

BILL

To amend the Labour Act (Chapter 28:01); and to provide for matters connected therewith or incidental thereto. Enacted by the Parliament and the President of Zimbabwe.

1 Short title

This Act may be cited as the Labour Amendment Act, 2015.

2 Amendment of Section 2 Cap 28:01

Section 2 (“Interpretation”) of the Labour Act (Chapter 28:01) (hereinafter called the principal Act) is amended by the insertion of the following definition- “forced labour” means any work or services which a person is required to perform against his or her will under the threat of some form of punishment.”

3 Amendment of Section 11 of Cap 28:01

Section 11 (“Employment of young persons”) of the principal Act is amended – in subsection (1) –

(i) in paragraph (a) by the deletion of “thirteen years” and the substitution of “sixteen years”;

(ii) in paragraph (b) by the deletion of “fifteen years” and the substitution of “sixteen years”;

(b) in subsection (2) by the deletion of “between the ages of thirteen and fifteen years” and the substitution of “below the age of eighteen years”;

(c) in subsection (3) by the deletion of “under the age of fifteen years but not younger than thirteen years” and the substitution of “under the age of eighteen years but not younger than sixteen years”.

4 Amendment of Section 12 of Cap 28:01

Section 12 (“Duration, particulars and termination of employment contract”) of the principal Act is amended –

(a) by the insertion after subsection (3) of the following subsection –

“(3a) A contract of employment that specifies its duration or date of termination, including a contract for casual work or seasonal work or for the performance of some specific service,

shall, despite such specification, be deemed to be a contract of employment without limitation of time upon the expiry of such period of continuous service as is –

(a) fixed by the appropriate employment council; or

(b) prescribed by the Minister, if there is no employment council for the undertaking concerned, or where the employment council fixes no such period; and thereupon the employee concerned shall be afforded the same benefits as are in this Act or any collective bargaining agreement provided for those employees who engaged without limit of time.”;

(b) by the insertion after subsection (4) of the following subsections –

“(4a) No employer shall terminate a contract of employment on notice unless –

(a) the termination is in terms of an employment code or, in the absence of an employment code, in terms of the model code made under section 101(9); or

(b) the employer and employee mutually agree in writing to the termination of the contract; or

(c) the employee was engaged for a period of fixed duration or for the performance of some specific service; or

(d) pursuant to retrenchment, in accordance with Section 12C.

(4b) Where an employee is given notice of termination of contract in terms of subsection (4a) and such employee is employed under the terms of a contract without limitation of time, the provisions of Section 12C shall apply with regard to compensation for loss of employment.”

5 New section substituted for Section 12C of Cap 28:01

The principal Act is amended by the repeal of Section 12C and the substitution of the following sections –

“12C Retrenchment and compensation for loss of employment on retrenchment or in terms of section 12(4a)

(1) An employer who wishes to retrench anyone or more employees shall –

(a) give written notice of his or her intention –

(i) to the works council established for the undertaking; or

(ii) if there is no works council established for the undertaking or if a majority of the employees concerned agree to such a course, to the employment council established for the undertaking or industry; or (iii) if there is no works council or employment council for the undertaking concerned, to the Retrenchment Board, and in such event any reference in this section to the performance of functions by a works council or employment council shall be construed as a reference to the Retrenchment Board or a person appointed by the Board to perform such functions on its behalf; and

(b) provide the works council, employment council or the Retrenchment Board, as the case may be, with details of every employee whom the employer wishes to retrench and of the reasons for the proposed retrenchment; and

(c) send a copy of the notice to the Retrenchment Board.

(2) Unless better terms are agreed between the employer and employees concerned or their representatives, a package (hereinafter called “the minimum retrenchment package”) of not less than one month’s salary or wages for every two years of service as an employee (or the equivalent lesser proportion of one month’s salary or wages for a lesser period of service) shall be paid by the employer as compensation for loss of employment (whether the loss of employment is occasioned by retrenchment or by virtue of termination of employment pursuant to Section 12(4a)(a), (b) or (c), no later than date when the notice of termination of employment takes effect.

(3) Where an employer alleges financial incapacity and consequent inability to pay the minimum retrenchment package timeously or at all, the employer shall apply in writing to be exempted from paying the full minimum retrenchment package or any part of it to –

(a) the employment council established for the undertaking or industry; or

(b) if there is no employment council for the undertaking concerned, to the Retrenchment Board; which shall respond to the request within fourteen days of receiving the notice (failing which response the application is deemed to have been granted).

