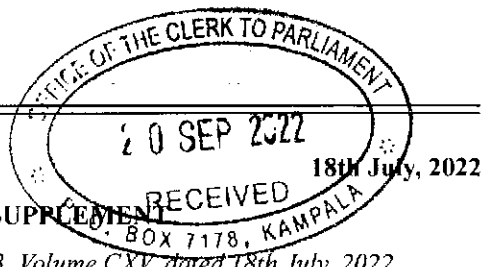

BILLS
SUPPLEMENT No. 16



BILLS SUPPLEMENT

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Bill No. 19

Employment (Amendment) Bill

2022

THE EMPLOYMENT (AMENDMENT) BILL, 2022

MEMORANDUM

1. POLICY AND PRINCIPLES

The object to the Bill is to amend the Employment Act 2006, to operationalize the provisions of Article 40 of the Constitution of the Republic of Uganda to all categories of workers in Uganda. The Bill specifically makes provision for the regulation of employment of domestic workers and casual employees so as to improve their working conditions; to provide for compulsory registration and licensing of recruitment agencies for domestic workers and non-manual labourers; to provide for an explicit formula for calculation of severance pay; to remove the conditions attached to payment of severance pay; to provide for the recruitment and employment of migrant workers to provide for scope of sexual harassment in employment; to provide for the protection of working breast feeding mothers; to require employers to put in place policies and facilities for breast feeding mothers; to provide for the conversion of casual employment to term contract.

2. DEFECTS IN THE EXISTING LAW

2.1 Casual employees

The current Employment Act 2006, only defines a casual employee under section 2. The Act however does not legislate or make provisions on employment of casual employees. In addition, the provisions of Section 3(2) (a) also affect casual employees who are sometimes dependent relatives of the employers working in a family undertaking.

Despite the 2011 Employment Regulations, regulating casual employment, the Act lacks substantive provisions to support the enforcement of the regulations on casual employment and thereby creating a defect in the law. The practitioners and enforcers of the Act have found challenges and difficulties in remedying the legal defect where the regulations are creating principal provisions which are not in the Act. This has resulted into exploitation of the labour force depriving such workers of the rights as employees enshrined in the Employment Act 2006 and social protection which in the long term increases Government Expenditures on such workers especially in their old ages.

2.2 Protection of breastfeeding working mothers.

Although Article 40 (4) of the Constitution provides for the protection of every female worker during pregnancy and after birth in accordance with the law; the current Employment Act, 2006 however does not contain comprehensive and explicit provision promoting the rights of breast feeding mothers. The Act under Section 56 only provides for maternity leave, job protection and nondiscrimination leaving out other key elements in maternity protection such as breastfeeding breaks and breastfeeding facilities which are key to the health of both infants and mothers as documented by the World Health Organisation. In addition, the Ugandan Employment Act provides the least maternity protection provisions for working mothers in the East African region.

There is therefore need to amend the Employment Act, 2006 to operationalize article 40 (4) by clearly providing for the protection of the rights of breastfeeding mothers at work places and to encourage employers, where possible, to provide breast feeding facilities or rooms.

2.3 Domestic workers.

The current Employment Act, 2006 has broad application, covering all employees employed by an employer under a contract of service (apart from exceptions for an employer's dependent relatives and

members of the UPDF). The Act however, has a very narrow scope on the regulation of domestic work, domestic workers, employers of domestic workers and recruitment and placement of domestic workers. Section 38(3) of the Act is to the effect that no permit is required for a person or company to recruit and place a domestic servant and non-manual laborers.

In addition, the Act under section 3 (2) (a) also clearly states that the Act does not apply to employers and their dependent relatives when the defendant relatives are the only employees in a family undertaking....' Majority of the women and young persons working as domestic workers are often related to their employers and this limits the applicability of the law on domestic workers. In addition most of the household employees working in homes in family undertakings do not exceed five and thereby being excluded from the applicability of the Act.

The only special categories expressly mentioned in the Act are persons with disabilities and apprentices and yet domestic workers are equally recognized as being among vulnerable by the National Employment Policy of 2011.

Further, while the Act recognizes "domestic servant", it does not recognize the category of workers known as "domestic workers" because homes are considered private premises and therefore cannot be inspected by labour officers to enforce the Act. This lack of express provisions in the law has led to severe exploitation of women and young persons working as domestic workers including depriving domestic workers of their wages, working for longer hours about 16-18 hours of work per day, absence of proper food and living or sleeping condition, forced labour and being totally cut off from their family members, bounded labour , sexual exploitation by their employers or by the agents during transit, at the office of agency and at the work place in houses of employers, the list of exploitation is endless.

