



DECENT WORK CHECK

NAMIBIA 2023

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WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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Acknowledgements

Many people contributed to the development of the Decent Work Check as a tool and to this Check for Namibia. Those who contributed to the development of tool include Paulien Osse, Kea Tijdens, Dirk Dragstra, Leontine Bijleveld, Egidio G. Vaz Raposo and Lorena Ponce De Leon. Iftikhar Ahmad later expanded the work to new topics in 2012-13 and made the work more legally robust. Daniela Ceccon, Huub Bouma, and Gunjan Pandya have supported the work by bringing it online through building and operating labour law database and linking it to the WageIndicator websites. Special thanks are due to the WageIndicator global labour law office (headed by Iftikhar Ahmad), which works on Decent Work Checks since 2012. The Minimum Wages Database, developed by Kea Tijdens, is supported by Paulien Osse, Kim Chee Leong, and Martin Guzi. Khushi Mehta updated the Minimum Wages Database before 2020.

Minimum Wage Database and Labour Law Database are maintained by the Centre for Labour Research, Pakistan, which works as WageIndicator Labour Law office. The team comprises Iftikhar Ahmad (team lead), Ayesha Kiran, Ayesha Mir, Seemab Haider Aziz, Sobia Ahmad, Shanza Sohail, and Tasmeena Tahir.

Bibliographical information

Ahmad I, Ahmad A (2023) *Namibia Decent Work Check 2023*. Amsterdam, WageIndicator Foundation, May.

For an updated version in the national language, please refer to <https://mywage.org/namibia>

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WageIndicator Foundation, 2023

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Constitution of Namibia
2. Labour Act, 2007
3. Social Security Act, 1994
4. Rule 194, 2 (2)(8)(4)(a) of Annexure-E, 199(7), 8 of Schedule 3(2) of Annexure-F of Regulations relating to Health and Safety of Employees at Work, 1997
5. Regulation 2(6)(b) of Regulations relating to Health and Safety of Employees at Work, 1997
6. Regulation 10(1) of Regulations relating to Domestic Workers, 2017
7. Employees' Compensation Act 1941, amended in 1995
8. National Pensions Act, 1992
9. Discrimination Prohibition Act, 1991
10. Employment Services Act, 2011
11. Education Act, 2001
12. Regulation 2 (1) of Regulations relating to Domestic Work
13. Regulations 12(1), 12(2), Rule 10(5) of 2.(1) of Schedule 1.2, 13(4) of 2.(2) of Schedule 1.2 & 4 of 2.(3) of Schedule 1.2 of Regulations relating to Health and Safety of Employees at Work, 1997
14. State of Emergency - Covid-19: Suspension of Operation of Provisions of Certain Laws and Ancillary Matters Regulations: Namibian Constitution (Proc. 16/2020)
15. Labour Directives relating to Covid-19: State of Emergency - Covid-19 Regulations (GN No. 110 of 2020)

The text in this document was last updated in May 2023. For the most recent and updated text on Employment & Labour Legislation in Namibia, please refer to: <https://mywage.org/namibia>

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Namibia has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Labour Act, 2007

Minimum Wage

Minimum wage is regulated under the Labour Act in Namibia. The Minister for Labour has the power to issue wage orders to decide the remuneration and working conditions for employees in a particular industry or area after considering the recommendations of the Wage Commission. The Wage Commission is formed either by the Minister, or upon the request of a trade union and/or registered employers' organization. The function of the Wage Commission is to investigate the conditions of employment including remuneration and accordingly report back to the Minister. The Wages Commission is a tripartite body with representation from workers and employers' organizations.

The Wage Commission's report must also consist of recommendations for minimum remuneration, the basis upon which the remuneration is based, the deductions allowed or disallowed, wage payment method, keeping of employment records, prohibition or regulation of certain kinds of work etc. For updating the minimum wage, the Wage Commission can recommend increase or decrease in the remuneration, and the Minister can issue a new wage order accordingly. Minimum wages are generally set through the collective agreements. There are separate collective agreements for agriculture and industry.

The Labour Act, 2007 in itself does not provide a list of factors to be taken into account for the determination of minimum wage. Furthermore, the law does not require that the minimum wage must take

into account the living expenses of the employees.

After 1 October 2018, minimum wage is increased by one percent additionally equal percentage to average rise in inflation rate as described in Namibia Statistics Agency under Statistics Act 2011.

For the purpose of compliance, the labour inspector can assist employees in filing complaints. Furthermore, the inspector may investigate and issue a compliance order where the employer has failed to comply with the wage order. A person who fails to comply with the compliance order is liable to a fine not exceeding N\$ 10,000 or imprisonment for a period of up to two years or both.

Source: §13, 105-106, 114, 125-127 of the Labour Act, 2007; §3 Wage order for setting minimum wage and supplemental minimum conditions of employment for domestic workers: Labour Act, 2007 (Government Notice No. 258 of 2017)

Regular Pay

The Labour Act defines basic wage as a part of an employee's remuneration in money including the cash equivalent of payment for the work done during the hours ordinarily worked. However, this definition does not include allowances or pay for overtime. Additional pay for work done on Sunday or a public holiday as well as additional pay for night work or payments for pension, annuity, medical benefits or insurance are not included.

The employer is required to pay to the employees their monetary remuneration not later than one hour upon completion of ordinary hours of work on the payday. The wage payment may be made on daily,

weekly, fortnightly or monthly basis. The payment is to be in cash or at employee's option, by cheque. The payment can be made either to the employee or by a direct deposit into an account designated in writing by that employer. Whether the payment is by cash or cheque, it has to be made in a sealed envelope.

The employer cannot deduct from the employee's remuneration unless the deduction is allowed on a Court order or as prescribed in any law. That being said, as long as the deduction does not exceed one third (33%) of the employee's remuneration, a deduction can also be allowed under any collective agreement or arbitration award, or if the deduction was agreed in writing and concerns a payment due from the employee. For the latter, a deduction can only be made for rent where accommodation has been provided by the employer, where goods have been sold by the employer, a loan has been advanced by the employer, contributions have been made to employee benefit funds, or subscription or levies to a registered trade union.

