

**TOPICAL ISSUES IN LABOUR AMENDMENT ACT NO. 11 OF 2023  
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**UNMASKING LABOUR AMENDMENT ACT NO. 11 OF 2023  
AT NATIONAL EMPLOYMENT COUNCILS (NECs) &  
MINISTRY OF PUBLIC SERVICE, LABOUR AND SOCIAL  
WELFARE ANNUAL GENERAL SYMPOSIUM HELD AT  
CARIBBEA  
BAY RESORT, KARIBA FROM 9 - 11 NOVEMBER 2023**

**Section 1 of Labour Amendment Act, 2023: name of Labour Amendment Act No. 11 of 2023.**

This legal provision gives the shortened name of the new legislation as Labour Amendment Act, 2023 for ease of citation. The government of Zimbabwe is commended for some good and progressive amendments to the Labour Act and equally respectfully implored to revisit some problematic or contentious grey areas in our labour law.



## Section 2 of Labour Amendment Act 2023: **new definition for violence and harassment at work.**

- The definition of violence and harassment at work in terms of section 2 of the Labour Act has been broadened and widened to make the workplace safe from any form of violence and harassment like sexual harassment, for both male and female employees. This is a good and progressive amendment to our labour law to promote social justice and democracy in the workplace as required by the main purpose of the Labour Act set out in terms of section 2A (1) of the Labour Act, which forms the heart and soul or nerve centre of labour legislation.
- The expansive definition of harassment and violence is a good amendment which harmonises the Labour Act with labour rights in terms of section 65 of the **Constitution of Zimbabwe Amendment Act (No. 20), 2013, International Labour Organisation (ILO) Conventions and Convention on the Elimination of any form of Discrimination Against Women (CEDAW).**

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- ▶ The harmonisation of the Labour Act with the Constitution of Zimbabwe was legally necessary and imperative because national constitution is the highest or mother law of the land as stated in section 2 (1) of the Constitution of Zimbabwe “*This Constitution is the supreme law of Zimbabwe and any law, practice, custom, custom or conduct inconsistent with it is invalid to the extent of the inconsistency.*”

## **Section 3 of Labour Amendment Act, 2023: **new definition and meaning of forced labour.****

- ▶ This legal provision repealed and re-enacted section 4A of the Labour Act [Chapter 28:01] clarifying what constitutes forced labour and what does not constitute forced labour.
- ▶ The essentials of forced labour are clarified and differentiated from lawful labour like labour as a form of punishment by a competent criminal court of law for a crime or necessary labour during times of emergency.
- ▶ Suffice to mention that ILO Convention No. 29 of 1930 expressly prohibits forced labour.

# **Section 4 of Labour Amendment Act, 2023: right to equal remuneration for both male and female employees.**

- ▶ In terms of this amendment, section 5 of the Labour Act is amended to provide for equal remuneration for male and female employees as part of harmonisation of the Labour Act with section 65(1) and (6) of the Constitution of Zimbabwe, equal benefit and protection of the law anti-discrimination provisions in terms of section 56 (1), (2) and (3) of the Constitution of Zimbabwe and Equal Remuneration ILO Convention No. 100 of 1951.
- ▶ Equal remuneration for male and female employees is a very important and milestone legal development for the enhancement of gender equality and work.
- ▶ This is a good and progressive amendment.

## **Section 5 of Labour Amendment Act, 2023:** **synchronised definition of harassment and violence at work.**

- ▶ Section 6 of the Labour Act was amended to make violence and harassment of an employee at work both a criminal offence punishable by up to 10 years in jail and also proscribe it as an unfair labour practice.
- ▶ This is a laudable amendment good for peace, harmony and tranquillity at the workplace protecting victims of harassment and violence from any perpetrator or villain thereby making workplaces conducive for every person to enjoy the right to fair labour practices, fair labour standards and safe working conditions as provided for in terms of section 65 (1) of the Constitution of Zimbabwe.

## Section 6 of Labour Amendment Act, 2023: combined definition of violence and harassment at work.

- ▶ This is a good legal provision which widens the definition of unfair labour practice by the employer in terms of section 8 of the Labour Act to encompass violence and harassment in compliance with Violence and Harassment ILO Convention 190. The legal need to have a protectionist remedy for sexual harassment and violence at work has its roots and genesis in the Bible story of **Genesis 39:7-12** "And it came to pass after these things, that his master's wife cast her eyes upon Joseph; and she said, Lie with me. But he refused. And though she spoke to Joseph day after day, he refused to go to bed with her or even be with her. One day he went into the house to attend to his work duties and none of the household servants was inside. She caught him by his garment and said, come to bed with me. But he left the garment in her hand and ran out of the house."



