

Uganda's Employment Amendment Bill, 2022

Our commentary



1 Introduction

Uganda's Parliament is presently deliberating the Employment (Amendment) (No.2) Bill of 2022 ("Bill") that seeks to revise the Employment Act that was enacted in 2006. The Bill sets out to cure the defects in the law identified in the last 17 years of its implementation. In this article, we give our commentary on the proposed amendments.

2 Sexual Harassment Policy

Only employers with more than 25 staff are presently required to have a sexual harassment policy. It is now proposed that every employer regardless of the number of employees in their service should have in place measures to combat sexual harassment at the workplace.

3 Nursing and working mothers

To make the work environment more accommodative for nursing and working mothers, it is proposed that every employer must make available at the place of work, time, space and facilities for breastfeeding and childcare for employees' children between the ages of 3 months to 3 years. Though this is in line with the international labour obligations that Uganda is committed to, it is unclear whether all employers would be able to afford such amenities.

4 Labor Externalization

There has been an exponential increase in the number of Ugandans deployed abroad for employment notably in the Middle East in the last 10 years. The applicable labour externalization regulatory regime has however not adequately addressed the challenges in the trade.

It is now proposed that no entity should locally recruit labour for employment outside of Uganda unless licensed by the relevant authority. The agency should equally embark on recruitment only when there is an underlying job order issued by the Commissioner responsible for employment services. It is also further proposed that an agency should not recruit any person unless the underlying contract of employment provides for the right of the employee to be repatriated at the expense of the employer.

5 Dismissal and Termination

The Courts have grappled with the application of the terms dismissal and termination that are interchangeably used under sections 66, 68 and 69 of the Employment Act. The Bill proposes to distinguish the act of dismissal from employment and termination of an employment contract to clear the current confusion. The Bill provides for a new section under 65A that sets out elaborate grounds for dismissal different from those for termination under the current section 65 of the Employment Act.

6 Unfair and wrongful dismissal

The terms unfair and wrongful dismissal are also used interchangeably in the current law. The Bill now provides separately for unfair and wrongful dismissal. The gist of this proposal is that it will be unfair dismissal if the employee is not dismissed within the parameters of the proposed law under section 65A and wrongful dismissal if the contractual due process is not adhered to in the dismissal process.

7 Reasons for Dismissal from Employment

The question whether employees should be given reasons for dismissal from employment has been extensively litigated but never definitively settled (See the Supreme Court decisions on this point in Barclays Bank vs Godfrey Mubiru, SCCA No. 1 of 1998, Stanbic Bank vs Kiyemba Mutale, SCCA No. 2 of 2010 and Hilda Musunguzi vs Stanbic Bank (U) Ltd, SCCA No. 5 of 2016).

Despite the Supreme Court guiding that an employer may give reasons for dismissing an employee, the Industrial Court has always insisted that reasons must be given to an employee that has been dismissed. The position on whether or not to give reasons upon dismissal always seemed blurred, and thus necessitated legislation. In the proposed amendment, it is obligatory for an employer to give reasons for dismissing an employee otherwise the dismissal will be deemed unfair.

8 Compensation for unfair dismissal

The current position of the law under section 78 of the Employment Act is that an employer only pays 4 weeks' wages as compensation for unfair dismissal. The Bill proposes to increase the compensation to 8 weeks. This

proposal notwithstanding, the compensation for wrongful dismissal is not set out despite the attempt of the law to clearly delineate for legal purposes unfair from wrongful dismissal.

9 Severance Pay

The severance pay quantum under section 89 of the Employment Act is subject to negotiation between the parties. However, the Industrial Court had established a practice that “in the absence of an arrangement between the employer and the employees as to the calculation of severance pay, an unlawfully terminated employee would be entitled to an amount equivalent to his/her salary for every month per year worked.” See *Donna Kamuli Vs. DFCU LDC 002/2015*.

It is now proposed that the severance allowance payable to an employee would be one month's salary for each year worked.

