

RESTRICTIVE LABOUR LEGISLATION IN NAMIBIA AND ITS NEGATIVE EFFECT ON JOB CREATION

14 September 2011

EXECUTIVE SUMMARY.

- When employing a person there is an inherent risk to the employer. How should and can that risk be reduced to encourage employment creation.
- Direct and indirect cost factors increase the risk factor of employment, and discourage more employment.
- Barriers to firing become barriers to hiring.
- The rights of the employer to maintain the most suited workforce is being eroded.
- Today a worker can lodge a complaint without cost or risk to himself. Thus the, as yet unanswered question, is the current dispute resolution system unfairly biased in favour of the worker?
- Is it right for an employer to have to spend up to 25% of his productive time on labour issues, instead of on running his business?
- Does the current labour regulation system discourage investors, or at the least reduce the number of jobs they create?
- The world has just come through a serious global economic down- turn. It is not a case of IF another will occur, but WHEN. A flexible labour market will assist any country to weather the next such storm.
- What is needed is SMARTER regulation not MORE
- Importation of European employment policies will not necessarily work in a developing country such as Namibia.

1. Namibia has some of the most restrictive labour legislation when compared to other countries. How does this influence job creation?

Employers throughout the world are directly influenced by labour legislation in their decisions to hire or not hire new staff. Namibia is in no way immune from this key global determinant of job creation.

There are various ways in which labour legislation impacts on both the capacity and appetite of employers to hire more staff.

Firstly, employment carries risk for an employer. Judging and managing risk lies at the heart of doing business, and lies at the heart of employment decisions. Employers always take a risk when they hire, and labour relations legislation can exacerbate these risks when set wrongly

and either encourage or discourage taking a risk and creating a new job. Legislation should strive to lower the risk of employment.

The second consideration is cost. How any labour market is regulated, and how complex a regulatory system is to administer carries costs for employers, and these costs determine whether it is economically sound to create new job opportunities. Direct cost factors, such as wage levels (both minimum and market rates), combine with indirect administrative costs and labour market restrictions, to determine the extent to which it is economically viable to create jobs.

The third consideration, which combines with cost, is the reward employers can reap from job creation. Critical to this is the relative productivity the labour relations system supports, the hours that can be worked, and the skills new employees bring to their work. This determines the extent to which it is rewarding to create jobs.

Restrictions on hiring and firing, and excessive employment protection rights can multiply risks to employers, and discourage job creation. This determines the extent to which it is prudent to create jobs and the risk appetite of employers (and indeed of investors and those determining not just jobs growth, but economic growth).

The UDF youth League agrees with the concept of a more flexible labour legislative regime, as reported on 19th September.

Namibia ranks 69th on the World Bank Doing Business index, with positive indications on security of contracts and access to credit. However, the capacity to create jobs will be a further critical determinant of Namibia's future competitiveness, particularly with other African nations ranked above us on the World Bank scale.

Countries throughout our region are making significant advancements in delivering the fundamental foundations for doing business across borders, access to credit, and starting and registering businesses. This is critical and long overdue. However, greater consistency and reliability in the financial and legal underpinnings of doing business across Africa will lead to even greater attention being paid to considerations such as how work is regulated, and how this successfully balances competing interests and considerations. We predict that Namibia's performance in regulating its labour market, and supporting the doing of business and creation of jobs, will become even more critical to our future investment performance and growth.

2. Would it be correct to say that employers are hesitant to hire more people due to current labour legislation?

Employers in Namibia are hesitant to hire new staff, and to create more opportunities in the formal sector that will lead social development, attract investment and grow our economy. Principal concerns Namibian employers identify as discouraging job creation include:

The red tape and rigmarole required in order to terminate services is a nightmare. Emphasising here that no employer will want to terminate the services of a good, reliable worker. He will want to terminate only those who are laggards, unreliable and non-productive.

The right of the employer to maintain a workforce best suited to his needs, is today limited.