## **Section 7 of Labour Amendment Act, 2023: legal provisions about protection of young persons from abuse via employment.**

- ▶ This is a good amendment to section 11 of the Labour Act which prohibits employment of young persons by imposing 10 years' jail on any offender.
- ▶ This legal provision gives effect to two fundamental ILO Conventions against child labour namely, Minimum Age Convention No. 138 and Worst Forms of Child Labour Convention No. 182.

## **Section 8 of Labour Amendment Act, 2023: new legal provisions about termination of employment under section 12(4a) of the Labour Act.**

- ▶ This is a mixed bag legal provision which repealed the old section 12 (4a) of the Labour Act and re-enacted a new section 12 (4a) of the same Labour Act giving legal parameters or circumstances in terms of which an employee or employer can lawfully terminate a contract of employment.
- ▶ An employee is given a legal right to terminate a contract of employment via two scenarios, namely by either resignation or retirement.
- ▶ On the other hand, an employer is given the legal right to terminate a contract of employment via three scenarios namely, a written mutual agreement with an employee, disciplinary inquiry in terms of an applicable registered employment code of conduct or some other manner agreed in advance by the employer and employee concerned, which is undefined akin to nameless tree (mutiusinazita).

## Section 8 of Labour Amendment Act, 2023: termination of employment legal provisions.

- ▶ The phrase “some other manner agreed in advance between an employer and employee concerned” provided for in terms of section 12 (4a) of the Labour Act is unclear by creating a layer of confusion regarding its meaning and open to potential abuse by some employers who may take advantage of its vague, nebulous and open ended manner to insert or invoke arbitrary summary dismissal or termination of an employee on notice without even conducting a disciplinary hearing. This can open a can of worms or Pandora’s box of arbitrary and unfair termination of employment of employees by some employers stirring a hornet’s nest like what the **Zuva Supreme Court judgment** did in 2015 opening floodgates of termination of employment on 3 month’s notice in terms of the common law which is not so common. Employees must sleep with one eye open to avoid signing suspicious or problematic contracts of employment with unfair clauses for an employer to have the unfettered discretion to terminate a contract of employment.

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- ▶ Employees must be on the lookout to make sure that their written contracts with employers do not contain a poisoned chalice affording or giving an employer unlimited discretion to terminate a contract of employment willy-nilly or at will without following due process of law in a capricious, notorious, arbitrary, spineless, draconian, rapacious, brutal, nefarious and barbaric manner akin to an avenging spirit (ngozi/ingozi). A blind provision for termination of employment by an employer is typical of a legal minefield or time bomb hence employees need to be alert. Due process of law is illustrated in court decided cases underscoring the principles of natural justice like right to be heard (*audi alteram partem*) and rule against bias (*nemo iudex in sua causa*) rule like **Taylor v Minister of Higher Education & Anor 1996 (2) ZLR 772 (S)** wherein the Supreme Court of Zimbabwe echoed the famous statement that even God did not banish Adam and Eve from the Garden of Eden without giving them the right to be heard as recorded in **Genesis 3: 8-24** and **Rwodzi v Chegutu Municipality 2003 (1) ZLR 601 (H)**. Also the right to be heard, right to a fair hearing and protection against mob justice was practically demonstrated by Jesus Christ in the Bible story

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recorded in **John 8 verses 1-11** when He protected a hapless and helpless woman from a merciless marauding crowd baying for her blood and wanting to stone and lynch her to death on an allegation that she had been caught red-handed (*in flagrante delicto*) in adultery, without giving her the right to be heard and also proving bias by bringing the woman alone for punishment and leaving out the man who committed the alleged offence with her. The right to be heard does not mean that right to be seen, legally meaning that it is perfectly legal for an employer to conduct or do an online or virtual disciplinary hearing against an employee. Apostle Paul also reiterated the cardinal importance of the right to a fair hearing and right to be heard in **Acts 25 :16** thus, **" I told them that it is not Roman custom/law to convict people without trial and before they have faced their accusers and have had an opportunity to defend themselves against charges."** Suffice to underscore that section 69 of the Constitution of Zimbabwe affords every person (natural/juristic) an entrenched or embedded right to a fair hearing in both civil and criminal cases and access to justice before a court or tribunal established by law.

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- ▶ Summary dismissal of an employee or termination on notice without the informed consent of the affected employee renders employment codes of conduct and retrenchment process a mockery or useless stooge or scarecrow typical of a lifeless and harmless statue.
- ▶ ILO Convention 158 requires fair termination of a contract of employment for a just cause based on the employee's conduct after a fair hearing or the operational requirements of the employer based on retrenchment meaning that summary dismissal and termination on notice by an employer are illegal methods of termination of an employee's contract of employment. Fairness require a just, equitable and impartial decision that does not show bias, discrimination or favouritism against any person.

