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NEWSFLASH

FROM: **JEREMIAH TLADI & CO**

TO: **OUR STAKEHOLDERS** **DATED: 14 OCTOBER 2025**

NEWSFLASH: EMPLOYMENT & LABOUR RELATIONS BILL NO.10 OF 2025

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1. INTRODUCTION

1.1. The **Employment and Labour Relations Bill No. 10 of 2025**, published in the Government Gazette on 6 June 2025, represents a transformative step in modernising Botswana's labour law framework. Although not yet enacted, the Bill introduces significant reforms aimed at enhancing fairness, transparency, and accountability in employment relations.

1.2. Among its key objectives, the Bill establishes formal labour institutions to oversee compliance, enshrines fundamental worker rights, and provides a framework for orderly labour relations and collective bargaining. It also introduces clear mechanisms for the prevention and resolution of workplace disputes, ensuring efficiency and fairness.

1.3. Notably, the Bill strengthens protections for employees by regulating probationary periods, limiting fixed-term contracts, expanding the definition of unfair dismissal. These reforms collectively shift the employment landscape towards a more structured and equitable system, aligning Botswana's labour law with modern international standards while balancing the interests of employers and employees.

2. APPLICATION OF THE BILL

2.1. The Employment & Labour Relations Bill applies to all employers, employees and trade unions within the jurisdiction of Botswana.

3. CONSOLIDATION OF THE EMPLOYMENT ACT, TRADE DISPUTE ACT AND THE TRADE UNIONS & EMPLOYERS' ORGANIZATION ACT

3.1. Notably, the Employment & Labour Law Bill has merged the provisions of the Employment Act, Trade Dispute Act and the Trade Unions & Employers' Organisations Act. The Bill has incorporated provisions such as Industrial Actions, previously provided for in the Trade Unions & Employers Act and further, incorporated provisions of mediation, which was previously provided for in the Trade Disputes Act.

4. EMPLOYMENT TERMINATION AND DISMISSAL

4.1. Under the former Employment Act [Cap. 47:01] of the laws of the republic of Botswana, termination of employment was permissible on limited grounds, namely misconduct, redundancy, or incapacity. However, the Act offered minimal direction regarding what constituted a fair or reasonable procedure prior to termination.

4.2. The provisions regulating termination were contained in Sections 17 to 27 of the repealed Act, which dealt with matters such as notice periods, severance benefits, and redundancy procedures.

4.3. Section 23 of the old Act restricted certain bases for dismissal, for example, an employee could not lawfully be dismissed on account of trade union membership or participation in trade union activities.

4.4. Section 25 further required that where termination occurred by reason of redundancy, the employer was obliged to provide the employee with appropriate notice and severance pay.

4.5. The proposed Employment Bill introduces more comprehensive and explicit protections for employees in respect of termination of employment.

4.6. It broadens the definition of *unfair dismissal* to include dismissals based on grounds such as maternity, trade union involvement, or discrimination.

4.7. The Bill also introduces a requirement for consultation with affected employees or their representatives before any retrenchment or redundancy exercise is undertaken.

4.8. Constructive dismissal is now expressly recognised, acknowledging that an employee may lawfully terminate employment where the employer's conduct renders continued employment intolerable.

4.9. Employers are now required to follow a fair disciplinary process in all cases of alleged misconduct or incapacity, to document reasons for termination, and to engage in good faith consultations before effecting redundancies.

4.10. Non-compliance with these procedural and substantive requirements may expose an employer to liability for unfair dismissal, reflecting the Bill's stronger emphasis on fairness, transparency, and accountability in employment termination practices.

5. PROBATIONARY PERIOD

5.1. Under section 20 of the repealed Employment Act [Cap. 47:01], a probationary period was permitted for newly appointed employees. The duration of this period depended on the nature of the employee's work: for unskilled workers, the probationary period could not exceed three months, whereas for skilled workers, it could extend up to twelve months. During this period, the employer was entitled to terminate the employment contract by giving notice. No reasons were required to be furnished for such termination, and the law did not impose any obligation on the employer to provide feedback or conduct a formal assessment of the employee's performance. In effect, probation under the old Act operated as a discretionary trial period, offering the employer wide latitude to dismiss the employee without procedural fairness or justification.

5.2. The new Employment Bill, however, introduces a markedly different and more structured approach under section 155. It provides that an employer may place a newly appointed employee on probation, whether under a fixed-term or permanent contract, for a period not exceeding six months. This six-month limit applies uniformly to all categories of workers, thereby eliminating the distinction between skilled and unskilled employees that existed under the old Act. The purpose of the probationary period is expressly stated namely, to allow the employer an opportunity to evaluate the employee's performance and suitability before confirming the appointment.

5.3. During the probationary period, the employer is now required to assess the employee's performance and to inform the employee of any areas in which he or she is failing to meet the expected standards. The employer must also provide reasonable evaluation, instruction, training, guidance, or counselling to assist the employee in improving performance. These provisions represent a significant shift from the old regime, under which employers were not obliged to evaluate or support probationers in any structured manner.

5.4. Termination of employment during probation is no longer purely at the employer's discretion. Under subsection (5) of section 155, the employer may only terminate the contract after having complied with the performance-related obligations set out above and having invited the employee to make representations. Termination is permissible only if the employer remains satisfied, after this process, that the employee is not suitable to perform the required work. In such cases, the employer must give notice or pay in lieu thereof. This introduces procedural fairness into what was previously an entirely discretionary decision.

