

LABOUR AMENDMENT

H.B. 14, 2021.]

LABOUR AMENDMENT AMENDMENT BILL, 2021

MEMORANDUM

The Bill will amend the Labour Act [*Chapter 28:01*]. The amendments are being made to align the Labour Act with section 65 of the Constitution of Zimbabwe and the International Labour Organisation (ILO) Conventions ratified by Zimbabwe. In order to align with section 65 of the Constitution, this Bill will expound on the rights to fair and safe labour practices and standards.

The review also seeks to promote ease of doing business principles through streamlining and promoting timely conclusion of processes, particularly the labour dispute settlement and retrenchment processes.

The Bill also takes care of emerging issues in the world of work such as labour broking, violence and harassment at the work place and emerging forms of employment relationships with a view to closing the lacuna in the existing legislation thus entrenching fair labour standards contemplated in section 65 of the Constitution.

The Bill is a product of extensive consultations among representatives of Government, Business and Labour within the auspices of the Tripartite Negotiating Forum (TNF). It therefore represents convergence of competing interests among the tripartite constituents.

In more detail, the individual clauses of the Bill provide as follows:

Clause 1

This clause sets out the Bill's short title.

Clause 2

This clause amends the existing section 2 of the Act by including the definitions of "gender-based violence and harassment" and "violence and harassment". The addition of these definitions expands the protection given to employees from the actions of their employers or other employees.

Clause 3

This clause in addition to existing types of work from being forced labour, exempts any work that may be conducted as part of communal work or services.

Clause 4

This clause will place an obligation on employers to pay male and female employees equally for work of the same value. The new provision broadens the scope of the principle of equal pay for work of equal value to tackle occupational sex segregation in the labour market.

Clause 5

This clause amends section 6 to prohibit violence and harassment at the workplace, including violence and harassment of a sexual based nature or gender based nature.

Clause 6

This clause amends section 8 by including as unfair labour practice the actions by employer who engages in actions that amount to violence and harassment. *Clause 7.*

Clause 7

This clause amends section 11 (Employment of young persons) by increasing the penalty a person found guilty of conducting child labour from two to ten years with a view to providing a more deterrent sanction given the backdrop of increasing trade sanctions on goods produced in child labour prone markets.

Clause 8

This clause amends section 12 to unambiguously deal with the issue of the common law practice of termination on notice and also deal with issues of casualization by making provision that a fixed term contract cannot be for a period that is less than 12 months, unless the employment is for seasonal or causal work or for the performance of a specific service.

This clause further provides that an employer who employs the majority of his or her employees on fixed term contracts will have make use of retrenchment provisions when the contracts are terminated.

This clause further provides for termination of contracts for breach of express or implied conditions of service after a due process (*procedural fairness*) in line with applicable and established code of conduct or agreed disciplinary procedure.

Clause 9

This clause replaces section 12C to provide essential definitions related to retrenchment and makes provisions to ensure that employer's obligation to pay the retrenchment package to his or her employees is fulfilled, taking into account any employer that deliberately diminishes his or her capacity to pay the retrenchment package and also making sure that employees are free to make representations to the Retrenchment Board where they allege that an employer has the capacity to pay a better retrenchment package than that offered.

This clause further provides a process for effecting enforcement of non-payment of a retrenchment package through the Labour Court.

Clause 10

This clause inserts a new section to ensure that employees do not evade having to pay retrenchment packages to their employees by fraudulently or recklessly conducting their business in a manner that renders the employer unable to pay such retrenchment package.

Clause 11

This clause amends section 18 to align the Labour Act to section 65(7) of the Constitution to ensure that women employees have the right to fully paid maternity leave for a period of 3 months by removing qualifying periods, prescribed intervals for maternity and a maximum number of times for enjoying the right to maternity leave under one employer.

Clause 12

This clause inserts a new section that makes provision for the manner in which an employer can engage employees on contracts for hourly work against the backdrop of new forms of contracts called "zero hour contracts" wherein workers are only paid for actual hours worked in the event of work stoppage not caused by the employee. These contracts may not prohibit employees from seeking other work. This section clause also mandates the employer to pay up the difference of what the employees earn and the minimum wage where employees do not earn the minimum wage for a period of two months.

This clause further provides for fair labour practices in labour brokerage arrangements in that, it affords protection for employees in such arrangements by making the labour broker and employer both liable to the employee. This deals with mischief that comes with triangular employment relationships which circumvent employer obligations and responsibilities including fair remuneration of workers.

This clause further gives clarity to the responsibilities of parties to a labour brokerage arrangement.

Clause 13

This clause provides for the Minister to be a party to a collective bargaining agreement where statutory bodies or entities controlled by the State are parties to a collective bargaining agreement to cure the mischief of unsustainable employments costs being agreed upon by parties to a CBA in statutory bodies or entities controlled by the state.

Clauses 14 and 15

Clause 14 makes an addition to the matters that a works council may be consulted on by the employer by adding paid educational leave to the scope of collective bargaining thus mainstreaming ILO Convention 140 on Paid Educational Leave ratified by Zimbabwe.

Clause 15 deletes the need for the Minister to specify the maximum amount that can be set for membership fees of trade union, employers organization or federation.

Clause 16

This clause removes the need for accreditation proceedings during the application for registration of a trade union, employers organisations or federation.

Clause 17

This clause makes addition to the requirements for application for registration of a trade union, employers organisations or federation, namely the requirement to specify the physical head office of the organisation and submission of the minutes of the meeting of the organisation. This is meant to deal with mushrooming of briefcase unions seeking registration without known offices or proven membership.

Clause 18

This clause requires every trade union, employers organisation or federation to submit vital information to the Registrar, such as the auditor's report and change of address for the service of documents.

Clause 19

This clause amends section 45 by providing a set out criteria for the Registrar in considerations for variation, suspension and rescission of registration of trade unions or employers organisations.

Clause 20

This clause amends section 51 to remove the provision of supervision of elections of trade unions by labour Officers which has been noted conflicts with principles of freedom of association as it constitutes interference in internal affairs of trade unions.

Clauses 21 and 22

Clause 21 amends section 54 by removing the involvement of the Minister in the collection of union dues.

Clause 22 repeals section 55 which empowered Minister to regulate union dues.

Clause 23

This clause repeals and substitutes section 56 of the existing Act to ensure that all employment councils are governed as statutory employment councils to improve governance oversight as voluntary employment council were claiming autonomy given their voluntary nature. This clause also provides for some trade unions or employer organisations to be admitted to employment council meetings as observers were they are not allocated any seats.

Clause 24

This clause amends section 58 of the existing Act by requiring employment councils to provide for the admission of new parties to employment council in their Constitutions.