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- ▶ This chequered history of labour law in Zimbabwe has it on record that once upon a time, after the delivery of the Supreme Court judgment in **Don Nyamande and Another v Zuva Petroleum (Pvt) Ltd 2015 (2) ZLR 186 / SC 43/15** on 17 July 2015 dealing with the common law right of an employer to terminate a contract of employment on notice, some labour carnage or genocide took place in terms of which some employers abruptly and indiscriminately terminated contracts of employment for employees on notice in terms of the common law.
- ▶ The common law ghost of termination of contract of employment on notice wreaked havoc like the demon of legion recorded in the bible in **Luke 8:26-39** and **Mark 5 :1-20** until it was exorcised by Jesus Christ and drowned with some pigs in the sea. By the same token, the common law termination of a contract of employment on notice was also watered down by Labour Amendment Act, 2015. Fairness is a major yardstick or barometer for ensuring that decisions in labour matters are done with a human face or heart to promote equity or social justice and prevent exploitation.

## Section 9 of Labour Amendment Act, 2023: **new retrenchment law.**

- ▶ This is a good legal provision which repealed the old section 12C of the Labour Act and replaced it with a new section 12C which protects employees against unjustified retrenchments.
- ▶ An employer must prove the justification for a retrenchment before an employment council or retrenchment board.
- ▶ The retrenchment law has been tightened to afford employees job security and prevent indiscriminate retrenchments.
- ▶ Also the minimum retrenchment package is no longer pegged in the law so as to prevent a situation under the old law where some employers who could afford to pay more than the minimum retrenchment package took advantage of the law by ending up treating the minimum retrenchment package as the maximum payable package.



## Section 10 of Labour Amendment Act, 2023 : **new retrenchment legal parameters.**

- ▶ The legislature introduced a new section 12CC of the Labour Act which punishes some bad employers who stage-manage or induce a retrenchment process by running down a business or employer entity recklessly, with gross negligence or intention to defraud by creating personal liability of business owners or managers or principals or shareholders. These new legal provisions allow for the piercing or lifting of the corporate veil so that the law can expose and punish culprits who sink or collapse companies or organisations or employer entities to create an artificial need for job loss by employees via retrenchment.
- ▶ The employment council or retrenchment board is given extensive investigative powers to unearth the reasons for any business collapse and punish any employer or business owner who causes a business failure leading to unnecessary retrenchment of employees and unjustified job losses. The failure to mention a minimum retrenchment package in the Labour Act may be a positive step to promote flexibility and negotiation of a fair, reasonable and affordable package between an employer and an employee directly via negotiation or at employment council or retrenchment board unlike the previous legal framework where a rigid minimum retrenchment package was applied by some employers as a maximum package even where such employers could afford to pay more.

## Section 11 of Labour Amendment Act, 2023: **new legal provisions about unlimited maternity leave protection for female employees.**

- ▶ This is a good amendment which repealed some provisions of section 18 of the Labour Act which limited maternity leave for female employees in terms of one-year employment qualifying period for paid maternity leave and maximum number of three times paid maternity leave with one employer.
- ▶ This amendment harmonises section 18 of the Labour Act on maternity leave with section 65 (7) of the Constitution of Zimbabwe which affords female employees unlimited paid maternity leave right for at least 3 months.

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- ▶ Also this amendment is in sync with ILO Maternity Leave Convention 103 for the protection of female employees.
- ▶ However, to prevent some potential hidden or subtle discrimination of young female employees of potential child bearing age or who have not reached menopause by some employers who may not want to pay maternity leave, government is urged to seriously consider introducing some maternity leave fund either via Zimbabwe Manpower Development Fund (ZIMDEF) or National Social Security Authority (NSSA). Young female employees who may potentially get pregnant deserve legal protection from being sidelined or isolated by some employers on the job market preferring those women who are no longer child bearing sometimes jokingly called off-layers.

## Section 12 of Labour Amendment Act, 2023: **protection of employee on hourly work.**

- ▶ This is a good amendment by introducing the new section 18A of the Labour Act giving legal protection to employees employed on hourly work by giving them flexibility to be employed elsewhere failing which the employer must pay them minimum wages in terms of the applicable collective bargaining agreement.
- ▶ Also employees employed for hourly work are given the same legal protection in terms of the minimum conditions of employment and protection contained in the applicable collective bargaining agreements.

## Section 13 of Labour Amendment Act, 2023: **line Minister works council negotiations legal right.**

- ▶ The line or responsible Minister for an employer which is a statutory corporation, statutory body or entity wholly or predominantly controlled by the State is given equal footing in terms of works council collective bargaining agreement in terms of section 25 of the Labour Act.
- ▶ This may be an advantage that employees now have direct access to the government principal for negotiations but it may also be a disadvantage where employees and even some employer representatives may feel intimidated or cowed by the presence of the politically powerful Minister in works council negotiations. It is fervently hoped that the presence of the powers that in the works council collective bargaining process will improve and enhance the collective bargaining process for betterment of the conditions of employment.

