BUSINESS ESWATINI

Impact Analysis Report on the Prohibition of Triangular Employment

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- S.129 OF EMPLOYMENT BILL NO. 12 OF 2024

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| EXECUTIVE SUMMARY

This report presents an evidence-based assessment of the potential impacts of Section 129 of the Employment Bill No. 12 of 2024, which proposes the outright prohibition of triangular employment arrangements in Eswatini.

This report presents an evidence-based assessment of the potential impacts of Section 129 of the Employment Bill No. 12 of 2024, which proposes the outright prohibition of triangular employment arrangements in Eswatini. The analysis draws on survey data from 71 employers across sectors and company sizes, complemented by international labour standards and regional practice.

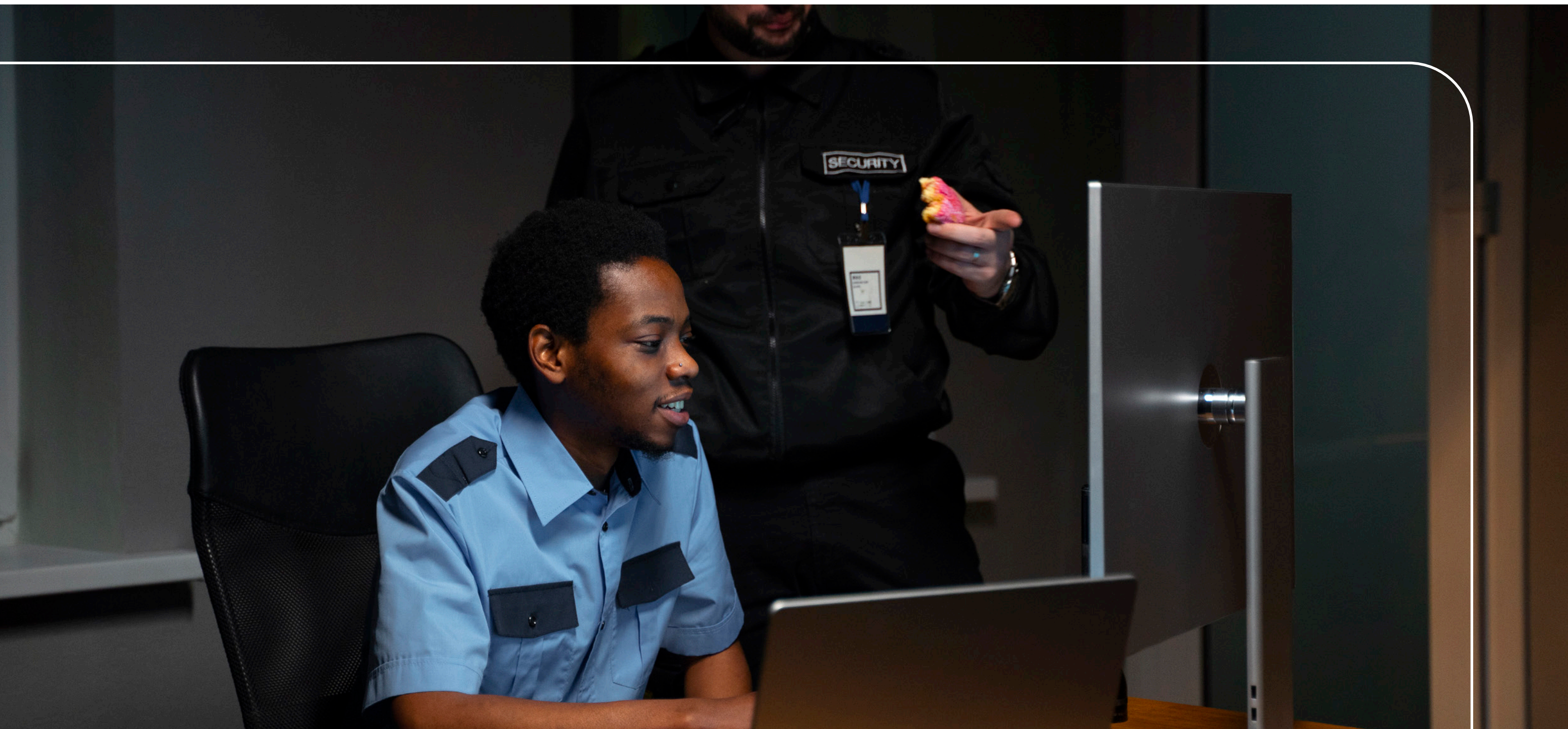
Background and Context

Triangular employment, defined as work performed by employees supplied by a third-party intermediary (e.g. private employment agencies), is widely used in Eswatini across security, agriculture, cleaning, construction, and other services. The proposed ban requires termination of all such arrangements within 12 months after promulgation of the Bill into law. The ILO has cautioned that prohibition is inconsistent with Convention 181, which promotes regulation rather than elimination of private employment agencies. Other Southern African Development Community (SADC) countries, including South Africa and Namibia, have adopted regulatory approaches emphasising licensing, inspections, contract transparency, and joint liability rather than prohibition.

Employer Reliance and Workforce Profile

Survey findings show triangular employment is structurally integrated into staffing models:

- Large enterprises rely on triangular workers for over 50% of non-core functions.
- Medium enterprises employ 20–40% of staff through triangular arrangements.
- Small enterprises use it for cost management and workload fluctuations.
- Triangular workers are predominantly low-skilled, with primary to junior secondary education, and concentrated in roles such



as security guards, cleaners, drivers, and warehouse assistants

Employment and Economic Impacts

Eswatini's labour market remains structurally constrained. According to the Integrated Labour Force Survey (ILFS) 2023, the working-age population is 793,614, of which just over half (50.8%) are economically active. Within this group, only 64.6% (260,356) are employed, while nearly half of the working-age population (49.2%) remains outside the labour force. Against this fragile backdrop, the prohibition of triangular employment is projected to result in over 11,700 direct job losses and a further 8,000 indirect jobs at risk across services, logistics, and SMEs. Nationally, job losses could surpass 20,000, deepening the current unemployment rate of 34% and disproportionately affecting youth and women.

- The limited capacity of businesses to absorb displaced workers, estimated at only 28%, further compounds the risks, as employers cite high cost and compliance burdens under direct employment models.
- The transition also carries heavy severance liabilities exceeding E250 million, with only one-third of employers able to meet obligations without risk of default. Broader economic effects include declining PAYE, VAT, and corporate tax revenues, reduced household consumption, and heightened risks of informalisation, which could reverse gains made under the ILO Decent Work Agenda.

Sector Case Studies

The impact of prohibition is especially severe in three critical sectors. In the sugar industry, triangular employment underpins seasonal harvesting operations and sustains rural communities through estate housing, water, and health services; prohibition would destabilise both production and local livelihoods. The security sector, with over 15,000 workers, depends on flexible deployment across multiple sites; a ban would collapse service contracts, including for government and critical infrastructure. In forestry and agriculture, which engage over 22,000 seasonal workers, direct employment would be financially unsustainable, risking mass retrenchments in rural areas and undermining export competitiveness. These case studies demonstrate that triangular employment is not peripheral but integral to Eswatini's economic and social stability.

Financial and Systemic Risks

- Liquidity Crisis: 68% of employers cannot absorb termination costs without defaulting. Forestry, agriculture, and security are the most exposed sectors.
- Third-Party Risks: Potential bank loan defaults, supplier contract breaches, and insurance claims pose risks to the wider financial system. SMEs, which constitute 90% of formal enterprises, are most vulnerable.
- Domino Effect: A wave of defaults would undermine enterprise stability, supply chains, and creditor confidence, with long-term risks for investment and competitiveness.

