

● Employment Alert

An Insight into the key provisions of the Employment (Amendment) Act, 2022



On the 24th of May 2023, the Parliament of Uganda passed the Employment Amendment Bill No. 2 of 2022. While the amendment is under the Employment Act, the Bill has by cross reference amended other Legislations such as the Labour Disputes (Arbitration and Settlement) Act, 2006, Act No. 8 of 2006.

In accordance with Article 91 of the Constitution of Uganda, the Bill will have to be assented to by the President of Uganda before it becomes Law. Once assented to, this Bill will introduce many key changes that will reshape employment relations in Uganda. Some of the key changes which have been introduced by the Employment Amendment Bill No. 2 include the following;

Key Changes

1. Taking away quasi-judicial powers from Labour Officers to arbitrate and adjudicate labour disputes.

1.1. Over the 17 years of the application of the Act, the Industrial Court and the legal fraternity have noted that Labour Officers often lack the legal background to carry on quasi-judicial functions, especially arbitration, and adjudication. Secondly, there was the need to reconcile Sections 13 and 93 of the Employment Act as the scope and powers vested upon the Labour Officers in the two Sections were contradictory. The Court of Appeal in the case of Eng. John Eric Mugenyi -V- Uganda Electricity Company Limited Civil Appeal No. 167 of 2018 when dealing with the sections noted that the powers of Labour Officers should be limited to only mediation and reconciliation.

1.2. The Bill has followed the recommendation of the Court of Appeal and repealed the powers of Labour Officers to arbitrate and adjudicate labour disputes.

2. Breastfeeding Nursery and Mothers;

2.1. The Bill prohibits discrimination against female employees on account of being breastfeeding mothers and requires a reduction in contractual hours to provide working breaks for a breastfeeding mother and the establishment of a lactation station. The Bill specifically forbids termination or dismissal of a female employee on grounds of pregnancy or for any reason connected with pregnancy. The new provision will therefore create a more favourable working environment for pregnant women and breastfeeding mothers.

2.2. The Bill also enjoins every employer to make available at the place of work, time, space or a facility for breastfeeding and child care for the children of the employees aged between three months to three years.

3. Sick Leave

3.1. The current Employment Act empowers an Employer to terminate from employment any employee who is sick and unable to work for more than two months.

3.2. The Bill has however increased the period of Sick leave from two to six months before an employer can exercise the right to terminate an employee from employment on account of sickness.



The statutory obligation imposed on the employee to notify the employer of the sickness and to produce, if requested by his or her employer and at intervals of not less than one week, a written certificate signed by a qualified medical practitioner certifying his or her incapacity for work and duration of the incapacity, have not been removed and will continue to apply.

4. Recruitment of persons for employment abroad:

4.1. The current law only requires that anyone who intends to carry out business as a recruitment agency to obtain a recruitment permit.

4.2. To curb the increasing risk of human trafficking, the Bill forbids the illicit or concealed movement of persons in or out

of Uganda for purposes of Employment and makes it compulsory for all recruitment firms to obtain a recruitment license from the Commissioner for Employment Services before commencing business. All recruitment firms must be Companies Limited and are also mandated to make annual reports of all their activities.

4.3. The Bill also bars certain entities from carrying on the business of recruitment firms in this regard; travel agencies; sales agents for an Airline Company; political, religious or cultural organisations; insolvent companies; recruitment companies whose licenses were cancelled and companies whose directors have been convicted of an offence related to trafficking or illegal recruitment are also stopped from carrying on business as recruitment agencies.

To ensure the protection of migrant workers before leaving the country, the law has set in place different measures and obligations to be fulfilled by recruitment agencies and these include;

i. The requirement to have a Job Order; Recruitment agencies are required to only recruit upon confirmation of a job order issued by the potential employer abroad. A job order should set out the number of employees required for the specific job, the skills required for the workers and the wages to be paid. It will help create certainty for workers.

ii. The recruitment agent is obliged to carry out due diligence on the suitability of the potential employer before the placement.

iii. Orientation of employees by the recruitment agencies before signing contracts. This involves explaining the policies, procedures and terms and conditions of the employment such as rights and duties under the contract of employment abroad.

iv. Ensure proper qualifications by the employees for the job for which they are to be recruited.

v. Record keeping: The recruitment agencies are obliged to maintain records for the employees who have been recruited. This will solve the issue of unresolved disappearances by some of the employees abroad.

vi. To curb the increasing number of employees who have been stuck abroad

without means of coming back to Uganda after their contracts are terminated, the Bill now requires that all recruitment contracts for jobs abroad have a repatriation clause upon the termination of the contract.

Requirement for all Employers to have and publish their sexual harassment policy.

4.1. The current law only mandates employers with 25 employees or more to formulate and have sexual harassment policies. This meant that the majority of the workplaces with less than 25 employees were left out and there was no requirement for them to have a sexual harassment policy.



