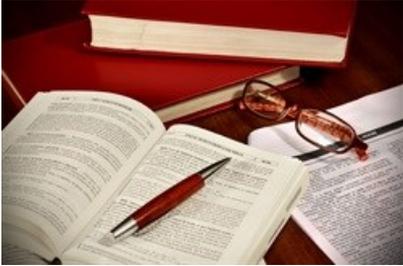


# Recruiting and employing in Botswana

 By [Thabiso T. Tafila](#)

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Employers must get it right from the onset when recruiting and employing an employee in Botswana. This is important because as soon as an offer of employment is made and accepted by the employee, employment relationship immediately comes into existence.



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This would mean that the application of all statutory protections as found in the Employment Act will immediately kick in.

To safeguard employers from employing employees who they later discover that they should have not employed in the first place and want to get rid of but are now held back because of the statutory provisions of the Employment Act, the following should be observed:

- The prospective employer must know that a person applying for a job or an interviewee is not entitled to any protection at all under the employment laws.
- The prospective employer does not owe the applicant or interviewee any duty of fairness.
- The prospective employer can behave subjectively in selecting employees.

However, there are exceptions to the above where even applicants for employment are protected by law, namely:

- Discrimination.
- Infringe principle of freedom of association.
- Improper testing.

No person may unfairly discriminate, directly or indirectly, against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscientious, belief, political opinion, culture, language and birth.

In any screening process of a prospective employee, no criteria or questions should be asked on issues that could be interpreted to amount to discrimination in any of the above mentioned instances.

## Union membership

Freedom of association relates to union membership or union activities. If a prospective employer during the interview of a prospective employee, asks questions which may reveal the union membership of an individual or union activities, the employer may be found to have acted unfairly if he does not at the end of the day employ such a prospective employee who probably was the best to be employed under the circumstances. This might result in the prospective employer being made to pay damages to the prospective employee.

Certain employers usually want to subject prospective employees to medical test and based on the results of the test they will then decide whether to offer the employee employment or not. Such is also not permitted unless if the medical test is one prescribed by law and or is essential to the job in question. Other forms of testing such as polygraph and alcohol tests must also be consistently applied and must be reliable and accurate and must not be culturally biased.

All being equal however, the prospective employer enjoys the freedom and discretion of who they want to employ and owes no one any duty of fairness.

## ABOUT THABISO T. TAFILA

Thabiso T. Tafila is a partner and the head of Employment and General Litigation at Mnchin & Kelly in Botswana, a member of DLA Piper Africa.

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