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## ACT NO. 3 OF 2000

**LABOUR CODE (AMENDMENT) ACT 2000**

An Act to amend the Labour Code Order, 1992, to establish an Industrial Relations Council and to provide for its appointment and functions; to establish the Office of the Director of Dispute Prevention and Resolution and to provide for its appointment and functions; to establish a Labour Appeal Court; to provide for the appointment and tenure of the President and Deputy President of the Labour Court; to provide for the conciliation and arbitration of disputes; to authorise the Minister, in the national interest, to appoint a conciliator to prevent or resolve disputes; and to provide for the prevention of disputes by making the failure to bargain in good faith an unfair labour practice.

**ENACTED BY THE PARLIAMENT OF LESOTHO****1. Short title**

This Act may be cited as the Labour Code (Amendment) Act, 2000.

**2. Interpretation**

The principal law is amended in section 3 -

- (a) by inserting the following definitions in their appropriate alphabetical order:

“Constitution” means the Constitution of Lesotho of 1993;

“Council” means the Industrial Relations Council established in terms of section 46A;

“Director” means the Director of Dispute Prevention and Resolution appointed in terms of section 46B(3)(a);

“Directorate” means the Directorate of Dispute Prevention and Resolution referred to in terms of section 46B;

“dispute” includes an alleged dispute;

“dispute of interest” means a trade dispute concerning a matter of mutual interest to employees but does not include a dispute of right;

“dispute of right” means a dispute concerning the application and interpretation of any provision of the Labour Code or any other labour law, collective agreement or contract of employment;

“Principal Secretary” means the Principal Secretary responsible for Employment and Labour”;

(b) by deleting and substituting the following definitions:

“Collective agreement” means any written agreement entered into between a registered trade union and an employer or employers’ organisation in respect of any matter of mutual interest and includes agreements on recognition, agency shops and grievance, discipline and dispute procedures;

“Court” means either the Labour Court or the Labour Appeal court depending on the context;

“Registrar” means either the Registrar of the Labour Court or the Registrar of Trade Unions and Employer Organisations depending on the context;”.

### 3. Powers of Minister

The principal law is amended in section 9 by inserting the following subsection after subsection (2) -

“(3) If the Minister believes that it is in the national interest, the Minister may, after consultation with the Industrial Relations Council, appoint a person to prevent or resolve any trade dispute by conciliation.

(4) The Minister may, on the recommendation of the Industrial Relations Council, publish codes of good practice, model collective agreements and guidelines on conciliation and arbitration.”.

4. The principal Act is amended in section 15 by the deletion of that section.

5. The principal law is amended in Part III by deleting the heading to Division D and substituting it with the following heading:

**“Division D: Labour Court and Labour Appeal Court”.**

6. **Establishment of Labour Court and Registrar of Court**

The principal law is amended in section 22 by deleting subsection (2) and substituting the following subsection:

“(2) There shall be -

- (a) a Registrar of the Labour Court who shall be a person qualified in law and who shall be appointed by the Judicial Service Commission, after consultation with the Industrial Relations Council for the purpose of carrying out duties in relation to the decisions, awards, other records and docketing of the Court;

- (b) so many Deputy Registrars as the President of the Court may determine.”.

7. **Composition of Court**

The principal law is amended in section 23 -

- (a) by deleting subsections (1) and (1A) and substituting the following:

“(1) (a) The Judicial Service Commission shall appoint as members of the Court -

- (i) a President; and

- (ii) such number of Deputy Presidents as the Judicial Service Commission may consider necessary.

- (b) The Judicial Service Commission shall consult with the Industrial Relations Council before mak-

- (c) ing the appointments in terms of paragraph (a).  
Before deciding on the number of Deputy Presidents, the Judicial Service Commission shall consult with the Industrial Relations Council.”;
- (b) by deleting subsection (3) and substituting the following:
- “(3) (a) The President and the Deputy Presidents shall not hold office in the Public Service.
- (b) The Minister shall determine the terms and conditions of the President and Deputy President -
- (i) in consultation with the Minister of Finance;
- (ii) after consultation with the Judicial Service Commission; and
- (iii) after consultation with the Industrial Relations Council.
- (c) The President and Deputy President may be removed from office by the Judicial Service Commission but only for inability to perform the functions of their respective offices (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.
- (d) Before removing a member of the court under paragraph (c) the Judicial Service Commission shall, in consultation with the Industrial Relations Council, appoint a committee to enquire into the matter and report on the facts thereof to the Commission and advise on what action should be taken.”;
- (c) by deleting the words “ordinary members” wherever they appear in that section and substituting the word “assessors”;
- (d) by deleting subsection (5) and substituting the following:

