ch 2 of the Act, where special remedies are also provided for discrimination in an employment setting. This is a clear indication of the seriousness with which sexual harassment at the workplace is viewed by the legislature and rightly so. Being subjected to unwanted and unwarranted conduct of a sexual nature not only creates a barrier to equality in employment as is stressed in s 2 of the Act, but it also violates an employee's constitutional right to dignity and of the person. The seriousness of sexual harassment in employment is reinforced by the fact that the failure on the part of an employer to prevent it may even attract delictual liability.

team misconduct:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

unfair labour practice:

Wilderness Air Namibia v Janse van Rensburg 2012 (2) NR 764 (LC); *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC)

unfair dismissal:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (arbitrators' finding of unfair dismissal overturned)

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC) (court overturns factual conclusion of arbitrator on grounds that no arbitrator could reasonably have found dismissal unfair; procedural defects can be overlooked if there is substantial fairness)

Hangana Seafood (Pty) Ltd v Viringa 2016 (2) NR 582 (LC)

Lawrence v Gijimaast Technology Services (Pty) Ltd & Another 2019 (1) NR 1154 (LC) (termination of employment contract on grounds of incapacity due to health issues found to be substantively and procedurally fair)

Namdeb Diamond Corporation (Pty) Ltd v Gaseb 2019 (4) NR 1007 (SC) (employee dismissed for a valid and fair reason and in compliance with a fair procedure; violation of fiduciary duty not to work against employer's interests even in absence of specific rules applicable to conduct in question)

Januarie v Namibia Ports Authority (Pty) Ltd 2024 (1) NR 209 (LC) (decision of arbitrator upheld; sanction of dismissal ruled to be fair where employee organised public demonstration outside workplace which made serious allegations against employer, with severe negative impact on good name of employer, in violation of fiduciary duty toward employer as well as employer's disciplinary policy).

Labour Act 11 of 2007

section 1:

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (definition of "employee")

section 9:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

Namibia Training Authority v Nangolo-Rukoro & Another 2016 (4) NR 992 (LC) (section 9(3))

Namibia National Teacher's Union v Government of the Republic of Namibia & Others NO 2018 (2) NR 403 (LC) (collective agreements interpreted against backdrop of section 50(1)(e) in successful appeal against arbitrator's award)

section 10:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

sections 11-12:

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)

Chapter 8, Part B (conciliation) and Part C (arbitration):

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (differences between statutory schemes for conciliation and arbitration discussed at length)

section 15:

Inamudhimbwa v Coca Cola Namibia Bottling Co (Pty) Ltd & Others 2024 (4) NR 1172 (HC) (employee's refusal to work continuous shift in absence of ministerial approval under section 15 is not grounds for a fair dismissal; employee has a right to disobey an unlawful instruction)

section 24:

Titus v National Housing Enterprise & Others 2025 (1) NR 73 (SC) (section 24(4) applied)

section 33:

House and Home (a trading division of Shoprite (Pty) Ltd) v Majiedt & Another 2013 (2) NR 333 (LC)

Management Science for Health v Kandungure & Another 2013 (3) NR 632 (LC) (minimum requirements of fair disciplinary hearing set forth at para 5)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

Namibia Custom Smelters (Pty) Ltd v Mupetami & Another 2015 (3) NR 859 (LC) (section 33(1)(a))

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC)

Jurgens v Geixob & Others 2017 (1) NR 160 (LC) (section 33(1) requires an employer to show *both* a valid and fair reason for dismissal *and* a fair procedure in order to establish a fair dismissal; an arbitrator has unfettered discretion to make an appropriate award in the case of an unfair dismissal even if there was a fair substantive reason for a dismissal

which lacked procedural fairness, and a court will interfere with the arbitrator's exercise of discretion in this regard only if no reasonable arbitrator could have come to the same conclusion)

Rossing Uranium Ltd v Goseb & Another 2019 (2) NR 464 (LC) (section 33(1)(a) encompasses two requirements – a valid reason for dismissal and a decision that dismissal is a fair outcome in the circumstances)

Maree v Amazing Kids Private School & Another 2020 (4) NR 1151 (LC) (section 33(4))

Letshego Bank of Namibia (Pty) Ltd v Bahm 2022 (1) NR 120 (LC) (dishonesty is a serious offence which can in certain cases justify dismissal; trust is a key factor in employment by banking institution)

Council of the City of Windhoek v Brandt 2023 (4) NR 1070 (SC) (application of section 33 to a case of constructive dismissal)

Nghiwete v Namibia Students Financial Assistance Fund 2024 (4) NR 905 (SC) (section 33(4))

section 34:

Namibia Wildlife Resorts Ltd v Government Institutions Pension Fund & Others 2015 (1) NR 88 (SC)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC)

section 35:

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (amount prescribed in section 35(3) is a minimum and does not preclude court from ordering a higher amount of severance pay)

Gibeon Village Council v Labour Commissioner & Others 2021 (1) NR 94 (LC) (section 35 on severance pay applied)

section 37:

Vox Orion (Pty) Ltd t/a Vox Orion v Prinsloo 2014 (1) NR 202 (LC)

section 49:

Kandukira v Shinguadja & Another 2013 (4) NR 903 (LC) (section 41(1)(d), read with sections 51(1) and 121(1)(a), includes an unfair labour practice between a trade union and its members, which can be referred to a Labour Commissioner as a dispute)

section 45:

Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC)

section 50:

Namibia National Teacher's Union v Government of the Republic of Namibia & Others NO 2018 (2) NR 403 (LC) (collective agreements interpreted against backdrop of section 9 in successful appeal against arbitrator's award)

Namibia Water Corporation Ltd v Tjipangandjara 2025 (3) NR 716 (SC) (High Court has no jurisdiction to hear a cause of action arising under s. 50(1) of the Labour Act as opposed to a civil claim based on repudiation of the employment contract; "contraventions of s 50 give rise to the right under s 51 to refer disputes in respect of those contraventions to the Labour Commissioner to be referred to arbitration")

section 51:

Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC)

section 65:

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (application of section discussed in light of Constitutional right of assembly and its limitations)

section 74:

Namibia National Teachers Union & Others v Kayec Trust & Others 2018 (1) NR 21 (HC) (longer time period for notice of strike in collective agreement that binds parties under section 70(1) constitutes compelling reason for departing from 48-hour rule in section 74(1)(d))

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 74 applied)

section 76:

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 76(3)(a)-(b) applied); overruled on appeal in *Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Another* 2022 (2) NR 325 (SC)

section 79:

Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC)

Tjipangandjara v Namibia Water Corporation (Pty) Ltd 2015 (4) NR 1116 (LC)

section 82:

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC) (section 82(9)(c); no constitutional bar to service of notice of conciliation or arbitration by a Labour Commissioner or an official who conducts conciliation or arbitration proceedings)

section 85:

Roads Contractor Company v Nambahu & Others 2011 (2) NR 707 (LC) (section 85(6): includes guidelines for arbitration to satisfy constitutional right to fair hearing)

Note that the case erroneously refers to the statute as the "Labour Court Act".

section 86:

Nedbank Ltd v Louw 2011 (1) NR 217 (LC) (section 86(2))

Paulo v Shoprite Namibia (Pty) Ltd & Others 2013 (1) NR 78 (LC) (section 86(15): interpretation of term "re-instatement")

National Housing Enterprise v Hinda-Mbazira & Others 2013 (1) NR 19 (LC) ((section 86(2); six-month time period for referral of a dispute involving a dismissal in section 86(2)(a) begins to run when the dispute has crystallised, after exhaustion of internal remedies, and not from the date of the dismissal, finding that this section must be read intertextually with sections 82(7), (8) and (9)); interpretation confirmed on appeal in *National Housing Enterprise v Hinda-Mbazira* 2014 (4) NR 1046 (SC)

Classic Engines CC v Nghikofa 2013 (3) 659 (HC) (not applicable to an action for damages for breach of an employment contract, since conciliator and arbitrator have no power to award damages); see also *Nghikofa v Classic Engines CC* 2014 (2) NR 314 (SC) (section 86(2) of Act does not require that breach of contract claim be referred to Labour Commissioner, discussed in course of considering prospects of success on merits in condonation application)

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (section 86(2)(c) is peremptory and allows for no power of amelioration)

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (section 86(7))

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 86(16)(a))

