

Our Ref: Mr C Mucheche

14 JULY 2023

**RE: LEGAL OVERVIEW COMMENTARY ABOUT LABOUR AMENDMENT ACT, 2023
ENACTED /PASSED AS LAW ON 14 JULY 2023**

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1. Section 1 of Labour Amendment Act, 2023

This legal provision gives the shortened name of the new legislation as Labour Amendment Act, 2023 for ease of citation.

2. Section 2 of Labour Amendment Act 2023

The definition of violence and harassment at work 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. 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). 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."***

3. Section 3 of Labour Amendment Act, 2023

This legal provision repealed and re-enacted section 4A of the Labour Act [Chapter 28:01] clarifying what constitutes forced labour and what does not constitute forced labour.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.

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4. Section 4 of Labour Amendment Act, 2023

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. This is a good and progressive amendment.

5. Section 5 of Labour Amendment Act, 2023

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 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.

6. Section 6 of Labour Amendment Act, 2023

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.

7. Section 7 of Labour Amendment Act, 2023

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.

8. Section 8 of Labour Amendment Act, 2023

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. The phrase some other manner agreed in advance between an employer and employee concerned is unclear 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. Employees must be on the lookout to make sure that their written contracts with employers do not afford or give an employer unlimited discretion to terminate a contract of employment willy-nilly or at will without following due process of law. Summary dismissal of an employee or termination on notice 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. 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* 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.

9. Section 9 of Labour Amendment Act, 2023

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.

10. Section 10 of Labour Amendment Act, 2023

The legislature introduced a new section 12CC of the Labour Act which punishes some bad employers who stage-manage a retrenchment process by running down a business recklessly, with gross negligence on intention to defraud by creating personal liability of business owners or principals. 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.

11. Section 11 of Labour Amendment Act, 2023

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. 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).

12. Section 12 of Labour Amendment Act, 2023

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.

13. Section 13 of Labour Amendment Act, 2023

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. 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 by the presence of the politically powerful Minister in works council negotiations. 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.

14. Section 14 of Labour Amendment Act, 2023

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.

15. Section 15 of Labour Amendment Act, 2023

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.

16. Section 16 of Labour Amendment Act, 2023

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].

17. Section 17 of Labour Amendment Act, 2023

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. Trade unions and employer's associations must be accountable and above board in their operations because the collect money from the public as subscriptions.

18. Section 18 of Labour Amendment Act, 2023

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.

19. Section 19 of Labour Amendment Act, 2023

This new legal provision repealed the old section 45 of the Labour Act and re-enacted a new section 45 which require 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.

20. Section 20 of Labour Amendment Act, 2023

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.

21. Section 21 of Labour Amendment Act, 2023

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.

22. Section 22 of Labour Amendment Act, 2023

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.

23. Section 23 of Labour Amendment Act, 2023

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. This will promote collective bargaining process and enforcement of minimum conditions of employment for the protection of employees from exploitation at the workplace. 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 or "chinhu chedu" mentality.

24. Section 24 of Labour Amendment Act, 2023

This is another positive amendment to section 58 of the Labour Act giving legal framework for the constitution of employment councils to make 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.

25. Section 25 of Labour Amendment Act, 2023

A good amendment to section 63 of the Labour Act via new section 63 (3b) and (3c) giving a labour officer jurisdiction where a designated agent after the expiry of thirty days without a designated agent redressing any dispute or unfair labour practice. The purpose of this legal provision is to ensure fast access to justice by any person who refers a labour dispute or unfair labour practice matter to a designated agent. 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.

26. Section 26 of Labour Amendment Act, 2023

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 legal provision 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.

27. Section 27 of Labour Amendment Act, 2023

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

28. Section 28 of Labour Amendment Act, 2023

Also, this amendment to section 81 of the Labour Act empowering the Minister to amend a registered collective bargaining agreement 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.

29. Section 29 of Labour Amendment Act, 2023

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.

30. Section 30 of Labour Amendment Act, 2023

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. 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. The old Labour Act did not provide for enforcement and execution of a certificate of settlement.

31. Section 31 of Labour Amendment Act, 2023

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. This amendment restores and reasserts the jurisdiction of a labour officer in completed disciplinary proceedings which had been scrapped by some various Supreme Court judgments from 2019 to 2022. 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 the law 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.

32. Section 32 of Labour Amendment Act, 2023

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.

33. Section 33 of Labour Amendment Act, 2023

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

34. Section 34 of Labour Amendment Act, 2023

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, 98 and 154 protecting employees' freedom of association, right to organise and right to collective bargaining among other protected legal rights.

35. Section 35 of Labour Amendment Act, 2023

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. However, it must be used lawfully and objectively to prevent any illegalities, abuse of power or authority.

36. Section 36 of Labour Amendment Act, 2023

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. Notice of registration of a labour officer's ruling or judgement 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.

37. Section 37 of Labour Amendment Act, 2023

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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