



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

**FACULTY OF HUMAN SCIENCES
DEPARTMENT OF SOCIAL SCIENCES**

QUALIFICATION: BACHELOR OF SPORTS MANAGEMENT	
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SESSION: JUNE 2019	PAPER: THEORY AND CASE STUDIES
DURATION: 3 HOURS	MARKS: 100

FIRST OPPORTUNITY EXAMINATION	
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MODERATOR	Bernhard Tjatjara

INSTRUCTIONS
<ol style="list-style-type: none">1. The paper has 5 main questions.2. ALL the questions are compulsory.3. Read carefully before answering.4. Write clearly and neatly.5. Number the answers clearly and according the structure in the examination question paper.6. Use full sentences and proper paragraphs when answering questions. The inappropriate use of bullet-points will be penalised, as will poor spelling and grammar and illegible handwriting.

ANNEXURE

Selected Extracts: Labour Act 11 / 2007
(6 pages)

PERMISSIBLE MATERIAL

None

THIS EXAMINATION PAPER CONSISTS OF 8 PAGES (Including this front page)

QUESTION 1

Choose the correct answer from the given options in each of the following questions. Only write down the correct letter next to the corresponding question number. Use BLOCK CAPITAL LETTERS.

- 1.1 It is important to distinguish between employees and independent contractors because:
- A. The Labour Act 2007 only applies to employees
 - B. Employers are only vicariously liable for damages caused by employees
 - C. Employees are subject to the authority and control of the employer
 - D. All of the above
- 1.2 Choose the statement that is the MOST CORRECT.
- A. The Labour Act 2007 prescribes the minimum wage to be paid to employees in a certain industry
 - B. A minimum wage can be established in terms of a collective agreement
 - C. A minimum wage can be established in terms of a collective agreement or by a Wages Commission
 - D. All of the above
- 1.3 Susan gives Ann N\$ 200 as a loan. Ann thinks it is a gift. This contract is:
- A. Valid, because the parties have reached consensus on a material term of the contract, i.e. the amount of N\$ 200
 - B. Voidable, although the parties have reached consensus, the consensus is defective
 - C. Void, the parties did not reach consensus due to a mistake regarding motive
 - D. Void, the parties did not reach consensus due to a mistake regarding performance
- 1.4 Stephen is an asset manager at Poor Co. He is head-hunted by Wise Co. to work for them in the same field, at double the salary. Both companies are based in the same city. Stephen would love to accept the offer from Wise Co., but when he started with Poor Co., he signed a restraint of trade agreement to the effect that he would not work in the same field anywhere in Southern Africa for ten years after leaving the company. Which of the following statements is TRUE?
- A. Stephen is not bound by the agreement because he signed it out of his own free will
 - B. Stephen is bound by the agreement unless he can prove that the restraint is unreasonable and against public interest
 - C. Poor Co. cannot hold Stephen to the agreement unless they can prove that the restraint is reasonable
 - D. Restraint of trade agreements are invalid and Stephen is not bound to the agreement

- 1.5 Choose the INCORRECT statement.
- A. Fixed term contracts will terminate at the expiry of the term of service and no notice of termination is required
 - B. Indefinite term contracts can be terminated by way of notice
 - C. In the case of serious misconduct an employee's employment can be terminated without notice and the employee requested to leave the place of work immediately
 - D. None of the above
- 1.6 The courts exercise discretion with regards to the remedy of specific performance for breach of contract in determining whether or not to apply it. In which circumstance(s) will a court be reluctant to order specific performance?
- A. Performance has become impossible
 - B. The granting of an order will cause a disproportionate loss for the debtor compared with the benefit for the creditor
 - C. An award for damages will adequately compensate the plaintiff
 - D. All of the above.
- 1.7 Four students at NUST are discussing the law about formalities for contracts. Lynne says that the contracting parties can make contracts in any way they wish just to say the words of offer and acceptance is enough; Gloria says that it is necessary to sign some contracts, and that is only if it is the wish of the contracting parties; Max agrees that it is necessary to sign some contracts, but says that the general rule is that all contracts are not valid if not in writing; Ashley says that it is necessary to sign some contracts and says that the general rule is that contracts need not be in writing; Whose opinion is the MOST CORRECT?
- A. Lynne
 - B. Gloria
 - C. Max
 - D. Ashley
- 1.8 When does a contract of employment come into existence?
- A. When both the employer and employee have signed the contract
 - B. When the employee reports for work on the first day
 - C. When one person agrees to work for another in return for payment of remuneration
 - D. After the employee has worked for a month
- 1.9 Andy leased a flat from Ben. Andy transfers his right of occupation to Cathy, without the knowledge of Ben, whilst Andy continues to pay the rent. This legal concept is known as:
- A. Compromise
 - B. Cession
 - C. Agency
 - D. Delegation

