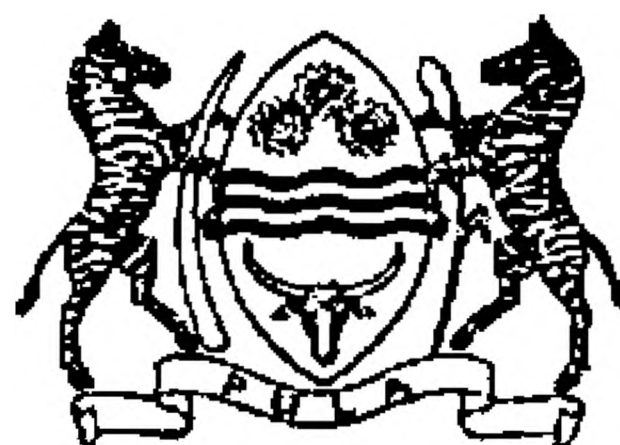


# EMPLOYMENT (AMENDMENT) ACT, 1992

No. 26



of 1992

## ARRANGEMENT OF SECTIONS

### SECTION

1. Short title
2. Amendment of section 2, Cap. 47:01
3. Amendment of section 20
4. Amendment of section 21 (1)
5. Amendment of section 26
6. Deletion of section 27
7. Amendment of section 28
8. Amendment of section 40
9. Amendment of section 81 (3)
10. Amendment of section 95
11. Amendment of section 96
12. Amendment of section 99
13. Amendment of section 101
14. Deletion of sections 103, 115, 116 and 119
15. Amendment of section 117
16. Amendment of section 137
17. Deletion of sections 150—165

**An Act to amend the Employment Act**

*Date of Assent:* 29th September, 1992.

*Date of Commencement:* 9th October, 1992.

ENACTED by the Parliament of Botswana.

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| <ol style="list-style-type: none"><li>1. This Act may be cited as the Employment (Amendment) Act, 1992.</li><li>2. (1) Section 2 of the Employment Act, hereinafter referred to as “the Act”, is amended in subsection (1) thereof —<ol style="list-style-type: none"><li>(a) by substituting for the definition of “casual employee” the following definition —<p>““casual employee” means an employee whose terms of contract are for a period of not more than twelve months, and which contain provisions limiting employment to not more than three days, or more than twenty two and a half hours work per week;”;</p></li><li>(b) in the definition of “continuous employment”, by the deletion of the proviso thereto; and</li><li>(c) in the definition of “contract of employment” by the deletion of the words “including a contract of apprenticeship or an indenture to learn”.</li></ol></li></ol> | <p>Short title<br/>Amendment<br/>of section 2<br/>Cap. 47:01</p> |
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(2) Section 2 (3) of the Act is amended by deleting the words “Section 28 and”.

Amendment  
of section 20

3. Section 20 of the Act is amended —

- (a) in subsection (1) thereof by substituting for the words “six months” the words “three months in the case of unskilled employees, and twelve months in the case of skilled employees,”;
- (b) in subsection (2) thereof, by inserting immediately after the words “section 18 or 19” the words “by not less than 14 day’s notice”;
- (c) in subsection (3) thereof, by deleting the words “and the effect of subsection (2)”.

Amendment  
of section  
21 (1)

4. Section 21 (1) of the Act is amended by substituting for the words “Part VI” the words “Part VII”.

Amendment  
of section 26

5. Section 26 of the Act is amended by adding at the end thereof the following new subsection —

“(4) For the purposes of this section the term “serious misconduct” shall, without prejudice to its general meaning, include or be deemed to include the following —

- (a) wilful disobedience of lawful and/or reasonable orders given by the employer;
- (b) wilful, express or implied, misrepresentation by the employee in respect of his skills or qualifications;
- (c) habitual or wilful neglect of duties;
- (d) acts of theft, misappropriation or wilful dishonesty against the employer, another employee, or a customer or client of the employer;
- (e) acts of violence;
- (f) damage caused wilfully or by gross negligence to movable or immovable property of the employer;
- (g) wilful disclosure of confidential information or trade secrets where such disclosure is or is likely to be detrimental to the interests of the employer;
- (h) inability to carry out normal duties, due to the consumption of alcohol or habit-forming drugs;
- (i) wilful refusal to obey or comply with any safety rules or practices for the prevention or control of accidents or diseases;
- (j) consistent work performance below average despite at least two written warnings;
- (k) offering or receiving bribes;
- (l) persistent absence from work without permission.”.