The employer cannot impose fine on an employee unless there is authorization from a statute or a collective agreement. Furthermore, the employer cannot require the employee to buy goods from the employer, use services rendered by the employer for reward, pay for the goods supplied by the employer at a higher price than the amount paid by the employer along with reasonable costs. Also, the employer cannot require or permit an employee to repay any remuneration duly paid to an employee or acknowledge receipt of an amount greater than the remuneration actually received.

Where the employment contract or collective agreement allows, an employer through a written notice to reduce the ordinary working hours of the employee for a maximum period of three months for operational reasons or as otherwise provided by law and can reduce employee's remuneration but by no more than one-half (50%).

Labour Act also requires an employer to provide pay slip to the worker indicating the wages paid.

The Labour Act has given the formula for calculation of remuneration and basic wages.

Source: §8(b) & 10-12 of the labour Act, 2007

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Namibia has not ratified the Conventions 01 and 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Labour Act, 2007

Overtime Compensation

In accordance with Labour Act, 2007, ordinary hours per week are 45. The daily working hours cannot exceed 9 hours per day if the employee works 5 days or less per week. Where the employee works 6 days, working hours cannot exceed 8 hours per day. Children below the age of 14 years are not allowed to work. For children above the age of 14 years and adults, there does not appear to be any distinction as to their ordinary work hours or overtime.

An employer cannot ask the employee to do overtime unless otherwise agreed in the written agreement. Overtime must not exceed 10 hours a week and 3 hours per day. The employer must pay an employee at a rate of at least one and one-half times (150%) of the employee's hourly basic wage for overtime. Where the employee ordinarily works on a Sunday or on a public holiday, he/she must be paid at a rate of at least double (200%) the employee's hourly basic wage for overtime.

The periods of work are to be fixed in such a way that where an employee has continuously worked for 5 hours, he/she must be given a meal interval for at least 1 hour. This meal interval can be decreased to half an hour where the employee agrees and the Labour Department has been notified of such an agreement. The meal interval is not regarded as time worked unless the employee is a security officer, works in an emergency healthcare services, or is of any class designated by the Minister

of Labour, and has to work up to 60 hours a week.

Source: §3(2) & 16-18 of the Labour Act, 2007

Night Work Compensation

The working hours for night workers are between 10 pm to 7 am. An employee is entitled to an additional payment of 6% of the employee's hourly basic wage, not including overtime, for each hour of work performed by the employee between the hours of 10 pm and 7 am. The law does not provide for reduced working hours for a night time worker. Children below the age of 18 years cannot be employed as night time workers. However, the Minister of Labour can make regulations permitting children between the ages of 16 to 18 years to carry out night work.

Source: §3(3), 3(4) & 19 of the Labour Act, 2007

Compensatory Holidays / Rest Days

An employer must allow an employee a weekly interval of at least 36 hours of consecutive hours of rest unless the employee is performing urgent work. Furthermore, an employer cannot permit an employee to work on a Sunday or a public holiday unless the latter is performing urgent work, business in shop, hotel or such other establishment that operates on Sunday, domestic service, health and social welfare care, work which requires continuous shifts, farm work, or any activity approved by Permanent Secretary for Labour.

Where both the employer and employee agree and the worker works on a Sunday or on a public holiday, such an employee is to be paid his normal daily remuneration along with 150% (for Sunday) or 50% (for public holiday) of the employee's hourly basic wage for each hour worked as opposed to 200% (for Sunday) or hourly basic wage (for public holiday) along with daily remuneration. In return, the employee is to receive an equal period of time off work during the next working week.

The law does not require compensatory rest days for working on a weekly rest day or a public holiday. However, employee can have the equivalent time off if they accept a decrease in the hourly basic wage.

Source: §20-22 of the Labour Act, 2007

Weekend / Public Holiday Work Compensation

The Labour Act, 2007 does provide compensation for the employees working on a Sunday or a public holiday. For Sundays, the employer must pay an employee who works on Sundays 200% of that employee's basic wage for each hour worked. However, an employer can pay an employee who works on a Sunday, 150% of that employee's hourly basic wage instead, if the employer grants the employee an equal period of time away from work during the next working week. However, for such an arrangement, agreement from the employee is necessary. Where the employee ordinarily works on a Sunday, then the employer has to pay the employee's daily remuneration along with the hourly basic wage for each hour worked.

For public holidays, if the holiday falls on a day on which an employee would have ordinarily worked, then the employee who works on a public holiday must be given normal daily remuneration as well as the hourly basic wage for each hour worked. However, where employer and the employee agree, then the latter who works on a daily holiday can be given normal daily remuneration along with 50% of the employee's hourly basic wage for each hour worked and in return, the employee has to be given an equal period of time off work during the next working week. If the employee works on a public holiday that falls on a day other than the employee's ordinary working day, the employer must pay 200% of the employee's hourly basic wage for each hour worked.

Source: §21-22 of the Labour Act, 2007

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Namibia has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week.

Regulations on annual leave and holidays:

- Labour Act, 2007

Paid Vacation / Annual Leave

According to Labour Act, 2007, the number of days in the annual leave is calculated in accordance with the number of days ordinarily worked by the employee in a work week. If the numbers of days in the ordinary work week are 6, the annual leave entitlement is 24 working days. The numbers of days ordinarily worked in a week are to be multiplied with 4 and the result would be the annual leave in terms of working days. There does not appear to be annual leave distinctions between employees who are adults and adolescents/children.

The employer is to determine the timing of annual leave. However, it is to be taken no later than four months after the end of the annual leave cycle. It can even be taken six months after the end of the annual leave cycle as long as the employee has agreed in writing to such an extension.

