

## CHAPTER 28:01

### LABOUR ACT

*Acts 16/1985, 12/1992, 20/1994 (s. 19), 22/2001 (s. 4), 17/2002, 7/2005, 5/2011 (s. 18), 5/2015, 3/2016.*

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**AN ACT to declare and define the fundamental rights of employees; to give effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organisation and as a member of or party to any other international organisation or agreement governing conditions of employment which Zimbabwe would have ratified; to define unfair labour practices; to regulate conditions of employment and other related matters; to provide for the control of wages and salaries; to provide for the appointment and functions of workers committees; to provide for the formation, registration and functions of trade unions, employers organizations and employment councils; to regulate the negotiation, scope and enforcement of collective bargaining agreements; to provide for the establishment and functions of the Labour Court; to provide for the prevention of trade disputes, and unfair labour practices; to regulate and control collective job action; to regulate and control employment agencies; and to provide for matters connected with or incidental to the foregoing.**

[Long title amended by section 44 of Act 17 of 2002 and by section 38 of Act 7 of 2005]

[Date of commencement: 15th December, 1985.]

## PART I

### PRELIMINARY

#### **1 Short title**

This Act may be cited as the Labour Act [*Chapter 28:01*].

[Short title amended by section 2 of Act 17 of 2002]

#### **2 Interpretation**

In this Act—

“accreditation proceedings” means proceedings held in terms of section *forty-one*;

“agent union” means a trade union acting as an agent union in terms of section *thirty-one*;

“appropriate trade union”, in relation to any employees means—

- (a) a trade union which is an agent union for the employees concerned; or

- (b) where there is no agent union for the employees concerned, the trade union which is registered for interests which correspond most closely to those of the employees concerned;
- “assessor” means a member of the Labour Court appointed in terms of section *eighty-four*;  
[Definition inserted by section 2 of Act 17 of 2002]
- “association dues” means money levied by an employers organization in terms of section *fifty-two*;
- “casual work” means work for which an employee is engaged by an employer for not more than a total of six weeks in any four consecutive months;  
[Definition inserted by section 2 of Act 17 of 2002]
- “certificate of registration” means a certificate relating to the registration of an employment agency issued in terms of paragraph (a) of subsection (2) of section *one hundred and fifteen*;
- “certified”.....  
[Definition repealed by section 3 of Act 17 of 2002]
- “Chairman”.....  
[Definition repealed by section 3 of Act 17 of 2002]
- “check-off scheme” means a scheme whereby an employer, with the consent of the employees concerned, deducts union dues directly from the remuneration of his employees and remits such dues to the trade union representing them;  
[Definition inserted by section 2 of Act 17 of 2002]
- “code”.....  
[Definition repealed by section 3 of Act 17 of 2002]
- “collective bargaining agreement” means an agreement negotiated in accordance with this Act which regulates the terms and conditions of employment of employees;
- “collective job action” means an industrial action calculated to persuade or cause a party to an employment relationship to accede to a demand related to employment, and includes a strike, boycott, lock-out, sit-in or sit-out, or other such concerted action;
- “compulsory arbitration” means compulsory arbitration in terms of section *ninety-eight*;
- “contractor” means a person who renders to an employer services which are related to or connected with those of the employer’s undertaking;
- “Deputy Chairman”.....  
[Definition repealed by section 3 of Act 17 of 2002]
- “designated agent” means a person appointed to be a designated agent of an employment council in terms of section *sixty-three*;  
[Definition inserted by section 2 of Act 17 of 2002]
- “disciplined force” means—
- (a) a military, air or naval force;
  - (b) a police force;
  - (c) a prison service;
  - (d) persons employed in the President’s Office on security duties;
- [Definition inserted by section 2 of Act 17 of 2002 and amended by section 37 of Act 7 of 2005]
- “dispute” means a dispute relating to any matter concerning employment which is governed by this Act;
- “dispute of interest” means any dispute other than a dispute of right;  
[Definition inserted by section 2 of Act 17 of 2002]
- “dispute of right” means any dispute involving legal rights and obligations, including any dispute occasioned by an actual or alleged unfair labour practice, a breach or alleged breach of this Act or of any regulations made under this Act, or a breach or alleged breach of any of the terms of a collective bargaining agreement or contract of employment;  
[Definition inserted by section 2 of Act 17 of 2002]
- “employee” means any person who performs work or services for another person for remuneration or reward on such terms and conditions as agreed upon by the parties or as provided for in this Act, and includes a person performing work or services for another person—
- (a) in circumstances where, even if the person performing the work or services supplies his own tools or works under flexible conditions of service, the hirer provides the substantial investment in or assumes the substantial risk of the undertaking; or
  - (b) in any other circumstances that more closely resemble the relationship between an employee and employer than that between an independent contractor and hirer of services;

[Definition substituted by section 2 of Act 17 of 2002 and amended by section 2 of Act 7 of 2005]

“employer” means any person whatsoever who employs or provides work for another person and remunerates or expressly or tacitly undertakes to remunerate him, and includes—

- (a) the manager, agent or representative of such person who is in charge or control of the work upon which such other person is employed; and
- (b) the judicial manager of such person appointed in terms of the Companies Act [Chapter 24:03];
- (c) the liquidator or trustee of the insolvent estate of such person, if authorised to carry on the business of such person by—
  - (i) the creditors; or
  - (ii) in the absence of any instructions given by the creditors, the Master of the High Court;
- (d) the executor of the deceased estate of such person, if authorised to carry on the business of such person by the Master of the High Court;
- (e) the curator of such person who is a patient as defined in the Mental Health Act [Chapter 15:12] (No. 15 of 1996), if authorised to carry on the business of such person in terms of section 88 of that Act;

[Definition substituted by section 2 of Act 17 of 2002 and amended by section 2 of Act 7 of 2005]

“employers organization” means any association or organization formed to represent or advance the interests of any employers or groups thereof in respect of matters relating to employment;

“employment agency” means any business carried on for gain or reward in which employment of any nature whatsoever is either procured for persons seeking work or is offered to such persons on behalf of third parties, or in which advice in regard to such procurement or offering of employment is given to such persons or third parties, as the case may be;

[Definition substituted by section 2 of Act 17 of 2002]

“employment board”.....

[Definition deleted by section 3 of Act 17 of 2002]

“employment code” means an employment code of conduct registered in terms of section *one hundred and one*;

[Definition inserted by section 2 of Act 17 of 2002]

“employment council” means an employment council formed in terms of section *fifty-six* or *fifty-seven*;

“employment officer” means an officer designated as such in terms of his employment in the Public Service;

“equal remuneration”, for the purposes of subsection (2a) of section *five*, means rates of remuneration that have been established without differentiation on the basis of gender;

[Definition inserted by section 2 of Act 17 of 2002]

“federation” means a group of trade unions or employers organizations, each of which is representative of a single undertaking or industry;

“fixed date” means the 15th December, 1985;

“forced labour” means any work or services which a person is required to perform against his or her will under the threat of some form of punishment;

[Definition inserted by section 2 of Act 5 of 2015]

“HIV/AIDS status”, in relation to any individual, means the presence or otherwise in that individual of the human immuno-deficiency virus;

[Definition inserted by section 2 of Act 17 of 2002]

“Labour Court” means the Labour Court established by section *eighty-four*;

[Definition inserted by section 2 of Act 17 of 2002]

“labour officer” means a labour officer referred to in paragraph (b) of subsection (1) of section *one hundred and twenty-one*;

[Definition substituted by section 2 of Act 17 of 2002]

“legal practitioner” means a person registered as such in terms of the Legal Practitioners Act [Chapter 27:07];

[Definition inserted by section 2 of Act 7 of 2005]

“managerial employee” means an employee who by virtue of his contract of employment or of his seniority in an organisation, may be required or permitted to hire, transfer, promote, suspend, lay-off, dismiss, reward, discipline or adjudge the grievances of other employees;

[Definition substituted by section 2 of Act 7 of 2005]

“maximum wage notice” means a notice issued in terms of section *twenty-two*;

“member”, in relation to the Labour Court, means a Judge of the Labour Court or any assessor;  
[Definition substituted by section 2 of Act 17 of 2002 and by Act 3 of 2016]

“membership fees”, in relation to a trade union or employers organization, means those fees chargeable by the trade union or employers organization concerned in respect of membership or renewal thereof;

“minimum wage notice” means a notice issued in terms of section *twenty*;

“Minister” means, subject to section 83, the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;  
[Definition substituted by section 2 of Act 7 of 2005]

“prescribed” means prescribed by regulations made in terms of section *one hundred and twenty-seven*;  
[Definition inserted by section 2 of Act 17 of 2002]

“region” means any area within Zimbabwe declared by the Minister, by statutory instrument, to be a region for the purposes of this Act;

“Registrar” means the Registrar of Labour referred to in paragraph (a) of subsection (1) of section *one hundred and twenty-one*, and includes an Assistant Registrar referred to in that paragraph;

“relevant particulars” means such information and other particulars as are within the interests of a workers committee, trade union, employers organization or federation, as the case may be, and which relate to the issue that is legitimately before the organization requesting such information and other particulars;

“retrench”, in relation to an employee, means terminate the employee’s employment for the purpose of reducing expenditure or costs, adapting to technological change, reorganising the undertaking in which the employee is employed, or for similar reasons, and includes the termination of employment on account of the closure of the enterprise in which the employee is employed;  
[Definition inserted by section 2 of Act 17 of 2002]

“Retrenchment Board” means the board established by regulations made in terms of section *seventeen* to consider matters related to the retrenchment of employees referred to it in terms of section *twelve C*;  
[Definition inserted by section 2 of Act 17 of 2002]

“seasonal work” means work that is, owing to the nature of the industry, performed only at certain times of the year;  
[Definition inserted by section 2 of Act 17 of 2002]

“technical or vocational education” means education provided at a technical or vocational institution;  
[Definition inserted by section 2 of Act 17 of 2002]

“technical or vocational institution” means an institution registered as such in terms of the law relating to technical or vocational education;  
[Definition inserted by section 2 of Act 17 of 2002]

“trade union” means any association or organization formed to represent or advance the interests of any employees or class thereof in respect of their employment;

“Tribunal”.....  
[Definition deleted by section 3 of Act 17 of 2002]

“unfair labour practice” means an unfair labour practice specified in Part III, or declared to be so in terms of any other provision of this Act;

“union agreement” means a collective bargaining agreement that has been negotiated by an appropriate trade union and an employer or employers organization;

“union dues” means money levied by a trade union in terms of section *fifty-two*;

“work of equal value”, for the purposes of subsection (2a) of section *five*, means work that involves similar or substantially similar skills, duties, responsibilities and conditions;  
[Definition inserted by section 2 of Act 17 of 2002]

“workers committee” means a workers committee appointed or elected in terms of Part VI;

“works council” means a council composed of an equal number of representatives of an employer and representatives drawn from members of a workers committee and a chairperson.  
[Definition amended by section 2 of Act 7 of 2005]

## 2A Purpose of Act

(1) The purpose of this Act is to advance social justice and democracy in the workplace by—

(a) giving effect to the fundamental rights of employees provided for under Part II;

(b) ....

[Paragraph repealed by section 3 of Act 7 of 2005]

(c) providing a legal framework within which employees and employers can bargain collectively for the improvement of conditions of employment;

(d) the promotion of fair labour standards;

(e) the promotion of the participation by employees in decisions affecting their interests in the work place;

(f) securing the just, effective and expeditious resolution of disputes and unfair labour practices.

(2) This Act shall be construed in such manner as best ensures the attainment of its purpose referred to in subsection (1).

(3) This Act shall prevail over any other enactment inconsistent with it.

[Subsection substituted by section 3 of Act 7 of 2005]

[Section inserted by section 4 of Act 17 of 2002]

### **3 Application of Act**

(1) This Act shall apply to all employers and employees except those whose conditions of employment are otherwise provided for in the Constitution.

(2) For the avoidance of any doubt, the conditions of employment of members of the Public Service shall be governed by the Public Service Act [*Chapter 16:04*].

(3) This Act shall not apply to or in respect of—

(a) members of a disciplined force of the State; or

(b) members of any disciplined force of a foreign State who are in Zimbabwe under any agreement concluded between the Government and the Government of that foreign State; or

(c) such other employees of the State as the President may designate by statutory instrument.

[Section substituted by section 4 of Act 7 of 2005]

## **PART II**

### **FUNDAMENTAL RIGHTS OF EMPLOYEES**

#### **4 Employees' entitlement to membership of trade unions and workers committees**

(1) Notwithstanding anything contained in any other enactment, every employee shall, as between himself and his employer, have the following rights—

(a) the right, if he so desires, to be a member or an officer of a trade union;

(b) where he is a member or an officer of a trade union, the right to engage in the lawful activities of such trade union for the advancement or protection of his interests;

(c) the right to take part in the formation and registration of a trade union;

(d) the same rights, *mutatis mutandis*, as are set out in paragraphs (a), (b), and (c) in relation to workers committees.

(2) Every employee shall have the right to be a member of a trade union which is registered for the undertaking or industry in which he is employed if he complies with the conditions of membership.

(3) No term or condition of employment and no offer of employment shall include a requirement that an employee or prospective employee shall undertake—

(a) if he is a member or officer of a trade union or workers committee, to relinquish his membership or office of such trade union or workers committee; or

(b) not to take part in the formation of a trade union or workers committee;

and any such requirement shall be void.

(4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any infringement or threatened infringement of a right specified in subsection (1) shall be entitled to apply under Part XII for either or both of the following remedies—

(a) an order directing the employer or other party concerned to cease the infringement or threatened infringement, as the case may be;

(b) an order for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be.

#### **4A Prohibition of forced labour**

(1) Subject to subsection (2), no person shall be required to perform forced labour.

(2) For the purposes of subsection (1) "forced labour" does not include—

(a) any labour required in consequence of the sentence or order of a court; or

- (b) labour required of any person while he is lawfully detained which, though not required in consequence of the sentence or order of a court—
  - (i) is reasonably necessary in the interests of hygiene or for the maintenance or management of the place at which he is detained; or
  - (ii) is permitted in terms of any other enactment;
- or
- (c) any labour required of a member of a disciplined force in pursuance of his duties as such or any labour required of any person by virtue of an enactment in place of service as a member of any such force; or

[Paragraph amended by section 37 of Act 7 of 2005]

- (d) any labour required by way of parental discipline; or
- (e) any labour required by virtue of an enactment during a period of public emergency or in the event of any other emergency or disaster that threatens the life or well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or disaster, for the purpose of dealing with that situation.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Section inserted by section 4 of Act 17 of 2002]

## 5 Protection of employees against discrimination

(1) No employer shall discriminate against any employee or prospective employee on grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or, subject to the Disabled Persons Act [*Chapter 17:01*], any disability referred to in the definition of “disabled person” in that Act, in relation to—

- (a) the advertisement of employment; or
- (b) the recruitment for employment; or
- (c) the creation, classification or abolition of jobs or posts; or
- (d) the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits; or
- (e) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or
- (f) the provision of facilities related to or connected with employment; or
- (g) any other matter related to employment.

[Subsection amended by section 7 of Act 17 of 2002]

(2) No person shall discriminate against any employee or prospective employee on the grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or, subject to the Disabled Persons Act [*Chapter 17:01*], any disability referred to in the definition of “disabled person” in that Act, in relation to—

- (a) the advertisement of employment; or
- (b) the recruitment of persons; or
- (c) the introduction of prospective employees for jobs or posts; or
- (d) any other matter related to employment.

[Subsection amended by section 7 of Act 17 of 2002]

(2a) No employer shall fail to pay equal remuneration to male and female employees for work of equal value.

[Subsection inserted by section 7 of Act 17 of 2002]

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(4) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any act or omission of an employer in contravention of subsection (1) shall be entitled to claim or apply under Part XII, as the case may be, for either or both of the following remedies—

- (a) damages from the employer for any loss caused directly or indirectly as a result of the contravention;
- (b) an order directing the employer to redress the contravention, including an order to employ any person, notwithstanding that the vacancy in question has already been filled and

notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged.

(5) Without prejudice to any other remedy that may be available to him in any competent court, any person who is aggrieved by any act or omission of any person in contravention of subsection (2) shall be entitled to claim or apply under Part XII, as the case may be, for either or both of the following remedies—

(a) damages from such person for any loss caused either directly or indirectly as a result of the contravention;

(b) an order directing such person to redress the contravention.

(6) For the purposes of this section, a person shall be deemed to have discriminated if his act or omission causes or is likely to cause persons of a particular race, tribe, place of origin, political opinion, colour, creed or gender to be treated—

(a) less favourably; or

(b) more favourably;

than persons of another race, tribe, place of origin, political opinion, colour, creed or gender, unless it is shown that such act or omission was not attributable wholly or mainly to the race, tribe, place of origin, political opinion, colour, creed or gender of the persons concerned.

[Subsection amended by section 45 of Act 17 of 2002]

(6a) Where, notwithstanding that any act or omission referred to in subsection (6) is not attributable wholly or mainly to the race, tribe, place of origin, political opinion, colour, creed or gender of a person, it is nevertheless shown that any act, practice or requirement by an employer causes persons of a particular description by race, tribe, place of origin, political opinion, colour, creed or gender to be treated less favourably than persons of any other such description, it shall be presumed, unless the act, practice or requirement concerned can be justified on any of the grounds specified in subsection (7), that such person was unlawfully discriminated against.

[Subsection amended by section 7 of Act 17 of 2002]

(7) Notwithstanding subsections (1) and (2), no person shall be deemed to have discriminated against another person—

(a) on the grounds of gender or pregnancy where—

(i) in accordance with this Act or any other law, he provides special conditions for female employees; or

(ii) in accordance with this Act or any other law, or in the interests of decency or propriety, he distinguishes between employees of different genders; or

[Subparagraph amended by sections 7 and 45 of Act 17 of 2002]

(iii) it is shown that the act or omission concerned was done or omitted to be done, as the case may be, by or on behalf of a men's or women's or boys' or girls' organization in the *bona fide* pursuit of the lawful objects of such organization;

(b) on the grounds of political opinion or creed where it is shown that the act or omission concerned was done or omitted to be done, as the case may be, by or on behalf of a political, cultural or religious organization in the *bona-fide* pursuit of the lawful objects of such organization;

(c) on the grounds of race or gender if the act or omission complained of arises from the implementation by the employer of any employment policy or practice aimed at the advancement of persons who have been historically disadvantaged by discriminatory laws or practices;

[Paragraph inserted by section 7 of Act 17 of 2002]

(d) if the act or omission complained of arises from the implementation by the employer of any employment policy or practice aimed at assisting disabled persons as defined in the Disabled Persons Act [*Chapter 17:01*];

[Paragraph inserted by section 7 of Act 17 of 2002]

(e) if any distinction, exclusion or preference in respect of a particular job is based on the narrowly defined inherent operational requirements, needs and necessities of that particular job.

[Paragraph inserted by section 7 of Act 17 of 2002]

(8) It shall be no defence to a charge in respect of a contravention of subsection (1) or (2) to prove that—

(a) the employee or prospective employee concerned was not in fact taken into employment by the employer concerned or that such employee would, in any case, not have been taken into such employment for any other lawful reason; or

- (b) the employee or prospective employee concerned has left or has not left the employment of the employer concerned; or
- (c) the employee or prospective employee concerned has subsequently been taken into employment by the employer concerned in circumstances showing that he has not been discriminated against; or
- (d) the employer concerned subsequently withdrew or did not fill the vacancy; or
- (e) the person charged is no longer committing any contravention of subsection (1) or (2); or
- (f) the employee or prospective employee concerned was party to the alleged contravention or did not complain about it; or
- (g) it was in the business interests of the person charged to commit the contravention; or
- (h) the contract or agreement which forms the subject of the charge was entered into prior to the fixed date.

## **6 Protection of employees' right to fair labour standards**

(1) No employer shall—

- (a) pay any employee a wage which is lower than that to fair labour specified for such employee by law or by agreement made under this Act; or
- (b) require any employee to work more than the maximum hours permitted by law or by agreement made under this Act for such employee; or
- (c) fail to provide such conditions of employment as are specified by law or as may be specified by agreement made under this Act; or
- (d) require any employee to work under any conditions or situations which are below those prescribed by law or by the conventional practice of the occupation for the protection of such employee's health or safety; or
- (e) hinder, obstruct or prevent any employee from, or penalize him for, seeking access to any lawful proceedings that may be available to him to enable him lawfully to advance or protect his rights or interests as an employee.

(2) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **7 Protection of employees' right to democracy in the work place**

(1) No person shall—

- (a) hinder, obstruct or prevent any employee from forming or conducting any workers committee for the purpose of airing any grievance, negotiating any matter or advancing or protecting the rights or interests of employees;
- (b) threaten any employee with any reprisal for any lawful action taken by him in advancing or protecting his rights or interests.

(2) Every employer shall permit a labour officer or a representative of the appropriate trade union, if any, to have reasonable access to his employees at their place of work during working hours for the purpose of—

- (a) advising the employees on the law relating to their employment; and
- (b) advising and assisting the employees in regard to the formation or conducting of workers committees and trade unions; and
- (c) ensuring that the rights and interests of the employees are protected and advanced;

and shall provide such labour officer or representative of the appropriate trade union, if any, with reasonable facilities and access for the exercise of such functions.

[Subsection amended by section 37 of Act 7 of 2005]

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(4) Notwithstanding subsection (3), nothing done to prevent any disruption of normal production processes, or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (1) or (2).

