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Labour & Employment 2021

Contributing editors

**Matthew Howse, K Lesli Ligorner, Walter Ahrens,
Michael D Schlemmer and Sabine Smith-Vidal**

Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the sixteenth edition of *Labour & Employment*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Austria, Hong Kong, Hungary, Mauritius, Romania, Singapore and Taiwan.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Matthew Howse, K Lesli Ligorner, Walter Ahrens, Michael D Schlemmer and Sabine Smith-Vidal of Morgan, Lewis & Bockius LLP, for their continued assistance with this volume.



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LEGISLATION AND AGENCIES

Primary and secondary legislation

1 | What are the main statutes and regulations relating to employment?

The Employment Code Act 3/2019 (the Employment Code) and the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia are the two main statutes relating to employment. Also, there are three statutory instruments currently in force, issued under the Minimum Wages and Conditions of Employment Act, Chapter 276 of the Laws of Zambia (which was repealed and replaced by the Employment Code):

- the Minimum Wages and Conditions of Employment (General) Order 2011;
- the Minimum Wages and Conditions of Employment (Shop Workers) Order 2011; and
- the Minimum Wages and Conditions of Employment (Domestic Workers) Order 2011 (all Orders as amended in 2018).

Protected employee categories

2 | Is there any law prohibiting discrimination or harassment in employment? If so, what categories are regulated under the law?

The Employment Code imposes a general obligation on employers to promote equal opportunity in employment and to eliminate discrimination in the workplace. It prohibits discrimination against an employee or prospective employee either in policy or in practice, and in respect of recruitment, training, promotion, the terms and conditions of employment and termination of employment based on the following specific grounds: colour; nationality; tribe or origin; language; race; social origin; religion; belief; conscience; political or other opinions; sex; gender; pregnancy; marital status; ethnicity; family responsibility; disability; status; health; culture and economic grounds.

The Constitution of Zambia also offers some protection against discrimination by referring to 'discrimination' as treating a person differently, directly or indirectly, based on age; birth; race; sex; origin; colour; disability; religion; conscience; belief; culture; language; tribe; pregnancy; health; or marital, ethnic, social or economic status.

Further, the Industrial and Labour Relations Act prohibits an employer from discriminating against an employee on the following grounds:

- where the employee seeks to exercise his or her right to partake in the formation of a trade union or to become a member of a trade union of his or her choice;
- where an employee holds office in an association;
- where an employee chooses to partake in the activities of a trade union or to seek or accept an appointment to hold the office of such a union;

- where an employee exercises his or her right to absent him or herself from work without leave from his or her employer to partake in any activities of a trade union if leave was initially applied for but was unreasonably withheld by the employer;
- where an employee has previously been or is a complainant or witness or has given evidence in proceedings before any court, irrespective of whether the proceedings were instituted against the employer;
- where an employee is awarded a reward, benefit or compensation against the association or class of employers to which the employer belongs as a result of a court decision in the employee's favour or that of the trade union or class of employees to which the employee belongs; and
- based on the employer's membership or non-membership of any association.

Enforcement agencies

3 | What are the primary government agencies or other entities responsible for the enforcement of employment statutes and regulations?

The Labour Department is the primary agency responsible for the enforcement of employment statutes and regulations. This enforcement is done through the Labour Commissioner, assisted by the assistant labour commissioners, labour officers and labour inspectors. The Tripartite Consultative Labour Council, the Labour Advisory Committee and the Skills Advisory Committee play advisory roles concerning specific labour matters.

WORKER REPRESENTATION

Legal basis

4 | Is there any legislation mandating or allowing the establishment of employees' representatives in the workplace?

Yes, the Constitution of Zambia and the Industrial and Labour Relations Act.

Powers of representatives

5 | What are their powers?

The Constitution of Zambia provides for the general right to freedom of assembly and association.