- 1.10 Sally owes Shirley N\$ 50.00, while Shirley in turn owes Sally N\$ 20.00. Sally is only obliged to pay Shirley the amount of N\$ 30.00 since Sally's obligation to pay the full amount to Shirley is terminated by the operation of the law. This legal concept is known as:
- Release
 - Merger
 - Novation
 - Set-off
- 1.11 The requirements for a delict are:
- Act, Wrongfulness, Intention, Causation, Damages
 - Act, Wrongfulness, Fault, Causation, Damages
 - Act, Wrongfulness, Intention, Negligence, Causation, Damages
 - Act, Intention, Causation, Damages, Fraud
- 1.12 "Progressive discipline" means that:
- An employee may not be dismissed without substantive and procedural fairness
 - An employee may not be dismissed without a hearing
 - Discipline should be corrective, not punitive.
 - You should always give an employee a written warning before he/she may be dismissed
- 1.13 Example 1
Albert agrees to fix Brian's motorcycle after Albert gets a loan from the bank to buy tools. Albert's bank application for a loan is declined with the result that Albert is not able to fix the motorcycle.
- Example 2
Xavier agrees to repair Ivy's car. On the day on which Ivy is to deliver the car to Xavier's workshop, Ivy realizes that the car was struck by lightning the previous night before the conclusion of the contract.
- SELECT THE OPTION BELOW which best describes the relationship between the above two examples.
- Example 1 is an instance of negligence of the debtor, and example 2 is an instance of subjective impossibility of performance
 - Example 1 is an instance of objective impossibility of performance and example 2 is an instance of negligence
 - Example 1 is an instance of subjective impossibility of performance and example 2 is an instance of objective impossibility of performance
 - None of the above options best describe the above two examples.
- 1.14 Industrial action can only take place if:
- It is a dispute of rights
 - It is a dispute of interest
 - The dispute could not be settled by way of arbitration
 - The dispute remains unresolved after 90 days

- 1.15 Jo owes Lloyd an amount of N\$ 600. Jo and Lloyd enter into an agreement in terms of which Lloyd will cancel the debt if Jo agrees to divorce his wife so that Lloyd can marry her.
Which ONE of the following statements is CORRECT?
- A. Jo and Lloyd's contract is lawful because they have reached consensus;
 - B. Jo and Lloyd's contract is lawful because they both have capacity to enter into juristic acts;
 - C. Jo and Lloyd's contract is unlawful because their agreement is contrary to good morals;
 - D. Jo and Lloyd's contract is unlawful because the agreement is contrary to statutory provisions.
- 1.16 A contract with a clause stating that should either party breach the contract, the innocent party would be entitled to claim the amount of N\$ 20 000.00 is known as a:
- A. Warranty
 - B. Cancellation Clause
 - C. Entrenchment Clause
 - D. Penalty Clause
- 1.17 Mr. Boyce promises to give his son a Volkswagen Beetle provided that he passes his first year of studies at NUST. This agreement is subject to a:
- A. Suspensive Condition
 - B. Resolutive Condition
 - C. Suspensive Time Clause
 - D. Resolutive Time Clause
- 1.18 Which one of the following contracts is valid?
- A. Peter enters into a contract with Yul whereby he leases his house to Yul. Neither one of the parties is aware of the fact that the house has burnt down the previous day
 - B. Dan agrees to buy N\$ 5 000.00 worth of cannabis (dagga) from Daniella
 - C. Allan and Simon agree telephonically that Allan will buy Simon's farm for N\$ 250 000.00
 - D. Josie accepts Maggie's offer to buy her computer for N\$ 7 000.00. 2 weeks after the agreement Josie discovers that Game Namibia is selling the same brand of computer at a discount of N\$ 4 300.00
- 1.19 A plaintiff who intends to claim damages for a breach of contract must prove:
- A. Damage, legal causation and a breach of contract
 - B. Mitigation of damages, a breach of contract, that the damages was reasonably foreseeable or agreed to by the contracting parties
 - C. a *lex commissoria*, factual causation, mitigation and reasonable foreseeability of the damage
 - D. None of the above

