



**INTERNATIONAL
LAWYERS ASSISTING
WORKERS NETWORK**

VIEWS AND RECOMMENDATIONS ON THE EMPLOYMENT (AMENDMENT) BILL NO.2 OF 2022 BY INTERNATIONAL LAWYERS ASSISTING WORKERS NETWORK (ILAW).

About the ILAW Network

The INTERNATIONAL LAWYERS ASSISTING WORKERS (ILAW) NETWORK is a global membership organization for union and worker rights lawyers, headquartered in Washington, D.C. The ILAW Network's core mission is to bring together legal practitioners and scholars in an exchange of ideas and information to protect worker rights. The ILAW Network has expertise in international and comparative labour rights law.

SALIENT FEATURES OF THE EMPLOYMENT (AMENDMENT) BILL NO.2 OF 2022

The Bill provides for recruitment agencies and seeks to streamline the process of recruitment of employees for employment abroad; further provide for severance allowances where by it allow workers to receive an allowance at the end of the employment relationship with the employer; child care and breastfeeding facilities by employers; requires all employers to put measures in place that prevent sexual harassment at workplace; dismissal from employment and termination of a contract of service so as to eliminate the ambiguity caused by using the two words in the Act interchangeably; introduces a new Part IXA on employment of migrant workers within Uganda and regulate which jobs may not be offered non-citizens and other related matters.

CLAUSE SPECIFIC VIEWS AND RECOMMENDATIONS.

- 1. Clause 1 of the bill amends section 2 of the principal Act which is the interpretation section by substituting the definition of “commissioner, disability, dismissal from employment and defines a “job order”.***

Recommendation

The definition of disability should be comprehensive and based on international standards and norms including the UN Convention on the Rights of Persons with Disabilities, which Uganda ratified in 2008, and ILO Convention 159. Under Article 27 of the UN Convention on the Rights of Persons with Disabilities, state parties

must adopt measures that “recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible.” This includes a right to reasonable accommodations in the workplace. Article 2 defines “Reasonable accommodation” to mean “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

2. **Clause 2 of the bill amends section 7 of the Principal Act by requiring every employer to have in place measures to prevent sexual harassment at the work place to display the measures in a conspicuous place at the work place.**

Observation

Notably this is a good reform towards the prevention of sexual harassment at the workplace, since the Principal Act only required Employers with over 25 employees to undertake these measures. However, it is our opinion that this provision as it stands in its current form is not enough to prevent sexual harassment at the workplace.

Recommendation

The scope of who an employer’s representative is in the principal Act should be widened not only to include a person who is employed by that employer who either has authority over the employee alleging sexual harassment or in position of authority over other employees in the workplace of the employee alleging sexual harassment but to **“persons not directly employed by the Employer but having a working or business relationship with the Employer and also employees with no “authority,”. The employer’s duty of care to ensure the safety of workers should also include a duty to take steps to prevent violence and harassment committed by third parties, such as clients and customers that occur in the course of, connected to or arising out of work.** It is therefore recommended that the employer obligations extend not just to direct employees, but to anyone connected to the business. This recommendation is consistent with Articles 2 and 4.2 of the ILO Convention 190.

The bill should be brought fully into compliance with international best practices, including in particular ILO Convention 190 and the UN Convention on Economic, Social and Cultural Rights. Further, it is not enough to require employers to have sexual harassment policies in place but the bill should list the basic elements in such policies. To bring this fully in line with international standards, here are some of the

issues that should include in the sexual harassment policies and ought to be highlighted in the bill;

- ❖ The policy should address all forms of violence and harassment in the world of work, including specifically gender-based violence and harassment. Currently, the law only requires policies with respect to sexual harassment. Discrimination based on sex is also prohibited under the law, but there is nothing requiring a policy or other preventative measures. Many jurisdictions have recognized that discrimination based on sex also encompasses discriminatory conduct rooted in gender that is not sexual - conduct that instead is based on expectations, stereotypes and norms about sex/gender. These non-sexual forms of discrimination based on gender are very common and often interlinked with sexualized forms of abuse -- to be comprehensive, policies and preventative measures should address both forms.
- ❖ Any policy should be developed in consultation with trade unions where they exist, and with democratically selected worker representatives within the enterprise where unions do not exist.
- ❖ The policy should address violence and harassment not just from supervisors and co-workers but from anyone connected to the business or enterprise including third parties such as clients and customers

