

Services Sector

Domestic Workers

1996 - 1999

Domestics' union hit by cash crisis

By JAMES BOWYER

(294)
ST(M) 28/7/96

THE future of The South African Domestic Workers Union (Sadwu) is in the balance as the 26 000-strong union faces a financial crisis.

"I don't even have enough money for my train fare," complained Cape regional Sadwu organiser Mike Sedgwick. He is one of 15 regional organisers from nine offices around the country whose salaries have not been paid for three months.

Phones have also been cut off at the union's head office in Cape Town, causing the union's activities to grind to a halt.

"We simply do not have the money to pay salaries," said Myrtle Witbooi, treasurer and spokesperson. Witbooi explained that foreign donors were no longer footing the bill for unions in the new South Africa.

"Donors are withdrawing and it is very difficult for domestic workers to carry the union because of their low incomes," she said.

Domestic workers joining the union now have to pay R4 a month towards running costs.

It was likely the union would merge with other service-related unions to survive, said Witbooi, who has called a meeting next week to decide on their future.

New deal for domestics — all you need to know



Working hours, overtime and tea breaks — what the law says now

WITH the new Labour Relations Act on the point of promulgation, labour relations consultant **BASIL SMITH** explains the position of domestic workers and their employers. In response to the many queries still flowing in, today's column is aimed at answering as many questions as possible.

QUESTION: Who is a domestic worker?

ANSWER: The Basic Conditions of Employment Act defines a domestic as an employee charged wholly or mainly with the performance of domestic work in dwelling premises and includes gardeners, drivers (employed by a household) and people who care for children, the aged, the sick, the frail and the disabled. Farmworkers are excluded.

Q: What are "dwelling premises"?

A: Any premises used wholly or mainly for dwelling purposes.

Q: What is the situation if a domestic only works one, two or, at most, three days a week?

A: If the person has been working for the same employer for a period of not less than four consecutive weeks, the employee is known as a "regular day worker" (RDW).

Q: What is a casual employee?

A: Someone employed by an employer on not more than three days out of seven (a week) for a consecutive period of less than four weeks. More than four weeks and he/she is a RDW.

Q: What is a part-time employee?

A: There is no provision in the Act for a part-time employee which applies to domestics. A domestic employee is either a casual, an RDW or a full-time domestic worker.

Q: What are domestics' normal working hours?

A: A domestic may not be required to work more than 46 hours in a week (seven days). However, the 46-hour limit excludes all work done on a Sunday and overtime work. Meal breaks are also not included in the 46 hours unless the domestic, during a meal break, does no other work than to care for children, the aged, the sick, the frail or disabled, in which instances these meal breaks are included in the 46 hours.

Q: Supposing a domestic works three days a week, can you require her to work 46 divided by three, that is 15,3 hours a day?

A: No! There is also a daily limit on the hours permitted. A person who works not more than five days a week cannot be required to work more than nine hours and 15 minutes on any day. This excludes meals and overtime as above. Similarly, a domestic working more than five days a week shall not be required to work more than eight hours 30 minutes a day.

Q: What is overtime?

A: It is any time worked (other than Sunday time worked) in excess of the normal daily working hours. Overtime is voluntary and can be worked only by mutual agreement.

Q: How much must be paid for overtime, when worked?

A: The rate prescribed by the Act is one-and-one-third times the employee's normal hourly rate of pay an hour worked. But in the case of domestics who may live in, get food or any other benefits as "payment in kind", the rate is calculated on the value of the total package, reflected as an hourly rate.

Q: Is there a limit to the overtime an employee may be required to work?

A: Yes. Three hours on any day and 10 in any week.

Q: Can a domestic's hours of work be lengthened but not increased?

A: Yes, by applying what is called a "spread-over", the nine hours and 15 minutes or eight hours and 30 minutes can be "stretched" or extended to cover a period of 12 hours or 14 hours if the domestic "lives in".

Q: What is a spread-over?

A: The number of hours between the starting time and finishing time of the employee's normal working day, for example, 6am to 6pm equals 12 hours during which the normal working hours — nine and a quarter, or eight and a half, may be worked.

Q: How does this work in practice?

A: domestic may be required to work from 6am to 8am (two), have a break from 8am to 10am, then work from 10am to 12 noon (two), break for an hour, start again at 1 pm to 3.30pm (two), break for an hour until 4.30pm and work until 6pm (two).

Q: How long does an employee get for lunch or tea breaks?

A: It is compulsory to give an employee a break of one hour (or not less than 30 minutes by written agreement) after five consecutive hours worked. This meal interval is not considered as working time unless the provisions above apply.

Q: To what annual leave is the employee entitled?

A: The legal minimum annual leave for full-time domestics is 14 consecutive days for a year worked. In the case of RDWs, the employee is entitled to one day's leave for each 28 worked.

Q: What about sick leave?

A: An employee, other than an RDW, who works a five-day week, is entitled to 30 days' paid sick leave in a 36-month cycle. For a person working more than five days a week, 36 days in a 36-month cycle. An RDW is entitled to one day's paid leave per 28 days in employment. Payment for sick leave must be paid and is subject to the employee furnishing a valid medical certificate.



QUEENS OF CLEAN Marina Fourie, owner of Cleaning Lady, and Thelma Richardson, in charge of the agency's domestic cleaners

PHOTO: JOHN WOODROOF

Cleaning Lady wields mop against employment crisis

JOHN MAKONI

(994)

ET (BR)

28/10/97

In Gauteng alone, there are more than 100 companies."

Johannesburg — Every weekday in Bertrams, scores of women queue outside Cleaning Lady's offices to register for a temporary cleaning job.

Long before the terms "RDP" and "community empowerment" were first uttered, Marina Fourie, the owner of Cleaning Lady, had already moved in that direction. With today's unemployment rate at 35 percent or more, anyone recruiting 60 people a week for job placement deserves praise.

"We think even if some people are with us for a short time, we've done our bit," said Fourie. "They have to give others a chance."

Though some women may only get a two-week job, they are paid appropriately for it. The Cleaning Lady, established in 1985, has contracts to clean hotels, offices and colleges. Clients include Gencor, some Standard Bank branches and technical colleges around Johannesburg.

John Hammill, the chairman for the National Contract Cleaners' Association in Gauteng, said the cleaning industry was "on the rise ...

With the minimum wage for cleaners at R5,05 an hour, those working normal time got a monthly salary of R875, while those who put in overtime could earn just over R1 000, Hammill said.

The cleaning industry was not yet regulated, pending the creation of a bargaining council, after which companies would be obliged to declare their incomes, Hammill said.

The industry's booming atmosphere was largely because of two factors, he said. First, sourcing the specialist service industry was a popular 1990s trend. Second, "People are sticking to businesses in which they are experts, and that has helped the cleaning industry too."

Women with responsibilities, particularly those with children, get first preference at securing a job with Cleaning Lady. There is also a sprinkling of men. Cleaners who exhibit rare skills as temporary workers are eventually taken on as permanent staff. Some have been with Fourie for as long as 20 years.

NEWS

Railway police flooded by stranded domestics

City jobs for rural women turn sour

NORMAN JOSEPH AND BEAUREGARD TROMP
STAFF REPORTERS

The police rail commuter unit is being flooded by rural women stranded in Cape Town after offers of jobs in the city have turned sour.

Police spokesman Bertram Croutz said unit members were probing the situation.

In recent weeks many women, some with children, have approached the charge office on platform one to ask for help to get home. Last weekend seven women turned up at the charge office.

On Tuesday a young mother with a baby arrived to ask for help. Bettie Adams, 20, clutching her nine-month-old son Graham, alleged she had left her Rondebosch East job because she had not been paid.

Ms Adams said that when she had told her employer, Anna Ganswoort, she was leaving, she had been told she should "not bother to return".

She said she had arrived at Cape Town station from De Doorns on May 26 to meet a friend, a domestic worker in Rondebosch East, who was going to take her to a family who would give her a job. Instead she met another domestic worker, who introduced her to Mrs Ganswoort, who took her on, agreeing to pay her R300 a month.

Approached for comment, Mrs Ganswoort claimed that Ms Adams "took advantage of my goodness" and "exploited" the family.

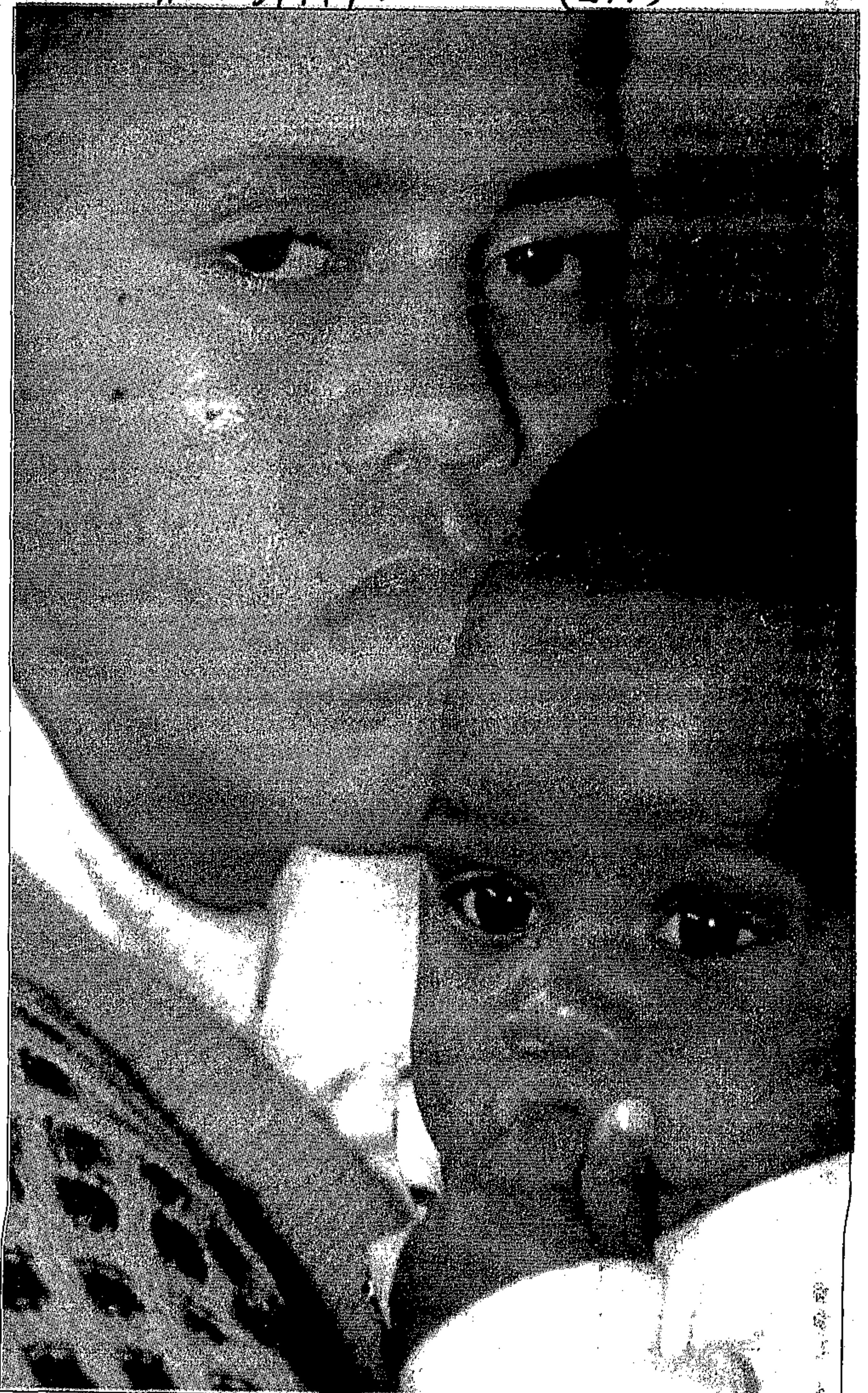
She said she was prepared to pay Ms Adams but she would subtract R70 she had given her during the month. Ms Adams should return to Cape Town for the money.

Sergeant Croutz said police asked Metrorail for tickets for the destitute women, and at other times took them to police stations in the towns that they came from. Police there would take them home.

He said the women - most of whom could not read or write and did not know where they were or the full names of their employers - were paid low wages.

Sergeant Croutz said police were looking into whether there was a recruitment organisation which sought young women from Boland towns to work in homes in the Peninsula, and then dumped those they considered unsuitable.

He asked people with information to phone him on 419 1673 ext 207.



Crossed lines: domestic worker Bettie Adams and baby Graham stranded at Cape Town station

OBED ZILWA

Madams and Eves come to grips with labour laws

Star 30/11/97

(294)

Domestic workers are now legally entitled to annual leave, a lunch break, Sundays off, and double pay on public holidays

By LEE-ANN ALFREDS

For close on three hours yesterday the auditorium at the Temple Emanuel in Parktown strongly resembled a scene from one of South Africa's most popular cartoon strips.

There was the podium and the speakers, the engrossed audience and the countless questions, and a "Madam" sitting next to her "Eve".

But apart from the appearance the mood in the air was one of seriousness.

"Madams" and "Eves" alike were in the audience for a purpose – they had come to learn as much as they could about the new Labour Relations Act (LRA). The Act, implemented in November to regulate relations between employees and employers, is the first labour legislation which also applies to domestic workers.

In keeping with the seriousness, the questions for the speakers from the Labour Department and the Domestic Workers' Union flew thick and fast.

Afterwards, queues waiting to speak to the experts pronounced the seminar – organised by The United Sisterhood, a Jewish women's organisation – a success.

"It was very nice because we now know how to act," said Rebecca Shelembe (40), a live-in domestic worker of 13 years from Parktown North.

"I knew about the union for a long time, but I didn't know why

Working conditions spelt out

I must join," she said. "I was told if I joined, my employer wouldn't like it."

An employer, who did not want to be named, said she'd attended the meeting because it was "absolutely important" for employers and employees to understand the LRA. "It's important to know my rights so there's no confusion, no comeback," she said.

According to the LRA, domes-

tic workers are entitled to:

■ 14 consecutive days' leave of absence with full pay annually.

■ Written notice of one month after a four-week probation.

■ Severance pay equal to one week's wages for every year worked.

■ Work for 45 hours per week. A domestic worker is also entitled to a one-hour break every five hours. A casual domestic worker – one who is employed for three days or less – should not have to work for more than nine hours and 15 minutes a day.

■ They should be paid for public holidays. If a domestic works on a public holiday, he or she must be paid double or receive a day off in lieu of the day worked.

■ Overtime and Sundays off.

The Act does not make provision for a minimum wage or hourly rate, but recommended rates are available from the Domestic Workers' Union on (011) 825-5621.

Information can also be obtained from the Labour Department.

Facing eviction after 44 years of service

ANC fights for 68-year-old worker

BLACKMAN NGORO
STAFF REPORTER

The African National Congress is throwing its weight behind a 68-year-old domestic worker who is to be brought before the courts this week for not moving out of staff quarters after being fired.

Elizabeth Botha had a stroke two years ago and her employer of 44 years, Micky Ginsberg, fired her.

Mrs Botha signed an agreement to move out by the end of January, but says she did not understand the contents of the agreement.

ANC spokeswoman Lorna Levy said: "We have decided to defend the action on behalf of Elizabeth Botha. It's unreasonable to kick her out like that, it's completely heartless.

"Employers can't throw an employee out in this manner. I know she signed an agreement, but clearly she didn't understand it.

"We must make people understand they have obligations to their employees, and we intend to stand by her."

The case was expected to be heard on Friday.

Ms Levy said: "The municipality also has a role to play. We want to persuade them to give people housing here in Sea Point, people who have been living here for a long time."

The agreement Mrs Botha signed, according to papers from Mrs Ginsberg's lawyers and lodged with the clerk of the court, was that she would vacate the staff quarters no later than January 31.

Craig Schneider, who acted for Mrs Botha in an unfair labour practice complaint, said he didn't know about the court case.

"Mrs Botha will have to consult me. I was involved only with her claim against Mrs Ginsberg, but I believe people must stick to the agreements they make."

He said he had not been in touch with Mrs Botha, "but I do believe, given the age of the parties involved, that the matter should be settled without having to go court."

Meanwhile Mrs Botha cannot understand why her bankers, Permanent Bank, allowed Mrs Ginsberg to take over her account, which was opened for her by Mrs Ginsberg's late

husband in 1987.

Mrs Botha alleges that, after her stroke, Mrs Ginsberg had her sign over her account under false pretences. She signed a document she did not understand, by which she either relinquished control over the account, or gave power of attorney to her lawyer, Mr Schneider.

A statement of the account dated 1995 shows that a fixed deposit of R11 457 was to be available to Mrs Botha in 1996.

Mrs Botha says this amount was left to her by Mr Ginsberg.

She suspects a settlement of R17 500 now being suggested to her by Mrs Ginsberg includes the amount in the bank.

Jackie Keers of Permanent Bank told the Cape Argus she would give information about accounts only to clients or their legal representatives.

Mrs Botha said she found out her account had been taken over by her employer only when she was told she had agreed to leave the premises.

Mr Schneider said a condition for receiving some of the money was that she move out.

ARG 16/3/98

297 (294)

Gogo Lilly spent years caring for her employers, but she's alone and destitute now that she's old

Down and out after a life of service

Many of today's elderly worked as domestic servants decades ago - for white people who do not even remember the names of those who lovingly cooked and cleaned for them. BOETTIE DAMANE recounts the rise and fall of a beloved relative and how old age can bring heartache, not only to the elderly but to those who seek to care for them

Her head held high with unforgotten pride, a little old woman comes along. She walks elegantly and with dignity. But when she is close, you can hear her muttering, talking to someone who isn't there. She suffers from memory loss. Some say she is mentally disturbed.

This is Lillian Lichaba, known with love as Gogo Lilly. She's 81 years old and lives a sad life at the Mzimba women's hostel for the destitute, in Orlando West.

Her youngest sister is my own mother. When I was 8, Gogo Lilly worked as a domestic for a family in Hillbrow. Gogo Lilly had a bedroom in the row of servants' rooms on the roof above the flats.

Appreciated

I was living with my grandmother Mafafadele in Orlando West, and on Thursdays and sometimes on Saturdays, Gogo Lilly came to visit.

She had no children of her own. Although unmarried, there had been a son called Buti, but he died in a car accident before I was born. She appreciated me very much.

I used to spend my school holidays at Gogo Lilly's place in Hillbrow, on her insistence. I think she desired to care for a child. I enjoyed being with her.

In those days Gogo Lilly was a smart dresser and proud of it. Her middle sister was a staff nurse who boasted about her education and bragged that she would never work as a domestic servant. This led to bitter

battled between the sisters - my mother was a domestic too.

In her room on the roof over the Hillbrow flats, Gogo Lilly operated a shebeen. There were police raids in the night, and women were arrested for operating these illegal drinking dens. The saddest part was when the Measles or Measles heard about it. Then the raid would be fired.

One night as we slept, the cops came to raid our room. Thinking quickly, Gogo Lilly ordered me to crawl under a box which served as a table. I was not discovered and the police left to knock on other doors.

Ten years later Gogo Lilly left that job. She found another one in Dankseld. Later she was in and out of smart young women for almost 10 years.

She ended up working for a lady she called Milka. Milka who lived alone with her dog in Greenfield.

By now I was a grown man. On my visits, I would find Gogo Lilly shouting at her employer. "Ial You are sleeping



with a dog, you must clean up the mess!" Then, turning to me, she would say: "She treats this dog like a human being."

One day there was an attractive girl of cooking school of cooking meat coming from the kitchen. Milka was personally doing the cooking - she was preparing lunch for her dog. The meat was expensive, too.

It was in 1984, as far as I remember, when I received news that Gogo Lilly was in a mental institution at Krugersdorp. I went to see her and found her in a bed way.

Shekoulen was like a prison, with its red brick walls and iron grilles. Gogo Lilly looked like a caged animal. Her eyes popped out in horror.

But she managed to give a smile when she recognised me and shuffled over on her bare feet, which were covered with dust. Compared to the person I had known, so energetic and full of life, this was a stranger. I

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was hurt inside.

After a few months Gogo Lilly was discharged and went to live briefly with my mother who had rented a room for herself at the Mzimba women's hostel. Gogo Lilly was incapable of looking after herself. The family had gradually separated since the pillar, grandmother Mafafadele, passed away. No one wanted to take responsibility for poor Gogo Lilly.

This is not only happening to my Gogo. Here is the plight of many old people who can no longer take care of themselves. Often, their families reject them. If the old person happens to receive a pension, they may be accepted, provided that the pension money is used as the family sees fit.

Psychiatric treatment

Gogo Lilly has a pension, though there was a long spell when she could not claim it after she lost her ID documents.

Recently the family requested that she be sent back to the mental institution. But I couldn't bear to see her in the same state as she was in 1984, and refused to agree I took her to the Orlando Clinic to seek psychiatric treatment. We were told to go to the social workers. They would give us a letter to take to the psychiatrist so that she could be treated.

My plan is to find a room for Gogo Lilly close to my one-room shack in Orlando West. Her heart has not changed a bit, her love has extended to embrace my own three children. My 15-year-old son Musa already visits



EMPTY HOURS: Lillian Lichaba, very old and decrepit, now lives at the Mzimba home for the destitute

her regularly with food and other things which I provide.

As a single parent, what little money I earn goes to supporting my children. Yet somehow I must split my money and take the responsibility of caring for Gogo Lilly. Remembering

how she used to take care of me when I was a child, I owe her a lot. She has done too much to be easily forgotten.

Boettie Damane is a full-time worker at Street-Wise, a street children's drop-in centre in Hillbrow.

Madams and Eves: the domestic battleground

They try to take away our own womanhood'

(294) Art 2/2498

Domestic workers, like farm workers, are at the bottom of the employment heap.

Unaware or uncaring that they are breaking the law, employers often like to pay staff in kind rather than cash, and if challenged will boot the worker into the street.

Dr Jonathan Grossman of the University of Cape Town Sociology Department said: "In most cases there are no conditions of employment outlined, no contract, nothing. People work long, long hours. Some employers still pay their workers in clothing plus lodging and a limited amount of food."

The Basic Conditions of Employment Bill, which will affect domestic workers, is expected to be passed by the National Assembly this year. The Labour Relations Act also protects domestic workers' rights.

"But there is no minimum wage set. That is a big problem. Beside how is this legislation or the new one expected to be enforced?" Dr Grossman said.

Workers can approach the Commission

SPECIAL REPORT



BLACKMAN NGORO

for Conciliation, Mediation and Arbitration when they feel they have been treated unfairly, but many are unaware that the commission exists, or how to approach it.

Florence Gwandala, the ANC constituency office co-ordinator in Sea Point, who was a domestic worker for 10 years, said employers often had no respect for the women who worked for them.

"They themselves are women but they try to take away our own womanhood because they see us as beneath them."

"They limit visits by boyfriends to one day a week, usually Wednesday afternoons. And then we must register the man's name and his identity number. If you have children they may visit over the weekend but they may not sleep overnight."

Mrs Gwandala said her office tried to help and sometimes interceded between employer and worker.

"When we call the homes where the women work the employer often asks, after a short conversation, 'What has the ANC got to do with this?' Some then abruptly bang the phone down before you can continue."

The women, who, in general, received wages ranging from R300 plus accommodation, to R800 without accommodation, had problems because of their ignorance of the law, according to documented information at the ANC's constituency office.

The information showed that Sea Point blocks of flats were increasingly being run by boards of trustees which have stringent rules for domestic workers on the premises.

Many workers just sweat it out for their taxi fares

BLACKMAN NGORO
Staff Reporter

The Department of Labour recommends that employers pay domestic workers who don't live in at least R50 to R55 for an eight-hour day's work.

But Michael Sedgwick, a labour inspector in the Western Cape said: "We are currently using the Basic Conditions of Employment Act 3 of 1983. It is an inadequate piece of legislation as it doesn't have a minimum wage stipulation."

"Domestic workers should also have paid sick leave and days off, and even a pension. Most domestic workers don't get these."

Mr Sedgwick said the provincial office of

the labour department had written to Labour Minister Tito Mboweni asking him to legislate for minimum wages in this sector.

"At the moment we can say the domestic workers really work for their transport costs."

Mr Sedgwick said the nature of exploitation of domestic workers was varied but included the non-payment of workers.

In one case in an upmarket area of Pretoria a domestic worker applied for a live-in job and had the working conditions described to her. She would look after a family of two adults and four children ranging in age from 16 to about 3 years.

She would get one weekend off a month,

plus Thursday and Sunday afternoons after clearing up.

Her working hours would stretch from from 6am until she cleared up after supper with an hour off at midday.

Supper would be between 6pm and 7pm but on Fridays it would be served later as the family had a major religious dinner and would finish only at 9pm.

For this she would earn a salary of R450 a month.

The worker turned down the job.

Some employers claim since they provide their workers with room, food and clothes they didn't see any need to pay wages.

"This particularly applies in areas such as Wynberg where mostly Muslim and

The rules were drafted by the major property managers who were contracted to administer the properties which were under sectional title.

In some cases live-in workers are not allowed to cook in their rooms. A letter from the board to a resident about one worker said: "These rooms are for the purposes of sleeping only ... they were not intended to be used as a bedroom and kitchen. If takeaways are brought into the room that is acceptable. But cooking on hot plates is not allowed."

