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Botswana employment act 2010 pdf

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The Employment Act in Botswana establishes guidelines for employment and protects employed individuals. The legislation creates the position of Commissioner of Labour, sets up the Labour Advisory Board and Minimum Wages Advisory Board, and addresses child labor laws. Specifically, it bans child labor and allows the Minister to exclude certain occupations from child or young person employment rules if deemed necessary. The Act also outlines conditions for labor regarding food, water, and medical care. This document consolidates Act No. 29 of 1982 with amendments up to S.I. No. 27 of 2008. The Employment Act Chapter 47:01 covers preliminary matters, administration, contracts of employment, and specific sections on information disclosure by employers, procedures for addressing issues related to the Act, obligations of officers, and liabilities. The full document can be downloaded ad-free with a free trial, and its unique e-Paper software allows users to convert PDF publications into flip-books optimized for Google search. Rules for employment contracts including termination, severance benefits, and duties of employers are outlined in this legislation. Employers may only terminate contracts under certain conditions (23). Termination without notice is prohibited unless otherwise stated in the contract (26). Employees have the right to severance pay when their contract ends (27). If an employee dies or goes missing during their contract, their employer must provide transportation and other necessary services (30). Employers are responsible for providing medical facilities in certain circumstances (35) and keeping a register of casual employees (36). The law also requires employers to provide means of transport on repatriation (34). Contracts that do not meet the requirements of this Part may be considered void (37). Special contracts related to recruitment, including those involving foreign nationals or employment abroad, are governed by Parts III and IV. All contracts must be in writing (40), with certain terms being void if they contravene this requirement. Employers have specific responsibilities under these special contracts, which include conducting medical examinations of prospective employees (46) and ensuring that the contracting age is respected. Recruitment agencies require a licence to operate (54), and their recruiters must adhere to strict regulations. The Commissioner has the power to take security from applicants, cancel or suspend licences and permits, and impose liability on recruiters for offenses committed by their employees (58). The law also regulates the transport of recruited persons and their families to and from places of engagement or employment (64-66), as well as the supply of necessities during these journeys (67). Regulations in connection with employment are covered under Part VI. Forced labour is prohibited, and officials who use such practices face penalties. The legislation also provides for the protection of wages, including rules on payment periods, times, and the prohibition of unauthorized deductions or attachments. Regulations and Provisions for Employee Rights and Working Conditions ##### Part VII: Rest Periods, Hours of Work, Holidays, and Other Conditions of Work - **Rest periods**: Employees are entitled to regular breaks. - **Payment for work during rest period**: Compensation is required if work is done during these breaks. - **Hours of work**: Specific rules govern the number of working hours per day or week. - **Leave with pay**: Employees are entitled to paid leave, including public holidays and sick leave. ##### Part IX: Contractors and Contracting - **Powers of Commissioner**: The Commissioner has authority to ensure payment of wages for employees in contracted positions. ##### Part XI: Employment of Children and Young Persons - **Prohibition of employment underground**: Children and young persons are not allowed to work underground. - **Restriction on employment of children and young persons**: There are strict rules about when and where these individuals can work. ##### Part XII: Employment of Females - **Maternity allowance**: Pregnant female employees are entitled to a specific allowance during their maternity leave. - **Prohibition of serving notice during maternity leave**: Employers cannot serve notice of termination during this period. ##### Part XIV: Labour Health Areas - **Housing and feeding**: Employees in designated areas must be provided with adequate housing and food. - **Medical care**: Access to medical treatment is a right for these employees. ##### Part XV: Determination of Minimum Wages - **Minimum Wage Advisory Board**: A board advises on the setting of minimum wages. - **Powers of Minister**: The Minister can set minimum wages after receiving advice from the board. An Act To Amend Employment Laws And Provide Comprehensive Provisions For Matters Incidental Thereto. **PART I: Preliminary (ss 1-8)** * This Act shall be known as the Employment Act. * Key terms are defined, including "agricultural undertaking," "attesting officer," and "casual employee." **PART II: Wages And Hours Of Employment** * The Act establishes minimum wage rates. * Employers must maintain records for enforcement purposes. **PART III: Labour Advisory Board** * A Labour Advisory Board is established to advise the Minister on labour matters. **PART IV: Remedies, Jurisdiction, Procedure And Penalties** * Offences under this Act are outlined, including failure to pay wages and detaining employee property. * Penalties for these offences are specified. **PART V: Supplementary Provisions** * The Act saves proceedings under other laws. * Annual reports must be submitted to the National Assembly. * Regulations may be made by the Minister. 1. **First Schedule**: Persons entitled to receive property of deceased or missing employees. 2. **Second Schedule**: Paid public holidays. 3. **Third Schedule**: Minimum wage advisory board members. 4. **Fourth Schedule**: Industries where minimum wages may be fixed by the Minister. 