## PART III

### UNFAIR LABOUR PRACTICES

#### 8 Unfair labour practices by employer

An employer or, for the purpose of paragraphs (g) and (h), an employer or any other person, commits an unfair labour practice if, by act or omission, he—

- (a) prevents, hinders or obstructs any employee in the exercise of any right conferred upon him in terms of Part II; or
- (b) contravenes any provision of Part II or of section *eighteen*; or  
[Subsection amended by section 4 of Act 22 of 2001]
- (c) refuses to negotiate in good faith with a workers committee or a trade union which has been duly formed and which is authorized in terms of this Act to represent any of his employees in relation to such negotiation; or
- (d) refuses to co-operate in good faith with an employment council on which the interests of any of his employees are represented; or  
[Paragraph amended by section 37 of Act 7 of 2005]
- (e) fails to comply with or to implement—
  - (i) a collective bargaining agreement; or
  - (ii) a decision or finding of an employment council on which any of his employees are represented; or  
[Subparagraph amended by section 37 of Act 7 of 2005]
  - (iii) a decision or finding made under Part XII; or
  - (iv) any determination or direction which is binding upon him in terms of this Act;or
- (f) bargains collectively or otherwise deals with another trade union, where a registered trade union representing his employees exists; or  
[Paragraph amended by section 37 of Act 7 of 2005]
- (g) demands from any employee or prospective employee any sexual favour as a condition of—
  - (i) the recruitment for employment; or
  - (ii) the creation, classification or abolition of jobs or posts; or
  - (iii) the improvement of the remuneration or other conditions of employment of the employee; or
  - (iv) the choice of persons for jobs or posts, training, advancement, apprenticeships, transfer, promotion or retrenchment; or
  - (v) the provision of facilities related to or connected with employment; or
  - (vi) any other matter related to employment;or  
[Paragraph inserted by section 7 of Act 17 of 2002 and amended by section 37 of Act 7 of 2005]
- (h) engages in unwelcome sexually-determined behaviour towards any employee, whether verbal or otherwise, such as making physical contact or advances, sexually coloured remarks, or displaying pornographic materials in the workplace.  
[Paragraph inserted by section 7 of Act 17 of 2002 and amended by section 37 of Act 7 of 2005]

#### 9 Unfair labour practices by trade union or workers committee

A trade union or a workers committee commits an unfair labour practice if by act or omission it—

- (a) prevents, hinders or obstructs an employee in the exercise of any right conferred upon him in terms of Part II; or
- (b) contravenes any of the provisions of its constitution; or  
[Paragraph amended by section 37 of Act 7 of 2005]
- (c) fails to represent an employee's interests with respect to any violation of his rights under this Act or under a valid collective bargaining agreement, or under a decision or finding of an employment council, or under Part XII; or  
[Paragraph amended by section 37 of Act 7 of 2005]
- (d) fails to comply with or to implement any decision or finding of an employment council, or any decision or finding made under Part XII, or any determination or direction under this Act which is binding upon it; or  
[Paragraph amended by section 37 of Act 7 of 2005]
- (e) not being registered, purports to act as a collective bargaining agent in terms of Part X or participates in the collection of union dues; or
- (f) recommends collective job action in contravention of a valid collective bargaining agreement; or

- (g) except as may be authorized in terms of this Act, purports to act as the collective bargaining agent for employees, or calls for collective job action when another trade union has duly been registered to represent the employees concerned; or
- (h) purports to enter upon an agency agreement or collective bargaining agreement when another trade union has been duly registered for the workers concerned.

## **10 Minister may prescribe further unfair labour practices**

(1) The Minister may, after consultation with the Labour Court, from time to time, prescribe by statutory instrument acts or omissions which constitute unfair labour practices, whether by employers, employees, workers committees or trade unions or otherwise and may from time to time vary, amend or repeal any such notice.

(2) Before exercising his powers in terms of subsection (1), the Minister shall publish in the *Gazette* notice of intent and shall call for any objections thereto within a period specified in such notice.

## **PART IV**

### GENERAL CONDITIONS OF EMPLOYMENT

## **11 Employment of young persons**

(1) Subject to subsection (3), no employer shall employ any person in any occupation—

- (a) as an apprentice who is under the age of sixteen years;
- (b) otherwise than as an apprentice who is under the age of sixteen years.

[Subsection amended by section 3 of Act 5 of 2015]

(2) Any contract of employment entered into in contravention of subsection (1), and any contract of apprenticeship with an apprentice below the age of eighteen years which was entered without the assistance of the apprentice's guardian, shall be void and unenforceable against the person purportedly employed under such contract, whether or not (in the case of a contravention of paragraph (b) of subsection (1)) such person was assisted by his guardian, or was married or otherwise tacitly or expressly emancipated, but such person may enforce any rights that have accrued to him by or under such contract.

[Subsection amended by section 4 of Act 7 of 2005 and by section 3 of Act 5 of 2015]

(3) A person under the age of eighteen years but not younger than sixteen years may—

- (a) perform work other than work referred to in subsection (4) at a school or technical or vocational institution that is carried out as an integral part of a course of training or technical or vocational education for which the school or institution is primarily responsible;
- (b) perform work in an undertaking, other than work referred to in subsection (4), that is carried out in conjunction with a course of technical or vocational education.

(4) No employer shall cause any person under the age of eighteen years to perform any work which is likely to jeopardise that person's health, safety or morals, which work shall include but not be limited to work involving such activities as may be prescribed.

(5) Any employer who employs any person in contravention of subsection (1) or (4) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 7 of 2005]

[Section substituted by section 9 of Act 17 of 2002]

## **12 Duration, particulars and termination of employment contract**

(1) Every person who is employed by or working for any other person and receiving or entitled to receive any remuneration in respect of such employment or work shall be deemed to be under a contract of employment with that other person, whether such contract is reduced to writing or not.

(2) An employer shall, upon engagement of an employee, inform the employee in writing of the following particulars—

- (a) the name and address of the employer;
- (b) the period of time, if limited, for which the employee is engaged;
- (c) the terms of probation, if any;
- (d) the terms of any employment code;
- (e) particulars of the employee's remuneration, its manner of calculation and the intervals at which it will be paid;
- (f) particulars of the benefits receivable in the event of sickness or pregnancy;
- (g) hours of work;
- (h) particulars of any bonus or incentive production scheme;
- (i) particulars of vacation leave and vacation pay;

(j) particulars of any other benefits provided under the contract of employment.

(3) A contract of employment that does not specify its duration or date of termination, other than a contract for casual work or seasonal work or for the performance of some specific service, shall be deemed to be a contract without limit of time:

Provided that a casual worker shall be deemed to have become an employee on a contract of employment without limit of time on the day that his period of engagement with a particular employer exceeds a total of six weeks in any four consecutive months.

(3a) A contract of employment that specifies its duration or date of termination, including a contract for casual work or seasonal work or for the performance of some specific service, shall, despite such specification, be deemed to be a contract of employment without limitation of time upon the expiry of such period of continuous service as is—

- (a) fixed by the appropriate employment council; or
- (b) prescribed by the Minister, if there is no employment council for the undertaking concerned, or where the employment council fixes no such period;

and thereupon the employee concerned shall be afforded the same benefits as are in this Act or any collective bargaining agreement provided for those employees who engaged without limit of time.

[Subsection inserted by section 4 of Act 5 of 2015]

(4) Except where a longer period of notice has been provided for under a contract of employment or in any relevant enactment, and subject to subsections (5), (6) and (7), notice of termination of the contract of employment to be given by either party shall be—

- (a) three months in the case of a contract without limit of time or a contract for a period of two years or more;
- (b) two months in the case of a contract for a period of one year or more but less than two years;
- (c) one month in the case of a contract for a period of six months or more but less than one year;
- (d) two weeks in the case of a contract for a period of three months or more but less than six months;
- (e) one day in the case of a contract for a period of less than three months or in the case of casual work or seasonal work.

[Subsection substituted by section 6 of Act 7 of 2005]

(4a) No employer shall terminate a contract of employment on notice unless—

- (a) the termination is in terms of an employment code or, in the absence of an employment code, in terms of the model code made under section 101(9); or
- (b) the employer and employee mutually agree in writing to the termination of the contract; or
- (c) the employee was engaged for a period of fixed duration or for the performance of some specific service; or
- (d) pursuant to retrenchment, in accordance with section 12C.

[Subsection inserted by section 4 of Act 5 of 2015]

(4b) Where an employee is given notice of termination of contract in terms of subsection (4a) and such employee is employed under the terms of a contract without limitation of time, the provisions of section 12C shall apply with regard to compensation for loss of employment.

[Subsection inserted by section 4 of Act 5 of 2015]

(5) A contract of employment may provide in writing for a single, non-renewable probationary period of not more than—

- (a) one day in the case of casual work or seasonal work; or
- (b) three months in any other case;

during which notice of termination of the contract to be given by either party may be one week in the case of casual work or seasonal work or two weeks in any other case.

[Subsection amended by section 6 of Act 7 of 2005]

(6) Whenever an employee has been provided with accommodation directly or indirectly by his employer, the employee shall not be required to vacate the accommodation before the expiry of a period of one month after the period of notice specified in terms of subsection (4) or (5).

(7) Notwithstanding subsection (4) or (5), the parties to any contract of employment may, by mutual agreement, waive the right to notice:

Provided that where the termination is at the initiative of the employer, the employee shall have a right to payment for a period corresponding to the appropriate period of notice required in terms of subsection (4) or (5).

[Section substituted by section 10 of Act 17 of 2002]

[Note by Law Reviser : In terms of Section 18 of the Labour Amendment Act, 2005 (Act No. 5 of 2015), "section 12 of the Labour Act [Chapter 28:01] as amended applies to every employee whose services were terminated on three months' notice on or after 17th July, 2015".]

## **12A Remuneration and deductions from remuneration'**

(1) Remuneration payable in money shall not be paid to an employee by way of promissory notes, vouchers, coupons or in any form other than legal tender.

(2) Remuneration may be payable in kind only in industries or occupations where such payment is customary, and shall be subject to the following conditions—

- (a) any such payment shall be appropriate for the personal use and benefit of the employee and the employee's family;
- (b) the value attributed to such payment shall be fair and reasonable;
- (c) equipment or clothing required to protect the health and safety of the employee shall not be computed as part of the remuneration of the employee;
- (d) no payment shall be made in the form of liquor or drugs;
- (e) remuneration in kind shall not substitute entirely for remuneration in money.

(3) Subject to any collective bargaining agreement, wages shall be paid at regular intervals on working days at or near the workplace.

(4) Remuneration shall be paid directly to the employee except as otherwise provided by law or a collective bargaining agreement.

(5) All remuneration shall be accompanied by a written statement showing—

- (a) the name of the employer and employee; and
- (b) the amount of remuneration and the period in respect of which it is paid; and
- (c) the component of the remuneration representing any bonus or allowance; and
- (d) any deductions; and
- (e) the net amount received by the employee.

(6) No deduction or set-off of any description shall be made from any remuneration except—

- (a) where an employee is absent from work on days other than industrial holidays or days of leave to which he is entitled, the proportionate amount of his remuneration only for the period of such absence;
- (b) amounts which an employer is compelled by law or legal process to pay on behalf of an employee;
- (c) where an employee has received an advance of remuneration due, the amount of such advance, up to an amount not exceeding twenty-five *per centum* of the gross remuneration owed;
- (d) by written stop-order for contributions to insurance policies, pension funds, medical aid societies, building societies, burial societies and registered trade unions;
- (e) by written consent of an employee, for repayment of money lent by the employer on terms that have been mutually agreed to between the parties concerned;
- (f) an amount recovered for payments made in error.

(7) The aggregate amount of permissible deductions that may be made from the remuneration of any employee in any pay interval shall not exceed twenty-five *per centum* of the employee's gross remuneration for that interval:

Provided that upon termination of an employee's service, an employer may deduct from the total remuneration due to the employee an amount equal to any balance which may be due to the employer in terms of paragraph (a), (c), (e) or (f).

[Section substituted by section 10 of Act 17 of 2002]

## **12B Dismissal**

(1) Every employee has the right not to be unfairly dismissed.

(2) An employee is unfairly dismissed—

- (a) if, subject to subsection (3), the employer fails to show that he dismissed the employee in terms of an employment code; or
- (b) in the absence of an employment code, the employer shall comply with the model code made in terms of section 101(9).

[Paragraph substituted by section 7 of Act 7 of 2005]

(3) An employee is deemed to have been unfairly dismissed—

- (a) if the employee terminated the contract of employment with or without notice because the employer deliberately made continued employment intolerable for the employee;
- (b) if, on termination of an employment contract of fixed duration, the employee—
  - (i) had a legitimate expectation of being re-engaged; and
  - (ii) another person was engaged instead of the employee.

(4) In any proceedings before a labour officer, designated agent or the Labour Court where the fairness of the dismissal of an employee is in issue, the adjudicating authority shall, in addition to

considering the nature or gravity of any misconduct on the part of the dismissed employee, consider whether any mitigation of the misconduct avails to an extent that would have justified action other than dismissal, including the length of the employee's service, the employee's previous disciplinary record, the nature of the employment and any special personal circumstances of the employee.

[Section substituted by section 10 of Act 17 of 2002]

## **12C Retrenchment and compensation for loss of employment on retrenchment or in terms of section 12(4a)**

(1) An employer who wishes to retrench any one or more employees shall—

- (a) give written notice of his or her intention—
  - (i) to the works council established for the undertaking; or
  - (ii) if there is no works council established for the undertaking or if a majority of the employees concerned agree to such a course, to the employment council established for the undertaking or industry; or
  - (iii) if there is no works council or employment council for the undertaking concerned, to the Retrenchment Board, and in such event any reference in this section to the performance of functions by a works council or employment council shall be construed as a reference to the Retrenchment Board or a person appointed by the Board to perform such functions on its behalf;
- and
- (b) provide the works council, employment council or the Retrenchment Board, as the case may be, with details of every employee whom the employer wishes to retrench and of the reasons for the proposed retrenchment; and
- (c) send a copy of the notice to the Retrenchment Board.

(2) Unless better terms are agreed between the employer and employees concerned or their representatives, a package (hereinafter called "the minimum retrenchment package") of not less than one month's salary or wages for every two years of service as an employee (or the equivalent lesser proportion of one month's salary or wages for a lesser period of service) shall be paid by the employer as compensation for loss of employment (whether the loss of employment is occasioned by retrenchment or by virtue of termination of employment pursuant to section 12(4a)(a), (b) or (c)), no later than date when the notice of termination of employment takes effect.

(3) Where an employer alleges financial incapacity and consequent inability to pay the minimum retrenchment package timeously or at all, the employer shall apply in writing to be exempted from paying the full minimum retrenchment package or any part of it to—

- (a) the employment council established for the undertaking or industry; or
- (b) if there is no employment council for the undertaking concerned, to the Retrenchment Board;

which shall respond to the request within fourteen days of receiving the notice (failing which response the application is deemed to have been granted).

(4) In considering its response to a request for exemption in terms of subsection (3) the employment council or Retrenchment Board—

- (a) shall, where the employer alleges complete inability to pay the minimum retrenchment package, be entitled to demand and receive such proof as it considers requisite to satisfy itself that the employer is so unable, and if so unable on the date when the notice of termination of employment takes effect, may propose to the employer a scheme to pay the minimum retrenchment package by instalments over a period of time;
- (b) shall, where the employer offers to pay the minimum retrenchment package by instalments over a period of time, consider whether the offer is a reasonable one, and may propose an alternative payment schedule;
- (c) may inquire from the employer whether he or she has considered, or may wish to consider, specifically or in general, the alternatives to termination of employment provided for in section 12D.

[Section substituted by section 5 of Act 5 of 2015]

## **12D Special measures to avoid retrenchment**

(1) Every employer shall ensure that, at the earliest possible opportunity, his employees are kept informed of and consulted in regard to any major changes in production, programmes, organisation or technology that are likely to entail the retrenchment of any employees.

[Subsection amended by section 6 of Act 5 of 2015]

(2) Subject to this section, before giving notice of the intention to retrench any employees in terms of section *twelve C*, an employer may agree with the employees concerned, or with any workers

committee or works council which represents the employees, to have recourse to either or both of the following measures for a period not exceeding twelve months—

- (a) subject to subsection (4), placing the employees on short-time work; or
- (b) instituting a system of shifts as provided in subsection (5).

(2a) If no agreement is reached in terms of subsection (2), an employer shall give written notice of his or her proposed measures to avoid retrenchment, and of the opposing proposals, if any, to—

- (a) the employment council established for the undertaking or industry; or
- (b) the Retrenchment Board, if there is no employment council for the undertaking concerned;

whereupon the employment council or the Retrenchment Board, as the case may be, may, no later than thirty days after it has received the employer's notice —

- (c) accept or reject the employer's proposed measures to avoid retrenchment; or
- (d) refer back the matter to the employer for reconsideration with the employees, workers committee or works council concerned, together with its own suggestions for improving the original proposals or reconciling them with any opposing proposals.

[Subsection inserted by section 6 of Act 5 of 2015]

(2b) If—

- (a) an employer's proposed measures to avoid retrenchment are rejected in terms of subsection (2a)(c), then, within thirty days of such rejection; or
- (b) no agreement on alternative measures to avoid retrenchment is reached with an employer's employees or with the appropriate workers committee or works council in accordance with subsection (2a)(d), then, no later than the thirtieth day after the date when the proposed measures were referred back for reconsideration;

an employer may give written notice of his or her proposed (original or revised) measures to avoid retrenchment to—

- (c) the Retrenchment Board, where written notice of his or her proposed measures to avoid retrenchment were first made in terms of subsection (2a)(a); or
- (d) the Minister, where written notice of his or her proposed measures to avoid retrenchment were first made in terms of subsection (2a)(b); or

whereupon the Retrenchment Board or the Minister, as the case may be, shall, no later than thirty days after Board or the Minister has received the employer's notice, accept or reject the employer's proposed measures to avoid retrenchment.

[Subsection inserted by section 6 of Act 5 of 2015]

(3) An agreement entered into in terms of subsection (2) shall have effect notwithstanding anything to the contrary contained in any employment regulations, collective bargaining agreement or other contract or agreement applicable to the employees concerned.

(4) While an employee is on short-time work referred to in paragraph (a) of subsection (2), he shall be paid the hourly equivalent of his weekly or monthly wage for the hours he has actually worked:

Provided that an employee shall receive not less than fifty *per centum* of his current weekly or monthly wage, as the case may be.

(5) For the purposes of paragraph (b) of subsection (2), an employer may divide all or any of the employees concerned into shifts and may—

- (a) require each shift to work on alternate half-days, days, weeks or months:

Provided that no shift shall be without work for more than one month at a time or for an aggregate of more than six months in any period of twelve months;

- (b) pay each employee on shift for the hours, weeks or months he has actually worked.

(6) Before having recourse to any measure referred to in subsection (1), an employer shall give not less than seven days' written notice to every employee affected by the measure.

(7) Any time during which an employee is not engaged in full-time work as a result of a measure resorted to in terms of this section shall be regarded as unpaid compulsory leave and shall not be deemed to interrupt continuity of employment.

(8) If an agreement is reached in terms of subsection (2) with the employees alone, or with a workers committee or works council not having a representative of a registered trade union as a member, an employer shall give written notice of the agreement to—

- (a) the employment council established for the undertaking or industry; or
- (b) the Retrenchment Board, if there is no employment council for the undertaking concerned;

no later than fourteen days after the employer begins implementing the agreement.

[Subsection inserted by section 6 of Act 5 of 2015]

(9) If the employment council or Retrenchment Board is concerned that an agreement referred to in subsection (8) is not in the best interests of the employees concerned or of employees in the industry to which the undertaking belongs, or is otherwise contrary to the interests of employees generally or the public interest, it shall refer the agreement to the Minister, and the Minister may, after—

(a) inviting and considering any written representations by the employer concerned; and

(b) consulting with the appropriate advisory council, if any, appointed in terms of section 19;

nullify the agreement by written notice to the employer (or nullify it by a specified date if the employer does not make specified changes to the agreement) ,without, however, affecting the validity of anything done in good faith under the agreement before the date of such nullification, or exposing the employer to any liability for anything done in good faith before that date in accordance with the agreement that is contrary to any employment regulations, collective bargaining agreement or other contract or agreement applicable to the employees concerned.

[Subsection inserted by section 6 of Act 5 of 2015]

[Section substituted by section 10 of Act 17 of 2002]

### **13 Wages and benefits upon termination of employment**

(1) Subject to this Act or any regulations made in terms of this Act, whether any person—

(a) is dismissed from his employment or his employment is otherwise terminated; or

(b) resigns from his employment; or

(c) is incapacitated from performing his work; or

(d) dies;

he or his estate, as the case may be, shall be entitled to the wages and benefits due to him up to the time of such dismissal, termination, resignation, incapacitation or death, as the case may be, including benefits with respect to any outstanding vacation and notice period, medical aid, social security and any pension, and the employer concerned shall pay such entitlements to such person or his estate, as the case may be, as soon as reasonably practicable after such event, and failure to do so shall constitute an unfair labour practice.

(1a) Wages and benefits payable to any person or to his or her estate in terms of this section shall not form part of or be construed as a retrenchment package which an employee is entitled to where his or her employment has been terminated as a result of retrenchment in terms of section 12C.

[Subsection inserted by section 9 of Act 7 of 2005]

(2) Any employer who without the Minister's permission withholds or unreasonably delays the payment of any wages or benefits owed in terms of subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(3) The court convicting an employer of an offence in terms of subsection (2) may order him to pay—

(a) to the employee concerned; or

(b) to any person specified by it for the benefit of the employee concerned;

in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.

(4) The court may at any time on the application of the employer, employee or specified person concerned, for good cause shown, vary an order made in terms of subsection (3).

(5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to the amount specified in an order made in terms of subsection (3) as if such amount were a fine referred to in those sections.

(6) Nothing contained in this section shall be construed as precluding a person referred to in subsection (1) or his representative or the executor of his estate, as the case may be, from claiming over and above any wages or benefits to which he or his estate is entitled in terms of subsection (1), damages for any prejudice or loss suffered in connection with such dismissal, termination, resignation, incapacitation or death, as the case may be.

### **14 Sick leave**

(1) Unless more favourable conditions have been provided for in any employment contract or in any enactment, sick leave shall be granted in terms of this section to an employee who is prevented from attending his duties because he is ill or injured or undergoes medical treatment which was not occasioned by his failure to take reasonable precautions.

(2) During any one-year period of service of an employee an employer shall, at the request of the employee supported by a certificate signed by a registered medical practitioner, grant up to ninety days' sick leave on full pay.