Deletion of  
section 27

6. The Act is amended by the deletion of section 27 therefrom.

Amendment  
of section 28

7. (1) Section 28 (1) of the Act is amended —

- (a) by substituting for the words “the employee a severance benefit at the rate of one day’s basic pay in respect of each of the first 60 months continuous employment and at the rate of two day’s basic pay in respect of each month of continuous employment” the

words “an employee who has been in continuous employment with him for 60 months or more, a severance benefit at the rate prescribed”;

(b) by substituting for proviso (i) the following new proviso —

“(i) severance benefit shall be payable at the conclusion of each period of 60 months continuous service by the employee, or at the termination of his employment, at the option of the employee;”;

(c) by substituting for proviso (ii) the following new proviso —

“(ii) where, upon the date of payment of any severance benefit, the employee, or his dependent or beneficiary, is at that date or some future date entitled to the payment of a gratuity or pension or both a gratuity and pension in respect of the period of employment under the contract, no severance benefit which would otherwise be payable in terms of this section to the employee or his dependent or his beneficiary shall be payable.”.

(2) Section 28 (2) is amended in paragraph (a) (ii) by deleting the words “but excluding therefrom any payment in kind”.

(3) Section 28 (3) is amended by inserting immediately after the word “may” in line 2 the words “, where there is a dispute as to the amount payable,”.

8. Section 40 of the Act is amended by substituting for paragraph (b) thereof the following paragraph — Amendment of section 40

“(b) falls into a category of contracts prescribed by the Minister for the purposes of this Part.”.

9. Section 81 (3) of the Act is amended by substituting for the words “the wages” in line 12 the following — Amendment of section 81 (3)

“any wages, ex gratia payments, severance pay, gratuities and payments for accrued leave”.

10. Section 95 of the Act is amended by adding at the end thereof the following words — Amendment of section 95

“, or at his option be granted a day or days off, as the case may be, in lieu thereof.”.

11. (1) Section 96 (2) of the Act is amended by substituting for the proviso thereto the following new proviso — Amendment of section 96

“Provided that where an employee is required to work during a rest period, he shall be granted a similar rest period in substitution therefor, before the next following rest period is due.”.

(2) Section 96 is amended by substituting for subsection (5) thereof the following subsection —

“(5) If an employee is required to work in any one day more than the number of hours in the ordinary daily working period, the number of hours so worked in excess shall be deemed, for the purposes of this Act, to be overtime, and the employee shall be paid for such overtime one and a half times the wages he would have been paid had the time worked not been overtime.”.

(3) Section 96 (7) is amended by substituting for the number "10" the number "14".

(4) Section 96 is amended by substituting for subsections (8) and (9) thereof the following subsection —

"(8) For the purpose of calculating the daily rate of payment and/or benefits due for overtime to an employee employed on a monthly rate of pay the following divisors shall be applied —

22 in respect of a 5 day working week;

24 in respect of a 5 1/2 day working week;

26 in respect of a 6 day working week:

Provided that the Minister may, by regulations, prescribe different methods of calculation in respect of any particular specified circumstances."

(5) Section 96 (10) is amended by substituting for the number "10" the number "12".

(6) Section 96(12) is amended by substituting for the number "10" the number "14".

Amendment  
of section 99

12. Section 99 of the Act is amended —

(a) by substituting for subsection (2) thereof the following subsection —

"(2) Every employer shall grant to every employee employed by him leave with basic pay at the rate of not less than 1,25 days per month.";

(b) in subsection (6), by substituting for paragraph (b) thereof the following new paragraph —

"(b) at the rate of 1,25 days in respect of every month or part of a month of continuous employment after he last became entitled to leave under sub-section (2)."

Amendment  
of section 101

13. Section 101 of the Act is amended —

(a) by substituting for subsection (1) thereof the following subsection —

"(1) Any employee shall, after medical examination at the expense of the employer by a medical officer nominated by the employer, or after medical examination at the expense of the employee by a medical officer nominated by the employee, be entitled to such sick leave as the medical officer concerned recommends, and shall be entitled to be paid his basic pay for at least 14 days of such sick leave in any one year of continuous employment."; and

(b) by deleting subsections (2), (3) and (6).

Deletion of  
sections 103,  
115, 116 and  
119

14. The Act is amended by deleting sections 103, 115, 116 and 119 therefrom.

Amendment  
of section 117

15. Section 117 of the Act is amended by adding at the end thereof the following subsection —

“(9) Where a female employee works for another employer during any period of absence from work in accordance with the terms of this section, she shall forfeit her entitlement to maternity allowance.”.

16. Section 137 of the Act is amended by deleting subsections (2) and (3) thereof. Amendment  
of section 137

17. The Act is amended by deleting therefrom sections 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164 and 165. Deletion of  
sections  
150—165

PASSED by the National Assembly this 5th day of September, 1992.

C.G. MOKOBI,  
*Clerk of the National Assembly.*