**“(5) The Court when hearing any matter referred to it under the Code, shall be duly constituted if it consists of -**

- (a) a member of the Court; and**
- (b) two assessors chosen by that member -**
  - (i) one from the panel of employer assessors appointed in terms of subsection (6) (a)(i); and**
  - (ii) the other the panel of employee assessors appointed in terms of subsection (6)(a) (ii).**
- (c) Notwithstanding paragraph (b), a member of the Court may appoint any suitable person as an assessor in any particular case if there is no appointed assessor able to sit as an assessor.”;**

**(e) by deleting subsection (6) and substituting the following:**

- “(6) (a) The Minister shall appoint assessors to -**
- (i) an employer panel of assessors from nominations made by the employer members of the Industrial Relations Council; and**
  - (ii) an employee panel of assessors from nominations made by the trade union members of the Industrial Relations Council.**
- (b) Each panel of assessors shall consist of so many assessors as there are members of the Court.**
  - (c) The assessors shall be persons having experience or knowledge of labour relations.**
  - (d) The full time assessors shall be appointed for a**

period of five years on such terms and conditions as may be determined by the Minister -

- (i) in consultation with the Minister of Finance;
  - (ii) after consultation with the Judicial Service Commission; and
  - (iii) after consultation with the Industrial Relations Council.
- (e) An assessor may be removed from the panel by the Minister acting on the advice of the Industrial Relations Council for inability to perform an assessor's functions (whether arising from infirmity of body or mind or any other cause) or for misbehaviour.”;
- (f) by deleting subsection (7) and substituting the following:
- “(7) The decision of the Labour Court shall be -
- (a) the majority of the Court, on matters of fact; and
  - (b) the members of the Court, on matters of law.”;
- (g) by inserting after subsection (11) the following subsection:
- “(12) No proceedings of the Labour Court are invalid because -
- (a) the appointment of an assessor was defective; or
  - (b) after the commencement of the proceedings, the Court proceeds without an assessor because -

- (i) the assessor is unable to sit as an assessor; or
- (ii) the member of the Court removes the assessor from the proceedings in the interest of the administration of justice.”

8. The principal law is amended by deleting section 24 and substituting it with the following:

**“24. Jurisdiction and powers of the Labour Court**

- (1) Subject to the Constitution and section 38A, the Labour Court has jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other labour law are to be determined by the Labour Court.
- (2) The Court shall have the power -
  - (a) to inquire into and decide the relative rights and duties of employees and their respective organisations in relation to any matter referred to the Court under the provisions of the Code and to award appropriate relief in case of infringement;
  - (b) to impose at civil law, in the case of any infringement of the provisions of the Code, any fine provided for thereby;
  - (c) to inquire into and make awards and decisions in trade disputes, when so requested by the Minister or the Director;
  - (d) to inquire into and make awards and decisions in any matters relating to industrial relations, other than trade disputes, which may be referred to it;
  - (e) to rescind any contract of employment and make such consequential orders as may be just in the circumstances;



- (f) to assess the fair value of services rendered by an employee in any case in which such services are to be assessed in accordance with the provisions of the Code or in any case where the rate of wages or other benefits to which an employee should be entitled were not agreed between the employer and employee or it is uncertain what was agreed;
- (g) to fix the amount of compensation for loss of or damage to the property of an employer where such loss has been occasioned by the wrongful act or omission of his or her employee;
- (h) to adjust and set off one against the other all claims on the part either of the employer or of the employee arising out of or incidental to such relation between them as the Court may find, whether such claims are liquidated or unliquidated or are for wages, damage to person or property or for any other cause, and to direct payment of the balance found due by one party to the other party;
- (i) to make any appropriate order, including an order of costs;
- (j) to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him or her by the Court under the Code;
- (k) when brought to its attention by any party, to resolve any ambiguity in its own award or decision;
- (l) to rescind any decision made in the absence of a party to the litigation;
- (m) to perform such acts and carry out such duties as

may be prescribed under the Code or any other written law.

