



REPUBLIC OF NAMIBIA

MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT CREATION

OFFICE OF THE MINISTER

Tel.: (061) 2066321/05
Fax: (061) 212323

Enquiries:.....
Our Ref:

Private Bag 19005
32 Mercedes Street,
Khomasdal
Windhoek

EXPLANATORY MEMO

ILO CONVENTION ON MATERNITY PROTECTION CONVENTION, 2000 (NO. 183)

Introduction

Article 95 of the Namibian Constitution provides that “[T]he State shall actively promote and maintain the welfare of the people by adopting, inter alia, policies aimed at. . .:

(d) membership of the International Labour Organisation (ILO) and, where possible, adherence to and action in accordance with the international Conventions and Recommendations of the ILO . . .”

This memorandum has been prepared to summarize and elucidate the key provisions of ILO Convention 183 on the Maternity Protection in support of Namibia’s ratification of the Convention and to provide information on work already being undertaken to implement the Convention.

1. Preamble

The Preamble introduces the international legal and socioeconomic context of the Convention.

- 1.1. The Preamble notes the need to revise the Maternity Protection Convention (Revised), 1952, and the Maternity Protection Recommendation, 1952. The revision of the Maternity Protection Convention is designed to further promote equality of all women in the workforce and the health and safety of the mother and child, and to recognize the diversity in economic and social development of Members, as well as the diversity of enterprises, and the development of the protection of maternity in national law and practice.
- 1.2. In terms of the legal context, the Preamble notes the ILO instruments, in particular the Convention concerning Workers with Family Responsibilities aimed at ensuring equality of opportunity and treatment for men and women workers (1981) and existing international instruments on human rights namely Universal Declaration of Human Rights (1948), the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), the United Nations Convention on the Rights of the Child (1989), the Beijing Declaration and Platform for Action (1995), the International Labour

- 1.3. The Preamble recognizes the circumstances of women workers and the need to provide protection for pregnancy, which are the shared responsibility of government and society.

2. Article 1: Definitions

- 2.1. "Woman" refers to any female person without discrimination whatsoever.
- 2.2. "Child" refers to any child without discrimination whatsoever.
- 2.3. **NOTE:** The Labour Act, 2007 refers to a female employee in terms of maternity leave. Female employees are protected under the discrimination clause in the same Act.

3. Article 2: Scope

- 3.1. Article 2 applies to all employed women, including those in atypical forms of dependent work. A Member State after consulting the representative organizations of employers and workers concerned, may exclude wholly or partly from the scope of the Convention limited categories of workers if the application would raise special problems of a substantial nature.

NOTE: The Social Security Act applies in relation to every employer, including the State, and every employee. Section 5 of the Labour Act provides for protection for pregnant females against discrimination, while sections 26 and 27 provide for maternity leave benefit and protection against dismissal during maternity leave.

4. Article 3: Health Protection

- 4.1. Article 3 obligates a Member State that ratifies to ensure appropriate measures that protect against work that presents risks to the mother or child's health. The adoption of the measures must be done in consultation with the representative organizations of employers and workers.

Note: The Labour Act permits a female employee who is pregnant, to temporarily reassign her duties or functions, other than her normal duties or functions, which are suitable to her pregnant condition, provided that the reassignment does not lead to a reduction in remuneration or any other benefits. Pregnant employees are prohibited to perform work during night hours at least eight weeks before her expected date of confinement or eight weeks after her confinement period.

5. Articles 4 and 5: Maternity Leave

- 5.1. In accordance with National Laws a female pregnant employee shall be entitled to a period of maternity leave of not less than 14 weeks which include 6 weeks compulsory leave after childbirth.
- 5.2. Prenatal period of leave is to be extended between the presumed date of childbirth and actual data of childbirth without reducing compulsory portion of prenatal leave
- 5.3. In case of illness or complications, leave is to be provided before or after the maternity leave period with medical documentation of illness, complications, or risk of pregnancy or childbirth complications

NOTE: The Labour Act provides for 12 weeks maternity leave. The Tripartite Task Force amending the Labour Act agreed to increase maternity leave from 12 to 14 weeks. The Labour Act provides for the extension of maternity leave with one month or accrued sick leave if there are complications arising from birth or congenital conditions.

