COSATU Submission on the Basic Conditions of Employment Bill

Presented to the Parliamentary Portfolio Committee on Labour
October 1997

---

1. Introduction

Twenty months ago, the Minister of Labour, Comrade Tito Mboweni, released a Green Paper on the Basic Conditions of Employment. From April 1996, government, labour and business engaged in negotiations in Nedlac, first over the Green Paper and later various drafts of the Basic Conditions of Employment Bill (the Bill). The primary aim of these negotiations was to agree on the purpose and content of the Bill.

COSATU views this piece of legislation, as very important as it replaces the current Basic Conditions of Employment Act and Wage Act and provides a floor of basic conditions of employment for all worker – organised and unorganised – including the most vulnerable, such as domestic and farmworkers.

Business on the other hand want to preserve apartheid cheap labour practices in the workplace by protecting the current BCEA passed by the apartheid regime at the time when employers had a cosy relationship with government, and the majority of workers were disenfranchised. Employers, using globalisation and international competition as their cover, want to remove obstacles to further oppression and exploitation of workers. If employers have their way, South African workers, who, as the Green Paper points out, already work long hours by international standards, would work even longer hours, with very little or no protection.

The challenge facing you as the elected representatives of the people is to send out a signal to workers, through this Bill, as to what you consider to be the minimum employment standards to which every worker should be entitled, concerning basic things like hours of work, periods of sick and maternity leave and rates of over-time pay.

Parliament's choice is stark: to lead the process of eradicating apartheid's legacy from South African work places by improving and securing employment standards for ordinary working people or, to give in to those forces who want to turn back the clock and retain the patterns of apartheid cheap labour and worker security.

From the beginning of the negotiations COSATU indicated that it supported the need to change the South African legislation taking into account the Minister's five year plan and the RDP, the demands of workers during many years of apartheid rule as well as the need for social justice at the workplace.

In this regard we indicated that while we support the broad thrust of major parts of the Green Paper, and subsequent draft Bills to the extent that they seek to set a basic floor, and to improve, and regulate working conditions, there remain certain core areas that we would want addressed. These issues have since become the subject of public debates during our marches and strikes as well as during the ill conceived court case by BSA. Indeed, while the Bill is only now before you, Parliamentarians have already referred to it in their various interventions during the parliamentary debates.

While government and labour generally, COSATU in particular, have revised their positions in search of a settlement, business have refused to change their positions. COSATU attempted to encourage a resolution through offering a number of major compromises. For example, during the course of negotiations last year, COSATU proposed:

- that a 40 hour working week, need not be implemented immediately but that it could be phased-in over a 5 year period.
- that the demand for 6 months paid maternity leave be reduced to 4 months paid with the right of an additional two months of unpaid leave, and
- that the minimum age of child labour be reduced from 18 to 16 years.

Despite these compromises by COSATU, business refused to compromise on its positions. Obviously, business is in no rush to see the implementation of new basic conditions legislation as the present Act was drafted by the apartheid regime at a time when the majority of workers were disenfranchised and when employers had a close alliance with that regime. The resulting intransigence of business led to a deepening of the conflict over the Bill, and endless attempts to delay the process.

In the process, business, supported by their representatives in parliament (especially the NP & DP) have exposed their true intentions:

- under the guise of "labour market flexibility" (i.e. undermining the rights of workers) they are determined to stop progressive labour legislation and to reverse existing legislation which limits the unfettered power which they have enjoyed in the past.
- In attacking the labour legislation business has attacked the legislative programme of Tito Mboweni's Five-Year Programme for the Department of Labour. This can be interpreted as nothing less than a rejection of the ANC government's programme to transform employment relations and promote equity and productivity in the work place. They do it under the guise of promoting employment creation and small business promotion, yet the same business is engaged in mass retrenchments and continues to resist anti-monopoly legislation.

Our submission will focus on the core issues that want the committee to address as well as hand over proposed draft changes for your consideration (contained in the accompanying document). The core issues that we seek to address are the following:

- Hours of work
- The prohibition of the used of child labour
- The variation of standards below what is provided in the legislation
- The right to paid maternity leave
- Employment Conditions Commission
- Transitional arrangements
- Sunday work

2. Hours of Work

The Bill improves working hours in respect of those workers whose hours of work are currently above 45 hours. While we welcome this reduction in working hours, particularly in respect of domestic, security, transportation, farm and mineworkers, we remain of the view that the bill should be strengthened to ensure that the proposed schedule, and systematic reduction in hours. We therefore propose that the bill be amended to include the following:

- Entrench all sectoral minima which are below 45 hours, as a step to the goal contained in the Bill of achieving a 40-hour week. This needs to be explicitly captured in the schedule;
- In addition to the 18 months investigation proposed in the Bill, we recommend that the report be tabled in Nedlac, whereafter negotiations on the systematic reduction of working hours should take place. This should be implemented within two years;
- The reporting to parliament on progress in achieving the reduction of working hours should take place once every two years;

The phasing in of a 40-hour week, combined with a curb on overtime, can assist in increasing employment levels if there is a commitment by employers to invest in employment creation. This will be preferable to the situation where, through entrenching a longer working week, the law pushes the economy onto a path where fewer workers, work longer hours, for less.

