

- Significance of Declaration of Essential Services in terms of the Labour Relations Act
- [Statutory Instrument 137 of 2003](#): Declaration of Essential Services

SIGNIFICANCE OF DECLARATION OF ESSENTIAL SERVICES IN TERMS OF THE LABOUR RELATIONS ACT

The Labour (Declaration of Essential Services) Notice, 2003, published in Statutory Instrument 137 of 2003, was made in terms of paragraph (b) of the definition of "essential service" in section 102 of the Labour Act. The definition applies to Part XIII of the Act only. The Part is headed COLLECTIVE JOB ACTION.

The term is not used often in Part XIII (and only once elsewhere in the Act; see section 93(5)(a) in Part XII). The relevant provisions in Part XIII are set out below.

102 Interpretation in Part XIII

In this Part—

“essential service” means any service—

- (a) the interruption of which endangers immediately the life, personal safety or health of the whole or any part of the public; and
- (b) that is declared by notice in the Gazette made by the Minister, after consultation with the appropriate advisory council, if any, appointed in terms of section nineteen, to be an essential service.

[substituted by Act 17 of 2002 with effect from 7th March, 2003.]

103 Appeal against declaration of essential service

Any person who is aggrieved by any statutory instrument by the Minister declaring any service or occupation to be an essential service may appeal against such notice to the Labour Court, and the Labour Court may vary or revoke the statutory instrument as it deems just.

[amended by Act 17 of 2002 with effect from 7th March, 2003.]

104 Right to resort to collective job action

(1) Subject to this Act, all employees, workers committees and trade unions shall have the right to resort to collective job action to resolve disputes of interest.

(3) Subject to subsection (4), no collective job action may be recommended or engaged in by—

- (a) any employees, workers committee, trade union, employer, employers organisation or federation—
 - (i) if the persons concerned are engaged in an essential service; or

COLLECTIVE JOB ACTION

The term is defined in section 2 of the Labour Act:-

“collective job action” means an industrial action calculated to persuade or cause a party to an employment relationship to accede to a demand related to employment, and includes a strike, boycott, lock-out, sit-in or sit-out, or other such concerted action;

Its principal use is in Part XIII of the Act, headed COLLECTIVE JOB ACTION.

SANCTIONS FOR UNLAWFUL COLLECTIVE JOB ACTION

There are civil and criminal sanctions for involved in collective job action in breach of section 104(3)(a) of the Act..

The **civil sanctions** are of various types:

- those involving the Labour Court - see sections 106 and 107 of the Labour Act dealing with show cause orders and disposal orders.
- liability to compensate injured parties for injury or death or property loss or damage in terms of section 109(6) of the Act
- loss of privileges for trade unions and employers organizations under section 109(3) of the Act.

Criminal sanctions are in sections 106 and 112 of the Act (there may be some duplication and overlapping):-

109 Liability of persons engaged in unlawful collective action

(1) If a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereinafter in this section called a “responsible person”), or any individual employer or employee or group of individual employers or employees, recommends, advises, encourages, threatens, incites, commands, aids, procures, organises or engages, in any collective action which is prohibited in terms of subsection (3) of section *one hundred and four*, the responsible person, and every official or office-bearer of the responsible person, or, as the case may be, individual employer or employee or group of individual employers or employees, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person other than a person referred to in subsection (1) who recommends, advises, encourages, threatens, incites, commands, aids or procures any collective action which is prohibited in terms of subsection (3) of section *one hundred and four*, with the intention or realising that there is a risk or possibility of bringing about such collective action, shall be guilty of an offence and liable to a fine not exceeding level fourteen or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

The test referred to in section 3 of the Public Order and Security Act [*Chapter 11:17*] shall apply to determining whether or not the person whose conduct is in issue realised that there was a risk or possibility that his conduct might bring about the collective action referred to in this subsection.

(7) Subject to Part XIX of the Criminal Procedure and Evidence Act [*Chapter 9:07*], a court which has convicted a person of any offence in terms of subsection (1) that involves any loss, damage, injury or death for which that person is liable in terms of this section shall forthwith award compensation to any person who has suffered personal injury or whose right or interest in property of any description has been lost or diminished as a direct result of the offence.

