



DECENT WORK CHECK

BOTSWANA 2023

Ayesha Ahmed
Iftikhar Ahmad

WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

The Authors

Ayesha Ahmed, a law graduate, is part of the Islamabad Team and works on Labour Law Database.

Corresponding author: Iftikhar Ahmad works as Labour Law Specialist with WageIndicator Foundation. He is the founder of the Centre for Labour Research which is the global labour law office of the WageIndicator Foundation. He can be contacted at iftikharahmad@wageindicator.org

Acknowledgements

Many people contributed to the development of the Decent Work Check as a tool and to this Check for Botswana. Those who contributed to the development of tool include Paulien Osse, Kea Tijdens, Dirk Dragstra, Leontine Bijleveld, Egidio G. Vaz Raposo and Lorena Ponce De Leon. Iftikhar Ahmad later expanded the work to new topics in 2012-13 and made the work more legally robust. Daniela Ceccon, Huub Bouma, and Gunjan Pandya have supported the work by bringing it online through building and operating labour law database and linking it to the WageIndicator websites. Special thanks are due to the WageIndicator global labour law office (headed by Iftikhar Ahmad), which works on Decent Work Checks since 2012. The Minimum Wages Database, developed by Kea Tijdens, is supported by Paulien Osse, Kim Chee Leong, and Martin Guzi. Khushi Mehta updated the Minimum Wages Database before 2020.

Minimum Wage Database and Labour Law Database are maintained by the Centre for Labour Research, Pakistan, which works as WageIndicator Labour Law office. The team comprises Iftikhar Ahmad (team lead), Ayesha Kiran, Ayesha Mir, Seemab Haider Aziz, Sobia Ahmad, Shanza Sohail, and Tasmeena Tahir.

Bibliographical information

Ahmad I, Ahmad A (2023) *Botswana Decent Work Check 2023*. Amsterdam, WageIndicator Foundation, May.

For an updated version in the national language, please refer to <https://mywage.org/botswana>

Copyright 2023 by WageIndicator Foundation. All rights reserved.

WageIndicator Foundation, 2023

Address: Mondriaan Tower, 17th floor, Amstelplein 36, 1096 BC, Amsterdam, The Netherlands.

Email office@wageindicator.org

TABLE OF CONTENTS

INTRODUCTION	1
MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR	2
01/13 WORK & WAGES	3
03/13 ANNUAL LEAVE & HOLIDAYS	9
04/13 EMPLOYMENT SECURITY	11
05/13 FAMILY RESPONSIBILITIES	15
06/13 MATERNITY & WORK	17
07/13 HEALTH & SAFETY	20
08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT	23
09/13 SOCIAL SECURITY	26
10/13 FAIR TREATMENT	28
11/13 MINORS & YOUTH	31
12/13 FORCED LABOUR.....	34
13/13 TRADE UNION	37
QUESTIONNAIRE.....	40

INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental Principles and Rights at Work and Core ILO Conventions, are practised, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects deemed necessary in attaining “decent work”. The work makes the abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and scores the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Finally, workers can compare their personal score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

A Decent Work Check is beneficial both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also helpful for researchers, labour rights organisations conducting surveys on the situation of rights at work and the general public wanting to know more about the world of work. For example, WageIndicator teams worldwide have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed – being a worker, self-employed, employee, employer, policymaker, labour inspector – there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer), and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work, especially the effective enforcement of legislation in financially constrained states, a rise in precarious employment and analysing the impact of regulatory regimes.

In 2023, the team aims to include at least 15 more countries, thus taking the number of countries with a Decent Work Check to 125!

MAJOR LEGISLATION ON EMPLOYMENT AND LABOUR

1. Employment Act, 2010
2. Public Holidays Act, 2006
3. Code of Conduct
4. Code of Good Practice: Maternity Benefits and Family Responsibility
5. Factories Act, 1973
6. Workers Compensation Act
7. Code of Good Practice: Sexual Harassment in the Workplace
8. Code of Good Practice: HIV/AIDS and Employment
9. Children Act
10. Anti-human Trafficking Act, 2014
11. Constitution of Botswana 1966
12. Trade Unions and Employers' Organization Act
13. Trade Disputes Act, 2004

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Botswana has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Employment Act, 2010

Minimum Wage

Employment Act regulates minimum wages in Botswana. The minimum wages can be fixed for industries or sections thereof of building, construction, exploration, quarrying, garage, motor trade, road transport, hotel, catering, entertainment, manufacturing, service, repair, wholesale or retail distributive trade, domestic services, agricultural sector and for security guards employed by security companies.

Where the Minister of Labour considers it necessary to fix the minimum wage for any category of employees in any trade, section of trade, industry or section of industry, he must refer the matter to the Minimum Wages Advisory Board (the “Board”). The Board investigates the wages in the concerned industry and makes recommendations to the Minister. However, the Minister is not required to accept the recommendation of the Board. Having considered the recommendations of the Board, the Minister can then, by order published in the Gazette, fix the minimum wage for employees of the relevant category in the industry or section of industry and designate the date on which the minimum wage is to come into operation.

In formulating its recommendations to the Minister, the Board is to take into account certain considerations. First, the needs of the employees in question and their families. General level of wages in Botswana, the cost of living, any social security benefits and the relative living standards of other social groups need to be

taken into account. Second, elimination of gender discrimination in respect of wages for equal work. Third, economic factors such as the requirements of economic development, levels of productivity and the necessity of a high level of employment. Last, all other relevant matters.

Where the Minister considers it necessary to adjust or abolish the minimum wage with regards to any category of employees in any industry or section of industry due to the changes in the cost of living as updated by the Government's Central Statistics Office or because of any other relevant changes, he is to refer the question of the adjustment or abolition to the Board. The Board will then investigate and make recommendations. However, before referring any question of the adjustment or abolition of a minimum wage to the Board, the Minister is to, by notice published in the Gazette, declare his intention of doing so. Such a notice is to be published in the Gazette not less than 30 days immediately before the first meeting of the Board concerning the matter. Upon considering the recommendations of the Board, the Minister can abolish the minimum wage in question or adjust it in such manner as he considers appropriate in all the circumstances and designate the date on which the new minimum wage shall come into operation.