- 1.20 To negotiate “in good faith” means that:
- A. Each party must have the opportunity to be heard
 - B. The parties to the negotiations should not employ delaying tactics
 - C. They should have the honest intention to find a fair and reasonable solution to the problem at hand
 - D. All of the above

Two marks each [40]

QUESTION 2

Briefly answer the following questions.

- 2.1 Define a delict. (4)
- 2.2 Which human rights are regarded as absolute? (2)
- 2.3 What is the difference between arbitration by the Court of Arbitration for Sport and mediation by the same organisation? (4)
- 2.4 What is an “option”? (3)
- 2.5 Is it correct to say that a voidable contract is neither valid nor void? Explain. (3)
- 2.6 When will an employee be said to be working “overtime”? (2)
- 2.7 What / who is an agent? (2)
- [20]**

QUESTION 3

Naledi used to be a promising Namibian tennis player but years of partying have eroded her skills and chased away her sponsors. Desperate for some money, she decides to sell her car. She places an advertisement on Facebook on 15 March 2019 and the very next day Jono makes her an offer by way of a telephone conversation, which Naledi accepts. They agree that delivery of the car will take place on 3 April 2019 and that payment will take place on 15 April 2019. They also agree that they should “put something in writing to serve as proof”. This takes place on 20 March 2019.

Answer the following questions based on the above facts:

- 3.1 When did the contract come into existence? Discuss in full. (3)

QUESTION 3 CONTINUES ON THE FOLLOWING PAGE

- 3.2 On 30 March 2019 the car is stolen from Naledi's garage. Shortly after it is found in a nearby veld, burnt out and damaged beyond repair. Advise Jono as to the status of the contract in these circumstances. (4)
- 3.3 A subsequent investigation reveals that Naledi had hired the thief to steal the car as she felt she would get more money from the insurance company than by selling it to Jono. Advise Jono about how this affects the contract and what his rights are under these circumstances. (5)
- 3.4 Assume that Naledi had been feeling very sorry for herself and had been drinking heavily in the hours just before speaking to Jono on the phone on 16 March. Discuss the validity of the contract. (4)
- 3.5 Assume the subject of the sale was cocaine and not a car. Jono is eager to get his hands on the cocaine. Naledi delivers the cocaine on 3 April 2019 but Jono fails to pay him on 15 April 2019. Does Naledi have a claim against Jono? (4)
- [20]**

QUESTION 4

The Namibian Hockey Union enters into an agreement with Meme Tina to open a restaurant at the Jubber Hockey Fields. The restaurant will be open from Tuesdays through to Sundays. Meme Tina must appoint her own staff for the restaurant and approaches you for advice on the following aspects:

- 4.1 When should her employees be granted a meal interval and how long should this interval be? (2)
- 4.2 May she expect from her employees to work on Sundays and Public Holidays? Motivate your answer. (2)
- 4.3 What is the maximum number of hours she may expect her employees to work per day and per week respectively? (5)
- 4.4 How must she remunerate her employees if they work overtime? (1)
- [10]**

QUESTION 5 CONTINUES ON THE FOLLOWING PAGE

QUESTION 5

In each of the following instances, indicate whether there was an act (conduct) in terms of the law of delict. Motivate your answers.