Uganda Law Reform Commission in their 2018 study report on the Employment Act also noted that although the application of the Employment Act, 2006 does not exclude domestic workers, their low bargaining power and fragility in their job cannot be sufficiently catered for solely by the general provisions of the Employment Act, 2006.

Therefore the need to amend the Act to expressly recognise domestic workers under the Act and clearly provide for their regulation. This is especially important due to their vulnerability and susceptibility to exploitation and the fact that employers of domestic workers and casual employees have been reluctant to comply with the implied provisions of the Act.

2.4 Migrant Workers

The Employment Act 2006 lacks comprehensive provisions regulating recruitment, employment and monitoring of the Migrant Workers Section 37 of the Act only prohibits the illicit movements of migrant workers in and out of the country. There are no provisions regulating the employment of migrant workers in Uganda. This has resulted into exploitation of migrant workers and abuse of their rights including the right to collective bargaining. The Employment (Recruitment of Migrant Workers) Regulations, 2005 came into force a year earlier than the Employment Act of 2006, however, there were no principle provisions on the recruitment and placement of Ugandan migrant workers for work abroad. The lack of comprehensive provisions regulating the recruitment and employment migrant workers has resulted into reports of Uganda migrant workers ending up in conditions indicative of human trafficking, limited monitoring and protection to migrant and in the worst scenarios losing lives.

2.5 Sexual Harassment in Employment

Section 7(4) limits its application to employers employing 25 employees or more. This section presupposes that sexual harassment in employment only takes place in such work places which is entirely wrong. In addition, section also gives the employer a lot of discretionary

powers in as far as it requires to employer to develop sexual work place policies without clear guidance. The scope of sexual harassment in employment is also limited and falls below the standards as clearly elaborated in the recently adopted ILO convention No. 190 at the 108th International Labour Conference 2019.

2.6 Severance allowance

The current provisions on payment of severance allowance lack explicit formula for the calculation of the severance allowance. Accordingly, the Industrial Court of Uganda in its ruling established a formula that has since become a practice. In addition, the provision on severance allowance are also limiting and carry with them conditions that contradicts the principles behind the payment of severance allowance that include severance pay as employment protection device, efficiency enhancing human resource instrument and as a social benefit program.

3. REMEDIES PROPOSED TO DEAL WITH THE DEFECTS.

The object of the Bill is therefore to address the gaps that have been identified in the current law by amending the existing law.

The Bill therefore provides for—

- (a) the definition of domestic worker, domestic work, household employee, work place and recruitment agency;
- (b) explicit application of the Act to domestic workers and casual employees;
- (c) empower the Minister to prescribe measures to prevent sexual harassment at the workplace;
- (d) to expand the application of section 7 to all work places and sectors
- (e) to provide for the scope of occurrence of sexual harassment in employment
- (g) to specifically mention domestic workers and casual employees as special categories of employees;

- (h) to expressly make provisions for the recruitment and employment of migrant workers.
- (i) require a written contract of service for migrant worker who is recruited in Uganda for work in another country, before departure, receive a written job offer or contract of employment that is enforceable in the country in which the work is to be performed containing the terms and conditions of employment prescribed under the Act;
- (j) to require recruitment agencies of domestic workers and casual employees to obtain a permit before operation and empower the Minister to put in place measures for the regulation of the agencies;
- (k) to require recruitment agencies to keep records of all workers recruited and their employers and contact details;
- (l) to provide for the protection of the rights of breastfeeding mothers;
- (m) to provide for conversion of casual workers to ordinary workers as recognised by the Act.
- (n) to empower the Minister to make regulations relating to domestic workers, casual employees and breastfeeding mothers.
- (o) to provide for explicit formula for the calculation and payment of severance allowance.

HON. AGNES KUNIHIRA,
Workers Member of Parliament.

THE EMPLOYMENT (AMENDMENT) BILL, 2022

ARRANGEMENT OF CLAUSES

Clause

1. Amendment of section 2 of Act 6 of 2006.
2. Amendment of section 3 of principal Act.
3. Amendment of section 7 of principal Act.
4. Insertion of new section 7A to principal Act.
5. Amendment of section 12 of principal Act.
6. Amendment of section 13 of principal Act.
7. Insertion of new section 28A to principal Act
8. Amendment of section 32 of principal Act.
9. Substitution of section 34 of principal Act.
10. Insertion of new section 34A in principal Act
11. Insertion of new section 37A in principal Act.
12. Amendment of section 38 of principal Act.
13. Insertion of new section 38A to principal Act.
14. Insertion of new section 38B to principal Act.
15. Amendment of section 39 of principal Act.
16. Insertion of new section 56A to principal Act.
17. Amendment of section 59 of principal Act.

