



Labour Market Regulations and Labour Market Outcomes in Zambia

A Firms' Perspective

ZIPAR "More and Better Jobs" Policy Paper No.4

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Acronyms

CEO	Chief Executive Officer
EPL	Employment Protection Laws
FDI	Foreign Direct Investment
FGD	Focus Group Discussions
GDP	Gross Domestic Product
NAPSA	National Pensions Scheme Authority
PMG	Performance Management Practices
SI	Statutory Instrument
SOE	State Owned Enterprise
TCLC	Tripartite Consultative Labour Council
USD	United States Dollars Currency
ZIPAR	Zambia Institute for Policy Analysis and Research
ZAM	Zambia Association of Manufacturers
ZFE	Zambia Federation of Employers
MWAVR	Ratio of Minimum Wages to Average Wage
WCF	Workers Compensation Fund



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Summary

In 2015 the Zambian Government made several amendments to the Employment Act (CAP 268) No. 13 of 1997 culminating in the introduction of new labour regulations as well as redefining old ones. Stunted formal sector job growth, despite strong economic growth compelled Government action. There was also a seeming preference for firms to avoid permanent employment and instead preferring to offer short term contracts. Frequent reports of subjection of workers to poor conditions and wages and the tendency to employ casual labour even for jobs of a permanent nature all necessitated a government intervention. The following are some of the most contentious of the new labour regulations:

- *Government 'banned' casualization of labour and criminalized its practice;*
- *Separation clauses were tightened and every employer was to give a "valid" reason for terminating employment;*
- *The minimum wage was also increased earlier in 2011 and new categories of workers such as house helps were added to the list of those deserving a minimum wage.*

Though these regulations have triggered ongoing policy debates, no single analysis has been undertaken to provide empirical evidence regarding the effects of the new regulations on employment creation. This report therefore sought to fill this gap.

The survey was undertaken as part of ZIPAR's broad Flagship project on 'More and Better Jobs' intended to offer evidence-based advice on policies and strategies for creating more and better jobs in Zambia. Firms were interviewed in Lusaka, Kitwe, Livingstone and Chipata to understand their experiences with the new legal framework and how it has impacted on business and job creation so far. Below are some of the key findings:

1. **Limited labour reforms consultations:** firms observed that they were rarely consulted when new regulations were made. This has made it difficult for them to adjust to the new legal framework as they feel their best interests have not been safeguarded.
2. **Limited understanding of legal provisions:** the survey established that both employers and in some cases labour officers seem to lack clear understanding of some of the new laws. This makes compliance difficult and is recipe for misunderstanding between employers and enforcers.
3. **The ban on casualization has introduced new labour constraints:** most firms face serious labour constraints following the ban on casualization. However, this mostly resulted from lack of understanding of the alternative options to casualization provided for in the new laws.
4. **Separation has become costlier:** the new severance pay and restrictions on separation between employer and employee make separation expensive especially in bad economic times when firms would need to trim labour.
5. **Mixed impact of minimum wages:** some firms, in particular large scale with a larger proportion of professional workers adjusted to increased minimum wages with relative ease compared to small and medium scale firms with a larger proportion of general workers. A number of these had to shrink labour as a way of sustaining business but reducing job numbers. At the beginning the greatest impact of the minimum wage was felt in sectors such as agriculture, wholesale and trade and construction. Compliance was also low in the same sectors. The least impact was in sectors like financial services, electricity and professional services.

In conclusion, while labour regulations are a necessary tool for Government to protect workers in the labour market, there is need for careful action. Particularly, Government should guard against over-regulation which tends to affect job numbers negatively, as it may become difficult for firms to hire labour. To address some of the concerns highlighted by firms and the bottlenecks the survey found, we recommend the following:

- i. *Strengthen labour reform consultations and sensitization:* Government should make labour reforms more consultative as well as sensitise all parties adequately on the new regulations. More sensitization needs to be done concerning the meaning of the ban on casualization. More specifically firms should be made to understand that certain types of contracts such as piecework, consultancies and seasonal work are not casualization and can be used.
- ii. *Strengthen monitoring and enforcement of the implementation of the minimum wage to improve compliance:* non-compliance of the minimum wage can only be attributed to weak enforcement. Government should strengthen enforcement by increasing ground inspections as the only way of raising the wages of low-paid workers. Since some sectors had problems while others did not, Government should consider moving to sector based minimum wage; that is to say, it should be higher in some sectors and lower in others. This could improve compliance. However, this will also call for the need to invest in information such as data gathering, processing and dissemination as a requirement to understand the dynamics of different sectors.
- iii. *Re-engage firms on severance pay and separation restrictions:* Government needs to provide a platform to discuss with firms the issue of severance package widely and come up with a more balanced package that does not make separation as expensive. The principle should be to let firms vary labour when they want without affecting their businesses negatively.



1.0 Introduction

1.1 Economic Context

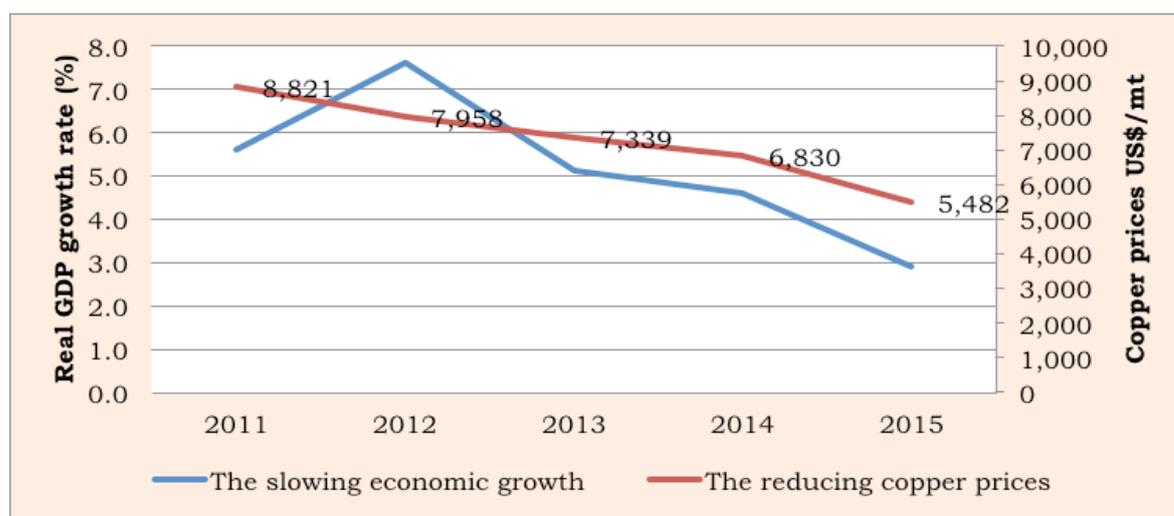
Since 2014, Zambia’s economic growth has substantially slowed down, and is projected to not exceed 3.4% of GDP in 2017 (National Assembly, 2016). The slowdown follows nearly a decade and half of robust and stable economic growth averaging above 6% of GDP for the period 2000 to 2014, earning Zambia a status as one of Africa’s – and the world’s – fastest-growing countries then (African Development Bank, 2013).

The economic slowdown has been driven by a number of factors. The major ones include a steep drop in the global price of copper, Zambia’s main foreign exchange earner, mainly as a result of the decline in Chinese demand which consumes 40% of total global copper supply. Copper prices fell by nearly 40% between 2011 and 2015. This price fall, coupled with numerous changes in the mining tax regime, contributed to reduced foreign exchange inflows, mounting trade and fiscal deficits.

The country also experienced severe electricity supply constraints which ensued from mid-2015 partly as a result of low water levels in the nation’s dams that are used to produce electricity. This contributed to reduced output and productivity and increased costs as firms and households put in alternative strategies to cope with the crisis. According to the Zambia Association of Manufacturers, electricity rationing alone reduced industrial production by between 60-70% between June and October 2015 (Nsupila, 2015). It was further estimated that the electricity supply constraints would result in a 16% reduction in the estimated nominal GDP for 2015 (Zambian Informer, 2015).

The Kwacha, Zambia’s currency, also weakened sharply against the major convertible currencies. Being import-dependent, the prices of most consumer goods and services sky-rocketed leading to an inflation spiral. Inflation increased from 7.7% in September 2015 to 21.1% in December 2015. These and other factors shaped the performance of the Zambian economy leading to slow economic growth which hit a trough of 2.9% in 2015 - the slowest growth since the 1990s.

Figure 1: Real GDP growth rate and copper prices, 2011-2015



Source: Central Statistical Office; Bank of Zambia

The recent economic downturn clearly had negative effects on employment prospects for the country with 9 000 jobs estimated to have been lost in 2015 (ZIPAR, 2016). But it is not only the economic downturn that limited the job prospects; Zambia's episodes of strong economic growth have generally not translated into meaningful job creation even in the long term. Formal sector employment especially has remained stagnant despite the surge in the number of mainly young people joining the labour force each year. Between 2005 and 2014 it is estimated that formal sector employment has sluggishly grown at a rate of approximately 50 000¹ jobs per year compared to the size of the labour force which receives in excess of 300 000 new entrants each year (Ministry of Finance and National Planning, 2013).

The informal sector has on the other hand continued to be the largest employer of labor accounting for approximately 84% of the employed population (Central Statistical Office, 2015). Regardless, workers in the informal sector remain in what can be described as vulnerable employment which lack decent work² conditions. In the rural areas, the majority of these workers are unpaid family workers who work hard but only to earn nothing.

1.2 Rationale for Labour Laws and Regulations in Zambia

The lack of sufficient formal jobs and increasing informality in the midst of strong economic growth over the past 14 years has seemingly drawn a lot of attention to the labour market. It is factual that labour market regulations have always existed in Zambia but there has never been a time when they attracted so much attention as in recent years. It is not yet clear what explains this development but an increasing role of the private sector in the economy may be a possible reason. Since economic liberalisation in the early 1990s Zambia has seen a gradual increase in private sector participation in the economy. Most of private sector establishments such as those in mining, services, construction and manufacturing have been at the centre of recent economic growth. While many of these establishments have grown stronger and become profitable, decent jobs have continued to be limited in the same economy. Whether the private sector is thriving on the back of exploited labour is a question yet to be answered.

