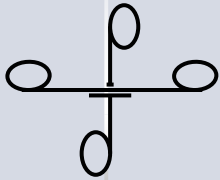


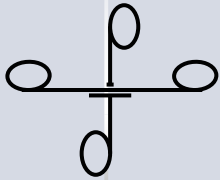
Basic Employment Conditions and The Labour Act, 2007

Seminar presented by
Pieter J de Beer



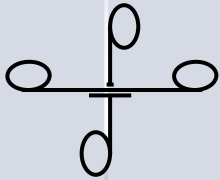
Ground Rules

- Welcome and Introduction
- Please do not use Cell phones
- Programme for the day
- Questions
- Slides at www.namibia-law.com from 29 Nov to 10 December 2010



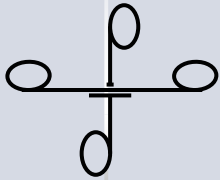
Introduction p. 5

- Sources of Namibian Labour Law
 - Common law
 - Legislation
 - Case law



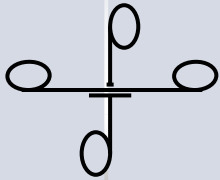
Introduction

- Understanding the employment relationship
 - Terms and conditions of the contract
 - Policies and practices
 - Individual and collective agreements
 - Provisions of the Labour Act



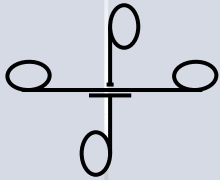
Introduction

- Written employment agreements and verbal employment agreements
- Difference of opinion / interpretation
- Review or compare employment agreements with provisions of Labour Act and other laws



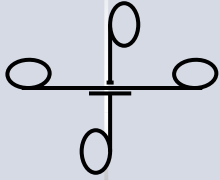
Introduction

- Duty to comply with the Labour Act rests on the employer, regardless of what employee agreed to or signed
- Instances where business operation requires different terms or conditions?
- Parameters of the law



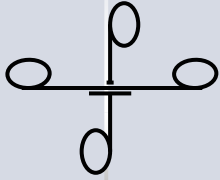
Labour Law Legislation p. 6

- Act came into operation on 1-11-2008, except sec. 128 - prohibition of labour hire services
- Rules and Regulations promulgated and came into operation on 1-11-2008



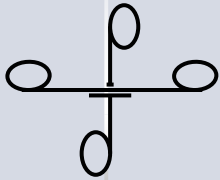
Current Legislation

- Labour General Regulations 1-11-08
- Rules pertaining to Conciliation and Arbitration 1-11-08
- Labour Court Rules 15-1-2009
- Good practices pertaining to industrial relations (strikes / picketing) 19-10-09



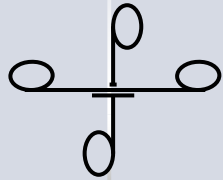
Current Legislation

- Health & Safety Regulations remains in force – 1 August 1997



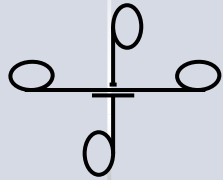
Future Developments

- Amendments to the Labour Act
 - Labour Hire rules
 - Existence of employment relationship
- Employment Service Bill
 - Regulate recruitment



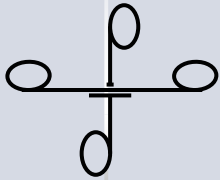
Related Legislation p. 7

- Social Security Act & Regulations
- Affirmative Action Act
- Social Work & Psychology Act
- Pension Fund Acts and Regulations
- Employee Compensation Act
- Medical Aid Act and Regulations
- Married Persons Equality Act
- Racial discrimination
- Immigration Control Act



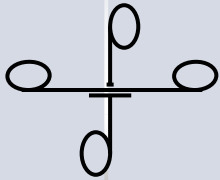
Application of the Act p. 7

- The Act is applicable to all employers and employees within Namibia
- The Act is not applicable to “independent contractors”



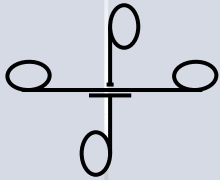
Employee

- An individual, excluding an independent contractor who works for another person and who receives, or is entitled to receive remuneration for that work; or
- In any manner assists in the carrying on or conducting the business of an employer



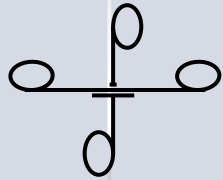
Nature of Employment p.8

- ID of parties to the agreement
- Make services available
- Employer utilises services
- Employer pay remuneration in return
- Common law and legislation are applicable



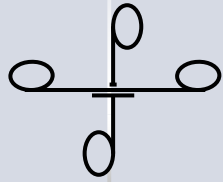
Employment Agreement

- No need to be in writing
- Employee to make services available
- Compensation payable to employee
- Parties may agree to more favourable conditions
 - Recommendation Always written agreement



Employment Agreement

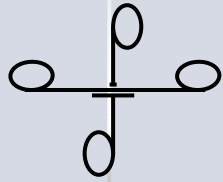
- Basic working conditions applicable to all employees
 - Permanent employees
 - Temporary employees (fix term)
 - Part time employees
- The 2007 Act removes the concept of “**casual employees**” by amendment to the Social Security Act.