Labour Officers ensure compliance with the provisions of the Employment Act, 2010 including the provisions on minimum wages and wage payment. In order to pursue legal action for contravention of the Act, 2010, the Labour Officers require authorization from the Attorney General.

Where the employer is convicted for failing to comply with minimum wage order, the court can order him to pay to the employee

the difference between the statutory wages and wages actually paid. Furthermore, the employer can also be fined (maximum fine is P2 000) or face imprisonment for a term not exceeding 18 months or to both.

Source: § 10-11, 131-142 and the Fourth Schedule of the Employment Act, 2010

Regular Pay

Under the Employment Act, 2010, basic pay has been defined as the rate of payment, including any payment in kind, made by an employer for work done or services performed during an hourly, weekly, fortnightly or monthly period excluding all other remuneration.

Wage has been defined in relation to any contract of employment, means remuneration or earnings, however designated or calculated, which is paid by an employer to an employee, and is capable of being expressed in monetary terms. It is fixed by mutual agreement or by legislation, and is payable by virtue of a written or oral contract of employment.

A contract of employment may fix periods concerning when wages are payable. However, no wage period is to exceed one month and with regards to casual employees, no wage period can be less than one week. Where the contract of employment is silent as to the wage period, the period is one month.

Wages earned by an employee under his contract of employment must be paid before the expiry of the third working day immediately after the last day of the wage period in respect of which the wages are payable. Where it is not practicable, wages must be paid as soon as it is reasonably practicable to do so.

All payments of wages and any other payments which are due to the employee are to be made on a working day and during working hours at or near the place of employment. However, with the consent of the employee, such payments can be made elsewhere.

An employer can deduct from the wages and any other payments which are amount due by him concerning any tax or rate imposed by law and contribution to any provident or pension fund or scheme established under the Employment Act, 2010 to which the employee has agreed. With the consent of the employee, employee can deduct from wages an amount for rental or service charges for accommodation provided by the employer and where any deduction is allowed for under any collective agreement.

Furthermore, the employer can deduct from the wages any other payments which may be due to the employee, where the employee has requested the employer to remit on his behalf. Deductions can be in respect of unauthorized absence from work; the actual cost of meals, or the cost not subsidized by the employer, supplied by the employer at the request of the employee; such amenities and services supplied by the employer; to recover any over payment of wages; contributions payable by the employee; to recover any basic pay which may have been paid to an employee in respect of annual leave granted by the employer before the completion of the period by virtue of which that leave would have been earned; and for any other purpose which may be approved by the Minister.

Source: § 2, 74, 75 & 80 of the Employment Act, 2010

02/13 COMPENSATION

ILO Conventions

Compensation overtime: Convention 01 (1919)

Night work: Convention 171 (1990)

Botswana has not ratified the Conventions 01 & 171.

Summary of Provisions under ILO Conventions

Working overtime is to be avoided. Whenever it is unavoidable, extra compensation is at stake - minimally the basic hourly wage plus all additional benefits you are entitled to. In accordance with ILO Convention 1, overtime pay rate should not be less than one and a quarter time (125%) the regular rate.

Night work means all work which is performed during a period of not less than seven (07) consecutive hours, including the interval from midnight to 5 a.m. A night worker is a worker whose work requires performance of a substantial number of hours of night work which exceeds a specified limit (at least 3 hours). Convention 171 requires that night workers be compensated with reduced working time or higher pay or similar benefits. Similar provisions are found in the Night Work Recommendation No. 178 of 1990.

If a worker has to work on a national/religious holiday or a weekly rest day, he/she should be entitled to compensation. Not necessarily in the same week, provided that the right to a paid compensation is not.

If a worker has to work during the weekend, he/she should thereby acquire the right to a rest period of 24 uninterrupted hours instead. Not necessarily in the weekend, but at least in the course of the following week. Similarly, if a worker has to work on a public holiday, he/she must be given a compensatory holiday. A higher rate of pay for working on a public holiday or a weekly rest day does not take away the right to a holiday/ rest.

Regulations on compensation:

- Employment Act, 2010

Overtime Compensation

Normal working hours in Botswana are 8 hours a day and 48 hours a week.

An employee is not required under his contract of employment to work more than five consecutive hours without a period of rest which is not be less than 30 minutes or more than an ordinary working period of eight hours in any one day or more than 48 hours in any one week. However, an employee engaged under his contract of employment in regular shift work can be required by his employer to work more than five consecutive hours without a period of rest, more than eight hours in any one day or more than 48 hours in any one week. That being said, the average number of hours worked over any period of four weeks is not to exceed 48 hours per week.

Where the working week is one of five days, the hours of work in each day can be increased to nine but the work hours must be interrupted by a period or periods of rest of not less than one hour in the aggregate during which period the employee is to be provided with the opportunity to have a meal.

An employee can be required by his employer to exceed the limit of hours or to work during a rest period prescribed in case of an actual or threatened accident; essential work, the performance of which is Crucial to the life of the community; work essential for national defence or security; urgent work to be done to machinery or plant; an interruption of work which it was

not reasonably possible to foresee; or work to be performed by employees in any industrial undertaking considered by the Minister of Labour to be vital to the economy of Botswana.

An employee is not to be required or permitted to work overtime for more than 14 hours in any one week. The Minister can through an order published in the Gazette, declare that the limitation upon overtime is not to apply to employees in a particular industry or undertaking.

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 will be considered overtime, and the employee will be paid one and a half times (150% of the normal wage rate).

Where a contract of employment provides for the payment of wages without reference to the number of hours worked by the employee and further provides that he may be required to work overtime in exceptional circumstances, the worker is not entitled to the overtime unless the contract of employment provides.

