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- Adoption
- Age, Domicile and Status
- Being Employed
- Child Contact
- Credit Agreements
- Dismissals
- Divorce
- Domestic Violence
- Emoluments Attachments
- Maintenance
- Marriages
- Motor Vehicle Accidents
- Strikes and Lock-Outs
- Unmarried Father
- Wills
- Workplace Injuries

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- the description of the industry in which the employer was engaged and his/her job description;
- the period of service;
- the employee's remuneration; and
- if the employee so requests, the reason for termination of employment.

Can the terms and conditions of a contract of employment be changed?

- The general rule is that a contract of employment is binding but it can be changed by an agreement between the employer and employee. However, these conditions may not be less favourable than those provided for by the Labour Act (Act 11 of 2007) and the Namibian Constitution
- The terms of the contract of employment can be changed by the general law i.e. the Namibian Constitution or any relevant Act of Parliament.

What are the duties of an employee and employer in an employment relationship?

Employee's Duties

1. **Service**
 - An employee's most basic and principal duty is to make his or her services available to the employer once he/she accepts employment. The employee must make his or her services available even if he or she is given no work to do.
2. **Obedience/ Discipline**
 - An employee must respect and obey all the lawful orders and instructions of the employer.
3. **Good Faith/Fidelity**
 - An employee must act in good faith. This means that an employee must refrain from doing anything which will have the effect of prejudicing or obstructing his/her employer's business. He/she must not conduct a business of his/her own which will have the effect of negatively affecting his/her employer's business interests, or earn a secret commission or profit from his/her employment or divulge confidential information or trade secrets obtained in the course of his/her employment.
4. **Competence/Ability**
 - An employee must display the necessary competence, ability, diligence and skills to perform the work for which he/she has been appointed and is being paid.

Employer's Duties

1. **Remuneration**
 - An employer is under a legal obligation to remunerate an employee who makes his/her services available to the employer.
 - The Labour Act (Act 11 of 2007) prescribes the manner in which basic wages must be calculated and paid, what deductions are permissible and when an employee may be absent from work with pay e.g. annual leave, compassionate leave, sick leave and maternity leave.
2. **Safe Working Conditions**
 - The employer must take all reasonable precautions to ensure safe working conditions for his employees. Depending on the nature of work to be performed, the employer may be required to provide

- special training, specialised equipment and or protective clothing for his workers.
- The employee, however, also has a duty to take reasonable care to ensure his own and co-workers' safety and to co-operate with his employer to enable work which may bear an element of risk, to be performed safely.
- In the event of an employee having a reasonable ground to believe that the work place has become dangerous or unhealthy he or she is entitled to leave that place until necessary measures have been taken to rectify the situation.

Glossary of terms:

COLLECTIVE AGREEMENT: means a written agreement concerning the terms and conditions of employment or any other matter of mutual interest, concluded by -
(a) one or more registered trade unions, on the one hand, and
(b) on the other hand -
(i) one or more employers;
(ii) one or more registered employers' organisations; or
(iii) one or more employers and one or more registered employers' organisations.

DEPENDANT: in the context of provision of accommodation, dependant means the spouse and the dependant children of the employee or of the spouse.

JURISTIC PERSON: a juristic person or an artificial person is an entity such as a corporation or a company that is recognised as having legal personality. This means it is capable of enjoying and being subject to legal rights and duties.

ORDINARY WORK WEEK: the number of days per week ordinarily worked by an employee.

PREFERENT CREDITOR is a creditor receiving a preferential right to payment upon the debtor's bankruptcy under applicable insolvency laws. In most legal systems, some creditors are given priority over ordinary creditors. For example, holders of first mortgage bonds must be paid by the borrower before payments are made to holders of second mortgage bonds on the same collateral. First mortgage bondholders are the preferred creditors.

PRO RATA BASIS: means on a proportional basis.

REMUNERATION: means the total value of all payments in money or in kind made or owing to an employee arising from the employment of that employee.

SEVERANCE PAY: employees are entitled to certain amounts of money, different from separation benefits such as pension and gratuity when the contracts of employment come to an end. Such amounts of money are referred to as severance pay.

SICK LEAVE CYCLE: a sick leave means a consecutive period of 36 months. This is because sick leave is not calculated on annual basis but rather on a three-year basis.

SUMMARY DISMISSAL: means dismissal without the required notice of termination of contract.



Being Employed
(Part 2)



Maternity leave.