Independent Contractors

p. 9

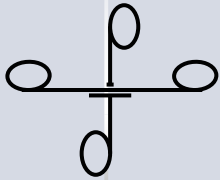
- The Dominant Impression Test
 - Method of payment
 - Tax, Social Security
 - Supervision and control
 - Benefits such as annual leave
 - Making services available versus executing a piece of work



Obligations of Employer

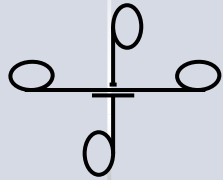
p. 11

- Duty to compensate
- Provision of work
- Safe working environment
- Minimum employment conditions



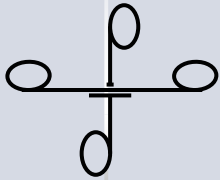
Fundamental Rights

- No employment decision may discriminate against employee [Sec 5(2)]
- “Employment decision” is almost every possible decision an employer can take with regard to employment [Sec 5(1)(b)]



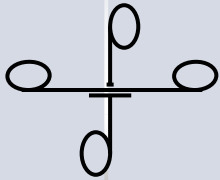
Fundamental Rights [sec 5 (4)]

- It is NOT discrimination to select on
 - Ability
 - Capacity
 - Productivity
 - Conduct
 - Operational requirements
 - Needs



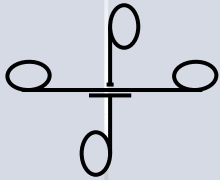
Fundamental Rights

- Discrimination on grounds of gender without justification is unlawful [sec 5 (3)]
- No discrimination allowed based on “family responsibility”
- Includes “dependants” which are not necessarily family [sec 5 (1) (c)]



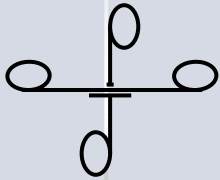
Fundamental Rights

- To avoid allegations of discrimination questions and information required during the interview, selection and recruitment process must have a “valid” aim
- What do you want to do with the answer provided?



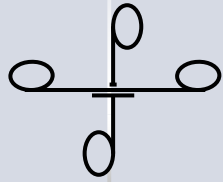
Fundamental Rights [sec 5(1)(g)]

- “Work of equal value” refers to gender and not *race or ethnic* differences



Fundamental Rights

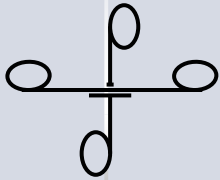
- Onus to prove is on employee / complainant [sec 5 (5) (a)]
- Complainant can also be a prospective employee [sec 5(7)(a)]
- Complaints involving discrimination will be referred to Arbitration [sec 7(3)]
- Complainant may go to the High Court in stead of Arbitration [sec7(5)]



Terms and Conditions

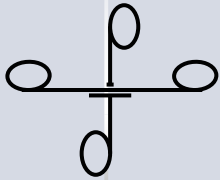
p. 13

- Not the ordinary contract
- Tri-party relationship
- Prerequisites outlined during recruitment and selection
- “Non-negotiable” terms
- Not contravening the laws



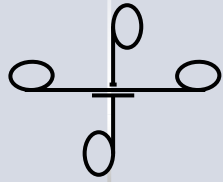
Terms & Conditions

- Of the shelf pro forma agreements
- Company policies and practices
- Collective (Recognition) agreements
- Individual agreements



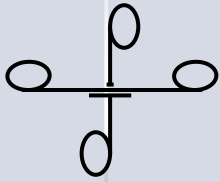
Contract Clauses p. 14

- Recommended clauses regulating the relationship and informing (reminding) employees of the applicable terms and conditions of employment



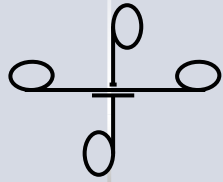
Statutory Terms and Conditions p. 15

- Concept contract clauses in line with the Basic conditions of employment stipulated in Part Three of the Act.
- Overview



Minimum Conditions

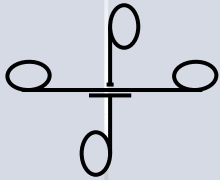
- Unless an employer received exemption, the basic conditions of employment must be adhered to by Employers



Categories of Employees

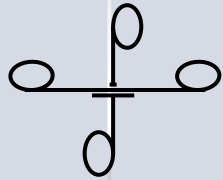
p. 16

- Permanent employees
- Temporary (Fix-term) employees
- Part Time
- Seasonal
- “casual employees”
- Use of correct terminology



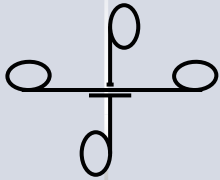
Temporary Contract (a)

- That is a contract of employment that expires on a certain date
 - Begin date and end date specified
 - No notice of termination necessary
 - Minimum conditions applicable
 - No severance allowances payable on termination



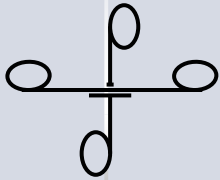
Temporary Contract (b)

- That is a contract of employment that expires on completion of a certain job
 - Begin date specified but end date depends on completion of job, normally one week's notice
 - Minimum conditions applicable
 - No severance allowances payable on termination



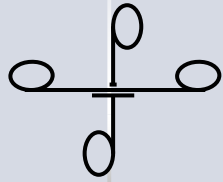
Part time workers

- They are employees who works less that the ordinary working hours per day, e.g. 5 hours per day /overtime will start after 5 hours/
- Only difference is that the working days is less hours per day
- Can be permanent or temporary employees
- Minimum conditions apply *pro rata*



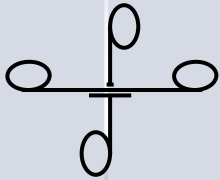
Seasonal Employees

- Permanent employees but works not full year
- Employment continuous every year for the season / specific period
- Severance accrues over the years used
- Leave accrues – usually paid out at end of season
- Sick leave entitlement - continuous



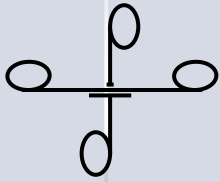
Minimum Employment Conditions p. 17

- Part Three of Act is applicable to all employees
- More favourable conditions – there should be no doubt how t is determined, evaluated – written form
- Exemption



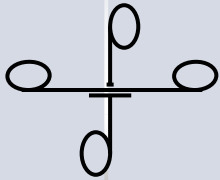
Section 9 (2) of Act

- When would it be more favourable?
- Retirement age regulated by company policy? – consequences – e.g. Severance pay



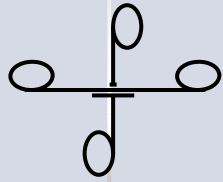
Non-adherence to the Basic Conditions p. 18

- Requirements for exemption in terms of section 139
- If it is more favourable – avoid conflict and contractually agree on why and how the favourable condition(s) is measured / determined



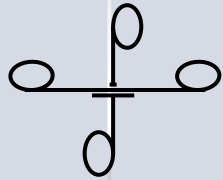
Company Policies p. 18

- Policies are guidelines
- Not cast in concrete
- Should not be part of agreed terms
- Company prerogative
- Not elevated to terms of contract but employer should follow own imposed standards, and justify non-adherence when it occurs.



