

H.B. 1, 2005

LABOUR AMENDMENT BILL, 2005
(as passed by Parliament on 2nd November, 2005)

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This document reflects the Bill as finally passed by Parliament on Wednesday the 2nd November, 2005, and incorporates the Committee Stage amendments recorded in the Votes and Proceedings of the House for that day.

Parliamentary History

First Reading: 22nd June, 2005.

PLC Report: 18th August, 2005 (adverse report).

PLC Report withdrawn: Tuesday 1st November, 2005 (following Minister's undertaking to remove cause for Committee's objection to clause 29 of the Bill by moving an appropriate Committee Stage amendment).

Second Reading: Tuesday 1st November, 2005.

Committee Stage: Wednesday 2nd November, 2005 (four amendments approved).

PLC Report on amended Bill: Wednesday 2nd November, 2005 (non-adverse report)

Third Reading: Wednesday 2nd November, 2005.

The Committee Stage amendments

In this document the four Committee Stage amendments are highlighted by **red font for new material** and strikethrough font for deleted words. Only four clauses are affected. **Clause 26** is new, necessitating renumbering of the remaining clauses and leaving the Bill with a total of forty clauses as opposed to the thirty-nine of the original Bill. The other amendments are to be found in the renumbered clauses **29, 30 and 32**.

The amendment to clause 30 (originally clause 29) removed the only objection raised by the PLC in its adverse report. It did so by deleting words allowing a presiding officer in the Labour Court to terminate questioning of witnesses in certain circumstances. The PLC had considered those words inconsistent with the right to a fair trial enshrined in section 18(9) of the Constitution.

BILL

To amend the Labour Act [*Chapter 28:01*], to repeal section 56 of the Export Processing Zones Act [*Chapter 14:07*], and to provide for matters connected therewith or incidental thereto.

ENACTED by the President and the Parliament of Zimbabwe.

1 Short title

This Act may cited as the Labour Amendment Act, 2005.

2 Amendment of section 2 of Cap. 28:01

Section 2 ("Interpretation") of the Labour Act [*Chapter 28:01*] (hereinafter called "the principal Act") is amended—

- (a) in the definition of "employee" by the deletion of "that the first-mentioned person is in a position of economic dependence upon or under an obligation to perform duties for the second-mentioned person" and the substitution of "as agreed upon by the parties or as provided for in this Act";
- (b) by repeal of the definition of "managerial employee" and the substitution of—
 ""managerial employee" means an employment who by virtue of his contract of employment or of his seniority in an organisation, may be required or permitted to hire, transfer, promote, suspend, lay-off, dismiss, reward, discipline or adjudge the grievances of other employees;"
- (c) by the repeal of the definition of "Minister" and the substitution of—
 ""Minister" means, subject to section 83, the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the President may, from time to time, assign the administration of this Act;"
- (d) by insertion of the following definition—
 ""legal practitioner" means a person registered as such in terms of the Legal Practitioners Act [*Chapter 27:07*];"
- (e) in the definition of "works council" by the addition after "committee" of "and a chairperson".

3 Amendment of section 2A of Cap. 28:01

Section 2A of the principal Act is amended—

- (a) in subsection (1) by the repeal of paragraph (b);
- (b) by the repeal of subsection (3) and the substitution of the following—
 "(3) This Act shall prevail over any other enactment inconsistent with it."

4 Amendment of section 3 of Cap. 28:01

Section 3 ("Applicant of Act") of the principal Act is repealed and the following is substituted—

"3 Application of Act

(1) This Act shall apply to all employers and employees except those whose conditions of employment are otherwise provided for in the Constitution.

(2) For the avoidance of any doubt, the conditions of employment of members of the Public Service shall be governed by the Public Service Act [*Chapter 16:04*].

(3) This Act shall not apply to or in respect of—

- (a) members of a disciplined force of the State; or

- (b) members of any disciplined force of a foreign State who are in Zimbabwe under any agreement concluded between the Government and the Government of that foreign State; or
- (c) such other employees of the State as the President may designate by statutory instrument."

5 Amendment of Section 11 of Cap. 28:01

Section 11 ("Employment of young persons") of the principal Act is amended—

- (a) in subsection (1) by the insertion after "entered" of "into";
- (b) in subsection (5) by the deletion of "thirty thousand dollars" and the substitution of "level seven".

