

## **POSITION PAPER ON THE EMPLOYMENT (AMENDMENT) BILL, 2022**

### **1.0 Introduction**

The right to work is a fundamental right, recognized in several international legal instruments.<sup>1</sup> For example, Article 6 of the International Covenant on Economic Social and Cultural Rights (ICESCR); Article 15 of the African Charter on Human and Peoples Rights (ACHPR), among other instruments which guarantee the people's right to work. The right to work constitutes an essential vehicle for the realization of other human rights and forms an inseparable and inherent part of human dignity. It contributes to the wellbeing and economic survival of the individual and encompasses all forms of work.

In Uganda, Article 40 of the 1995 Constitution forms the constitutional premise of the right to work. It provides that all persons have a right to practice their profession and to carry on any lawful occupation, trade or business and enjoins parliament to enact laws to give effect to various related matters.

At the subsidiary level, employment relations are principally governed by the Employment Act 2006. However, a number of other legislations deal with peculiar aspects entailed in employment, such as occupational safety, permitted deductions, labour unions, among others. These aspects are governed by various legislations, which include; Labour Unions Act, The Occupational Safety and Health Act Cap 225, Workers Compensation Act, National Social Security Fund Act, and Contracts Act 2010, among others.<sup>2</sup> All these laws provide for and govern various aspects of workers and employers including their rights, working conditions, and dispute resolutions.

### **2.0 Employment (Amendment) Bill**

The Parliament of Uganda has recently tabled the Employment (Amendment) Bill 2022 which is intended to address the defects in the current employment law by primarily addressing issues relating to casual and domestic workers, migrant workers, breastfeeding mothers, and, sexual harassment, among other issues in employment.

The object of the Bill is to amend the Employment Act 2006, by operationalizing the provisions of Article 40 of the Constitution of the Republic of Uganda to all categories of workers in Uganda. As such, the Bill broadly seeks to offer social protection by improving

---

<sup>1</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 18: The Right to Work (Art. 6 of the Covenant)*, 6 February 2006, E/C.12/GC/18

<sup>2</sup> Other legislations include but are not limited to the Trademark Act, Persons with Disability Act, Uganda Citizen and Immigration Control Act, all which provide for peculiar aspects in employment.

the working conditions of casual workers, offering protection against exploitation of the labour force and deprivation of workers' rights.

This Bill presents an opportunity to align the employment laws with Sustainable Development Goal 8 which calls for full and productive employment and decent work for all. Specifically, target 8.5 provides that by 2030, full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value must be achieved and further under target 8.8, calls for protection of labour rights and promotion of safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.<sup>3</sup>

### **3.0 General Comments on Key Provisions of the Proposed Bill.**

#### **i) Sexual Harassment in Employment**

The current law only defines what constitutes sexual harassment, the procedure for a complaint in case of sexual harassment at work and limits the requirement for sexual harassment procedures to employers with more than twenty-five (25) employees. The proposed Bill reinforces this position by further prohibition of mistreatment, harassment and violence at the workplace and removal of the 25-employee limit.

#### **ii) Employment of Children**

Concerning the employment of children, the Bill seeks to increase the age limit for light work to sixteen years to protect children from exploitation and child labour.

#### **iii) Protection of Employees**

The Bill further offers more protection to employees by an expansion of the definitions of the contract of service and employee to cater for casual and domestic work while prohibiting employers from retaining or withholding original personal or professional documents of an employee, as well as protection of special categories of employees.

#### **iv) Casual Employees rights.**

The Bill proposes that any form of casual employment beyond four months entitles the casual labourer to a written contract and all rights and benefits enjoyed therefrom.

#### **v) Migrant Workers**

In respect to migrant workers, the Bill defines what a recruitment agency is, and its obligations, and provides for specific obligations for employers of migrant workers while creating an offence for non-compliance.

#### **vi) Repatriation Allowance**

The Employment Act presently provides that on termination of an employment contract, repatriation allowance must be given to employees who worked one hundred kilometres away from their homes, the proposed Bill reduces the distance to fifty kilometres and five years for automatic repatriation allowance in case of termination of an employee.

