

TERMS OF REFERENCE

Consultancy Title:	Consutancy Support to Business Eswatini on the Employment Bill No. 12 of 2024 Employer Impact, Regulatory Options and Implementation Framework
Type of Consultancy	Individual or Group
Duration: Deadline for submission of proposal:	Maximum 30 days up to 22nd October 2026 12h 00 Monday 28th September 2026

Introduction & Background

The Employment Bill No. 12 of 2024 represents a significant proposed reform of Eswatini's employment law framework. The Bill seeks, among other objectives, to modernise and harmonise employment legislation and align the national framework with international labour standards. The Bill was considered through the Labour Advisory Board, approved by Cabinet and tabled before Parliament, but remained pending when the 11th Parliament was dissolved. The proposed reforms have potentially significant implications for employers, including employment contracts, employment status, working-time arrangements, benefits and entitlements, termination, severance, casual and fixed-term employment, part-time employment, outsourcing, subcontracting, third-party labour arrangements, compliance obligations and employer liability.

Business Eswatini recognises the importance of modernising the employment law framework and ensuring effective protection of workers. At the same time, it considers it important that the implementation of the Bill provides employers with a clear, predictable and workable regulatory framework and does not unintentionally disrupt legitimate employment and business models.

A particular issue is the proposed treatment of triangular employment and related third-party labour arrangements. Business Eswatini's position is that legitimate arrangements should be capable of effective regulation while preventing abuse and protecting workers' rights.

The assignment is therefore intended to provide an independent, evidence-based technical assessment of the Bill from an employer-impact and implementation perspective, while identifying regulatory options capable of advancing decent work, worker protection, sustainable enterprise and effective labour-market governance.

2. Purpose of the Assignment

The purpose of the assignment is to develop a practical Employer Impact, Regulatory Options and Implementation Report that:

1. identifies the material changes introduced by the Bill;
2. explains what those changes will mean for employers in practice;
3. identifies employment practices and arrangements that may need to change;
4. assesses areas where employers may acquire new obligations, liabilities, dispute exposure or penalties;
5. develops practical regulatory options for triangular employment and related third-party labour arrangements;

6. identifies what should be regulated through the Act, Regulations, codes or administrative guidance;
7. assesses the proposed framework against relevant ILO standards, particularly C181 and R188 where applicable; and
8. translates the findings into a practical implementation manual/module for the October 2026 Labour Law Conference.

The assignment is not intended to produce a comprehensive economic impact assessment or extensive primary sector research. It should make efficient use of existing research, including Business Eswatini's work on triangular employment, available official information, Ministry of Labour & Social Security Reports and ILO comparative material and targeted employer/social-partner consultations.

3. Strategic Relevance to ILO Decent Work and UN Programming

The assignment provides an opportunity for ILO ACTEMP to support the transition from legislative reform to practical implementation of a modern employment law framework in Eswatini.

The intervention is aligned with the ILO's country-level approach, under which Decent Work Country Programmes provide the framework for ILO support to national priorities and are implemented with the active participation of Government, employers' and workers' organisations.

It is also relevant to the implementation of the UN Sustainable Development Cooperation Framework 2026 - 2030 for Eswatini, which emphasises stronger national systems, inclusive growth, resilience and strategic partnerships.

The assignment will contribute to:

- strengthening labour-market governance;
- supporting effective implementation of international labour standards;
- promoting decent and productive employment;
- strengthening worker protection within changing employment models;
- supporting sustainable and responsible enterprises;
- improving legal and regulatory certainty for employers;
- strengthening tripartite and social dialogue;
- supporting evidence-based policy development; and
- building the capacity of employers and other social partners to understand and implement the new legal framework.

4. Specific Objectives

The consultant will:

A. Assess the material legislative changes

Identify and analyse the provisions of the Bill that materially affect employers, with particular attention to:

- employment contracts;
- casual employment;
- fixed-term employment and successive fixed-term contracts;
- part-time employment;
- pro-rata rights and benefits;
- working hours and rest periods;
- overtime;

- leave and related entitlements;
- termination and unfair dismissal;
- severance and other termination-related payments;
- employer record-keeping and administrative obligations;
- outsourcing and subcontracting;
- triangular employment;
- private employment agencies;
- third-party labour arrangements;
- employer liability;
- dispute resolution;
- enforcement and penalties.

B. Translate legislative changes into employer consequences

For each material change, identify:

- current legal/practical position;
- proposed position;
- affected employers and employment arrangements;
- what employers will have to change;
- contractual implications;
- HR and payroll implications;
- financial implications;
- compliance requirements;
- potential disputes/litigation;
- potential penalties or enforcement exposure; and
- transitional issues.