6 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 repeal of subsection (4) and the substitution of—

"(4) Except where a longer period of notice has been provided for under a contract of employment or in any relevant enactment, and subject to subsections (5), (6) and (7), notice of termination of the contract of employment to be given by either party shall be—

- (a) three months in the case of a contract without limit of time or a contract for a period of two years or more;
- (b) two months in the case of a contract for a period of one year or more but less than two years;
- (c) one month in the case of a contract for a period of six months or more but less than one year;
- (d) two weeks in the case of a contract for a period of three months or more but less than six months;
- (e) one day in the case of a contract for a period of less than three months or in the case of casual work or seasonal work.";
- (b) in subsection (5) in paragraph (a) by the deletion of "one week" and the substitution of "one day";
- (c) in subsection (11) in paragraph (b) by the deletion from paragraph (ii) of "employees involved" and the substitution of "employees concerned".

7 Amendment of section 12B of Cap. 28:01

Section 12B ("Dismissal") of the principal Act is amended in subsection (2) by the repeal of paragraph (b) and the substitution of the following—

- "(b) in the absence of an employment code, the employer shall comply with the model code made in terms of section 101(9)."

8 Amendment of section 12C of Cap. 28:01

Section 12C ("Retrenchment") of the principal Act is amended—

- (a) in subsections (8) and (9) by the deletion of "within two weeks";
- (b) by the repeal of subsection (10).

9 Amendment of section 13 of Cap 28:01

Section 13 ("Wages and benefits upon termination of employment") of the principal Act is amended by the insertion after subsection (1) of the following subsection—

"(1a) Wages and benefits payable to any person or to his or her estate in terms of this section shall not form part of or be construed as a retrenchment package which an employee is entitled to where his or her employment has been terminated as a result of retrenchment in terms of section 12C."

10 Amendment of section 18 of Cap. 28:01

Section 18 ("Maternity leave") of the principal Act is amended—

- (a) in subsection (1) by the deletion of "ninety days" and the substitution of "ninety-eight days";
- (b) by the repeal of subsection (4)

11 New section substituted for section 19 of Cap. 28:01

Section 19 of the principal Act is repealed and the following is substituted—

"19 Advisory councils

(1) The Minister may, either on his or her own initiative or on the recommendation of any employer or employee of any association representing employers or employees, appoint advisory councils consisting of such persons as the Minister may deem fit, to investigate and make recommendations to him or her as to one or more of the following—

- (a) in connection with wages, salaries or benefits—
 - (i) the fixing of minimum wages and benefits for employees; or
 - (ii) any other matters to which minimum wage notices may relate;
- (b) the making or regulations in terms of section 17 or section 26;
- (c) the compilation of a list of arbitrators in terms of section 98(6);
- (d) the declaration of any service as an essential service in terms of the definition of "essential service" contained in section 102;
- (e) the code of picketing in term of section 104A;
- (f) any other matter as may give better effect to the provisions of this Act."

12 Repeal of section 22 of Cap. 28:01

Section 22 of the principal Act is repealed.

13 Amendment of section 23 of Cap. 28:01

Section 23 ("Formation of workers committees") is amended—

- (a) in subsection (2) by the deletion of "labour relations officer" and the substitution of "labour officer";

- (b) by the repeal of subsection (3) and the substitution of—

"(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2), either party to the dispute may refer to it to the labour officer mentioned in paragraph (a) of that subsection, or, in the absence of such labour officer, any other labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration."

14 Amendment of section 25 of Cap. 28:01

Section 25 ("Effect of collective bargaining agreements negotiated by worker committees") of the principal Act is amended—

- (a) by the deletion of subsection (2)(b);
 (b) by the insertion after subsection (5) of the following subsection—

"(6) Any person who is aggrieved by any determination or direction in terms of subsection (2) or any amendment of a collective bargaining agreement in terms of subsection (4) may appeal to the Labour Court."