A child cannot be required or permitted to work more than six hours a day or 30 hours a week. A child or young person cannot, without the express permission of the Commissioner, be required or permitted to work in an industrial undertaking for more than three consecutive hours in the case of a child or more than four consecutive hours in the case of a young person, without a period of rest which cannot be less than 30 minutes.

A young person cannot, without the express permission of the Commissioner in writing, be required or permitted to work in an industrial undertaking for more than seven hours a day. Where a young person employed on work in an industrial undertaking is attending school, then the hours of his attendance at school will be deemed to be hours of work in the industrial undertaking, unless it is a government institution or approved by public authority.

Source: § 95, 97 & 105 of the Employment Act, 2010

Night Work Compensation

No provision concerning night work compensation could be located in the Employment Act.

Compensatory Holidays / Rest Days

Every employee is to be granted by the employer in every period of seven consecutive days a rest period comprising at least 24 consecutive hours.

This period is ordinarily Sunday or includes a Sunday. Where the employee is engaged on shift work, he must be granted a rest period comprising any period of 30 consecutive hours. Where an employee is required to work during a rest period, he must be granted substitute rest period before the next weekly rest period or paid at least double the wages (200% of the normal wage rate) for working on a weekly rest day.

Any employee who works on a paid public holiday or on a day observed as a public holiday is either to be paid at least double the wages (200% of the normal wage rate)

or be granted a paid day off for that day within 10 days immediately thereafter.

Source: § 93, 95 & 99 of the Employment Act, 2010

Weekend / Public Holiday Work Compensation

Any employee who works on a weekly rest day or a paid public holiday or on a day observed as a public holiday must be paid a premium wage or given a compensatory holiday.

The monetary compensation is 200% of the normal wage rate for working on a weekly rest day or a public holiday. The compensatory holiday for weekly rest day must be granted before next weekly rest day. The compensatory holiday for working on a public holiday must be granted within 10 days of the said public holiday on which the worker was required to work.

Source: § 94 and 99 of the Employment Act, 2010

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention
Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days.
In addition, for several industries, different Conventions apply.

Botswana has ratified the Convention 14 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week.

Regulations on annual leave and holidays:

- Employment Act, 2010

Paid Vacation / Annual Leave

Workers are entitled to paid annual leave of at least 1.25 days for every month of month. In total, this translates to 15 working days of annual leave. Annual leave does not increase with the length of employment with the employer.

Of the total 15 working days' leave earned in respect of a period of 12 months, at least eight working days have to be taken no later than six months immediately after the end of the period in respect of which the leave was earned. Remaining leave can be accumulated year by year but is not to be accumulated for longer than three years immediately after the end of the period in respect of which leave was first accumulated. At the end of that three years' period, all the accumulated leave together with all the leave earned in respect of the immediately preceding period of 12 months must be taken.

Payment in lieu of annual leave is possible. Where a contract of employment is terminated by either party to the contract, the employer is to pay to the employee his basic pay in respect of any period of leave accumulated or which has otherwise accrued to him but has not been granted before the termination of the contract of employment, and leave in respect of every month or part of a month of continuous employment after he last became entitled to leave.

Source: §98 of the Employment Act, 2010

Pay on Public Holidays

Workers are entitled to fully paid festival (public and religious) holidays. These include memorial holidays and religious holidays (Christian origin). There are a total of eight public holidays. These are New Year's Day, Good Friday, Easter Monday, 1st May, President's Day, Day following President's Day, Botswana Day, Christmas Day. However, for the mining industry, only Christmas Day, Good Friday and Botswana Day are to be public holidays.

Source: §99 and the Second Schedule of the Employment Act, 2010; §2 of the Public Holidays Act, 2006

Weekly Rest Days

Workers are entitled to a rest period of at least 24 consecutive hours in any period of 7 consecutive days. This period is ordinarily a Sunday or includes a Sunday. Where the employee is engaged on shift work, he is to be granted a rest period comprising any period of 30 consecutive hours.

Source: § 93 & s.95 of the Employment Act, 2010

04/13 EMPLOYMENT SECURITY

ILO Conventions

Convention 158 (1982) on employment termination

Botswana has not ratified the Convention 158.

Summary of Provisions under ILO Convention

The questions under this section measure the security or even flexibility or precariousness of an employment relationship. Although these are not clearly mentioned in a single convention (severance pay and notice requirement are provided in the Termination of Employment Convention No. 158) however, the best practices in the field require that employees be provided with a written contract of employment; workers on fixed term contracts should not be hired for tasks of permanent nature; a reasonable probation period (ideally lower than or equal to 6 months) may be followed to assess the suitability of an employee; a period of notice must be specified in an employment contract before severing the employment relationship; and workers be paid severance allowance on termination of employment relationship.

A contract of employment may be oral or written however workers should be provided with a written statement of employment at the start of their employment.

Fixed Term Contract workers must not be hired for permanent tasks as it leads to precarious employment.

A reasonable probation period must be allowed to let a worker learn new skills. A newly hired employee may be fired during probation period without any negative consequences.

A reasonable notice period, depending on the length of service of an employee, may be required before an employer may sever the employment relationship.

Employers may be required to pay a severance allowance on termination of employment (due to redundancy or any other reason except for lack of capacity or misconduct).

Regulations on employment security:

- Employment Act, 2010

Written Employment Particulars

Contracts of employment may be oral or in writing, expressed or implied. However, any work which falls outside of Botswana or as may be specified by the Minister of Labour, the employment contract must be in writing. Worker must be given a copy of contract where employment contract is concluded in writing.

Contract of employment is to contain the full name and address of the employer, the name and occupation of the employee, the place of work, the date on which employment begins, working hours, wage, rate of overtime pay, other cash payments, when remuneration will be paid, deductions from remuneration, annual leave, sick leave, maternity benefits and leave, period of notice for termination of employment or when the contract is to terminate, the payment for working on public holidays, and the list of documents which form part of contract of employment.

