

# **Labour Laws in Botswana**

## **Sources of Labour Law include:**

### **1. Legislation**

- ♦ Employment Act CAP 47:01
- ♦ Workers Compensation Act No. 23 of 1998
- ♦ Trade Unions and Employers Organisations Act, 2003
- ♦ Employment of Non-Citizens Act CAP 47:02
- ♦ Trade Disputes Act, 2003

### **2. Industrial Court Decisions**

Decisions of the Court create case law.

### **3. Collective Agreements**

These are documents that deal with matters relating to the terms and conditions of employment (substantive matters) and disputes resolution procedures (procedural matters). Section 37 of the Trade Disputes Act states that every collective agreement shall be binding upon the parties to the agreement.

### **4. Contract of employment**

The relationship between the employer and employee is based on a contract. The employer is obliged to pay wages, an employee has a duty to work for the employer.

### **5. Custom and Practice**

Actions that are practiced and accepted over a period of time.

1. **Employment Act - CAP 47:01**

The Employment Act as amended lays down minimum conditions of employment for employees, whether citizen or expatriate, employed in the private and parastatal sectors. An expatriate employee should be in possession of a valid work permit.

**Working Hours**

If the working week is 5 days, then the working day may not be more than 9 hours and a period of rest totaling 1-hour should be provided during the day. If the working week is more than 5 days, then the working day may not be more than 8 hours or more than 48 hours in a week. A break of at least 30 minutes must be given after 5 consecutive hours of work.

A rest day of not less than 24 consecutive hours, normally including Sunday, must be given in every period of 7 consecutive days. Shift workers must be given a rest day of at least 30 consecutive hours in a period of 7 consecutive days.

**Overtime**

An employee may not work more than 14 hours overtime in any one week. For normal days of work overtime is calculated at one and a half times the basic hourly rate. For rest days or paid public holidays overtime is calculated at double the hourly rate.

**Paid Public Holidays**

There are 8 paid public holidays each year, and these include: New Year's Day, Good Friday, Easter Monday, 1<sup>st</sup> May, President's Day, Day following President's Day, Botswana Day, Christmas Day

In the case of domestic employees only 4 of the paid public holidays are applicable and these include: New Year's Day, Good Friday, Botswana Day, and Christmas Day alone.

### **Leave**

A minimum of 15 working days of paid leave is given per year. At least 8 leave days must be taken within 6 months of the leave earning period. The remaining days may be accumulated for up to 3 years when they must be taken. If the contract is terminated by either party the employee must be paid for any outstanding or accumulated leave.

### **Sick Leave**

An employee is entitled to a minimum of 14 working days paid sick leave in any one year of continuous employment. The employee must inform the employer as soon as possible and provide a doctor's certificate if they are absent from work for more than 24 hours.

### **Maternity Leave**

Provision is made for maternity leave totaling 12 weeks (6 weeks before and 6 weeks after confinement) after the employer has been presented with a certificate signed by a doctor, medical nurse or a

midwife. An additional 2 weeks maternity leave may be granted on account of illness arising from her confinement.

During maternity leave a maternity allowance of not less than 25% of the employee's basic pay or 50 thebe for each day of absence, whichever is greater, is payable.

### **Minimum Wages**

The following are the current minimum wage rates: 2006/2007 (with effect from May 1<sup>st</sup> 2006)

#### **Employees in the trades/industries below including Casual, Part time employees and Wage Rate per Security Guards employed by Security Services Hour Companies**

Manufacturing, Service & Repair Trades;

Building Construction, Exploration and Quarrying

Industries;

P3.35

Hotel, Catering & Entertainment Trades;

Garage, Motor Trade & Road Transport;

Wholesale Distributive Trade.

Security Guards employed by Security Services

P3.35

Companies

Retail Distributive Trade

P2.90

Night watchmen in the above trades/industries

P2.80

- These rates are adjusted every year around February by the Minimum Wages Advisory Board.

## **Employment Records**

Employers may by written notice be required to keep records of each employee, including basic personal information, nature of employment, wage details, leave data, etc.

## **Probation**

Employees, who are to serve a period of probation, should be informed in writing, of the length of the probationary period before entering into a contract of employment.

Contracts of employment terminated during a probationary period are deemed to have been terminated with just cause and reasons for such termination shall not be required.

Contracts of employment may provide for a probationary period not exceeding three months in the case of unskilled employees, and twelve months in the case of skilled employees.

## **Notice, Suspension & Termination**

An employer or employee may terminate the contract of employment by giving notice. The minimum notice period is the same as the wage period, i.e. an employee who is paid monthly must be given a month's notice. Notice also applies when an employee is on probation. Payment equivalent to the amount that the employee would have received during the period of notice may be made in lieu of giving notice.