(4) In considering its response to a request for exemption in terms of subsection (3) the employment council or Retrenchment Board –

(a) shall, where the employer alleges complete inability to pay the minimum retrenchment package, be entitled to demand and receive such proof as it considers requisite to satisfy

itself that the employer is so unable, and if so unable on the date when the notice of termination of employment takes effect, may propose to the employer a scheme to pay the minimum retrenchment package by instalments over a period of time;

(b) shall, where the employer offers to pay the minimum retrenchment package by instalments over a period of time, consider whether the offer is a reasonable one, and may propose an alternative payment schedule;

(c) may inquire from the employer whether he or she has considered, or may wish to consider, specifically or in general, the alternatives to termination of employment provided for in Section 12D.

6 Amendment of Section 12D of Cap 28:01

Section 12D (“Special measures to avoid retrenchment”) of the principal Act is amended –

(a) in subsection (1) by the deletion of “of any group of five or more employees in a six-month period” and the substitution of “of any employees”;

(b) in subsection (2) by the deletion of “or with any workers committee, works council or employment council which represents the employees” and the substitution of “or with any workers committee or works council which represents the employees”;

(c) by the insertion after subsection (2) of the following subsections –

“(2a) If no agreement is reached in terms of subsection (2), an employer shall give written notice of his or her proposed measures to avoid retrenchment, and of the opposing proposals, if any, to –

(a) the employment council established for the undertaking or industry; or

(b) the Retrenchment Board, if there is no employment council for the undertaking concerned; whereupon the employment council or the Retrenchment Board, as the case may be, may, no later than thirty days after it has received the employer’s notice –

(c) accept or reject the employer’s proposed measures to avoid retrenchment; or

(d) refer back the matter to the employer for reconsideration with the employees, workers committee or works council concerned, together with its own suggestions for improving the original proposals or reconciling them with any opposing proposals:

(2b) If –

(a) an employer's proposed measures to avoid retrenchment are rejected in terms of subsection (2a)(c), then, within thirty days of such rejection; or

(b) no agreement on alternative measures to avoid retrenchment is reached with an employer's employees or with the appropriate workers committee or works council in accordance with subsection (2a)(d), then, no later than the thirtieth day after the date when the proposed measures were referred back for reconsideration; an employer may give written notice of his or her proposed (original or revised) measures to avoid retrenchment to –

(c) the Retrenchment Board, where written notice of his or her proposed measures to avoid retrenchment were first made in terms of subsection (2a)(a); or

(d) the Minister, where written notice of his or her proposed measures to avoid retrenchment were first made in terms of subsection (2a)(b); or whereupon the Retrenchment Board or the Minister, as the case may be, shall, no later than thirty days after Board or the Minister has received the employer's notice, accept or reject the employer's proposed measures to avoid retrenchment.”;

(d) by the insertion after subsection (7) of the following subsections –

“(8) If an agreement is reached in terms of subsection (2) with the employees alone, or with a workers committee or works council not having a representative of a registered trade union as a member, an employer shall give written notice of the agreement to –

(a) the employment council established for the undertaking or industry; or

(b) the Retrenchment Board, if there is no employment council for the undertaking concerned; no later than fourteen days after the employer begins implementing the agreement.

(9) If the employment councillor or Retrenchment Board is concerned that an agreement referred to in subsection (8) is not in the best interests of the employees concerned or of employees in the industry to which the undertaking belongs, or is otherwise contrary to the interests of employees generally or the public interest, it shall refer the agreement to the Minister, and the Minister may, after –

- (a) inviting and considering any written representations by the employer concerned; and
- (b) consulting with the appropriate advisory council, if any, appointed in terms of Section 19; nullify the agreement by written notice to the employer (or nullify it by a specified date if the employer does not make specified changes to the agreement), without, however, affecting the validity of anything done in good faith under the agreement before the date of such nullification, or exposing the employer to any liability for anything done in good faith before that date in accordance with the agreement that is contrary to any employment regulations, collective bargaining agreement or other contract or agreement applicable to the employees concerned.”

7 Amendment of Section 31 of Cap 28:01

Section 31 (“When trade union may act as agent union”)(2) of the principal Act is amended by the insertion after “to the Minister in writing,” of the words “together with the prescribed fee”

8 Amendment of Section 33 of Cap 28:01

Section 33 (“Application for registration”) of the principal Act is amended-

(a) in subsection (1) by the insertion after “in the prescribed form,” of the words “together with the prescribed fee”;

(b) by the insertion after subsection (2) of the following subsection –

“(3) Where a document is lost by a trade union, employer’s organisation or federation, any person may make an application of the replacement of such document to the Registrar on payment of a prescribed fee.”