The employment contract which pertains to work outside Botswana or as otherwise prescribed by the Minister for labour should all of the above and certain extra information.

Three copies of every contract of employment attested under this Act are to be attested together with the original; one copy is to be delivered to the employer, one copy to the employee and one to the labour officer of the district of employment or, where the place of employment is outside Botswana, to the appropriate government official in the district within which the place

of employment is located. The original of every attested contract of employment is to be deposited with and preserved by the attesting officer.

Source: § 14, 39, 40, 43 of the Employment Act, 2010 and Rule 9.4 of the Code of Conduct

Fixed Term Contracts

The length of local fixed term contracts has not been specified under the law. Fixed term contracts are allowed for employment outside of Botswana. The maximum length of employment contract is to be 2 years. Where the employment contract is made in another country and relates to employment in Botswana, then the period of employment stipulated in any re-engagement contract of employment is not to exceed nine months or the maximum period prescribed by the law of the country of origin if it is less than nine months.

Source: § 50 & 51(2)(f) of the Employment Act, 2010

Probation Period

Employment contract provides for a probationary period for indefinite term employment contract with unskilled and skilled workers. In the case of an employment contract with an unskilled worker, the length of probationary period is 3 months. The probationary period is raised to 12 months for employment contracts with skilled workers.

An employment contract can be terminated during the probationary period by giving at least 14-day notice. In this way, the contract is deemed to have been terminated with

just cause and neither the employer nor the employee is required to give any reasons.

Source: § 20 of the Employment Act, 2010

Notice Requirement

A contract of employment (for a specified task) is terminated when the work specified in the contract is completed or the period of time for which the contract was made has expired. An indefinite term employment contract is deemed to run until lawfully terminated.

An indefinite term employment contract may be terminated by either employer or employee where the wages are payable for a period not exceeding a day, at the close of any day's work without notice. Where the wages are payable in respect of any period exceeding a day, the employment contract may be terminated at any time as long as notice has been given to the other party. Where the wages are payable for a period exceeding one day but less than a week, then notice has to be at least of one day. Where the wages are payable for period more than one week but less than two weeks but the employee has been in continuous service for 2-5 years, then the minimum length of notice is to be two weeks. Where the wages are payable in respect for a period exceeding one week but not more than a month and the employee has been in continuous employment for 5-10 years, then the minimum length of the notice is to be one month. Where wages are payable in respect for a period exceeding a day and the employee has been in continuous employment for 10 years or more, the minimum length of notice is to be six weeks.

The employer can terminate the contract of employment without giving notice of his intention to do so or making any payment where the employee is guilty of serious misconduct during the course of his employment.

An employee whose contract of employment is for an indefinite term or whose contract is for a specific task can terminate the contract of employment without giving notice of his intention to do so or making any payment on the basis that the nature of work is different than for which he was engaged for, his employment requires change in residence which is not stated in the employment contract, being transferred to lower grade work, bad treatment by employer or employer's representative, or possibility of violence or disease resulting from employment which was not stated in the employment contract.

There is a possibility to pay compensation in lieu of notice. Either party may terminate an indefinite term contract by paying the other party the wages that would have accrued to the worker during the minimum legal period of notice. Where such notice has already been given, the employment contract can be terminated without waiting for the expiry of the period of notice, by paying to the other party a sum equal to the amount of basic pay which would otherwise have accrued to the employee during the balance of the period of notice.

Source: § 17, 18, 19 & 26 of the Employment Act, 2010

Severance Pay

Severance pay is regulated under the Employment Act, 2010. A foreign or expatriate worker is entitled to severance

pay (end of service award) at half monthly wage (15 days' wage) per year for the first five years of service with the employer. The rate of severance pay increases to one monthly wage per year of service for years of employment beyond the first five years. Severance pay is payable only where the worker is not registered with the social insurance system. Severance pay is not awarded if a worker terminates the contract without notice.

If an employment contract is unjustifiably terminated, the affected party (generally the worker) has the right to compensation estimated by the court, taking into account the type of work, the amount of damage, the period of service, and the custom in force at the time of occurrence of employment termination.

Source: §76 & 78 of the Employment Act, 2010

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981) Recommendation 165: Workers with Family Responsibilities (1981)

Botswana has not ratified both the Conventions 156 & 165.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Code of Good Practice: Maternity Benefits and Family Responsibility

Paternity Leave

There is no provision concerning paternity leave in the Employment Act, 2010.

Parental Leave

There is no provision concerning parental leave in the Employment Act, 2010.

Flexible Work Option for Parents / Work-Life Balance

It is encouraged that employers grant their employees paid leave in addition to their annual leave entitlement, for circumstances where in case of fathers, a child is born; when the employee's child is seriously ill; and when in the event of death of an employee's spouse, life partner, parent, grandparent, child, grandchild or sibling.

Source: Rule 9 of the Code of Good Practice: Maternity Benefits and Family Responsibility.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Botswana has not ratified both the Conventions 103 & 183.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Employment Act, 2010
- Code of Good Practice: Maternity Benefits and Family Responsibility

Free Medical Care

The Employment Act, 2010 does not require an employer to pay the medical expenses or any part of such expenses incurred by a female employee during or attributable to her pregnancy or confinement.

Medical services included maternity care are provided by public hospitals which are accessible to all.

Source: § 119 of the Employment Act, 2010

No Harmful Work

An employer may not require or permit pregnant or breastfeeding employees to perform work which is hazardous to their health or of their children. Certain conditions may present a threat to health and safety and this may include exposure to noise, vibration, radiation, electro-magnetic fields etc; working in extreme conditions i.e., excessive heat or cold; and exposure to harmful chemical substances.