6. Article 6, 7 and 11: Cash Benefit and Periodic Review

- 6.1. Cash benefits shall be provided, in accordance with national laws and regulations, or in any other manner consistent with national practice, to women who are absent from work on maternity leave.
- 6.2. Benefits in respect of maternity leave shall be provided through compulsory social insurance or public funds. An employer shall not be individually liable for the direct cost of any such monetary benefit
- 6.3. Cash benefits shall be at a level which ensures that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living
- 6.4. No less than 2/3rds of a woman's earnings; where laws stipulate other methods to determine the cash benefits, the amount is to be comparable to the amount resulting on average of such of those earnings as are taken into account for the purpose of computing benefits.
- 6.5. Condition to qualify must be satisfied by a large majority of women covered under the convention. If a woman does not qualify for cash benefits, she is entitled to adequate benefits from social assistance funds.
- 6.6. Medical benefits for prenatal, childbirth, and postnatal care plus hospitalization if necessary are to be provided in accordance with national law.
- 6.7. For countries whose economy and social security systems are not well-developed, they are in compliance if cash benefits are provided at a rate equivalent to the rate payable for sickness or temporary disability in accordance with national laws and regulations; these countries need to explain the rate of cash benefits and the reason for that rate.

6.8. Each Member shall examine periodically, in consultation with the representative organizations of employers and workers, the appropriateness of extending the period of leave referred to in Article 4 or of increasing the amount or the rate of the cash benefits referred to in Article 6.

NOTE: The Labour Act provides for a female employee to be paid by the employer the remuneration payable while the portion of the employee's basic wage be paid by Social Security Commission which is mandated to pay maternity benefit through a compulsory monthly contribution of 0.9% of basic wage, with a minimum monthly contribution of N\$2.70 and a maximum monthly contribution of N\$81.00 by each employee.

The Government Policy on Social Protection, 2018 provides for the establishment of Universal maternity grant. The aim of the grant is to address high health and financial risks women face in maternity due to unemployment, low incomes, widespread lack of medical insurance and loss of income owing to maternity leave.

Government is committed to the improvement of maternal and child health, as a contribution to the sustainable development of and ensure universal access to health care by every woman and child. The Universal Health Coverage under the Social Protection Policy will improve pre- and post-natal care, nutrition of mothers and newborn children and birth registration.

7. Articles 8 and 9: Employment Protection

- 7.1. Pregnant or breastfeeding women employment cannot be terminated during pregnancy, leave, or a period of time following return to work;
- 7.2. A woman is guaranteed her position or an equivalent paid position when she returns to work after maternity leave;
- 7.3. A woman cannot be discriminated against because of maternity; and
- 7.4. Pregnancy tests are prohibited during application for employment except when under law where work is prohibited/restricted for pregnant/nursing mothers or there is significant risk to health or mother/child

NOTE: The above requirements will be implemented as the Labour Act provides for such protection.

8. Article 10: Breastfeeding Mothers

Breastfeeding mother is entitled to one or more daily breaks or daily reduction of work hours to breastfeed and that time is counted as working time with pay.

NOTE: a new provision is been introduced in the Labour Act which will entitled a nursing mother to have a breastfeeding break or adjustment of ordinary working hours for breastfeeding as prescribed.

9. **Article 12: Implementation**

The implementation of these obligations shall be done by means of laws or regulations, except in so far as effect is given to it by other means such as collective agreements, arbitration awards, court decisions, or in any other manner consistent with national practice.

NOTE: The above requirements will be implemented through, among other things, legislative amendments and a comprehensive Regulation pursuant to the Labour Act on breastfeeding breaks.