Further the government has an obligation to design policies and preventative measures for workers in the informal economy who do not have a formal employer. ILO Convention 190 calls on governments to extend protections against violence and harassment to “all workers, regardless of contractual status” and to “take appropriate measures to prevent violence and harassment in the world of work, including recognizing the important role of public authorities in the case of informal economy workers

We further propose that there is need for the bill to address sexual harassment which occurs during access to employment (pre- entry sexual harassment). The bill only looks at sexual harassment during employment and does not put in place preventative measures on entry to employment.

The Bill should address shortcomings in the 2012 regulations on sexual harassment, in line with international standards, particularly with respect to the obligation to ensure gender-sensitive, effective complaints mechanisms and protect victims, witnesses and whistleblowers from retaliation. In particular, the current requirement

under sexual harassment regulations is that victims must first report a violation to the sexual harassment committee, before reporting their complaint to the Labour officer. This limits access to justice for victims. First of all these Committees are not independent as they are constituted by the Employer and are set up within a workplace environment which is likely to stigmatize and silence the victims. It is particularly problematic if the perpetrator of the violence or harassment is on the committee if it is required that individuals have to first report to the committee rather than the Labour office. This presents a barrier to justice and should be removed.

3. **Clause 3 of the bill amends section 13(1)(a) of the principal Act by repealing the words “ arbitration and adjudication”.** Section 13(1)(a) of the Principal Act provides as follows;

“A Labour officer to whom a complaint has been made under this Act shall have the power to investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint with the involvement of any labour union present at the place of work of the complainant”.

Observation.

This amendment seeks to reduce the methods of settling a complaint before the labour officer to only by way of “Conciliation”. Conciliation is a “non-binding procedure in which an impartial third party assists the parties to a dispute in reaching a mutually agreed settlement of the dispute”. It is voluntary and parties have a choice to reject it. Limiting the powers of labour officers to only conciliation will increase a case backlog in the industrial court, which currently has two judges adjudicating all matters arising from labour officers in the whole country. This amendment would limit access to justice for workers and should be removed.

Further leaving this amendment as it stands in the current bill also means that the Labour (Disputes settlement and Arbitration Act) will also have to be amended to provide for the new jurisdiction of the Industrial Court. Labour officers are courts of first instances according to the principal Act, with decisions from them being appealed or referred to the Industrial Court.

RECOMMENDATION

Labour officers should remain with their current power as provided for in the principal Act. They should only be empowered to use the said methods instead of limiting them.

4. **Clause 4 and 5 repeal sections 37 and 38 of the Principal Act.**

Section 37 of the principal Act prohibits illicit or clandestine movement of migrants for employment for purposes of departing from, passing through or arriving in Uganda or giving assistance to any organisation for that purpose. It further prohibits a person from employing a person whom he or she knows to be unlawfully present in Uganda and a person who contravenes the same commits an offence.

Section 38 of the Principal Act provides for a recruitment permit. It prohibits any person or his or her agent or messengers from engaging in the business of operating a recruitment agency unless he or she is in possession of a valid recruiting permit issued by the Commissioner. The permit is to be issued subject to such terms and conditions as given by the Commissioner.

The said two repealed sections are replaced by new parts in the bill under clause 7 as follows;

PART IV(A): Recruitment of Persons for Employment Abroad

This new part is created by clause 7 of the bill and provides for new sections highlighted with our opinions below;

- a) S39A provides for illicit or concealed movement of persons. *Section 39A(1) provides that a “ person shall not facilitate the illicit or concealed movement of persons for employment abroad by organizing the departure, transit or arrival of the persons in Uganda, or give assistance to any organisation for that purpose. Whereas section 39A (2) of the bill provides that; “an employer shall not employ a person whom he or she knows to be unlawfully present in Uganda”.*

Observation

The word illicit or concealed movement if not defined may have ambiguous interpretations.