Further, the Industrial and Labour Relations Act does not specifically provide for the powers of trade unions; however, it does provide for the rights of members (employees) of the trade unions, which include the right:

- to take part in the formation of a trade union;

- to choose which trade union to join;
- not to be discriminated against in respect of trade union membership, or lack of, including against being a member of a specific trade union or other organisation when applying for an engagement;
- not to be prevented, dismissed, penalised, victimised, discriminated against or deterred from exercising the rights conferred on an employee under the Act;
- to relinquish membership from a trade union;
- to practise collective bargaining;
- not to be dismissed, victimised or prejudiced for the exercise or anticipated exercise of the rights under the Act;
- not to perform work normally performed by the employee if he or she is lawfully on strike or is locked out, except for where the work constitutes an essential service or where the employee waives such right;
- to participate and to take leave of absence to attend activities concerning trade unions;
- to have fundamental rights protected;
- not to perform work during a lawful strike; and
- to avail him or herself of benefits, rewards or compensation

BACKGROUND INFORMATION ON APPLICANTS

Background checks

- 6 | Are there any restrictions or prohibitions against background checks on applicants? Does it make a difference if an employer conducts its own checks or hires a third party?

The Employment Code does not expressly prohibit employers from conducting background checks on applicants. Further, it does not make a difference whether the employer conducts its own checks or hires a third party to do so.

Medical examinations

- 7 | Are there any restrictions or prohibitions against requiring a medical examination as a condition of employment?

There are no restrictions against requiring a medical examination as a condition of employment provided that there is no discrimination in the process. An employer is permitted by law to request the applicant to be medically examined to determine his or her fitness for the job, and it reserves the right to hire or not to hire the applicant on this basis. The law, however, requires the employer to keep the applicant's medical records and maintain confidentiality if these are submitted.

Drug and alcohol testing

- 8 | Are there any restrictions or prohibitions against drug and alcohol testing of applicants?

There are no restrictions against requiring drug and alcohol testing for applicants provided that there is no discrimination in the process. An employer reserves the right to hire or refuse to hire an employee for failing to submit to a drug and alcohol test when it is specifically required.

HIRING OF EMPLOYEES

Preference and discrimination

- 9 | Are there any legal requirements to give preference in hiring to, or not to discriminate against, particular people or groups of people?

The law provides that when filling a vacancy, an employer must prioritise a Zambian citizen unless the Zambian citizen does not possess the

requisite skills for the job, or there is no application made by a Zambian citizen. In terms of discrimination, the Employment Code imposes a general obligation on employers to promote equal opportunity in employment and to eliminate discrimination in the workplace. The Code prohibits discrimination against an employee or prospective employee either in policy or in practice, and in respect of recruitment, training, promotion, the terms and conditions of employment and termination of employment based on specific grounds, including colour, nationality, race and social origin.

- 10 | Must there be a written employment contract? If yes, what essential terms are required to be evidenced in writing?

According to the Employment Code, an employment contract need not be in writing; however, it must be in writing if it is for a period of six months or more. Where an employment contract is in writing, the following essential terms must be expressly stipulated in the contract:

- the date of commencement, form and duration of the employment contract;
- the date on which the employee's period of service began, taking into account any employment with a previous employer that may count towards that period;
- the place at which, or the geographical limits within which, any work under the contract is to be performed;
- the ordinary working hours and days;
- the wages to be paid and the scale or rate of the wages, the method of calculating the wages and details of any other benefits;
- the details of any cash payments, payments in kind or any other benefits;
- the intervals of payment of the wages of the employee, monthly or at a shorter period, as the case may be;
- if applicable, the particulars of any food to be provided under the contract or of any cash equivalent of the food;
- the deductions to be made to an employee's wages; and
- the nature of the employment and tasks, where applicable and practical, and the general operations involved and any additional details necessary to clarify the nature of the work for which the employee has been contracted.

- 11 | To what extent are fixed-term employment contracts permissible?

The Employment Code provides for the execution of both long-term and short-term employment contracts. Long-term contracts are contracts either for a period exceeding 12 months, renewable for a further term, or for the performance of a specific task or project that is to be undertaken over a specified period and of which the termination is determined in advance by the parties. Short-term contracts are contracts for a period not exceeding 12 months.

Probationary period

- 12 | What is the maximum probationary period permitted by law?

