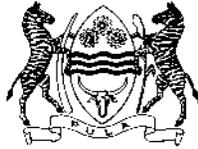


EMPLOYMENT (AMENDMENT) ACT, 2010

(Published on 10th September, 2010)

No. 10



of 2010

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Employment Act.

Date of Assent: 3rd September, 2010

Date of Commencement: 10th September, 2010

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Employment (Amendment) Act, 2010.
2. The Employment Act, (in this Act referred to as “the Act”), is amended in section 2 by —
 - (a) substituting for the definition of “employee” the following new definition —

““employee” means any person who has, either before or after the commencement of this Act, entered into a contract of employment for the hire of his labour:
Provided that the expression shall not include a public officer;”
 - (b) substituting for the definition of “employer” the following new definition —

““employer” means any person who has entered into a contract of employment for the hire of the labour of any person, including a public authority, or the person who owns or is carrying on for the time being or is responsible for the management of the undertaking, business or enterprise of whatever kind in which the employee is engaged:

Short title
Amendment of
section 2 of
Cap. 47:01

Provided that the expression shall not include the Government in respect of all of its officers;”

(c) substituting for the definition of “forced labour” the following new definition —

““forced labour” means all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself voluntarily, other than labour —

- (a) required in consequence of a sentence or order of a court;
- (b) required of any person while the person is lawfully detained and that, though not required in consequence of the sentence or order of a court, is reasonably necessary in the interest of hygiene at the place at which that person is detained;
- (c) required of a member of a disciplined force in pursuance of the member’s duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, required by law of such person in place of such service;
- (d) required during any period of public emergency or in the event of any other emergency or calamity which threatens the life and well-being of the community, to the extent that the requiring of such labour is reasonably justifiable in the circumstances of any situation arising or existing during that period or as a result of that other emergency or calamity, for the purpose of dealing with that situation; or
- (e) reasonably required as part of reasonable and normal communal or other civic obligations;”;

(d) substituting for the definition of “public authority”, the following new definition —

““public authority” means a corporation established by a written law or corporation registered in accordance with the Companies Act in which the Government owns a majority of all the equity shares;” and

(e) substituting for the definition of “wage” or “wages”, the following new definition —

““wage”, in relation to any contract of employment, means remuneration or earnings, however designated or calculated, which is paid by an employer to an employee, is capable of being expressed in monetary terms, is fixed by mutual agreement or by legislation, and is payable by virtue of a written or unwritten contract of employment;”.

3. Section 23 of the Act is amended by —

(a) substituting for paragraph (d) the following new paragraph —

“(d) the employee’s race, tribe, place of origin, social origin, marital status, gender, sexual orientation, colour, creed, health status or disability;” or

(b) inserting a new paragraph (e) as follows —

“(e) any other reason which does not affect the employee’s ability to perform that employee’s duties under the contract of employment.”.

Cap. 42:01

Amendment of
section 23 of
the Act

4. Section 27 of the Act is amended by inserting immediately after subsection (1), the following new subsection —

Amendment of section 27 of the Act

“(1A). Notwithstanding subsection (1), the employer shall, in the case of termination of a contract of employment before an employee has served a continuous period of 60 months, pay to the employee a severance benefit at a rate proportionate to that employee’s length of service.”.

5. The Act is amended by deleting section 45.

Deletion of section 45 of the Act

6. The Act is amended by substituting for section 49, the following new section —

Amendment of section 49 of the Act

“Termination of contract in certain circumstances

49. (1) If the employer is unable to fulfil a contract of employment to which this Part applies or if owing to sickness or accident the employee is unable to fulfil such a contract, the contract may be terminated, subject to conditions safeguarding the right of the employee to any wages earned, any compensation due to him in respect of the sickness or accident and any right to repatriation.

(2) A contract of employment to which this Part applies may be terminated by agreement between the parties —

(a) subject to conditions safeguarding the employee from the loss of the employee’s right to repatriation unless the agreement for the termination of the contract of employment otherwise provides;

(b) where the employee’s consent to the agreement has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

(c) subject to the settlement of all monetary liabilities between the parties.”.