In another case a portfolio manager for a major estate agency wrote to a tenant of a Sea Point block of flats telling him his domestic was not to use the front entrance.

"A specific ruling was made that maids not be allowed to use this door and that residents should not allow them the use of the key. This rule was breached. A trustee witnessed your maid using your key at the Arthur's Road door. We must point out that if your maid makes illicit use of the door with your key we shall have to confiscate same."

coloured employers are guilty of this practice. They also lock their workers indoors and stop them from having outside contact," said Mr Sedgwick.

The wages in Wynberg ranged from R200 to R250 a month.

Labour relations officials had also found that many employers were often not keen to allow their live-in domestic workers to have family members staying with them on the property.

"Employers should also make a provision for their staff so they have something to live on when they retire," Mr Sedgwick said.

The Department of Labour's Unemployment Insurance Fund does not cover domestic workers.

No room for Elizabeth after decades of service

BLACKMAN NGORO
Staff Reporter

A 68-year old domestic worker has vowed not to leave a room which she had taken for granted belonged to her after being employed by the same woman for 44 years.

Last Saturday was the deadline set for her to pick up her possessions and vacate the room.

Elizabeth Botha says she signed legal papers she didn't understand, and was given a cheque for R1 000.

Mrs Botha, who had a stroke two years ago after working as a domestic for Micky Ginsberg for what she said was 44 years, now has no home. She leaves her cramped room in the mornings and returns at dusk, afraid to meet her old employer.

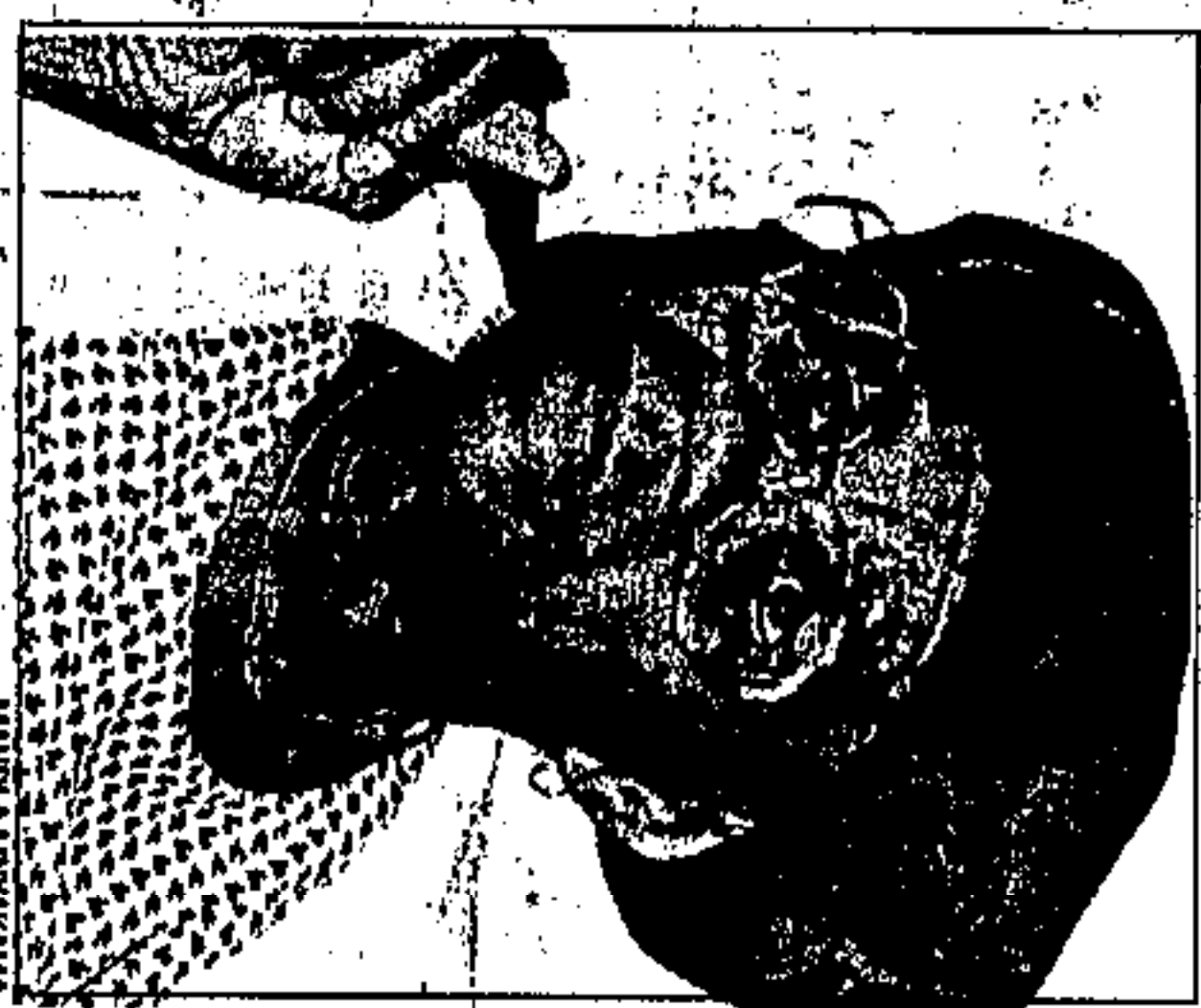
"I love her but I don't know what's wrong with her now. She behaves as if she has never seen me in her life yet I worked for her for 44 years. I raised her three daughters, two of whom are overseas and the other is in Johannesburg. I also raised her grandchildren. Now I'm treated like a leper."

Mrs Botha said she had hoped that Mrs Ginsberg would build her a home or buy her a flat as other employers in the building had done for their workers.

The relationship between the two soured sharply when Mrs Botha had her stroke.

According to Mrs Botha, when she came out of hospital two years ago, Mrs Ginsberg told her if she could no longer work she had never lived anywhere else in her adult life than with the Ginsbergs.

Mrs Ginsberg said she didn't owe Mrs Botha anything. "She worked for me for 42 years, not 44. We have reached an agreement in which she signed papers that she



Treated like a leper: Elizabeth Botha

would move, that's all. I have paid school fees for her grandson and there is nothing else. She will get some money from her advocate."

Asked how much money she had paid her worker off with she said it was none of this newspaper's business.

Alexander Durandt, an attorney and author of booklet called *You, Your Domestic Worker and the New Laws*, said domestic workers had been covered by the old Basic Conditions of Employment Act (1983) since January 1, 1994 and by the new Labour Relations Act since November 1996.

He said it was unfortunate that employers and domestic workers failed to plan ahead financially for the future.

Domestic workers'

fight for night school

ARL 3/8/98

'Our bosses deny us an education'

MANDLA MNYAKAMA

SPECIAL CORRESPONDENT

Domestic workers in Green Point, Mouille Point and Sea Point claim their employers are changing their working hours so they are unable to attend evening classes.

The Siyafunda Adult School in Green Point holds classes from 6pm to 9pm four days a week.

At the beginning of the year 300 students were registered but this has dropped to fewer than 100.

Domestic workers claimed their employers had increased their working hours and shifted supper time to deliberately prevent them from attending the evening classes.

A man who used to work as gardener said he lost his job when his boss asked him why he wanted "to go to school and get clever".

When other employers realised that their workers were attending evening classes they forced them out of their rooms.

"My boss is very unfair. He usually holds parties during the week and demands that I work," said Thobeka Vimba of Transkei.

"We agreed about my attendance at evening classes but when I brought him my timetable he said I could go only one day a week."

A woman who gave her name as Wendy from Mouille Point said her employer had told her she came to Cape Town to work, not to go to school.

A woman who works in a guest house in Camps Bay said her employer allowed her to attend evening classes, but she was worried about the end-of-year exams, which would be held during the day.

Another worker, Anna Simons, said: "We want our employers to allow us to attend school just for those three hours a day so we can catch up on some education to better ourselves, or we would know nothing."

A teacher at the school, Annes Emeran, said most pupils arrived late because the employers did not release them in time for class. Sometimes workers were forced to babysit during class hours.

"I acknowledge the fact that many of the workers are grown people who are full-time employees but we wish some of the employers would give them a chance to educate themselves after working hours," said Mr Emeran.

Some workers said their bosses denied them the chance of education because they feared there would learn their rights.



Ready to learn: adult learners hard at work in their classroom at the Siyafunda Adult school in Green Point

MANDLA MNYAKAMA

Domestics benefit from new Act

Labour relations laws bring these workers on a par with all other employees

By GORA NDILOVU

Domestic workers stand to receive greater protection from the new Labour Relations Act (LRA) but poor understanding of the act could prevent them from making the most of the opportunities.

Unions and industrial relations experts said ignorance of the act, which became effective last Monday, coupled with a lack of organisation among some of the unions, would stand in the way of domestic workers receiving any benefits.

Former treasurer of the 50 000-strong South African Domestic Workers' Union (Sadwu) and its only remaining active national executive member, Myrtle Witbooi, praised the Government for "the best law" ever to be made for domestic workers.

But she said her union was in disarray and unable to grab the opportunities available to its members.

The Congress of South African Trade Unions (Cosatu) last year called for the reorganisation of Sadwu following allegations of mismanagement of funds and maladministration. This was followed by a mass resignation of senior officials and staff.

Witbooi said that Sadwu

could not take full advantage of the privileges provided by the new LRA because it now lacked the manpower to reach the great majority of its members.

Business economist Mathew Grossett said the act provided domestic workers, who "were victims of quick and easy dismissals in the past, greater protection".

He agreed with Witbooi that the main problem was how the new information could be "filtered down" to the majority of

Union in disarray, unable to mobilise

domestic workers, who, according to 1994 union figures, numbered more than 1-million countrywide.

He said the situation was worsened by the fact that more than 90% of them could neither read nor write.

Alexander Durandt of Cape Labour and Industrial Consultants said the new act had "drastically changed the legal relationship between the domestic workers and their employers".

Durandt warned employers to familiarise themselves with the act because ignorance could cost them financially.

He said that while domestic workers received protection for the first time in 1994 when the Basic Conditions of Employment Act was extended to cover them, unfair dismissals and unfair labour practices were not covered in the act.

The new LRA brings workers on a par with all other employees, forcing employers to heed the law. Like other workers, domestics could only be dismissed for misconduct, failure to do work because of incompetence and through retrenchment. One of these reasons must be present for a dismissal to be valid.

In the past all that an employer needed to end a domestic's employment was to give her a month's notice.

During such a dismissal, they said, a domestic was entitled to all the facts at her employer's disposal.

She should be given the opportunity to state her case to her employer either by representing herself or by representation from a union official or a fellow-worker.

A dismissal which touched on a domestic's fundamental and

constitutional right, such as not being discriminated against and participating in a legal strike, was automatically declared unfair by the new LRA and carried heavy penalties for the employer.

Domestics also had access to the new labour body, the Commission for Conciliation, Mediation and Arbitration where they had no contact with a union or had no representative.

Another important gain for domestics was that employers should pay them severance pay at the rate of one week's salary for each completed year of continuous service.

This payment applied irrespective of whether such a dismissal was fair or unfair.

Grossett said: "This is a really great act. Although it does not set minimum wages for domestics and makes no provision for pensions, it has lifted these workers to the level of the rest of employees in the country.

"There are still companies which have no pension schemes; the same applies to minimum wages - some industries do not have such minimums."

He said unions for domestic workers needed to work hard to educate them about their rights, possibly through the medium of workshops.

Star 18/11/96

(157) (294)

Cosatu backs Sadwu's suspension of president

BY TAMSEN DE BEER

(294) Star 3/4/96

Cosatu has endorsed the suspension by members of the South African Domestic Workers' Union (Sadwu) of Sadwu president Violet Senna, general secretary Florrie de Villiers and assistant general secretary Elsie Komako earlier this year.

Sadwu is one of 19 Cosatu affiliate unions.

But Sadwu president Violet Senna said the decision to suspend three of the five executive members was unconstitutional. The decision had been taken by union officials and did not represent the sentiments of the union's members, he said.

Cosatu endorsed the suspension this weekend, when a possible disaffiliation of the union was also on the cards.

Cosatu spokesperson Nowetu Mpati said Cosatu's central executive committee (CEC) had decided to continue its support of Sadwu, "although there have been problems".

"They are still our affiliate but they are not in good standing.

"The problem is Sadwu has no money to carry out its programme. We took into consideration that the people the union is servicing are the most disadvantaged workers in the country," she said.

The 18 other Cosatu affiliates would each contribute R5 000 towards the fund-

ing of Sadwu.

"There are affiliates prepared to contribute more than that to ensure the union functions well," she said.

She said Sadwu leadership had appeared to act "above the constitution of Sadwu and wanted to dictate to members". She said members were apparently not able to contribute to union decision-making.

But Senna insisted members still supported her, and said some had withheld their union subscription fees until the issue was resolved.

"Cosatu do not know the inside story. They are going on hearsay. They have not approached me, neither was I given a hearing by Sadwu. I feel Cosatu is taking sides in this issue instead of hearing the inside story," she said, adding information was being withheld from the organisation from the two remaining members of the Sadwu executive.

A transitional committee was in place, with experienced organisers seconded from Cosatu affiliates to assist Sadwu in preparing a programme, said Mpati.

Funds given to the union would be administered by Cosatu.

Sadwu has nine regions countrywide and an estimated 25 000 members, but numbers have apparently declined since the trouble started earlier this year.

All your questions answered

Q: When does a char or a casual domestic qualify as a domestic employee for the purposes of the act, requiring you to draw up a written contract of employment?

A: In terms of the law, chars working for more than 24 hours a month at one household are covered by the provision requiring a written contract to be drawn up.

But it is always advisable to draw up a contract anyway to protect not only the domestic but you, the employer, as well. Also, warns Suzette Botha of Cofesa, employers who have failed to comply with the law in this regard and who have come before the CCMA have been ordered to pay fines equivalent to two years of the domestic's salary.

Q: Is there a minimum rate of payment per hour, or is that a matter for negotiation between you and your employee?

A: At present there is no minimum wage in terms of the law, although the Government has indicated it will introduce it in the not-too-distant future. Suzette Botha says experience in the Western Cape has shown that wages for chars range from R35 to R60 a day while those for full time live-in domestics range between R350 and R2 100 a month.

Q: Are annual, sick, maternity and family responsibility leave prescribed by law or is that also a matter for negotiation?

A: The domestic is entitled to at least three weeks (21 consecutive days - not working days) of leave for every year he or she has worked (annual leave). This is paid leave. But you can agree with your employer to be paid in lieu of leave. You can also agree to take part of your leave - say one week - and be paid for the remainder.

Sick leave: employees who work a five-day week are entitled to 30 days per cycle of 36 months.

Those who work a six- or seven day week are entitled to 36 days per cycle of 36 months.

Basically it boils down to one day's sick leave for every cycle of 26 days worked.

Your employer is not required to pay you if you have been absent from work for more than two days without being able to show a doctor's certificate.

Maternity leave: if you become pregnant you have a right to four months in a row of maternity leave. You may take your leave from four weeks before the birth and you may not be required to work for six weeks after the birth of your child unless a doctor certifies you as fit for work. You must notify your employer in writing of the dates you intend to take this leave.

Family responsibility leave is leave granted to you to attend to any urgent family business

such as a sick child or a close relative's funeral. You are entitled to three days family responsibility leave per year and this, too, is fully-paid leave.

Q: Under what circumstances can one dismiss a domestic employee?

A: The employer cannot dismiss you for refusing to do something illegal, for informing the authorities about something wrong or illegal that you have witnessed or for being a member of a union. In such cases, the dismissal will be "automatically unfair".

If you are being dismissed for misbehaviour, failure to work properly or the employer's inability to continue paying you, the dismissal is probably (although not necessarily) fair.

A domestic can be summarily dismissed for drinking on duty and theft, but always depending on the circumstances, (such as where children are being supervised) it would be more serious.

The following usually justify dismissal:

1. **Misconduct.** The misconduct must be described in the contract. The seriousness of the misconduct will determine what the procedure should be, for example whether it is three warnings and a final written warning or summary dismissal.

'There's no minimum wage but indications are this is on the cards'

2. **Incompetence** due to factors such as lack of training or natural ineptitude.

3. **Physical/medical inability.**

4. **Operational reasons** - such as where the employer can no longer afford to employ you, loses a job or moves elsewhere.

Q: What if your circumstances change? For example, your family grows up so you do not need a full-time employee. Or you lose your job so you cannot afford a domestic. Would you have to offer a retrenchment package? If so, based on what?

A: Such circumstances would probably fall into the category of so-called "operational reasons" (see above). The employer is obliged to pay the worker severance pay at the rate of one week of his or her salary for every year worked and to help the domestic find alternative employment as soon as possible. Domestic workers face an unsure and precarious future in terms of disability and retirement. It is often left to the

employer's discretion to provide such benefits. This is not always possible. Cofesa offers an affordable Domestic Worker Cover (for from R55,88) which provides for the following needs: Investment Plan, Accidental Death Benefit, Funeral Benefit (for the whole family), and Temporary Disability Benefit. For more information, contact Cofesa at the telephone numbers given below.

Q: Will you need to pay UIF and register your employee formally?

A: Not at this stage, although provision for this may be made in future.

Q: Is there a difference between the contracts for live-in, full-time maids and twice-weekly chars?

A: The contracts for live-in, full-time workers and twice-weekly chars are all the same. The only difference is that the working time for a live-in domestic may vary from day to day.

Q: What about pension and medical aid? Does the contract stipulate provision and deduction for these?

A: The contract does not stipulate that these be provided and deducted for, but Cofesa highly recommends that employers deduct an amount from their employees' salaries for pension and provident funds.

Q: And personal accident insurance? Is this covered?

A: This is usually provided for in one's household insurance and accident policy.

Q: Does Cofesa charge a fee to draw up a contract? Can you draw up your own contract and to whom can you go for information and guidance?

A: Cofesa charges R80 to draw up a contract.

You can instead approach the Department of Labour for their standard term contracts or simply draw up your own. The Department or the Black Sash will give you advice.

Cofesa offers a continuing helpline to all those who have taken out one of our contracts - and whenever a problem crops up you can make contact for free advice.

Cofesa's telephone numbers:

- Head Office: (011) 472 6152
- Regional Office: 653 5851
- Southern Suburbs: 689 7411 or 531 2983
- Parow: 559 4683
- Somerset West: 883 8313 - or (028) 271 4940
- Overberg: (028) 271 4940
- Stellenbosch: 883 8313
- Bellville: 99 4476
- Durbanville: 975 4040
- Paarl: 862 6379
- Black Sash: 461 5607
- Department of Labour: 460 5911

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CAPE ARGUS 23/9/28 (294)

New deal ahead for maids and madams

Law aims to end the exploitation of domestic workers

RAY 23/9 1998 (2914)

Suzette Botha chuckles with a mixture of amusement and some displeasure about the madam who insisted on inserting into her maid's contract of employment the stipulation that if ever the maid became pregnant, she would immediately forfeit her job.

"Needless to say I refused to allow her to put the term into the contract," laughs Suzette.

Then there was the angry gentleman who, after learning that he would soon be compelled by law to enter into a written contract of employment with his domestic employee, shouted: "That's it! She's lost her job!" And then slammed down the phone.

No-one knows better than Suzette Botha that when the Basic Conditions of Employment Act comes into effect towards the end of the year, it will herald the beginning of a new era for the country's 2.4 million maids and their madams.

The act will regulate the relationship between employer and domestic employee as never before and will go a long way towards ending exploitation of domestic workers.

A former school teacher and librarian, Suzette bought the Stellenbosch (and Southern suburbs too) franchise of Cofesa (Confederation of Employers of Southern Africa) after she took out its domestic cover policy for her own domestic worker.

She now devotes herself to the business of selling and implementing contracts of employment to employers and their domestic employees, and promoting enlightened relations.

Very soon many householders will be affected by the act, chapter four of which states that a written contract has to be drawn up between every employer and domestic employee.

Ignorance of the law or neglecting to obey it will carry penalties of a fine of up to R500.

In terms of the new Basic

Conditions of Employment Act, to be promulgated on December 1,

employers who engage the services of a domestic worker will

have to enter into a written contract of employment with their domestic

employee. Feature writer

DAVID YUTAR spoke to someone who knows the ins and outs of the new law and its implications for the household

The act defines a domestic worker as an employee who performs domestic work in the home of his or her employer and includes domestic helpers, housekeepers, chargs, gardeners, chauffeurs and a person who takes care of children, the aged, the sick, the disabled or the frail.

How have South Africa's madams taken to the new notion of a highly regulated relationship of domestic employment and the invasion of privacy that this inevitably entails?

Suzette says that in spite of the somewhat resistant man who slammed down the phone, on the whole employers have been surprisingly compliant and even welcoming of the law - realising that its implementation will bring with it clarity and benefits for both parties.

Suzette says that although some may see the law as over-regulating a hitherto unregulated domain, at the end of the day it is a welcome development because of the vast number of domestic workers who are underpaid, taken for granted and often badly exploited by their employers.

She tells the story of one domestic worker who, when referred to as "a

member of the family" vehemently protested, exclaiming: "I am not part of your family! I am a worker and I want to be treated as such!"

The worst exploitation of domestic workers is to be found in the treatment of live-in maids and workers, says Suzette.

"My hair rises when I hear there is a woman coming in with her live-in maid to draw up a contract."

"Many employers see their live-in domestics as being on call 24 hours a day."

Suzette Botha says the contract covers the entire spectrum of what can go wrong in the relationship between employer and domestic (she adds that she knows from personal experience what can go wrong) and that it protects both employer and worker.

By far the biggest problem in the area of domestic work, says Suzette, is the need to create trust between maid and madam.

"I always tell employers that the best way they can do this is to encourage their domestic to ask for anything if she needs it."

"It comes down to the *Pygmalion* effect."

"If you expect your domestic to do a better job, then he or she probably will."

"Of course, it is also essential to make sure that you know something about the person you employ - and because it has become so difficult to fire a domestic employee, I recommend that employers hire a worker for a longer period of probation in the beginning."

Suzette not only draws up contracts for employers and their workers but also preters to implement and explain the contract to the parties as well.

When it comes to breaches of the contract and grievances, she always encourages employees to talk and discuss the matter with their employers



Bottom line: a domestic worker and her employer get down to the basics of a work contract and its conditions of employment

first.

"Communication is of the utmost importance as it is a one-on-one relationship."

"And I always tell the employee that what happens out there to the labour force doesn't affect you."

Often problems and misunderstandings can be easily resolved by talking and frank discussion.

Suzette tells of the very reliable gardener who, after working for about two years without showing any fault, one day came to work paralytically drunk.

When his employer spoke to him, it transpired that the man's wife, after being unable to conceive for years, had finally fallen pregnant. So elated had the husband been at the news, that he went to celebrate,

having a bit too much too drink in the process.

The employer offered him some black coffee and listened to his story with empathy.

For further information call Suzette Botha on (021) 883 8313.

