

NEWSLETTER

The Official Newsletter of
SEENA Legal Consult.



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PREFACE:

As we welcome the first edition of our newsletter for 2026, we would like to extend our sincere gratitude to all our clients for your continued support and trust throughout the past year. Your ongoing commitment to constructive labour relations remain the foundation upon which our work is built, and we are deeply appreciative of the opportunity to support you in navigating the ever-evolving workplace environment.

The start of a new year brings renewed energy, fresh opportunities, and new challenges within the labour landscape. As businesses continue to adapt to changing regulatory developments, economic pressures, and evolving workforce expectations, our focus remains on providing practical, legally sound guidance that helps employers maintain compliant, fair, and productive workplaces.

Deur 2026 sien ons daarna uit om ons vennootskap met u voort te sit deur insigte te bied oor huidige arbeidstendense, opdaterings oor wetgewende ontwikkelings en leiding te gee oor die effektiewe hantering van werksplekuitdagings.

Ons wens al ons lede en hul spanne 'n suksesvolle, gesonde en voorspoedige jaar toe. Mag 2026 groei, stabiliteit en positiewe vooruitgang in beide u professionele en persoonlike lewe bring. Baie dankie vir u volgehoue ondersteuning en vertroue in ons.

SEENA groete,

Koos Barkhuizen
Managing Director

A PRACTICAL GUIDE TO MANAGING SICK LEAVE, MEDICAL INCAPACITY AND ABSENTEEISM IN THE WORKPLACE

Managing sick leave and medical incapacity has become one of the most challenging practical issues facing employers in the current Namibian labour environment. Employers must balance employee wellbeing and statutory rights with operational continuity, fairness among staff, and legal compliance. A structured and proactive approach is essential to reduce disputes and maintain workplace stability.

1. Distinguish between Sick Leave, Incapacity, and Misconduct

One of the most common mistakes employers make is treating all absenteeism the same. Employers should clearly distinguish between:

- Short-term sick leave: temporary illness supported by medical certificates.
- Medical incapacity: situations where an employee's health condition may permanently or substantially affect their ability to perform duties.
- Misconduct-related absenteeism: absence without valid medical proof or failure to follow procedures.

Each category requires a different management process.



2. Implement Clear Medical Evidence Requirements

Employers should maintain clear policies stating:

- When medical certificates are required.
- The timeframe for submitting medical evidence.
- The employee's responsibility to provide updated medical information.

Employers should avoid continuous chasing for documentation. Instead, communicate clearly that the responsibility to justify absence rests primarily with the employee.

3. Address Long-Term Absence Early

Extended or repeated medical absence should trigger early intervention rather than waiting for the situation to escalate. Practical steps include:

- Meeting with the employee to understand prognosis.
- Requesting consent for occupational medical assessment where appropriate.
- Clarifying whether the condition is temporary or likely long-term.

4. Use Occupational Medical Assessments

Independent medical opinions are increasingly important. Employers should consider occupational practitioners who can assess:

- Fitness for duty.
- Work restrictions or accommodations.
- Likely recovery timelines.

5. Consider Reasonable Accommodation

Before considering termination due to incapacity, employers should evaluate whether reasonable adjustments can enable continued employment, such as:

- Modified duties.
- Adjusted working hours.
- Alternative roles where available.

6. Maintain Consistent Documentation

Proper records are critical. Employers should retain all:

- Medical certificates received.
- Correspondence requesting information.
- Meeting notes and consultation records.

7. Communicate Expectations Clearly

Employees should understand:

- Sick leave is not unlimited.

- Continued absence requires ongoing medical justification.
- Failure to provide medical proof may lead to absence being treated as unauthorised.

Conclusion

Effective sick leave and incapacity management requires structured processes.

Employers who distinguish between illness and misconduct, rely on independent medical input, communicate expectations clearly, and document every step are better positioned to support employees while protecting operational needs and legal compliance.

NAMIBIA MOVES TOWARDS A CCMA-STYLE LABOUR DISPUTE SYSTEM: WHAT THE NEW CADR BILL MEANS

Namibia is preparing for a significant shift in how workplace disputes are handled. A draft law known as the *Commission for Alternative Dispute Resolution (CADR) Bill* proposes the creation of an independent dispute-resolution body that will take over many of the conciliation and arbitration functions currently performed by the Ministry of Labour.