Operational Disruptions

The prohibition would cause immediate and widespread disruption:

- 72% of employers anticipate workforce reductions.
- 55% foresee mechanisation/automation to offset costs, risking further job losses.
- 51% of SMEs in cleaning, catering, and logistics face closure.
- 76% expect supply chain disruptions, especially in export-linked sectors.

The sugar industry faces particularly acute risks given its reliance on seasonal, scalable labour in remote regions. A ban would strain estate housing, water, and health facilities, destabilise rural contractor businesses, and compromise harvest schedules—creating ripple effects in entire communities dependent on the sugar belt economy.

Policy Alternatives and Employer Preferences

Employers overwhelmingly oppose prohibition (97% against). Instead, they favour:

- Regulation of Private Employment Agencies (55%).
- Strengthening the labour inspectorate (43%).
- Allowing phased transitions (26%).
- Sectoral exemptions for industries such as forestry, agriculture, and security (17%). Only 3% support prohibition. Employers recommend alignment with ILO Convention 181, which provides for licensing, contract transparency, worker protections, and joint liability where appropriate.

Constitutional Considerations

Section 32(1) of the Constitution of Eswatini, 2005 guarantees the right of every person to engage in any lawful trade, occupation, or business. A blanket prohibition of triangular employment undermines this constitutional right and contradicts the principle of lawful enterprise.

Recommendations

Employers recommend that Government:

1. Withdraw or amend Section 129 to remove the prohibition and adopt a regulatory approach.
2. Ratify ILO Convention 181 and repeal outdated Convention 96.
3. Strengthen the monitoring framework for PEAs, with robust inspections, whistleblowing mechanisms, contract verification and digital oversight.
4. Apply joint and several liability selectively on the agency and user enterprise, ensuring accountability without deterring business.
5. Implement sector-specific codes of conduct in key industries such as agriculture, retail, forestry, security, and hospitality.
6. Safeguard vulnerable workers through retraining, placement support, and social protection linkages.

Conclusion

The impact analysis demonstrates that an outright prohibition of triangular employment would result in massive job losses, financial instability, systemic risks to the economy, and operational disruption in critical industries. Employers therefore do not support the prohibition. The sustainable pathway is a regulatory model that strengthens enforcement, protects workers, and upholds constitutional and international obligations, while preserving enterprise viability and community livelihoods.

> *Against this fragile backdrop, the prohibition of triangular employment is projected to result in over 11,700 direct job losses and a further 8,000 indirect jobs at risk across services, logistics, and SMEs.*

| 1.0 BACKGROUND AND INTRODUCTION

This policy shift has sparked strong concern from employers, particularly amid the country's worsening unemployment crisis estimated at 34% as of 2023, one of the highest in the region.

1.1 Changes on the introduction context and legislative proposal section

The Ministry of Labour and Social Security has tabled the Employment Bill No.12 of 2024 before Parliament, which introduces a full prohibition on triangular employment arrangements under Section 129. The legislation mandates that all existing triangular employment arrangements be terminated within 12 months of enactment. Section 2 of the Bill defines triangular employment as a relationship where an employer procures labour via a third party such as a private employment agency (PEA) and where wages are paid by the intermediary, not directly by the end user.

This policy shift has sparked strong concern from employers, particularly amid the country's worsening unemployment crisis estimated at 34% as of 2023, one of the highest in the region. Sectors heavily reliant on low-skilled, flexible labour including agriculture, security, cleaning, and construction - are at risk of severe disruption.

1.2 ILO Position and Technical Comments (2020)

The International Labour Organization (ILO), through its Pretoria Office, issued formal technical comments in 2020 on the then-draft Employment Bill. These comments, which remain unaddressed by government as of 2025 (in the Bill that is currently before Parliament), are critical of the blanket prohibition on triangular employment.
Specifically, the ILO stated:

> *"The Office will comment on two different aspects of the proposed prohibition of triangular forms of employment. The first aspect relates to whether the prohibition of triangular forms of employment is contemplated in International Labour Standards. The second aspect relates to whether there may be another way of achieving the apparent policy objective of the provision, broadly speaking to protect the rights of workers."*

The ILO Pretoria Office suggested the following three alternative options to an outright ban:

a.) A targeted prohibition, limited to high-risk or exploitative economic sectors.
b.) A requirement for written contracts to ensure clarity, transparency, and accountability.
c.) An extension of joint and several liability, making both the agency and user enterprise legally responsible for worker protection.
d.) These alternatives are consistent with ILO Convention No. 181 (1997) on Private Employment Agencies, which encourages the regulation, not elimination, of PEAs.

While the ILO acknowledged the risks of abuse in triangular employment arrangements, its technical advice did not recommend outright prohibition. Instead, the ILO emphasised regulatory remedies such as introducing joint and several liability provisions between PEAs and user enterprises, ensuring clear and transparent contractual arrangements, and

enhancing monitoring systems. Employers in Eswatini consider this a more proportionate response to identified risks, particularly since some sectors have already indicated willingness to reconfigure contracts in line with international best practice. This reflects an alignment with the ILO's position that effective regulation, rather than prohibition, is the appropriate means to address potential exploitation in triangular employment relationships.

1.3 International Labour Standards

Eswatini is currently a signatory to the Fee-Charging Employment Agencies Convention (No. 96), which has been superseded globally by Convention 181 (1997). The ILO recommends that Eswatini:

- Denounce Convention 96, and
- Ratify Convention 181, which provides a modern framework for regulating PEAs while protecting workers' rights.

Relevant links:

- *C.96 – Fee-Charging Employment Agencies Convention (Revised), 1949*
- *C.181 – Private Employment Agencies Convention, 1997*

The proposed ban under Section 129 contradicts ILO Convention 181, which emphasizes balancing labour flexibility and worker protections.

The ILO Convention No. 181 explicitly recognises triangular employment and provides detailed provisions on:

- Licensing and oversight of PEAs.
- Prohibition of charging fees to workers.
- Equal treatment between agency workers and directly hired employees.
- Defined responsibilities of user enterprises and agencies.
- Protection of the rights to freedom of association and collective bargaining.

Eswatini's continued adherence to the obsolete Convention 96, which the ILO is in the process of abrogating, further weakens legal coherence. Ratification of Convention 181 would bring the country in line with international best practices and allow for a regulatory approach that protects both enterprises and workers.

1.4 Regional Practice

South Africa regulates triangular employment under its Labour Relations Amendment Act (2014), which:

- Limits assignment duration (3 months).

- Grants equal treatment rights.
- Holds both PEA and client jointly liable.

Namibia implemented a similar model: while banning exploitative labour hire, it allowed regulated triangular employment under licensing frameworks and court-enforced protections. Other countries regulate PEAs via licensing, inspections, and contract transparency, without banning them.

1.5 Importance of the Assessment

This report responds to these policy concerns with an evidence-based impact assessment drawn from Eswatini employers. Its objective is to support a regulatory approach, informed by:

- Empirical data from affected businesses.
- Stakeholder perspectives on operational and labour risks.
- Legal analysis on international compliance.
- Case studies demonstrating viable regulation elsewhere.

Given Eswatini's reliance on informal labour, high youth unemployment, and narrow tax base, any legislative misstep could exacerbate systemic risks, including SME failures, banking defaults, and social instability.