9 Amendment of Section 39 of Cap 28:01

Section 39 (“Application or proposal to vary, suspend or rescind registration”) (1) of the principal Act is amended by the insertion after “apply to the Registrar,” of the words “together with the prescribed fee.”

10 Amendment of Section 55 of Cap 28:01

Section 55 (“Minister may regulate union dues”)(2) of the principal Act is amended by the repeal of paragraphs (e) and (f).

11 Amendment of Section 59 of Cap. 28:01

Section 59 (“Registration of employment councils”) of the principal Act is amended –

(a) in subsection (1) by the insertion after “registration of an employment council,” of the words “which application shall be made together with the prescribed fee”;

(b) in subsection (2) by the insertion after “a certificate of registration” of the words “subject to any conditions, including conditions limiting the manner in which and objects for which the employment council may expend its funds, as the Registrar considers fit to impose”;

(c) by the insertion of the following subsections after subsection (2) –

“(3) Subject to subsection (4), a certificate of registration of an employment council is issued for an indefinite period.

(4) An employment council shall –

(a) submit an audited account of its revenue and expenditure to the Registrar within the period specified in Section 63A; and

(b) submit at the written request of the Registrar, no later than seven days after receiving the request, or after such longer period as the Registrar may for good cause allow, such written report on any matter as the Registrar may reasonably require in connection with its operations; and any failure on the part of the employment council to comply with paragraph (a) or (b) constitutes justifiable grounds upon which the Registrar may cancel its certificate of registration.”

12 New sections inserted in Part VIII of Cap 28:01

The principal Act is amended by the insertion in Part VIII after Section 63 of the following sections –

“63A Audit of accounts of employment councils, inspection and examination thereof, and administration of affairs of employment councils in certain cases

(1) The secretary of every employment council shall, within three months after the end of each financial year of that council, cause an account of its expenditure and revenue for that financial year to be audited by a general accountant, public accountant or public auditor registered as such in terms of the Public Accountants and Auditors Act (Chapter 27:12), and

shall submit a copy of the audited account of its revenue and expenditure to the Registrar no later than three months after the end of the financial year concerned or fourteen days after the preparation of the audited account of its revenue and expenditure, whichever is the later date.

(2) The Registrar may seek clarification from any employment council or from the responsible general accountant, public accountant or public auditor of any item in the audited account of its revenue and expenditure, and any failure to do so within seven days of the Registrar making a written demand to that effect shall constitute grounds for the cancellation of the registration of the employment council or for the launching of an investigation of its affairs in accordance with the following provisions of this section.

(3) If the Registrar has reasonable cause to believe that the property or funds of any employment council are being misappropriated or misapplied, or that the affairs of any employment council are being conducted in a manner that is detrimental to the interests of the employers or employees in the industry or undertaking for which it is registered, the Registrar may investigate or order that such employment council be investigated in accordance with subsection (4).

(4) The Registrar may appoint any officer in the Civil Service or other person (hereinafter called an “investigating officer”) to do any or all of the following –

(a) seek clarification from any employment council or from the responsible general accountant, public accountant or public auditor of any item in the audited account of its revenue and expenditure;

(b) inspect any aspect of the affairs or activities of any employment council and examine all documents relating thereto;

(c) examine the books, accounts and other documents relating to the financial affairs of any employment council; and make a report thereon to the Minister through the Registrar, including any recommendation as to whether it should be de-registered or administered in terms of subsections (9) to (11).

(5) During the period of investigation of an employment council, no employee of the employment council shall, without the consent of the investigating officer, in any way expend or dispose of any property of the employment council:

Provided that an investigating officer shall not refuse to grant consent in terms of this subsection in respect of any expenditure or disposal which is in the ordinary and lawful course of business of the employment council concerned.

(6) For the purpose of any investigation in terms of subsection (2), the investigating officer –

(a) may –

(i) by notice under his or her hand, delivered to the person concerned personally or sent to him or her by post, require any person to produce to him or her any book or other document which has any bearing on the subject of the inspection, examination or audit; and

(ii) retain for a reasonable period any book or document produced to him or her by virtue of a notice under this subsection or voluntarily by any person;

(b) shall, in relation to an employment council, its premises and its employees, have the powers of an investigator referred to in section 120(2)

(7) Where the Minister accepts a recommendation made in terms of subsection (4) that the affairs of the employment council be administered, he or she shall make application to the Labour Court to appoint an administrator and such assistants as the administrator may require, to administer the affairs of the employment council in respect of which the recommendation was made:

Provided that –

(a) an administrator may not be appointed for more than six months;

(b) pending determination by the Labour Court of an application to appoint an administrator, the Minister may appoint a provisional administrator who shall exercise all the powers of a substantive administrator until the provisional administrator's appointment is confirmed by the Labour Court or some other person is appointed with the leave of the Court as substantive administrator;

(c) if the Labour Court refuses an application to appoint an administrator or confirm the appointment of a provisional administrator, the refusal of the application shall not affect the validity of anything done by the provisional administrator in good faith pursuant to this section before the date of such refusal.