- 5.1 Mbewa is watching a dog-racing event. Suddenly Jackson's dog escapes from its kennel and bites Mbewa.
- 5.2 Fighters Sports Club is having repairs done to its sports grounds. They fail to put up a warning that there is a deep hole in the ground. Mbewa falls into the hole.
- 5.3 A Police Officer on duty watches a skirmish between two men but makes no attempt to break up the fight. One of the men is stabbed.
- 5.4 Mbewa is on holiday at a game farm and is hiking a mountain trail when he is attacked by a lion.
- 5.5 Jackson is driving when he has an unexpected epileptic seizure. He crashes into Mbewa's car.

Two marks each [10]

TOTAL MARKS 100

- (b) special circumstances exist that justify the exemption in the interests of the affected employees.
- (3) An exemption granted in terms of subsection (2) -
 - (a) must be set out in the prescribed form, which must -
 - (i) state the period of the exemption as determined by the Minister; and
 - (ii) be signed by the Minister;
 - (b) may commence on -
 - (i) the date it is signed, or a later date; or
 - (ii) a date before the date it is signed, but not earlier than the date of the application for exemption; and
 - (c) may include any conditions under which the exemption is granted.
 - (4) The Permanent Secretary must -
 - (a) forward the exemption to any person exempted and the employees affected by the exemption; and
 - (b) furnish a copy of the exemption to any person on payment of the prescribed fee.
 - (5) The Minister may, in writing, amend or withdraw an exemption.

PART C HOURS OF WORK

Declaration of continuous shifts

- 15. (1) The Minister may, by notice in the *Gazette*, declare any operation to be a continuous operation and permit the working of continuous shifts in respect of those operations.
 - (2) In a notice referred to in subsection (1), the Minister may prescribe any condition in respect of the shift, provided that no one shift may be longer than eight hours.
 - (3) In addition to publication of any information in the *Gazette* as contemplated in this section, the Minister must, where appropriate, publish the information through other available means, with a view to ensuring that the intended recipients of the information receive the information.
- ##### Ordinary hours of work
- 16. (1) Subject to any provision of this Chapter to the contrary, an employer must not require or permit an employee, other than an employee contemplated in subsection (3), to work more than -
 - (a) 45 hours in any week, and in any case, not more than -

- (i) nine hours on any day, if the employee works for five days or fewer in a week; or
 - (ii) eight hours on any day, if the employee works for more than five days in a week; or
 - (b) if the employee works in a continuous operation, the maximum number of hours prescribed by the Minister in terms of section 15(2) for that employee's continuous shift.
 - (2) The ordinary hours of work of an employee described in subsection (1) whose duties include serving members of the public may be extended up to 15 minutes in a day, but not more than a total of 60 minutes in a week, to enable that employee to continue performing those duties after the completion of ordinary hours of work.
 - (3) Subject to any provision of this Chapter to the contrary, an employer must not require or permit a security officer, an employee working in emergency healthcare services or an employee of a class designated by the Minister in terms of subsection (5) to work more than -
 - (a) 60 hours in any week, and in any case, not more than -
 - (i) 12 hours on any day, if the employee works for five days or fewer in a week; or
 - (ii) 10 hours on any day, if the employee works for more than five days a week; or
 - (b) if the employee works in a continuous operation, the maximum number of hours prescribed by the Minister in terms of section 15(2) for that employee's continuous shift.
 - (4) In determining the time worked during the week by an employee for the purposes of this section, any meal interval referred to in section 18 -
 - (a) of an employee subject to subsection (3) must be regarded as time worked;
 - (b) of any other employee must be disregarded.
 - (5) The Minister may designate a class of employees for the purpose of subsection (3) by notice in the *Gazette* if satisfied that the affected employees or their registered trade unions have been consulted.
- ##### Overtime
- 17. (1) Subject to any provision of this Chapter to the contrary, an employer must not require or permit an employee to work overtime except in accordance with an agreement, but, such an agreement must not require an employee to work more than 10 hours overtime a week, and in any case, not more than three hours' overtime a day.
 - (2) An employer must pay an employee for each hour of overtime worked at a rate at least one and one-half times the employee's hourly basic wage but, when an employee who ordinarily works on a Sunday or public holiday, works overtime on that Sunday or public holiday, the employer must pay that employee at a rate of at least double the employee's hourly basic wage.