- After completing six months' continuous service in the employment of an employer, a female employee is entitled;
 - to four (4) weeks maternity leave before the expected date of confinement;
 - to maternity leave for the entire period from the commencement of her maternity leave (which has commenced from the date of confinement);
 - and to eight (8) weeks after her date of confinement;
 - in the case of an employee whose date of confinement occurred less than four (4) weeks after the commencement of her maternity leave, she is still entitled to a total of twelve (12) weeks of maternity leave.
- The employee must furnish or provide the employer with a signed medical certificate confirming the expected date of confinement before taking maternity leave and a medical certificate confirming the actual date of confinement on her return from leave.
- During her maternity leave an employee is entitled to claim payment of the prescribed portion of her basic wage from the Social Security Commission, if she contributed to the Social Security Commission.
- If a medical practitioner certifies that due to complications arising from pregnancy or delivery, it is necessary for the health of the employee, her employer must grant her extended maternity leave.
- An employer must not dismiss an employee during the period of maternity leave on grounds arising from collective termination (retrenchment) or redundancy, or any ground arising from her pregnancy, delivery, or her resultant family status or responsibility.
- However, this protection against dismissal does not apply if the employer has offered the employee alternative employment and she has unreasonably refused to accept the offer.

Provision of Accommodation

- If by virtue of his/her job an employee is required to live at the place of employment or to reside on any premises owned or leased by the employer, the employer must provide the employee with adequate housing including sanitary and water facilities.
- If the employee concerned lives on agricultural land, the employer must provide sufficient facilities such as sanitary and water facilities to meet the reasonable needs of the employee and the employee's dependants.
- Furthermore, the employer must permit the employee to keep livestock and to cultivate the land to meet the reasonable needs of the employee and the employee's dependants or alternatively, in terms of an agreement of with the employee;
 - provide the employee with sufficient food to meet the reasonable needs of the employee and the employee's dependants; or
 - pay the employee an additional amount to do so.
- Upon termination of the employment of the employee, the employer may not require the employee to vacate the premises or place unless;
 - in the case of an employee residing on agricultural land, the employer gives to the employee three (3) three month's written notice to vacate; or
 - in the case of all other employees, the employer gives to the employee at least one (1) month's written notice to vacate.
- If an employee alleges unfair dismissal and has referred the dispute to the Labour Commissioner within thirty (30) days following the

- termination of employment, the employer may not require the employee to vacate the place or premises until the dispute is resolved in terms of the Labour Act (Act 11 of 2007)
- An employer is required to obtain a court order to evict an employee who unreasonably refuses to vacate the premises or place when the time to vacate is due.

Termination of Employment on Notice

The general rule is that an employer or employee may terminate the contract of employment by either party giving to the other party notice to terminate the contract.

- The Labour Act (Act 11 of 2007) stipulates that a contract of employment may be terminated by notice and the following notice periods must be adhered to-
- one (1) days' notice, if the employee has been employed for four (4) weeks or less;
 - one (1) weeks' notice if the employee has been employed for more than four (4) weeks but less than one year;
 - one (1) months' notice if the employee has been employed for more than one (1) year.
 - The employer and employee may agree to longer notice periods provided that such periods are of equal duration for both parties.
 - The notice of termination must be in writing stating the reasons for termination except in the instance of an illiterate employee, who may give notice orally.
 - In the case of an employer terminating employment, the written notice of termination must state the reasons for termination and the date on which the notice is given.
 - The date on which the notice is given may be -
 - on any working day in respect of an employee who has been employed for four weeks or less;
 - on or before the last working day of the week in respect of an employee has been employed for more than four (4) weeks but less than one year; or
 - on the first or the 15th of the month in respect of an employee if the employee has been employed for more than one (1) year.
 - An employer must not give notice of termination during any period of leave to which the employee is entitled and the notice must not run concurrently with such period of leave.
 - The requirement to give notice of termination of employment does not affect the right of a dismissed employee:
 - to dispute the lawfulness or fairness of the dismissal in terms of the Labour Act (Act 11 of 2007) or any other law; or
 - of an employer or an employee to terminate the contract of employment without notice, for any cause recognised by law,

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- or to make payment instead of notice.
- A cause generally recognised by law which entitles an employee to terminate the contract of employment without notice is where an employer refuses or fails to discharge his or her obligations under the contract.
- In the case of an employer, a cause recognised by law which entitles him or her to terminate the contract of employment without notice (or summarily) is serious misconduct, which includes failure or refusal of the employee to render personal service due to persistent and unexplained absenteeism, drunkenness, disobedience, insubordination, theft etc.