Clause 25

This clause amends section 63 of the existing Act in order to ensure that the matter of dispute or unfair labour practice are redressed by allowing a labour officer to assume jurisdiction over such matters where they have not been attended to by a designated agent within a period of 30 days. This allows for access to justice to concerned parties in places where there are no Designated Agents of the National Employment Councils (NECS) and in situations of inordinate delays by NECs.

Clause 26

This clause will allow for negotiations of conditions for paid education leave to take place at an employment council, as well as allow the Minister to be party to such negotiations where a statutory body or State entity is involved.

Clauses 27 and 28

Clause 27 amends section 79 in this clause removes the requirement for collective bargaining agreements to be subjected to Ministerial approval on the grounds that the agreement is or has become unfair or unreasonable. The parties to the collective bargaining agreement themselves have the right of redress should any part of their agreement is unfair or unreasonable.

Clause 28 repeals and replaces subsection (1) of section 81 to the same effect that the parties to a collective bargaining agreement may address any unfair or unreasonable provision of their collective bargaining agreement.

Clause 29

This clause enunciates the right in section 65(4) of the Constitution to secure just, equitable and satisfactory conditions of work through a system of collective bargaining established by law.

Clause 30

This clause replaces section 93 of the Act to allow for registration with a Court a dispute or unfair labour practice settlement and for the labour officer to issue a certificate of settlement which will have the effect of a civil judgement. This ensures expeditious resolution of labour disputes given the complexity and cumbersome nature of the existing system.

Clause 31

This clause amends section 98 of the Act and strengthens the powers of the Labour Court and labour officer over the arbitration process.

Clause 32

This clause inserts in section 101 the requirement to periodically review every registered employment code of conduct every 5 years.

Clause 33

This clause creates a distinction between the liability that is attached to people who engage in unlawful job action in a case where essential services are involved and any other case.

Clause 34

This clause repeals section 111.

Clause 35

This clause amends section 112 and likewise in the amendment to section 109 differentiates between the liability that is attached to people who engage in unlawful job action in a case where essential services are involved and any other case.

Clause 36

This clause amends section 120 of the Act with a view to streamline the Ministry's powers to regulate administrative issues of trade unions and employers organisations, by ensuring that where there is a real risk that the funds or property of the organisation will be lost, the Minister may appoint a provisional administrator.

Clause 37

This clause makes provision for such minor amendments as are necessary to the Act.

BILL

To provide for the amendment of, the Labour Act [*Chapter 28:01*], and to provide for matters connected to or incidental to the foregoing.

ENACTED by the Parliament and the President of Zimbabwe.

5 **1 Short title**

This Act may be cited as the Labour Amendment Act, 2021.

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 by insertion of the following definitions—

10 ““gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment;

15 “violence and harassment” in the context of section 6(3) and section 8 refers to a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment;”.

3 Amendment of section 4A of Cap 28:01

20 Section 4A (“Prohibition of forced labour”) of the principal Act is amended by the repeal of subsections (2) and (3) and the substitution of—

 “(2) For the purposes of subsection (1) the term “forced labour” shall not include—

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- (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
- (b) any work or service which forms part of the normal civic obligations voluntarily undertaken by the citizens of a fully self-governing country;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of the Prisons and Correctional Service or other public authority authorised by law to rehabilitate offenders and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- (d) any work or service exacted by a public authority in virtue of any law in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, epidemic, pandemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population:

Provided that the law in virtue of which such work or service is exacted must set forth the circumstances in which its application is reasonably justifiable, be restricted in its application to the period of the emergency or its immediate aftermath, and require that any work or service exacted be strictly proportionate to what is needed to meet the emergency in question;

- (e) minor communal services of a kind which, by virtue of being performed by the members of the community in the direct interest of the said community, are considered after consultation with the members of that community or their direct representatives to be normal civic obligations incumbent upon such members; or
- (f) labour required of any person while he or she is lawfully detained which, though not required in consequence of the sentence or order of a court—
 - (i) is reasonably necessary in the interests of hygiene or for the maintenance or management of the place at which he or she is detained; or
 - (ii) is permitted in terms of any other enactment.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.”.

4 Amendment of section 5 of Cap of 28:01

Section 5 of the principal Act (“Protection of employees against discrimination”) is amended by the repeal of subsection (2a) and the substitution of—

“(2a) Every employer shall pay equal remuneration to male and female employees for work to which equal value is attributed without discrimination on the grounds of sex or gender.”.

5 Amendment of section 6 of Cap. 28:01

Section 6 (“Protection of employees’ rights to fair labour standards”) of the principal Act is amended by the insertion after subsection (2) of the following subsections—

“(3) No person shall directly or indirectly act in a manner that amounts to violence and harassment towards another person at the workplace including any action in the course of, linked with or arising out of work—

- (a) in the workplace, including public and private spaces where they are a place of work;
- (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities;
- 5 (c) during work-related trips, travel, training, events or workplace organised social activities;
- (d) through work-related communications, including those enabled by information and communication technologies;
- (e) in employer-provided accommodation; and
- 10 (f) when commuting to and from work.

(4) Any person who contravenes subsection (3) shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment.

15 (5) Notwithstanding anything to the contrary in an employment code or the conditions of service for the employee concerned, any employee who is found after due enquiry by the employer to have engaged on a balance of probabilities in any of the acts for which the employee may be charged for an offence under subsection (4) shall be justifiable grounds for dismissal for that employee whether that employee has been prosecuted or not.”.

20 **6 Amendment of section 8 of Cap.28:01**

Section 8 (“Unfair labour practices by employer”) of the principal Act is amended by the insertion after paragraph (h) of the following paragraph—

- “(i) any employer who engages in any of the action prohibited in section 6(3), (4), or (5).”.

25 **7 Amendment of section 11 Cap. of 28:01**

Section 11 (“Employment of young persons”)(5) of the principal Act is amended by the deletion of “level 7” and “two years” and the substitution of “level 12” and “ten years” respectively.