Clause

18. Amendment of Section 89 of principal Act.
19. Amendment of section 90 of principal Act.
20. Amendment of section 97 of principal

A BILL for an Act

ENTITLED

THE EMPLOYMENT (AMENDMENT) ACT, 2022

An Act to amend the Employment Act, 2006 to specifically make provision for the regulation of employment of domestic workers and casual employees in Uganda so as to improve their working conditions; to provide for compulsory registration and licensing of recruitment agencies for domestic workers and non-manual labourers; to provide for an explicit formula for calculation of severance pay; to remove the conditions attached to payment of severance pay; to provide for the recruitment and employment of migrant workers, to provide for scope of sexual harassment in employment; to provide for the protection of working breast feeding mothers; to require employers to put in place policies and facilities for breast feeding mothers; to provide for the conversion of casual employment to term contract.

BE IT ENACTED by Parliament as follows—

PART I—PRELIMINARY

1. Amendment of section 2 of Act 6 of 2006.

The Employment Act, 2006, in this Act referred to as the principal Act is amended in section 2—

- (a) by substituting for the definition of “contract of service” the following new definition—

““contract of service” means any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration to work for an employer and includes a contract of apprenticeship, domestic work or casual work;”

- (b) by inserting immediately after the definition of “dismissal from employment”, the following new definitions—

““domestic work” means work performed in or for a household or households;”

““domestic worker” means a person employed to do domestic work for remuneration for one or more employers by staying at the employer’s household or otherwise and includes, temporary, contractual or a migrant domestic worker;”

- (c) by substituting for the definition of “employee”, the following—

““employee” means any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, a domestic worker, or the Government of Uganda, including the Uganda Public Service, a local authority, a parastatal but excludes a member of the Uganda Peoples’ Defence Forces;”

- (d) by inserting immediately after the definition of “recruitment” the following new definition—

““recruitment agency” means any company or firm, not being a public authority which provides one or more of the following labour market functions;

- (e) services for employing workers with a view to making them available to a third party;
- (r) services for matching employees with potential employers without becoming party to the employment relationship that may arise therefrom;
- (g) other services relating to job seeking, such as the provision of information;”
- (k) by inserting immediately after the definition of “worker”, the following new definition—

““workplace” means all places of work and all sites and areas where work is carried out including not only the permanent, indoor, factory, industries, household, stationary places of work such as offices and shops but also temporary places of work such as civil engineering sites, open air places such a fields, forests, roads, oil refineries, and mobile places of work such as cabs of trucks, seats of tractors and excavators, ships, galleys, freight decks of air craft, and without exception, places where workers are found as a consequence of their work.

2. Amendment of section 3 of principal Act.

Section 3 of the principal Act is amended by repealing subsection (2) (a).

3. Amendment of section 7 of principal Act

The principal Act is amended in section 7 by substituting for subsection (4) the following—

“(4) An employer shall put in place measures to prevent sexual harassment at his or her work place.”

4. Insertion of new section 7A to principal Act.

Section 7 of the principal Act is amended by inserting immediately after section 7, the following new section-

“7A. Prohibition of mistreatment, harassment and violence against an employee

(1) An employer shall not mistreat, harass, violate, cause or permit an employee to be mistreated, harassed or violated by any other person.

(2) Mistreatment, harassment, and violence under subsection (1) include—

- (a) Physical abuse;
- (b) Intimidation of an employee;
- (c) the employer or an agent of the employer doing or causing an employee to do any act which causes or is likely to cause injury to health or safety of the employee;
- (d) wrongful confinement;
- (e) insulting the modesty of an employee; or
- (f) Withholding food and other basic necessities where applicable.”

(3) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding forty two currency points or imprisonment not exceeding seven years or both.”

5. Amendment of section 12 of principal Act.

Section 12 of the principal Act is amended by inserting immediately after subsection (2) the following new subsection—

“(3) The Minister may, by statutory instrument, prescribe a simplified and accessible complaint handling mechanism for workers with disabilities, domestic workers, casual employees and other categories of employees that he or she determines may require special protection.”

6. Amendment of section 13 of principal Act.

Section 13 of the principal Act is amended by inserting immediately after subsection (1) (a) the following new sub section—

“(aa) The labour officer while exercising the powers under section 13(1) (a), shall choose and use only one mode of dispute resolution;”

7. Insertion of new section 28 A to principal Act.

The principal Act is amended by inserting immediately after Section 28 the following—

“28A. Outsourcing of services.