3. Child labour

While we welcome the definition of a child in the Bill (below 18 years) in line with the Constitution, the Bill is too lenient in its approach to child labour. COSATU remains of the view that the threshold below which child labour would be prohibited should be set at 16 years instead of 15 as provided in the Bill. Further, COSATU wants to see the beefing up of provisions regulating employment of children between 16 and 18 years. In a country where there is a low skills base, high illiteracy, and youth unemployment, it makes no sense to discourage their parents from keeping their children at school.

4. Variation

The Bill provides for downward variation of basic conditions of employment through individual agreements, collective bargaining, bargaining councils and by ministerial and sectoral determinations. We remain opposed to the variation model in the Bill particularly in relation to the potential for downward variation under the guise of "flexibility" which would be erosion of workers basic rights, without a corresponding benefit to workers. We propose a model that will ensure that where variation takes place, a test of "on balance more favourable" is applied. This allows for a degree of flexibility to parties in collective bargaining, while not undermining the floor of basic rights.

The variation of basic standards has been introduced as a result of business's battle cry for the introduction of greater "labour market flexibility". Decoded, this usually aims to remove workers protection and lower their wages. It reflects business's yearning for a return to the days of apartheid's system of cheap black labour.

The ILO study on the South African labour market (1996) has in fact argued that the South African labour market is too flexible, particularly for the majority of black workers who are faced with harsh conditions and great insecurities as to wage levels, conditions of employment and access to benefits.

Rigidities tend to be concentrated in the upper echelons of the labour market, especially in the managerial and professional strata, who use their access to scarce skills and historically accumulated privileges to entrench their positions in a way which has led to huge disparities.

To the extent that flexibility is about a genuine desire to mould patterns of production to meet peculiar needs, the Bill, as well as collective bargaining arrangements, provide for a number of mechanisms which respect the minimum standards provided in the Bill. This kind of flexibility is in our view adequate to deal with the circumstances facing different sectors.

To the extent that the committee agrees to the variation model in the Bill, the following amendments should be made, to protect a number of core rights from downward variation:

- Working hours should be included as part of the core rights that cannot be varied
- The Ministerial power to vary through sectoral determinations, as well as that of bargaining councils, should be limited to areas stipulated by the Act (as contained in the sections on individual and collective agreements).

5. Paid maternity leave

Women in South Africa particularly black women workers have suffered enormously under apartheid. Many of them have been dismissed for falling pregnant while employed. Some have had to resort to abortions to save their jobs. The current BCEA provides for three months maternity leave with no job guarantee. Unless they are covered by collective agreements, the only payment women receive is 45% of their UIF depending on period of contribution. It is important to note however, that this "maternity benefit" under the UIF, provides for six months, under certain circumstances.

Guaranteed maternity leave without guaranteed income is wholly inadequate. Lack of social security in South Africa also makes women, and many female-headed households, completely dependent on this payment.

We welcome the fact the Bill increases the period of maternity leave from three to four months seemingly with job guarantee. We, however, remain of the view that this does not go far enough particularly with respect to the leave period and payment. We, therefore recommend that the Bill be amended to provide for six months maternity leave of which at least four months should be paid. The Bill should expressly make it clear that this will be paid maternity leave. Further, that the provision dealing with job security be strengthened to make it clear that women are not only entitled to leave, but to their jobs when they return from confinement.

The common claim, including before yourselves yesterday, that payment of maternity leave will cripple employers who employ women, is either a result of deliberate misrepresentation, ignorance, or sexism. We have consistently argued for a social fund, which everyone would contribute to, which would therefore benefit all workers, and employers.

In the event that the UIF is used as a mechanism for payment, women who lose their jobs soon after returning from maternity leave should not have their unemployment benefits prejudiced. We reject the current position that seeks to maintain the levels of payment at 45% in favour of full payment. Taking into account the failure of the tripartite task team to reach agreement on the payment, we request that an independent team be appointed to make recommendations on the level of payment. In the meantime the Bill should be amended to provide for payment being effected through Ministerial determination, at the time that the Bill comes into operation.

6. Employment Conditions Commission

In addition to these core issues of dispute, COSATU remains concerned about the lack of teeth given to the Employment Conditions Commission (ECC), a crucial institution set up by the Bill. The Commission will have the function of, inter alia proposing minimum wages for vulnerable workers who are not covered by the collective bargaining processes. It is problematic that the ECC is being given inferior powers to its predecessor, the Wage Board. We believe that if it is to function effectively, its role must go beyond being a mere advisory institution to the Minister.

7. Transitional Arrangements

The Bill contains a transitional schedule that suggests that in the case of the Mining, Farming and Security Industry the hours contemplated in the Bill will apply six months after the legislation is operational. We propose that hours of work for security workers be reduced from 60 to 55 hours when the Bill is promulgated and thereafter a further 5 hours every 10 months until 45 hours per week is reached, without loss of pay.

Affected sectors and industries should be encouraged to agree on how this would be implemented. Their discussions will not be about whether or when this should take place, but how to effect it within the stipulated period.