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- ▶ There is need for any collective bargaining process to comply with ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, ILO Convention No. 154 on Promotion of Collective Bargaining and ILO Convention No. 98 on Right to Organise and Collective Bargaining.

**Section 14 of Labour Amendment Act, 2023: paid educational leave for employees as part of works council items for negotiation.**

- ▶ A good amendment to section 25A of the Labour Act introducing paid educational leave as an item for consideration in collective bargaining agreements at works council level for the promotion of human capital or staff development via learning.

## Section 15 of Labour Amendment Act, 2023: **regulation of affairs of trade unions**

- ▶ This amendment to section 28 of the Labour Act creates a potential room for abuse of power by the responsible authority or powers that be to deter powerful trade unions and employment associations from getting registered by setting excessive amounts of money as requirement for registration, thereby violating section 58 of the Constitution of Zimbabwe on freedom of association and labour rights in terms of section 65 of the same Constitution.



**Section 16 of Labour Amendment Act, 2023:  
compliance with due process of law concerning  
trade union or employers association registration.**

- ▶ A good amendment to requiring the Registrar of Labour to give reasons for his/her decision in application for registration in terms of section 33 of the Labour Act, in compliance with section 68 right to administrative justice as well as the **Administrative Justice Act [ Chapter 10:28]**.

## Section 17 of Labour Amendment Act, 2023: **good governance structures and systems for trade unions and employers associations.**

- ▶ A good amendment to section 34 of the Labour Act promote transparency and good governance of trade unions and employer's associations seeking registration to have a written constitution and clear structures to avoid operating like underground or secret organisations or societies. These checks and balances on the affairs of trade unions and employers associations are progressive in promoting good governance of those legal entities which in turn form employment councils. Employment councils must not be run as personal fiefdoms but in a transparency way for the benefit of members of the public for society's common good.
- ▶ Trade unions and employer's associations must be accountable and above board in their operations because they collect money from the public as subscriptions.

## Section 18 of Labour Amendment Act, 2023: **registrar information compliance checks.**

- ▶ The new section 34A of the Labour Act giving powers to the Registrar of Labour to impose a duty to provide information on the part of a registered trade union or employers organisation is a positive amendment for promoting good governance of such organisations if used properly.
- ▶ However, it may also be a double-edged negative amendment if it is abused or improperly used to unlawfully interfere with powerful registered trade unions or employers organisations as a way of trying to neutralise them.

## Section 19 of Labour Amendment Act, 2023: **registrar regulatory powers**

- ▶ This new legal provision repealed the old section 45 of the Labour Act and re-enacted a new section 45 which is good and progressive by requiring the Registrar to comply with principles of natural justice like right to be heard and the law in relation dealing with variation, suspension or rescission of registration of trade unions or employers organisations.
- ▶ This measured approach helps prevent a heat of the moment or spur of the moment decision by the Registrar by requiring the Registrar to make wide consultations to arrive at an informed decision.

## Section 20 of Labour Amendment Act, 2023: **supervision of elections of trade unions and employers associations.**

- ▶ This amendment to section 51 of the Labour Act relating to supervision of election of officers of registered trade unions and employers organisations must be used sparingly and with great caution so that the Registrar does not unlawfully interfere or meddle with the internal affairs of a registered trade union or employers association by pitching camp with election losers or seeking to impose unwanted or unpopular candidates on trade unions or employers associations via the backdoor.

## Section 21 of Labour Amendment Act, 2023: **legal provisions about collection of union dues.**

- ▶ This amendment to section 54 of the Labour Act is positive to avoid unnecessary interference by authorities in collection of union dues by trade unions.

## Section 22 of Labour Amendment Act, 2023: **deregulation of collection of union dues.**

- ▶ Also this repeal of section 55 of the Labour Act is a good amendment by removing the Minister's power to regulate collection of union dues so that trade unions can enjoy their independence, autonomy and constitutional right to freedom of association in terms of section 58 of the Constitution of Zimbabwe.

## Section 23 of Labour Amendment Act, 2023: **new legal framework for employment councils.**

- ▶ This positive amendment to section 56 of the Labour Act creates a seamless and similar relationship between a voluntary employment council and statutory employment council to ensure the proper regulation of employment councils and also the universal coverage of employment councils to all employers and employees in the applicable industry or sector. Improving good corporate governance practices for employment councils is positive in that it ensures that such entities remain viable as going concerns performing government's delegated function via labour regulation and dispute resolution.
- ▶ This will promote collective bargaining process and enforcement of minimum conditions of employment for the protection of employees from exploitation at the workplace.



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- ▶ Also the amendment requires the constitution of an employment council to accommodate new members from either a trade union or employers association based on proportional representation or if the new member is not eligible to get voting rights due to low membership threshold, that new member gets an observer status.
- ▶ This approach seeks to prevent privatisation and abuse of employment councils by a few treating it like a personal fiefdom ( in Shona vernacular language “chinhu chedu”) mentality. Good corporate governance and accountability characterised by checks and balances are vital systems necessary for the survival of national employment councils (NECs). Secretariat must be empowered to run employment councils on a day to day basis with council members from trade union and employers association playing an oversight role and not descending into the arena.