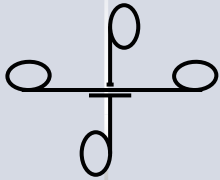
Remuneration & Basic Wage p. 19

- Contractual terminology should conform to definitions contained in the Labour Act – to avoid misunderstanding and conflict



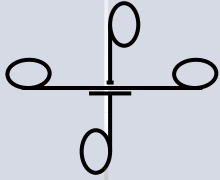
Remuneration [sec 1]

- Total value of all payment in money and in kind made or owing to the employee
 - Pension benefits excluded
 - Housing (and all other) allowances included



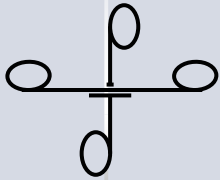
Remuneration is used

- To Calculate
 - Payment in lieu of notice
 - Work done until date of termination of services
 - Leave accrual payments
 - Severance allowance calculations



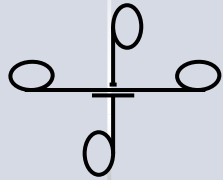
Remuneration

- Paid within 1 hour after closure on payday
- Pay statement must be provided



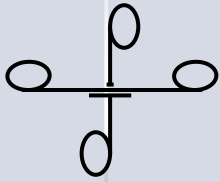
Basic wage [sec 8(1)(b)]

- Payment in money and kind Excluding
 - Allowances
 - Overtime
 - Sunday & Public Holiday pay
 - Night work pay
 - Pension and medical benefits or insurance



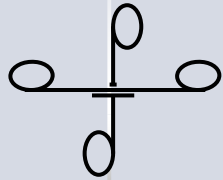
Basic Wage are used

- To calculate
 - Overtime worked
 - Night work allowance
 - Work done on Sundays
 - Work done on Public Holidays



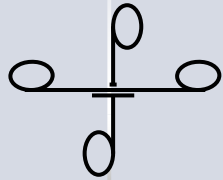
Compensation Structure

- Why separate compensation into salary, benefits, *et cetera*?
- Cost of Employment structures
- Discrimination risk with allowing freedom to structure compensation – agree on formula to determine basic wage and remuneration



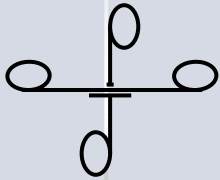
Overtime p. 20 [sec. 17]

- Employee must agree to work overtime
- Time of this agreement is at the commencement of the employment agreement or thereafter
- The agreement is not per overtime incident, it is a working conditions



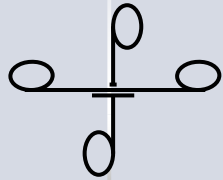
Overtime Payment [sec. 17(2)]

- 1½ times basic wage rate Mon – Sat
- If overtime is on Public Holidays or Sunday which is ordinary working day, it must be double the basic wage rate
- Overtime will become more expensive if “in-kind” payments (rations & leave provided)



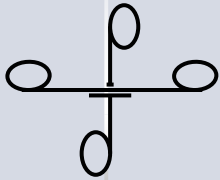
Overtime Limit Extension

- To increase overtime limitations
 - No exemption required
 - Employer & Employees must agree
 - Parties apply to the Permanent Secretary stating
 - Class of employee applicable to
 - New limits
 - Conditions pertaining to new limits
 - Period of application



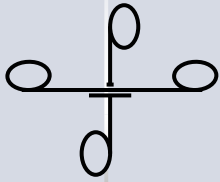
Deductions p. 21 [sec 12]

- Allowed if
 - By law, court order; (no limit) or
 - A maximum total of 1/3
 - Per collective agreement or arbitration award or
 - Agreed in writing for
 - Rent provided by employer
 - Goods sold by employer
 - Loan granted by employer
 - Employee benefit funds contributions
 - Union levies or subscriptions



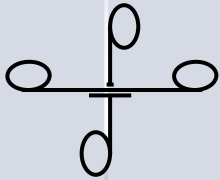
Deductions

- Employee absent from work without permission before or after public holiday is not entitled to pay for public holiday on normal working day [sec. 22(6)]



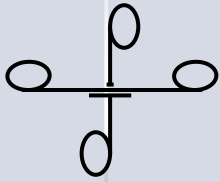
Calculation of Pay Rate p. 22

- Table in At not sufficiently clear
- Compensation based on hourly rate



Reduction [sec. 12(6)]

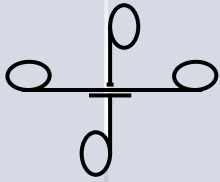
- By notice employer may reduce
 - Ordinary working hours for up to three months
 - Accordingly reduce remuneration with a maximum of 50%
 - For operational reasons or other recognised by law
- Reduction period may be extended with three months by agreement



Payments on Termination

p. 23

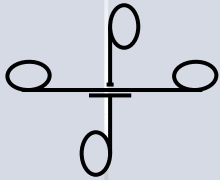
- Withholding pay?
- Set-off principle?
- Damages caused?