All your questions answered

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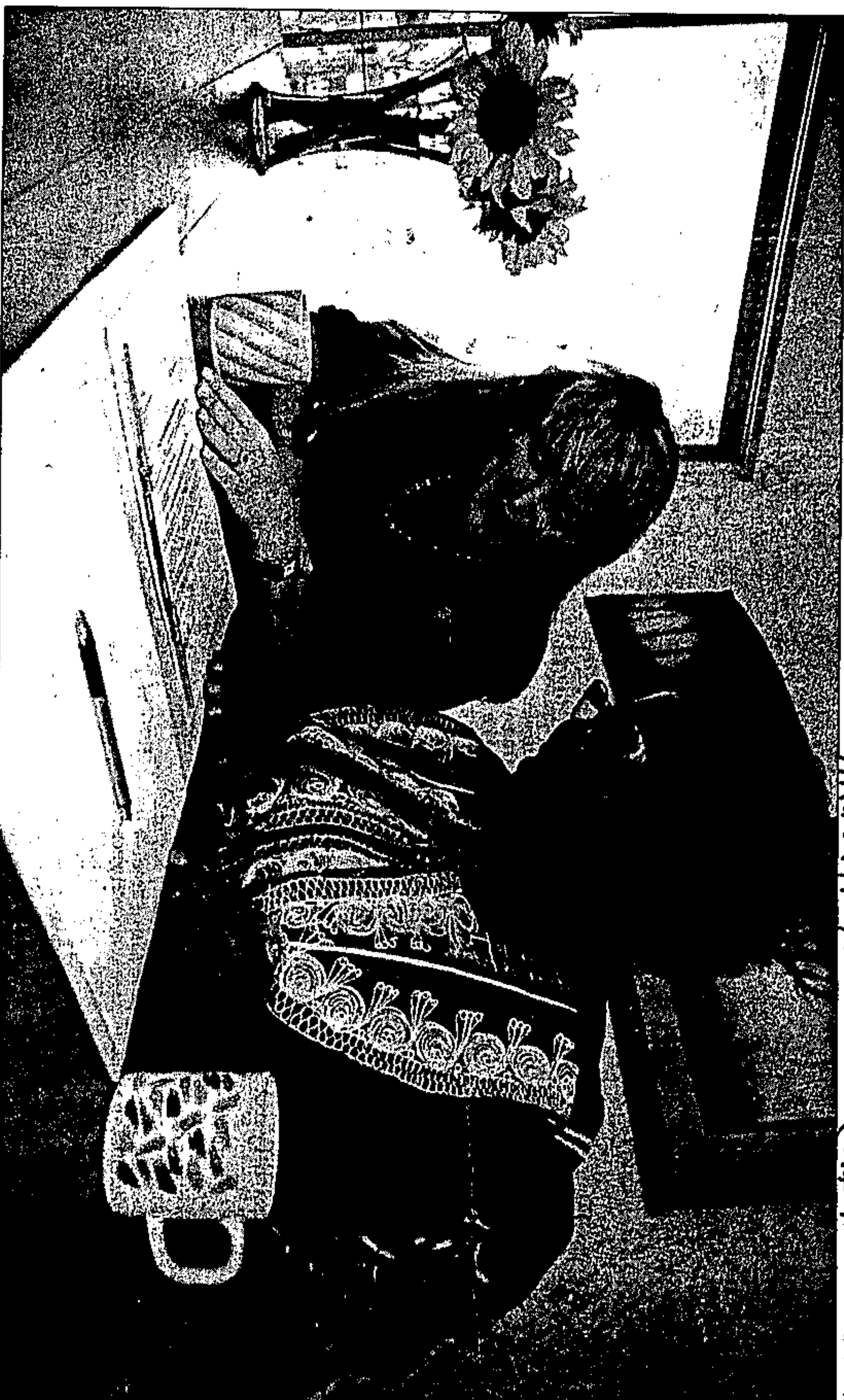
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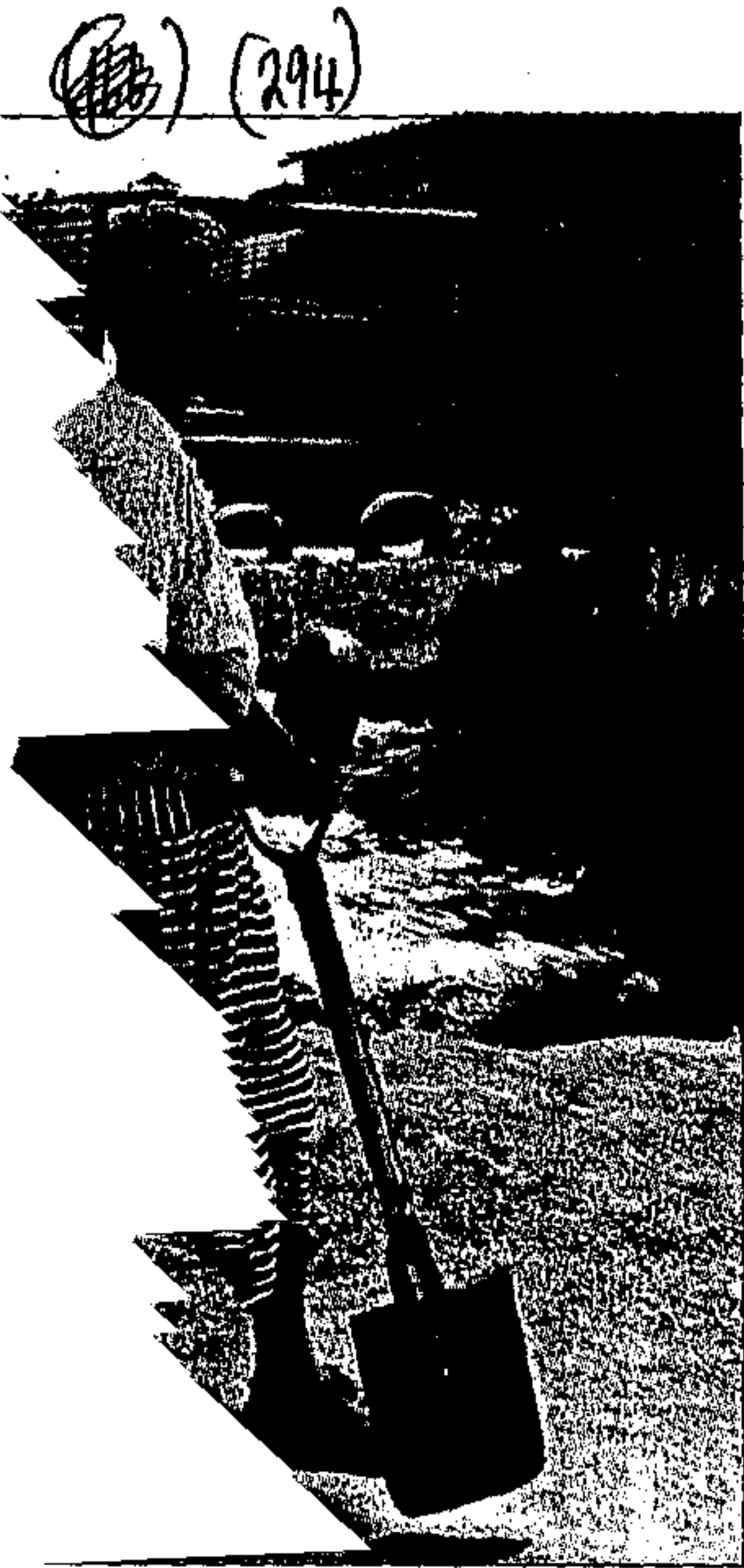
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and sectors.
There is no prescribed mini-
mum rate of remuneration.
Workers and employers are
urged to ensure that their condi-
tions of employment comply with
the act.
The Department of Labour is
available to advise employers and
workers of their rights and obli-
gations. It is also obliged to enforce
the law if non-compliance occurs.
For further information con-
tact your nearest Department of
Labour office.
■ Lisa Seftel is the chief director
for Labour Relations in the De-
partment of Labour

This and other sample
contracts for instance one for
small businesses, are available for
free from the Department of Labour.
These are not mandatory by law
but are recommended by the
Department to protect both
employers and workers.

SAMPLE CONTRACT OF EMPLOYMENT

Recommended by the Department of Labour for domestic employees

Entered into between:
(herein referred to as "the employer")

Address of employer:
.....

and
(herein after referred to as "the employee")

1. **Commencement**
This contract will begin on and continue until terminated as set out in clause 4.

2. **Place of work**
.....

3. **Job description**
Job Title
(e.g. domestic worker, child minder, gardener, etc)

Duties
.....

4. **Termination of employment**
Either party can terminate this agreement with four weeks' written notice. In the case where an employee is illiterate, notice may be given by that employee verbally.

5. **Wage**
5.1 The employee's wage shall be paid in cash on the last working day of every week/month and shall be: R

5.2 The employee shall be entitled to the following allowances/ payment in kind:

5.2.1 A weekly/monthly transport allowance of R

5.2.2 Meals per week/month to the value of R

5.2.3 Accommodation per week/month to the value of R

5.3 The total value of the above remuneration shall be R

(The total of clauses 5.1 to 5.2.3)

(Modify or delete clauses 5.2.1 to 5.2.3 as needed)

5.4 The employer shall review the employee's salary/wage once a year.

6. **Hours of work**

6.1 Normal working hours will be from am to pm on Mondays to Fridays and from am to pm on Saturdays.

6.2 Overtime will only be worked if agreed upon between the parties from time to time.

6.3 The employee will be paid for overtime at the rate of one and a half times his/her total wage as set out in clause 5.3.

7. **Meal intervals**

The employee agrees to a lunch break of one hour/30 minutes (delete the one that is not applicable). Lunchtime will be taken from to daily.

8. **Sunday Work**

Any work on Sundays will be by agreement between the parties from time to time. If the employee works on a Sunday he/she shall be paid double the wage for each hour worked.

9. **Public Holidays**

The employee will be entitled to all official public holidays on full pay.

If an employee does not work on a public holiday, he/she shall receive normal payment for that day. If the employee works on a public holiday he/she shall be paid double.

10. **Annual Leave**

10.1 The employee is entitled to days' paid leave after every 12 months of continuous service. Leave is to be taken at times convenient to the employer who may require that the employee take his/her leave at such times as coincide with that of the employer.

11. **Sick Leave**

11.1 During every sick leave of 36 months the employee will be entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks.

11.2 During the first six months of employment the employee will be entitled to one day's paid sick leave for every 26 days worked.

11.3 The employee is to notify the employer as soon as possible in case of his/her absence from work through illness.

12. **Maternity Leave**

12.1 The employee will be entitled to days' maternity leave without pay: OR

12.2 The employee will be entitled to days' maternity leave on pay

(Pick applicable clause.)

13. **Family responsibility**

The employee will be entitled to three days' family responsibility leave during each leave cycle.

14. **Deductions from remuneration**

The employer may not deduct any monies from the employee's wage unless the employee has agreed to this in writing on each occasion.

15. **Accommodation**

15.1 The employee will be provided with accommodation for as long as the employee is in the service of the employer, and which shall form part of his/her remuneration package

15.2 The accommodation may only be occupied by the worker, unless prior arrangement with the employer.

15.3 Prior permission should be obtained for visitors who wish to stay the night. However, where members of the employee's direct family are visiting, such permission will not be necessary.

(Pick applicable clauses.)

16. **Clothing**

..... sets of uniforms will be supplied to the employee by the employer and will remain the property of the employer.

17. **Other conditions of employment or benefits**

.....

18. **General**

Any changes to this agreement will only be valid if they are in writing and have been agreed and signed by both parties.

THUS DONE AND SIGNED AT ON THIS DAY OF 1998

EMPLOYER

EMPLOYEE

Witnesses:

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Child prostitutes face big Aids risk

By Charity Bhengu

A GROUP of children who should be at school are sitting at a street corner in Hillbrow, Johannesburg, nonchalantly minding their own business.

But, at the sight of a posh car, they are suddenly on their feet – the young girls, aged between 13 and 16, are prostitutes.

And, what makes this even more horrifying, is that the girls are increasingly becoming part of the shocking Aids statistics of South Africa's prostitutes.

About 70 percent of the country's sex workers are infected with HIV. Among them are children, recruited every day by pimps in the streets of Hillbrow, Durban and Cape Town.

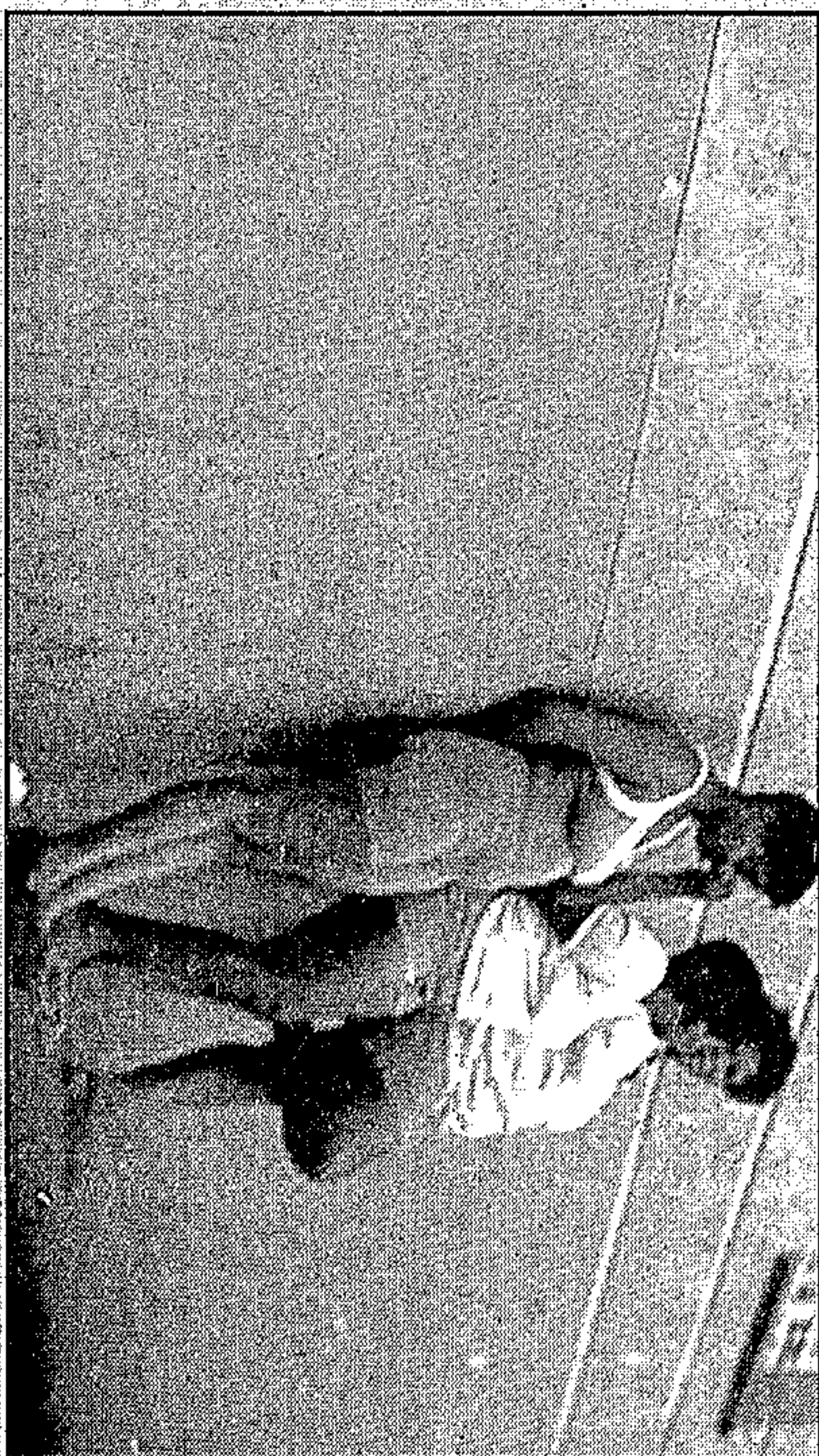
The Commission on Gender Equality (CGE) – which is pressing for the decriminalisation of sex work – estimates that seven out of every 10 sex workers are HIV positive, and three out of 10 potential carriers of the virus are sex workers.

Prostitution is criminalised by the Sexual Offences Act in South Africa, which makes it illegal to have "carnal knowledge with any other person for reward".

However, internationally, the trend has been towards an understanding of prostitution as a human rights issue, rather than as a moral or religious one.

Earlier this year, a process to decriminalise sex work in Gauteng – which began in 1996 – was halted.

CGE lawyer Liesl Gernholtz says: "The views on the matter are polarised and heated, as issues of morality and



Young sex workers on a street corner in Hillbrow, Johannesburg, last week.
PIC: PAT SEBOKO
(294)
(48)

religion collide with those of human rights and the need to intervene in a growing HIV-Aids epidemic."

She said the commission supported the decriminalisation of sex work on the basis that it would empower prostitutes, not presently afforded legal protection.

"Research indicates that sex workers are raped, beaten and abused by clients and pimps. They are also victimised and harassed by the police, and deprived of the most basic rights," says Gernholtz.

The child sex workers – found in many cities around the country, and most of them black – are exposed to drugs, violence and criminal activities. Some of them are as young as

eight years old.

Adriel du Plessis from The House, a Johannesburg project that provides shelter for former child prostitutes, says: "We have children as young as eight years who used to be prostitutes in our care."

Not normal job

"Theirs (prostitutes') is not a normal job – it is a violent, degrading, humiliating trade in which many get raped four to five times a day. They live life of hell. They are assaulted with very little recourse."

Prostitution not only threatens the physical safety and health of children, says Du Plessis, but also seriously damages their emotional development

because of the prison-like conditions in which they live.

The Aids Consortium says the decriminalisation of sex work will improve the working conditions of sex workers as they will be able to get health insurance, workers' compensation, social security and disability grants.

Dr Liz Floyd of the Gauteng health department says sex workers are vulnerable and sometimes not in a position to insist on clients using condoms because they did not have any other options to secure work.

She says the department has a significant budget to control the spread of Aids and points out that new Aids projects are being set up to support

sex workers. Floyd points out that schoolgirls who have more than one partner for material gain even though they do not consider themselves prostitutes are also considered potential victims of Aids.

Poverty, migrant labour and an increase in sex tourism contribute to the sexual exploitation of children. In fact, child sex tourism is organised specifically to facilitate a commercial sexual relationship with a child.

Prostitution is also rife around the mines and hostels, especially in places like Khuisong in Carletonville, where lonely migrant labourers are willing to pay for sex.

On the other hand, university students are joining the sex trade as well to pay their tuition fees, while others "moonlight" to be able to afford expensive cars, designer clothes and cellular phones.

Last week *Sowetan* visited the notorious Quartz Street in Hillbrow, Johannesburg, and found street-wise teenagers hanging around on street corners, clad in skimpy outfits that left nothing to the imagination.

They occupy filthy hotels, flats and even office blocks which serve illegally as brothels. Starry-eyed and in awe of the glamour and glitter that abounds in Johannesburg, they end up being involved in drug and alcohol abuse.

Some are unable to stop selling their bodies once they become reliant on the money and drugs. Others are so traumatised by their experiences that they cannot quit or go back home.

Sowetan 3/11/98

Domestic workers' fight for night school

'Our bosses deny us an education'

APR 3/8/98

MANDLA MNYAKAMA
SPECIAL CORRESPONDENT

Domestic workers in Green Point, Mouille Point and Sea Point claim their employers are changing their working hours so they are unable to attend evening classes.

The Siyafunda Adult School in Green Point holds classes from 6pm to 9pm four days a week.

At the beginning of the year 300 students were registered but this has dropped to fewer than 100.

Domestic workers claimed their employers had increased their working hours and shifted supper time to deliberately prevent them from attending the evening classes.

A man who used to work as a gardener said he lost his job when his boss asked him why he wanted "to go to school and get clever".

When other employers realised that their workers were attending evening classes they forced them out of their rooms.

"My boss is very unfair. He usually holds parties during the week and demands that I work," said Thobeka Vinba of Transkei.

"We agreed about my attendance at evening classes but when I brought him my timetable he said I could go only one day a week."

A woman who gave her name as Wendy from Mouille Point said her employer had told her she came to Cape Town to work, not to go to school.

A woman who works in a guest house in Camps Bay said her employer allowed her to attend evening classes, but she was worried about the end-of-year exams, which would be held during the day.

Another worker, Anna Simons, said: "We want our employers to allow us to attend school just for those three hours a day so we can catch up on some education to better ourselves, or we would know nothing."

A teacher at the school, Anees Emeran, said most pupils arrived late because the employers did not release them in time for class. Sometimes workers were forced to babysit during class hours.

"I acknowledge the fact that many of the workers are grown people who are full-time employees but we wish some of the employers would give them a chance to educate themselves after working hours," said Mr Emeran.

Some workers said their bosses denied them the chance of education because they feared there would learn their rights.



Ready to learn: adult learners hard at work in their classroom at the Siyafunda Adult school in Green Point

MANDLA MNYAKAMA

Compulsory contracts, which will protect all domestic workers and will have to spell out terms of employment, working hours, annual leave and over-

New era for maids and

Star 30/11/98 (294) (H321) 2074

Domestic worker Monica Mathibe (31) has two children to support in the Eastern Cape on a salary of R872 a month. Each month, she sends home R300.

She works six days a week and gets every third weekend off. She does not pay for her accommodation, food or medical bills and yet she struggles to get by.

But her quality of life was much improved when her employer, Muriel Hare of Kalk Bay, approached her with a conditions of employment contract.

This contract will be compulsory from tomorrow in terms of the new Basic Conditions of Employment Act for all employers who have a domestic worker who works for more than 24 hours a month.

The contract will have to specify the terms of employment, working hours, annual leave and even overtime.

Hare is 86 and lives alone with her quadriplegic daughter Dawn. She has four domestic workers who clean the house and help take care of her daughter.

She decided to have contracts drawn up with all of her employees after an unpleasant incident with a former employee.

She approached an agency, Confederation of Employers of Southern Africa, and a consultant came to see her and her staff.

Much to the surprise of Mathibe and the other staff, their pay was actually increased after it was discovered how much overtime they worked. For Mathibe it means a very welcome extra R72 a month.

"I am very happy with the contract," she said.

Patience Bavuma, the new cook, agreed. "Yes, it is a good thing - it helps us very much."

Hare said the domestic workers in her home were more than just servants - they were a part of the family.

When her previous cook decided to leave her service, she was saddened.

But then a letter arrived from the Department of Labour, claiming that she had unfairly dismissed the cook and now owed her money.

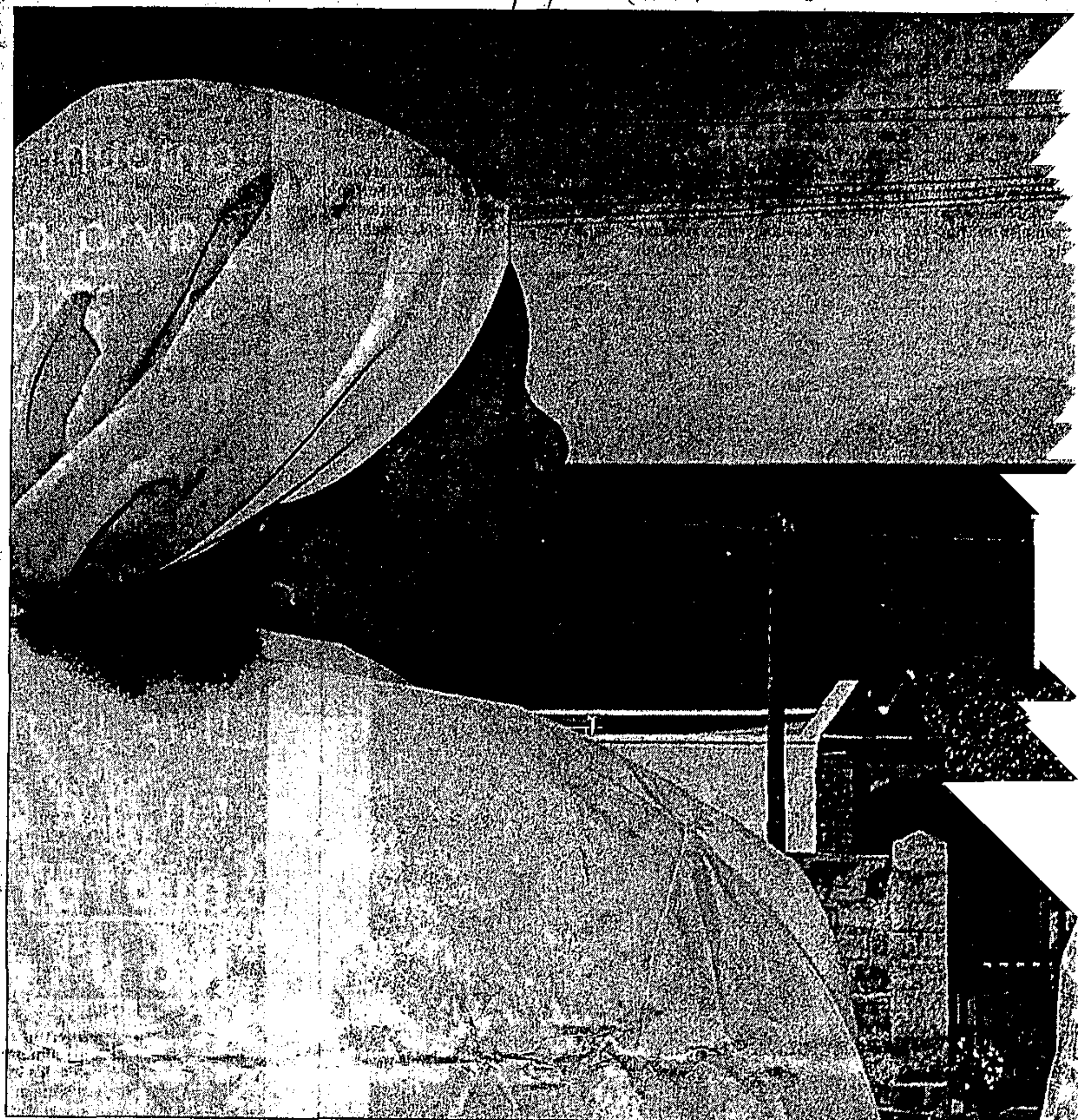
Hare said she was deeply hurt and upset.

For the past 15 years she had paid the cook a pension and had also paid for an expensive eye operation.

"It was the biggest shock. We had her for 15 years and she was part of the family."

"We had never had such unpleasantness before."

When she approached her em-



It's a deal ... Monica Mathibe and Muriel Hare were both delighted when Mathibe's employment contract had been signed and sealed. For Mathi-

ployees about contracts they were at first sceptical.

But when they heard about the increase in their salaries due to the overtime, their scepticism turned into delight.

For domestic workers like Mathibe, the contract means that for the first time they are in a position of power.

The act ensures that domestic

workers, for the first time, will be treated like other workers.

"The big difference is that domestic workers are no longer seen as 'other' workers, but will be employees just like any other," said Department of Labour senior inspector Grant Theys.

The most significant addition to the act is the need for a formal contract between the employer and em-

ployee, which lays down the exact terms of employment.

The contract, needed for when an employee works a minimum of 24 hours a month, will have to include the personal details of both employer and employee, the basic job description, hours to be worked, overtime details and leave conditions.

