

WHAT THE LAW SAYS ABOUT THE RIGHTS OF AN EMPLOYEE:



*Understanding the
Critical Provisions of the
Employment Act Ch. 268
of the Laws of Zambia*



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1.0 Introduction

The right to decent work is critical for self-flourishment and self-dignity. Every person is entitled to opportunities earn a living. Such opportunities should not in any way demean or undermine an individual's dignity.

The international human rights frameworks acknowledge and enshrine the right to decent work. It is articulated in the International Covenant on Economic, Social and Cultural Rights (ICESCR). Further to that, the United Nations define 'decent work' in the general comment on **“decent work”** *employment that “respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work safety and remuneration, including respect for the physical and mental integrity of the worker in the exercise of his/her employment.*

In Zambia, the laws of Zambia equally protects the right to decent through various legislation that government employment and conditions of employment. However, it is of concern that the practice on the ground is different. Majority of people find themselves working without contracts, with unclear conditions of service, and are denied certain benefits which are necessary to make their employment decent. There are three key pieces of legislation that outlines conditions that protect the right to decent work and these are: The Employment Act, The Workers Compensation Act and the Minimum Wages and Conditions of Employment Act.

One of the main factors underlying lack of respect for decent work for women is the lack of compliance and adherence to the provisions on these important pieces of legislation in the Zambian Law.

It is important that both employers and employees take time to learn and understand the contents of these pieces of legislation in order to foster compliance. Equally, a public that is aware of these laws will stimulate positive debate that move State actors to take action in enforcing compliance among employers.

The Employment Act is a primary piece of legislation that guides both employers and employees in their day to day interactions. It is the most important document from which the rights and duties of either of them can be determined.¹

¹ Dr. Mwenda, W. S. 2011. Employment Law in Zambia: Cases and Materials, Revised Edition. B. A. Stationers & Printers Ltd: Lusaka at page 28

The purposes for which this law was made were that it was to provide:²

- Legislation relating to the employment of persons;
- Engagement of persons on contracts of service;
- The form of and enforcement of contracts of service;
- The appointment of officers of the Labour Department and for the conferring of powers on such officers and upon medical officers;
- Protection of wages of employees;
- Control of employment agencies; and
- Related matters.

It is for this reason that this booklet has been compiled, to simplify the key provisions of these existing legislation for easy comprehension. The contents of this booklet are mostly drawn from the Employment Act, but has some additional contents from the Workers Compensation Act, and the Wages... Act. The sections of the Employment Act that have been simplified in this are numbered as they appear in the Act.

² Preamble to the Act

2.0 Provisions of the Employment Act

The Act has 11 parts styled parts as follows:

PART I - PRELIMINARY

Name of law

This Act is correctly referred to as the “*Employment Act*”. Because of the sequencing of laws its title extends to it being Chapter 268, found in Volume 15 of the entire set of the Laws of Zambia. Its full name therefore is: Employment Act, Chapter 268, Volume 15 of the laws of Zambia.³

Application of the Law

This law applies to everyone within Zambia, except for members of the Defence Force, the Zambia Police Force and the Zambia Prison Service, as these men and women in uniform have legislation that provides adequately for their employment.⁴

Interpretation

Some commonly used words, terms and phrases are interpreted as follows:⁵

“*Employee*”: any person who has entered into or works under a contract of service. The contract can either be oral or in writing.

“*Contract of Employment*”: A contract of employment is an agreement that guides the relationship between the employer and employee. In terms of the law it is of critical importance as it determines the rights and duties of employer and employee.

“*Casual employee*”: any employee whose terms of employment provide for his payment at the end of each day. Such employment should not exceed a period of six months.

“*Employer*”: any person, or any firm, corporation or company, public authority or body of persons who or which has entered into a contract of service to employ any person.

³ Title of the Act

⁴ Section 2

⁵ Section 3

“Labour officer”: any person who is employed as a public servant for the purpose of the administration of the Employment Act.

“Piece work”: any work which is paid based on the amount of work performed irrespective of the time occupied in its performance.

“Wages”: This refers to the money that one is expected to be paid for work done under a contract of employment.

“Young person”: a person who has not attained the age of fifteen years. In a separate piece of legislation called, the Employment of Young Persons Act, it is an offence to employ anyone below the age of fifteen.

PART II – APPOINTMENTS, POWERS AND DUTIES OF OFFICERS

Powers of Labour Officers

The government employs people who are called labour officers. Their duty is to ensure that all the contents and provisions of this law are followed and respected. In order to effectively carry out their duties, they have power to:⁶

- (a) to enter any workplace at any time to inspect the workplace; and
- (b) to enter by day any premises in order to carry out any examination, test or inquiry which he may consider necessary in order to satisfy himself that the provisions of this Act are being complied with.
- (c) Any employee who has concerns regarding their employment conditions can report to the labour officers.