Life Office of Namibia Ltd (Namlife) v Amakali & Another 2014 (4) NR 1119 (LC) (section 86(18): consequence of non-compliance when arbitration award delivered after 30-day time limit); see also *Torbitt & Others v International University of Management* 2017 (2) NR 323 (SC) (discussed below)

Shaama v Roux 2015 (1) NR 24 (LC) (application of section 86(2))

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (various provisions of section 86 considered, including section 86(7))

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (section 86(15))

Torbitt & Others v International University of Management 2017 (2) NR 323 (SC), overturning *International University of Management v Torbitt & Others* 2015 (3) NR 698 (LC) (Supreme Court: interpretation of "must" in section 86(18) requires substantial rather than rigid compliance with the stated time period for issue of arbitration awards; it would be unjust in the circumstances of the case at hand to treat an award issued 21 days late as a nullity, but the 30-day time limit "must still be regarded as the guiding objective when awards are to be issued by arbitrators")

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (section 86(18))

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC)

Tow-In Specialist CC v Urinavi 2016 (3) NR 829 (LC) (section 86(16))

Rossing Uranium Ltd v Goseb & Another 2019 (2) NR 464 (LC) (section 86(2)(a) (meaning of "six calendar months") and 86(15))

Employees of Swakopmund Uranium v Swakop Uranium 2020 (2) NR 503 (HC) (time-bars in section 86 not applicable to civil suit in High Court as the time-bars apply only to the availability of certain remedies under the Labour Act and do not extinguish underlying common-law action; the applicable time limits for the High Court action are found in

the Prescription Act 68 of 1969); overturned in part by *Swakop Uranium v Employees of Swakopmund Uranium* 2022 (4) NR 1195 (SC) (High Court has jurisdiction to hear a claim arising from a contract of employment, to which the time limits in section 86 do not apply, but in this case the claim arose from the right to overtime in section 17 of the Act read with section 8 and not from the employment contract; the High Court thus lacked jurisdiction to hear the matter and the time limits in section 86(2)(b) were applicable)

Gibeon Village Council v Labour Commissioner & Others 2021 (1) NR 94 (LC) (section 86(2)(b) of the Labour Act applies to the determination of prescription for an appeal against an arbitration award, and not the Prescription Act 68 of 1969 or the *Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970*; the test is when each "dispute" arose, and not the "cause of action")

section 87:

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (section 87(1)(b): Labour Court not required to make an arbitration award an order of court)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (section 87(1)(b): once registered under this section, an arbitration award becomes a fully-fledged order of the Labour Court)

section 82:

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 82(17))

section 86:

Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (section 86(16) applied)

Shikemeni & Another v Transnamib Holdings & Another 2023 (3) NR 861 (HC) (section 86(2)(b) applied)

section 88:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (section 88(a))

section 89:

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section 89(18))

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (LC) (appeal against arbitration award); *Paulo v Shoprite Namibia (Pty) Ltd & Others* 2013 (1) NR 78 (LC) (where arbitrator's award adverse to employer is suspended pending appeal under section 89(6)-(8), employer has no obligation to remunerate employee unless employee has invoked section 89(9)(b)(ii)).

Nedbank Ltd v Louw 2011 (1) NR 217 (LC)

Telecom Namibia Ltd v Nangolo & Others (LC 33/2009) [2012] NALC 15 (28 May 2012) (section 89(2); confirmed on appeal in *Telecom Namibia Ltd v Nangolo & Others* 2015 (2) NR 510 (SC))

House and Home (a trading division of Shoprite (Pty) Ltd v Majiedt & Others 2013 (2) NR 333 (LC) (section 89(1)(a): question of law v question of fact)

Purity Manganese (Pty) Ltd v Shikongo NO & Others 2013 (2) NR 473 (LC) (section must be read in conjunction with Arts 12 and 18 of Constitution)

Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)

Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with *Lungameni & Others v Hagen & Another* 2014 (2) NR 352 (LC))

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Atlantic Chicken Co (Pty) Ltd v Mwandingi & Another 2014 (4) NR 915 (SC) (gross irregularities by arbitrator)

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC) (gross irregularity by arbitrator)

Walvis Bay Municipal Council v Kangumu 2014 (4) NR 978 (LC) (appeal against award of arbitrator can be made on *any* question of law, and is not limited to questions of law raised by party in conciliation and subsequent arbitration)

National Housing Enterprise v Hinda-Mbazira 2014 (4) NR 1046 (SC) (determination of dispute in terms of section 89(10)(a), overturning referral of dispute back to arbitrator in *National Housing Enterprise v Hinda-Mbazira & Others* 2013 (1) NR 19 (LC))

Shaama v Roux 2015 (1) NR 24 (LC) (appeal v review of arbitrator's decision; questions of law versus questions of fact under section 89(1) and defects in arbitration proceedings under section 89(4))

Bobo v Ohorongo Cement (Pty) Ltd 2015 (1) NR 40 (LC) (leave to appeal Labour Court decision required under section 18(2)(c) of High Court Act 16 of 1990 when Court refused condonation in appeal against arbitration award in terms of this section of the Labour Act)

Novanam Ltd v Rinquest 2015 (2) NR 447 (LC) (section 89(1)(a): question of law v question of fact)

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC) (section 89(1)(a): question of law)

Swartbooi & Another v Mbengela NO & Others 2016 (1) NR 158 (SC) (review of arbitration proceedings confined to defects set forth in section 89(5); Art 18 of the Namibian Constitution does not apply to arbitration tribunals)

Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd 2016 (2) NR 554 (SC) (ambit of question of law in section 89(1)(a); overrules *Paulo v Shoprite Namibia (Pty) Ltd & Others* 2013 (1) NR 78 (LC) on interpretation of "question of law *alone*" in section 89(1)(a))

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC) (section 89(1)(a); application of test from *Janse van Rensburg v Wilderness Air Namibia (Pty) Ltd* 2016 (2) NR 554 (SC))

Cape Orchard Company Namibia (Pty) Ltd v Yikoghahoha & Others 2021 (1) NR 257 (LC) (section 89(1)(a) applied)

First National Bank of Namibia Ltd v Nghishidivali & Another 2021 (4) NR 1125 (SC) (appealability of condonation under section 89(3) for failure to comply with section 89(2))

Beukes & Another v Krohne NO & Another 2022 (1) NR 104 (LC) (section 89(4)-(5) applied; no defect present where arbitrator simply sought to identify all persons present to enter this on the record)

Desert Fruit (Pty) Ltd v Smith & Others 2023 (3) NR 674 (SC) (section 89(1), (4)-(5): Labour Court is acting as a court of first instance in respect of appeal from or review of arbitration under section 89, meaning that no leave is required to appeal Labour Court decision to Supreme Court - noting at para 44 that "this court had previously accepted the position [on appeals under section 89] to be to the contrary but without the point ever being argued and determined"; section 89(9)-(10); powers of Labour Court on review)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (section 89(2) read with rule 23(2) of the Conciliation and Arbitration Rules)

section 91:

Labour Supply Chain v Hambata 2012 (1) NR 313 (LC) (parties may agree to private arbitration only after a dispute has arisen if this is not covered in a collective agreement)

section 117:

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC) (section 117(1); jurisdiction to intervene in disciplinary proceedings should miscarriage of justice otherwise occur)

Haimbili & Another v Transnamib Holdings Ltd & Others 2013 (1) NR 201 (LC) (interpretation of section 117(1)(e))

Kamati v Namibia Rights and Responsibilities Inc 2013 (2) NR 452 (LC) (Labour Court jurisdiction under section 117(1))

Meatco v Namibian Food and Allied Workers Union & Others 2013 (3) NR 777 (LC) (anomaly of section 117(1)(d) discussed; section 117(1)(e) interpreted)

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC)

Namibia Financial Institutions Union (Nafinu) v Nedbank Namibia Ltd & Another 2015 (4) NR 1161 (SC) (urgent relief under section 117(1)(e) is temporary in nature and not a final

order)

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (High Court sitting as such does not have jurisdiction under section 117(1)(i) which confers exclusive jurisdiction on the Labour Court; enforcement of arbitration award encompassed within reference to "any labour matter")

Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Others 2021 (1) NR 134 (LC) (section 117(1)(e)); this point was confirmed on appeal in *Shoprite Namibia (Pty) Ltd v Namibia Food and Allied Workers Union & Another* 2022 (2) NR 325 (SC)