The contract does not have to be

signed but if it is, it will regard a formal contract.

The new Basic Conditions of Employment Act sets a minimum but states that domestic workers should not work more than 45 hours a week.

Three hours of overtime is allowed per day, but no more than 10 hours overtime should be worked in a week.

will protect all domestic workers and their employers, working hours, annual leave and overtime hours, writes **Andrea Botha**

maids and madams

11/98 (294) (MAM) ~~201~~

LEON LESTRADE



Mathibe's employment contract had been signed and sealed. For Mathibe it will result in more money at the end of each month.

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The contract, needed for when an employee works a minimum of 24 hours a month, will have to include the personal details of both employer and employee, the basic job description, hours to be worked, overtime details and leave conditions.

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signed but if it is, it will be regarded as a formal contract.

The new Basic Conditions of Employment Act sets a minimum wage but states that domestic workers should not work more than 45 hours a week.

Three hours of overtime is allowed per day, but no more than 10 hours overtime should be worked in a week.

The conditions of overtime should also be carefully worked out. If the employee wishes to change these conditions, this can be done after 12 months.

If an employer refuses to draw up a contract or to follow the terms of the contract, the domestic worker can contact the Department of Labour who will investigate.

An employer could be fined if

found guilty of contravening the new act. Domestic workers who work less than 24 hours a month are deemed casual workers and no contract has to be signed between them and an employer.

They said the new act would curtail abuse of domestic workers and empower them, and lay the foundation for discussion of a minimum wage.

employment contract that meets the conditions set out by the Basic Conditions of Employment Act. Trish Beaver reports

Maids, madams to iron out their creases

(294) AKL 28/11/98

This weekend may be the last chance you have to organise a "bosberaad" with your domestic worker without her charging you overtime. From Tuesday, the relationships between South Africa's "Madams" and "Eves" will never again be the same.

South Africans have watched with fascination how cartoon characters Ewe and Gwen Anderson have negotiated their way into the new South Africa with wit, humour and panache.

Most South Africans relate to the bitter-sweet *Madam & Eve* comic strip because it reminds them of their own relationship with their domestic workers. That relationship has always been difficult to define.

The nature of domestic work is broad and all-encompassing. It varies from home to home and the relationship between the "maid and madam" often goes far deeper than that of an employer and employee.

The maid can be a friend and confidante and is sometimes treated as a member of the family.

An intimacy develops when people work in such close quarters. But that intimacy can also be abused.

The madam starts to depend on the maid as if she were a part of the family and the maid begins to treat the home as her personal domain, taking the proverbial liberties with the telephone and the sugar supplies.

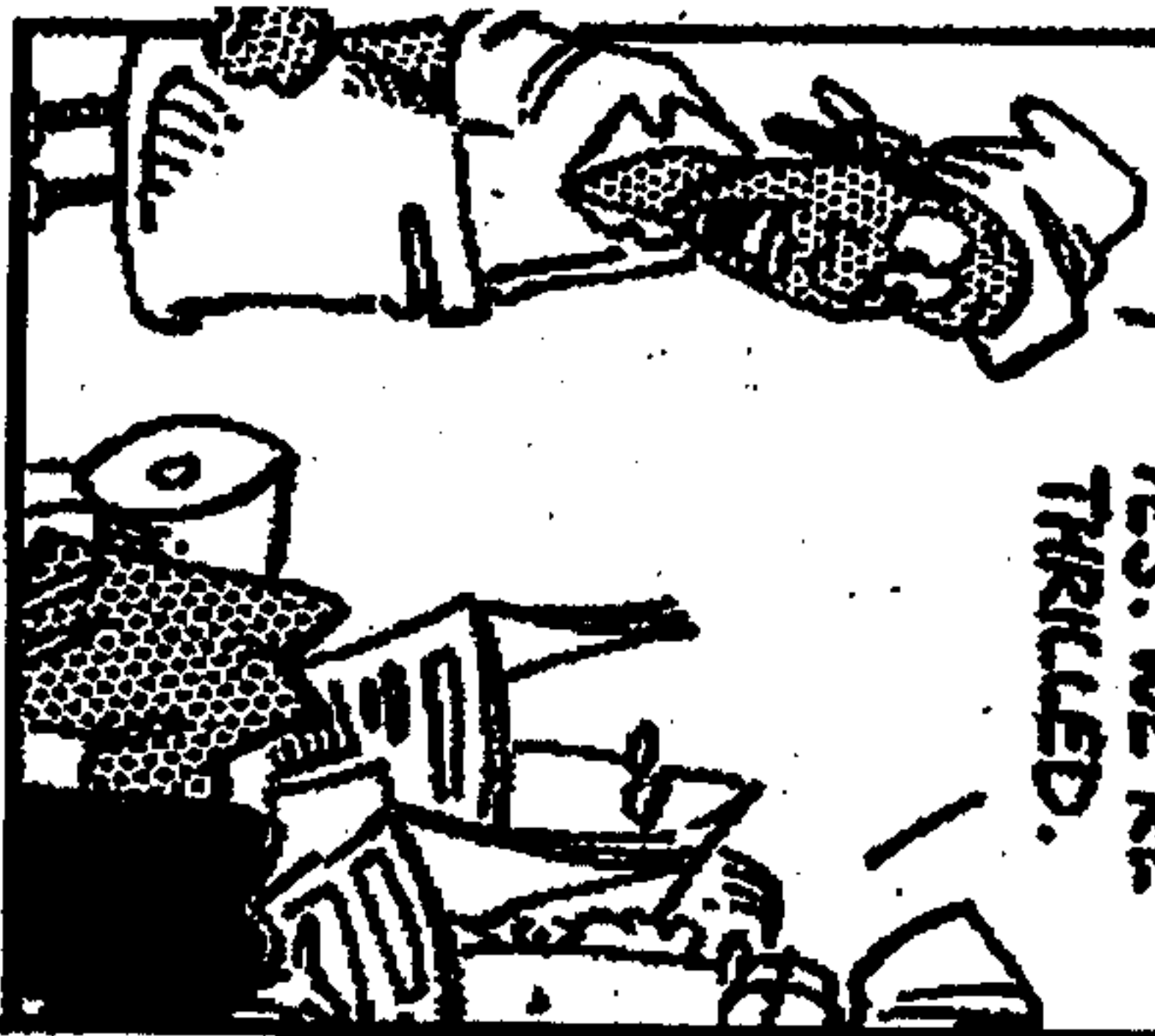
There is no doubt that the unequal balance of power can result in a relationship fraught with potential hazards.

The new Basic Conditions of Employment Act sets out certain conditions that will protect the complex relationship from abuse. From Tuesday, it will be compulsory for employers to set out the terms of employment in a contract. The employee will in turn be able to demand certain working rights.

The contract will cover job description, paid leave, sick leave, overtime, notice period and working hours. Employers who fail to adhere to the basic conditions set out by the act will be fined.

YOU MUST FEEL VERY PROUD TO HAVE SUCH A DOMESTIC LEGEND WORKING IN YOUR HOUSE.

YES. WE'RE THRILLED.

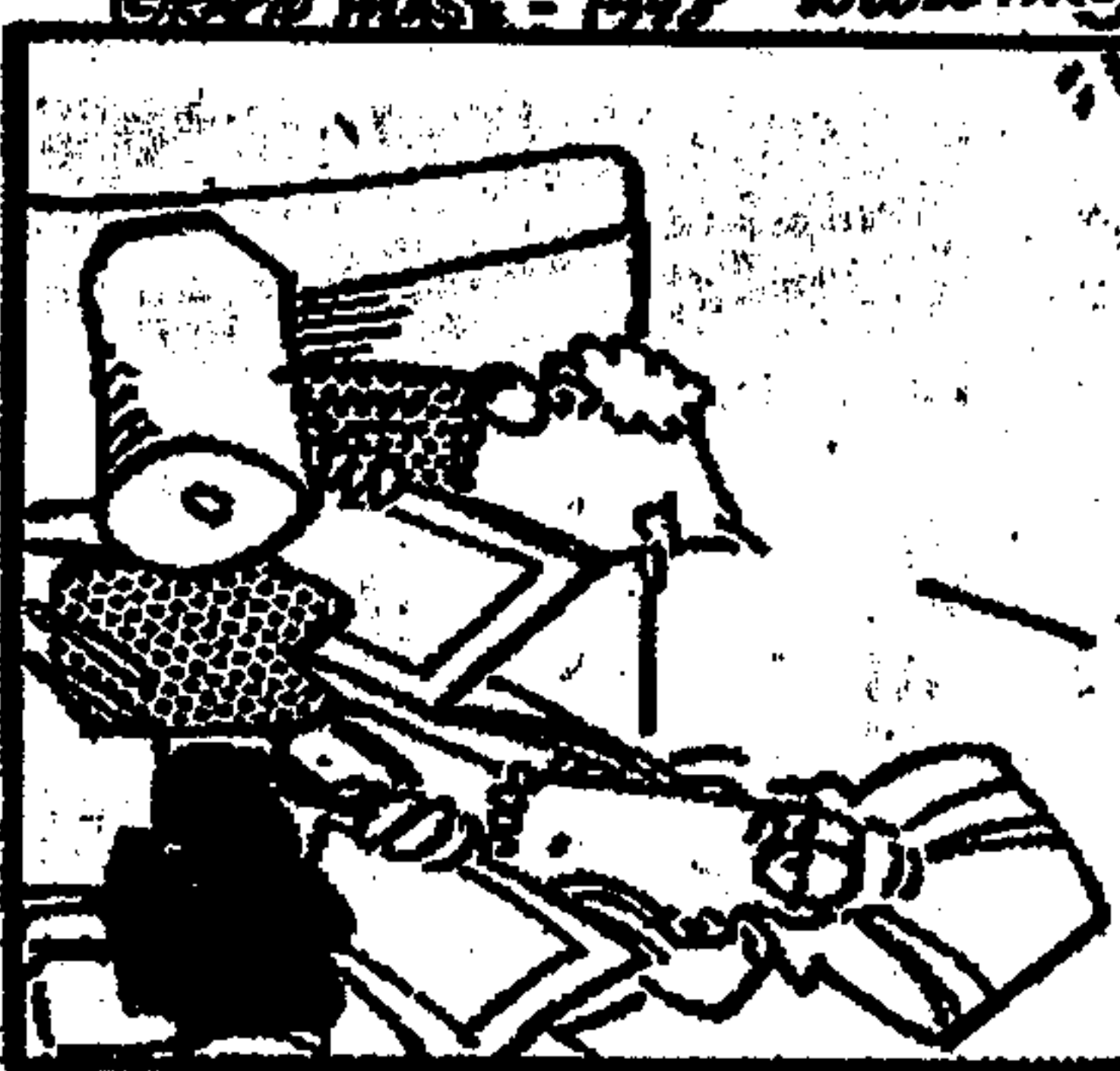


MS. SISULLU... JUST THINK OF ME AS A SPONGE... THIRSTY FOR KNOWLEDGE.

...AND PLEASE, YOU DON'T HAVE TO CALL ME "MS. SISULLU."



CALL ME "GURU"... OR "TEACHER". I'M GETTING NAUSEOUS.



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Domestic sick's sangoma on employer

Louise Levin and her maid Elizabeth Ndiluli had a difference of opinion over a missing cellphone.

They had no employment contract and neither of them felt that the issue could be resolved.

Mrs Ndiluli walked out and later phoned her "madam" demanding severance pay, notice pay and retrenchment pay. When Mrs Levin refused to pay Mrs Ndiluli for the five days she had worked that month because she had not worked any notice period, Mrs Ndiluli told her that she would organise a sangoma to cast a death spell on her.

Mrs Levin said: "I was horrified. I

felt threatened and I also felt ridiculous."

If the above scenario had occurred post-Basic Conditions of Employment Act, Elizabeth Ndiluli and Louise Levin would probably have worked out their differences.

The new act will make employers and employees more aware of their obligations.

Summary dismissal is a thing of the past. And household duties will no longer be an ad hoc arrangement as job descriptions will be a vital part of the employment contract.

Selma Vilikazi, of the SA Domestic Workers Union, said that domes-

tic workers were treated like slaves without rights. "We have had to develop resistance to abuse. We have had more cases now than ever before because domestic workers are becoming aware of their rights."

"Employers tend to think of their domestic as a cook, cleaner, nanny, security guard, babysitter, house-sitter, receptionist and animal minder."

Sadwu has recommended that domestic workers earn a minimum wage of R1 000 for semi-skilled work and R1 200 for skilled work. The union recommends that overtime should be R9,75 an hour.

BASIC CONDITIONS OF EMPLOYMENT ACT

- The Act only affects domestic workers who work more than 24 hours a month.
- An employment contract between employer and employee is compulsory.
- The contract must be kept for three years after the working relationship has ended.
- If a domestic has worked less than four weeks she is entitled to one week's notice.
- If a domestic has worked longer than four weeks she is entitled to one month's notice.
- The domestic is entitled to three weeks paid leave per year.
- The domestic must agree to working overtime and must be paid time and a half or must be given time off.
- Work on Sundays and public holidays is paid at double time or she can be given time off.
- A domestic worker should not work more than 45 hours per week.
- She is entitled to two weeks sick leave per year.
- She is entitled to four months unpaid maternity leave.
- She is entitled to three days leave per year to attend to family obligations.
- If the employer wishes to retrench the worker she must inform the worker and they must discuss alternatives and packages.
- The worker must receive at least one week's wages for every year of employment.

Basic Conditions of Employment Act covers all in country from today, especially the most vulnerable – domestic, farm, and contract sectors

Shan 1/12/98

(294)

By Lisa Seftel

Today December 1, 1998, the new Basic Conditions of Employment Act will be promulgated. What improvements does the act offer?

The previous law does not cover all workers. The new BCEA covers all.

Most significantly, farm, domestic, part-time and contract workers will have basic conditions of employment. Public service workers will be covered from May 1 2000.

South African workers work long hours and often work overtime to make ends meet.

Many workers live far from their homes and spend far too much time away from their families.

The law now says that the maximum number of hours that a worker can be compelled to work is 45 hours a week.

Weekly working hours for shift, mine and farm workers have been reduced from 48 to 45 hours. This will be implemented on farms and mines as from December 1 1999.

Working hours for security guards have been reduced from 60 to 55 hours a week. This will be further reduced to 50 hours in a year's time.

This does not mean that workers who work a 40-hour week will have to work a 45-hour week.

The law only sets the minimum floor – it says workers cannot be forced to work more than 45 hours a week without overtime pay.

The new act improves the overtime premium from "time and a third" to "time and a half".

Workers will be paid more for working overtime. It is hoped that this will lead to workers doing less overtime.

The new overtime rate could also be an incentive to employ more workers rather than pay overtime.

The new act allows for compulsory rest periods. This protection did not exist in the past and workers could work for months without a day off. Workers must now have every Sunday as a rest day, unless they agree otherwise.

Workers who work regularly on a Sunday must be paid a premium of time and a half.

If they work occasionally on a Sunday, they must be paid double time. This is good news for shop workers.

Until now, unless they won this through collective bargaining, shop workers have not been paid more for giving up their Sundays.

It has been well established that workers who work at night for long periods run greater health and safety risks. They also often face danger if no transport is provided for them.

Previously, the law gave workers no special protection. The new act says night workers must be paid a premium or get additional time off.

The act also includes provisions to protect their health and safety.



Now better protected ... workers on the way to dig trenches for street lights in Ivory Park.

Workers lose some chains

It improves workers' leave provisions. Annual leave has been increased from two weeks to three weeks. Sick leave remains at three weeks in a three-year cycle, but workers will now be entitled to their full sick leave quota after just six months in employment, instead of after one year.

Maternity leave has been improved from 12 weeks to four months and extended to include women who give birth to stillborn children.

All women, no matter how long they have been employed in a company, are eligible for maternity leave.

Women also have greater choice as to when they take leave around the birth of their child – they are no longer obliged to take one month maternity leave before the birth.

However, the employer is still not obliged to pay the employee for the period for which she is off work due to her pregnancy.

The act introduces a new form of leave called family responsibil-

ity leave. Workers are now entitled to three days paid leave per year to attend the birth or illness of their children or the death of an immediate family member.

The act prohibits children under 15 from working. Children between 15 and 18 years of age will be better protected and prohibited from working in certain jobs, especially in the mining and manufacturing sectors.

In addition to setting a floor of rights for all workers, the act includes provisions for establishing minimum wages and conditions for groups of vulnerable workers such as farm and domestic workers.

For the first time, the Government will be able to set a minimum wage for domestic and farm workers. With some workers in these sectors earning as little as R100 and R200 a month, this measure is urgently needed.

Some employers have argued that the BCEA will raise labour costs and prevent job creation.

The Department of Labour questions the basis of these arguments. Jobs are not created or lost by a single law. As the Jobs Summit has shown, sustainable job creation requires a multifaceted strategy. In addition, not all employers will face an increase in costs.

For example, improved conditions can help increase productivity and reduce the negative social consequences, and therefore the social costs, of poor working conditions.

The new act is nevertheless sensitive to the problems facing the labour market.

It is for this reason that it includes ways in which the act's provisions can be varied or changed to suit the circumstances of individual workers as well enterprises

and sectors.

There is no prescribed minimum rate of remuneration.

Workers and employers are urged to ensure that their conditions of employment comply with the act.

The Department of Labour is available to advise employers and workers of their rights and obligations. It is also obliged to enforce the law if non-compliance occurs.

For further information contact your nearest Department of Labour office.

■ Lisa Seftel is the chief director for Labour Relations in the Department of Labour

New act allows for compulsory rest periods

This and other sample contracts, for instance one for small businesses, are available for free from the Department of Labour. These are not mandatory by law but are recommended by the department to protect both employers and workers.

Workers get legal

Sick leave, holidays, hours laid

LISA SEFTEL

Now that the the new Basic Conditions of Employment Act has been promulgated, what improvements does it offer for workers?

The previous law did not cover all workers. The new one covers all. Most significantly, farm, domestic, part-time and contract workers will have basic conditions of employment, and public service workers will be covered from May 1, 2000.

South African workers work long hours and often do overtime to make ends meet. Many workers live far from home and spend far too much time away from their families.

The law now says that the maximum amount of time that someone can be compelled to work is 45 hours a week. Weekly hours for shift, mine and farm workers have been reduced from 48 hours to 45 hours. This will be implemented on farms and mines from December 1 next year.

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The law only sets the minimum floor - it says workers cannot be forced to work more than 45 hours a week without overtime pay.

The new Act improves the over-time premium from "time and a third" to "time and a half". Workers will be paid more for working overtime. It is hoped that this will lead to their doing less overtime.

The new over-time rate could also be an incentive to employ more workers rather than pay overtime.

The Act allows for compulsory rest periods. This protection did not exist in the past and workers could work for months without a day off.

Workers must now have every



New day dawns: millions of domestic, farm and contract workers now have rights in the workplace, thanks to changes in

Sunday as a rest day, unless they agree otherwise. Those who work regularly on a Sunday must be paid a premium of time and a half.

Should they work occasionally on a Sunday, they must be paid double time. This is good news for shop workers.

Until now, except where shop workers had won this right through collective bargaining, they were not paid extra for giving up their Sundays.

It has been well established that workers who work at night for long periods run greater health and safety risks.

They also often face danger if no transport is provided to take them home. Previously, the law gave workers no special protection.

The new Act says night workers must be paid a premium or get

additional time off. The Act also contains provisions on health and safety.

It improves leave provisions. Annual leave has been increased from two weeks to three weeks. Sick leave remains at three weeks in a three-year cycle, but workers will now be entitled to their full sick leave quota after six months in employment, instead of after one year.

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The Act prohibits children under 15 years of age from working. Children between 15 and 18 years of age will be better protected and prohibited from working in certain areas, especially in the mining and manufacturing sectors.

In addition to setting a floor of rights for all workers, the legislation includes provisions for

Madam wins the day as Eve is cleaned out

M+G 20-26/9/96 (294)

With the dissolution of Sadwu, domestic staff now have even fewer provisions available to protect their interests and working conditions, writes **Fay Davids**

potential home for its 12 000 members.

There is also talk at Cosatu of the formation of a service union where security guards, cleaners, workers

in the hotel and catering industry, as well as domestic workers can be organised. Vavi says: "It's sad that domestic workers don't have

a home. They can't exploit the fruits of democracy when we don't have a collec-

tive." Domestic work in South Africa has a hue all of its own. It's always been coloured by apartheid; most madams are white; most maids black. But that's changing with the growth of a new black middle class. The country's large pool of unskilled labour means that for many young and mostly rural black women, domestic work is their only career path.

Work is often long and underpaid. Although Sadwu recommends a salary of R1 200, very few employers pay this. In some areas, salaries still barely top R100 a month. About three years ago, Cosatu successfully campaigned for the inclusion of domestic and farmworkers in the ambit of the Basic Conditions of Employment Act. The new provisions did not set a minimum wage; all they did was put in place fairer working conditions, set working hours, holiday pay and leave. It was lauded at the time, though it is now clear that the legislation is little more than a pretty paper concept.

'Domestic workers can't exploit the fruits of democracy when we don't have a collective'

firm rumours of mismanagement, though assistant general secretary Zwelinzima Vavi says funding from Nordic countries, which sustained the union, has slowed to a trickle in the past two years.

"You cannot run a union on external funds," says Vavi.

Now Sadwu members are seeking affiliation to other Cosatu unions. It has earmarked the South African Commercial Catering and Allied Workers Union, as well as the Transport and General Workers Union as a

HE domestic worker affiliate union of the Congress of South African Trade Unions (Cosatu) has been dissolved, leaving question marks over the effectiveness of world-class legislation about to be passed to protect the sector.

The South African Domestic Workers Union (Sadwu) decided to dissolve at a special congress held a fortnight ago and the decision has since been ratified by Cosatu.

Sadwu suffered a severe cut in foreign funding, with allegations of mismanagement also being levelled at the union's leadership in Cape Town. The federation will not con-

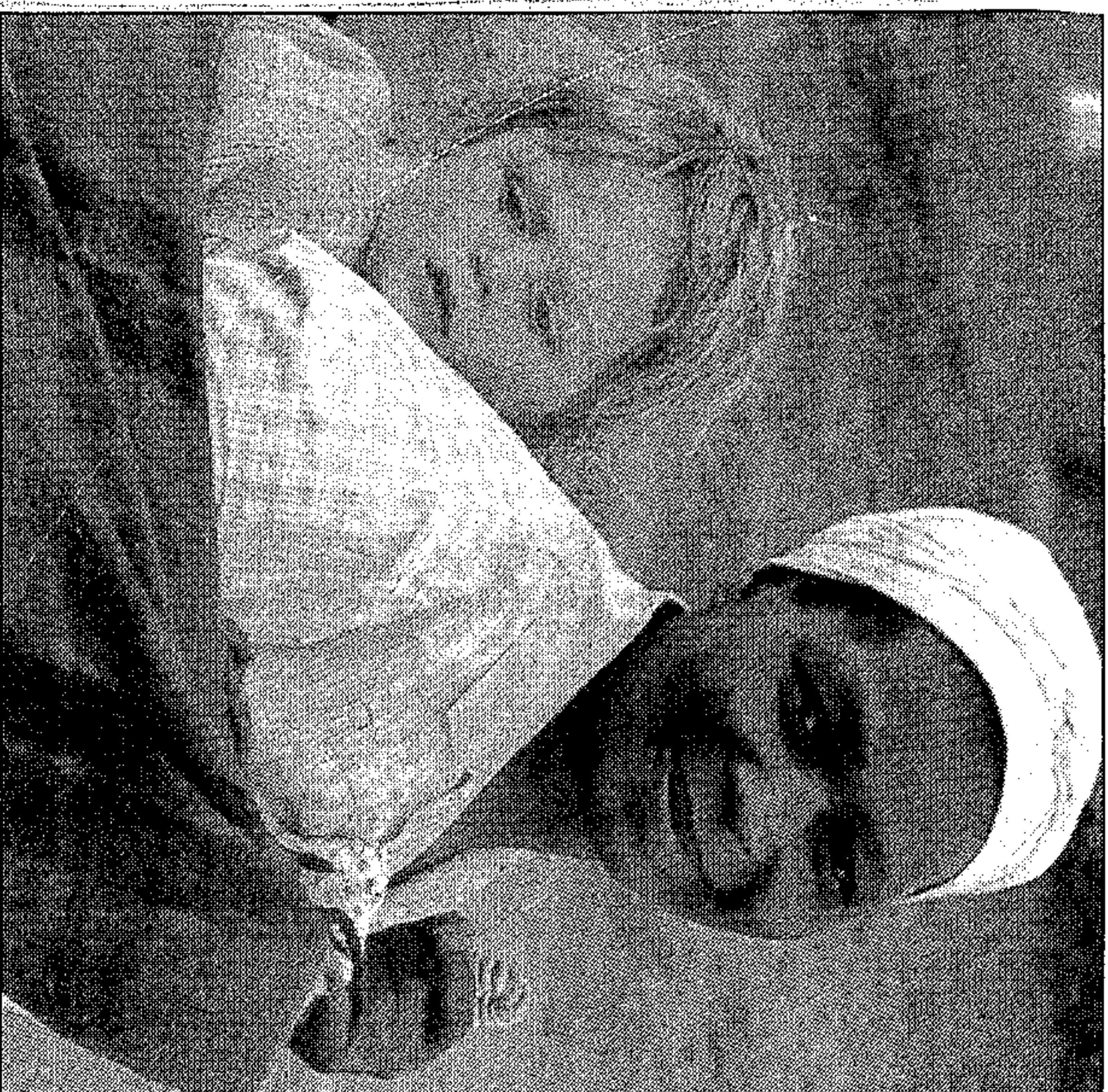
"The legislation has had very little impact," says Vavi. This legislation is set to be beelied up by its inclusion in the Employment Standards Bill, currently being negotiated at the National Economic Development and Labour Council.

he Labour Department's director of minimum standards, Lisa Settel, says a separate Sectoral Employment Standard. This standard would take into account the special conditions of domestic work, including the fact that most domestic workers live on their employer's premises and look after young children.

