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The Impact of the Amended Labour Provisions of the Labour Act 7:2005 on Industrial Relations in Gweru Urban Commercial Sector

By

VONAI CHIRASHA
Department of Human Resource Management,
Midlands State University,
Gweru, Zimbabwe.

and

MILDRED MAHAPA
Department of Human Resource Management,
Midlands State University,
Gweru, Zimbabwe.

Abstract

There are different relationships that arise out of the workplace ranging from the individual worker and the employer to collective groups of workers like workers committees and trade unions and the employer or groups of employers. Such relationships are governed by labour laws that come in the form of Labour Act that would have been passed by the Parliament. The research looked at amended Labour Act No 7:2005 and how it impacted on the industrial relations at workplace. It also looked at what influenced the amendment of these provisions and whether they benefited the people they were supposed to benefit. It was established that the labour system is determined by a number of factors such as the ideology of ruling class, the socio-economic environment, politics and the balance of the class struggle. Based on the findings on the impact of the new provisions on industrial relations, the research revealed that the legislature's intention in amending the provisions was influenced more by other factors such as political influence and the country's status regionally and internationally, as compared to the need to improve industrial relations at work place. What emerged strongly from the research was that labour laws are amended by the legislature with little consultation of the stake holders and as a result some of the provisions amended created more problems at work place than addressing them. It is therefore recommended that the legislature make

intensive consultations prior to any amendment, so as to address problematic provisions in order to improve industrial relations and boost up moral among workers hence increasing productivity.

Labor law has been very important in guiding the contract of employment since 1901 when the Master's Servant Act was introduced. As labor law changes various scholars have been interested in defining rights of employers and employees and as such little attention was given to the impact of amending labor law on employment relationship. This study sought to evaluate how change was managed when Labor Act 7:2005 was amended and the impact it had on creating either a harmonious working relationship or a disharmonious relationship.

It is important to note that the ideology of the ruling class, the socio-economic environment, politics and the balance of class struggle all contribute to shape labor law at any given time.

Background

The first piece of legislation that governed labor was the Master and Servants Ordinance of 1901. Its main characteristics included the right of the employer to give penal sanctions for breach of contract and the right to fire. The employees had no rights. As a form of resistance the African workers engaged in disobedience actions conducted in "nooks and cronies of the day to day" work situation (Raftopolous. 1997). The difficult conditions which black workers underwent led the Wankje Colliery Strike 1912 and the Shamva Mine Strike of 1927 which attracted much attention from the authorities and the State enforced several measures which were as follows;

1. Industrial Conciliation Act Chap 233(No.l0 of 1934) which laid the basis of collective bargaining and establishment and regulation of bargaining forums in which labor and capital had equal representation. The right to strike was recognized though with restrictions.

2. Workmen's Compensation Act Chapter 232 1932 and amended Act 31, 1925, Act 17, 1930 Act 19, 1936) Provided for a compulsory system for compensation where employers were obliged to pay compensation to workers or their surviving spouse if they are injured or killed at work. However it only catered for coloreds and people of European descent and not natives.

3. Industrial Conciliation Act 1945 which increased state interference in trade unions as a way of stopping formation of political parties.

4. Native Labor Boards Act 1947 which entailed setting of minimum wages for blacks.

5. Industrial Conciliation Act 1959 Act which now incorporated black workers in private sector excluding those in agriculture, domestic service, government employees. The Act banned prohibition of raceAased trade unions, and suppressed militant television.

6. Factories and Workers Act 1951 provided state regulated enforced system of industrial safety for all employees excluding black workers in mining, farming and catering Industries.

The first black Labor Act to be introduced by the Zimbabwean government was the Employment Act 1980 which sought to redress the colonial legacy and dealt with the issue of wage discrimination, dismissal and minimum wages. This was followed by various amendments among which are Labor Relations Act 16/85, Labor Relations Amendment Act 17/2002 and Labor relations Act 7/2005. The political ideology by that time was socialist. The government wanted to introduce laws that would be away with racial discrimination and unfair labor practice by the white employers. This incorporated state regulation dismissals, direct state involvement in dispute settlement with creation of labor forums /courts like labor relations officers, and labor relations tribunal. On the other hand the state increased its interventions in labor disputes restricting the right to strike. During these amendments scholars have been more interested in focusing on the interpretation of provisions.