8 Amendment of section 12 Cap. of 28:01

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

- (a) in subsection (4) by the deletion of the words “to be given by either party shall be” and the substitution of “to be given by either party shall (notwithstanding any provision of the common law to the contrary) be” ;
- 35 (b) by the repeal of subsections (4a) and (4b) and the substitution of the following—

“(4a) A contract of employment may be terminated only, on the part of an employee, by his or her resignation or retirement, and in the following cases on the part of an employer—

- 40 (a) for misconduct following due disciplinary proceedings in accordance with this Act (with notice under subsection (4) unless the employment code of conduct provides otherwise); or
- (b) by mutual agreement in writing (with notice under subsection (4) unless otherwise agreed); or

- (c) in the case of a fixed term contract, upon the expiry of the period of the contract without the need to give notice under subsection (4):
- Provided that—
- (i) notwithstanding anything in such contract to contrary no fixed term contract shall be for less than twelve months except—
 - A. in the case of employment that by its nature is casual or seasonal employment; or
 - B. the contract is for the performance of some specific service which may be completed before that time;
 - (ii) any fixed term contract that purports to be for a period off less than twelve months shall be deemed to be a contract for an indefinite period;
 - (iii) if the majority of employees engaged by the same employer are on fixed term contracts, and at any time when an employee’s employment is terminated on the expiry of his or her fixed term contract, then the provisions of sections 12C and 12D shall apply to such termination as if it was retrenchment;
- (d) pursuant to retrenchment proceedings in terms of section 12C (“Retrenchment and compensation for loss of employment on retrenchment or in terms of section 12(4a)”); or
- (e) in terms of section 14(“Sick leave”) (4)(b); or
- (f) for the breach of an express or implied term of contract, upon such breach being verified after due inquiry under an applicable employment code or in any other manner agreed in advance by the employer and employee concerned.”.

9 New sections substituted for section 12C of Cap. 28:01

Section 12C (“Retrenchment and compensation for loss of employment on retrenchment or in terms of section 12(4a)”) of the principal Act is repealed and the following is substituted—

“12C Retrenchment and compensation for loss of employment on retrenchment

(1) In this section—

“capacity to pay”, in relation to an assessment of an employer’s capacity to pay a minimum or an enhanced retrenchment package, shall not be deemed to be affected by any action of the employer done in contemplation of retrenchment that diminishes or apparently diminishes his or her capacity to pay a minimum or an enhanced retrenchment package, and

includes any action done at any time up to twelve months before the retrenchment;

“employer” for the purposes of this section includes any person, entity or trust that is a successor to the employer, whether domiciled in Zimbabwe or not;

“retrench”, with reference to the date on which an employment contract is terminated for the purpose of retrenchment, means any date specified by the employer that is not earlier than the date on which the employer lodges written notice of retrenchment in terms of subsection (3)(a) and not later than the date on which the employer lodges written notice of retrenchment with the Retrenchment Board in terms of subsection (5) (and in the absence of such specification, the latter date shall be presumed to have been the intended date).

(2) Unless better terms are negotiated and agreed between the employer and the employee or employees concerned or their representatives—

- (a) a minimum retrenchment package shall be payable by the employer as compensation for retrenchment not later than 60 days from the date on which the retrenchment takes effect, unless the affected employees agree to a longer or shorter or staggered period of payment of the package; and
- (b) if the employees concerned or their representatives, having alleged that the employer has the capacity to pay an enhanced retrenchment package, and having satisfied the Retrenchment Board to that effect, the enhanced retrenchment package shall be payable with effect from the notification of the Retrenchment Board’s decision.

(3) An employer who intends to retrench any one or more employees or has negotiated with his or her employees a retrenchment package better than the minimum retrenchment package (hereafter called the “agreed retrenchment package”) shall—

- (a) give fourteen days written notice —
 - (i) of the intention to retrench in the absence of an agreed retrenchment package to the works council established for the undertaking or, if there is no works council established for the undertaking concerned or if a majority of the employees concerned agree to such a course, to the employment council established for the undertaking or industry; and
 - (ii) of such intention or the agreed retrenchment package, as the case may be, to the Retrenchment Board; and
 - (iii) of the intention to retrench in the absence of an agreed retrenchment package to the employee or employees concerned;
- (b) in the absence of an agreed retrenchment package, provide the works council or employment council, as the case may be, and the Retrenchment Board with details of every employee

whom the employer wishes to retrench and of the reasons for the proposed retrenchment.

(4) Where negotiations for a retrenchment package better than the minimum retrenchment package are undertaken after the notice given to the Retrenchment Board under subsection (3)(a)(ii) and an agreement is secured (including the date or dates when it shall be paid to the employees), any payments required to be made in terms of the retrenchment package must be made on the day or days so agreed and the signed retrenchment package shall be notified in writing in accordance with subsection (5)(a) to the Retrenchment Board no later than the end of the notice period or seven days thereafter.

(5) No later than fourteen days when any employee is retrenched, the employer shall notify the Retrenchment Board—

- (a) of the fact and the particulars of any agreed retrenchment package, if any (in which event the Retrenchment Board will no later than fourteen days from the date of when the employer notified the Board issue to the employer a certificate (hereinafter called a “notification certificate”) to that effect if is satisfied that the agreed retrenchment package is indeed better than the minimum retrenchment package); or
- (b) in the absence of an agreed retrenchment package, of the fact that the minimum retrenchment package is being or is to be paid, together with details of every retrenched employee (in which case the Retrenchment Board will no later than fourteen days from the date of when the employer notified the Board issue to the employer a notification certificate to that effect):

Provided that—

- (i) if an employer does not comply with this subsection, the full amount of the monies and other benefits pursuant to the agreed retrenchment package or minimum retrenchment package, as the case may be, shall vest (notwithstanding any provision for staggering the payment thereof) in the affected employee, employees or their representatives on the 21st day after the employee or employees concerned or any of them are first retrenched and the employee, employees or their representatives may proceed to enforce the package in terms subsections (6) and (7);
- (ii) where the Retrenchment Board issues a certificate under paragraph (a) or (b) it shall post a copy of it on any actual or virtual notice board of the Retrenchment Board for a period of not less than seven consecutive days;
- (iii) if there is a question in any judicial or other proceedings whether the Retrenchment Board issued a notification certificate to the employer, an affidavit by the employer to

the effect that he or she notified the Board in compliance with paragraph (a) or (b) shall be *prima facie* proof to that effect.

5 (6) If it is alleged by any employee or employees or their
representatives that any agreed retrenchment package or minimum
retrenchment package has not been paid within the time or times stipulated
or agreed, such employee, employees or their representatives must, before
proceeding to enforce the package in terms of subsection (7), satisfy the
10 Retrenchment Board to that effect in the form of an affidavit in which
the extent of non-compliance shall be clearly set forth, whereupon the
Retrenchment Board shall notify the employer of the allegation in writing
and afford him or her an opportunity to make representations to the Board
in writing in rebuttal of the allegation, and if no such representations are
15 received or the Board is satisfied that compliance has not been made
with the minimum or agreed package, the Board shall issue a certificate
(hereinafter called a “non-compliance certificate”) to that effect in which
the extent of non-compliance shall be clearly set forth.