Payment instead of notice

- The Labour Act permits an employer or employee not to comply with the requirement to give notice of termination where, as stated earlier, the employer or employee waives the right to notice by agreement, provided that-
 - the employer pays the employee the remuneration to which he/she is entitled; and
 - where the employee resigns, he or she pays an amount equal to his/her remuneration for the notice period to the employer.

Automatic Termination of Contracts of Employment

- A contract of employment terminates automatically in the following instances;
 - in the event of the death or sequestration of the employer as an individual, the contract of employment terminates automatically after one (1) month of the employer's death.
 - In the instance of a juristic person, such as a limited liability company, a contract of employment will also terminate automatically after one (1) month of the winding up.
 - In the instance of a partnership, a contract of employment will also terminate automatically after one (1) month of the dissolution of the partnership.
- An employee whose contract is terminated automatically as indicated above, is considered a preferent creditor in respect of any amounts due to him/her in terms of the Labour Act (Act 11 of 2007).

Procedural Fairness

- An employer has the right to dismiss an employee if there are fair and valid reasons to justify such dismissal, for example, on grounds of poor or /and unsatisfactory performance but for such dismissal to be deemed to be fair in terms of the Constitution of Namibia and the Labour Act, the employer must follow the proper and fair procedures also known as procedural fairness.
- Procedural fairness includes the following;
 - the right to be charged;
 - the right to be heard and given the opportunity to defend the charges at a disciplinary hearing;
 - the right to be given ample opportunity for the preparation of one's case;
 - the right to appear before an impartial tribunal;
 - the right to representation; and

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- the right of appeal.

Unfair Dismissal

- In terms of the Labour Act (Act 11 of 2007), it is unfair to dismiss an employee because the employee;
 - discloses information that the employee is entitled or required to disclose to another person;
 - fails or refuses to do anything that an employer must not lawfully permit or require an employee to do;
 - exercises any right conferred by the Labour Act (Act 11 of 2007) or the terms of the contract of employment or collective agreement;
 - belongs, or has belonged, to a trade union;
 - takes part in the formation of a trade union;
 - participates in the lawful activities of a trade union; or
 - because of such employee's sex, race, colour, ethnic origin, religion, creed or social or econornic status, political opinion or marital status.

Severance Pay

- An employee who has completed at least 12 months of continuous service and who is dismissed, dies while employed, resigns or retires on reaching the age of 65-years, is entitled to severance pay in an amount equal to one week's remuneration for each year of continuous service with the employer.
- Severance pay need not be paid to an employee who is dismissed for misconduct or for poor work performance or for unreasonably refusing re-instatement.
- In addition to the above, severance pay need not be paid to an employee if such employee unreasonably refuses to accept employment on terms not less favourable than those to him or her immediately before the termination of employment with –
 - the surviving spouse, heir or dependant of a deceased employer within one month of the death of the employer; or
 - one or more of the former partners within one month of the dissolution of the partnership, if the employer was a partnership.

Transportation on Termination of Employment

- If the employee is dismissed during the first 12 months of employment, and at any place other than the place where the employee was recruited, the employer must either -
 - transport the employee to the place that the employee was recruited; or
 - pay the employee an amount equal to the costs of that transport.
- However, an employee who unreasonably refuses to be reinstated is not entitled to such transportation.

Payments on Termination and Certificates of Employment

- On termination of the employee's employment the employer must pay the employee-
 - all amounts due to him/her for work done before the termination and other payments for work done on Sunday;
 - overtime worked during the notice period if applicable;
 - for periods of leave not granted and to which he/she is entitled;
 - any severance pay due to him/her;
- The employer must also provide the employee with a certificate of employment which must state-
 - the full particulars of the employer and employee;

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Sick leave

- During any sick leave cycle or a period of 36 consecutive months of employment, an employee is entitled to the following sick leave: -
 - If the employee ordinarily works six (6) days a week, he/she is entitled to thirty-six (36) working days of sick leave;
 - If the employee ordinarily works five (5) days a week, he/she is entitled to thirty (30) working days of sick leave;
 - If the employee ordinarily works fewer than five (5) days during a week, the sick leave is to be calculated on a *pro rata* basis;
 - If an employee does not ordinarily work a fixed number of days a week, the sick leave days that he/she is entitled to, must be calculated annually on the basis of the previous twelve (12) months; so, for example;
 - for a 4-day working week, the employee will be entitled to twenty-four (24) days of sick leave;
 - for a 3-day working week, the employee will be entitled to eighteen (18) days of sick leave;
 - for a 2-day working week, the employee will be entitled twelve (12) days of sick leave;
 - for a 1 day working week, the employee will be entitled to (6) days of sick leave.
- During the employee's first year of employment he/she is entitled to one (1) day's sick leave for every 26 working days completed.
- Sick leave does not form part of annual, compassionate or maternity leave and any untaken leave lapses at the end of every 36-month period.
- If any employee is absent from work for more than two (2) consecutive days allegedly due to illness and fails to produce a medical certificate or any other prescribed proof of illness, the employer is not required to pay the employee for such leave.