Ordinary Working Hours

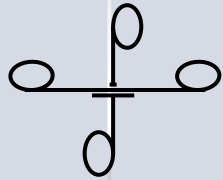
p. 23 [sec 16]

- 9 hours / day
- 45 hours per week
- Compulsory week-end breaks
- Meal break of 60 min after 5 hours
- Security Officers and emergency health care staff working continuously (12 hours/10 hours)



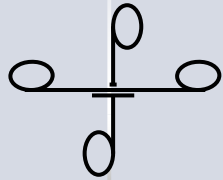
Sunday work p. 24 [Sec. 21]

- Only allowed for certain purposes [Sec. 21(2)] or allowed by PS on application
- It is not overtime
- Must be paid double basic rate for hours worked [Sec 21(7)]



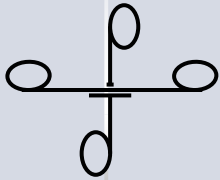
Public Holiday Work [Sec 22]

- Only allowed for certain purposes [Sec. 22(2)] or allowed by PS on application
- It is not overtime
- Employee must get normal remuneration of Public Holiday on ordinary working day
- If employee works on PH, must get basic wage per hour worked



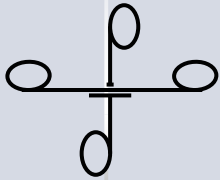
Urgent Work p. 25 [sec. 8(1)(k)]

- Emergency work which if not done could cause harm to or endanger the life, personal safety or health of any person or could cause serious damage or destruction to property



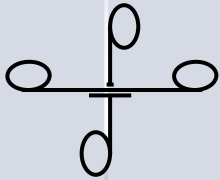
Urgent Work

- Overtime limits not applicable [sec.17(5)]
- May work longer than 12 hours/day [sec.20(1)]
- Not entitled to weekly interval [sec.20(2)]



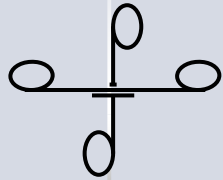
Essential Services p. 25

- If it is interrupted it would endanger life, personal safety or health of the whole or any part of the population on Namibia [sec. 1]
- Essential service will be determined by committee on recommendation of Labour Commissioner [sec. 77]



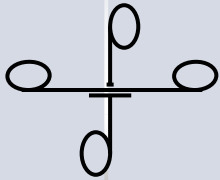
Severance Allowances p. 25 [sec. 35]

- No set-off between severance and pension fund payments
- Employee entitled to one week's remuneration for every completed year if retrenched, dies or retires at 65 or is dismissed due to incapacity
- If retire at younger age per employment provision, severance will be payable
[sec. 9(1)(a) & (b)]



Night Work p. 26 [sec. 19]

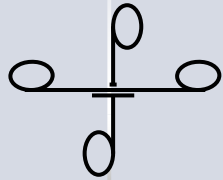
- Ordinary work between 20:00 – 07:00
- 6% of basic wage for night hours
- No night time work for employees on maternity leave [sec. 19(2)]



Annual Leave p. 26

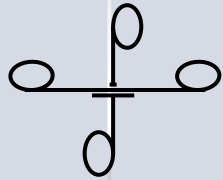
[sec. 23]

- Paid annual leave will increase to 4 weeks' leave after completion of 12 months employment; i.e.
 - 6 day work week = 24 paid work days leave
 - 5 = 20
 - 4 = 16
 - 3 = 12
 - 2 = 8
 - 1 = 4



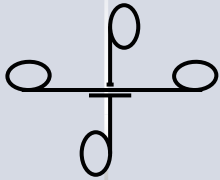
Annual leave [sec. 23]

- If quantity of working days differs
 - Take average working days over 12 months and
 - Multiply it with 4 to get annual leave days
- Employee entitled to leave after 12 months
- Time of leave in employer's discretion provided with 4 months after leave cycle
- Leave must be taken, "not cashed in"



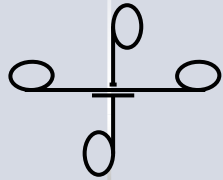
Sick Leave p. 27 [sec. 24]

■ 6 day working week	36 w/d in 36
■ 5	30
■ 4	24
■ 3	18
■ 2	12
■ 1	6



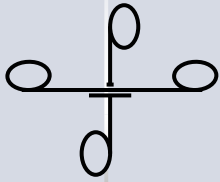
Sick Leave

- During first year 1 paid sick leave for every 26 days worked [sec. 24(1)(c)]
- If employee does not work fixed number of days per week, average over 12 months must be used
- Medical certificate if absent more than 2 days
- Medical practitioner /registered nurse to sign medical certificate



Sick Leave [sec 24 (4)]

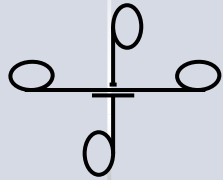
- Paid sick leave not applicable if:
 - No medical certificate is produced for sick more than two days
 - If incapable due to accident or scheduled decease covered by Employee's Compensation Act
 - If employer contributed to a fund /insurance which covers sick leave



Compassionate Leave

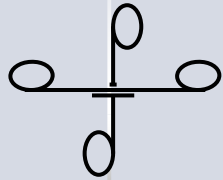
p. 27 [sec. 25]

- Compassionate leave is on full remuneration
- For sickness and death in family
- 5 working days per annum per employee
- Does not accrue from year to year
- To be regulated by Minister
- Family includes spouse, child, parent, grandparent, brother or sister of employee and in-laws [sec. 25(5)]



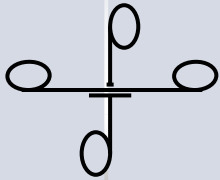
Maternity Leave [sec. 26]

- Employee entitled to Maternity leave after 6 months' employment
 - Employer responsible to continue to pay all allowances during maternity leave;
 - Employee claims basic salary from SSC
 - Minimum 12 weeks maternity leave
 - 4 weeks before expected date of confinement as certified by medical practitioner
 - 8 weeks after actual date of birth



Maternity Leave

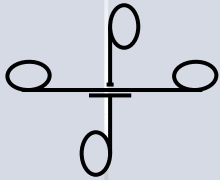
- During maternity leave the employer may not:
 - Retrench the employee
 - Dismiss her on account of pregnancy, family status or responsibility
- Employer may offer employee comparable alternative employment and if she unreasonable refuses, take steps



Extended Maternity Leave

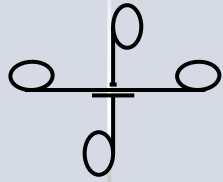
[Sec 27]

- Due to complications and necessary for health it may be extended for one month or accrued sick leave (greater)
- **A** Medical practitioner must issue a certificate



Termination p. 28 [sec. 30]