(3) If, during any one-year period of service of an employee, the employee has used up the maximum period of sick leave on full pay, an employer shall, at the request of the employee supported by a certificate signed by a registered medical practitioner, grant a further period of up to ninety days' sick leave on half pay where, in the opinion of the registered medical practitioner signing the certificate, it is probable that the employee will be able to resume duty after such further period of sick leave.

(4) If, during any one-year period of service, the period or aggregate periods of sick leave exceed—

(a) ninety days' sick leave on full pay; or

(b) subject to subsection (3), one hundred and eighty days' sick leave on full and half pay;

the employer may terminate the employment of the employee concerned.

(5) An employee who so wishes may be granted accrued vacation leave instead of sick leave on half pay or without pay.

[Section substituted by section 11 of Act 17 of 2002]

#### **14A Vacation leave**

(1) In this section—

“qualifying service”, in relation to vacation leave accrued by an employee, means any period of employment following the completion of the employee's first year of employment with an employer.

(2) Unless more favourable conditions have been provided for in any employment contract or in any enactment, paid vacation leave shall accrue in terms of this section to an employee at the rate of one twelfth of his qualifying service in each year of employment, subject to a maximum accrual of ninety days' paid vacation leave:

Provided that, if an employee is granted only a portion of the total vacation leave which may have accrued to him, he may be granted the remaining portion at a later date, together with any further vacation leave which may have accrued to him at that date, without forfeiting any such accrued leave.

(3) All Saturdays, Sundays and public holidays falling within a period of vacation leave shall be counted as part of vacation leave.

[Subsection amended by section 37 of Act 7 of 2005]

(4) An employee who becomes ill or is injured during a period of vacation leave may cancel his vacation leave and apply for sick leave.

(5) Where an employee has no vacation leave accrued, he may be granted vacation leave without pay.

[Section inserted by section 11 of Act 17 of 2002]

#### **14B Special leave**

Special leave on full pay not exceeding twelve days in a calendar year shall be granted by an employer to an employee—

(a) who is required to be absent from duty on the instructions of a medical practitioner because of contact with an infectious disease;

(b) who is subpoenaed to attend any court in Zimbabwe as a witness;

(c) who is required to attend as a delegate or office-bearer at any meeting of a registered trade union representing employees within the undertaking or industry in which the employee is employed;

(d) who is detained for questioning by the police;

(e) on the death of a spouse, parent, child or legal dependant;

(f) on any justifiable compassionate ground.

[Section inserted by section 11 of Act 17 of 2002]

#### **14C Weekly rest and remuneration for work during public holidays**

(1) Every employee shall be entitled to not less than twenty-four continuous hours of rest each week, either on the same day of every week or on a day agreed by the employer and employee.

(2) Subject to subsection (3), an employee shall be granted leave of absence during every public holiday, and shall be paid his current remuneration for that day if it occurs on a day on which he would otherwise have been required to work.

(3) Where an employee consents to work on a public holiday he shall be paid not less than twice his current remuneration for that day, whether or not that day is one on which he would otherwise have been required to work.

## 15 Death of employer

Except where more favourable conditions have otherwise been provided for in the employment contract concerned or in terms of any relevant enactment, including any regulations made in terms of this Act, or in any agreement or determination made or given effect to in terms of any enactment, a contract of employment between an employee and an employer who is an individual shall not be terminated on the death of the employer but shall continue to have effect until the expiration of the period after which it would have terminated had due notice of termination been given on the day on which the employer died, and during such period the employee shall be entitled to such wages and other benefits as are provided for in the employment contract from the person legally representing the deceased employer in his capacity as such.

## 16 Rights of employees on transfer of undertaking

(1) Subject to this section, whenever any undertaking in which any persons are employed is alienated or transferred in any way whatsoever, the employment of such persons shall, unless otherwise lawfully terminated, be deemed to be transferred to the transferee of the undertaking on terms and conditions which are not less favourable than those which applied immediately before the transfer, and the continuity of employment of such employees shall be deemed not to have been interrupted.

(2) Nothing in subsection (1) shall be deemed—

- (a) to prevent the employees concerned from being transferred on terms and conditions of employment which are more favourable to them than those which applied immediately before the transfer, or from obtaining terms and conditions of employment which are more favourable than those which applied immediately before, or subsequent to, the transfer;
- (b) to prevent the employees concerned from agreeing to terms and conditions of employment which are in themselves otherwise legal and which shall be applicable on and after the transfer, but which are less favourable than those which applied to them immediately before the transfer:

Provided that no rights to social security, pensions, gratuities or other retirement benefits may be diminished by any such agreement without the prior written authority of the Minister;

- (c) to affect the rights of the employees concerned which they could have enforced against the person who employed them immediately before the transfer, and such rights may be enforced against either the employer or the person to whom the undertaking has been transferred or against both such persons at any time prior to, on or after the transfer;
- (d) to derogate from or prejudice the benefits or rights conferred upon employees under the law relating to insolvency.

(3) It shall be an unfair labour practice to violate or evade or to attempt to violate or evade in any way the provisions of this section.

## 17 Regulatory powers of Minister

(1) Subject to this Act, the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section *nineteen*, may make regulations providing for the development, improvement, protection, regulation and control of employment and conditions of employment.

[Subsection amended by section 12 of Act 17 of 2002]

(2) Where the Minister has made regulations in terms of subsection (1), every contract, agreement, arrangement of any kind whatsoever, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such regulations relate and which provides terms or conditions less favourable to the employee than those specified in the regulations, shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such regulations.

[Subsection substituted by section 12 of Act 17 of 2002]

(3) Without prejudice to the generality of subsection (1), the Minister may make regulations in terms of that subsection providing for—

- (a) the rights of employees, including minimum wages, benefits, social security, retirement and superannuation benefits, and other conditions of employment;
- (b) the deductions which may be made from the wages of employees;
- (c) the hours of work of employees, including overtime, night and shift work and the remuneration therefor;
- (d) rest and meal breaks, the provision of food and other services at work in special cases and the charges that may be made from wages therefor;

- (e) leave, including sick leave, maternity leave and bereavement leave, that shall be granted to employees and the remuneration and allowances that shall be payable in respect thereof;
- (f) the holidays that shall be granted to, or that may be withheld from, employees, and the remuneration and allowances that shall be payable in respect thereof;
- (g) the establishment of pension, social security, sick, medical, holiday, provident, insurance and other funds for employees, and the levying of contributions thereto by employers and employees;
- (h) the special conditions that shall be applicable to female, juvenile and disabled employees, including the prohibition of the employment of persons below the age of sixteen years;
- (i) the restriction on the employment of juveniles and pregnant women in specified types and categories of employment or at specified hours, and the rights and privileges of mothers with suckling infants;
- (j) the regulation and control of employment on contract, overtime, part-time, short-time or casual basis, including the conditions relating to any such employment;
- (k) the encouragement of employment of disabled persons and the remuneration and allowances payable to, and the facilities which should be provided for, such persons;
- (l) the settling of disputes in a category or class of employment by reference to specified officials or tribunals;
- (m) the protection of the rights of employees in respect of wages, pensions, benefits and holidays where the employer terminates or transfers his undertaking;
- (n) the implementation of any national or international standards of employment, including those related to the rights and obligations of employers and employees as to safety, health and compensation for occupational disablement;
- (o) the recruitment and employment of unskilled, semi-skilled and skilled labour and apprentices in any occupation, including the regulation and control of the recruitment of citizens, non-citizens and residents for any type of employment within and outside Zimbabwe:

Provided that no regulations shall be made in terms of this paragraph without prior consultation with the Minister responsible for apprenticeship training;

- (p) the employment of unemployed persons and persons released from penal institutions;
- (q) regulating and restricting the circumstances in which employers may suspend or terminate the employment of any of their employees;
- (r) specifying or otherwise restricting the circumstances in which contracts of employment may be terminated summarily or otherwise;
- (s) the reinstatement of employees where they have been retrenched, whether voluntarily or otherwise in circumstances which are to their disadvantage, or which are contrary to the national interest;
- (t) the regulation and control of persons recruiting labour or operating employment agencies, including the registration of such persons or employment agencies;
- (u) any other matter relating to or connected with employment which it may be necessary to regulate.

(4) Regulations made in terms of subsection (1) may provide for penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(5) Unless in the opinion of the Minister the urgency of the situation demands otherwise, the Minister shall, before making regulations in terms of this section, cause to be published in the *Gazette* a notice setting forth the general purport of the proposed regulations and stating that the regulations shall be open for inspection at a place specified in the notice, and calling upon persons who have any objections to the proposed regulations to lodge them in writing with the Minister within thirty days of the date of publication of such notice:

Provided that failure by the Minister to comply with this subsection shall not affect the validity of the regulations concerned.

## **18 Maternity leave**

(1) Unless more favourable conditions have otherwise been provided for in any employment contract or in any enactment, maternity leave shall be granted in terms of this section for a period of ninety-eight days on full pay to a female employee who has served for at least one year.

[Subsection amended by section 10 of Act 7 of 2005]

(2) On production of a certificate signed by a registered medical practitioner or State Registered Nurse certifying that she is pregnant, a female employee may proceed on maternity leave not earlier than the forty-fifth day and not later than the twenty-first day prior to the expected date of delivery.

(3) A female employee shall be entitled to be granted a maximum of three periods of maternity leave with respect to her total service to any one employer during which she shall be paid her full salary:

Provided that paid maternity leave shall be granted only once during any period of twenty-four months calculated from the day any previous maternity leave was granted.

(4) .....

[Subsection repealed by section 10 of Act 7 of 2005]

(5) Any maternity leave requested in excess of the limits prescribed in this section may be granted as unpaid maternity leave.

(6) Unless the employer grants sick leave for medical reasons other than maternity, sick leave may not be granted once paid maternity leave has begun or during a period of unpaid maternity leave.

(7) During the period when a female employee is on maternity leave in accordance with this section, her normal benefits and entitlements, including her rights to seniority or advancement and the accumulation of pension rights, shall continue uninterrupted in the manner in which they would have continued had she not gone on such leave, and her period of service shall not be considered as having been interrupted, reduced or broken by the exercise of her right to maternity leave in terms of this section.

(8) A female employee who is the mother of a suckling child shall, during each working day, be granted at her request at least one hour or two half-hour periods, as she may choose during normal working hours, for the purpose of nursing her child, and such employee may combine the portion or portions of time to which she is so entitled with any other normal breaks so as to constitute longer periods that she may find necessary or convenient for the purpose of nursing her child.

(9) Any person who contravenes this section shall be guilty of an unfair labour practice.

(10) Notwithstanding subsections (8) and (9), the grant of breaks during normal working time to a female employee for the purpose of nursing her child shall be made in accordance with all the exigencies of her employment and nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (8).

(11) A female employee shall be entitled to the benefits under subsection (8) for the period during which she actually nurses her child or six months, whichever is the lesser.

[Section substituted by section 13 of Act 17 of 2002]

## PART V

### ADVISORY COUNCILS AND WAGE AND SALARY CONTROL

[Heading amended by section 37 of act 7 of 2005]

#### 19 Advisory councils

The Minister may, either on his or her own initiative or on the recommendation of any employer or employee of any association representing employers or employees, appoint advisory councils consisting of such persons as the Minister may deem fit, to investigate and make recommendations to him or her as to one or more of the following—

- (a) in connection with wages, salaries or benefits—
  - (i) the fixing of minimum wages and benefits for employees; or
  - (ii) any other matters to which minimum wage notices may relate;
- (b) the making or regulations in terms of section 17 or section 26;
- (c) the compilation of a list of arbitrators in terms of section 98(6);
- (d) the declaration of any service as an essential service in terms of the definition of "essential service" contained in section 102;
- (e) the code of picketing in terms of section 104A;
- (f) any other matter as may give better effect to the provisions of this Act.

[Section substituted by section 11 of Act 7 of 2005]

#### 20 Minimum wage notices

(1) The Minister may, by statutory instrument—

- (a) in respect of any class of employees in any undertaking or industry—
  - (i) specify the minimum wage and benefits in respect of such class of employees;
  - (ii) require employers to grant or negotiate increments on annual income of such minimum amount or percentage as he may specify;

and prohibit the payment of less than such specified minimum wage, benefits or increments to such class of employees;

- (b) regulate or prohibit the making of deductions from the wages and benefits of an employee to whom such notice relates;
- (c) regulate or prohibit the withdrawal, reduction or alteration of any benefits to which an employee to whom such notice relates was entitled in respect of his employment immediately before the date of commencement of such notice;
- (d) give such other direction or make such other provision as he may deem necessary or desirable to ensure the payment of a minimum or other specified wage or benefits to any class of employees;
- (e) provide for exemptions from paragraphs (a), (b), (c) and (d).

(2) Where the Minister has issued a minimum wage notice in terms of subsection (1)—

- (a) every contract, agreement, determination or regulation made in terms of any enactment which related to the employment of an employee to whom such minimum wage notice relates and which provides for wages, benefits or deductions from wages which are less favourable to the employee than those specified in the notice, shall be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such notice;
- (b) every agreement or arrangement of any kind whatsoever, express or implied, whether made before or after the date of commencement of such minimum wage notice by an employer or employee to whom such notice relates, which conflicts with such notice shall, to the extent of such conflict, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with such notice.

(3) Any person who contravenes a notice issued in terms of subsection (1) shall—

- (a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and
- (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(4) The court convicting an employer of an offence in terms of paragraph (b) of subsection (3) may order him to pay—

- (a) to the employee concerned; or
- (b) to any person specified by it for the benefit of the employee concerned;

in addition to any other penalty which it may impose, an amount which, in its opinion, will adequately compensate the employee concerned for any prejudice or loss he has suffered as a result of the contravention concerned, within such period and in such instalments as may be fixed by such court.

(5) Sections 348 and 349 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] shall apply, *mutatis mutandis*, in relation to the amount specified in an order made in terms of subsection (4) as if such amount were a fine referred to in those sections.

(6) Nothing contained in this section shall be construed as precluding an employee, notwithstanding an order made in terms of subsection (4), from recovering by civil proceedings any amount or additional amount by which he has been prejudiced as a result of any contravention of a minimum wage notice.

## **21 Prohibition of termination of services of employee**

(1) No employer shall, otherwise than in terms of an exemption granted to him in terms of subsection (2), terminate the services of an employee solely on the ground of a requirement to pay him a minimum wage in terms of a minimum wage notice.

(2) Where the Minister considers that special circumstances exist, he may, by notice in writing, and on such terms and conditions as he may specify, grant an employer exemption from subsection (1).

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **22 .....**

[Section repealed by section 12 of Act 7 of 2005]

## PART VI

### WORKERS COMMITTEES: FORMATION AND FUNCTIONS

#### 23 Formation of workers committees

(1) Subject to this Act and any regulations, employees employed by any one employer may appoint or elect a workers committee to represent their interests:

Provided that no managerial employee shall be appointed or elected to a workers committee, nor shall a workers committee represent the interests of managerial employees, unless such workers committee is composed solely of managerial employees appointed or elected to represent their interests.

(1a) Subject to subsection (1b), the composition and procedure of a workers committee shall be as determined by the employees at the workplace concerned.

[Subsection inserted by section 14 of Act 17 of 2002]

(1b) Notwithstanding subsection (1a), if a trade union is registered to represent the interests of not less than fifty *per centum* of the employees at the workplace where a workers committee is to be established, every member of the workers committee shall be a member of the trade union concerned.

[Subsection inserted by section 14 of Act 17 of 2002]

(2) For the purposes of appointing or electing a workers committee, employees shall be entitled to—

- (a) be assisted by a labour officer or a representative of the appropriate trade union; and
- (b) reasonable facilities to communicate with each other and meet together during working hours at their place of work; and
- (c) be provided by their employer with the names and relevant particulars of all employees employed by him;

so however, that the ordinary conduct of the employer's business is not unduly interfered with.

[Subsection amended by section 13 of Act 7 of 2005]

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2), either party to the dispute may refer it to the labour officer mentioned in paragraph (a) of that subsection, or, in the absence of such labour officer, any other labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection substituted by section 13 of Act 7 of 2005]

#### 24 Functions of workers committees

(1) A workers committee shall—

- (a) subject to this Act, represent the employees concerned in any matter affecting their rights and interests; and
- (b) subject to subsection (3), be entitled to negotiate with the employer concerned a collective bargaining agreement relating to the terms and conditions of employment of the employees concerned; and
- (c) subject to Part XIII, be entitled to recommend collective job action to the employees concerned; and
- (d) where a works council is or is to be constituted at any workplace, elect some of its members to represent employees on the works council.

(2) Subject to subsection (3), where a workers committee has been appointed or elected to represent employees, no person other than such workers committee and the appropriate trade union, if any, may—

- (a) act or purport to act for the employees in negotiating any collective bargaining agreement; or
- (b) direct or recommend collective job action to the employees.

(3) Where an appropriate trade union exists for any employees, a workers committee of those employees may negotiate a collective bargaining agreement with an employer—

- (a) in the case where the trade union has no collective bargaining agreement with the employer concerned, only to the extent that such negotiation is authorized in writing by the trade union concerned; or
- (b) in the case where there is a collective bargaining agreement, only to the extent permitted by such collective bargaining agreement; or
- (c) where the Minister certifies in writing that—
  - (i) the issue in question was omitted from or included in the principal collective bargaining agreement when it should not have been so omitted or included; and

- (ii) the parties to the principal collective bargaining agreement have failed or are not in a position to reach an agreement on such an issue.

## **25 Effect of collective bargaining agreements negotiated by workers committees**

(1) Every collective bargaining agreement which has been negotiated by a workers committee shall be referred by the workers committee to the employees and the trade union concerned, and, if approved by the trade union and by more than fifty *per centum* of the employees, shall become binding on the employer and the employees concerned:

Provided that where there is any conflict between the terms and conditions of any such collective bargaining agreement and collective bargaining agreement negotiated by an appropriate trade union, the latter shall prevail unless the terms and conditions of the former collective bargaining agreement are more favourable to the employees concerned, in which case such last-mentioned terms and conditions shall prevail.

(2) Where a collective bargaining agreement which has been negotiated by a workers committee contains any provision which is, or has become—

- (a) inconsistent with this Act or any other enactment; or  
(b) .....

[Paragraph repealed by section 14 of Act 7 of 2005]

(c) unreasonable or unfair, having regard to the respective rights of the parties; the Minister may direct the parties to the agreement to negotiate, within such period as he may specify, an amendment to the agreement in such manner or to such extent as he may specify, and he may give such other directions relating to the operation of the agreement pending its amendment as he may deem fit, and such directions shall be binding on the parties.

(3) Where the Minister has made a direction in terms of subsection (2), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate an amendment to the agreement in good faith, and to report back to the Minister within the period specified in the direction the extent to which they have been able or unable to agree in amending the agreement.

(4) The Minister may, after considering any report submitted to him in terms of subsection (3), amend the collective bargaining agreement concerned in accordance with the report of the parties or in such other manner as he may deem necessary in the national interest, having regard to the considerations specified in paragraphs (a), (b) and (c) of subsection (2), and the agreement, as amended, shall, subject to this Act, be binding on the employer and the employees concerned.

(5) A collective bargaining agreement negotiated in terms of this section shall not be affected by—

- (a) where the employer is a corporate body, a change in membership of the management or ownership of the employer; or  
(b) a change in membership of the workers committee or the employees concerned; or  
(c) a transfer of the undertaking or industry in which the employees concerned are employed.

(6) Any person who is aggrieved by any determination or direction in terms of subsection (2) or any amendment of a collective bargaining agreement in terms of subsection (4) may appeal to the Labour Court.

[Subsection inserted by section 14 of Act 7 of 2005]

## **25A Composition, procedure and functions of works councils**

(1) In every establishment in which a workers committee representing employees other than managerial employees has been elected, there shall be a works council.

(2) A works council shall be composed of an equal number of members representing the employer and the workers committee.

(3) The procedure of a works council shall be as determined by the employer and the workers committee at the establishment concerned.

(4) Without prejudice to the provisions of any collective bargaining agreement that may be applicable to the establishment concerned, the functions of a works council shall be—

- (a) to focus the best interests of the establishment and employees on the best possible use of its human, capital, equipment and other resources, so that maximum productivity and optimum employment standards may be maintained; and  
(b) to foster, encourage and maintain good relations between the employer and employees at all levels, and to understand and seek solutions to their common problems; and  
(c) to promote the general and common interest, including the health, safety and welfare of both the establishment and its workers; and

(d) in general, to promote and maintain the effective participation of employees in the establishment, and to secure the mutual co-operation and trust of employees, the employer and any registered trade union representing employees in the establishment, in the interests of industrial harmony.

(5) Without prejudice to the provisions of any collective bargaining agreement that may be applicable to the establishment concerned, a works council shall be entitled to be consulted by the employer about proposals relating to any of the following matters—

- (a) the restructuring of the workplace caused by the introduction of new technology and work methods;
- (b) product development plans, job grading and training and education schemes affecting employees;
- (c) partial or total plant closures and mergers and transfers of ownership;
- (d) the implementation of an employment code of conduct;
- (e) the criteria for merit increases or payment of discretionary bonuses;
- (f) the retrenchment of employees, whether voluntary or compulsory:

Provided that any matter involving the retrenchment of five or more employees within a period of six months shall be governed by sections *twelve C* and *twelve D*, unless otherwise agreed by the employer with the members of the works council representing the workers committee.

(6) Before an employer may implement a proposal relating to any matter referred to in subsection (5), the employer shall—

- (a) afford the members of the works council representing the workers committee a reasonable opportunity to make representations and to advance alternative proposals;
- (b) consider and respond to the representations and alternative proposals, if any, made under paragraph (a) and, if the employer does not agree with them, state the reasons for disagreeing;
- (c) generally, attempt to reach consensus with the members of the works council representing the workers committee on any matter referred to in subsection (5).

[Section inserted by section 15 of Act 17 of 2002]

## **26 Minister may make regulations relating to workers committees**

(1) The Minister may, after consultation with the appropriate advisory council, if any, appointed in terms of section *nineteen*, make such regulations as he considers necessary for the control of workers committees and works councils and, without derogation from the generality of his power in this regard, such regulations may provide for—

- (a) the methods or procedures to be followed for the formation of workers committees;
- (b) the tenure of office of members of workers committees;
- (c) the operation, management and conduct of the affairs of workers committees and works councils;

[Subsection amended by section 45 of Act 17 of 2002]

(2) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed the penalties referred to in section *one hundred and twenty-eight*.