The maximum probationary period permitted by law is three months, which may be extended at the discretion of the employer for a further period of not more than three months.

Classification as contractor or employee

- 13 | What are the primary factors that distinguish an independent contractor from an employee?

To qualify as an employment relationship, the Employment Code emphasises the need for employer control and for the work to be carried out

personally by the employee, for the benefit of the employer and within specific working hours. Additionally, the Zambian judicial system relies heavily on common law principles in distinguishing between employees and independent contractors. (See *John Muyabi v Thandiwe Banda and The Attorney General* [2021] ZMCA 22.)

Temporary agency staffing

14 | Is there any legislation governing temporary staffing through recruitment agencies?

Yes, the Employment Code provides for the regulation of employment agencies. It does not, however, provide specifically for temporary staffing through these agencies. The period of the contract is left to the agreement of the parties

FOREIGN WORKERS

Visas

15 | Are there any numerical limitations on short-term visas? Are visas available for employees transferring from one corporate entity in one jurisdiction to a related entity in another jurisdiction?

The Immigration and Deportation Act No. 18 of 2010 (the Immigration and Deportation Act) provides for the issuance of temporary employment permits in respect of business visitors intending to remain in Zambia for a period exceeding 30 days. However, the validity of a temporary employment permit shall not exceed six months in any given 12-month period.

Work permits issued in Zambia are only applicable within the jurisdiction; therefore, visas are not available for employees transferring to another jurisdiction.

Spouses

16 | Are spouses of authorised workers entitled to work?

Spouses may only engage in work upon the issuance of an employment permit under the Immigration and Deportation Act.

General rules

17 | What are the rules for employing foreign workers and what are the sanctions for employing a foreign worker that does not have a right to work in the jurisdiction?

The Employment Code provides the following restrictions for employers:

- employers should not employ an expatriate where employment is for work that is not a critical skill as classified by the Skills Advisory Committee;
- employers should not cause an employed expatriate to engage in work other than that which is authorised under the relevant work permit;
- employers should not dismiss or lay off a citizen or resident employee as a result of having employed an expatriate;
- employers should not coerce, threaten or act in any other illegal manner that causes the expatriate to engage in work without his or her consent; and
- where an expatriate is employed, the employer must designate an understudy (a Zambian citizen identified to work as a trainee) for the expatriate and submit a schedule of training programmes and management succession of the understudy to the Labour Commissioner.

The Immigration and Deportation Act places an obligation on employers to ensure that they employ neither an illegal immigrant nor a foreign

national whose immigration status does not permit the employer to employ him or her. Employers are further required to make an effort in good faith to ensure that they have not employed an illegal immigrant and to determine the immigration or citizenship status of the employee.

The sanctions for non-compliance under the Employment Code are a fine upon conviction or imprisonment for a term not exceeding three years, or both.

Resident labour market test

18 | Is a labour market test required as a precursor to a short or long-term visa?

Yes, the Skills Advisory Committee under the Ministry of Labour and Social Security is responsible for carrying out surveys and research in expatriate skills required in Zambia and preparing a list of the critical skills required. The Employment Code prohibits the employment of an expatriate to engage in work that is not a critical skill. Critical skills are defined as special or scarce academic or professional qualifications, standards of education or skills required in Zambia.

TERMS OF EMPLOYMENT

Working hours

19 | Are there any restrictions or limitations on working hours and may an employee opt out of such restrictions or limitations?

Normal working hours are set at eight hours a day. The employer may, with the employee's consent, extend the hours of work beyond this limit without additional remuneration, provided the hours do not exceed 48 hours a week. For a watch person or guard, the weekly working hours should not exceed 60 hours a week.

Overtime pay

20 | What categories of workers are entitled to overtime pay and how is it calculated?

All employees are entitled to overtime pay. Overtime is calculated at a rate of one-and-a-half times the employee's hourly rate of pay. Overtime for work performed on a public holiday or weekly rest day (usually a Sunday) is calculated at double the employee's hourly rate of pay.

21 | Can employees contractually waive the right to overtime pay?

Yes, they can; there is no express restriction under the law.

