

BILL NO. 11 OF 2016

A BILL

FOR AN ACT TO AMEND THE EMPLOYMENT RELATIONS PROMULGATION 2007 AND FOR RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Employment Relations (Amendment) Act 2016.
- (2) This Act comes into force on the date of its publication in the Gazette.
- (3) In this Act, the Employment Relations Promulgation 2007 is referred to as the “Promulgation”.

Section 3 amended

2. The Promulgation is amended by deleting section 3 and substituting the following—

“Application

3.—(1) Subject to subsection (2), this Promulgation applies to all employers and workers in workplaces in Fiji, including the Government, other Government entities, local authorities, statutory authorities and the sugar industry.

(2) This Promulgation does not apply to members of the Republic of Fiji Military Forces, the Fiji Police Force and the Fiji Corrections Service.”

New Part 15A inserted

3. The Promulgation is amended by inserting the following new part after Part 15—

“PART 15A—FEDERATION OF TRADE UNIONS AND EMPLOYERS

Registration of federation of trade unions and employers

147A.—(1) Any federation of trade unions or any federation of employers must be registered with the Registrar.

(2) The provisions of Part 14 on the registration of trade unions shall apply *mutatis mutandis* to the registration of any federation of trade unions or federation of employers under subsection (1).

(3) A federation of trade unions or any federation of employers registered under this part shall *mutatis mutandis* be subject to the rights, liabilities and obligations as are available or applicable to trade unions under parts 14 and 15.

(4) The election of officials of any federation of trade unions or any federation of employers registered under this part shall be conducted by the Fijian Elections Office in accordance with the Electoral Decree 2014.”

Section 185 amended

4. Section 185 of the Promulgation is amended by—

(a) deleting the definition of—

(i) “Bargaining Unit”; and

(ii) “trade union” and substituting the following—

““trade union” means a trade union of workers registered under this Promulgation and shall include an enterprise union;” and

(b) inserting the following new definition—

““enterprise union” means a trade union of workers registered under this Promulgation where all the workers who are members of that trade union are employed by the same employer;”

Section 189 amended

5. The Promulgation is amended by deleting section 189 and substituting the following—

“Freedom of Association

189. All workers in an essential service and industry shall have the right to form and join a trade union, and shall be entitled to engage in collective bargaining in accordance with this part, and to have their trade disputes adjudicated by the Arbitration Court in accordance with this part.”

Section 190 amended

6. The Promulgation is amended by deleting section 190 and substituting the following—

“Right of workers to form and join enterprise unions

190. In addition to the rights conferred under section 189, all workers in an essential service and industry shall have the right to form and join an enterprise union, and shall be entitled to engage in collective bargaining in accordance with this part, and to have their trade disputes adjudicated by the Arbitration Court in accordance with this part.”

Section 191BN amended

7. Section 191BN(1)(b) of the Promulgation is amended by deleting “28” and substituting “14”.

Section 191BO amended

8. Section 191BO(1)(b) of the Promulgation is amended by deleting “28” and substituting “14”.

Sections 191X and 191BC deleted

9. The Promulgation is amended by deleting sections 191X and 191BC.

Part 19 amended

10. Part 19 of the Promulgation is amended by inserting the following new division after Division 8—

“Division 8A – Transitional

Reinstatement of individual grievances

191BTA.—(1) Any individual grievance which was terminated or discontinued under section 30(2) of the Decree or under section 266 is hereby reinstated, and shall be determined by the Arbitration Court.

(2) In the determination of any individual grievance which is reinstated under subsection (1), the Arbitration Court shall have such powers and be subject to such procedures as prescribed under sections 191AY and 191AZ.

Application for compensation for termination of employment under the Decree

191BTB.—(1) Subject to subsection (2), any worker who—

- (a) was employed in an essential national industry under the Decree or with a designated corporation or a designated company under the Decree; and
- (b) whose employment was terminated by the employer during the operation of the Decree,

may make an application to the Arbitration Court for compensation, provided however that any such application must be made to the Arbitration Court within 28 days from the date of the commencement of this section.

(2) No application for compensation shall be made by any worker for the termination of employment—

- (a) on the basis of established, proven or admitted corruption, abuse of office, fraud or theft; or
- (b) whereby the facts and situation which led to the termination has resulted in the worker being convicted of an offence.

(3) In the determination for compensation made under this section, the jurisdiction of the Arbitration Court shall be limited to only an award of compensation not exceeding \$25,000.00.

(4) Subject to subsection (3), in the determination of any application made under this section, the Arbitration Court shall have such powers and be subject to such procedures as prescribed under sections 191AY and 191AZ.

Registration of trade unions affected by the Decree

191BTC. Any trade union which was deregistered as a result of the Decree shall be entitled to apply to be registered as a trade union in accordance with this Promulgation, and shall not be required to pay any registration fee which may be applicable, provided however that any such trade union must apply for registration within 7 days from the date of the commencement of this section.”

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Suva
February 2016*

EMPLOYMENT RELATIONS (AMENDMENT) BILL 2016

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 On 25 March 2015, the Fijian Government, the Fiji Commerce and Employers' Federation and the Fiji Trades Union Congress (**'Parties'**) signed a Tripartite Agreement at the International Labour Organization (**'ILO'**) Governing Body session in Geneva, Switzerland (**'Agreement'**) stating the following—
- (a) the Employment Relations Promulgation 2007 (**'ERP'**) shall form the basis of labour management relations in Fiji;
 - (b) there should be compliance with core ILO Conventions which were the subject of the Article 26 Complaint;
 - (c) to ensure compliance with the core ILO Conventions, there would be amendments to the law which would be presented to Cabinet and then to Parliament and implemented no later than the end of October 2015;
 - (d) any other on-going review of labour laws including ERP shall be conducted through the Employment Relations Advisory Board (**'ERAB'**) mechanism;
 - (e) Government restore the check-off facilities; and
 - (f) the Parties submit a Joint Implementation Report to the June 2015 session of the ILO Governing Body.
- 1.2 Following the March 2015 ILO Governing Body session, ERAB comprising of only the Parties met in May 2015 and deliberated on the draft Employment Relations (Amendment) Bill 2015 (**'2015 Bill'**). The reason only these Parties were present at these ERAB proceedings was because the Fiji Trades Union Congress (**'FTUC'**) had threatened to not participate if other worker representatives were invited to be part of ERAB.