In simple terms, Namibia appears to be moving toward a system similar to South Africa's well-known CCMA (Commission for Conciliation, Mediation and Arbitration).

What is changing?

At present, most labour disputes, including unfair dismissals, workplace grievances, and certain collective bargaining disputes, are referred to the Labour Commissioner within the Ministry of Labour for conciliation and arbitration. The proposed CADR system would transfer these functions to a new, independent Commission dedicated specifically to preventing and resolving labour disputes.

The aim is to create a more streamlined, specialised and accessible dispute-resolution environment. Instead of dealing directly with a government department, employers and employees would approach an independent Commission designed to resolve disputes quickly, fairly and with minimal legal formalities.

How will the new Commission work?

The CADR will be governed by a Board representing key stakeholders, including government, organised labour, employers' organisations and independent experts.

Commissioners will be appointed to facilitate conciliation (where parties try to reach agreement)



and arbitration (where a neutral decision-maker issues a binding ruling).

The Commission will have powers to:

- Receive and manage labour dispute referrals;
- Facilitate conciliation meetings to help parties settle disputes;
- Conduct arbitration hearings where settlement is not possible;
- Issue binding awards that are enforceable like court orders; and
- Promote dispute prevention through training, guidance and education.

In addition, the Commission will regulate certain trade union organisational rights and collective bargaining processes.

Key changes to labour dispute procedures

Although the Labour Act itself remains largely intact, several procedural changes could affect how workplace disputes unfold:

1. Independent dispute forum

The most significant change is structural: conciliation and arbitration will shift from the Ministry of Labour to an independent Commission, mirroring the CCMA model in South Africa.

2. Stronger emphasis on internal workplace processes

Before referring disputes, parties will be required to show that internal grievance or disciplinary procedures were followed and exhausted. This places greater responsibility on employers and employees to attempt resolution at workplace level first.

3. Faster timelines and clearer procedures

One of the stated objectives of the proposed CADR system is to improve efficiency and reduce delays in resolving labour disputes. The draft Bill introduces more structured timelines for dispute processing. For example, once a dispute is referred to the Commission, conciliation meetings must be scheduled within a defined period (14 days), and commissioners are required to attempt resolution within a specified timeframe.

While the current system already contains timeframes, these are sometimes flexible in practice. The new framework appears designed to promote faster case progression and reduce long waiting periods between referral and hearing. For employers and employees alike, this means that disputes may move more quickly through the system, leaving less room for delay tactics or procedural stalling.

4. Adjusted referral periods and stricter deadlines

The draft Bill proposes changes to the time limits within which disputes must be referred. In particular, unfair dismissal disputes may need to be referred within a shorter timeframe than under the current Labour Act (3 months, as opposed to the current 6 months). Importantly, these time limits may run from the completion of internal processes rather than strictly from the date of dismissal itself.

This change could have significant implications. Employees and trade unions will need to monitor deadlines carefully to avoid missing referral windows, while employers must ensure that internal procedures do not become unnecessarily prolonged or unclear, as disputes may arise regarding when internal remedies were truly exhausted.

Shorter or more structured referral periods are likely intended to encourage prompt resolution of disputes while evidence and recollection remain fresh. However, they may also increase procedural pressure on both sides to act quickly and obtain advice earlier in the process.

5. Expanded consultation duties in retrenchments and operational dismissals

The draft legislation also proposes more detailed requirements when employers consider retrenchments. While the Labour Act already requires meaningful consultation with recognised unions or employee representatives, the new provisions appear to expand the scope of information that employers must disclose and discuss during the consultation process.

Employers may be required to provide more detailed information upfront, including reasons for proposed dismissals, alternatives considered, selection criteria, and possible future re-employment opportunities. The consultation process is framed as a genuine negotiation process, including discussions

around minimising job losses, mitigating adverse impacts on affected employees, and potentially negotiating severance benefits beyond statutory minimums.

Additionally, the Commission itself may play a more active supervisory role where disputes arise during retrenchment consultations. This could mean earlier external involvement in restructuring processes, which may help prevent disputes from escalating, but could also require employers to prepare more thoroughly before initiating retrenchments.

What does this mean for employers and employees?

If implemented, the CADR could modernise Namibia's labour dispute system by making it more specialised, efficient and accessible. However, it will also require both employers and employees to adapt to new procedures, stricter timelines and enhanced compliance requirements.

As the Bill progresses, we will monitor developments closely and will keep you informed of any new changes.

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