Furthermore, during its episodes of growth, Zambia has attracted generous Foreign Direct Investments (FDI) inflows with a number of international firms and conglomerates setting up businesses in the economy. Regrettably, reports of employees - especially Zambian nationals - being mistreated in some of these international firms through the application of labour practices that are exploitative rather than rewarding are not uncommon. Similarly, reports purporting that some of the firms tend to employ casual labour for work of permanent nature in order to avoid paying benefits and providing conditions of service that come with more permanent employment contracts have also been trending in recent years.

The above issues contribute to labour market failures³ which have the potential to negatively affect the efficient allocation of labour in the labour market. This could end in reduced productivity in the economy.

Scenarios such as the above are potentially compelling for authorities to ensure existing laws and regulations are enforced and where necessary, new ones are introduced to protect the interest of employees. This partly explains the heightened interest in labour markets regulation in Zambia.

1 Calculated using employment trends for the 2005, 2008, 2012 and 2014 Labour Force Survey reports by the Central Statistical Office.

2 According to the International Labour Organisation, decent work sums up the aspirations of people in their working lives. It involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organize and participate in the decisions that affect their lives and equality of opportunity and treatment for all women and men.

3 Labour market failures occur when the market (laws of demand and supply) fail to allocate labour equitably. In this case the demand and supply for labour is influenced by various factors in a way that tempers with their allocation. For example, discrimination against certain sections of society for reason of race, gender, political affiliation etc. can affect decisions to hire a person or the right person. The same can affect whether these groups receive fair wages and good conditions of service.

Regardless of the reasons for increased interest in the labour market in Zambia virtually all countries have legal statutes guiding the behaviour of different parties in the labour market. In a liberalised economy such as Zambia, labour market regulation is one of the many facilitative roles that Government can play to ensure the smooth running of business. In this case the role of Government is to ensure a balance between workers' protection and creating an enabling environment for employers that does not constrain or disrupt business.

Even though labour market regulations are important they do not always succeed in resolving labour market failures. As a matter of fact the outcomes of labour market regulations are in many cases mixed. There is also the challenge of avoiding the extremes of over- and under-regulation that authorities have to be wary of as there is a price to pay at either of these extremes in both economic and social terms (Betcherman, 2014). Inadequate labour laws would not protect workers effectively while overly stringent ones can impede job creation and hurt the workers they are intended to help. The critical issue therefore remains that labour market regulations should be designed in such a way as to alleviate market failures and at the same time offer some protection to workers without imposing major costs on firms or the economy. This report later discusses whether Zambian labour laws are striking this important balance.

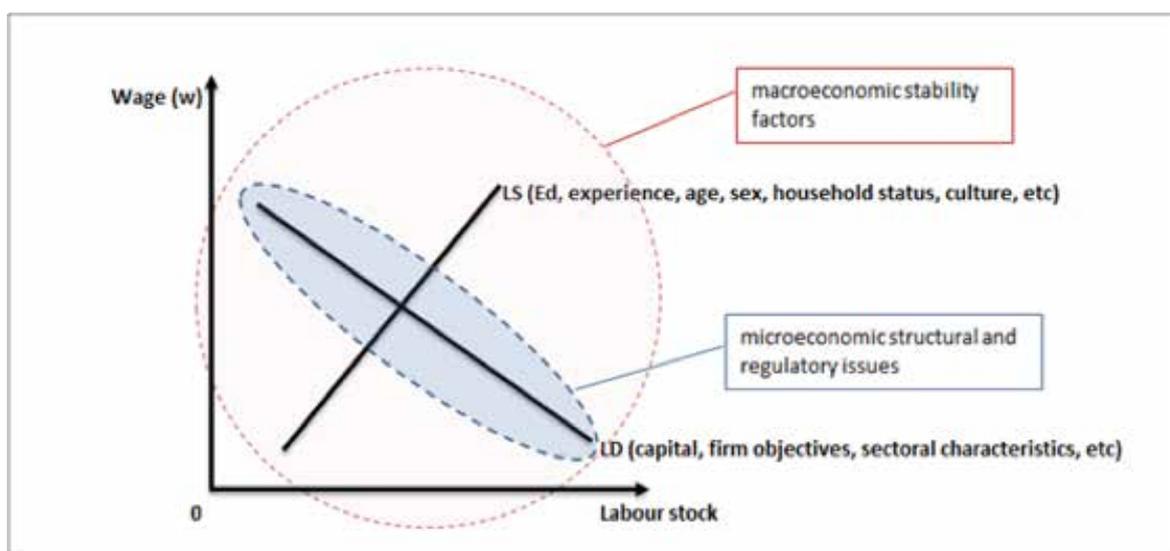
The rest of the report is organised as follows: Section 2 which follows immediately states the objectives of the study describing the genesis of this work. This is followed by an outline of the methodology in section 3. Section 4 gives an international perspective of the effects of various Labour Laws on the labour market. This is trailed by an outline of a detailed background of Labour Laws in Zambia in section 5. The firm's perspectives of current labour regulations in Zambia are presented and discussed in section 6 before the recommendations and a conclusion in section 7.

2.0 Study Objectives

In early 2015 ZIPAR embarked on a Flagship Project dubbed “More and Better Jobs”. The project sought to provide greater understanding of the issues of employment, unemployment and underemployment and to ultimately offer evidence-based advice on policies and strategies for creating more and better jobs in Zambia. One of the goals of the Flagship Project was to undertake comprehensive research on issues relating to the size, quality, causes and consequences of underemployment and unemployment in Zambia, and secondly, providing evidence-based policy and strategic options for helping to address the country’s job creation challenges.

The framework within which the Flagship project was implemented is summarised in figure 3 below. According to this framework the interaction of the participants – workers, firms and the public sector (both as employer and regulator of the market through laws and policies) – in the labour market is influenced by a number of factors including: labour demand factors (employer-specific effects); labour supply factors (quality, productivity and employability of labour and support systems like education); microeconomic structures and regulations; and macroeconomic growth and stability factors.

Figure 2: Illustration of the Labour Market



Source: Adapted from ZIPAR’s concept note on ‘More and Better Jobs’ flagship project for 2015.

This particular study focuses on the regulation aspect of the broad flagship framework. The importance of regulation as earlier alluded to is in ensuring that the different parties in the labour market are in harmony and works to maintain productivity while protecting rights and privileges of all players. Labour regulations are therefore important determinants of the environment in which buyers and sellers interact and how that environment affects employment.

Based on the above the main objective of this study is to understand the effects of current labour laws and regulations on job creation from the perspective of business establishments. Insights from this analysis could serve two purposes as follows: The first is to consider the effects of current laws and regulations on job creation and the business environment in general while the second is to provide important reference materials for future reviews of the laws and regulations. The study focuses on various key components of labour market regulations and questions including some of the following:

- **General and Minimum wages:** do current thresholds for different sectors on minimum wage promote or hinder hiring of labour? What alternatives exist for minimum wages? What criteria are used to set and revise minimum wages? Should minimum wages be sector based or uniform across sectors as is the case now?
- **Mandatory employee benefits:** what is the nature of current employment benefits? Are they feasible based on the current economic context? Are they adequate in providing a social safety net for employees when out of work? What adjustments can be made to strike a balance between securing workers interest without escalating the cost of doing business?
- **Hiring and Firing:** is it easy to hire and fire labour in Zambia? What are the rules guiding the hiring and firing of labour? What are the costs associated with hiring and firing?
- **Redundancy costs:** What is the cost of separation? Do the current laws on severance pay (separation compensation) make it harder for employers to hire labour? What are the possible alternatives to current laws on severance pay?



3.0 Methodology

The survey used qualitative methods of data collection and analysis supported by quantitative approaches in one instance. The justification for using qualitative methods for this particular study is that qualitative methods are especially effective in obtaining culturally specific information about the values, opinions, behaviours, and social contexts of particular populations (Mack, et al., 2005). Indeed the perceptions, interpretations and application of labour laws and regulations is influenced by values, opinions, behaviours and social contexts of both employers and employees. Mack et al further adds that the strength of qualitative research is its ability to provide complex textual descriptions of how people experience a given research issue, in this context labour regulations. They further postulate that qualitative methods are also effective in identifying intangible factors, such as social norms, socioeconomic status, gender roles, ethnicity, and religion, whose role in the research issue may not be readily apparent.

In view of the above the study employed two main approaches to collect data namely, a desk review and primary data collection. The two approaches are elaborated below:

- i. Desk Review:** The aim of the desk review was to have a clear understanding of past and present labour regulations in Zambia. The desk review relied on the use of secondary information of various kinds including documents such as the Zambian constitution and various Acts related to labour such as the minimum wages and conditions of service act, the employment act, the industrial relations act and many others. This process helped the study to understand the extent to which labour regulations have managed to address some of the contentious issues in the labour market over time. The desk review was also used to gather and compare information about various labour laws in other countries and their effects on the labour markets. This was in order to assess whether Zambian labour laws have different effects on the labour market compared to the other countries.
- ii. Primary Data Collection:** The desk review was complemented by primary data collection. Using qualitative approaches, the aim of primary data collection was to interact with employers and business owners from different sectors. The anticipated outcome of the interactions was documented real life experiences and concerns of businesses relating to the current labour regulation frameworks.