This Labor Act 7:2005 amendment was made on the basis of recommendation from International Labor Organization. The intention of the legislature was to democratize the workplace by bringing in certain provisions among the most pertinent are the following: The researcher was attracted by different ways in which stakeholders interpret some of the provisions in the recently amended Labor Act 2005 with particular reference to retrenchments laws which were now advocating for a fair dismissal. The interpretation of any labor provision has an impact in either creating a harmonious working environment which is normally characterized by peace, collaboration, meeting targets, and team working among other indicators. Misinterpretation of the same provision may have negative impact at workplace and this usually create a disharmonious relationship that is characterized by conflict, quarrels, high staff turnover, and increase in number of disciplinary hearings among other indicators.

Retrenchments section 12C of 7:2005 used to allow the Minister to make a decision within two weeks failure of which would mean the retrenchments would have been passed by the Minister. This was repealed because it was making retrenchments easy after the Ministry had failed to make a decision within two weeks, which implies that the employer may not proceed to retrench until such a decision has been finalized.

The International Labor Organization (ILO) defines retrenchment as "a fair dismissal" that must be for a valid reason which truly pertains to the operational requirements of the business; payment of severance allowances and benefits to affected employees and full consultation of workers representatives in any retrenchment exercise. The Government has shifted from the position where it controlled retrenchments to a position wher ,since the end of 1990, retrenchments have been negotiated between employers and employees. The intention was to give workers their rights, which go beyond the mere right to wages and notice, but encompassing the broad economic, social and psychological functions, which must be compensated on retrenchments. It was seen as super exploitation for employers to make vast profits while they pay workers small portion of the total value they create in the process of work. Fairness demands that when employment relationship ends due to no fault of the employee, the employee should at least be entitled to an adequate retrenchment package especially so as the years of service increase. The employer should pay some package resulting in a fairer balance of pains and gains (M Gwisai 2006). Since neither party is at fault, both should be involved in the retrenchment process and try to minimize as far as possible the adverse consequences. The legislature by amending the provision in 2005 wanted to make retrenchments easy if the Minister fails to make a decision within two weeks.

The other provision addressed by the paper is dispute handling where the new provision has now given Labour Court all the powers to handle dispute and cases are no longer referred to the High Court, instead they are now referred to the supreme court as the hierarchy will be shortened. The intention was to decentralize dispute handling by introducing workplace and industrial codes of conduct. According to Madhuku (1998), one of the criticisms that were made against the dispute settlement system in the Zimbabwe Labor Relations Act 1985 was that it took too long to be quick and effective at implementation. The system involved not less than six levels at which dispute could be resolved. In 1992 amendments were made to shorten the system of dispute settlement such that workplace disputes could be resolved within a short time.

According to Section 93, disputes are referred to the labor officer who will try to conciliate the parties. If conciliation is unsuccessful that is if disputing parties fail to come to an agreement within 30days after the Labor Officer attempted to settle the dispute he/she shall issue a certificate of no settlement to the parties. The matter shall be referred to the Labor Court.

The Labor officer shall refer the dispute to the Senior Labor Officer who shall refer the dispute to compulsory arbitration. Compulsory arbitration is whereby the Minister on recommendation by the Senior President of the Labor Court appoints an arbitrator there are no charges on compulsory arbitration as the State bears all costs.

Voluntary[7] arbitration is only when both parties elect to that route and parties appoint their own arbitrator. The two parties pay costs of voluntary arbitration. The Arbitration Act Chapter 15:06 governs voluntary arbitration.