(3) An employer may apply in writing to the Permanent Secretary to increase the limits on overtime work referred to in subsection (1) if the employees affected by the application agree.

(4) If the Permanent Secretary grants the application, the Permanent Secretary must issue a notice stipulating -

- (a) the class of employees to whom the notice applies;
 - (b) the new limits on overtime work;
 - (c) any conditions concerning the working of that overtime; and
 - (d) its period of application,
- and may amend or withdraw the notice at any time.

(5) This section, except subsection (2), does not apply to an employee who is performing urgent work.

Meal intervals

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

(2) An employer may shorten the meal interval to not less than 30 minutes if -

- (a) the employee agrees; and
- (b) the employer has given written notice to the Permanent Secretary of that agreement.

(3) An employer must not require or permit an employee to work during a meal interval.

(4) For the purposes of this section -

- (a) work is continuous unless it is interrupted by an interval that is more than 60 minutes, or such shorter period as agreed in terms of subsection (2);
 - (b) a driver of a motor vehicle who does no work other than remaining in charge of the vehicle or its load during a meal interval is deemed not to be working during the interval; and
 - (c) an employee must be remunerated for any portion of a meal interval that is longer than 90 minutes.
- (5) This section does not apply to -
- (a) an employee who is engaged in urgent work;
 - (b) a security officer; or
 - (c) an employee who works on a continuous shift.

Night work

19. (1) An employee is entitled to an additional payment of six percent of that employee's hourly basic wage, excluding overtime, for each hour of work performed by that employee between the hours of 20h00 and 07h00.

(2) An employer must not require or permit an employee, whom the employer knows, or reasonably ought to know, is pregnant, to perform any work, including overtime work, between the hours of 20h00 and 07h00, during the period -

- (a) eight weeks before her expected date of confinement; or
- (b) eight weeks after her confinement.

(3) The periods referred to in subsection (2) may be extended if a medical practitioner certifies that it is necessary for the health of the employee or her child.

Daily spread-over and weekly rest period

20. (1) No employer may require or permit an employee, other than an employee who is performing urgent work, to work a spread-over of more than 12 hours.

(2) An employer must not require or permit an employee, other than an employee who is performing urgent work, to work without a weekly interval of at least 36 consecutive hours of rest.

Work on Sundays

21. (1) An employer must not require or permit an employee to perform work on a Sunday, except as provided in this section.

(2) Subsection (1) does not apply to an employer who employs an employee for the purposes of -

- (a) urgent work;
 - (b) carrying on the business of a shop, hotel, boarding house or hostel that lawfully operates on a Sunday;
 - (c) performing domestic service in a private household;
 - (d) health and social welfare care and residential facilities, including hospitals, hospices, orphanages and old age homes;
 - (e) work on a farm required to be done on that day;
 - (f) work in which continuous shifts are worked; or
 - (g) any activity approved by the Permanent Secretary in terms of subsection (4).
- (3) An employer may apply in writing to the Permanent Secretary to approve work on Sundays if the employees affected by the application agree.