The current draft proposed the exclusion of the public sector for 18 months. This is a new point, which was never raised in the negotiations. We do not believe that public sector workers should be excluded from the Bill when it is implemented. We therefore propose that the government motivate why specific areas should be excluded so as to ensure negotiations with the public sector unions on when and how these will be effected.

8. Double Pay for Sunday Work

Sundays are the only day of the week most workers have a chance to be with their families. In terms of the Bill, when workers – who don't ordinarily work on Sunday – are required to work on Sunday, they should receive double pay. COSATU supports the Bill's provision for double pay on Sundays.

Difficulties emerge where an employee works on a Sunday and receives time off in lieu of extra payment. This is because the proposal in the Basic Conditions Bill is worse than the position under the existing Basic Conditions of Employment Act. Under the existing Act the employer had the option to pay the Sunday worker one and one third times the wage rate and give him or her a Paid day off. In terms of the new Bill, there may be an agreement that Sunday workers should be paid at their normal rate and that they receive an amount of paid time-off equal to the difference between what they have received for their Sunday work and what they were entitled to receive if they had been paid at double pay.

The effect of this complicated formula is that workers who take time-off as part of payment for working on Sundays will be worse off under the new Bill than under the current Act. Care should also be take to ensure that there is no difference in benefit between workers who are requested to work on Sunday or on their day off.

The proposed Bill should be amended to ensure that workers who elect to take a day off as part of their payment for Sunday work be placed in at least as favourable a position as is currently provided for under the existing Act.

9. Compliance

Enforcement mechanisms and penalties need to be appropriate to ensure that the rights contained in the Bill are taken seriously and enforced. Enforcement of workers rights should not continue to be taken less seriously than enforcement of property, patent, and other rights, which contain huge penalties.

Issues raised by business on the process

- **Nedlac and parliament**

Business and their representatives in the media are trying to claim that the processing of the Bill through parliament "undermines tripartism", "threatens to collapse Nedlac" etc. Those arguing this either don't understand the nature of the Nedlac process, or are deliberately trying to obfuscate the fact that business is abusing Nedlac to subvert the democratic process. COSATU

has consistently throughout negotiations on the Bill argued that Nedlac should not be used to frustrate the parliamentary process, but to enhance it.
Nedlac was designed to deepen democracy, and to involve stakeholders. Not to frustrate legislation, or prevent parliament from exercising its sovereignty. Any reasonable person observing negotiations on the Bill in Nedlac surely must accept that after more than a year, these negotiations had run their course, and that parliament now needed to exercise its mandate to take a final decision. It is hypocritical for business to protest at the Bill being taken to parliament, when failure to reach agreement was in large part the result of business refusal to negotiate seriously, or to make meaningful compromises. Many of us gained the clear impression that business was abusing Nedlac to deliberately frustrate the process, scuttle the Bill, and thereby retain the status quo.

- **Small business**

Big business is using small business as a red herring to conceal their real concern: that the Bill introduces measures, which inhibit their power to exploit. Big business organisations, which are represented here, and also claim to represent small business, are all affiliates of BSA, which was involved in the Nedlac negotiations.

Figures on working hours show that it is those working for large employers, not small business, who are working the longest hours, and the longest overtime (see table below). It is therefore nonsense for them to claim that their real concern is to protect small business.

SMALL BUSINESS WORK LESS HOURS THAN BIG BUSINESS			
Number of workers	**Hours per week**	**Overtime hours**	**Total hours**
1 – 50	42,5	3,2	45,7
51 – 150	42,6	6,0	48,6
151 – 400	43,4	5,9	49,3
401 +	44,3	5,3	49,6

Source: Green Paper on Employment Standards

Way forward
Following the many months of negotiations and final disagreement amongst the Nedlac partners, the task falls on South Africa's first post-apartheid Parliament to decide on the content of the Basic Conditions Bill.
COSATU is confident that the Parliamentary process – including submissions at public hearings – will yield positive results as Members of Parliament are well aware of the conditions and expectations of South Africa's workers.

APPENDIX: PROPOSED LEGAL DRAFTING

1. This draft takes account of the Bill published in April 1997 ("the April Bill") and the Bill presented to Parliament ("the October Bill").
2. Core issues
   The core issues for COSATU are set out in the following items:
   Working Hours – 5, 6 and 7.
   Sunday work – 21, 22 and 23
   Maternity Leave – 31
   Variation – 42 – 50 and all items where comments are made about the variation of a specific condition of employment
   Child Labour – 41