1.6 Data Collection

To provide a robust foundation for the analysis, the study draws on multiple sources of evidence that capture both the breadth and depth of triangular employment practices across Eswatini's economy. Data was gathered through employer surveys and sector-specific meetings convened by Business Eswatini (BE). The surveys generated quantitative information on the prevalence and nature of triangular employment, while the stakeholder meetings with representatives from manufacturing, security, retail, hotels and accommodation, agriculture, the sugar industry, forestry, ICT, and other sectors provided qualitative insights into sector-specific experiences, challenges, and practices. Taken together, these complementary sources offer a well-rounded perspective on the potential implications of Section 129 of the Employment Bill across key industries. Business Eswatini's membership spans all sectors of the economy and is therefore broadly representative of the structure of the private sector in Eswatini. Although all members were invited to participate in the survey, responses were received from a mix of employers: those currently using triangular employment, those who used it in the past, and those who do not and do not recommend it. This diversity ensures that the findings reflect a broad range of perspectives while remaining highly relevant to enterprises most affected by Section 129. From a research perspective, the survey is not statistically representative of the entire private sector, but the credibility and reliability of the evidence are strengthened by BE's sectoral coverage, the systematic combination of survey and qualitative consultation data, and verification steps undertaken during analysis. Together, these measures provide a credible, sector-grounded snapshot of current triangular employment practices, offering a sound basis for policy dialogue, stakeholder engagement, and further research in Eswatini.

> *"Taken together, these complementary sources offer a well-rounded perspective on the potential implications of Section 129 of the Employment Bill across key industries."*

| 2.0 EMPLOYER PROFILES AND WORKFORCE COMPOSITION ANALYSIS

This pattern confirms that triangular employment arrangements are not marginal, they are structurally integrated into the private sector's staffing models.

Overview of Respondent Profile

The assessment engaged a cross-section of seventy one private sector employers in Eswatini across various sectors and company sizes. The respondents included:

- Micro and Small Enterprises: Typically employing fewer than 50 individuals, concentrated in agriculture, construction, and retail sectors.
- Medium Enterprises: Ranging from 51 to 250 employees, representing manufacturing, logistics, and cleaning services.
- Large Enterprises: With workforce numbers exceeding 250, often covering infrastructure, utilities, and security.

This diversity ensures that the data reflects the differential risks posed by the proposed Section 129 across the entire private sector spectrum.

2.2 Triangular Workforce Reliance

Employers were asked to indicate their total workforce and how many are engaged through triangular employment (e.g. via Private Employment Agencies, intermediaries, or third-party contractors). Preliminary aggregation reveals:

- In large enterprises, triangular employees often constitute over 50% of their workforce in non-core functions such as security, cleaning, warehousing, and project-based work.
- Medium enterprises show a significant reliance, particularly for fixed-term or seasonal functions, accounting for 20 - 40% of their headcount.
- Small and micro enterprises typically rely on triangular employment for agility in managing cost and workload variability, although absolute numbers are lower.

This pattern confirms that triangular employment arrangements are not marginal, they are structurally integrated into the private sector's staffing models.

2.3 Skill and Education Profiles of Triangular Workers

Data from the survey shows that:

- The majority of triangular employees possess primary to junior secondary education.
- Common roles include general labourers, cleaners, security guards, drivers, and warehouse assistants.
- Skill levels are generally low to semi-skilled, making these workers highly vulnerable in the event of a sector-wide retrenchment without upskilling or transition pathways.

2.4 Employment Modalities

Employers were further asked to categorize the triangular workers into contract types:

- Temporary/Seasonal
- Fixed-Term
- Project-Based

A notable trend is the prevalence of project-based triangular employment, particularly in sectors like construction and event logistics. This reflects the flexible nature of triangular employment, which would be difficult to replicate under direct employment models.

2.5 Regional Spread and Sectoral Clusters

Though anonymized, responses indicate regional representation from urban and peri-urban centres (Mbabane, Matsapha, Nhlangano) as well as rural-based SMEs - especially in agriculture and community-based services.

Sectoral concentration of triangular employment is highest in:

- Security and cleaning services
- Construction and civil works
- Warehousing and distribution
- Hospitality and retail (seasonal peaks).

> *A notable trend is the prevalence of project-based triangular employment, particularly in sectors like construction and event logistics. This reflects the flexible nature of triangular employment, which would be difficult to replicate under direct employment models.*

| 3.0 JOB LOSS PROJECTIONS AND ECONOMIC IMPACT

According to the Integrated Labour Force Survey (ILFS) 2023, Eswatini's working-age population (15 years and above) stands at 793,614 persons. Of this group, 50.8% (402,910) are in the labour force, while 49.2% (390,705) are outside the labour force

3.1 Overview

The proposed prohibition of triangular employment under Section 129 of the Employment Bill poses immediate and measurable risks to employment levels in Eswatini, particularly among unskilled and low-skilled workers who form the majority of the triangular workforce.

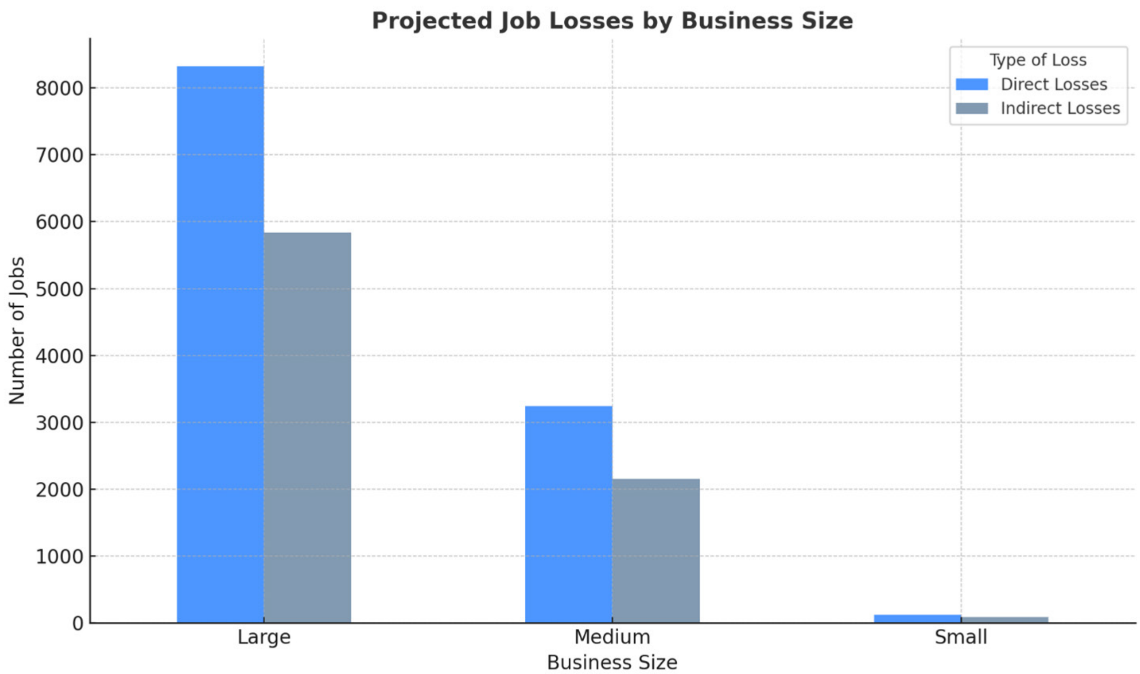
Labour Market Overview

According to the Integrated Labour Force Survey (ILFS) 2023, Eswatini's working-age population (15 years and above) stands at 793,614 persons. Of this group, 50.8% (402,910) are in the labour force, while 49.2% (390,705) are outside the labour force. Within the labour force, 64.6% (260,356) are employed, highlighting both the level of economic participation and the scale of labour market challenges. Based on aggregated employer submissions, the following risks have been quantified.

3.2 Estimated Job Losses

Respondents projected over 11,700 direct job losses if the ban on triangular employment is implemented, primarily affecting vulnerable and unskilled groups. These job losses will be further amplified through indirect channels including service providers, logistics operators, security firms, and SMEs that depend on contract labour. The indirect job losses are estimated to exceed 8,000.