Every employee is entitled to full remuneration during the annual leave. However, the number of days in the annual leave may be decreased if, on the request of the employee, the employer granted that employee occasional leave on full remuneration. An employer must pay the remuneration to an employee in respect of annual leave according to that employee's regular pay schedule. In any other circumstance, the remuneration must be paid either on the last working day before the start of the annual leave or on the first pay day after the end of the leave period, if

the employee requests such an extension in writing.

Source: §23 of the Labour Act, 2007

Pay on Public Holidays

Under the Schedule of the Public Holidays Act, 1940, there are 12 public holidays in total. They consist of New Year's Day, Good Friday, Easter Monday, Independence Day (the 21st of March), Worker's Day (the 1st of May), Cassinga Day (the 4th of May), Ascension Day, Africa Day (the 21st of May), Heroes Day (the 26th of August), Day of the Namibian Woman and International Human Rights Day (the 10th of December), Christmas Day (the 25th of December), Family Day (the 26th of December).

If a public holiday falls on the day the employee normally would work, the worker is entitled to a fully paid public holiday.

Source: The Schedule of the Public Holidays Act, 1940 and §22(5)(a)(i) of the Labour Act, 2007

Weekly Rest Days

Under the Labour Act, 2007, an employer cannot require or permit an employee, other than an employee who is performing urgent work, to work for more than 12 hours. Furthermore, an employer cannot allow an employee to work without a weekly interval of at least 36 hours of consecutive hours of rest unless he/she is performing urgent work. A weekly interval of at least 36 hours of consecutive rest must be provided.

It should also be noted that an employer cannot require or allow an employee to perform work on a Sunday. Exceptions to

this are where an employee is employed for the purpose of urgent work, business of a shop, hotel, etc. which operates on a Sunday, domestic services in a private household, health and social welfare care and residential facilities, farm work, work where continuous shifts are necessary, or any activity which may be approved by the Labour Department.

Source: §20-21 of the Labour Act, 2007

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Namibia has ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Labour Act, 2007

Written Employment Particulars

Under the Labour Act, 2007, a basic condition of employment constitutes a term of any contract of employment except where the law provides a more favourable term for the employee, where a term of employment or collective agreement is more favourable to the employee, or where the basic condition of employment has been altered by the Minister of labour. Remuneration, working hours, annual leave along with other kinds of leave, accommodation and employment termination are considered as basic conditions of employment.

Upon termination of employment, an employer must give an employee a certificate of service stating the employee's name, the name and address of the employer, a description of the industry the employer is engaged in, the date of commencement and termination of employment, the employee's job description, the remuneration at date of termination, and upon request of the employee, the reason for termination of employment.

Under Regulations relating to Domestic Workers issued under the labour Act, 2007, an employer upon hiring a domestic worker should enter into a written contract with the domestic worker. The details to be provided in the written contract between an employer and a domestic worker are to consist of names, contract details, place of work, job description, ordinary work days and hours, meal intervals, monetary remuneration and basic wages, overtime,

ordinary work on Sunday or public holiday, transport allowance, social security, sick leave, compassionate leave, maternity leave, vacation leave, provision of food, accommodation, benefits, health and safety obligations, freedom of association, code of conduct, changes to the contract, and commencement date.

An employer must provide a copy of the written contract but before the contract is signed the employer must explain to the domestic worker the terms of the contract in a language which the domestic worker understands.

Source: §9 & 37 of the Labour Act, 2007 and Regulation 12 of the Regulations relating to Domestic Workers

Fixed Term Contracts

No provision concerning fixed term contracts could be located in the Labour Act.

Probation Period

No provision concerning probation periods could be located in the Labour Act.

Notice Requirement

Under the Labour Act, 2007, there is termination of employment through notice, termination through payment instead of notice and automatic termination of the employment contract.

For termination of employment contract on notice whether by employer or employee, the period of notice cannot be less than one day if the employee has been employed in the establishment for four weeks or less. If

the employee has been employed for more than four weeks but not more than one year, the period of notice should not be less than one week. Where the employee has been employed for than one year, the notice period should be of at least one month.

Payment in lieu of notice is allowed. Instead of giving notice, the employer can pay the employee the remuneration the employee would have received, if the employee had worked during the period of notice. Similarly, an employee can pay the employer the remuneration the employer would have paid, if the employee had worked during the period of notice and terminate the employment contract immediately.

An employment contract terminates automatically one month after the death or sequestration of the employer or shut down of the business. However, the employment may continue on a for a longer period as provided in the employment contract/collective agreement, or during the duration where the employer continues to carry on business.

The notice of termination must be in writing and must state the reasons for termination. The date on which the notice is given must also be stated. It should be noted that an illiterate employee can give notice orally.

Source: §30-32 of the Labour Act, 2007

Severance Pay

In accordance with the Labour Act, 2007, an employer is to give severance pay to an employee who was dismissed, died while employed, or resigns/retires upon reaching the age of 65, as long as at least 12 months

of continuous service were completed. However, severance pay does not need to be paid where there were fair grounds for dismissal due to misconduct or poor performance, if the employee refuses to be reinstated, where the employee refuses to accept less favourable terms of employment with the next of kin of the deceased employer upon one month from the latter's death, or refuses to accept employment with former partner(s) upon dissolution of partnership.

Severance pay must be in an amount equal to at least one week's remuneration for each year of continuous service with the employer. The payment of severance pay does not affect an employee's right to any other amount that the employee is obliged to pay the employee. Where the contract of employment was terminated as a result of the employee's death, then in the absence of a will, the employer must pay severance to the employee's surviving spouse. Where there is no spouse, then to the children of the deceased employee and where there are no children, to the employee's estate.

Source: §35 of the Labour Act, 2007

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

Namibia has not ratified both the Conventions 156 & 165.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

Paternity Leave

There is no provision concerning paternity leave under the law.

Parental Leave

There is no provision concerning parental leave under the law.