Smith v Desert Fruit Namibia (Pty) Ltd & Others 2021 (2) NR 393 (LC)

Makili & Others v Council of the Municipality of Gobabis & Others 2021 (4) NR 1074 (HC) (section 117 of Act does not exclude jurisdiction of the High Court: "this court has a discretion to decline to exercise its inherent discretion in labour disputes where appropriate remedies exist in the Labour Court" and "will exercise its jurisdiction where just cause is shown in a particular case" (para 34))

Masule v Prime Minister of the Republic of Namibia & Others 2022 (1) NR 10 (SC) (Labour Court is a division of the High Court and not a lower or separate court (para 47); it is a misdirection for a High Court judge to decline to hear a matter on the basis that it falls within the "exclusive jurisdiction" of the Labour Court; if a matter is brought before a High Court judge instead of in the Labour Court, that judge should hear the matter, consider whether it is the kind of dispute covered by the Labour Act, whether it was brought in terms of the rules of court governing labour disputes and whether the remedies sought are competent under the Labour Act (para 53))

section 118:

Namibia Seaman and Allied Workers Union v Tunacor Group Ltd 2012 (1) NR 126 (LC)

Purity Manganese (Pty) Ltd v Katzao & Others 2012 (1) NR 233 (LC)

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC); *TM-S v Namibia Estate Agents Board & Another* 2016 (4) NR 1030 (SC)

Onesmus v Namibia Farm Workers' Union 2018 (4) NR 922 (LC) ("frivolous or vexatious")

Namibia Tourism Board v Kankondi & Another NO 2018 (4) NR 931 (LC)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (costs awarded due to deplorable conduct of applicant TransNamib)

Smith v Desert Fruit Namibia (Pty) Ltd & Others 2021 (2) NR 393 (LC)

Desert Fruit (Pty) Ltd v Smith & Others 2023 (3) NR 674 (SC) (section 118: finding of Labour Court that party's untenable stance met threshold of vexatiousness cannot be faulted)

section 119:

National Housing Enterprise v Beukes & Others 2015 (2) NR 577 (SC) (section 119(3))

section 128*:*

Africa Personnel Services (Pty) Ltd v Government of the Republic of Namibia & Others 2009 (2) NR 596 (SC) (section 128 prohibiting labour hire struck down as unconstitutional); see also *Government of Namibia v Africa Personnel Services* 2010 (2) NR 537 (HC) (interlocutory order staying implementation of section 128 pending appeal) (court's approach discussed in Felicity !Owoses-/Goagoses, "Reading down words in a statute, the courts' role, and the place of Parliament: The approach of the Namibian courts", *Namibia Law Journal*, Volume 4, Issue 1, 2012, available here)

Africa Labour Services (Pty) Ltd v The Minister of Labour and Social Welfare & Another 2013 (4) NR 1175 (HC) (upholding constitutionality of section 128 as substituted by Act 2 of 2012)

section 128A:

Kamwi v Namibia National Veterans Association 2014 (2) NR 504 (LC)

Swart v Tube-O-Flex Namibia (Pty) Ltd & Another 2016 (3) NR 849 (SC)

Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC)

Tobiko v University of Namibia 2023 (2) NR 528 (NLD)

section 129*:*

Samcor Diamond Mining Ltd v Hercules 2010 (1) NR 304 (HC) (service of arbitration award and noting of appeal in terms of sections 89(2) and 129, read together with section

89(18))

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (section 129(2)(d) read with rule 23(2) of the Conciliation and Arbitration Rules)

section 134:

Namibia Estate Agents Board v Like & Another NO 2015 (1) NR 112 (LC); *TM-S v Namibia Estate Agents Board & Another* 2016 (4) NR 1030 (SC).

section 137:

Namibia National Teachers Union & Others v Kayec Trust & Others 2018 (1) NR 21 (HC) (**Code of Good Practice on Industrial Action (Strikes and Lock-outs)** issued pursuant to this section)

The following cases concern the **Labour Court Rules 2008** in GN 279/2008 –

Rule 6(24):

Dr Matti Kimberg Practice v Mwafufya-Shikongo NO & Others 2014 (3) NR 799 (LC)

Rule 6(26):

Van Rensburg v Sefofane Air Charters 2010 (2) NR 554 (LC)

Rule 10:

Namibia Development Corporation v Mwandingi & Others 2013 (3) NR 737 (LC) (discussed *obiter* as being possibly *ultra vires)*

Rule 14:

Shaama v Roux 2015 (1) NR 24 (LC)

Rule 15:

First National Bank Namibia Ltd v Van der Westhuizen & Another 2012 (1) NR 195 (LC)

Lungameni & Others v Hagen & Another 2014 (2) NR 352 (LC)

Puma Chemicals v Labour Commissioner & Another 2014 (2) NR 355 (LC) (agreeing with *Lungameni & Others v Hagen & Another* 2014 (2) NR 352 (LC))

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC)

Rule 16:

Onesmus v Namibia Farm Workers' Union 2018 (4) NR 922 (LC) (rule 16(5); order is obtained in error for purposes of this rule if it contradicts a provision of the Act)

TransNamib Holdings Ltd v Tjivikua & Others 2019 (3) NR 756 (LC) (application for rescission under rule 16(1) and (5) applies to arbitration award registered under section 87(1)(b) of Act)

Rule 17:

Municipal Council of Windhoek v Esau 2010 (2) NR 414 (LC)

Africa Personnel Services (Pty) Ltd v Shipunda & Others 2012 (2) NR 718 (LC) (rule 17(23) takes precedence over Practice Directives, which apply only where there is no specific rule covering the matter which is at variance with the Practice Directives; rule 17(25) requires application for condonation even if parties have agreed to extension of time, but should be re-examined in light of fact that duty to provide record lies with adjudicator (Office of the Labour Commissioner) and not with appellant)

Benz Building Suppliers v Stephanus & Others 2014 (1) NR 283 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)

Gibeon Village Council v Labour Commissioner & Others 2021 (1) NR 94 (LC) (application of rule 17(25))

Nakambonde v Transnamib Holdings Ltd 2021 (4) NR 1089 (SC) (non-compliance with rule 17(16)(a)-(b) not excused by attorney's incompetence)

B2Gold Namibia (Pty) Ltd v Shitula & Another 2022 (1) NR 91 (LC) (rule 17(25); court proposes steps to improve problematic situation involving records of arbitration proceedings, to be brought to attention of all arbitrators; rule 17(25) should also be reconsidered to mitigate harm to appellants when record is delayed)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (intention of rules 17(1)-(3);

application of rules 17(12)-(16))

Inamudhimbwa v Coca Cola Namibia Bottling Co (Pty) Ltd & Others 2024 (4) NR 1172 (HC) (non-compliance with rule 17(16) by respondent in appeal, with no condonation application, has the result that the appeal is considered unopposed)

Rule 18:

Usakos Town Council v Jantze & Others 2016 (1) NR 240 (HC) (rule 18(1))

Form 11:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (in an appeal against an arbitration award, it is a peremptory requirement to set out the grounds of appeal in Form LC 41, under the Conciliation and Arbitration Rules, but not to do so in Form 11).