Absorption capacity is severely limited, with an average of only 28.4% of displaced workers likely to be absorbed into direct employment, based on current wage structures, overheads,



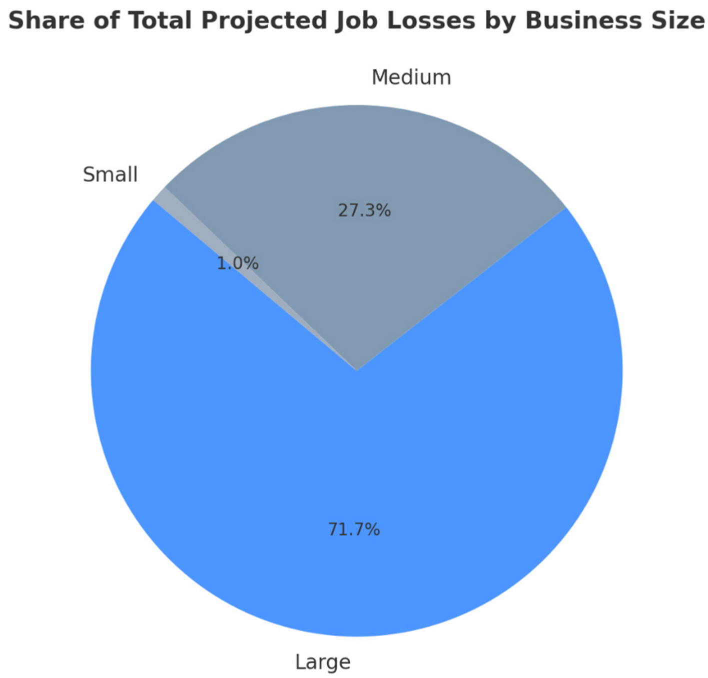


Figure 3: Share of Total Projected Job Losses by Business Size

and legal risks.

This pie chart shows the share of total projected job losses by business size if the ban on triangular employment is implemented.

- Large businesses account for the overwhelming majority of projected losses at 71.7%. This confirms that the largest employers, particularly in labour-intensive sectors such as security, cleaning, and logistics, will be the most severely affected.
- Medium-sized businesses represent 27.3% of the projected losses. While not as large in absolute numbers as big firms, this is still a significant share, underlining their reliance on triangular employment to manage costs and flexibility.
- Small businesses contribute only 1.0% of the projected losses, reflecting their limited use of triangular employment compared to larger firms.

The risk is disproportionately concentrated among:

- Workers with primary or secondary education.
- Female and youth workers in cleaning, hospitality, and support roles.

3.4 Financial Liabilities and Absorption Constraints

Employers estimate that terminal benefits liabilities across surveyed firms will exceed E250 million, assuming compliance with severance, leave encashment, and notice obligations.

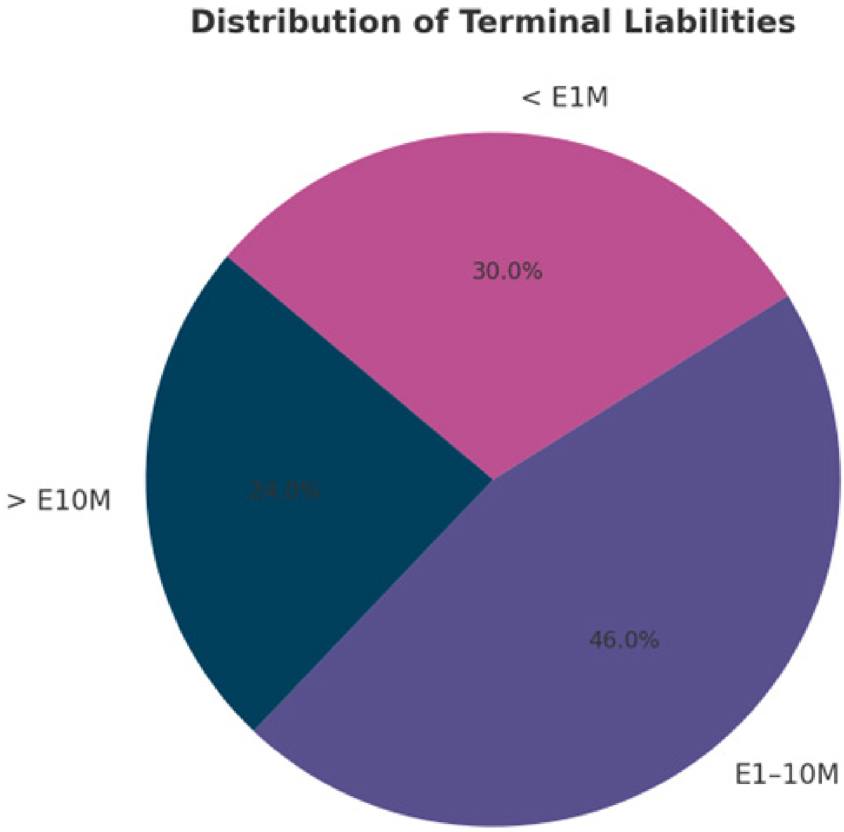
- Only 32% of businesses believe they can absorb these costs without defaulting.
- The average financial exposure of large firms is E4.2 million, primarily in payroll liabilities and contract penalties.

Liability Distribution Pie

Share of firms by estimated terminal benefit obligations:
E10M :24% | E1 - 10M: 46% | <E1M: 30%

3.5 Economic Consequences of the Ban

a) National Employment Impact- *Assuming extrapolation across all major sectors using triangular employment, the national job loss*



risk exceeds 20,000 workers, pushing Eswatini's already high unemployment rate (34%) further into crisis territory.

b) Tax Revenue and Consumption - Reduced employment would directly impact:

- *PAYE contributions.*
- *VAT through lower household spending.*
- *Company tax compliance, particularly among struggling SMEs.*

c) Informalisation and Decent Work Backsliding - *Workers exiting triangular employment are likely to enter informal, unregulated labour markets. This is contrary to Eswatini's commitments under:*

- *ILO Decent Work Agenda*
- *Sustainable Development Goals (SDG 8 – Decent Work and Economic Growth)*

	Direct Losses	Indirect Losses	Absorption %	Est. Liability (E)
Large	8,327	5,842	25%	> E10M
Medium	3,241	2,156	32%	E1M–E10M
Small	120	85	40%	< E1M

3.6 Summary Table

3.7 Key Findings Recap

- 11,700+ direct jobs at immediate risk
- Absorption capacity remains below 30%
- Terminal liabilities exceed E250 million
- Sectors most affected: Forestry, Agriculture, Security
- National economic risks include lower tax intake and increased informality

| 4.0 FINANCIAL RISK AND LIQUIDITY EXPOSURE

The findings point to a looming liquidity crisis, especially in high-risk sectors such as forestry and security.

4.1 Overview

This section examines the financial exposure facing businesses, particularly their ability to absorb the costs associated with terminating triangular employment contracts, including terminal benefits, compliance penalties, and disruptions to financing obligations. The findings point to a looming liquidity crisis, especially in high-risk sectors such as forestry and security.

4.2 Cost Absorption Capacity

A core question posed to employers was whether they could absorb the full financial cost of severance payouts and transition to direct employment models without risking insolvency, breach of contract, or default on existing obligations.

key findings:

- 68.2% of all surveyed employers cannot absorb the costs without defaulting or downsizing operations.
- Among large firms, only 34% indicated they could manage the costs, while 82% of forestry businesses flagged high-risk exposure.

Summary Table:

- Large enterprises: 67% cannot absorb termination costs
- Medium enterprises: 72% cannot absorb
- Small & micro enterprises: 70–100%

Business Size	Avg. Liability (E)	Can Absorb Costs	Key Risk Trigger
Large	E4.2M	34%	Bank loans, severance
Medium	E1.8M	28%	Supplier penalties
Small	E450K	21%	Payroll, legal claims

“Only 32% of firms, mostly large ones, can absorb the cost of terminating triangular workers.”