Source: Rule 8 of Code of Good Practice: Maternity Benefits and Family Responsibility

Maternity Leave

A female employee is to give notice to her employer of her confinement through a written medical certificate that states that the confinement will probably take place within six weeks immediately after the date

of the certificate. On receipt of this certificate, the employer has to immediately permit the female employee in question to absent herself from work until her confinement. He is not to permit or require her to return to work until the expiry of six weeks immediately after her confinement. This means that the pregnant employee is entitled to 12 weeks of maternity leave. Within 21 days immediately after her confinement, a female employee is to inform her employer of the date of confinement through a written certificate.

Where a female employee delivers to her employer a written certificate that the employee is suffering from an illness arising out of her confinement and is consequently unfit to return to work, the employer will not permit or require her to return to work until the expiry of eight weeks immediately after her confinement.

The maternity leave can be extended further by six weeks where the employee is suffering from an illness arising out of her confinement and is consequently unfit to return to work.

Source: § 113 of the Employment Act, 2010 and Rule 2 of Code of Good Practice: Maternity Benefits and Family Responsibility

Income

The employer has to pay every female employee whilst she is absent from work because of maternity leave an allowance of not less than 50 per cent of the basic pay and other benefits or 50 thebe per day, whichever is greater.

If a female employee works for another employer during maternity leave, she forfeits her entitlement to maternity allowance.

Maternity allowance is paid in the following three instalments:

- (a) the first, for the period of absence up to and including the day of confinement, is paid within 48 hours immediately after the employee delivers the medical certificate;
- (b) the second, for the period of absence of six weeks immediately after the day of confinement, is paid on the return of the employee to work or, where that period has been extended, on the day she would otherwise have been due to return to work; and
- (c) the third, where there has been an extension of two weeks, is paid within 48 hours immediately after the employee deliver the required medical certificate.

Source: §113 of the Employment Act, 2010; Rule 3 of the Code of Good Practice: Maternity Benefits and Family Responsibility

Protection from Dismissals

Employment of a female worker during her maternity leave is protected. Where a worker is on maternity leave, the employer is prohibited from serving a termination of employment notice on her. Furthermore, any such notice given to a female employee which expires during maternity leave will be null and void.

No notice of intention to terminate the employment of a pregnant employee given without good cause within three months of her confinement, will affect her right to

receive maternity allowance. Here, good cause is limited to acts of serious misconduct.

Source: § 116 of the Employment Act, 2010 and Rule 4 of the Code of Good Practice: Maternity Benefits and Family Responsibility

Right to Return to Same Position

The Employment Act, 2010 provides that any absences by the employee due to maternity leave is not to interrupt the employment of the employee concerned. The law also prohibits dismissal of a worker on maternity leave. This means that the worker has the right to return to the same position on completion of maternity leave.

Source: § 113 of the Employment Act, 2010

Breastfeeding/ Nursing Breaks

For nursing mothers, the employer is to permit the female employee to take nursing break of half-an-hour twice a day during the working hours for six months immediately after her return to work from confinement. The nursing breaks are considered working time and are thus paid breaks. The two half-an-hour feeding periods can be aggregated and taken as one continuous hour, at the option of the employee and in agreement with the employer.

Source: §118 of the Employment Act, 2010

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Botswana has not ratified both the Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Code of Conduct
- Employment Act, 2010
- Factories Act, 1973

Employer Cares

Parts IV-VII of the Factories Act have detailed provisions on maintaining safe and healthy workplaces. These relate to cleanliness, ventilation, prohibition of overcrowding, safe dealing of chains, ropes, hoists and lifts, etc. The Factories Act further requires safe means of access and safe place of employment. Maintaining a safe work environment is also the responsibility of workers. Factories Act prohibits workers to wilfully and without reasonable cause do anything likely to endanger himself or any other person.

In line with the Employment Act, every employer must, at his own expense, provide for his employees and members of their families living with them medical aid in accordance with such scale as may be prescribed. The obligation to provide medical aid to the members of worker's family extends only to cases where the employee and his family are resident on employer's land.

According to the Code of Conduct, the conditions of employment must be designed to avoid any exposure to the employee to danger, health hazards or unpleasant working conditions. If hazardous or unpleasant working conditions cannot be avoided, the employer must provide appropriate protective clothing and equipment, and should consider compensation for unpleasant working conditions. Where practical, the employer should arrange for

pre and post medical examinations and if the employees are exposed to hazardous substances, then there should also be regular in-service medical examinations. Wherever possible, joint management and employee health and safety committee should be established.

Source: Rule 11 of the Code of Conduct; §125 of the Employment Act, 2010; Parts IV-VII of the Factories Act, 1973

Free Protection

If hazardous or unpleasant working conditions cannot be avoided, the employer must provide appropriate protective clothing and equipment, and should consider compensation for unpleasant working conditions.

Where, in any factory, workers are employed in any process involving excessive exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances, including suitable gloves, footwear, goggles, head or face coverings or any other necessary clothing or appliance must be provided and maintained for the use of such workers.

Source: §51 of the Factories Act; Rule 11 of the Code of Conduct

Training

Factories Act requires training and supervision of inexperienced workers.

In line with the Code of Conduct, the induction training should consist of providing information concerning the employee's job and direct supervisor, rates of pay and other terms and conditions of

employment, the company's rules, and if necessary, information about trade union recognized by the company.

If an employee is exposed to hazardous working conditions, special training should be given in the use of safety equipment, safety procedures and the wearing of protective clothing. Employees should also be trained in occupational health and safety practices at work.

The management is to provide appropriate training programs to enable employees to develop additional skills and knowledge. Service training is to be considered essential. For supervisor and management positions, the employers are to ensure that employees undergo appropriate training prior to taking up these positions.