Compassionate leave.

- An employee is entitled to a total of five (5) days compassionate leave with fully paid remuneration for each period of twelve (12) months of continuous employment.
- Compassionate leave may be taken when there is a death or serious illness in the family.
- In this context 'employee's family' means a child, including a child adopted in terms of any law, custom or tradition, spouse, parent, grandparent, brother or sister of the employee, or father-in-law or mother-in-law of the employee.
- Compassionate leave does not form part of annual, sick or maternity leave and does not entitle the employee to any additional remuneration on termination of employment.
- Compassionate leave days are not cumulative and therefore, any untaken compassionate leave day lapses at the end of the 12-month period.

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Being Employed
(Part 1)



Employment law in Namibia

- The Labour Act (Act 11 of 2007) generally governs labour or employment law in Namibia. It deals with employment relationships. Employment relationships are created by an agreement which is referred to as a contract of employment.

What is a contract of employment?

- A contract of employment is an agreement between two parties, the employer and employee, in terms of which the employee agrees to offer his/her personal services to the employer in return for a reward or payment.
- The reward or payment can be in the form of an agreed amount or other form remuneration.
- A contract of employment may be for a fixed period (fixed term contract of employment) or (permanent) that is until it is terminated by either employer or employee.
- A contract of employment does not have to be in writing.
- It can even take the form of a simple letter of appointment.
- The problem, however, with a verbal agreement is that the terms of the contract may be disputed by one or both of the parties and it is therefore advisable that a written contract be concluded.

What are the terms and conditions usually contained in a contract of employment?

- When parties enter into a contract of employment, they normally negotiate and agree to the terms of the contract themselves. The terms of the contract may be expressed either orally or in writing. However, there are also terms that are to be included into the contract by operation of law such as the Labour Act (Act 11 of 2007).
- Although the specific terms and conditions required in an employment contract vary, the following basic conditions of employment are to be included in an employment contract.

Terms Included in a Contract of Employment

- Names and identification of the parties, including, in some cases, addresses and ID numbers.
- Effective date of the agreement.
- The type of employment, full-time or part-time, monthly salary or hourly rate, and the type of services provided by the employee.
- Payment of remuneration, deduction of tax and contribution to the Social Security Commission, compliance with the guidelines of the Labour Act (Act 11 of 2007) to make it possible for the employee to perform his /her duties in a safe environment.
- Working hours.
- Benefits provided to the employee.
- Termination, describing the circumstances under which either party may terminate the agreement and the notice required.
- Resolution of employment disputes as provided for by the Labour Act (Act 11 of 2007).

What terms and conditions of employment are automatically included by law?

- The Namibian Labour Act (Act 11 of 2007) contains extensive and

detailed provisions relating to basic conditions of employment, and rules concerning termination of service, dismissal of workers, and disciplinary action. These provisions set out the minimum conditions which apply to all contracts of employment between individual employers and their individual workers.

- Nevertheless, it should be clearly understood that the basic conditions laid down in the Labour Act (Act 11 of 2007) are minimum conditions, and therefore there is nothing to prevent an employer from granting, or agreeing to, more favourable conditions if he or she so wishes.
- Such agreements are often reflected in registered collective agreements between employers, or their organizations, and trade unions. The provisions contained in such agreements are enforceable in the same way as the basic conditions laid down.
- The basic conditions of employment contained in the Labour Act (Act 11 of 2007) are summarized below:

Remuneration

- The Act sets out the basis and method to be applied to determine the applicable hourly, daily, weekly or monthly rate of pay of an employee where it is necessary to do so.
- An employee is ordinarily remunerated on a basis of time worked.
- An employee who is remunerated on a basis other than time worked is considered to be remunerated on a weekly basis.
- An employee's remuneration must be fixed and paid on the agreed date and in the agreed mode of payment.
- The employer must also be furnished or provided with a written statement of particulars in the prescribed form and payment must not be made at a shop, bottle store or any place of amusement in that shop, bottle store or place, unless such place is the employees' place of employment.