> *A core question posed to employers was whether they could absorb the full financial cost of severance payouts and transition to direct employment models without risking insolvency, breach of contract, or default on existing obligations.*

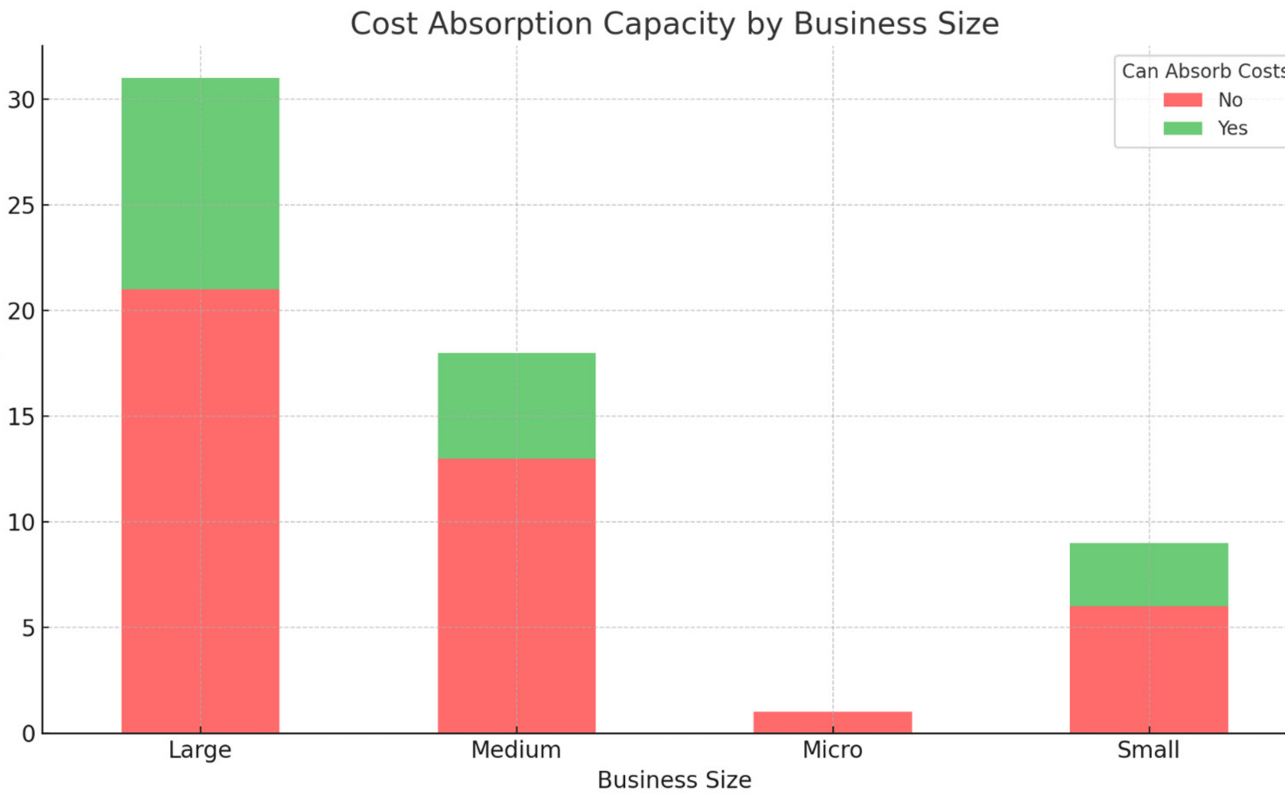


Figure 1: Cost Absorption Capacity by Business Size

cannot absorb

This confirms high systemic risk across the formal business spectrum, with micro businesses entirely vulnerable.

4.3 Exposure by Sector and Size

The financial fragility varies widely across sectors and business sizes. While some larger entities have reserve buffers, their exposure is driven by volume—especially in security, warehousing, and plantations. Smaller businesses may face closure or retrenchment.

Average Bank and Supplier Exposure

- Large firms: E4.2 million average loan/ service contract exposure
- Medium firms: E1.8 million
- Small firms: E450,000 – often informal debt or arrears

Figure 2: Cost Absorption Capacity by Sector (Top 10 Sectors)

“Forestry, manufacturing, and agriculture lead in cost vulnerability.”

- Forestry, manufacturing, and agriculture are consistently high-risk sectors
- Sectors such as cleaning, human resources, and professional services show zero resilience to sudden regulatory cost shocks

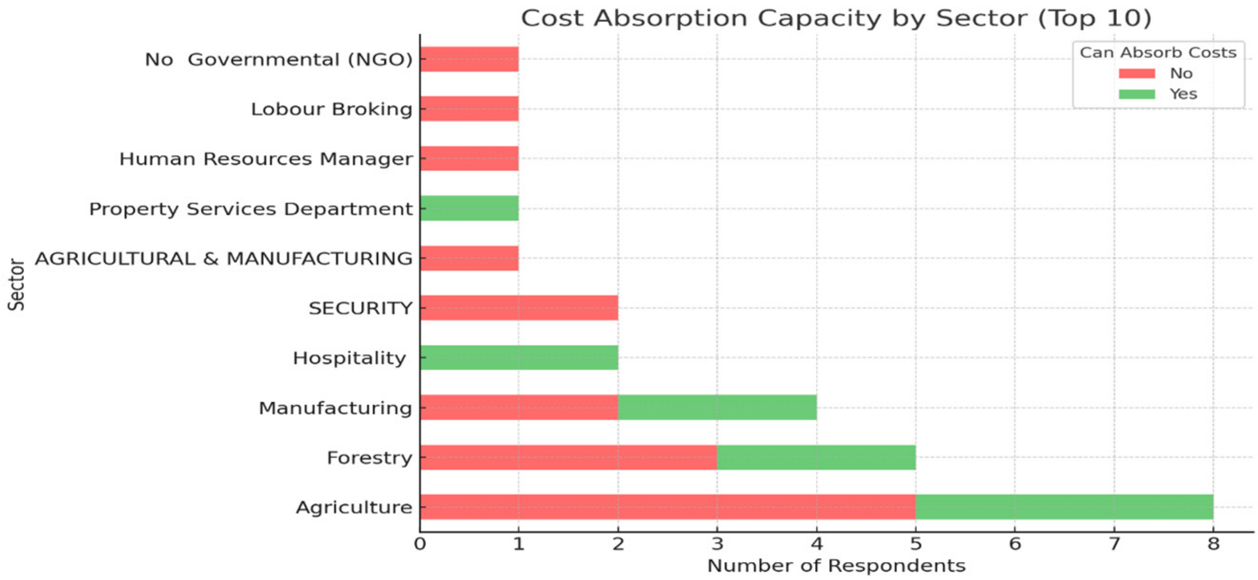
This confirms high systemic risk across the formal business spectrum, with micro businesses entirely vulnerable.

Breakdown:

- Cannot Absorb: 68%
- Can Absorb: 32%

4.4 Risk Heatmap by Sector and Size

Qualitative Heatmap:



Size/Sector	Agriculture	Forestry	Security
Large	High	Critical	High
Medium	Medium	High	High
Small	Low	Medium	Medium

"High default risk is concentrated in forestry and security, across all size categories."

Critical: High debt exposure, low reserves, heavy reliance on triangular workforce.

- High: Some reserves, but high cost risks.
- Medium: Conditional ability to adjust.
- Low: Limited risk, small size.