Source: §29 of the Factories Act; Rule 22 of the Code of Conduct

Labour Inspection System

Employment Act provides for appointment of Commissioner of Labour and Labour Officers. They have the power to, at any reasonable time, enter, inspect and examine any area where any employee is housed; enter, inspect and examine any sanitary arrangements, water supply, hospital or medication to be used by employees in any place; inspect and examine kitchens and food for the employees; take and remove, for the purposes of analysis, samples of any material or substances handled by employees; require any employer to produce any employee employed by him or any documents relevant to such an employee; and question any employer or employee or any other person whose evidence there is reasonable cause to

consider necessary regarding matters connected with carrying out any of the provisions of this Act.

The Commissioner or any labour officer can require all premises in the building used by the employer or recruiter to be kept clean and in a sanitary condition; require the employer or recruiter to return to the place of his recruitment or send to hospital any person who is ill and for whom the conditions prevailing at any place of employment is not conducive to the recovery of his health; where any particular place is unsanitary according to the Commissioner or Labour Officer. Directions can be issued to the person for the time being responsible for the management to discontinue such occupation

It is the duty of the Commissioner and Labour Officers to furnish technical information and advice to any employer or employee regarding the most effective means of complying with legislative requirements.

Source: §3, 4 & 11 of the Employment Act, 2011

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Botswana has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Employment Act, 2010
- Workers Compensation Act
- Factories Act

Income

Any employee is, after medical examination, entitled to such sick leave as the medical officer concerned recommends and is entitled to be paid his basic pay for at least 20 working days of sick leave in any one year of continuous employment. The cost of the medical examination has to be borne by the employer.

Source: §100 of the Employment Act, 2010

Medical Care

Every employer is to provide for his employees and members of their families living with them medical aid. The employer is to defray the reasonable expenses incurred by a worker within Botswana, or with the approval of the Commissioner of Worker's Compensation, outside Botswana, as a result of any injury or occupational disease which would entitle the worker to compensation.

Under the Factories Act, upon the premises of a factory, there is to be provided and maintained a first aid box or cupboard stocked to the prescribed standard. Each first aid box is to be placed under the charge of a responsible person who will always be readily available during working hours, and a notice will be affixed in every workroom stating the name of the person in charge of the first aid box or cupboard provided in respect of that room.

Source: §125 of the Employment Act, 2010; §28-30 of the Workers Compensation Act; §49 of the Factories Act

Job Security

There is no clear provision on job security after the first 20 days of sickness. In line with the Employment Act, if the employer is unable to fulfil a contract of employment or where, owing to sickness or accident, the employee is unable to fulfil such a contract, the contract may be terminated, subject to conditions safeguarding the right of the employee to any wages earned, any compensation due to him in respect of sickness or accident and any right to repatriation.

Source: §49 of the Employment Act, 2010

Disability / Work Injury Benefit

Work injuries are divided into three categories: (i) permanent incapacity (ii) temporary incapacity and (iii) fatal injury leading to death of a worker.

If the employee is assessed with a total disability, a lump sum of 60 months of the insured worker's monthly earnings is paid. If the employee requires the constant attendance of others to perform daily functions, up to 25% of the permanent disability benefit is to be paid as constant attendant allowance. For partial permanent disability, a lump sum of 60 months of the employee's monthly earnings multiplied by the assessed degree of disability is paid.

For temporary disability, 66% of the difference between the employee's monthly earnings before the work injury occurred or the occupational disease began

and the employee's monthly earnings (actual or potential) afterwards is paid for up to six months. This may be extended for an additional three-month period of up to 24 months with the approval of the Commissioner for Workmen's Compensation. A lump sum can also be paid under certain circumstances.

Where the employee has passed away due to his injuries, the compensation which is payable to or for the benefit of the worker, will be payable to the deceased worker's dependents. A lump sum of 48 months of the employee's monthly earnings minus funeral costs is paid to dependent survivors. However, a reduced benefit is paid to survivors who were only partially dependent.

Source: §18, 19 of the Workers Compensation Act

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Botswana has not ratified the above-mentioned Conventions.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give “due regard to the working ability of elderly persons” and “demographic, economic and social criteria, which shall be demonstrated statistically”. Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Workers Compensation Act

Pension Rights

Both men and women are entitled to a pension from the age of 65 onward. To claim pension, the person in question must have a valid national identity card. For old-age benefits, 330 pula is paid per month. That being said, the benefits are to be adjusted periodically due to changes in cost of living. The entire source of fund is from the Government.

Source: Botswana Social Security Profile 2017

Dependents' / Survivors' Benefit

For Universal pension, the source of which is the government, there are survivor benefits for War Veteran's allowance and Orphan Care benefit. Under War Veteran's allowance, 450 pula a month is paid to the widow or orphan of a deceased veteran of World War I and II. The widow's allowance will cease upon her remarriage.

There is also an orphan care benefit where an electronic food voucher of 650 pula is paid to the orphan's guardian. In addition, the cost of school uniforms, subsidies for transportation, clothing and rent, support for special dispensation for tertiary education and support for additional education needs, is also paid.

Source: §14 of the Workers Compensation Act; Botswana Social Security Profile 2017

Unemployment Benefits

There is no provision for unemployment benefit. Law provides for severance benefit, paid by the employer, which is paid on termination of employment relationship.

Invalidity Benefits

For Disability Allowance under Universal Pension, the entire source of funds is the Government. It is paid to individuals who have severe disabilities. However, to qualify for such an allowance, the individual claiming it must have an allowance below 120 pula or 150 pula if they have dependents, and less than four livestock units. For Disability Allowance, 300 pula per month is paid. Additionally, a monthly electronic food voucher worth 600 to 800 is also paid depending upon the local authority.

Source: Botswana Social Security Profile 2017

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Convention 190 (2019) is about elimination of violence and harassment in the world of work.

Botswana has ratified the Conventions 100 and 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment. It defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment”. This definition covers physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, among other things.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Employment Act, 2010
- Code of Conduct
- Code of Good Practice: Sexual Harassment in the Workplace
- Code of Good Practice: HIV/AIDS and Employment

Equal Pay

There is no provision concerning equal pay in the Employment Act, 2010.