PART III – CONTRACTS OF SERVICE GENERALLY

There are a number of general terms that according to the law automatically become part of a contract of employment, whether or not the employer and employee make any mention of them in the contract of employment. If these terms are lacking in any employment, an employee has cause to demand that they be met, and if this fails, the employee can report

⁶ Section 6

the issue to the labour officer. These terms deal with issues of the *minimum contracting age, repatriation, paid holidays, maternity leave and prohibition of employment on pregnancy related reasons, as follows:*

Minimum contracting age

Any person under the age of 15 is by law not allowed to be employed.⁷ A person who employs someone below the age of 15 should be reported to a labour officer.

Repatriation

When a person is offered a job that is based in a place other than his or her current base, it is the responsibility of the employer to meet the expenses of moving that person to the new employment base.

Paid holidays

After six months of continuous work, every employee who is on long term or permanent employment is entitled to a holiday calculated at the rate of two days per month to be taken at a time agreed between the employer and employee.⁸

Maternity leave

Every female employee who has completed at least two years of continuous service with her employer is entitled to maternity leave of twelve weeks with full pay.⁹

Prohibition of termination of employment on pregnancy related reasons

An employer shall not terminate the services of a female employee or impose any other penalty due to the employee's pregnancy.¹⁰

⁷ Section 12

⁸ Section 15

⁹ Section 15A

¹⁰ Section 15B

PART IV - ORAL CONTRACTS OF EMPLOYMENT

Application of Part IV

The law makes provision for specific matters that are to apply to oral contracts of employment. An oral contract arises when the terms of employment are not in written form but are agreed upon verbally by the parties.

Contracts not required to be in writing

It is not a requirement under the law that all contracts are to be in writing.¹¹ However, it is only advisable that one has their contract in writing to avoid problems of evidence when disputes arise.

Period of contract

In the absence of any proof of the same, oral contracts of employment will be deemed to be of the period for which wages are paid.¹² This means that where there is no proof whatsoever, the determination of the period of the contract will be made in relation to the period for which payments were to be due to the employee.

Termination by notice or pay

An employee or employer can terminate a contract if notice is given.¹³ Alternatively, a contract could also be terminated if the employer pays the employee money that would have been due to the employee if he had continued to work until the end of the contract period.¹⁴

Record of employment

The law provides that every employer is mandated to prepare and maintain at his own expense a record of contract for every employee employed by him under an oral contract of service.¹⁵

¹¹ Section 17

¹² Section 18

¹³ Section 20

¹⁴ Section 21

¹⁵ Section 24

Dismissal

Wherever an employer shall dismiss an employee without notice, such an employer is mandated to deliver to a labour officer in the District in which the employee was working, a written report of the circumstances leading to, and the reasons for, such dismissal.¹⁶

Further on, where an employee is dismissed without notice, he shall be paid on dismissal the wages and other allowances due to him up to the date of such dismissal.¹⁷

PART V - WRITTEN CONTRACTS OF EMPLOYMENT

Like oral contracts, there are specific matters that are to apply to written contracts of employment. These are:

Attestation

An employer must ensure that the employee has understood the contents of their contract of employment, and there must be proof of such understanding on the part of the employee. The contract has to be attested to by a labour officer for it to be enforceable. However, if a contract has not been attested to by the labour officer but the parties to the contract are literate and entered into the contract in good faith, then the contract will be enforceable as if it was attested.

Contents of written contracts

A written contract should contain the following:¹⁸

- (a) Name of the employer and of the employee;
- (b) Name of the business or undertaking in which the employee is to be employed;
- (c) Place of engagement and, where applicable, the place of origin of the employee;
- (d) Date of commencement and the duration of the contract of service;
- (e) Place at which, or the geographical limits within which, any work under the contract is to be performed;
- (f) Wages to be paid and, if applicable, particulars of any food to be provided under the contract or of any cash equivalent of any such food;

¹⁶ Section 25

¹⁷ Section 26

¹⁸ Section 30

- (g) An undertaking by the employer to pay the wages of the employee monthly or at shorter period; and
- (h) Nature of the employment, including working hours and tasks where applicable and practical, and the general operations involved.

Termination

It is provided under the law that a written contract shall be terminated:¹⁸

- (a) If the period for which it was given has expired; or
- (b) If the employee has died; or
- (c) In any other manner in which a contract of service may be lawfully terminated.
- (d) Due to sickness or accident, an employee is unable to fulfil a written contract; it may be terminated on the report of a registered medical practitioner.

PART VI – HOUSING AND WELFARE

Housing

An employer may, by agreement or as part of conditions of service provide to an employee either housing, a loan or advance towards the purchase or construction of a house, guarantee facility for a mortgage or house loan on behalf of an employee or pay housing allowance.²⁰ It is dependent on how the employer is comfortable with fulfilling this obligation.

Water for use by employees

Every employer has to ensure that at the place of employment there is an adequate supply of drinking water for use by his employees.²¹

Medical attention

An employer is required to provide medical cover for an employee to enable the employee to get medical attention and medicines and where necessary, transport to a medical institution during the illness of the employee.²²

¹⁹ Section 36

²⁰ Section 42

²² Section 43

PART VII - PROTECTION OF WAGES

Wages to be paid in Kwacha

Payment of wages is to be made in any of the following ways:²³

- (a) Into an account at a bank or building society;
- (b) Postal order;
- (c) Money order; or
- (d) By cheque.