7. Section 83 of the Act is amended by substituting for subsection (1), the following new subsection —

Amendment of section 83 of the Act

“(1) No employer shall impose in any contract of employment, any term which limits the manner in which an employee may expend the employee’s wages or any other payments due to the employee after they have been paid to the employee, and every contract of employment which contains such a term, is void to the extent that it so provides.”.

8. The Act is amended by substituting for section 86, the following new section —

Amendment of section 86 of the Act

“Authority of employer to open shop

86. (1) Nothing in this Part shall prohibit an employer otherwise lawfully entitled to do so from establishing a shop for the sale of provisions generally to the employer’s employees or other people rendering services connected with the employer’s undertaking; but no employee or other person shall be compelled by any contract of employment, agreement or order, written or oral, to purchase provisions at any such shop, or buy services operated in connection with that undertaking.

- (2) Any person who compels or seeks to compel —
- (a) any employee by any contract of employment, agreement or order; or
 - (b) any other person by agreement or order, to purchase provisions at any such shop, or buy services operated in connection with that undertaking to employees or such other persons shall be guilty of an offence and liable to the penalties prescribed by section 151 (c).”

Amendment of section 100 of the Act

9. Section 100 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) Any employee shall, after medical examination at the expense of the employer by a medical officer nominated by the employer, or after medical examination at the expense of the employee by a medical officer nominated by the employee, be entitled to such sick leave as the medical officer concerned recommends, and shall be entitled to be paid his basic pay for at least 20 working days of such sick leave in any one year of continuous employment.”

Amendment of section 101 of the Act

10. The Act is amended by substituting for section 101, the following new section —

“Powers of Commissioner to secure payment of wages due to employees of contractors, subcontractors and employers

101. (1) Notwithstanding the provisions of any other law, where the Commissioner is satisfied that a contractor, subcontractor or an employer has ceased to carry on business or operate as such within Botswana and that a significant number of the contractor’s, subcontractor’s or employer’s employees or former employees are due wages under their contracts of employment from the contractor, subcontractor or employer, the Commissioner may summarily seize any movable property belonging to the contractor, subcontractor or employer that the Commissioner is satisfied has been used to carry on the business of the contractor, subcontractor or employer, and cause the same to be sold by public auction.

(2) The Commissioner shall have control of the proceeds of any sale by public auction in terms of this section and shall use the same towards payment of such wages as he is satisfied are due to the employees or former employees of the contractor, subcontractor or employer in question.”

Amendment of section 108 of the Act

11. Section 108 of the Act is amended by substituting for subsection (1), the following new subsection —

“(1) No young person or child shall be employed on any work which is harmful to his health, development, safety, or morals.”

Amendment of
section 113 of
the Act

12. Section 113 of the Act is amended by substituting for subsection (5), the following new subsection —

“(5) The employer shall pay every female employee whilst she is absent from work in pursuance of subsection (2) or (4) an allowance of not less than 50 per cent of the basic pay and other benefits she would otherwise have been entitled to receive, and this subsection shall apply notwithstanding the provision of any law for the time being in force relating to the determination and payment of a minimum wage:

Provided that the Minister may, by Order published in the *Gazette*, amend this section to increase the rate of maternity allowance herein prescribed after consultation with the Minister for the time being responsible for health and with registered organizations of employers and employees.”.

Amendment of
section 118
of the Act

13. Section 118 is amended by substituting for subsection (1), the following new subsection —

“(1) Where a female employee wishes to suckle her child or otherwise feed him herself, the employer shall permit her to do so for half-an-hour twice a day during the hours of work for six months immediately after her return to work, pursuant to the provisions of this Part, following her confinement and shall pay her basic pay in respect of each such period as if it were ordinary working time:

Provided that the two half-an-hour feeding periods, may be aggregated and taken as one continuous hour, at the option of the employee and in agreement with the employer.”.

Amendment of
section 143 of
the Act

14. Section 143 of the Act is amended under subsection (2) by inserting immediately after paragraph (d), the following new paragraph —

“(e) advise and consult the Minister on International Labour Organisation standards.”.

Amendment
of Third
Schedule to
the Act

15. The Third Schedule is amended under paragraph 1 by deleting subparagraph (3).

PASSED by the National Assembly this 3rd day of August, 2010.

BARBARA N. DITHAPO,
Clerk of the National Assembly.