(7) Upon issuance of the notification certificate, the retrenchment
20 package to which the certificate relates, shall be binding on the employer
and the employee or employees concerned, and the package shall be paid
(subject to proviso (i) to subsection (5)) in accordance with its terms,
failing which the employee or employees concerned or their representatives
may —

- 25 (a) apply to the Labour Court for an order enforcing the package
on the basis of the non-compliance certificate, for which
purpose the Labour Court shall deem the non-compliance
certificate to be a liquid document, determinable by default
judgment proceedings in the same way as such documents
are determinable in the magistrates courts or High Court;
30 and
- (b) upon obtaining such order, submit for registration a copy of
the order to the court of any magistrate which would have
had jurisdiction to order the payment of the retrenchment
package to which the order of the Labour Court relates had
35 the matter been determined by it, or, if the amount of the
order exceeds the jurisdiction of any magistrates court, the
High Court.

(8) Where a decision, order or determination has been registered in
40 terms of subsection (7) it shall have the effect, for purposes of enforcement,
of a civil judgment of the appropriate court.

(9) Where an employer alleges lack of capacity to pay any part
of the minimum retrenchment package—

- 45 (a) the employer shall within fourteen days of any employee
being retrenched comply with subsection (5)(b) as if reference
to minimum retrenchment package in that provision is
a reference to the portion of the minimum retrenchment
package that he or she is able to pay not being less than
twenty-five *per centum* of the total package and subsections
(6) and (7) shall apply to that portion accordingly; and

- (b) the employer shall apply in writing to the employment council or the Retrenchment Board, if there is no employment council for the undertaking concerned, for exemption from paying such part of the minimum retrenchment package in respect of which he or she alleges incapacity to pay, providing such evidence as is necessary in support of its application and such additional evidence as the employment council or the Retrenchment Board may require in making its determination; and 5
- (c) a copy of the application referred to in paragraph (b), together with the supporting documents, shall be made available by the employer to the employees concerned or their representatives. 10

(10) The employment council or the Retrenchment Board shall consider the application and make its determination within thirty days of the date of receipt of the application and, before making its determination, the employment council or the retrenchment board shall call a hearing of the parties. 15

(11) If the employment council or the Retrenchment Board fails to make a determination within thirty days as specified in subsection (10), or if any party is aggrieved by any determination of the employment council or the Retrenchment Board, the aggrieved party may appeal to the Labour Court within twenty-one days of the expiry of the said period of thirty days or of the date of the determination, as may be appropriate. 20

(12) An employer who purports to retrench any employee without giving notice of retrenchment to the Retrenchment Board in accordance with subsection (5) shall be guilty of an offence and liable to a fine not exceeding level 12 or to imprisonment for failure to pay the fine in full within six months (the reference to an employer for the purpose of imprisonment shall be a reference to any member of the governing body of a corporate employer). 25 30

(13) Where an employer gives notice in accordance with subsection (3)(a) (iii) that he or she is to pay the minimum retrenchment package, then upon completion of the steps specified in subsections (4) and (5) and without prejudice to the payment of the minimum retrenchment package, it is open to— 35

- (a) any trade union representing retrenched employees or representative; or
- (b) any retrenched employee (if he or she is the only retrenchee) or any retrenched employee acting with the written authority of the majority of any group of retrenched employees. 40

no later than 60 days from the date of issuance of the notification certificate under subsection (5), to allege in writing to the Retrenchment Board that the employer has the capacity to pay an enhanced retrenchment package, giving particulars of any proof to that effect and specifying the amount of the enhanced retrenchment package sought. 45

(14) The employment council or the Retrenchment Board shall consider the application and make its determination within thirty days of the date of receipt of the application and, before making its determination, the employment council or the Retrenchment Board shall call a hearing of the parties at which— 50

- (a) the employer shall disclose its audited financial statements;
- (b) the employment council of the Retrenchment Board may require the employer to respond by way of affidavit to any specific allegation concerning its ability to pay an enhanced retrenchment package made by any employee, group of employees or any representative thereof.

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(15) If the employment council or the Retrenchment Board fails to make a determination within thirty days as specified in subsection (10), or if any party is aggrieved by any determination of the employment council or the Retrenchment Board, the aggrieved party may appeal to the Labour Court within twenty-one days of the expiry of the said period of thirty days or of the date of the determination, as may be appropriate.

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(16) Any employer who fails to comply within the time specified by the employment council or by the Retrenchment Board in terms of subsections (14) and (15) shall be deemed to be guilty of the crime of contempt of court contrary to section 182 of the Criminal Law (Codification and Reform) Act [Chapter 9:23] and subject to the penalties therefor.”.

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10 New section inserted in Cap. 28:01

The principal Act is amended by the insertion after section 12C of the following section—

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“12CC Non-payment of retrenchment package due to fraudulent, reckless or grossly negligent conduct by employer

(1) If an employer alleges in terms of section 12C (9) partial or total incapacity to pay the minimum retrenchment package and it emerges in the course of proceedings in terms of section 12C (9) and (10) that there are indications prompting a reasonable suspicion that —

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- (a) the employer deliberately stripped the assets of the business or otherwise degraded it in contemplation of retrenchment; or
- (b) the business of the employer was or is being carried on—
 - (i) recklessly; or
 - (ii) with gross negligence; or
 - (iii) with intent to defraud any person or for a fraudulent purpose;

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the Retrenchment Board or the employment council, as the case may be, having invited the employer concerned to respond to the allegations by way of affidavit within a specified time, and not having received such affidavit within the specified time or not being satisfied that the affidavit constitutes an adequate response to the allegations, may issue a provisional statement setting forth its grounds for believing that the business of the employer was being carried out in manner described in subparagraphs (i), (ii) or (iii), and serve copies of the statement to the employer and to any employee or representative of employees who requests the statement.