Unauthorised deductions

An employer cannot make any deductions from wages payable to an employee for retaining such an employee in employment.²⁴ This means that for every deduction on an employee's pay, the employer should have a reason justified and acceptable by the employee.

Explanation of wages

The law provides that every employer shall, before an employee commences employment or when changes in the nature of such employment take place, explain to the employee the rate of wages and conditions of service.²⁵ This means that the onus of explaining the employee's pay and what is constituted therein rests solely on the employer.

Wages while incapacitated

It is provided that if any employee becomes temporarily incapacitated in consequence of sickness or accident not occasioned by his own default, such employee shall, provided he has produced a valid medical certificate, receive pay for the days absent up to a maximum of twenty-six working days in any period of twelve months.²⁶

²³ Ibid

²⁴ Section 47

²⁵ Section 51

²⁶ Section 54

PART IX – DISPUTES AND BREACHES OF CONTRACT

This part of the law provides for issues relating to disputes and breaches of contracts of employment.

Disputes to be referred to Labour Officer

When an employer or employee neglects or refuses to comply with the terms of any contract of service, the party aggrieved may report the matter to a labour officer.

Once the Labour Officer receives such a report, he or she is mandated to take necessary steps to effect a settlement between the parties.²⁷

When a report is made to the labour officer and the labour officer is of the view that a breach of the provisions of the law has occurred, the labour officer may refer the matter to a court.²⁸

PART X - POWERS OF COURTS AND OFFENCES UNDER THE LAW

Powers of the Courts

When a labour matter is referred to the Courts, the Court hearing such a matter has a number of powers provided for under the law. These powers include:²⁹

- (a) Terminating a contract of employment;
- (b) Applying any punishment that the law stipulates;
- (c) Assessing the fair value of services rendered by an employee in disputes of amount to be paid for work done;
- (d) Deciding the relative rights and duties of employers and employees with regards to disputes as to the contract of employment;
- (e) Fixing the amount of compensation for loss of or damage to property;
- (f) Awarding damages for wrongful dismissal; and
- (g) Ordering reinstatement or re-employment.

²⁷ Section 64

²⁸ Section 65

²⁹ Section 70

Offences

There are a number actions which the law considers as offences, such as:³⁰

- (1) Inducing any person to engage himself in employment;
- (2) Induces any other person to induce, any employee to stop working for his employer;
- (2) Forges or counterfeits or utters any testimonial, reference or other certificate of the character of an employee;
- (3) Offers himself to hire as an employee and asserts or pretends that he has served in employment in which he has not; and
- (4) By force, in any way prevents or endeavours to prevent any person from accepting work from any employer.

PART XI - MISCELLANEOUS PROVISIONS

Certificate of service, testimonials and references

The law provides that every employer shall, on the termination of a contract of employment between employer and his employee, give to his employee a certificate of service.

³⁰ Section 75

3.0 Provisions of other related legislation

3.1 Minimum Wages and Conditions of Employment Act

The law in Zambia has set minimum standards for the protection of employee, especially those not adequately covered by any effective mechanism of regulating wages and other conditions of service. That law is the Minimum Wages and Conditions of Employment Act, Chapter 276, Volume 15 of the Laws of Zambia. Under that law, the Minister of Labour is empowered to make regulations and orders with respect to minimum conditions of employment for any group of workers.³¹

The law empowers the minister to set such minimum standards for:³²

- (a) rates of wages to be paid to workers by the hour, day, week or month;
- (b) normal hours of work in any day or week;
- (c) normal working days in any week or month;
- (d) rates for any work done in excess of or outside the normal hours of work or the normal working days;
- (e) rates of paid holidays or any conditions attaching to the granting of such holidays;
- (f) rates for any piecework;
- (g) rates of allowance for any food or housing; and
- (h) any other matter which in the opinion of the Minister is necessary or expedient.

It is incumbent upon the employee to know the minimum wage so they can negotiate accordingly.

3.2. Safety Issues

The Workers Compensation Act, No. 10 of 1999 is a law that was passed in line with issues of safety of employees while at work. It generally makes provision for the establishment and administration of a Fund for the compensation of workers disabled by accidents occurring during the course of their employment, or diseases similarly contracted by workers. It provides

³¹ Dr. Mwenda, W. S. 2011. *Employment Law in Zambia: Cases and Materials, Revised Edition*. B. A. Stationers & Printers Ltd: Lusaka at page 40

³² Section 3 of the Minimum Wages and Conditions of Employment Act, Chapter 276, Volume 15 of the Laws of Zambia

for the payment of compensation to dependants of workers who die as a result of such accidents or diseases.³³

The law provides for the right to compensation in that if an accident happens to an employee during his or her employment and the accident causes the employee's disablement or death, the employee or dependants are entitled to compensation in accordance with the Act.³⁴

³³ Dr. Mwenda, W. S. 2011. Employment Law in Zambia: Cases and Materials, Revised Edition. B. A. Stationers & Printers Ltd: Lusaka at page 230

³² Section 41 of the Workers' Compensation Act, No. 10 of 1999

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