Sexual Harassment

The Botswana Public Service (Amendment) Act, No. 14 of 2000, (in a newly added section 31A) classifies sexual harassment of a public officer by a co-worker or by a supervisor as misconduct. No such provision is available under the Employment Act.

The Code of Conduct includes within the definition of discrimination, harassment of an employee whether of a sexual nature or not. Sexual harassment has been defined as an unwanted conduct of sexual nature. The unwanted nature of the act distinguishes it from consensual behaviour.

An employee who is harassed can resign and claim compensation for constructive dismissal, sue for damages for breach of contract or an invasion of privacy, or interdict the harasser or the employer. Furthermore, the employee can lawfully discipline or dismiss an employee who is found to have been guilty of sexual harassment.

The workplace is to be free from sexual harassment. The employer is to respect the

employee's right to dignity, privacy and equity, and the employees are to respect the right to dignity, privacy and equity of other employees. Furthermore, an employer is to create and maintain a working environment where the dignity of each employee is respected. A workplace is to be maintained in such a way that the victims of sexual harassment do not fear reprisals or feel their grievances are being ignored. For this, the employer can follow certain steps such as all employees being refrained from committing sexual harassment, a working environment is to be maintained where sexual harassment is unacceptable, that those dealing with the business are not subjected to sexual harassment by any of the employees, and that appropriate action is taken when sexual harassment does occur in the workplace.

Source: Rule 3 of the Code of Conduct and Rule 1,3, 5 of Code of Good Practice: Sexual Harassment in the Workplace

Non-Discrimination

Discrimination has been defined to include but not limited to discrimination on the basis of race, tribe, place of origin, national extraction, social origin, marital status, political opinions, sex, colour or creed.

An employment contract cannot be terminated on grounds of employee's race, tribe, place of origin, social origin, marital status, gender, sexual orientation, colour, creed, health status or disability.

Under the Code of Conduct, no employee or employer can discriminate against any employee in any employment policy or practice. Furthermore, employee with

HIV/AIDS are not to be discriminated against allocation of employee benefits or be dismissed on the basis of their HIV/AIDS status.

Source: § 23 of the Employment Act, 2010 and Rule 3 of the Code of Conduct and Rule 8 & 9 of the Code of Good Practice: HIV/AIDS and Employment

Equal Choice of Profession

No discriminatory provisions could be located under the Constitution of Botswana or Employment Act. It is the employer's responsibility to ensure that there is equal opportunity in the workplace. The employer is to adopt, communicate, implement, monitor and review policies to eliminate discrimination and the following guidelines on specific issues.

Source: Rule 6 of the Code of Conduct

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Botswana has ratified the Conventions 138 and 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Employment Act, 2010
- Children Act

Minimum Age for Employment

A child has been defined to mean a person under the age of 15 years. A young person has been defined as person above the age of 15 but below the age of 18. No one is to recruit any child or young person for employment. Any person who does so will be guilty of an offence and liable to a fine not exceeding P2,000 or be imprisoned for a term not exceeding 18 months or to both

A child cannot be employed in any capacity. However, where the child has attained the age of 14 and is not attending school, he may be employed for light work which is not harmful to his health and development by a member of his family or for such work as may be approved by the Commissioner. However, where the employment is other than of a domestic character in connection with which suitable accommodation is provided, the child is to return to his parents or guardian each night. A child is not permitted to work more than six hours a day or 30 hours a week.

A child who has attained the age of 14 years and is still attending school can be employed during school vacations for light work which is not harmful to his health for not more than five hours a day between 6 am and 4 pm. For this, the approval of the Commissioner is required.

Under the Children Act, every child has the right to be protected from labour practices which are inappropriate for the child's age or which have detrimental impact on the child's education, physical or mental

health, or social, moral or spiritual development. A person who employs a child has to submit the necessary records to Ministry of Labour. Failure to do so can lead to a fine of P10,000. Any person who employs children will be fined P10,000 to P30,000 and can be imprisoned for 12 months to 5 years.

Education is not compulsory in Botswana.

Source: § 2, 47 & 105 of the Employment Act, 2010 and 24 of the Children Act

Minimum Age for Hazardous Work

A child cannot be required or permitted to work more than six hours a day or 30 hours a week. A child or young person cannot, without the express permission of the Commissioner, be required or permitted to work in an industrial undertaking for more than three consecutive hours in the case of a child or more than four consecutive hours in the case of a young person, without a period of rest which shall not be less than 30 minutes.

A young person cannot, without the express permission of the Commissioner in writing, be required or permitted to work in an industrial undertaking for more than seven hours a day. Where a young person employed on work in an industrial undertaking is attending school, then the hours of his attendance at school will be deemed to be hours of work in the industrial undertaking, unless it is a government institution or approved by public authority.

A child or young person is not to be employed on any kind of work during the night. For a child, night consists of the period between 10 pm to 6 am. For a young

person, night consists of the period between 11 pm to 6 am.

However, a young person may be employed on work during the night in the case of an emergency which could not reasonably have been foreseen and prevented or if the young person is so employed under a contract of apprenticeship or indenture to learn.

A child is not to be required or permitted, in the course of his employment, to lift, carry or move anything so heavy that it is likely to endanger his physical development. A child or young person is not to be employed for underground work. Furthermore, young person or child cannot be employed on any work which is harmful to his health, development, safety or morals.

Source: § 105, 106 & 107 of the Employment Act, 2010

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Botswana has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Employment Act, 2010
- Anti-human Trafficking Act, 2014

Prohibition on Forced and Compulsory Labour

Under the Employment Act, 2010 defines forced labour as all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself voluntarily. However, it does not include labour required in consequence of a sentence or order of a court; required of any person while the person is lawfully detained and that which is reasonably necessary in the interest of hygiene at the place at which that person is detained; required of a member of a disciplined force as the member's duties as such or, in the case of a person who has conscientious objections to service as a member of a naval, military or air force, required by law of such person in place of such service; required during any period of public emergency or calamity which threatens the life and well-being of the community; or reasonably required as part of normal communal or other civic obligations.