Item	Section in Sept Bill	Proposal	Motivation
	CHAPTER 1		
1.	1	Insert the following definition: "designated representative means a representative trade union, or, in the absence of representative trade union, the representatives nominated by the affected employees, or in the absence of such nominated representatives, the affected employees."	As far as possible, a standard definition of a representative of affected employees is necessary, and this proposal is similar to the provisions of s189(1) of the Labour Relations Act which designates parties to be consulted over retrenchment.
2.	1	Insert the following definition: "Representative trade union" means a trade union, or two or more trade unions acting jointly, whose numbers are a majority of the affected employees."	It is necessary to define this.
3.	1	Insert the following definition: "Serve" means to send by registered post, telegram, telex, telefax or deliver by hand.	This is the same definition as in the Labour Relations Act.
4.	3(2)	Amend the subsection as follows: "The provisions of this Act apply to persons undergoing vocational training except to the extent that any term or condition of their employment is regulated by the provisions of any other law provided that the provisions of the other law are not less favourable than the provisions in this Act."	No other law should permit the downward variation of conditions of employment of persons undergoing vocational training.
	CHAPTER 2		
5.	9(1)	Table 1 of schedule 3 (Transitional Arrangements) should be	It is necessary to provide a schedule for the reduction of

Item	Section in Sept Bill	Proposal	Motivation
		amended with respect to security guards. See item 5: "For a period of 12 months after the commencement date of this Act, provided that the employees ordinary hours of work do not exceed 55 hours per week; and thereafter reduce the maximum ordinary hours of work every 10 months thereafter until the maximum ordinary hours of work per week are 45" Insert in schedule 3 an item 5(2) and renumber 5 as 5(1): "Despite section 9(1) an employer who prior to the commencement of this Act, required or permitted any employee or category of employees to work more than or equal to 41 but less than 45 ordinary hours per week, must reduce those ordinary weekly hours applicable to such employee or category of employees by one hour from the commencement of this Act." Industries and sectors where a reduction in ordinary hours of work is to take place due to the provisions of this Act must negotiate the effect of this upon wages and remuneration. COSATU believes and will motivate during these negotiations that any reduction in weekly working hours caused by this Act must be without loss of benefits and remuneration.	hours of security guards. Employees who have obtained better hours of work in the past should retain that position relative to a new floor of rights.
6.	9(2)	Substitute this subsection with the following: An employee's ordinary hours of work in terms of subsection (1) may be extended up to 15 minutes in a day or 60 minutes in a week to enable an employee whose duties include serving members of the public to continue performing those duties after the completion of ordinary hours of work <u>by a written agreement with a designated representative</u>." "Designated representative" means "a <u>representative trade union</u>, or, in the absence of a <u>representative trade union</u>, the representatives nominated by the affected employees, or, in the absence of such nominated representatives the affected employees"	This is a core issue relating to the mechanism for variation. By ensuring that negotiations with a representative trade union takes place, the Act will be promoting the values of the Labour Relations Act.

Item	Section in Sept Bill	Proposal	Motivation
		"Representative trade union" means "a trade union, or two or more trade unions acting jointly, whose numbers are a majority of the affected employees."	
7.	9(3)	Include a new sub-item 4(3) to schedule 1: "The report must detail the progress made towards the reduction of weekly working hours on a sectoral and national basis." Amend item 5(2) of schedule 1 to read: "The Department's first report must be published 6 months after completion of the investigation referred to in item 4. Thereafter the reports must be published every two years." Amend item 5(3) of schedule 1 to read: "The report must be tabled in Parliament and submitted to NEDLAC by the Minister."	
8.	10(1)(a)	This subsection should be substituted with: "… to work overtime except in accordance with a written agreement with a designated representative."	This is a core issue relating to the mechanism for variation by agreement. See COSATU's comments in relation to section 9(2)
9.	10(3)	This subsection should be substituted with: "Despite subsection (2), a written agreement with a designated representative may provide for an employer to …"	This is a core issue relating to the mechanism for variation by agreement.
10.	10(4)(b)	This subsection should be substituted with: "A written agreement with a designated representative may increase the period contemplated by paragraph (a) to 3 months."	This is a new subsection which did not appear in the April Bill. COSATU's first problem relates to the mechanism for variation. The second problem is that the period of 12 months is too long.
11.	10(5)	This subsection should be substituted with: "A agreement concluded in terms of subsection (1) lapses after one year and if renewed may not be valid for longer than a one year period on each renewal."	There is no reason why this should be limited only to the first year. To protect workers' rights it should be up for negotiation each year.
12.	11	Delete this section	COSATU is not opposed to the compressed working week or averaging of hours in principle. However it should not mean that workers sacrifice their overtime pay for any hours that they would have worked overtime had there been a normal working week. This 'flexibility' is flexibility of standards