Section 97(1) of the Labor Act provides for any person who is aggrieved by the conduct of any proceedings in terms of a code of conduct or a determination made under a code, to appeal to the Labor Court. According to Section 92D Act 7:2005 a party which disagrees with a decision of the Labor Court can appeal to the Supreme Court but only on " question of law' not where the facts are disputed nor on the merits of the Labor Court(Markings, 2005).This implies that an appeal to the Supreme Court will be made if there is misinterpretation of the law and not on merits or dispute.

The introduction of the workplace and industrial codes of conducts was to bring labor laws into compliance with relevant international standards. The International Standards represent the fundamental rights necessary in any modern society to ensure social stability and economic progress. The reforms acknowledge economic and social dimension of globalization and the universality of certain labor rights while on the other hand they acknowledge economic and social interdependence of the various nations in the SADAC region.(Gwisai M 2006)

It is believed that labour law can create significant value in improving industrial relations if there is wide consultation among stakeholders to establish the most pertinent issues that may sour relations at work. This, it is believed, would assist the legislature to address correct issues at work. According to Sounders et al (2000) the implementation of change in any organization can be problematic. This is especially likely to be the case in situations where this type of change involves people and in which personal relationships and emotional responses are predominant" (McCalman & Paton, 1922:18.).

Mabey and Salman (1995) consider a number of perceptions about management of change that will affect reactions to it. Amongst these factors are whether change is perceived as "deviant" or "normal" and "threatening" or "desirable" Change regarded as deviant will be perceived as imposed and outside prevailing cultural norms. This is likely to generate resistance and this will require careful implementation to overcome the fear associated with this perception. Perceptions about the nature of change and the need for it will therefore affect reactions to it.

While it is inevitable that Law, including Labor Law will change in accordance with changing circumstances. How- ever, the main question to be answered is on whether the changes benefit the intended beneficiaries?

The researcher considered how stakeholders have been able to manage change of the new provisions of Labor Act 7:2005. The study used the planned change model that was developed by Bullock and Batten in l9»3.(Mazhazha=Nyandoro Z F 1002 ZOU)

The model has four distinct phases which are exploration, planning, action phase and integration phase. At the stage of exploration the organization become aware of the felt-need for change. According to Cook et al (1997) there are six multiple forces that influence organizations to respond and adapt to change namely, technology, economic conditions, globalization, world politics, social and demographic changes as well as internal organizational problems. In its planning phase the organization must involve all people likely to be affected by the change. When all resources and the necessary support have been identified change is then implemented. There is need for continuous evaluation of activities that have been implemented. The last phase of the model is integration where there would be need to reinforce the new behaviors brought about by change.

In the first phase an organization explores and decides on whether vt want to make specific changes uv operations, systems or culture, hi this scenario the organization is the government who is also the legislature and employer on the other hand. At this stage the organization should create an awareness of the need for change.

The Ministry of Public Service Labor and Social Welfare in particular had the mandate to identify facilitators for change to assist with planning and implementation of the change program.

The second stage is the planning phase. At this stage there is need to involve appropriate arrangements for managing change process. Intensive consultation to gather information in order to establish a correct diagnosis of the problems faced at workplace is carried out. Key decision makers are also consulted to give their support on proposed changes.

The third stage in the planned change model is the action phase. The stage involves the implementation of the changes. There was need for the legislature to establish appropriate arrangements to manage change process. The concerned Ministry had a task to evaluate the implementation activities and provide feedback for any necessary adjustments and refinements.

The last stage in this model is the integration phase. The focus here is reinforcing new behaviors through positive feedback and reward systems. The organization is to make a close up on the impact of the provisions and reward those stakeholders that would have successfully implemented the new provisions.

There are three options when designing change which are collaboration, consultation and communication. Collaboration occurs when members of a team work together through a change program. In this case the legislature and stakeholders should have collaborated in coming up with the new provisions so as to create the understanding of why change is needed. It is likely that such a background is necessary to build commitment in implementing change. Collaboration is also said to allow individuals with different experience and skills to become involved in the key change decisions. (Bourne M & Bourne P 2002-Change Management)

How- ever collaboration at levels of policy making may take time to create and build the team and even if the team was to be build they may not be consensus on the best course of action hence the legislature in this case may become isolated from the rest of the stakeholders. (Bourne & Bourne 2002).

