

LABOUR AND EMPLOYMENT RELATIONS AMENDMENT BILL 2022

SAMOA

Explanatory Memorandum

Summary:

This Bill seeks to amend the Labour and Employment Relations Act 2013 (“principal Act”). The objects of the Bill are to amend the Labour and Employment Relations Act 2013 to:

- (a) improve consistency with ratified International Labour Organisation (ILO) conventions;
- (b) clarify terms and conditions of employment;
- (c) clarify the role of labour inspectors;
- (d) improve processes for resolving employment grievances and complaints;
- (e) provide for a process regarding the termination of employment.

Clauses:

Clause 1: - provides for the short title and commencement. The Act will be cited as the Labour and Employment Relations Amendment Act 2022 and will commence on the date nominated by the Minister.

Clause 2: - amends section 2 of the Principal Act to provide for:

- (a) the definitions of new terms such as “*complaint*”, “*domestic worker*”, “*grievance*”, “*gender-based harassment*”, “*redundancy*”, “*serious misconduct*”, “*sexual harassment*”, “*work performance*”; and

- (b) substitutes definitions for the following terms -
 - (i) "citizen";
 - (ii) "harassment";
 - (iii) "shift work"; and
- (c) amends following definitions in the principal Act -
 - (i) "labour inspector";
 - (ii) "employment exchange services";
 - (iii) "remuneration";
 - (iv) "employees organization";
 - (v) "Court";
 - (vi) "trade union"; and
- (d) repeals obsolete terms such as "*award*", "*discrimination*", "*industrial grievance*", "*misconduct*", and "*shift employee*".

Clause 3: - provides for an amendment to section 3 of the Principal Act to clarify its relationship with the Shipping Act 1998, in that the principal Act applies to employees working on ships where terms and conditions of employment are not provided for in the Shipping Act 1998.

Clause 4: - substitutes section 4(1)(e) and (f) of the Principal Act to clarify that employers' and employees' organisations nominate representatives to the Samoa National Tripartite Forum whom are endorsed by Cabinet.

Clause 5: - substitutes section 5(3) of the Principal Act to clarify the circumstances in which Cabinet may remove and replace a member of the Samoa National Tripartite Forum for neglect of duties or other serious misconduct. Section 5(4) is repealed.

Clause 6: - amends section 12 of the Principal Act to add a new function to the functions of the Ministry by inserting a new paragraph (g) after paragraph (f), to administer the placement of Samoan citizens overseas employment under bilateral agreements with other countries including:

- (i) the criteria and conditions for a person's selection and participation in overseas employment;
 - (ii) conditions relating any person acting as a recruitment agent; and
 - (iii) any related matters.
- Clause 7:** - amends section 13(1)(a) of the Principal Act by substituting "manpower" with "employees".
- Clause 8:** - substitutes section 16 of the Principal Act to update the powers of the CEO and labour inspectors including establishing a new power to issue penalty notices.
- Clause 9:** - substitutes section 17 of the Principal Act to describe the powers of labour inspectors in relation to investigating or resolving complaints and grievances under the Act.
- Clause 10:** - substitutes section 18 of the Principal Act relating to forced labour and increases the level of penalties for breaches of the section.
- Clause 11:** - substitutes section 20 of the Principal Act to extend the prohibition of discrimination to all aspects of employment and provide that discrimination based on a person's participation in the activities of a trade union is unlawful.
- Clause 12:** - inserts new section 20A to provide for harassment and sexual harassment as this is a requirement under the Violence and Harassment Convention, that a person must not engage in a conduct that is harassment or sexual harassment.
- Clause 13:** - amends section 21 by inserting new subsections (4) and (5) in the Principal Act to specify certain provisions that must be included in collective agreements, and that copies of collective agreements must be supplied to the CEO.

- Clause 14:** - amends section 22 of the Principal Act:
- (a) by amending subsections (2) by replacing the words “Employees’ organisations may join a trade union” with “An employee, or group of employees may join a trade union, and a trade union may join an employees’ organization”; and
 - (b) and amending subsection (3) by replacing the words “Employers’ organisations may join other employers’ organisations” with “An employer may join an employer’s organisation”; and
 - (c) by inserting a new subsection (4) to clarify that trade unions and employers can join employees’ and employers’ organisations; prohibit employers’ and employees’ organisations from engaging in acts of interference with each other; prohibit employers from placing trade unions under their control; and provide that a trade union shall have reasonable access to a workplace.
- Clause 15:** - repeals section 26(2) of the Principal Act to address an internal inconsistency in the section.
- Clause 16:** - provides for amendments to section 27 of the Principal Act as follows:
- (a) by inserting a new paragraph (ja) (*in subsection (1), after paragraph (j)*) to provide that trade union membership fees are a lawful deduction; and

(b) for subsection (2), paragraph (c), by substituting “of showing cause against the deduction” with “to show why the deduction is not justified” to clarify the a deduction under subsection (1)(b) must not be made until the employee has been given an opportunity to show why the deduction is not justified.

- Clause 17:** - inserts a new section 27A in the Principal Act prohibiting the imposition of a disciplinary fine by an employer for an employee’s misconduct.
- Clause 18:** - substitutes section 32(3) of the principal Act to provide that a minimum wage review shall be conducted by the Forum every two (2) years after consulting with employers and employees as the Forum considers appropriate.
- Clause 19:** - substitutes section 34 of the Principal Act to provide that all contracts of service of more than two (2) months must be in writing.
- Clause 20:** - amends section 35 of the Principal Act to delete the reference to a pro forma contract of service in Schedule 1 and inserting a new subsection (5) to provide that an employer has a duty to provide work, except where an employee has breached a contract of service.
- Clause 21:** - amends section 36(1) of the Principal Act to provide that an employer may put an employee on probation for three (3) months at the commencement of his or her employment.
- Clause 22:** - substitutes section 37 of the Principal Act to provide an employer must comply with regulations relating to the employment of people with disabilities and comply with conditions relating to the employment of domestic workers.