Item	Section in Sept Bill	Proposal	Motivation
			downwards which favours the employer only rather than flexibility which provides an equivalent benefit to the employee as a result of the change.
13.	11(2)	Notwithstanding the comments about s11 above, it is not clear why subsection (2)(d), which was in the April Bill, has now been deleted. Subsection (2)(d) stated: "(d) after 18h00 and before 06h00 the next day" If this section remains in the Bill subsection (d) should be reinstated.	It is necessary to clarify what period of the 24 cycle is considered night work. It is only proper in COSATU's view that this should be a twelve hour cycle that coincides most closely with common sense of notions of night and day.
14.	11	Notwithstanding the comments about s11 above: 1 Retain subsection (3) which was in the April Bill. 2 Agreements to vary should always be in writing with a representative as defined.	It is not clear why subsection (3), which was in the April Bill, has now been deleted.
15.	12	See comments with respect to section 11 above. Notwithstanding the comments above, Subsection 12(4) should be deleted. If this section remains in the Bill, where averaging is introduced it should also result in employees receiving no less than the payment for the average ordinary and overtime hours worked each week or each month during the period over which hours are averaged.	S12(4) is a new provision in the October Bill. It is not clear why the limitation on the duration of the collective agreement about averaging, namely 12 months, should be limited to the first 2 collective agreements. Surely it should apply to all collective agreements? It should not be possible for employees to be lured into sacrificing their permanent rights for a short term economic gain in one round of negotiations.
16.	14(2)	The subsection should be substituted with: "An employer may not require or permit an employee to work during the meal interval unless the employee is performing emergency work or is a domestic worker who is taking care of children, the aged, the sick, the frail or the disabled.	The wording is too broad. It should be limited to specific categories of employees.
17.	14(5)	Substitute this section with: "A written agreement with a designated representative may…"	This is a core issue relating to the mechanism for variation by agreement.
18.	15(1)(b)	Substitute this section with: "a weekly rest period of at least 36 consecutive hours must include Sunday unless otherwise agreed to by means of a written agreement with a <u>designated representative</u>."	This is a core issue relating to the mechanism for variation by agreement.
19.	15(3)(a)	Amend this section to refer to 72 consecutive hours instead of 60	The 60 hour threshold is too short.

Item	Section in Sept Bill	Proposal	Motivation
		consecutive hours.	
20.	15(3)	Substitute this section with: "Despite subsection (1)(b), a written agreement with a designated representative may provide for - …"	This is a core issue relating to the mechanism for variation by agreement.
21.	16(1)	Add a subsection in section 15 which reads: "For the purposes of this section, one day of the weekly rest period of an employee who normally works on a Sunday is deemed to be equivalent to a Sunday and all the provisions of this section must apply to that day with the necessary changes. The day referred to in this subsection must be agreed in writing with a designated agent."	An employee who normally works on a Sunday should not be disadvantage vis-à-vis other workers in relation to pay for work performed on his or her normal rest period. COSATU is not seeking to introduce work on a rest day, but variation by means of a collective agreement concluded at a bargaining council, ministerial exemption and a sectoral determination may permit this. COSATU seeks a provision for payment if such exemptions are made possible under the Act. This is subject to agreement on the variation clause.
22.	16(3)	Substitute the preamble in the existing subsection with: "Despite subsections (1) and (2) a written agreement with a designated representative may…"	This is a core issue relating to the mechanism for variation by agreement.
23.	16 – new section	Substitute 16(4) with the following and renumber the existing subsection as 16(5) with the necessary numbering changes to subsequent subsections: "If an employee grants a combination of time off and pay for work performed on a Sunday, the combination must be no less favourable than the equivalent of double the employee's rate of pay, or, one day of paid time off and the remainder and the remainder at one and a third the employee's rate of pay for the time the employee worked on Sunday, whichever is higher."	This will ensure that the interests of employees currently benefiting from the provisions of s10(2)(b) of the old BCEA are protected.
24.	17(2)	Substitute this section with: "An employer may only require or permit an employee to perform night work in accordance with a written agreement with a designated representative, and if -…"	This is a core issue relating to the mechanism for variation by agreement.
25.	17(2)(b)	Substitute this subsection with: "the employer provides safe transportation between the employee's place of residence and the workplace at the commencement and conclusion of the employee's shift."	The Bill ignores the dangerous character of some forms of transport (e.g. trains at night).

Item	Section in Sept Bill	Proposal	Motivation
26.	17(3)(a)	Substitute this subsection with: "inform the employee of – (i) any health or safety hazards associated with the work that the he or she is required to perform; and (ii) The employee's right to undergo a free medical assessment …. This communication must be in writing to the employee in a language that the employee understands. If the employee is not able to understand the written communication, it must be explained orally in a language that the employee understands."	An employee should be informed of all his or her rights about night work. The communication must be understood by the worker in order to be sure the employee's consent is genuine.
27.	17(3)(b)		It is not clear why the point about the "costs of the medical examination" has been left out of the October Bill when it was present in the April Bill. The employee should not have to bear the costs of the medical examination as night work is for the convenience of the employer.
28.	17(3)(c)(ii)	Delete this subsection	This subsection was not in the April Bill. It can provide an easy mechanism for employers to avoid compliance with the clause and compel employees who are ill to work night work which is supposed only to be worked only by agreement. It also is contrary to the intention of Clause 10(4) of the Code of Good Conduct for Dismissals which stipulates that an employer should give particular consideration to employees who suffer from work related illnesses in seeking to accommodate their incapacity.
29.	19(2)	Delete this subsection.	This subsection was not in the April Bill. There is no reason why the provisions of this chapter should not apply to all leave.
30.	23(1)	Amend this subsection as follows: "An employer is not required to pay an employee in terms of section 22 if the employee has been absent from work for more than two consecutive days or more than two occasions during an eight week period and, on request by the employer, does not produce a medical certificate stating the employee was unable to work for the duration of the employee's latest absence on account	The employee may not be able to produce a certificate for the previous occasions that he/she was absent in the last 8 weeks. He/she may have been genuinely sick on those occasions.

