

THE EMPLOYMENT AND LABOUR RELATIONS ACT, 2025: WHAT EVERY EMPLOYER NEEDS TO KNOW

INTRODUCTION

Botswana's labour legislative framework has historically centred on three main acts being **Employment Act (Cap. 47:01)**, **Trade Disputes Act, 2016**, and the **Trade Unions and Employers' Organisation Act (Cap. 48:01)** together with their respective Regulations. These statutes set out minimum employment and labour standards relating to the regulation of contracts, dispute resolution mechanisms, and workplace rights.

In recent years, social, economic, and international pressures have called for legislative reforms which led to the enactment of the **Employment and Labour Relations Act, 2025**. This Act represents an alignment of Botswana's employment and labour laws with both domestic constitutional principles and International Labour Organization (ILO) standards, whilst simultaneously consolidating all the labour and employment legal framework into one act that governs all, including the informal sector economy and the public service.

The primary object of the New Act is to uphold economic efficiency, productivity and social justice as a means of promoting sound labour relations, regulating industrial disputes and actions as well as giving effect to constitutional provisions on labour matters.¹

For employers, this is greater than a legislative reform, but rather represents a significant shift towards stricter compliance, enhanced employee protections, and increased accountability. Employers will be expected to take a greater initiative in developing their policies and managing working environments, or they will risk incurring substantial financial and legal consequences.

This paper constitutes a comprehensive breakdown of the New Act, explaining the direct implications of the new provisions on employers.

¹ Employment and Labour Relations Act 2025, s4

PART II TO PART V - FUNDAMENTAL RIGHTS AND PROTECTIONS OF THE EMPLOYEE

The previous labour legislative framework focused heavily on union rights, recruitment, contracts, and dispute resolution mechanisms. However, the New Act is introducing a new approach and alignment with international practices by recognizing the importance of fundamental employee rights and providing express and detailed provisions to ensure their protection. In so doing, a great expectation is placed on employers to carry out a more proactive approach in ensuring the employee is safeguarded in the workplace.

1. Prohibition of Child Labour

One of the most significant changes introduced by the New Act is the expansion on protection against child labour. The New Act significantly clarifies protections against child labour, providing detailed definitions, stricter age requirements, more comprehensive prohibition of harmful practices, and stiffer penalties.

This substantial reform introduces a broader concept of child labour which includes any work that interferes with a child's right to education, or that is likely to be harmful to the child's health or physical, mental, spiritual, moral or social development.²

A "child" was previously defined as anyone under the age of 15, however the new Act raises this threshold by defining a child as **any person under the age of 18**. This essentially means that Employers must exercise far greater caution when hiring young persons. Therefore, no employment of anyone under age 15 is permitted under any circumstances, and individuals aged 15 to 17 may only perform light work, and even so, under strict conditions.³

Employers are further required to ensure that no work interferes with schooling, involves hazardous tasks, or heavy lifting. The New Act also introduces strict limits on

² s 5

³ ss 6 - 7

working hours for children, prohibiting overtime, and banning night work except in very limited circumstances.⁴

The New Act requires that Regulations be made on child employment, hours, conditions, and specific protections, and further provisions be made by the Minister for exclusion of certain occupations of work having regard to the nature of the work. Therefore, employers should be proactive in constant awareness of these regulations, ensuring that they are in continued legal conformity with them.⁵

There are severe consequences that employers stand to incur in the event of non-compliance being, a fine of up to P50,000.00, imprisonment for up to 5 years or both.

In order to avoid incurring any legal and financial liability, employers should adopt a child-labour compliance protocol in their workplaces that verifies the age of all young workers through proper documentation before engagement, classifies permissible light work, bans hazardous or night or underground work for children, monitors working hours and conditions closely and keeps written records of any lawful youth employment.

2. Prohibition of Forced Labour

The New Act makes the prohibition of forced labour express, elevating the issue from a general labour-law concern to a specific statutory prohibition with great consequences.

The prohibition of forced labour reinforces the constitutional principle that all work must be voluntary. Essentially, no employer may compel or coerce an individual to work against their will. This includes not only physical force but also indirect forms of pressure, such as threats, intimidation, or abuse of authority. It not only applies to the coercion of employees but extends to any member of the population.⁶

Any violations of the provisions may result in penalties a fine of up to P50,000.00, imprisonment for up to 5 years or both.

In order to ensure compliance with this provision, employers should warrant that all employment relationships are entered into freely and that no threats, penalties, or confinement are used to compel work under any circumstances.

⁴ ss 8 - 9

⁵ s 12

⁶ ss 13 - 15

3. Prohibition of Discrimination, Violence and Harassment in the Workplace

The New Act introduces express and stringent protections against discrimination, violence, and harassment in the workplace, significantly expanding on employer's responsibilities and employee protections on these matters.