Vacation and holidays

22 | Is there any legislation establishing the right to annual vacation and holidays?

Yes, the Employment Code provides that all employees, except temporary or casual employees, contracted to work for 12 months or more are entitled to annual paid leave calculated at a rate of two days per month or 24 days per year. Despite the leave days accruing from the first day of employment, leave can be taken only after 12 months of continuous employment.

Sick leave and sick pay

23 | Is there any legislation establishing the right to sick leave or sick pay?

Yes, the Employment Code provides that all employees are entitled to sick leave for an unlimited duration with no pay; however, upon the expiry of six months, the employer may discharge the employee on

medical grounds on the recommendation of a medical doctor if the employee does not recover from the illness. The decision to discharge the employee is discretionary, and an employee may continue on sick leave after the six-month period. Employees on short-term contracts are entitled to sick leave plus full pay for the first 26 days and, thereafter, at half pay for the next 26 days. Employees on long-term contracts, on the other hand, are entitled to sick leave plus full pay for the first three months of the leave and, thereafter, at half pay for the next three months of the sick leave.

Additionally, employees are entitled to family responsibility leave of seven days per year to enable them to nurse their sick spouses, children or dependants, and an additional three days of paid leave per year to cover responsibilities related to the care, health or education of their children, spouses or dependants.

Leave of absence

24 | In what circumstances may an employee take a leave of absence? What is the maximum duration of such leave and does an employee receive pay during the leave?

An employee can take leave where he or she has annual leave days available or as authorised by law, and with the approval of the employer in each case.

Mandatory employee benefits

25 | What employee benefits are prescribed by law?

The Employment Code prescribes numerous employee benefits including:

- repatriation and repatriation transport;
- paid public holidays;
- annual leave and annual-leave benefits;
- sick leave and medical discharge;
- compassionate leave of 12 days annually for the death of a spouse, parent, child or dependent or based on justifiable compassionate grounds;
- family responsibility leave of seven days per year to care for a sick child, spouse or dependant, and an additional three days of paid leave per year where the employee needs to cover responsibilities related to the care, health or education of his or her child, spouse or dependant;
- nursing breaks for breastfeeding mothers;
- Mother's Day for every female employee once a month;
- severance pay;
- maternity leave;
- forced leave with basic pay;
- paternity leave of at least five unpaid consecutive days for male employees;
- housing; and
- medical attention.

Part-time and fixed-term employees

26 | Are there any special rules relating to part-time or fixed-term employees?

There are no special rules under the Employment Code relating to part-time or fixed-term employees.

Full-time employees are required to work a maximum of 48 hours per week, whereas part-time employees work for fewer than 48 hours per week. A full-time employee may work for longer hours without added remuneration provided that it does not exceed 48 hours. By contrast, this option is expressly not permitted under the Employment Code for a part-time employee.

Fixed-term employees are entitled to severance pay and gratuity in specific situations.

Public disclosures

27 | Must employers publish information on pay or other details about employees or the general workforce?

The Employment Code does not specifically require employers to publish information on pay; however, it requires employers to keep records of the employees' wages and to make the records available to a labour officer (during normal working hours) for inspection. The employer is also required to keep records of written contracts of employment of former employees for a period of five years after termination.

POST-EMPLOYMENT RESTRICTIVE COVENANTS

Validity and enforceability

28 | To what extent are post-termination covenants not to compete, solicit or deal valid and enforceable?

As a general rule, restrictive covenants are unenforceable. However, they may be enforceable if they are reasonable (concerning period, geographical limitation, the interest of the parties and public interest) and if they seek to protect a legitimate interest (see *Patel v Patel* (1985) ZR 220). Consideration for the restraint is also of paramount importance (see *Aon Zambia Limited v Vincent Witt and Ayibulayi Shoko*, 2015/HP/2460, unreported).

The maximum period of such covenants primarily depends on the nature of the business, and this is a matter to be determined by the court on a case-by-case basis.

Post-employment payments

29 | Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?

No, unless this is agreed by the parties.

LIABILITY FOR ACTS OF EMPLOYEES

Extent of liability

30 | In which circumstances may an employer be held liable for the acts or conduct of its employees?

