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LABOUR CODE (AMENDMENT) ACT 1997

ACT NO. 9 OF 1997

An Act to amend the Labour Code Order, 1992'**Enacted by the Parliament of Lesotho****Short title.**

1. This Act may be cited as the Labour Code (Amendment) Act 1997.

Scope of application

2. The principal law is amended in section 2(2) (a) by inserting the following after subparagraph (iii) —

“(iv National Security Service;
(v) Lesotho Prison Services;”.

Composition of Court

3. The principal law is amended in section 23 —

- (a) by deleting the words “subsection (5)” and substituting the words “subsection (6)” in the last line of subsection (1) (c), and
(b) by inserting the following subsection after subsection (1) —

“(1A) The Minister may determine
(a) the terms of reference;
(b) tenure of office; and
(c) remuneration,

of ordinary members of the Labour Court.”.

Exclusive civil jurisdiction

4. The principal law is amended in section 25(1) by deleting the words “ordinary or”.

Power to summon witnesses, etc.

5. The principal law is amended in section 29 by deleting subsection (3) and substituting the following —

“(3) Notwithstanding section 27 (2), any person who is summoned to give evidence or to produce any book, document, record or other item or giving evidence before the Court shall be entitled to the same privileges and immunities as if that person were summoned to attend or were giving evidence in civil proceedings before the High Court.”.

Power to obtain evidence

6. The principal law is amended in section 30 by deleting the words “President of the Court” wherever they appear and substituting the word “Court”.

Penalty for contempt of court

7. The principal law is amended in section 32 —

- (a) by deleting the word "President" which appears in the fourth line between the words "the" and "may order", and substituting the word "Court";
- (b) by deleting the words "President of the" which appear in the eighth line between the words "as the" and "Court".

Severance payments

8. The principal law is amended in section 79 by inserting the following after subsection (6) —

- "(7) Where an employer operates some other separation benefit scheme which provides more advantageous benefits for an employee than those that are contained in subsection (1) he may submit a written application to the Labour Commissioner for exemption from the effect of that subsection.
- (8) An application under subsection (7) shall contain full particulars of the scheme operated by the employer and shall be accompanied by a certified copy of the rules.
- (9) If upon considering an application under subsection (7) the Labour Commissioner is satisfied that the scheme operated by the employer offers better advantages to the employee, the Labour Commissioner shall exempt the employer from the effect of subsection (1)."

Unsettled disputes: conciliation

9. The principal law is amended in section 226(2) by deleting the words "seven days" and substituting "fourteen days", in the fourth line thereof.

Notice of strikes and lock-outs

10. The principal law is amended in section 229 by deleting the last sentence of subsection (3) and substituting the following — "In such a case the seven-day notice required under subsection (2) shall still be given."

Essential services

11. The principal law is amended in section 232 by deleting subsection (1) and substituting the following:

- "(1) For the purpose of this section of the Code the term "essential service" means —
- (a) an undertaking that provides a service the interruption of which would endanger the life, personal safety or health of all or any part of the population of Lesotho; or
- (b) a service rendered by any person in respect of an under-

taking which may be specified by the Minister by Notice in the Gazette.”.

NOTE

1. Order No. 24 of 1992
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**GOVERNMENT NOTICE NO. 40 OF 1997
EXPLANATORY MEMORANDUM TO THE
LABOUR CODE (AMENDMENT) BILL, 1997**

Introduced into the National Assembly on the 13 May 1997
(Circulated by authority of the Minister of Employment and Labour,
Honourable N. V. Molopo)

OUTLINE

The purpose of the Bill is to amend the Labour Code Order No. 24 of 1992 in order to redress short-comings which have become apparent since its coming into operation on 1 April 1993. This is done in the interest of sound industrial relations.

NOTES ON CLAUSES

Clause 1 Short title and commencement

2. This clause provides for the citation of the Labour Code (Amendment Act, 1997).

Clause 2 Scope of application

3. This clause provides for additional categories of employees to be exempted from operation of provisions of the principal law in terms of section 2(2) thereof.

Clause 3 Composition of Court

4. This clause provides for the determination of the terms of appointment of the ordinary members of the Labour Court as they have not been provided for under the principal law.

Clause 4 Exclusive jurisdiction

5. The principal law was meant to confer exclusive civil jurisdiction on the Labour Court on issues pertaining to application of its provisions so that such issue cannot properly be brought before any subordinate court. This clause is meant to clarify that issue as the principal law makes reference to both ordinary and subordinate courts at section 25 hereof.

Clause 5 Power to obtain evidence

6. This clause is meant to rectify the error in empowering the Pre-

sident of the Labour Court, instead of the Court itself, to obtain evidence as set out in Section 30 (1) of the principal law.

Clause 6 Penalty for contempt

7. This clause is meant to rectify the error in empowering the President of the Labour Court, instead of the Court itself, to order a penalty for contempt of court as set out in section 32 of the principal law.

Clause 7 Severance pay

8. This clause is meant to substantiate the provisions of Section 79 of the principal law on severance pay in order to make its application more practicable.

Clause 8 Unsettled disputes: conciliation

9. This clause alters the number of days prescribed by section 226 (2) of the principal law for the process of industrial action in order to make the provisions relating the settlement of disputes more practicable.

Clause 9 Notice of strikes and lock-outs

10. Provisions of section 229(3) render the settlement of disputes impossible and allows workers to strike readily. This does away with the notion of settlement of disputes first and strike action as a last resort, for as the section presently stands it is open to abuse.

Clause 10 Essential services

11. This clause is intended to expand the meaning of an essential service so as to allow for the Minister to list undertakings to be regarded as essential services for greater certainty.