



**NAMIBIA UNIVERSITY
OF SCIENCE AND TECHNOLOGY**

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

QUALIFICATION: BACHELOR OF SPORTS MANAGEMENT	
QUALIFICATION CODE: 07BOSM	LEVEL: 6
COURSE CODE: SLR611SS	COURSE NAME: SPORTS LAW AND REGULATIONS
SESSION: JULY 2019	PAPER: THEORY AND CASE STUDIES
DURATION: 3 HOURS	MARKS: 100

SECOND 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 7 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 If an employee reasonably believes that it is not safe to continue working at her place of work, she may:
- A. Resign from her job
 - B. Report her employer to the Labour Commissioner
 - C. Leave her place of employment until the situation has been rectified
 - D. Inform her employer of such belief and leave her place of employment until the situation has been rectified
- 1.2 "Overtime" refers to any work done:
- A. In excess of eight hours a day
 - B. Outside normal working hours, including Sundays and Public Holidays
 - C. Between 20h00 and 07h00
 - D. Outside normal working hours, excluding Sundays and Public Holidays
- 1.3 A preferential right is:
- A. A right one party obtains in order to accept or refuse the purchase of an item first
 - B. A right, which comes into existence because you have a certain period to decide to contract at a later date
 - C. A right, which comes into existence on a certain future date
 - D. None of the above
- 1.4 Our courts have authoritatively laid down that where in the ordinary course the Post Office is used as the channel of communication and a written offer is made, consensus is reached at the time when, and the place where, the letter of acceptance is posted. The above principle is known as:
- A. The information theory
 - B. The declaration theory
 - C. The reception theory
 - D. The expedition theory
- 1.5 Which of the following statements is true?
- A. Cession is a transfer agreement in terms of which a right or rights are transferred from the person who holds them to another
 - B. Cession is a way of transferring rights and obligations from one party, called the cedent, to another party, called the cessionary
 - C. Cession is a surety agreement
 - D. Cession is a contract in terms of which only obligations are transferred

Question 1 continues on the next page

- 1.6 The main difference between arbitration by the Court of Arbitration for Sport and mediation by the same organisation is that:
- A. Arbitration is done by a panel of arbitrators whereas mediation uses only one arbitrator
 - B. An arbitration ruling has the same enforceability as a judgement by a court of law, whereas mediation is a non-binding and informal process
 - C. With arbitration the parties have a dispute whereas with mediation they are on an amicable basis
 - D. Arbitration only takes place in Switzerland, but mediation can take place all over the world
- 1.7 Which of the following would make a contract voidable?
- A. Mistake, illegality and duress
 - B. Duress, misrepresentation and undue influence
 - C. Misrepresentation, mistake and duress
 - D. Illegality, duress and undue influence
- 1.8 Severance pay can always be claimed:
- A. If an employee is retrenched
 - B. If an employee retires at the age of sixty
 - C. Both A and B
 - D. None of the above
- 1.9 The requirements for a delict are:
- A. Act, negligence, wrongfulness, causation and damages
 - B. Act, wrongfulness, fault, causation and damages
 - C. Act, conduct, wrongfulness, causation and damages
 - D. Conduct, wrongfulness, fault, legal causation and damages
- 1.10 Jojo's girlfriend is pregnant and he is concerned about how this will impact on them financially. He asks the Sports Law class for advice.
WIETZ says she is entitled to 12 weeks of fully paid maternity leave.
GREG says that during her maternity leave she is entitled to her usual remuneration payable except for the basic wage.
DENZEL says that during her maternity leave her employer must continue to pay her basic wage.
MANGALISO says this is a disaster and they are doomed to a life of poverty.
Who is the MOST CORRECT?
- A. Wietz
 - B. Greg
 - C. Denzel
 - D. Mangaliso

Question 1 continues on the next page

- 1.11 Which one of the following is a reason for concluding a contract in restraint of trade?
- A. The protection of competition
 - B. The protection of the public
 - C. The protection of trade secrets
 - D. None of the above options
- 1.12 Choose the MOST CORRECT statement.
- A. An employer must provide an employee with adequate housing, sanitary and water facilities
 - B. If it is required from an employee to live at the place of employment the employer must provide an employee with adequate housing
 - C. If it is required from an employee to live at the place of employment, the employer is obliged to provide the employee with adequate housing, sanitary and water facilities
 - D. An employer must provide an employee with adequate housing, sanitary and water facilities or the cash equivalent thereof
- 1.13 Which of the following suggests that there is no agreement between the parties?
- A. A salesman tells a customer that the car that she is thinking of buying is a 2019 model, but it was actually made in 2018. The customer agrees to buy the car
 - B. Fred puts a knife to Zanele's throat and demands that she sells her flat to him. Zanele signs the contract
 - C. Andile thinks that he might have employed the twin brother of the man he actually wanted to employ
 - D. All the agreements are valid
- 1.14 Nitesh agrees to sell his PlayStation to Pam for N\$ 2000. The day before Pam is to collect it, Nitesh sells and delivers the same PlayStation to Nathan for N\$ 2 500. Nathan doesn't know about Nitesh's sale to Pam. The contract between Nitesh and Pam is:
- A. Void, because performance is objectively impossible
 - B. Valid, because performance is subjectively impossible
 - C. Void, because it is illegal to sell the same item to two persons at the same time
 - D. Voidable, because Nitesh made a misrepresentation to Pam by making her believe that he is going to sell the PlayStation to her
- 1.15 The purpose of the law of delict is to:
- A. Pay the plaintiff's damages
 - B. Make the plaintiff feel better
 - C. Compensate the plaintiff for the harm caused by the defendant's wrongful and culpable conduct
 - D. Punish the perpetrator