A person who contracts another person to offer services shall ensure that the contracts of employment of an employee carrying out the services is in accordance with this Act, the standard contract of service and other applicable laws, regulations and collective bargaining agreements.”

8. Amendment of section 32 of principal Act.

Section 32 of the principal Act is amended by substituting for the word “fourteen”, with the word “sixteen”, wherever it appears.

9. Substitution of section 34 of principal Act.

The principal Act is amended by substituting for section 34, the following—

“34. Special categories of employees.

Without prejudice to the generality of the preceding sections of this Part, the Minister shall, on the recommendation of the Labour Advisory Board, make regulations governing the employment of persons with disabilities, domestic workers, casual employees, apprentices and other categories of employees, who in his or her opinion, are in need of special protection.”

10. Insertion of new section 34A in principal Act

The principal Act is amended by inserting immediately after section 34, the following new section—

“34A. Conversion of casual employment to term employment.

(1) A person shall not be employed as a casual labourer for a period exceeding four months

(2) A casual employee engaged continuously for four months shall be entitled to a written contract and shall cease to be a casual employee and all rights and benefits enjoyed by other employees shall apply to him or her

(3) Where a casual employee is laid off by an employer and rehired, the service shall be regarded as continuous.”

11. Insertion of new section 37 in principal Act.

The principal Act is amended by inserting immediately after section 37 the following new section—

“37A. Obligations of employer of migrant worker

(1) An employer employing a migrant worker in Uganda shall undertake to—

- (a) ensure that the employment is in accordance with this Act, the standard contract of service and other applicable laws, regulations and collective bargaining agreements;
- (b) provide the migrant worker orientation on the terms and conditions of employment and other relevant information including the their rights and duties under their contracts of employment prior to or in the process of engagement;
- (c) ensure that the migrant worker has a valid work permit;
- (d) keep a register of all migrant workers employed at the work place;
- (e) file annual returns to the district labour officer of the area in which the work place is located with details of the migrant workers employed;
- (f) repatriate a migrant worker or his or her body upon death or on the expiry or termination of the contract of service for which he or she was recruited regardless of the cause of death or reason for termination.

(2) A person who contravenes this section commits an offence and liable on conviction to a fine not exceeding two hundred currency points or imprisonment not exceeding three years or both.”

12., Amendment of section 38 of principal Act.

Section 38 of the principal Act is amended—

- (a) by inserting immediately after subsection (2), the following—

“(2a) A recruitment agency shall undertake due diligence on the suitability of an employer under whose employment it intends to place an employee;

(2b) A recruitment agency granted a permit under this Act for the purposes of recruitment for the external labour market shall undertake to—

- (a) provide to a migrant worker orientation on recruitment policies and procedures, terms and conditions of employment and other relevant information including his or her rights and duties under his or her contract of employment prior to or in the process of engagement;
- (b) ensure a migrant worker receives and signs a written contract of service, or a written job offer before departure, that is enforceable in the country in which the work is to be performed clearly containing the terms and conditions of employment;
- (c) ensure that a migrant worker recruited or deployed by the agency is qualified and holds the documents necessary for the job concerned;
- (d) ensure that a contract of employment is in accordance with this Act, or the law of the country where the employee is to be placed for employment, the standard contract of service and other applicable laws, regulations and collective bargaining agreements;
- (e) assume full and complete responsibility for all claims and liabilities which may arise

in connection with the use of its license and provide a list of all its employees involved in the recruitment and placement of employees including their contracts of appointment, bio-data and two copies of their passport size photographs; and

- (f) comply with any other condition as may be set by the Minister by Regulations.”

(2d) The following persons are not eligible to be licensed to engage in the business of recruitment and placement of migrant workers—

- (a) a travel agency or sales agency of an airline company;
- (b) an officer or member of the board of any company or partner in a partnership engaged in the business of a travel agency;
- (c) a company whose members of the board are engaged in the business of a travel agency;
- (d) a partnership whose partners are engaged in the business of a travel agency; and
- (e) a political, religious or tribal organization;
- (f) an individual who is not registered under company;
- (g) a person who was once a director or partner in any partnership or company that had previously been issued a recruitment permit under this Act and the recruitment permit was cancelled;

- (h) a person who was once convicted of the crime of Trafficking in Person;
- (i) any other category of persons as may be prescribed by the Minister by Regulations.”
- (j) by repealing subsection (3);
- (k) by inserting immediately after subsection (5) the following new subsection—

“(5a) A recruitment agency shall ensure that a recruitment fee charged by the agency is not deducted from the remuneration of the migrant worker.”

