

REPUBLIC OF KIRIBATI
(No. 2 of 2008)

I assent,

Beretitenti
Assented: 15th May 2008

AN ACT TO AMEND THE EMPLOYMENT ORDINANCE

Commencement:
2008

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

Short title

1. This Act may be cited as the Employment (Amendment) Act 2008.

Amendment of section 2

2. Section 2 of the Employment Ordinance (hereinafter referred to as the principal Ordinance) is amended by repealing the definition of the word “worker” and substituting the following -

““worker” means any person who has entered into or works under a contract of employment and includes any immigrant worker, a worker who is apprenticed and any domestic servant and self-employed persons including children working in the absence of an employment relationship;”

Amendment of section 74

3. Section 74 of the principal Ordinance is amended by repealing paragraph (c) and substituting the following -

“(c) unpaid labour on minor communal works that is reasonably required as part of reasonable and normal communal or civic obligations;”

Amendment of section 75

4. Section 75 of the principal Ordinance is amended by repealing the figure “\$100” and substituting “\$250,000 and to imprisonment for life”.

Insertion of new Part VIIA

5. A new Part VIIA is inserted immediately after section 75 as follows -

**“PART VIIIA
PROHIBITION OF DISCRIMINATION AND EQUAL REMUNERATION**

Prohibition of discrimination

75A. (1) No person shall discriminate, directly or indirectly, against any employee or applicant for employment on the grounds of race, colour, sex, religion, political opinion, national extraction, social origin, disability, non contagious disease including actual or perceived HIV/AIDS status, in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.

(2) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

Prohibition of indirect discrimination

75B. (1) No person shall indirectly discriminate against any employee or prospective employee.

(2) Indirect discrimination occurs when the same condition, treatment or criterion is applied to everyone, but results in a disproportionately harsh impact on persons of a certain racial group, colour, sex, religion, political opinion, national extraction, social origin, disability, non contagious disease including actual or perceived HIV/AIDS status.

Burden of proof

75C. Whenever discrimination is alleged, the employer against whom the allegation is made must establish that it is justified.

Equal remuneration

75D. (1) Men and women shall receive equal remuneration for work of equal value.

(2) For the purposes of subsection (1), “remuneration” means the wage or salary and any additional benefits or allowances whatsoever payable, directly or indirectly, whether in cash or in kind, by the employer to the employee arising out of the employee's employment.

Remedies

75E. (1) A complaint alleging infringement of rights in this Part shall be laid in the High Court.

(2) Where a complaint has been proved, the Court shall make such order as it deems necessary to ensure compliance with the provisions of this Part, including an order for reinstatement of an employee, or an order for the payment of compensation, or both.”

Amendment of section 83

6. Section 83 of the principal Ordinance is amended by inserting before “night” the following definition -

““child” means a young person under the age of 18 years;”

Amendment of section 86

7. Section 86 of the principal Ordinance is amended by repealing it and substituting the following -

“Employment of persons under 18

86. A male person under the age of 18 shall not be employed or work underground in any mine, on a ship or during the night in any industrial undertaking unless he has attained the age of 16 and the health, safety, education, morals and development of the young person are fully protected and that the young person has received adequate specific instruction or vocational training in the relevant branch of activity.”

Amendment of section 87

8. Section 87 of the principal Ordinance is amended by repealing it and substituting the following -

“Hazardous work

87. (1) Notwithstanding anything in this Ordinance, no person between the age of 14 and 18 years shall perform work, or be employed in any occupation or activity, which by its nature or the circumstances in which it is carried out, is likely to jeopardize the health, safety, education, morals or development of such a person.

(2) The Minister shall, in consultation with any relevant organizations of employers and workers and the government’s advisory committee on children, specify by notice, occupations or activities which, in the opinion of the Minister, are likely to have the effect mentioned in subsection (1).”

EMPLOYMENT (AMENDMENT) ACT 2008

EXPLANATORY MEMORANDUM

The amendment to the Employment Ordinance is to give effect to various International Labour Conventions dealing with the abolition of forced labour (the Abolition of Forced Labour Convention No. 105); equal remuneration regardless of race, sex or religious belief (Equal Remuneration Convention No. 100); setting minimum age for employment in various fields considered to be harmful or hazardous to children or young persons (Minimum Age Convention No. 138); prohibiting various form of child labour (Worst Forms of Child Labour Convention No. 138); and abolition of discrimination at the place of work (Abolition of Discrimination Convention No. 20).

A new definition of 'worker' is inserted at section 2 which is more general and inclusive. The definition of 'forced or compulsory labour' is amended at paragraph (c) by extending it to other areas, not restricting it to the local government council as it is at present, prior to this amendment.

Section 4 amends Section 75 by increasing from \$100 to \$250,000 for those engaged in employing people forcefully or compulsorily.

A new Part VII A is inserted dealing comprehensively with prohibition of discrimination and equal remuneration. Note that prohibition of discrimination is extended among others, to those with actual or perceived HIV/AIDS.

Section 6 deals with employment of children and other young persons. The child is now defined to be a young person under the age of 18 years.

Section 7 and 8 prohibits employment of child in employment where the circumstance of the work is likely to jeopardize the health of such child.

Titabu Tabane
Attorney-General