The following cases concern the **Rules relating to the conduct of conciliation and arbitration before the Labour Commissioner** ("Con-Arb Rules") in GN 262/2008 –

Rule 5:

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC) (meaning of term "must")

Methealth Namibia Administrators (Pty) Ltd v Matuzee & Others 2015 (3) NR 870 (LC)

Simana v Agribank of Namibia 2016 (4) NR 913 (SC)

Rule 6:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (substantial compliance with rule 6(3)(a))

Rule 13:

Novanam Ltd v Absalom & Others 2014 (4) NR 1009 (LC)

Rule 14(2):

Purity Manganese (Pty) Ltd v Katjivena & Others 2015 (2) NR 418 (LC)

Rule 18:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 20:

Rossing Uranium Ltd v Goseb & Another 2019 (2) NR 464 (LC)

Rule 21:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (rule 21(1) read with section 86(18) of Act)

Rule 22:

Christian Congregation of Jehovah's Witnesses of Namibia (Incorporated Association Not for Gain) v Social Security Commission of Namibia 2019 (1) NR 342 (SC) (Labour Court Rules' omission to provide a procedure for appeals in terms of section 45 of Act is dealt with by applying rule 119 of the Rules of the High Court)

Rule 23:

Standard Bank Namibia v Grace 2011 (1) NR 321 (LC)

Namibia Dairies (Pty) Ltd v Alfeus & Another 2014 (4) NR 1115 (LC)

Primedia Outdoor Namibia (Pty) Ltd v Kauluma 2015 (1) NR 283 (LC)

Germanus v Dundee Precious Metals Tsumeb & Others 2019 (2) NR 453 (LC)

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (rule 23(2) read with section 89(2) and 129(2)(d) of Act)

Rule 27:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 28:

Cape Orchard Company Namibia (Pty) Ltd v Yikoghahoha & Others 2021 (1) NR 257 (LC) (arbitrator has no authority to set aside a notice of withdrawal which forms part of settlement agreement under this rule)

Rule 29:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Rule 34:

Strauss v Namibia Institute of Mining & Technology, Arandis Campus & Others 2014 (3) NR 782 (LC)

Form LC 41:

AT Helsman Group (Pty) Ltd v Frederik 2024 (2) NR 511 (LC) (in an appeal against an arbitration award, it is a peremptory requirement to set out the grounds of appeal in Form LC 41, but not to do so in Form 11 under the Labour Court Rules).

The following cases were decided when the **Labour Act 6 of 1992** was the operative law –

General

arbitration proceedings:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 1993 NR 270 (LC)

change in conditions of employment:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

constructive dismissal:

Transnamib Limited v Swartz NLLP 2002 (2) 60 NLC

Cymot (Pty) Ltd v McLoud 2002 NR 391 (LC)

costs of appeal:

Ikuambi v Tax Free Warehouse NLLP 2002 (2) 273 NLC

delay in challenging lawfulness of dismissal:

Kröger v Transnamib Limited (Air Namibia) & Others 1995 NR 84 (HC); *Krüger v Transnamib Limited (Air Namibia) & Others* 1996 NR 168 (SC) (Note: The spellings of *Kröger/Krüger* are inconsistent between the High Court case and the Supreme Court case in the hard copy of the Namibian Law Reports.)

disciplinary code:

City Council of Windhoek v Pieterse 2000 NR 196 (LC) (effect of Industrial Relations Code as an internal disciplinary code, considered in the context of an application for rescission of a default judgement, on the issue of whether appellant showed a *bona fide* defence with some *prima facie* prospect of success)

disciplinary hearing:

Namibia Tourism Board v Kauapirura-Angula 2009 (1) NR 185 (LC)

"duress":

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

employment contracts:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (interpretation of Conciliation Board Agreement governing terms and conditions of employment with respect to retirement age)

Bucher v Kalahari Express Airlines NLLP 2002 (2) 104 NLC (letter of appointment)

Ocean Diamond Mining SA v Louw NLLP 2002 (2) 276 RSA HC (C) (ruling by High Court of South Africa on restraint of trade provision in employment contract between Namibian employee and Namibian subsidiary)

Van Rooyen v University of Namibia 2004 NR 150 (LC) (effect of mistake in respect of employment contract)

Overberg Fishing (Pty) Ltd v Docompo 2012 (1) NR 285 (LC) (termination of fixed term contract by effluxion of time)

fair trial and specificity of complaint:

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC)

failure to exhaust internal grievance procedures:

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

jurisdiction:

K Golin t/a Golin Engineering v Cloete 1995 NR 254 (LC) (jurisdiction of district labour court and Labour Court after parties have reached a settlement in respect of alleged unfair dismissal)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC) (respective jurisdiction of district labour court and Labour Court)

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)

Habenicht v Chairman of the Board of Namwater Ltd & Others NLLP 2004 (4) 18 NHC (High Court versus district labour court as appropriate forum)

Reilly v Namibian Ports Authority 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC) (jurisdiction of district labour court, Labour Court and High Court)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (jurisdiction of Labour Court and district labour court)

"managerial prerogative":

Consolidated Diamond Mines (Pty) Ltd v Mine Workers' Union of Namibia & Others (1) 1994 NR 180 (LC)

natural justice in disciplinary proceedings:

National Union of Namibian Workers v Naholo 2006 (2) NR 659 (HC)

recognition agreements:

Consolidated Diamond Mines (Pty) Ltd v Mine Workers' Union of Namibia & Others (1) 1994 NR 180 (LC)

retirement age:

Kruger v The Council of the Municipality of Windhoek & Another NLLP 1998 (1) 157 NLC; 2002 (2) 114 NLC (determination of retirement age in view of changed pension fund agreement)

retrenchment:

Schutte & Others v Telecom Namibia Ltd (LC 2/98) (meaning of retrenchment)

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (meaning of retrenchment)

Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC); *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC) (voluntary retrenchment)

rule *nisi*:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (discharge of rule *nisi* when underlying purpose for it has fallen away because strike has ended)

sanctions for misconduct:

Foodcon (Pty) Ltd v Schwartz NLLP 2002 (2) 181 NLC

settlement agreements:

Mbome & Another v Foodcon Fishing Product NLLP 2002 (2) 202 NLC

sex discrimination (staff housing scheme):

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

stay of District Labour Court judgement pending appeal:

Rössing Uranium Ltd v Cloete & Another 1999 NR 98 (LC)

"transfer" versus "promotion":

Northern Fishing (Pty) v Tsuseb NLLP 2002 (2) 253 NLC

unfair labour practice:

Minister of Works Transport and Communication v Namupembe 2003 NR 90 (LC)

<u>Labour Act 6 of 1992</u>

section 1:

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) ("remuneration")

Smit v Standard Bank Namibia 1994 NR 366 (LC) ("dispute"; "dispute of interests"; "dispute of rights") (see Lameck Mukondomi, "Dispute of right vis-á-vis dispute of interest: An analysis of *Smit v Standard Bank of Namibia", UNAM Law Review,* Volume 2, Issue 1,

2014)

Paxton v Namib Rand Desert Trails (Pty) Ltd 1996 NR 109 (LC) ("employee" and "employer")

Kruger v Office of the Prime Minister & Another 1996 NR 321 (LC) ("remuneration")

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) ("overtime")

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC) (judge does not fall within definition of "employee")

Ameib Ranch Guest Farm v Matrefu & Others 2002 NR 311 (LC) ("strike")

De Wee v Ackermans (Pty) Ltd 2004 NR 30 (LC) ("casual employee")

Engelbrecht & Others v Hennes 2007 (1) NR 236 (LC) ("employee" versus agent)

Van Wyk & Another v Rumingo & Others NLLP 2004 (4) 1 NLC; 1997 NR 102 (HC) ("employee" v independent contractor)

Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC) ("remuneration")

Hugo v Council of Municipality of Grootfontein 2015 (1) NR 73 (SC) ("dispute of interests" versus "dispute of rights")

section 2:

Bourgwells Ltd v Shepalov & Others 1999 NR 410 (HC) (section 2(1))

section 4:

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

section 15(1):

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (status of Labour Court as lower court)

section 18:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (jurisdiction)

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia 1994 NR 360 (LC) (declaratory orders)

Nyambe v City Savings 1996 NR 31 (LC) (jurisdiction in terms of section 18(1))

Hailemo v Security Force Services 1996 NR 99 (LC) (representation of parties in Labour Court)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC) (jurisdiction to make declaratory orders)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC) (Labour Court's lack of jurisdiction to hear a case of first instance concerning constructive dismissal)

Hannah v Government of the Republic of Namibia 2000 NR 46 (LC) (meaning of "employment" in section 18(1)(e))

CIC Holdings Ltd v Beukes & Another 2003 NR 106 (HC) (exclusive jurisdiction of Labour Court); *Beukes & Another v CIC Holdings Ltd* 2005 NR 534 (SC) (jurisdiction of Labour Court and High Court)

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC (jurisdiction of Labour Court and district labour court)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (section 18(1)(c))

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (jurisdiction of Labour Court)

Reilly v Namibian Ports Authority 2005 NR 319 (LC) (jurisdiction of Labour Court and district labour court)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (review of decision of Permanent Secretary)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC) (section 18(1)(e); right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (possibility of proceeding under section 18(1) does not oust jurisdiction of High Court under Art 18 of Constitution)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC) (costs orders)

See also cases generally discussing jurisdiction in labour matters, listed above.

section 19:

Hailemo v Security Force Services 1996 NR 99 (LC) (section 19(3); representation of parties in Labour Court)

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (section 19(1)(a); not discussed in appeal case *Visagie v Namibia Development Corporation* 1999 NR 219 (HC))

section 20:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

President of the Republic of Namibia & Others v Vlasiu 1996 NR 36 (LC)

Pietersen v Ohlthaver & List Retirement Fund & Another 1996 NR 255 (LC)

Drysdale v Namibia Breweries Ltd & Namibia Resorts International 1996 NR 301 (LC)

Louw v The Chairperson of the District Labour Court & Another (Case 1) NLLP 2002 (2) 147 NLC (appeal versus review of costs order under this section)

Beukes v Peace Trust NLLP 2004 (4) 102 NLC

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC)

Kruger & Others v Namibian Broadcasting Corporation 2006 (1) NR 233 (LC), *Namibian Broadcasting Corporation v Kruger & Others* 2009 (1) NR 196 (SC)

Commercial Investment Corporation (Pty) Ltd v Namibian Food and Allied Workers Union & Others 2007 (2) NR 467 (LC)

National Housing Enterprise v Beukes & Others 2009 (1) NR 82 (LC)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC)

section 21:

President of the Republic of Namibia & Others v Vlasiu 1996 NR 36 (LC) (application for leave to appeal; meaning of "questions of law")

The Council of the Municipality of Windhoek & Another v Kruger NLLP 1998 (1) 161 NLC (points *in limine* challenging authority of municipality to apply for leave to appeal)

Rumingo & Others v Van Wyk 1997 NR 102 (HC) (interpretation of "question of law")

Visagie v Namibia Development Corporation 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 182 NLC (application for leave to appeal; meaning of "questions of law"); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (questions of law versus findings of fact)

Beukes v Peace Trust 2004 (4) NLLP 102 (NLC)

Cronje v Municipality Council of Mariental NLLP 2004 (4) 129 NSC

Namibian Broadcasting Corporation v Mubita NLLP 2004 (4) 114 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

S v Koch 2006 (2) NR 513 (SC) (section discussed in *dicta* at 526)

Cymot (Pty) Ltd v Cloete & Another 2007 (1) NR 320 (LC)

Onesmus v Minster of Labour & Another 2010 (1) NR 187 (HC) (amendment of section 21(1) by Act 10/2001 does not affect status of Labour Court as lower court)

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

section 22:

Hailemo v Security Force Services 1996 NR 99 (LC) (representation of parties in Labour Court)

section 24:

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC); *Transnamib Ltd v Poolman & Others* 1999 NR 399 (SC)

Karuaihe-Martin v Telecom Namibia NLLP 2002 (2) 267 NLC

Van Heerden v Municipal Council of Walvis Bay NLLP 2002 (2) 306 NLC

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

Jansen van Vuuren v Namibia Water Corporation Limited 2006 (2) NR 607 (LC)

section 25:

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC)

section 28 (shift work):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute shift work for the purposes of this section)

Erongo Mining and Exploration Company Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC) (effect when read together with section 25)

section 32 (overtime):

Poolman & Others v Transnamib Ltd 1997 NR 89 (HC) (calculation of "day")

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (parties can enter into an agreement about what constitutes "work" for purposes of overtime payment; non-active standby duty of firemen does not constitute "work" for the purposes of this section)

section 33 (Sundays and public holidays):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute "work" for the purposes of this section)

Erongo Mining and Exploration Co Ltd t/a Navachab Gold Mine v Mineworkers Union of Namibia 2000 NR 70 (LC) (meaning of "remuneration" in section 33(3)(a))

section 34 (night work):

Municipality of Windhoek v Van Wyk & Others 1999 NR 313 (LC) (non-active standby duty of firemen does not constitute work performed at night for the purposes of this section)

section 37(b):

Old Mutual Life Assurance Company (Namibia) Ltd v Symington 2010 (1) NR 239 (SC)

section 39:

Erundu Stevedoring (Pty) Ltd v Namibia Seaman & Allied Workers Union NLLP 2004 (4) 187 NLC (meaning of "on full remuneration"; leave to appeal to Supreme Court granted)

Municipal Council, City of Windhoek v Swarts 2006 (1) NR 341 (LC)

section 45:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (unfair dismissal)

Navachab Gold Mine v Izaaks 1996 NR 79 (LC) (section 45(1): unfair dismissal; fair and valid reason for dismissal)

Hailemo v Security Force Services 1996 NR 99 (LC) (unfair dismissal)

Kamanya & Others v Kuiseb Fish Products Ltd 1996 NR 123 (LC) (effect of failure to employ fair procedure where there is a fair reason for dismissal)

Society for the Prevention of Cruelty to Animals v Terblanche 1996 NR 398 (HC) (unfair dismissal; procedure)

M Pupkewitz & Sons v Kankara 1997 NR 70 (LC) (unfair dismissal; substantive fairness)

Rossam v Kraatz Welding Engineering Ltd 1998 NR 90 (LC) (unfair dismissal; procedural fairness)

Goagoseb v Arechenab Fishing and Development Co NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (unfair dismissal)

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC (reinstatement of some but not others following an illegal strike action constitutes *prima facie* case of unfair labour practice)

Swakopmund Hotel & Entertainment Centre v Kariab NLLP 1998 (1) 213 NLC (unfair dismissal; substantive fairness)

Cross Country Carriers v Farmer NLLP 1998 (1) 226 NLC; NLLP 2002 (2) 34 NLC (employee's failure to tender services does not constitute a "dismissal")

Njathi v Permanent Secretary, Ministry of Home Affairs 1998 NR 167 (LC) (dismissal by operation of section 24(5) of Public Service Act is for fair and valid reason and in accordance with fair procedure)

Oa-Eib v Swakopmund Hotel & Entertainment Centre 1999 NR 137 (LC) (unfair dismissal; procedural and substantive fairness)

Hartlief Continental Meat Products (Pty) Ltd v Mutota & Others NLLP 2002 (2) 45 NLC (unfair dismissal; procedural and substantive fairness)

Links v Cross Country Carriers NLLP 2002 (2) 291 NLC (effect of failure to employ fair procedure where there is a fair reason for dismissal)

Namibia Dairies (Pty) Ltd v Nafau & Others NLLP 2002 (2) 314 NLC (unfair dismissal)

Mazian v Transnamib Transport (Pty) Ltd NLLP 2002 (2) 352 NLC (unfair dismissal; interpretation of section 45(1) and procedural unfairness)

Kurtz v Nampost Namibia Ltd & Another 2009 (2) NR 696 (LC) (fair procedure; right to legal representation at disciplinary hearing on complex charges, where Human Resources Manual provided for this in exceptional circumstances)

sections 45-46:

Du Toit v The Office of the Prime Minister 1996 NR 52 (LC) (holding: sections 45 and 46 (unfair dismissal) do not apply to termination of employment by notice in terms of a contract or a collective agreement in terms of section 47 if sections 47, 49, 51 and 52 read with sections 69-72 are complied with; dicta: sections 45 and 46 on unfair dismissal do not apply to fixed term contracts which expire by the effluxion of time, with the possible exception of cases where there is an "expectation of tenure")

PEP Stores Namibia (Pty) Ltd v Iyambo & Others 2001 NR 211 (LC) (principle of collective guilt not a fair basis for dismissal)

Hailulu v Council of the Municipality of Windhoek 2002 NR 305 (LC) (unfair dismissal)

Model Pick 'n Pay Family Supermarket v Mwaala 2003 NR 175 (LC) (dismissal for theft/dishonesty; when courts will interfere with decision of employer to impose sanction of dismissal)

Shiimi v Windhoek Schlachterei (Pty) Ltd NLLP 2002 (2) 224 NLC (appropriate award to employee in respect of unfair dismissal)

PEP Stores (Namibia) (Pty) Ltd. v Iyambo & Others NLLP 2002 (2) 336 NLC

Swartbooi v Heunis NLLP 2002 (2) 367 NLC

Namibia Beverages v Hoaës NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)

Meintjies v Joe Gross t/a Joe's Beerhouse 2003 NR 221 (HC); confirmed in *Joe Gross t/a Joe's Beerhouse v Meintjies* 2005 NR 413 (SC) (sections 45 and 46 on unfair dismissal apply to contracts terminated in accordance with sections 47-53)