15 Amendment of section 29 of Cap. 28:01

Section 29 ("Registration of trade unions and employers organisations and privileges thereof") of the principal Act is amended—

- (a) in subsection (4)—
 (i) in paragraph (a) by the deletion of "labour relations officer" and the substitution of "labour officer";
 (ii) by the repeal of paragraph (e);
 (b) in subsection (4a) by the repeal of the proviso thereto and the substitution of—

"Provided that if the parties negotiating a collective bargaining agreement fail to agree on the extent of paid or unpaid leave for the purposes of this subsection, either or both of the parties to the dispute may refer the matter to a labour officer who shall thereupon deal with it in terms of section 93.";

- (c) in subsection (5)—
 (i) in paragraph (a) by the deletion of "labour relations officer" and the substitution of "labour officer",
 (ii) by the repeal of paragraph (d).

16 Amendment of section 30 of Cap. 28:01

Section 30 (Unregistered trade unions and employers organisations") of the principal Act is amended—

- (a) in subsection (1) by the deletion in paragraph (a) of "labour relations officer" and the substitution of "labour officer";
 (b) in subsection (2) by the repeal of paragraph (a).

17 Amendment of section 40 of Cap. 28:01

Section 40 ("Variation, suspension or rescission of registration") of the principal Act is amended—

- (a) in subsection (1) by the deletion of "or certification";
- (b) by the repeal of subsection (2);
- (c) in subsection (3) by the deletion of "or certification" and "or certified";
- (d) by the insertion after subsection (4) of the following subsection—

"(5) Any person who is aggrieved by any determination or decision made by the Registrar in terms of this section may appeal to the Labour Court."

18 Amendment of section 45 of Cap. 28:01

Section 45 ("Consideration relating to registration or variation, suspension or rescission of registration of trade unions or employers organisations") of the principal Act is amended in subsection (1)(a)(i)B by the deletion of "and any other Minister whose Ministry or Department may be affected".

19 Amendment of section 48 Cap. 28:01

Section 48 ("Notice of appeal") of the principal Act is amended by the repeal of subsection (2) and the substitution of the following—

"(2) A notice of appeal in terms of subsection (1) shall not suspend the operation or effect of the decision appealed against."

20 Amendment of section 51 of Cap. 28:01

Section 51 ("Supervision of election of officers") of the principal Act is amended by the insertion after subsection (2) of the following subsection—

"(3) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court."

21 Amendment of section 63 of Cap. 28:01

Section 63 ("Designated Agents of Employment Councils") of the principal Act is amended by the repeal of subsection (3a) and the substitution of—

"(3a) A designated agent of an employment council who meets such qualifications as may be prescribed shall, in his or her certification of appointment, be authorised by the Registrar to redress or attempt to redress any dispute which is referred to the designated agent or has come to his or her attention; where such dispute occurs in the undertaking or industry and within the area for which the employment council is registered, and the provisions of Part XII shall apply, with the necessary changes, to the designated agent as they apply to a labour officer."

22 Amendment of section 74 of Cap. 28:01

Section 74 ("Scope of collective bargaining agreements") of the principal Act is amended in subsection (3) by the insertion after paragraph (k) of the following paragraphs—

- (l) housing and transport facilities or in their absence, an allowance for the same;
- (m) measures to combat workplace violence and handling its aftermath."

23 Amendment of section 76 of Cap. 28:01

Section 76 ("Duty of full disclosure when financial incapacity alleged") of the principle Act is amended by the repeal of subsection (2) and the substitution of—

"(2) Where there is any dispute as to whether or not full disclosure has been made in terms of subsection (1), either party to the dispute may refer it to a labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration."

24 Amendment of section 79 of Cap. 28:01

Section 79 ("Submission of collective bargaining agreements for approval or registration") of the principal Act is amended by the deletion of subsection (2)(b).

25 Amendment of section 81 of Cap. 28:01

Section 81 ("Amendment of registered collective bargaining agreements by Minister") of the principal Act is amended—

(a) by the deletion of subsection 1(b);

(b) by the insertion after subsection (4) of the following subsection—

"(5) Any person who is aggrieved by any action taken by the Minister in terms of this section may appeal to the Labour Court."

26 New section inserted in Cap. 28:01

The principal Act is amended by the insertion after section 82A of the following—

"82B Codes of best practice, guidelines and model agreements

The Minister shall publish in the *Government Gazette* codes of best practices, guidelines and model agreements which the employers and employees may have regard to when performing their duties but they are not obliged to follow them."