Settel says enforcing such stringent legislation is difficult. "There's a constitutional constraint on the right to privacy. You can't just walk into somebody's house." The department's implementation strategy is headed in the direction of prevention rather than inspection.

It is planning an education campaign to inform both employers and employees of their rights under the new law. In the absence of a trade union in the sector, Settel says the department is considering working through those places where domestic workers congregate, such as local branches of political parties, churches, clinics and women's organisations.

Labour watchers doubt that Sadwu will work again. It's difficult to organise the sector because there is no shop-floor. "There is only a single employer for a single worker," says Vavi. "It's impossible to organise stop-orders." This makes the prospect of self-sufficiency extremely difficult. Employment in the sector is very fluid, with the rate of dismissals and movement of staff very high.



A heavy burden: Many domestic workers have to look after their employer's children

PHOTOGRAPH: ANNA ZIEMINSKI

Law on maids' side at last

SAW 28/11/98

(294)

Next week is crunch time for employers of domestic workers. It will be compulsory for maids and madams to have a formal employment contract that outlines by the conditions set out in the Basic Conditions of Employment Act. IRISH BEAVER reports

Fines can now be imposed if a contract hasn't be signed

This weekend may be the last chance you have to organise a boss/maid with your domestic worker without being charged overtime. From the beginning of December (Tuesday), relationships between "Madams" and "Eves" will never be the same again.

South Africans have watched with fascination how cartoon characters Eve and Gwen Anderson have negotiated their way into the new South Africa with wit, humour and panache. Most South Africans relate to the bittersweet *Madam and Eve* comic strip in a way that mirrors their own relationships with their domestic workers. This relationship has always been difficult to define.

The nature of domestic work is broad and all-encompassing. It varies from home to home, and the relationship between maid and madam often stretches far deeper than that of an employer and employee.

The maid can be a friend and confidante, and is sometimes treated as part of the family. There is an inherent intimacy that develops when people work in such close quarters. This intimacy can also lead to abuse.

The madam starts to depend on the maid as if she were a part of the family, and the maid begins to treat the home as her personal domain - taking liberties with the telephone and the sugar supplies.

There is no doubt that the unequal balance of power leads to a relationship fraught with potential hazards. The new Basic Conditions of Employment Act sets out certain conditions that will protect this complex relationship from abuse.

From Tuesday it will be compulsory for employers to set out the terms of employment according to a contract. The employee will in turn be able to demand certain working rights.

The contract will encompass areas such as job description, paid leave, sick leave, overtime, notice period and working hours. Employers who fail to adhere to the basic conditions as set out by the act will be liable for a fine. In 1996 the Labour Relations Act paved the way for the present legislation by setting out the terms of the employment relationship. It especially set guidelines for disputes and procedures regarding dismissal.

Hundreds of disputes have since been handled by the Commission for Conciliation, Mediation and Arbitration. In fact, most of their cases relate to the unfair dismissal of domestic workers.

A spokesperson from the CCMA said many of the disputes involving domestic workers were not settled in the conciliation process, where both parties reach an agreement.

Usually a CCMA commissioner was called upon to arbitrate and make an order. The arbitration order is legally binding and can be lodged with the Labour Court.

Selma Vilikazi, from the SA Domestic Workers' Union (Sadwu), said that despite arbitration orders in favour of the domestic workers, employers still refused to pay up.

Sadwu has resorted to its own manner of resolving the disputes. The union organises protests outside the homes of "bad madams". Members toy-toy and stand outside the homes with placards.

Vilikazi said: "We find they soon give in, and pay over the money they owe because they are embarrassed."

She said the new legislation was a positive step. "We will still be fighting for medical aid and pension, which we think should be compulsory. We would also like access to the Unemployment Insurance Fund and Workmen's Compensation."

Vilikazi said she did not believe the Basic Conditions of Employment Act would discourage employers from hiring domestic workers. "The employers must look at this new law as neutral. Before the employment begins, both parties will know what is expected of them."

Pay, leave, hours - same rights as other workers

- What the Basic Conditions of Employment Act means:
- The act affects only domestic workers who work more than 24 hours a month.
 - An employment contract between employer and employee is compulsory. The contract must be kept for three years after the working relationship has ended.
 - If a domestic has worked less than four weeks, she is entitled to one week's notice.
 - If a domestic has worked longer than four weeks, she is entitled to one month's notice.
 - The domestic is entitled to three weeks' paid leave a year.
 - The domestic must agree to working overtime, and must be paid time-and-a-half or must be given time off.
 - Work on Saturdays and public holidays is paid at double time, or else time off can be given.
 - A domestic worker should not work more than 45 hours a week.
 - She is entitled to two weeks' sick leave a year.
 - She is entitled to four months of unpaid maternity leave.
 - She is entitled to three days' leave per year to attend to family obligations, such as funerals.
 - If the employer wishes to retrench the worker, the worker must be informed, and alternatives and packages must be discussed. The worker must receive at least one week's wages for every year of employment.
 - The above conditions can be flexible from the Labour Department.
 - Workers who feel their employer has violated the act can report the matter to the department.
 - The Commission for Conciliation, Mediation and Arbitration will intervene only in cases of unfair dismissal.

Friends: Muriel Hare, 86, shares a joke with Monica Mathibe, 31. Her workers are more than just employees — they are a part of the family, says Mrs Hare

LEON LESTRADE

Domestics get a new deal

Contracts formalise positions for first time

(294) ARS 30/11/98

Domestic worker Monica Mathibe, 31, has herself and two children in the Eastern Cape to support on a salary of R872 a month.

She sends home R300 monthly.

She works six days a week and gets every third weekend off.

She does not pay for her accommodation, food or medical care, but struggles to get by.

Now, however, her quality of life is set for a boost, when her employer, Muriel Hare of Kalk Bay, approaches her with a "conditions of employment" contract.

The contracts will be compulsory from December 1 in terms of the new Basic Conditions of Employment

Act. The contracts will affect all employers who have a domestic worker putting in more than 24 hours a month.

It will have to specify the terms of employment, working hours, annual leave and overtime.

Mrs Hare is 86 and lives with her quadriplegic daughter, Dawn.

She has four domestic workers who clean the house and help take care of her daughter.

Mrs Hare decided to have contracts drawn up with all of her workers after an incident with a former employee who approached an agency, Confederation of Employers of Southern Africa, which sent a con-

INSIDE STORY



ANDREA BOTHA

Much to the surprise of Mrs Mathibe and the others, their pay was increased after it was seen how much overtime they worked.

For Mrs Mathibe, it means a very welcome R72 extra a month.

"I am very happy with the contract," she said. Patience Bavuna, the new cook, agreed.

the cook a pension, and had also paid for an expensive eye operation.

"Yes, it is a good thing — it helps us very much."

Mrs Hare said the domestic workers in her home were more than just employees — they were a part of the family.

She was saddened when her previous cook decided to leave, she said.

But then a letter arrived from the Department of Labour, claiming that she had unfairly dismissed the cook, and now owed her money.

Mrs Hare said she was deeply hurt and upset.

For the past 15 years she had paid

"It was the biggest shock. We had had her for 15 years and she was a part of the family."

"We had never had such unpleasantness before."

When she approached her employees about contracts, they were sceptical at first.

But when they heard about the increase in their salaries as a result of the overtime, their scepticism turned to delight.

For domestic workers like Mrs Mathibe, the contract means that, for the first time, they are in a position of power.

Now full protection of the law will curtail abuse

Domestic workers will enjoy greater protection under the new Basic Conditions of Employment Act, which comes into effect on December 1.

The Act ensures that domestic workers, for the first time, will be treated like other workers.

"The big difference is that domestic workers are no longer seen as 'other' workers, but will be employees just like any other," said Department of Labour senior inspector Grant Theys.

The most significant addition to

the Act is the need for a formal contract between the employer and employee, which lays down the exact terms of employment.

The contract, which is needed for when an employee works a minimum of 24 hours a month, will have to include the personal details of both employer and employee, the basic job description, hours to be worked, overtime details and and leave conditions.

The contract does not have to be signed — but if it is, it will be regarded as

a formal contract.

The new Basic Conditions of Employment Act does set a minimum wage but states that domestic workers should not work more than 45 hours a week.

Three hours of overtime is allowed per day, but no more than 10 hours overtime should be worked in a week.

The conditions of overtime should also be carefully worked out.

If the employee wishes to change these conditions, this can be done

after 12 months.

If an employer refuses to draw up a contract or to follow the terms of the contract, the domestic worker can contact the Department of Labour, which will investigate.

An employer could be fined if found guilty of contravening the new Act.

Domestic workers who work less than 24 hours a month are deemed casual workers and no contract has to be signed between them and an employer.

Mr Theys said the new Act would curtail abuse of domestic workers and empower them — and lay the foundation for discussion of a minimum wage.

He added that the Act was very clear on what was expected of the employer and the contract.

There was no need to go to an agency or to a lawyers' firm for help in drawing up the contract as people could do it themselves if they had a copy of the Act and had read what was expected of them.

Labour laws force madams into legal minefield

RAEL SOLOMON discusses the impact of the new labour legislation governing domestic workers

ST (PT) 22/11/98

DOMESTIC employers as a group probably employ more people than any other sector, but are they ready to handle the new status of their relationships with their domestic employees?

The Labour Relations Act 66 of 1995 presented employers of domestics with many challenges, as can be seen from the number of domestic disputes referred to the Commission for Conciliation, Mediation and Arbitration (CCMA). However, the new Basic Conditions of Employment Act is set to create even more havoc.

On November 11 1996, the new Labour Relations Act rolled back years of inequality, and even tilted the playing field in favour of employees. One of the key clauses gave full recognition to all domestic employees — including part-time gardeners — who are now able to enjoy the full protection of the new dispensation. This step was generally welcomed but it brought in its wake a certain concern on the part of employers who did not know how to handle the developments.

Employee expectations were greatly heightened followed by a flurry of referrals to the CCMA. Many employers had their worst fears confirmed and began to wish for the

"good old days". Even hardened businessmen walk in trepidation of the rigid structures of our labour legislation. For the average housewife, being an employer of a domestic worker has turned into a nightmare of rules and procedures.

The Labour Relations Act is, however, fair and the rights bestowed were long overdue. It is correct that domestics should be treated fairly and most employers have accepted that they cannot hire and fire at whim. However, the Basic Conditions of Employment Act is a horse of another colour and will, I believe, do infinite harm to domestic labour relations. All employers have to comply with and implement the provisions of the Act from December 1.

The Basic Condition of Employment Act creates a plethora of rules and regulations and it has been said that it will retard rather than encourage job creation. For small businesses, it is going to be a nightmare and the housewife has become a small business person in her own right. The Act creates rigid prescriptions regarding leave, overtime, night work, working hours in general, notice pay and contracts.

Employers can no longer unilaterally insist that the domestic work overtime. This

must be by agreement and the amount of hours that may be worked is prescribed by the Act. In addition, if you require your domestic to work after 6pm, you must obtain her consent. You must also give your domestic an additional allowance (over and above normal overtime) and provide transport home if she does not live in.

Without a doubt, the employment contract and its enforcement will be the biggest headache for domestic employers. All employers are required to supply their employees with written particulars of employment. Not only this, but the Act specifies 16 different particulars of employment that must be recorded in the contract. The only exception is em-

ployees who work for less than 24 hours per month. This may sound simple, but apart from knowing what to include in the contract of employment, it is essential to know how to phrase the contract and what to exclude from it. Your domestics are armed with powerful weapons. The next thing they will be doing is indulging in protected strikes.

As a result, domestic employers must be the equivalent of human resources managers in order to successfully navigate the perilous waters of the Basic Conditions of Employment Act. The net effect of this will be an increasing reticence to take on full-time employees. We can already observe this effect if we look at the increased use of gardening and pool

cleaning services. The situation is only likely to get worse as domestic employees suffer the slings and arrows of labour legislation not suited to the domestic environment.

The state should review the Act where it applies to domestics, making it simpler and more flexible. Treating one's employees fairly and correctly is laudable, but imposing legislation more suited to the business environment on the domestic sector may be self-defeating, with both parties ending up losers. If job creation is the name of the game, then the Act in its current form will simply not do.

● Rael Solomon heads up the Labour Consultancy and prepares the Labour Guides found at www.btimes.co.za



NOT HAPPY... domestic workers show their feelings during a protest in 1994

Consumer Court enjoys unconstitutional powers

Lay tribunal may order fines of up to R200 000, or jail terms of up to five years

Star 12/197



BY PETER LEON

No one would deny that

South African consumer legislation is ill-suited to the realities of modern South Africa. What little legislation exists, such as the Usury Act 1968, the Credit Agreements Act 1980 and the Harmful Business Practices Act 1988 does not begin to address the needs of South African consumers.

Unlike more sophisticated economies, South Africa has no unfair contract terms legislation, which would enable a court to void unfair contractual terms imposed on parties in a situation of unequal bargaining power.

Given our vast income disparities, one would imagine that this would enjoy the urgent attention of the Department of Trade and Industry. Instead, it has been left to the South African Law Commission, whose attempts at outlawing unreasonable contractual terms are yet to receive the attention of the Government draftsman. Partly as a result of this and undoubtedly as an attempt to be seen to be consumer-friendly, the provinces, rather than the central Government, have sprung into action.

In Gauteng, its underworked legislature recently enacted the Consumer Affairs (Unfair Business Practices), Act, 1996.

The stated object of the act is to protect Gauteng's consumers through the creation of a consumer protector and office for the investigation of unfair business practices which may, in turn, institute unfair business practice suits against miscreants in Gauteng's newly established Consumer Court.

The act deliberately defines "business" "business practice" and "investment" very widely.

The idea, presumably, behind this was to bring all business activities within the purview of the act, so that the definition of unfair

business practice ("any business practice which, directly or indirectly, has or is likely to have the effect of unfairly affecting any consumer") is sufficiently elastic to apply to a wide variety of situations.

As the act's principal investigative arm, the office is responsible for the investigation of all unfair business practices. It possesses sweeping powers of subpoena, both in relation to individuals as well as to documents, which are fortified by even more extensive powers of search and seizure (after a search warrant is granted by the Consumer Court).

It is the institution of the Consumer Court which is the most notable feature of the act. Not content to leave the adjudication of unfair business practices to the ordinary courts, the act establishes

Penal and judicial authority frightening

specialist consumer courts, of five members each, four of whom need not be lawyers.

The Consumer Court has the power to fine recalcitrant witnesses or jail them for up to 12 months, as well as the power to punish those in contempt of the court's orders with fines of up to R200 000 or up to five years' jail.

It is in a coercive, Orwellian, sense that the Consumer Court's powers are most worrying.

First, the court may, apparently without notice to the suspected party, temporarily prohibit an unfair business practice and attach the assets of such party.

Next, once an investigation has been completed, the court may prohibit an unfair business practice permanently and, among other things, dissolve the company. As an adjunct to this, the court may appoint a curator to take control of the business responsible for

the unfair business practice, who may in turn seize all its assets.

The powers are frightening. There appears to be nothing to stop the court from closing down any business which it believes to be involved in an unfair business practice.

It is a matter of concern that Gauteng has seen fit to vest these powers in what is, in effect, a lay tribunal which is manifestly not independent of government.

Although provinces enjoy concurrent competence with Parliament over consumer protection, they do not, unlike in Canada, enjoy the power to establish courts of any description. On this basis alone, the establishment of the Consumer Court is constitutionally questionable under schedule 6 of the interim constitution, as well as schedule 4 of the final constitution.

Moreover, section 96 of the interim constitution provides that the judicial authority of the Republic vests in the courts established by that constitution and any other law, while the final constitution is even more explicit.

It states that the judicial authority of the Republic is vested in the courts, which are described in section 166 as the Constitutional Court, the Supreme Court of Appeal, the high courts, the magistrates' courts and "any other court established or recognised by an act of Parliament".

Not only is the court neither established nor recognised by any act of Parliament, but, on any test, it is not constitutionally independent. Its members enjoy neither security of tenure nor financial security. Indeed, the MEC's power to establish and disestablish the Consumer Court means that it has no institutional independence.

By contrast both the interim and the final constitution explicitly guarantee the independence and impartiality of the judiciary.

In Canada, this precise issue has occupied the attention of the Canadian Supreme Court, which ruled, more than a decade ago in

Valente v The Queen (1985) 2 SCR 673, that the constitutional guarantee of judicial independence meant that all courts must meet three overriding requirements:

■ Security of tenure (no dismissal except for cause related to an incapacity to perform judicial functions);

■ Financial security (salary rights must be fixed by law);

■ Institutional independence (the judiciary must be able to control its own internal process).

As a consequence of Valente, the Canadian Supreme Court has recently outlawed courts martial on the grounds that their largely lay composition, which is not independent of the military, precarious tenure and lack of institutional independence all undermine the constitutional guarantee of judicial independence.

Recalcitrant witnesses may be imprisoned

When viewed against the Canadian experience and our own constitutional guarantees of judicial independence, it seems unlikely that the Consumer Court will pass constitutional muster.

A number of questions flow from this. How many people must suffer under the court's yoke before its jurisdiction is challenged and undone? How could the Gauteng government – and other provincial governments – embark on such a naive exercise without obtaining adequate professional advice?

How can the act itself survive in the event that the court is declared unlawful?

Why was such a constitutionally defective instrument devised? It is to these questions which the citizens of Gauteng are entitled to answers.

■ Peter Leon is a member of the Gauteng legislature.

Pen now mightier than broom for domestic

New employment act radically changes the South

ANDREA BOTHA
STAFF REPORTER

Domestic workers can put away their brooms and take up pens to sign up for better working conditions, fair pay and benefits from today.

It will be compulsory for all who employ domestic workers for more than 24 hours a month to have a writ-

ten contract drawn up, as the new Basic Conditions of Employment Act, to be promulgated today, is extended to cover them.

Lisa Seftel, chief director of labour relations in the Department of Labour, said: "The previous law did not cover all workers. Most significantly, farm, domestic, part-time and contract workers will now have basic conditions of employment."

But the law does not cover just domestic workers. All employees are covered by the new law, which radically changes the South African work environment.

Ms Seftel said many South Africans worked long hours and often worked overtime to make ends meet. They often lived far from their work and spent far too much time away from their families.

The new act addressed this by reducing working hours and increasing overtime pay from time and a third to time and a half.

The law now was that the most a worker could be compelled to work in a week was 45 hours.

Weekly working hours for shift, mine and farm workers had been reduced from 48 hours to 45, and for security guards from 60 hours to 55.

Anybody who worked more than 45 hours in a week had to be paid overtime. The department hoped this would lead to less overtime, and be an incentive to employ more people.

The new act also allowed for compulsory rest periods. This protection did not exist in the past and workers could work for months without a day off.

Workers must now have every

African work environment

(294)

ART 1/12/98

Sunday as a rest day, unless they agree otherwise.

Those who work regularly on a Sunday must be paid time and a half, and if they work occasionally on a Sunday must be paid double time.

Ms Seftel said it was well established that those who worked at night for long periods ran greater health and safety risks. They often faced danger if transport was not provided.

Those who worked at night must be paid a premium, or get additional time off.

Annual leave had been increased from two weeks to three. Sick leave remained at three weeks in a three-year cycle, but workers would now be entitled to their full sick-leave quota after six months instead of 12, while maternity leave had been improved from 12 weeks to four months.

workers

All your questions answered

Q: When does a char or a casual domestic qualify as a domestic employee for the purposes of the act, requiring you to draw up a written contract of employment?

A: In terms of the law, chars working for more than 24 hours a month at one household are covered by the provision requiring a written contract to be drawn up.

But it is always advisable to draw up a contract anyway to protect not only the domestic but you, the employer, as well. Also, warns Suzette Botha of Cofesa, employers who have failed to comply with the law in this regard and who have come before the CCMA have been ordered to pay fines equivalent to two years of the domestic's salary.

Q: Is there a minimum rate of payment per hour, or is that a matter for negotiation between you and your employee?

A: At present there is no minimum wage in terms of the law, although the Government has indicated it will introduce it in the not-too-distant future. Suzette Botha says experience in the Western Cape has shown that wages for chars range from R35 to R60 a day while those for full time live-in domestics range between R350 and R2 100 a month.

Q: Are annual, sick, maternity and family responsibility leave prescribed by law or is that also a matter for negotiation?

A: The domestic is entitled to at least three weeks (21 consecutive days - not working days) of leave for every year he or she has worked (annual leave). This is paid leave. But you can agree with your employer to be paid in lieu of leave. You can also agree to take part of your leave - say one week - and be paid for the remainder.

Sick leave: employees who work a five-day week are entitled to 30 days per cycle of 36 months.

Those who work a six- or seven day week are entitled to 36 days per cycle of 36 months.

Basically it boils down to one day's sick leave for every cycle of 26 days worked.

Your employer is not required to pay you if you have been absent from work for more than two days without being able to show a doctor's certificate.

Maternity leave: if you become pregnant you have a right to four months in a row of maternity leave. You may take your leave from four weeks before the birth and you may not be required to work for six weeks after the birth of your child unless a doctor certifies you as fit for work. You must notify your employer in writing of the dates you intend to take this leave.

Family responsibility leave is leave granted to you to attend to any urgent family business

such as a sick child or a close relative's funeral. You are entitled to three days family responsibility leave per year and this, too, is fully-paid leave.

Q: Under what circumstances can one dismiss a domestic employee?

A: The employer cannot dismiss you for refusing to do something illegal, for informing the authorities about something wrong or illegal that you have witnessed or for being a member of a union. In such cases, the dismissal will be "automatically unfair".

If you are being dismissed for misbehaviour, failure to work properly or the employer's inability to continue paying you, the dismissal is probably (although not necessarily) fair.

A domestic can be summarily dismissed for drinking on duty and theft, but always depending on the circumstances, (such as where children are being supervised) it would be more serious.

The following usually justify dismissal:

1: Misconduct. The misconduct must be described in the contract. The seriousness of the misconduct will determine what the procedure should be, for example whether it is three warnings and a final written warning or summary dismissal.

'There's no minimum wage but indications are this is on the cards'

2: Incompetence due to factors such as lack of training or natural ineptitude.

3: Physical/medical inability.

4: Operational reasons - such as where the employer can no longer afford to employ you, loses a job or moves elsewhere.

Q: What if your circumstances change? For example, your family grows up so you do not need a full-time employee. Or you lose your job so you cannot afford a domestic. Would you have to offer a retrenchment package? If so, based on what?

A: Such circumstances would probably fall into the category of so-called "operational reasons" (see above). The employer is obliged to pay the worker severance pay at the rate of one week of his or her salary for every year worked and to help the domestic find alternative employment as soon as possible. Domestic workers face an unsure and precarious future in terms of disability and retirement. It is often left to the

employer's discretion to provide such benefits. This is not always possible. Cofesa offers an affordable Domestic Worker Cover (for from R55,88) which provides for the following needs: Investment Plan; Accidental Death Benefit; Funeral Benefit (for the whole family); and Temporary Disability Benefit. For more information, contact Cofesa at the telephone numbers given below.

Q: Will you need to pay UIF and register your employee formally?

A: Not at this stage, although provision for this may be made in future.

Q: Is there a difference between the contracts for live-in, full-time maids and twice-weekly chars?

A: The contracts for live-in, full-time workers and twice-weekly chars are all the same. The only difference is that the working time for a live-in domestic may vary from day to day.

Q: What about pension and medical aid? Does the contract stipulate provision and deduction for these?

A: The contract does not stipulate that these be provided and deducted for, but Cofesa highly recommends that employers deduct an amount from their employees' salaries for pension and provident funds.

Q: And personal accident insurance? Is this covered?

A: This is usually provided for in one's household insurance and accident policy.

Q: Does Cofesa charge a fee to draw up a contract? Can you draw up your own contract and to whom can you go for information and guidance?

A: Cofesa charges R80 to draw up a contract.

You can instead approach the Department of Labour for their standard term contracts or simply draw up your own. The Department or the Black Sash will give you advice.

Cofesa offers a continuing helpline to all those who have taken out one of our contracts - and whenever a problem crops up you can make contact for free advice.

Cofesa's telephone numbers:

- Head Office: (011) 472 6152
- Regional Office: 653 5851
- Southern Suburbs: 689 7411 or 531 2983
- Parow: 559 4683
- Somerset West: 883 8313 - or (028) 271 4940
- Overberg: (028) 271 4940
- Stellenbosch: 883 8313
- Bellville: 99 4476
- Durbanville: 975 4040
- Paarl: 862 6379
- Black Sash: 461 5607
- Department of Labour: 460 5911

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obliged to take one month's
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Act introduces a new form
e called family responsibility
Workers are now entitled to
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late family member.