The employers involved in the study were prompted to share their experiences with a focus on the implications of current labour laws on hiring, maintaining and firing labour. The focus was on specific regulations including minimum wages, severance pay and casualisation of labour among others. Primary data collection was conducted through the following mechanisms:

Focus Group Discussions (FGDs): FGDs were conducted with business owners and employers from the sectors of the economy stated earlier. Each firm was represented by their human resource personnel and/or the C.E.Os. The FGDs were designed in such a way as to allow participants to share as much information as they had. This was done by employing specially designed qualitative tools and discussion guides. To ensure quality of information the FGDs were conducted by experienced researchers from ZIPAR.

In-depth interviews: one-to-one in-depth interviews were conducted with leaders or captains of the industries selected. The in-depth interviews followed a uniform interview guide that helped to ensure consistence in line with the objectives of the study. Interviews were also skilfully designed to avoid respondent fatigue. The interviewees were assured of confidentiality and that their submissions were to remain anonymous and only reported

collectively.

Labour Rigidities Ranking Tool: the research team designed a labour rigidities ranking tool which was administered to respondents that attended the FGDs and in-depth interviews. The tool was used to assess the extent to which specific labour laws are viewed as rigidities in hiring and firing labour by ranking them in order of difficulty. The highest ranking regulations were probed further and have been discussed extensively in the report. They also form part of the main recommendations of the report.

Selection of Participants: This study uses purposive sampling to select the participants of the study. Purposive sampling is a common sampling strategy which groups participants according to preselected criteria relevant to a particular research question (Mack, et al., 2005). Thus, firms from five sectors namely Agriculture, Tourism, Mining, Construction, Manufacturing and Services were selected in the towns of Kitwe, Lusaka, Livingstone and Chipata. The preselected criteria for the inclusion of these sectors is that these sectors employ the majority of labour in Zambia compared to any other and are the largest contributors to Zambia's GDP (Central Statistical Office, 2014). The selected towns also represent areas where most industry and labour in the country are concentrated. From these, Chief Executive Officers (C.E.Os) or their human resources managers were interviewed.

In terms of the sample size, the design of the study had a wide coverage of variables to investigate. Thus, it did not need a specific sample size to determine statistical significance. What was rather important is to be able to determine the point of theoretical saturation (i.e. the point in data collection when new data no longer bring additional insights to the research questions). This was achieved by ensuring that the firms included in the study were different in many respects such as sector, industry, size, location and so on. This particular study included commercial banks, service providers such as mobile telephone companies, mining contractors, manufacturing, hotels and many others.



4.0 Labour Regulations and Labour Market Outcomes: An International Perspective

Labour market regulations have had mixed results on unemployment, long term growth and productivity in different countries and regions of the world. Though there seems to be more evidence from developed countries, a number of cases still exist in developing countries that adequately demonstrate how labour regulations affect labour markets especially in the context of high unemployment and informality.

Minimum wages for example tend to make labour more costly and have been found to reduce employment in Brazil, Colombia, Costa Rica, Hungary, Indonesia, Nicaragua, and Trinidad and Tobago (Betcherman, 2014). Similar results were found earlier in Kenya (Andalon & Pages, 2008) and Indonesia where minimum wage laws resulted in loss of jobs especially for workers in smaller businesses. But no overall employment impact was found in China and Mexico (Betcherman, 2014). For other African countries for which data is available minimum wages and labour market restrictions were not major constraints on employment creation, rather the lack of supportive services to business such as infrastructure was (Fox & Oviedo, 2008).

More stringent regulations also tend to hurt jobs in developing countries. Laws requiring employers to obtain permission from the government to retrench or lay off workers in India and Zimbabwe found substantial declines in the demand for employees (other things equal), overall resulting in fewer jobs (Fallon & Lucas, 1991).

Relatedly, rules discouraging temporary contracts such as casual labour and making separation costly through severance packages as is the case in Zambia lengthen both job tenure and unemployment duration. This means that those who are in job positions will continue to hold them for some time as long as the laws remain in effect but at the same time employers are not willing to take on new employees (Betcherman, 2014). The effect that high costs of separation has on employment is also demonstrated in Colombia: when the Government moved to reduce the costs associated with firing, there was a significant fall in unemployment by about 25% (Kluger, 2000). This is in line with a common notion that hiring is only as easy as it is to fire.

Another study which tested whether the industrial relations related regulations affect the pattern of manufacturing growth in India found that states whose Industrial Disputes Act was pro-worker experienced lowered output, employment, investment, and productivity in registered or formal manufacturing (Burges & Besley, 2004). Output in unregistered or informal manufacturing increased at the same time implying that this kind of regulation hurt formal businesses more than informal ones. This is an important insight and points in the direction that labour laws and regulations may affect formal and informal firms differently. This is a critical issue for Zambia which has high informality with more than 80% of employment being in the informal sector.

The above evidence on the effects of labour regulations on employment notwithstanding, some authors suggest that labour regulations might not be among the top “binding constraints” to development in Sub-Saharan Africa (Fox & Oviedo, 2008). They instead observe that to enhance job creation in this region the focus should be on improving the overall investment climate as labour regulation reform alone might not lead to the high payoffs like in other regions.



5.0 Background to Labour Laws and Regulations in Zambia

5.1 Statutory labour regulations and wages

We have established that labour markets require regulations to mitigate market failures. We have also observed the different outcomes of various regulations on the labour market in different countries. It is important at this stage to point out that there are actually three different forms of labour market regulations that a country can choose to enforce. These are 1) market-based, 2) collective-voice and 3) statutory (Betcherman, et al., 2001).

Market-based mechanisms are often characterized as “unregulated” and involve the individual contract (either explicit or implicit) between employer and employee (Betcherman, et al., 2001). These can be found in some developed countries. The other mode of regulation, collective voice, refers to the voluntary negotiation and administration of the employment relationship where workers (and sometimes employers) are represented collectively. In developing countries, including Zambia, only a minority of workers is covered by collective bargaining making this mechanism impractical.

The third and last mechanism which is the one widely used in Zambia is statutory where rules and procedures are established by laws and decrees that govern aspects of the employment relationship. These can cover a wide range of areas: for example, the establishment and protection of universal worker rights; the protection of vulnerable groups of workers; principles for determining compensation; working conditions; and the initiation and termination of the employment relationship.

The need for statutory regulation stem from the need to address market failures and injustice or exploitation. The 1995 World Development Report (The World Bank, 1995) highlights four reasons for public interventions in the labour markets as follows:

- *Uneven market power.* Workers may find themselves in a weak bargaining position. This can raise concerns about their protection from unjust treatment.
- *Discrimination.* Workers belonging to groups with little voice or power (e.g., due to age, gender, ethnicity, etc.) may experience particular disadvantages in the labour market.
- *Insufficient information.* Workers and some employers may not have adequate information to make informed decisions about the conditions of work. Health and safety hazards are the classic example.
- *Inadequate insurance against risk.* Workers are typically unable to formally insure themselves against labour market-related risks associated, for example, with unemployment, disability, or old age.

The substance of labour regulations is often regarded as protective hence commonly referred to as Employment Protection Legislation (EPL). The EPL legislation can be classified into two main groups of rules, one pertaining to hiring, the other to termination. Rules on hiring dictate what types of labour contracts are permissible under what conditions — for instance, open-ended, fixed-term, part-time, and apprenticeship contracts. Rules on termination govern the ending of contracts including causes (voluntary and involuntary, justified or unfair), end-of-service compensation (severance pay), and procedures (for instance, third-party notification or approval, advance notice, and resting periods) (The World Bank, 2013).

There are also the statutory regulations of wages which usually are provided for by the minimum wages legislation. Minimum wages aim at ensuring that low-paid workers still receive a living wage. Some countries have sector based minimum wages while others have a uniform minimum wage that applies to all the sectors.

Other types of labour policies can also have implications for job security. Some regulations set specific conditions for the employment of women and young workers. They include maternity leave, the need for child care facilities, first-contract waivers, or reduced minimum wage for apprentices. The aim of these policies is to facilitate the participation of more vulnerable population groups and to protect them once they are employed. Antidiscrimination Regulations address socially unaccepted differences in the treatment of workers, with the goal to reduce inequality and enhance social cohesion and fairness in employment (The World Bank, 2013). Table 1 presents a summary of the various labour market regulations.

Table 1: The various aspects of labour market regulations.

Type of Intervention	Specific Examples
Establishment and protection of Universal workers' rights	<ul style="list-style-type: none"> - <i>Right to associate</i> - <i>Right to bargain collectively</i> - <i>Right to contest dismissals and disciplinary action</i>
Protection of vulnerable groups	<ul style="list-style-type: none"> - <i>Minimum working age</i> - <i>Equality of employment opportunities</i> - <i>Equal pay</i>
Determining compensation	<ul style="list-style-type: none"> - <i>Minimum wages</i> - <i>Overtime payments</i> - <i>Mandatory non-wage benefits</i>
Working Conditions	<ul style="list-style-type: none"> - <i>Occupational health and safety standards</i> - <i>Maximum working hours</i> - <i>Minimum number of holidays</i>
Initiation/termination of employment relationship	<ul style="list-style-type: none"> - <i>Fixed term contract</i> - <i>Reasons for dismissal</i> - <i>Advance notice and severance requirements</i>

Source: The World Bank, 2013

In Zambia, the labour market regulatory framework is administered through a range of legislation indicated below:

- i) *The Employment (Amendment) Act No. 15 of 2015*
- ii) *The Industrial and Labour Relations Act (Cap 269) No. 30 of 1997*
- iii) *The Minimum Wages and Conditions of Employment Act (Cap. 276) No. 13 of 1994.*
- iv) *The National Pension Scheme Authority Act*
- v) *The Workers Compensation Act No. 10 of 1999*
- vi) *The Factories Act (Cap 441) No. 13 of 1994*
- vii) *The Occupational Health and Safety Act No. 36 of 2010*
- viii) *Employment of Young Persons and Children Act No. 13 of 1994*
- ix) *Apprenticeship Act No. 13 of 1994*

The major EPL issues are mainly covered under the Employment Act No. 15 of 2015 and the Minimum Wages and Conditions of Employment Act (CAP 276) No. 13 of 1994. EPL thus consist the main focus of this report.