Flexible Work Option for Parents / Work-Life Balance

There is no provision concerning flexible work-options for parents in the law.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Namibia has not ratified the Conventions 103 and 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Social Security Act, 1994
- Labour Act, 2007
- Rule 194, 2.(2)(8)(4)(a) of Annexure-E, 199(7), 8 of Schedule 3(2) of Annexure-F of Regulations relating to Health and Safety of Employees at Work, 1997

Free Medical Care

There is no provision concerning free medical care for pregnant workers under the Labour Act. However, Social Security Act provides for a National Medical Benefit Fund to provide medical benefits to every employee who is member of the Fund.

Source: §32 & 34 of the Social Security Act, 1994

No Harmful Work

Under the Labour Act, 2007, an employer is prohibited from engaging a pregnant employee to perform any work, including overtime work, between 10 pm to 7 am from 8 weeks before her expected date of confinement to 8 weeks after her confinement.

Under Regulations relating to Health and Safety of Employees at Work, 1997, no person may require a pregnant worker to work in a respirator zone where hazardous chemical substances are used such as lead in a form which can be inhaled, ingested or otherwise absorbed, organic mercury compounds, polybromophenylene (PBB) and polychlorobiphenylene (PCB), arsenic, cadmium, carbon disulphide, estrogenic compounds, aromatic chlorinated hydrocarbons, organophosphate pesticides, or nicotine. Where a woman is

employed in work which exposes her to lead, she must be temporarily suspended from work if she becomes pregnant. Similarly, no employer is to allow a female employee who is pregnant to work in an environment where she is liable to be exposed to ionizing radiation. Furthermore, no pregnant woman is to be employed in any area where the noise level is in excess of 85dB(A).

The law does not provide as to the type of actions the employer is required to take in order to protect the health and safety of pregnant workers other than removing them from work site where harmful work is being done.

Source: §19(2) of the Labour Act, 2007 and Rule 194, 2.(2)(8)(4)(a) of Annexure-E, 199(7), 8 of Schedule 3(2) of Annexure-F of Regulations relating to Health and Safety of Employees at Work, 1997

Maternity Leave

According to the Labour Act, 2007, where a female employee has completed six months of continuous service, she is entitled to maternity leave of four weeks before her expected date of confinement. After her date of confinement, she is entitled to eight weeks of maternity leave in every case. Total duration of maternity leave is 12 weeks. Thus, if the pre-natal leave is less than 4 weeks for some reason, the remaining duration is adjusted in the post-natal leave.

The minimum period for maternity leave is twelve weeks. However, this period can be extended where there have been complications in birth. Where there are complications in the birth, either because of the health of the employee or the

employee's child, the employer must grant an extended maternity leave of one month or the amount of accrued sick leave that the employee has at the time.

Source: §26-27 of the Labour Act, 2007

Income

Under the Labour Act, 2007, the employee is entitled to any remuneration from the employer during the maternity, whether extended or not, with the exception of basic wage. The Social Security Council is to pay the basic wage to the employee during the maternity period regardless of whether it is extended or not. Hence, presumably the employees on maternity leave would be paid 100% of their monthly wage.

Source: §26-27 of the Labour Act, 2007; §28-29 of the Social Security Act, 1994

Protection from Dismissals

An employer cannot dismiss an employee on her maternity leave or upon the expiry of her maternity leave for the purpose of reduction in the workforce or on any grounds arising from her pregnancy, delivery, or family status or responsibility. Furthermore, employees on maternity leave are protected from dismissals arising from collective termination or redundancy. However, the protection from dismissal will not apply if the employer has offered the employee comparable alternative employment and she has unreasonably refused to accept the offer.

Source: §26 & 34 of the Labour Act, 2007

Right to Return to Same Position

There is no provision in law which related to return to the same position.

Breastfeeding

There is no provision relating to breastfeeding / nursing breaks in the law.

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Namibia has ratified the Convention 81 only.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Labour Act, 2007
- Regulation 2(6)(b) of Regulations relating to Health and Safety of Employees at Work, 1997
- Regulation 10(1) of Regulations relating to Domestic Workers, 2017

Employer Cares

In the labour Act, 2007, it has been expressly stated that the working environment is to be safe. It should not be a risk to the health of employees and the establishment must have adequate facilities and arrangements for the welfare of employees. The machinery is to be maintained without any risk to the employees. Safe entry and exit entrances are to be provided. Employees are to be given protective clothing where necessary. Information and training is to be provided for a safe work environment. Storage and handling of substances should be without risk to the employees. Instructions should be provided and there is to be proper supervision. Organization of work including mealtimes and hours of work should not affect the health or safety of workers. Any other step for the safety, health and welfare of the employees can also be adopted by the employer.

Source: §39 of the Labour Act, 2007

Free Protection

Under the Regulations relating to Health and Safety of Employees at Work, 1997, all safety equipment and facilities, including personal protective equipment and clothing must be supplied free of charge.

Similarly, in the Regulations relating to Domestic Workers, an employer must provide the domestic worker a uniform and appropriate personal protective equipment.

Source: Regulation 2(6)(b) of Regulations relating to Health and Safety of Employees at Work, 1997 and Regulation 10(1) of Regulations relating to Domestic Workers, 2017

Training

Under the Regulations related to the Health and Safety of Employees at Work, 1997, every employee is to be provided training in the tasks he/she is expected to perform including all aspects of health and safety related to such tasks so that the employee is able to take reasonable care of his or her own safety and of fellow employees.

If an employee's scope of employment has changed or he/she will be performing different tasks or tasks which differ from before, then the employer is required to provide the employee with all the necessary information and training for the additional tasks. Furthermore, the employee is to be instructed in all aspects concerning health and safety related to such tasks. All of this has to be done before the employee starts performing the tasks.

Under the Regulations relating to Domestic Workers, 2017, a worker must be provided training concerning possible hazards relating to work duties including potentially dangerous equipment and toxic substances, proper use and maintenance of personal protective equipment and safe work techniques relating to domestic work.