Recommendation

“Illicit or concealed movement needs to be defined and the term “person” under section 39A(1) should include a “ company” as well for purposes of clarity.

- b) *39B prohibits a person from transacting the business of a recruitment agency in Uganda without a licence issued by the Commissioner responsible for employment services. Such a licence may be subject to conditions as the Commissioner may determine and may be revoked at any time.*

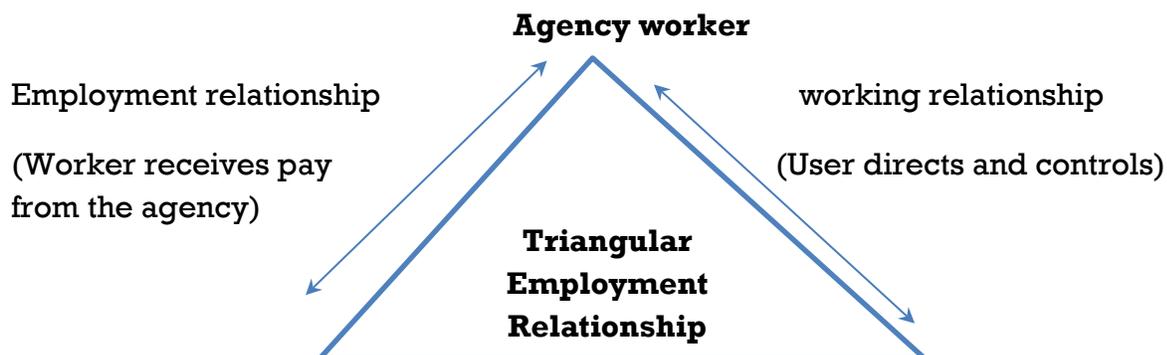
Observation

Currently, in the labour market, there are many recruitment firms or agencies undertaking both internal and external supply of labour. Under internal supply of labour, there are those carrying on labour brokerage or temporary agency work where they supply labour to user undertakings but retain an employment relationship with the workers they supply yet the user undertaking directs and controls the same workers so supplied. This kind of arrangement has led to the growth of triangular employment relationships in the labour market which are currently not regulated by the Employment Act No.6 of 2006 (the principal Act). In essence, these recruitment agencies share employer roles/functions punching holes in the traditional tests of a contract of service under common law. These kinds of recruitment practices have created a new form of work commonly referred to by the International Labour Organisation as “Temporary agency work”. Although in Uganda, there is a blurred difference between this kind of work and outsourcing.

When not regulated, temporary agency work is very precarious and exploitative.

The challenges associated with Temporary Agency work are many. One of them is the complexity of a triangular employment relationship. Temporary agency work creates a triangular employment relationship different from the traditional personal and bilateral employment relationship.

The challenge that arises then is the identification of the real employer or entity responsible for the rights and benefits of the employee since two entities share employer roles on the employee. However, although one entity (Temporary work Agency) is contractually recognized as the employer, the other (user enterprise) is not, yet in fact and practice, it plays more employer functions, and has more control and influence over the terms and conditions of work of the agency worker. This becomes a complex challenge compared to the simplicity that exists in the identification of an employer in a personal and bilateral employment relationship. Therefore, with this uncertainty, it is very easy for both employing entities to evade liability towards the rights and benefits of temporary agency workers. For purposes of clarity, the diagram below illustrates better the concept of temporary agency work.





Recruitment Agency

User Undertaking

The other dangers and challenges are; unequal treatment/ discrimination of temporary agency workers, denial of the right to freedom of association and collective bargaining, the growing shift from permanent to temporary jobs and income inequality.

Recommendation

- ❖ The term “recruitment agency” needs to be defined broadly. Perhaps, even the use of this term in the bill needs to be rethought. It would be better, to use the term “private employment Agency” as enshrined in the ILO Private Employment Agencies Convention 181. The convention also provides for a comprehensive definition of the same.