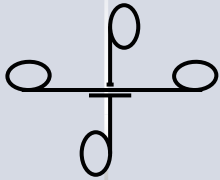
- Notice periods
 - One day's notice if less than 4 weeks in employment
 - One week's notice is less than 12 months' in employment, notice on or before last day of week
 - One month's notice if employment longer than 12 months, running from 15th or 1st of month
- Payment in lieu of notice allowed



Drug, Alcohol & Polygraph

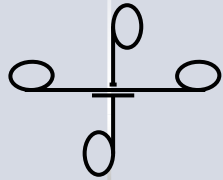
p. 29

- If condition is not prohibited or does not constitute contravention of right (discrimination) it is permitted.
- Fundamental rights – sec 5(4)
- Person conducting test must be certified / trained



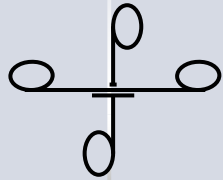
Medical Evaluations p. 29

- Only by registered occupational health officer
- Respect right to privacy
- Testing instrument must be scientifically controlled
- Are Urine / blood tests medical evaluations?



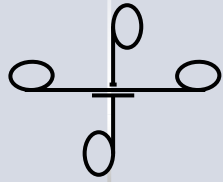
Safe Working Environment

- Employers duty – sec 39 – 42
- Duty to test people which may cause risk – breathalyser alcohol testing
- Occupational Health evaluations to be done by such practitioners



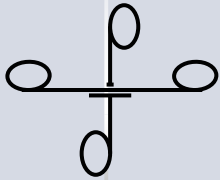
Strike & Lockouts p. 30

- Ultimate tool
- Right to withhold work is a Constitutional Right which may be exercised by following the requirements stipulated in Labour Act



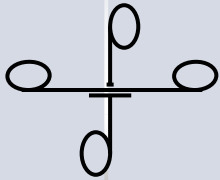
Strike - Legal Requirements p. 31

- Dispute of interest
- Dispute referred to conciliation
- Conciliation must end in agreement or
- Dispute unresolved for 30 days
- Certificate of deadlock
- 48 Hours notice
- Attempt to agree on strike rules



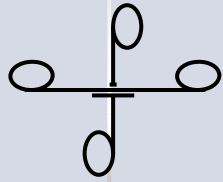
Strike Action

- Industrial Action falling within definition of strike = strike and if requirement were not followed = illegal strike
- “unprotected strike” = incorrect terminology as it is based on RLA of SA



Strike Action

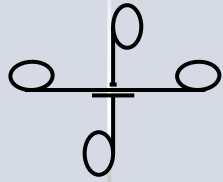
- No remuneration (not basic wage) during strike action or lockout
- Prohibition against using scab labourers – temps during legal strike action



Strike Plan – Principles

p. 32

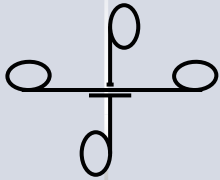
- Having a Strike action management plan as company policy – confidentiality
- Principles applicable



Employment Service Bill

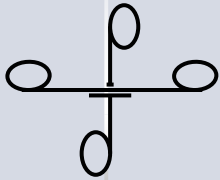
p. 33

- Promulgation may be within near future, but
- Implementation will be slow and unsure when and if (similar to Smoking Act)
- Board to be created before Act can be implemented



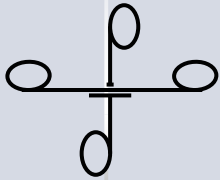
Employment Service Bill

- Applicable to “designated employers”
- Not defined yet
- Socialist concept of GRN employment agency – National Employment Service
- Board to report to Minister and Minister must submit report to National Assembly within 30 days



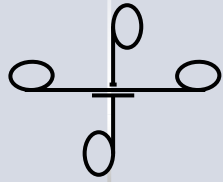
NES Bureau

- Register job seekers
- Register vacant positions
- Recommend to designated employer job seekers
- Regulate psychometric test
- Evaluation of job seekers may privately be done only by registered psychometric test



NES Bureau

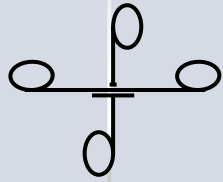
- Impact – HR Managers will have to be registered psychometrics – not a “soft position in future – revert back to past
- Social Work and Psychology Act must be followed – Registered Industrial Psychologists will become minimum requirement for HR Managers



NES Designated Employers

p. 34

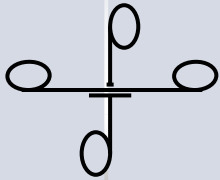
- Employment will be blocked if
 - Outstanding labour order
 - Social Security not up to date
 - AA Report not approved
 - “Big Brother” control, public services interfering with private businesses.



NES Employment Officers

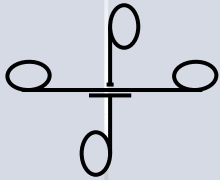
p. 34

- Power equal to police and labour inspector authorities
- May enter and inspect work place without appointment but subject to "reasonable time"



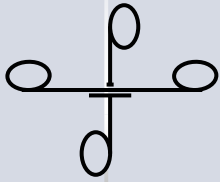
Dismissal p. 35 [sec. 33]

- Must be valid and fair reason AND
- Must follow fair procedure and comply with Code of Good practice
- If disputed arbitration will determine if procedure followed was fair and if substantive reasons for dismissal



Onus to show fairness

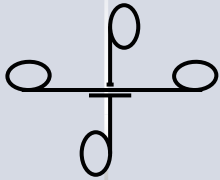
- In instances of dismissal the onus is on employer, but if dismissal is not the sanction, the onus is on the employee



Justification of Dismissal

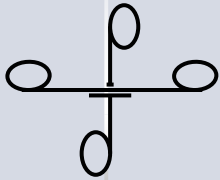
p. 35

- No other sanction appropriate
- Misconduct sufficient serious nature
- Employment relationship destroyed
- Repeated nature of misconduct
(general, not necessarily the same misconduct)
- Company policy recommends so