Item	Section in Sept Bill	Proposal	Motivation
		of sickness or injury."	
31.	25(1)	Substitute the following for the existing subsection: "An employee is entitled to at least six consecutive months maternity leave." As regards payment insert a new subsection 25(7) with the following effect: "An employee is entitled to payment of a percentage of her ordinary remuneration for a period of at least 4 months whilst on maternity leave, which must be paid to the employee by the Unemployment Insurance Fund (UIF). The Minister must prescribe the percentage of ordinary remuneration to be paid in terms of this clause. The payment made to an employee by the UIF for maternity leave benefits must not adversely affect her right to unemployment benefits that would normally be due to her under the UIF."	It is desirable for a woman to take six months leave for the physical and psychological well being of the child and the mother. A woman should not be discriminated against in respect of her unemployment entitlement merely because she drew maternity leave benefits from the UIF fund.
32.	27(2)	Substitute this subsection with: "An employer must grant an employee, during each annual leave cycle, at the request of the employee, a total of three days' paid leave, which the employee is entitled to take <u>in whole or in part</u> -"	The underlined additions are to make clear that such leave may be taken in part.
33.	28(2)	This subsection should be deleted.	This is a new provision in the October Bill which widens the classes of excluded workers. There is no reason why small employers and employers of domestic workers should be exempt from the sections mentioned.
34.	34(1)(a)	Substitute this subsection with: "the employee gives prior written consent to the deduction in respect of a debt specified in the agreement <u>which must also specify, where applicable, the nature and quantity of any goods sold which gave rise to the debt</u>; or"	It must be clear what the deduction is for. A deduction like this could lead to a volatile dispute. The Act must prevent such disputes by ensuring the provision of adequate information.
35.	34(2)	Substitute this clause with: "Despite section 34(1) an employer may not make any deduction arising out of any loss or damage, unless…"	CPSATU wishes to limit any deductions for loss or damage circumventing the requirements of s34(1)(a) and s34(2) by permitting such deductions in a collective agreement under s34(1)(b). With all deductions that may arise from loss or damage, a fair procedure must be followed.
36.	34(2)(d)	"the total deductions from the employee's remuneration in terms of this subsection do not exceed one-quarter of the employee's	A deduction of ¼ of an employee's annual bonus could amount to a significant reduction in the take home bonus,

Item	Section in Sept Bill	Proposal	Motivation
		remuneration in money excluding any remuneration paid annually apart from leave pay."	especially as these are usually taxed at a higher rate at the time of payment. COSATU believes deductions should be levied only on regular remuneration.
37.	34(5)(a)	COSATU proposes that the subsection be substituted with: "Repay any remuneration except for overpayments previously made during the two months preceding the repayment by the employer resulting from an error in calculating the employee's remuneration."	In s70(d) the Bill limits the recovery of underpayment by the Labor Inspectorate to arrear underpayment of 12 months only, whereas no limit is placed on the period for recovering overpayments.
38.	37(1)(b)		There is no good reason why an employee should be entitled to less notice pay after one month in employment than after one year.
39.	37(2)	Delete this section	Notice periods are fundamental entitlements which should not be different in different sectors as they affect all employees in the same manner. Also, in the absence of a minimum notice period of retrenchment in the LRA, such a provision is essential to reduce hasty and ill-considered retrenchments.
40.	41(3)	COSATU proposes that this sub-section should be amended to read: "(3) The Minister may vary the amount of severance pay in terms .. (2) by notice in the Gazette. Despite any other provision in this Act, may only be done after consulting NEDLAC and the Public Service Co-ordinating Bargaining Council established under Schedule of the Labour Relations	The amendment is necessary in one view to ensure no downward revision of severance entitlements by sectoral or ministerial determination.
	CHAPTER 6		
41.	43, 44	The age of 15 should be replaced with the age of 16 in subsections 43(1) and 44(1).	Given the shortage of jobs for adult breadwinners and the importance of raising educational standards of school leavers, children should be encouraged to stay in school longer.
	CHAPTER 7		
42	49	Delete subsections (1) and (2) and replace with: "*A collective agreement may replace or exclude a basic condition of employment to the extent permitted by this Act or a sectoral determination."*	
43.	50(1)		Labour welcomes the limitation of exemptions to individual cases but believes that it is unnecessary and undesirable to