Article 2(3) of the ILO Private Employment Agencies Convention 181 defines a private employment agency as “***any natural or legal person, independent of the public authorities which provides one or more of the following labour market services;***

- (a) services for matching offers of and applications for employment, without the private employment agency becoming a party to the employment relationships which may arise there from;
 - (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person (referred to below as a "user enterprise") which assigns their tasks and supervises the execution of these tasks;
 - (c) other services relating to job seeking, determined by the competent authority after consulting the most representative employers and workers organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment.
- ❖ The bill should include a clause that places joint and several liabilities on both the recruitment agency undertaking temporary agency work and the user undertaking in the event of any violations of worker’s liability irrespective of a

commercial agreement that may exist between the recruitment agency and user undertaking. The approach of joint and several liability is for instance used in South Africa, although it is a default one as it only applies where the temporary work agency(Recruitment agency) fails to honor statutory obligations concerning temporary agency workers¹. Perhaps, the best approach would be for the bill to impose a “joint employer” status with shared employer roles and liabilities.

c) Section 39C requires a recruitment agency to be company and as such the Commissioner responsible for employment services shall not grant a licence to operate a recruitment agency unless the person seeking the grant of a licence is a company incorporated under the Companies Act, 2012. Further under subsection 2, a recruitment agency granted a licence under this Act shall submit report of its operations to the Commissioner responsible for employment services every calendar year. Additionally the subsection 3 empowers the minister to make regulations to provide for the procedure for obtaining a licence; the governance and general operations of recruitment agencies; and the fees payable.

Observation

This is a good step towards regulation. Notably, given the recommendation above to change it from recruitment agency to private employment agency, it should be noted that all of the sections making mention of recruitment agency will need to be amended along the same lines

d) Section 39D lists institutions not eligible to be licensed as recruitment agencies that is; a company whose object allows it to conduct a business of a travel agency or sales agency of an airline company; a company that has any of the members of its board of directors engaged in the business of a travel agency; a company with a political, religious or cultural agenda; a company that is declared insolvent; a company whose licence was cancelled; or a company whose directors have been convicted of an offence relating to illegal recruitment of workers or trafficking of persons.

e) 39E prohibits a recruitment agency from recruiting any employee without a job order issued by the Commissioner responsible for employment services and a recruitment agency that does so commits an offence and is liable, on

¹ Section 198A(3)(b) of the Labour Relations Act 2014 as amended, Laws of South Africa

conviction to a fine not exceeding five hundred currency points or a term of imprisonment not exceeding twelve months or both.

Observation

Ordinarily the Commissioner does not issue job orders. Job orders are issued by the recruitment agencies in the countries of destination.

Recommendation

Perhaps, the Commissioner's role would be to vet and approve the said job orders.

- f) *39F requires a recruitment agency shall carry out due diligence on the suitability of an employer whom the recruitment agency intends to recruit for, prior to recruiting for the employer.*

Recommendation

The kind of due diligence that needs to be carried out by the recruitment agency needs to be defined or highlighted. There should be a non-exhaustive list of what constitutes due diligence on the part of the private employment agency including review and vetting that the user-employer has no outstanding labor violations, and abides by all the legal and statutory requirements, including assurances on wages, work time, occupational safety and health, discrimination, freedom of associating and collective bargaining.

- g) *39G requires a recruitment agency; before a person who intends to work abroad signs a contract of employment, to orient the person on the policies, procedures and terms and conditions of employment including the rights and duties under his or her contract of employment, prior to signing the contract of employment for employment abroad; ensure that the person who intends to be employed abroad is qualified for the job advertised; ensure that the contract of employment is not prohibited under the laws of Uganda and is in accordance with the laws of the country where the person is to be employed; assume full responsibility for all claims which may arise in connection with the use of the licence of the agency; and keep and maintain a record of all persons recruited through the recruitment agency, including names and addresses, contracts of employment, bio data and passport photographs.*

Recommendation

Recruitment agencies should be obligated to orient the person on their legal rights in the country of destination, including with respect to labour rights and violations of the terms of the contract, as well as where to go to report complaints. Orientation materials should be presented in a clear, straightforward manner in a language the person understands. . Recruiters should be prohibited from keeping any original identification

documents, including passports or visas, or other original personal or official documentation.

h) 39H prohibits a recruitment agency from recruiting a person for employment abroad unless the contract of employment provides for the right of the employee to be repatriated at the expense of the employer under the following circumstances; upon the expiry of the period of service stipulated in the contract of employment; upon the termination of the contract of employment by reason of the inability of the employee to perform the contract; and upon the termination of the contract of employment by agreement between the parties; or upon the termination of the contract of employment by a competent court.”