## **PART VII**

TRADE UNIONS, EMPLOYERS ORGANIZATIONS AND FEDERATIONS OF TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

### **27 Right to form trade unions or employers organizations**

- (1) Subject to this Act, any group of employees may form a trade union.
- (2) Subject to this Act, any group of employers may form an employers organization.
- (3) Subject to this Act, any group of trade unions or employers organizations may form a federation.

### **28 Requirements for formation of trade unions and employers organizations**

- (1) Every trade union, employers organization or federation shall—
    - (a) subject to subsection (2), before it raises funds from any source; and
    - (b) within six months of its formation;
- adopt a written constitution which shall provide for—
- (i) the qualifications for membership, including membership fees, if any; and
  - (ii) the right of any person to membership if he is prepared to abide by the rules and conditions of membership; and

- (iii) the number of officials and office bearers, their powers and functions and their appointment or election; and
- (iv) the holding of annual general meetings; and
- (v) the submission by any official or office bearer to re-appointment or re-election if a petition therefor is made—
  - A. within one year of his appointment or election, as the case may be, by not less than three quarters; or
  - B. later than one year of his appointment or election, as the case may be, by not less than one quarter;
 of the members of the trade union, employers organization or federation; and
- (vi) the call and conduct of meetings of members or representatives of members of the trade union, employers organization or federation; and
- (vii) the prohibition of discrimination against any members or class of members on grounds of race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or, subject to the Disabled Persons Act [Chapter 17:01], any disability referred to in the definition of "disabled person" in that Act; and

[Subparagraph amended by section 45 of Act 17 of 2002]

- (viii) the amendment of the constitution; and
- (ix) the winding up of the trade union, employers organization, or federation;

and failure to so provide in the constitution shall constitute an unfair labour practice by the trade union, employers organization, or federation concerned.

(2) A trade union, employers organization or federation may, notwithstanding subsection (1) and before it has adopted a written constitution in terms of that subsection, raise funds in respect of membership fees to an amount not exceeding such amount as may be specified by the Minister by statutory instrument for the purposes of this subsection.

(3) Every trade union, employers organization or federation shall, within six months of its formation, submit two copies of its constitution to the Minister, and shall within one month of any amendment of its constitution submit copies of such amendment with a statement of the purpose thereof to the persons and authorities mentioned in this subsection.

(4) It shall be the duty of every official or office bearer of a trade union, employers organization or federation to ensure compliance with this section.

## **29 Registration of trade unions and employers organizations and privileges thereof**

(1) Subject to this Act, any trade union, employers organization or federation may, if it so desires, apply for registration.

(2) Every trade union, employers organization or federation shall, upon registration, become a body corporate and shall in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act or thing which its constitution requires or permits it to do, or which a body corporate may, by law, do.

(3) .....

[Subsection repealed by section 16 of Act 17 of 2002]

(4) Subject to this Act, a registered trade union or federation of such unions shall be entitled—

- (a) to be assisted by a labour officer or designated agent of the appropriate employment council in its dealings with employers; and

[Paragraph amended by section 15 of Act 7 of 2005]

- (b) through its duly authorized representatives, to the right of access to employees conferred by subsection (2) of section *seven*; and
- (c) to be provided by employers with the names and other relevant particulars, including particulars as to wages of all employees who are employed in the industry or undertaking for which the trade union or federation is registered, and who are members of the trade union or federation concerned; and
- (d) to make representations to a determining authority or the Labour Court; and
- (e) .....

[Paragraph repealed by section 15 of Act 7 of 2005]

- (f) to form or be represented on any employment council; and
- (g) to recommend collective job action; and
- (h) to levy, collect, sue for and recover union dues; and
- (i) to act as an agent union in terms of section *thirty-one*; and

(j) to exercise any other right or privilege conferred by this Act on registered trade unions or federations thereof.

(4a) In addition to the privileges specified in subsection (4), an official or office-bearer of a registered trade union or federation shall be entitled to take such reasonable paid or unpaid leave during working hours as may be agreed under a collective bargaining agreement for the purpose of enabling the official or office-bearer to perform the functions of his office:

Provided that if the parties negotiating a collective bargaining agreement fail to agree on the extent of paid or unpaid leave for the purposes of this subsection, either or both of the parties to the dispute may refer the matter to a labour officer who shall thereupon deal with it in terms of section 93.

[Subsection inserted by section 16 of Act 17 of 2002 and proviso substituted by section 15 of Act 7 of 2005]

(5) Subject to this Act, a registered employers organization shall be entitled—

(a) to be assisted by a labour officer or a designated agent of the appropriate employment council in its dealings with trade unions or workers committees; and

[Paragraph amended by section 15 of Act 7 of 2005]

(b) through its duly authorized representatives, to be provided by trade unions and workers committees with the names and other relevant particulars of all their members; and

(c) to make representations to a determining authority or the Labour Court; and

(d) ....

[Paragraph repealed by section 15 of Act 7 of 2005]

(e) to form or be represented on any employment council; and

(f) to exercise any other right or privilege conferred by this Act on registered employers organizations.

### **30 Unregistered trade unions and employers organizations**

(1) No unregistered trade union or employers organization may in its corporate name—

(a) make representations to the Labour Court; or

(b) be assisted by a labour officer or a designated agent of any employment council.

[Paragraph amended by section 16 of Act 7 of 2005]

(2) No unregistered trade union or employers organization may, whether in its corporate name or through any of its members—

(a) .....

[Paragraph repealed by section 16 of Act 7 of 2005]

(b) form or be represented on any employment council; or

(c) be entitled to be provided with the particulars specified in paragraph (c) of subsection (4) or paragraph (b) of subsection (5) of section *twenty-nine*.

(3) No unregistered trade union may, whether in its corporate name or otherwise—

(a) recommend collective job action; or

(b) have the right of access to employees conferred by subsection (2) of section *seven*; or

(c) levy, collect or recover union dues by means of a check-off scheme.

[Paragraph substituted by section 16 of Act 7 of 2005]

### **31 When trade union may act as agent union**

(1) Subject to subsection (2), a registered trade union may act as the agent union of employees in any undertaking or industry who are not otherwise represented by a registered trade union if—

(a) not less than fifty *per centum* of the employees concerned are in favour of such trade union representing them; or

(b) an unregistered trade union or a registered trade union which otherwise represents the employees concerned requests the registered trade union to act as its agent union; or

(c) the Minister so requests.

(2) Except where the Minister has requested a registered trade union to act as an agent union or has consented to such a request in terms of paragraph (c) of subsection (1), a registered trade union that desires so to act shall apply to the Minister in writing, together with the prescribed fee, setting out the circumstances giving rise to the application.

[Subsection amended by section 7 of Act 5 of 2015]

(3) On receipt of an application in terms of subsection (2), the Minister may, after taking into account—

(a) the extent to which the registered trade union appreciates the interests and needs of the employees concerned; and

(b) the views of any employers or employees who may be affected; and

(c) any levies or dues the registered trade union proposes to levy from the employees concerned; and

(d) the ability of the registered trade union to act as an agent union;  
grant or refuse the application.

(4) No registered trade union shall act as an agent union—

(a) for a period of more than three years unless, before the expiry of three years after commencing so to act, the Minister extends such period; or

(b) after a trade union representing the employees concerned has been registered or has re-acquired its competency to represent the employees concerned.

(5) A registered federation of trade unions may act, *mutatis mutandis*, as an agent union with respect to the members of one of its component unions or undertakings.

(6) The Minister may on his own initiative or on the application of any interested party, at any time, revoke the authority of a registered trade union or federation of trade unions to act as an agent union.

### **32 Agent union to disclose other agencies**

A registered trade union or federation of trade unions which is acting as an agent union for any employees may, in terms of section *thirty-one*, become the agent union for any other employees if it discloses to such other employees its prior agency.

### **33 Application for registration**

(1) Every application for registration by a trade union or employers organization or federation shall, subject to section *thirty-four*, be made to the Registrar in the prescribed form together with the prescribed fee.

[Subsection amended by section 8 of Act 5 of 2015]

(2) The Registrar shall cause notice to be published in the *Gazette* of every application made in terms of this section, and in such notice shall invite any person who wishes to make any representations relating to the application to lodge such representations with the Registrar within such period, not being less than thirty days from the date of the notice, as may be specified in the notice, and to state whether or not he wishes to appear in support of his representations at accreditation proceedings.

(3) Where a document is lost by a trade union, employer's organisation or federation, any person may make an application of the replacement of such document to the Registrar on payment of a prescribed fee.

[Subsection inserted by section 8 of Act 5 of 2015]

### **34 Requirements of application for registration**

An application for registration of a trade union or employers organization or federation shall contain the following information—

(a) the name of the trade union or employers organization or federation; and

(b) the names and relevant particulars of the persons intending to secure the registration; and

(c) the coverage of the proposed trade union or employers organization or federation with regard to the undertakings or industries concerned, with such exclusions as may be intended; and

(d) the affiliates to and the affiliations of the trade union or employers organization or federation, including international, national or local unions, organizations or workers communities; and

(e) sources of funds and material, both current and anticipated, for organizing the trade union or employers organization or federation, and the address of its bank;

and shall be accompanied by a copy of its constitution or operational rules.

### **35 Requirements of constitution of registered trade unions or employers organizations**

The constitution of every registered trade union or employers organization or federation shall, in addition to the matters referred to in section *twenty-eight*, provide for—

(a) consultation between the various governing bodies or branches of the trade union or employers organization and members thereof before such trade union or employers organization or federation—

(i) enters upon a collective bargaining agreement; or

(ii) recommends collective job action; or

(iii) embarks upon any new programme which is likely to substantially affect the rights and interests of its members; or

(iv) increases fees and other dues payable by its members; or

- (v) assigns an official to represent its members in a particular matter that is of considerable significance to its members;
- and
- (b) the keeping of books of accounts and the submission of such books of accounts for auditing within three months of the end of each financial year, and the making available to members of certified true copies of the audited accounts and the auditor's report thereon; and
  - (c) the prohibition of the use of union or association dues of the trade union or employers organization or federation for electioneering for the trade union or employers organization or federation or for political purposes; and
  - (d) .....
- [Paragraph repealed by section 18 of Act 17 of 2002]
- (e) the equitable sharing of the funds of the trade union or employers organization with any of its branches; and
  - (f) the maintenance of a register of members and a record of the fees, if any, paid by each member and the periods to which those fees relate; and
  - (g) the giving to any person who is refused membership or who is expelled of written reasons for such refusal or expulsion; and
  - (h) such other matters as may be prescribed.

[Section amended by section 18 of Act 7 of 2005]

### **36 Registration of trade unions, employers organizations and federations**

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (2) of section *thirty-three* and after the holding of accreditation proceedings, if any, grant or refuse an application for the registration of a trade union or employers organization or federation.

(2) When granting any application for registration in terms of subsection (1), the Registrar may, after consultation with the applicant, increase or reduce the interests or area in respect of which the applicant applied for registration.

(3) Where the Registrar grants an application for registration of a trade union or employers organization, he shall enter in his register—

- (a) the name of the trade union or employers organization; and
- (b) every undertaking or industry in respect of which the trade union or employers organization is registered; and
- (c) such other particulars as may be prescribed;

and shall issue the trade union or employers organization with a certificate of registration in the prescribed form.

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made by him in terms of this section.

### **37 .....**

[Section repealed by section 19 of Act 17 of 2002]

### **38 .....**

[Section repealed by section 19 of Act 17 of 2002]

### **39 Application or proposal to vary, suspend or rescind registration**

(1) Any interested person, including the trade union or employers organization concerned, may apply to the Registrar together with the prescribed fee, for the variation, suspension or rescission of the registration of a trade union or employers organization.

[Subsection amended by section 9 of Act 5 of 2015]

(2) If a registered trade union or employers organization—

- (a) no longer adequately represents the interests or area for which it was registered; or
- (b) has failed to perform any of its functions in terms of this Act;

the Minister may, after consultation with the trade union or employers organization concerned, direct the Registrar to hold accreditation proceedings to determine whether or not the registration of the trade union or employers organization concerned should be varied, suspended or rescinded.

(3) On receipt of an application in terms of subsection (1) or a direction in terms of subsection (2), the Registrar shall publish notice in the *Gazette* of the application or direction and shall, in such notice, invite any person who wishes to make any representations relating to such application or direction to lodge with him such representations within thirty days of the date of publication of the notice, and to state whether or not he wishes to appear in support of such representations at accreditation proceedings.

#### **40 Variation, suspension or rescission of registration**

(1) Subject to this Act, the Registrar may, after considering any representations lodged in terms of subsection (3) of section *thirty-nine* and after the holding of accreditation proceedings, if any, vary, suspend or rescind the registration of a trade union or employers organization.

[Subsection amended by section 17 of Act 7 of 2005]

(2) The rescission of the certification of a trade union or employers organization shall have the effect of rescinding the registration of that trade union or employers organization, unless the Registrar otherwise directs.

(3) The suspension of the registration of a trade union or employers organization shall have the effect of suspending that trade union or employers organization, as the case may be, from performing all or any of the functions of a registered trade union or employers organization, as may be specified in the order of suspension.

[Subsection amended by section 17 of Act 7 of 2005]

(4) The Registrar shall, on request, supply any interested person with his reasons for any decision made in terms of this section.

(5) Any person who is aggrieved by any determination or decision made by the Registrar in terms of this section may appeal to the Labour Court.

[Subsection inserted by section 17 of Act 7 of 2005]

#### **41 Accreditation proceedings**

Accreditation proceedings shall be held for the purposes of determining whether or not—

(a) a trade union or employers organization should be registered;

(b) .....

[Paragraph repealed by section 20 of Act 7 of 2005]

(c) the registration of a trade union or employers organization should be varied, suspended or rescinded;

in any case where—

(i) the Registrar considers that such proceedings should be held; or

(ii) the Minister directs that such proceedings should be held; or

(iii) any interested person has requested such proceedings, whether in relation to a trade union or employers organization which has already been registered or in relation to a trade union or employers organization which is proposed to be registered:

Provided that the Registrar may, in any case referred to in this subparagraph decline to hold accreditation proceedings.

[Paragraph amended by section 20 of Act 7 of 2005]

#### **42 Notice of accreditation proceedings**

(1) Whenever accreditation proceedings are proposed to be held, the Registrar shall give not less than thirty days' notice thereof—

(a) in writing to the parties concerned; and

(b) by publication of a notice in the *Gazette* and in such other publication as he thinks appropriate.

(2) A notice given in terms of subsection (1) shall specify—

(a) the subject of the accreditation proceedings; and

(b) the time and place of the accreditation proceedings;

and shall call upon all interested parties, who wish to do so, to submit any representations they wish to make to the Registrar and to advise him whether or not they will be attending the proceedings.

(3) Where the Registrar has received any representations relating to any matter to be considered at accreditation proceedings, he shall submit or make available a copy thereof to other interested parties as soon as practicable.

#### **43 Procedure at accreditation proceedings**

At the hearing of any accreditation proceedings—

(a) the parties—

(i) may appear in person or by any duly authorized representative;

(ii) shall be given a reasonable opportunity of presenting their case;

(b) the Registrar shall preside and shall, subject to any procedure that may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties and to carry out the objects of this Act.

#### **44 Notification of decision made at accreditation proceedings**

Upon the completion of any accreditation proceedings, the Registrar shall notify all interested party who appeared at the proceedings of his decision in writing and his reasons therefor.

#### **45 Considerations relating to registration or variation, suspension or rescission of registration of trade unions or employers organizations**

(1) In any determination of the registration of a trade union or employers organization or of the variation, suspension or rescission thereof, the Registrar shall—

(a) take into account—

(i) representations by—

- A. employers and employees who might be affected; and
- B. the Minister; and
- C. any member of the public or any section thereof likely to be affected;

and

[Subparagraph amended by section 18 of Act 7 of 2005]

(iii) the desirability of affording the majority of the employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests; and

(iv) the desirability of reducing, to the least possible number, the number of entities with which employees and employers have to negotiate; and

(vi) whether representations made in terms of subsection (3) of section *thirty-nine* or at any accreditation proceedings in terms of section *forty-one* indicate that the trade union or employers organization will not be substantially representative of the employees or employers it proposes to represent;

and

(b) ensure compliance with the following requirements—

(i) a trade union shall not represent employers;

(ii) an employers organization shall not represent employees other than managerial employees;

(iii) the constitution of a trade union or employers organization shall not be inconsistent with this Act.

[Subsection amended by section 21 of Act 17 of 2002]

(2) Where any person asserts that there should, in any particular case, be any departure from the general rule referred to in subparagraph (iv) of paragraph (a) of subsection (1), the burden of proving such assertion shall lie on such person.

[Subsection amended by section 21 of Act 17 of 2002]

#### **46 Matters to be determined by Labour Court**

In the event of any dispute as to—

(a) the extent or description of any undertaking or industry; or

(b) whether any employees are managerial employees;

the matter shall be referred to the Labour Court for determination.

#### **47 Right of appeal**

Any person who is aggrieved by a decision of the Registrar—

(a) to register a trade union or employers organization; or

(b) not to register a trade union or employers organization; or

(c) to vary, suspend or rescind the registration of a trade union or employers organization or to decline such variation, suspension or rescission; or

(d) ....

[Paragraph repealed by section 21 of Act 17 of 2002]

(e) to decline to hold accreditation proceedings;

may, subject to this Part, appeal to the Labour Court.

[Section amended by section 22 of Act 17 of 2002]

#### **48 Notice of appeal**

(1) A person who intends to appeal in terms of section *forty-seven* shall, within thirty days of the date on which he was notified of the decision against which he intends to appeal, in such form and manner as may be prescribed, give notice of appeal and of the grounds on which the appeal is based to the Registrar, and to every person who appeared at the accreditation proceedings, if any, concerned.

(2) A notice of appeal in terms of subsection (1) shall not suspend the operation or effect of the decision appealed against.

[Subsection substituted by section 19 of Act 7 of 2005]

(3) The Registrar may, on the application of any person, by notice in writing impose such reasonable restrictions as he considers necessary on the activity of any trade union or employers

organization concerned in an appeal referred to in subsection (1) in order to protect the reasonable interests of the public and of persons concerned in the appeal.

(4) Any person upon whom restrictions have been imposed in terms of subsection (3) may, with due notice to the other persons concerned, make representations to the Registrar in respect thereof and the Registrar may, if he thinks fit, vary or revoke such restrictions.

(5) Any person upon whom restrictions have been imposed in terms of subsection (3) shall, if he fails to comply therewith, be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

#### **49 Appeals before Labour Court**

(1) On an appeal before the Labour Court in terms of section *forty-seven*—

(a) the parties thereto shall be given a reasonable opportunity of presenting their case:

Provided that the Labour Court may direct in any particular case that the parties shall be confined to submitting their representations in writing and, in such case, each party shall be given a reasonable opportunity of replying to the representations of the other party;

(b) the Labour Court shall, subject to such procedures as may be prescribed, act in such manner and on such principles as he deems best fitted to do substantial justice to the parties, and to carry out the objects of this Act.

(2) On an appeal in terms of section *forty-seven*, the Labour Court may, subject to this Part, confirm, vary or set aside the decision of the Registrar appealed against, and may make such other order, whether as to costs or otherwise, as he thinks necessary or appropriate.

#### **50 Right of membership of registered trade unions and employers organizations**

(1) Every employee shall be entitled to membership of any registered trade union which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

(2) Every employer shall be entitled to membership of any registered employers organization which represents his undertaking or industry if he is prepared to comply with its rules and conditions of membership.

#### **51 Supervision of election of officers**

(1) The Minister may, where the national interest so demands, cause to be supervised the holding of elections to any office or post in a registered trade union or employers organization.

(2) Without derogation from the generality of subsection (1) the Minister may, on the advice of the Registrar—

(a) set aside any election if the election was not properly conducted or if the result of the election did not represent the views of the electors;

(b) postpone, or change the venue of or procedure for, any election, if it is necessary to do so to ensure that the views of electors are given proper expression;

(c) assign responsibility for the conduct of any election to any trade union or employers organization;

(d) if the conduct of any election campaign by any person is leading to a misrepresentation of any issues involved in such election, and the consequences of such misrepresentation have serious implications for the national interest, prohibit any person from so conducting the election campaign;

(e) make regulations for controlling and regulating elections and for fixing the qualifications for officers of registered trade unions and employers organizations.

(3) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court.

[Subsection inserted by section 20 of Act 7 of 2005]

#### **52 Right to union or association dues**

(1) For the purpose of fulfilling its obligation to represent the interests of its members employed or engaged in the undertaking or industry for which it is registered, a registered trade union or employers organization may, subject to this Act, levy, collect, sue for and recover union and association dues.

(2) Subject to this Act, a federation of trade unions or employers organizations shall not, unless permitted to do so in any particular case by the constitution of the member trade union or employers organization concerned, levy, collect or receive membership fees, union dues or association dues, as the case may be, from persons in their capacity as individual employers or employees.

(3) Any person who contravenes subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **53 Restrictions on payment of union dues by employers**

(1) No employer shall, without the consent of the Minister, pay on behalf of any employee any union dues other than to a registered trade union.

(2) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **54 Collection of union dues**

(1) Union dues shall be collected by an employer from his employees and transferred to the trade union concerned—

- (a) by means of a check-off scheme or in any other manner agreed between the trade union and the employees and the employer or employers organization concerned; or
- (b) failing such agreement as referred to in paragraph (a), by authorisation in writing of an employee who is a member of the trade union concerned.

[Subsection amended by section 23 of Act 17 of 2002]

(2) The Minister may, by notice in writing to any employer, prohibit or modify any arrangements made for the collection of union dues by the employer from his employees.

(3) The Minister may in terms of subsection (2) give directions—

- (a) relating to a reduction or increase of the amount deductible by the employer;
- (b) directing payment of the union dues by the employer into a trust fund and not to the trade union concerned;
- (c) in respect of such other matters in connection with the payment of union dues as the Minister considers necessary or desirable in the interest of the employees concerned.