Item	Section in Sept Bill	Proposal	Motivation
			extend the class of applicants to employer organizations. Individual exemptions should only be granted temporarily on grounds of dire economic necessity requiring short term relief, otherwise they can simply become a device for undercutting competitors. Also, merely because a business is failing does not mean that employees should bear the additional cost of that failure in the form of lower conditions of employment. Only if the relief granted will clearly resolve the short term difficulties of the business should it be granted.
44.	50(2)		There is no justification for not limiting the Minister's discretion to vary core rights. The minister should not issue exemptions from basic conditions of employment which are part and parcel of bargaining council agreements.
45.	50(3)	Amend the revised section as follows: *"The minister must request the Commission –* *(a) to advise and make recommendations on any application made in terms of subsection (1);* (b) *to prepare guidelines for the consideration of applications made in terms of subsection (1)."*	In order for the ESC to play a proper advisory role, its views ought to be considered in all instances. The Minister should act on the recommendation of the Commission as a matter of course and not merely seek its advice on a selective basis. If he/she does not agree with the Commission's recommendations then the Minister should have the power to refer the matter back to the Commission.
46.	50(6)(b)	Substitute for the existing subsection (b) the following: *"(i) the employer has served a copy of the application, together with a notice stating that representations can be made to the Minister, on the designated representative"*	See motivation for definition of designated respresentative.
47.	50(6)	Insert a new subsection 50(6)(c) as follows: *"The employer must serve the documents in terms of subsection 50(6)(b) not later than the date on which the application is served on the Minister."*	This is necessary to permit an adequate opportunity to respond.
48.	50(7)(a)	Replace this subsection with: *"(a) may be issued for a period of one year."*	Indefinite or long term determinations are undesirable, because they can lead to a variation becoming entrenched as a norm.
49.	50(9)	Substitute the existing preamble in this subsection with the following:	The determination may not refer to an employer but to a class of employers

Item	Section in Sept Bill	Proposal	Motivation
		"An employer in respect of whom or whose employees a determination has been made must -…"	
50.	50 – new subsection	Add a new subsection 50(10) as follows: *"If the Minister does not accept a recommendation of the Commission made under s50(3)-* *(a) he or she must refer the application back to the Commission for reconsideration, and* *(b) after the Commission has reconsidered the matter and reported the outcome to the Minister, the Minister may make a decision on the application."*	This formulation is simply a parallel formulation of the process applying to sectoral determination in section 55. There is no reason in principle why variations be the Minister ought to be treated differently.
51.	51(2)	Substitute this subsection with: "A sectoral determination must not be inconsistent with the purposes of this Act, be made in accordance with s50(2), with the necessary changes, the provisions of this Chapter and by notice in the Gazette."	All variations of basic conditions should be subject to the same principles irrespective of which method of variation is used, otherwise inconsistency and unfairness could result. Furthermore, because sectoral determinations are essentially substitutes for collective bargaining, they should be subject to the same variation principles. Rather than the vague test of variation which is not inconsistent with the purposes of the Act, COSATU prefers a test that only permits variation if it provides for more favourable conditions overall in the sense contained in Annexure A
52.	51(3)	Substitute the following for the existing subsection: "The Minister must – (a) publish a notice in the Government Gazette and at the same time in a daily newspaper circulating in an area to be investigated, which sets out the terms of reference of the investigation and which invites written representations by members of the public no less than 30 days from the date of publication of the notice; and (b) must advise parties who wish to make oral representations, which must be made in public, of the place and time at which they may be made."	This provision will ensure a reasonable opportunity for an open process of continuity to take place.
53.	54	Add a new subsection 54(5) as follows: "The report referred to in 54(1) together with the comments of the commission in terms of 54(4) shall be made public within 10 days of submission to the Minister."	This would facilitate a process of more transparent decision making and would indirectly enhance the quality of the decision finally made.

Item	Section in Sept Bill	Proposal	Motivation
54.	55	Replace section 55(3) with: "After considering the further report and recommendation of the Commission, the Minister may make a sectoral determination in accordance with the Commission's recommendations."	See motivation under section 50 (new subsection)
55.	55(4)(n)	Substitute "minimum conditions" for "conditions" in subsection (n).	This subsection is inconsistent with references in the same section to minimum conditions of employment.
	CHAPTER 9		
56.	59(2)(d)	Delete this subsection	This issue is not appropriate to entrust to the ECC, which is concerned with setting of employment standards not macro economic policy.
57.	61	Substitute this section with: "The Commission ~~may~~ must hold public hearings at which it ~~may~~ must permit interested parties to make oral submissions on any matter that the Commission is considering in terms of section 59(2)."	It would be inconsistent for the Commission to hold public hearings on some occasions but not others, and could unduly limit participation in the process.
58.	59 – 62	The appointment of members of the Commission should not be in the Minister's prerogative entirely. The model applicable to the appointment of the Governing Body of the CCMA should apply to the appointment of members of the Commission. In addition, provision should be made for the appointment of assessors or additional members drawn from organized labour and business, as provided for in previous drafts of the Bill. Where a statutory council exists within the scope of the possible determination the additional members must be drawn from statutory council. Where no statutory council exists the Labour and Business representatives at Nedlac should nominate the assessors and additional members.	The powers and functions of the Commission, compared to that of the old Wages' Board, are seriously deficient. The Commission's functions as set out in the Green Paper and the previous drafts of the Bill specified a greater role of the Commission. The functions of the Commission should therefore be re-visited.
	CHAPTER 10		
59.	68(1)	Insert the words "within a specified time limit" after the words "comply with the provision"	It is logical that such an undertaking should specify such a limit for implementation.
60.	69(1)	Substitute the following for the existing subsection: "A labour inspector who has reasonable grounds to believe that an employer has not complied with a provision of this Act, or an undertaking in terms of s68(1), must issue a compliance order	It is important that non-compliance is not tolerated for an indefinite period of time and that inspectors act promptly in tackling transgressors.