Question 1 continues on the next page

- 1.16 When a debtor intentionally or negligently does something which makes performance absolutely impossible, this is known as:
- A. Supervening impossibility of performance
 - B. Objective impossibility of performance
 - C. Subjective impossibility of performance
 - D. Prevention of performance
- 1.17 In case of a dispute that arises about a contract that has been reduced to writing in a document, the rule which prevents a party from bringing evidence outside the document to prove his/her version of the content and meaning of the contract is known as:
- A. The contra preferentum rule
 - B. The parol evidence rule
 - C. The law of contract rule
 - D. None of the above options
- 1.18 A person acquires majority in amongst others:
- A. By exhibiting the degree of judgment normally expected from an adult
 - B. By reaching the age of 21 years
 - C. By reaching the age of 18 years
 - D. A and C
- 1.19 One of the following is not an obligation of the employee:
- A. To make his/her services available
 - B. To follow unlawful instructions of the employer
 - C. To be obedient to supervisors
 - D. None of the above
- 1.20 One of the following is a reason for cancellation of a contract in the event of *mora debitoris*:
- A. When the creditor has made time of the essence by means of a notice of rescission
 - B. When the breach of contract is excusable
 - C. When no *lex commissoria* is present in the contract
 - D. When an award for damages will adequately compensate the plaintiff

Two marks each [40]

QUESTION 2

Briefly answer the following questions.

- 2.1 What are human rights? (3)
- 2.2 When will a trade union be recognised as an exclusive bargaining agent? (3)

Question 2 continues on the next page

- 2.3 What are the requirements for “negligence” in terms of the law of delict? (4)
- 2.4 Explain “agency” (3)
- 2.5 How is severance pay calculated? (2)
- 2.6 Distinguish between the contractual capacity of an insane person and an intoxicated person. (3)
- 2.7 In terms of the law of contract, what is “specific performance”? (2)
- [20]**

QUESTION 3

Sportswear manufacturers Niknik sign a contract with a top Namibian footballer in terms of which they would pay him a substantial amount of money to wear only their brand of clothing, which they would provide to him free of charge. The contract does not specify the date of delivery.

Answer the following questions based on the above facts:

- 3.1 Two months after entering into the contract Niknik have not yet delivered the clothing. Have they breached the contract? Explain in full. (6)
- 3.2 In the event of Niknik being in breach of contract, advise the footballer as to the legal remedies to him, with specific emphasis on what they have to prove in order to succeed in their claim. (9)
- [15]**

QUESTION 4

John Malindi agreed with Sunshine Sports Club (SSC) to build them a new place of business. SSC would pay Mr Malindi a deposit of 20% and the outstanding amount at the completion of the new building. Mr Malindi would provide his own workers and tools.

During construction, Sam, a visitor to the construction site, was injured when Petrus threw a brick from the first floor because he chose not to follow a safety rule laid down that all extra bricks must be carried down. Petrus was paid a monthly salary by Mr Malindi.

Answer the following questions based on the above facts.

- 4.1 Petrus is expected to work six days a week (Mondays to Saturdays). What is the maximum hours he may work per day and per week? (2)

Question 4 continues on the next page

- 4.2 Mr Malindi expects of Petrus to work non-stop, without taking a break. Is this permissible? (4)
- 4.3 How must Mr Malindi remunerate her Petrus if he works overtime? (1)
- 4.4 Sam wants to sue SSC for his injuries. Can he do it? Motivate your answer in full. (3)
- 4.3 After the incident, Mr Malindi chased Petrus away because of his misconduct which jeopardised the safety of others. Did Mr Malindi act fairly? (5)
- [15]**

QUESTION 5

The rules of the World Boxing Federation provide (*inter alia*) as follows:

- “4.2. If in the referees’ judgement the knockdowns have been indecisive ... the contest may be continued but with good sense and judgement and the boxers’ welfare always paramount.
- “5.1. The referee is the sole arbiter in all championship contests and the only person authorized to stop a contest at any stage if ... either boxer is in such condition that to continue might subject them to serious injury.
- “5.5. The referee may stop the contest and consult with the ringside physician on the medical advisability of a boxers’ ability to continue. However, the referee is the only person permitted to signal the end of a contest.”

Malcolm “The Terminator” Mpinda is scheduled to fight Rocco “Invincible” Shikongo in a championship boxing match in Windhoek. Reffie Ree is appointed to officiate at the match. Reffie is very proud of himself, since this is the first championship bout that he is appointed to referee.

As soon as the fight starts it is clear that Mpinda is no match for Shikongo. Right from the start he takes several blows to the head, and in the third round he is knocked down. He manages to get to his feet, but stumbles around in the ring, looking dazed and confused. Reffie consults with the ringside physician, who advises him to stop the fight; however Reffie tells the physician “only I may decide that”. The fight continues, but two seconds into the next round Mpinda takes another knock to the head and crumbles to the ground. He is rushed to hospital and a few days later the doctors inform his family that he has suffered irreparable brain damage.

His family want to claim damages from the referee and the Namibian Boxing Federation. Advise them on their chances of being successful in their claim against the referee.

[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 (5)(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)(ii); 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 employee 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