

# **Proposal for a Unified Employment Act**

27 June 2019

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# Issues of Concern in the Labour Sector

- Separate Regime for Offices and Shops and Industrial Sector – fragmentation of laws. Multiplicity of laws and overlap creates confusion for employers and workers: essentially creates discrimination based on type of work.
- Inflexible provisions for employers to employ workers, number of hours, restriction on night work for women, lack of part time options.
- Inconsistent provisions for overtime work for females in the manufacturing sector under the Factories Ordinance (e.g. 60 hours of overtime per month which can be 3 hours overtime per day for 20 days) as compared to the SOE with no overtime possible except on short working day
- Issues concerning “manpower agencies” (outsourcing) because of difficulties in identifying the “employer”; different interpretations of “principal” and “agent” by Labour Tribunals in identical cases
- Costs of employment as a result of unclear provisions.
- Lack of provisions to prohibit discrimination in the private sector.

# 2018 Cabinet Decision for a Unified Employment Act

- The Cabinet determined in June 2018 that four laws (*Shop and Office Act, Wage Board Ordinance, Employment of Women, Children and Young Persons Act, and Maternity Ordinance*) should be unified.
- in addition, other laws, if they are implicated, need to be reviewed.
- Focus on the low labour force participation of women and the need for flexible service conditions in the new technology based economy.
- The Cabinet paper also noted: “It must also be stressed that the drafting of a new act incorporating flexible service conditions should be without prejudice to the rights currently enjoyed by workers.”

# Policy Objectives

1. Address all labour law issues in a single comprehensive law instead of the separate laws on industrial, office, female and agricultural workers; amalgamate and amend laws.
2. Laws should not discriminate on service conditions based on trade or service , male or female etc. ; all workers are entitled to the same conditions; leave, overtime, working hours to be uniform.
3. Labour law should set clear unambiguous definitions of rights and obligations of employers and employees.
4. Employment law must protect rights of workers and include anti-discrimination provisions, while allowing employers flexibility appropriate in the modern workplace.
5. Labour law should be based on setting rules and not on seeking approvals from the Commissioner General of Labour because DOL resources are limited and the inspection of large numbers is not possible.
6. Consistent with National Human Resources and Employment Policy 2012.
7. Follow the Cabinet decision to unify labour laws.

# Employment Act to be part of a Labour Code

Comprehensive Labour Code outline could be:

- I. Terms and Conditions of Employment
- II. Occupational Health and Safety (drafted)
- III. Industrial Relations (Collective Bargaining)
- IV. Employees' Provident Fund (and other retirement provisions)

This arrangement is based on the Canadian approach, among others. The proposed Employment Act is only the first step of these four general laws.

# Parts of the Unified Law on Employment - I

1. Fundamental principles
2. Hiring, including non-discrimination on the basis of gender, race, ethnic origin, religion or similar characteristic
3. Employment contracts, fixed term and indefinite term contracts as well as a narrower definition of casual labor
4. Payment of wages and recordkeeping (minimum wage and overtime, maximum hours, as well as provision for part-time work)
5. Holidays and leave – change to current law; leave pro-rata if part- time
6. Maternity leave

# Parts of the Unified Law on Employment - 2

8. Service Contract Hiring
9. Employment Agencies
10. Employment of Children and Young Persons
11. Administration of this Act
12. Grievances and Dispute procedures
13. Offences
14. Interpretations
15. Concluding provisions, transitional provisions

# Part I Fundamental Principles

- Employer responsibilities
- Non-discrimination on the basis of gender, race, origin, ethnicity, language, creed, caste, family or marital status, disability
- Equal pay for equal work equal pay for work of equal value
- Sexual harassment a form of gender discrimination
- Right of workers to freedom of association
- Employer's right to have and enforce workplace rules

Non-discrimination important for GSP+ and consistent with the 2012 National Human Resources and Employment Policy

Examples of similar fundamental provisions at the outset of similar laws: Maldives, Czech Republic

# Part II Hiring of Workers by Employers and Part III Employment Contracts

- No discrimination
- Applicants have to present requirements accurately
- Contents of Contracts – details on remuneration and benefits, Base Wage in terms of hours, days or months, performance based remuneration allowed
- Fixed term and indefinite term contracts
- Casual contracts defined; provision for oral contracts
- Part-time work
- Housing
- Transportation

# Part IV Recordkeeping, Remuneration, Hours, Overtime and Rest

- Employer responsibility for recordkeeping
- Same restrictions on hours as now, 45 per week, overtime after 8 hours
- Allow 5 day week (Compressed Schedule)
- Pro-rata payments for part-time workers
- Rest intervals
- Permissible deductions

Examples of provisions on compressed schedules Canada, South Africa

Compressed: allows over 8 hours per day subject to weekly limit

# **PART V Annual Leave and Holidays and Part VI Maternity Leave**

- Restates current provisions, 14 days annual leave after second year, as per Employment Contract, by agreement with Employer
- Poya days, Public Holidays paid
- Casual and / or sick leave 7
- Part-time workers – pro rata
- Maternity Leave - Restates most recent amendments, establishment of crèches

# **PART IX Service Contract Hiring and Part X Employment Agencies**

- Service Contract hiring is included because of need to regulate “manpower agencies”
- Manpower agencies provide labour to enterprises on a continuing basis and have a continuous relationship with workers
- Employment Agencies are included because of need to regulate to prevent deceptive or abusive practices
- Employment Agencies provide a one-time service to Employers, identifying prospective Employees

# **PART XI Employment of Children and Young Persons**

- Incorporates existing provisions but updates to new ILO requirements for age of permissible employment for children and young persons
- Important for GSP+
- Needs to be reviewed to see if additional prohibitions and rules are needed
- Young persons can be Apprentices and Trainees

# IMPLEMENTATION PROVISIONS –

- **PART XII  
Administration of  
this Act**
  - Regulations and guidelines to be promulgated by Minister
- **PART XIII  
Grievances and  
Dispute Procedures**
  - Exhaustion of Remedies
  - DOL to focus on Mediation and Conciliation
- **PART XIV Offenses**
  - Restates Current Provisions
  - Trial by Magistrate retained

# PART XV New Interpretations

- Compressed Week
- Casual Labour – 36 days
- Child – age 16 as required by ILO
- Contract for Service – “manpower agency” contracts
- Employer – one definition for all purposes
- Retirement Age – not less than 60
- Sexual harassment defined as a form of discrimination
- Young persons – age 16 or 17

# Implementation Requirements for Employment Act

- Drafting of several rules and regulations, including for enforcement mechanisms for grievances, such as conciliation and mediation
- Mapping of Department of Labour present and future activities
- Labour Inspection automation, including self-certification
- Public Information for all stakeholders: trade unions, employers, manpower agencies, employment agencies, informal workers and others
- Training Labour Officers and others

**Thank You**