10 Migrant Workers

It is presently illegal to employ a person unlawfully present in Uganda. The Bill seeks to repeal this provision and introduce a new Part that deals with the employment of migrant workers. It is proposed that there will be categories of jobs that foreigners would not be eligible to take up unless the responsible Minister has issued an exemption certificate.

11 Concerns

The proposed amendments notwithstanding, there are concerns that need to be looked into as set out in the

discussion below.

a) Adjudication/arbitration powers of labor officer

Labour officers can presently “adjudicate, arbitrate or conciliate” between the parties to a labor dispute which such powers the Bill proposes to restrict to conciliation only. It is not clear why this is so but the proposal, as is, creates uncertainty over the powers and roles of the labor office (r) as a court of first instance in resolving labor disputes. This may create more backlog at the Industrial Court.

b) Repatriation facilitation

Currently, repatriation is available to an employee recruited for employment at a place 100 kilometers or more away from his or her home. The Bill proposes to change the language and grant a repatriation allowance to an employee that is working 100 kilometers or more from the place where he or she was recruited. There is still need to clarify or define what the place of recruitment is.

12 Conclusion

The living and dynamic nature of law is reflected in the fact that laws are amended, repealed, or created to reflect changing circumstances. The proposed amendments to Uganda's Employment Act after 17 years of implementation not only seek to cure some of the defects identified in the law but also provide an update in the law to ensure it remains relevant and effective in meeting the aspirations of both employees and employers.

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Denis is widely published and a regular commentator in the local, regional and international media and speaker at various forums regarding the taxation and financing of energy projects as well as the protection of large capital projects within the framework of international investment law.

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Bill is a Senior Advisor with Cristal Advocates. He has concentrated on working with energy companies with a particular focus on cross border transactions and M&A since 1989 and is a leading global energy and tax practitioner with wide international experience. Between 1986 and 1998, he worked in London with the UK tax authorities and Big Four accounting firms. From 1998 to 2004, he was based in Kazakhstan working across the Caspian region with Deloitte. He was in the region at the time it was developing its infrastructure for crude oil production with international investment following the collapse of the Soviet Union.

From 2004 to 2008, he worked in Russia where he led Deloitte's oil and gas industry group and established Deloitte's office in Sakhalin. He moved to East Africa in 2009 leading Deloitte's energy and resources industry group in Uganda, Kenya, Tanzania, Rwanda, Ethiopia and Mozambique. He was initially based in Kampala, Uganda later relocating to Dar es Salaam, Tanzania. Bill returned to the UK in 2014 supporting Deloitte UK teams working on outbound projects investing in Africa and was a key member of Deloitte UK's energy and resource practice until his retirement from the firm in September, 2018.

Bill is a graduate of Oxford University and completed his inspectors' training with the UK Inland Revenue in 1989. ■



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John leads the public policy and advocacy practice at the firm and combines unique public and private sector experience.

Prior to joining Cristal Advocates, he had worked as a Private Secretary to the President of the Republic of Uganda. During this time, he participated in several public and private sector engagements that included advising and coordinating activities relating to oil and gas as well as infrastructural projects of national significance. John had earlier worked with the Post Bank Uganda Limited and Shonubi Musoke and Co. Advocates.

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Dickens leads the oil and gas practice at Cristal Advocates. He has an in depth appreciation of Uganda's oil and gas sector having served as the maiden Company Secretary of the Uganda National Oil Company (UNOC) and the Uganda Refinery Holding Company Limited (URHC). UNOC represents the Government of Uganda commercial interests in the oil and gas sector while URHC represents government interests in the refinery project as well as managing the petrol based industrial park.

Dickens was instrumental in UNOC's formation and initial period of operation and also served as its head of Contracts, Negotiations and Advisory until May 2018. Prior to joining UNOC, Dickens was Legal Counsel at the Petroleum Directorate of the Ministry of Energy playing key legal advisory roles on the negotiation and implementation of PSAs, Joint venture and other oil and gas agreements. He was also part of the team that shepherded the process of enacting the current Ugandan oil and gas Legislations and Regulations including the local content requirements.

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