An employee may be dismissed without notice being given when it can be proved that the employee is guilty of "serious misconduct" in the course of employment.

When dealing with cases of termination of employment contracts, the Industrial Court being a Court of law and equity, considers whether such termination is on good and valid grounds by applying tests of procedural fairness and substantive fairness.

### **Severance Benefit: the 5 year service award**

(Section 2 (3) of the Employment Act, 1992 makes managers, administrators, executives and professional staff eligible for Severance Benefit).

An employee who has completed 60 months of continuous employment with one employer regardless of whether the contract of employment has been terminated or not, is due to receive a "severance benefit". This is calculated at the rate of one day's basic pay for each month worked during the first 60 months of continuous employment and two day's basic pay for each additional month of continuous employment. This benefit is not due to employees who will receive a gratuity or a pension at the end of their contract of employment.

### **Repatriation**

Where an employee has been brought to the place of employment by the employer, the employee has the right to be repatriated, at the employer's expense, to his place of recruitment on termination of the contract of employment. This right applies to both citizen

and expatriate employees, regardless of whether the place of recruitment is situated within or outside Botswana. Where the employee's family has been brought to the place of employment by the employer, the family must be repatriated at the expense of the employer in the event of the employee being repatriated or of his death.

### **Employment of Children**

Section 105 of the Employment Act prohibits the employment of children under the age of 15 in any capacity whatsoever.

## **CHANGES IN THE EMPLOYMENT ACT AS CONTAINED IN THE EMPLOYMENT (AMENDMENT) ACT, 2003**

**Section 92 A is inserted immediately after section 92 thereof**, and requires that in the vent of an employer's insolvency, an employees claims arising out of his employment shall be payable out of the assets of the insolvent employer before non-privileged creditors are paid their shares. The protection extends to claims of:

- ◆ An employee's claims for wages up to three months prior to the insolvency or to the termination of employment.
- ◆ The employee's claims for payment as a result of work performed during holidays within a period of twenty-four (24) months prior to the insolvency or termination of employment.
- ◆ The employee's claims for any amount due to him in respect of other types of paid absence for a period not less

than three months prior to the insolvency or termination of employment, and

- ◆ Such severance benefits or other terminal benefits as the employee is entitled to.



## **2. Worker's Compensation Act No. 23 of 1998**

The Worker's Compensation Act No. 23 of 1998 requires an employer to pay compensation to any employee who is incapacitated through a work-related injury or occupational disease. Employers are also required to take up an insurance policy to cover liability under the Act.

### **Permanent Total Incapacity**

Where the worker suffers permanent total incapacity, compensation is calculated at 60 times monthly earnings multiplied by the percentage of incapacity. In no case shall the amount of compensation be less than P16, 000.00 or exceed P250, 000.00

### **Permanent Partial Incapacity**

Where the worker suffers permanent partial incapacity, compensation is calculated at 60 times the monthly multiplied by the percentage of incapacity. In no case shall the amount of compensation exceed P200, 000.00

### **Fatal**

In the event of death, the amount of compensation shall not be less than P8, 000.00 or exceed P200, 000.00

### **Medical Expenses**

Medical, surgical, dental hospital treatment, skilled nursing and supply of medicines expenses - P75, 000.00

Supply, fitting, maintenance, repair and renewal of artificial appliances – P10, 000.00

Transport charges – P1, 500.00

### 3. **Trade Unions and Employers Organisations Act, 2003**

The Trade Unions and Employers' Organisations Act of 1984 as amended makes provision for and sets out the rules for three categories of organisation: trade unions, federations of trade unions and employers' organisations. A trade union is an organisation of employees with a minimum of 30 members, whose main aims are to regulate relations between employees and employers or employers' organisations, or between employees and employees. Registration with the Registrar of Trade Unions and Employers' Organisations is compulsory. No employer may make membership or non-membership of a trade union a condition of employment.

#### **Federations of Trade Unions**

Any two or more registered trade unions may with the consent of the Minister form a federation of trade unions or amalgamate together as one trade union.

#### **Employers' Organisations**

An employers' organisation is an association made up wholly or mainly of employers whose main aims are to regulate the relations between employers and employees or trade unions.

## **CHANGES IN THE TRADE UNIONS AND EMPLOYERS ORGANISATIONS ACT**

Provisions in the above Act were found to be too restrictive to freedom of association and collective bargaining.