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(2) Having received a copy of a provisional statement under subsection (1)—

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- (a) any trade union representing retrenched employees or representative; or

- (b) any retrenched employee (if he or she is the only retrenchee) or any retrenched employee acting with the written authority of the majority of any group of retrenched employees;
 may on notice to the employer and any person to be named in paragraph (d), make an application to the Labour Court to seek— 5
- (c) a general declaration confirming the statement (any allegation of which the employer may rebut on a balance of probabilities); and
- (d) a specific declaration to the effect that any one or more of the following— 10
- (i) the employer;
- (ii) any named person who is or was an owner, director or partner of the business or any other named persons who were knowingly parties to the carrying on of the business in such manner or in such circumstances; 15
- shall be personally responsible, without limitation of liability, for the total amount of the minimum retrenchment package, on the basis of joint or several liability or as the court may direct, and the court may give such further orders as it considers proper for the purpose of giving effect to the declaration and enforcing the liability, including an order under paragraph (e): 20
- Provided that every person named under subparagraph (ii) must be afforded an opportunity by the Labour Court to rebut any allegations against him or her for the purpose of this paragraph on a balance of probabilities; 25
- (e) if the general declaration is confirmed and the specific declaration is granted, an order may be made by the Labour Court for payment of the minimum retrenchment package to every retrenched employee (whether or not he or she is a party to the application), and for the payment of the costs of the application by the employer or any named person (the award of which costs shall be at the discretion of the Labour Court). 30
- (3) If the Labour Court grants the order under subsection (2)(e) the applicant may submit for registration a copy of the order to the court of any magistrate which would have had jurisdiction to order the payment of the retrenchment package had the matter been determined by it, or, if the amount of the retrenchment package exceeds the jurisdiction of any magistrates court, the High Court.”. 35

11 Amendment of section 18 of Cap. 28:01 40

Section 18 (“Maternity Leave”) of the principal Act is amended by the—

- (a) deletion in subsection (1) of “who has served for at least one year.”; and
- (b) repeal of subsection (3).

12 New section inserted in Cap.28:01 45

The principal Act is amended by the insertion after section 18 of following sections—

“18A Contracts for hourly work

(1) No employer shall engage an employee on terms that the employee will be paid only for the hours that such employee actually works—

- 5
- (a) on terms that prohibit such employee from being employed by another employer or on his or her own account, during the hours when he or she is not working for the first mentioned employer;
- 10
- (b) if the effect of such contract is that in any consecutive period of two months the employee earns less than the minimum remuneration or wage fixed in a collective bargaining agreement as the minimum rate of remuneration or minimum wage for the undertaking or industry, and grade and type of occupation governed by that collective bargaining agreement, in which event the employee concerned shall be entitled to be paid the difference between what he or she has earned in that period of two months and one month’s remuneration or wage;
- 15
- (c) if such contracts are prohibited by the collective bargaining agreement governing the undertaking, industry and grade and type of occupation.
- 20

18B labour brokerage arrangements

(1) In this section—

25

“labour brokerage arrangement” means an agreement whereby a person (the third party) wishing to engage other persons in the capacity of employees (the employees) enters into a contract or other arrangement with a principal (the labour broker) by the terms of which the labour broker manages the payroll or other services in connection with the remuneration and other benefits of the employees and is directly responsible for the discipline including the dismissal of the employees and the third party assigns their duties and supervises the execution of their work.

30

(2) Employees employed by virtue of a labour brokerage arrangement shall have conditions no less favourable than—

35

- (a) other employees in that grade or occupation employed by the same employer; or
- (b) the collective bargaining agreement for the undertaking or industry, where the third party only employs its employees in terms of a labour brokerage arrangement.
- 40

(3) Unless the labour brokerage arrangement specifies unambiguously which of the parties to the arrangement is responsible for the payments or damages in question, the labour broker and the third party are jointly and severally liable for any payments or damages to the employee arising out of any grievance or dispute or unfair labour practice.”.

45

13 Amendment of section 25 of Cap. 28:01

Section 25 (“Effect of collective bargaining agreements negotiated by workers committees”) of the principal Act is amended by the repeal of subsections (2), (3) and (4) and the substitution of the following section—

“(2) Where a collective bargaining agreement negotiated by a workers committee involves an employer which is a statutory corporation, statutory body or an entity wholly or predominantly controlled by the State, the Minister responsible for that body, corporation or entity shall be deemed to be a party on an equal footing with such employer and accordingly is a party to the negotiation of such collective bargaining agreement.”. 5
10

14 Amendment of section 25A of Cap. 28:01

Section 25A (“Composition, procedure and functions of works”) (5) of the principal Act is amended by the insertion after paragraph (f) of the following paragraph—

“(g) paid educational leave.”.

15 Amendment of section 28 of Cap. 28:01

Section 28 (“Requirements for formation of trade unions and employers organizations”) (2) is amended by the deletion of “to an amount not exceeding such amount as may be specified by the Minister by statutory instrument for the purposes of this subsection”.

16 Amendment of section 33 of Cap. 28:01

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

- (a) in subsection (2) by the deletion of “and to state whether or not he or she wishes to appear in support of his or her representations at accreditation proceedings”;
- (b) by the insertion after subsection (3) of the following subsection— 25

“(4) The Registrar shall within sixty days of the receipt of an application, issue a certificate of registration if the application complies with the requirements of this Act:

Provided that if no compliance is made with this subsection the applicant may make application in terms of the Administrative Justice Act [*Chapter 10:28*] for an order compelling the Registrar to issue a certificate of registration or to give reasons why the certificate cannot be issued.”. 30

17 Amendment of section 34 of Cap. 28:01

Section 34 (“Requirements of application for registration”) of the principal Act is amended by the insertion after paragraph (e) of the following paragraphs— 35

- “(f) whether the trade union or employers organisation has a head office at a physical address;
- (g) proof in the form of the minutes of, and a register of attendance at, a meeting signed by the participants thereof constituting the leadership of the trade union, employers organisation or federation thereof.”. 40

18 New section inserted in Cap. 28:01

The principal Act is amended by the insertion after section 34 of the following section—

“34A Duty to provide information to Registrar 45

(1) Every registered trade union, employers organization, or federation thereof, shall avail to the Registrar—

- (a) within thirty days of receipt of its auditor's report, a certified copy of that report and of the financial statements;
- (b) by the 31st of March of each year, a certified statement by its secretary, showing the number of members as at 31st of December, of the previous year;
- (c) within thirty days of receipt of a written request by the Registrar; an explanation of anything relating to the statement of membership, the auditor's report or financial statements;
- (d) within thirty days of an appointment or re-appointment or election or re-election of any office bearer, a written return of his or her name and work address;
- (e) within thirty days after any change of address for the service of documents, a written statement for the new address for the service of documents.

(2) Where a trade union, employers organization or federation fails to comply with subsection (1), the Registrar—

- (a) shall by written notice require the trade union, employers organization or federation to comply with any provision of subsection (1) with which it has failed to comply, within sixty days of the notice, upon expiry of which if no compliance is made the Registrar shall notify the trade union, employers organisation or federation concerned that it has been suspended for a period not exceeding 60 days from operating as a registered entity and is therefore prohibited from benefitting from any check-off scheme or enjoying the other privileges of an entity registered under this Act;
- (b) shall uplift the suspension as soon as compliance is made with the relevant provision of subsection (1) or if no compliance is made by the end of the period of suspension, shall cancel the certificate of registration of the trade union, employers organisation or federation and remove its name from the register if no compliance is made with the relevant provision of subsection (1).”.