5.2 Evolution of the Zambia labour market regimes overtime

Labour laws in Zambia have been evolving over a long period of time. As the economy grows and new challenges emerge adjustments to some of the laws have become necessary. Issues of hiring and firing as well as minimum wages have been among the most critical issues that have undergone various adjustments. This section highlights some of the laws and how they have evolved over time.

5.2.1 Dealing with employment protection – hiring and firing

With the advent of liberalization of the Zambian economy and privatization of the State Owned Enterprises (SEOs), the private sector has become the major employer. The turn of events introduced new dynamics in the labour market. Anecdotal evidence suggests the emergence of employment practices which includes decline in permanent employment relationships, poor conditions and wages and casualisation of labour:

- i) *Decline in permanent employment relationships*
The private sector particularly multinationals, favoured non-traditional forms of employment relationships including labour contracting (broking) and contractual arrangement. There was also the gravitation towards outsourcing engagements to facilitate a situation where companies are left to perform only those functions in which they have a comparative advantage. Furthermore, Performance Management Contracts (PMC) resulted in companies and organizations moving away from permanent employment; preferring short term, fixed contract arrangements.
- ii) *Poor conditions and wages.*
There were also some incidents where workers were subjected to very poor conditions of service which included poor wages among other working conditions.
- iii) *Casualisation of labour*
Casualisation is attributed to the practice of hiring workers on a non-permanent basis for work of a permanent nature. This phenomenon has been a common trend especially among the large multinationals who avoid the costs associated with additional conditions of service such as pension contributions.

Over the years, successive governments have attempted to intervene in the market by amending some sections of the laws to deal with these issues. Much of the mechanics of it revolved around the following issues related to the Employment and the Minimum Wages and Conditions of Employment Acts. These issues are:

- i) The Employment Act (CAP 268) No. 13 of 1997 did not adequately address the various employment relationships that existed in the labour markets including temporary workers, part-time workers, seasonal workers, fixed term contracts until it was amended in 2015. The Act only defined permanent employment, casual employment and piecework. In this case, the application of the law was rather vague: for example, one-year fixed contracts or seasonal employment was regarded as casualisation.
- ii) The severance provisions in the Minimum Wages and Conditions of Employment Act are regarded as onerous by the private sector. The Acts provides for 3 months' pay for retirement and 2 months' pay for redundancy for each year worked, respectively for an employee who serves for a minimum of 10 years or has reached the age of 55 years. The private sector argued that these clauses were burdensome and a constraint to engaging workers on a long-term basis. The expectation was that the establishment of the National Pensions

Scheme would take care of the retirement benefits for all categories of workers⁴.

Government has responded to address these issues in various ways starting with issuing mere threats to employers concerning amendments and repealing the laws. Between 1997 and 2005, no major action was taken other than banning of labour broking by the Minister of Labour. In 2005, however, Government committed itself to the Private Sector Development Reform Programme Action Plan. Government agreed to repeal severance provisions in the Minimum Wages and Conditions of Service Act. By 2007, not much had been done regarding this action. However, in 2007, the Government through a ministerial statement to Parliament made some commitments to undertake some regulatory reforms.

Part of that statement read as follows:

“Mr Speaker, since its rampant emergence on the Zambian labour market in recent years, casualisation continues to impact negatively on the morale of the Zambian workers. It has been observed that the majority of the employers are moving away from employing permanent workers in their establishments to casualizing what are usually supposed to be permanent positions, thus creating insecurity and uncertainty among workers. Following a meeting held with various stakeholders, my ministry has established the causes of casualisation of labour and these will be addressed in the context of the existing, domestic, regional and international labour laws and codes.

It is therefore, the policy of the Government to ensure that this scourge is addressed by pursuing the following measures:

- i) amending the Employment Act to ensure that the law is streamlined in a manner that employers do not abuse the clause relating to casual employment;*
- ii) casual work will only be allowed for seasonal workers in sectors such as agriculture and other sectors where project-related tasks require specialized input. The hon. Minister responsible for Labour shall, by appropriate legislation, regularly issue guidelines to govern the casual employment in various sectors of the economy;*
- iii) major employers will be expected to employ workers in positions that are of a continuous nature in their organizational structures on a permanent basis;*
- iv) with regard to contractual work allocated to contractors, casual employment will only be permitted for specialized technical work of a limited duration or where justifiable, cause is shown by an employer;*
- v) labour broking is illegal in Zambia and will continue to be banned. Notwithstanding the mounting pressure in support of broking, it will not have a place in our labour laws in its present form;*
- vi) following the consultations held with social partners in 2006, the Government intends to review the Statutory Instruments of minimum wages with a view to ensuring that this piece of legislation is streamlined in accordance with the Government policy of encouraging local and foreign investment in the economy, by addressing the concerns that account for increased cost of undertaking business in the country⁵.*

No major actions were taken in relation to the above pronouncements until 2015 when Government finally made what it called fast-track amendments to the Employment Act.

The Employment (Amendment) Act No. 15 of 2015 attempted to address the various contentious issues as follows:

⁴ In 1999, Government indicated that these would be repealed after the transformation of National Provident Fund to NAPSA.

⁵ 2007, Ministerial Statement (Mr Mukuma)

- i) Defining employment relationships which were not clearly defined before.

The various employment categories are now defined as follows:

Table 2: Newly Defined Employment Relationships

Employment type	Definition
Casual employee	<i>(a) is not permanent in nature; (b) does not require any skill in the performance of the work to be done; and, (c) terms provide for payment at an hourly rate, payable at the end of each day;</i>
Fixed – term contract	<i>(a) a period exceeding twelve months, renewable for a further term, subject to section twenty-eight C; or, (b) the performance of a specific task or project to be undertaken over a specified period of time; and whose termination is fixed in advance by both parties;</i>
Seasonal employment	<i>means employment under a contract of service where the timing and duration of the contract is influenced by seasonal factors such as climate, agricultural or business peak cycle</i>
Short – term contract	<i>“short term contract” means a contract of service of six months but not exceeding twelve months;</i>
Temporary employment	<i>means service under a contract of service where a person is engaged to do relief work in the absence of a substantive employee, and may include employment which is part-time, but does not include a person engaged on a short-term contract;</i>
Part-time	<i>Employment under a contract of service that stipulates working hours of at least one-fifth less than the number of hours, prescribed under the Minimum Wages and Conditions of Employment Act or as specified in a collective agreement made in accordance with the Industrial and Labour Relations Act, for fulltime work calculated on a weekly, monthly or yearly basis;</i>

Source: Employment (Amendment) Act No. 15 of 2015

- ii) The Act introduced a new employment practice called Flexibilisation

Flexibilisation is defined as an employment practice that is characterized by different types of human resource management as follows:

- a) *pay flexibility, which is focused on performance related pay and pay bargaining;*
 - b) *contractual flexibility, which is focused mainly on non-permanent contracts of service, sub-contracting and outsourcing;*
 - c) *task flexibility, which allows employees to perform various activities; and*
 - d) *working hours flexibility, which focuses on part time working, job sharing and flexi hours of work;*
- iii) The Act provides some clarity on the employment practices that are not casualisation: These are
- a) *Work under a consultancy agreement;*
 - b) *Piece work;*
 - c) *Seasonal work;*

- d) *Temporary employment;*
 - e) *Part time work; and*
 - f) *Flexibilisation*
- iv) Further, the application of the Act on casualisation excludes micro or small business enterprises⁶. However, micro and small business are required to comply with the Minimum Wages and Conditions of Employment Act.
- v) The main thrust of the amendment was to “ban” casualisation. In an attempt to do this, the Act provides for the following. That:
- a) A casual employee is employed for a maximum of six months:
 - b) Where the employee continues to be employed after the expiration of six months, the employee shall cease to be a casual employee and the contract of service of that employee shall continue but shall be deemed to be a short term contract having effect from the day following the expiration of the initial six months.
 - c) Where an employee, who is engaged on a short term contract, continues to be employed after the expiration of the short-term contract, the short-term contract shall be deemed to be a fixed-term contract.
 - d) An employee’s fixed-term contract may be renewed for subsequent terms, except that the cumulative duration of the successive fixed term contracts of employment with an employer shall be as prescribed.
 - e) Where an employee who is engaged on a fixed term contract of service continues in employment with the same employer after the expiration of the prescribed cumulative period, the contract of service shall be deemed to be a permanent contract.
- vi) The Act criminalizes the practice of casualisation. A body corporate that engages in casualisation is liable to a fine or imprisonment
- vii) In addition to the employer giving notice for termination of employment, the employer is further required to give “valid” reason for termination. The reason should be connected to capacity, conduct, or operational requirement of the undertaking⁷.
- viii) The clause for regulation of employment agencies was also amended.

The Act now defines an employment agency as:

“Employment agency” means a natural or legal person or an unincorporated body of persons providing one or more of the following labour market services:

- a) matching offers of, and applications for, employment without the employment agency becoming a party to the employment relationship which may arise therefrom;
- b) employing persons with a view to making them available to a third party, who may be a natural or legal person that assigns their tasks and supervises the execution of these tasks; or
- c) services relating to job seeking as may be prescribed by the Minister, in consultation with the Tripartite Consultative Labour Council (TCLC), in accordance with the Industrial and Labour Relations Act; and

⁶ As defined by the MSME Policy

⁷ There should also be proof that the employer did all they could to help the employee before dismissing them. In case of poor performance there should be proof of efforts to help the employee improve performance before declaring them unable to perform their respective duties e.g performance monitoring and training support

- ix) The Act, in harmony with the Business Regulatory Act, 2014, introduces a single licensing system for the industry.