The factors affecting this are multiple, but one example echoes across the nation and that is the ease with which employees can lodge a complaint with the Office of the Labour Commissioner, however frivolous the alleged complaint might be. The 2008 – 2010 report from the Office of the Labour Commissioner lists a total of 2444 complaints of which 1202 are for unfair dismissal. The total AND the number of alleged unfair dismissals are both far too high.

An employer's main occupation is running his business. Employers in Namibia report that they spend up to 25% of their time on labour and related matters, which is especially critical to the medium sized operation. Thus sadly too often when faced with a hearing at the Office of the Labour Commissioner, they cannot afford to lose time to their business (and by default the continued employment of their other workers) and they settle too rapidly just to get the matter over.

We understand and agree with the concept of Affirmative Action, but again the amount of work compliance involves, the NEF receives reports of companies strategically keeping their employee numbers below the relevant figure, to avoid the associated problems.

Why hire more staff if it's so difficult to dismiss non-performers.

Note here, that there needs to be regulation, we do not want to revert to pre-independence inhuman treatment of workers, BUT what we need is SMART regulation, not more and more.

The NEF supported, from Day One, the Governments Vision 2030, and have frequently stated our support for this Vision. Unfortunately, the Government is shooting itself in the foot with the restrictive labour legislation which does nothing to encourage employment, the corner stone to social and economic stability.

Unfortunately, this is set to get worse. Rather than moving in the right direction, the imposts on Namibian employers and their disincentives to hire are due to be exacerbated.

We have complete support for the need for Labour Market Information, but the new Act recently gazetted is a nightmare of control and red-tape. IN March 2009 the NEF wrote a six page document to the Labour Advisory Council and copied directly to the Minister, pointing out that the majority of information being sought is available immediately from, the Ministry of Home Affairs, the Equity Commission, the NTA and NPC. In addition concern was raised regarding the amount of additional administrative work. This document was, in the main, was ignored.

The Private Sector was invited to take part in the National Employment Creation Conference last year, and among others the various sectors called for easing of labour legislation. The conclusions of that conference were never transparently or publicly made known, but we are given to understand that the main outcome was the establishment of Targeted Intervention for Employment Growth (TIPEEG) results from that conference. Why therefore has the private sector not been involved in developing TIPEEG? Why has the private sector not been invited to be part of the implementation of TIPEEG?

Employers have alternatives to job creation in Namibia, a fact we must be realistic and acknowledge, and as a nation do better in avoiding.

These range from choosing to invest elsewhere, employing foreign workers, or substituting capital for labour (such as introducing labour saving technologies), right through in smaller businesses to proprietors preferring to work themselves or through family, rather than creating a new job.

No one wins in such situations. These outcomes are contrary to the interests of Namibian business and our community, but this is a genuine risk unless our country does better in how we approach working with business, and in particular the capacity for doing business and creating jobs.

It is also worth recalling the times we live in. The major economies of the world are at risk of entering another serious downturn, driven by debt, economic risk and weak recovery following the global financial crisis. The global economy brings globalised risks, and no country will be immune from a further global downturn. No country can afford to confront the likely next crisis without its labour market operating as efficiently as possible in generating jobs, and without its labour law system doing everything possible to support and encourage employment.

We fear in Namibia that with employers already discouraged from job creation by inappropriate, unbalanced and disincentivising labour legislation, we will confront any re-emergent global crisis less able to compete than we should be.

3. How can employers be encouraged to offer more jobs?

Employers are encouraged and able to offer more jobs in a stable, growing economy, underpinned by sensible, balanced, proportionate and efficient business regulation that achieves its regulatory purpose and subsequently avoids unduly harming business.

Governments make employers more confident and able to create jobs through the range of their activities, encompassing: the management of the economy, a stable and reliable justice system, enforceability of contracts, smart and effective business regulation etc.

Reform of labour market regulation is part of this, but cannot be the only focus of efforts towards job creation. Wider economic management and good governance are equally critical prerequisites to job creation.

The key to governments achieving growth and jobs lies in working with business/employers, and listening to and acting on the factors that are restricting them in creating jobs. Genuine partnership and dialogue with those who actually create jobs is the single surest path to sustained job creation.