19 Amendment of section 45 of Cap. 28:01

Section 45 (“Considerations relating to registration or variation, suspension or rescission of registration of trade unions or employers organizations”) of the principal Act is repealed and substituted with the following section—

“45 Considerations relating to variation, suspension or rescission of registration of trade unions or employers organisations

In any determination of the variation, suspension or rescission of registration of a trade union or employers organisation, the Registrar shall—

- (a) take into account—
 - (i) representations by—
 - A. employers and employees who might be affected; and
 - B. the Minister; and

- C. any member of the public or any section thereof likely to be affected;
- and
- (ii) the desirability of affording the majority of the employees and employers within an undertaking or industry effective representation in negotiations affecting their rights and interests; and 5
- (iii) whether representations made in terms of subsection (3) of section thirty-nine or at any accreditation proceedings in terms of section forty-one indicate that the trade union or employers organization will not be substantially representative of the employees or employers it proposes to represent; 10
- and
- (b) ensure compliance with the following requirements — 15
- (i) a trade union shall not represent employers;
- (ii) an employers organisation shall not represent employees other than managerial employees;
- (iii) the constitution of a trade union or employers organisation shall not be inconsistent with this Act.”. 20

20 Amendment of section 51 of Cap. 28:01

Section 51 (“Supervision of election of officers”) of the principal Act is amended

- (a) by the repeal of subsection (1) and the substitution of—
- “(1) Any person directly involved in the election for any office or post in a registered trade union or employers organisation may complain in writing to the Minister transmitted through the Registrar that any such election is tainted by fraud, unfairness or coercion, giving details of the same in such notice.”; 25
- (b) by the deletion in subsection (2) of the words “Without derogation from the generality of subsection (1), the Minister may, on the advice of the Registrar” and the substitution of “Upon due inquiry by the Registrar of a complaint, the Minister may, on the advice of the Registrar”. 30

21 Amendment of section 54 of Cap. 28:01

Section 54 (“Collection of union dues”) of the principal Act is amended by the repeal of subsections (2), (3), (4) and (5a). 35

22 Amendment of section 55 of Cap. 28:01

Section 55 (“Minister may regulate union fees”) of the principal Act is repealed.

23 New section substituted for section 56 of Cap. 28:01

The principal Act is amended by the repeal of section 56 and the substitution of the following section— 40

- “56 formation of employment councils otherwise than under section 57 and admission of new parties to employment councils
- (1) in this section—
- “employer member” means an employers organisation or federation thereof; 45
- “employee member” means a trade union or federation thereof

(2) The employment councils formed under this section shall be governed by this Act in every respect as if such employment council is a statutory employment council.

(3) Any—

- 5 (a) employer, registered employers organisation or federation of such organisations; and
- (b) registered trade union or federation of such trade unions;
- may, at any time, form an employment council by signing a constitution agreed to by them for the governance of the council, and by applying for its registration in terms of section 59.
- 10

(4) There shall be parity of votes as between the employer members and the employee members of an employment council.

(5) The votes of—

- 15 (a) an employer member of an employment council in relation to the other employer members of the council shall be allocated proportionately according to the number of members of the employer member;
- (b) an employee member of an employment council in relation to the other employee members of the council shall be allocated proportionately according to the number of members of the employee member:
- 20

Provided that—

- 25 (i) if the membership of the employee member is less than the percentage (specified in the constitution of the employment council) of all the membership of the employee members of the employment council, the employment council must in its constitution allocate a specified fraction of a vote to the employee member concerned;
- 30 (ii) if the membership of the employer member is less than the percentage (specified in the constitution of the employment council) of all the membership of the employer members of the employment council, the employment council must in its constitution allocate a specified fraction of a vote to the employer member concerned.
- 35

(6) The distribution of votes in the employment council amongst the trade unions and the employers organisations shall be subject to review every twelve months.

40

(7) If a dispute arises relating to the number of votes allocated to a trade union or employers organisation, it shall be referred to the Registrar for determination.

45 (8) Any trade union or employers organisation that is aggrieved by a determination issued by the Registrar in terms of subsection (4) may appeal to the Labour Court.

(9) Where the membership of a particular trade union or employers organisation is not adequate for it to be allocated a seat, it may, at the discretion of the employment council be admitted as an observer in employment council meetings.”.

24 Amendment of section 58 of Cap. 28:01 5

Section 58 (“Constitution of employment councils”) of the principal Act is amended by the repeal of paragraph (g) and substitution of the following paragraph—

“(g) the admission of new parties to the employment council in accordance with section 56; and”.

25 Amendment of section 63 Cap. 28:01 10

Section 63 (“Designated agents of employment councils”) of the principal Act is amended—

(a) by the repeal of section(3b) and the substitution of the following sections—

“(3b) Subject to subsections (3c) and (3d) where a designated agent is authorised to redress any dispute or unfair labour practice in terms of subsection (3a), no labour officer shall have jurisdiction in the matter during the first thirty days after the date when the dispute or unfair labour practice arose, but a labour officer may assume such jurisdiction (and exercise in relation to that dispute or unfair labour practice the same powers that a designated agent has in terms of this section) after the expiry of that period if proceedings before a designated agent to determine that dispute or unfair labour practice have not earlier commenced. 15 20

(3c) The Registrar may upon receipt of a complaint from an interested party or a labour officer, after making due inquiry and affording an opportunity to the designated agent concerned to make representations in writing to him or her in response to the complaint— 25

(a) withdraw the appointment of a designated agent if there is sufficient evidence of failure on the part of the designated agent to exercise his or her mandate effectively or to comply with the provisions of this Act; or 30

(b) if the complaint is in relation to an ongoing dispute or unfair labour practice, to the effect that the designated agent is being unduly dilatory in determining the matter or is otherwise conducting himself or herself in an improper manner, the Registrar may direct the employment council to allocate the matter to a different designated agent or refer the matter to a labour officer.”. 35

26 Amendment of section 74 Cap. 28:01

Section 74 (“Scope of collective bargaining agreements”) of the principal Act is amended— 40

(a) in subsection (3) by the insertion of the following paragraph after paragraph (n)—

“(o) negotiation of conditions for paid educational leave at employment council.”; 45

(b) by the insertion of the following subsection after subsection (6)—

“(7) Where a collective bargaining agreement being negotiated involves an employer which is a statutory corporation, statutory body or

an entity wholly or predominantly controlled by the State, the Minister responsible for that body, corporation or entity shall be deemed to be a party on an equal footing with such employer and accordingly is a party to the negotiation of such collective bargaining agreement.”.

