

## THE EMPLOYMENT (AMENDMENT) BILL, 2015

---

### MEMORANDUM

The object of this Bill is to amend the Employment Act so as to

- (a) revise the provisions relating to registration of employment agencies;
- (b) prohibit casualisation to ensure that employees who are performing work which is permanent in nature are deemed to be on short term contracts;
- (c) regulate fixed term contracts;
- (d) ensure that employers give reasons to an employee for termination of a contract of service; and
- (e) provide for matters connected with, or incidental to, the foregoing.

L. KALALUKA,  
*Attorney-General*

# A BILL

ENTITLED

## An Act to amend the Employment Act.

ENACTED by the Parliament of Zambia

Enactment

1. This Act may be cited as the Employment (Amendment) Act, 2015 and shall be read as one with the Employment Act, in this Act referred to as the principal Act.

Short title

Cap. 268

5 2. Section *three* of the principal Act is amended—

Amendment  
to section 3

(a) by the deletion of the definitions of “casual employee”, “employee” and “employment agency” and the substitution therefor of the following:

“casual employee” means a person whose employment

10

(a) is not permanent in nature;

(b) does not require any skill in the performance of the work to be done; and

(c) terms provide for payment at an hourly rate, payable at the end of each day;

15

“employee” means a person who, in return for remuneration, enters into a contract of service whether on full time, part time or temporary basis or who is engaged to do casual work, but does not include a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act, an independent contractor or a person engaged to do piece work;

20

Cap. 275

25

“employment agency” means a natural or legal person or an unincorporated body of persons providing one or more of the following labour market services:

(a) matching offers of, and applications for, employment without the employment agency becoming a party to the employment relationship which may arise therefrom; 5

(b) employing persons with a view to making them available to a third party, who may be a natural or legal person that assigns their tasks and supervises the execution of these tasks; or 10

(c) services relating to job seeking as may be prescribed by the Minister, in consultation with the Tripartite Consultative Labour Council, in accordance with the Industrial and Labour Relations Act; and 15

(b) by the insertion, in the appropriate places, of the following new definitions:

“casual work” means work that is not permanent in nature, but excludes the exceptions specified in subsection (1) of section *twelve A* 20

“casualisation” means the employment of a person under a contract of service for work which is permanent in nature under terms and conditions of employment for a casual employee, but excludes the exceptions specified in subsection (1) of section *twelve A*; 25

“consultancy agreement” means an agreement between two or more parties relating to the rights and duties of the parties under which one or more of the parties is an expert or are experts engaged to do specialised work related to the expert’s professional or technical capacities; 30

“contract of service” means an agreement establishing an employment relationship between two or more parties whether express or implied, and if express, whether oral or in writing; 35

“employment relationship” means a situation where work is carried out in accordance with instructions and under the control of an employer and may include—

5 (a) the integration of the employee in the organisation of the enterprise where the work is—

(i) performed solely or mainly for the benefit of an employer;

10 (ii) carried out personally by the employee; and

(iii) remunerated and constitutes the employee’s sole or principal source of income; or

15 (b) work—

(i) carried out within specific working hours or at a workplace specified by the employer;

20 (ii) which is of a particular duration and has a certain permanency;

(iii) that requires the worker’s availability; and

25 (iv) which requires the provision of tools, materials and machinery by the employer;

“fixed—term contract” means a contract of service for—

30 (a) a period exceeding twelve months, renewable for a further term, subject to section *twenty-eight C*; or

(b) the performance of a specific task or project to be undertaken over a specified period of time; and whose termination is fixed in advance by both parties;

35

“flexibilisation” means an employment trend that is characterised by different aspects of human resource management, such as—

- (a) pay flexibility, which is focused on performance related pay and pay bargaining; 5
- (b) contractual flexibility, which is focused mainly on nonpermanent contracts of service, sub contracting and outsourcing; 10
- (c) task flexibility, which allows employees to perform various activities; and
- (d) working hours flexibility, which focuses on parttime working, jobsharing and flexi hours of work; 15