- (3) The Court shall take into account any code of conduct or guide line, published by the Minister in accordance with this Act, that is relevant to a matter being considered in the proceedings.”

9. The principal law is amended by deleting section 25 and substituting it with the following:

**“Exclusive civil jurisdiction**

- (1) The jurisdiction of the Labour Court is exclusive and no court shall exercise its civil jurisdiction in respect of any matter provided for under the Code -
- (a) subject to the Constitution and section 38A; and
- (b) notwithstanding section 6 of the High Court Act, 1978 (Act No. 13 of 1973).
- (2) The Minister, the Labour Commissioner, the Director of Dispute Prevention and Resolution and an aggrieved party shall have the right to present a claim to the court as provided under the Code.”

10. **Power to summon witnesses, etc.**

The principal law is amended in section 29 by numbering the un-numbered paragraph as subsection “(2)” and renumbering the subsequent subsections accordingly.

11. **Power to summon witnesses, etc.**

The principal law is amended in section 30 by numbering the un-numbered paragraph (following subsection (1)) as subsection (2) and renumbering the subsequent subsection accordingly.

12. The principal law is amended by deleting section 38 and substituting the following sections:

**“38 Establishment and composition of the Labour Appeal Court**

- (1) There shall be a Labour Appeal Court.
- (2) The Labour Appeal Court is the final court of appeal in respect of all judgements and orders made by the Labour Court.
- (3) The Labour Appeal Court consists of -
  - (a) a judge of the High Court who shall be nominated by the Chief Justice acting in consultation with the Industrial Relations Council; and
  - (b) two assessors chosen by that judge -
    - (i) one from a panel of employer assessors nominated by the employer members of the Industrial Relations Council; and
    - (ii) one from a panel of employee members on the Industrial Relations Council.
- (4) The Minister shall appoint, in a full-time capacity, one of the assessors from each of the panels referred to in subsection (3)(b).
- (5) Notwithstanding subsection (3)(b), the judge of the Labour Appeal Court may appoint any suitable person as an assessor in any particular case if there is no nominated assessor able to sit.
- (6) The assessors shall be persons having experience or knowledge of labour relations.
- (7) The full time assessors shall be appointed for a period of five years on such terms and conditions as may be determined by the Minister -
  - (i) in consultation with the Minister of Finance;

- (ii) after consultation with the Judicial Service Commission; and
  - (iii) after consultation with the Industrial Relations Council.
- (8) The decision of the Labour Appeal Court shall be –
- (a) on matters of fact, the majority of the court; and
  - (b) the judge, on matters of law.
- (9) No proceedings in the Labour Appeal Court are invalid because –
- (a) the appointment of an assessor was defective; or
  - (b) after the commencement of proceedings, the Court proceeds without an assessor because –
    - (i) the assessor is unable to continue to sit as an assessor in the case; or
    - (ii) the judge removes the assessor from the proceedings for good cause.
- (10) The Registrar of the Labour Court shall be the Registrar of the Labour Appeal Court.

### **38A Jurisdiction of Labour Appeal Court**

- (1) The Labour Appeal Court has exclusive jurisdiction –
- (a) to hear and determine all appeals against the final judgements and the final orders of the

Labour Court;

- (b) to hear and determine all reviews -
  - (i) from judgements of the Labour Court;
  - (ii) from arbitration awards issued in terms of this Act; and
  - (iii) of any administrative action taken in the performance of any function in terms of this Act or any other labour law.
- (2) Notwithstanding the provisions of any other law, the Labour Appeal Court may hear any appeal or review from a decision of any Subordinate Court concerning an offence under this Code and any other labour law.
- (3) Notwithstanding the provisions of subsection (1), the judge of the Labour Appeal Court may direct that any matter before the Labour Court or a matter referred to the Directorate for arbitration in terms of section 227 be heard by the Labour Appeal Court sitting as a court of first instance.
- (4) Subject to the Constitution of Lesotho, no appeal lies against any decision, judgement or order given by the Labour Appeal Court.

