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LAWS OF KENYA

LABOUR INSTITUTIONS ACT

CHAPTER 234

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CHAPTER 234

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CHAPTER 234
LABOUR INSTITUTIONS ACT

[Date of assent: 22nd October, 2007.]

[Date of commencement: 2nd June, 2008.]

An Act of Parliament to establish labour institutions, to provide for their functions, powers and duties and to provide for other matters connected thereto

[Act No. 12 of 2007, L.N. 62/2008, Act No. 20 of 2011, Act No. 12 of 2012, Act No. 19 of 2014.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Labour Institutions Act.

2. Commencement

This Act shall come into force on 2nd June, 2008.

3. Interpretation

In this Act, unless the context otherwise requires—

“**authorised officer**” means a labour officer, employment officer or medical officer appointed under this Act;

“**Board**” means the National Labour Board established under section 5;

“**collective agreement**” means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employer’s organisation;

“**Commissioner for Labour**” means the Commissioner for Labour appointed under section 30;

“**Committee of Inquiry**” means a Committee of Inquiry appointed under section 28;

“**contract of service**” means an agreement, whether oral or in writing, and whether express or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service made within Kenya and to be performed in full or in part outside Kenya, and any contract for service with a foreign State, except a contract for service entered into with, by or on behalf of the Government;

“**Director**” means the Director of Employment appointed under section 30;

“**employee**” means a person who has been employed for wages or a salary and includes an apprentice or indentured learner;

“**employer**” means any person, including the Government, who employs or has employed an employee and where appropriate includes—

- (a) an heir, successor, assignee or transferor of an employer; or

(b) an agent, director, or any person authorised to represent an employer;

“employers’ organisation” means any number of employers associated together for the purpose whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees;

“employment agency” means—

- (a) any person, company, institution, agency or other organisation which acts as an intermediary for the purpose of procuring employment for a worker, but does not include newspapers or other publications unless they are published wholly or mainly for the purpose of acting as intermediaries between the employer and the worker; or
- (b) employment agencies not conducted with a view to profit, that is to say, the placing of services of any company, institution, agency or other organisation which, though not conducted with a view to deriving any pecuniary or other material advantage, levies from either employer or worker for the above services an entrance fee, a periodical contribution or any other charge;

“employment record” means any record required to be kept by an employer;

“federation” means a registered federation of trade unions or employers’ organisations;

“Industrial Court” means the Industrial Court established under sections 11;

“labour law” means any Act dealing with labour matters;

“medical officer” means—

- (a) a medical practitioner who is registered and licensed under the Medical Practitioners and Dentists Act (Cap. 253), or
- (b) a medical officer of a local authority appointed under the Public Health Act (Cap. 242);

“Minister” means the minister for the time being responsible for Labour matters;

“Principal Judge” means the Principal Judge of the Industrial Court appointed under section 11;

“redundancy” means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous as a result of practices commonly known as abolition of office, job or occupation;

“Registrar of the Industrial Court” means the Registrar of the Industrial Court appointed under section 19;

“Registrar of Trade Unions” means a Registrar of trade unions and includes a Deputy Registrar or an Assistant Registrar of Trade Unions appointed under section 31;

“sector” means an industry or a service or part of an industry or a service;

“trade union” means an association of employees whose principal purpose is to regulate relations between employees and employers, including an employer’s organisation.

4. Application

(1) This Act shall not apply to—

- (a) the armed forces or the reserve as respectively defined in the Armed Forces Act (Cap. 199);
- (b) the National Youth Service.

(2) The Minister may, on the recommendation of the Board and after taking account of all conventions and other international instruments ratified by Kenya, by order, exclude from the application of all or part of this Act limited categories of employed persons in respect of whom special problems of a substantial nature arise.

(3) The Minister may, after consultation with the Board, by order exclude from the application of all or part of this Act, categories of employed persons whose terms and conditions of employment are governed by special arrangements, provided those arrangements afford protection that is equivalent to or better than that part of the Act from which those categories are being excluded.

PART II – THE NATIONAL LABOUR BOARD

5. Establishment of the Board

(1) There is established the National Labour Board.

