

## An ultimate layman's guide to the Labour Act of Zimbabwe

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17 July 2015 is a day many remember as the day a shock labour ruling was made by the Supreme Court of Zimbabwe. It was the case of *Don Nyamande & Anor v Zuva Petroleum (Pvt) Ltd* which led to the delivery of the verdict asserting an employer's common law right to unilaterally terminate a contract of employment on notice. This ruling sent shockwaves across Zimbabwe and triggered panic in the Labour market with its effects spreading like wildfire resulting in the loss of over 6000 jobs in just one week. This prompted the Government to introduce a package of amendments to the *Labour Act (Chapter 28:01)* in the form of the *Labour Amendment Act, 2015*, published on 26 August 2015. One of the major objectives of the amendments was to ensure payment of compensation to those employees whose contracts were terminated on notice immediately following the Zuva judgement.

The Labour Act Chapter 28:01 is an act which serves to protect employees from situations such as this. It exists to declare and define the fundamental rights of employees; to define unfair labour practices; to regulate conditions of employment and other related matters; to provide for the control of wages and salaries; to provide for the appointment and functions of workers committees; to provide for the formation, registration and functions of trade unions, employers organizations and employment councils; to regulate the negotiation, scope and enforcement of collective bargaining agreements; to provide for the establishment and functions of the Labour Court; to provide for the prevention of trade disputes, and unfair labour practices; to regulate and control collective action; to regulate and control employment agencies, and to provide for matters connected with or incidental to the foregoing.

The labour Act applies to all employees except members of the disciplined forces and employees whose conditions of service are regulated by the Constitution. The conditions of service of members of the public service are also regulated by the Public Service Act [Chapter 16:04], members of the disciplined services are covered by the Defence Forces Act [Chapter 11:02] and Prisons Services Act [Chapter 07:10] whilst members of the Judiciary are regulated in terms of the Judicial Services Act [Chapter 07:18].

### A FEW WAYS IN WHICH THE LABOUR ACT PROTECTS YOU

#### **Discrimination**

Section 5 (1) of the **Labour Act** relates to the protection of employees against **discrimination**. An employee cannot be discriminated against based on race, tribe, place of origin, political opinion, colour, creed, gender, pregnancy, HIV/AIDS status or any disability as defined in the **Disabled Persons Act** [Chapter 17:01]. This is also supported by the constitution.

#### **Equal Pay**

Section 5(1)(d) of the Labour Act prohibits discrimination in wages based on sex. It states that the determination or allocation of wages, salaries, pensions, accommodation, leave or other such benefits; should be non-discriminatory.

### **Unlawful Dismissal**

Section 12B addresses dismissal. It states that every employee has the right not to be unfairly dismissed. It further defines unfair dismissal as follows

- if, subject to subsection (3), the employer fails to show that he dismissed the employee in terms of an employment code; or
- in the absence of an employment code, the employer shall comply with the model code made in terms of section 101(9). [Paragraph substituted by section 7 of Act 7 of 2005]
- if the employee terminated the contract of employment with or without notice because the employer deliberately made continued employment intolerable for the employee;
- if, on termination of an employment contract of fixed duration, the employee— (i) had a legitimate expectation of being re-engaged; and (ii) another person was engaged instead of the employee

### **Unfair Labour Standards**

The Labour Act [Chapter 28:01] in section 6(1) aims to protect employees against unfair labour practices. It states that no employer shall—

1. pay any employee a wage which is lower than that to fair labour specified for such employee by law or by an agreement made under the Act; or

**Subject to Section 20 of the Labour Act the Minister introduced Statutory Instrument 81 of 2020 Labour Relations (Specification of Minimum Wages) (Amendment) Notice, 2020 (No. 15) introduced an amendment of the Labour Act introduced in 2020 to raise the minimum wage. It repealed Statutory Instrument 70 of 1996, is repealed and substituted it with the following:**

**For all employees (other than domestic and agricultural employees, for which alternative provision will be made) . . . . . \$2 549,74**

**NEC employees can, however, be exempt from this.**

(b) require any employee to work more than the maximum hours permitted by law or by an agreement made under the Act for such employee; or

(c) fail to provide such conditions of employment as are specified by law or as may be specified by an agreement made under the Act; or

(d) require any employee to work under any conditions or situations which are below those prescribed

by law or by the conventional practice of the occupation for the protection of such employee's health or safety; or

(e) hinder, obstruct or prevent any employee from, or penalize him for, seeking access to any lawful proceedings that may be available to him to enable him lawfully to advance or protect his rights or interests as an employee.

### **Employment of Young Person**

Subject to subsection (3), no employer shall employ any person in any occupation— (a) as an apprentice who is under the age of sixteen years; (b) otherwise than as an apprentice who is under the age of sixteen years.

### **Remuneration**

Section 12A addresses remuneration and deductions from remuneration. It states that remuneration payable in money shall not be paid to an employee by way of promissory notes, vouchers, coupons or in any form other than legal tender. However, remuneration may be payable in kind only in industries or occupations where such payment is customary and shall be subject to the following conditions— (a) any such payment shall be appropriate for the personal use and benefit of the employee and the employee's family; (b) the value attributed to such payment shall be fair and reasonable; (c) equipment or clothing required to protect the health and safety of the employee shall not be computed as part of the remuneration of the employee; (d) no payment shall be made in the form of liquor or drugs; (e) remuneration in kind shall not substitute entirely for remuneration in money

### **The Right to Rest!**

Section 14C especially part 1 is not as commonly known as the other types of leave employees are entitled to. It addresses weekly rest and remuneration for work during public holidays. It states that every employee shall be entitled to not less than twenty-four continuous hours of rest each week, either on the same day of every week or on a day agreed by the employer and employee. It also proffers that an employee shall be granted a leave of absence during every public holiday, and shall be paid his current remuneration for that day if it occurs on a day on which he would otherwise have been required to work. Where an employee consents to work on a public holiday he shall be paid not less than twice his current remuneration for that day, whether or not that day is one on which he would otherwise have been required to work.

### **If Your Employer Dies**

The Labour Act also put into perspective what should happen if your employer died. It states that except where more favourable conditions have otherwise been provided for in the employment contract concerned or terms of any relevant enactment, including any regulations made in terms of the Act, or any agreement or determination made or given effect to in terms of any enactment, a contract of employment between an employee and an employer who is an individual shall not be terminated on the

death of the employer but shall continue to have effect until the expiration of the period after which it would have terminated had due notice of termination been given on the day on which the employer died, and during such period the employee shall be entitled to such wages and other benefits as are provided for in the employment contract from the person legally representing the deceased employer in his capacity as such.

The 64 pages of the Labour Act are definitely worth reading and understanding. It is important as an employee to know your rights. This article only covered some of the issues addressed in the Act but there is so much more. During this pandemic, when many of us have found ourselves with a lot of free time, let's take some of that time to learn the laws which protect us at work. Once we have mastered the Act perhaps we can discuss why the Act is written in an androcentric way!

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