### **38B Rules for the Labour Appeal Court**

The Chief Justice of the High Court may, by notice in the Gazette, make rules for the purpose of regulating the procedures of the Labour Appeal Court.”.

### **13. National Advisory Committee on Labour**

The principal law is amended in section 42(1) by deleting subsection (d) and substituting the following:

- “(d) to advise the Minister on any matter -

- (i) referred to it under any provision of this Code;
- (ii) connected with the employment of workers, industrial relations or organisations of employers or workers as is referred to it by the Minister.”.

**14. National Advisory Council on Occupational Safety, Health and Welfare**

The principal law is amended in section 46 by inserting a new subsection (8):

“(8) For the purposes of this section, “Council” means the National Advisory Council on Occupational Safety, Health and Welfare referred to in subsection (1).”.

**15. The principal law is amended by inserting the following sections after section 46:**

**“46A Industrial Relations Council**

- (1) There shall be established an Industrial Relations Council.
- (2) The Council shall consist of -
  - (a) the Principal Secretary, who shall chair the Council;
  - (b) three members representing the Government;
  - (c) three member representing the employers; and
  - (d) three member representing the employees.
- (3) The Director of Dispute Prevention and Resolution shall be an ex officio member of the Industrial Relations Council and shall be its secretary.
- (4) The Minister shall -
  - (a) appoint the members representing -

- (i) the Government;
    - (ii) the employers, after consultation with the employer representatives of the National Advisory Committee on Labour; and
    - (iii) the employees, after consultation with the trade union representatives of that Committee; and
  - (b) publish the names of the members in the Government Gazette.
- (5) The Principal Secretary and the Director of Dispute Prevention and Resolution are not entitled to vote.
- (6) The members of the Council shall be appointed for a term of three years.
- (7) The Minister shall remove a member from membership -
- (a) if that member has committed misconduct rendering that member unfit to be a member; or
  - (b) if the member is an employer or employee member, on the recommendation of the employer or employee representatives of the National Advisory Committee on Labour, as the case may be.
- (8) The functions of the Council shall be -
- (a) to advise on the qualifications and appointment of -
    - (i) the judges and the assessors of the Labour Court and the Labour Appeal Court;
    - (ii) the Director of Dispute Prevention and Resolution and the Deputy Director; and
    - (iii) the conciliators and arbitrators contemplated in section 46B(3)(a);

- (b) to make the rules for conciliation and arbitration proceedings under the auspices of the Directorate of Dispute Prevention and Resolution;
  - (c) to make recommendations to the Minister on -
    - (i) codes of good practice, model collective agreements and guidelines on conciliation and arbitration;
    - (ii) a tariff of fees for part-time conciliators and arbitrators; and
    - (iii) for the improvement of dispute prevention and resolution;
  - (d) to make annual reports to the Minister on the state of dispute prevention and resolution in Lesotho and to table that report with the National Advisory Committee on Labour.
- (9) The Council shall determine its own rules and procedures for the conduct of its functions.
- (10) The Minister shall, in consultation with the Minister of Finance, determine the allowances payable to the members of the Council.

**46B Directorate of Dispute Prevention and Resolution**

- (1) There shall be a Directorate of Dispute Prevention and Resolution.
- (2) The Directorate shall be -
  - (a) a juristic person; and
  - (b) independent of the Government, any political party, trade union, and employer or employers' organisation.
- (3) The Directorate shall consist of -



- 
- (a) the Director, Deputy Director, conciliators and arbitrators who shall be appointed by the Minister after consultation with the Council; and
  - (b) staff seconded by the Principal Secretary.
- (4) The Minister shall determine the terms and conditions of employment of the persons appointed in terms of subsection (3)(a) -
- (i) in consultation with the Minister of Finance;
  - (ii) after consultation with the Judicial Service Commission; and
  - (iii) after consultation with the Industrial Relations Council.
- (5) The functions of the Directorate shall be -
- (a) to attempt to prevent and resolve trade disputes through conciliation;
  - (b) to resolve trade disputes through arbitration;
  - (c) to advise employers, employers' organisations, employees and trade unions on the prevention and resolution and prevention of trade disputes;
  - (d) to compile and publish -
    - (i) information about its activities;
    - (ii) statistics on dispute prevention and resolution; and
    - (iii) significant arbitration awards.
- (6) In order to perform its functions the Directorate may appoint a conciliator in the Directorate or a part-time conciliator to -

