

Government Gazette 15173

STATE PRESIDENT'S OFFICE

No. 1865.
13 October 1993

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:-

No. 147 of 1993: Agricultural Labour Act, 1993

GENERAL EXPLANATORY NOTE:

Words in italics indicate insertions in existing enactments.

ACT

To provide for the application of the Labour Relations Act, 1956, and the further application of the Basic Conditions of Employment Act, 1983, to farming activities and employers and employees engaged therein; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 1 October 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

CHAPTER 1

LABOUR RELATIONS ACT, 1956

Application of Act 28 of 1956 to farming activities

1. The provisions of the Labour Relations Act, 1956, as construed by the provisions of this Chapter, shall apply to farming activities and employers and employees engaged therein: Provided that any amendment to the said Labour Relations Act, 1956, after 1 September 1993 shall not be construed as applying to farming activities and such employers and employees.

Construction of certain provisions of Act 28 of 1956

2. The Labour Relations Act, 1956, shall for the purposes of section 1 be construed as if-

(a) in section 1(1):

- (i) after the definition of "agreement" the following definition had been inserted:

" 'agricultural labour court' means the court established by section 17E;"

- (ii) for the definition of "determination" the following definition had been substituted:

" `determination' means a determination made under section 17E, 46, 76 or 77, as the case may be;" and

- (iii) after the definition of "employers' organization" the following definitions had been inserted:

" `farm' includes fresh water and sea water in so far as farming activities are carried on therein or thereon;

" `farming activity' means any activity on a farm in connection with agriculture, including stockbreeding, horticulture and forestry;"

(b) in section 2(2) the words "in farming operations or" had been deleted;

(c) in section 17-

- (i) the following paragraphs had been inserted after paragraph (bC) of subsection (11):

"(bD) to decide any appeal lodged with it in terms of section 17E(7) and, in deciding to hear the dispute, to make such order as may be necessary to have the matter set down for determination by the industrial court;

(bE) to determine any dispute referred to it by the agricultural labour court in terms of section 17E(5)(b) or (c);

(bF) for the purposes of an appeal in terms of section 17E(7)(c) to hear such evidence as it deems necessary concerning the order for reinstatement or compensation, or the dismissal of a prayer for reinstatement or compensation, as the case may be;"

- (ii) after subsection (11) the following subsection had been

inserted:

"(11A) The industrial court shall deal with any dispute contemplated in subsection (11)(bD), (bE) and (bF) as if it had been referred to it in terms of section 46(9)."; and

- (iii) the following paragraphs had been inserted after paragraph (b) of subsection (12):

"(c) In considering an order as to costs in terms of paragraph (a), the industrial court shall take into consideration whether or not, in its opinion, the dispute should, considering its nature, have been referred to the agricultural labour court instead of to the industrial court.

(d) The industrial court may, on application, order a party to furnish security for costs if it considers that a dispute should, considering its nature, have been referred to the agricultural labour court instead of to the industrial court.";

- (d) after section 17D the following section had been inserted:

"Agricultural labour court

17E. (1) (a) There is hereby established a court to be known as the agricultural labour court.

(b) The agricultural labour court shall consist of

- (i) a president, who shall be the president of the industrial court;
- (ii) a deputy president, who shall be the deputy president of the industrial court; and
- (iii) such other member or members as the Minister may from time to time determine.

(2) The provisions of section 17(1)(b) to (e), (2), (6), (8), (10), (13), (14), (17), (18), (19), (20), (20A) and (22)(a), (b), (c)(i), (ii), (vii) and (ix) and (d) shall apply mutatis mutandis in relation to the agricultural labour court.

(3) Whenever there is a dispute between an employer and an employee engaged in farming activities concerning an alleged unfair labour practice, any party to the dispute may refer the dispute to the agricultural labour court for determination.

(4) The agricultural labour court shall as soon as possible after receipt of the reference in terms of subsection (3), determine the dispute on such terms as it may deem reasonable, including but not limited to the ordering of reinstatement or compensation: Provided that in determining the dispute the agricultural labour court shall take into consideration the specific farming situation.

(5) (a) Any party to a dispute referred to the agricultural labour court may, prior to the commencement of the hearing of the dispute, apply to the agricultural labour court:

(i) for an order that the dispute be determined by the industrial court; or

(ii) for a decision on whether the agricultural labour court has jurisdiction to hear the dispute.

(b) If an application contemplated in paragraph (a) is granted on good cause shown, the agricultural labour court shall refer the dispute to the industrial court for determination.

(c) The agricultural labour court may of its own motion at any time refer a dispute referred to it to the industrial court for determination.

(d) Any dispute referred to the industrial court in terms of paragraph (b) or (c), shall be determined by the industrial court as if the dispute had been referred to the industrial court in terms of section 46(9).

(6) The agricultural labour court shall not be a court of record but the presiding officer shall take minutes or cause minutes to be taken of any determination made by it in terms of this section.

(7) Any decision or determination of the agricultural labour court is final: Provided that any party to the dispute may appeal to the industrial court-

(a) where a dispute has been referred to the industrial court in terms of subsection (5); or

(b) where the agricultural labour court made a decision in respect of its jurisdiction; or

(c) if the agricultural labour court ordered reinstatement or compensation or dismissed a prayer for reinstatement or compensation.

(8) The agricultural labour court may not make any order as to costs.