“full-time” means employment under a contract of service that stipulates the maximum number of statutory or conventional hours prescribed for a week, month or year, but Act No. 3 of 2014 20 excludes overtime work;

“permit” means an employment agency permit issued under section *fifty-six*;

“seasonal employment” means employment under a contract of service where the timing and 25 duration of the contract is influenced by seasonal factors such as climate, agricultural or business peak cycle;

“short term contract” means a contract of service of six months but not exceeding twelve 30 months;

“single licensing system” has the meaning assigned to it in the Business Regulatory Act, 2014;

“temporary employment” means service under a contract of service where a person is engaged 35 to do relief work in the absence of a substantive employee, and may include employment which is part-time, but does not include a person engaged on a short-term contract; 40

5 “part time” means employment under a contract of service that stipulates working hours of at least one-fifth less than the number of hours, prescribed under the Minimum Wages and Conditions of Employment Act or as specified in a collective agreement made in accordance with the Industrial and Labour Relations Act, for fulltime work calculated on a weekly, monthly or yearly basis; and

10 “permanent in nature” means—

(a) employment that exceeds six months, is not casual work and is under a written contract of service; or

15 (b) a position in an undertaking that is necessary for the continued or sustainable operation of the undertaking or is core to the objectives of the undertaking.

3. The principal Act is amended by the insertion immediately after section *twelve* of the following new section:—

Insertion of section 12A

12A. (1) For purposes of this Act and notwithstanding any other provision of this Act or other written law

Casualisation, application and prohibition of casualisation

(a) the following shall not be casualisation:

- 25 (i) work under a consultancy agreement;  
(ii) piece work;  
(iii) seasonal work;  
(iv) temporary employment;  
(v) part time work; and  
(vi) flexibalisation; and

30 (b) the provisions of this Act, relating to casualisation, shall not apply to an undertaking that employs ten or less than ten employees, except that the undertaking shall comply with the Minimum Wages and Conditions of Employment Act with respect to its employees.

Cap. 276

(2) A person shall not engage an employee for a job which is permanent in nature on casual terms of employment.

40 (3) Any person who engages an employee for a job that is permanent in nature on casual terms of employment commits an offence and is liable, upon conviction, to a fine not exceeding one hundred and eighty thousand penalty units.

(4) A body corporate that engages a casual employee for a job that is permanent in nature commits an offence and is liable, upon conviction —

(a) in the case of a first offence, to a fine not exceeding one hundred and eighty thousand penalty units; or

(b) in the case of a subsequent offence, to a fine of three hundred and sixty thousand penalty units or to imprisonment for a period not exceeding six months, or to both. Insertion of section 28A

Insertion of section 28A

4. The principal Act is amended by the insertion of the following new sections immediately after section *twenty eight*:

Deeming contract of service to be short-term contract

**28A.** Where a casual employee continues to be employed after the expiration of six months, the employee shall cease to be a casual employee and the contract of service of that employee shall continue but shall be deemed to be a short term contract having effect from the day following the expiration of the initial six months.

Deeming short-term contract as fixed term contract

**28B.** Where an employee, who is engaged on a short term contract, continues to be employed after the expiration of the shortterm contract, the shortterm contract shall be deemed to be a fixed term contract.

Regulation of fixed term contract

**28C.** (1) Subject to subsection (2), an employee's fixed-term contract may be renewed for subsequent terms, except that the cumulative duration of the successive fixed-term contracts of employment with an employer shall be as prescribed.

(2) Where an employee who is engaged on a fixed-term contract of service continues in employment with the same employer after the expiration of the prescribed cumulative period, the contract of service shall be deemed to be a permanent contract.

(3) A fixed-term contract relating to an employee who is a professional registered with a professional body or management staff of a prescribed category, shall, with that employee's consent, continue to be a fixed-term contract for a period specified in the contract.

(4) The prescribed cumulative period may be jointly altered by employers and employees under a collective agreement specifying the reasons for the renewals of fixed-term contracts.