- 
- (a) conciliate a dispute referred to it;
- (b) attempt to prevent or resolve a dispute if the Director apprehends that a dispute may arise or escalate.
- (7) The Directorate shall be financed from monies appropriated by Parliament.
- (8) The Director is the chief accounting officer for the Directorate.
- (9) The Director is responsible for the proper management and functioning of the Directorate.
- (10) The Director may delegate any of the functions conferred on the Director by this Act except the functions referred to in subsection (8).
- (11) The Directorate or its officers shall not be liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the performance of its functions.
- (12) The Directorate or its officers shall not disclose to any person or in any court any information, knowledge or document that it or one of them acquired on a confidential basis or without prejudice in the performance of its functions except on the order of a court.”.
- 16.** The principal law is amended by deleting the heading to section 66 and substituting **“Unfair dismissal”**.
- 17. Evasion of employer’s obligations**
- The principal law is amended in section 67 by inserting the words “or arbitrator” after the words “Labour Court”.
- 18. Written statement of reasons for dismissal**
- The principal law is amended in section 69(5) by deleting the words “the Court” and substituting the words “the Labour Court or arbitrator”.
-

**19. Time Limit**

The principal law is amended by deleting section 70.

**20. Remedies**

The principal law is amended in section 73 by inserting the words "or arbitrator" after the word "Court" wherever it appears in that section.

**21. Charges; costs**

The principal law is amended in section 74 -

- (a) in subsection (1), by inserting the words "or arbitrator" after the word "Court"; and
- (b) in subsection (2), by inserting the words "or arbitrator" after the word "Court" in that subsection.

**22. Discrimination against union members and officials**

The principal law is amended in section 196 by deleting subsection (1) and substituting the following subsection:

- "(1) (a) Every person has the right -
- (i) to participate in forming a trade union;
  - (ii) to join a trade union; and
  - (iii) to participate in its lawful activities.
- (b) No person may discriminate against an employee, or a person applying for employment, for exercising any right conferred by this Act.
- (c) Any breach of the provisions of this subsection is an unfair labour practice."

**23. The principal law is amended by inserting, after section 198, the following sections:**

**“198A Duty to bargain in good faith**

- (1) For the purposes of this section -
  - (a) “a recognised trade union” means a registered trade union that has been recognised by an employer or employers’ organisation as a collective bargaining partner;
  - (b) “a representative trade union” means a registered trade union that represents the majority of the employees in the employ of an employer;
  - (c) “a majority of employees in the employ of an employer” means over 50% of those employees.
- (2) An employer shall bargain collectively in good faith with a representative trade union.
- (3) In any collective bargaining relationship -
  - (a) a recognised trade union shall bargain in good faith with any employer or employers’ organisation;
  - (b) an employer or employers’ organisation shall bargain in good faith with the recognised trade union.
- (4) A breach of the provisions of this section shall be an unfair labour practice.

**198B Summary determination of representativeness dispute**

- (1) Any dispute about whether a registered trade union is representative for the purpose of this section shall be referred to the Directorate for summary determination by an arbitrator appointed by the Director.
- (2) In order to make that determination, the arbitrator may -
  - (a) make any necessary inquiries;

- (b) if appropriate, conduct a ballot of the employees;
- (c) take into account any other relevant information.”.

**24. Liability and rights in contract**

The principal law is amended in section 219 by -

- (a) deleting the colon at the end of subsection (2)(c);
- (b) deleting the proviso; and
- (c) inserting a new subsection (3) as follows:

“3. Nothing in this section renders the agreements referred to in subsection (2) unlawful.”.