27 New section substituted for section 83 of Cap. 28:01

Section 83 of the principal Act is repealed and the following is substituted—

"83 Administration of Part XI

In this Part "responsible Minister" means (except in section 89(1)(b), where reference to the responsible Minister is to the Minister as defined in section 2) the Minister responsible for justice or any other Minister to whom the President may, from time to time, assign the administration of this Part."

28 Amendment of section 86 of Cap. 28:01

Section 86 ("Assessors") of the principal Act is amended—

(a) by repeal of subsection (1) and the substitution of

"(1) The Senior President of the Labour Court, in consultation with the Minister and the responsible Minister shall prepare a list of the names of not less than ten persons who have knowledge or experience in labour relations and who may appropriately be appointed as assessors of the Labour Court.'";

Section 89 ("Functions, powers, and jurisdiction of Labour Court") of the principal Act is amended—

- Provided that—
- (i) any such determination shall specify an amount of damages to be awarded to the employee concerned as an alternative to his reinstatement or employment;
 - (ii) in deciding whether to award damages or reinstatement or employment, onus is on the employer to prove that the employment relationship is no longer tenable, taking into account the size of the employer, the preferences of the employee, the situation in the labour market and any other relevant factors;
 - (iii) should damages be awarded instead of reinstatement or employment as a result of an untenable working relationship arising from unlawful or wrongful dismissal by the employer, punitive damages **should** **may** be imposed;”.

The principal Act is amended by the insertion after section 90 of the following section—

(1) The Labour Court shall not be bound by the strict rules of evidence, and the court may ascertain any relevant fact by any means which the presiding officer thinks fit and which is not unfair or unjust to either party.

- (2) Evidence may be adduced orally or in writing in any proceedings in the Labour Court, at the discretion of the presiding officer.
- (3) The parties or their representatives to any proceedings in the Labour Court shall be entitled to question or cross-examine each other or any witness. ~~The parties or the representatives to any proceedings in the Labour Court shall be entitled to question or cross-examine each other or any witness, but the presiding officer may terminate any such~~

~~questioning or cross-examination if he or she considers it to be unfair, oppressive, unduly prolonged or unnecessary.~~

(4) It shall be the responsibilities of the presiding officer to ascertain the facts in any proceedings in the Labour Court, and for that purpose he or she may—

- (a) call any party or his or her representative;
- (b) question or cross-examine any party or his or her representative or witness; and
- (c) put any question to a party or his or her representative or witness which is suggested to him or her by any party.’’.

31 Amendment of section 92A of Cap. 28:01

Section 92A ("Contempt of Labour Court'') of the principal Act is amended in subsection (2) by the deletion of "three thousand dollars'' and the substitution of "level five'.

32 New sections substituted for section 92D of Cap. 28:01

Section 92D of the principal Act is repealed and the following are substituted—

"92D Appeals to the Labour Court not provided for elsewhere in this Act

A person who is aggrieved by a determination made under an employment code, may, within such time and in such manner as may be prescribed, appeal to the Labour Court.

92E Appeals to the Labour Court generally

(1) An appeal in terms of this Act may address the merits of the determination or decision appealed against.

(2) An appeal in terms of subsection (1) shall not have the effect of suspending the determination or decision appealed against.

(3) Pending the determination of an appeal the Labour Court may make such interim determination in the matter as the justice of the case requires.

92F Appeals against decisions of Labour Court

(1) An appeal on a question of law only shall lie to the Supreme Court from any decision of the Labour Court.

(2) Any party wishing to appeal from any decision of the Labour Court on a question of law in terms of subsection (1) shall seek from the President who made the decision leave to appeal that decision.

(3) If the President refuses leave to appeal in terms of subsection (2), the party may seek leave from the judge of the Supreme Court to appeal."