The other option in designing new provisions is consultation which occurs when work of an individual or group is presented to others for acceptance beft>re it is implemented. This helps in creating understanding of why change is needed and alternative ideas maybe considered thus reducing resistance. How- ever it should be noted that consultation may not mean that change will be accepted and it takes time to undertake especially with large groups of people such that in most cases consultation is done with small groups at high levels which may not give adequate representation. The last option in managing change is communication This occurs when people are informed of the change and have little or no say in what is happening.

It should be noted that each option has own advantages and drawbacks but what is more important is to ask "whom to involve, in what, when?. The question should be asked continually until the change is demonstrably complete and well embedded in the working practices and culture of the organizations.

Methodology

The researcher made use of qualitative survey method since the study was in depth examination of a unit of interest. Semi-structured and open-ended questionnaires together with interview guides were used in collecting primary data and documented evidence was used to complement the primary data, A sample size of 25% of the total companies in the commercial sector in Gweru was researched.

The researcher was focused on the managers were represented the employer, workers committees representing employees, Trade Unions representatives, Labour Officers, Head of National Employment Council and Labour Court officers. The total worker population for the sample size that was researched in Gweru Urban was 676 broken down as follows:

The Total Worker Population for the Sample Size that was Researched in Gweru Urban is 676 Broken Down as Follows:

Diagram 1

Company Size	No of Companies	Selected Samples	Study Population	Selected sample
Large	9	3	4SO	20
Middle	28	7	178	25
Small	31	8	48	24
Total	68	18	676	69

The second level comprised the people interviewed in each company. Purposive sampling was used at this level. According to David and Sutton (2004) purposive sampling is used when the subjects are selected according to the researchers own knowledge and opinion about which ones they think will be appropriate to the topic area. Thus the selection of the employer or employer's representative and workers committee member was based entirely on the researchers opinion of the most appropriate respondent. Furthermore the chosen respondents are defined authorities at workplace. Thus a total of 169 employers/employees representative's and members of the Workers Committee were targeted.

The study concluded that employment relationship at workplace got worse in some instances because of the way change has been handled by the legislature. It was further established that most of the intended beneficiaries were not consulted on the need for change, neither were there aware or able to interpret some of the amended provisions. As a result this constrained relations at work place hence it became the researcher's intention to focus on the impact of amending labor law on employment relations.

Empirical Approach

The data generated primrily through the use of questionnaires is analysied established empirical arguement of various forms of dispute labor resolutions in Nigeria.

Table: Data on Labour Act Resolution of Dispute

Form of Labour Dispute Settlement	Yes	No	Total
Dispute Resolution	95(85)	18(28)	113
Retrenchnent	25(35)	22(12)	47
Total	120(100%)	40(100%)	160

Source: Field Survey, 2011

From the table above, out of 120 respondents on form of labour dispute settlement, 95 said yes that dispute resolution serves as a major form of resolution in industrial relation in the labour act while only 25 are of the opinion that it is retrenchment. Of the 160 reponses 120 said yes that dispute resolution and retrenchment can serve as dispute resolution of labour act while 40 said No.

The test of statistic X^2cal (16.88) > X^2cal (3.84) showed that; There is significant relationship between the labour form of dispute settlement and labour act resolution.

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Discussion Dispute Resolution

80% of the stakeholders were aware that the amended Labour Act 7:2005 but very few (15%) had knowledge on which provisions were amended and the subsidiary provisions. On dispute handling both management and workers representatives concurred that most of their organizations fall under National Employment Council code of conduct hence they did not benefit from the National Act.