GENERAL OBSERVATIONS AND RECOMMENDATIONS ON PART IV(A)

- ❖ The part only focuses on externalization of Ugandan workers and ignores internal supply or recruitment of labour which is now a common practice on the labour market and yet unregulated.
- ❖ There is no provision that prevents recruitment or placement fees on the part of agencies.
- ❖ It is therefore recommended that a separate part regulating internal supply of labour or internal recruitment practices be introduced including clauses that protect the rights of workers so recruited under such arrangements.
- ❖ There should be a separate clause prohibiting recruitment fees or any additional fees charged to a worker who takes employment through a private employment agency².

5. Clause 6 amends section 39 of the Principal Act by substituting that;

“ (1) An employee who is employed at a place which is more than one hundred kilometres from the place where he or she was recruited shall have the right to be repatriated at the expense of the employer to the place of recruitment in the following cases—(a) on the expiry of the period of service stipulated in the contract; (b) on the termination of the contract by reason of the employee’s sickness or accident; (c) on the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary; and (d) on the termination of the contract by order of the labour officer, the Industrial Court or any other court.”

² See: https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---migrant/documents/publication/wcms_536755.pdf

Observation

The amendment removes section 39(2) and (3) of the principal Act i.e; (2) where the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the expense of the employer, in the event of the employee's repatriation or death.

(3) Where an employee has been in employment for at least 10 years he or she shall be repatriated at the expense of the Employer, irrespective of his or her place of recruitment.

The bill therefore seeks to limit the obligation of the employer to repatriate employees to only circumstances where such an employee was recruited 100 kilometers away from their homes. The obligation of the employer to repatriate employees who were not recruited 100 kilometers from their homes but have worked for at least 10 years and the extra obligation to repatriate the family of the employee have been scrapped off by the bill. This disadvantages workers.

Recommendation

The provisions of the principal Act in regard to repatriation should remain.

8. Clause 8 amends the section 55 of principal Act. Section 55 of the principal Act is amended in subsection (1) by substituting for paragraph (b) the following—

“(b) if, at the expiry of the sixth month, the sickness of the employee continues, the employer is entitled to dismiss the employee upon complying with all the terms of contract of service up to the time of dismissal from employment.”

Observation

Sickness cannot be a ground of dismissal but rather termination of employment

Recommendation

The word “dismiss” should be replaced with “terminate”

9. Clause 9 inserts a new section 57A in principal Act. It provides that The principal Act is amended by inserting immediately after section 57 the following— “57A. Establishment of breastfeeding and child care facilities.

(1) Every employer shall make available at the place of work, time, space or a facility for breastfeeding and child care for children of the employees.

(2) The facility referred to in subsection (1) shall be for children between the age of three months and thirty-six months.

(3) The Minister shall, by regulations, prescribe operational standards for the breastfeeding and child care facilities.”

Observation

This is a positive direction towards extending maternal rights to female employees. However, the provision does not state whether the time breaks to nurse the children will be part of the working hours.

Recommendation

- ❖ There should be addition to the clause that “breaks or the reduction of daily hours of work for breastfeeding shall be counted as working time and remunerated accordingly”.
- ❖ The word “adequate or reasonable” should be added to clause 9(1) i.e "adequate time" or "hygienic, private and otherwise adequate space or a facility"

10. Clause 10 inserts a new section 65A in principal Act. It Provides that; The principal Act is amended by inserting immediately after section 65 the following—

“65A. Dismissal from employment.