5.2.2 The Minimum Wage Policy

The Minimum Wages and Conditions of Service Act, CAP 276 is an Act of Parliament which provides powers to the office of the Minister of labour to put in place safeguards against erosion of decent earnings and working conditions mainly targeted at vulnerable working groups. This law which was first enacted by Parliament in 1982 empowers the Minister to provide protection to workers by issuance of a Statutory Instrument (SI) which sets the minimum wage and minimum conditions of employment for some categories of workers. Over the years, the statutory instruments have excluded government employees, local authorities, domestic workers and those whose conditions of service are regulated through the process of collective bargaining and by contracts. In 2011, the domestic workers minimum wage and conditions of service were introduced under statutory instrument no. 3 of 2011.

The main issues of contention relating to the minimum wage have been as follows:

- i) The use of a standard minimum wage for all sectors has posed a challenge to some industries. Zambia has been applying a ‘global’ minimum wage regardless of whether or not labour market conditions and productivity vary substantially across regions and industry.
- ii) Although the minimum wages and other labour related matters are discussed through the framework of the TCLC⁸, the Minister has the discretion to set minimum wages. The Minister also has powers to exempt an industry from paying the minimum wage if they so negotiate as long as they still pay a decent wage. There is currently no laid down guidelines nor benchmark that serves as a basis for setting the minimum wages.

Table 3 below shows the minimum wages that have been set since 1982 for both General workers and Shop Workers categories. The Shop and General Workers who previously earned a basic pay of ZMW419.00 and total earning of ZMW767.10 now get a basic pay of ZMW700.00 Other provisions include ZMW210.00 housing allowance, ZMW102.40 for transport while lunch allowance has been pegged at ZMW120.00, coming to a total of ZMW1,132.40.

Table 3: Minimum wage rates

	Total earning (ZMW)	Monthly basic pay (ZMW)	Monthly allowances (ZMW)
1997	65.00	55.00	10.00
2002	115.00	95.00	20.00
2006	498.400	268.00	230.40
2011	767.100	419.00	348.10
2012	1,134.20	700.00	434.20

Source: Ministry of Labour Youth and Sport – Statutory Instruments of Minimum wages and Conditions of Employment Act: 2002; 2006; 2011; 2012

For domestic workers, the minimum wage was set at ZMW250.00 with transport allowance of ZMW102.40 giving them a total earning of ZMW352.40 per month. This has since been revised in 2012 to ZMW420.00 with transport allowance of ZMW102.40, bringing the total to ZMW522.40

⁸ TCLC brings together Ministry of Labour, employers and the Labour Unions

5.2.3 Other laws

In addition to the above issues, the enactment of the 2016 Amended Zambian Constitution have also introduced some new laws that affect the labour market, these are:

- i) Retirement age has been increased to 65 years from 55 years
- ii) Pension or gratuity accrued by an employee should be paid on the last day of service. If the employee is not paid, the employer is required to pay the employee the monthly salary for the period that the pension or gratuity is not paid.
- iii) Pension and gratuity is tax free.



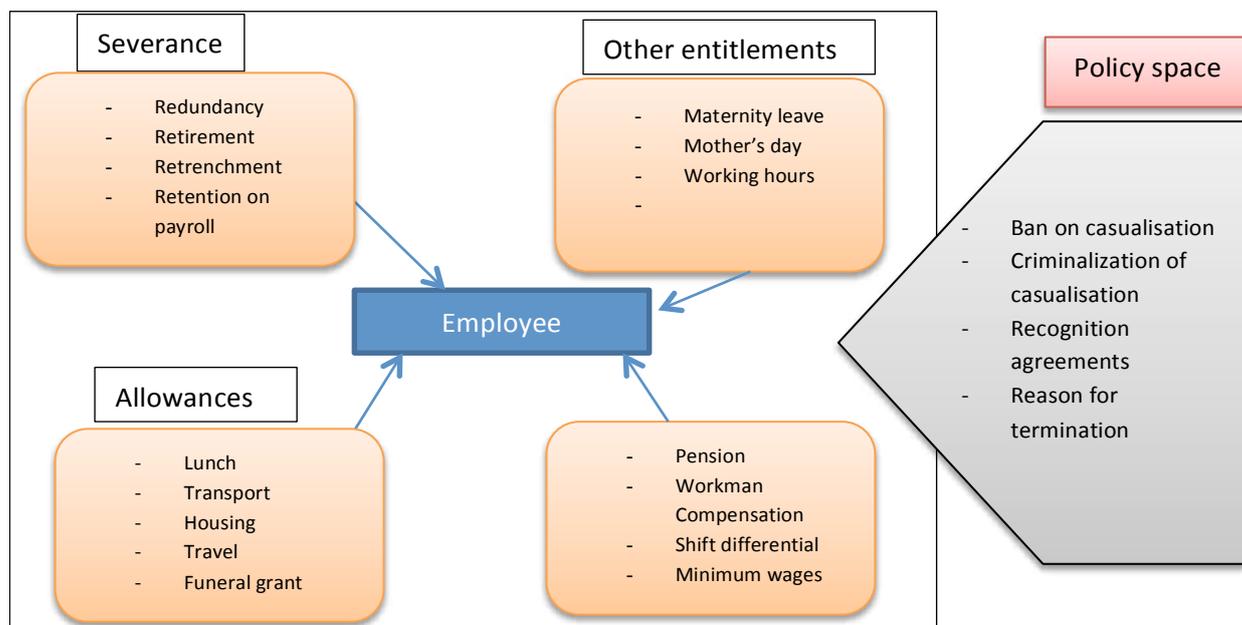
6. Labour Laws and Regulations: Zambian Firms' Perspectives

In this section we present the findings of the firm level qualitative survey on how various labour laws outlined above have impacted on businesses and the labour market in general. As stated earlier the study does not quantify the impact of labour laws but rather provides a qualitative depiction of labour market outcomes of the regulations. We present this section as a narrative of how businesses perceive the various labour laws and whether the laws are a hindrance to business and job creation.

6.1 Firm's perception of the impact of the labour market regulations

Purposefully sampled firms from the stated industries were engaged in Lusaka, Chipata, Livingstone and Kitwe. The firms were asked through their representatives to identify the various elements in the labour laws that they consider critical in the day to day operation of their businesses. Figure 3 summaries 20 issues that were identified as important at all the various locations of the study.

Figure 3: Labour Regulations Elements of Concern to Firms in the Survey



Source: Authors' own construction

Using the Labour Rigidities Ranking Tool explained earlier, firms were asked to rank the elements in terms of the extent to which each of them constrained business operations and employment creation on a scale of 0 to 5. A score of 5 meant that a particular element was perceived as of great concern by firms and a major constraint to business. A score of 0 on the other hand was interpreted as not of a concern to firms.

The firms were also asked to explain the rationale for ranking each element with a particular score. In each interview session the final score was reached at through a group consensus of the firm's representatives. The scores were then listed per interview location and an average was determined to reflect the final score of each of the elements. Colour codes were also added as shown in **Table 4**. The respective scores are explained below:

Table 4: Labour Regulation Rigidity Index

Issue	Livingstone 1	Livingstone 2	Chipata	Lusaka	Kitwe1	Kitwe2	Average score
Criminalization of Labour Issues	3	5	5	0	4	5	4
Ban on Casualisation	5	5	5	0	0	2	3
Recognition Agreements	3	3	0	3	4	3.5	3
Mother's Day	5	3	2	3	2	1	3
Workers Compensation	5	4	4	0	0	3	3
Redundancy Benefits	5	4	1	1	1	1	2
Minimum Wages	3	5	1	0	0	3	2
Retirement	2	0	5	0	2	1	2
Retention on Payroll	2	0	4	0	4	0	2
Retrenchment	2	3	3	0	0	0	2
Maternity Leave	4	0	3	1	0	0	1
Working Hours	0	0	0	0	2	4	1
Shift Differential	5	0	0	0	0	0	1
Transport Allowance	1	0	0	0	1	2	1
Housing Allowance	1	0	1	0	0	1	1
Pension/NAPSA	1	0	1	0	0	0	0
Lunch Allowance	1	0	0	0	0	1	0
Reason for termination	0	0	0	0	0	1	0
Funeral Grant	1	0	0	0	0	0	0
Subsistence and Travel Allowance	0	0	0	0	0	0	0

6.1.1 Criminalization of Labour Issues (Average score – 4)

Criminalization of labour refers to the practice of letting labour related offenses committed by employers be handled by institutions that resolve criminal offenses such as the police or courts of law. It has become common in recent years for employees to report their employers to the police rather than the industrial relations body which is meant to handle all labour related offenses and disputes.

Criminalisation of labour came to the fall during Government's efforts to cartel casualization. The principle Act concerning this provision has been amended by insertion of section 21 (A) which covers casualisation application and prohibition.

Amendment Act replaces the principle Act as follows:

12 (A) (4) A body corporate that engages a casual employee for a job that is permanent in nature commits an offence and is liable, upon conviction —

(a) in the case of a first offence, to a fine not exceeding one hundred and eighty thousand penalty units; or

(b) in the case of a subsequent offence, to a fine of three hundred and sixty thousand

penalty units or to imprisonment for a period not exceeding six months, or to both.

Firms involved in the survey perceive this as the biggest concern which also hinders business. The major bone of contention against this law is that labour laws are supposed to be handled in an industrial relations court and not a criminal court as doing so portrays employers as criminals and can affect the reputation of businesses.

“An employer can be arrested for practicing casualisation, this scares away investors, and it is in itself a constraint”⁹

“Originally, the Industrial Relation Court was under the Ministry of Labour for a simple reason that it was a court that does not require technical evidence – now it has been taken to Judiciary”¹⁰

Nonetheless, firms have differing opinions on this law with some saying it was completely wrong and others saying it was a good measure for deterring would be labour law defaulters. The latter’s argument was based on the premise that without criminalising labour, workers’ rights would not be respected. Proponents of this idea further argue that some industries are risk prone and any failure to observe rules, such as non-provision of protective clothing endangers the lives of employees. This law is therefore a good way of ensuring safety of workers. The law is also a way of taking responsibility to an individual level rather than leaving it vaguely and collective.