A Comparison with the South African Labour Act 66 of 1995

There is a Commission for Conciliation, Mediation and Arbitration (CCMA) set up to resolve disputes. Employees contemplating *a* strike are compelled to refer their dispute or grievance to a council if the parties are in the sector. If not, they must refer the dispute to the Commission for CCMA. The Council or CCMA will attempt to settle the matter by conciliation. If conciliation fiuls they have to certify- that the dispute remains unresolved or extend the period for conciliation to lapse, from the date of referral of the dispute before the strikers embark on strike (See 64(a) (i) (iii).

In the went of a refusal to bargain, an advisory award must be obtained. (Department of Labour South Africa). Both scenarios have worked well in resolving disputes at work and there is little conflict in dispute handling.

Retrenchment

On retrenchments, 80% of managers" representatives felt that the legislature did not consider the employer's position during such economic difficulties. They expressed concern on the need for the legislature to consult them when amending such provisions that would affect the operations of the business. To them the intentions of the legislature were not clear. How- ever 73% of workers felt that the legislature intention was to protect workers against unscrupulous employers who could hire and fire them at will.

Problems Faced in Interpreting Amended Provisions

On retrenchments management expressed that the provisions are clear but the process is too long. They felt that the provision does not give the employer room to express his/her need to reduce cost before retrenchment and as a result it forces employers to take workers on contract. Managers regarded it as an expense on their part as they felt that in most cases they will be stuck with unwanted baggage. They felt that the provision has a negative impact on their recruitment policies as they will be forced to take workers on contract. They also felt that they were not given enough platforms to highlight their reasons for wanting to retrench, In trying *P avoid the long cumbersome process of retrenchment most employers have resorted to employing contract workers thereby creating job insecurity for workers.

The Principal Labor Officer and Designated Agents in Gweru urban indicated that the intention of the legislator was both political and to improve industrial relations.

This is supported by Madhuku (2006) who argues that the intention of the legislator who is the Government and the employer on the other hand was to win the electorate by enacting Laws and Provisions that would make it stay in power for some time. The other intention was to be in line with SADC and ILO standards as Zimbabwe subscribes to most of their conventions. The Government would also want to improve industrial relations at work and reduce conflict so as to harmonize the society for a peaceful environment. However stakeholders are not clear on the intention of the legislature as they were not consulted on the need for change. They are also finding it difficult to appreciate the legislature's intention as some of the provisions have worsened their employment relationship for example the provision on retrenchment which has created conflict when the employer resorted to employ contract workers,

The Act is not clear on when the Minister should finalize on the decision to retrench. The Minister may take as much time as he/she want, if it takes long the employer would be stuck with employees who are no longer productive yet on the other hand he would need to cut costs. The provision has made termination difficult hence the employer would be forced to recruit on contract basis and there will be no job security on the part of employees. Workers on the other hand were not clear on

procedures to negotiate for retrenchment due to lack of training. They also felt that the provision does not provide job security as most employers would opt for contract employees.

A Comparative Analysis with the South African Labour Act 66 of 1995

In South Africa Section 189 of the Labor Act provides that when an employer want to dismiss employees he should consult a workplace forum/ trade union/ or its representatives to come up with a collective agreement. It further alleges that the consulting parties must reach consensus on appropriate measures to **avoid the dismissals,** minimize the number of dismissals, change the timing of dismissals and mitigate the adverse effects of dismissal. They should also agree on the methods of selecting employees to be dismissed.

The Act goes on to say flit the employer should put in writing the reasons for proposed dismissals, alternatives and reasons for rejecting alternatives, number of employees to be affected by the dismissal, period dismissals are to take place and assistance he proposes to offer to employees.

The employer according to the provision should consider and respond to the representations made by the consulting party and if the employer does not agree must state reasons for nor agreeing.

Finally the employer must select the employees to be dismissed according to selection criteria that have been agreed to by the consulting parties and if no criteria have been agreed on his criteria should be fair and objective. (Department of Labor South Africa).

