



SWAZILAND GOVERNMENT GAZETTE EXTRAORDINARY

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THE EMPLOYMENT (AMENDMENT) ACT, 1997

(Act No. 5 of 1997)



I ASSENT

MSWATI III
KING OF SWAZILAND

28th August, 1997

AN ACT

entitled

An Act to amend the Employment Act, 1980.

ENACTED by the King and the Parliament of Swaziland.

Short Title.

1. This Act may be cited as the Employment (Amendment) Act, 1997 and shall be read as one with the Employment Act, 1980 (hereinafter referred to as "the principal Act".)

Amendment of section 15.

2. Section 15 of the principal Act is amended in subsection (2) by replacing the words "two hundred and fifty Emalangeni or to imprisonment for three months" with the words "not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both".

Amendment of Section 30.

3. Section 30 of the principal Act is amended by replacing the words "two hundred and fifty Emalangeni or to imprisonment for three months" with the words "not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both".

Insertion of section 33bis.

4. The principal Act is amended by adding the following new section after section 33 -

"Payment of all benefits before selling business.

33bis (1) An employer shall not -

- (a) sell his business to another person; or
- (b) allow a take over of the business by another person

unless he first pays all the benefits accruing and or due for payment to the employees at the time of such sale or take over.

(2) Notwithstanding subsection (1) if the person who is buying the business or taking it over, makes a written guarantee which is understood by and acceptable to each employee that all benefits accruing at the termination of his previous employment shall be paid by him within 30 days and by mutual agreement agreed in writing and approved by the Commissioner of Labour, subsection (1) shall not apply.

(3) An employer who fails to comply with subsection (1) shall, upon conviction, be liable to a fine not exceeding six thousand Emalangeni or to imprisonment not exceeding two years or both."

Amendment of section 39.

5. Section 39 of the principal Act is amended by replacing it with the following new section -

"Suspension of employee

39. (1) An employer may suspend an employee from his or her employment without pay where the employee is -

- (a) remanded in custody; or
- (b) has or is suspected of having committed an act which, if proven, would justify dismissal or disciplinary action.

(2) If the employee is suspended under subsection (2) (b), the suspension without pay shall not exceed a period of one month.

(3) If the employer finds that the employee did not commit the act referred to in subsection (1) (b), the suspension shall be lifted and the employer shall pay to the employee an amount equal to the remuneration he would have been paid during the suspension.

(4) Where the employee is suspended because he was remanded in custody, and is subsequently acquitted of the charge and any other related charges for which he was placed in custody, the suspension shall be lifted, and subject to subsection (5), the employer shall not be obliged to pay any wages to the employee for the period the employee was in custody.

(5) Where an employee is remanded in custody as a result of a complaint laid by his employer in relation to his employment naming him as an accused is subsequently acquitted of that charge or any other related charges, the employer shall pay to the employee an amount equal to the remuneration he would have been paid during the period of suspension."

Amendment of section 40.

6. Section 40 of the principal Act is amended in subsection (2) by adding the following new paragraphs -

“(e) the latest financial statements and audited accounts of the undertaking;

(f) what other opinions have been looked into to avert or minimize the redundancy.”

Amendment of section 44.

7. Section 44 of the principal Act is amended by replacing the words “two hundred and fifty Emalangeni or imprisonment for three months” with the words “not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both”.

Amendment of section 64.

8. Section 64 of the principal Act is amended by replacing the words “two hundred and fifty Emalangeni or three months imprisonment for a first offence” with the words “not exceeding two thousand five hundred Emalangeni or imprisonment not exceeding three years or both and for a second or subsequent conviction to a fine not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both”.

Amendment of section 78.

9. Section 78 of the principal Act is amended by replacing the words “five hundred Emalangeni or to imprisonment for three months” with the words “not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both”.

Amendment of section 94.

10. Section 94 of the principal Act is amended by replacing the words “five hundred Emalangeni or imprisonment for three months” with the words “not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both”.

Amendment to section 102.

11. Section 102 of the principal Act is amended by -

(a) inserting the figure “(1)” before the word “every” occurring in line 1;

(b) inserting the words “with at least two weeks full pay” between the word “leave” and “upon” occurring in line 3;

(c) inserting the following new subsection -

“(2) Notwithstanding subsection (1), a female employee entitled to maternity leave by virtue of subsection (1), shall be so entitled as least once after the lapse of a period of 24 months from the last maternity leave.”

Amendment of section 103.

12. Section 103 of the principal Act is amended by adding the following new subsection -

“(5) Every female employee shall be entitled to a one hour nursing break with pay per day three months after maternity leave.”

Amendment of section 107.

13. Section 107 of the principal Act is amended by replacing it with the following new section -

“No obligation to pay for maternity leave.

107. Except as provided in section 102, nothing in this part shall be construed as requiring any employer to pay an employee for any time spent on maternity leave.”

Amendment of section 109.

14. Section 109 of the principal Act is amended by -

(a) replacing the words “not exceeding five hundred Emalangeni or to a term of imprisonment not exceeding six months with the words “not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both”.

(b) replacing the words “two hundred and fifty Emalangeni or to imprisonment for three months” with the words “not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both”.

Amendment of section 118.

15. Section 118 of the principal Act is amended by replacing the words “not exceeding two hundred and fifty Emalangeni or to imprisonment for three months” with the words “not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both”.

Amendment of section 122.

16. Section 122 of the principal Act is amended by adding the following new subsections -

“(5) An employee shall be entitled to a total of one month compassionate leave annually but nothing in this section shall be construed as requiring an employer to pay an employee for any time spent on such leave.

(6) This section shall apply only upon the death of an employee’s immediate family member.”

Amendment of section 131.

17. Section 131 of the principal Act is amended by replacing the words “two hundred and fifty Emalangeni or to imprisonment for three months” with the words “not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both”.

Amendment of section 147.

18. Section 147 of the principal Act is amended by replacing the words “five hundred Emalangeni or to imprisonment for six months” with the words “three thousand Emalangeni or imprisonment for one year or both”.