The best thing the Namibian government can do to create more jobs in this country is to enter into meaningful and continuous dialogue with business on our economy, and across the business of government, including the regulation of the labour market, and to act on what it hears, not just to consult and then look at short-term political expediency.

Of course no government acts on everything it hears from any interest, and interests must be balanced. However, smart governments seek a partnership with business, and listen and act on the concerns of those responsible for job creation where possible. This will be a key part of encouraging the creation of more jobs in Namibia.

Specific priorities on where to start identified by the businesses who are members of the Namibian Employers' Federation, and who make the actual decisions on the creation of new jobs in this country, include:

- Allow work permits for Non-Namibian qualified experts.
- While the NTA is progressing, give Vocational training priority
- Ensure incentives for any company investing in training
- Ensure the Ministry of Finance gets the refund system operating optimally, not that employers wait months for legitimate refunds causing serious cash-flow problems and risking the sustainability of enterprises.
- Review the Labour Act with specific reference to Dispute Prevention and Resolution

Should legislation be relaxed?

Notions of relaxing legislation are simplistic, as are labels such deregulation versus regulation. This kind of shorthand thinking obscures the quite complex and strategic settings each national government needs to make, and which all governments throughout the world need to improve.

These labels do not assist governments in reaching the right solutions to unlocking more jobs in their national circumstances.

Rather than relaxing regulation, Namibian employers want to see 'smart regulation' for our future. This means up-to-date, refined, and proportionate approaches that reflect national circumstances and capacities, and that balance the aims of regulating with considerations such as impacts on business viability and incentives for job creation.

So, rather than relaxing legislation, employers support Namibian labour law being revisited, reviewed and re-balanced to act on the genuine concerns that are holding back growth and holding back job creation. In most areas, smarter regulation means better regulation and better execution of the purpose of regulating, including better protecting rights and conditions.

A critical part of any government's management of the labour market is also to adopt the right approach for each country's stage of development. Employers in Namibia are concerned that our labour laws not attempt to import decades of practice and precedent from Europe and other parts of the world and from countries at other stages of development. We need a labour law system that is appropriate to Namibian circumstances, in the first quarter of the 21st Century.

All countries should choose a path of development with appropriate labour rights, however no country can sustainably afford to attempt a level of labour protection at odds with its capacities and level of development. All countries need to pursue the possible and the prudent for their national circumstances, rather than attempting to import any so called ideals into their system.

As we have seen, even some of the most developed countries are now struggling with the inflexibilities, costs and risks they have imposed on their labour markets and now find themselves unable to respond in the face of serious crisis due in part to their inflexible and unbalanced approach labour market regulation. We cannot afford to tie our hands in Namibia in the same way.

Leadership and innovation does not mean trying to imitate European levels of labour market regulation, or importing international models that are harming jobs in their original context, let alone in the context of the challenges we face in contemporary Namibia.

There is much that Namibia should try to lead the world on, and lead our region on, but leadership for our country lies in the right labour regulation, reflecting our national circumstances, balancing job creation with worker protection, and doing so in a wider system that encourages a competitive, growing Namibia. It also means being realistic about our labour market and the capacities of Namibian businesses to implement a system of labour market regulation over time.

We should pay particular regard to approaches in our region and in countries we compete with for investment and job creation and doing business and creating jobs in Namibia must make economic sense.

Final concluding comments

Three final comments:

- It is critical that all countries value employment as a key means of integrating people into their society. We have seen all too clearly in countries like the UK, and North Africa the social consequences of young people concluding that employment is not part of their future.
- The issue of transitioning into employment from school and training. Namibia needs, like all countries, to ensure young people are employable and have the skills employers need to offer them work. Critical to this is linkages between business and both the education and training systems. Effective partnership and engagement with employers is critical.
- Diversity of contractual options in work. Evidence shows that persons entering the workforce through temporary or part time employment transit frequently to full time employment.

The Namibian Employers' Federation
(With contributions from the International Organisation of Employers)
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