## Section 24 of Labour Amendment Act, 2023: admission of new members to employment councils.

- ▶ This is another positive amendment to section 58 of the Labour Act giving legal framework for the constitution of employment councils to be inclusive by making legal provision for the admission of new parties to an employment council as required by legislation in terms of section 56 of the Labour Act under proportional representation to ensure that all interested parties are adequately represented. Employment councils are also encouraged to come up with succession planning systems to avoid one man or one woman band which can create stagnation when realities of life like death, retirement or incapacity happen. Also successors must be trained and mentored as part and parcel of succession planning.

## Section 25 of Labour Amendment Act, 2023: **jurisdiction of a designated agent and step-in jurisdiction of a labour officer.**

- ▶ A good amendment to section 63 of the Labour Act via new section 63 (3b) and (3c) giving a labour officer step-in gap filling additional jurisdiction after the expiry of thirty days without a designated agent redressing any dispute or unfair labour practice. This is a very progressive legal provision to achieve the just, effective and expeditious resolution of disputes and unfair labour practices as mandated by section 2A(1)(f) of the Labour Act. Labour disputes or unfair labour practices must be resolved in a fast and cheaper way so that members of the public do not lose trust and confidence in the labour dispute resolution system tempting some to resort to self-help or take matters or the law into their own hands out of frustration or getting distraught. The amendment relating to complaints against a DA must not be be

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- ▶ Since the Constitutional Court of Zimbabwe decided in **Isoquant Investments (Pvt) Ltd t/a Zimoco v Darikwa CCZ 6/20** that a designated agent has jurisdiction to make a determination, there is need for a further amendment to section 63 of the Labour Act to bestow a designated agent (DA) with jurisdiction to rescind a default determination, decision or order as well as correct a determination, decision or order granted in error just like section 92C of the Labour Act. This will ensure that labour matters are not decided on technicalities but on the merits to ensure finality to litigation or disputes and closure as was underscored by the **Supreme Court in Dalny Mine v Banda 1999 (1) ZLR 220 (S) & Duly Holdings v Chanaiwa 2007 (2) ZLR 1 (S)**.

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- ▶ Under the current labour legislation, cognisant of the fact that a DA is a creature of statute, without a clear legal provision within the four corners of the Labour Act, it may be argued that a DA lacks jurisdiction to rescind his/her default determination, decision or order and even to correct a decision made by him/her in error because such a jurisdiction is not conferred or provided for within the four corners of the Labour Act as the enabling legislation based on legal research emanating from Supreme Court judgments like **National Railways of Zimbabwe v Zimbabwe Railway Artisans Union and Others 2005 (1) ZLR 341 (S) & Gwaze v National Railways of Zimbabwe 2002 (1) ZLR 679 (S)**. This scenario may create a merry-go round or stagnant situation for a party who wants to have legal recourse for rescission of a default determination. There is a compelling need for the Labour Act to be amended to provide legal clarity about a designated agent's jurisdiction to hear or deal

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- ▶ with an application to rescind a default determination so that an aggrieved party does not grope in legal darkness or resort to trial and error game or legal dead end before the Labour Court either by way of an appeal or an application for review against a default determination by a designated agent thereby creating a jurisdiction dilemma like one demonstrated in **Tuso v City of Harare 2004 (1) ZLR 1**. There is a legal complication in that there is no clear cut legal provision in the Labour Act for legal recourse or remedy by way of an appeal or review when one is faced with a default determination by a designated agent, thereby creating a legal conundrum in the form of a lacuna or loophole.

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- ▶ The purpose of the amendment to section 63 of the Labour Act is to ensure fast access to justice by any person who refers a labour dispute or unfair labour practice matter to a designated agent. Designated agents are form an important backbone of labour dispute settlement in Zimbabwe and hence employment councils must be capacitated with designated agents staff to function smoothly and avoid overloading labour officers with too much work around labour dispute resolution.
- ▶ Fast access to justice is jealously protected in terms of section 2A(1)(f) of the Labour Act and section 69 of the Constitution of Zimbabwe. Labour Amendment Act No. 11 of 2023 positively decentralised the jurisdiction of designated agents to be confined to districts and provinces.