Sources: Regulation 2(3) & (4) of Regulations related to the Health and Safety of Employees at Work, 1997 and Regulation 10(1)(c) of Regulations relating to Domestic Workers, 2017.

Labour Inspection System

The Labour Act, 2007 prescribes the procedure and functions of the labour inspectors. The Minister for labour can appoint labour inspectors to enforce the aforementioned Act. The Permanent Secretary of Labour must then issue a certificate to the labour inspector confirming his/her appointment.

The labour inspector can, at a reasonable time, enter any premises. He can direct that the premises or part of it may not be disturbed so as to carry out a search more effectively. He/she can examine any book, document or object relevant for the administration of the above-mentioned Act. Any book, document or object can be copied and/or seized. A sample from an object or the atmosphere can also be taken as well as measurements, readings, recordings or photographs. Furthermore, the labour inspector can question any individual on the premises. The labour inspector can also assist any person in making an application, referral or complaint and can also settle the matter.

Where the Labour Inspector has reasonable grounds to believe that an employer has not complied with the provisions of Labour Act, 2007 then he/she may issue a compliance order. Any person who obstructs a labour inspector in the performance of his/her functions, intentionally does not provide an answer to the labour inspector's question, intentionally provides false and misleading

information to the labour inspector, fails to comply with the compliance order or falsely claims to be a labour inspector, then such a person would be liable to a fine not exceeding N\$10,000 or imprisonment for up to two years or both.

Source: §123-127 of the Labour Act, 2007

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Namibia has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Labour Act, 2007
- Social Security Act, 1994
- Employees' Compensation Act 1941, amended in 1995

Income

The Labour Act, 2007, provides sick leave for employees. If the employee works five days during a week, he/she is entitled to 30 working days of sick leave. If the employee ordinarily works six days a week, he is entitled to 36 working days. The above leave entitlement is applicable for a sick leave cycle which means a consecutive period of 36 months. Thus, sick leave is not on an annual basis rather calculated on a three-year basis. Where the employee ordinarily works fewer than five days during a week, the sick leave is to be calculated on a proportional basis. However, even then, an employee is entitled to one day's sick leave for every 26 days worked during the employee's first year of employment. After the first year of employment, a worker can accrue up to 30/36 days of sick leave in one sick leave cycle (36 months). Where the employee does not ordinarily work a fixed number of days per week, he/she is entitled to sick leave to be calculated annually on the basis of average number of days worked per week over the previous 12 months.

The employer is to pay the employee an amount equal to that employee's daily remuneration for each day of absence of sick leave. However, there are circumstances where the employer is not required to pay remuneration for sick leave. First, where the employee has been absent from work for two consecutive days and has failed to produce a medical certificate by a

medical practitioner or provide any other proof. Second, where the employee is entitled to payment under the Employees' Compensation Act, 1941 due to him/her being absent from work due to an accident or a scheduled disease. Third, where the employee is entitled to payment from a fund or organization, that guarantees the payment of sick leave, as designated by the employee and in respect of which the employer makes contributions. Fourth, where the employee is entitled to payment in respect of that sick leave under any other legislation.

In line with the Social Security Act, sickness benefit provided through the Social Security Commission, is as follows: 75% of the maximum basic earnings is paid from the 31st day of sickness (for workers working 5 days a week) or 37th day (for workers working 6 days a week) during the first 12 months of sickness. During the next 12 months, sickness benefit is 65% of the maximum basic earnings. During the first 30/36 days of sickness, sickness benefit (100% of employee's daily earnings) is provided by the employer.

Source: §24 of the Labour Act, 2007; §29 of the Social Security Act, 1994

Reforms Related to COVID-19

During the State of Emergency – COVID 19, certain laws and ancillary matters regulations were suspended, and new temporary provisions were introduced in order to meet the requirements and needs of the affected workers. This included suspension of certain articles of the Labour Act, 2007, and employers were not allowed to dismiss the employees or reduce their remuneration, and compelled to provide them with sick leave when required as per the regulations during the lockdown.

Reduction of employee's remuneration was only possible on the basis of negotiation with the respective workplace representative or trade union, or through collective agreement in their absence.

The President of Namibia also approved employment and training schemes for those who are unemployed and socio-economically disadvantaged as contemplated in Article 37(4) of the Social Security Act, 1994. Further details are comprehensively discussed in the Government Gazette issued on 28th April 2020. As per the Government Gazette issued on 29th April 2020, safety and health measures at workplace, Employees' Compensation Fund and penalties were also established.

Medical Care

Any employee registered under the Social Security Act, 1994, is to be a member of the Maternity Leave, Sick Leave and Death Benefit Fund, the National Medical Benefit Fund and the National Pension Fund. In return, every employer and employee is to be liable to pay contributions to every fund of which the employee is a member.

A member who has been incapable for at least 30 consecutive days is to be paid sick leave benefits for the number of days during which the member was absent from work through incapacity which exceeds the number of days of sick leave provided for in the Labour Act. However, sick leave benefits are not payable in respect of a period of sick leave which exceeds two consecutive years.

An employee who is a member of a National Medical Fund is to be provided with medical benefits.

Source: §20, 21, 30 & 32 of the Labour Act, 2007; §28-33 of the Social Security Act, 1994

Job Security

There is no provision which concerns job security in the law.

Disability / Work Injury Benefit

Work injury benefits are provided under the Employees' Compensation Act 1941, amended in 1995. There is no minimum qualifying period however the injury must last for at least 3 days.

Work injuries may be classified on the basis of their consequences as those resulting in: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

In case of Permanent Total Disability (more than 30% disability), up to 75% of the insured worker's last monthly earnings before the disability began is paid in accordance with the assessed degree of disability.

In the case of permanent partial disability (for an assessed disability of 30%), a lump sum of up to 15 times the insured worker's last monthly earnings are paid according to the assessed degree of disability.

In the case of Temporary Disability, 75% of the insured worker's average monthly wage is paid up to 12 months. The benefit may be extended for up to 6 months. After 18 months, the Social Security Commission must decide either to extend the temporary disability benefit or initiate permanent disability pension.