Act prohibits children
.5 years of age from working.
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pecially in the mining and
cturing sectors.

ddition to setting a floor of
for all workers, the legisla
cludes provisions for estab-

lisking minimum wages and
conditions for groups of vulnerable
workers such as farm and domestic
workers.

For the first time, the Govern-
ment will be able to set a minimum
wage for domestic and farm
workers. With some workers in
these sectors earning as little as
R100 and R200 a month, this mea-
sure is urgently needed.

Some employers have argued
that the Act will raise labour costs
and reduce job creation. The
Department of Labour questions
the basis of these arguments.

Jobs are not created or lost by a
single law. As the Jobs Summit has
shown, sustainable job creation
requires a multifaceted strategy.

In addition, not all employers
will face an increase in costs.

For example, improved condi-
tions can help improve productivi-
ty and reduce negative social conse-
quences, and therefore the social
costs, of poor working conditions.

The Act is nevertheless sensi-
tive to the problems facing the
labour market.

It is for this reason that it
includes ways in which its provi-
sions can be varied or changed to
suit the circumstances of individ-
ual workers as well as enterprises
and sectors.

There is no prescribed mini-
mum rate of remuneration.

Workers and employers are
urged to ensure that their condi-
tions of employment comply with
the new law.

Members of the Department of
Labour are available to advise
employers and workers on their
rights and obligations. It is also
obliged to enforce the law if non-
compliance occurs.

For further information contact
your nearest Department of Labour
office.

■ Lisa Seftel is the chief director
for Labour Relations in the Depart-
ment of Labour

This and other sample
contracts, such as for
small businesses, are
available from the Labour
Department. They are not
mandatory in law but are
recommended by the
department to protect
both employers and
workers

SAMPLE CONTRACT OF EMPLOYMENT

Recommended by the Department of Labour for domestic employees

Entered into between:
(herein referred to as "the employer")

Address of employer:
.....
.....

and
(herein after referred to as "the employee")

1. Commencement

This contract will begin on and continue until terminated as set out in clause 4.

2. Place of work

3 Job description

Job Title
(e.g. domestic worker, child minder, gardener, etc)

Duties
.....
.....

4 Termination of employment

Either party can terminate this agreement with four weeks' written notice. In the case
where an employee is illiterate, notice may be given by that employee verbally.

5 Wage

5.1 The employee's wage shall be paid in cash on the last working day of every week/month
and shall be: R

5.2 The employee shall be entitled to the following allowances/
payment in kind:

5.2.1 A weekly/monthly transport allowance of R

5.2.2 Meals per week/month to the value of R

5.2.3 Accommodation per week/month to the value of R

5.3 The total value of the above remuneration shall be R

(The total of clauses 5.1 to 5.2.3)

(Modify or delete clauses 5.2.1 to 5.2.3 as needed)

5.4 The employer shall review the employee's salary/wage once a year.

6. Hours of work

6.1 Normal working hours will be from am to pm on Mondays to Fridays and from
..... am to pm on Saturdays.

6.2 Overtime will only be worked if agreed upon between the parties from time to time.

6.3 The employee will be paid for overtime at the rate of one and a half times his/her total
wage as set out in clause 5.3.

7. Meal intervals

The employee agrees to a lunch break of one hour/30 minutes (delete the one that is
not applicable). Lunchtime will be taken from to daily.

8. Sunday Work

Any work on Sundays will be by agreement between the parties from time to time. If the
employee works on a Sunday he/she shall be paid double the wage for each hour worked.

9. Public Holidays

The employee will be entitled to all official public holidays on full pay.

If an employee does not work on a public holiday, he/she shall receive normal payment for
that day. If the employee works on a public holiday he/she shall be paid double.

10. Annual Leave

10.1 The employee is entitled to days' paid leave after every 12 months of continuous
service. Leave is to be taken at times convenient to the employer who may require that
the employee take his/her leave at such times as coincide with that of the employer.

11. Sick Leave

11.1 During every sick leave of 36 months the employee will be entitled to an amount of paid
sick leave equal to the number of days the employee would normally work during a period
of six weeks.

11.2 During the first six months of employment the employee will be entitled to one day's paid
sick leave for every 26 days worked.

11.3 The employee is to notify the employer as soon as possible in case of his/her absence from
work through illness.

12. Maternity Leave

12.1 The employee will be entitled to days' maternity leave without pay: OR

12.2 The employee will be entitled to days' maternity leave on pay
(Pick applicable clause.)

13. Family responsibility

The employee will be entitled to three days' family responsibility leave during each leave
cycle.

14. Deductions from remuneration

The employer may not deduct any monies from the employee's wage unless the employee
has agreed to this in writing on each occasion.

15. Accommodation

15.1 The employee will be provided with accommodation for as long as the employee is in the
service of the employer, and which shall form part of his/her remuneration package

15.2 The accommodation may only be occupied by the worker, unless prior arrangement with
the employer.

15.3 Prior permission should be obtained for visitors who wish to stay the night. However, where
members of the employee's direct family are visiting, such permission will not be necessary.
(Pick applicable clauses.)

16. Clothing

..... sets of uniforms will be supplied to the employee by the employer and will remain
the property of the employer.

17. Other conditions of employment or benefits

18. General

Any changes to this agreement will only be valid if they are in writing and have been agreed and
signed by both parties.

THUS DONE AND SIGNED AT ON THIS DAY OF 1998

EMPLOYER

EMPLOYEE

Witnesses:

Domestic workers and the law

(294) M+G 16-22/10/98

The Basic Conditions of Employment Act applies to domestic workers too, writes
Belinda Beresford

Labour relations, like charity, begin at home. But unlike charitable acts, proper labour relations towards your maid, gardener, chauffeur or childminder are not voluntary.

Before crime and emigration became the main topics of conversation among the chattering classes, complaining about domestic workers was a traditional dinner-table subject. But the days of being able to dismiss your maid or gardener offhand are gone with the advent of new labour legislation.

Domestic workers are now entitled to paid holidays, sick leave, maternity leave and have rights to be protected when they are dismissed.

Breaching the new labour laws can have a heavy financial penalty. Perfunctory dismissal could render you liable to pay your dismissed employee up to 24 months' salary.

The relationship between domestic workers and employers can be intensely personal. After all, you often share the same living space. But this hasn't stopped employers exploiting their workers, and the intensity of the relationship can make disputes more adversarial.

Complaints brought by domestic workers are one of the biggest areas of disputes brought to the Council for Conciliation, Mediation and Arbitration (CCMA). Roughly 6% of the organisation's caseload is due to disputes between domestic workers and their employers. But the CCMA says cases involving domestic workers have a lower settlement rate: only about 55% of such disputes are settled in conciliation, compared to an average of about 65% to 70% for all CCMA cases.

One labour negotiator says this could be because domestic workers are being given legal protection for the first time. Employers may therefore treat disputes more casually — while their employees may have the desire to wield their new-found rights.

But while it's easy for employers to fear the Act, by following procedure and understanding the law you can reduce your liabilities.

Domestic workers are defined as anyone employed by the household, such as a maid, gardener or person who looks after children or an elderly or disabled person. Your legal responsibilities towards your domestic

workers depend on the number of hours they work. If it's fewer than 24 hours a month — or less than a day a week — they have very few rights. Domestic workers who work more than 24 hours a week are entitled to most rights given under the Basic Conditions of Employment Act.

Perhaps the most important thing to sort out is an employment contract. Legally you have to give a domestic employee a "written particulars of employment" document. From the beginning of December this year employers must provide this written contract, and keep a copy of it until three years after the employee has left their service.

Legislation for domestic workers differs from that of other employees. For example, if someone has been working for you for less than a month, both sides need to give one week's notice of quitting. But if it's less than a year, domestic workers must receive four weeks notice, while other employees usually get only two weeks.

A domestic worker is entitled to three weeks' paid leave a year, *pro rata* for the time worked. Two weeks of this is non-negotiable — in other words, it cannot be bartered away in return for extra privileges or pay.

Domestic employees are also entitled to overtime pay of time-and-a-half and working on Sundays or public holidays requires double pay.

This provision can be altered by mutual agreement.

If you and your maid agree that a normal working week includes Sundays, then she would not be entitled to extra pay. But if you ask her to work Sunday as extra time, she has to receive double pay. You would also owe her a full day's pay, even if you only asked her to work part of the day. By mutual agreement, you can give paid time off equivalent to the extra time worked.

Domestic workers have a 45 hours working week limit, unless you both agree otherwise. So if your child-minder agrees to work for 50 hours a week, that is acceptable — as long as you pay overtime for the extra five hours. Usually the overtime payment would be included in the monthly wage you would both agree to.

Under the legislation domestic workers are entitled to six weeks sick leave for every 36-month "sick-leave cycle", or roughly two weeks a year.

Female workers are also entitled to four consecutive months unpaid maternity leave. While she is pregnant, you cannot ask a domestic worker to do anything hazardous to mother or child, nor can she work within six weeks of her due date without a midwife or medical practitioner certifying she is fit to do so.

If a domestic worker has been employed for at least four days a week

for at least a month, she or he is entitled to three days' paid leave for family responsibilities. The Basic Conditions of Employment Act specifies what constitutes a valid reason, such as the sickness of a child or the death of a spouse or life partner.

Of the CCMA's disputes involving domestic workers, more than 70% are related to dismissals. One labour expert says that most employers go wrong by ignoring the procedures they are legally obliged to follow. Even if there is a valid reason for dismissing a domestic worker, ignoring the correct procedure can mean you end up paying compensation.

Under the Labour Relations Act, an "automatically unfair" dismissal — gratuitously sacking someone for no valid reason — makes you liable for up to two years' salary as compensation.

The most broad categories for dismissal are misconduct, incapacity and "operational requirements". This would include for example if you could no longer afford a chauffeur. A dismissal for operational requirements is basically a retrenchment, and you are required to give severance to the tune of one week for each year of continuous service.

However, before dismissing someone, you have to consult with the affected employee and try to implement appropriate measures to

avoid dismissal or minimise distress. These could, for example, include giving training or time off to help the worker find another job.

You are also obliged to disclose all reasons, relevant information and alternatives to your employee in writing and to consult with them about the situation. A domestic worker may be willing to accept lower pay in return for keeping a job. If no alternative can be worked out, you both have to agree on retrenchment pay.

Of course there is a catch: even if you obediently follow all the required procedures, you could still be pulled before the CCMA if your employee questions a dismissal. But your case would be much clearer if you have fulfilled all your legal obligations — in writing, and kept a copy.

Depending on the circumstances, disputes either go to arbitration or to the labour court. Cases involving unfair labour practices, operational requirements and strike-related situations would generally go to the labour court, while misconduct and incapacity would go to arbitration.

This story gives very broad guidelines on the legal position between domestic workers and employers. Consult a lawyer or legal organisation for precise details for each situation



Loophole found in law for domestic workers

Change employees into entrepreneurs, private households are urged

FARRAH ISMAIL
OWN CORRESPONDENT

Durban - Critics of the new Labour Relations Act have found loopholes in the law which gives rights and privileges to domestic workers.

For employers who fear the new legislation the Confederation of Employers (Cofesa) has suggested that households privatise their domestic work and change their employees into entrepreneurs.

The new law covers the full-time or part-time domestic, char, gardener, cook, child minder or any other domestic worker, giving them an equal footing with other employees in other areas of the economy.

Households cannot terminate a domestic worker's employment without following a fair procedure, such as carrying out an inquiry and allowing the domestic an opportunity to respond to allegations.

For dismissals workers must have misbehaved or be incapable of performing the work, and it must be necessary because of the employer's needs or requirements.

There are defined and agreed working hours for the domestic, rates for overtime, remuneration for public holidays, Sundays, leave pay and maternity and paternity leave.

If the domestic enjoys free accommodation, food, electricity, transport allowances and other extras, this forms part of the

salary and referred to as "payments in kind".

It is not necessary for an employer to form a written agreement with a domestic, especially if one already exists.

In its attempt to preclude the new Labour Relations Act from applying to domestic workers, Cofesa has recommended that employees working in the household be self-employed and operate as contractors.

"We want to encourage households and business to contract people and alleviate

poverty and unemployment," says Cofesa director Piet Pelser.

Mr Pelser says it is of great significance that the new LRA excludes independent contractors.

Using more contract labour would minimise job losses, currently running at 180 000 jobs a year, he argues.

Workers no longer need to be employed in the traditional manner with medical aid, vacation and sick leave, and be given time off or paid

for public holidays, he says, adding that Cofesa has assisted more than 3 000 com-

panies to change their employees into contractors.

Legal commentators and the South Africa Domestic Workers' Union have questioned whether in fact domestic workers could be regarded as "contractors" as the nature of their jobs requires a full-on service to be performed.

Cape Town labour lawyer Michael Bagrain said it was up to the Labour Court to rule whether domestic servants could be in fact deemed to be contractors.

"Contractual relations will be challenged and smitten if the relationship is between employer and domestic servant. There is no way this recommendation by Cofesa is going to work. The relationship

between the two parties has to be truly independent.

"In this way domestic servants would not have any legal protection in terms of basic pay, disciplinary measures, etc.

"Domestic workers are desperate for their jobs, and will sign any agreement in order to secure employment.

"Any contract devised outside the ambit of the law will not stand up in the Labour Court. This is an unfair labour practice. There are always gaps in the law but we cannot bastardise it."

Sadwu's Myrtle Witbooi said most union members were uneducated and employers took advantage of this.

Workers are desperate for their jobs and will sign any agreement

Act 16/11/96

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Domestics 'to be considered'

(123) (294)
CAPE TOWN — New legislation to improve compensation benefits for victims of occupational injury and disease needed to take into account cover for domestic workers, the National Assembly's labour committee said yesterday.

In its report on the Compensation for Occupational Injuries and Diseases Amendment Bill, the committee recommended other aspects of the bill be further investigated by the labour department and discussed at the National Economic, Development and Labour Council.

These included pensions for black workers who prior to June 1977 were excluded from the Workmen's Compensation Act, and discrimination against lower-paid workers due to payouts being based on a percentage of earnings and a percentage assessment of the injury and not on a loss of earning capacity.

The committee called for the legislation to be reviewed as soon as possible. — Sapa.

BD 5/9/97

Legal rights at last for domestics

By Mzwakhe Hlangani
Labour Reporter

TRADITIONALLY domestic workers enjoyed almost no legal rights.

Today they are protected by the Labour Relations Act and the new Basic Conditions of Employment Act will start affecting relations between employers and their domestic workers by the end of September.

Cape labour and industrial con-

sultants spokesman Reisner Hermans says the new Act has to be welcomed for improvements in stipulating minimum working conditions and has simplified the obligations of employers.

The Act also gives clarity to the position of part-time workers by stipulating that all those working a certain number of hours are covered by its provisions.

For the first time of their lives domestic workers are entitled to a

rest period of at least 36 hours a week, Hermans said.

The maximum weekly working hours are set at 45 hours. This might be exceeded by a maximum of 10 hours overtime a week which must be remunerated at one-and-a-half times the usual hourly wage.

Transgression of the Act's provisions is a criminal offence. The punishment, if found guilty, is a fine ranging between R100 and R500 per employee.

21/9/98
Lawyer

(294)

Cosatu dumps domestic workers

Ferial Haffajee

The Cinderella workers are angry. At the best of times the domestic workers who pick up the mess of others, look after the children of others and keep gardens tidy are kicked around and badly paid.

Now they also accuse their work colleagues in the Congress of South African Trade Unions (Cosatu) of deserting them.

The South African Domestic Workers Union (Sadwu) was dissolved last year, but continued to operate its offices because it says that Cosatu failed to carry out a promise to find it a new home in another trade union.

"Cosatu doesn't really care about us," said a former union leader, Hester Stevens, this week. "We're not happy with the way we've been treated. We've sent messages and faxes to office-bearers. But there's been no response from them."

In the meantime, the number of domestic workers is swelling as re-trenched factory workers, foreigners,

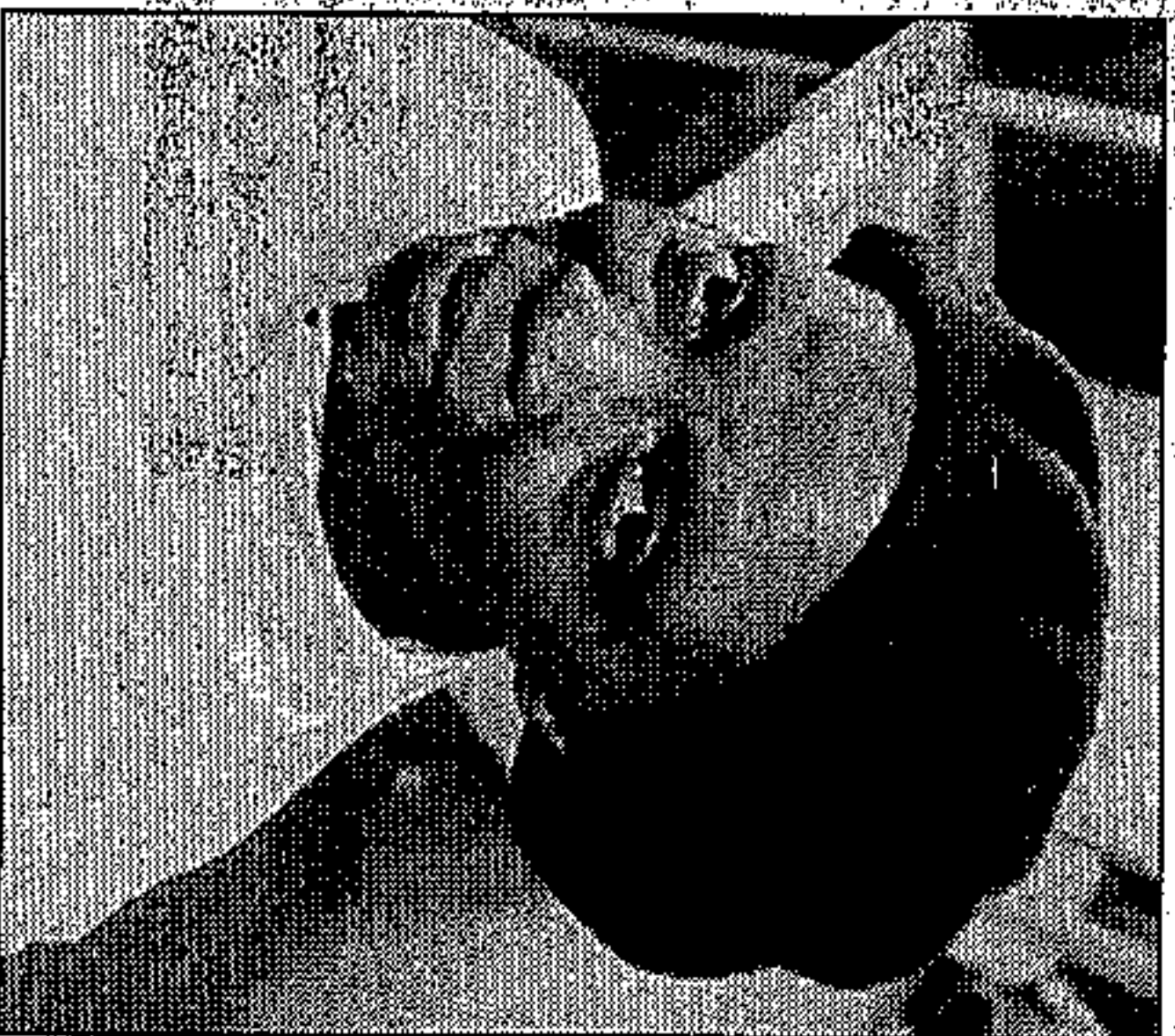
more men and white women take to the broom and mop as the easiest way to scrape a living. This quintessential South African relationship of maids and madams is growing more common: there are between one and two million domestic workers.

The sector employs more people than mining or agriculture but pays a pitiful salary. Salaries are about R150 a month in the worst-reported cases while a monthly income of about R1 500 is tops.

Sadwu was quietly dissolved by Cosatu last year after 11 years dogged by maladministration and a poor organising record. At its peak, Sadwu notched up only 7 000 members.

Yet it was the only lobbying voice and advice centre for the country's maids and gardeners. Many non-members turned up at its offices around the country and they continued to knock on Sadwu's doors after Cosatu's decision.

"We cannot just dump the workers," said Selina Vliakazi, who still works out of the union's sparse Johannesburg office. The phone lines



Hanging in there: Selina Vliakazi keeps the dissolved union's offices open.

PHOTO: DANNY HOFFMAN

have just been reinstated after being cut off for non-payment and the R1 080 rent is just about paid every month.

Cosatu's campaigns co-ordinator Isaac Mahlangu refused to comment

this week. "We are not going to be run by the media. We are trying to work out a clear plan to service domestic workers," he said.

Cosatu's long-term plan is to start a services union for domestic workers, and those who work in hotels and restaurants. In the short-term, it promised that Sadwu members would be incorporated into either its catering and commercial affiliate, Saccawu, or the Transport and General Workers Union. Sadwu has had no word from either.

Domestic workers are not a coveted sector for trade unions: subscriptions must be collected by hand as stop-orders cannot be signed and most madams dismiss their maids at the first whiff of unionism in their back yards.

Cosatu last year appointed a five-member team to plan Sadwu's future and to assess the mistakes that had been made with the union.

That committee has met only once. It accomplished little except to issue a strongly worded admonition to those who continued to run union

offices. But Cosatu cannot ignore this sector in which over one in 10 South Africans work.

A recent study by Debbie Budlender of the Community Agency for Social Enquiry found that the supply for domestic workers far exceeds the demand as more people enter the sector and wages are being driven down. It is the first port of call for many foreigners who make South Africa home.

One worker told researchers that "there are lots of people now, even people who come from other countries, and those people agree to any amount, even if it's 50c a day, as long as she can get a place to stay".

Budlender's team of researchers uncovered evidence of a growing and lucrative trade among some domestic worker agencies who go to rural areas to recruit young women and provide them as bonded labour to mostly Indian suburbs around the country.

In advertisements which smack of slavery, they offer "jong, vars, plasdames beskikbaar" — fresh young farmgirls available.

CAROL PATON

MAIDS and their madams will be faced with a new set of rules when the Basic Conditions of Employment Bill becomes law later this year.

The new Bill aims to improve the working conditions of domestic workers. It will lay down the minimum standards that must be met by every employer in any household, factory or farm.

Employers will have to meet the following requirements, many of which will also apply to part-time domestic workers:

● **WORKING TIME:** The maximum number of hours that a domestic worker can work in a week will be 45. If she works five days a week or is a part-time employee, she may work a maximum of nine hours a day. If she works six days a week, the maximum number of hours a day is eight.

She will have to be paid overtime if she works over 45 hours a week.

● **OVERTIME:** All overtime work will have to be paid for at one-and-a-half times the normal wage.

A domestic worker may not work more than three hours' overtime in a day or 10 hours a week.

An employer can negotiate with a full-time or part-time domestic worker to work for 12 hours a day on some days without overtime pay. But she could still not work more than 45 hours a week for that employer.

A clean slate for maids and madams

An employer's guide to the new set of rules that will polish up domestic working conditions in SA

ST 4/5/97

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● **MEAL BREAKS:** After five hours of work there must be a meal break of at least one hour. This can be shortened to half-an-hour if an employee agrees. If an employer wants a worker to remain in the house or work during the lunch break, the worker must be allowed to eat but must also be paid for the lunch hour.

● **REST PERIODS:** A full-time domestic worker must have a daily rest of at least 12 hours between finishing work one day and starting again the next. She must have a weekly rest of at least 36 hours, including a Sunday.

An employer can negotiate with a domestic worker to work on Sundays.

● **SUNDAY WORK:** If a domestic worker always works on Sunday and has her days off on other days, she must be paid one-and-a-half times her normal wage. If an employer asks her to work the occasional Sunday, she must be paid double.

● **PUBLIC HOLIDAYS:** A domestic worker can be required to work on public holidays only if she agrees. She must be paid double for the day, or she must be given a paid holiday.

● **ANNUAL LEAVE:** A domestic worker will be entitled to three weeks of paid leave after she has worked for 12 months. Part-time workers will be entitled to one day's leave for every 17 days worked.

● **SICK LEAVE:** She is also entitled to six weeks' paid sick leave for every 36 months that she has worked. An employer can negotiate to decrease the amount of sick pay but cannot pay less than 75 percent of the worker's salary. For part-time workers this will be calculated proportionately for the time she has worked.

● **MATERNITY LEAVE:** A domestic worker will be entitled to four months' maternity leave. During this time her job must be protected, although her employer is not obliged to pay her.

● **FAMILY RESPONSIBILITY LEAVE:** Domestic workers will be en-

titled to three days of paid leave to attend to a sick child, a death in the family or, in the case of a man, the birth of his child.

● **NOTICE PERIOD:** For domestic workers who have worked for more than one month the period of notice will be one month.

An employer may pay a worker a month's wages instead of giving notice. However, live-in domestic workers will have the right to remain in the employer's accommodation during the notice period.

The notice must be given in writing and explained to the employee in a language she can understand.