## Section 26 of Labour Amendment Act, 2023: **paid educational leave as an additional item for negotiation at employment council.**

- ▶ A good amendment to section 74 of the Labour Act providing for negotiation of conditions of paid educational leave at employment council for staff or human capital development and advancement.
- ▶ Also the same amendment to section 74 of the Labour Act gives responsible line or responsible Minister for an employer which is a statutory corporation, statutory body or entity wholly or predominantly controlled by the State equal footing in terms of collective bargaining process at employment council, something that may work either in favour of employees or against them depending on how the Minister will flex his/her power which may actually be a veto power. Also this legal provision about a Minister's equal involvement in the collective bargaining process at both works council and employment council require a delicate application given the reality that government is both an employer and regulator as a way of trying to balance some inherent competing interests in a potential conflict of interest scenario. There is need to adopt a wait and see approach so that people can see the advantages or disadvantages of the presence of the Minister at the employment council negotiating platform. The rationale behind the presence of the Minister at the employment council negotiation platform is for government to monitor and control labour costs by being abreast with the collective bargaining process. However, this idea of government casting its eye on labour costs must be used with a measured approach so that parastatals and government owned entities do not end up losing workforce or suffering brain drain due to demotivating and poor conditions of service and remuneration for employees employed by such organisations.



## **Section 27 of Labour Amendment Act, 2023: submission of collective bargaining agreements for approval or registration.**

- ▶ This is a good amendment to section 79 of the Labour Act dealing with submission of collective bargaining agreements for approval or registration. However this must not be abused by the responsible authority to illegally, unfairly and illegitimately undermine the outcome of collective bargaining process by employers and employees.

## Section 28 of Labour Amendment Act, 2023: **legal provision for amendment of collective bargaining agreement (CBA).**

- ▶ Also, this amendment to section 81 of the Labour Act empowering the Minister to amend a registered collective bargaining agreement is a good amendment which must be progressively used and applied to promote social justice and democracy at the workplace as required by section 2A of the Labour Act and not in a retrogressive manner to impoverish the employees or unfairly overburden employers.

## Section 29 of Labour Amendment Act, 2023: **universal/uniform legally binding nature of a collective bargaining agreement industrywide.**

- ▶ This is highly commendable and progressive good amendment to section 82 of the Labour Act emphasising the binding nature of registered collective bargaining agreements to all employers and employees to which it applies and removing attempts by some employers to avoid or evade equitable minimum conditions of employment set out in collective bargaining agreements. An employer is free to participate in a collective bargaining agreement and any refusal or boycott of the collective bargaining process is not a valid legal defence, immunity or excuse for a defaulting employer to be legally bound by the operations of a registered collective bargaining agreement for the applicable sector or industry. The rationale is to prevent some employers or employees from boycotting membership of employment councils and refusing to pay employment council dues or subscriptions like what happened in the case of **Netone Cellular (Pvt) Ltd v National Employment Council for the Communications and Allied Services Industry HH 211/15, Econet Wireles v Minister of Public Service, Labour and Social Welfare & Anor HH 350/15 and National Employment Council for the Communication and Allied Services Industry v Netone Cellular (Pvt) Ltd & Anor CCZ 17/19.** The Government of Zimbabwe

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deserves a thumbs up and pat on the back for showing unwavering solidarity with employment councils in the face of relentless attacks by some employers who wanted to make employment councils extinct or cease to exist. However some employers also deserve appreciation for steadfastly supporting employment councils when they faced an existential threat by way of other employers who did not want to pay employment council dues thereby financially crippling the operations of such employment councils.

## Section 30 of Labour Amendment Act, 2023: conciliation and compulsory arbitration dispute resolution process.

- ▶ This is a good amendment to section 93 of the Labour Act bringing back alternative dispute resolution (ADR) in the form of conciliation by a labour officer as well as voluntary and compulsory arbitration of labour disputes. The importance of conciliation in the amicable resolution of labour disputes was echoed by the **Supreme Court in the case of NRZ v Railways Artisans & Others SC 46/2015** wherein the court held that in compulsory arbitration an arbitrator cannot dictate the terms of a collective bargaining agreement between employer and employee parties.
- ▶ Also this amendment introduces another progressive insertion of enforcement mechanisms for a certificate of settlement in terms of section 93 (2) of the Labour Act by giving it legal effect of a civil judgment of an appropriate court thereby making it executable via a writ of execution. Another notable feature is the new section 93 (7) of the Labour Act giving the responsible Minister equal footing *locus standi* in a dispute or unfair labour practice involving an employer which is a statutory corporation, statutory body or an entity wholly or predominantly controlled by the State.