6. Composition of the Board

(1) The Board shall consist of the following members appointed by the Minister, who shall be Kenyan citizens—

- (a) a chairperson who has experience and expertise in labour relation matters;
- (b) the General Secretary of the most representative federation of trade unions;
- (c) the Chief Executive of the most representative federation of employers’ organisation;
- (d) two persons appointed from nominees of the most representative federation of employers’ organisation dealing with labour matters;
- (e) two persons appointed from nominees of the most representative federation of trade unions;
- (f) not more than two other independent members;
- (g) the Director of Employment;

- (h) the Director of Micro and Small Enterprise Development;
 - (i) the Director of Occupational Safety and Health Services;
 - (j) the Director of Industrial Training;
 - (k) the Registrar of the Industrial Court; and
 - (l) the Registrar of Trade Unions.
- (2) The provisions of the Schedule shall apply with respect to the Board.
- (3) The Minister may on the advice of the Board, amend the Schedule.

7. Functions of the Board

- (1) The functions of the Board are to advise the Minister on—
- (a) all matters concerning employment and labour;
 - (b) legislation affecting employment and labour;
 - (c) any matter relating to labour relations and trade unionism;
 - (d) any issue arising from the International Labour Organisation and the International Labour Organisation Conventions;
 - (e) codes of good practice;
 - (f) any issue raised by an international or regional association of states of which Kenya is a member;
 - (g) systems of labour inspection and the administration of the labour laws;
 - (h) any aspect of public employment services, vocational guidance, vocational training and the employment of persons with disabilities;
 - (i) the formation and development of policies designed to promote the granting of paid educational leave to workers for the purpose of training, trade union social and civic education and trade union education;
 - (j) the general state of employment, training and manpower development in the country;
 - (k) productivity measurement and improvement;
 - (l) the appointment of wages councils;
 - (m) the appointment of members of the Industrial Court;
 - (n) the setting of compensation benefits in accordance with the provisions of the laws relating to work injury benefits;
 - (o) the registration, suspension and deregistration of trade unions and employers organisations; and
 - (p) any other matter related to any of the Board's functions.
- (2) The Minister shall, in consultation with the Board advise—
- (a) the Government on the issuing of immigration entry permits and work permits to non-citizens; and
 - (b) the Chief Justice on the assignment of judges to the Industrial Court and the Rules of the Industrial Court.

(3) In the performance of its functions, the Board may conduct—

- (a) any investigation as it may consider necessary; and
- (b) research into labour, economic and social policy.

(4) The Board may co-opt any person to participate in its deliberations, but a person so co-opted shall have no right to vote at any meeting of the Board.

(5) The Board may determine its own procedure for the performance of its functions.

(6) The Secretary to the Board shall brief the Board at least once in every three months on the following issues—

- (a) the general state of the economy according to the Government;
- (b) labour market information and employment trends;
- (c) reported strikes and lockouts;
- (d) inflationary trends and indices;
- (e) the number of complaints and disputes lodged by employees against employers and by employers against employees under the law relating to labour relations and progress in the settlement of such complaints or disputes;
- (f) labour inspection services; and
- (g) any other issues determined by the Minister or the Board.

8. Committees of the Board

(1) The Board shall, in consultation with the Minister, establish the following committees—

- (a) Work Permits Committee;
- (b) National Manpower Development Committee;
- (c) Trade Disputes Committee;
- (d) Productivity Committee; and
- (e) such other committees or panels as are necessary for the performance of the Board's functions.

(2) The Board may, with the approval of the Minister, co-opt into the membership of the committees established under this section other persons whose knowledge and expertise are necessary for the functions of the committees or the Board.

9. Remuneration of members

There shall be paid to the Chairman and members of the Board such remuneration, fees or allowances for expenses as the Minister in consultation with the Minister in charge of Finance, may determine.

10. Secretary and officers of Board

The Commissioner for Labour—

- (a) shall be the secretary to the Board; and

(b) may appoint such other officers as are necessary to assist the Board.

PART III – THE INDUSTRIAL COURT

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PART IV – COMMITTEE OF INQUIRY

28. Appointment of Committee of Inquiry

(1) The Minister, may by notice in the *Gazette*, appoint a Committee of Inquiry to inquire into any matter which appears to the Minister to be connected with or relevant to any trade dispute or to trade disputes in general, or to trade disputes of any type or class, whether or not any such dispute has been reported to the Minister under this Act.