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the

employment council concerned in such a manner as to rectify the matters for the rectification of which he or she was appointed and, in so doing, may, by notice in writing prohibit any person who is or has been an employee of the employment council from –

(a) expending, disposing of or in any way dealing with any property of the employment council; or

(b) operating any account with any bank, building society or other financial institution on behalf of the employment council:

Provided that the administrator shall authorise any transaction or expenditure which he or she is satisfied forms part of the ordinary and lawful course of business of the employment council.

(9) If after due investigation an administrator appointed in terms of subsection (7) finds sufficient evidence on a balance of probabilities that any person who is or has been an employee of the employment council has misappropriated any property of the employment council, the administrator may-

(a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence so found; and (b) lodge, on due notice to the employee or former employee concerned (“the respondent”), an application to the Labour Court, together with the affidavit, for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down to for hearing (the “return day” of the application) to refund or return to such employment council any property which the respondent has misappropriated from such employment council;

(10) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the administrator shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(11) For the purposes of subsection (9), “misappropriate” in relation to the property or moneys of the employment council under administration includes doing either or both of the following in defiance of a notice referred to in subsection (8) –

(a) expending or disposing of the property of the employment council; or

(b) withdrawing moneys from any account with any bank, building society or other financial institution operated on behalf of the employment council:

(12) Any person who –

(a) makes any false representation to, or otherwise wilfully hinders or obstructs an investigating officer or administrator in the exercise of his or her functions; or

(b) falsely holds himself or herself out to be an investigating officer or administrator; or

(c) having received notice under subsection (6)(a), without lawful excuse fails to produce any book or document referred to in subsection (6)(a) which he or she may be able to produce; or

(d) contravenes subsection (5) or (9); 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.

13 Amendment of Section 74 Cap 28:01

Section 74 (“Scope of Collective Bargaining Agreements”)(3) of the principal Act is amended by the insertion of the following paragraph after paragraph (m) –

“(n) the following measures to foster the viability of undertakings and high levels of employment, where applicable, namely measures-

(i) to promote high levels of productivity; and

(ii) to promote economic competitiveness; and

(iii) to promote economic and environmental sustainability; and

(iv) to mitigate the cost of living.”

14 Amendment of Section 79 Cap 28:01

Section 79 (“Submission of Collective Bargaining Agreements for approval or registration”) (2) of the principal Act is amended by the insertion of the following paragraph –

“(b) contrary to public interest;”

15 New Section inserted in Cap 28:01

The principal Act is amended by the insertion of the following section after section 92E –

“92EE Grounds of review by Labour Court

(1) Subject to this Act and any other law, the grounds on which any proceedings or decision conducted or made in connection with this Act may be brought on review before the Labour Court shall be –

(a) absence of jurisdiction on the part of the arbitrator or adjudicating authority concerned;

(b) interest in the cause, bias, malice or corruption on the part of the arbitrator or adjudicating authority concerned;

(c) gross irregularity in the proceedings or the decision of the arbitrator or adjudicating authority concerned.

(2) Nothing in subsection (1) shall affect any other law relating to the review of proceedings or decisions of inferior courts, tribunals or authorities.”

16 Amendment of Section 93 Cap. 28:01

Section 93 (“Powers of labour officers”) (2) of the principal Act is amended by the insertion of the following paragraph –

“(5) After a labour officer has issued a certificate of no settlement, the labour officer, upon consulting any labour officer who is senior to him or her and to whom he or she is responsible in the area in which he or she attempted to settle the dispute or unfair labour practice –

(a) shall refer the dispute to compulsory arbitration if the dispute is a dispute of interest and the parties are engaged in an essential service, and the provisions of Section 98 shall apply to such reference to compulsory arbitration; or

(b) may, with the agreement of the parties, refer the dispute or unfair labour practice to voluntary arbitration if the dispute is a dispute of interest; or

(c) may if the dispute or unfair labour practice is a dispute of right;

make a ruling that, upon a finding on a balance of probabilities that –

(i) the employer or other person is guilty of an unfair labour practice; or

(ii) the dispute of right or unfair labour practice must be resolved against any employer or other person in a specific manner by an order –

A. directing the employer or other party concerned to cease or rectify the infringement or threatened infringement, as the case may be, including the payment of moneys, where appropriate;

B. for damages for any loss or prospective loss caused either directly or indirectly, as a result of the infringement or threatened infringement, as the case may be; whereupon the provisions of subsections (5a) and (5b) shall apply.