Kausiona v Namibian Institute of Mining & Technology (NIMT) NLLP 2004 (4) 43 NLC

De Wee v Ackermans (Pty) Ltd 2004 NR 30 (LC) (unfair dismissal of an employee in a situation with a lower degree of permanency but which does not meet the statutory definition of "casual employee")

Metropolitan Namibia Ltd v Haimbili NLLP 2004 (4) 110 NLC (dismissal upheld in case involving employee dishonesty)

Van den Heever v Imcor Zinc (Pty) Ltd NLLP 2004 (4) 257 NLC (procedural and substantive fairness of dismissal)

Kahoro & Another v Namibia Breweries Limited 2008 (1) NR 382 (SC) (in the absence of a fair procedure, the employer bears the onus of proving that there was nevertheless a fair and valid reason for a dismissal)

LL Diamonds (Pty) Ltd v Thobias 2009 (1) NR 346 (LC) (dismissal of employee on probation requires proper enquiry into employee's work performance)

Peace Trust v Beukes 2010 (1) NR 134 (HC) (both procedural requirements and existence of valid and fair reasons for dismissal considered)

Rosh Pinah Zinc Corporation v Muronga 2013 (2) NR 595 (LC) (applied to dismissal on grounds of incapacity; acceptable for employer to offer to accommodate employee in new position at lower remuneration as alternative)

section 46:

Navachab Gold Mine v Izaaks 1996 NR 79 (LC) (section 46(1)-remedies)

Hailemo v Security Force Services 1996 NR 99 (LC) (section 46(3)-standard of proof of fair dismissal by employer is balance of probabilities; section 46(4); considerations relevant to determining fairness)

Drysdale v Namibia Breweries Ltd & Another 1996 NR 301 (LC)

Society for the Prevention of Cruelty to Animals v Terblanche 1996 NR 398 (HC) (section 46(1)-remedies)

M Pupkewitz & Sons v Kankara 1997 NR 70 (LC) (section 46(1)(a)(iii)-remedies; section 46(4)(b)-nature of order in respect of unfair dismissal)

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (section 46(3)-employer's duty to lead evidence first in accordance with burden of proof as stated in this section; not discussed in appellate case *Visagie v Namibia Development Corporation* 1999 NR 219 (HC))

Swakopmund Hotel & Entertainment Centre v Kariab NLLP 1998 (1) 213 NLC (section 46(3)-employer's burden of proving fair dismissal not discharged)

Rossam v Kraatz Welding Engineering Ltd 1998 NR 90 (LC) (section 46(4); appropriate relief for unfair dismissal)

Engelbrecht v Transnamib Holdings Ltd 2003 NR 40 (LC); *Transnamib Holdings Ltd v Engelbrecht* 2005 NR 372 (SC) (meaning of the term "reinstatement" in section 46(1)(a)(i))

Commercial Bank of Namibia Ltd. v Van Wyk NLLP 2004 (4) 250 NLC (grounds for dismissal upheld)

Model Pick `n Pay Family Supermarkets v Mukosho NLLP 2004 (4) 219 NLC (grounds for dismissal upheld)

Josob v Namibia Breweries (Pty) Ltd 2008 (1) NR 117 (LC) (onus of proof)

Parcel Force Namibia (Pty) Ltd v Tsaeb 2008 (1) NR 248 (LC) (unfair dismissal and appropriate remedies; order for reinstatement confirmed despite long passage of time)

Pioneerspark Service Station v Afrikaner & Another 2008 (1) NR 353 (LC) (dismissal on ground of dishonest conduct held to be fair despite fact that employee did not benefit from the dishonesty)

Pinks Family Outfitters (Pty) Ltd t/a Woolworths v Hendricks 2010 (2) NR 616 (LC) (application of section 46(1)(a)(iii))

section 47:

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (section 47(1)-notice requirements; section 47(5)-"remuneration")

Meintjies v Joe Gross t/a Joe's Beerhouse 2003 NR 221 (HC); confirmed in *Joe Gross t/a Joe's Beerhouse v Meintjies* 2005 NR 413 (SC) (termination of contract by notice in terms of section 47 constitutes a dismissal as contemplated by section 45)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (termination of contract with pay in lieu of notice constitutes a dismissal as contemplated by section 45 and requires a fair procedure)

section 50 (retrenchment):

African Granite Co v Mineworkers Union of Namibia & Others 1993 NR 91 (LC) (requirements of notice of intention to retrench; meaning of "opportunity to negotiate")

Goagoseb v Arechenab Fishing & Development Co NLLP 1998 (1) 143 NLC; NLLP 2004 (4) 10 NLC (section 50(1)(b)-retrenchment)

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (employer's duties concerning intended retrenchment; interpretation of section 50(1)(b) as providing only for an opportunity to negotiate in relation to the effects of the proposed retrenchment); *Visagie v Namibia Development Corporation* 1999 NR 219 (HC) (discussing meaning of "intends" and "negotiate", and overturning finding of Labour Court on compliance with section 50(1)(b))

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC (dismissal following illegal strike action cannot be categorised as retrenchment)

HS Contractors v Vihanga NLLP 2002 (2) 138 NLC (compliance with section 50(1) and procedure in respect of criminal offences under section 50(2))

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (section 50(1)(b)-validity of purported retrenchment)

Namibian Broadcasting Corporation v Kruger & Others 2009 (1) NR 196 (SC)

Seebach v Tauber & Corssen Trading (Pty) Ltd & Another 2009 (1) NR 339 (LC)

National Housing Enterprises v Beukes & Others 2011 (2) NR 609 (LC)

section 52:

Namibia Wholesale and Retail Workers Union (NWRWU) & Others v Democratic Media Holdings 1998 NR 109 (LC) (section 52(1)-deduction of employer's contribution to pension fund from severance allowance following retrenchment)

Lalandii (Pty) Ltd v Butshingi NLLP 2002 (2) 409 NLC (section has no application to person with whom there was no subsisting employment contract)

section 54:

Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP 2002 (2) 173 NLC

section 58:

PEP Stores Namibia (Pty) Ltd v Iyambo & Others 2001 NR 211 (LC)

Mineworkers Union of Namibia v Damara Granite (Pty) Ltd NLLP 2002 (2) 173 NLC

Namibia Seaman and Allied Workers Union (NASAWU) v Lalandi Fishing (Pty) Ltd & Others 2003 NR 71 (LC)

NASAWU v Lalandi Fishing (Pty) Ltd & Others NLLP 2004 (4) 76 NLC

section 67:

Namdeb Diamond Corporation (Pty) Ltd v Mineworkers Union of Namibia NLLP 2002 (2) 188 NLC (duty to bargain and good faith negotiation)

Namibia Seamen and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 257 (LC) (in relation to jurisdiction of Labour Court)

section 74:

Jansen van Vuuren v Namibia Water Corporation Limited 2006 (2) NR 607 (LC)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)

section 79:

Smit v Standard Bank Namibia 1994 NR 366 (LC) (section 79(2)(a)(i)(aa)-lock-outs)

section 81:

Consolidated Diamond Mines (Pty) Ltd v Mineworkers Union of Namibia 1994 NR 360 (LC) (section 81(6)-duties of employees not participating in strike)

Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia & Others 1995 NR 225 (LC) (section 81(3)-right to picket)

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (section 81(1)-notice of strike action need not include exact date and time of intended strike; confirmation of *Navachab Joint Venture t/a Navachab Gold Mine v Mineworkers Union of Namibia* 1995 NR 225 (LC) on section 81(3)-interpretation of right to picket)

section 82:

SWA Meat Corporation Ltd v Namibia Wholesale and Retail Workers Union & Others NLLP 1998 (1) 199 NLC (interpretation of endangerment of "life, health or safety of any person")

section 107:

Nanditume v Minister of Defence 2000 NR 103 (LC) (exclusion of applicant from the NDF solely on the basis that he was found to be HIV positive constitutes unfair discrimination in terms of section 107)

Kiggundu & Others v Roads Authority & Others 2007 (1) NR 175 (LC) (does not cover discrimination on the grounds of nationality)

section 111:

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)(section 111(1)(c))

The following cases concern the **Labour Court Rules 1994** contained in GN 63/1994 (now repealed), and the **District Labour Court Rules** contained in GN 138/1993 (such courts no longer being in existence) –

<u>Labour Court Rules 1994</u>

Rule 1:

Nyambe v City Savings 1996 NR 31 (LC)

Rule 4(3):

Hailemo v Security Force Services 1996 NR 99 (LC) (rule 4(3) held to be *ultra vires* section 22 of the Labour Act)

Rule 6(16)-(17)

Mineworkers Union of Namibia (MUN) v CSO Valuations (Pty) Ltd 2002 (2) 208 NLC

Rule 6(23):

Namibia Food and Allied Workers Union v Cadilu Fishing (Pty) Ltd 2005 NR 113 (LC)

Beukes & Others v National Housing Enterprise 2007 (1) NR 142 (LC)

Rule 6(24):

Shoprite Namibia (Pty) Ltd v Paulo & Another 2010 (2) NR 475 (LC)

Rule 6(25):

Van Rooyen v University of Namibia 2004 NR 150 (LC)

Rule 6(27):

Nyambe v City Savings 1996 NR 31 (LC)

Rule 8(1):

Van Rooyen v University of Namibia 2004 NR 150 (LC)

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)

Rule 9(b):

Nyambe v City Savings 1996 NR 31 (LC)

Rule 12:

Vlasiu v President of the Republic of Namibia & Others 1994 NR 332 (LC)

Nyambe v City Savings 1996 NR 31 (LC)

Rule 15(2):

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC)

Rule 16:

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 18:

Shiimi v Windhoek Schlachterei (Pty) Ltd NLLP 2002 (2) 224 NLC

Windhoek Optics (Pty) Ltd v De Jager NLLP 2004 (4) 22 NLC

Ministry of Regional and Local Government and Housing v Muyunda 2005 NR 107 (LC)

Rule 19(1):

Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 19(2):

Ministry of Basic Education, Sports & Culture v Sauer NLLP 2004 (4) 192 NLC.

<u>District Labour Court Rules</u>

Rule 4:

Town Debt Collecting CC & Another v Boois & Another NLLP 2002 (2) 392 NLC

Rule 6:

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Rule 7:

Anguwo & Others v Northern Fishing Company NLLP 1998 (1) 196 NLC (effect of failure of respondent to oppose)

Thiro v M & Z Motors NLLP 2002 (2) 370 NLC

De Wee v Ackermans (Pty) Ltd 2004 NR 30 (LC)

Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos NLLP 2004 (4) 35 NLC

Rule 10:

Transnamib Holdings Ltd v Lourens NLLP 2002 (2) 360 NLC

Transnamib Holdings Ltd v Cartstens 2003 NR 213 (LC)

Louw v The Chairperson of the District Labour Court & Another (Case 1) NLLP 2002 (2) 147 NLC (stated in *dicta* that because the spirit of rule 10 is to avoid formality, unsworn translations may be received into evidence)

Elleries Furniture Namibia (Pty) Ltd t/a Furncity Furniture v De Vos NLLP 2004 (4) 35 NLC

Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC

Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC

Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC)

Mdaka v Gendev of Namibia 2005 NR 483 (LC)

Rule 13:

Stahn t/a HS Contractors v Kapuka & Others 2000 NR 133 (LC) (joint complaint)

Woermann Brock & Co (Pty) Ltd v Shaanika & Others 2011 (1) NR 98 (LC) (procedure relating to joint complaint)

Rule 18:

Namibia Beverages v Hoaës NLLP 2002 (2) 380 NLC (repeated in NLLP 2004 (4) 1 NLC)

Rule 19:

Uazeua & Others v Smith t/a Jakaranda Restaurant 2001 NR 227 (LC)

Shiimi v Windhoek Schlachterei (Pty) Ltd NLLP 2002 (2) 224 NLC
Thiro v M & Z Motors NLLP 2002 (2) 370 NLC
Tjihiua v Windhoek Municipality NLLP 2002 (2) 413 NLC
Windhoek Optics (Pty) Ltd v De Jager NLLP 2004 (4) 22 NLC
Kausiona v Namibian Institute of Mining & Technology (NIMT) NLLP 2004 (4) 43 NLC

Rule 21:

Beukes & Another v CIC Holdings Ltd 2005 NR 534 (SC)
Namibia Breweries Ltd v Kaeka & Another 2011 (1) NR 16 (LC)

Rule 22:

Transnamib Holdings Ltd v Carstens 2003 NR 213 (LC)
Town Debt Collecting CC & Another v Boois & Another NLLP 2002 (2) 392 NLC
Transnamib Holdings Ltd v Garoeb NLLP 2004 (4) 68 NLC
Transnamib Holdings Limited v Carstens NLLP 2004 (4) 209 NLC
Hitula v Chairperson of District Labour Court Windhoek & Another 2005 NR 83 (LC) (*obiter* noting problems of construction).

The following are post-independence cases dealing with the previous **Conditions of Employment Act 12 of 1986** (OG 5221) –

Namib Wood Industries (Pty) Ltd v Mutiltha & Another 1991 NR 158 (HC)
Van der Berg v Chairman of the Disciplinary Committee (Oranjemund) of Consolidated Diamond Mines (Pty) Ltd & Others 1991 NR 417 (HC)
Nangombe & Others v Ackermans Ltd 1992 NR 10 (HC)
Engels v Allied Chemical Manufacturers (Pty) Ltd 1992 NR 372 (HC).

The following case discusses ***ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982*** –

Namibia Development Corporation v Visagie 18 Indus. L.J. (Juta) 657 (1997), NLLP 1998 (1) 166 NLC (Article 13; not discussed in appeal case *Visagie v Namibia Development Corporation* 1999 NR 219 (HC)).

Commentary*:*

Dr JWF van Rooyen, *Namibian Labour Lexicon, Volume 1, Essential Expressions,* 2003

Dr JWF van Rooyen, *Namibian Labour Lexicon, Volume 2 (Revised Edition), The Labour Act, 2007 A-Z,* 2011, available here

Law Society of Namibia, *Labour Law: An overview of the relevant provisions of the Labour Act, Act 11 of 2007*, undated pamphlet, available here

Herbert Jauch, *ILO Fact Boxes: Namibia's Labour Act, No 11 of 2007,* undated, South Africa: ILSSA Project, International Labour Office (ILO), available from the Labour Resource and Research Institute (LaRRI) here

Colin Fenwick, "Labour law reform in Namibia: Transplant or implant?" in T Lindsey (ed), *Law Reform in Developing and Transitional States*, Oxon, UK: Routledge Studies in Development Economics, 2007

Herbert Jauch and John Nakuta, *Understanding Namibia's Labour Law: A Guide to the Labour Act (No 11 of 2007),* Windhoek: Labour Resource and Research Institute (LaRRI), 2008, available here

Legal Assistance Centre, *Gender and the Labour Act 11 of 2007,* 2009, available here

Dr JWF van Rooyen, *Namibian Labour Lexicon, Volume 2 (revised edition), The Labour Act, 2007 A to Z: A Guide to the Understanding and Application of the Labour Act, 2007 (Act No. 11 of 2007),* 2011, available here

Collins Parker, *Labour Law in Namibia*, Windhoek: University of Namibia Press, 2012

Frederico Links & Clement Daniels, "Protected Disclosure: Informing the Whistleblowing Debate in Namibia", Institute for Public Policy Research, 2012, available here

Jaco Boltman, "Conciliation and arbitration proceedings: Separating the different dispute resolution mechanisms – A critical analysis of case law", *Namibia Law Journal*, Volume 6, Issue 2, 2014, available here

Graham Hopwood, "Encouraging the Reporting of Corruption: Principles Of Whistleblower Protection", Institute for Public Policy Research, 2016, available here.

Commentary on labour hire in Namibia:

F Nghiishililwa, "Labour hire in Namibia: Constitutional Right or modern slavery?" in N Horn, A Bösl & A du Pisani (eds), *Constitutional Democracy in Namibia: A Critical Analysis after Two Decades*, Konrad Adenauer Stiftung, 2010, available here

Herbert Jauch & Ntwala Mwilima, *Labour Hire in Namibia: Current Practices and Effects*, Labour Resource and Research Institute (LaRRI) for the Ministry of Labour and Social Welfare, 2006, available here

Nico Horn & Kaijata Kangueehi, "*African Personnel Services v Government of Namibia & Others*, decided on 1 December 2008. Case No. A4/2008", *Namibia Law Journal*, Volume 1, Issue 1, 2009, available here

Fritz Nghiishililwa, "The banning of labour hire in Namibia: How realistic is it?", *Namibia Law Journal*, Volume 1, Issue 2, 2009, available here

A Botes, "The History of Labour Hire in Namibia: A Lesson for South Africa", [2013] *Potchefstroom Electronic Law Journal* 16, available here.

