



REPUBLIC OF KIRIBATI
(No 3 of 2017)

I assent,


Beretitenti
23/2/ 2018

AN ACT TO AMEND THE EMPLOYMENT AND INDUSTRIAL RELATIONS CODE (EIRC)
2015

Commencement:

23/2/ 2018

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

1. Short Title

This Act may be cited as the Employment and Industrial Relations Code (Amendment) Act, 2017.

2. Meaning of 'principal Act'

In this Act 'principal Act' means the *Employment and Industrial Relations Code (EIRC) 2015*.

3. Amendment of section 8

Section 8 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"s8(1) The Minister may appoint such labour inspectors as are necessary or expedient for the purposes of this Code, who shall be public servants."

4. Amendment of section 9

Section 9 of the principal Act is amended as follows:-

(a) in subsection (3) by inserting a new subsection 9(3)(f) immediately after subsection 9(3)(e) as follows:-

"9(3)(f) remove any child from a situation where the inspector has reasonable grounds to believe that the child is engaged in hazardous work or a worst form of child labour or is likely to be seriously harmed".

(b) in subsection (3) by inserting a further subsection 9(3)(g) immediately after a new subsection 9(3)(f) as follows:-

"9(3)(g) issue a fixed penalty notice in the prescribed form".

5. Amendment of section 10

Section 10 of the principal Act is amended by repealing subsection (3) and substituting it as follows:-

"10(3) An employer may, in extenuating circumstances, apply to the Commissioner for an extension of the date, of no more than 28 days, specified for compliance with the demand notice".

6. Amendment of section 11

Section 11 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"11(1) An employer may, within 28 days of the demand notice being issued, apply to the Registrar to have the demand notice reviewed, provided that the demand notice has not been issued in relation to a fixed penalty offence listed in Schedule 6 of this Code."

7. Amendment of section 12

Section 12 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"12(1) Any person aggrieved by an order of the Registrar under section 11, may appeal the decision or order to the High Court provided that the demand notice has not been issued in relation to a fixed penalty offence listed in Schedule 6 of this Code."

8. Insertion of new section 13A

Section 13A is inserted immediately after section 13 as follows:-

"13A Fixed Penalty Notice

13A(1) Offences that are fixed penalty offences and the penalties which can be issued in fixed penalty notices are set out in Schedule 6;

(2) In the event that a labour inspector forms the opinion, on reasonable grounds, that an employer has committed a fixed penalty offence listed in Schedule 6, the labour inspector may issue a fixed penalty notice containing a fixed penalty in accordance with this section;

(3) The fixed penalty notice must be issued in the form prescribed by regulations;

(4) The fixed penalty must be paid within 28 days of the fixed penalty notice being issued.

An employer who is served with a fixed penalty notice and disputes the offence contained in the notice or fails to pay the penalty in full within 28 days may be prosecuted for the fixed penalty offence. If convicted of a breach of a fixed penalty offence, the general penalty prescribed in section 152 of the Code will apply;

(5) If any person has committed a fixed penalty and has been penalised under this section for more than 3 times an employer may be prosecuted and the general penalty prescribed in section 152 of the Code will apply."

9. Amendment of section 15

Section 15 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"15(1) The Minister may appoint the Registrar, who shall be a public servant."

10. Amendment of section 32

Section 32(5) of the principal Act is amended by inserting the word "heard" before the word "on" and after the word "be". This section shall read as follows, "The Registrar shall be entitled to be *heard* on any appeal under this section".

11. Amendment of section 40

Section 40 of the principal Act is amended as follows:-

- (a) in subsection (1)(e) by repealing the words "one of whom shall be appointed by the Minister as Vice Chairman of the Board".
- (b) inserting a new subsection (3) after subsection (2) as follows, "The Minister must appoint a Vice Chairman from amongst the employee's and the employer's representative who shall take it in turn".

12. Amendment of section 115

Section 115 of the principal Act is amended as follows:-

- (a) in subsection (2) by repealing it and substituting it as follows:-
"115(2) Subject to subsection (3), the minimum age for employment applies to all types of work that is not considered hazardous work or a worst form of child labour, including, work as a self employed person and work as an apprentice".
- (b) in subsection (3) by repealing it and substituting it as follows:-
"115(3) The minimum age for employment does not apply to work performed in schools, as part of an authorised programme of education or community services, church, youth activities to work carried out by a child in a family undertaking, family setting or family business provided that such work:-
 - (a) is unlikely to harm the health, safety and development of the child;
 - (b) shall not prejudice the child's attendance at school;
 - (c) shall not prejudice the child's ability to benefit from schooling;
 - (d) complies with the prescribed requirements for light work;
 - (e) is in the best interest of the child."