The Restrictions were: -

- ❑ The Act excluded a public officer from the definition of “employee”
- ❑ **The change extends the definition of an “employee” to cover public officers. This means that public officers now enjoy the right to form and join trade unions in accordance with Convention 87. Exception is provided for the armed forces, police and prisons services.**
- ❑ The Act set a threshold of 30 employees for forming a union.
- ❑ **The change removes the threshold in order to accommodate employees in small enterprises**
- ❑ The Act gave the Registrar and the Minister certain powers over trade unions and employers organisations viz:

1. The Registrar had the power to refuse to register or cancel the registration of trade union or employers organisation if any of its officers had within the preceding 5 years been convicted of an offence under the Act or Trade Disputes Act, or involving fraud or dishonesty and finally sentenced to a term of imprisonment.

- **The change removes these powers as they are seen not to comply with Article 3 of Convention 87, which provides for unions and employers organisations rights to choose their leaders in full freedom**

The Registrar had power to refuse to register a trade union or employers' organisation if s/he was satisfied that there existed a trade union or employers organisation which sufficiently represented the interests in respect of which the application for registration is made.

- **The change removes the restriction and leaves the judgements about proliferation of their organisations to workers and employers themselves.**

3. The Registrar had the power to refuse to register a trade union, federation of trade unions if any of its officers is a non-citizen unless the Minister had consented to his /her election.

- **The change removes that provision so as to allow members of a trade union to decide who should become an officer of their union.**

4. The Act empowers the Registrar to remove a treasurer deemed to be incapable of carrying his/her duties.

- **The change deletes the provisions so as to allow trade unions themselves to deal with incompetence of their officers.**

5. The Act empowered the Minister to require that an extra ordinary general meeting of trade union be convened.

- **The change removes the Minister's power as it is seen to be interference to allow the members themselves to organise their activities in full freedom.**

6. The Act required any two or more registered trade unions to seek the Minister's consent in writing in order to amalgamate.

- **The change removes the Minister's consent and only provides that they shall inform the Registrar in writing of such amalgamation.**

7. The Act required a trade union or employers organisation to seek the Minister's consent in writing to affiliate to any body outside Botswana and also to accept any funds originating from outside Botswana

- **The change removes Minister's consent as it is seen to be interference. Trade Unions will only be required to declare the funds received from outside Botswana.**

8. The Schedule to Act provided matters for which constitutions of trade unions and employers organisations shall provide

- **The change removes the Schedule so as to leave trade unions and employers' organisations to decide what matters their constitutions shall provide for as this is seen to be interference by public authorities.**

9. Section 22(1) provided that for one to be an officer of a trade union or federation of trade unions, he had to be a member of that union or an employee in an industry with which the trade union is directly

involved. Employees of a trade union or a federation of trade unions are barred from becoming officers of that trade union or federation of trade unions.

- ❑ **Section 22 of the Act has been repealed to allow members of trade unions and federations of trade unions to elect their officers in freedom.**

10. The Act provided in a detailed manner, how the funds of trade unions, federation of unions and employers organisations shall be expected.

- ❑ **The Act has been amended to provide that “No funds of a trade union, federation of trade unions or employers’ organisations shall be expended otherwise than as provided by their constitutions”**

### **The new introductions to the Act are:**

- ❖ Providing for recognition at the workplace where the union represents at least a third of employees of employer.
- ❖ Providing for recognition at industry if a trade union has its members at least a third of employees in an industry.
- ❖ Providing for organisational rights once a union has been granted recognition. Such rights shall include access for the purpose of recruiting members, holding of meetings, representing members, union dues etc.

- ❖ Providing for disclosure of all relevant information by the employer to a recognised trade union to enable the union to consult or bargain collectively.

The employer is not bound to disclosure information that is legally privileged confidential or private and personal relating to an employee or likely to cause material harm to an employee or employer.

#### 4. **Employment of Non-Citizens Act - CAP 47:02**

This is an Act to regulate the employment and other engagement in occupations for reward or profit of certain persons who are not citizens of Botswana and provides for matters incidental thereto.

The said Act provides for categories of non-citizens that should hold permits and those that are exempted from holding such permits. Applications for work permits are considered by the Immigrants Selection Boards which are established in terms of the Immigration Act.

### **Policies**

- 1. THE NATIONAL POLICY ON INCOMES, EMPLOYMENT, PRICES AND PROFITS.** This policy regulates incomes, employment, prices and profits.

**2. THE MANPOWER DEVELOPMENT, TRAINING AND LOCALISATION POLICY.** This policy addresses the training of citizen employees for the purposes of localizing non-citizens held positions.



## 5. **Trade Disputes Act, 2003**

The Act was promulgated to provide for settlement of trade disputes generally and for settlement of trade disputes in essential services and for the control and regulation of industrial action and related matters.