The word "employer" is extended to any recruiter, employment agency or any other agent that offers labour recruitment, whilst "worker" refers to any applicant for employment.⁷ This means that these protections extend beyond employees to include job applicants, and therefore job recruitment practices must also comply.

The New Act explicitly prohibits discrimination on a wide range of grounds including race, sexual orientation, tribe or place of origin, national extraction, social origin, maternity, pregnancy, marital status, paternity, religion, disability, political affiliation or opinion and health status.⁸

As a result, employers are now required to take all reasonable steps to eliminate any form of discrimination in company policies and promote equal opportunities in the workplace. They are further expected to prevent violence and harassment in the workplace especially any gender-based violence.⁹

Employers can therefore be held liable for discriminatory acts committed by their employees unless they can demonstrate that they took all reasonable steps to prevent such conduct. Failure to do so may lead to a fine of up to P50,000.00, imprisonment for up to 5 years or both.¹⁰

In special circumstances, it is permissible to distinguish or exclude employees on the basis of inherent requirements of the job or to give special assistance to anyone who may need it due to sex, age, disability, pregnancy, maternity, family, responsibilities, or social or cultural status.¹¹

In order to mitigate risks, employers should develop and enforce clear workplace anti-discrimination, anti-harassment and anti-violence policies, conduct regular staff

⁷ s 16

⁸ s 18(1)

⁹ s 17

¹⁰ s 19

¹¹ s 18(2)(b)

training against discrimination in the workspace and establish effective complaint and investigation procedures and documented corrective action processes.

4. Freedom of Association

The New Act strengthens workers' rights to organize and participate in trade unions which means that Employees are free to establish a trade union, join a trade union and participate in lawful activities of a trade union of their choosing. The term "workers" in this part is extended to an applicant for employment as well as workers who are not employees,¹² which includes independent contractors, consultants and agents.

Employers are expressly prohibited from interfering with these rights or penalizing employees for any union involvement, as this constitutes unfair labour practice which carries serious penalties.

An employer is also given the right to establish and join a federation of employers' organisation and participate in all lawful activities that pertain to it. In so, doing, no discrimination against employers or any office bearers of employers' organisations is permitted.¹³

A trade union or employers' organisation's rights are also laid out to include determining and drawing its own constitution, electing its representatives, planning and organising its activities and establishing and joining a federation of trade unions or employers' organisations. They are further empowered to participate in international trade unions and employers' organisations, as well as receive financial contributions or assistance from them, and no public authority is permitted to interfere with these rights.¹⁴

A worker, employer, trade union and employers' organisations are further empowered to enjoy freedoms of opinion and expression at any meeting, in their publications or in the course of their activities, so long as they adhere to reasonable limitations of freedom of expression in a democratic society.

Non-compliance with these may result in fines of up to P100,000 or imprisonment of up to 7 years or both in serious cases. It is therefore imperative that employers respect

¹² ss 20 - 22

¹³ s 23

¹⁴ s 24

union activities within the workplace, engage constructively in collective bargaining processes and avoid retaliatory or discriminatory practices against union members.

5. Disputes Concerning Fundamental Rights and Protections

The New Act introduces a structured dispute resolution framework centred around mediation for any person aggrieved on unfair labour practice or on the interpretation and application of any of their fundamental rights. These disputes must first be referred to a designated Commission for mediation, and if they remain unresolved, the matter may proceed to the Industrial Court for adjudication.¹⁵

A notable change is the shift in the burden of proof in discrimination cases. Once an employee establishes a prima facie case for discrimination, then the employer must prove that the conduct was not discriminatory, did not occur as alleged, is not one of the protected grounds for discrimination or that it was legally justified.¹⁶

It is therefore essential that employers maintain detailed complaint logs and document all dispute related decisions and actions, and ensure transparency and consistency in HR practices, in order to avoid the hefty penalty of a fine of P50,000.00, imprisonment for up to 5 years or both.

CONCLUSION

The introduction of Fundamental Rights and Protections of the employee marks a new compliance era for employers. The implications on employers are more demanding, accountability is increased and the penalties are more severe.

Employers that fail to conform with the New Act risk not only financial penalties but also criminal liability and reputational harm. Employers are therefore called to take immediate steps towards making all the necessary policy reforms and encouraged to seek further legal guidance on these matters.

Our team at Bogopa, Manewe, Tobedza & Co. is always ready and committed to providing assistance on all matters relating to labour law and employment relations. We pride ourselves on delivering professional, reliable, and timely legal support tailored to

¹⁵ s 26

¹⁶ s 27

your needs. For more information about our services, kindly visit our website at www.bomaattorneys.co.bw

On our next instalment of **“The Employment and Labour Relations Act, 2025: What Every Employer Needs to Know”**, we will be diving into “Recruitment, Contracts of Employment and Termination of Employment”. Stay tuned to our social media so you don’t miss out!

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