Government's position was that it wanted to table the 2015 Bill in Parliament as soon as possible to meet the timelines it had agreed to. The 2015 Bill was tabled in Parliament and subsequently referred to the parliamentary Standing Committee on Justice, Law and Human Rights.

- 1.3 The report of the parliamentary Standing Committee was submitted to Parliament in its July sitting. On 14 July 2015, the 2015 Bill was enacted as the Employment Relations (Amendment) Act 2015 ('**Act**').
- 1.4 Contrary to the Agreement, in June 2015, the Parties could not submit a single Joint Implementation Report to the ILO Governing Body as Government and the Fiji Commerce and Employers Federation ('**FCEF**') submitted a Joint Implementation Report and FTUC submitted a separate Implementation Report. The ILO Governing Body then requested that a Joint Implementation Report was to be submitted before the November 2015 session of the ILO Governing Body.
- 1.5 In October 2015, Government, in its policy of inclusiveness, expanded the membership of ERAB. The expanded ERAB excluding FTUC met on 12, 13 and 14 October 2015. The FTUC chose not to attend that ERAB meeting and subsequent meetings as according to them, they should be the only organisation that represents workers in Fiji.
- 1.6 Despite the absence of FTUC, ERAB met on 12, 13 and 14 October 2015, and agreed as follows—
 - (a) reduction of the notice period for strike from 28 days to 14 days;
 - (b) reinstatement of individual grievances which were discontinued by the Essential National Industries (Employment) Decree 2011 ('**ENIDecree**'); and
 - (c) invite ILO to provide technical assistance and expertise to assist ERAB to consider, gauge and determine the list of essential services and industries.
- 1.7 At the November 2015 session of the ILO Governing Body, the Parties again could not submit a single Joint Implementation Report and the ILO Governing Body decided that a Tripartite Mission was to be sent to Fiji to ascertain the difficulties in submitting a Joint Implementation Report to the ILO.
- 1.8 From 24 to 29 January 2016, the Tripartite Mission visited Fiji and conducted a series of meetings.
- 1.9 On 29 January 2016, in accordance with the Agreement, and with the assistance of the Tripartite Mission, the Parties signed a single Joint Implementation Report which contained the following achievements and concessions—
 - (a) restoration of check-off facilities;
 - (b) reduction of the notice period for strike from 28 days to 14 days;

- (c) individual grievances which were discontinued by the ENI Decree as well as the Employment Relations (Amendment) Decree 2011 shall be reinstated and determined by the Arbitration Court for expeditious adjudication;
- (d) invitation to ILO to provide technical assistance and expertise to assist ERAB to consider, gauge and determine the list of essential services and industries;
- (e) removal of all references to Bargaining Units in the ERP (as amended by the Act), and allowing workers to freely join or form a trade union (including an enterprise trade union under the ERP);
- (f) removal of sections 191X and 191BC of the ERP (as amended by the Act);
- (g) any worker who was employed in an essential national industry or a designated corporation or designated company under the ENI Decree and whose employment was terminated during the operation of the ENI Decree can apply within 28 days to the Arbitration Court for compensation not exceeding \$25,000.00. However, no applications shall be made for terminations of appointment on the basis of established, proven or admitted corruption, abuse of office, fraud and theft or terminations of appointment whereby the facts and situation which led to the termination has resulted in the worker being convicted for an offence; and
- (h) any trade union which was deregistered as a result of the ENI Decree shall be entitled to apply to be registered again in accordance with the ERP and shall be required to pay any registration fees provided however that that trade union must apply within 7 days.

1.10 As a result of these achievements and concessions, the Parties also agreed that there is no need for the ILO to pursue the Article 26 Complaint against Fiji as all relevant issues have been resolved.

2.0 CLAUSES

- 2.1 Clause 1 of the Employment Relations (Amendment) Bill 2016 (**'Bill'**) provides for the short title and commencement.
- 2.2 Clause 2 of the Bill provides that the ERP applies to all employers and workers in workplaces in Fiji including the Government, other Government entities, local authorities, statutory authorities and the sugar industry.
- 2.3 Clause 3 of the Bill provides for registration of federation of trade unions and federation of employers.
- 2.4 Clause 4 of the Bill deletes references to Bargaining Unit and amends the definition of trade union to include an enterprise union.

- 2.5 Clause 5 of the Bill provides for freedom of association for all workers in an essential service and industry and provides for adjudication of their trade disputes by the Arbitration Court.
- 2.6 Clause 6 of the Bill provides workers in an essential service and industry the right to form and join an enterprise union.
- 2.7 Clause 7 of the Bill reduces the notice period for strikes in an essential service and industry from 28 days to 14 days.
- 2.8 Clause 8 of the Bill reduces the notice period for lockouts in an essential service and industry from 28 days to 14 days.
- 2.9 Clause 9 of the Bill deletes the provisions on representations in negotiations and before the Arbitration Court.
- 2.10 Clause 10 of the Bill reinstates individual grievances terminated under the ENI Decree and provides for compensation to workers whose employment was terminated during the operation of the ENI Decree.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the minister responsible for employment, productivity and industrial relations.

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Attorney-General