Commentary on child labour in Namibia:

D LeBeau & G Spence, *Towards the elimination of the worst forms of child labour in Namibia*, University of Namibia, 2004

Dr Elizabeth M Terry, *Elimination of Child Labour in Namibia: A discussion document on what is known, existing policy and programmes and possible gaps*, Ministry of Labour and Social Welfare, 2007

Dr Elizabeth M Terry, *Child trafficking linked to child labour and commercial sexual exploitation of children in Namibia: A child labour-related rapid assessment study,* Windhoek: Ministry of Labour/ILO, 2007

Children's engagement in the production of charcoal in Namibia: A child labour-related rapid assessment study, Windhoek: Ministry of Labour and Social Welfare, 2007

Clever Mapaure, "Child labour: A universal problem from a Namibian perspective" in Oliver C Ruppel (ed), *Children's Rights in Namibia*, Konrad Adenauer Stiftung, 2009, available here

FX Bangamwabo, "Towards the elimination of the worst forms of child labour in Namibia: The implementation and internalisation of international law relating to the worst forms of child labour", *Namibia Law Journal*, Volume 2, Issue 2, 2010, available here

In-depth study on child labour in the agricultural sector in Namibia: A study of Oshikoto, Ohangwena, Caprivi and Kavango, Windhoek: Labour Resource and Research Institute (LaRRI), 2011

Paul Benjamin, "To regulate or to ban? Controversies over temporary employment agencies in South Africa and Namibia" in L Malherbe & J Sloth-Nielsen, eds, *Labour Law into the Future,* Juta 2012.

Commentary on specific labour sectors:

Cons Karamata, *Farm Workers in Namibia: Living and Working Conditions,* Labour Resource and Research Institute (LaRRI), 2006, available here

Hilma Shindondola-Mote, *The plights of Namibia's domestic workers*, Labour Resource and Research Institute, 2008, available here

Herbert Jauch, Ntwala Mwilima, Hilma Shindondola-Mote, *Service Station Workers in Namibia,* Labour Resource and Research Institute (LaRRI), 2008, available here

"Minimum Wages for Farm Workers in Namibia", Labour Resource and Research Institute (LaRRI) for the Namibia Farmworkers Union (NAFWU), 2008, available here

Hilma Shindondola-Mote, *Uranium mining in Namibia: The mystery behind 'low level radiation'*, Labour Resource and Research Institute, 2009, available here

Ute Dieckmann & Theodor Muduva, *Namibia's Black Gold?: Charcoal Production, Practices and Implications,* Legal Assistance Centre, 2010, available here.

Employment Services Act 8 of 2011

Summary: This Act (originally published in GG 4764) establishes a National Employment Service aimed at achieving full employment in Namibia. The Service consists of an Employment Services Board which plays an advisory role, and an Employment Services Bureau which registers job vacancies and job-seekers, amongst other functions. The Act also requires designated employers to report vacancies and new positions and to provide information about the composition and training of their workforces. It also provides for the licencing of private employment agencies and for the appointment of employment officers to enforce the Act. Portions of the Act were brought into force on 1 September 2012 by GN 194/2012 (GG 5005): Part 1, Part 4 (except section 26(2)) and Part 5. Part 3 of the Act was brought into force on 15 September 2015 by GN 201/2015 (GG 5829)

Note that the short title in section 35(1) of the Act (as promulgated in *Government Gazette*) is the "Employment Services Act". However, the headings and contents section in the *Gazette* refer to it as the "Employment Service Act" (with "Service" being singular instead of plural).

Amendments: Act 2/2012 (GG 4925) amends sections 1, 24 and 26, in relation to "labour hire". This amending Act was brought into force as of 1 August 2012 by GN 136/2012 (GG 4958) – but GN 136/2012 (GG 4958) was withdrawn by GN 192/2012 (GG 5005) on 1 August 2012, while GN 193/2012 (GG 5005) provides that amending Act 2/2012 will come into force on 1 August 2012, *except for* the provisions in section 10 insofar as they relate to section 26(2)(a)(ii)-(iii) of the Employment Service Act.

Regulations: Employment Service Regulations are contained in GN 62/2013 (GG 5147).

A separate set of regulations regarding employment services is published in GN 42/2015 (GG 5702).

Notices: Designations of employers and institutions under section 15(2) of the Act are contained in GN 202/2015 (GG 5829), which provides that each employer employing 25 or more employees is a designated employer for purposes of compliance with Part 3 of the Act, and designates training institutions and educational institutions for the purposes of section 18(1) of the Act.

Note that GN 202/2015 fails to indicate the date from which the designated employers are required to comply with the provisions of Part 3, as required by section 15(3) of the Act – unless the date of publication of the notice is understood as being that date.

GN 311/2022 (GG 7917) designates each employer employing 10 or more employees as a designated employer for purposes of compliance with Part 3 of the Act, not later than 12 months from the date of publication of the notice (30 September 2022).

COMMISSIONS

Commission of Inquiry into Labour Matters in South West Africa (AG 32/1987)

Commission of Inquiry into Labour Related Matters Affecting Agricultural Employees and Domestic Employees (Proc. 1/1995, GG 1020).

See also GN 14/1995 (GG 1020), as amended by GN 55/1995 (GG 1044).

INTERNATIONAL LAW

Charter of Fundamental Social Rights in SADC, 2003

†Constitution of the International Labour Organization (ILO), 1919

**Instrument of Amendment of the ILO Constitution, 1986*

Instrument of Amendment of the ILO Constitution, 1997

ILO Convention 29 concerning Forced or Compulsory Labour, 1930

Protocol of 2014 to the Forced Labour Convention, 1930

ILO Convention 81 concerning Labour Inspection in Industry and Commerce, 1947

ILO Convention 87 concerning the Freedom of Association and Protection of the Right to Organise, 1948
ILO Convention 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, 1949
ILO Convention 100 concerning Equal Remuneration, 1951
ILO Convention 105 concerning the Abolition of Forced Labour, 1957
ILO Convention 111 concerning Discrimination in Respect of Employment and Occupation, 1958
ILO Convention 122 concerning Employment Policy, 1964
ILO Convention 138 concerning Minimum Age for Admission to Employment, 1973
ILO Convention 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, 1976
ILO Convention 150 concerning Labour Administration: Role, Functions and Organisation, 1978
ILO Convention 151 concerning Protection of the Right to Organise and Procedures for Determining Conditions of Employment in the Public Service, 1978
ILO Convention 158 concerning Termination of Employment at the Initiative of the Employer, 1982
ILO Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999
ILO Convention 188 concerning Work in Fishing, 2007
ILO Convention 189 concerning Domestic Workers, 2011
ILO Convention 190 concerning Violence and Harassment, 2019

Note: In this list, the numbers of the respective ILO Conventions have been placed at the front of their respective names to make searches for each of these conventions easier. Technically, the numbers appear at the end. For example, what is listed here as "*ILO Convention 29 concerning Forced or Compulsory Labour, 1930"* is in fact *"ILO Convention concerning Forced or Compulsory Labour (No. 29), 1930"*.

*****SADC Protocol on Employment and Labour, 2014***
*****SADC Protocol on the Facilitation of Movement of Persons, 2005***

See also Whistleblower Protection Act 10 of 2017 (**CRIMINAL LAW AND PROCEDURE**).

See also Vocational Education and Training Act 1 of 2008 (**EDUCATION**).

See also Atomic Energy and Radiation Protection Act 5 of 2005 (**ENVIRONMENT**).

See also Petroleum (Exploration and Production) Act 2 of 1991 (regulations on health, safety and welfare of employees) (**MINING AND MINERALS**).

See also Posts and Telecommunications Companies Establishment Act 17 of 1992 (conditions of service of employees of the posts and telecommunications companies (**MEDIA AND COMMUNICATION**).

See also **PUBLIC SERVICE**.

See also Social Security Act 34 of 1994 (**SOCIAL SECURITY**).

See also Export Processing Zones Act 9 of 1995 (**TRADE AND INDUSTRY**).