(5a) A labour officer who makes a ruling and order in terms of subsection (5)(c) shall as soon as practicable –

(a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence upon which he or she makes the draft ruling and order; and

(b) lodge, on due notice to the employer or other person against whom the ruling and order is made (“the respondent”), an application to the Labour Court, together with the affidavit and a claim for the costs of the application (which shall not exceed such amount as may be prescribed), for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down to for hearing (the “return day” of the application) to do or pay what the labour officer ordered under subsection (5)(c)(ii) and to pay the costs of the application.

(5b) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the labour officer concerned shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court.”

17 Amendment of Section 120 of Cap 28:01

Section 120 (“Investigation of trade unions and employers organisations”) of the principal Act is amended by the repeal of subsections (7), (8), (9), (10) and (11) and the substitution of the following subsections –

“(7) Where the Minister accepts a recommendation made in terms of subsection (3)(b)(ii), he shall make application to the Labour Court to appoint (omitted) or an administrator (or confirm the appointment of a provisional administrator pursuant to proviso (b) and such assistants as the administrator may require, to administer the affairs of the trade union, employers organisation or federation in respect of which the recommendation was made:

Provided that –

(a) an administrator may not be appointed for more than six months or until the next annual general meeting of the trade union, employers organisation or federation concerned whichever is the later;

(b) pending determination by the Labour Court of an application to appoint an administrator, the Minister may appoint a provisional administrator who shall exercise all the powers of a substantive administrator until the provisional administrator’s appointment is confirmed by the Labour Court or some other person is appointed with the leave of the Court as substantive administrator;

(c) if the Labour Court refuses an application to appoint an administrator or confirm the appointment of a provisional administrator, the refusal of the application shall not affect the validity of anything done by the provisional administrator in good faith pursuant to this section before the date of such refusal.

(8) An administrator appointed in terms of subsection (7) shall administer the affairs of the trade union, employers organisation or federation concerned in such a manner as to rectify the matters for the rectification of which he or she was appointed and, in so doing, may, by notice in writing prohibit any person who is or has been an office-bearer or employee of the trade union, employers organisation or federation from —

(a) expending, disposing of or in any way dealing with any property of the trade union: employers organisation or federation; or

(b) operating any account with any bank, building society or other financial institution on behalf of the trade union, employers organisation or federation:

Provided that the administrator shall authorise any transaction or expenditure which he is satisfied forms part of the ordinary and lawful course of business of the trade union, employers organisation or federation.

(9) If after due investigation an administrator appointed in terms of subsection (7) finds sufficient evidence on a balance of probabilities that any person who is or has been an office-bearer or employee of the trade union, employers organisation or federation has misappropriated any property of the trade union, employers organisation or federation, the administrator may –

(a) make an affidavit to that effect incorporating, referring to or annexing thereto any evidence so found; and

(b) lodge, on due notice to the office-bearer or employee or former office-bearer or employee concerned (“the respondent”), an application to the Labour Court, together with the affidavit, for an order directing the respondent by a certain day (the “restitution day”) not being earlier than thirty days from the date that the application is set down for hearing (the “return day” of the application) to refund or return to such trade union, employers organisation or federation any property which the respondent has misappropriated from such trade union, employers organisation or federation.

(10) If, on the return day of the application, the respondent makes no appearance or, after a hearing, the Labour Court grants the application for the order with or without amendment, the administrator shall, if the respondent does not comply fully or at all with the order by the restitution day, submit the order for registration to whichever court would have had jurisdiction to make such an order had the matter been determined by it, and thereupon the order shall have effect, for purposes of enforcement, of a civil judgment of the appropriate court.

(11) For the purposes of subsection (9), “misappropriate” in relation to the property or moneys of the trade union, employers organisation or federation under administration includes doing either or both of the following in defiance of a notice referred to in subsection (8) –

(a) expending or disposing of the property of the trade union, employers organisation or federation; or

(b) withdrawing moneys from any account with any bank, building society or other financial institution operated on behalf of the trade union, employers organisation or federation:

(12) Any person who –

- (a) makes any false representation to, or otherwise wilfully hinders or obstructs an investigator or administrator in the exercise of his or her functions under this section; or
- (b) falsely holds himself or herself out to be an investigator or administrator; or
- (c) contravenes subsection (4); 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.”

18 Transitional provision

Section 12 of this Act applies to every employee whose services were terminated on three months' notice on or after the 17th July, 2015.