- 25.** The principal law is amended by deleting sections 225 to 228 and substituting the following:

**“Division A: Dispute of interest**

**225 Settlement of disputes of interest**

- (1) Any party to a dispute of interest may, in writing, refer that dispute to the Directorate.
- (2) The party who refers the dispute shall satisfy the Director that a copy of the referral has been served on all the other parties to the dispute.
- (3) The Directorate shall appoint a conciliator who will have the responsibility for conciliating the dispute until it is settled.
- (4) The conciliator shall attempt to resolve the dispute through conciliation within 30 days of the referral.
- (5) If a dispute is resolved -
  - (a) the conciliator shall issue a report; and

- 
- (b) the settlement shall be reduced to writing and signed by the parties to the dispute.
- (6) If the dispute remains unresolved after the 30 day period -
- (a) the conciliator shall issue a report that the dispute is unresolved; and
- (b) that dispute shall be referred to arbitration if -
- (i) the parties to the dispute consent in writing to do so;
- (ii) the parties to the dispute are engaged in an essential service as defined in section 232(1) as amended.
- (7) Subject to subsection (8), the conciliator shall issue the report referred to in subsection (6) (a) as soon as the 30 day period expires unless the party who refers the dispute fails to attend a meeting convened by the conciliator, in which case the report shall only be issued after 30 days calculated from the date of that meeting.
- (8) If the other party to the dispute fails to attend the meeting referred to in subsection (7), the conciliator may issue the report immediately.

**Division B: Disputes of right**

**226 Disputes of right**

- (1) The Labour Court has the exclusive jurisdiction to resolve the following disputes:
- (a) subject to subsection (2), the application or interpretation of any provision of the Labour Code or any other labour law;
- (b) an unfair labour practice;
-

- (c) an unfair dismissal if the reason for the dismissal is -
  - (i) for participation in a strike;
  - (ii) as a consequence of a lockout; or
  - (iii) related to the operational requirements of the employer.
  
- (2) The following disputes of right shall be resolved by arbitration -
  - (a) a dispute referred by agreement;
  - (b) a dispute concerning the application or interpretation of -
    - (i) a collective agreement;
    - (ii) a breach of a contract of employment;
    - (iii) a wages order contemplated in section 51;
  - (c) a dispute concerning the underpayment of any monies due under the provisions of this Act;
  - (d) an unfair dismissal for any reason other than a reason referred to in subsection (1)(c).
  
- (3) Notwithstanding the provisions of this section, the Director may refer a dispute contemplated in subsection (2) to the Labour Court for determination if the Director is of the opinion that the dispute may also concern matters that fall within the jurisdiction of the Court.

#### **227 Settlement of disputes of right**

- (1) Any party to a dispute of right may, in writing, refer that dispute to the Directorate -
  - (a) if the dispute concerns an unfair dismissal, within 6 months of the date of the dismissal;

- 
- (b) in respect of all other disputes, within 3 years of the dispute arising.
- (2) Notwithstanding subsection (1), the Director may, on application, condone a late referral on good cause shown.
- (3) The party who refers the dispute shall satisfy the Director that a copy of the referral has been served on all the other parties to the dispute.
- (4) If the dispute is one that should be resolved by arbitration, the Director shall appoint an arbitrator to attempt to resolve the dispute by conciliation, failing which the arbitrator shall resolve the dispute by arbitration.
- (5) If the dispute is one that should be resolved by adjudication in the Labour Court, the Director shall appoint a conciliator to attempt to resolve the dispute by conciliation before the matter is referred to the Labour Court.
- (6) If the dispute is resolved -
- (a) the conciliator or arbitrator shall issue a report; and
  - (b) the settlement shall be reduced to writing and signed by the parties to the dispute.
- (7) If a dispute contemplated in subsection (4) remains unresolved after the arbitrator has attempted to conciliate it, the arbitrator shall resolve the dispute by arbitration.
- (8) If a party to a dispute contemplated in subsection (4) fails to attend the conciliation or hearing of an arbitration, the arbitrator may -
- (a) postpone the hearing;
  - (b) dismiss the referral; or
  - (c) grant an award by default.
-



- (9) If a dispute contemplated in subsection (5) remains unresolved after 30 days from the date of the referral -
- (a) the conciliator shall issue a report that the dispute remains unresolved;
  - (b) any party to the dispute may make an application to the Labour Court.
- (10) In the report contemplated in subsection (9)(a), the conciliator shall record any failure to attend a meeting convened by the conciliator to resolve the dispute.
- (11) In determining any order of costs contemplated in section 24(1)(r), the Labour Court shall take into account any failure to attend a conciliation meeting referred to in the report contemplated in subsection (10).