4.5 Third-Party Exposure (Banking, Creditors, Contracts)

"Financial fragility in surveyed businesses may trigger a domino effect on banks, suppliers, insurers, and credit networks, especially where triangular labour anchors service delivery contracts."

Employers flagged several third-party risks resulting from the proposed ban:

- Loan defaults due to rapid reduction in cash flow
- Supplier contract breaches, especially in logistics, outsourced catering, and support services
- Insurance claim surges, including employer liability cover and unemployment protection
- Credit rating deterioration, which may impact future borrowing.
- Sector Representativeness
- According to the FINSCOPE survey (2023):
  - There are over 70 000SME in Eswatini and these constitute the majority of formal businesses
  - Agriculture, retail, and services are the top three sectors for informa and triangular labour

The Eswatini Labour Force Survey 2023 confirms that triangular employment (contract-based work) is most prevalent in:

- Security (approx. 15,000 workers)
- Forestry/agriculture (22,000 combined seasonal workers)
- Cleaning/logistics (urban SMEs).

4.6 Representativeness

- 68.2% of businesses at risk of financial default.
- Forestry and security sectors face highest risk profiles.
- Bank and supplier defaults may follow job terminations.
- Most SMEs lack reserves to cover terminal obligations.
- Risk of cascading credit chain failure.

4.7 Key Findings Recap

Business Size	Avg. Liability (E)	Can Absorb Costs	Key Risk Trigger
Large	E4.2M	34%	Bank loans, severance
Medium	E1.8M	28%	Supplier penalties
Small	E450K	21%	Payroll, legal claims

| 5.0 OPERATIONAL IMPACTS AND RISK TO THIRD PARTIES

Drawing from both quantitative employer responses and qualitative insights, the evidence suggests widespread, immediate, and possibly irreversible operational setbacks, especially in sectors heavily reliant on flexible labour deployment.

5.1 Overview

This section analyses the anticipated operational disruptions and ripple effects on third parties such as suppliers, investors, customers, and financiers - should the prohibition of triangular employment take effect.

Drawing from both quantitative employer responses and qualitative insights, the evidence suggests widespread, immediate, and possibly irreversible operational setbacks, especially in sectors heavily reliant on flexible labour deployment.

5.2 Primary Operational Impacts

The assessment revealed five dominant operational consequences expected by firms:

1. Workforce Reduction (72%)
Employers anticipate forced retrenchments or non-replacement of workers, especially those engaged via Private Employment Agencies (PEAs). This is especially evident in security, forestry, and support services.

2. Adoption of Automation or Technology (55%)
To mitigate the increased cost of direct employment, medium to large enterprises (especially in manufacturing and agro-processing) are considering mechanisation - threatening additionally, low-skilled jobs.

3. Temporary or Permanent Closure (51%)
Some SMEs—particularly in cleaning, catering, and remote logistics- indicated potential shutdowns due to labour cost hikes and inflexible HR compliance burdens.

4. Reduced Investment and Expansion Plans (42%)
Businesses in timber, construction, and hospitality plan to defer capital expenditure, suspend hiring, or scale down operations.

5. Supply Chain Disruptions (76%)
Many firms expect delayed delivery timelines, unfulfilled contracts, and cascading disruptions, particularly in export-linked value chains.

> *Workforce Reduction (72%) Employers anticipate forced retrenchments or non-replacement of workers, especially those engaged via Private Employment Agencies (PEAs). This is especially evident in security, forestry, and support services.*

5.3 Sectoral Variations in Impact

- **Forestry and Agriculture:** *Most severely affected, with field workers and seasonal operations comprising the bulk of triangular employment.*
- **Security Services:** *Expect widespread contract renegotiations or terminations, especially in the public sector and multi-site coverage contracts.*
- **Manufacturing:** *Facing automation vs. employment dilemma; some employers anticipate restructuring to preserve cost-efficiency.*
- **Hospitality and Retail:** *Anticipated declines in service efficiency, as casual roles will be hard to convert into formal employment due to fluctuating demand.*

Case Study

5.3.1 Case Study: The Sugar Industry

The sugar industry illustrates the scale of disruption that an outright prohibition of triangular employment would cause. As the backbone of the economy in the sugar belt regions, the industry is deeply dependent on flexible labour deployment due to its seasonal harvest cycles and weather-dependent operations.

Key Risks Identified:

- **Operational Dislocation:** *Sugar estates rely heavily on triangular workers during peak harvests. Without such arrangements, companies must either retain surplus workers year-round at unsustainable cost or face severe labour shortages during high-demand periods.*
- **Community Impact:** *Estates operate in remote regions and already provide critical housing, water supply, and health services to workers and surrounding communities. Prohibition would intensify pressure on these limited facilities and undermine the stability of local communities.*
- **Contractor Viability:** *Local contractors and SMEs that supply services to estates depend on triangular employment arrangements. A ban would put many of these enterprises at risk, eroding company–community relations and damaging rural economies.*
- **Macro-Economic Consequences:** *As one of Eswatini's leading export industries, disruption in sugar operations would undermine foreign exchange earnings, reduce government tax revenues, and destabilise the national balance of payments.*

Implication:

The sugar industry demonstrates that triangular employment is not merely a labour deployment choice but an integral feature of economic sustainability in key sectors. Prohibition would therefore have cascading consequences beyond enterprise operations, extending to community welfare, rural livelihoods, and national economic stability.

5.3.2 Case Study: Security Services

The security sector is one of the largest users of triangular employment, with approximately 15,000 workers engaged through private agencies. Multi-site coverage contracts (e.g. banks, malls, government buildings) depend on rapid deployment of guards under flexible arrangements.

Key Risks:

- **Contract Disruptions –** *Without triangular employment, many agencies cannot sustain multi-site contracts, leading to contract terminations or service gaps in critical infrastructure.*
- **Labour Inflexibility –** *Direct employment is impractical given the high turnover of guards*

and multiple short-term client contracts.

- **Financial Exposure –** *Security firms face high severance costs and thin margins, increasing risk of collapse.*
- **Public Sector Dependence –** *Government institutions and parastatals rely on security contracts; prohibition could jeopardise service delivery and increase costs to the state.*

5.3.3 Case Study: Forestry and Agriculture

Forestry and agriculture employ the largest number of triangular workers (approx. 22,000 combined seasonal workers). Their operations are inherently seasonal and donor-dependent, making triangular employment integral to their survival.

Key Risks:

- **Seasonal Labour Dependency –** *Plantation and field work requires thousands of workers during planting and harvesting seasons but not year-round. Direct employment would force firms to carry unsustainable fixed payrolls.*
- **Financial Fragility –** *Surveyed forestry enterprises showed the highest exposure to default risks, with 82% unable to absorb termination liabilities.*
- **Community Effects –** *Many forestry operations are based in rural areas, where they serve as the primary employer. Prohibition would cause retrenchments that spill over into household poverty and rural instability.*
- **Export Competitiveness –** *Timber and agro-processing exports rely on competitive cost structures. Prohibition would raise costs and reduce competitiveness in regional markets.*

Summary of Case Studies

These sector-specific case studies highlight that triangular employment is not a peripheral practice but a structural necessity in industries critical to Eswatini's economy. Prohibition would therefore result in:

- Employment disruption (tens of thousands of jobs lost),
- Enterprise instability (contract defaults, SME closures),
- Community destabilisation (loss of services in rural areas), and
- National economic risks (exports, tax base, and competitiveness weakened).