● **EMPLOYMENT CONTRACTS:** When the Bill becomes law, an employer will be required to give a domestic worker written particulars of employment that describes what she is required to do and the conditions set out above.

Strictly speaking, this is not a contract as the employee does not have

to sign it. But if an employer wants to change or vary any of the minimum conditions these have to be drawn up in a contract signed by both the employer and the worker.

● **VARIATION:** Some of the conditions can be varied if the domestic worker agrees. These include compensating workers for overtime with paid time off, extending the working day to 12 hours without overtime pay, reducing meal times and sick pay and exchanging a Sunday for another day off.

● **WAGES:** The Bill gives the minister of labour the power to set minimum wages for domestic workers, something which he is likely to do once it becomes law.

The wage determination will probably be set at varying levels for different parts of the country and take into account the value of payment in kind to domestic workers, such as accommodation and food.

Employers should do the following when the Bill becomes law:

● Provide your domestic worker with written particulars of her job and conditions of service;

● If you want to change any of the minimum conditions, such as overtime pay, you will need to discuss this with your employee;

● You should then draw up a contract which both of you sign; and

● When a wage determination is made by the minister of labour you will have to pay the minimum wage.

New Act gives women security

By Khangale Makhado

MPOTSENG (not her real name) left her place of work on maternity leave. After three months of nurturing her son she decided it was time to go back to work as she had an extra mouth to feed.

When she entered her office, her ever-smiling face was reduced to tears. Someone had been hired in her place. The only explanation she got was that "the company could not afford to keep her place forever".

"After days of bitter struggle against intransigent management and with the help of my trade union, we finally managed to secure my job. We had literally to evict the new guy from my desk," she recalled.

"My sister Thembi was not so lucky. She worked at a chemical factory and, because of inadequate safety measures, she was exposed to chemicals and that caused a miscarriage."

This epitomises the plight of pregnant women at work who are forced to choose between giving birth and securing their jobs. While some may opt for the former, there are those in other industries whose health and that of their foetus are put at risk by being exposed to dangerous chemicals.

Trade unions and labour experts agree that in the past laws did very little to ensure that pregnant women were neither victimised nor protected from dangerous chemicals at work. According to some unions, in the past there was no clear protection for a pregnant woman dismissed because she was absent from work. In addition, there was no obligation for payment during confinement

Domestic workers have been worse off

and laws were silent on keeping jobs for the women on maternity leave.

Women working as domestic workers have been the most exploited. Once a domestic worker became pregnant, she would be dismissed.

The National Council of Trade Unions (Nactu), however, believes that outside the domestic arena, exploitation and discrimination against pregnant women is common in the commercial and catering, textile and agricultural sectors. The South African Domestic Workers Union (Sadwu) has found it very difficult to negotiate with employers because members are scattered all over the country.

General secretary Myrtle Witbooi said when negotiating with employers they insist on a contract of employment to include maternity leave.

At the mercy of employers

In a memorandum to the Labour Department, Sadwu demanded that domestic workers have three to six months paid maternity leave.

"Although the Labour Relations Act (LRA) offers job security, not many employers will adhere to it as most of our workers are uneducated and will not be able to understand the legislation," said Witbooi.

Domestic workers remain the most oppressed and for them nothing much has changed, not even in the new South Africa. "As they have no houses, they are at the mercy of the employers. When they get pregnant they become squatters as they have nowhere to go."

"People working in the agricultural sector use pesticides such as 245T which may expose pregnant women to dangers resulting in severe abnormality in the foetus."

"As if that is not enough, one would find in the same industry pregnant women bending and lifting heavy loads during harvest

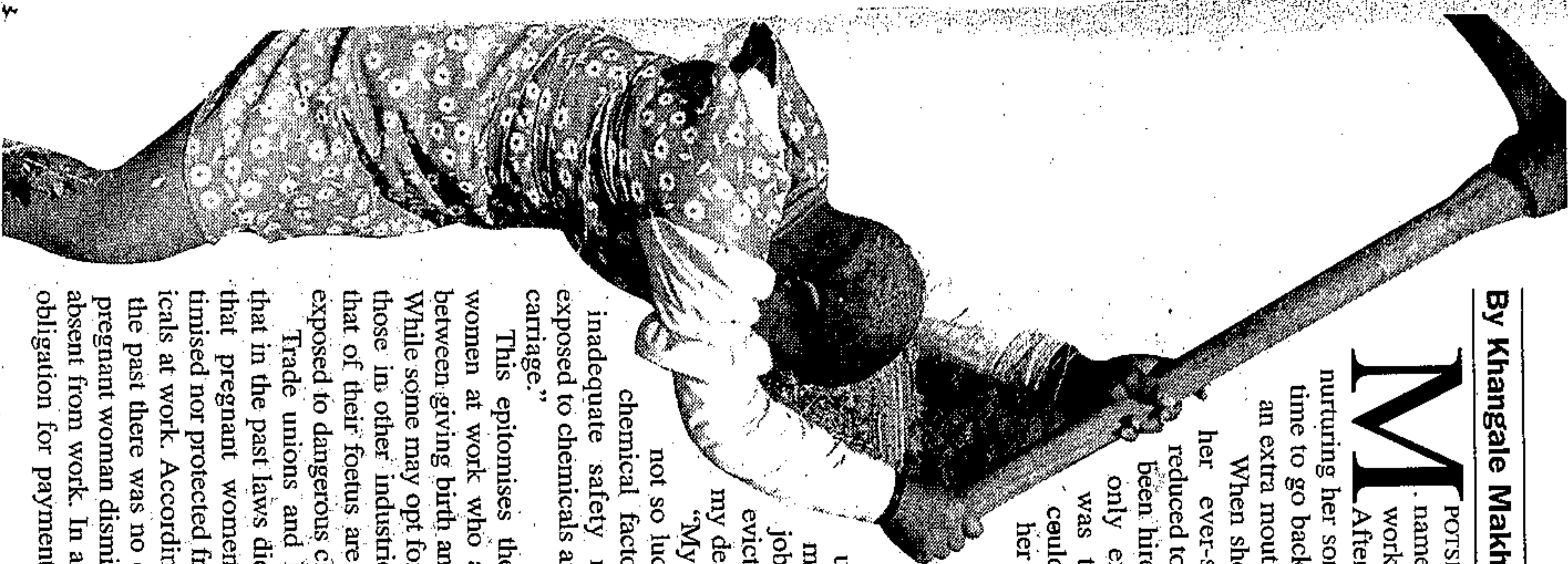
periods. This also happens in other industries like health care, domestic workers, shops and machinists in the clothing industry," said Mrs Mamohau Mofokeng of Nactu's Women's Unit.

Mofokeng says in the past, the question of occupational health and safety was left entirely in the hands of managements and this led to situations where:

- Some accidents were not reported;
- Hazards were allowed to go on, and

● Encouraging the syndrome that accidents result solely from the fault and negligence of workers.

"What is encouraging is that the new look Occupational Health and Safety Act really advocates that there should be health and safety representatives and committees representing both the workers and management," says Mofokeng. The new LRA seems set to improve the plight of pregnant women and may end sexual harassment.



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SERVICES SECTOR - DOMESTIC WORKERS
1999

Minimum pay on the way for domestics

(294)

PARLIAMENTARY BUREAU AND SAPA

The Government plans to introduce a minimum wages for South Africa's domestic and agricultural workers, according to Labour Minister Membathisi Mdladlana.

"For the first time, the state can and will set statutory minimum wages for workers in these sectors," he said yesterday, introducing debate on his budget vote in the National Assembly.

Mr Mdladlana later told journalists that the Basic Conditions of Employment Act - promulgated in December last year - allowed for the legislation of minimum wages, and his department was determining what these should be.

It was very difficult at this stage to say what level was considered appropriate.

"The wage process in South Africa is not determined at a national level, but in the sectors themselves," he said.

"We need to encourage farm workers and farmers ... to determine wages."

Mr Mdladlana said the Government was concerned by the fact that 25% of South Africans earned less than R500 a month.

Asked how minimum wages would be policed in a sector where workers were poorly organised, he said that would still have to be negotiated.

Mr Mdladlana denied that existing labour legislation was too inflexible and destroyed jobs.

But the New National Party and the Democratic Party insisted that the high unemployment rate was caused by inflexible labour laws.

DP MP Colin Eglin said: "Instead of rising to the challenge of high unemployment, Government attempts to bury the problem in a deluge of regulatory legislation."

ARG 16/3/99

'CARRY OUT STUDY FIRST'

Call for living wage that won't lead to job losses

(294) ET 17/3/99

JOHANNESBURG: While the Labour Department considers what the minimum wage for domestic workers will be, there are concerns it may result in unemployment. **VIVIAN WARBY** reports.

WHILE the government's proposal to set a minimum wage for domestic workers was generally hailed yesterday, fears were also expressed that the move may lead to job losses.

Labour Minister Memphathi Mdladlana told Parliament on Monday that the Basic Conditions of Employment Act would set the minimum wage and his department would determine what this should be. He said it was difficult to say now what level of wage was considered appropriate.

Supporting Mdladlana, South African Domestic Workers' Union president Selina Vilakazi said her organisation would be asking for a minimum wage of R800 for a domestic worker who is employed on a full-time basis and who does basic household chores such as cleaning and laundry.

After that, said Vilakazi, wages should be set according to skills level. For a skilled worker — who does cooking and child care — the minimum wage should be R1 200. Daily rates should start at R75, she said.

Vilakazi claimed thousands of

domestic workers across the country continued to be "grossly exploited", with some earning wages as low as R200 a month.

Three domestic workers' employment agencies in Gauteng said they would not even consider sending any of their domestic workers to a home that was offering anything less than R650 a month.

"Depending on the skill level, salaries start at R650," said Linda Will, owner of Abby's Domestics in Randburg. "We won't even talk to anyone offering less as we believe that would be slave labour."

Will said at present there were thousands of domestic workers looking for employment and much less people looking to employ them. Setting a minimum wage, she feared, may be detrimental to some of these workers as it would take them out of the price range that some people could afford to pay.

Rosemary Mthembu of Household Services in Parkhurst, Johannesburg, said the rates they looked at ranged between R600 and R1 000 for a 45-hour week.

Another agency based in Randpark Ridge, Johannesburg, said they considered extras such as accommodation and food over and above the minimum wage guidelines of R650 that they set.

Sally Motlana, national president of the Black Housewives' League, said while she welcomed regulating the wages of domestic workers, she feared that setting a minimum wage that was out of reach for some employers could lead to many dismissals in an area that already had a high unemployment rate.

Motlana said before government set a minimum wage it was important that it carried out a study as well as an in-depth discussion on the issue with employers and domestic workers, so that a wage could be set that would not lead to job losses, but that was still a living wage.

The Black Sash welcomed the news that a minimum wage would be set. "It's great news," said Wellington Ntamo, case worker at the Black Sash. "This is one of the sectors that has been neglected on all fronts, although since 1994 they have been recognised as a workforce."

"There have been so many abuses of domestic workers in the past, not only in the wage area but also in the conditions of employment."



HOME WORK: The South African Domestic Workers' Union says wages should depend on the skills level and recommends a minimum wage of R800 for a full-time domestic worker who does basic household chores such as cleaning. **PICTURE: THE STAR**

Workers, employers unaware of rights

(294) ET 17/3/99

JOHANNESBURG: Emily, who did not want her real name used, is a 35-year-old domestic worker who has two children. She is unmarried and has worked for her present employer for four years.

From Monday to Friday, Emily's working day begins at 6.30am and ends at 8pm. Her duties include general housework — cleaning, washing and ironing — as well as cooking and child care. For this Emily takes home R700 a month.

Of her salary Emily spends between R50 and R100 on her children's schooling. Transport costs her R10 a day (R200 a month) and she spends between R200 and R300 a month on food. Toiletries and other household necessities cost her

about R100.

Emily believes that her salary is "fine". She is not on medical aid and doctor's visits are paid for by her employer. Emily does not have a signed contract with her employer and is unaware of her rights as set out under the Basic Conditions of Employment Act, which she and other domestic workers became part of at the end of 1997.

Under the act, which only affects domestic workers who work more than 24 hours a month, a contract between employer and employee is compulsory. The act means Emily's rights include:

- Three weeks paid leave a year.
- Time-and-a-half pay or time off for working overtime.

● Double pay or time off for working on occasional Sundays or public holidays.

● Two weeks' sick leave a year.

● A maximum of 45 hours of work a week.

● At least one week's wages for every year of employment if the worker is retrenched.

SA Domestic Workers' Union president Selina Vilakazi applauds the inclusion of domestic workers in the Basic Conditions of Employment Act but says it is not without problems. "There seems to have been an increase in dismissals. Another problem is that employers are being made to sign contracts they do not understand." — Own Correspondent

Get organised, minister tells domestic workers

ARG 17/3/99

Labour Minister Membathisi Mdladlana has met representatives of domestic workers and their employers to encourage them to organise themselves to negotiate a minimum wage.

Mr Mdladlana said the Basic Conditions of Employment Act promulgated last year

would make it possible to set a minimum wage for domestic workers and agricultural employees. He said minimum wage negotiations should be completed in a year.

Mr Mdladlana said it was difficult to say what these wage levels should be. A quarter of South Africans earned less than R500

a month, which was less than the government pension.

He said domestic workers were in a sector which was not well organised and Cosatu (Congress of South African Trade Unions) had been trying to organise them.

-Parliamentary Bureau

CONDITIONS OF EMPLOYMENT

MINIMUM MONTHLY WAGE (Basic skills):	Union	Agency	Reality
Living in: food, accommodation and uniforms must also be supplied over and above wage	R800	R650	R200-R500
Not living in: a meal, uniforms plus transport must be supplied over and above wage			
OVERTIME/HOUR:	R10	R10-R15	R5-R10
DAILY RATE :	R75	R50	R35-R50
Transport money and food are over and above wage			

Unions: what the union wants Agencies: guidelines given by agencies Reality: what's actually happening

Domestic workers just don't know their rights (294) Kar 17/3/99

BY VIVIAN WARBY

Emily, who did not want her real name used, is a 35-year-old domestic worker who has two children. She is unmarried and has worked for her present employer for four years.

Emily arrives at work between 6.30am Monday to Friday and goes home at 8pm daily. Her duties include general housework - cleaning, washing and ironing - as well as cooking and child care.

For this Emily takes home R700 a month.

Of her salary, Emily spends between R50 and R100 on her children's schooling. Transport costs her R10 a day (R200 a month) and she spends between R200 and R300 a month on food. Toiletries and other household necessities cost her about R100.

Emily believes her salary is "fine". She is not on medical aid and doctor's visits are paid for by her employer.

Emily does not have a signed contract with her employer and is unaware of her rights as set out under the Basic Conditions of Employment Act, which she and other domestic workers became part of at the end of 1997.

Under the act, which affects

only domestic workers who work more than 24 hours a month, a contract between employer and employee is compulsory.

The act means Emily is entitled to, among other things:

- Three weeks of paid leave a year.
 - Time-and-a-half pay or time off for working overtime.
 - Double pay or time off for working on occasional Sundays or public holidays.
 - Two weeks' sick leave a year.
 - Not working more than 45 hours a week.
 - Three days' leave a year to attend to family obligations such as funerals.
 - Being informed, and discussing alternatives and packages with the employer, if the latter wishes to retrench the worker.
 - At least one week's wages for every year of employment.
- But SA Domestic Workers' Union president Selina Vilakazi believes that, despite government steps, conditions have become worse for some workers.
- "There seems to be more dismissals. Employees have to sign contracts they do not understand. Some work until 11pm or midnight without overtime pay," Vilakazi said.

'What domestics sk

(~~165~~) (294) ^{Should be paid} Star 17/3/99

Union says a skilled worker who cooks and looks after children should be entitled to about R1 200 a month

By VIVIAN WARBY

The Government's proposal to set a minimum wage for domestic workers was generally hailed yesterday, but fears were expressed that the move may lead to job losses.

Labour Minister Mamba- thisi Mdladlana told Parliament on Monday that the Basic Conditions of Employment Act would set the minimum wage, and his department would determine the figure. However, he could not give an indication of what the wage would be or when it would be effective.

Supporting Mdladlana, SA Domestic Workers' Union president Selina Vilakazi said her organisation would be asking for a minimum wage of R800 for a domestic worker who is employed

Some get as little as R200 a month

full-time and who does basic household chores such as cleaning and laundry.

After that, said Vilakazi, wages should be set according to the skills level. For a skilled worker, who does cooking and looks after children, the minimum wage should be R1 200. Daily rates should start at R75.

Thousands of domestic workers continued to be "grossly exploited", with some earning as little as R200 a month, she added.

Three placement agencies in the Gauteng area said they would not even consider sending any of their domestic workers to an employer who was offering less than R650 a month.

"Depending on the skill level, salaries start, at the lowest, at R650," said Linda Will, owner of Abby's Domestics in Randburg. "We won't even talk to anyone

offering less, as we believe that would be slave labour."

Will said that at present there were thousands of domestic workers looking for employment but far fewer people looking to employ them. Setting a minimum wage, she feared, might be detrimental to some of these workers because it would take them out of the price range most people could afford.

Rosemary Mthembu of Household Services in Parkhurst, Johannesburg, said their rates ranged between R600 and R1 000 for a 45-hour week.

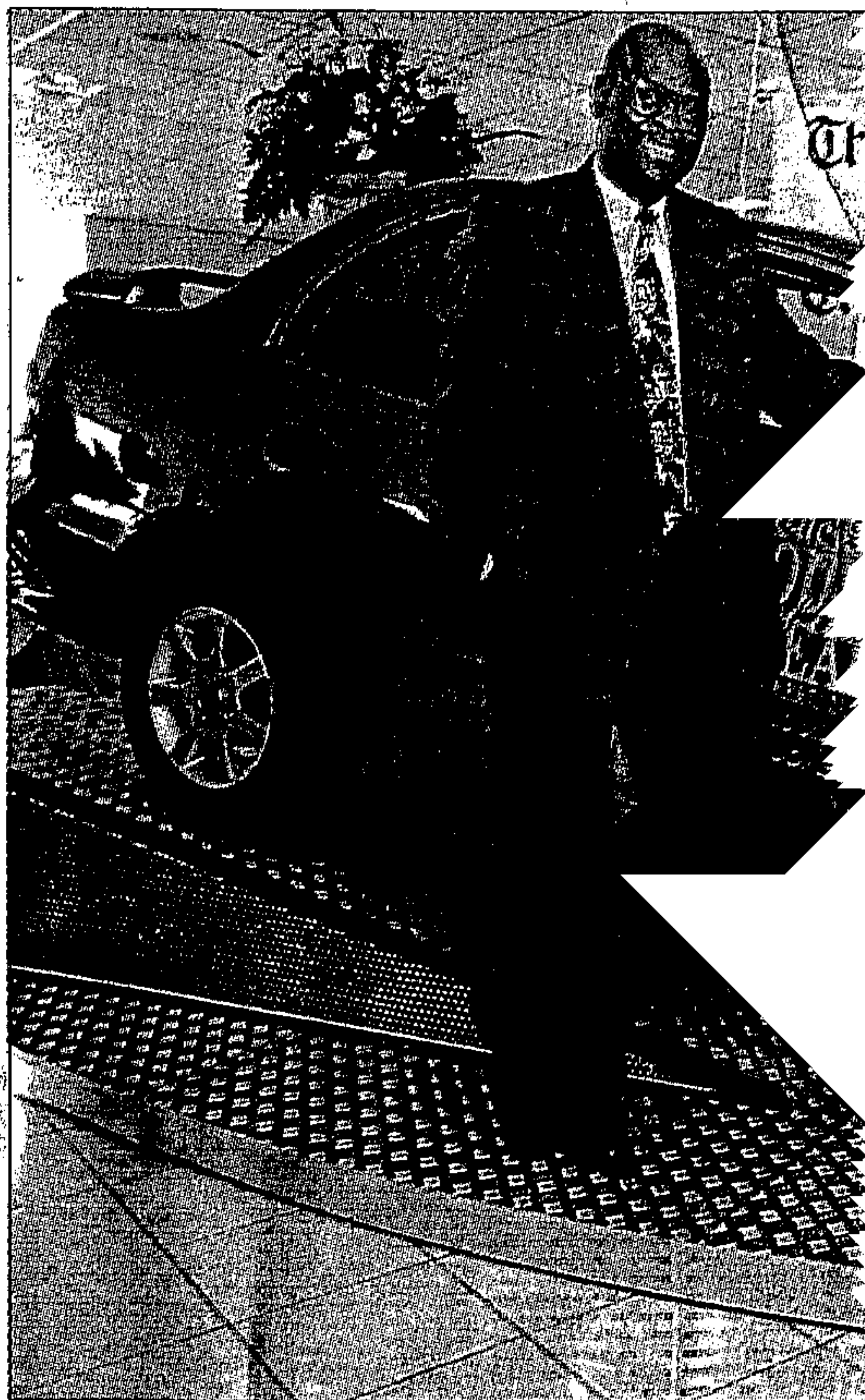
Another agency based in Randpark Ridge, Randburg, said extras such as accommodation and food were over and above their minimum wage guidelines of R650.

Sally Motlana, president of the Black Housewives' League, said that while she welcomed plans for a minimum wage, she feared that if the figure was out of reach for some employers, it could lead to many dismissals in a sector that already had a high unemployment rate.

Motlana said that before the Government set a minimum wage it should carry out a study and consult with employers and domestic workers. In this way, a wage could be set that would not lead to job losses, but would still be a living wage.

The Black Sash welcomed the news. "It's great," said case worker Wellington Ntamo. "This is one of the sectors that has on all fronts been neglected, although since 1994 there has been improvement and recognition of them as a workforce. They have been so many abuses of domestic workers in the past, not only in the wage area but also in the conditions of employment."

► Report and graphic Page 3



Star couple ... winners of The Star Couple of the Year, Lucia and Itume at the glittering awards ceremony last night. Their prizes include a Hy.

Host of prizes for winners of T

The accent is always on romance in The Star Couple of the Year competition, and our loving young winners for 1998 turned the key on a new stage of their romantic lives at the Cresta Hyundai showrooms yesterday.

Social workers Lucia and Itumeleng Molefe took the title, receiving the first prize, a Hyundai Accent XS, as well as a trousseau of other fabulous gifts.

Valued at R48 390, with mod-

ifications worth R12 000, the Hyundai Accent XS is just the kind of luxury The Star Couple of the Year deserve.

A second honeymoon at Namibia's Protea Hotel Walvis Bay Lodge - with return flights to Windhoek courtesy of British Airways Comair, and car hire from Budget Rent-a-Car - also await the winners. Other prizes include: a Kelvinator fridge, automatic washing machine and freezer valued at

R8 val Pha me. R10 a vol Ar. Bo bri for Wo and ye.

Unions vow to fight employers

By Saint Molakeng and Sapa

TRADE unions representing farmworkers and domestic workers have vowed to fight employers who dismiss their members to avoid paying minimum wages proposed by Labour Minister Mr Memphahisi Mdladlana.

"We will take the employers to the Commission for Conciliation, Mediation and Arbitration and other institutions. We will fight them all the way," Farm and Allied Workers Union of South Africa (Fawusa) president Mr Meshack Geyses said yesterday.

Geyses was reacting to utterances by some employers and certain political parties that Mdladlana's proposal would lead to job losses.

"The Government's intention to introduce a minimum wage for farm and domestic workers will simply aggravate unemployment," the South African Agricultural Union's labour committee chairman Mr Pieter Erasmus said on Tuesday after the announcement in Parliament.

"The farming sector was traditionally labour-intensive but, given the deluge of labour and land legislation, more farmers were cutting back on

their workforce," Erasmus said.

Geyses said farmers and employers of domestic workers had had it "nice" under apartheid. "Mdladlana's proposal will be the best thing ever to happen to the workers."

The SA Domestic Workers Union (Sadwu) also hailed the proposal. "We

are happy that the plight of domestic workers has been considered," said Sadwu secretary Ms Eunice Dladla.

Dladla lamented the fact that domestics had been underpaid, with some earning R200 a month. Sadwu recommended a minimum wage of R800 for full-time domestics and

R1 200 for those who performed skilled work such as cooking.

Fawusa said the minimum wage for farmworkers should be R800 for those whose employers give them monthly food rations. Without the rations, R1 200 should be the wage.

The Department of Labour said this week it had embarked on a consultative process to determine the minimum wages for farm and domestic workers.

Department spokeswoman Ms Lisa Seftel stressed that no minimum wage had yet been set for these sectors.

"A minimum wage has not been set for farm and domestic workers and will

only be set after an extensive process involving the maximum participation of affected workers and employers," Seftel said.

Members of the public, employers, workers and other players would have ample opportunity to contribute to the process, she said.

Seftel said the Employment Conditions Commission, set up in terms of the Basic Conditions of Employment Act, would hold public hearings nationally on the issue.

The department would also launch an investigation into employment conditions in these sectors.

Minimum wage for domestics (294)

By JOVIAL RANTAO AND
HOPEWELL RADEBE

The Government planned to introduce minimum wages for domestic workers and farm labourers, Labour Minister Membathisi Mdladlana told Parliament yesterday.

He said the Basic Conditions of Employment Act would set minimum wages and his department was determining what they should be.