---

<sup>3</sup> United Nations (2017) Resolution adopted by the General Assembly on 6 July 2017, [Work of the Statistical Commission pertaining to the 2030 Agenda for Sustainable Development \(A/RES/71/313\)](#)

vii) Severance Allowance

The Employment Act currently lacks an explicit formula for the calculation of severance allowance; the proposed Bill addresses this lacuna by explicitly providing the formula for calculating this allowance.

vii) Breastfeeding Mothers

The proposed Bill offers further protection to new and breastfeeding mothers by providing for thirty-minute breastfeeding breaks daily every two hours or a reduction in the contractual hours for an additional sixty days to allow for breast feeding. It further obliges the employer to establish a lactation place at work to allow breastfeeding mothers to breastfeed their children during these breaks.

#### 4.0 Commentary on the specific Provisions

Clause	Contents of the Clause	Comment	Proposal/Observation
Clause 1: Amendment to Section 2	<ul style="list-style-type: none"> <li>i. Includes domestic work or casual work under the definition of “contract of Service”</li> <li>ii. Incorporates new definitions of domestic work and domestic worker.</li> <li>iii. Includes ‘domestic worker’ in the definition of employment</li> <li>iv. Incorporates a new definition of a recruitment agency</li> <li>v. Incorporates a new definition of workplace</li> </ul>	<p>The bill provides definitions for the categories of casual and domestic workers.</p> <p>This is a welcome development, especially for the predominant workforce in the informal sector.</p>	<p>Whereas the bill provides for the signing of a contract of service with the specific groups including casual and domestic workers, entailing their scope of work, pay, leave, and rights among others in addition to payment of the statutory contributions of their employees, it comes short because;</p> <ul style="list-style-type: none"> <li>i) Many casual and domestic workers earn money that does not meet the threshold for a written contract under the Contracts Act.</li> <li>ii) The net pay of casual and domestic workers is often always commensurate to the task, as such no amount is set.</li> </ul>

Clause 2: Amendment to Section 3	The bill repeals the exclusion of the applicability of the Act to employers and their domestic relatives in a family undertaking.	Here, the requirement that the Act does not apply to employers and their dependent relatives is done away with.	This is a welcome move, as most casual and domestic workers often have a familial relationship with their employers, thus with the recognition of their work, the Act ought to apply to them.
Clause 3: Amendment to section 7	The Bill Substitutes subsection (4) with a general provision for measures to prevent sexual harassment at the work place	Previously, the law required only employers with more than 25 employees to put in place measures to prevent sexual harassment.	The proposed provision offers more protection to all workers by creating a general obligation to all employers, regardless of the number of employees.
Clause 4: Insertion of New Section 7A	<p><b>i.</b> The Bill provides for the prohibition of mistreatment, harassment and violence against an employee</p> <p><b>ii.</b> The bill defines what constitutes mistreatment, harassment and violence and makes non-compliance an offence.</p>	By this provision, the Bill creates a new prohibition against mistreatment, harassment and violence against employees	The example of mistreatment under Section 7A (2) (b) and (e) ought to be revised to provide for specific acts which constitute intimidation and/or insult to the modesty of an employee. In its current form, it is too broad and subjectively biased to the perception of particular acts by the employee.
Clause 5: Amendment of Section 12	The Bill introduces that by statutory instrument, the Minister will prescribe simplified and accessible complaint handling mechanism for workers with disabilities, domestic workers, casual employees	By this provision, the Bill adopts and provides access to justice, for the casual and domestic workers	Whereas the provision is well stated, the substantive law should contain foundational procedures so as not to create a lacuna, when waiting for the minister to comply with the proposed law.