Particular attention should be given to situations in which conduct or employment arrangements that are currently permissible may become restricted, subject to additional conditions, or give rise to new liability under the Bill.

5. Triangular Employment: Regulatory Options

This will be the principal regulatory component of the assignment. The consultant will assess the proposed treatment of triangular employment and develop a limited number of realistic regulatory options.

The analysis should address:

- definition and scope;
- temporary employment;
- private employment agencies;
- agency workers;
- user enterprises;
- outsourcing and subcontracting;
- legitimate service contracts versus supply of labour;
- obligations of agencies/intermediaries;
- obligations of user enterprises;
- allocation of employment rights and responsibilities;
- joint/several or other liability mechanisms;
- equal treatment;
- registration/licensing/certification;
- worker protection;
- monitoring;
- record keeping;
- dispute resolution;
- sanctions;
- enforcement; and
- transitional arrangements.

Regulatory options

The options should move beyond conceptual descriptions and, where appropriate, indicate what the Regulations could actually provide, including illustrative regulatory provisions, criteria, thresholds, procedures or safeguards. The analysis should draw on existing ILO technical material and relevant comparative experience, particularly in the region, rather than undertaking an extensive new comparative research exercise. South Africa's framework provides a useful example of regulating temporary employment services while introducing a deeming mechanism and additional protections for workers in specified circumstances.

The report must clearly distinguish between:

- Private Sector's preferred policy position; and
- The independent technical assessment of regulatory options against applicable international labour standards.

6. Regulations and Implementation Framework

This should become a **major output**, rather than a subsidiary part of the current ToR.

The consultant should identify:

- **Matters that can appropriately be dealt with through Regulations**
- **Matters better addressed through Codes of Practice**
- **Matters suitable for administrative guidelines**

For priority areas, the consultant should provide an outline of the proposed regulatory architecture, including, where feasible:

- proposed regulatory subject;
- purpose;
- scope;
- key requirements;
- responsible party;
- employer obligations;
- worker protection;
- compliance mechanism;
- records/documentation;
- sanctions/consequences; and
- transitional provisions.

7. Employer Impact and Business Adaptation

The consultant will assess the practical implications of the Bill for employers, using representative employer scenarios rather than full sector case studies.

The assessment should cover:

Employment arrangements

- casual;
- part-time;
- fixed-term;
- temporary;
- permanent;
- outsourced;
- subcontracted;
- agency/third-party workers.

Employer systems

- contracts;
- payroll;
- benefits;

- HR records;
- employee registers;
- working-time systems;
- leave administration;
- compliance monitoring.

Employer exposure

Particular attention should be given to:

- new statutory liabilities;
- potential claims;
- CMAC exposure;
- court/litigation exposure;
- inspection exposure;
- administrative penalties;
- criminal offences where applicable;
- financial consequences of non-compliance.

8. Targeted Sector Illustrations

The report should contain three to four concise sector scenarios, selected to illustrate the principal employer issues: current practice → proposed legal position → employer impact → worker impact → compliance response → regulatory issue.

Examples: .

- security/cleaning/facilities management – third-party labour;
- retail/wholesale/hospitality – casual, part-time, hours and pro-rata arrangements;
- construction/agriculture – fixed-term, seasonal and project-based employment;
- manufacturing/mining – outsourcing, subcontracting and labour-intensive operations.

9. International Labour Standards and Decent Work

The consultant will map the material provisions against relevant ILO standards.

This should be focused rather than a comprehensive standards treatise.

The analysis should identify:

- relevant ratified conventions;
- relevant ILO principles and standards;
- areas of alignment;
- areas requiring implementation measures;
- provisions requiring regulations/guidelines;
- implications for decent work.

For triangular employment and private employment agencies, particular attention should be given to C181 and R188. C181 provides for national regulation of private employment agencies, including licensing/certification or another appropriate regulatory framework, while protecting workers' rights.

R188 also provides useful guidance on the involvement of employers' and workers' organisations and the use of regulations, technical standards, guidelines and codes consistent with national practice.

10. Institutional and Enforcement Implications

This section should be limited to employer consequences.

The consultant should identify implications for:

- labour inspection;
- CMAC;
- courts;

- relevant Stakeholders.

The analysis should focus on:

- new employer-facing obligations;
- records and documentation subject to inspection;
- disputes likely to arise;
- potential liabilities;
- enforcement mechanisms;
- penalties;
- areas requiring procedural Regulations or guidelines.