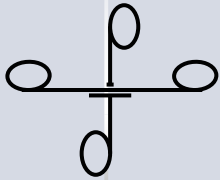
Retrenchment p. 35

- Four weeks' notice
- Notices issued, containing certain information
- Duty to negotiate
- Provide relevant information



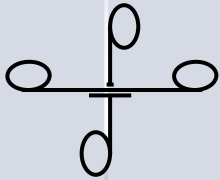
Retrenchment p. 35 [sec. 34]

- At retrenchments employers compelled to Negotiate on [sec. 34(1)(c)]
 - Alternatives
 - Selection criteria
 - How to minimise dismissals
 - Conditions on which dismissals are to take place
 - How to avert adverse effects



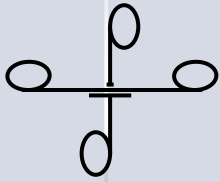
Retrenchment [sec. 34(1)(c)]

- Retrenchment – disclosure:
- Employer must disclose all relevant information necessary for the union to engage effectively in the negotiations, unless
 - Legally privileged
 - Prohibited by law or court order
 - Confidential and might cause substantial harm to employer.



Retrenchment [sec. 34 (4)]

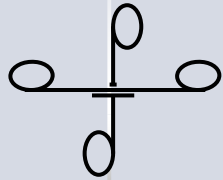
- If no agreement, Labour Commissioner will appoint a conciliator to mediate
- Employer may not terminate employment based on retrenchment unless "it has been settled or otherwise disposed of" [sec. 34(60(b))]
- If retrenchment is a disguise employees may approach Labour court [sec. 34(7) &(9)]



Unfair Labour Practices

p. 37 [Sec. 47]

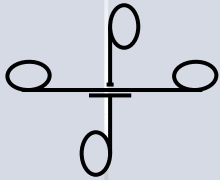
- Unfair dismissal or disciplinary action
- Unfair labour practices are defined and limited - not a wide range of incidents



Unfair Labour Practices

[Sec. 48]

- Employee & Trade Union
 - Mala fide negotiations by trade union
 - Refusal to bargain collectively
 - Engage in conduct that
 - subverts orderly collective bargaining
 - Intimidates any person
 - Not fairly represents employees in bargaining unit.

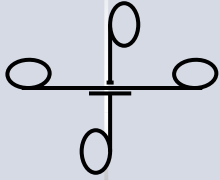


Unfair Labour Practices

[Sec. 50]

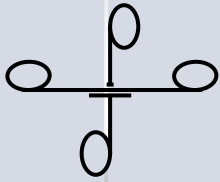
Employer or employer's organisation's

- Refusal to bargain collectively
- Bargain in bad faith
- Unilaterally alter term of employment
- Refusal to disclose relevant information reasonably required
 - Reasonable person test
 - Unless confidential or legal privileged



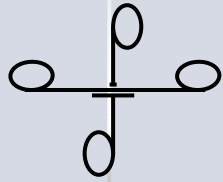
Disclosure

- Disclosure of information has reference to:
 - Functions of workplace union representative:
 - Make representations to E/r relating to terms and conditions of employment;
 - Retrenchments
 - Disciplinary hearings
 - Any other function i.t.o. collective agreement



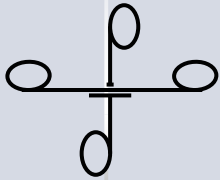
Disclosure

- Disclosure required with
 - Retrenchment
 - Information reasonable required for a shop steward to do his work
 - AA Plan
 - Health & Safety
 - Representation
 - Negotiations



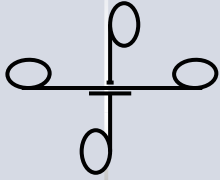
Procedural fairness review p. 38

- Basic questions to assist in determination if procedural fairness was complied with.



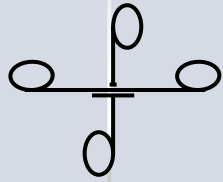
Internal Appeal p. 39

- Rehearing
- New Evidence
- Appeal on record



Employee rights p. 40

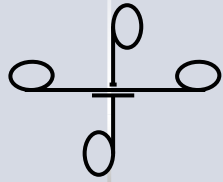
- Notification
- Sufficient particulars of allegations
- Representation
- Attendance
- Right state case and question



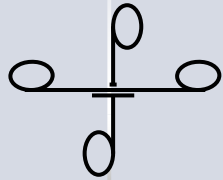
Employee Obligations

p. 41

- Duty to make service available
- Duty to be obedient
- Duty to maintain good faith

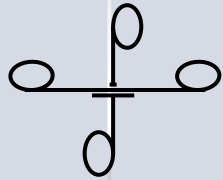


Conciliation and Arbitration p. 43



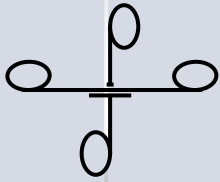
Labour Disputes, Conciliation & Arbitration [sec 81 -]

- District Labour Court will be repealed
- The role of the Conciliators and Arbitrators is **inquisitorial**.
 - May lead and participate in questioning
 - Not common to that of an independent chairperson in this part of the world



Representation - Conciliation

- No legal practitioners and consultants
- Conciliation
 - By a member, office bearer or official of that party's trade union / employers organisation [sec. 82(12)]
 - By co-employee
 - By director, member (cc) or employee

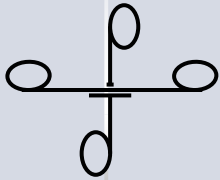


Representation - Arbitration

- By office bearer or official of that party's trade union or employers' organisation

[sec. 86(12)]

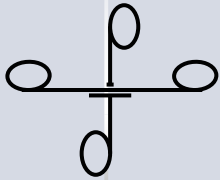
- By co-employee
- By an employee of juristic person



Legal Representation

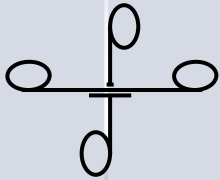
Legal practitioners may represent a party if

- By agreement between parties;
- If the matter is complex;
- If it is appropriate that such representation be allowed – provided that other party is not prejudiced.
- [Sec. 82(13) & 86(13)]



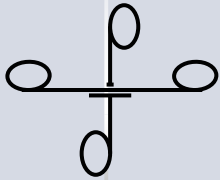
Legal Representation [sec. 140]

- Permanent Secretary may provide legal assistance to a party to arbitration if that person is unable for financial reasons to obtain legal representation if allowed by arbitrator.