(4) If the Permanent Secretary grants the application, the Permanent Secretary must issue a notice in writing stipulating -

- (a) the nature of the work to which the notice applies; and
 - (b) any conditions that may apply.
- (5) Subject to subsection (6), an employer must pay an employee who works on Sunday double that employee's hourly basic wage for each hour worked.
- (6) Despite subsection (5), an employer may pay an employee who works on Sunday, one and one half of that employee's hourly basic wage for each hour worked, if -
- (a) the employer grants that employee an equal period of time away from work during the next working week; and
 - (b) that employee agrees.
- (7) In a case of an employee who ordinarily works on Sunday, the employer must pay the employee's daily remuneration plus the hourly basic wage for each hour worked.
- (8) For the purpose of this section, if the majority of the hours worked on a shift that extends into or begins on a Sunday falls on -
- (a) the Sunday, all the hours on that shift are deemed to have been worked on Sunday; or
 - (b) the Saturday or Monday, all the hours on that shift are deemed to have been worked on that Saturday or Monday.

Public holidays

22. (1) An employer must not require or permit an employee to perform any work on a public holiday, except as provided in this section.
- (2) Subsection (1) does not apply to an employer who employs an employee for the purposes of -
- (a) urgent work;
 - (b) carrying on the business of a shop, hotel, boarding house or hostel that lawfully operates on a public holiday;
 - (c) performing domestic service in a private household;
 - (d) health and social welfare care and residential facilities, including hospitals, hospices, orphanages and old age homes;
 - (e) work on a farm required to be done on that day;
 - (f) work in which continuous shifts are worked; or
 - (g) any activity approved by the Permanent Secretary in terms of subsection (4).
- (3) An employer may apply in writing to the Permanent Secretary to approve work on a public holiday if the employees affected by the application agree.

- (4) If the Permanent Secretary grants the application, the Permanent Secretary must issue a notice in writing stipulating -
- (a) the nature of the work to which the notice applies; and
 - (b) any conditions that may apply.
- (5) If a public holiday falls on a day on which an employee would ordinarily work, the employer must either -
- (a) pay -
 - (i) an employee who does not work on the public holiday, no less than that employee's daily remuneration subject to subsection (6); or
 - (ii) an employee who works on the public holiday, that employee's normal daily remuneration plus that employee's hourly basic wage for each hour worked; or
 - (b) if the employee referred to in paragraph (a)(ii) requests and the employer agrees -
 - (i) pay an employee who works on the public holiday that employee's normal daily remuneration plus one half of that employee's hourly basic wage for each hour worked; and
 - (ii) grant that employee an equal period of time from work during the next working week.
- (6) If an employee who does not work on a public holiday falls, without a valid reason, to work on either the day immediately before, or the day immediately following, that public holiday, the employer is not required to pay that employee the amount otherwise required in terms of subsection (3)(a)(i).
- (7) If an employee works on a public holiday that falls on a day other than the employee's ordinary work day, the employer must pay double that employee's hourly basic wage for each hour worked.
- (8) For the purpose of subsections (1) to (7), if the majority of the hours worked on a shift, that extends into or begins on a public holiday, falls on -
- (a) the public holiday, all the hours on that shift are deemed to have been worked on the public holiday; or
 - (b) the other day, all the hours on that shift are deemed to have been worked on that day

PART D LEAVE

Annual leave

23. (1) For the purpose of this section "ordinary work week" means the number of days per week ordinarily worked by an employee.

(2) Every employee is entitled to at least four consecutive weeks' annual leave with full remuneration in respect of each annual leave cycle, calculated as follows:

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

(3) If an employee does not ordinarily work a fixed number of days per week, the employee is entitled to annual leave calculated on the basis of the average number of days worked per week over the 12 months prior to the commencement of a new annual leave cycle, multiplied by four:

(4) The number of leave days referred to in subsection (2) may be reduced by the number of days during the annual leave cycle which, on request by the employee, the employer granted that employee as occasional leave on full remuneration.

