

## Analysis of Statutory Instrument No. 48 of 2020

### Section 36 and 37     Annual Leave and Annual Leave Benefits Formula

- The formula for annual leave pay calculation as set out in the Fifth Schedule of the Employment Code Act of 2019 was printed as a multiplication but this has been widely perceived as a mistake as it is deemed to be a division sign in practice.
- New contractual agreements can use the formula with the division sign and employers can use basic pay or full pay as the measure for calculating annual leave pay.
  - The choice of which pay (basic or full pay) will be used is at the discretion of the employer depending on their company policy and business case.

Annual Leave Benefit Pay Formula =  $(FP \times D) / 26 \text{ days}$

**OR**

Annual Leave Benefit Pay Formula =  $(BP \times D) / 26 \text{ days}$

Where:

D = number of accrued leave days

FP = full pay which is the basic pay, allowances, and the cash equivalent of any allowances in kind applicable for a period not exceeding one month but does not include payments in respect of any bonus.

BP = only basic pay

- In addition to being able to pay annual leave benefits at the end of each year as per the Employment Code Act of 2019, the employer can now choose to pay annual leave benefits at the end of the contract in line with their HR policy and procedures.
- The current practice of the calculation and payment of annual leave benefits must remain aligned to current contractual agreements until the end of those agreements or unless otherwise agreed in writing with employees.



## Section 48    Forced Leave

- Employers are now allowed to place employees on leave without basic pay, after they have met the guiding principles set out in the schedule of the Statutory Instrument No. 48 of 2020.
- Employees are still be entitled to receive their benefits at the end of the contract as per current contractual agreements signed with employers.
- For the avoidance of doubt, the employer must be assessed to be in financial distress by an authorised officer of Ministry of Labour and Social Security, as set in the guiding principles set out in the schedule of the Statutory Instrument No. 48 of 2020, before placing employees on leave without basic pay.

## Section 54    Severance Pay

- Expatriate employees and employees in management are exempt from receiving severance benefits like gratuity, at termination unless their signed current contractual agreement entitles them to receive these benefits.
- Employers are now allowed to exempt severance pay, like gratuity, in employment contracts for expatriate employees and employees in management. However, best practice in HR is for employers to provide for termination benefits in line with the business case, to facilitate employee loyalty to employers and for employees to receive fair reward.
- The current practice of the severance pay must remain aligned to current contractual agreements until the end of those agreements or unless otherwise agreed in writing with employees.

## Section 55    Termination by Redundancy

- The time period for notifying authorised officers at the Ministry of Labour and Social Security of impending termination by reason of redundancy has been reduced to periods of less than 60 days' notice.



- Employers are only allowed to terminate employees by reason of redundancy due to the three main reasons as defined by cited by Section 55 1):
  - (a) the employer ceasing or intending to cease to carry on the business by virtue of which the employees were engaged;
  - (b) the business ceasing or diminishing or expected ceasing or diminishing the requirement for the employees to carry out work of a particular kind in the place where the employees were engaged; or
  - (c) an adverse alteration of the employee's conditions of service which the employee has not consented to.
- Where an employer intends declare employees redundant, the employer must be assessed to be in financial distress by an authorised officer of Ministry of Labour and Social Security, as defined in the guiding principles set out in the schedule of the Statutory Instrument No. 48 of 2020.

### Section 73      Payment of Gratuity

- Expatriate employees, employees in management, employees in the agriculture and domestic sectors are exempt from receiving their gratuity at the end of their contract unless their current contractual agreements entitle them to receive these benefits.
- Employers are now allowed to exempt gratuity to contracts for expatriate employees, employees in management, employees in the agriculture and domestic sectors. However, best practice in HR is for employers to provide for termination benefits in line with the business case, to facilitate employee loyalty to employers and for employees to receive fair reward.
- The current practice of the payment of gratuity must remain aligned to current contractual agreements until the end of those agreements or unless otherwise agreed in writing with employees.



## Section 75 Overtime

- Expatriate employees and employees in management are exempt from earning overtime for working in excess of forty-eight hours in a week unless their current contractual agreement entitles them to receive this benefit.
- The current practice of the payment of overtime must remain aligned to current contractual agreements until the end of those agreements or unless otherwise agreed in writing with employees.

### Timelines of Statutory Instrument No. 48 of 2020

All updates addressed in this statutory instrument will exist until the Minister of Labour and Social Security issues a new statutory instrument which revokes or repeals the Statutory Instrument No. 48 of 2020.

*Disclaimer: The content of this analysis is intended to be of general use only and should not be relied upon without seeking specific legal advice.*

If you have any additional questions, do not hesitate to contact us by calling 0211 259 101/2 or emailing [info@topfloor.co.zm](mailto:info@topfloor.co.zm).

A handwritten signature in blue ink, appearing to be "Bongani B Kumar".

Bongani B Kumar  
Managing Director