5.5. Importantly, subsection (6) of section 155 provides that where the employer does not confirm the employee's appointment, and fails to inform the employee of the reasons for non-confirmation, the appointment shall be deemed to have been confirmed. This provision prevents employers from indefinitely extending probation or neglecting to regularise employment status, thus protecting employees from exploitation or uncertainty.

5.6. In summary, whereas section 20 of the old Act afforded employers broad discretion to terminate probationary employees without justification, the new Bill imposes clear procedural and substantive obligations aimed at ensuring fairness and accountability. Probation is now conceived not merely as a testing period, but as a structured process of evaluation, guidance, and mutual engagement. The reforms reflect a modern approach consistent with international labour standards and the constitutional principles of fair labour practices, promoting transparency, due process, and respect for the dignity of workers.

6. PRESUMPTION OF INDEFINITE EMPLOYMENT – SECTION 157 OF THE BILL

6.1. Section 157 of the Employment Bill governs the use of fixed-term contracts. It provides that an employer may not employ a worker on a fixed-term contract, or successive fixed-term contracts, for a period exceeding twelve months, unless there is an objective and justifiable reason for doing so. Justification may arise from the nature of the work, which is inherently temporary or limited, or from any other reason that the employer can demonstrate as valid.

6.2. The Bill sets out specific circumstances in which a fixed-term contract may be reasonably employed. These include, but are not limited to, situations where the employee is temporarily replacing another staff member, responding to a short-term increase in workload, engaged as a trainee or intern for professional development, hired to complete a defined project, performing seasonal work, occupying a position funded externally for a limited period, or reaching the normal or agreed retirement age within the employer's business.

6.3. Where an employer fails to comply with these requirements, any fixed-term contract entered into or renewed in breach of the section is deemed to be of indefinite duration, conferring upon the employee the rights and protections associated with permanent employment.

6.4. The legislation further requires that any offer of fixed-term employment, or any renewal or extension thereof, must be made in writing and must clearly state the reasons for fixing the term, as set out in the section. In any proceedings where the validity of a fixed-term contract is questioned, the employer bears the burden of proving both that there was a legitimate reason for limiting the duration of employment and that the terms were agreed upon with the employee.

6.5. In effect, these provisions ensure that fixed-term contracts are used appropriately, protect employees from prolonged temporary employment, and promote equality of treatment between fixed-term and permanent staff.

7. STATUTORY LEAVE PROVISIONS (FAMILY RESPONSIBILITY LEAVE, MATERNITY LEAVE, PATERNITY LEAVE & ADOPTION LEAVE)

7.1. Firstly, the Bill has introduced the Family responsibility leave which mandates the employer, upon request by the employer, to grant the worker three (3) days leave in case of death or a serious illness of the worker's spouse, siblings, children, adopted children and/ or parents, grandparents and the worker's in-laws.

7.2. However, to be granted the leave, a worker has to satisfy the following requirements:

7.2.1 Has to be employed for a period longer than four (4) months; and,

7.2.2 Has to work for at least four (4) days a week.

7.3. Furthermore, the Bill introduces an adjustment and/ or an increase of maternity leave for expectant workers from twelve (12) weeks to fourteen (14) weeks. However, the expectant worker is mandated to give her employer six (6) weeks' notice before the expected date of birth.

7.4. In relation to maternal allowance, the Bill is clear that where a female worker has more than one (1) employer, the worker shall, in respect to the same confinement, be entitled to maternity allowance from more than one employer, which is a significant change to the Employment Act which provided that in such an instance, the worker was entitled to only one allowance.

7.5. Further, the Bill has introduced a five (5) days paternity leave for every worker who is a father. However, an employer may require reasonable proof of paternity from the father before granting such leave.

7.6. Additionally, the Bill has also introduced an adoption and/ or a parental leave for every adoptive parent whose adopted child is below the age of two (2) and the leave is for ten (10) weeks consecutively. In this event, an adoptive parent worker may commence the adoption leave in the following instances:

7.6.1 When an adoption order is granted by a competent court; and,

7.6.2 Where the child is placed in the care of a prospective adoptive parent by a competent court whilst the adoption order is being finalized by the competent court.

8. ESTABLISHMENT OF AN INDEPENDENT MEDIATION & ARBITRATION COMMISSION AND MEDIATION & ARBITRATION BOARD

8.1. The Employment & Labour Bill introduces an independent Mediation and Arbitration Commission which shall be responsible for:

6.1.1 Mediating any employment dispute referred to it; and,

6.1.2 Determining any dispute referred to it by arbitration if the dispute is one that requires to be dealt with by arbitration, if the parties are in agreement that the dispute should be referred to arbitration and if the dispute is a referral from the Industrial Court.

6.1.3 It is worth noting that the commission is capable of suing or being sued in its own name.

CONCLUSION

The Employment and Labour Relations Bill No. 10 of 2025 represents a significant modernisation of Botswana's labour law framework. By introducing clearer protections for employees, regulating probation and fixed-term contracts, expanding the definition of unfair dismissal, and emphasising procedural fairness, the Bill promotes transparency, accountability, and equitable labour relations. Once enacted, these reforms will provide a more balanced and predictable environment for both employers and employees, aligning domestic law with contemporary international labour standards.

Should you require any assistance with the implications of the proposed Bill on your obligations as employers and employees, please feel free to contact us on attorneys@jtco.co.bw or call on 393 2044 for assistance.