5 **27 Amendment of section 79 Cap. 28:01**

Section 79 (“Submission of collective bargaining agreements for approval or registration”) of the principal Act is repealed and substituted with the following section—

10 **“79 Submission of collective bargaining agreements for approval or registration**

(1) After negotiation, a collective bargaining agreement shall be submitted to the Registrar for registration.

(2) Where any provision of a collective bargaining agreement appears to the Minister to be—

- 15 (a) inconsistent with this Act or any other enactment; or
 (b) contrary to public interest:

20 Provided that the Minister shall in writing specify the issue of public interest at stake he may direct the Registrar not to register such collective bargaining agreement until it has been suitably amended by the parties thereto.

25 (3) Where a collective bargaining agreement is not registered or approved in terms of subsection (2) until it has been amended, it shall be the duty of the parties concerned to negotiate for such amendment in absolute good faith and to duly participate in proceedings necessary therefor, and failure to do so shall constitute an unfair labour practice.”.

28 Amendment of section 81 Cap. 28:01

Section 81 (“Amendment of registered collective bargaining agreements by Minister”) (1) of the principal Act is repealed and substituted with the following subsection—

30 “(1) Where a collective bargaining agreement which has been registered contains any provision which is or has become inconsistent with this Act or any other enactment, the Minister may direct the parties to the agreement to negotiate within such period as he may specify for the amendment of the agreement in such manner or to such extent as he may specify.”.

29 Amendment of section 82 of Cap. 28:01

35 Section 82 (“Binding nature of registered collective bargaining agreements”) of the principal Act is amended by the insertion of the following subsection before subsection (1)—

“(a1) For the avoidance of doubt it is declared that—

- 40 (a) to secure just, equitable and satisfactory conditions of work in conformity to section 65(4) of the Constitution, it is in the public interest that these conditions be uniformly established through a system of free collective bargaining established by law;
- 45 (b) by this Act, every employer, employee, employers organisation, trade union or federation thereof is free to engage in collective bargaining by having the opportunity directly or indirectly under section 56 to obtain representation in an employment council;

accordingly, it shall not be a lawful excuse for those who did not avail themselves of the opportunity referred to in paragraph (b) to fail to abide by or claim not to be bound by a collective bargaining agreement freely negotiated for their industry.”.

30 Amendment of section 93 of Cap. 28:01

Section 93 (“Powers of labour officer”) of the principal Act is repealed and substituted by the following section— 5

“93. Powers of labour officer

(1) A labour officer to whom a dispute or unfair labour practice has been referred, or to whose attention it has come, shall attempt to settle it through conciliation or, if agreed by the parties, by reference to arbitration. 10

(2) If the dispute or unfair labour practice is settled by conciliation, the labour officer shall record the settlement in writing, which shall be registrable with the relevant court for enforcement upon default. The certificate of settlement to enable enforcement shall be issued by the labour officer and it shall have the effect for purposes of enforcement, of a civil judgment of the appropriate court. 15

(3) If the dispute or unfair labour practice is not settled within thirty days after the labour officer began to attempt to settle it under subsection (1), the labour officer shall issue a certificate of no settlement to the parties to the dispute or unfair labour practice. 20

(4) The parties to a dispute or unfair labour practice may agree to extend the period for conciliation of the dispute or unfair labour practice referred to in subsection (3).

(5) After a labour officer has issued a certificate of no settlement, the labour officer, upon consulting any labour officer who is senior to him or her and to whom he or she is responsible in the area in which he or she attempted to settle the dispute or unfair labour practice— 25

- (a) shall refer the dispute to compulsory arbitration if the dispute is a dispute of interest and the parties are engaged in an essential service; or 30
- (b) may, with the agreement of the parties, refer the dispute or unfair labour practice to voluntary arbitration; or
- (c) may refer the dispute or unfair labour practice to compulsory arbitration if the dispute or unfair labour practice is a dispute of right; 35

and the provisions of section 98 shall apply to such reference to compulsory arbitration.

(6) If, in relation to any dispute—

- (a) after a labour officer has issued a certificate of no settlement in relation to the dispute or unfair labour practice, it is not possible for any reason to refer the dispute or unfair labour practice to compulsory arbitration as provided in subsection (5); or 40
- (b) a labour officer refuses, for any reason, to issue a certificate of no settlement in relation to any dispute or unfair labour practice after the expiry of the period allowed for conciliation under subsection (3) or any extension of that period under subsection (4); 45

any party to the dispute may, in the time and manner prescribed, apply to the Labour Court—

- 5 (i) for the dispute or unfair labour practice to be disposed of in accordance with paragraph (b) of subsection (2) of section *eighty-nine*, in the case of a dispute of interest; or
- (ii) for an order in terms of paragraph (c) of subsection (2) of section *eighty-nine*, in the case of a dispute of right.

10 (7) Where a dispute or unfair labour practice involves an employer which is a statutory corporation, statutory body or an entity wholly or predominantly controlled by the State, the Minister responsible for that body, corporation or entity shall be deemed to be a party on an equal footing with such employer and accordingly is a party to such dispute or
15 unfair labour practice.”.

31 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 repealed and the following is substituted—

20 “98 Effect of reference to compulsory arbitration under Parts XI and XII

(1) In this section, “reference to compulsory arbitration”, in relation to a dispute, means a reference made in terms of paragraph (d) of subsection (1) of section 89 or section 93.

25 (2) Subject to this section, the Arbitration Act [*Chapter 7:15*] shall apply to a dispute referred to compulsory arbitration.

(3) Before referring a dispute to compulsory arbitration, the Labour Court or the labour officer, as the case may be, shall afford the parties a reasonable opportunity of making representations on the matter.

30 (4) In ordering a dispute to be referred to compulsory arbitration, the Labour Court or labour officer, as the case may be, shall determine the arbitrator’s terms of reference after consultation with the parties to the dispute.

(5) In referring a dispute to compulsory arbitration—

- (a) the Labour Court; or
- 35 (b) the labour officer, after consulting any labour officer who is senior to him or her and to whom he or she is responsible in the area in which he or she attempted to conciliate the dispute;

40 as the case may be, shall appoint as an arbitrator a person whose name appears on a list referred to in subsection (6) who shall make an award within ninety days of the hearing:

Provided that the labour officer who attempted to conciliate the dispute which is referred to arbitration shall not be appointed as the arbitrator in that dispute.

45 (6) The Minister, in consultation with the Labour Court and the appropriate advisory council, if any, appointed in terms of section nineteen, shall from time to time prepare a list of arbitrators consisting of—

- (a) any labour officer, *ex officio*, or designated agent whom he considers to be experienced or qualified in arbitration; and
- (b) any other person whom he considers to be experienced or qualified in arbitration.