(1) An employer may dismiss an employee from employment on any of the following grounds—

- (a) Inability of the employee to perform duties assigned by the employer in the contract of employment;
- (b) redundancy of the employee;
- (c) disobeying lawful orders or instructions;(these should be deleted)... this is very subjective
- (d) sickness which lasts more than six months and renders the employee unable to perform his or her duties under the contract of service;
- (e) abandonment of duty by the employee;
- (f) where the employer establishes that the employee presented forged documents or did not possess required qualifications at the time of recruitment;
- (g) Where the continuous employment of the employee may lead to breach of a statutory obligation;
- (h) where the conduct of the employee inside or outside the employment may have an adverse effect on the business of the employer; or
- (i) any other ground specified in the contract of employment.

(2) An employer who is considering to dismiss an employee on the ground of redundancy under subsection (1) (b) shall show proof that, the employer—

- (a) has ceased business operations;
- (b) has ceased to carry on business in a place where the employee was employed; or

(c) due to reorganization of work, introduction of labour saving devices or change in work pattern, the employer requires fewer employees for the existing work.”

(3) An employer shall, before dismissing an employee on the ground of sickness under subsection (1) (d) seek the opinion of the medical doctor of the employee relating to the medical condition of the employee.

(4) For purposes of paragraph (e), abandonment of duty is deemed to have occurred when an employee is absent from work without the permission and knowledge of the employer for a consecutive period of more than thirty days.”

Observation

Some of the grounds enlisted under this clause as grounds for dismissal are actually grounds for termination, for instance sickness and redundancy. The rest of the grounds are so subjective, vague and ambiguous that they are most likely going to be used by the employer to the detriment of employees. In any case, it would bring about more clarity if the bill draws a clear distinction between termination and dismissal rather than attempting to distinguish the two using grounds that in the end cause more ambiguity. For instance sub clause (h) i.e ***where the conduct of the employee inside or outside the employment may have an adverse effect on the business of the employer is very vague and ambiguous***. It should be more specific, to guard against lawful actions taken by employees but could be seen as 'adverse' do not create a grounds for dismissal

Further sub- clause which gives an Employer (i) any other ground specified in the contract of employment allows employers to have any other reason as a valid reason as long as it is in the contract.

The principal Act does not define redundancy, there is need to define it.

Recommendation

This whole clause ought to be deleted. It does not remedy any mischief in the current law rather it brings more confusion and ambiguity.

Redundancy should be defined. We can consider borrowing from the employment Act of Kenya which defines it as ““The loss of employment, occupation, job or career by involuntarily means through no fault of the employee involving termination of employment at the initiative of the employer, where the services of an employee are superfluous, and the

practices commonly known as abolition of office, job or occupation and loss of employment”.

Also the redundancy clause should be separated from dismissal. It should be under termination of employment. Section C should be deleted as a ground of redundancy. Before redundancy the Union if in place and the employee to be affected by the said redundancy and the labour officer should be consulted.

A one month notice should be served to the employee, trade union and the labour officer prior to the intended redundancy. The notice period is meant to open doors for consultation. Consultation gives an opportunity for other avenues to be considered to avert or to minimize the adverse effects of terminations; consultations are meant for the parties to put their heads together. Consultations have to be a reality not a charade; ideally, stakeholders must have and keep an open mind to listen to suggestions, consider them properly and then only then decide what is to be done; and consultation must not be cosmetic. In essence, consultation is an essential part of the redundancy process and ensures that there is substantive fairness.

An employer should not know with certainty the employees that will be made redundant at this stage. An objective selection criteria should be strictly observed to ensure fairness. It is important to note that the consultation process should be run for a minimum of 1 month. Further, that the consultation process may differ if the redundancy is a large or small one, for instance, a town hall meeting may be held with all employees if the redundancy is a large one. The employer should ensure that it carries out the process as fair as possible and that all mitigating factors are taken into consideration.

11. *Clause 11 provides for replacement of section 66 of principal Act as follows;*

“66. Notification and hearing before dismissal.