(4) Any person who is aggrieved by any direction given by the Minister in terms of subsection (3) may appeal to the Labour Court.

(5) On an appeal in terms of subsection (4) the Labour Court may confirm, rescind or amend the Minister's direction:

Provided that where the Minister certifies that the reason for the direction was that the registered trade union concerned had engaged or had threatened to engage in an unlawful collective job action, any ruling by the Labour Court rescinding or amending the Minister's direction shall not have effect for six months from the date of such direction.

[Proviso amended by section 23 of Act 17 of 2002]

(5a) No employer shall collect or pay any union dues in terms of this section to or on behalf of a trade union or federation—

- (a) while its registration is suspended; or
- (b) after its registration has been rescinded.

[Subsection inserted by section 23 of Act 17 of 2002]

(6) Any employer who fails or refuses to collect union dues and transfer them to the trade union concerned in accordance with this section shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

### **55 Minister may regulate union dues**

(1) The Minister may make regulations providing for the proper and systematic collection, management, application and disbursement of union dues by trade unions.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the maximum amount, and method of assessment, of union dues;
- (b) the accounting procedures that shall be followed in connection with the collection, management, application and disbursement of union dues;
- (c) the appointment of auditors and the keeping of books of accounts;
- (d) the payment by trade unions of a percentage of union dues to any association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions in Zimbabwe;
- (e) .....
- (f) .....

[Paragraphs (e) and (f) repealed by section 10 of Act 5 of 2015]

(g) limitations on the matters on which and the extent to which union dues may be expended.

(3) The Minister may, in writing, direct any trade union to supply him with such information as he may require in connection with the acquisition and disbursement of union dues.

(3a) Any trade union that fails or refuses to comply with a direction in terms of subsection (3) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(4) The Minister may exercise the same powers as are conferred upon him in terms of subsections (1), (2) and (3), *mutatis mutandis*, in relation to association dues.

## PART VIII

### EMPLOYMENT COUNCILS

#### 56 Voluntary employment councils

Any—

(a) employer, registered employers organization or federation of such organizations; and

(b) registered trade union or federation of such trade unions;

may, at any time, form an employment council by signing a constitution agreed to by them for the governance of the council, and by applying for its registration in terms of section *fifty-nine*.

#### 57 Statutory employment councils

(1) The Minister may, whenever the national interest so demands, request—

(a) any registered employers organization or federation of such organizations; and

(b) any registered trade union or federation of such trade unions;

to form an employment council and to apply for its registration in terms of section *fifty-nine*.

(2) If within three months of a direction being given in terms of subsection (1), the parties concerned have failed to apply for the registration of an employment council, the Minister may appoint such number of persons as he considers will represent the employers and employees concerned, and such persons shall, within such period as may be specified by the Minister, form an employment council by signing a constitution agreed to by them for the governance of the council and by obtaining registration of the council in terms of section *fifty-nine*.

#### 58 Constitution of employment councils

The constitution of every employment council formed in terms of this Part shall provide for—

(a) a statement of the aims and objectives of the council; and

(b) the registered trade union concerned or federation of such trade unions to appoint fifty *per centum* of the members of the employment council, and the employers organization concerned or federation of such organizations to appoint the remaining members; and

(c) the appointment of a chairman and vice-chairman of the employment council:

Provided that every constitution shall provide that if the chairman is appointed by members representing the registered trade union or federation of trade unions, the vice-chairman shall be appointed by members representing the employers organization or federation of such organizations, and *vice-versa*; and

(d) the dues which are payable to the employment council by the members thereof; and

(e) the administration of the funds of the employment council; and

(f) the keeping of minutes and other records of the proceedings of the employment council; and

(g) the admission of new parties to the employment council; and

(h) the procedures for dealing with any disputes within the undertaking or industry represented by the parties to the employment council; and

(i) the amendment of the constitution; and

(j) the winding up of the employment council; and

(k) such other matters as may be prescribed.

#### 59 Registration of employment councils

(1) Upon application for the registration of an employment council, the Registrar shall—

(a) if he is satisfied, having due regard to section *sixty-one* which shall apply, *mutatis mutandis*, that the employment council and its constitution comply with this Act, register the employment council which application shall be made together with the prescribed fee;

(b) if he is not satisfied as provided in paragraph (a), refuse to register the employment council.

[Subsection amended by section 11 of Act 5 of 2015]

(2) Whenever the Registrar registers an employment council he shall furnish that employment council with a certificate of registration subject to any conditions, including conditions limiting the

manner in which and objects for which the employment council may expend its funds, as the Registrar considers fit to impose.

[Subsection amended by section 11 of Act 5 of 2015]

(3) Subject to subsection (4), a certificate of registration of an employment council is issued for an indefinite period.

[Subsection inserted by section 11 of Act 5 of 2015]

(4) An employment council shall—

- (a) submit an audited account of its revenue and expenditure to the Registrar within the period specified in section 63A; and
- (b) submit at the written request of the Registrar, no later than seven days after receiving the request, or after such longer period as the Registrar may for good cause allow, such written report on any matter as the Registrar may reasonably require in connection with its operations;

and any failure on the part of the employment council to comply with paragraph (a) or (b) constitutes justifiable grounds upon which the Registrar may cancel its certificate of registration.

[Subsection inserted by section 11 of Act 5 of 2015]

## **60 Employment councils to be bodies corporate**

Every employment council shall, upon registration in terms of this Act, become a body corporate and in its corporate name be capable of suing and being sued, of purchasing or otherwise acquiring, holding or alienating property, movable or immovable, and of doing any other act which its constitution requires or permits it to do, or which a body corporate may by law do.

## **61 Variation of registration of employment councils**

(1) Whenever the Registrar is satisfied that—

- (a) any employment council is not sufficiently representative of the undertaking or industry in respect of which it is registered; or
- (b) any branch or section of the undertaking or industry in respect of which an employment council is registered has been included in the registration by oversight or mistake or that an employment council is not sufficiently representative of any such branch or section; or
- (c) the character of any undertaking or industry in respect of which an employment council is registered is such that a particular branch or section thereof should no longer be included in such undertaking or industry; or
- (d) it is in the interests of employers, employees or the public for a particular branch or section of any undertaking or industry in respect of which an employment council is registered, to form a separate employment council for that branch or section; or
- (e) any branch or section of an undertaking or industry should be included within the undertaking or industry for which an employment council is registered;

he may, after consultation with the employment council, vary the coverage in respect of which the employment council is registered and make the necessary variation in his register.

(2) If at any time the Registrar is satisfied that an employment council—

- (a) is not sufficiently representative of any undertaking or industry in respect of which it is registered; or
- (b) has failed to comply with this Act;

he may, after consultation with the employment council concerned, cancel the registration of that employment council.

(3) If the Registrar exercises any of the powers conferred upon him by subsection (1) or (2), he shall call upon the secretary of the employment council concerned to transmit to him the certificate of registration issued to it, and the secretary shall, within thirty days of being so called upon, transmit the certificate of registration to the Registrar.

(3a) A secretary of an employment council who fails or refuses to transmit the council's certificate of registration to the Registrar in accordance with subsection (3) shall be guilty of an offence and liable to a fine not exceeding level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

(4) The Registrar shall, upon receipt by him of a certificate of registration of an employment council in terms of subsection (3)—

- (a) make the necessary alterations therein and return it to the employment council concerned; or
- (b) issue to the employment council concerned a fresh certificate of registration; or
- (c) cancel the certificate of registration;

as may be appropriate.

(5) Any person aggrieved by any action taken by the Registrar in terms of this section may appeal to the Labour Court.

## **62 Duties of employment councils**

(1) An employment council shall, within the undertaking or industry and in the area in respect of which it is registered—

(a) assist its members in the conclusion of collective bargaining agreements or otherwise prevent disputes from arising, or settle disputes that have arisen or may arise between employers or employers organizations on the one hand and employees, workers committees or trade unions on the other, and shall take such steps as it may consider expedient to bring about the regulation or settlement of matters of mutual interest to such persons or bodies;

[Proviso to paragraph repealed by section 37 of Act 7 of 2005]

(b) take such steps as it may consider expedient to ensure that any collective bargaining agreement and any regulations pertaining to an undertaking or industry with which it is concerned are being observed.

(2) The parties to an employment council registered in respect of any activity carried on by a local authority or statutory body shall have power to enter into an agreement such as is referred to in subsection (1), notwithstanding anything to the contrary contained in any law empowering the local authority or statutory body concerned to make provision with respect to any such agreement.

## **63 Designated agents of employment councils**

(1) For the purpose of enabling it to exercise its powers and perform its functions in terms of this Act, an employment council may, and when so directed by the Registrar shall, advise the Registrar of persons whom it wishes to be appointed as its designated agents.

(2) If the Registrar approves of the persons advised in terms of subsection (1) he shall appoint them as designated agents of the employment council and shall issue them with certificates of appointment.

(3) A designated agent of an employment council may—

(a) require any employer in the undertaking or industry and within the area for which the employment council is registered—

(i) to grant him reasonable access to his employees for the purpose of advising and assisting them in relation to their rights of employment;

(ii) to grant him reasonable access to his premises and to the books, records and other documents relating to his employment for the purpose of examining and ascertaining matters relating to or affecting the employment of his employees who are represented by any trade union or federation of trade unions which is a member of the employment council concerned, and of ascertaining whether or not the terms of any relevant collective bargaining agreement and regulations are being observed;

(b) enter upon any premises of an employer in the undertaking or industry and within the area for which the employment council is registered for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Act or for the seizure of any property which is the subject matter of an offence in terms of this Act.

(3a) A designated agent of an employment council who meets such qualifications as may be prescribed shall, in his or her certification of appointment, be authorised by the Registrar to redress or attempt to redress any dispute which is referred to the designated agent or has come to his or her attention; where such dispute occurs in the undertaking or industry and within the area for which the employment council is registered, and the provisions of Part XII shall apply, with the necessary changes, to the designated agent as they apply to a labour officer.

[Subsection substituted by section 21 of Act 7 of 2005]

(3b) Where a designated agent is authorised to redress any dispute or unfair labour practice in terms of subsection (3a), no labour officer shall have jurisdiction in the matter.

[Subsection inserted by section 24 of Act 17 of 2002]

(4) Any person who hinders or obstructs a designated agent of an employment council in the exercise of his powers or the performance of his duties in terms of this Act shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(5) Notwithstanding subsection (4), nothing done to prevent any disruption of normal production processes or any interference with the efficient running of an undertaking or industry shall be held to be in contravention of subsection (3).

### **63A Audit of accounts of employment councils, inspection and examination thereof, and administration of affairs of employment councils in certain cases**

(1) The secretary of every employment council shall, within three months after the end of each financial year of that council, cause an account of its expenditure and revenue for that financial year to be audited by a general accountant, public accountant or public auditor registered as such in terms of the Public Accountants and Auditors Act [*Chapter 27:12*], and shall submit a copy of the audited account of its revenue and expenditure to the Registrar no later than three months after the end of the financial year concerned or fourteen days after the preparation of the audited account of its revenue and expenditure, whichever is the later date.

(2) The Registrar may seek clarification from any employment council or from the responsible general accountant, public accountant or public auditor of any item in the audited account of its revenue and expenditure, and any failure to do so within seven days of the Registrar making a written demand to that effect shall constitute grounds for the cancellation of the registration of the employment council or for the launching of an investigation of its affairs in accordance with the following provisions of this section.

(3) If the Registrar has reasonable cause to believe that the property or funds of any employment council are being misappropriated or misapplied, or that the affairs of any employment council are being conducted in a manner that is detrimental to the interests of the employers or employees in the industry or undertaking for which it is registered, the Registrar may investigate or order that such employment council be investigated in accordance with subsection (4).

(4) The Registrar may appoint any officer in the Civil Service or other person (hereinafter called an “investigating officer”) to do any or all of the following —

- (a) seek clarification from any employment council or from the responsible general accountant, public accountant or public auditor of any item in the audited account of its revenue and expenditure;
- (b) inspect any aspect of the affairs or activities of any employment council and examine all documents relating thereto;
- (c) examine the books, accounts and other documents relating to the financial affairs of any employment council;

and make a report thereon to the Minister through the Registrar, including any recommendation as to whether it should be deregistered or administered in terms of subsections (9) to (11).

(5) During the period of investigation of an employment council no employee of the employment council shall, without the consent of the investigating officer, in any way expend or dispose of any property of the employment council:

Provided that an investigating officer shall not refuse to grant consent in terms of this subsection in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the employment council concerned.

(6) For the purpose of any investigation in terms of subsection (2), the investigating officer—

- (a) may—
  - (i) by notice under his or her hand, delivered to the person concerned personally or sent to him or her by post, require any person to produce to him or her any book or other document which has any bearing on the subject of the inspection, examination or audit; and
  - (ii) retain for a reasonable period any book or document produced to him or her by virtue of a notice under this subsection or voluntarily by any person;
- (b) shall, in relation to an employment council, its premises and its employees, have the powers of an investigator referred to in section 120(2)

(7) Where the Minister accepts a recommendation made in terms of subsection (4) that the affairs of the employment council be administered, he or she shall make application to the Labour Court to appoint an administrator and such assistants as the administrator may require, to administer the affairs of the employment council in respect of which the recommendation was made:

Provided that—

- (a) an administrator may not be appointed for more than six months;
- (b) pending determination by the Labour Court of an application to appoint an administrator, the Minister may appoint a provisional administrator who shall exercise all the powers of a substantive administrator until the provisional administrator’s appointment is confirmed by the Labour Court or some other person is appointed with the leave of the Court as substantive administrator;

(c) if the Labour Court refuses an application to appoint an administrator or confirm the appointment of a provisional administrator, the refusal of the application shall not affect the validity of anything done by the provisional administrator in good faith pursuant to this section before the date of such refusal.

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the employment council concerned in such a manner as to rectify the matters for the rectification of which he or she was appointed and, in so doing, may, by notice in writing prohibit any person who is or has been an employee of the employment council from—

- (a) expending, disposing of or in any way dealing with any property of the employment council; or
- (b) operating any account with any bank, building society or other financial institution on behalf of the employment council:

Provided that the administrator shall authorize any transaction or expenditure which he or she is satisfied forms part of the ordinary and lawful course of business of the employment council.

(9) If after due investigation an administrator appointed in terms of subsection (7) finds sufficient evidence on a balance of probabilities that any person who is or has been an employee of the employment council has misappropriated any property of the employment council, the administrator may—

- (a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence so found; and
- (b) lodge, on due notice to the employee or former employee concerned (“the respondent”), an application to the Labour Court, together with the affidavit, for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down to for hearing (the “return day” of the application) to refund or return to such employment council any property which the respondent has misappropriated from such employment council;

(10) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the administrator shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(11) For the purposes of subsection (9), “misappropriate” in relation to the property or moneys of the employment council under administration includes doing either or both of the following in defiance of a notice referred to in subsection (8)—

- (a) expending or disposing of the property of the employment council; or
- (b) withdrawing moneys from any account with any bank, building society or other financial institution operated on behalf of the employment council:

(12) Any person who—

- (a) makes any false representation to, or otherwise wilfully hinders or obstructs an investigating officer or administrator in the exercise of his or her functions; or
- (b) falsely holds himself or herself out to be an investigating officer or administrator; or
- (c) having received notice under subsection (6)(a), without lawful excuse fails to produce any book or document referred to in subsection (6)(a) which he or she may be able to produce; or
- (d) contravenes subsection (5) or (9);

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Section inserted by section 12 of Act 5 of 2015]

## **PART IX**

[Part IX (sections 64 to 73) repealed by s. 25 of Act 17 of 2002]

## **PART X**

COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BY TRADE UNIONS AND EMPLOYERS ORGANIZATIONS

### **74 Scope of collective bargaining agreements**

(1) This Part shall apply to collective bargaining agreements negotiated by registered trade unions, employers and employers organizations or federations thereof:

Provided that nothing in this Part contained shall prevent an unregistered trade union or employers organization from negotiating a collective bargaining agreement.

(2) Subject to this Act and the competence and authority of the parties, trade unions and employers or employers organizations may negotiate collective bargaining agreements as to any conditions of employment which are of mutual interest to the parties thereto.

(3) Without derogation from the generality of subsection (2), a collective bargaining agreement may make provision for—

- (a) rates of remuneration and minimum wages for different grades and types of occupations;
- (b) benefits for employees;
- (c) deductions which an employer may make from employees' wages, including deductions for membership fees and union dues, and deductions which an employer may be required or permitted by law or by order of any competent court to make;
- (d) methods of calculating, or factors for adjusting rates of pay, and the dates, times and modes of payment;
- (e) all issues pertaining to overtime, piece-work, periods of vacation and vacation pay and constraints thereon;
- (f) the demarcation of the appropriate categories and classes of employment and their respective functions;
- (g) the conditions of employment for apprentices;
- (h) the number of hours of work and the times of work with respect to all or some of the employees;
- (i) the requirements of occupational safety;
- (j) the maintenance of, and access by the parties to, records of employment and pay;
- (k) procedures for dealing with disputes within an undertaking or industry;  
[Paragraph inserted by section 26 of Act 17 of 2002]
- (l) housing and transport facilities or in their absence, an allowance for the same;  
[Paragraph inserted by section 22 of Act 7 of 2005]
- (m) measures to combat workplace violence and handling its aftermath.  
[Paragraph inserted by section 22 of Act 7 of 2005]
- (n) the following measures to foster the viability of undertakings and high levels of employment, where applicable, namely measures—
  - (i) to promote high levels of productivity; and
  - (ii) to promote economic competitiveness; and
  - (iii) to promote economic and environmental sustainability; and
  - (iv) to mitigate the cost of living.  
[Paragraph inserted by section 13 of Act 5 of 2015]

(4) Nothing contained in any collective bargaining agreement shall prevent either or both of the parties from seeking to renegotiate or amend the agreement after twelve months of its operation in order to take account of changed circumstances in the industry or undertaking concerned.

(5) A collective bargaining agreement shall not contain any provision which is inconsistent with this Act or any other enactment, and any collective bargaining agreement which contains any such provision shall, to the extent of such inconsistency, be construed with such modifications, qualifications, adaptations and exceptions as may be necessary to bring it into conformity with this Act or such other enactment.

(6) The existence of a collective bargaining agreement shall not preclude an employer and his employees from agreeing to the introduction of higher rates of pay or other more favourable conditions of employment before the expiry of such collective bargaining agreement, so however that the rights and interests of the employees are not thereby diminished or adversely affected:

Provided that the collective bargaining agreement shall be endorsed to reflect such higher rates of pay or other more favourable conditions of employment.

## **75 Obligation to negotiate in good faith**

- (1) All parties to the negotiation of a collective bargaining agreement shall—
- (a) disclose all information relevant to the negotiation, including information contained in records, papers, books and other documents; and
  - (b) make no false or fraudulent misrepresentations in regard to matters relevant to the negotiation; and
  - (c) earnestly and expeditiously endeavour to arrive at a successful conclusion in the negotiation; so as to ensure that the entire negotiation is conducted in absolute good faith.

(2) It shall constitute an unfair labour practice to fail to negotiate in absolute good faith, or in any way to bring about a situation that undermines the basis of negotiating in absolute good faith.

#### **76 Duty of full disclosure when financial incapacity alleged**

(1) When any party to the negotiation of a collective bargaining agreement alleges financial incapacity as a ground for his inability to agree to any terms or conditions, or to any alteration of any terms or conditions thereof, it shall be the duty of such party to make full disclosure of his financial position, duly supported by all relevant accounting papers and documents, to the other party.

(2) Where there is any dispute as to whether or not full disclosure has been made in terms of subsection (1), either party to the dispute may refer it to a labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection substituted by section 23 of Act 7 of 2005]

(3) Any person who fails or refuses to comply with a determination that is binding upon him in terms of subsection (2) shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection inserted by section 4 of Act 22 of 2001]

#### **77 Representation of parties**

The parties to the negotiation of a collective bargaining agreement may be represented by committees, delegates or agents:

Provided that—

- (i) the powers of such committees, delegates or agents shall be specified in writing and certified by the parties they represent;
- (ii) copies of such documents shall be served by each party on the other party or parties prior to the commencement of negotiations.

#### **78 Ratification of collective bargaining agreements**

(1) Every collective bargaining agreement which has been negotiated by a party and which is required to be ratified by the members thereof or by a constituent branch or other party thereto shall be deemed not to have been ratified unless every portion of the collective bargaining agreement has been ratified.

(2) Notwithstanding subsection (1), where the national interest so demands, the Minister may direct that any portion of a collective bargaining agreement which has not been ratified shall be put into effect prior to the ratification of the other portions of the collective bargaining agreement:

Provided that where a collective bargaining agreement itself stipulates that it shall not be valid unless ratified *in toto*, the Minister shall not exercise his powers in terms of this subsection except in relation to provisions dealing with wages and benefits which have been ratified.

#### **79 Submission of collective bargaining agreements for approval or registration**

(1) After negotiation, a collective bargaining agreement shall be submitted to the Registrar for registration.

(2) Where any provision of a collective bargaining agreement appears to the Minister to be—

- (a) inconsistent with this Act or any other enactment; or
- (b) contrary to public interest;

[Paragraph inserted by section 14 of Act 5 of 2015]

(c) unreasonable or unfair, having regard to the respective rights of the parties; he may direct the Registrar not to register such collective bargaining agreement until it has been suitably amended by the parties thereto.

(3) Where a collective bargaining agreement is not registered or approved in terms of subsection (2) until it has been amended, it shall be the duty of the parties concerned to negotiate for such amendment in absolute good faith and to duly participate in proceedings necessary therefor, and failure to do so shall constitute an unfair labour practice.

#### **80 Publication of collective bargaining agreements**

(1) Upon registration of a collective bargaining agreement the Minister shall publish the agreement as a statutory instrument.

(2) The terms and conditions of a registered collective bargaining agreement shall become effective and binding—

- (a) from the date of publication of the agreement in terms of subsection (1); or
- (b) from such other date as may be specified in the agreement.