5.4 Risk to third parties

The operational effects will not be isolated. Respondents warned of significant collateral risks to:

- **Suppliers:** *Reduced orders or delays in procurement from subcontracted service providers.*
- **Financial Institutions:** *Increased risk of loan defaults from firms unable to meet salary obligations, rent, or creditor terms.*
- **Customers and Clients:** *Disruptions in delivery timelines and quality, especially in public utilities and large-scale cleaning or guarding contracts.*
- **Investors:** *Negative investor confidence, especially in sectors that rely on scalable and flexible labour solutions.*

5.5 Systemic implications

The aggregate effect is a contraction in enterprise resilience, increased fixed labour costs, and the erosion of cost-effective service models. The most vulnerable are low-capital SMEs and rural enterprises, which often lack the buffer capacity to absorb such rapid regulatory shocks.

In economic terms, this threatens:

- Reduced tax contributions.
- Lower wage circulation in local economies.
- Increased informalisation or evasion of compliance.

5.6 Summary Table: Frequency of Expected Operational Impacts

Operational Impact	% of Respondents Reporting	Sectors Most Affected
Workforce Reduction	72%	All, esp. Security, Agro
Automation Adoption	55%	Manufacturing, Agro
Temporary Closure	51%	Cleaning, Hospitality, SME
Reduced Investment	42%	Forestry, Agro processing
Supply Chain Disruption	76%	Export-linked, Retail

5.7 Concluding Observations

The evidence from across sectors confirms that the proposed prohibition of triangular employment would not only reduce enterprise flexibility but also destabilise entire value chains. The impacts are multi-layered: significant retrenchments of low-skilled workers, closure risks for SMEs, accelerated informalisation, and heightened strain on service delivery and community welfare systems. Case studies in sugar, security, and forestry/agriculture illustrate that triangular employment is not a peripheral practice but a structural necessity for industries that anchors both the national economy and rural livelihoods.

Accordingly, the operational risks highlighted in this section point to systemic consequences far beyond employment figures alone affecting business continuity, competitiveness, and the social contract between companies and communities. These findings underscore the need for a regulatory approach that preserves economic resilience while addressing risks of exploitation, rather than an outright prohibition.

From the above it is clear that the proposed legislative change is not merely a legal or procedural matter it represents a deep structural disruption to enterprise functioning across multiple tiers of Eswatini's economy. The risk extends well beyond employment metrics, threatening business continuity, competitiveness, and the sustainability of domestic supply chains. A ban would undermine the viability of local contractors whose businesses depend on triangular arrangements, thereby damaging company, community relations in rural areas where enterprises are primary economic drivers.

> *The impacts are multi-layered: significant retrenchments of low-skilled workers, closure risks for SMEs, accelerated informalisation, and heightened strain on service delivery and community welfare systems.*

| 6.0 POLICY ALTERNATIVES AND STAKEHOLDER PREFERENCES

The most urgent policy priority is to strengthen licensing, enforcement, and labour inspection systems. Experience from other jurisdictions demonstrates that effective regulation—rather than prohibition—can address the risks of triangular employment.

6.1 Overview

This section presents the alternatives proposed by employers to the outright prohibition of triangular employment as outlined in Section 129 of the draft Employment Bill. It examines the preferred regulatory pathways, sectoral preferences, and comparative international practices that provide workable models for Eswatini.

The data indicates a strong preference for regulation rather than prohibition, particularly among firms in security, manufacturing, and agriculture sectors, which are most reliant on flexible labour sourcing.

6.2 Summary of Employer Policy Preferences

Preferred Alternative	% of Respondents
Regulate Private Employment Agencies	55.4%
Strengthen Labour Inspectorate	43.2%
Introduce Transition Period	25.7%
Sectoral Exemptions (e.g. forestry)	17.3%
Full Ban (support for s.129)	3.1%

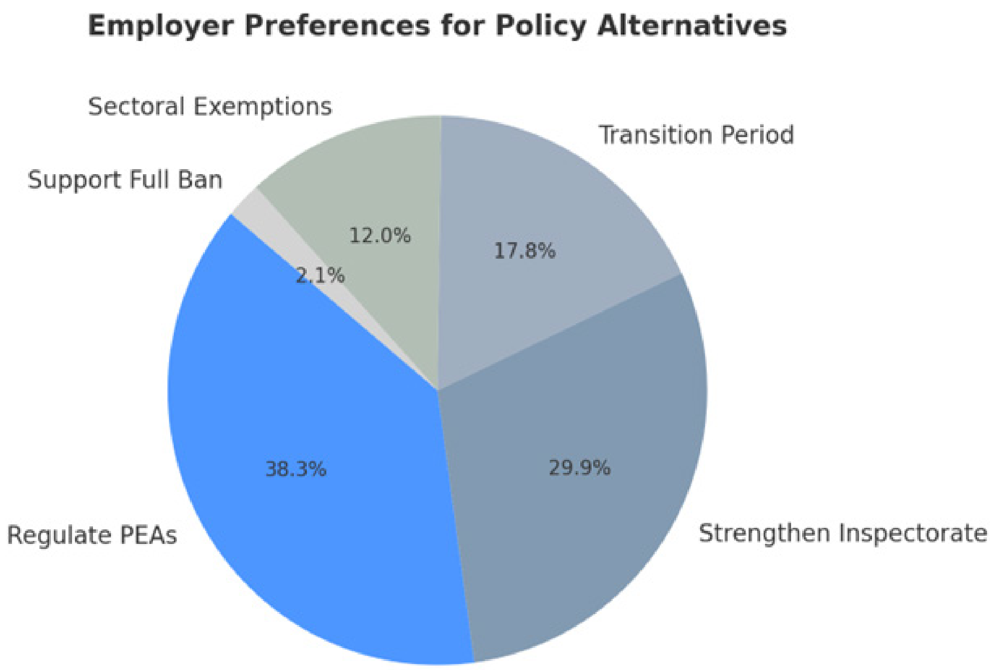


Figure: Employer Preferences for Policy Alternatives

- More than 9 out of 10 respondents oppose the current form of Section 129. They favour structured regulation aligned with ILO Convention 181.
- A majority (55.4%) of respondents support regulating Private Employment Agencies.
- Only 3.1% support the full prohibition as currently proposed under Section 129.

6.3 Sectoral Insights

Security Sector (89% support regulation)
- Employers demand recognition of the unique contractual nature of their services.
- High turnover and multiple short-term client contracts make direct employment impractical.

Manufacturing
- Supports regulation and formal registration/licensing of agents to ensure accountability.
- Concerns focus on maintaining international competitiveness and low-cost production.

Agriculture and Forestry
- Strong preference for 3-year phased transition.
- Notes seasonal nature of work and budget constraints of donor-linked projects.

6.4 Qualitative Comments From Employers

SECTOR	QUOTED COMMENT
MANUFACTURING	"REGULATE RATHER THAN BAN - ILO CONVENTION 181"
AGRICULTURE	"GIVE US AT LEAST 3 YEARS TO RESTRUCTURE CONTRACTS"
SECURITY	"STRENGTHEN INSPECTORATE, NOT PUNISH EMPLOYERS"
CLEANING	"DIRECT EMPLOYMENT NOT FEASIBLE FOR PART-TIME JOBS"

6.5 Alignment with International Labour Standards

- Eswatini currently ratifies Convention 96, which has been abrogated by the ILO.
- The ILO recommends the adoption of Convention 181, which explicitly permits triangular employment under a regulated framework.
- Convention 181 provides for:
  - Licensing and oversight of PEAs.
  - Protection of workers' rights under agency contracts.
  - Equal treatment principles and dispute resolution mechanisms.