- (l) by substituting for subsection (7), the following—

“(8) A person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding one hundred twenty currency points or imprisonment not exceeding five years or both.”

13. Insertion of new section 38A to principal Act.

The principal Act is amended by inserting immediately after section 38 the following—

“38A. Minimum employment standards.

The Minister shall, by statutory instrument, prescribe the minimum employment standards applicable to persons who are recruited for employment abroad.

(2) Without limiting the general effect of subsection (1), the minimum employment standards shall prescribe the minimum terms for a contract of employment which shall include the following—

- (a) job description;
- (b) working hours;
- (c) guaranteed wages and emoluments, including wages and emoluments for regular working hours and an overtime pay for services rendered beyond regular working hours;
- (d) free emergency medical and dental treatment facilities;
- (e) just cause for the termination of the contract or of the services of the workers;
- (f) workers compensation benefits and war hazard protection;
- (g) repatriation of worker's remains and properties in case of death to the point of hire, or if this is not possible under the circumstances, the proper dispatch upon prior arrangement with the worker's next-of-kin and the nearest Embassy or Consulate;
- (h) allowable deductions;
- (i) assistance in the remittance of worker's salaries, allowances or allotments to his or her beneficiaries; and
- (j) any other terms as the Minister may prescribe."

14. Insertion of new section 38B to principal Act.

The principal Act is amended by inserting immediately after the new section 38A the following—

“38B. Records to be kept by recruitment agencies.

(1) A recruitment agency issued a permit under section 38 shall maintain at its place of business an up to date record of transactions with employers and employees that they have connected for employment.

(2) Where a recruitment agency arranges for employment of a worker out of Uganda, the agency shall put in place measures for obtaining at least quarterly updates from the employers and the worker.

(4) A person who contravenes this section commits an offence and liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years of both.”

15. Amendment of section 39 of principal Act.

Section 39 of the principal Act is amended —

(a) by substituting for subsection (1) the following—

“(1) An employee recruited for employment at a place which is more than fifty kilometres from his or her home shall have the right to be repatriated to his or her place of recruitment at the expense of the employer.”

(b) by substituting for subsection (3) the following—

“(3) Where an employee has been in employment for at least five years he or she shall be repatriated at the expense of the employer irrespective of his or her place of recruitment”.

- (c) by inserting immediately after subsection (4) the following—

“(5) Repatriation shall be calculated at a minimum compensatory rate of 7 km to one litre of fuel (Petrol) from the work town to home town plus a sum of 25 currency points as facilitation from home town to home village or place of domicile.”

16. Insertion of new section 56A to principal Act.

The principal Act is amended by inserting immediately after section 56, the following new section—

“56A. Protection of breast feeding mothers from discrimination.

(1) A female employee shall not be discriminated against on account of being a breast feeding mother.

(2) Upon the expiry of a female employee’s maternity leave, an employer shall, accord the female breast feeding employee a daily thirty minute breastfeeding break in every two hours of continuous work, or a reduction in the contractual hours of daily work for an additional sixty working days to enable the female employee breast feed her child.

(3) An employer shall establish a reasonable lactation station at the work place.

(3) The breaks or reduction in daily hours of work referred to in subsection (1) shall be considered as part of the female breast feeding employee’s ordinary working time and shall be remunerated accordingly.

17. Amendment of section 59 of the principal Act.

Section 59 of the principal Act is amended by inserting immediately after subsection (5) the following—

“(6) An employer shall not retain or withhold an original personal and professional document belonging to an employee”.

18. Amendment of Section 89 of Principal Act

The Principal Act is amended by substituting for section 89 the following—

“89. Calculation of amount of severance allowance

The severance allowance payable shall at the minimum, be one month’s gross salary of the employee at the time of termination of his or her contract of service for the period worked by him or her for the employer.”

19. Amendment of section 90 of Principal Act.

Section 90 of the principal Act is amended by repealing subsection (1).

20. Amendment of section 97 of principal Act.

Section 97 of the principal Act is amended in subsection (2).

(a) by substituting for paragraph (f) the following—

“(f) employment of persons with disabilities, domestic workers, casual employees, apprentices and other categories of employees;”

(b) by inserting the following immediately after paragraph (f)—

“(fa) schemes for the benefit and welfare of domestic workers and casual employees including social

security, health, insurance, education and other beneficial schemes;

- (fc) minimum standards for decent conditions of work;
- (fd) the regularisation of casual employees and domestic workers.”

Cross References

Constitution of the Republic of Uganda, 1995

Employment Act, 2006.

Occupational Safety and Health Act, Act 9 of 2006

Workers Compensation Act, Cap. 225