112 Offences under Part XIII

(1) Any person who contravenes or fails to comply with:

- (a) subsection (2) or (3) of section *one hundred and four*; or
- (b) section *one hundred and five* ; or
- (c) a direction made in terms of paragraph (b) or (c) of subsection (2) of section *one hundred and six*; or
- (d) the terms of a disposal order; or
- (e) section *one hundred and eleven*;

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

(2) When imposing any penalty or sentence upon conviction for an offence in terms of subsection (1), the court shall take into account—

- (a) the terms of any show cause order or disposal order which has been made relating to the offence concerned, and the extent to which the convicted person has complied with it; and
- (b) the extent to which the dispute concerned has been resolved.

STATUTORY INSTRUMENT : DECLARATION OF ESSENTIAL SERVICES

NOTE: In [section 2\(e\)](#) there is no paragraph (vi). The printed Statutory Instrument has the identical defect

Statutory Instrument 137 of 2003.

[CAP. 28:01

Labour (Declaration of Essential Services) Notice, 2003

THE Minister of Public Service, Labour and Social Welfare hereby, in terms of paragraph (b) of section 102 of the Labour Act [*Chapter 28:01*], publishes the following notice:—

1. This notice may be cited as the Labour (Declaration of Essential Services) Notice, 2003.
2. The following services are hereby declared to be essential services in terms of section 102 of the Act—
 - (a) services provided by the fire brigade or any other fire services performed by—
 - (i) drivers;
 - (ii) control room attendants;
 - (iii) chief fire officers and assistants;
 - (iv) divisional officers and supervisors of fighters; and
 - (v) station officers;
 - (b) services relating to the supply and distribution of water and provided by—
 - (i) pump operators
 - (ii) those responsible for water treatment;
 - (iii) plumbers;
 - (iv) electricians; and
 - (v) engineers;
 - (c) veterinary services provided by —
 - (i) laboratory technologists;
 - (ii) laboratory assistants;
 - (iii) veterinary surgeons and veterinary doctors;
 - (iv) persons employed in a disease surveillance unit;
 - (v) field branch personnel of the veterinary services department;
 - (vi) animal health inspectors;
 - (vii) veterinary livestock technicians;
 - (viii) the head of field veterinary services;

involved in the diagnosis and control of rabies, foot-and-mouth disease and anthrax and the control of locusts and army worm;

- (d) services provided by revenue specialists involved in the performance of security and health checks at airports and other ports of entry on behalf of the Zimbabwe Revenue Authority established in terms of section 3 of the Revenue Act [*Chapter 23:11*];

- (e) health services provided by—

- (i) ambulance drivers;
- (ii) doctors;
- (iii) nurses;
- (iv) pharmacists;
- (v) radiographers;
- (vii) physiotherapists;
- (viii) pharmacy technicians;
- (ix) rehabilitation technicians;
- (x) dental therapists;
- (xi) medical laboratory scientists;
- (xii) medical laboratory technologists;
- (xiii) laboratory assistants;
- (xiv) laboratory technicians;
- (xv) dentists;
- (xvi) environmental health officers;
- (xvii) environmental health technicians;
- (xviii) electro cardiogram technicians;
- (xix) hospital equipment technicians;
- (xx) X-ray operators
- (xxi) dark room assistants;
- (xxii) occupational therapists;

- (f) transport and communication services provided by—

- (i) telecommunication technicians, drivers and mechanics in the industry;
- (ii) aircraft technician engineers;
- (iii) air traffic controllers in the Civil Aviation Authority of Zimbabwe established in terms of section 4 of the Civil Aviation Act [*Chapter 13:16*];
- (iv) meteorological technicians;
- (v) road technicians and engineers;
- (vi) engineers, signals officers and engine men at the National Railway of Zimbabwe established in terms of section 3 of the Railways Act [*Chapter 13:09*];

- (g) electrical services provided by a person licensed under the Electricity Act [*Chapter 13:19*] and performed by the operational staff and any staff of contractors hired by such person; and
- (h) services provided by any public broadcaster during a state of disaster declared in terms of section 27 of the Civil Protection Act [*Chapter 10:06*] or in an emergency likely to be declared a state of disaster in terms of that Act..

3 Any non-essential service may be declared an essential service by the Minister if a strike in a sector, service industry or enterprise persists to the point that the lives, personal safety or health of the whole or part of the population is endangered.

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