In case of death, survivor benefits are paid to the spouse and orphans. The spouse pension is 40% of the permanent disability the deceased person received or was entitled to receive. The orphan's pension is 20% of the permanent disability pension the deceased person received or was entitled to receive. The orphan's pension is available until the child reaches the age of 18 years. However, the orphan pension ceases even before 18 years if the child marries before turning 18. The maximum survivor benefit is 100% of the permanent disability pension the deceased person received or was entitled to receive.

Funeral grant is also paid as a lump sum amount. There is also provision for a lump sum death benefit which is generally twice the deceased worker's earnings at the time of death.

Employment injury benefits are regulated by the Social Security Commission. Employers are required to contribute a specific percentage of gross payroll, in line with the industry classification.

Source: Employees' Compensation Act 1941, amended in 1995

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Namibia has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- National Pensions Act, 1992
- Social Security Act, 1994

Pension Rights

Under the National Pensions Act, 1992, an aged person, any person who has reached the age of 60, is entitled to basic state pension. A person is entitled to a national pension if he satisfies to the Permanent Secretary of Health and Safety that he/she is an aged, blind or disabled person, is a resident of Namibia, and is a citizen or has been a permanent resident of Namibia for continuous period of time.

Under the Social Security Act, 1994, any employee who is a member of National Pension Fund is entitled to pension benefits. In order to qualify for pension benefits from National Pension Fund, the employee must be registered with the Social Security Commission. He must not be a member of any other pension fund or scheme approved by the Minister of Labour and Human Resources Development. Where contribution has been paid to the full, the employee has to be a member of the Fund for at least six months before a claim can be made.

If the employee who is a member of the Death Benefit Fund, retires, the full value of his/her death benefits which would have been payable upon his/her death, will be paid to him/her and no further amount will be payable. In order to qualify for Death Benefits, the employee must be registered with the Social Security Commission. He must not be a member of any other pension fund or scheme approved by the Minister of Labour and Human Resources Development. Where contribution has been

paid to the full, the employee has to be a member of the Fund for at least six months before a claim has been made.

Source: §2 & 3 of the National Pensions Act, 1992 and §20, 21, 31 & 34 of the Social Security Act, 1994

Dependents' / Survivors' Benefit

Under Social Security Act, 1994, upon death of an employee who was a member of the Death Benefits Fund, death benefits will be payable to a dependent. If the dependent is still a minor, it will be paid to his/her guardian or to any other person who is considered by the Social Security Commission to a fit and proper person to administer such benefits.

In order to qualify for death benefits, the deceased employee must have registered with the Social Security Commission. He must not have been a member of any other pension fund or scheme approved by the Minister of labour and Human Resources Development. Where contribution has been paid to the full, the employee had to have been a member of the Fund for at least six months before a claim can be made.

Source: §20, 21 & 31 of the Social Security Act, 1994

Unemployment Benefits

There is no provision of law concerning unemployment benefits.

Invalidity Benefits

Under the National Pensions Act, 1992, any person is entitled to a national pension if he satisfies to the Permanent Secretary of Health and Safety that he/she is a blind or

disabled person, is a resident of Namibia, and is a citizen or has been a permanent resident of Namibia for continuous period of time.

Under the Social Security Act, 1994, if the employee who is a member becomes disabled, the full value of death benefits which would have been payable upon his/her death, will be paid to him/her and no further amount will be payable. In order to qualify for death benefits, the employee must be registered with the Social Security Commission. He must not be a member of any other pension fund or scheme approved by the Minister of labour and Human Resources Development. Where contribution has been paid to the full, the employee has been a member of the Fund for at least six months before the claim arose.

Source: §3 of the National Pensions Act, 1994 and §20, 21 & 31 of the Social Security Act, 1994

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

Namibia has ratified the Conventions 100 and 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of Namibia
- Labour Act, 2007
- Discrimination Prohibition Act, 1991
- Employment Services Act, 2011

Equal Pay

Under the Labour Act, 2007, it is discrimination on grounds of sex to differentiate without justification in any employment decision, including remuneration, between employees who do work of equal value or between applicants who seek work of equal value.

Source: §5(3) of the Labour Act, 2007

Sexual Harassment

The Labour Act, 2007 defines sexual harassment as any unwarranted conduct of a sexual nature towards an employee which constitutes a barrier towards equality in employment where the victim has told the perpetrator that he/she finds the conduct offensive or where the perpetrator should have reasonably realized that the conduct is unacceptable, taking into account the respective positions of the parties in the place of employment, the nature of their employment relationships and the nature of the place of employment.

Any dispute may be referred to the labour commissioner. The person who refers the dispute must satisfy the labour commissioner that a copy of the notice of a dispute has been served on all parties to the dispute. The labour commissioner may then refer the dispute for resolution to the arbitrator. Where the dispute alleges discrimination, the labour Commissioner

must first try to have a resolution through a conciliator and then refer the dispute to arbitration. However, despite the dispute resolution mechanism set in place, any person whose fundamental right has been violated, can approach the labour Court for appropriate relief.

A person must not, in any employment decision or in the course of an employee's employment, directly or indirectly sexually harass an employee.

Where a worker resigns from employment due to sexual harassment by the employer, it constitutes constructive dismissal. Since constructive dismissal constitutes unfair dismissal, the employee is entitled to remedies for unfair dismissal.

Source: §5(7)(b), 5(8) & 7 of the Labour Act, 2007

Non-Discrimination

The Constitution of Namibia stated that no person can be discriminated on the basis of their gender, race, colour, ethnic origin, creed, social or economic status.

Under the Racial Discrimination Prohibition Act, 1991, no employer who is seeking to appoint a person who has applied for such work, can refuse to appoint him on the basis of the person's race, colour or ethnic origin, or upon employment, offer different conditions than those offered to other employees. Furthermore, an employee cannot be dismissed or subjected to any detriment where the other employees performing same or similar work are not dismissed or would not be subjected to the detriment on the ground of employee's race, colour or ethnic origin. Any person

contravening this section would be liable to a fine not exceeding Rs. 50,000 or imprisonment not exceeding 10 years or both.