Permissible Deductions

- No amounts may be deducted from an employee's remuneration except-
 - If agreed to in writing by the employee subject to the following;
 - the deductions are limited to one third of the employee's remuneration.
- A deduction may be made only in respect of the payment of -
 - rent for accommodation provided by the employer;
 - goods sold to the employee by the employer;
 - a loan advanced by the employer;
 - contributions to employee's benefit, for example, medical aid or pension fund;
 - subscriptions or levies to a registered trade union;
 - arbitration awards; or
 - required or permitted under any collective agreement or in terms of any arbitration award; and
 - where permitted or required by a court order or any law.

Working Hours

- An employee may not be required or permitted to work more than 45 hours in any week.
- An employee who works for five days or fewer days in a week may not be required or permitted to work more than nine (9) hours a day and one who works more than five days a week more than eight (8) hours a day.

- However, there are certain exceptions.
- Exceptions to above are in respect of security officers and employees working in emergency healthcare services who may not be required or permitted to work more than 60 hours a week i.e. 12 hours on any day if such employee works for five days or fewer days in a week, or 10 hours a day if the employee works for more than five days a week.
- Employees other than security officers are entitled to a 60 minute break after every 5 hours of work.
- The break is not calculated as working hours.
- An employee is entitled to a weekly rest period of 36 consecutive hours.
- Security officers may be required to work during meal breaks and such time will be included in the working hours.

Overtime

- An employer should not require or permit an employee to do overtime work which is not stipulated in the contract of employment.
- If there is such an agreement, an employer must not require or permit an employee to work more than ten (10) hours overtime a week or more than three (3) hours overtime a day.
- The limits on overtime work may be increased by the Permanent Secretary, on application made in writing by the employer to the Permanent Secretary.
- The above rules relating to overtime work do not apply to an employee who is performing urgent work.
- An employee performing overtime must be paid a rate of at least one and one-half times the employee's hourly basic wage.
- But if an employee ordinarily works on Sunday or a public holiday, the employer must pay such employee at least double the basic wage if such employee works overtime on that Sunday or public day.

Night Work

- An employee performing work between the hours of 20h00 and 07h00 is entitled to an additional payment of six percent (6%) of his hourly basic wage, excluding overtime work, for each hour of work such employee performs between 20h00 and 07h00.

Work on Sundays

- As a general rule, an employer must not require or permit an employee to work on a Sunday.
- This general rule is, however, subject to certain exceptions.
- Work on a Sunday is only permitted if the employee is employed for the purposes of-
 - urgent work;
 - domestic service in a private household;
 - health and social welfare care and residential facilities, including hospitals, hospices, orphanages, and old age homes;
 - work on a farm required to be done on that day;
 - work in which continuous shifts are worked; or
 - any activity or services approved by the Permanent Secretary on application in writing by the employer.

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Work on Public Holidays

- An employee may not be required or permitted to perform work on a public holiday except where such employee-
 - performs urgent work;
 - works at a shop, hotel, boarding house or hostel that lawfully operates on a public holiday;
 - performs domestic service in a private household;
 - health and social welfare care and residential facilities, including hospitals,hospices, orphanages, and old age homes;
 - is employed on a farm and the work is required to be done on that day;
 - works in work in which continuous shifts are worked; or
- The Permanent Secretary has approved such work on application made in writing by the employer to the Permanent Secretary and if the employees affected by the application agree.
- If a public holiday falls on an ordinary working day and an employee is required to work on that day, such employee must receive his/her normal daily remuneration plus the normal basic wage rate for the hours worked.
- An employee who is absent without leave on a working day before or after a public holiday is not entitled to payment for either the public holiday or the day, he/she is absent before or after such holiday.
- An employee, who is required to work on a public holiday that falls on a day other than an ordinary working day, must be paid double his/her hourly basic wage for every hour worked.

Annual leave

- For every completed period of 12 months or each annual leave cycle, the employee is entitled to leave calculated as follows:

Number of days in ordinary work week	Annual leave
• 6 day work	24 working days
• 5 day work	20 working days
• 4 day work	16 working days
• 3 day work	12 working days
• 2 day work	8 working days
• 1 day work	4 working days

- An employer may determine when the employee may take his/her annual leave provided;
 - such leave is taken not later than four (4) months after the end of the annual leave cycle or,
 - if the employee has agreed in writing to such extension, six (6) months after the end of the annual leave cycle.
- An employer must grant an employee an additional day of paid leave if a public holiday falls on a day;
 - during the employee's annual leave; and
 - on which the employee would ordinarily have worked.
- All leave is subject to the approval of the employer.
- An employer must not require or permit an employee to work for the employer during any period of annual leave.
- Except on termination of employment, an employer and an employee may not agree that the employee is to be paid any amount in substitution for the annual leave to which the employee is entitled, whether or not the employee requests or agrees in writing to such a payment.