### **Definitions**

A trade dispute is defined as including an alleged dispute, a dispute between unions, a grievance, a dispute of interest, and any dispute over:

- a) The application or the interpretation of any law relating to employment
- b) The terms and conditions of employment of any employee or class of employees, or the physical conditions under which such employee or class of employees may be required to work
- c) The entitlement of any person or group of persons to any benefit under any existing collective agreement
- d) The existence or non-existence of any collective agreement
- e) The dismissal, employment, suspension from employment, retrenchment, re-employment or reinstatement of any person or group of persons or

- f) The recognition or non-recognition of an organisation seeking to represent employees in the determination of their terms and conditions of employment.

### **Essential Service**

These are services specified under the schedule of the Act e.g. water, electricity, fire, health, sanitary services, etc.

### **Industrial Action**

Means lockout, strike or action short of a strike (go slow) in furtherance of a trade dispute.

The Trade Disputes Act sets out the procedure to be followed once a trade dispute exists.

### **Section 3**

This section establishes a panel of mediators and arbitrators appointed by the Minister with the Commissioner as the chairman of the panel.

### **Section 6**

Where the Commissioner is satisfied that a trade dispute is apprehended or exists, he can mediate whether the dispute has or has not been reported or referred to him under section 5, 6, 7 or 8 to help parties reach a settlement.

## **Section 7**

The section deals with the reporting and mediation of trade disputes generally. Reports made under this section should be in writing and should specify, among other things, the nature of the dispute and a copy of the report should be served on the other party to the dispute. An employee who cannot read or write may refer a dispute orally.

The Commissioner or any officer delegated by him shall assign a mediator to attempt to resolve the dispute through mediation, or refer the dispute directly to arbitration.

## **Section 8**

A mediator shall attempt to resolve a dispute within 30 days of the date the dispute was received by the Commissioner or labour officer delegated. The 30 days may be extended.

Where a mediator fails to mediate a dispute within the prescribed period, the parties may refer the dispute to arbitration or to the Industrial Court.

## **Section 9**

This section outlines the process of arbitration where the Commissioner has referred a trade dispute.

The arbitrator shall attempt to settle a dispute referred to him within 30 days of the dispute being referred to him, and shall thereafter make an award.

An arbitration award shall have the same force and effect as a judgement or order of the Industrial Court.

## **Section 14**

This section empowers the Minister to refer a trade dispute to the Industrial Court whether the parties consent or not.

This is in a situation where the Minister is satisfied that a trade dispute exists or is apprehended and where:

- a) the dispute involves an essential service
- b) the Minister is satisfied that the dispute has or may jeopardise the essentials of life or livelihood of the people or may endanger the public safety or the life of the community.

## **The Industrial Court**

### **Section 15 – Establishment of the Court**

The Industrial Court is a creature of the Trade Disputes Act and is headed by a Judge President. Industrial Court Judges are appointed by the President. The Judge sits with two assessors one nominated by an organization representing the workers, and another by an organization representing the employers.

### **Section 18 – Jurisdiction of the Court**

The Court has jurisdiction

- ♦ To hear and determine all trade disputes except disputes of interest
- ♦ To interdict any unlawful industrial action
- ♦ To hear appeals and reviews from decisions of mediators and arbitrators

- ◆ To direct the Commissioner to assign a mediator to mediate a dispute where in the opinion of the Court, the matter has not been properly mediated or requires further mediation
- ◆ To direct the Commissioner to refer a dispute that is before the Court, to arbitration
- ◆ To refer any matter to an expert and at its discretion to accept his/her report as evidence in the proceedings.
- ◆ Give all such directions and do all such things as may be necessary for the expeditious and just hearing and determination of any dispute before it.

On matters of law the Judge sits alone and determines such matter.

Appeals against the Industrial Court decisions go to the Court of Appeal.

### **Section 20(3) – Urgent Applications**

Any party to a dispute may make an urgent application to court for the determination of a trade dispute. The applicant must set forth the circumstances which he/she avers render the matter urgent and reasons why the matter cannot go through mediation by the Commissioner of Labour.

### **Section 21 - Representation**

Applications may be represented by any person or may appear in person at the Court.

## **Section 24 – Wrongful Termination**

Where the court determines that an employee has been wrongfully dismissed or disciplined the court may make an order of:

- ◆ Reinstatement with or without compensation
- ◆ Compensation in lieu of reinstatement
- ◆ Reinstatement if dismissal is considered to be unlawful or motivated on the grounds of sex, trade union membership, trade union activity, lodging of a complaint or grievance, religious tribal or political affiliation
- ◆ Compulsory reinstatement if the employment relationship has not broken down irrevocably.

Any compensation ordered shall not exceed the actual pecuniary loss suffered.

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