Termination of employment legislation digest

Country profile – Zambia

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Legislative provisions regulating termination of employment in Zambia are found in the Employment Act, Cap. 512 (EA) of 1965, the Employment (Amendment) Act No. 18 of 1982 and Act No. 15 of 1989 (EAA), the Industrial and Labour Relations Act, 1993 (ILRA) (as amended in 1997), the Minimum Wages and Conditions of Employment (General) Order, 1994 (MWG), and the Minimum Wages and Conditions of Employment (Shop Workers) Order, 1994 (MWS). In addition, collective agreements typically contain termination of employment provisions and can therefore be considered to be an important source of regulation of termination of employment in Zambia for those persons covered by them.

Scope of legislation

The EA and EAA extend to all employed persons except persons in the Defence Force, members of the Zambia Police Force and Zambia Prison Service. Under sec. 2(2) of the EA, the Minister of Labour has power to exempt or exclude certain persons or categories of persons from the ambit of the legislation, but to date no such exemptions have been made. Judicial and Security Services are excluded from the application of the ILRA (sec. 2(1)).

Before 1991, termination of employment in the state sector was regulated by separate legislation and was excluded from general employment provisions on termination of employment (Employment (Special Provisions) Regulations, 1989). However, since that date, the statute has been repealed (pending revision) and all categories of employees in the public service are no longer excluded from the scope of the legislative protections. It is also noteworthy that the common law notion of dismissal by pleasure of the Crown or Royal Prerogative has been discarded.

Daily paid workers are excluded from provisions regulating termination of employment under sec. 19(iii) of the EA, as are casual workers engaged for a short period. Moreover, an employer who has
been declared bankrupt is exempted from the legal obligations in relation to termination of employment.

Contracts of employment

There is a clear dichotomy in the law of Zambia between contracts of employment which are required by law to be written, which are not in practice the usual form of employment contract in Zambia (addressed under Part V, EA), and other contracts, which can be made orally (under Part IV, EA). This dichotomy is reflected in the provisions regulating termination of employment. Contracts required to be in writing under Part V, sec. 28(1), are those which are made for a fixed period of service exceeding six months; contracts stipulating conditions of employment which differ materially from those customary in the district of employment for similar work; contracts of foreign service; and contracts to be performed personally in relation to some specific work (a fixed task) which could not reasonably be expected to be completed within six months.

Termination of employment

Depending on the type of contract involved, employment can terminate, not at the initiative of the employer, in certain circumstances, including by:

- the expiry of a fixed-term contract;
- the completion of the task for which the contract was concluded;
- the death of the employee; or
- any other manner in which a contract of service may be lawfully terminated or deemed to be terminated, whether under the provisions of the EA or otherwise (for written contract, see sec. 36(1), Part V, EA).

Dismissal

In relation to all contracts except those governed under Part V (i.e. written contracts), sec. 20 of the EA provides that either party to a contract of employment may terminate with notice and without giving any reason. Pay in lieu of notice is also an acceptable option for terminating employment (sec. 21, EA). This provision does not, however, apply to contracts of fixed duration and specified as non-renewable.

However, it should be noted that provisions under various collective agreements, which are enforceable under Zambian law, are an important source of law protecting employees from arbitrary or unjust dismissal at the initiative of the employer. Further, recent legislation in the form of the ILRA, including a wide jurisdiction to inquire into any disputes between employer and employee (sec. 85(4)), gives the Industrial Relations Court the power to inquire into dismissals from employment.

Under sec. 25 of the EA, provision is also made for summary dismissal, that is, dismissal without notice or pay in lieu of notice on the grounds of serious misconduct. The notion of serious
misconduct sufficient to justify summary dismissal is defined by the common law notions of the term and includes serious misconduct such as theft, fraud or other dishonesty, habitual negligence or absence from work, wilful disobedience of the employer’s instructions and wilful destruction of the employer’s property. In addition, collective agreements typically specify the kinds of misconduct which would justify dismissal and prescribe the relevant procedures to be followed where dismissal is contemplated. It is usual for three warnings of misconduct to be given before dismissal can take place.