#### **81 Amendment of registered collective bargaining agreements by Minister**

(1) Where a collective bargaining agreement which has been registered contains any provision which is or has become—

- (a) inconsistent with this Act or any other enactment; or
- (b) .....

[Paragraph repealed by section 25 of Act 7 of 2005]

(c) unreasonable or unfair, having regard to the respective rights of the parties;  
the Minister may direct the parties to the agreement to negotiate within such period as he may specify for the amendment of the agreement in such manner or to such extent as he may specify.

(2) Where the Minister has made a direction in terms of subsection (1), it shall be the duty of the parties to the collective bargaining agreement concerned to negotiate in absolute good faith for the amendment of the agreement and to report back to the Minister within the period specified in the direction as to the extent to which they have been able or unable to agree in amending the agreement.

(3) Upon receipt of the report of the parties in terms of subsection (2), the Minister shall consider the same and may thereafter amend the collective bargaining agreement in accordance with the report of the parties or in such other manner as is consistent with the considerations specified in paragraphs (a), (b) and (c) of subsection (1).

(4) Where the Minister amends a collective bargaining agreement in terms of subsection (3), he shall direct the Registrar to register such amendment and section *eighty* shall apply, *mutatis mutandis*, in relation thereto.

(5) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court.

[Subsection inserted by section 25 of Act 7 of 2005]

## **82 Binding nature of registered collective bargaining agreements**

(1) Where a collective bargaining agreement has been registered it shall—

- (a) with effect from the date of its publication in terms of section *eighty-five*, or such other date as may be specified in the agreement, be binding on the parties to the agreement, including all the members of such parties, and all employers, contractors and their respective employees in the undertaking or industry to which the agreement relates;
- (b) remain binding despite—
  - (i) a change of employer; or
  - (ii) a change of ownership of the undertaking or industry concerned; or
  - (iii) a change in the membership or structure of the trade union or employers organization;
- (c) remain binding until—
  - (i) it is replaced by a substitute agreement, notwithstanding any provision therein contained that it shall expire by lapse of time;
  - (ii) it is terminated by the mutual agreement of the parties thereto.

[Subsection amended by section 45 of Act 17 of 2002]

(2) This section shall apply, *mutatis mutandis*, in respect of any part of a collective bargaining agreement.

(3) Any person who fails to comply with a collective bargaining agreement which is binding upon him shall, without derogation from any other remedies that may be available against him for its enforcement—

- (a) commit an unfair labour practice for which redress may be sought in terms of Part XII; and
- (b) be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(4) If a registered collective bargaining agreement provides a procedure for the conciliation and arbitration of any category of dispute, that procedure is the exclusive procedure for the determination of disputes within that category.

[Subsection inserted by section 27 of Act 17 of 2002]

### **82A Copies of collective bargaining agreement**

(1) Each party to the negotiation of a collective bargaining agreement shall be provided with a copy of the agreement.

(2) A copy of a collective bargaining agreement in force shall be posted in a conspicuous place in every undertaking in respect of which it applies.

(3) A copy of a collective bargaining agreement in force shall be made available for examination free of charge on request by any employee bound by its terms at the offices of the trade union that was a party to its negotiation.

[Subsection inserted by section 28 of Act 17 of 2002]

## **82B Codes of best practice, guidelines and model agreements**

The Minister shall publish in the *Government Gazette* codes of best practices, guidelines and model agreements which the employers and employees may have regard to when performing their duties but they are not obliged to follow them.

[Section inserted by section 26 of Act 7 of 2005]

## **PART XI**

### **LABOUR COURT**

[Part (sections 83 – 92D) inserted by section 29 of Act 17 of 2002]

## **83 Administration of Part XI**

In this Part “responsible Minister” means (except in section 89(1)(b), where reference to the responsible Minister is to the Minister as defined in section 2) the Minister responsible for justice or any other Minister to whom the President may, from time to time, assign the administration of this Part.

[Section substituted by section 27 of Act 7 of 2005]

## **84 Establishment and composition of Labour Court**

(1) The Labour Court established before the commencement of the Constitution shall, subject to this Act, continue in operation.

(2) The Labour Court shall consist of—

(a) the Judge President of the Labour Court and such number of Judges of the Labour Court as the President may consider necessary after consultation with the Judicial Service Commission; and

(b) subject to section 90(1), such assessors as are provided for in this Act.

(3) A person referred to in subsection (1)(a) shall be appointed on such terms and conditions, including terms and conditions relating to the payment of salary, allowances and pension benefits, as the President, on the recommendation of the Judicial Service Commission, may fix.

(4) Assessors shall be chosen in terms of section 90, whenever required, from the list prepared in terms of section 86. in terms of section 90, whenever required, from the list prepared in terms of section 86.

[Section substituted by Act 3 of 2016]

## **84A Oath of office**

Every Judge of the Labour Court appointed after the commencement of the Constitution shall, before entering upon his or her office, swear before the Chief Justice or the next most senior judge available, the judicial oath set out in the Third Schedule.

[Section substituted by Act 3 of 2016]

## **85 Qualification for appointment as President of Labour Court**

(1) person shall not be qualified for appointment as a President of the Labour Court unless he or she is at least forty years old and—

(a) is or has been a judge of a court with unlimited jurisdiction in civil or criminal matters in a country in which the common law is Roman-Dutch or English and English is an officially recognised language;

(b) for at least seven years, whether continuously or not, he or she has been qualified to practise as a legal practitioner—

(i) in Zimbabwe; or

(ii) in a country in which the common law is Roman-Dutch and English is an officially recognised language; or

(iii) if he or she is a Zimbabwean citizen, in a country in which the common law is English and English is an officially recognised language

and is currently so qualified to practise.

(2) Additionally, to be appointed as a judge of the Labour Court a person must be a fit and proper person to hold office as a judge.

[Section substituted by Act 3 of 2016]

## **86 Assessors**

(1) The Judge President of the Labour Court, in consultation with the Minister and the responsible Minister shall prepare a list of the names of not less than ten persons who have knowledge or experience in labour relations and who may appropriately be appointed as assessors of the Labour Court.

[Subsection substituted by section 28 of Act 7 of 2005 and amended by Act 3 of 2016]

(2) The Judge President of the Labour Court may, in consultation with the responsible Minister, add or remove the name of any person from any list drawn up in terms of subsection (1).

[Subsection amended by section 28 of Act 7 of 2005 and by Act 3 of 2016]

(3) Before entering upon his duties for the first time, an assessor shall take an oath before the Judge President of the Labour Court that he will faithfully perform his duties as a member of the Labour Court.

(4) An assessor shall be paid such remuneration and allowances as the responsible Minister, with the consent of the Minister responsible for finance, may fix.

[Subsection amended by section 28 of Act 7 of 2005 and by Act 3 of 2016]

## **87 Registrar of Labour Court**

(1) There shall be a registrar of the Labour Court whose office shall be a public office and form part of the Judicial Service.

(2) The registrar of the Labour Court shall be responsible for—

- (a) filing applications, references, appeals, records and other documents lodged with the Labour Court; and
- (b) safeguarding the records of the Labour Court; and
- (c) notifying parties of the dates and times at which matters are set down for hearing by the Labour Court; and
- (d) performing such other functions as may be prescribed or as may be necessary for the proper functioning of the Labour Court.

(3) In the performance of his functions as registrar of the Labour Court, the registrar of the Labour Court shall be subject to the directions of the Judge President of the Labour Court.

[Section amended by Act 3 of 2016.]

## **88 Seal of Labour Court**

(1) The Labour Court shall have and use as occasion may require a seal in a design approved from time to time by the President.

(2) The registrar of the Labour court shall have custody of the seal of the Labour Court.

## **89 Functions, powers and jurisdiction of Labour Court**

(1) The Labour Court shall exercise the following functions—

- (a) hearing and determining applications and appeals in terms of this Act or any other enactment; and
- (b) hearing and determining matters referred to it by the Minister in terms of this Act; and
- (c) referring a dispute to a labour officer, designated agent or a person appointed by the Labour Court to conciliate the dispute if the Labour Court considers it expedient to do so;
- (d) appointing an arbitrator from the panel of arbitrators referred to in subsection (6) of section *ninety-eight* to hear and determine an application;
- (d1) exercise the same powers of review as would be exercisable by the High Court in respect of labour matters;

[Paragraph inserted by section 29 of Act 7 of 2005]

(e) doing such other things as may be assigned to it in terms of this Act or any other enactment.

(2) In the exercise of its functions, the Labour Court may—

- (a) in the case of an appeal—
  - (i) conduct a hearing into the matter or decide it on the record; or
  - (ii) confirm, vary, reverse or set aside the decision, order or action that is appealed against, or substitute its own decision or order; or

(iii) ....

[Subparagraph repealed by section 29 of Act 7 of 2005]

(iv) .....

[Subparagraph repealed by section 29 of Act 7 of 2005]

(b) in the case of an application made in terms of subparagraph (i) of subsection (7) of section *ninety-three*, remit it to the same or a different labour officer with instructions directing that officer to attempt to resolve it in accordance with such guidelines as it may specify;

(c) in the case of an application made in terms of subparagraph (ii) of subsection (7) of section *ninety-three*, make an order for any of the following or any other appropriate order—

- (i) back pay from the time when the dispute or unfair labour practice arose;
- (ii) in the case of an unfair labour practice involving a failure or delay to pay or grant anything due to an employee, the payment by the employer concerned to the employee or someone acting on his behalf of such amount, whether as a lump sum or by way of instalments, as will, in the opinion of the Labour Court, adequately

compensate the employee for any loss or prejudice suffered as a result of the unfair labour practice;

(iii) reinstatement or employment in a job:

Provided that—

- (i) any such determination shall specify an amount of damages to be awarded to the employee concerned as an alternative to his reinstatement or employment;
  - (ii) in deciding whether to award damages or reinstatement or employment, onus is on the employer to prove that the employment relationship is no longer tenable, taking into account the size of the employer, the preferences of the employee, the situation in the labour market and any other relevant factors;
  - (iii) should damages be awarded instead of reinstatement or employment as a result of an untenable working relationship arising from unlawful or wrongful dismissal by the employer, punitive damages may be imposed;  
[Proviso substituted by section 29 of Act 7 of 2005]
  - (iv) insertion into a seniority list at an appropriate point;
  - (v) promotion or, if no promotion post exists, pay at a higher rate pending promotion;
  - (vi) payment of legal fees and costs;
  - (vii) cessation of the unfair labour practice;
- (d) in the case of an application other than one referred to in paragraph (b) or (c), or a reference, make such determination or order or exercise such powers as may be provided for in the appropriate provision of this Act;
- (e) subject to subsections (3) and (4), make such order as to costs as the Labour Court thinks fit.

(3) The costs in connection with any proceedings before the Labour Court shall be payable in accordance with the scale of costs for the time being in use in the court of a magistrate in civil cases, unless the person presiding over the Labour Court directs that the scale of costs for the time being in use in the High Court shall apply.

(4) Any costs awarded by the Labour Court shall be taxed by the registrar of the Labour Court in terms of subsection (3) and the taxation of such costs shall be subject to review by a Judge of the Labour Court at the instance of any interested party.

[Subsection amended by Act 3 of 2016]

(5) For the purpose of taking evidence on any question before it, the Labour Court shall have the same powers as the High Court to summon witnesses, to cause the oath to be administered to them, to examine them and to call for the production of books, plans and documents.

(6) No court, other than the Labour Court, shall have jurisdiction in the first instance to hear and determine any application, appeal or matter referred to in subsection (1).

## **90 Exercise of functions by Labour Court**

(1) The functions of the Labour Court may be exercised by one or more Judges sitting by themselves or with one or more assessors chosen from the list prepared in terms of subsection (1) of section *eighty-six*.

(2) Subject to subsection (3), all questions that fall to be decided by the Labour Court sitting with more than one member shall be decided by a majority of the members:

Provided that—

- (i) where the opinions of the members of the Labour Court are equally divided on any question, the decision of the person presiding over the Labour Court shall be the decision of the Labour Court;
- (ii) no assessor shall have a voice in the decision of—
  - A. any question of law; or
  - B. any question as to whether a matter for decision is a question of fact or of law; or
  - C. any question as to the admissibility of evidence.

(3) Subject to this Part, the Presidents of the Labour Court may make rules for the Court providing for—

- (a) the practice, procedure and rules of evidence to be followed, including the determination of any preliminary point in any proceedings;
- (b) the service of notices and other documents required for the purpose of any proceedings;
- (c) the forms to be used for the purpose of any proceedings;

- (d) the fees to be paid in respect of the service or examination of documents and the doing of any other thing by the registrar of the Labour Court or any officer of the Labour Court in connection with any proceedings;
- (e) the tariff of fees which may be charged by legal practitioners or a registered trade union or employers organisation for the purpose of paragraph (b) of section *ninety-two* in respect of any matter relating to the Labour Court;
- (f) allowances and other payments to witnesses summoned to give evidence or to produce any book or document in any proceedings;
- (g) any other matter which the Judges of the Labour Court consider should be provided for in rules in order to ensure or facilitate the proper dispatch and conduct of the business of the Labour Court:

Provided that in any case not covered by the rules referred to in this subsection, the Labour Court shall act in such manner as it considers best fitted to do substantial justice and effect and carry out the objects of this Act, and for that purpose the Labour Court may give instructions on the course to be pursued which shall be binding on the parties to the proceedings.

(4) Rules in terms of subsection (3) shall not have effect until they have been approved by the Chief Justice and the responsible Minister.

[Subsection amended by section 37 of Act 7 of 2005 and by Act 3 of 2016]

### **90A Procedure and evidence in the Labour Court**

(1) The Labour Court shall not be bound by the strict rules of evidence, and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party.

(2) Evidence may be adduced orally or in writing in any proceedings in the Labour Court, at the discretion of the presiding officer.

(3) The parties or their representatives to any proceedings in the Labour Court shall be entitled to question or cross-examine each other or any witness.

(4) It shall be the responsibilities of the presiding officer to ascertain the facts in any proceedings in the Labour Court, and for that purpose he or she may—

- (a) call any party or his or her representative;
- (b) question or cross-examine any party or his or her representative or witness; and
- (c) put any question to a party or his or her representative or witness which is suggested to him or her by any party.

[Section inserted by section 30 of Act 7 of 2005]

### **91 Sittings of Labour Court**

The Labour Court shall sit at such places and at such times as may be prescribed or as the Judge President of the Labour Court may direct.

[Section amended by Act 3 of 2016]

### **92 Representation of parties**

A party to a matter before the Labour Court may appear in person or be represented and appear by—

- (a) a legal practitioner registered in terms of the Legal Practitioners Act [*Chapter 27:07*]; or
- (b) an official or employee of a registered trade union or employers organisation of which the party is a member; or
- (c) a company director, company secretary, company legal advisor or person in charge of human resources or personnel management on behalf of the employer.

[Paragraph inserted by Act 3 of 2016]

### **92A Contempt of Labour Court**

(1) If any person, at a sitting of the Labour Court, wilfully insults any member of the Court or wilfully interrupts the proceedings of the Court or otherwise wilfully disturbs the peace or order of the proceedings, the member presiding may order the person to be removed and detained in custody until the rising of the Court.

(2) Any person referred to in subsection (1) shall be guilty of an offence and liable, in addition to any removal and detention in terms of that subsection, to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 31 of Act 7 of 2005]

### **92B Effective date and enforcement of decisions of Labour Court**

(1) The Labour Court may fix the date from which any decision, order or determination made by it shall operate, which date may be an earlier or later date than the date of the decision, order or determination.

(2) The President of the Labour Court who made the decision, order or determination shall submit sufficient certified copies of it to the registrar of the Labour Court to enable the registrar to furnish a copy to each of the parties affected by it.

(3) Any party to whom a decision, order or determination relates may submit for registration the copy of it furnished to him in terms of subsection (2) to the court of any magistrate which would have had jurisdiction to make the order had the matter been determined by it, or, if the decision, order or determination exceeds the jurisdiction of any magistrates court, the High Court.

(4) Where a decision, order or determination has been registered in terms of subsection (3) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(5) If any order which has been registered in terms of subsection (4) has been rescinded or altered by the Labour Court in terms of section *ninety-two C*, the clerk or registrar of the court concerned shall make the appropriate adjustment in his register.

### **92C Rescission or alteration by Labour Court of its own decisions**

(1) Subject to this section, the Labour Court may, on application, rescind or vary any determination or order—

- (a) which it made in the absence of the party against whom it was made; or
- (b) which the Labour Court is satisfied is void or was obtained by fraud or a mistake common to the parties; or
- (c) in order to correct any patent error.

(2) The Labour Court shall not exercise the powers conferred by subsection (1)—

- (a) except upon notice to all the parties affected by the determination or order concerned; or
- (b) in respect of any determination or order which is the subject of a pending appeal or review.

(3) Where an application has been made to the Labour Court to rescind or vary any determination or order in terms of subsection (1), the Labour Court may direct that—

- (a) the determination or order shall be carried into execution; or
- (b) execution of the determination or order shall be suspended pending the decision upon the application;

upon such terms as the Labour Court may fix as to security for the due performance of the determination or order or any variation thereof.

### **92CC Part-heard matters**

Where the office of a President hearing a matter before the Labour Court becomes vacant—

- (a) by reason of retirement or the appointment of that President to the High Court, the President concerned shall continue hearing the matter to its conclusion as if he or she was still a President of the Labour Court; or
- (b) by reason of death or some cause other than those mentioned in paragraph (a), the Senior President shall re-assign the matter before a different President—
  - (i) for hearing at the stage which that matter had reached before the office of the first-mentioned President became vacant, if the parties to the matter so agree; or
  - (ii) in the absence of the agreement of the parties under subparagraph (i), for re-hearing of all the arguments and evidence led at the original hearing of the matter, for which purpose the registrar of the Labour Court shall notify the parties of the new date and place of the hearing.

[Section inserted by section 18 of Act 5 of 2011]

### **92D Appeals to the Labour Court not provided for elsewhere in this Act**

A person who is aggrieved by a determination made under an employment code, may, within such time and in such manner as may be prescribed, appeal to the Labour Court.

[Section substituted by section 32 of Act 7 of 2005]

### **92E Appeals to the Labour Court generally**

(1) An appeal in terms of this Act may address the merits of the determination or decision appealed against.

(2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.

(3) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.

[Section inserted by section 32 of Act 7 of 2005]

[Part XI (sections 83 – 92D) inserted by section 29 of Act 17 of 2002]

## **92EE Grounds of review by Labour Court**

(1) Subject to this Act and any other law, the grounds on which any proceedings or decision conducted or made in connection with this Act may be brought on review before the Labour Court shall be—

- (a) absence of jurisdiction on the part of the arbitrator or adjudicating authority concerned;
- (b) interest in the cause, bias, malice or corruption on the part of the arbitrator or adjudicating authority concerned;
- (c) gross irregularity in the proceedings or the decision of the arbitrator or adjudicating authority concerned.

(2) Nothing in subsection (1) shall affect any other law relating to the review of proceedings or decisions of inferior courts, tribunals or authorities.

[Section inserted by section 15 of Act 5 of 2015]

## **92F Appeals against decisions of Labour Court**

(1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.

(2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision or, in his or her absence, from any other President leave to appeal that decision.

[Subsection amended by section 18 of Act 5 of 2011. Amendment erroneously referred to section 94F instead of to 92F.]

(3) If the President refuses leave to appeal in terms of subsection (2), the party may seek leave from the judge of the Supreme Court to appeal.

[Section inserted by section 32 of Act 7 of 2005]

## **PART XII**

### **RESOLUTION OF DISPUTES AND UNFAIR LABOUR PRACTICES**

## **93 Powers of labour officers**

(1) A labour officer to whom a dispute or unfair labour practice has been referred, or to whose attention it has come, shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration.

[Subsection amended by section 33 of Act 7 of 2005]

(2) If the dispute or unfair labour practice is settled by conciliation, the labour officer shall record the settlement in writing.

[Subsection amended by section 33 of Act 7 of 2005]

(3) If the dispute or unfair labour practice is not settled within thirty days after the labour officer began to attempt to settle it under subsection (1), the labour officer shall issue a certificate of no settlement to the parties to the dispute or unfair labour practice.

[Subsection amended by section 33 of Act 7 of 2005]

(4) The parties to a dispute or unfair labour practice may agree to extend the period for conciliation of the dispute or unfair labour practice referred to in subsection (3).

[Subsection amended by section 33 of Act 7 of 2005]

(5) After a labour officer has issued a certificate of no settlement, the labour officer, upon consulting any labour officer who is senior to him or her and to whom he or she is responsible in the area in which he or she attempted to settle the dispute or unfair labour practice —

- (a) shall refer the dispute to compulsory arbitration if the dispute is a dispute of interest and the parties are engaged in an essential service, and the provisions of section 98 shall apply to such reference to compulsory arbitration; or
- (b) may, with the agreement of the parties, refer the dispute or unfair labour practice to voluntary arbitration if the dispute is a dispute of interest; or
- (c) may if the dispute or unfair labour practice is a dispute of right; make a ruling that, upon a finding on a balance of probabilities that—
  - (i) the employer or other person is guilty of an unfair labour practice; or
  - (ii) the dispute of right or unfair labour practice must be resolved against any employer or other person in a specific manner by an order—
    - A. directing the employer or other party concerned to cease or rectify the infringement or threatened infringement, as the case may be, including the payment of moneys, where appropriate;
    - B. for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be;

whereupon the provisions of subsections (5a) and (5b) shall apply.

[Subsection substituted by section 16 of Act 5 of 2015]

(5a) A labour officer who makes a ruling and order in terms of subsection (5)(c) shall as soon as practicable—

- (a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence upon which he or she makes the draft ruling and order; and
- (b) lodge, on due notice to the employer or other person against whom the ruling and order is made (“the respondent”), an application to the Labour Court, together with the affidavit and a claim for the costs of the application (which shall not exceed such amount as may be prescribed), for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down to for hearing (the “return day” of the application) to do or pay what the labour officer ordered under subsection (5)(c)(ii) and to pay the costs of the application.