(2) Where the Minister has referred any matter to the Committee of Inquiry under subsection (1), the Minister may refer to the Committee of Inquiry any other matter which in his opinion ought to be so referred.

(3) A Committee of Inquiry shall consist of three or more persons including a chairman, as the Minister deems fit to appoint and the Minister may appoint a public officer to be the secretary of the Committee of Inquiry.

(4) A Committee of Inquiry consisting of three or more persons may act notwithstanding any vacancy in their number.

29. Report of Committee of Inquiry

(1) A Committee of Inquiry shall inquire into and report on any matter referred to it under section 28 and shall submit a report on the matter to the Minister.

(2) Subject to section 24, the Minister may order the publication of any report made by a Committee of Inquiry in whole or in part and in such manner and at such time as the Minister deems fit.

PART V – LABOUR ADMINISTRATION AND INSPECTION**30. Appointment of Commissioner for Labour, Director of Employment and other officers**

(1) Subject to the laws governing the public service, there shall be appointed—

- (a) a Commissioner for Labour;
- (b) a Director of Employment; and
- (c) such other officers as may be necessary for purposes of administration of laws relating to labour and employment.

(2) The Minister may designate officers appointed under subsection (1)(c)—

- (a) labour officers;
- (b) employment officers; or
- (c) medical officers.

(3) The persons appointed under subsections (1) and (2) shall be authorised officers for purposes of this Act.

31. Appointment of Registrar, deputy registrar and assistant registrars of trade unions

(1) The Minister shall appoint a Registrar of Trade Unions who shall be responsible for the registration and regulation of trade unions, employers' organisations and federations.

(2) The Minister may appoint a deputy registrar of trade unions, assistant registrars of trade unions and such other officers as may be required for the purposes of this Act.

(3) The Registrar of Trade Unions shall, in the exercise of his powers relating to the registration and regulation of trade unions, act on the advice of the Board.

32. Delegation

(1) The Commissioner for Labour may, in writing, delegate to any labour officer any of the Commissioner's powers, functions and duties.

(2) The Director of Employment may in writing, delegate to any employment officer any of the Director's powers, functions and duties.

(3) The Registrar of Trade Unions may, in writing delegate to the Deputy Registrar or Assistant Registrars any of the Registrar's powers, functions and duties.

(4) The Commissioner for Labour, the Director of Employment, and the Registrar of Trade Unions, as the case may be, may—

- (a) attach conditions to a delegation and may amend or revoke a delegation at any time; and
- (b) vary or set aside any decision made by a person acting on delegation under subsections (1), (2) and (3).

33. Certificate of authority for authorised officer

(1) Every authorised officer shall be issued with a certificate of authority by—

- (a) the Commissioner for Labour, in the case of a labour officer;
- (b) the Director of Employment, in the case of an employment officer; and
- (c) the Director of Medical Services, in the case of a medical officer.

(2) When performing duties under this Act, an authorised officer, if reasonably requested to do so by any person affected, shall produce his certificate of appointment to that person.

34. Powers of entry to premises by authorised officer

(1) An authorised officer may, either alone or in the presence of another person, enter any premises or place where persons are, or may be, employed for the purpose of performing his duties as specified under this Act or any other labour law.

(2) An authorised officer shall, on the occasion of an inspection or visit authorised by or under the provisions of this Act, notify the employer or his representative of his presence for that purpose at the first practicable opportunity, unless it is considered by the authorised officer concerned that the notification may be prejudicial to the performance of his duties or otherwise likely to defeat the object thereof.