Sec. 36(1), Part V, of the EA, concerning written contracts as defined in the Act, provides that such contracts may be terminated in any manner in which a contract of service may be lawfully terminated or deemed to be terminated, whether under the provisions of that Act or otherwise. Provisions are also made for the employee to be discharged under medical grounds where he or she is unable to fulfil the written contract of service (sec. 36(2), EA).

Where termination of employment arises out of a breach of contract in relation to the terms of the contract of employment, the employee is also entitled to initiate an action for unlawful dismissal, including submitting the matter as a collective dispute.

A general prohibition against termination of employment on discriminatory grounds is contained in sec. 108 of the ILRA. The grounds listed are race, sex, marital status, religion, political opinion or affiliation, tribal extraction or status of the employee. This section is reinforced by art. 23 of the Constitution of Zambia. In addition, sec. 5 of the ILRA prohibits termination of employment on the grounds of trade union activity or membership, non-membership in a trade union or the making of a complaint against the employer or giving evidence against him or her in any proceedings.

By amendment to the EA in 1982, under sec. 15 of the EAA, a provision prohibiting employers from terminating employment of women workers due to sick leave by reason of pregnancy or absence for statutory maternity leave was enacted.

The EA also provides for statutory sick leave with full pay and employment cannot be terminated on this ground during this leave period (sec. 54).

The EAA, 1989, contains provisions relating to redundancy or termination of employment for economic reasons or for technological or other structural change to the business. This statute contains a definition of redundancy; in effect, it is a statement of the common law definition of the term.

### Notice and prior procedural safeguards

The Constitution of Zambia entrenches the principles of natural justice, specifically the right to be heard. Although constitutional law is strictly enforceable only against the State and not individual private employers, the principles of natural justice, in particular the right to a fair hearing, have been embraced in private employment law in Zambia and given effect under collective agreements. It can now be viewed as a labour law custom or norm in that country and could consequently take effect, even where legal provisions under a collective agreement are not in place. The right to be heard would apply where an employee is being dismissed in relation to some charge of misconduct or wrongdoing and would also incorporate the opportunity to defend oneself. In Zambia, this is

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1 Under the now repealed Employment (Special Regulations) Act, 1989, provision was made for lawful termination on the grounds of incompetence, wilful disobedience, misconduct and neglect.
translated into the right to be informed of the specific charge and the ancillary right to the services of the trade union representative or a lawyer to defend such a charge (sec. 91, ILRA). Further, where the governmental labour authority gives effect to his or her investigatory powers in relation to dismissal matters, the rules of natural justice will be followed.

Before proceedings for dismissal may commence, an employee is entitled to three warnings about conduct considered to be wrongful, thus giving him or her the opportunity to reform.

In the case of written contracts, as described under the EA, an employer may only terminate the contract of employment on medical grounds in a situation where the employee is unable to fulfil his or her obligations, with the written consent of a governmental labour officer. The officer is also empowered to impose such conditions as he or she thinks fit for the purposes of safeguarding the right of the employee to any outstanding wages or deferred pay, any compensation in respect to any accident or disease, and any repatriation rights (if the employee is covered by a contract of foreign service) or other benefits (sec. 36).

Secs. 20 and 21 of the EA make provision for termination of employment by way of notice or payment in lieu of notice. Parties to the contract of employment may agree as to the requisite period of such notice but the statute sets minimum standards consisting of:

- 24 hours where the contract is for a period of less than a week;
- 14 days where the contract is a daily contract under which, by agreement or custom, wages are payable not at the end of the day, but at intervals not exceeding one month; and
- 30 days where the contract is for a period of one week or more.

Such notice is not required to be in writing. It should be noted, however, that parties to a contract of employment may contract out of their minimum rights to notice under the EA, as sec. 19 explicitly recognizes “contracts expressed to be terminable without notice”. This implies that the legislation does not, in fact, provide for minimum standards of protection from dismissal in the form of notice.

