



Supplement No. 1
to Gazette No. 42 of 4th August, 2006

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Published by the Authority of His Majesty the King
Price: M4.50

ACT NO. 5 OF 2006

Labour Code (Amendment) Act, 2006

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ACT NO. 5 OF 2006

Labour Code (Amendment) Act, 2006

An Act to amend the Labour Code Order 1992¹ to make provision for HIV and AIDS in the workplace and to transfer the review powers from the Labour Appeal Court to the Labour Court and for related matters.

Enacted by the Parliament of Lesotho

Short title and commencement

1. This Act may be cited as the Labour Code (Amendment) Act 2006, and shall come into operation on the date of its publication in the Gazette.

Insertion of new Part

2. The Labour Code Order, 1992, (hereinafter referred to as "the principal law"), is amended by inserting the following new Part aafter section 235 -

"Part XX A HIV and AIDS and Employment

Interpretation

235 A. For the purpose of this Part -

"Acquired Immune Deficiency Syndrome (AIDS)" means a condition characterised by a combination of signs and symptoms caused by HIV, contracted from another person and which attacks and weakens the body's immune system, making the afflicted person susceptible to other life threatening infections;

"communicable diseases" means any disease which can be communicated directly or indirectly from one person to another person;

"direct testing" means any scientific analysis or laboratory procedure done on an individual to determine the presence of HIV infection;

"discrimination" means distinction, exclusion or preference made on the basis of real or perceived HIV and AIDS status which has the effect

of nullifying or impairing equality of opportunity or treatment in employment or occupation;

“Human Immunodeficiency Virus (HIV)” means the virus which causes AIDS;

“indirect testing” means a method other than the testing of blood or other body fluids, through which an inference can be made as to the HIV and AIDS status of a person; and

“Minister” means the Minister responsible for employment and labour.

Information and education to employees on HIV and AIDS

235 B. (1) An employer shall -

- (a) in consultation with his or her employees or their organisations, design and implement education programmes in accordance with guidelines developed by the Minister; and
- (b) at his or her own cost, cause to be provided for the benefit of a person employed by him or her, and at a place and time during normal working hours as he or she may appoint, provide gender-sensitive education and information relating to -
 - (i) acquisition, transmission and prevention of HIV and AIDS, and related communicable diseases;
 - (ii) promotion of safe sex and risk reduction measures in relation to sexually transmitted infections;
 - (iii) testing and counselling facilities for HIV and AIDS;

- (iv) care, support and referrals; and
 - (v) rights of employees affected or infected with HIV and AIDS.
- (2) Education and information to be provided in terms of subsection (1) shall be provided by a person who has knowledge, experience and expertise in matters relating to HIV and AIDS.
- (3) The provision of education and information referred to in subsection (1) shall be at such intervals as the employer and his or her employees of their organisations may agree.
- (4) An employer who refuses or otherwise fails to comply with the provisions of subsections (1), (2) and (3) commits an offence and is, on conviction, liable to a fine of not less than five thousand Maloti or five months imprisonment.

Testing

- 235 C. (1) An employer shall not require a job applicant or an employee to undergo a direct or in-direct HIV testing as a condition for employment, access to the employment, applications or training.
- (2) Subsections (1) shall not prevent medical testing of a person for fitness for work.
- (3) An employer who fails to comply with subsections (1) and (2) commits an offence and is, on conviction, liable to a fine not less than five thousand Maloti or five months imprisonment.

Confidentiality and non-disclosure

- 235 D. (1) An employer shall not -
- (a) compel an employee or a job applicant to disclose his or her HIV and AIDS status or that of any other person; or

- (b) except with the written consent of the employee or job applicant to whom the information relates, disclose information relating to the HIV and AIDS status of the employee or job applicant acquired by the employer in the course of his or her duties unless the information is required to be disclosed in terms of any other law.
- (2) An employer who fails to comply with the provisions of this section commits an offence and is, on conviction, liable to a fine of not less than five thousand Maloti or five months imprisonment.

Discrimination in employment

- 235 E. (1) An employer shall not discriminate an employee on the basis of his or her HIV and AIDS status in relation to the following -
- (a) promotion;
 - (b) transfer;
 - (c) training or other employee development programme;
 - (d) job status; and
 - (e) other terms and conditions of employment.
- (2) The positive HIV status of an employee or a job applicant shall not in itself constitute lack of fitness to work.
- (3) An employer shall not discriminate a job applicant on the basis of his or her HIV and AIDS status.
- (4) An employer who discriminates against his or her employee or job applicant on the grounds stated in sub-sections (1), (2) and (3) commits an unfair labour practice.

Eligibility for employee benefits

- 235 F. (1) The HIV status of an employee shall not affect his or

her eligibility or that of his or her dependants for any occupational or other benefit schemes provided by the employer for his or her employees.