35. Powers of labour officer

(1) A labour officer may, for the purpose of monitoring or enforcing compliance with any labour law—

- (a) require the production of wage sheets or other employment records kept by an employer, and records of payments made to outworkers by persons giving out work, and any other such records as are required by any labour law or wages order to be kept by employers, and to inspect and examine those sheets or records and copy any material part thereof;
- (b) require any person giving out work and any out-worker to give any information which is in that person's power to give with respect to the names and addresses of the persons to whom the work is given or from whom the work is received and with respect to the payments to be made for the work;
- (c) inspect and copy any material part of any list of outworkers kept by an employer or other person giving out work to outworkers; and
- (d) examine, either alone or in the presence of any other person, with respect to any matter under Part VI, any person whom the labour officer has reasonable cause to believe to be or to have been an

Provided that no person shall be required to give any information that incriminates him;

- (e) at all reasonable times, enter, inspect and examine any land or building, other structure, whether permanent or temporary on or in which the labour officer has reasonable ground to believe that an employee is residing or is employed, and may make such inquiry, inspection or examination as may be necessary to enable the labour officer to determine whether the provisions of this Act or any other labour law are being complied with;
- (f) at all reasonable times, require an employer to produce an employee employed by him and a document relating to the employment of any employee, and may require an employee to produce any document relating to the employee's employment;
- (g) examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he has reasonable ground to believe to be or to contain evidence of an offence under this Act or any other labour law;
- (h) enter, inspect and examine all latrines and other sanitary arrangement or water supply;
- (i) inspect and examine all food provided or appearing to be provided for the employees, and take samples thereof in duplicate, in the presence of the employer or the employers representative which samples shall be sealed and one sample so sealed shall be left with the employer;
- (j) order that all buildings and premises where employees are housed or employed be kept in a clean and sanitary condition;
- (k) without prejudice to the powers of the Attorney-General, institute proceedings in respect of any contravention of any provision of this Act or for any offence committed by an employer under this Act or any other labour law;
- (l) institute an appeal on behalf of any employee in any civil proceedings by an employee against his employer in respect of any matter, thing or cause of action arising out of or in the course of the employment, whether such civil proceedings are contemplated or instituted by the employee himself or are civil proceedings ordered by a magistrate;
- (m) without prejudice to the institution of proceedings in respect of any offence, to take into custody and return to his parent or guardian, or other person whom he is satisfied has for the time being the charge of or control over him, any child whom he reasonably suspects to be employed in contravention of any of the provisions of the law relating to employment.

(2) Where a labour officer seizes a register, record, book or other document in the performance of the labour officer's duties under subsection (1)(g), the labour officer shall give to the employer or his representative a receipt in respect of such register, record, book or other document in the prescribed form.

36. Powers of employment officer

(1) An authorised officer may, for the purposes of collecting labour market data, exercise the powers conferred upon a labour officer by section 25(1)(a) to (c), (f) and (g).

(2) Where an employment officer seizes a register, record, book or other document in the performance of the employment officers' duties, the employment officer shall give to the employer or his representative a receipt in respect of such register, record, book or other document in the prescribed form.

37. Powers of medical officer

A medical officer may, for the purposes of this Act, exercise the powers conferred upon a labour officer by section 35(1)(e) to (i) inclusive and may, in addition—

- (a) order an employee who, in the opinion of the medical officer, is sick and for whom the conditions prevailing at the place of employment are not conducive to the rapid recovery of his health or strength, to return to the place of work or to proceed to hospital, and in that case the employer shall at the earliest opportunity and at his own expense send the employee to the place of work or to a hospital, as the case may be;
- (b) condemn any food provided for employees which, in the opinion of the medical officer, is unfit for human consumption, and all food so condemned shall be destroyed forthwith in the presence of the medical officer;
- (c) order at the expense of the employer, such variety of food for an employee as he may deem necessary:

Provided that the cost of the food supplied under any such order shall not exceed the normal cost of rations ordinarily supplied by employers to employees in that district at the time;

- (d) condemn any building or other structure whether permanent or temporary in which an employee is residing or is employed, if in the opinion of the medical officer it is unfit by reason of its construction, situation or condition for the purpose to which it is put, whereupon it shall not be used for that purpose until a medical officer has subsequently certified that it may be used for that purpose;
- (e) order the employer to supply an employee working under a written contract of service with one or more blankets or with clothing, and in that case, the reasonable cost thereof shall be paid by the employee and may be deducted from the remuneration for the employee, and until the cost has been paid by, or deducted from, the wages of the employee, the blanket or blankets or clothing supplied shall remain the property of the employer; or
- (f) inspect all drugs and medicine provided for the use of employees.