Under the Labour Act, 2007, a person must not discriminate in any employment decision directly or indirectly or engage in any practice which has the effect of discrimination on the grounds such as race, colour or ethnic origin; sex, marital status or family responsibilities; religion, creed or political opinion; social or economic status; degree of physical or mental disability; AIDS or HIV status; or previous current or future pregnancy.

Accordingly, the Employment Services Act, 2011 provides that a private employment agency cannot discriminate in the advertisement, recruitment, and referral of persons for prospective employment on the basis of race, colour or ethnic origin; sex, marital status or family responsibilities; religion, creed or political opinion; social or economic status; degree of mental or physical disability; AIDS or HIV status; or previous, current or future pregnancy.

It is unfair to dismiss an employee because of such employee's sex, race, colour, ethnic origin, religion, creed or social or economic status, political opinion or marital status.

Source: §10 of the Constitution of Namibia, §7 of Discrimination Prohibition Act, 1991, §5(2) of the Labour Act, 2007 and §26 of the Employment Services Act, 2011

Equal Choice of Profession

Under the Labour Act, 2007, a person must not discriminate in any employment decision directly or indirectly, or adopt any requirement or engage in any practice

which has the effect of discrimination against any individual on the grounds of sex, marital status or family responsibilities. It is discrimination on grounds of sex to differentiate without justification in any employment decision between employees who do work of equal value or between applicants who seek work of equal value.

The Constitution of Namibia provides all persons with a right to withhold their labour without being exposed to criminal liabilities. Furthermore, every person has the right to practice any profession, or carry on any occupation, trade or business.

Source: §21 of the Constitution of Namibia and §5 of the Labour Act, 2007

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Namibia has ratified the Conventions 138 and 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of Namibia
- Labour Act, 2007
- Education Act, 2001
- Regulations relating to Domestic Work
- Regulations relating to Health and Safety of Employees at Work, 1997

Minimum Age for Employment

A person must not employ a child who is under the age of 14. Where a child is at least aged 14 but has not reached the age of 16, they can be employed unless otherwise not allowed for a number of reasons. First, a child must not be employed in accordance with Article 15(2) of the Constitution of Namibia where they are required to perform work which is likely to be hazardous or to interfere with their education, or is harmful to their health or physical, mental, spiritual, moral or social development.

Second, a child must not be employed where the Minister of Labour has prohibited it so. Third, a child is not to be employed in respect of any work between the hours of 10 pm to 7 am. Last, a child is not to be employed where on the premises work is done underground or in a mine; construction or demolition takes place; goods are manufactured; electricity is generated, transformed or distributed; machinery is installed or dismantled; or any work activity which is harmful to the child's health, safety, or physical, mental, spiritual, moral or social development.

The compulsory education age is 16 years.

Source: §3 of the Labour Act, 2007; §53 of the Education Act, 2001

Minimum Age for Hazardous Work

The minimum age for hazardous works is 18 years. The Constitution read with the Labour Act, 2007 forbids any sort of employment of children under the age of 14. Certain work activities for the children between the age of 14 to 16 are forbidden. Such work activities consist of night work; work which is done underground or in a mine; construction or demolition takes place; goods are manufactured; electricity is generated, transformed or distributed; machinery is installed or dismantled; or any work activity which is harmful to the child's health, safety, or physical, mental, spiritual, moral or social development. However, such tasks may be allowed where the Minister of Labour has permitted so through regulation.

Regulations relating to Domestic Work under the labour Act, 2007, no person is to employ a child below the age of 18 years as a domestic worker.

Regulations relating to Health and Safety of Employees at Work, 1997, no person below the age of 16 years is allowed to work at or in the vicinity of a construction site, engineering works, trench or excavation; at a pulp mill, saw mill or woodworking establishment; in the vicinity of an industrial processes at any factory; in any silo, storage bin, vat, hopper, tunnel, shaft, sewer or other confined space; on the cutting line of any packing plant or the evisceration line of any poultry plant or abattoir; in any forestry or logging operation; on any drilling or servicing rig; as an operator of any heavy, mobile equipment, any crane or other heavy housing equipment; or as an operator of a forklift truck or similar mobile equipment.

Furthermore, no person under the age of 18 years is to be employed underground or in a open-pit face of any mine; as a radiation worker; or in any activity for which respiratory equipment is required except where the work is being performed under the close supervision of a labour inspector. They cannot work in an environment where asbestos dust is likely to be released into the atmosphere.

No person under the age of 18 years is to work or be permitted to work in a lead area or a respirator zone. An employer is also to ensure that no person under the age of 18 years is permitted to work at an underground or at the open-pit face of any mine; in a silica process; in any cleaning or maintenance work which is likely to involve exposure to dust from a silica process except under proper supervision; or in any activity where respiratory protective equipment is required except under proper supervision.

Source: §15(2) of the Constitution of Namibia, §3 of the Labour Act, 2007, Regulation 2 (1) of Regulations relating to Domestic Work and Regulations 12(1), 12(2), Rule 10(5) of 2.(1) of Schedule 1.2, 13(4) of 2.(2) of Schedule 1.2 & 4 of 2.(3) of Schedule 1.2 of Regulations relating to Health and Safety of Employees at Work, 1997

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Namibia has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of Namibia
- Labour Act, 2007

Prohibition on Forced and Compulsory Labour

The Constitution of Namibia states that no person is to be required to perform forced labour. All types of forced labour is prohibited unless it is required as a consequence of a sentence or order by a court, where the person is rightfully detained and is reasonably necessary in the interests of hygiene, during a public emergency, or required as a part of reasonable and normal communal or civic obligations.