Case Study Comparisons:

- **South Africa:** *Labour Relations Act permits labour broking with protections after 3 months' service.*
- **Namibia:** *Prohibition was overturned by Constitutional Court in 2009; regulation model adopted instead.*
- **Lesotho:** *Allows triangular employment with registration requirements and sectoral codes of practice.*

6.6 Regulatory Options for Eswatini
6.6.1 Strengthening Licensing, Enforcement, and Inspections

The most urgent policy priority is to strengthen licensing, enforcement, and labour inspection systems. Experience from other jurisdictions demonstrates that effective regulation—rather than prohibition—can address the risks of triangular employment. The ILO's operational guidelines for regulating PEAs outline several measures that should be prioritised in Eswatini:

- **Robust Inspection and Audit Systems:** *Establishing specialised labour inspection units trained to detect irregularities and requiring PEAs to submit placement records, which should be cross-checked with ENPF records for accuracy.*
- **Whistleblowing and Worker Protection Mechanisms**: *Creating confidential hotlines and reporting systems to enable workers to safely report exploitation and breaches, supported by awareness campaigns in partnership with trade unions.*

- **Worker Contract and Payment Verification:** *Implementing standardised contract templates and conducting periodic wage verification surveys to promote fairness and transparency.*
- **Digital Platforms and Data Integration:** *Utilising digital platforms to track inspection activities, enable data analytics, and identify patterns of irregular or exploitative conduct.*

Currently, Eswatini lacks a coherent framework that integrates these measures. Disrupting the entire triangular employment system through prohibition would not resolve these governance weaknesses. Instead, a clear roadmap for strengthening licensing and inspections, in line with the ILO guidelines, offers the most viable path to addressing current challenges.

The following table outlines practical alternatives to the blanket ban:

Option	Description	Impact Level	Feasibility
Regulate PEAs under C.181 principles	Introduce licensing, code of conduct, penalties for violations	High	High
Phased Transition (2–3 years)	Allow employers time to restructure contracts & finances	Moderate	High
Sector-Based Exceptions	Allow triangular models in forestry, security, agriculture	Targeted	High
Enhanced Labour Inspectorate	Boost monitoring and compliance capacity before enforcement	Moderate	Moderate
Direct Ban (Current Proposal)	Ban with 12-month sunset clause	Severe	Low

6.7 Conclusion

Employers overwhelmingly favour smart regulation over prohibition, aligned with global standards and domestic realities. They call for:

- A structured transition period
- Licensing and accountability of agents
- Sector-sensitive approaches

Strengthening of enforcement capacity

Prohibiting triangular employment without these measures risks undermining employment, enterprise stability, and trust in regulatory processes.

| 7.0 MEMBER RECOMMENDATIONS

Finally, it must be noted that an outright ban is inconsistent with the Constitution of the Kingdom of Eswatini. Section 32(1) of the Constitution Act No. 1 of 2005 provides that every person has the right to practise any lawful trade or business.

7.0 MEMBER RECOMMENDATIONS

7.1 General Policy Recommendations

1. Withdraw or Amend Section 129 of the Draft Employment Bill

- Immediately halt the progression of the blanket prohibition.
- Part XVI on Foreign contracts of Employment and Regulation of Labour Agents and Part XVII on Public and Private Employment Services of the Bill attempts to regulate PEAs. However, the provisions are contradictory to section 129.
- Open a consultative process on alternative regulatory approaches.

2. Ratify ILO Convention 181

- Replace outdated Convention 96 with Convention 181 as advised by the ILO since 2020.
- Use the Convention as a framework to regulate, not abolish, triangular employment.

3. Develop a National Policy Framework on Private Employment Agencies (PEAs)

- Establish clear legal definitions, licensing criteria, and reporting obligations.
- Define scope of work and accountability of PEAs in line with international standards.

4. Design a Transition Plan (2–3 Years)

- Allow time for enterprises to adjust contracts, workforce composition, and internal policies.
- Avoid sudden termination of over 11,000 triangular workers.

7.2 Institutional Strengthening

1. Reform and Resource the Labour Inspectorate

- Increase the number and capacity of inspectors to monitor PEAs and user enterprises.
- Train inspectors on C.181 aligned practices and grievance resolution.

2. Create a PEA Licensing and Registry System

- Include digital registration, vetting criteria, sanctions for non-compliance.
- Link with revenue, procurement, and skills development systems.

7. Introduce Sector-Specific Codes of Conduct

- Develop binding codes for sectors such as security, agriculture, hospitality, and forestry.
- Allow tailored models while maintaining minimum labour standards.

7.3 Economic and Social Safeguards

1. .Conduct a Social Impact Assessment

- Commission an independent impact analysis on the effects of triangular employment in Eswatini.
- Include gender, youth, rural employment, and SMEs as focus areas.

2. Protect Vulnerable Workers in Transition

- Provide retraining, placement support, or conditional subsidies for those affected.
- Strengthen linkages with the Eswatini National Provident Fund and TVET institutions.

3. Avoid Informalisation of Labour
- Design regulations to formalise triangular work, not push it underground.
- Penalise informal outsourcing and labour-only subcontracting.

7.4 Stakeholder Engagement and Dialogue

1. Create a Tripartite Working Group on Employment Models
- Include government, employers, workers, ILO, and legal experts.
- Review triangular employment trends, risks, and good practices in SADC and beyond.

2. Launch an Employer Education Campaign
- Promote compliance tools, model contracts, and dispute prevention strategies.
- Engage business chambers, sector associations, and SMEs.

3. Hold Regional Consultations Before Parliamentary Deliberation
- Ensure participation from rural enterprises, outgrower schemes, cooperatives, and NGOs.
- Document concerns and alternatives to inform a revised bill.

7.5 Legal Drafting Recommendations

1. Revise Definitions in Section 2 of the Bill
- Align the definition of "triangular employment" with ILO wording.
- Exclude subcontracting and service contracting from unintended capture.

2. Include a Provisional Clause on Future Regulation
- Permit the Minister to issue regulations under Convention 181 within 12–18 months.
- Use this clause to defer blanket prohibition pending implementation readiness.

7.6 Monitoring and Reporting

1. Track Labour Market Trends Post-Reform
- Regularly publish employment data on triangular employment, PEA compliance, and job transitions.
- Involve universities and research centres in ongoing evaluation.

2. Monitor Impacts on Tax Revenue and SME Survival
- Work with the Eswatini Revenue Authority and financial institutions to monitor enterprise stability.
- Issue early warning bulletins to inform social protection and budget planning.

7.7 International Cooperation

1. Request Technical Assistance from the ILO
- For legislative drafting, inspectorate training, and PEA model development.

2. Benchmark with SADC Countries
- Engage in regional peer learning with Namibia, South Africa, Lesotho, and Botswana.
- Identify best-fit models for Eswatini's small, informal and rural-centric economy.

3. Engage Donor Partners in Transition Support
- Align donor-funded projects to support phased transitions and enterprise upgrading.
- Avoid unintended donor withdrawals caused by labour compliance breakdowns.

CONCLUSION

In conclusion, employers do not support an outright prohibition of triangular employment. The evidence demonstrates that prohibition would disrupt operations, particularly in labour-intensive sectors such as agriculture, manufacturing, and services, while undermining community livelihoods and local economies.

Instead, a targeted regulatory approach is required to prevent exploitation, strengthen transparency, and align national law with international labour standards. Finally, it must be noted that an outright ban is inconsistent with the Constitution of the Kingdom of Eswatini. Section 32(1) of the Constitution Act No. 1 of 2005 provides that every person has the right to practise any lawful trade or business. A prohibition of triangular employment would therefore contradict this constitutional guarantee and undermine the legal foundation for lawful enterprise.

The above recommendations aim to safeguard jobs, ensure decent work, and maintain Eswatini's economic stability, particularly in fragile and informal-heavy sectors. Prohibiting triangular employment without alternatives risks amplifying unemployment, enterprise insolvency, and social instability.

A balanced regulatory approach, rooted in global standards and national realities, remains the most sustainable path forward.

"Instead, a targeted regulatory approach is required to prevent exploitation, strengthen transparency, and align national law with international labour standards."

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