It was difficult to say now what level of wage was considered appropriate.

Mdladlana said the Government was concerned that 25% of the country's work force, many of them in the agricultural and domestic sectors, earned less than R500 a month.

Opposition parties have reacted cautiously to the announcement, warning that it could undermine job creation by making domestic and agricultural work too expensive for small employers.

Democratic Party spokesperson on agriculture, Errol Moorcroft, said an enforced minimum wage would encourage farmers to reduce their labour force and rely increasingly on mechanical means of harvesting and planting.

"It is not that people should not be rewarded appropriately for their labour, but at present we should not create reasons for employers to reduce staff in a sick economic environment such as ours," he said.

United Democratic Movement acting secretary-general Annelize van Wyk said minimum wages would need to be thoroughly discussed to avoid stifling economic growth and job creation.

► More details
Business Report

Relief for domestic workers

~~28~~ (294)

LABOUR Minister Membathisi Mdladlana this week announced that he would set a minimum wage for farm and domestic workers.

He told parliament during his budget speech that the Basic Conditions of Employment Act, which came into effect on December 1, 1998, allowed for the sectoral determinations to be set in the domestic and farming sectors.

Sectoral determinations set down minimum wages and conditions of

employment which are appropriate for a particular sector.

A minimum wage will only be set after consultation with all the relevant stakeholders.

According to the Labour Department's chief director of labour relations, Lisa Seftel, members of the public will be able to make submissions to the department and the Employment Conditions Commission (ECC) when the ECC holds public hearings nationally.

CP 21/3/99

Good intentions clouded by

perceptions

(294)

The frenzy around minimum pay for domestics underlines concerns about legislation, writes RAEI SOLOMON

ST(BT) 28/3/99

IT IS no wonder employers are feeling besieged. By February 28 this year, some 158 806 cases had been referred to the Commission for Conciliation, Mediation and Arbitration (7 000 in January alone and 81% being for unfair dismissal). Between 7% and 9% have been from the domestic sector.

Two weeks ago Labour Minister Membathisi Mdladlana casually mentioned that government was seriously examining the possibility of implementing a minimum wage structure for domestic and farm workers.

He also mentioned in an aside that it would be at least two years before the structure could be implemented.

He got the desired result. The media went to town and within 24 hours the Domestic Workers Union climbed on the bandwagon, saying a R1 200 minimum was their objective. The minister knew what he was doing — three million votes are not to be sneezed at. Domestic employers are already examining their

All this without even a White Paper on the table and little chance of a law before the 2004 election

options and farmers are destroying shacks. And all this without even a White paper on the table and little chance of a law being promulgated before the 2004 election.

The above scenario characterises the huge impact some of the labour laws are having on the job market regardless of how well-intentioned they are. When the Labour Relations Act

was promulgated in November 1996 its impact was immediate. To date some 110 000 cases have been resolved at the conciliation stage by employers' paying compensation. Employers have got the message. Even if correct procedures are followed and there are valid substantive reasons, dismissing an employee can be a long and costly exercise.

At least two clauses are having a negative impact on employer perceptions. The main problem clause is that if the employer does not follow a required and fair procedure when dismissing an employee, regardless of the substantive reasons, a commissioner has



MINIMUM WAGE... Labour Minister Membathisi Mdladlana has got employers worried

no discretion but to award compensation equal to the remuneration that would have been earned from the date of dismissal to the last day of adjudication. With long delays at the CCMA, this may be anything from six months to a year's remuneration.

A second clause stipulates that even if an employee resigns, it may be referred for constructive dismissal on the

basis that continued employment was made intolerable.

The prescription of working and overtime hours by the Basic Conditions of Employment Act and employers' perceptions that the Employment Equity Act will negatively change management structures should be urgently addressed by government. It's all very well introducing new legislation which an over-

worked CCMA can't handle. Steps have to be taken to listen to employer complaints and to educate all parties about the real intentions of the laws. An eight-page employment contract handout for housewives is not the answer.

● Rael Solomon heads up The Labour Consultancy and prepares labour guides on the Sunday Times-Business Times web page

Minimum pay on the way for domestics

(294)
PARLIAMENTARY BUREAU AND SAPA

The Government plans to introduce a minimum wages for South Africa's domestic and agricultural workers, according to Labour Minister

Membethisi Mdladlana.

"For the first time, the state can and will set statutory minimum wages for workers in these sectors," he said yesterday, introducing debate on his budget vote in the National Assembly.

Mr Mdladlana later told journalists that the Basic Conditions of Employment Act - promulgated in December last year - allowed for the legislation of minimum wages, and his department was determining what these should be.

It was very difficult at this stage to say what level was considered appropriate.

"The wage process in South Africa is not determined at a national level, but in the sectors themselves," he said.

"We need to encourage farm workers and farmers... to determine wages."

Mr Mdladlana said the Government was concerned by the fact that 25 % of South Africans earned less than R500 a month.

Asked how minimum wages would be policed in a sector where workers were poorly organised, he said that would still have to be negotiated.

Mr Mdladlana denied that existing labour legislation was too inflexible and destroyed jobs.

But the New National Party and the Democratic Party insisted that the high unemployment rate was caused by inflexible labour laws.

DP MP Colin Eglin said: "Instead of rising to the challenge of high unemployment,

□ DOMESTIC & FARM WORKERS

Minister seeks comment on work conditions

Membathisi Mdladlana, the labour minister, would today publish a notice in the Government Gazette inviting written public comment on the creation of minimum wages and conditions of employment for domestic and farm workers. Once comment had been collated, a report would be made available to the Employment Conditions Commission which, in turn, would use it to prepare advice for the minister on appropriate minimum wages and conditions of work for agricultural and domestic sectoral determinations. In advising the minister, the commission would take into account factors like the ability of employers to successfully conduct their businesses, the operations of small businesses, the cost of living, the alleviation of poverty and wage differentials and inequalities, among others. - *Frank Nxumalo*.

Johannesburg

(294) (4) CT(BR) 7/5/99

By RYAN CRESSWELL

An investigation into the wages and working conditions of the agricultural and domestic worker sectors would take nearly a year to complete and would involve widespread consultation and research, the Labour Department said yesterday.

Under the Basic Conditions of Employment Act, promul-

Focus on workers' conditions

gated in December, the government can now set conditions of employment, which include minimum wages, for these workers. But farmers and other employers believe this could stifle job creation and the government is taking a careful look before making any further

decisions.

Notices on the beginning of the investigation into the two generally poorly paid sectors were published in the *Government Gazette* two weeks ago.

In a four-month first phase, the Labour Department will assess the market and find out

what kind of wages are being paid and what social security or medical benefits are being supplied. The second phase will involve specialised research into various issues, and there will be consultation with all role-players, including unions and non-governmental organisations.

Early next year the department will write up its report.

294

SPAW 20/5/99

Why poverty's more than sums

Haroon Bhorat

One of the key dilemmas facing the government is to eradicate, or at least reduce, poverty. The first step is to understand which are the most affected groups. In the labour market there are three groups which together explain more than 80% of the poverty in South Africa. They are unemployed people, domestic workers and farmworkers.

Domestics and farmworkers may have jobs, but they are still living in poverty. While less than 4% of labourers in the mining and manufacturing sectors live in poverty, 38% of domestics are poor and 27% of farmworkers earn below the poverty line.

From a policy perspective, this means that labour market interventions aimed at poverty alleviation need to give credence to the fact that poverty exists not only among the unemployed, but also among narrowly (and indeed easily) defined sections of the employed.

Some commentators may argue that while these groups are very poor, they could be living in households that are not poor; that the collective income in a home they have access to will make them non-poor.

Statistics show, however, that this is patently untrue: the three poorest groups also come from the three poorest types of households in the country.

The statistics show that in the homes where

mtg 28/5-3/6/99

farmworkers live, more than 60% live in dire poverty. In the case of the unemployed and domestics, more than 40% of their homes are poor.

Knowing who most of the poor people are, in which homes they live and how much money each of these homes earns enables one to undertake a theoretical exercise giving each of these poor households enough money to place them above the poverty line.

For example, if a home is earning an income of R500 and the poverty line is about R900, then we would need to give that home R400 and it would no longer be poor.

If we use this approach, what would it cost, in theory, to eradicate most of the poverty in society?

In total, the number of poor homes which have domestics, unemployed people or farmworkers living in them amounts to just more than two million. The calculations show it would cost about R10-billion a year to place all these homes out of poverty. This translates into giving each of these poor homes an average of R3 300 a year. How do we evaluate this amount? Is it inordinately large or surprisingly small? To put it in perspective: it represents about 6% of the government's total expenditure outlays.

The government spends about 20% of its budget on paying the interest on its debt, and about the same amount on education each year. This 6%, then, is a relatively low amount, and it would seem to indicate that the prob-

lem of poverty is easily solved.

Does this mean all that needs to happen is for the government to make provision for an income grant of this sort on an annual basis, and we could immediately talk of a poverty-free society? The answer is no.

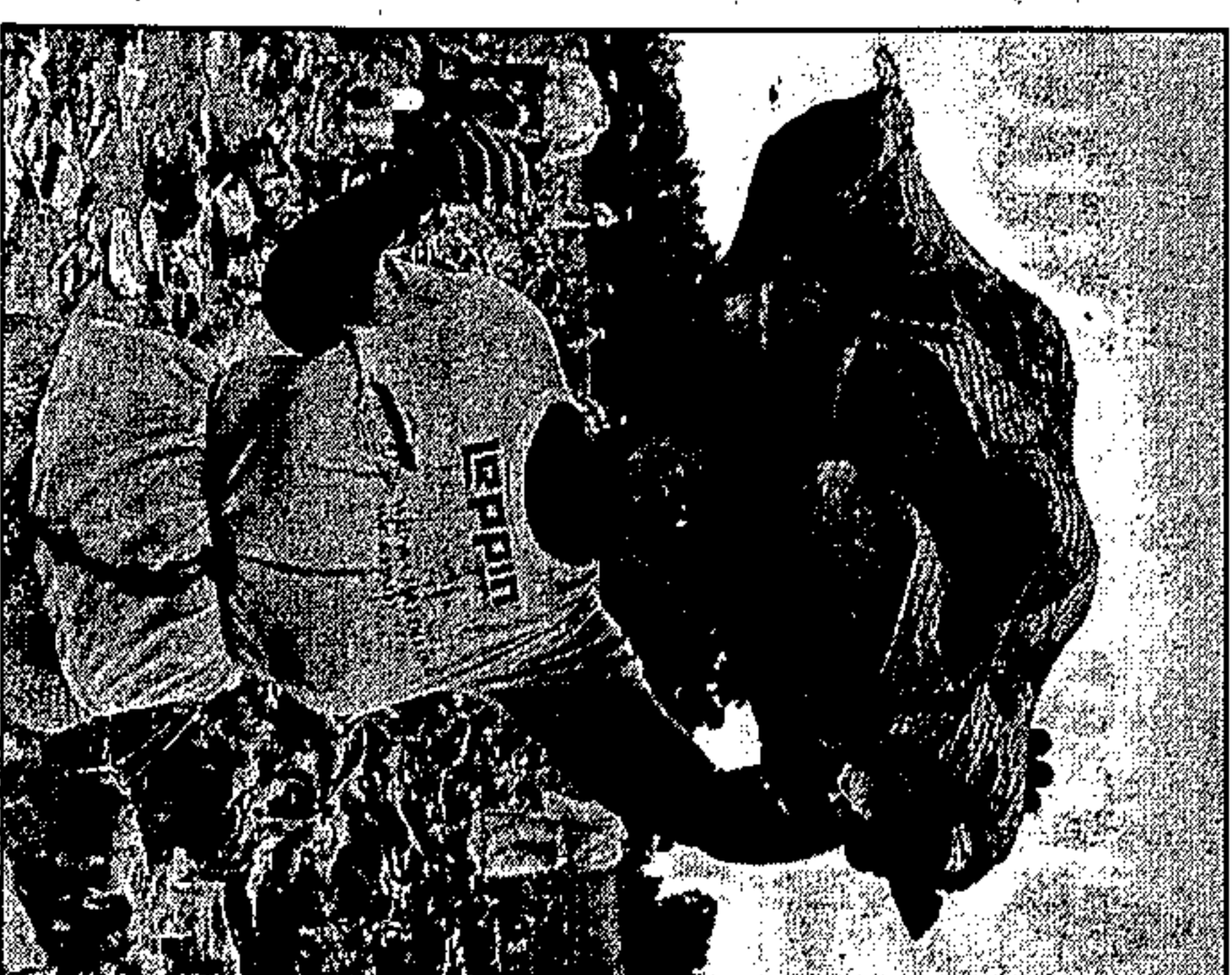
As is the case with most theoretically appealing calculations, such a potential income grant throws up a whole host of obstacles.

The first difficulty is that the government will not find it easy to target the poorest of the poor effectively. Large wastage could occur through ineffective targeting, and while the money may get into the hands of poor homes, it won't reach the poorest of the poor.

Then there are the not insignificant administration costs that inevitably go with the setting up of such a scheme.

Thirdly, giving grants to indigent homes could result in an undesired outcome: individuals may cease work, or stop looking for work. Apart from the obvious moral issues here, such a withdrawal of labour would have serious negative economic consequences. One can imagine the growing drain on the state of such a scheme, as new entrants in the labour market refused to find jobs and rather relied on the state's income transfer.

What is clear, however, is that we can describe the nature and extent of poverty in South Africa quite simply and vividly. It is also evident that those individuals who are poor invariably live in homes that are indigent.



A heavy load: Three groups in the labour market explain 80% of the poverty — the unemployed, domestic workers and farmworkers. PHOTOGRAPH: RUTH MOTAU

Finally, while the above calculations are simplistic and rather tell a story about the size of the problem than offer a tangible policy intervention, they suggest the government needs to think more energetically about social security and welfare provision for the poor.

Haroon Bhorat is a senior researcher in the development policy research unit at the School of Economics, University of Cape Town

Provide for your domestics

Shaun Harris
TAKING STOCK

In the strange social structure that is South Africa, domestic workers, along with non-unionised farm workers, probably remain the most neglected part of the labour force.

The irony, particularly when it comes to the typical domestic maid or gardener, is that these workers often become long-time employees and integral, valued parts of a family.

Their neglect is often not deliberate. Parents/employers prepared to leave a child under the daily care of a domestic worker, as well as the general security and running of a household, soon develop great respect, often affection, for that person.

There was a time when domestics were undoubtedly exploited in terms of remuneration, but while no statistics for average pay levels seem to exist (and as yet no legislation for minimum wages), they have certainly improved.

Any employer who depends on a domestic worker to look after their most valued people and possessions is probably trying to pay that person as much as they can reasonably afford.

The neglect comes in largely through ignorance, both on the part of the employer and employee. In the bustle of daily life, little thought is given to what is going to happen to a domestic worker at retirement.

For people working inside the formal economy, retirement benefits are often part of the overall package.

It's probably not hard to forget that many domestic workers, unless they have negotiated a contract with their employer that includes retirement benefits, will have nothing but an inadequate state pension to depend on in their retirement years.

Many employers wake up to the realities, but often at a stage when the retirement of their domestic worker is already looming. The result is a rushed plan to try and provide some form of retirement income, a plan that is usually expensive and inefficient.

A little bit of planning now, while there is still time to build up a decent retirement package, will not be too

expensive, even for individual workers.

Typically, an affluent businessperson outside the corporate structure — self-employed people or owners of small companies — provide for their retirement through retirement annuities or perhaps even an endowment policy aimed at maturing on retirement date.

There are good products around, though investment performance has been questioned. The advantage is that they offer a safe, stable and often guaranteed benefit at retirement. The problem is that they are not particularly well-suited for domestic workers.

Monthly premiums tend to be relatively high, possibly more than the workers could afford if they are paying part of the policy.

The employer might pick up the full payments, but what happens if the domestic worker breaks service and moves to a new employer? Chances are premiums will lapse, destroying a large chunk of the built-up value.

In terms of ease, flexibility and the best absolute investment returns, unit trusts are an attractive option. Monthly debit orders into a stable, well-run fund (general equities are probably the best option) are affordable — as low as R50 a month. If the investment is started in the early stages of employment, compound growth over the years could provide a useful nest egg for retirement.

The danger is market-timing risk. Survey after survey has shown the strong and relatively safe performance of equity-based unit trusts over a long period (at least five years), but the market could always turn down at the wrong time.

A collapse in share prices six months before a domestic worker is due to retire would be disastrous — the worker may not have the time to wait for the market to come back, and will be forced to live on the devalued portfolio.

Unit trusts will undoubtedly give the best returns on investment, but don't carry the other necessary benefits associated with formal, group benefit retirement products like life and disability cover.

Group benefits have always been the preserve of big business, and South Africa's life insurance companies have worked hard at providing products and schemes for this lucrative market.

They have not been that creative in catering for individual employees, saying the business is unprofitable. Some life companies that entered the individual benefits market have since pulled out, or charge hefty administration fees to justify their running costs.

But a few life companies and banks have tailored products specifically for

this market. Some of these are little more than inflexible fixed-period endowments, but at least two are worth looking at.

One is the Absa Workers' Fund, aimed at providing group benefits for the employees of small businesses, but also suitable for individual domestic workers.

Monthly premiums start as low as R40 and go up to R250, but there is no maximum on monthly premiums. Apart from the very basic plan one, the other six plans include death and disability cover, and funeral benefits for members and spouses.

Fedsure Group Benefits also offers a workers' fund that can be adapted for individual employees. Monthly premiums start at R30 and go up to R700, and there are also no limits.

Increased contributions greatly enhance retirement benefits. For instance, R30 a month over 30 years on the basic plan A will leave the worker with a lump sum of about

R292 000 on retirement. But if the monthly premium is increased to R80 on the same plan, the retirement lump sum is a respectable, and liveable, R876 000.

Apart from death, disability and funeral benefits, an added facility allows a member to use a portion of the accumulated benefit as a housing loan after two years' membership.

Marketing manager Lee Loubser says a growing number of domestic workers are using the fund, either as groups (which they form themselves) or as individuals through their employers.

Affordability and the added benefits make products like these suitable for domestic workers' retirement benefits.

Ideally, the employee should contribute half (perhaps by sacrificing an annual wage increase) and the employer the rest.

An added retirement boost would be to run a small unit trust account in conjunction with the policy.

Total monthly contributions can be kept fairly low, but will make a huge difference at retirement.



Move to improve lot of domestics

(294) *Sowetan* 2/8/99
By Mzwakhe Hlangani
Labour Reporter

THE ill-treatment and exploitation of black domestic workers has traditionally been part of the employer and employee relationship, in which domestics enjoyed almost no legal rights since time immemorial.

But this will soon be a thing of the past.

Investigations to set standards for minimum wages, hours of work, recognition of domestic services and overtime, among other things, will be finalised at the end of this month, the Labour Department's Gauteng director, Mr Jesse Maluleke, said at the weekend.

Labour Minister Membathisi Mdladlana has ordered the provincial directorate to investigate domestic workers' plight with a view to making decisions on minimum wages and conditions of employment under the new labour legislation.

Maluleke convened a workshop on Friday as part of a series of hearings nationwide for organisations representing employers, trade unions and non-governmental organisations, local government officials and interested parties.

Discussing conditions that should be included in the new legislation, the weekend forum felt strongly about hours of work for domestic workers, payment rates, sick leave, maternity and compassionate leave and unemployment insurance fund. Some

domestic workers have to work between 10 and 12 hours a day.

Formal recording and nature of deductions, issuing of payslips, medical aid, accommodation, conservative days leave, overtime and minimum wages also featured prominently during the workshop deliberations.

It was essential that major stakeholders' views and proposals be tabled in the sectoral determination to be submitted to the Equity Employment Commission at the end of August, which in turn would advise Mdladlana on implementing minimum working conditions and wages for domestic workers.

Maluleke said their recommendations would not concentrate strictly on monetary gains for domestic workers but on important aspects including proper accommodation and other essential workplace aspects since domestics were the most vulnerable among the workers.

He said it was difficult to negotiate for domestic workers as individuals.

Domestic workers at the workshop welcome the proposals aimed at improving their wages which varied from R250 to R800 a month, with extended working hours of between 10 and 12 hours a shift.

A series of these workshops will determine what level the minimum wages and employment standards should be pitched at.

And, according to industrial and labour consultants, transgression of the Act's provisions is a criminal offense, which carries a fine of between R100

Benefits of wage law could be marginal

Proposed legislation to govern minimum wages for South Africa's lowest-paid employment sectors could pose a serious danger for employment losses, writes Haroon Bhorat

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The Department of Labour has recently called for public submissions and comment on the issue of minimum wages and conditions of employment for domestic and farm workers. An analysis of the first of these two issues, namely wages, will place into sharp focus the stringent trade-offs faced by the department in this part of the workforce.

It is important, at the outset, to get a sense of the basic wage and employment statistics governing domestic and farmworkers in the economy. There are approximately 700 000 household domestic workers in the society, compared with fewer than one million farm labourers.

The imposition of any labour legislation will therefore impact on nearly two million workers, and their respective dependants. One is not, therefore, talking of an insubstantial number of affected individuals.

The overwhelming majority (96%) of domestic workers are female, while the majority of farmworkers (78%) are male. Hence the legislation would have a near equivalent impact on both males and females in the workforce.

But perhaps the most important reason for the Department of Labour seeking to isolate these two occupations for special consideration lies in the pitifully low wages earned by these two groups.

Domestic workers on average earn just more than R300 per month, while farmworkers earn approximately R400 per month. These two occupations are far and away the lowest paid in the South African labour market.

To put into perspective how low these earnings are: domestic workers earn a third of what the average miner earns, and fourteen times less

than the average skilled professional. Extremely low wages lead to the familiar outcome of individuals having a job, yet living in deep poverty.

Given these earnings of domestics and farmworkers, it is not surprising that more than 80% of all these workers remain below the poverty line. In this environment of extreme levels of indigence, it is tempting to give serious consideration to a legislated policy of minimum wages for these workers.

It is possible, given the above parameters, to undertake a carefully conceived thought experiment, where in the dilemma of the choice between higher wages and lower levels of employment is vividly displayed.

We can think of such an experiment in the form of two scenarios:

- Scenario one — where the wage of domestic and farm workers is increased by 10%.

- Scenario two — where the wage is doubled.

The first scenario is, of course, a far more likely outcome than the second. But the purpose of the extreme second case is to display how harsh some of the trade-offs between wages and employment are.

The effects of scenario one will be that the increase in the wage of these two occupations by 10% will reduce the percentage of workers in poverty to 75%, a 5% reduction to the poverty level prior to the wage increase. This, for domestic workers, means that about 32 000 of them will no longer be in poverty.

For farmworkers, the wage increase will extricate 47 000 of them from poverty. Given the large numbers of these workers, this is not by any means a significant poverty reduction effect.

This does not mean that the wage increase will not be beneficial, but it

is clear that its benefits in terms of alleviating poverty will be marginal. It has to be remembered though that, along with a wage increase, there is a serious danger of employment losses, as some employers perceive the cost of employment as being too high. This option may be the best and most optimal available to the department.

Aside from the concerns around the trade-off between poverty and employment, there are two other relevant issues surrounding the minimum wage. These are the effects of a minimum wage have on payments in kind and, secondly, the monitoring of minimum wages should they be set.

On the first, it is true that a large number of employers do offer transfers in kind to their employees. By this, one is referring to, for example,

food given to domestics, or bags of mealie meal to farm labourers, by their respective employers.

The imposition of the minimum wage may see employers rescind these free transfers and begin then to charge employees for these products. So, an employer of a household domestic may decide that the new higher minimum wage is not affordable, given the current working arrangements.

In order to retain the services of the domestic, the employer will begin to include the free meals and so on as part of the wage paid to the domestic.

In such a case, the cash wage received by the domestic may not change and, in some cases, may go down. The potential for circumventing the minimum wage law arises thus from the existing and significant free transfers flowing from

the employer to the employee.

The second concern around the minimum wage, that of monitoring its implementation, is, in many senses, what the effectiveness of the legislation hinges on. For example, even a minimum wage at double the current average wage is only effective if the government can ensure that such legislation is implemented and adhered to by employers.

The Department of Labour is currently under-resourced in this arena, and effective monitoring of such legislation will be extremely difficult. In addition, and more importantly, domestic services and farming are sectors notoriously difficult to monitor, even if the department did have an adequate supply of labour inspectors.



Living in poverty: Farmworkers are one of the two lowest-paid groups in the South African labour market, earning on average about R400 per month. PHOTOGRAPH: JACQUI PILE

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This is because employers in these sectors are widespread, often in un-reachable areas and seldom a visible presence in the economy. If one thinks of the impossibility of trying to track down even a small national sample of households that employ domestic workers, as well as extracting wage information from the employer or employee, then the difficulty in monitoring these two sectors becomes evident.

Simply put, the effectiveness of any minimum wage legislation will depend on the state's ability to enforce and monitor the implementation by employers of the terms of the legislation.

Together with the difficulties in monitoring such legislation, its employment effects as well as employers' possible responses — the minimum wage legislation proposed here should be, at best, viewed as setting a precedent for employers to improve their wages and other conditions of employment for these two indigent groups of workers.

The goal of poverty reduction among domestic and farm workers is thus only realistically achievable through a combination of economic policy interventions.

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