13. Amendment of section 116

Section 116 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

- "116(1) A child aged 12 or 13 may be employed or engaged to perform light work that:
- (a) is unlikely to be harmful to the health, safety and development of the child;
 - (b) shall not prejudice the child's attendance at school;
 - (c) shall not prejudice the child's ability to benefit from schooling;
 - (d) complies with the prescribed requirements for light work; and
 - (e) is in the best interest of the child."

14. Amendment of section 118

Section 118 of the principal Act is amended as follows:-

- (a) in subsection (1)(b) by inserting immediately after the word "children" the words "domestically and internationally".
- (b) in subsection (1)(g) by inserting immediately after the word "performances" the following

words, "distributing and possessing child pornography and financially benefiting from the use of children in prostitution".

15. Amendment of section 124

Section 124(1) of the principal Act is amended by repealing the words "28 days" and substituting it with the words "6 months".

16. Amendment of section 127

Section 127 of the principal Act is amended by repealing the whole section and substituting it as follows:-

"127 Referral for conciliation-

- 127 (1) The Registrar may refer a matter to an independent conciliator for conciliation.
- (2) The Minister in accordance with the advice of Cabinet may appoint such conciliators as are necessary or expedient for the purposes of the Code.
- (3) A conciliator shall conciliate a matter referred to him or her, including the cause and circumstances of the dispute by communicating with the parties and shall endeavour to bring about a settlement, and then shall report the outcome to the Registrar.
- (4) In discharging his or her functions, a conciliator shall do so in a timely fashion as is reasonably practicable in the circumstances, and in any case, shall no more than:
- (a) one month from the date the matter is referred to the conciliator by the Registrar; and
 - (b) a shorter timeframe as may be specified by the Registrar.
- (5) The terms of every settlement of a dispute under this section shall:
- (a) be in writing;
 - (b) signed by the parties to the dispute;
 - (c) certified by the Conciliator as a true and accurate record of the settlement; and
 - (d) a copy shall be lodged with the Registrar".

17. Amendment of section 128

Section 128 of the principal Act is amended in subsection(1) by repealing it and substituting it as follows:-

"128(1) The Registrar may refer an employment dispute to an independent arbitrator that he or she shall select from a pool of arbitrators who are appointed by the Minister after taking into account recommendations from the Decent Work Advisory Board".

18. Amendment of section 129

Section 129 of the principal Act is amended by repealing it and substituting it as follows:-

"129 Every referral of a trade dispute to a particular conciliator or arbitrator made by the Registrar in accordance with this Part shall be final and shall not be questioned by any party to the employment dispute in question."

19. Amendment of section 139

Section 139 of the principal Act is amended by inserting a new subsection(6) immediately after subsection(5) as follows:-

"139(6) For the avoidance of doubt this section does not prevent a strike or lockout taking place of less than 50 employees that is lawful under this Part".

20. Amendment of section 154

Section 154 of the principal Act is amended as follows:-

- (a) in subsection (1) by repealing the words "Beretitenti" and substituting it with the word "Minister".
- (b) in subsection (2) by repealing the words "Beretitenti" and substituting it with the word "Minister".
- (b) in subsection (2) by inserting new subsections of 154(2)(e), (f), (g) and (h) after subsection 154(2)(d) as follows:-

"Section 154 Regulations under this Code

154(2) Without any prejudice to the generality of subsection (1), the Minister, acting in accordance with the advice of the Cabinet may make regulations with respect to:

 - (e) wages and salaries criteria and guidelines for workplaces;
 - (f) the records, registers, books, systems, information, accounts and other documents to be kept by employer's in respect of employees including working children;
 - (g) the conditions of work and hours of work for children including the prohibition, restriction or regulation of certain occupations or activities;
 - (h) penalties and enforcement mechanisms including powers of the labour inspectors to prosecute and issue fixed penalties."

21. Insertion of a new section 157

Section 157 is inserted immediately after section 156 of the principal Act as follows:-

"157 Transitional Provision-

157(1) Any proceedings commenced prior to this Act that relate to the Employment Ordinance 1977, Trade Union and Employer Organisations Code 1998 or the Industrial Relations Code 1998, as the case may be shall continue as if those Acts remain in force.