5. **Fifth Schedule**: Labour Advisory Board members. This Act repeals and replaces the Employment Act, with amendments to provide comprehensive provisions for matters incidental thereto and connected therewith. * Child: a person under 15 years * Collective Labour Agreement (CLA): written contract between registered trade unions or their representatives and employers or registered organizations * Commissioner: labor commissioner or any person performing their official duties * Confinement: delivery of a child, meaning taking someone into care * Contractor: business owner responsible for construction work on behalf of another party under contract * Construction Work: building, civil engineering work including repairs and demolitions * Continuous Employment: uninterrupted employment with the same employer from an agreed start date; includes probation periods * Contract of Employment (COE): agreement where one person hires labor to another in exchange for a wage or benefit * The definition of employee includes individuals who have entered into a contract of employment or are responsible for managing an undertaking, business, or enterprise. * "Employment" refers to the performance of a contract of employment, while "forced labour" involves work or service exacted from someone under threat of penalty, without their voluntary consent. * Forced labour includes situations such as: * Work required in consequence of a court sentence or order * Work necessary for hygiene during lawful detention * Service requirements for military personnel with conscientious objections * Labour during public emergencies or disasters * Reasonable communal or civic obligations * The definition also includes industrial undertakings, such as mining, manufacturing, and transportation. * Other terms include: * Guardian: a person lawfully having custody of a child or young person * Industrial undertaking: any undertaking engaged in extracting minerals, manufacturing, building, civil engineering, transport, or other activities * Intoxicating liquor: has the same meaning as in the Liquor Act (Cap. 43:11) * Labour health area: an area declared under section 121 to be a labour health area for the purposes of this Act Here is the rewritten text: "Appointed officer" refers to someone designated under Section 4 as a labor officer for this Act's purposes. "Maternity allowance" is an allowance paid to female employees according to Section 113(5). A "medical officer" can be either (a) a government-employed medical practitioner or (b) any other medical practitioner appointed by the Minister in writing for this Act's purposes. A "mine" encompasses any undertaking, public or private, that extracts substances from beneath the earth's surface. The "minimum wage" is the wage fixed by the relevant minimum wages order. A "minimum wages order" is an order made under Sections 135 or 137 to fix or adjust a minimum wage. "Overtime" refers to hours worked in excess of those prescribed in Part VIII, either daily or weekly. A "place of employment" is any location provided by an employer where work is carried out by employees. The term "prescribed" means as defined by regulations made under this Act. A "principal" is someone who, through their trade or business, contracts with a contractor for labor supply or the execution of work. A "public authority" is a corporation established by written law or registered under the Companies Act (Cap. 42:01), where the Government owns most equity shares. A "public officer" is an employee or officer of a public authority. "Quarters" refer to any building provided for employees' temporary or permanent residence, as well as additional rooms or buildings used for cooking, eating, washing, bathing, latrines, or urinals. A "recruiter" holds a valid recruiter's license issued under Part V. "Recruitment" involves all operations undertaken to obtain labor from outside the workplace or at an employers' organization office supervised by the Commissioner. A "registered nurse and midwife" is someone registered both as a nurse and as a midwife under the Nurses and Midwives Act (Cap. 61:03). A "subcontractor" is anyone who contracts with a contractor for labor supply or work execution, or someone who contracts with a subcontractor to supply labor or execute part of any work. In relation to employment contracts, "wage" means remuneration or earnings, regardless of designation or calculation. The following provisions relate to terms and conditions of employment: * An employee is entitled to receive a payment from their employer. * This payment can be expressed in monetary terms and is determined through mutual agreement or legislation. * It is payable due to an existing written or unwritten contract of employment. Regarding the definition of certain terms: * A "week" refers to any consecutive period of seven days. * A "young person" is a person who has attained the age of 15 but is under 18 years old. Additional provisions include: * When referring to an employee's or recruited person's family, the term includes their spouse, child, parents, brothers, uncles, father-in-law, mother-in-law, and son-in-law. * The provisions of Part VIII do not apply to employees in certain categories, such as managers, administrators, executives, professional staff, or similar statuses. * A certificate from the Minister is conclusive for determining whether a person falls under specific sections of the Act. Regarding the appointment of labour officers: * The Minister may appoint public officers as labour officers for the purposes of this Act. * The Commissioner of Labour may delegate his functions to other persons with the consent of the Minister. As for directions and restrictions: * The Minister may give directions to all or any persons appointed under this Act regarding their functions. * These directions must be complied with by those receiving them. * The Minister can also declare that the Act or certain provisions do not apply in specific circumstances. The provisions outlined in this text do not apply to specific premises, as specified in a notice or order issued by the Minister. Prior to making such an order, the Minister must consult the Labour Advisory Board and ensure that it does not conflict with any international agreements or obligations binding Botswana or its government. Additionally, nothing in this Act relieves employers of their duties or liabilities under other enactments in force at the time. The Commissioner may require employers to provide information about their businesses, including employee numbers, pay, and conditions. This information must be furnished within a reasonable timeframe and in a specified manner. Employers who fail to comply with these requirements or furnish false information may be guilty of an offence and liable for penalties. Where authorized by the Attorney-General, a labor officer can initiate and conduct court proceedings in any magistrate's court to address violations of this Act or on behalf of employees with civil claims under the Act. The authorized officer must follow the Attorney-General's instructions. Labor officers have powers to investigate and take action