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- ▶ The old Labour Act did not provide for enforcement and execution of a certificate of settlement. Conciliation is a fast and flexible way of resolving labour disputes or unfair labour practices without confusion created by legal technicalities or jargon. Sometimes, it may be better for a labour officer or designated agent to break the ice by holding side meetings with parties as way of promoting a healthy conciliation process. In countries like South Africa, when parties appear for informal dispute resolution before the **Commission for Conciliation, Mediation and Arbitration (CCMA), in terms of section 112-115 of No. 66 of 1995: Labour Relations Act of 1995**, there is no automatic right to legal representation during conciliation before CCMA so as to maintain the informal nature of the dispute settlement process and make it faster and free from inherent delays caused by a thicket or plethora of legal technicalities. An arbitrator who is faced with an application for rescission of default arbitral award may borrow a leaf and rely on section 98 (9) of the Labour Act and deal with it in terms of section 92C of the Labour Act which gives an arbitrator same powers like the Labour Court in hearing and determining any matter. In terms of section 98(2) of the Labour Act,

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once a dispute is referred to compulsory arbitration, the Arbitration Act [ Chapter 7:15] is given mandatory legal application to such a dispute meaning that the powers of an arbitrator are derive from both the Labour Act and Arbitration Act as a hybrid. Article 25 of the Arbitration Act gives an arbitrator various legal options to pursue where a party is in default of arbitration proceedings, without showing sufficient cause like terminating proceedings where the claimant fails to file a statement of claim, treating a respondent's failure to file a statement of defence as an admission of the claimant's allegation, continue with proceedings and making an award on the evidence before the arbitrator if any party fails to appear at a hearing or produce documentary evidence and where the claimant fails to prosecute his claim, the arbitrator may make an award dismissing the claim or give directions with or without conditions, for the speedy determination of the claim. Also Article 33 (2) of the Arbitration Act allows an arbitral tribunal or arbitrator to correct any error on an arbitral award like errors in computation, clerical or typographical errors or any errors of a similar nature out of its own initiative (*mero motu*) or upon request by any party or by agreement of both parties in terms of Article 33 (1) & (3) of the Arbitration Act to correct or give an interpretation of a specific point or part of the award. Also Article 33 of the Arbitration Act gives an arbitrator jurisdiction to do a correction or interpretation of the award or to do an additional award. In terms of section 98 (14) & (15) of the Labour Act, an arbitral award certified by the arbitrator in terms of section 98 (13) of the Labour Act is registrable with the High Court or Magistrates Court for purposes of enforcement as a civil judgment of the appropriate court. Zimbabwe is encouraged to consider creating a uniform arbitration system under one umbrella organisation for quality control and certainty in the labour dispute system and avoid a haphazard arbitration process, like what our neighbour South Africa did by creating the Commission for Conciliation, Mediation and Arbitration.

## Section 31 of Labour Amendment Act, 2023: Labour Officer/Designated agent jurisdiction restoration.

- ▶ This is a good legal provision amending section 101 of the Labour Act giving a labour officer appeal jurisdiction at the instance of either an employer or employee party where a disciplinary process has been finalised in terms of the applicable employment code of conduct but the word appeal may be a misnomer or improper description of the conciliation jurisdiction of a labour officer in terms of section 93 of the Labour Act. Since a designated agent is legally empowered by section 63 (3a) & (3b) of the Labour Act to exclusively exercise the same jurisdiction a labour officer is bestowed with in terms of section 93 of the Labour Act where a designated agent is authorised to redress any dispute or unfair labour practice, one may creatively argue that the new amendment to section 101 of the Labour Act also afford a designated agent grafted or borrowed appeal jurisdiction over completed or finished disciplinary proceedings like a labour officer. Some employment codes of conduct will need to be amended to make room for a labour officer's statutory jurisdiction in completed disciplinary proceedings. At the moment there is no decided court case which give a designated agent the same powers like a labour officer to exercise jurisdiction over completed disciplinary proceedings. These new legal provisions will become clear in terms of their interpretation around the jurisdiction of a labour officer or designated agent in completed disciplinary proceedings once a test case is decided upon by our courts of law. Some may argue that there may be legal conflict between section 101 of the Labour Act giving appeal jurisdiction to a labour officer for completed disciplinary proceedings in terms of an employment code of conduct and section 92D of the Labour Act giving the Labour Court the same appeal jurisdiction once disciplinary proceedings are finalised



# Continued ...

- ▶ This amendment restore and reassert the appeal jurisdiction of a labour officer in completed disciplinary proceedings at the instance of either the employer or employee in terms of section 93 of the Labour Act, which had been scrapped by some various Supreme Court judgments from 2019 to early 2023 like **Mabeza v Sandvik Mining and Another SC 91/19, Zhou v City of Harare SC 175/20, Tafadzwa Sakarombe v Montana Carswell Meats (Private) Limited SC 44/20, Living Waters Theological Seminary v Chikwanha SC 59/21, Mukarati v Pioneer Coaches (Pvt) Ltd SC 34/22, Guruve Rural District Council v Mugayo SC 86/23**. The new section 101 of the Labour Act also give a labour officer jurisdiction to hear an appeal in terms of section 8 of the National Employment Code of Conduct, S.I. 15 of 2006.