Under the Labour Act, 2007, a person must not directly or indirectly cause, permit or require any individual to perform forced labour. Forced labour includes any work performed under a threat of penalty, punishment or harm upon either that individual or another individual upon non-performance of the work; any work which is performed by the employee's child who is under the age of 18 and is performed in an arrangement between the employer or employee; any work performed by an individual because that individual is for any reason subject to the control, supervision or jurisdiction of a traditional leader. It is an offence for any person to require an individual to perform forced labour. A person convicted is liable to a fine not exceeding N\$ 20,000 or to imprisonment for up to 4 years or both.

Trafficking in persons is a criminal offence in Namibia. The 2018 Act defines trafficking as “the recruitment, transportation, transfer, harbouring or receipt of persons,

by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.” Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. On conviction, the perpetrator is liable for the punishment of at least 30 years or fine should not be more than N\$ 1 million or liable to both punishment and fine.

Child labour and exploitation of children is prohibited. Procurement or use of children for slavery, force or compulsory labour, commercial sexual exploitation, armed conflict, child pornography and begging is prohibited. Similarly, engaging a child in work that likely to harm the health, safety or morals of a child, is inappropriate for a person of that child's age, or places child's well-being at risk is prohibited. Contravention of above provisions is a liable offence and on conviction can lead to a maximum fine of N\$50,000 or to imprisonment for a maximum period of 10 years or to both such fine and such imprisonment.

Sources: §9 of the Constitution of Namibia and §4 of the Labour Act, 2007; §3 Combating of Trafficking in Persons Act, 2018; §234 Child Care and Protection Act 3 of 2015

Freedom to Change Jobs and Right to Quit

The Constitution of Namibia provides all persons have a right to withhold their labour without exposing themselves to criminal penalties. Furthermore, every person has the right to practice any profession, or carry on any occupation, trade or business.

An employee can terminate the contract after serving reasonable notice. Both the employer and employee have the same notice requirements. If the employment contract is to be terminated on notice, the period of notice is not to be less than one day if the employee has been employed for four weeks or less. If the employee has been employed for more than four weeks but not more than one year, the period of notice should not be less than one week. Where the employee has been employed for more than one year, then the notice period should be of at minimum one month.

Sources: §21 of the Constitution of Namibia and §30 of the Labour Act, 2007

Inhumane Working Conditions

An employee cannot work more than 45 hours per week. There are exceptions to this limitation upon serving members of the public, security officers, an employee working in emergency health-care services or an employee of a class designated by the Minister of Labour. Furthermore, an employee is not allowed to work more than 10 hours of overtime per week, and in any case, not more than 3 hours of overtime per day.

Sources: §16 & 17 of the Labour Act, 2007

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Namibia has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of Namibia
- Labour Act, 2007

Freedom to Join and Form a Union

The Constitution of Namibia states that there is a fundamental right to freedom of association which includes the freedom to form and join associations or unions, including trade unions or political parties.

Domestic worker has the right to associate with a trade union. Employer should not deny access to the premises for trade union related activities as prescribed in Labour Act. An employer cannot prejudice against an employee or an individual seeking employment because of past, present or anticipated because of a membership to a trade union, or participation in the lawful activities of a trade union outside of ordinary working hours or during working hours with the permission of the employer.

Sources: §21(1)(e) of the Constitution of Namibia and §6 & 65 of the Labour Act, 2007; §11 Wage order for setting minimum wage and supplemental minimum conditions of employment for domestic workers: Labour Act, 2007 (Government Notice No. 258 of 2017)

Freedom of Collective Bargaining

Under the Labour Code, 2007, a registered trade union which represents the majority of the employees in an appropriate bargaining unit is entitled to be recognized as its exclusive bargaining agent to negotiate a collective agreement on any matter of mutual interest.

To be recognized as an exclusive bargaining agent, the registered trade union must ask the employer or the employers' organization to recognize it as the exclusive bargaining agent. The trade union will then submit to the labour commissioner a copy of its request of recognition to the employer or the employers' organization, proof that the request has been served to the employer and proof that the trade union represents majority of the employees within the bargaining unit. Within 30 days of the request, the employer or the employers' organization must inform the trade union has been recognized as an exclusive bargaining agent.

Where the trade union is not recognized, the trade union may then refer the dispute to the labour commissioner. The labour commissioner must then refer the dispute to the arbitrator. If the arbitrator is satisfied that the trade union represents majority of the workforce in the bargaining unit then the arbitrator can make an order recognizing the trade union as exclusive bargaining unit.

The Labour Advisory Council is to investigate and inform the Minister of Labour of matters such as collective bargaining, national policy concerning basic conditions of employment as well as health and safety at work, the prevention and reduction of employment, issues arising from International Labour Organization etc.

Sources: §64 & 93 of the Labour Code, 2007

Right to Strike

Employees have a right to strike where the dispute has already been referred to the labour Commissioner for conciliation,

where the employees' representatives have attended the conciliation meetings and even then, the dispute remains unresolved at the end of 30 days of the referral. The period may be shorter or longer either because of non-attendance by the employers' representatives or employees' representatives respectively.

After the end of the applicable period, the employees have to give 48 hours of notice of the strike to the labour commissioner and other parties to the dispute. The strike has to conform to any agreed rules regulating the conduct of the strike or any rules determined by the conciliator.

A person cannot participate in a strike if the dispute should be referred for arbitration or adjudication or where the dispute is concerning an essential service. The Essential Services Committee must recommend to the labour Advisory Council the essential services where the interruption to the service which would endanger the life, personal safety or health of the population. The Labour Advisory Council after considering the report of the Essential Services Committee, has to forward its recommendation to the Minister of Labour. Upon consideration, the Minister can decide to designate a particular service as an essential service and have the notice of its designation be published in the Gazette.

Hiring of replacement workers in place of the striking workers is prohibited under the Labour Act.

Sources: §74-77 of the Labour Act, 2007

QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

Decent Work Check Namibia is a product of www.wageindicator.org
and www.mywage.org/namibia/home



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment, promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Namibia scored 39 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.