	and other categories of employees that he or she determines may require special protection.		Alternatively, in addition to specific complaint handling mechanisms, the proposed law may vest authority in Labour Officers to handle such complaints, like all other complaints.
Clause 6: Amendment of section 13	The Bill introduces provision for the labour officer to use only one mode of dispute resolution under Section 13 of the Principal Act.	The proposed provision creates certainty and uniformity by the Labour Officer, in any chosen means of dispute resolution.	The law must clearly set out the various modes of dispute resolution available to the Labour Officer, whilst cognizant of the varied circumstances.
Clause 7: Insertion of New Section 28A	The bill provides for outsourcing of services	The Provision provides that the contract of service for a person who is contracted by another person to offer services is in accordance with the Act.	The proposition by the Bill is broad and difficult to implement because 'services' is such a wide scope and includes many things. The bill must specifically define which services. In its present state, the provision may offend laws on confidentiality especially when the outsourcing is for independent contractors.
Clause 8: Amendment of Section 32	The Bill increases the age of employment of children to sixteen (16) years	The provision offers more protection to the children.	This provision is welcome because it increases the age of employment of a child in a business to sixteen years.
Clause 9: Substitution Section 34	The Bill enjoins the Minister to make regulations governing employment of among others, domestic workers, casual employees, apprentices and other categories of employees that need special protection		The provision should specifically require the Minister to make regulations for these new categories, and not leave it to his/her discretion.

Clause 10: Insertion 34A	The Bill provides for the conversion of casual employment to term employment.	This provision provides that a casual worker employed beyond a period of 4 months becomes entitled to a written contract	This provision is well stated, albeit not entirely suited for all kinds of work. Some jobs are seasonal e.g., for harvest or planting times. The idea that an employee is going to cease being a casual worker with employment benefits becomes impracticable due to the nature of the work.
Clause 11: Insertion of new Section 37A	The Bill provides for obligations of employer of migrant worker and makes it an offence to contravene the section.		This provision is a welcome development especially in as far as it caters for attendant aspects for employment of migrant workers.
Clause 12: Amendment of Section 38	The Bill provides for the recruitment agency to undertake due diligence, provide migrant worker orientation, ensure migrant receives written contract of service among other things. The bill also provides for persons not eligible to be licensed to engage in recruitment and placement of migrant workers.	The provision further streamlines the employment of Migrant workers by addressing all related aspects.	
Clause 13: Insertion of new section 38A	The Bill provides for minimum employment standards applicable to persons who are recruited for employment abroad	The provision offers much needed protection against exploitation for persons who are recruited for employment abroad.	
Clause 14: Insertion of Section 38B	The Bill provides for record keeping by the recruitment agencies	The provision creates an obligation for recruitment agencies to	

		always keep records of transactions with employers and employees as well as those it arranges employment for outside Uganda.	
Clause 15: Amendment of Section 39	The Bill provides for repatriation of employees employed at a place which is more than 50 kilometers from his/her home.	The Bill reduces the distance to fifty kilometres and five years for automatic repatriation allowance in case of termination of an employee.	
Clause 16: Insertion of new section 56A	The Bill provides for protection of breast-feeding mothers from discrimination.	The provision offers further protection to new and breastfeeding mothers by providing for thirty-minute breastfeeding breaks daily in every two hours or a reduction in the contractual hours for an additional sixty days to allow her to breastfeed her child	This is a welcome provision which further takes into account the unique and maternal responsibilities of women as recognized under Article 33 of the Constitution.
Clause 17: Amendment of Section 59	The Bill proscribes an employer from withholding original personal and professional document	This provision offers more protection to employees against forced labour, where	

	belonging to an employee.	employers retain professional documents of employees	
Clause 18: Amendment of Section 89	The Bill provides for calculation of amount of severance allowance	This provision addresses the lacuna by explicitly providing for the formula for calculating this allowance, which was previously lacking in the Principal Act.	

### **Conclusion**

In conclusion, the Bill presents an opportunity to address the welfare and working conditions of domestic and casual workers through mandatory requirement of employment contracts. By doing so, the Bill prevents the exploitation and abuse of various categories of employees as seen above and addresses the gaps that previously existed; thereby ensuring that employment laws are up to date with international labour laws and standards. However, the Bill ought to further be refined to suit local circumstances so as to ensure easy enforceability and compliance.