



EMPLOYMENT ENSIGHT

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New type of worker recognised in the amended Employment Rights Act

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Recent amendments to Mauritius' Employment Rights Act ("ERA") have brought about regulation into an area of employment law that many foreign jurisdictions have struggled to deal with: the gig economy, which has so far been characterised by short term contracts or freelance work as opposed to permanent contracts and the accompanying benefits.

In terms of these amendments, a new type of worker has been recognised within the employment law legislative framework: the homeworker. A homeworker is defined as someone who provides his or her services outside of business premises (outside of what is conventionally understood as being the workplace), and specifically excludes entrepreneurs and those carrying out business on a self-employed basis.

The amendments provide protection and benefits, similar to those given to other employees, to a homeworker who is in an employment relationship. In this regard, an employment relationship is defined as a contract of service where:

- work is performed under an employer's control, direction or authority;
- the degree of control varies and depends on the nature and organisation of the work;
- a homeworker is remunerated by an employer for work performed;
- a homeworker does not engage another homeworker to perform the work allocated by his or her employer; and
- a homeworker is not engaged in a work on his or her own account.

The amendments ensure that the homeworker who is in an employment relationship will enjoy the benefits and protection provided for under employment legislation. The homeworker must also benefit from the following protections/benefits as provided for to other employees under the Employment Rights Act:

- protection against unfair and unlawful termination of contract;
- retirement benefits.

The amendments will be of particular relevance to operators in the gig economy, especially in light of the number of taxi platforms that have recently begun operating in Mauritius, with the possibility of significant players servicing the Mauritian market in a near future.

The amendments also cater for differences that are industry specific as far as the extent of control that an employer can exercise on an employee is concerned. On the other hand, the last three components making up the definition of an employment relationship are a nod to recent judgments delivered by English courts and tribunals in which issues surrounding employment relationship are thoroughly analysed. These amendments will be of definite interest to operators in the gig economy offering services via platforms.

Reviewed by Maxime Sauzier, director and senior counsel at ENSafrica in Mauritius.



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