(1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, explain to the employee, in a language the employee understands, the reasons for which the employer is considering the dismissal of the employee.

(2) The employee may, during the explanation in subsection (1) have a person of his or her choice in attendance.

(3) Notwithstanding any other provision of this Part, an employer shall, before making a decision to dismiss an employee, hear and consider any representations which the employee or the person of the employee’s choice under subsection (2), may make.

(4) The employer shall give the employee five working days within which to prepare the representations referred to in subsection (3).

(5) An employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks' net pay.

(6) A complaint alleging failure on the part of the employer to comply with this section may be joined with any complaint alleging wrongful dismissal, and may be made to a labour officer by an employee who has been dismissed.

(7) The labour officer shall have power to order payment of the sum specified in subsection (5) in addition to making an order in respect of any other award or decision reached in respect of the dismissal.

(8) A complaint under subsection (6) shall be made within three months after the date of dismissal or such other later period upon providing reasonable grounds."

Observation

This clause does not change much from the provisions of section 66 of the principal Act. What is introduced is sub-section 4 which requires the employer to give the employee five working days within which to prepare the representations referred to in subsection (3) and subsection 8 which gives an employee an avenue to file a complaint after the expiry of three months after the date of dismissal upon providing reasonable grounds.

Recommendation

The period of 5 working days within which to prepare representations is short. We propose 8 working days.

12. Clause 12 provides for insertion of new sections 66A and 66B in principal Act. The principal Act is amended by inserting immediately after section 66 the following—

"66A. unfair dismissal.

Dismissal shall be unfair where the employer dismisses an employee for any reason other than the reasons specified in section 65A.

Observation

By stating that a dismissal shall be unfair where the employer dismisses an employee for any reason other than the reasons specified in section 65A is a contradiction to the very provision of section 65A(i) which allows the Employer to dismiss an employee on any other ground specified in the contract of employment.

Recommendation

A more clear description of unfair dismissal should be adopted and Section 65(A)(i) should be deleted.

66C. Circumstances that do not warrant dismissal or imposing disciplinary penalty.

An employer shall not dismiss or impose any disciplinary penalty on an employee on the basis of the following—

- (a) a female employee's pregnancy, or any reason connected with the pregnancy;
- (b) the fact that an employee took, or proposed to take, any leave to which he or she was entitled under the law or a contract;
- (c) an employee's membership or proposed membership of a labour union;
- (d) participation or proposed participation in the activities of a labour union outside working hours or, with the consent of the employer, within working hours;
- (e) an employee's seeking of office as, or acting or having acted in the capacity of, an officer of a labour union or a workers' representative;
- (f) an employee's refusal or proposed refusal to join or withdraw from a labour union;
- (g) an employee's race, colour, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability;
- (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his or her employer, except where the conduct is, in the opinion of the labour officer, wholly irresponsible and without foundation; and
- (i) an employee's temporary absence from work for any period up to three months on reliable grounds, including illness or injury."

Observation

This clause has similar provisions as section 75 of the principal Act. The only amendment is the title that is; circumstances that do not warrant dismissal or imposing disciplinary penalty whereas the principal Act provides for; Reasons for termination or discipline. This bill brings more clarity.

13. Clause 13 provides for a replacement of section 68 of principal Act. For section 68 of the principal Act there is substituted the following—

"68. Reasons for dismissal.

(1) An employer shall, in any claim arising out of dismissal, give reasons for dismissal of the employee, and where the employer fails to do so, the dismissal shall be deemed to have been unfair.

(2) 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.

Recommendation

For clarity, the requirement that an employer give reasons for dismissal should include a requirement that the reasons be given in writing.

14. Clause 14 provides for replacement of section 69 of principal Act and substitutes the following;

“69. Summary dismissal.

(1) Summary dismissal shall occur where an employer dismisses an employee without notice or with less notice than that which the employee is entitled to, under a statutory provision or contractual term.

(2) An employer may, summarily dismiss an employee, where the conduct of the employee constitutes a fundamental breach of his or her obligations under the contract of employment.

(3) An employee who is dismissed summarily is not entitled to claim for payment in lieu of notice.”