38. Obstructing an authorised officer

A person who—

- (a) wilfully obstructs or hinders an authorised officer in the exercise of any power conferred by this Act or any rules made under this Act; or
- (b) neglects or fails to comply with any requirement or order made or given by an authorised officer in pursuance of any power conferred by this Act or any rules made under this Act,

commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to, for a term not exceeding six months or to both.

39. Offences by companies, etc.

(1) Where an offence under this Act is committed by a company, association or body of persons, corporate or incorporate or by a public body, and the offence is proved to have been committed with the consent or connivance, or to have been facilitated by any neglect on the part of any director, chairman, manager, secretary or other officer employed by such company or association or body of persons or public body, that director, chairman, manager, secretary or other officer shall be deemed to have committed an offence.

(2) In any proceedings under this Act, it shall be sufficient in the charge or information to allege the nature of any employment to which the charge relates and to state the name of the ostensible employer and the burden of proving that the employment is not such as alleged or that the employers specified in the charge or information is not the actual employer shall lie upon the person or public body alleging that fact.

40. Evidence

Where an entry is required by this Act to be made in a register or written record, the entry made by an employee or on his behalf shall be admissible as evidence of the fact therein stated.

41. Confidentiality

(1) Any authorised officer or other person who is or has been engaged in the administration of this Act, who discloses, except for the purposes of the exercise of his functions or when required to do so by a court or under any written law, any information acquired by him in the exercise or purported exercise of his functions under this Act to any other person commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months, or to both.

(2) Subsection (1) shall not apply to a disclosure of any information made—

- (a) for the purpose of any criminal proceedings;
- (b) for the purpose of the proper administration of this Act; or
- (c) in accordance with any written law.

42. Annual report

(1) The Commissioner for Labour and the Director of Employment shall, not later than the thirtieth of April in each year, prepare and publish an annual report of the activities undertaken in their respective departments.

(2) Without limiting what may be included in the report of the Commissioner for Labour, the report shall cover the following matters—

- (a) development with regard to relevant laws and regulations;
- (b) the staff under the jurisdiction of the Commissioner for Labour;
- (c) statistics of places of work to be inspected and number of workers employed therein;
- (d) findings in the course of inspection;
- (e) statistics of industrial accidents and occupational diseases;
- (f) statistics of persons with disabilities in work places and any aids being provided by the employer;
- (g) statistics of proceedings brought before the Industrial Court or other courts and their disposal; and
- (h) statistics of stoppages of work in various sectors of the industry.

(3) Without limiting what may be included in the report of the Director, the report shall cover the following issues—

- (a) the staff under the jurisdiction of the Director;
- (b) productivity level; and
- (c) labour market information and employment trends.

PART VI – WAGES COUNCILS

43. Establishment of wages councils

(1) The Minister, shall establish—

- (a) a General Wages Council; and
- (b) an Agricultural Wages Council.

(2) The Minister may, after consultation with the Board, in addition to the General Wages Council established under subsection (1), establish a Sectoral Wages Council if the Minister is of the opinion that—

- (a) the remuneration and other conditions of employment of any category of employees in any sector is not adequately regulated by collective agreements; and
- (b) it may be expedient to set minimum wages and other conditions of employment in respect of employees in those sectors.

(3) The terms of reference of a wages council appointed under subsection (2) may be in respect of—

- (a) employees in a sector, or part of a sector, either nationally or within a specific area; or
- (b) one or more specified categories of employees, either nationally or within specific sectors or areas.

(4) The Minister shall establish a wages council by notice in the *Gazette*—

- (a) specifying the terms of reference of the wages council;
- (b) the names of persons appointed as members of the wages council;
- (c) stipulating the period in which the wages council is required to investigate and prepare a report for the Minister; and
- (d) inviting representations from interested parties.

(5) A wages council shall consist of the following members appointed by the Minister—

- (a) a chairperson;
- (b) not more than three members nominated by the Board representing trade unions;
- (c) not more than three members nominated by the Board representing employers; and
- (d) not more than three independent members.

(6) A member nominated under subsection (5)(a) and (d) shall have knowledge and experience in the determination of minimum terms and conditions of employment.