33 Amendment of section 93 of Cap. 28:01

Section 93 ("Powers of labour officers") of the principal Act is amended-

- (a) in subsection (1) by the insertion after "dispute" of "or unfair labour practice'';
- (b) in subsection (2) by the insertion after "dispute'' of "or unfair labour practice'';
- (c) in subsection (3) by the insertion after "dispute'' wherever it occurs of "or unfair labour practice'';

- (d) in subsection (4) by the insertion after "dispute" wherever it occurs of "or unfair labour practice";
- (e) in subsection (5)
 - (i) by the insertion after "dispute" of "or unfair labour practice";
 - (ii) in paragraph (b) by the insertion after "dispute" of "or unfair labour practice";
 - (iii) in paragraph (c) by the insertion after "dispute" where it occurs for the first and second times of "or unfair labour practice";
- (f) by the deletion of subsection(6);
- (g) in subsection (7)-
 - (i) by the insertion after "dispute" of "or unfair labour practice";
 - (ii) in paragraph (a) by the insertion after "dispute" where it occurs of "or unfair labour practice";
 - (iii) in paragraph (b) by the insertion after "dispute" where it occurs for the first and second times of "or unfair labour practice".
 - (iv) in subparagraph (i) of paragraph (b) by the insertion after "dispute" where it occurs for the first time of "or unfair labour practice".

34 Repeal of Section 97 of Cap. 28:01

Section 97 of the principal Act is repealed.

35 Amendment of section 98 of Cap. 28:01

Section 98 ("Effect of reference to compulsory arbitration under Parts XI and XII") of the principal Act is amended—

- (a) in subsection (6)(a) by the insertion after "labour officer" of ", *ex-officio*"
- (b) by the repeal of subsection (7) and the substitution of—

"(7) In referring a dispute to compulsory arbitration by a person other than a labour officer, or a designated agent for the employment council which is registered to represent the undertaking or industry to which the parties belong, the Labour Court or labour officer shall determine the share of the costs of the arbitration to be borne by each party.";
- (c) by the repeal of subsection (9) and the substitution of—

"(9) In hearing and determining any dispute an arbitrator shall have the same powers as the Labour Court.".

36 Amendment of section 106 of Cap. 28:01

Section 106 ("Show cause orders") of the principal Act is amended in subsection (1) by the insertion of the following proviso—

"Provided that the Minister shall call both parties to appear before him or her for submissions before he or she issues a show cause order if he or she deems it necessary that they appear.".

37 Amendment of section 107 of Cap. 28:01

Section 107 ("Disposal orders") of the principal Act is amended in subsection (3)(a)—

- (a) by the deletion in subparagraph (ii) of "in his discretion, to dismiss summarily" and the substitution of "to take disciplinary action in terms of the code or law";
- (b) by the insertion after subparagraph (vi) of the following subparagraph—
 - "(vii) the taking of disciplinary action by the employer in the case of employees on collective job action, in terms of the code or any other sanction as the circumstances permit, in respect of defiance of a show cause order".

38 Amendment of the long title to Cap. 28:01

The long title of the principal Act is amended by the insertion after "fundamental rights of employees;" of "to give effect to the international obligations of the Republic of Zimbabwe as a member state of the International Labour Organisation and as a member of or party to any other international organisation or agreement governing conditions of employment which Zimbabwe would have ratified;"

39 Minor amendments to Cap. 28:01

The provisions of the principal Act specified in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule.

40 Repeal of section 56 of Cap. 14:07

Section 56 of the Export Processing Zones Act [*Chapter 14:07*] is repealed.

SCHEDULE (Section 38)**MINOR AMENDMENTS**

<i>Provision</i>	<i>Extent of amendment</i>
Section 2 (in paragraph (d) of the definition of "disciplined force")	By the deletion of "person" and the substitution of "persons".
Section 2 (in the definition of "check-off scheme")	By the deletion of ""employee" and the substitution of "employees".
Section 4A(2)(c)	By the deletion of "or service".
Sections 7(2), 8(d) and (e)(ii), 9(c) and (d), 19	By the deletion of "or employment board".
Section 8	By the insertion of "or" after the semi-colon at the end of paragraphs (f) and (g).
Section 9(b)	By the insertion after "contravenes any" of "of the provisions of".
Section 14A(3)	By the deletion of "gazetted".
Part V	By the deletion of the heading and the substitution of the following "ADVISORY COUNCILS AND WAGE AND SALARY CONTROL"
Section 62(1)(a)	By the repeal of the proviso.
Section 90(4)	By the deletion of "Minister responsible for justice" and the substitution of "responsible Minister".
Section 104(4)(b)	By the deletion of "or certified".