There should be no standalone institutional review of the inspectorate, CMAC or judiciary.

11. Transitional and Implementation Roadmap

The report should conclude with a practical roadmap addressing:

Government

- Regulations;
- administrative systems;
- enforcement guidance;
- institutional preparedness.

Employers

- contract review;
- employment-model review;
- payroll/HR adjustments;
- record keeping;
- third-party labour arrangements;
- compliance training.

Social partners

- consultation;
- communication;
- monitoring;
- implementation dialogue.

12. Deliverables

OUTPUT 1: Employer Impact, Regulatory Options and Implementation Report

A consolidated report of approximately **35 - 45 pages excluding annexes**, containing:

1. Executive Summary;
2. Purpose and methodology;
3. Overview of the material changes in the Bill;
4. Employer Impact Assessment;
5. Employment arrangements requiring adaptation;
6. Triangular Employment Regulatory Options;
7. Regulatory Framework and Regulations Architecture;
8. Employer liability, dispute and enforcement implications;
9. Targeted sector scenarios;
10. ILO Standards and Decent Work Assessment;
11. Transitional and Implementation Roadmap;
12. Conclusions and recommendations.

Annexes

- Employer Legislative Impact Matrix;
- Regulatory Options Matrix;

- illustrative regulatory framework;
- selected comparative examples;
- consultation list/methodology.

OUTPUT 2: Employment Bill Implementation Manual/Conference Module

A practical employer-facing conference manual/module, derived directly from Output 1.

It should include:

Module 1 : What is changing?

Module 2 : What does the Bill mean for employers?

Module 3 : Employment arrangements that will need to change

Including practical scenarios on:

- casual workers;
- fixed-term workers;
- part-time workers;
- long-term contracts;
- pro-rata entitlements;
- working hours;
- benefits;
- termination/severance.

Module 4: Triangular employment – what are the regulatory options?

Module 5 : Outsourcing, subcontracting and third-party labour

Module 6: Where employers face new liability

Including:

- disputes;
- CMAC;
- inspection;
- penalties;
- litigation.

Module 7: What should employers do now?

A practical compliance/preparation checklist.

Module 8: The way forward – implementation and social dialogue

The conference package should comprise:

- PowerPoint presentation;
- facilitator/speaker notes;
- participant manual/handout;
- employer checklist;
- practical scenarios;
- regulatory-options exercise;
- discussion questions.

12. Proposed Methodology

Phase 1 –Desk review

Review:

- Employment Bill No. 12 of 2024;
- Employment Act 1980 (as amended);
- Industrial Relations Act 2000 (as amended);
- existing Employment Act framework;
- Business Eswatini triangular employment study;
- existing BE submissions/positions;

- relevant ILO standards;
- selected comparative legislation and jurisprudence;
- available labour-market data.

Phase 2 – Targeted consultations

Targeted consultations with selected:

- Departments of Labour
- Employers/business associations;
- affected sectors;
- labour authorities;
- CMAC;
- Organised labour;
- Technical experts.
- Law society
- Industrial court judges

Phase 3 – Analysis

Develop:

- legislative impact matrix;
- employer impact assessment;
- regulatory options;
- implementation framework.

Phase 4 – Validation

Targeted technical validation with Business Eswatini and ILO ACTEMP.

Phase 5 – Conference translation

Convert the report into the employer-facing manual/module and conference presentation.

13. Proposed timeline

	Activity
Phase 1	Inception, document review and research framework
	Legislative analysis and targeted consultations
Phase 2	Regulatory options and employer impact analysis
	First draft report
	Technical/BE/ILO review and validation
Phase 3	Final report
	Conference manual/module and presentation
Phase 4	Final conference preparation
	Conference delivery

14. QUALIFICATIONS, SKILLS AND EXPERIENCE

Essential qualifications

- A postgraduate qualification in law, labour law, employment relations, industrial relations, labour policy, social policy or a related discipline.
- At least 10 years' professional experience in employment/labour law, labour policy, industrial relations or related regulatory work.
- Demonstrable experience in legislative and regulatory analysis and development.

Essential technical expertise

The consultant should demonstrate substantive expertise in employment and labour legislation; ILO international labour standards; Private Employment Agencies; temporary agency work and/or triangular employment; labour broking and labour supply arrangements; outsourcing and subcontracting; employer liability and allocation of employment obligations; legislative and regulatory drafting; labour-market regulation; and business/regulatory impact assessment.