(9) In addition to the matters referred to in section 17(22) (c) (i), (ii), (vii) and (ix), the Rules Board may make rules as to-

(a) mediation by the agricultural labour court prior to the hearing of a dispute referred to the agricultural labour court;

(b) the period within which and the manner in which an appeal under subsection (7) shall be noted;

(c) the period within which and the manner in which a matter is to be referred by the agricultural labour court to the industrial court in terms of subsection (5)(b) or (c) for determination.

(10) An order by the agricultural labour court for the payment of money shall be deemed to be an order made by the appropriate magistrate's court.";

(e) section 43 had been amended by the deletion of the word "and" at the end of subparagraph (iv) of paragraph (b) of subsection (4) and the insertion after subparagraph (v) of the said paragraph (b) of the following subparagraph:

"(vi) the specific farming situation,";

(f) section 46 had been amended by-

(i) the substitution for subsection (1) of the following subsection:

"(1) (a) For the purposes of this section, the expression `employer referred to in subsection (1)' means-

(i) any employer or group of employers engaged in farming activities; or

(ii) any employers' organization acting on behalf of one or more employers referred to in subparagraph (i) who is a member or who are members of that organization,

and the expression `employee referred to in subsection (1)' means-

(iii) any employee or group of employees employed in farming activities by an employer referred to in

subparagraph (i); or

- (iv) any trade union acting on behalf of one or more employees referred to in subparagraph (iii) who is a member or who are members of that trade union.

(b) Any one or more employers referred to in subsection (1) or any employers' organization acting on behalf of one or more such employers who is a member or who are members of that organization, on the one hand, and any group of employees referred to in subsection (1), or a trade union acting on behalf of such employees, who are employed by such employer or employers, on the other hand, may agree in writing that the provisions of subsections (2) to (6) of this section shall not apply to them."; and

- (ii) the deletion of subsection (7);

- (g) section 61 had been amended by the addition to subsection (1) of the following proviso:

"Provided that an inspector shall only after previous notice enter any dwelling premises on a farm."; and

- (h) section 65 had been amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) if the employees and employers who are or would be concerned in the strike or lock-out, are employees and employers referred to in section 46(1)(a); or".

CHAPTER 2

BASIC CONDITIONS OF EMPLOYMENT ACT, 1983

Further application of Act 3 of 1983 to farming activities

3. The provisions of the Basic Conditions of Employment Act, 1983, as amended by the provisions of this Chapter, shall apply to farming activities and employers and employees engaged therein: Provided that any amendment to the said Basic Conditions of Employment Act, 1983, after 1 September 1993 shall not be construed as applying to farming activities and such employers and employees.

Amendment of certain provisions of Act 3 of 1983

4. The Basic Conditions of Employment Act, 1983, shall, for the purposes of section 3, be amended by-

- (a) the insertion in section 1(1), after the definition of "remuneration" of the following definition:

" 'seasonal worker' means a farm worker who is temporarily employed with the same employer for an aggregate period of not more than four months in any continuous period of 12 months to perform the specific task of harvesting crops or hoe-weeding;";

- (b) the substitution for subsection (1) of section 6A of the following subsection:

"(1) An employer may conclude a written agreement with a farm worker, signed by both parties, in terms of which the ordinary working hours of the farm worker for a period agreed upon, but not exceeding four months in any continuous period of 12 months, are extended, but not by more than eight hours per week: Provided that the ordinary working hours of the farm worker shall be reduced in such a way that over the same period of 12 months the average ordinary working hours of the farm worker shall not exceed 48 hours per week.";

- (c) the substitution for subsection (2A) of section 10 of the following subsection:

"(2A) If a farm worker performs work which in the ordinary course of events is required to be performed on a Sunday his employer shall

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(a) pay him, if he has worked for not longer than two hours on a Sunday, an amount calculated at a rate of double his ordinary wage in respect of the whole time worked by him: Provided that the minimum amount payable shall not be less than his ordinary wage for two hours; or

(b) pay him, if he has worked for longer than two hours but not longer than five hours on a Sunday, an amount of not less than the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on a weekday; or

(c) pay him, if he has worked for longer than five hours on a Sunday, an amount which shall not be less than either an amount calculated at a rate of double his ordinary wage in respect of the whole time worked by him on a Sunday, or an amount equal to double the wage payable to him in respect of the time (excluding overtime) ordinarily worked by him on a weekday, whichever amount is the greater; and

(d) grant him, without remuneration, an ordinary working day in the next succeeding week as a day on which he is not required to work, if he has worked the hours contemplated in paragraph (b) or (c) of this subsection.";

(d) the substitution for subsection (10) of section 12 of the following subsection:

"(10) This section shall not apply to a casual employee or a seasonal worker.";

(e) the substitution for paragraph (c) of subsection (5) of section 13 of the following paragraph:

"(c) any casual employee or seasonal worker.";

(f) the deletion of the word "or" at the end of paragraph (a) of subsection (2) of section 15 and the addition to the said subsection of the following paragraph:

"(c) a seasonal worker: Provided that if a seasonal worker requests his employer to furnish him with a certificate of service, the employer shall furnish him with such a certificate."; and

(g) the addition to paragraph (a) of subsection (4) of section 22 of the following proviso:

"Provided that the inspector shall only after previous notice enter any dwelling premises on a farm;".

Short title

5. (1) This Act shall be called the Agricultural Labour Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.