Where a worker is to be dismissed summarily, his or her employer must, within four days of such dismissal, deliver to the appropriate government labour officer a written report of the circumstances leading to, and the reasons for, such dismissal. The labour officer is then required to register the details of the report in a specific register maintained for this purpose (sec. 25, EA) and to supervise an investigation into the alleged misconduct.

There is no law limiting the number of workers who may be retrenched at any particular time and no requirement for prior authorization or even regulation of redundancies as these requirements have now been repealed (previously under the Employment (Special Provisions) Regulations, 1989). However, regulatory provisions on termination of employment on the grounds of redundancy are commonly found in collective agreements. The usual practice is that where redundancy is contemplated, the employer and the trade union concerned must negotiate the terms of the proposed redundancy at least one month prior to carrying out the redundancy. For such negotiation to take place, the trade union and employees must be given appropriate information in relation to the proposed termination, including a statement of the reason for such termination, the number and categories of employees likely to be affected, the period over which the terminations are likely to be carried out and the redundancy package proposed.

The MWS requires that where employees employed in shops or shop-related businesses are to be dismissed for reason of redundancy, negotiations between the employer and the trade union
concerned must take place and the employer must give notice three months in advance of the intention to dismiss (sec. 14).

Severance pay

Non-civil service employees of the Government are entitled as part of their conditions of service to a long-service bonus after four years’ service upon termination of employment. The MWG makes provision for employees whose services have been terminated to obtain severance pay benefits. Such employees are also entitled to draw any pension entitlements from the Zambia National Provident Fund (a national fund), or any occupational pension schemes arranged by individual employers for the benefit of their employees. Where workers in the private sector not covered by collective agreements are dismissed for operational reasons, under clause 7 of the MWG, they are entitled to two weeks’ pay for each complete year of service. Workers employed in any shop or business or connected with the business of any shop, who are declared redundant after having served a minimum period of six months, are entitled to at least two months’ notice and redundancy benefits of two months’ pay for each completed year of service (clause 14, MWS).

Under the EAA, 1989, an employer who terminates the services of an employee by reason of redundancy is required to pay to the employee a redundancy payment calculated in a manner prescribed by the Minister.

Various collective agreements provide for payment of long-service bonuses upon attainment of at least five years’ continuous service in cases of termination of employment for reasons other than serious misconduct or redundancy.

Under sec. 26 of the EA, a worker, when summarily dismissed for lawful cause, is entitled to wages due up to the date of the cause of dismissal. Where the employee is dismissed other than summarily, or for reason other than redundancy, he or she is entitled to any overtime pay or other allowances accruing at the date of dismissal, including any wages owed at that date, in addition to the long-service bonus.

Avenues for redress

An employee having reasonable cause to believe that his or her services have been terminated on discriminatory grounds as listed under sec. 108 (ILRA) may make a complaint before the Industrial Relations Court within 30 days of the termination. However, the court has discretion to extend this 30-day time limit for a further three months after the date on which the complainant has exhausted any available administrative channels (sec. 108).

The Industrial Relations Court has original and exclusive jurisdiction to hear and determine any industrial relations matters or proceedings under the ILRA. In relation to termination matters, the court has jurisdiction to determine matters specified under the ILRA, such as termination on the grounds of trade union membership or activity and on discriminatory grounds. An important point to note is that the court also has jurisdiction to “hear and determine any dispute between any employer and an employee notwithstanding that such dispute is not connected with a collective agreement or other trade union matter”. It is clear that the jurisdiction is not confined to collective agreements and does not solely depend on the complaint being taken up as a collective dispute.
Rather, an individual will have standing to take a matter to the Industrial Relations Court (sec. 85(4), ILRA). Complaints must be made within 30 days of the event complained of, unless leave is obtained (sec. 85, ILRA as amended).

Where the Industrial Relations Court finds in favour of the complainant, it has the discretion to grant damages, compensation for loss of employment, re-employment or reinstatement or to deem the applicant to be retired, retrenched or redundant, or make any other order or award if the Court sees fit (sec. 85(A), ILRA). In making an award, the Court will consider the gravity of the discriminatory action under secs. 5 and 108 (ILRA) or other wrongful termination.

Further information

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