On the other hand the argument is that decisions at firm level are not made by an individual but involves a series of hierarchy which makes it unfair to criminalise specific individuals. CEOs and human resource persons are agents of their principals including boards of organisations. Incarcerating the agents would thus be unfair as they may not be solely responsible for some of the decisions a company makes. In many cases these would be acting on instruction from superiors and holding them responsible would not be fair.

Nonetheless it is important to also understand the context of this law. According to the Ministry of Labour an employer or their representative can only be prosecuted and later on jailed if found guilty once they refuse to follow the advice and interventions that the Ministry may provide in case of a labour law default. Thus prosecuting someone is a last resort and not directly linked to a particular default, but failure to take advice from labour officers.

6.1.2 The Ban on Casualisation of Labour (Average Score – 3)

The Amendment Act effectively prohibits casualisation. However it makes a provision for clauses that explain how employers ought to deal with different circumstances. For example, after the expiration of an initial casual contract, the same person can be hired again only that a subsequent engagement should be deemed to be a short term contract. In this case, terms and conditions of service for the engagement of the employee changes to the normal terms and conditions of service for the organization.

Most firms felt that this particular law has made it extremely difficult for them to do business in the sense that many firms regularly have activities that only require labour for shorter terms than 6 months. An example of plant maintenance was given as an ad hoc or short term activity that may not need full time employees to complete. Firms expressed that in the current form the law does not give them latitude to rationalise labour decisions thus complicating doing business. Others said while it is clear that banning casualisation does not mean banning piece work, firms are still restricted as no one person should be engaged to do piece work for more than six months. Thus,

9 Field Interviews, 2016

10 Filed Interviews, 2016

it remains unclear as to what a firm should do in cases where a plant needs maintenance for more than once in a given period of time since the law does not allow piece work to exceed six months.

However, it is important for firms to study the provisions of this particular law in more details. As earlier stated, casualisation does not apply to seasonal work or piece work. This means as long a type of work is known to be seasonal like most farming activities such as planting, weeding and harvesting which comes only at certain seasons casualization does not apply. This also goes for piecework activities such as offloading of goods once in a while, cleaning a plenty or premises once in a while and similar other activities.

Firms were also particularly concerned about how to deal with this issue when it comes to fluctuating business cycles. Normally there are business cycles in every economy which should determine whether to hire labour or not. In the current circumstances the law seems to suggest that businesses should keep people on permanent basis regardless of the health of the business. However, this is not practical and continues to make it even harder for business to manoeuvre especially in recessions. The economic hardships experienced since 2015 were cited as some of the examples when it was difficult to adjust labour.

The above notwithstanding, firms spoken to acknowledged that the law to ban casualisation of labour was in the first place necessary because some employers were taking advantage of workers and were able to avoid providing various privileges that only accrue if jobs are of a permanent nature. Since casuals are not entitled to certain privileges such as leave pay, keeping casuals was an easy way of saving costs for the business.

6.1.3 Recognition Agreements (Average score – 3)

Although not particularly related to the Employment Act, the issue of recognition agreements (RA) was cited as one of the major issues that should be addressed on the labour market. RAs are covered under the Industrial and Labour Relations Act and relates to trade unions and employers' associations. The current practice in Zambia is that once an employer signs an RA with a union, it has no leeway to opt out in preference for another. As such it has given room for the unions to be defiant and "intimidating against employers.

Employers argued that there should be a regulatory framework to guide the implementation of these agreements giving clear conditions under which the agreement could be invalidated. Particularly, there should be entry point and exit point for the employer – for any deviant behaviour by the unions.

"Some unions are so bullying they want to assume the role of an employer because they know that the employer cannot opt out"¹¹.

6.1.4 Mother's Day (Average score – 3)

The Employment Act Chapter 268 of the Laws of Zambia paragraph 54 (2) makes **a provision for women to take a day off every month to accommodate period discomfort.**

"In addition to the leave prescribed in subsection (1), every female employee shall be entitled to one day's absence from work each month without having to produce a valid medical certificate"¹².

The major concern regarding this legislation is that there has been a tendency for the women to abuse the right. Firms say the way women exercise this right has slowly become an important issue to consider when employers want to employ female employees. In future firms say the law

11 Field interviews, 2016

12 Field interviews, 2016

should be amended to require women to inform their superiors ahead of time instead of just disappearing. The concerns were raised by both male and female representatives.

6.1.5 Workers Compensation (Average score – 3)

The Workers Compensation Act was enacted in 1963 and has since had several amendments with the latest being in 1994. The objective of the Workers Compensation Act is to mandate employers to compensate workers in case of employment related injuries that include medical treatment and payment for time off as the employee recovers. It also includes compensation for any permanent disability.

Firms indicated that they have no problems paying premiums to the workers compensation. However, several important issues were raised regarding the administration and the purpose of the compensation fund as follows:

Firstly, though firms had no problems making contributions they were ignorant about the basis for calculating the premiums and hoped it could be more transparent. This means that firms had no clear understanding of how the rates were determined,

Secondly, it was also observed that the contributions were not risk rated as firms seem to pay uniform amounts regardless of the sector and type of business. It was felt among many firms that the Workers Compensation Fund (WCF) is like insurance against occupational risks which should be somehow related to the level of risk in the sector and industry in which a firm is. In this regard it would also be possible to reward firms that do not make claims in each year so that their contributions lessen in subsequent years. This is another way of ensuring firms put emphasis on occupational safety to reduce the occurrence of accidents.

Based on this, firms also wondered whether the Workers Compensation exists for purely revenue purposes for Government or for providing compensation against occupational injuries while ensuring occupational safety.

Thirdly, the other two observations aside, it is not always easy for employees to receive compensation. It was pointed that in most cases employers end up meeting medical costs or any other costs related to injuries of employees regardless of having complied WCF obligations. For cases where it has been possible to get compensation workers were reportedly complaining that the stipulated amounts are usually too small and in many instances not sufficient to meet the costs related to the injury or whatever may be the case, requiring employers to step in to aid.

Furthermore, firms stated that WCF restriction of benefits to disability cases only was a serious design flaw. WCF only processes benefits when employees are involved in accidents that impair them for the rest of their lives. However, employees get involved in serious injuries though they may not be necessarily disabled.

This study identified the above issues as the most important labour regulatory concerns among firms. Nonetheless, there were numerous regulatory issues that were also identified as potential constraints business operations as well as employment creation. These issues scored an average of two (2) and are discussed below.

6.1.6 Severance Packages

Provisions relating to severance pay have been topical for a long time. However, the firms did not rank this aspect highly mainly because of the contractual nature of employment relationships where firms could decide to provide gratuity or not. Three main aspects come out strongly relating to severance provisions. These are:

- i) Retirement – whereby employer is supposed to pay two (2) months’ pay for each completed year worked for an employee who has worked for ten years and above or has reached retirement age.
- ii) Redundancy – whereby employer is supposed to pay 2 months’ pay for each completed year worked when contract is terminated by reason of redundancy.

Firms observed that severance packages are a disincentive to employing on long term basis. Employers would rather go into a fixed short term contract and they could pay gratuity, a ‘thank you’ package. For redundancy, the fear is that it is very expensive to let go of permanent employees in times when business is not doing fine and the firm needs to shed off some labour.

Box 2: The Woes of Severance Package under Diminishing Business Opportunities

Mr Nasilele (not his real name) is a C.E.O of a company that supplies manufactured products used in the mining industry. His company is highly labour intensive. When copper prices plummeted recently one of his biggest clients terminated all contracts because they were also cutting on production. Mr Nasilele found himself with more workers than he needed. Because his demand for labour is dependent on availability of business or contracts, he equally did not have money to continue paying workers with reduced production. However, the liability for terminating employment was just too high due to redundancy packages especially that he has workers who have been serving for a long time. This represents a usual dilemma that many firms go through when the economy tightens as they cannot shrink labour without consequences. According to Mr Nasilele, the Zambian labour market is so rigid and does not allow for flexibilities for his firm to be able to manage the labour force to suit the commercial and economic demand of the type of business he is in. According to him Government needs to relax severance pay requirements and instead dialogue with firms for a win-win solution which while ensuring income security of redundant workers do not threaten business survival in economic down turns.

- iii) Retention on payroll

Article 189 (2) of the Zambian Constitution states that where a pension benefit is not paid on a person’s last working day, that person shall stop work but the person shall be retained on the payroll, until payment of the pension benefit based on the last salary received by that person while on the payroll.

The constitutional provision for persons employed on contracts was cited as a law that has adverse repercussions on the private sector businesses, non-profit organizations and even public sector institutions. The implication for this is that should you give any increment to the existing employees at the same scale, even the other employees who are not working after the expiration of contract or on retirement should enjoy that increment. The calculation of the pension will also have to reflect any salary adjustments occurring after retirement date.

“So you may retire this year, and your dues are only paid 3 to 4 years later, you will have to be paid retirement benefits using a higher salary scale than the salary you retired at”¹³.

13 Field interviews, 2016

6.1.7 Minimum Wages

The application of minimum wages is regulated through subsidiary legislation which includes general workers, shop keepers and domestic workers. Minimum wage regulation scored an average of two (2) in the survey, meaning that while a constraint, it was not much of a constraint as the others. The minimum wage has been a subject of debate in the recent past especially with the latest adjustment in 2012. Even then the debates have not been about whether to have one or not, but on the level at which it should be fixed. The firms indicated that the last revision were acute and had huge impact on business. The major submissions made by the firms on this matter included:

- *The lack of consensus in the way the minimum wages are determined*
- *The lack of consideration of the variations (size, sector, location etc) in the ability of industries to pay*

Some firms including those interviewed also claim that they had to diminish their labour to cope with the wage increase brought by the upward adjustment in the minimum wage. Others are said to have gone to the extent of closing businesses due to the resulting unsustainable wage bill. Nonetheless, these claims are not grounded in empirical findings that show the true effect of the minimum wage on businesses.