5. Section *thirtysix* of the principal Act is amended by the insertion —

Amendment  
of section 36

(a) in paragraph (c) of subsection (1), immediately after the words “or otherwise”, of the words “except that where the termination is at the initiative of the employer, the employer shall give reasons to the employee for the termination of that employee’s employment”; and

(b) of the following new subsections after subsection (2):

(3) The contract of service of an employee shall not be terminated unless there is a valid reason for the termination connected with the capacity, conduct of the employee or based on the operational requirements of the undertaking.

(4) The following shall not constitute a valid reason for termination:

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, acting or having acted in the capacity of, an employee’s representative;

(c) the filing of a complaint, the participation in proceedings against an employer involving alleged violation of laws or recourse to administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion or affiliation, ethnicity, tribal affiliation or social status of the employee; or

(e) absence from work during maternity leave.

6. The principal Act is amended by the repeal of section *fiftysix* and the substitution therefor of the following:

Repeal and  
replacement  
of section  
56

Prohibition of operation of employment agency without employment agency permit

56. (1) A person shall not operate or cause to be operated an employment agency without an employment agency permit issued under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction to a fine of one hundred and eighty thousand penalty units.

Repeal and replacement of section 57

7. The principal Act is amended by the repeal of section *fifty-seven* and the substitution therefor of the following:

Application for employment agency permit

57. (1) An application for a permit shall be made to the Labour Commissioner in the prescribed manner and form upon payment of the prescribed fee.

(2) The Labour Commissioner shall, where an applicant complies with the requirements of this Act, issue the applicant with a permit on such terms and conditions as may be prescribed by the Minister.

(3) The Labour Commissioner may refuse to issue a permit to an applicant if—

(a) the applicant fails to comply with any prescribed conditions precedent to the issue of the permit;

(b) a permit formerly held by the applicant is revoked;

or

(c) the applicant has been convicted of an offence under this Act or any other relevant written law.

(2) The Labour Commissioner shall notify the applicant, in writing, of the refusal to issue a permit and shall state the reasons for the refusal.

Insertion of section 58, 58A, 58B, 58C, 58D, 58E and 58F

8. The principal Act is amended by the insertion of the following:

Display of permit

58. A permit holder shall display the permit issued in accordance with this Act, or a certified copy of the permit, in a conspicuous place at the principal place of business and at every subsidiary premises where the permit holder carries out business.

Prohibition of transfer of permit

58A. (1) Except as is otherwise provided by this Act, a permit shall be used solely by the permit holder and is not transferable to another person.

(2) A person who transfers a permit issued to that person or accepts the transfer of a permit from any person commits an offence and is liable, upon conviction, to a fine of one hundred thousand penalty units.

5        58B. (1) A permit holder may, at any time during the validity of the permit, if there are any changes to the permit holder's business activity, apply to the Labour Commissioner for the amendment or variation of the terms and conditions of the permit. Amendment  
of permit

10        (2) The Labour Commissioner may approve the amendment of a permit to accommodate any variations requested by the permit holder and approved by the Labour Commissioner.

15        (3) The Labour Commissioner shall endorse and date any variation, approved in accordance with subsection (2), on the permit.

20        58C. (1) Subject to subsection (2), the Labour Commissioner may suspend or revoke a permit if the permit holder — Suspension  
or revocation  
of permit

(a) obtained the permit on the basis of fraud, negligence or misrepresentation;

(b) assigns, cedes or otherwise transfers the permit without the prior approval of the Labour Commissioner;

25        (c) fails to comply with any term or condition of the permit; or

(d) operates the permitted business activity in contravention of this Act or any other relevant written law.

30        (2) The Labour Commissioner shall, before suspending or revoking a permit, in accordance with subsection (1), notify the permit holder of the intention to suspend or revoke the permit, giving reasons for that decision and requesting the permit holder to show cause, within such reasonable period as may be specified in the notice, why the permit should not be suspended or revoked.

