

# Proposed amendments to the Employment Rights Act

18 December 2012

Following the Order Paper issued on 11 December 2012 at the National Assembly, five new bills were introduced amongst which are "The Employment Relations (Amendment) Bill" and "The Employment Rights (Amendment) Bill".

## Our Comments

Two sections affecting Gratuity have been introduced in the Employment Rights (Amendment) Bill. We also comment below on the potential effect of changes regarding duration of employment and normal retirement age.

### 1. Gratuity on Retirement

Section 49 of the Employment Rights Act 2008 refers to a gratuity paid by an employer to a worker who has been in continuous employment with the former for a period of twelve months or more.

This gratuity was defined as 15 days of remuneration for every period of 12 months' continuous employment (with part years counting pro-rata). This was typically interpreted by employers as meaning 15 calendar days (rather than working days), i.e. half a month's salary or 2 weeks' wages as mentioned in the previous Labour Act, for each year of service. However, it was also possible to interpret the "15 days" more generously as meaning "15 working days".

The proposed amendment in the Bill now brings a new definition to the number of days a month/fortnight/week should consist of for the purpose of this calculation. A month shall be deemed to consist of 26 days, a fortnight of 12 days and a week of 6 days.

As such, retirement gratuity would henceforth be based on a 15/26 formula instead of the previous 15/30 formula for monthly paid

employees. For weekly paid employees, the formula would become 2.5 weeks' pay for each year of service.

This could impose significant additional costs on employers, particularly those who do not already provide any additional benefits under occupational pension plans and therefore have to provide for the full or residual cost of gratuities on their balance sheets.

### 2. Gratuity on Death

A new section on gratuity on death has been introduced as section 49 A:

*"Where a worker who has been in continuous employment with the same employer for a period of not less than 12 months dies, that employer shall pay a gratuity –*

*(a) to the spouse of the deceased worker; or  
(b) where there is no surviving spouse, to the dependants of the deceased worker in equal proportion, irrespective of any benefits the spouse or dependants may be entitled to under the National Pension Act or any other enactment."*

The amount of the gratuity would be calculated in the same way as for retirement under section 49 of the Act.

Again, this could impose additional costs on employers who do not already provide some form of life assurance cover to their employees through membership of occupational pension plans or group insurance schemes.

### 3. Duration of Employment

The proposed Bill also redefines the duration of an employment agreement under Section 5 subsection (3) of the Employment Rights Act 2008 as:



*"where a worker, other than a migrant worker, has been in the continuous employment of an employer under one or more determinate agreements for more than 24 months, in a position which is of a permanent nature, the agreement shall, with effect from the date of the first agreement, be deemed to be of indeterminate duration."*

This could result in greater job security for employees who are offered contractual employment for a series of limited periods (with short breaks in between) rather than permanent employment.

#### **4. Normal Retirement Age**

It is proposed that a new subsection 49 (1A) would be introduced in the Employment Rights Act:

*"Notwithstanding any agreement or any provision to the contrary in any other enactment, an employer shall not require a worker to retire before the retirement age."*

This proposed amendment confirms the Government's intention to extend the transition to a new normal retirement age of 65 to all private sector employees, even if they may have previously agreed with their employers to a normal retirement age of 60 or even some other age depending on the nature of their occupation. We consider this could impose significant constraints on employers who would normally prefer greater flexibility in setting normal retirement ages appropriate to their workforce.

A typical example of the difficulty with this "one size fits all" approach is in the area of professional sports. The proposed amendment as it is would require a professional football club to continue employing football players up to age 65 if they wish to carry on until then!

We shall continue to keep you updated on such changes through our future News Alerts. Please do not hesitate to contact us for any queries.



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