#### **228 Urgent proceedings**

- (1) Any party to a dispute that has been referred in terms of section 227 may apply to the Labour Court for urgent relief, including interim relief pending the resolution of a dispute by arbitration.
- (2) Notwithstanding the provisions of this Part, if the Labour Court grants urgent interim relief in terms of subsection (1), the Court shall give such directions on the conduct of the conciliation or, if applicable, the arbitration of the dispute as may be appropriate.

#### **Division C: General provisions concerning conciliation and arbitration under this Part**

##### **228A Representation in proceedings**

- (1) In any proceedings under this Part, a party to the dispute may appear in person or be represented only by -
  - (a) a co-employee;
  - (b) a labour officer, in the circumstances contemplated in section 16(b);

- (c) a member, an officer of a registered trade union or employers' organisation; or
  - (d) if the party to the dispute is a juristic person, by a director, officer or employee.
- (2) Notwithstanding subsection (1), a party to a dispute contemplated in section 226(2) may be represented by a legal practitioner if -
- (a) the parties agree; or
  - (b) the arbitrator concludes that it is unreasonable to expect a party to deal with the dispute without legal representation, after considering -
    - (i) the nature of the questions of law raised by the dispute;
    - (ii) the complexity of the dispute; and
    - (iii) the comparative ability of the opposing party or representatives to deal with the arbitration of the dispute.

#### **228B Process of conciliation**

In any conciliation proceedings under this Part the conciliator or arbitrator shall determine the process of conciliating the dispute which may include -

- (a) mediating the dispute;
- (b) conducting a fact finding exercise; and
- (c) making a recommendation to the parties, which may be in the form of an advisory arbitration award.

#### **228C Conduct of arbitration**

- (1) In any arbitration proceedings under this Part, the arbitrator may

conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the dispute with the minimum of legal formalities.

- (2) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the arbitrator.
- (3) If the parties to the dispute agree, the arbitrator may suspend the arbitration proceedings at any time before making an award and attempt to resolve the dispute through conciliation.

#### **228D Codes of good practice and guidelines**

The arbitrator shall take into account any code of conduct or guideline, published by the Minister in accordance with this Act, that is relevant to a matter being considered in the arbitration proceedings.

#### **228E Arbitration awards**

- (1) The arbitrator may make any appropriate award in terms of this Act, including but not limited to, an award -
  - (a) that gives effect to any collective agreement;
  - (b) that gives effect to the provisions and the principles of this Act;
  - (c) that includes, or is in the form of, a declaratory order; and
  - (d) that includes -
    - (i) the re-instatement or re-employment of an employee; and
    - (ii) compensation or damages.
- (2) The arbitrator may not include an order for costs in the award unless a party, or the person who represented that party in the arbi-

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tration proceedings, acted in a frivolous or vexatious manner -

- (a) by proceeding with or defending the dispute in the proceedings;
  - (b) in its conduct in the proceedings.
- (3) Within 30 days of the conclusion of the arbitration proceedings -
- (a) the arbitrator shall issue an award with brief reasons signed by that arbitrator;
  - (b) the Director shall serve a copy of that award to each party to the dispute or the person who represented the party in the arbitration proceedings; and
  - (c) the Director shall file the original of that award with the Registrar of the Labour Court.
- (4) On good cause shown the Director may extend the period within which the award and the reasons are to be served and filed.
- (5) An award issued by the arbitrator shall be final and binding and shall be enforceable as if it was an order of the Labour Court.
- (6) Any arbitrator who has issued an award, acting on the arbitrator's own accord or, on the application of any affected party, may vary or rescind an award -
- (a) erroneously sought or erroneously made in the absence of any party affected by that award;
  - (b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
  - (c) granted as a result of a mistake common to the parties to the proceedings.
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**228F Review of arbitration awards**