Critical experience requirement

- Demonstrated experience undertaking similar assignments in Eswatini and/or the Southern African region should be a key selection criterion.
- Preference should be given to consultants who have previously undertaken assignments involving: Eswatini's employment and labour legislation; Government or social-partner institutions in Eswatini; Private sector or other employers' organisations; tripartite institutions; ILO-supported legislative or policy reform; regulation of private employment agencies/labour brokers; and outsourcing and subcontracting arrangements in Southern Africa.
- Experience in comparable African jurisdictions should also be considered where the consultant can demonstrate a clear understanding of the regional labour-market and regulatory context.

Other skills

The consultancy should have: strong legal research and analytical skills; demonstrated ability to translate legislation into practical business implications; strong comparative-law research skills; excellent report-writing skills; ability to develop practical regulatory recommendations rather than purely academic analysis; stakeholder consultation and facilitation skills; and demonstrated ability to present complex legal and policy issues to senior business, Government and social-partner audiences.

15. Evaluation Criteria

Proposals will be evaluated using a combined technical and financial scoring methodology consistent with applicable ILO/Business Eswatini procurement procedures. Only consultants meeting the minimum technical score will have their Financial Proposal opened and considered.

Technical Criteria (weight: 70%)

- Relevant academic qualifications and professional experience,
- Demonstrated technical expertise in employment and labour legislation, ILO international labour standards, private employment agencies, triangular employment and outsourcing/subcontracting arrangements;
- Demonstrated experience undertaking similar assignments in Eswatini and/or the Southern African region, including work with Government or social-partner institutions, Business Eswatini or other employers' organisations, Labour Advisory Boards/tripartite institutions, or ILO-supported legislative or policy reform (a key selection criterion per Section 14);
- Quality, relevance and clarity of the proposed methodology and workplan, including its fit with the phased approach (desk review, targeted consultations, analysis, validation, conference translation) and the 30 working-day timeline set out in this TOR;
- Quality of previous written work and analytical outputs (e.g. legislative/regulatory analysis, employer impact assessments, or training/conference materials); and

- Stakeholder consultation, facilitation and presentation skills, including the demonstrated ability to present complex legal and policy issues to senior business, Government and social-partner audiences.

Financial Criteria (weight: 30%)

- Reasonableness and value for money of the proposed budget relative to the scope, deliverables and timeline of the assignment; and
- Clarity and completeness of the cost breakdown by phase/deliverable.

The final combined score will be calculated as the weighted sum of the technical and financial scores.

16. Format of the Proposal

Interested consultants should submit a proposal comprising a separate Technical Proposal and Financial Proposal, as follows:

A. Technical Proposal

- Cover letter/expression of interest confirming availability and interest in the assignment;
- Curriculum Vitae (s) (CV) demonstrating the qualifications, technical expertise and experience of which. For a group consultancy at least the Lead and 3 CVs should be attached.
- A brief statement of the consultant's understanding of the assignment and the issues at stake;
- A proposed methodology and workplan, structured against the phases set out in Section 12 (desk review; targeted consultations; analysis; validation; conference translation), including the consultant's proposed approach to developing the Employer Impact, Regulatory Options and Implementation Report and the Conference Module;
- A detailed workplan/timeline showing how the consultant will deliver within the maximum 30 working days set out in this TOR;
- At least two samples of previous relevant written work (e.g. legislative/regulatory analysis, employer impact assessments, or training/conference materials); and
- Contact details of at least two relevant references.

B. Financial Proposal

- Submitted as a document/file separate from the Technical Proposal;
- A detailed cost breakdown showing the consultant's proposed daily/professional fee, the number of working days proposed per phase or deliverable, and any other proposed costs (e.g. local travel within Eswatini, communication);
- Total proposed fee, inclusive of all applicable taxes, expressed in *[currency to be confirmed by Business Eswatini]*; and
- The Financial Proposal should be consistent with, and clearly linked to, the phases and deliverables set out in the Technical Proposal.

C. Submission

- Proposals should be submitted to ***nelisiwem@business-eswatini.co.sz*** by **12h 00 Monday 28th September 2026** with the **Technical Proposal and Financial Proposal** clearly marked and submitted as separate documents/files;
- Late submissions will not be considered.

All deliverables will be provided in English in editable Word format and as final PDF versions.

CONFIDENTIALITY

The Consultant is expected to adhere to strict confidentiality vis-à-vis a third party in relation to all information related to the mission or collected as part of it (no reproduction or distribution of reports or products of the mission without written authorisation by Business Eswatini).