(2) Any organisation registered under the Trade Union and Employer Organisations Code shall continue to be registered on the commencement of this Act and for the avoidance of doubt:

- (a) officers appointed under the Trade Union and Employer Organisations Code shall be deemed valid;
- (b) rules relating to any trade union or employer organisation made under the Trade Union and Employer Organisations Code shall be deemed to be valid.
- (c) employer deductions of union fees shall continue unaffected on the commencement of this Act.

22. Insertion of Schedule

The principal Act is amended by inserting the following Schedule at the end thereof:-

"SCHEDULE 6 (Section 13A)

FIXED PENALTY OFFENCE

| Section | Offence | Individual | Company |
|---------|---|------------|----------|
| S.78(4) | Failure to pay wages | \$200 | \$1000 |
| s.79(5) | Failure to pay authorised deductions from wages owed to an employee | \$200 | \$1000 |
| s.80 | Failure to provide statement of wages and particulars | \$200 | \$1000 |
| s.81 | Failure to keep employment records | \$200 | \$1000 |
| s.82 | Failure to pay employees in case of insolvency or bankruptcy | \$200 | \$1000 |
| s.83 | Breach of limitation of hours of work in a day and a week | \$200 | \$1000 |
| s.84 | Failure to provide daily and weekly rest period | \$200 | \$1000 |
| s.85 | Failure to provide meal and tea breaks | \$200 | \$1000 |
| s.86 | Failure to provide nursing breaks | \$200 | \$1000 |
| s.88 | Breach of s.88 relating to night work | \$200 | \$1000 |
| s.91 | Failure to pay for annual leave | \$200 | \$1000 |
| s.92 | Failure to pay for work on public holidays | \$200 | \$1000 |
| s.93 | Failure to pay for sick leave | \$200 | \$1000 |
| s.94 | Failure to pay for compassionate leave | \$200 | \$1000 |
| s.95 | Failure to pay for maternity leave | \$200 | \$1000 |
| s.98(5) | Failure to provided reasons for termination of employment | \$200 | \$1000 |
| s.119 | Failure to keep a register of child employees | \$200 | \$1000". |

offences. More serious offences should be prosecuted and the employer should have a chance to make submissions.

Section 11 amends section 40 of the principal Act by giving the role of a Vice Chairman to representatives from the employees and employers on a rotation basis. Section 15 amends section 124(1) by extending the period of reporting to the Registrar from 28 days to 6 months to allow more time to collect documents and information relating to the termination.

Section 16 amends the whole of section 127 by making it more simpler and instead of the Registrar appointing the Conciliator the power is now vested with the Minister in accordance with the advice of Cabinet. The functions are clearer and flow to the previous provision.

Section 17 amends section 128 by taking the appointment of arbitrators from the Registrar to the Minister with the recommendation from the Decent Work Advisory Board. In this way it allows for the Board to have a say in the appointment, is more transparent and avoid conflict of interest.

The draft regulations provide that where an employer who disputes a fixed penalty notice and does not pay the fine within 28 days, the matter will proceed to a hearing in the High Court and if convicted, the fine prescribed in section 152 will apply, rather than the smaller fixed penalties prescribed in Schedule 6.

The new provisions relating to fixed penalty notices aim to penalise and deter employers from breaching the EIRC. Currently there are no deterrents and employers can repeatedly breach the legislation, knowing that prosecution and conviction will most likely take years.

Employers should be given an opportunity to remedy a breach (via a demand notice) but for employers who repeatedly offend or who are not deterred by demand notices, the review/appeal provisions in sections 11 and 12 of the EIRC could defeat the purpose of the fixed penalty notice (an immediate penalty and deterrent) and cause undue delays. Recommended amendments to sections 11 and 12 of the EIRC provide that a demand notice cannot be appealed to the Registrar or High Court where the offence relates to a fixed penalty offence. If the employer disputes the fixed penalty offence and does not pay the fine, the offence will be prosecuted in the High Court and the employer will have the opportunity to make submissions and dispute the offence and fine.

The insertion of section 157 is to allow for proceedings prior to the Act to remain in force as well as those organisation registered before will continue to be registered. Finally the insertion of the Schedule is to give effect to the penalty notice mentioned earlier.

**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Penal Code (amendment) and Criminal Procedure Code (amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 4th December 2017 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this 23 day of February 2018.



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Clerk of the Maneaba ni Maungatabu