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7th May 2020

Dear Member,

RE: IT WAS NOT EASY BUT TOGETHER WE DID IT

Members will recall that since the enactment of the Employment Code Act No. 3 of 2019, the ZFE Secretariat has been conducting sensitization workshops and has been interpreting the code to members continuously.

The feedback from the members has always been that the ECA is not an enabler for sustainable enterprise and therefore, does not create an environment for decent employment creation in the Country.

Your Secretariat continuously passed on this message to the Ministry of Labour and Social Security in addition to press statements issued on the Code. Some of our members directly wrote to the Minister of Labour and Social Security indicating their inability to comply with the Employment Code Act No 3 of 2019 as it comes in full force on 12th May 2020. The individual company letters to the Ministry contributed in strengthening the ZFE voice on raising the employers' concerns on the ECA.

Following the outbreak of the COVID-19 and its negative impact on Industry and the World of work at large your Secretariat requested the Ministry of Labour and Social Security to call for a special Tripartite Consultative Labour Council meeting to discuss the regulation of Labour market in the Country. The Ministry responded favorably and a special TCLC meeting for this purpose was held on Thursday 26th March 2020. Before this meeting ZFE had submitted sections of concerns to the Social Partners during the TCLC meeting that was held on 17th December 2019.

At the 26th March 2020 Special TCLC meeting, ZFE submitted the same concerns earlier submitted in December in addition to COVID 19 circumstances. At this meeting the following resolutions were made;

1. To place employees on paid annual leave. This was to include those with few or without accrued leave days. However, the days taken by employees with few or without accrued leave days shall be subject to deduction once they accrue such days;
2. In the event that resolution 1 above is not feasible, an employer could place the employees on forced leave and during this time such employees could be entitled to basic pay as provided for in Section 48 of the Employment Code Act No. 3 of 2019.
3. If the present public health threat deteriorates or fails to abate within an agreed timeframe, the Ministry through the Tripartite Consultative Labour Council (TCLC)

shall consider further mitigating action which shall be advised to the public in due course.

As a follow up on the 26th March 2020 special TCLC meeting, another special TCLC meeting was held on Thursday, 7th May 2020. At this meeting the Social Partners agreed that it is critical that TCLC innovates measures to aid smoothen employment and Labour relations during this unprecedented time with the goal of preserving as many jobs as possible without sacrificing the viability of enterprises. The TCLC partners agreed that there is need for an economy – wide perspective on this matter and an imperative need for a dictate balance between the interest of employers, employees and the Government as there shall be life beyond the COVID-19 outbreak.

Most importantly the TCLC Partners agreed that measures to be agreed upon by the TCLC may determine whether or not the economy can remain resilient through-out the outbreak and recover growth gain rapidly after. The TCLC Partners noted that the countries that were affected by the Economic down-turn of 2008 and failed to innovate suffered major recessions and it is incumbent upon the TCLC to ensure that the 7th National Development plan's goal for Zambia to be a sustainable middle income Country by 2030 is realized.

MAJOR RESOLUTIONS AGREED UPON CONCERN THE EMPLOYMENT CODE ACT No. 3 OF 2019

The Government will not completely suspend the implementation of the Code but agreed with the social partners on the following;

- 1. Section 48 of the ECA:** Employers who have been severely hit by the coronavirus and are not able to keep employers on forced leave and pay them basic pay as provided for under section 48 of the Employment Code Act No. 3 of 2019 can now apply to the Ministry to receive exemptions from the requirement to pay basic pay but instead simply place employees on unpaid leave.

The application for exemptions will require the Ministry of Labour and Social Security to;

- (a) review current quarterly tax returns and an examination of the extent of reduction in turnover compared to the last returns. All amended returns done to ZRA taking into consideration projected reduction in turnover.
- (b) documentary evidence of suspension or reduction of business and the effect on the turnover.
- (c) the current cash flow projections and verify the cash stress or financial constraints on the company.
- (d) review of the audited financial statements for the Ministry to check the profitability and any reserves from previous years.
- (e) review of the staff payroll to compare the staff costs with the current projected income.

2. Section 36 of the ECA: Exempt all employers from the application of section 36 on annual leave which currently prohibits carrying forward leave days not taken in any given financial year. Terms and conditions at the place of work should regulate leave provisions.

3. Section 37 of the ECA

The TCLC came to an agreement that the proposal in the issues paper that initiated discussions on Labour law reforms which was agreed to by the TCLC was for a provision of a commutation formula, unfortunately the formula in the Employment Code Act was cast as an Annual Leave benefit formula. To compound the situation, the ECA now contains a grave error that the printer replaced a division sign with another bracket that employees argue to mean a multiplier sign. TCLC agreed to have this formula suspended. Employers should now use the formula in the condition of service that has always been used in commutation of leave days before the ECA was formulated.

4. Section 55 (2) of the Employment Code Act on Notice of Redundancy:

Exemption to an employer from the requirement of giving notice of not less than Sixty (60) days' notice to an authorized officer of the impending termination by reason of redundancy if an employer can prove financial incapacity to the Labour Commissioner and the extreme urgency accompanying the termination. The Statutory Instrument (SI) to be issued will specify the relevant financial documents to be used to assess such incapacity and urgency.

5. Sections 54 and 73 on Gratuity: to exempt expatriates, Domestic Sector, Agricultural Sector, apprentice. This exemption will be extended to Senior Management employees in all sectors as they are able to negotiate for their conditions of employment that may include gratuity with their employers.

6. Section 75 on overtime - The ECA currently provides for overtime to be paid to an employee who on agreement with employers works for more than 48 hours in a week. A Manager is covered in the definition of an employee. Agreement was reached to exempt expatriates, and management employees from the application of over time.

Please note that the Minister of Labour and Social Security will soon issue a Statutory Instrument on these issues and once the SI is issued it will be law.

The Board Management and Staff of ZFE wish to thank members who made submissions to both the ZFE Secretariat and directly to the Ministry of Labour and Social Security as together we have achieved something.

Yours faithfully,
ZAMBIA FEDERATION OF EMPLOYERS



Harrington Chibanda
EXECUTIVE DIRECTOR

(An Affiliate to International Organisation of Employers and a Partner to the International Labour Organisation)