(5) An employer may determine when the annual leave is to be taken provided that it is taken no later than -

(a) four months after the end of the annual leave cycle; or

(b) six months after the end of the annual leave cycle, if, before the end of the four month period contemplated in paragraph (a), the employee agreed in writing to such an extension.

(6) An employer must pay the remuneration due to an employee in respect of annual leave -

(a) according to that employee's regular pay schedule, if the employee is paid by direct deposit as contemplated in section 11(1)(b)(i); or

(b) in any other case, not later than -

(i) the last working day before the commencement of the annual leave; or

(ii) not later than the first pay day after the end of the leave period, if the employee requests such an extension in writing.

(7) An employer must not require or permit an employee to take annual leave during any other period of leave to which the employee is entitled in terms of this Part.

(8) An employer must grant an employee an additional day of paid leave if a public holiday falls on a day -

(a) during the employee's annual leave; and

(b) on which the employee would ordinarily have worked.

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

(10) Except on termination of employment, an employer must not pay an employee an amount of money in substitution for the annual leave to which that employee is entitled, whether or not the employee requests or agrees in writing to such a payment.

Sick leave

24. (1) During any sick leave cycle, an employee is entitled to sick leave as follows:

(a) not less than 30 working days, if the employee ordinarily works five days during a week;

(b) not less than 36 working days, if the employee ordinarily works six days during the week; and

(c) not less than the number of working days calculated on a *pro rata* basis, if the employee ordinarily works fewer than five days during a week.

but an employee is entitled to one day's sick leave for every 26 days worked during the employee's first year of employment.

(2) For the purposes of subsection (1)(b), the sick leave days to which an employee who does not ordinarily work a fixed number of days per week is entitled must be calculated annually on the basis of the average number of days worked per week over the previous 12 months.

(3) Subject to subsection (4), on the employee's normal pay day, the employer must pay that employee an amount equal to that employee's daily remuneration for each day of absence on sick leave.

(4) Despite subsection (3), an employer is not required to pay an employee for sick leave in any of the following circumstances:

(a) if the employee -

(i) has been absent from work for more than two consecutive days; and

(ii) fails to produce a medical certificate by a medical practitioner or any other evidence of proof of illness as may be prescribed;

(b) to the extent that the employee is entitled to payment in terms of the Employees' Compensation Act, 1941 (Act No. 30 of 1941), if the employee is absent from work during any period of incapacity arising from an accident or a scheduled disease;

(c) to the extent that the employee is entitled to payment in respect of that sick leave from a fund or organisation -

(i) designated by the employee, and in respect of which the employer makes contributions at least equal to that made by the employee; and

(ii) that guarantees the payment of sick leave; or

- (d) to the extent that the employee is entitled to payment in respect of that sick leave under any other legislation.
- (5) Sick leave -
- (a) does not form part of annual, compassionate or maternity leave;
- (b) does not entitle the employee to any additional remuneration on termination of employment; and
- (c) if not used during the period referred to in subsection (1), lapses at the end of that period.

Compassionate leave

25. (1) An employee is, during each period of 12 months of continuous employment, entitled to five working days' compassionate leave with fully paid remuneration.
- (2) An employee is entitled to compassionate leave if there is a death or serious illness in the family.

(3) The Minister must prescribe the form and manner in which compassionate leave may be applied for by an employee and any other information that may be required to support the application.

- (4) Compassionate leave -
- (a) does not form part of annual, sick or maternity leave;
- (b) does not entitle the employee to any additional remuneration on termination of employment; and
- (c) if not used during the period referred to in subsection (1), lapses at the end of that period.
- (5) For the purposes of this section "family" means a -
- (a) child, including a child adopted in terms of any law, custom or tradition;
- (b) spouse;
- (c) parent, grandparent, brother or sister, of the employee; or
- (d) father-in-law or mother-in-law of the employee.