The South African Act advocates for 1 month full salary for every year worked and this assist employees in calculating their packages while the Zimbabwean Labor Act has no guide lines until parties negotiate and reach a settlement (Department of Labor South Africa). This result in harmonizing employment relations as both parties will be involved in the process and there will be transparency in all procedures.

Conclusion

The findings revealed that small to medium commercial enterprises and even big companies were not aware of the challenges that led to the Amendment of Labor Act 7:2005. In the literature reviewed various authors agreed that any new regulations can be welcomed with different reactions which bring the issue of managing change at work. It has been further established that organizations in Commercial Sector need to be involved during policy formulation for them to appreciate and understand any changes in labor regulations. Stakeholders seem to understand their codes of conduct

in respect of their dispute settlement. The Ministry of Public Service Labor and Social Welfare has no guidelines on packages which should be given during retrenchment.

Recommendations

1. Ministerial powers should be clarified and employers should be given room to explain their predicament that will be forcing them to retrench.

2. The Ministry of Public Service Labor and Social Welfare should have a branch which should be responsible for consulting, training and implementing any new amendments so that stakeholders are able to interpret and implement the new provisions.

3. There is need for the legislature to make extensive consultation before coming as with an Act. Consultations should be done through Trade Unions and employer organizations. It is recommended that further studies be done on a national basis for the Commercial Sector to ascertain the impact of the amended Labor Act 2005 provisions on labor relations at national level.

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Labour ACT No. 7: 2005

To amend the Labour Act [Chapter 28:01], to repeal section 56 of the Export Processing Zones Act IChapter 14:07], and to provide for matters connected therewith or incidental thereto.

NACTED by the President and the Parliament of Zimbabwe.

1 Short title This Act may be cited as the Labour Amendment Act, 2005.

2 Amendment of section 2 of Cap. 28:01 Section £ ("Interpretation") of the Labour Act [Chapter 28:01] (hereinafter called "the principal Act") is amended-—

(a) in the definition of “employee” by the deletion of "that the first-mentioned person is in a position of economic dependence upon or under an obligation to perform duties for the second-mentioned person" and the substitution of "as agreed upon by the parties or as provided for in this Act";

(b) by the repeal of the definition of “managerial employee” and the **substitution** of managerial employee" means an employee who by virtue of his contract of employment or of his seniority in an organisation, may be required or permitted to hire, transfer. promote, suspend, lay off, dismiss, reward, , discipline or adjudge the grievances of other employees;”

(c) by the repeal of the definition of "Minister" and the substitution of—“Minister” means, subject to section 83, the Minister of Public Service, Labour and Social Welfare or any other Minister to whom the
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President may, from time to time, assign the administration of this Act;”

(d) by the insertion of the following definition — “legal practitioner” means a person registered as such in terms of the Legal Practitioners Act [Chapter 27:07]”;

(e) In the definition of “works council” by the insertion after “committee” of “and a chairperson”

Section I2C (“Retrenchment”) of the principal Act is amended—

(a) in subsections (8) and (9) by the deletion of “within two weeks”;

(b) by the repeal of subsection (10).

9 **Amendment of section 13 of Cap. 28:01**

(Section 13 “Wages and benefits upon termination of employment”) of the principal Act is amended by the insertion after subsection (1) of the following subsection— "(la) Wages and benefits payable to any person or to his or her estate in terms of this section shall not form part of or be construed as a retrenchment package which an employee is entitled to where his or her empknment has been terminated as a result of retrenchment in terms of section 12C”.

Amendment of Section 23 of Cap. 28:01

Section 23 (“Formation of workers committees”) is amended (a) in subsection (2) by the deletion of “labour relations officer”and the substi-tution of” labour officer";

(b) by the repeal of subsection (3) and the substitution of—

(3) In the event of any dispute arising in relation to the exercise of any right referred to in subsection (2), either party to the dispute may refer it to the labour officer mentioned in paragraph (a) of that subsection, or, in the absence of such labour officer, any other labour officer, and the determination of the labour officer on the dispute shall be final unless the parties agree to refer it to voluntary arbitration.".