[Subsection inserted by section 16 of Act 5 of 2015]

(5b) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the labour officer concerned shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court.

[Subsection inserted by section 16 of Act 5 of 2015]

(6) .....

[Subsection repealed by section 33 of Act 7 of 2005]

(7) If, in relation to any dispute or unfair labour practice —

- (a) after a labour officer has issued a certificate of no settlement in relation to the dispute or unfair labour practice, it is not possible for any reason to refer the dispute or unfair labour practice to compulsory arbitration as provided in subsection (5); or
- (b) a labour officer refuses, for any reason, to issue a certificate of no settlement in relation to any dispute or unfair labour practice after the expiry of the period allowed for conciliation under subsection (3) or any extension of that period under subsection (4);

any party to the dispute may, in the time and manner prescribed, apply to the Labour Court—

- (i) for the dispute or unfair labour practice to be disposed of in accordance with paragraph (b) of subsection (2) of section *eighty-nine*, in the case of a dispute of interest; or
- (ii) for an order in terms of paragraph (c) of subsection (2) of section *eighty-nine*, in the case of a dispute of right.

[Subsection amended by section 33 of Act 7 of 2005]

[Section substituted by section 30 of Act 17 of 2002]

## 94 Prescription of disputes

(1) (1) Subject to subsection (2), no labour officer shall entertain any dispute or unfair labour practice unless—

- (a) it is referred to him; or
- (b) has otherwise come to his attention;

within two years from the date when the dispute or unfair labour practice first arose.

(2) Subsection (1) shall not apply to an unfair labour practice which is continuing at the time it is referred to or comes to the attention of a labour officer.

(3) For the purpose of subsection (1), a dispute or unfair labour practice shall be deemed to have first arisen on the date when—

- (a) the acts or omissions forming the subject of the dispute or unfair labour practice first occurred; or
- (b) the party wishing to refer the dispute or unfair labour practice to the labour officer first became aware of the acts or omissions referred to in paragraph (a), if such party cannot reasonably be expected to have known of such acts or omissions at the date when they first occurred.

[Section amended by section 31 of Act 17 of 2002]

95 .....

[Section repealed by section 32 of Act 17 of 2002]

96 .....

[Section repealed by section 32 of Act 17 of 2002]

97 .....

[Section repealed by section 34 of Act 7 of 2005]

## 98 Effect of reference to compulsory arbitration under Parts XI and XII

(1) In this section, “reference to compulsory arbitration”, in relation to a dispute, means a reference made in terms of paragraph (d) of subsection (1) of section *eighty-nine* or section *ninety-three*.

(2) Subject to this section, the Arbitration Act [*Chapter 7:15*] shall apply to a dispute referred to compulsory arbitration.

(3) Before referring a dispute to compulsory arbitration, the Labour Court or the labour officer, as the case may be, shall afford the parties a reasonable opportunity of making representations on the matter.

(4) In ordering a dispute to be referred to compulsory arbitration, the Labour Court or labour officer, as the case may be, shall determine the arbitrator’s terms of reference after consultation with the parties to the dispute.

(5) In referring a dispute to compulsory arbitration—

(a) the Labour Court; or

(b) the labour officer, after consulting any labour officer who is senior to him and to whom he is responsible in the area in which he attempted to conciliate the dispute;

as the case may be, shall appoint as an arbitrator a person whose name appears on a list referred to in subsection (6):

Provided that the labour officer who attempted to conciliate the dispute which is referred to arbitration shall not be appointed as the arbitrator in that dispute.

(6) The Minister, in consultation with the Senior President of the Labour Court and the appropriate advisory council, if any, appointed in terms of section *nineteen*, shall from time to time prepare a list of arbitrators consisting of—

(a) any labour officer, *ex officio* or designated agent whom he considers to be experienced or qualified in arbitration; and

[Paragraph amended by section 35 of Act 7 of 2005]

(b) any other person whom he considers to be experienced or qualified in arbitration.

(7) In referring a dispute to compulsory arbitration by a person other than a labour officer, or a designated agent for the employment council which is registered to represent the undertaking or industry to which the parties belong, the Labour Court or labour officer shall determine the share of the costs of the arbitration to be borne by each party.

[Subsection substituted by section 35 of Act 7 of 2005]

(8) Where a party to a dispute referred to compulsory arbitration is made up of more than one employer, employee, employers organisation, or trade union, the costs of the arbitration shall be paid in the proportions agreed upon by the constituent members of the party or, failing agreement, in the proportions determined by the arbitrator or arbitrators.

(9) In hearing and determining any dispute an arbitrator shall have the same powers as the Labour Court.

[Subsection substituted by section 35 of Act 7 of 2005]

(10) An appeal on a question of law shall lie to the Labour Court from any decision of an arbitrator appointed in terms of this section.

(11) Where the Labour Court or a labour officer has referred a dispute to compulsory arbitration, no employee, workers committee, trade union, employer or employers organisation shall engage in collective job action in respect of the dispute.

(12) Any person who contravenes subsection (11) shall be guilty of an offence and liable to a fine not exceeding level eight or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(13) At the conclusion of the arbitration the arbitrator shall submit sufficient certified copies of his arbitral award to each of the parties affected by it.

(14) Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him in terms of subsection (13) to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court.

(15) Where arbitral award has been registered in terms of subsection (14) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.

[Section substituted by section 34 of Act 17 of 2002]

## 99

[Section repealed by section 34 of Act 17 of 2002]

**101 Employment codes of conduct**

(1) An employment council or, subject to subsections (1a), (1b) and (1c), a works council may apply in the manner prescribed to the Registrar to register an employment code of conduct that shall be binding in respect of the industry, undertaking or workplace to which it relates.

[Subsection substituted by section 35 of Act 17 of 2002]

(1a) Where an employment council has registered a code governing employers and employees represented by it, no works council may apply for the registration of a code in respect of any industry, undertaking or workplace represented by the employment council unless it first refers the code to the employment council for its approval.

[Subsection inserted by section 35 of Act 17 of 2002]

(1b) Where a code is registered by a works council in respect of any industry, undertaking or workplace represented by an employment council and the employment council subsequently registers its own code, the code registered by the employment council shall supersede that of the works council, unless the works council refers it to the employment council for approval.

[Subsection inserted by section 35 of Act 17 of 2002]

(1c) Where an employment council refuses to approve a code made by a works council in terms of subsection (1a) or (1b), the works council may refer the matter to a labour officer, and the determination of the labour officer on the matter shall be final unless the parties agree to refer it to voluntary arbitration.

[Subsection inserted by section 35 of Act 17 of 2002]

(2) On application being made in terms of subsection (1), the Registrar shall, if he is satisfied that the employment code concerned provides for the matters referred to in subsection (3), register the employment code in the manner prescribed.

(3) An employment code shall provide for—

- (a) the disciplinary rules to be observed in the undertaking, industry or workplace concerned, including the precise definition of those acts or omissions that constitute misconduct;
- (b) the procedures to be followed in the case of any breach of the employment code;
- (c) the penalties for any breach of the employment code, which may include oral or written warnings, fines, reductions in pay for a specified period, suspension with or without pay or on reduced pay, demotion and dismissal from employment;
- (d) the person, committee or authority that shall be responsible for implementing and enforcing the rules, procedures and penalties of the employment code;
- (e) the notification to any person who is alleged to have breached the employment code that proceedings are to be commenced against him in respect of the alleged breach;
- (f) the right of a person referred to in paragraph (e) to be heard by the appropriate person, committee or authority referred to in paragraph (d) before any decision in his case is made;
- (g) a written record or summary to be made of any proceedings or decisions taken in terms of the employment code, which record or summary shall be made at the time such proceedings and decisions are taken.

(4) An applicant referred to in subsection (2) may, at any time after the registration of an employment code, apply in the manner prescribed to the Registrar to register any amendment to the employment code, and subsection (3) shall apply, *mutatis mutandis*, in relation to that amendment.

(5) Notwithstanding this Part, but subject to subsection (6), no labour officer shall intervene in any dispute or matter which is or is liable to be the subject of proceedings under an employment code, nor shall he intervene in any such proceedings.

(6) If a matter is not determined within thirty days of the date of the notification referred to in paragraph (e) of subsection (3), the employee or employer concerned may refer such matter to a labour officer, who may then determine or otherwise dispose of the matter in accordance with section *ninety-three*.

(7) .....

[Subsection repealed by section 35 of Act 17 of 2002]

(8) .....

[Subsection repealed by section 35 of Act 17 of 2002]

(9) The Minister may, after consultation with representatives of trade unions and employers organizations, by statutory instrument publish a model employment code of conduct.

(10) An employment council or works council may, by making application in terms of subsection (1), adopt the model employment code referred to in subsection (9), subject to such modifications as may be appropriate to the industry, undertaking or workplace concerned.

## PART XIII

### COLLECTIVE JOB ACTION

#### 102 Interpretation in Part XIII

In this Part—

“appropriate authority”.....

[Definition repealed by section 36 of Act 17 of 2002]

“disposal order” means an order made in terms of section *one hundred and seven*;

“essential service” means any service—

- (a) the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public; and
- (b) that is declared by notice in the *Gazette* made by the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section *nineteen*, to be an essential service;

[Definition amended by section 36 of Act 17 of 2002]

“lawful collective job action” means collective job action which is not prohibited in terms of subsection (3) of section *one hundred and four*;

“lock-out” means any one or more of the following acts or omissions by any person who is or has been an employer—

- (a) the exclusion by him of any person or number of persons, who are or have been in his employ, from any premises on which work provided by him is or has been performed; or
- (b) the total or partial discontinuance by him of his business or of the provision of work; or
- (c) the breach or termination by him of the contracts of employment of any person or number of persons in his employ; or
- (d) the refusal or failure by him to re-employ any person or number of persons who have been in his employ;

if that exclusion, discontinuance, breach, termination, refusal or failure is in consequence of a dispute regarding conditions of employment or other matters, and the purpose of that exclusion, discontinuance, breach, termination, refusal or failure is to induce or compel any persons who are or have been in his employ or in the employ of other persons to agree to or comply with any demands concerning conditions of employment or re-employment or other matters made by him or on his behalf or by or on behalf of any other person who is or has been an employer;

“show cause order” means an order made in terms of section *one hundred and six*;

“unlawful job action”.....

[Definition repealed by section 36 of Act 17 of 2002]

#### 103 Appeal against declaration of essential service

Any person who is aggrieved by any statutory instrument by the Minister declaring any service or occupation to be an essential service may appeal against such notice to the Labour Court, and the Labour Court may vary or revoke the statutory instrument as it deems just.

#### 104 Right to resort to collective job action

(1) Subject to this Act, all employees, workers committees and trade unions shall have the right to resort to collective job action to resolve disputes of interest.

[Subsection substituted by section 37 of Act 17 of 2002]

(2) Subject to subsection (4), no employees, workers committee, trade union, employer, employers organisation or federation shall resort to collective job action unless—

- (a) fourteen days’ written notice of intent to resort to such action, specifying the grounds for the intended action, has been given—
  - (i) to the party against whom the action is to be taken; and
  - (ii) to the appropriate employment council; and
  - (iii) to the appropriate trade union or employers organisation or federation in the case of members of a trade union or employers organisation or federation partaking in a collective job action where the trade union or employers organisation or federation is not itself resorting to such action;

- and
- (b) an attempt has been made to conciliate the dispute and a certificate of no settlement has been issued in terms of section *ninety-three*.  
[Subsection substituted by section 37 of Act 17 of 2002]
- (3) Subject to subsection (4), no collective job action may be recommended or engaged in by—
- (a) any employees, workers committee, trade union, employer, employers organisation or federation—
- (i) if the persons concerned are engaged in an essential service; or
  - (ii) if the issue in dispute is a dispute of right; or
  - (iii) if the parties to the dispute have agreed to refer the dispute to arbitration;
- or
- (b) any employees, workers committee or employer, if there is in existence a registered trade union or employers organisation which represents the interests of the employees or employers concerned and that trade union or employers organisation has not approved or authorised the collective job action; or
- (c) any trade union, employers organisation or federation unless the trade union, employers organisation or federation is registered; or
- (d) any workers committee, if there is in existence a union agreement which provides for or governs the matter in dispute, and such agreement has not been complied with or remedies specified therein have not been exhausted as to the issue in dispute; or
- (e) any workers committee, trade union or employers organisation, except with the agreement of the majority of the employees or employers, as the case may be, voting by secret ballot.  
[Subsection substituted by section 37 of Act 17 of 2002]
- (4) Nothing in subsection (1), (2) or (3) shall be deemed to prevent collective job action from being resorted to—
- (a) in order to avoid any occupational hazard which is reasonably feared to pose an immediate threat to the health or safety of the persons concerned:  
 Provided that—
- (i) the occupational hazard has not been deliberately caused by the persons resorting to the collective job action;
  - (ii) the collective job action resorted to shall remain proportional in scope and locality to the occupational hazard in question;
  - (iii) the collective job action shall diminish in proportion as such occupational hazard diminishes;
- (b) in defence of an immediate threat to the existence of a workers committee or a registered trade union.

[Paragraph amended by section 37 of Act 7 of 2005]

## **104A Picketing**

- (1) In the section—
- “picket” means a gathering of members and supporters of a trade union or workers committee for either or both of the following purposes—
- (a) demonstrating peacefully—
- (i) in support of any collective job action; or
  - (ii) in opposition to any lock-out;
- and
- (b) peacefully persuading other members of the trade union or workers committee or employees of the industry, undertaking or workplace represented by the trade union or workers committee to take part in the collective job action or demonstration.
- (2) A registered trade union or workers committee may authorise a picket.
- (3) Notwithstanding any other law regulating the right of assembly, a picket authorised in terms of subsection (2) may be lawfully conducted—
- (a) outside the premises of an employer or in any place to which the public has access; and
  - (b) if so authorised by a collective bargaining agreement, or a code of picketing agreed between the Minister and the appropriate advisory council, if any, appointed in terms of section *nineteen* and prescribed by regulations made in terms of section *one hundred and nineteen*, inside the premises of the employer concerned in any area that does not substantially affect production.

[Section inserted by section 38 of Act 17 of 2002]

## 105 Lock-outs and actions connected therewith

No employer or employers organization shall—

- (a) threaten, recommend or engage in a lock-out, except in accordance with sections *one hundred and two* and *one hundred and four*; or
- (b) without the consent of the Minister, lay off, suspend or dismiss any employee or withhold wages or benefits due to any employee as a consequence of or in connection with a lock-out.

(2) No employer or employers organisation or federation, or official or office-bearer of such employers organisation or federation, shall threaten, recommend, encourage, incite, organise or engage in an unlawful collective job action referred to in paragraph (b) of the definition of that term in section *two*.

(3) Where more than one person referred to in subsection (2) threatened, recommended, encouraged, incited, organised or engaged in the unlawful collective job action, their liability therefor shall be joint and several.

[Section substituted by section 39 of Act 17 of 2002]

## 106 Show cause orders

(1) Whenever a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereafter in this section called a “responsible person”) threatens, recommends, encourages, incites, organises or engages in any collective action referred to in subsection (1) of section *one hundred and nine* (hereinafter in this section and section *one hundred and seven* called an “unlawful collective action”), the Minister, acting on his own initiative or upon the application of any person affected or likely to be affected by the unlawful collective action, may issue an order calling upon the responsible person to show cause why a disposal order should not be made in relation thereto:

Provided that the Minister may call both parties to appear before him or her for submissions before he or she issues a show cause order if he or she deems it necessary that they appear.

[Proviso inserted by section 36 of Act 7 of 2005]

(2) A show cause order—

- (a) shall specify—
  - (i) the date, time and place at which the responsible person must appear before the Labour Court to show cause why a disposal order should not be made; and
  - (ii) the order or action desired or proposed;
- (b) may direct that pending the issuance of a disposal order, the unlawful collective action concerned be terminated, postponed or suspended.

[Section substituted by section 40 of Act 17 of 2002]

## 107 Disposal orders

(1) On the return day of a show cause order the Labour Court shall, at the time and place specified in the order, inquire into the matter and shall afford the parties concerned an opportunity of making representations in the matter.

(2) After conducting an inquiry in terms of subsection (1), the Labour Court may issue a disposal order directing that—

- (a) the unlawful collective action be terminated, postponed or suspended; or
- (b) the issue giving rise to the unlawful collective action concerned be referred to another authority to be dealt with in terms of Part XII and that, pending the determination of the issue in terms of that Part, the unlawful collective action concerned be terminated, postponed or suspended.

(3) Without derogation from the generality of the powers conferred upon the Labour Court in terms of subsection (2) to make a disposal order, such order may provide for—

- (a) in the case of an unlawful collective action other than a lock-out—
  - (i) discharge or suspension of an employer’s liability to pay all or part of the wages or benefits due to specified employees or categories of employees engaged in the unlawful collective action, in respect of the duration of such collective action or part thereof;
  - (ii) the employer, to take disciplinary action in terms of the code or law, or lay off or suspend with or without pay, specified employees or categories of employees engaged in the unlawful collective action;

[Subparagraph amended by section 37 of Act 7 of 2005]

- (iii) the lay off or suspension, with or without pay, of specified employees or categories of employees not engaged in the unlawful collective action for such period as may be specified where such lay off or suspension is necessitated by the collective action;

- (iv) the dismissal of specified employees or categories of employees engaged in the unlawful collective action;
- (v) the prohibition of the collection of union dues by any trade union concerned for such period as may be specified;
- (vi) the suspension or rescission of the registration of the trade union involved in the collective job action;
- (vii) the taking of disciplinary action by the employer in the case of employees on collective job action, in terms of the code or any other sanction as the circumstances permit, in respect of defiance of a show cause order.

[Subparagraph inserted by section 37 of Act 7 of 2005]

- (b) in the case of an unlawful collective action consisting of a lock-out—
  - (i) where wages or benefits due to employees have been withheld or suspended, the payment of such wages or benefits;
  - (ii) the resumption of the normal operations of the undertaking concerned;
  - (iii) where any employees have been laid off, suspended or dismissed, the reinstatement of such employees with all necessary wages, compensation and other related benefits;
  - (iv) the suspension or dismissal of specified managerial employees who are responsible for or have provoked, or contributed to, the lock-out.

[Section substituted by section 40 of Act 17 of 2002]

### **108 Protection of persons engaged in lawful collective action**

- (1) In this section and section *one hundred and nine*—

“lawful collective action” means any collective job action that complies with this Part in respect of its notification and other matters provided for under this Part, and “unlawful collective action” shall be construed accordingly.

(2) It shall not be a delict or breach of contract for any workers committee, registered trade union, registered employers organisation or registered federation of registered trade unions or employers organisations (hereinafter in this section called a “protected person”) to threaten, recommend or engage in a lawful collective action, and no protected person shall be liable to any civil liability or proceedings therefor other than as specified in this Part:

Provided that such immunity from suit shall not extend to wilful acts or omissions threatening or resulting in the destruction of, or damage to, property other than the perishing of goods caused by employees’ absence from work on account of such collective action.

(3) All individual employees and officials or office-bearers of a protected person, shall be entitled to the same immunity as is conferred upon a protected person in terms of subsection (2) and, in addition, his employment shall not be terminated on the ground that he has threatened, recommended or engaged in any lawful collective action.

(4) An employer is not obliged to remunerate an employee for services that the employee does not render during the lawful collective action except where the employee’s remuneration includes payment in kind by way of accommodation, the provision of food and other basic amenities of life, in which event the employer shall not discontinue such payment in kind unless the employee declines such remuneration:

Provided that, at the conclusion of the collective action, the employer may recover the monetary value of such remuneration by action instituted in the Labour Court.

(5) An employer may not employ any person for the purpose of performing the work of an employee who is locked out.

[Section substituted by section 40 of Act 17 of 2002]

### **109 Liability of persons engaged in unlawful collective action**

(1) If a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereinafter in this section called a “responsible person”), or any individual employer or employee or group of individual employers or employees, recommends, advises, encourages, threatens, incites, commands, aids, procures, organises or engages, in any collective action which is prohibited in terms of subsection (3) of section *one hundred and four*, the responsible person, and every official or office-bearer of the responsible person, or, as the case may be, individual employer or employee or group of individual employers or employees, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person other than a person referred to in subsection (1) who recommends, advises, encourages, threatens, incites, commands, aids or procures any collective action which is prohibited in

terms of subsection (3) of section *one hundred and four*, with the intention or realising that there is a risk or possibility of bringing about such collective action, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

The test referred to in section 3 of the Public Order and Security Act [*Chapter 11:17*] shall apply to determining whether or not the person whose conduct is in issue realised that there was a risk or possibility that his conduct might bring about the collective action referred to in this subsection.

(3) The Minister may, by order in writing served on—

- (a) a trade union or employers organisation which he believes on reasonable grounds to be in contravention of subsection (1); and
- (b) the employment council to which the trade union or employers organisation referred to in paragraph (a) is a party; and
- (c) any employer who is party to a collective bargaining agreement with the trade union referred to in paragraph (a);

suspend for such period, not exceeding twelve months, as shall be specified in the order, the right of the trade union to levy, collect or recover union dues by means of a check-off scheme, or the right of the employers organisation to collect membership fees.

(4) An order referred to in subsection (3) may be issued together with, or independently or instead of, a show cause order.

(5) If—

- (a) criminal proceedings against a trade union or employers organisation referred to in paragraph (a) of subsection (3)—
  - (i) are not instituted within thirty days of the date of service of the order referred to in subsection (3) on the trade union or employers organisation; or
  - (ii) end otherwise than in conviction;

or

- (b) the Labour Court declines to grant a disposal order;

the order shall be deemed to have been cancelled with effect from the last day for the institution of criminal proceedings in terms of paragraph (a), or the date of acquittal or withdrawal of the criminal proceedings, or the date when the Labour Court declined to grant an order referred to in paragraph (b), whichever is the earliest date.

(6) In addition to any penalty that may be imposed under subsection (1) or (2) and without derogation from any other remedy available under any other law—

- (a) a responsible person, and every official or office-bearer of the responsible person, and every individual employer or employee who participates in any unlawful collective action; or
- (b) a person referred to in subsection (2);

as the case may be, shall be jointly and severally liable, at the suit of any injured party, for any injury to or death of a person, loss of or damage to property or other economic loss, including the perishing of goods caused by employees' absence from work, caused by or arising out of or occurring during such collective action.