Item	Section in Sept Bill	Proposal	Motivation
		within 14 days of acquiring information on which his belief is based."	
61.	68(5)	Substitute the following for the existing subsection: "An employer must comply with the compliance order within the time period stated in the order or within 14 days of the delivery of the order whichever period is shorter, unless the employer objects in terms of section 71."	If one considers the time period since the employer is first made aware of the transgression, this would give an employer roughly a month to rectify matters, which should be sufficient.
62.	70(d)	Substitute "24 months" for "12 months"	An employer commits a breach of the fundamental provisions of the Act where underpayments occur. In the past, there was no limit for recovering underpayments. The proposal of the 24 months represents a compromise already on the normal 3 year limit for civil debt recovery.
63.	71(1)	Insert the following at the end of this subsection: "… and must give a copy of the objection to a compliance order to a designated representative before submitting the appeal to the Director-General."	It is essential that the affected parties be notified of an employer's intention to oppose an order so it can make representations to the Director-General as well.
64.	71(3)	Substitute this subsection with the following: "The Director-General, after considering any representations by the employer and any other relevant matter must as soon as possible but not later than 21 days after deliver of the employer's representations – (a) ~~may~~ confirm, vary or cancel an order or any part of an order; (b) …"	It is desirable to put time limits on such activity to ensure that rights are not effectively denied by bureaucratic delay.
65.	71(5)	Substitute "designated representative" for "representative" in this provision.	The Act should be consistent in the way it describes a representative of employees as far as possible.
66.	72(1)	Add the following underlined words in the subsection: "… that order, and at the same time must serve a copy of the representations on all trade unions which represent any affected employees, and on the affected employees who are not represented by any trade union."	To prevent unnecessary duplication of action notice to potential claimants for employers should be given.
67.	73(1) & (2)	Substitute " must within 21 days of the period mentioned in subsection 68(1)" for "may".	COSATU believes that the Director-General should not be granted a discretion as to whether to apply to the Labour

Item	Section in Sept Bill	Proposal	Motivation
			Court, especially if employees cannot apply to enforce a compliance order themselves. Time limits are important to prevent denial of rights through delay. See item below.
68.	73	Insert a new subsection 73(4) as follows: "Despite section 73(1) and (2), if an employer has not complied with the order in subsection 69(5) and the Director-General has not made an application in terms of subsection 73(1) and (2), an affected employee or trade union representing any affected employees may apply to the Labour Court to make the compliance order an order of the Labour Court in terms of section 158(1) of the Labour Relations Act."	Trade Unions or employees should not be denied the opportunity to use simpler mechanisms, especially once a compliance order already exists.
69.	76(2)	Add the following subsection 76(2): "In any proceedings concerning a contravention of this Act or any sectoral determination, if an employer has failed to keep any record in accordance with section 31(1) or kept that record as required by section 31(2), or if that record is false, the employee shall be deemed to have worked no less than the ordinary hours of work per week for the period in respect of which a record has not been kept or in respect of which the record is false, unless the contrary is proved."	See section 35(2) of the October Bill which creates a presumption of an employee's wage. Because the employer will be the one alleging that the employee does not work 45 hours per week, he/she will have to prove this. Since employees often will have no records of hours worked and that employers are bound to keep records under s31 this would not be a difficult burden for an employer to discharge. Concerning the part-time worker this provision is an incentive to keep a record. Part-time workers could be accommodated by production of a written contract referred to under s28.
70.	S77(6) S79 of April Bill	In the April Bill there was a section dealing with the recovery of monies. It has been deleted in the October Bill. COSATU suggests that it be retained as s77(6) and that the CCMA should also be given jurisdiction to hear and determine claims under this Act up to a certain value.	Not all CCMA work relates to employees whose services are terminated, for example: disputes about residual unfair labour practices. This will entail additional resources must be diverted for this function from existing resources already provided by the State with respect to the small claims court.
	CHAPTER 11		
71.	84	Add the following underlined words: "… Provided that any previous payment <u>by the same employer</u> of severance pay in terms of section 40 must be taken into account in determining the employee's entitlement to severance pay."	This should prevent any doubt creeping in about which severance pay is being considered.
72.	86(2)	Delete this subsection	There is no similar provision in the Labour Relations Act

Item	Section in Sept Bill	Proposal	Motivation
73.	87(1)	Add in the following as subsections (c) and (d) with the necessary numbering changes to the succeeding subsections: "(c) must issue a code of good practice on confidentiality of information in the workplace. (d) must issue a code of good practice on night work."	Since both of these codes are necessary for proper implementation of the Act, they should be specified explicitly.
	SCHEDULE ONE	See Item 5	
	SCHEDULE THREE		
76	Item 2 of Schedule 3	The Act must state the specific issues from which the State may be excluded from the provisions of this Act. They cannot have a blanket exclusion for 18 months.	There is no justification for discriminating against public service employees.