## Continued ...

- ▶ Also it is now a legal requirement for employers and employees to review their employment codes of conduct every five years in line with current legal developments so that such codes of conduct are not archaic or old fashioned.
- ▶ Any failure by an employer and employee to revise an employment code of conduct every five years results in that code of conduct being automatically deemed deregistered by operation of the law after the lapse of three (3) months grace period after the expiry of the pegged five years.
- ▶ If an employer's registered code of conduct is deemed deregistered, in terms of section 12B (2) of the Labour Act, that employer shall be required by operation of the law in terms of section 12B(1) and (2)(b) of the Labour Act to use the model code or National Code of Conduct S.I. 15 of 2006 as a legal alternative where there is no registered code of conduct. See [City of Gweru v Masinire SC 56/18](#) and [Tamanikwa & Others v Zimbabwe Manpower Development Fund SC 33/13](#)

## Section 32 of Labour Amendment Act, 2023: **ripple effect penalties for an unlawful strike.**

- ▶ This dragnet amendment imposing harsh and drastic penalties for an unlawful collective job action or strike is problematic and negative as it discourages employees from resorting to strike and yet without the right to strike the right to collective bargaining is empty collective begging.

## Section 33 of Labour Amendment Act, 2023: **abrogation of legal provisions about cessation of a strike.**

- ▶ This repeal of section 111 of the Labour Act is a welcome legal development.

## Section 34 of Labour Amendment Act, 2023: **scatter bomb criminal penalties for an unlawful strike.**

- ▶ This amendment to section 112 of the Labour Act solidifying criminal penalties and other forms of punishment for a strike creates a hostile environment for workers discouraging the exercise of the right to strike in violation of a cocktail of fundamental labour rights provided for in terms of section 65 of the Constitution of Zimbabwe and ILO Conventions 87 on freedom of association and protection of right to organise, 98 on right to organise and 154 on the right to collective bargaining protecting employees' freedom of association, right to organise and right to collective bargaining among other protected legal rights.

## Section 35 of Labour Amendment Act, 2023: **protection of employment council funds from potential abuse or pilferage.**

- ▶ This is a good amendment to section 120 of the Labour Act giving legal room for the appointment of a provisional administrator by the Minister while awaiting determination of Labour Court legal process, to assume interim legal protection of the funds, property or records of an employment council to avert risk of destruction or dissipation pending the appointment of a substantive administrator. Employment council funds and property must be protected from some people with sticky hands in the cookie jar or those fond of unauthorised borrowing or misappropriation of funds.
- ▶ However, it must be used lawfully and objectively to prevent any illegalities, abuse of power or authority.

## Section 36 of Labour Amendment Act, 2023: bridging legal provisions for registration and enforcement of unregistered draft rulings.

- ▶ This is an amendment which introduces section 128 of the Labour Act transitional provisions stating that a labour officer's unregistered draft ruling as at 14 July 2023 when Labour Amendment Act, 2023 was passed into law becomes a ruling or judgment by a labour officer registrable with an appropriate court for purposes of enforcement and also that any amount of money stated in that ruling as foreign currency must be converted to equivalent Zimbabwean local currency at the prevailing rate.
- ▶ The problem with this amendment is that it gives only the employer party the right to appeal to the Labour Court within 30 days of the notice of registration but it does not give an employee a similar right of appeal, thereby making it potentially unconstitutional for violating an employee's right to a fair hearing and access to justice in terms of section 69 of the Constitution of Zimbabwe and right to equal benefit and protection of the law in terms of section 56 (1) of the Constitution of Zimbabwe.

# Conti....

- ▶ Notice of registration of a labour officer's ruling or judgment may just mean the lodging or filing of an application for registration of such ruling or judgment with an appropriate court for purposes of enforcement, without waiting for the actual registration of such labour officer's ruling or judgment.
- ▶ Another problem with the new section 128 of the Labour Act is that it seems like it does not provide for the registration and enforcement of a labour officer's ruling or judgment which is not sounding in money e.g one for reinstatement or cessation or stoppage of unfair labour practices.
- ▶ This means that there is still a gap or lacuna in the law in that there are no clear-cut provisions for enforcement of a ruling or judgment by a labour officer not sounding in money.



## Section 37 of Labour Amendment Act, 2023: **reduction of period of notice to go on strike from 14 days to 7 days and decentralisation of DAs.**

- ▶ This amendment has some positive changes to our labour law by reducing the number of notice days to go on strike in terms of section 104 of the Labour Act from 14 days to 7 days. 14 days was too long a period of notice to on strike.
- ▶ Also this amendment seeks to promote the decentralisation of employment councils and confining jurisdiction of designated agents to districts or provinces to ensure that members of the public have fast access to justice.

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## AFRICAN LABOUR LAW INTERNATIONAL CONSULTANCY

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- ❖ *Overview of disciplinary Hearing*
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- ❖ *Dealing with application by Lawyers*
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- ❖ *Investigating , Compiling Evidence and cross examination*
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- ❖ *Rules of evidence*
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**The End!!!**