(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. 5

(8) Where a party to a dispute referred to compulsory arbitration is made up of more than one employer, employee, employers organization, or trade union, the costs of the arbitration shall be paid in the proportions agreed upon by the constituent members of the party or, failing agreement, in the proportions determined by the labour officer. 10

(9) In hearing and determining any dispute an arbitrator shall have the same powers as the Labour Court. 15

(10) An appeal on a question of law shall lie to the Labour Court from any decision of an arbitrator appointed in terms of this section.

(11) Where the Labour Court or a labour officer has referred a dispute to compulsory arbitration, no employee, workers committee, trade union, employer or employers organization shall engage in collective job action in respect of the dispute. 20

(12) At the conclusion of the arbitration the arbitrator shall submit sufficient certified copies of his or her arbitral award to each of the parties affected by it. 25

(13) Any party to whom an arbitral award relates may submit for registration the copy of it furnished to him or her in terms of subsection (12) to the court of any magistrate which would have had jurisdiction to make an order corresponding to the award had the matter been determined by it, or, if the arbitral award exceeds the jurisdiction of any magistrates court, the High Court. 30

(14) Where arbitral award has been registered in terms of subsection (14) it shall have the effect, for purposes of enforcement, of a civil judgment of the appropriate court.”.

32 Amendment of section 101 of Cap. 28:01 35

Section 101 (“Employment codes of conduct”) of the principal Act is amended —

- (a) by the insertion in subsection (1) after the word “manner prescribed” of “and on payment of a prescribed fee”;
- (b) by the insertion of the following proviso in subsection (5) —

“Provided that at the conclusion of such proceedings and notwithstanding anything to the contrary in an employment code, at the instance of any party aggrieved by those proceedings may appeal to a labour officer within 30 days of the conclusion of the proceedings whereupon the labour officer shall attempt to conciliate the dispute in terms of section 93 or exercise any other power provided for in that section.”; 40

- (c) by the insertion after subsection 10—

“(11) Every registered employment code of conduct shall be subject to review every five years, and the provisions of this section

shall apply with regards to the registration of a reviewed employment code of conduct.

5 (12) If after the lapse of the five years a registered employment code of conduct has not been reviewed within three months of the lapse of the five-year period the employment code of conduct shall be deemed deregistered.”.

33 Amendment of section 109 Cap. 28:01

10 Section 109 (“Liability of persons engaged in unlawful collective action”) of the principal Act is amended by the repeal of subsections (1) and (2) and the substitution of the following subsections—

15 “(1) If a workers committee, trade union, employers organisation or federation of registered trade unions or employers organisations (hereinafter in this section called a “responsible person”), or any individual employer or employee or group of individual employers or employees, recommends, advises, encourages, threatens, incites, commands, aids, procures, organises or engages, in any collective action which is prohibited in terms of section 104(3), the responsible person, and every official or office-bearer of the responsible person, or, as the case may be, individual employer or employee or group of individual employers or employees, shall be guilty of an offence and liable to—

- 20 (a) in the case where collective action relates to an essential service, a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (b) in any other case, to a fine not exceeding level 14 or in the case of failure to pay the fine to imprisonment not exceeding one year.

25 (2) Any person other than a person referred to in subsection (1) who recommends, advises, encourages, threatens, incites, commands, aids or procures any collective action which is prohibited in terms of section 104(3), with the intention or realising that there is risk or possibility of bringing about such collective action, shall be guilty of an offence and liable —

- 30 (a) in the case where collective action relates to an essential service, a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment;
- (b) in any other case, to a fine not exceeding level 14 or in the case of failure to pay the fine to imprisonment not exceeding one year

35 (The test referred to in section 15 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] shall apply to determining whether or not the person whose conduct is in issue realised that there was a risk or possibility that his conduct might bring about the collective action referred to in this subsection.)

34 Repeal of section 111 of Cap.28:01

40 Section 111(“Cessation of collective job action”) of the principal Act is repealed.

35 New section substituted for section 112 of Cap. 28:01

Section 112 (“Offences under Part XIII”) of the principal Act is repealed and the following is substituted—

“112 Offences under Part XIII

- 45 (1) Any person who contravenes or fails to comply with—
- (a) section 104(3); or

- (b) section 105; or
 - (c) a direction made in terms of section 106(2)(b); or
 - (d) the terms of a disposal order; or
- shall be guilty of an offence and liable to—
- (e) in the case where collective action relates to an essential service, a fine not exceeding level 14 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment; 5
 - (f) in any other case, to a fine not exceeding level 14 or in the case of failure to pay the fine to imprisonment not exceeding one year. 10
- (2) When imposing any penalty or sentence upon conviction for an offence in terms of subsection (1), the court shall take into account—
- (a) the terms of any show cause order or disposal order which has been made relating to the offence concerned, and the extent to which the convicted person has complied with it; and 15
 - (b) the extent to which the dispute concerned has been resolved.”.

36 Amendment of section 120 Cap. 28:01

Section 120 (“Investigation of trade unions and employers organizations”) of the principle Act is amended – 20

- (a) in subsection (7) by the deletion of “(or confirm the appointment of a provisional administrator pursuant to proviso (b))”;
- (b) by the repeal of paragraph (b) in the proviso and substitution of—
 - “(b) pending determination by the Labour Court of an application to appoint an administrator, the Minister may, if there is a real risk or possibility that unless the Minister makes such an appointment the funds, property or records of the employment council will be lost, disbursed or destroyed, appoint a provisional administrator who shall exercise all the powers of substantive administrator until the provisional administrator’s appointment is confirmed by the Labour Court or some other person is appointed with the leave of the Court as substantive administrator;”.

37 Amendments to Cap. 28:01

The provisions of the principal Act set out in the first column of the Schedule are amended to the extent specified opposite thereto in the second column of the Schedule. 35

SCHEDULE OF MINOR AMENDMENTS (Section 40)

Provision	Extent of amendment
Section 2	in the definition of “equal remuneration” by the deletion of “gender” and substitution of “sex and gender”
Section 5	by the deletion of “gender” wherever it occurs and substitution of “sex and gender”
Section 63(2)	by the insertion of “ within his district or province” after the phrase “employment council”
Section 104 (2)(a)	by the deletion of “fourteen” and substitution of “seven”
Section 36(1)	by the deletion of “and after the holding of accreditation proceedings, if any,”.
Section 39(3)	by the deletion of “thirty” and substitution with “fourteen”.
Section 41	by the deletion of paragraph (a); by the deletion in paragraph (c)(iii) “or in relation to a trade union or employers organization which is proposed to be registered
Section 42	by the deletion of “thirty” and substitution with “fourteen”.