Wrongful acts of the employee committed in the course of employment will render the employer vicariously liable (see *Acropolis Bakery Ltd v ZCCM Ltd* (1985) ZMSC 23). When assessing evidence as to what constitutes 'course of employment', the courts may take credible evidence regarding the instructions given to the employee to perform a task that would ordinarily not be associated with the employee's designation or job title (*GDC Hauliers (Z) Limited v Trans-Carriers Limited* (2001) ZMSC 17).

TAXATION OF EMPLOYEES

Applicable taxes

31 | What employment-related taxes are prescribed by law?

The following are the employment-related taxes and contributions:

- pay as you earn;
- the skills development levy;
- workers' compensation contributions;
- national pension contributions;
- national health insurance contributions; and
- union fees, if represented by a trade union.

EMPLOYEE-CREATED IP**Ownership rights**

32 | Is there any legislation addressing the parties' rights with respect to employee inventions?

Different IP-related legislation such as the Patents Act 2016, the Industrial Designs Act 2016 and the Copyright and Performance Rights Act 1994, address the parties' rights in this regard. The general position is that the employer owns all the intellectual property rights of inventions created by the employee during the course of employment; however, an employee may be entitled to some equitable remuneration in certain instances.

Trade secrets and confidential information

33 | Is there any legislation protecting trade secrets and other confidential business information?

There is no such legislation. In practice, however, employers protect their trade secrets and other confidential information by including confidentiality and non-disclosure clauses in the employment contract.

DATA PROTECTION**Rules and obligations**

34 | Is there any legislation protecting employee privacy or personnel data? If so, what are an employer's obligations under the legislation?

The labour laws do not specifically provide for employee data protection and privacy. The Electronic Communications and Transactions Act 21/2009 and CyberSecurity and Cyber Crimes Act No. 2 of 2021 protect any person's private communication from being intercepted. The Constitution generally guarantees and protects the right to privacy and provides that a person shall not be subjected to the search of his or her person or property without consent. In any case, the right to privacy may be limited with the employee's consent and depending on the agreement with the employer.

35 | Do employers need to provide privacy notices or similar information notices to employees and candidates?

There is no specific requirement in the Employment Code in this regard. However, the Code provides that where the employer has a policy in place, it must be brought to the attention of each employee; thus, if privacy notices are provided in the employer's policy, they must be brought to the employee's attention.

36 | What data privacy rights can employees exercise against employers?

The labour laws do not specifically provide for employee data protection and privacy. The Electronic Communications and Transactions Act 21/2009 protects any person's private communication from being intercepted. The Constitution generally guarantees and protects the right to privacy and provides that a person shall not be subjected to the search of his or her person or property without consent. In any case, the right to privacy may be limited with the employee's consent and depending on the agreement with the employer.

BUSINESS TRANSFERS**Employee protections**

37 | Is there any legislation to protect employees in the event of a business transfer?

Yes, the Employment Code provides that the employer shall not transfer any rights arising under a contract of employment to another employer before taking the following steps:

- obtaining the written consent of the employee;
- notifying the employee's representative of the proposed transfer; and
- obtaining endorsement by the Labour Commissioner or officer of the particulars of the transfer.

If the employee refuses to be transferred, the employment contract terminates, and the employee is entitled to severance pay.

TERMINATION OF EMPLOYMENT**Grounds for termination**

38 | May an employer dismiss an employee for any reason or must there be 'cause'? How is cause defined under the applicable statute or regulation?

An employer is required to give a valid reason for termination of the employment contract connected with either the capacity or conduct of the employee or based on operational requirements of the employer's undertaking; and the employee must be accorded an opportunity to be heard (see *Vekhnik v Casa dei Bambini Montessori Zambia* (2018) ZMCA 312, unreported and *Kenndy Born Kauka v Lusaka Apex Medical University* [2021] ZMCA 21).

Notice

39 | Must notice of termination be given prior to dismissal? May an employer provide pay in lieu of notice?