- Clause 23:** - provides for a new section 37A after section 37 in the Principal Act, to provide for favourable terms and conditions of a contract.
- Clause 24:** - amends section 38 of the principal Act to specify that an employee is to be paid double time, if he or she is required to work on a Sunday and it is not a day he or she would ordinarily work or scheduled to undertake shift work. Definition of “ordinarily work” is also provided for under new subsection (3).
- Clause 25:** - amends section 39 of the principal Act by substituting subsections (1) and (2) to clarify when entitlements, time off, pay and double time on public holidays apply.
- Clause 26:** - substitutes section 40 of the principal Act relating to annual leave to provide that an employee is entitled to leave calculated on a pro-rata basis during the year it is accumulated and carry forward 20 days annual leave (extendable by agreement with the employer).
- Clause 27:** - substitutes section 41 of the principal Act relating to payment in lieu of annual leave, and removes the requirement that an employer must receive consent from the CEO before paying an employee in lieu of annual leave.
- Clause 28:** - provides for an amendment to section 42 of the Principal Act relating to sick leave as follows:
- (a) by substituting the words “in each year” with “after 12 months continuous service with the same employer, including any period of probation” to clarify entitlement of sick leave of an employee;

(b) by substituting subsection (3) to provide that such leave can be taken on a pro rata basis during the year it is accumulated.

- Clause 29:** - amends section 47 of the principal Act to vary hours of work provisions relating to domestic workers.
- Clause 30:** - amends section 48(1) of the principal Act to vary overtime provisions relating to domestic workers and inserts new subsections 48(3) and (4) to provide for further flexibility relating to the application of overtime provisions.
- Clause 31:** - amends section 49 of the principal Act to simplify language relating to the application of shift provisions and to establish the calculation of overtime for shift work.
- Clause 32:** - substitutes section 51 of the principal Act with a new section in relation to the employment of children to specify the minimum age for light work (13 years) entry into general employment (16 years) and entry into hazardous work (18 years).
- Clause 33:** - amends section 52 of the principal Act to extend the scope of prohibitions on the termination of an employee's employment to include dismissal by reason of making an enquiry about an employer's compliance with the Act or the Occupational Safety and Health Act 2002.
- Clause 34:** - amends section 53 of the principal Act to align provisions in other sections that permit the termination of a contract of service.
- Clause 35:** - substitutes section 54 of the principal Act with a new section in relation to termination of a contract of service for an unspecified period, describing the circumstances in which an employee or employer may terminate a contract of service.

- Clause 36:** - provides for a new section 54A of the principal Act in relation to requirements relating to redundancy, outlining steps an employer must take if an employee's contract of service is terminated by reason of redundancy.
- Clause 37:** - amends section 55 in the principal Act to clarify requirements relating to the payment of wages in lieu of notice in the event of termination and paying out leave that has been accumulated and is owing to an employee.
- Clause 38:** - substitutes section 56 of the principal Act with a new section in relation to a notice period not required in certain cases describing the circumstances in which notice of termination is not required.
- Clause 39:** - substitutes section 57 of the principal Act in relation to Dismissal due to employee's conduct or work performance to establish a processes and procedures relating to the termination of employment due to an employee's conduct or performance.
- Clause 40:** - provides for a new section 57A describing the entitlements that must be paid to an employee when his or her employment is terminated.
- Clause 41:** - amends section 58 of the principal Act to clarify the categories of persons to whom the employment permit provisions apply, and provides it is an offence to employ a person without a permit.
- Clause 42:** - amends section 59 of the principal Act to ensure it is consistent with section 58 of the principal Act.
- Clause 43:** - amends section 60 of the principal Act as follows:
- (a) to substitute "Minister" wherever occurring with "CEO" transfer the authority to grant permits from the Minister to the CEO in Part 9 of the Principal Act;

- (b) to ensure it is consistent with section 58, and to provide that a permit is valid for up to three (3) years.
- Clause 44:** - amends section 61 of the principal Act as follows:
- (a) to substitute “Minister” wherever occurring with “CEO” to transfer the authority to revoke permits from the Minister to the CEO in this section; and
 - (b) to provide that the CEO may revoke an employment permit where misleading or false information is provided by an employer or employee.
- Clause 45:** - inserts a new section 61A in the Principal Act in relation to restrictions on employers, permitting the CEO to decline an employment permit for up to one (1) year if an employer has previously breached the law.
- Clause 46:** - substitutes Heading of Part 10 of the Principal Act with “Resolution of Disputes”.
- Clause 47:** - amends section 78 of the Principal Act to raise the quantum of penalties for offences.
- Clause 48:** - amends section 82 of the Principal Act to raise the quantum of penalties for offences, from “50” penalty units to “100” penalty units.
- Clause 49:** - amends section 83 of the principal Act to provide that regulations may be made in relation to additional specified matters.
- Clause 50:** - repeals the Labour and Employment Relations Regulations 2016.

Clause 51: - repeals Schedule 1 of the Principal Act and inserts a new Schedule 3 describing employers obligations relating to the employment of domestic workers pursuant to section 37(b) of the principal Act.

Clause 52: - sets out savings and transitional provisions.

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(Hon LEATINUU Wayne Soialo)

MINISTER FOR COMMERCE, INDUSTRY AND LABOUR