under the Act, including: - Entering workplaces for inspections - Reviewing employee living and working conditions - Conducting food safety checks - Collecting samples for analysis - Requiring employers to produce employee records The Commissioner or labor officer can conduct these actions at any time, with notice to the employer. Unless there's a valid reason, the Commissioner or labour officer won't reveal their presence if it might hinder the performance of duties. They won't offer advice to ensure compliance with this Act unless they deem it necessary to seek professional guidance from the relevant government department themselves. Moreover, they shouldn't enter any dwelling without the occupier's consent. The Commissioner or labour officer can request a meeting with an employer in writing, specifying a reasonable time and location. However, this requirement won't be made unless two written requests have failed, and the employer must demonstrate that attending such a meeting would cause significant economic harm to their business. The employer must also propose alternative steps to ensure compliance with this Act. Additionally, the Commissioner or labour officer can: * At any reasonable time, ask recruiters or people involved in recruitment to produce any recruited person or relevant documents. * Demand production of any licence or permit issued under this Act from recruiters or those engaged in recruitment. * Copy or extract information from employer records related to employees, connected to this Act's provisions. The Commissioner or labour officer can also: * Insist that rooms, stores, and premises in camps or buildings used by employers or recruiters be kept clean and sanitary. * Require the employer or recruiter to return ill workers to their place of recruitment or send them to hospital if conditions are not conducive to recovery. Any individual sent to a hospital by an employer or recruiter, as required by the Commissioner or labour officer, can return to their original location once they have fully recovered from illness or injury. Additionally, if any workplace, camp, vehicle, or structure is deemed unsanitary or hazardous to health by the Commissioner or labour officer, written directions will be issued to discontinue occupation until necessary repairs are completed and certified as safe for use. The Commissioner may also prohibit further employee engagement at a workplace where conditions do not meet Act standards. Furthermore, it is the duty of the Commissioner and labour officers to provide technical guidance and advice to employers and employees on maintaining compliance with the Act. Labour officers must notify the Commissioner of any uncovered abuses or defects in the Act. If the Commissioner or labour officer issues a direction or prohibition under certain circumstances, the affected individual can appeal to the Minister if they believe the terms are unreasonable or cannot be fulfilled within a reasonable timeframe. The direction or prohibition will remain in abeyance until the appeal is resolved, unless there is an imminent danger to human health or safety. Finally, all appeals must be submitted in writing and delivered to the Minister within 21 days of the original directive. The Minister will decide on an appeal as soon as reasonably possible if someone informs the employer or another responsible person about a prohibition. Regulations can set out how appeals should be made under subsection (9). Delaying or obstructing officials, failing to comply with instructions, hiding information, or preventing others from appearing in court can lead to serious consequences and fines. Employers must provide their employees with work as agreed upon during the contract's duration, unless the employee breaks their employment contract or the contract becomes impossible to fulfill without default. If an employer fails to do so, they must pay their employee the same wages for each day missed, regardless of whether the employee is still working or not. A contract of employment typically ends when a specific piece of work is completed or a specified time period expires, unless otherwise terminated by law. Contracts with unspecified end dates will continue until terminated by either party. For contracts without a fixed end date, either party may terminate them: 1. At the end of each day's work, if wages are paid daily, provided no notice is given to the other party. 2. At any time, if wages are paid for periods exceeding one day, subject to giving notice to the other party. The minimum notice period will be: 1. One day for employees with wages paid daily and working less than a week. 2. Equal to the pay period for employees working more than a week. 3. Two weeks for employees who have been continuously employed between two and five years, and their wages are paid weekly or longer. Where an employee has been working for five or more years but less than 10, one month's notice is required. For those with over 10 years of service, six weeks' notice must be given. However, if the employment contract specifies a longer notice period, that duration is respected. It is also possible to waive the notice requirement in specific cases. When terminating a contract without notice, the employer must pay the employee an amount equivalent to their basic pay for the minimum lawful notice period. If notice has already been given but not served, the employer can terminate the contract by paying the employee for the remaining notice period. Additionally, contracts with unspecified periods of employment may have a probationary period, lasting up to three months for unskilled employees and 12 months for skilled employees. If employment that is terminated during a probationary period shall be deemed to have been done with just cause, and neither the employer nor the employee need provide any reasons therefor. The contract shall terminate after at least fourteen days' notice has been given. Before entering into a contract of employment that includes a probationary period, the prospective employer must inform the prospective employee in writing of the length of the probationary period. Any person who violates this section will be guilty of an offence and will be subject to the penalties prescribed by section 151(b). To access Botswana's laws, visit the e-Laws website (www.elaws.gov.bw) and click on "New Legislation" or "Historical Legislation" for a list of past laws. You can also search and download PDFs from this site. Additionally, go to the unreported cases tab to view these records. The e-Laws website is available at www.elaws.gov.bw. 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