In order to provide a clear perspective on these claims the study performed quick analyses using the 2012 and 2014 labour force surveys. The assessment focused on understanding the bite, the firms affected by the minimum wage and the levels of compliance among firms. The level of bite, the percentage of workers affected and level of enforcement are devised by the World Bank as criteria to determine the potential impact of a minimum wage.

i) The Level of bite

The level of bite is the measure of the impact of the minimum wage. Measured by the ratio of minimum wages to the average wage (MWAVR) in the economy the bite is both used to describe the minimum wage system and to guide policy decisions (Rutkowski, 2003). The minimum wage earner is relatively better off if the ratio is high. However, too high a ratio means a more compressed earnings distribution, implying the minimum wage is becoming the 'going rate' with consequent challenges for firms to pay. In other words a ratio that is too close to the average wage could mean all workers in a given sector qualify to receive a minimum wage which can be unbearable for some firms.

The level of bite varies from country to country with the minimum wages in Europe usually ranging from 50% to 70% of average wages compared to 33% in the United States (Rutkowski, 2003). Most countries however, fall between 20% to 50%. From various studies that have been done on this subject, recommendations are that, as a rule of thumb, in developing countries the national minimum wage should be less than 40% of the average wage if unemployment is high and concentrated among the youth (Rutkowski, 2003). In addition, minimum wage levels are described as low if below 20%, modest 20% – 30%, medium high 30% – 39%, high 40% – 49% and very high if the percentage is above 50%.

Table 5: Zambia Mean wages and MWAVR in 2012 and 2014 by Industry

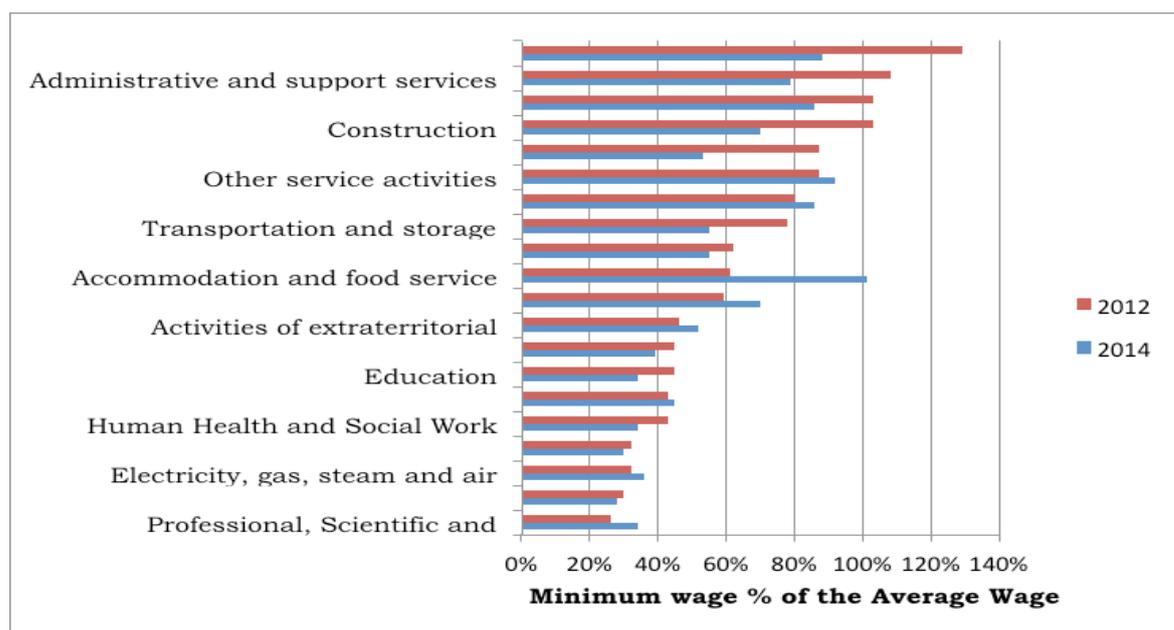
Industry	2012 mean	2014 mean	2012 median	2014 median	MWAVR 2012	MWAVR 2014
Professional, Scientific and technical	4,361.13	3,288.06	2,300.00	3,250.00	26	34
Financial and Insurance Activities	3,834.85	4,069.51	2,500.00	3,938.00	30	28
Electricity, gas, steam and air conditioning	3,574.97	3,158.58	2,000.00	2,415.00	32	36
Mining and quarrying	3,531.29	3,829.92	2,400.00	2,800.00	32	30
Human Health and Social Work	2,627.36	3,371.91	2,165.00	3,300.00	43	34
Information and communication	2,615.86	2,504.95	1,500.00	1,900.00	43	45
Education	2,533.22	3,348.77	2,300.00	3,500.00	45	34
Public Administration and Defense	2,504.12	2,902.28	1,800.00	2,800.00	45	39
Activities of extraterritorial organizations	2,469.79	2,186.86	1,272.00	1,790.00	46	52
Manufacturing		1,616.65	1,100.00	1,100.00	59	70
Accommodation and food service activities	1,869.26	1,126.36	700.00	950.00	61	101
Water Supply Sewerage, waste management	1,838.47	2,065.63	1,300.00	1,500.00	62	55
Transportation and storage	1,455.96	2,076.27	900.00	1,500.00	78	55
Arts, Entertainment and Recreation	1,415.97	1,316.02	902.00	1,300.00	80	86
Other service activities	1,307.34	1,236.07	500.00	830.00	87	92
Real estate Activities	1,300.00	2,150.00	1,300.00	2,150.00	87	53
Construction	1,103.46	1,615.39	800.00	1,200.00	103	70
Trade, wholesale and retail distribution	1,101.15	1,322.94	700.00	1,100.00	103	86
Administrative and support services	1,049.78	1,439.99	600.00	800.00	108	79
Agriculture, forestry and fisheries	876.36	1,290.16	500.00	600.00	129	88
Total	2,099.48	2,396.51	1,334.00	1,700.00	54	47

Table 5 above shows the distribution of average and median wages in 2012 and 2014 based on the Labour Force Surveys. In 2012, the minimum wage was revised to ZMW 1134.20. Calculating the MWAVR using this rate, we find that only four industries had a MWAVR below 40%, a total of nine had a MWAVR below 50%.

We can also deduce that the level of bite was extremely high for industries such as Agriculture, forestry and fisheries (129%), Administrative and support services (108%), Trade, wholesale and retail distribution (103%), Construction (103%). At these rates it means these particular industries' wages were below the minimum wages and now had to pay every worker a minimum wage. This is likely to be unbearable for some firms. Other industries with a high bite are Real estate Activities (87%), other service activities (87%), Arts, Entertainment and Recreation (80%), Transportation and storage (78%).

Nonetheless by 2014 there were some improvements in both the average and median wages of a number of sectors as shown in Table 5 above and Figure 4 below. The most outstanding improvement involve Agriculture, forestry and fisheries (129% to 88%), Administrative and support services (108% to 79%), Trade, wholesale and retail distribution (103% to 86%), Construction (103% to 70%), Real estate Activities (87% to 83%). These increments do not only signal a general improvement in wages which is good for the economy but also indicate that as average wages rise, compliant with minimum wages obligations actually improves. In other words the bite tends to reduce. However, a few industries did report a drop in their wage levels between 2012 and 2014. The MWAVR for Manufacturing, for example, dropped from 59% to 70%, Accommodation and food service activities from 61% to 101%.

Figure 4: Bite of the Minimum Wage in Zambia, 2012 and 2014

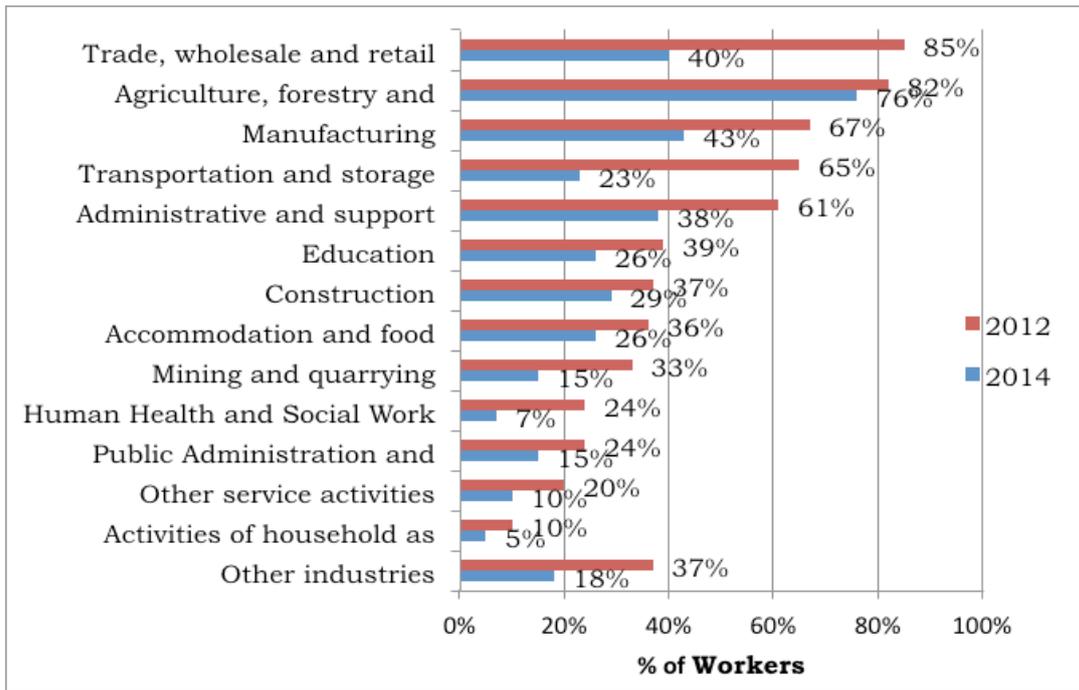


(ii) The percentage of workers affected

Another way of looking at the impact of minimum wage is to consider the shape of the earnings distribution which determines the percentage of workers who are affected or those who should receive the minimum wage. The larger the fraction of workers at or near the minimum wage, the stronger will be the effect of the increase in the minimum wages (Rutkowski, 2003).