(7) Subject to Part XIX of the Criminal Procedure and Evidence Act [*Chapter 9:07*], a court which has convicted a person of any offence in terms of subsection (1) that involves any loss, damage, injury or death for which that person is liable in terms of this section shall forthwith award compensation to any person who has suffered personal injury or whose right or interest in property of any description has been lost or diminished as a direct result of the offence.

[Section substituted by section 40 of Act 17 of 2002]

## 110 Appeals

(1) Any person who is aggrieved by—

- (a) a show cause order or the refusal to make such order; or
- (b) a disposal order made by an appropriate authority or by the refusal of any such authority to make such order;

may appeal to the Labour Court.

(2) The lodging of an appeal in terms of subsection (1) shall not affect any order appealed against:

Provided that pending the determination of the appeal, the Minister or the appropriate authority may give such directions to, or impose such restrictions on, any of the parties as he considers fair and reasonable, taking into account the respective rights of the parties and the public interest.

[Subsection amended by section 45 of Act 17 of 2002]

### **111 Cessation of collective job action**

Whenever—

- (a) the underlying cause of any collective job action or lock-out which is threatened, anticipated or in force has been removed; or
- (b) the issue, dispute or complaint giving rise to any collective job action or lock-out which is threatened, anticipated, or in force has been determined or resolved in terms of Part XII or this Part; or
- (c) any collective job action by a workers committee or trade union is threatened, anticipated or in force and the executive of such workers committee or trade union or federation thereof, acting in terms of its constitution, has ordered the suspension of such collective job action; or
- (d) the termination, postponement or suspension of any collective job action or lock-out is directed in any show cause order or disposal order which has been given;

any person who is or might become involved in such collective job action or lock-out shall, as the case may be, forthwith cease or refrain from participating in or threatening such collective job action or lock-out.

### **112 Offences under Part XIII**

(1) Any person who contravenes or fails to comply with—

- (a) subsection (2) or (3) of section *one hundred and four*; or
- (b) section *one hundred and five* ; or
- (c) a direction made in terms of paragraph (b) or (c) of subsection (2) of section *one hundred and six*; or
- (d) the terms of a disposal order; or
- (e) section *one hundred and eleven*;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) When imposing any penalty or sentence upon conviction for an offence in terms of subsection (1), the court shall take into account—

- (a) the terms of any show cause order or disposal order which has been made relating to the offence concerned, and the extent to which the convicted person has complied with it; and
- (b) the extent to which the dispute concerned has been resolved.

[Section substituted by section 4 of Act 22 of 2001]

## **PART XIV**

### **EMPLOYMENT AGENCIES**

### **113 Interpretation in Part XIV**

(1) In this Part, “registrar” means the registrar of employment agencies referred to in section *one hundred and twenty-one*.

(2) The registrar shall keep a register of employment agencies which have been registered in terms of this Act, and shall perform such other functions as are imposed or conferred upon him under this Act.

(3) The registrar may, subject to the directions of the Minister, delegate any of his functions to any other person employed by the State.

### **114 Employment agencies to be registered**

(1) No person shall—

- (a) conduct an employment agency; or
- (b) charge or recover any payment or reward for or in connection with the procurement of employment through an employment agency;

unless that employment agency is registered under this Act.

(2) No person shall hold himself out as conducting an employment agency, unless that employment agency is registered under this Act.

### **115 Application for registration, issue, variation and cancellation of certificates of registration**

(1) Application for the registration of an employment agency shall be made to the registrar in the prescribed form.

(2) Upon an application made to him in terms of subsection (1), if the registrar—

- (a) is satisfied that the premises concerned are suitable for use as an employment agency, and that having regard to any other relevant matters the application should be granted, he shall grant the application and issue to the applicant a certificate of registration;
  - (b) is not so satisfied as to the matters specified in paragraph (a), he shall refuse the application and give reasons for his refusal.
- (3) A certificate of registration shall specify—
- (a) the name of the person to whom the certificate is issued; and
  - (b) the premises at which the business is to be conducted; and
  - (c) the period for which the certificate shall be in force; and
  - (d) the area, including any foreign country, in respect of which the business may be conducted; and
  - (e) the class or classes of persons or employment in respect of which the business may be conducted; and
  - (f) any conditions subject to which the business may be conducted.
- (4) The registrar may cancel the registration of an employment agency or vary the terms or conditions of any certificate of registration—
- (a) after due inquiry and for good cause, if he has notified the holder of the certificate of his intention to do so, and has given the holder the opportunity of making representations to him, and has considered any representations which the holder has made; or
  - (b) on the application of the holder of the certificate.
- (5) Any person aggrieved by a decision of the registrar made in the exercise of his functions under this section may appeal against such decision to the Labour Court, which may determine the matter in such manner as it deems just.

#### **116 Duties of persons conducting employment agencies**

- (1) Every person who conducts or is in charge of an employment agency registered under this Act shall—
- (a) retain any record which by regulations made under this Act he is required to make for a period of three years subsequent to the occurrence of the event recorded; and
  - (b) on demand by an employment officer made at any reasonable time during the said period of three years, produce the said record for inspection; and
  - (c) furnish to the registrar such statistical information at such times and in such manner as may be prescribed.
- (2) No person shall charge or receive in respect of anything done or to be done at an employment agency—
- (a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area and class of business; or
  - (b) any fee or other payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act:

Provided that this subsection shall not apply to a business consultant carrying on business at the same place as an employment agency in respect of anything done in the course of such business other than the procurement of employment for clients.

#### **117 Powers of employment officers**

- (1) An employment officer may, without previous notice and at any reasonable time during the day, enter upon any premises of an employment agency for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Part.
- (2) In the exercise of the powers conferred upon him by subsection (1) an employment officer may—
- (a) require from any person conducting an employment agency the production of any books or documents which relate to his business and which are or have been upon the premises or in his possession or custody, or under his control; and
  - (b) at any place require from any person who has the possession or custody or control of any books or documents relating to the business of any person who is or was conducting an employment agency, the production of such books or documents; and
  - (c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b); and
  - (d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); and

- (e) seize any book or document referred to in paragraph (a) or (b) that, in his opinion, may afford evidence of the commission of any offence under this Act:

Provided that in the exercise of the powers conferred by this subsection, an employment officer shall exercise such reasonable care as to ensure that the smooth and efficient running of an employment agency is not unduly interfered with.

(3) Every employer in connection with whose employment agency any premises are occupied or used, and every person employed by him, shall at all reasonable times during the day, furnish such reasonable facilities as may be required by an employment officer for entering the premises for the purpose of inspecting or examining the books and documents kept in the premises, or for making any inquiry in relation thereto.

(4) No person shall—

(a) make a false statement—

(i) in any representations to an employment officer; or

(ii) when giving evidence to or before an employment officer investigating a case in terms of this section;

which he knows to be false in any material particular, or which he has no reason to believe to be true; or

(b) refuse to answer any question which an employment officer, in the exercise of his functions in terms of this section, has put to him; or

(c) refuse to comply to the best of his ability with any requirement made by an employment officer in the exercise of his functions in terms of this section; or

(d) hinder an employment officer in the exercise of his functions in terms of this section.

#### **118 Offences under Part XIV**

(1) Any person who fails to comply with—

(a) subsection (1) or (2) of section *one hundred and fourteen*; or

(b) any condition in a certificate of registration specified pursuant to paragraph (f) of subsection (3) of section *one hundred and fifteen*;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) Any person who contravenes—

(a) subsection (1) or (2) of section *one hundred and sixteen*; or

(b) subsection (4) of section *one hundred and seventeen*; or

(c) any regulations made in terms of section *one hundred and nineteen*;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection substituted by section 4 of Act 22 of 2001]

#### **119 Minister may make regulations**

(1) The Minister may make such regulations as he deems necessary or expedient for the purpose of giving effect to, or for the better administration of, this Part.

(2) Regulations made in terms of subsection (1) may provide for—

(a) the form in which an application is to be made for a certificate of registration;

(b) the fee to be paid for a certificate of registration or copies thereof;

(c) the fees which may be charged in respect of the business of an employment agency;

(d) the surrender of certificates of registration where the conditions thereof are to be varied or where such certificates are to be cancelled;

(e) the records to be kept in respect of an employment agency.

### **PART XV**

#### **GENERAL**

#### **120 Investigation of trade unions and employers organizations**

(1) If the Minister has reasonable cause to believe that the property or funds of any trade union, employers organization or federation are being misappropriated or misapplied, or that the affairs of any trade union, employers organization or federation are being conducted in a manner that is detrimental to the interests of its members as a whole, the Minister may order that such trade union, employers organization or federation be investigated.

(2) For the purpose of any investigation referred to in subsection (1), the Minister shall appoint in writing an investigator who shall, at all reasonable times and without prior notice, have power—

(a) to enter any premises; and

- (b) to question any person employed on the premises; and
- (c) to inspect and make copies of and take extracts from any books, records or other documents on the premises;

connected with or related to the trade union, employers organization or federation under investigation.

(3) An investigator appointed in terms of subsection (2) shall report the results of his investigation to the Minister as soon as practicable and, in so doing, may recommend, having regard to all the circumstances of the case, that—

- (a) in the case of an unregistered trade union, employers organization, or federation such trade union or employers organization or federation be wound up; or
- (b) in the case of a registered trade union, employers organization or registered federation such trade union, employers organization or federation—
  - (i) be de-registered and wound up; or
  - (ii) be administered in terms of subsection (7).

(4) During the period of investigation of a trade union, employers organization or federation no person who is or has been an office-bearer of the trade union, employers organization or federation concerned shall, without the consent of the investigator, in any way expend or dispose of any property of the trade union, employers organization or federation concerned.

(5) An investigator shall not refuse to grant consent in terms of subsection (4) in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the trade union, or employers organization or federation concerned.

(6) Where the Minister accepts a recommendation made in terms of paragraph (a) or subparagraph (i) of paragraph (b) of subsection (3), he shall—

- (a) in the case of an unregistered trade union, employers organization or federation make application to the High Court; or
- (b) in the case of a registered trade union, employers organization or federation make application to the Labour Court;

for the trade union, employers organization or federation concerned to be wound up in terms of its constitution.

(7) Where the Minister accepts a recommendation made in terms of subsection (3)(b)(ii), he shall make application to the Labour Court to appoint or an administrator (or confirm the appointment of a provisional administrator pursuant to proviso (b)) and such assistants as the administrator may require, to administer the affairs of the trade union, employers organization or federation in respect of which the recommendation was made:

Provided that—

- (a) an administrator may not be appointed for more than six months or until the next annual general meeting of the trade union, employers organization or federation concerned whichever is the later;
- (b) pending determination by the Labour Court of an application to appoint an administrator, the Minister may appoint a provisional administrator who shall exercise all the powers of a substantive administrator until the provisional administrator's appointment is confirmed by the Labour Court or some other person is appointed with the leave of the Court as substantive administrator;
- (c) if the Labour Court refuses an application to appoint an administrator or confirm the appointment of a provisional administrator, the refusal of the application shall not affect the validity of anything done by the provisional administrator in good faith pursuant to this section before the date of such refusal.

[Subsection inserted by section 17 of by Act 5 of 2015]

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the trade union, employers organization or federation concerned in such a manner as to rectify the matters for the rectification of which he or she was appointed and, in so doing, may, by notice in writing prohibit any person who is or has been an office-bearer or employee of the trade union, employers organization or federation from—

- (a) expending, disposing of or in any way dealing with any property of the trade union, employers organization or federation; or
- (b) operating any account with any bank, building society or other financial institution on behalf of the trade union, employers organization or federation:

Provided that the administrator shall authorize any transaction or expenditure which he is satisfied forms part of the ordinary and lawful course of business of the trade union, employers organization or federation.

[Subsection inserted by section 17 of by Act 5 of 2015]

(9) If after due investigation an administrator appointed in terms of subsection (7) finds sufficient evidence on a balance of probabilities that any person who is or has been an office-bearer or employee of the trade union, employers organization or federation has misappropriated any property of the trade union, employers organization or federation, the administrator may—

- (a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence so found; and
- (b) lodge, on due notice to the office-bearer or employee or former office-bearer or employee concerned (“the respondent”), an application to the Labour Court, together with the affidavit, for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down to for hearing (the “return day” of the application) to refund or return to such trade union, employers organization or federation any property which the respondent has misappropriated from such trade union, employers organization or federation.

[Subsection inserted by section 17 of Act 5 of 2015]

(10) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the administrator shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court.

[Subsection inserted by section 17 of Act 5 of 2015]

(11) For the purposes of subsection (9), “misappropriate” in relation to the property or moneys of the trade union, employers organization or federation under administration includes doing either or both of the following in defiance of a notice referred to in subsection (8)—

- (a) expending or disposing of the property of the trade union, employers organization or federation; or
- (b) withdrawing moneys from any account with any bank, building society or other financial institution operated on behalf of the trade union, employers organization or federation.

[Subsection inserted by section 17 of Act 5 of 2015]

(12) Any person who—

- (a) makes any false representation to, or otherwise wilfully hinders or obstructs an investigator or administrator in the exercise of his or her functions under this section; or—
- (b) falsely holds himself or herself out to be an investigator or administrator; or
- (c) contravenes subsection (4);

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection inserted by section 17 of Act 5 of 2015]

## **121 Officials**

(1) For the purposes of this Act, there shall be—

- (a) a Registrar of Labour and such number of Assistant Registrars of Labour as may be necessary for carrying out the functions assigned to such officers in terms of this Act; and
- (b) such number of labour officers and employment officers as may be necessary for carrying out the functions assigned to such officers in terms of this Act;

whose offices shall form part of the Public Service.

(2) With the approval of the Minister, the Registrar may delegate to any other officer referred to in subsection (1) any of the functions conferred upon him by this Act, other than such power of delegation.

(3) The Minister may give directions of a general nature to any officer referred to in subsection (1) as to the performance of his functions in terms of this Act.

(4) An officer referred to in subsection (1) shall be issued with a certificate signed by the Registrar stating his official title.

[Section substituted by section 41 of Act 17 of 2002]

## **122 Acquisition of undertakings by trade unions and trade union congress**

(1) Whenever—

- (a) an undertaking which employs persons who are members of one or more registered trade unions or a federation thereof is to be discontinued; and
- (b) it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued;

the Minister may, subject to this section, direct all or any of the trade unions or the federation concerned to endeavour in good faith to acquire the undertaking from their funds.

(2) Where the employees of an undertaking referred to in subsection (1) are not members of a registered trade union, the Minister may, if it would be in the interests of consumers, the employees concerned and members of the public generally that the undertaking be continued, subject to this section, direct any federation, association or congress of trade unions to endeavour in good faith to acquire the undertaking from the funds of such association or congress.

(3) Before making any direction in terms of subsection (1) or (2), the Minister shall consult the employees and any trade union, federation, association or congress of trade unions concerned.

(4) When making any direction in terms of subsection (1) or (2), the Minister shall include therein such directions as to the repayment by the employees concerned of such of the costs and expenses of the federation, association or congress of trade unions concerned as the Minister thinks fit.

### **123 Minister may raise levies to meet certain expenses**

(1) Subject to subsection (2), the Minister may, after consultation with the Minister responsible for finance, by statutory instrument provide for the imposition and payment of levies on employees, employers organizations, trade unions and federations thereof for the purpose of meeting the expenses of all or any of the following—

(a) .....

[Paragraph repealed by section 45 of Act 17 of 2002]

(b) the Labour Court; and

(c) employers organizations or any federation, association or congress of trade unions recognized by the Minister as being representative of all or most registered trade unions; and

(d) employers organizations recognized by the Minister as being representative of all or most registered employer organizations.

(2) In imposing levies in terms of subsection (1), the Minister shall take into account—

(a) the extent to which any person upon whom the levy is imposed has utilized or ought to utilize the services of the Labour Court, federation, association or congress of trade unions concerned; and

[Paragraph amended by section 45 of Act 17 of 2002]

(b) the ability of any person or organization upon whom the levy is imposed to pay the levy.

### **124 Protection against multiple proceedings**

(1) Where any proceedings in respect of any matter have been instituted, completed or determined in terms of this Act, no person who is aware thereof shall institute or cause to be instituted, or shall continue any other proceedings, in respect of the same or any related matter, without first advising the authority, court or tribunal which is responsible for or concerned with the second-mentioned proceedings of the fact of the earlier proceedings.

(2) .....

[Subsection repealed by section 4 of Act 22 of 2001]

### **125 Records to be kept by employers, principals and contractors**

(1) Every employer upon whom any agreement, determination or regulation is binding under this Act in relation to remuneration to be paid, time to be worked or such other particulars as may be prescribed shall at all times keep, in respect of all persons employed by him, records of the remuneration paid, of the time worked and of those other particulars.

(2) The form and manner in which the records referred to in subsection (1) shall be kept as prescribed:

Provided that the Registrar may in writing authorize the keeping of such records in some other form if the records so kept will, in his opinion, enable a labour officer or designated agent to ascertain therefrom the required particulars.

(3) Whenever any agreement, determination or regulation regulates the rates at which or the principles upon which payment shall be made by a principal or contractor to any person to whom any work is given out on contract by that principal or contractor, every such principal or contractor shall at all times keep records of payments made by him to any person to whom he has so given out work on contract and of such other particulars as may be prescribed, and every such person to whom work has so been given out on contract shall at all times keep records of payments received by him from any such principal or contractor in respect of such work and such other particulars as may be prescribed.

(4) Every person who is or has been an employer or principal or contractor, as the case may be, shall retain the records referred to in subsections (1) and (3) for a period of three years and shall produce these records on demand made at any time during that period by—

- (a) a labour officer; or
- (b) a designated agent acting within the scope of his authority, in terms of subsection (3) of section *sixty-three*.

(5) If an employer fails to keep or retain the records referred to in this section or falsifies any such record, it shall be presumed for the purposes of this Act that every employee employed by him during the relevant period was engaged throughout that period for not less than the ordinary hours of work applicable to that employee in terms of any agreement, determination or regulation under this Act.

(6) Where it is proved that any statement or entry contained in any record is false, the person required in terms of this section to keep that record shall be presumed, until the contrary is proved, wilfully to have falsified that record.

(7) Any person who fails to comply with any of the provisions of this section applicable to him or who wilfully falsifies any record referred to in this section shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **126 Investigative powers of labour officers**

(1) A labour officer—

- (a) may without previous notice enter upon any premises in which any person is being employed; and
- (b) in respect of matters relating to wages, hours or conditions of work, may question, either apart from or in the presence of others, any person who is or has been upon or in any premises in which any person is being employed; and
- (c) may require from any person who is or has been upon or in any premises in which any person is being employed the production then and there, or at a time and place fixed by the labour officer, of all relevant books and documents which are or have been upon or in the premises or in the possession or custody or under the control of any employer by whom the premises are occupied or used, or of any employee of that employer; and
- (d) may at any time and at any place require from any person who has the possession or custody or control of any relevant book or document relating to the business of any person who is or was an employer, the production then and there, or at a time and place fixed by the labour officer, of that book or document; and
- (e) may examine and make extracts from and copies of all books and documents produced to or examined by him, and may require an explanation of any entries in any such books or documents; and
- (f) may seize any such books or documents as he believes on reasonable grounds may afford evidence of any offence under this Act.

(2) Any employer in connection with whose business any premises are occupied or used, and every person employed by him, shall at all times furnish such facilities as are required by a labour officer for the purpose of exercising any of the powers conferred by subsection (1).

(3) Where any work is given out on contract to any person by a principal or contractor who is himself an employer in or is engaged in the undertaking, industry, trade or occupation concerned, a labour officer may exercise in relation to that principal or contractor any or all of the powers conferred by subsection (1).

(4) Any labour officer exercising a power or performing a duty conferred or imposed upon him by this section shall on demand produce the certificate furnished to him in terms of subsection (3) of section *one hundred and twenty-one*.

(5) Any person who—

- (a) refuses or fails to answer any question which a labour officer in the exercise of his functions puts to him; or
- (b) makes a false statement—
  - (i) in any representations to a labour officer; or
  - (ii) when giving evidence to or before a labour officer investigating a case in terms of this Part:

which he knows to be false in any material particular, or which he has no reason to believe to be true; or

- (c) refuses or fails to comply with any request made by a labour officer in the exercise of his functions; or
- (d) hinders a labour officer in the exercise of his functions;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection substituted by section 40 of Act 17 of 2002]

## **127 Regulations**

(1) The Minister may make regulations prescribing anything which, in terms of this Act, is to be prescribed or which in his opinion, is necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may provide for—

- (a) the form of applications, notices or orders in terms of this Act;
- (b) the procedures to be followed in making applications or appeals and the procedures to be followed by any official, board, tribunal or authority upon which functions are conferred in terms of this Act;
- (c) the examination and inspection of the books, records and documents of workers committees, trade unions and employers organizations;
- (d) the requirement by workers committees, trade unions and employers organizations to submit returns concerning their affairs to the Minister or such officials as may be specified;
- (e) the duties and functions of officers in terms of this Act;
- (f) the fees payable in respect of the registration and variation of registration of a trade union or employers organisation or federation thereof and the registration of employment councils.

[Paragraph inserted by section 43 of Act 17 of 2002]

(3) Regulations made in terms of subsection (1) may provide penalties for any contravention thereof:

Provided that no such penalty shall exceed a fine of level five or imprisonment for a period of six months or both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **128 Offences by and in respect of labour officers, designated agents and officials**

(1) Any person who—

(a) .....

[Paragraph repealed by section 4 of Act 22 of 2001]

(b) falsely holds himself out to be—

- (i) a labour officer; or
- (ii) a designated agent of an employment council; or
- (iii) an official of a trade union or employers organization;

or

(c) being an officer, agent or official referred to in paragraph (b), falsely represents that he is authorized by the Minister, an employment council or a trade union or employers organization to collect any moneys when he is not so authorized;

shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

(2) .....

[Subsection repealed by section 4 of Act 22 of 2001]