Maternity leave

26. (1) Subject to subsection (3), a female employee who has completed six months' continuous service in the employment of an employer is, with a view to her confinement, entitled to not less than 12 weeks' maternity leave, calculated as follows:

- (a) before her actual date of confinement -

- (i) she is entitled to commence maternity leave four weeks before her expected date of confinement, as certified by her medical practitioner; and
 - (ii) she is entitled to maternity leave for the entire time from the commencement of her maternity leave as contemplated in paragraph (i), until her actual date of confinement;
- (b) after her date of confinement, she is entitled to -
- (i) eight weeks maternity leave in every case; and
 - (ii) in the case of an employee whose date of confinement occurred less than four weeks after the commencement of her maternity leave, the amount of additional time required to bring her total maternity leave to 12 weeks.

(2) The employer must provide the employer with a certificate signed by a medical practitioner confirming -

- (a) the expected date of confinement before taking maternity leave; and
- (b) the actual date of confinement on her return from leave.

(3) During any period of maternity leave, the provisions of the contract of employment remain in force, and the employer must, during the period of maternity leave, pay to the employee the remuneration payable to that employee except the basic wage.

(4) The Social Security Commission established by the Social Security Act, 1994 (Act No. 34 of 1994) must, during the period that an employee is on maternity leave, pay to that employee such portion of that employee's basic wage as may be prescribed in terms of that Act.

- (5) An employer must not dismiss an employee during her maternity leave or at the expiry of that leave on -
- (a) any grounds contemplated in section 34; or
- (b) any grounds arising from her pregnancy, delivery, or her resulting family status or responsibility.
- (6) Subsection (5) does not apply if -
- (a) the employer has offered the employee comparable alternative employment; and
- (b) she has unreasonably refused to accept that offer.

Extended maternity leave

27. (1) If a medical practitioner certifies that -

- (a) due to complications arising from pregnancy or delivery, it is necessary for the health of an employee, an employer must grant that employee extended maternity leave in excess of the periods referred to in section 26 (1)(a) or (b), up to a maximum equal to the greater of -
- (i) one month, or

- (ii) the amount of accrued sick leave that the employee has at that time; or
- (b) due to complications arising from birth or congenital conditions, it is necessary for the health of the employee's child, an employer must grant that employee extended maternity leave in excess of the periods referred to in section 26(1)(b), up to a maximum equal to the greater of -
 - (i) one month; or
 - (ii) the amount of accrued sick leave that the employee has at that time.
- (2) If a medical practitioner issues a certificate in terms of both subsection (1)(a) and (b), the periods of extended maternity leave must run concurrently.
- (3) A period of extended maternity leave must run immediately before or immediately following an employee's maternity leave in terms of section 26.
- (4) Section 26(3) to (6) apply in respect of an employee who takes extended maternity leave under this section.

PART E ACCOMMODATION

Provision of accommodation

28. (1) For the purposes of this section, a "dependant" means the spouse and the dependant children of the employee or of the spouse.
- [The word "dependant" is usually spelt "dependant" when used as a noun, and "dependent" when used as an adjective.]
- (2) If an employee is required to live at the place of employment or to reside on any premises owned or leased by the employer, that employer must provide the employee with adequate housing including sanitary and water facilities.
 - (3) If an employee contemplated in subsection (2) lives on agricultural land, the employer must provide sufficient facilities referred to in that subsection to meet the reasonable needs of the employee and the employee's dependants, and must either -
 - (a) permit the employee to keep livestock and to cultivate land to meet the reasonable needs of that employee and that employee's dependants; or
 - (b) in terms of an agreement with the employee -
 - (i) provide the employee with sufficient food to meet the reasonable needs of the employee and the employee's dependants; or
 - (ii) pay the employee an additional amount to do so.
 - (4) An employer who terminates the employment of an employee who is required to live at the place of employment or to reside on any premises owned, leased or provided by the employer may not require the employee to vacate the said premises or place unless -
 - (a) in the case of an employee residing on agricultural land, the employer gives to the employee three months' written notice to vacate; or