Figure 5 below presents the outcome of the wage situation in Zambia when the minimum wage was adjusted in 2012. As can be seen, Trade, wholesale and retail distribution, Agriculture, forestry and fisheries, Manufacturing, Transportation and storage, Administrative and support services had between 61% and 85% of workers falling below the new minimum wages. This implies that the impact of the increase in the minimum wages then was huge for these industries. The scenario changed significantly two years later in 2014.

Figure 5: Percentage of workers affected by minimum wages 2012 and 2014.

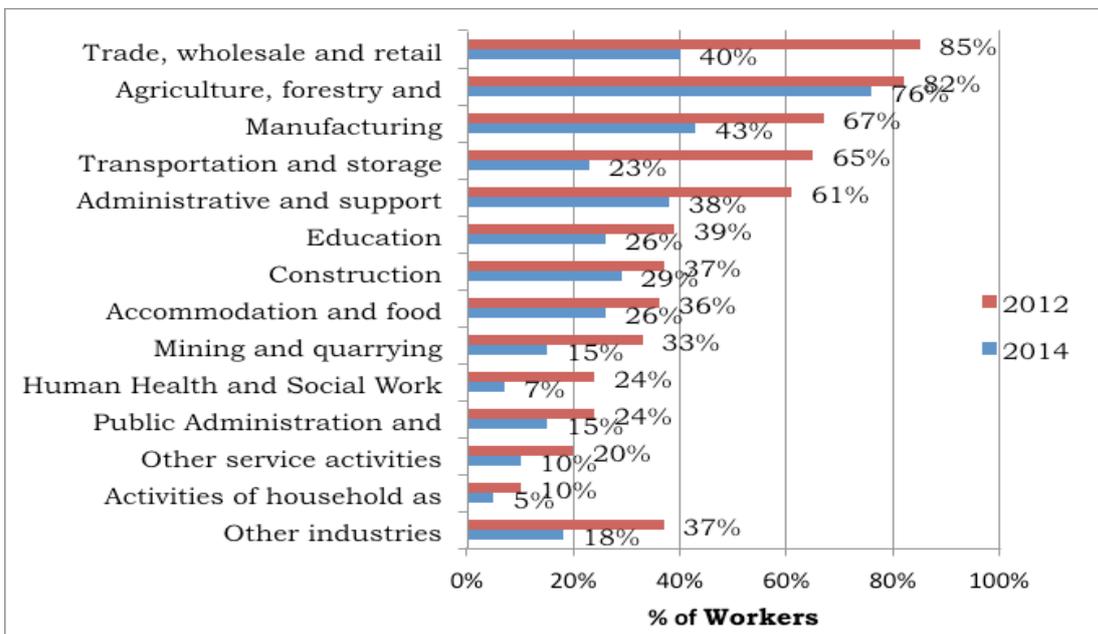


(iii) Level of enforcement

The firms that participated in the focus group discussion brought out the fact that although the issues of minimum wages was critical in 2012 when it was revised, it does not seem to be the case now mainly for 2 reasons. Firstly, many firms have adjusted the wages to around the minimum wages and the importance of the issue has subsided. Secondly, Government does not strictly enforce the minimum wages in Zambia.

Figure 6 shows the minimum wage compliance levels in 2014. Formal Agriculture forestry and fisheries had 76% of the workforce getting below the minimum wage scale. The reason behind low compliance could be that this is one of the sectors with the highest bite as earlier pointed out implying difficult for firms to pay everyone a minimum wage. This amplifies the call for sector based minimum wages as some sectors may not manage substantial minimum wage rates.

Figure 6: Proportion of Workers earning below the Minimum Wage by Industry, 2014



Overall, firms reacted to the minimum wage increase in different ways. Firms in sectors such as security services which employ a majority of general workers said they had to lay off workers as the wage bill suddenly doubled in some cases making it unsustainable. Firms recounted that the minimum wage meant that they had to push the costs to the consumer but consumers ended up cutting already agreed contracts as a result. Such decisions meant firms remained with more security men and women than what they needed for the contracts available. Based on this scenario they had to let go of appropriate numbers of employees.

For a number of firms and especially those that employ minimal numbers of general workers, the minimum wage law was not as adverse as one might think though the initial labour costs were high due to the sudden adjustments. Nonetheless firms gradually adjusted and included the additional costs in their labour costs.

However, relatively small businesses had difficulties adjusting to minimum wages for reasons that it did nothing but push up the cost of doing business. These are the firms that found themselves unable to transfer minimum wage costs to their consumers because this too was a business risk. A few firms indicated reaching the point of completely closing and going out of business for failure to sustain the wage bill.

6.1.8 Other issues

Although a number of other elements were raised, firms did not bring out major adverse issues on them. However, some of the key issues raised were picked and presented below:

Element	Average Score	Main issues raised
Maternity Leave	1	Employers were wary of the intentions of Government, following ILO ratifications to increase the maternity period from the current to six months. Some indicated this could affect employment chances of women.
Working Hours	1	No major issues raised
Shift Differential	1	For service industries such as tourism which requires people to work 24 hours, shift differential is a significant cost to the business. Firms argue that in cases where working at night becomes the norm for an employee, there should not be any need to receive an additional pay. This is because working during this time is no longer an inconvenience as opposed to when one usually works during the day and they are told to work in the night at some point for which they are not prepared.
Transport Allowance	1	No major issues raised
Housing Allowance	1	No major issues raised
Pension/NAPSA	0	High penalties pose challenges for businesses
Lunch Allowance	0	This was said to be low, may need adjustment
Funeral Grant	0	This was said to be low and does not reflect current economic situation
Reason for termination	0	This may work against the employee – for example, if the employee was fired for incompetence, he may find it difficult to find another job if this is put on record.
Subsistence and Travel Allowance	0	No major issues



7.0 Conclusion and Recommendations

This report has provided a comprehensive review of key labour laws and regulations in Zambia drawing from various pieces of legislation. The report has also revealed the perception of firms on current labour laws and regulations and how these laws and regulations have affected the labour market in Zambia. Through literature review the report has also highlighted the impact that labour regulations have on labour markets in other countries.

In concluding, the paper makes general observations followed by specific recommendations for Government and the relevant agencies as follows:

- a. ***Labour reforms consultations have been very limited and do not offer employers an adequate platform to input into the labour laws and regulations:*** It became very clear during the process of the survey that firms think that the process of amending labour laws has not been very consultative. In many instances firms expressed ignorance of processes leading to labour law amendments. Firms also wished that as key stakeholders they could be directly involved in the process without always being caught by surprise.

Regardless of this outlook there exists a TCLC which is supposed to bring together the Government, Private Sector and labour unions to dialogue all labour issues before important decisions and changes are made. According to the submissions of firms who participated in this survey not much is being done even under the TCLC. Apparently Government seems to be on its own when forming labour laws and regulations. The downside of the apparent lack of consultation is that it becomes very difficult for firms to implement the new reforms as they feel that their interests are not often represented.

- b. ***Limited understanding of labour reforms among employers or their representatives, employees and in some cases labour inspectors:*** The second important observation made during the survey was that there appeared to be limited understanding of certain labour laws and provisions first among employers. A substantial number of employer representatives were either not aware of the existence of certain labour laws or completely misunderstood the laws. In cases where they knew the law, they lacked comprehensive understanding of the provisions embedded within to help them get around legal constraints. For example, the subject of casualisation of labour was clearly misunderstood by a lot of firms. Whereas seasonal or piece work is exempted from casualisation for sectors such as agriculture, many firms didn't seem to understand this provision and were still facing serious labour constraints as a result.

Employers also submitted that they observed many misunderstandings of labour laws from labour inspectors who are the enforcers of the law. According to firms there was a lot of misinterpretation of certain labour laws which practically disrupted smooth running of business every time employers were reprimanded. Adding to this, employees also lack clear understanding of many labour regulations according to employers. This often led to unnecessary disputes between the two parties. It was also learnt that employees have also developed a tendency of reporting employer's to the police even for cases that can easily be resolved via exchange of ideas.

In view of the above and the many insights highlighted in the report, the Government should seek to:

1. Decriminalise labour offenses:
 - o *Clarify the law and relevance of the industrial relations court so as to use it to settle labour disputes without involving institutions that deal with criminal matters such as the police and courts of law.*
2. Scale up labour reform sensitization and education:
 - o *Run campaigns from time to time to educate employers and employees on new labour reforms including provisions that exist within the law to avoid work around certain constraints.*
 - o *Similarly, provide adequate orientation to labour inspectors to be able to interpret the law adequately without misleading employers and employees*
3. Review the functions of the Workers Compensation:
 - o *Improve the operations of the Workers Compensation to be able to respond to claims in time to avoid firms meeting employee costs of rehabilitation*
 - o *Consider linking Workers Compensation's contributions to the level of occupational risks of different industries and establishments.*
 - o *In the same line, consider providing an incentive for firms who maintain a clean record of occupational risks.*
4. Strengthen Implementation of the Minimum Wage
 - o *Strengthen enforcement of the minimum wage policy by increasing ground inspections so as to raise the wages of low-paid workers.*
 - o *Consider moving to sector based minimum wage. This could improve compliance to the minimum wage and at the same time raise the wages of low-paid workers in various sectors.*
 - o *Invest in information such as data gathering, processing and dissemination as a requirement for implementing a sector based minimum wage.*
5. Review the administration of Mother's day:
 - o *To ensure it works for employers and women in the work place Government should review the administration of Mothers' day.*
6. Revisit the law on severance pay
 - o *Provide a platform for firms and government to discuss the issue of severance package widely and come up with a more balanced package that does not make separation expensive.*



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