35        (3) The Labour Commissioner shall, where a permit holder fails to correct the contravention within the period specified under subsection (2), suspend or revoke the permit as the Labour Commissioner considers appropriate in the  
40        circumstances of the case.

- (4) Where a permit is revoked, in accordance with this section, the permit holder shall surrender the permit to the Labour Commissioner and the Labour Commissioner shall cancel the permit, subject to such conditions as may be imposed with respect to the winding up of the permitted business or activity. 5
- Surrender of permit  
58D. (1) Where a permit holder decides not to continue operating the permitted business or activity, the permit holder shall notify the Labour Commissioner, in writing, and surrender the permit to the Labour Commissioner. 10
- (2) Where a permit is surrendered in accordance with subsection (1), the Labour Commissioner shall cancel the permit subject to such conditions as may be imposed with respect to the winding up of the permitted business or activity.
- Renewal of permit  
58E. (1) A permit holder may, sixty days prior to the expiration of the period of validity of the permit, apply to the Labour Commissioner for the renewal of the permit in the prescribed manner and form upon payment of the prescribed fee. 15
- (2) The Labour Commissioner shall, within thirty days of receiving an application for the renewal of a permit, approve or reject the application and give reasons where the application for renewal of the permit is rejected. 20
- (3) A permit holder who submits an application for the renewal of a permit in accordance with subsection (1), shall continue to operate the permitted activity until a decision is made by the Labour Commissioner on the application for the renewal of the permit. 25
- Loss of permit  
58F. (1) A person who loses a permit or whose permit is damaged shall inform the Labour Commissioner within fourteen days of the loss or damage and shall, after a further period of fourteen days, apply to the Labour Commissioner for the issuance of a duplicate licence or permit. 30
- (2) On application under subsection (1), the Labour Commissioner may— 35
- (a) issue a duplicate permit on such terms and conditions as the Labour Commissioner may determine; or
  - (b) refuse the application and notify the permit holder, in writing, and give reasons for the refusal. 40

10. The principal Act is amended by the repeal of section *fiftynine* and the substitution therefor of the following:

Repeal and replacement of section 59  
Conditions of operation of employment agency and fees

5 59. (1) Where an employment agency matches offers of, and applications for, employment, the determination of wages and conditions of employment shall be between the employee and the prospective employer.

10 (2) An employment agency shall not charge a prospective employee fees for matching services rendered except such fees as may be payable in respect of services relating to job seeking.

(3) An employment agency shall charge a prospective employer such fees as may be agreed by the parties.

15 (4) An employment agency shall not provide employment to an employee without ensuring that the employee has a contract of service with the employment agency before or on the commencement of the employment.

(5) An employment agency shall not assign an employee of the agency to a third party—

20 (a) to replace employees of the third party who are on strike; or

25 (b) without ensuring that employees of the agency enjoy similar wages and conditions of employment with employees of the third party performing comparable tasks as the employees of the agency.

(6) An employment agency shall not interfere with the free transfer of an employee of the employment agency to the third party or another employer.

30 (7) A person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding one hundred and eighty thousand penalty units or to a term of imprisonment not exceeding six months, or to both.

35 (8) Where an offence under this section is committed by a body corporate or an unincorporated body, every director or manager of the body corporate or unincorporated body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the  
40 commission of the offence.

Repeal and  
replacement  
of section 62

**11.** The principal Act is amended by the repeal of section *sixty-two* and the substitution therefor of the following new section:

Single  
Licensing  
Act No. 3 of  
2014

62. The Labour Commissioner shall operate a single licensing system for the labour industry in accordance with 5 the Business Regulatory Act, 2014.

Repeal and  
replacement  
of section 63  
Appeal

**12.** The principal Act is amended by the repeal of section *sixty-three* and the substitution therefor of the following:

63. A person aggrieved with the decision of the Labour Commissioner under this Part may appeal to the court within 10 thirty days of receipt of the decision of the Labour Commissioner.