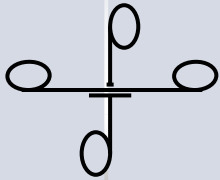
Arbitration and Conciliation

- The District Labour Court process is replaced by conciliation and Arbitration
- Pending disputes (matters with a court case number on 31 October 2008) will continue under old Act
- Parties can agree to take pending matters to Arbitration in terms of section 86



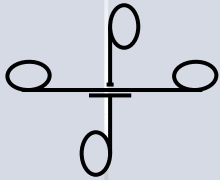
What is Arbitration?

- A third party (arbitrator) adjudicates the dispute and makes an award, which is final and binding on the parties.
- The third party actively intervenes in the dispute and takes over the role of the decision maker.
- 3rd listens to parties and investigates demands and counter demands
- Statutory OR Private Arbitration



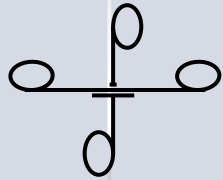
What is Conciliation?

- A third party act as mediator
- Conciliation promotes the continuation of negotiations to reach an agreement between the parties
- No final decision is made by the Conciliator



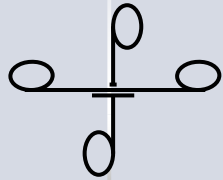
Arbitration and Conciliation

- A dispute is reported by a party to the Labour Commissioner
- Must be served / delivered to other party
- A *pro forma* will probably be created
- LC will
 - refer it to Conciliator or Arbiter
 - Set date, time and place



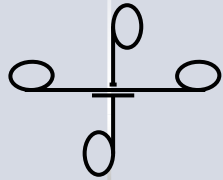
Conciliation [sec. 81 – 83]

- Is a mediation process
- Employer should “negotiate” with the other party and conciliator
- No final decision
- Dispute of interests
- Changed employment conditions



Arbitration [sec. 84 – 90]

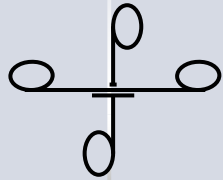
- Breach of agreements
- Dismissals and unfair labour practices
- Interpretation, implementation or application of the Act
- Oath may be administered
- Final and binding – becomes court order



Arbitration – rescission

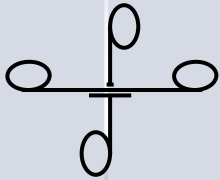
[sec. 88]

- By arbitrator within 30 days if:
 - Erroneously sought or made in absence of a party, or
 - It is ambiguous or contain obvious error or omission, or
 - It was made as a result of a mistake common to the parties to the proceedings



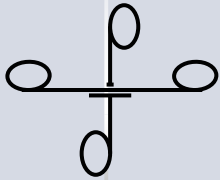
Arbitration – Appeal & review

- Appeal to the Labour Court [sec. 89]
 - On question of law alone;
 - On fact if related to discrimination and fundamental rights (sec. 7)
- Review if involves
 - Corruption
 - Arbitrator committed a misconduct
 - Arbitrator committed gross irregularity
 - Arbitrator exceeded powers
 - If order was improperly obtained



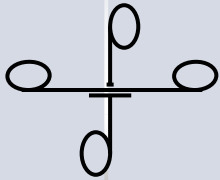
Prepare for Con - Arb

- Ensure that all Documents of all hearings are bound together
- Facts summarised by chairperson in outcome – in English
- Notices, relevant parts of policies / manuals /code
- Appeal only on Law



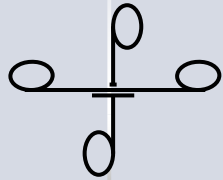
Definitions

- Various new definitions are introduced
- Definitions are found in section 1, 5 & 8
- A definition is used by the legislator when a word or term has a specific or technical meaning for the whole or part of the Act, in such cases the ordinary meaning is not relevant



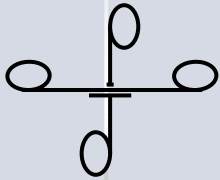
Security Officer [sec. 8(1)(g)]

- Employee who controls, checks and reports on movement of individuals, vehicle and goods through a checkpoint or any place at work or
- Protects persons or property



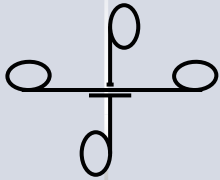
Meal Intervals [sec. 18]

- At least 1 hour after 5 hours work
- No working hours, unless security officer
- Reduce to 30 minutes if
 - Employee agrees &
 - Written notice to PS was given
 - No approval required



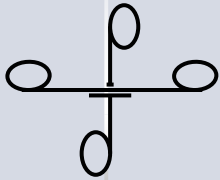
Meal Interval

- No work allowed during meal interval
- Driver sitting in vehicle to remain in charge of vehicle or load is deemed to be not working [sec. 18(4)(b)]
- Meal interval longer than 90 minutes must be paid for period longer



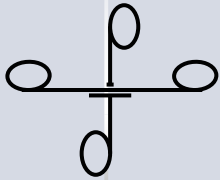
Weekly Rest Period [sec.20]

- The rest period between two weeks
[sec. 8(1)(m)]
- Weekly interval is 36 continuous hours
- All employees must get a weekly rest period



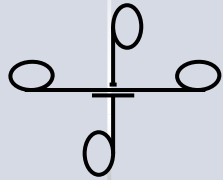
Accommodation [sec. 28]

- If employee is required to live at place of employment or reside on premises
- Adequate housing incl water & sanitary facilities



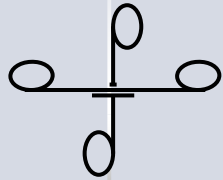
Accommodation [sec. 28(3)]