Generally, the Employment Code requires the employer to give notice or to pay the employee in lieu of the notice period in cases of termination unless the employee is guilty of misconduct of a nature such that it would be unreasonable to require the employer to continue the employment relationship. Where the termination is based on misconduct (ie, dismissal), there is no requirement for notice or payment in lieu of notice, but the employee must be accorded an opportunity to be heard, and due process must be observed (see *Stockdale v Woodpecker Inn Ltd and Spooner* (1967) ZR 164).

In cases of summary dismissal specifically, there is no requirement for notice or payment in lieu of notice at all. In such circumstances, however, the Code requires the employer to submit to a labour officer a written report of the circumstances leading to the summary dismissal within four days of the dismissal. If the contract of employment does not provide a notice period, the Code provides default notice periods depending on the duration of the employment contract. It is not enough, however, for the employer to give notice of termination; the employer must also give a valid reason for the termination based on the capacity or conduct of the employee or operational requirements.

40 | In which circumstances may an employer dismiss an employee without notice or payment in lieu of notice?

An employer may summarily dismiss an employee without notice or payment in lieu of notice under any of the following circumstances:

- gross misconduct inconsistent with the express or implied conditions of the employment contract;

- wilful disobedience of a lawful order given by the employer;
- lack of skill that the employee, expressly or implicitly, is warranted to possess;
- habitual or substantial neglect of the employee's duties;
- dishonesty, fraud and negligence calculated to injure the employer's business; or
- misconduct under the employer's disciplinary rules where the punishment is summary dismissal.

Severance pay

41 | Is there any legislation establishing the right to severance pay upon termination of employment? How is severance pay calculated?

The entitlement to severance pay is triggered in five situations:

- an employee is medically discharged;
- a fixed-term contract expires;
- a fixed-term contract is terminated prematurely;
- an employee is declared redundant; or
- upon the death of an employee.

It is calculated in the following way:

- where the employee has been medically discharged under the Employment Code: a lump sum of three months basic pay for each year served;
- where a fixed-term contract expires: 25 per cent of the basic pay or retirement benefits provided by the relevant social security scheme to which the employee is a member;
- where a fixed-term contract has been terminated: 25 per cent of the basic pay;
- where the employment contract has been terminated by redundancy: a lump sum of two months' pay for each year served; and
- where the employee dies in service: a lump sum of two months' basic pay for each year served.

Procedure

42 | Are there any procedural requirements for dismissing an employee?

There are no prescribed procedures under the law for dismissing employees except that the employee must be allowed to be heard regarding the charges, and the rules of natural justice must be observed throughout the disciplinary process (see *Supabets Sports Betting v Batuke Kalimukwa* Selected Judgment No. 27 of 2019)

In the case of summary dismissal, however, the employer is required to submit to a labour officer (within four days of the dismissal), a written report of the circumstances leading to the dismissal. In practice, dismissal procedures are contained in the employer's disciplinary code. There is no requirement for prior approval to be obtained from a government agency before dismissal.

Employee protections

43 | In what circumstances are employees protected from dismissal?

The Employment Code provides that an employer cannot terminate an employment contract based on the following reasons:

- union membership or participation in union activities outside working hours or within working hours with the consent of the employer;
- seeking office, acting or having acted as employee representative;
- the file of a complaint (or participation) in proceedings against the employer involving the alleged violation of laws;

- discrimination;
- absence from work during maternity or paternity leave;
- family responsibilities relating to taking care of a member of the employee's immediate family; or
- temporary absence from work during sick leave or injury.

Mass terminations and collective dismissals

44 | Are there special rules for mass terminations or collective dismissals?

There are no such special rules.

Class and collective actions

45 | Are class or collective actions allowed or may employees only assert labour and employment claims on an individual basis?

Employees are permitted to assert their labour rights through class or collective actions (see *Catherine Chavula and 14 others v Barclays Bank Zambia PLC, Staff Pension Fund*, Appeal No. 25 of 2015). The law requires that the pleadings must clearly indicate the material facts of the cause of action for each employee against their employer, and each employee is required to individually provide evidence proving his or her claim. Further, the pleadings must indicate that the plaintiff cited is suing on his or her own behalf and on behalf of the other employees (see *Finance Bank v Weluzani Banda and 162 others*, Selected Judgment No. 31 of 2019).