(7) The Agricultural Wages Council may recommend to the Minister, minimum remuneration and conditions of employment of employees employed—

- (a) in the agricultural sector; or
- (b) any sector in which no other wages order is applicable.

(8) A wages council may be appointed for a period of three years.

(9) The Minister may, after consultation with the Board, vary a notice issued under this section.

44. Functions of wages council

The functions of a wages council are to—

- (a) investigate the remuneration and conditions of employment in any sector;
- (b) invite and consider written and oral representations, in the prescribed manner, from interested parties; and
- (c) make recommendations to the Minister on minimum wage remuneration and conditions of employment.

(2) Recommendations made to the Minister in accordance with subsection (1) (c) may include recommendations on any matter that the Minister may include in a wages order.

(3) In the performance of its functions, a wages council may—

- (a) question any person who may be able to provide information relevant to the investigation;
- (b) in writing, require any person to provide any information, book, document or object relevant to the investigation; or
- (c) conduct public hearings.

(4) A person who without lawful excuse refuses to—

- (a) answer any question relevant to an investigation; or
- (b) furnish any information, book or document requested by a wages council,

commits an offence.

(5) In the performance of its functions under this section, a wages council shall take into consideration—

- (a) the needs of employees and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups;
- (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment and the need to encourage investment;
- (c) the ability of employers to carry on their business successfully;
- (d) the operation of small, medium and micro enterprises;
- (e) the cost of living;
- (f) the alleviation of poverty;
- (g) the minimum subsistence level;
- (h) the likely impact of any proposed conditions of employment on current employment or the creation of employment; and
- (i) any other relevant factor.

45. Publication of draft wages order

(1) Before publishing a wages order in the *Gazette*, the Minister shall publish a notice—

- (a) specifying that the Minister proposes to make a wages order;
- (b) specifying where copies of a draft of the wages order can be obtained; and
- (c) inviting comments within a reasonable period on the draft wages order, which may not be less than thirty days from the publication of the notice.

(2) The notice specified under subsection (1) shall be published—

- (a) in the *Gazette*; and
- (b) at least twice, with an interval of at least seven but not more than fourteen days between each publication, in a newspaper with a wide circulation.

(3) Any person may submit written comments on a draft wages order within the specified period.

(4) A person who objects to any part of a draft order shall set out—

- (a) the specific grounds of objection; and
- (b) the deletions, additions or modifications proposed.

(5) If no objections are received, the Minister may publish a wages order in accordance with section 46.

(6) If objections are received, the Minister—

- (a) shall refer the objections to the proposed wages order and any other comments submitted within the specified time period to the wages council for consideration; and
- (b) may request the Board to consider and advise on the objections.

46. Publication of wages order

(1) The Minister may, after considering any further report of the wages council and any further advice from the Board, publish a wages order.

(2) A wages order shall be—

- (a) published in the *Gazette*; and
- (b) be laid before the National Assembly within twenty-one days of publication.

(3) On publishing a wages order, the Minister shall also publish notices in a newspaper in accordance with section 45(2)(b) advising persons where a copy of the wages order can be obtained.

47. Contents of wages order

(1) A wages order shall—

- (a) set minimum rates of remuneration;
- (b) specify the matters in which an employer may make deductions from employee's wages and specify the maximum amount of deductions;
- (c) specify the maximum amount which may be deducted from an employee's wages in respect of rations supplied by the employer;
- (d) provide that an employer may only make a deduction in respect of rations supplied if authorised in writing by a labour officer;
- (e) regulate task based work and piece work;
- (f) regulate outwork, casual work and contract work;
- (g) set minimum standards of sanitation for employees who reside on the premises of their employer; and
- (h) regulate any other matter concerning remuneration or conditions of employment.

(3) A wages order may—

- (a) make different provisions for different classes of employees; and
- (b) contain provisions for the amendment or revocation of previous wages orders.

48. Wages Order to constitute minimum terms of conditions of employment

(1) Notwithstanding anything contained in this Act or any other written law—

- (a) the minimum rates of remuneration or conditions of employment established in a wages order constitute a term of employment of any employee to whom the wages order applies and may not be varied by agreement;
- (b) if the contract of an employee to whom a wages order applies provides for the payment of less remuneration than the statutory minimum remuneration, or does not provide for the conditions of employment prescribed in a wages regulation order or provides for less favourable conditions of employment, then the remuneration and conditions of employment established by the wages order shall be inserted in the contract in substitution for those terms.