A person who exacts, imposes, causes or allows forced labour for his benefit or for the benefit of any other person is guilty of an offence and is liable to be fined not exceeding P2,000 or be imprisoned for a term not exceeding 18 months or to both.

Any person who while trafficking of humans, subjects a person to slavery or forced labour, commits an offence of a fine not exceeding P1,000,000 or imprisonment for not longer than 30 years or both. Any person who buys and engages in the service

of a trafficked person, is liable to a fine not exceeding P100,000 or to an imprisonment for a term not exceeding 15 years or both. On a subsequent conviction, there is to be a fine not exceeding P400,000 or imprisonment for a term not exceeding 20 years.

Source: § 2 & 70 of the Employment Act, 2010 and 9 & 12 of the Anti-human Trafficking Act, 2014

Freedom to Change Jobs and Right to Quit

An indefinite term employment contract may be terminated by either employer or employee where the wages are payable for a period not exceeding a day, at the close of any day's work without notice. Where the wages are payable in respect of any period exceeding a day, the employment contract may be terminated at any time as long as notice has been given to the other party. Where the wages are payable for a period exceeding one day but less than a week, then notice has to be at least of one day. Where the wages are payable for period more than one week but less than two weeks but the employee has been in continuous service for 2-5 years, then the minimum length of notice is to be two weeks. Where the wages are payable in respect for a period exceeding one week but not more than a month and the employee has been in continuous employment for 5-10 years, then the minimum length of the notice is to be one month. Where wages are payable in respect for a period exceeding a day and the employee has been in continuous employment for 10 years or more, the minimum length of notice is to be six weeks.

Source: § 10 of the Employment Act, 2010

Inhumane Working Conditions

The general working hours are 8 hours a day and 48 hours a week. The overtime hours are 14 hours per week. Thus, the maximum working hours per week, inclusive of overtime, are 62 hours per week. The Minister for Labour may declare that 14-hour overtime restriction does not apply to employees in some industries or undertakings. Similarly, a ministerial order may prescribe the maximum number of hours which may be worked as overtime over any given period.

Source: § 95, 97 & 105 of the Employment Act, 2010

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize: Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Botswana has ratified both Conventions 87 & 98.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

Freedom to Join and Form a Union

In line with article 13 of the Constitution of Botswana, no person shall be hindered in the enjoyment of his or her freedom of assembly and association, that is to say, his or her right to assemble freely and associate with other persons and in particular to form or belong to trade unions or other associations for the protection of his or her interests.

There are a few restrictions on joining a trade union. A person cannot be a member of a registered trade union if he/she is under the age of 15 years. The member must also be an employee of the industry to which the trade union is concerned. Furthermore, an employee of a trade union cannot be a member as well.

Source: §13 of the Constitution of Botswana 1966; §20 & 21 of Trade Unions and Employers' Organization Act

Freedom of Collective Bargaining

Collective bargaining is regulated under the Trade Disputes Act. Every collective labour agreement is to be binding upon the parties who have entered into the agreement. However, a collective labour agreement will cease to be binding upon the parties thereto upon the expiry of one month, or such greater period as the notice may specify, immediately after the day on which any party to the agreement serves notice in writing to every other party to the agreement that it repudiates the agreement. That being said, no notice is to be served without the permission in writing of the Minister before the expiry of six

months immediately after the day on which the agreement came into force.

Each party to a collective labour agreement or to an agreement extending or varying the terms of a collective labour agreement has to lodge a certified copy thereof with the Commissioner within 28 days from the day the agreement was concluded. The Commissioner will register one copy of the agreement lodged with him, and will serve notice on each party to the agreement that he has done so.

Collective labour agreement has to be concluded between one or more registered trade unions or branches of trade unions, or where no such organization exists, the representatives of the employees concerned are to be elected and authorised by them.

Source: §2, 37 & 38 of the Trade Disputes Act, 2004

Right to Strike

A party to a dispute of interest has the right to strike if the dispute has been referred to the Commissioner but remains unresolved after 30 days. However, where the party referring the dispute fails to attend a mediation meeting, then the period can be further extended by 30 days. After the 30-day limit has expired, 48-hour notice of the commencement of the strike has to be given to the Commissioner and the other parties to the dispute. Furthermore, the strike must conform to the provisions of Trade Disputes Act, rules regulating strikes, and any rules determined by the mediator.

An employee who wilfully breaches his contract of employment knowing, either alone or in combination with others, the

effect of which is to deprive the public of an essential service or substantially to diminish the enjoyment of an essential service by the public; or endanger human life or public health or damage property, such worker is presumed to have committed an offence and is liable to a fine not exceeding P2,000 or to imprisonment for a term not exceeding 12 months, or to both.

In case of a trade dispute between employees and employers in essential services, where there is a failure to reach a settlement of a trade dispute reported to the Commissioner within 21 days of the day on which the dispute was so reported, the employees by or on whose behalf the dispute can proceed to take industrial action in furtherance of the dispute and such industrial action will not be unlawful industrial action.

Employers are prohibited from taking any persons into employment to do the work of employees who are on strike or who are locked out

Source: §39-45 of the Trade Disputes Act, 2004

QUESTIONNAIRE

DECENTWORKCHECK.ORG

Check

DecentWorkCheck Botswana is a product of
wageindicator.org and mywage.org/botswana



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security





10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment, promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

	Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
	Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
	Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
	Age		<input type="checkbox"/>	<input type="checkbox"/>
	Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
	Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
	Language		<input type="checkbox"/>	<input type="checkbox"/>
	Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
	Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
	Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
	Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40	I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41.	In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42.	In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43.	I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44.	My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45.	My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46.	I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47.	I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48.	My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49.	I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Botswana scored 39 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.