- (1) Any party to a dispute who seeks to review any arbitration award issued under this Part shall apply to the Labour Appeal Court for an order setting aside the award -
    - (a) within 30 days of the date the award was served on the applicant, unless the alleged defect involves corruption; or
    - (b) if the alleged defect involves corruption, within 30 days of the date that the applicant discovers the corruption.
  - (2) On good cause shown, the Labour Appeal Court may condone the late filing of an application to review an arbitration award.
  - (3) The Labour Appeal Court may set aside an award on any grounds permissible in law and any mistake of law that materially affects the decision.”.
26. The principal law is amended by deleting sections 229 and 230 and substituting the following sections:

**“229. When a strike is lawful**

- (1) A strike is lawful if -
  - (a) it concerns a dispute of interest;
  - (b) that dispute of interest has been referred to the Directorate in terms of section 225;
  - (c) that dispute remains unresolved;
  - (d) the time periods contemplated in section 225 have expired;
  - (e) a notice of intention to commence a strike has been served on the other party to the dispute and on the Directorate; and

- (f) at least 7 days from the date of that notice has expired.
- (2) The notice referred to in subsection (1)(e) may be served before the expiry of the time periods contemplated in section 225.
- (3) A strike is unlawful if -
  - (a) it is not in accordance with the provisions of subsection (1);
  - (b) the parties to the dispute have consented to having the dispute resolved by binding arbitration.

**230. When lockout is lawful**

- (1) A lockout is lawful if -
  - (a) it concerns a dispute of interest;
  - (b) that dispute of interest has been referred to the Directorate in terms of section 225;
  - (c) that dispute remains unresolved;
  - (d) the time periods contemplated in section 225 have expired;
  - (e) a notice of intention to initiate a lockout has been served on the other party to the dispute and on the Directorate; and
  - (f) at least 7 days from the date of that notice has expired.
- (2) The notice referred to in subsection (1)(e) may be served before the expiry of the time periods contemplated in section 225.
- (3) A lockout is unlawful if -
  - (a) it is not in accordance with the provisions of subsection (1);

- (b) the parties to the dispute have consented to having the dispute resolved by binding arbitration.”.

**27. Offences in connection with strikes and lockouts declared unlawful**

The principal law is amended by inserting “229” after the word “section” and before “230 or 232(5)”.

**28. Threat to essential services**

The principal law is amended in section 232 by replacing the words “Labour Commissioner” with “Director” where they appear in that section.

**29. PART XX - PICKETTING, INTIMIDATION AND OTHER MATTERS RELATING TO TRADE DISPUTES.**

The principal law is amended in all the sections under Part XX by deleting the words “section 230” wherever they appear and substituting them with “sections 229 and 230”.

**30. The principal law is amended by deleting section 240 and substituting the following section:**

**“240 Regulation and codes of goods practice**

- (1) The Minister may, after consultation wherever appropriate with employers’ and employees’ organisations representative of the interests concerned, make Regulations for the purpose of giving effect to the provisions of the Code.
- (2) The Minister shall, in consultation with the National Advisory Committee on Labour, at intervals of no more than two years, review the fines and fees provided by the Code and adjust them if deemed necessary.
- (3) The Minister may, after consultation with the Industrial Relations Council, publish codes of good practice.
- (4) Any person interpreting or applying this Act shall take any relev-

ant code of good practice into account.”.

### **31. Transitional provisions**

The principal law is amended by the insertion of the following new section after section 242:

#### **“243 Transitional provisions**

- (1) Notwithstanding the provisions of section 38(3), the first judge to be appointed to the Labour Appeal Court shall be appointed in terms of section 120 of the Constitution of Lesotho.
- (2) Before the Judicial Service Commission makes a recommendation in terms of section (1), it shall -
  - (a) call for nominations for the office from both sitting judges and from persons who are not judges but meet the requirements for appointment as a judge; and
  - (b) consult with the Industrial Relations Council on the recommendation.
- (3) In the case where the person to be appointed judge of the Labour Appeal Court is serving judge, the Chief Justice shall, in consultation with the Industrial Relations Council, assign such person as the judge of the Labour Appeal Court.
- (4) In the case where the person to be appointed is not a serving judge, that person shall be appointed in terms of the Constitution of Lesotho after the consultation referred to in subsection (2)(b).
- (5) The President, Deputy President and the Registrar of the Labour Court shall be deemed to be appointed under the provisions of this Act.” .



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