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THE EMPLOYMENT (AMENDMENT) BILL, 1995

(Bill No. 5 of 1995)

(To be presented by the Minister for Labour and Public Service)

MEMORANDUM OF OBJECTS AND REASONS

The object of this Bill is to amend the Employment Act, 1980 so as to -

- (a) provide for the payment of all benefits by the employer accruing to employees in case of a take over of a business by a new employer;
- (b) add the list of information an employer has to supply to the Labour Commissioner in case of termination of employment on grounds of redundancy;
- (c) provide more security for the payment of wages by the employer;
- (d) entitle a female employee to maternity leave with full pay for a specific period;
- (e) to repeal part III of the Act; and
- (f) to provide for matters incidental thereto.

S. H. ZWANE
Attorney General

A BILL

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, 1995 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 sub-section (2) by replacing the words "two hundred and fifty Emalangeni or to imprisonment for three months" with the words "not exceeding five thousand Emalangeni or imprisonment not exceeding five years".

Repeal of Part III.

3. Part III of the principal Act is repealed.

Amendment of Section 30.

4. 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 five thousand Emalangeni or imprisonment not exceeding five years".

Insertion of Section 33 bis.

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

"Payment of all benefits before selling business.

- 33 bis (1) An employer shall not
- (a) sell his business to another person;
 - (b) allow a take over of the business by another person unless he first pays all the benefits accruing to his employees at the time of such sale or take over.
- (2) Notwithstanding sub-section (1), if the person who is buying the business or taking it over, makes a written guarantee to each employee that all the accruing benefits shall be borne by him, sub-section (1) shall not apply.
- (3) An employer who fails to comply with sub-section (1), shall, upon conviction, be liable to a fine not exceeding ten thousand Emalangeni or to imprisonment not exceeding ten years."

Amendment of Section 39.

6. Section 39 of the principal Act is amended by replacing it with the following -

"Suspension of employee.

- 39 (1) An employer may suspend an employee from his employment without pay where the employee
- (a) is remanded in custody; or

- (b) has committed an act which, if proven, would justify dismissal or disciplinary action.
- (2) If the employee is suspended under sub-section (1) (b), the suspension without pay shall not extend beyond a period of one month.
- (3) If the employer finds that the employee did not commit the act referred to in sub-section 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 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 charge laid by his employer and is subsequently acquitted of that charge, 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.

7. Section 40 of the principal Act is amended in section (2) by adding the following new paragraphs

- "(e) latest financial statements and audited accounts of the undertaking;
- (f) other possible options to avert or minimise the redundancy."

Amendment of Section 44.

8. 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 five thousand Emalangeni or imprisonment not exceeding five years."

Amendment of Section 62.

9. Section 62 of the principal Act is amended by replacing it with the following -

"Security for the payment of wages.

- 62 (1) Pursuant to a report made under Part VII of this Act, if the Commissioner of Labour is of the opinion that an employer has begun or is about to begin operating in Swaziland, the Commissioner shall scrutinise the report filed by the employer and shall make such other enquiries as he may deem necessary and thereafter shall require the employer to deposit security in monetary terms with the Commissioner equivalent to three (3) months wages of all persons employed or about to be employed by that employer.

- (2) After every twelve months, an employer shall submit a written report to the Labour Commissioner showing the number of persons he has employed during the twelve months period and the amount of security deposited with the Commissioner.
- (3) The Commissioner shall, on being satisfied that section (2) has been complied with, issue a certificate to the employer to that effect.
- (4) An employer who fails to comply with this section shall be guilty of an offence and on conviction, be liable to a fine not exceeding ten thousand Emalangenani or to imprisonment not exceeding ten years or both."

Amendment of Section 102.

10. 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 two weeks full pay" between the word "leave" and "upon" occurring in line 3;
- (c) inserting the following new sub-section -
 - "(2) Notwithstanding sub-section (1), a female employee entitled to maternity leave by virtue of sub-section (1), shall be so entitled at least once after the lapse of a period of 24 months from the last maternity leave."

Amendment of section 107.

11. Section 107 of the principal Act is amended by replacing it with the following -

"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 under this Part.'

Amendment of section 122.

12. Section 122 of the principal Act is amended by adding the following new sub-section -

- "(5) An employee shall have one month compassionate leave but nothing in this section shall be construed as requiring an employer to pay an employee for any time spent on such leave."