- On agricultural land for the employee, spouse and dependant children' reasonable needs
 - Permit to keep livestock and to cultivate land for reasonable needs, OR
 - Provide sufficient food for employee and dependants; OR
 - Pay employee an additional amount to do so



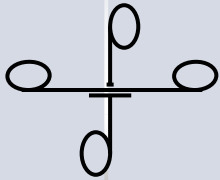
Accommodation [sec. 28(4)]

- Employment terminated by employer
 - Right to remain for three months on agricultural land, and
 - One month for other, OR
- Until unfair dismissal dispute is resolved if dispute was reported to Labour Commissioner within 30 days



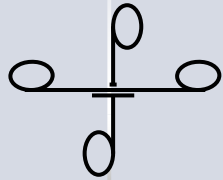
Health, Safety & Welfare

- Duties of employer [sec 39]
 - Provide working environment that is
 - Safe, without health risk & adequate facilities, arrangement for welfare of employees
 - Training, protective clothing, information, instructions *et cetera*
 - Report accidents and prescribe diseases



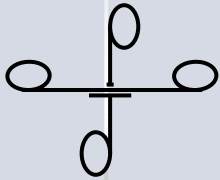
Health, Safety & Welfare

- Duties of employees
 - Take reasonable care for own safety and other who may be affected as a result of the work of employee
 - Co-operate with employer to comply with regulations



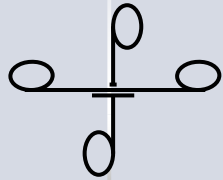
Health, Safety & Welfare

- Health and safety representative [sec. 43]
- 1 for every 10 – 100 employees
- For every 100 more, one more representative, which forms a committees



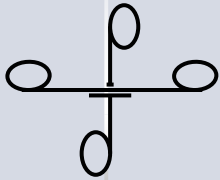
National Interest [sec. 80]

- National Interests
 - If Minister considers it in National Interest, can either:
 - request Labour Commissioner to conciliate, or
 - In consultation with Labour Advisory Council appoint a panel to conciliate the dispute.



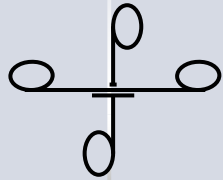
Urgent Interdicts [sec. 79(1)(b)]

- Any urgent Labour Court application must also be served on the Labour Commissioner



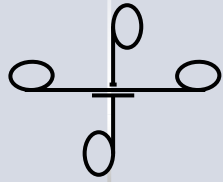
Labour Court Powers [sec. 117]

- The powers of the Labour Court are set out in this section.



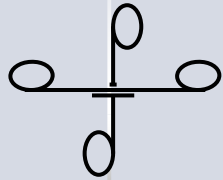
Powers of Labour Commissioner [sec. 121]

- Register disputes
- Through conciliation prevent disputes and give advice
- Resolve disputes through conciliation and arbitration
- Give advice pertaining to procedure to be followed
- Intervene in any action in the Labour Court
- Apply to labour Court for declaratory order



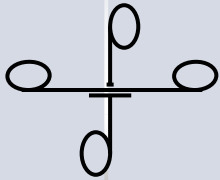
Powers of Labour Inspectors

- May issue compliance orders [sec. 126]
- May interfere with privacy and search premises and persons, as if inspector is a police official even if fundamental right to privacy is breached [sec. 125(1) & (3)]
- Failure or refusal to comply to the best of ability with order is criminal offence



Disciplinary Procedures

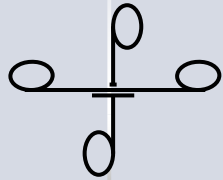
- Application of the Rules of Natural Justice.
- Protection of employee against employer's arbitrary and trivial action.
- Onus to prove on Employer



Disciplinary Procedures

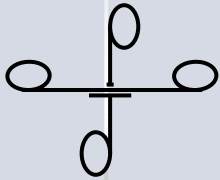
Fair Procedure?

- Manner in which procedure was followed
- Conduct and capability of employee
- Compliance with Company Policy
- Compliance with agreements



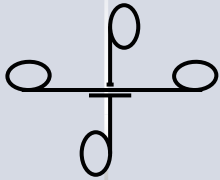
Disciplinary Procedures

- The Rules of Natural Justice dictate the rights of an employee.
- The Rules of Natural Justice dictate the sequence of events and the hearing



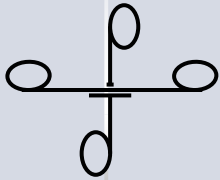
Fairness

- The hearing must precede the decision
- The hearing should be timeous
- Employee must have adequate opportunity to prepare
- Employee should be present
- Employee has the right to use a representative



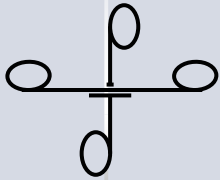
Fairness

- Employee has a right to test the evidence
- Employee must have an opportunity to put his/her side of the case
- The chairperson should be impartial
- Reasons for the decision should be given
- The employee should be allowed to appeal.



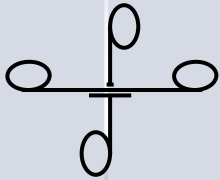
Fairness - Steps

- Inform employee of wrong/ charge
- Allow time to prepare
- Preferred give written notice
- Allow colleague to assist/represent
- Allow employee to prepare
- Put facts and evidence to employee



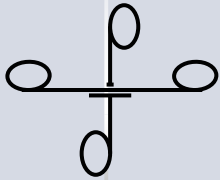
Fairness – Steps (2)

- Allow employee to put questions
- Allow employee to put his/her side of the story
- Take a decision on guilt or not and state reasons
- Make notes of everything



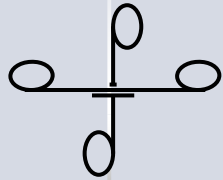
Fairness – Steps (3)

- Consider mitigation and aggravation
- Take decision on sanction
- Give reasons for sanction
- Keep notes / summary of all what were said



Fairness – Steps (4)

- Who should be involved?
- Who may be involved?
- Representative / Unions et cetera?



Thank you

When in doubt, read the ACT