- (2) Where eligibility of a person for any occupational or other benefit scheme is conditional upon HIV testing, the conditions attaching to HIV and AIDS status shall be the same as those applicable in respect of other life-threatening illness.
- (3) Where HIV testing is necessary in terms of subsection (2), the employer shall ensure that the employee undergoes appropriate pre-and post-HIV and AIDS counselling.
- (4) Where an employee undergoes an HIV and AIDS testing for the purposes of subsection (2), the employer shall not be entitled to information concerning the HIV and AIDS status of the concerned employee, unless the occupational or other benefit scheme concerned is operated by the employer.
- (5) An employer who fails to comply with the provisions of subsection (1) or (2) above commits an unfair labour practice.
- (6) An employer who fails to comply with the provisions of subsection (3) or (4) commits an offence and shall, on conviction be liable to a fine of not less than five thousand Maloti or five months imprisonment.

Termination of employment

- 235 G. (1) An employer shall not terminate the employment of an employee solely on the grounds of the employee's HIV status.
- (2) Where the employee becomes too ill as determined by a medical practitioner, to continue in employment, the provisions of the principal law which deal with incapacity on grounds of illhealth, shall apply.
 - (3) Any action by the employer which contravenes the provisions of subsection (1), amounts to unfair dismissal.

Risk assessment and management

- 235 H (1) Where a person is employed in an occupation or is required to provide services where there may be a risk of transmitting or acquiring HIV, the employer shall provide appropriate training, clear and accurate information and guidelines on minimising the transmission of HIV and AIDS related communicable diseases.
- (2) The working conditions and procedures in relation to occupations referred to in subsection (1) shall be designed to ensure optimal precautions to prevent transmission of HIV and AIDS and related communicable diseases to employees and members of the public.
- (3) An employer shall -
- (a) at his or her own cost and free of charge provide appropriate personal protective clothing to an employee referred to in subsection (1); and
 - (b) periodically review, for safety and efficacy, the use and condition of any equipment, devices, procedures, including first-aid procedures used, or guidelines followed, in any occupation referred to in subsection (1).
- (4) An employer who fails to comply with the provisions of this section commits an offence and is, on conviction, liable to a fine of not less than five thousand Maloti or five months imprisonment.

Protection against victimisation

- 235 I. (1) An employee shall not victimise or refuse to work with an employee or employer infected or affected or perceived to be infected or affected by HIV and AIDS.
- (2) An employer shall ensure that an employee who fails to comply with subsection (1) is subjected to a disciplinary action.

- (3) An employer who fails to comply with subsection (2) commits an offence and is, on conviction, liable to a fine of not less than five thousand Maloti or five months imprisonment.

Care and support

- 235 J. (1) An employer shall allow an employee an opportunity to seek medical attention of HIV and /aids counselling from a service provider of the employee's choice.
- (2) An employer shall, in consultation with the employees or their organisations, determine the procedures to be followed in counselling or medical attendance by the employees.
- (3) Where HIV and AIDS counselling and care services exist at the work place, the employer shall cause such to be provided for the benefit of the employees, and at such place and time during working hours as the need arises and at such times as may be agreed to by the employer and employees or their organisation.
- (4) The counselling and care services offered at the workplace shall be provided by a person who has knowledge, experience or expertise in matters relating to HIV and AIDS.
- (5) An employer who fails to comply with the provisions of this section commits an offence and shall, on conviction be liable to a fine of not less than five thousand Maloti or five months imprisonment.

Workplace HIV and AIDS policy

- 235 K. (1) An employer shall, within three months of the coming into operation of this Act and in consultation with employees or their organisations, develop and implement a workplace policy on HIV and AIDS aimed at -
- (a) prevention of new HIV infections;
- (b) protection of employees from discrimination and stigmatisation related to HIV and AIDS;

- (c) provision of care and support for employees who are infected or affected by HIV and AIDS; and
 - (d) management of the impact of the HIV and AIDS epidemic in the organisation.
- (2) An employer shall, periodically for a period not exceeding one year cause to be reviewed, the workplace policy on HIV and AIDS in consultation with his or her employees or their organisation.
- (3) An employer who fails to comply with subsections (1) and (2) commits an offence and is, on conviction, liable to a fine of not less than five thousand Maloti or five months imprisonment.

Guidelines

235 L. The Minister shall, in consultation with the National Advisory Council on Occupational Health, Welfare and Safety (NACOSH), develop and publish by Notice in the Gazette, guidelines to give effect to the provisions of this Part.

Powers to amend penalties

235 M The Minister may, by regulations and in consultation with the National Advisory Committee on Labour (NACOLA), amend the penalties under this Part”.

Jurisdiction of Labour Appeal Court

3. The principal law is amended in section 38A (b) by deleting subparagraph (ii).

Disputes of right

4. The principal law is amended in section 226(2)(c) by inserting the words “or non-payment” between “underpayment” and “of”.

Review of arbitration awards

5. The principal law is amended in section 228F by deleting the words "Labour Appeal Court" wherever they appear and substituting the words "Labour Court".

NOTE

1. Order No. 24 of 1992 as amended by Act No. 3 of 2000.