Recommendation

The term “fundamental breach” ought to be defined to avoid several interpretations that might disadvantage employees. Additional clarification should include, at a minimum, that the breach be also serious and intentional, to ensure that only the most severe misconduct is grounds for summary dismissal.

15. Clause 15 amends section 70 of principal Act. Section 70 of the principal Act is amended by substituting for subsection (2) the following—

“(2) A labour officer, presented with a claim under this section, shall decide whether the dismissal was justified in the circumstances, having regard to section 66C and to the Code of Discipline set out in Schedule.

Observation

This is fine. The clause brings more clarity

16. Clause 16 provides for replacement of section 71 of principal Act. For section 71 of the principal Act, there is substituted the following—

“71. Complaint to labour officer.

(1) An employee may lodge a complaint to a labour officer within three months from the date of the employee's dismissal or such later period as the employee shall show to be just and equitable in the circumstances.

(2) An employee whose services are under a probationary contract shall not lodge a complaint under this section.

(3) The right of an employee to make a complaint under this section is in addition to the right an employee may enjoy under any agreement between an employer or group of employers and a labour union.

(4) A labour officer shall, upon receipt of a complaint, handle the complaint in accordance with this Act and Regulations made thereunder.

(5) Where in accordance with this Act, a labour officer or an employee has referred the complaint or dispute to the Industrial Court and the Industrial Court finds that the dismissal was unfair, the Industrial Court may—

(a) subject to subsection (6) (a), order the employer to reinstate the employee; or

(b) order the employer to pay compensation to the employee.

(6) The court shall require the employer to reinstate or re-employ the employee unless—

(a) the employee does not wish to be reinstated or reemployed;

(b) the circumstances surrounding the dismissal of the employee are such that a continued employment relationship may be intolerable;

(c) it is not reasonably practicable for the employer to reinstate or re-employ the employee; or

(d) the dismissal is unfair only because the employer did not follow a proper procedure.”

Observation

Sub- section 2 which denies an employee whose services are under a probationary contract to lodge a complaint to the labour officer is unfair and contravenes articles 42, 28 and 44(c) of the Constitution of the Republic of Uganda in as far it denies such employees a right to be heard.

17. Repeal of section 73 of principal Act.

Recommendation

Employees under probationary contracts should be allowed to have the same rights as the confirmed employees to lodge complaints and access remedies where their rights under the Employment Act are violated.

Section 71 (4) which gives a labour officer power to receive and handle the complaint in accordance with the Act and Regulations made thereunder should state some time frame within which to handle the same so that the complaint does not just sit with the labour officer in perpetuity

17. Lastly clause 24 inserts a new Part IXA of in principal Act. It provides for employment of migrant workers seemingly within Uganda. The clause empowers the minister by notice in the gazette to declare a range of jobs that migrant workers shall not be offered for employment. The clause further prohibits the National Citizenship and immigration Board not to issue an entry permit to a migrant worker who is offered a job declared by the Minister under section 92B, except where the migrant worker possesses an exemption Certificate issued by the Commissioner responsible for employment services.

Recommendation

We propose that this part should not only focus on limiting the categories of jobs offered to migrant workers but it should also include clauses that protect the rights of migrant workers. For instance, these should be included as had earlier been captured in the private members' bill;

- (1) An employer employing a migrant worker in Uganda shall undertake to
 - a) ensure that the employment is in accordance with this Act, the standard contract of service and other applicable laws, regulations and collective bargaining agreements;
 - b) provide the migrant worker orientation on the terms and conditions of employment and other relevant information including the their rights and duties under their contracts of employment prior to or in the process of engagement and their rights under national labor laws;
 - c) ensure that the migrant worker has a valid work permit;
 - d) keep a register of all migrant workers employed at the work place;
 - e) file annual returns to the district labour officer of the area in which the work place is located with details of the migrant workers employed;
 - f) repatriate a migrant worker or his or her body upon death or on the expiry or termination of the contract of service for which he or she was recruited regardless of the cause of death or reason for termination..

Submitted on behalf of ILAW by

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