4.2. The Amendment now requires that all employers should have a sexual harassment policy and the same should be displayed in a conspicuous place at the workplace.

5. Clarity on dismissal versus termination;

5.1. There has been confusion on the distinction between termination and dismissal of the Employee and this is because the current Act in Sections 66, 68 and 69 uses these terms interchangeably.

5.2. The Bill seeks to clear the confusion by distinguishing dismissal from employment and termination of an employment contract by setting out elaborate grounds for dismissal which are different from those for termination under the current Sections 2 and 65 of the Employment Act.

5.3.1. Inability to perform duties assigned

5.3.2. Redundancy of the Employee.

5.3.3. Disobeying lawful orders or instructions

5.3.4. Sickness lasting more than 6 months.

5.3.5. Abandonment of duty for more than 1 month without explanation

5.3.6. Use of forged documents to get a job or lack of qualifications for the job

5.3.7. The conduct of the Employee outside or at work which adversely affects the Employer's business.

5.3.8. It also states that any other grounds set out in the Contract of Employment are applicable.

5.4. Section 68 of the Employment Act (which has been one of the primary sources of confusion on this issue) has also been repealed and in its place, a new provision that has been provided for and specifically refers to dismissal and not termination.

5.5. The Bill, therefore, imposes a duty on an employer, in any claim arising out of dismissal, to give reasons for dismissal of the employee, and where the employer fails to do so, the dismissal shall be deemed to have been unfair. The reasons for dismissal shall be which the employer, at the time of dismissing the employee, genuinely believed to exist and caused the employer to dismiss the employee.



5.6. This provision of the Bill expressly eliminates the need for employers to give reasons for terminations under Section 65 of the Act, which has since been left entirely as a termination clause. This harmonization will reinstate the power and ability of the employers to terminate employment contracts without the added burden of giving a reason/ ground for the termination as had been the practice advanced by the Industrial Court and for which many employers had been found to have flouted and subjected to costs.

5.7. This harmonization will furthermore strengthen the contractual powers of both employers and employees to negotiate and bind themselves to lawful rights such as the right for either party to terminate an employment relationship without the additional burden imposed on an employer to have a reason for exercising an express contractual right.

6. Dismissal Process;

6.1. Currently, Section 66 on the right to a fair hearing before dismissal left a lot to be desired and left it to the individual employer to follow their procedure for notification of dismissal and disciplinary hearings. The Bill seeks to clarify and harmonise the requisite procedure for the dismissal of the Employee. The new requirements include the following;

6.1.1. The Employer is obliged to explain to the Employee in a language the Employee understands the reasons why they are considering dismissal of the employee before the dismissal hearing.

6.1.2. The Employer is required to explain to the Employee their right to have representation during the hearing.

6.1.3. The Employer is further obliged to hear and consider the representation/ defence by the Employee before deciding to dismiss the Employee.

6.1.4. The Employer is also mandated to give the employee a minimum of 5 working days to prepare the representation before the dismissal hearing.

6.2. Failure by the Employer to adhere to these minimum requirements attracts a penalty of 4 weeks' net pay payable to the affected employee upon lodging a Complaint with the Labour officer.

7. Limitation of employment of migrant workers in Uganda;

7.1. The Bill seeks to limit the type of jobs that can be offered to migrant workers in Uganda. These are to be gazetted by the Minister and no work permits shall be issued to migrant workers/ Non- Uganda for these gazetted jobs unless there is an exemption certificate issued by the Minister for Gender, Labour and Social Development.

7.2. It is noteworthy that this provision will not apply to those employed under the Diplomatic Privileges Act or members of the East African Community common market or security agencies of a foreign state in Uganda.

8. Severance pay;

8.1. Under the current Act, it is up to the employer and employee to agree on how the severance pay should be calculated at the time of contracting. This, however, left a lot of uncertainty since most contracts of employment had no provision on severance pay and it was for the court to determine how severance pay was to be paid

8.2. The Bill thus intends to amend Section 89 of the Act and provides that, severance pay shall at the minimum be one month's gross salary of the employee at the time of termination for each year worked by him or her.

8.3. The Bill has furthermore expanded the circumstances under which Severance pay will be due and now includes circumstances where the employer terminates the contract of employment of the employee due to the employee's physical incapacity; and where the

position of the employee is declared redundant by the employer.

9. Timelines for handling labour disputes:

9.1. Sections 3, 4 & 5 of the Labour Disputes (Arbitration and Settlement) which sets timelines for resolving labour disputes within 6 weeks (2 weeks to react and 4 weeks to resolve) have been repealed. This is after labour officers complained about the short timelines which they were accorded to handle labour disputes. This means that Labour officers can handle the disputes for a longer period. However, this may lead to further backlog at the Labour office.

Caveat

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