Mandatory retirement age

46 | Does the law in your jurisdiction allow employers to impose a mandatory retirement age? If so, at what age and under what limitations?

Employers are not permitted to impose a mandatory retirement age. The law prescribes the retirement age of 60 years, with the option of early retirement at 55 years, or late retirement at 65 years with the employer's approval.

DISPUTE RESOLUTION

Arbitration

47 | May the parties agree to private arbitration of employment disputes?

Yes, the parties are at liberty to agree to private arbitration (see *Mbazima v Tobacco Association of Zambia* (2015/HP/ARB/009)). The courts also encourage parties to pursue out-of-court settlement agreements to save the parties costs and time, as held by the Supreme Court in *Finance Bank and another v Simataa Simataa*, Selected Judgment No. 21 of 2017.

Employee waiver of rights

48 | May an employee agree to waive statutory and contractual rights to potential employment claims?

Yes, an employee may waive his or her rights to potential claims against the employer. However, this does not prohibit the employee from claiming any accrued rights or benefits under the employment contract. Waivers are generally governed by the common law of contract, and its principles are, therefore, applicable in this regard (see *Finance Bank and another v Simataa Simataa*, Selected Judgment No. 21 of 2017).

Limitation period

49 | What are the limitation periods for bringing employment claims?

Employment claims can be commenced in the High Court in either the Industrial Relations Division or the Principal Registry. Claims in the Industrial Relations Division must be lodged by way of a notice of the complaint and a supporting affidavit within 90 days of the incident giving rise to the complaint. Claims in the Principal Registry are lodged mainly by way of a writ of summons and statement of claim and must be lodged within 30 days of the termination. Alternatively, and depending on the nature of the claim, the claim can be lodged with the Subordinate (Magistrate) Courts, in which case no time limit is applicable (see *Zambia National Commercial Bank PLC v Musonda* (2018) ZMCC 14, unreported).

UPDATE AND TRENDS

Key developments of the past year

50 | Are there any emerging trends or hot topics in labour and employment regulation in your jurisdiction? Are there current proposals to change the legislation?

Currently, there are proposals to amend the Employment Code, mainly relating to procedural aspects of employer-employee disputes managed by the Labour Commissioner. There are proposals for amendment to the Industrial and Labour Relations Act.

Further, the emergence of the covid-19 pandemic saw the creation of the Employment Code (Exemption) Regulations, Statutory Instrument No. 48 of 2020 (the Exemption Regulations). The Exemption Regulations aim to aid employers in navigating the adverse effects of the pandemic by providing the option to exempt the payment of certain benefits ordinarily due to employees.

Additionally, the enactment of the Cyber Security and Cyber Crimes Act No. 2 of 2021 has seen the reinforcement of protection against interception of communication and possession of data without authorisation and has now labelled these cybercrimes. The Act, however, recognises the Public Interest Disclosure (Protection of Whistle blowers) Act 2010, which is aimed at protecting employees and allowing them to make protected disclosures or public interest disclosures relating to irregular conduct by employers in both the public and private sectors.

Coronavirus

51 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

In terms of emergency legislation, two major statutory instruments have been issued to address the different aspects of the pandemic, namely:

- the Public Health (Infected Areas) (Coronavirus Disease 2019) Regulations, No. 22 of 2020, which restricts the number of people that can meet publicly; and
- the Employment Code (Exemption) Regulations, 2020, which operate to suspend the legal obligations of employers under the statute, such as payment of gratuity, severance pay and leave pay.

The exemptions apply to specified classes of employees such as expatriates, employees in management etc. To take advantage of certain aspects of the Exemption Regulations, the employer is required to show proof to the Labour Commissioner as to the basis of the exemption sought before it can be granted.



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Employers should engage with the Labour Office before implementing the Exemption Regulations to avert unnecessary litigation. This is especially considering that some legal obligations may be accrued and therefore, unassailable if contained in the contracts of employment unless varied by consent.

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