(2) An employer who fails to—

- (a) pay to an employee to whom a wages regulation order applies at least the statutory minimum remuneration; or
- (b) provide an employee with the conditions of employment prescribed in the order,

commits an offence.

(3) If an employer is found guilty of an offence under subsection (2), the court may in addition to any other penalty order the employer to pay the employee the difference between the amount which ought to have been paid in terms of the wages order and the amount which was actually paid.

(4) Where proceedings are brought under subsection (2) in respect of an offence consisting of a failure to pay remuneration at the statutory minimum remuneration or to provide an employee with the conditions of employment prescribed in the order, then—

- (a) if an employer is found guilty of the offence, evidence may be given of any like contravention on the part of the employer in respect of any period during the twelve months immediately preceding the date of the offence; and
- (b) on proof of such contravention, the court may order the employer to pay the difference between the amount which ought to have been paid during that period to the employee by way of remuneration and the amount actually paid:

Provided that evidence shall not be given under paragraph (a) unless notice of intention to give such evidence has been served upon the employer together with the summons, warrant, information or complaint.

(5) The powers given by this section for the recovery of sums due from an employer to an employee shall be in addition to and not in derogation of any right to recover such sums by civil proceedings:

Provided that no person shall be liable to pay twice in respect of the same cause of action.

49. Power of officers to institute proceedings

Notwithstanding any provision of any written law, a labour officer may institute proceedings on behalf of and in the name of an employee for the recovery of a sum due from an employer to an employee by reason of the failure of the employer to—

- (a) pay to the employee the statutory minimum remuneration; or
- (b) provide an employee with the conditions of employment prescribed in the order.

50. Meaning of remuneration

(1) Any reference in this Part to remuneration shall be construed as a reference to the amount paid or to be paid in cash to the employee by his employer clear of any deductions, except any deduction lawfully made—

- (a) for the purpose of a contribution to any provident fund or superannuation scheme;

- (b) in respect of rations supplied by an employer which the employer is permitted to make under a wages order;
- (c) under any provision of any other written law for the time being in force which provides for or permits deductions to be made from an employee's wages by the employer; or
- (d) at the request in writing of the employee, for any purpose in which the employer has no direct or indirect beneficial interest.

(2) Any reference in this Part to the “**statutory minimum remuneration**” means the minimum remuneration prescribed in a wages order.

51. Employee waiting for work on employer's premises

For the purpose of calculating the amount due to an employee employed in any occupation in respect of which a wages order has been made, the employee shall be deemed to have been employed for all the time during which the employee was present on the premises of the employer if it is proved to the satisfaction of the court that the employee was required to be present by the employer:

Provided that—

- (a) an employee who resides on the premises of the employer shall not be deemed to be employed for any time during which the employee is present on the premises by reason only of the fact that he is so resident; and
- (b) an employee while present during normal meal times in a room or place in which no work is being done shall be deemed to be present for a purpose not connected with his employment.

52. Employer not to receive premium

(1) Where an employee to whom a wages order applies is an apprentice or an indentured learner, his employer shall not receive directly or indirectly from him, on his behalf or on his account, any payment in the form of a premium:

Provided that nothing in this subsection shall apply to any payment made in pursuance of any instrument of apprenticeship if such payment is made—

- (i) not later than four weeks after the commencement of the apprenticeship; or
- (ii) at any time with the approval of a wages council.

(2) An employer who contravenes this section commits an offence and the court may, in addition to imposing a fine, order him to pay to the employee or other person by whom the payment was made the sum improperly received in the form of a premium.

53. Records and notices

(1) The employer of employees to whom a wages order applies shall—

- (a) keep such records as are necessary to show whether or not the employer is complying with the wages order; and
- (b) retain the records for at least three years after the date of the last entry therein.

- (2) An employer shall—
- (a) exhibit in the prescribed language and manner such notices as may be prescribed for the purpose of informing employees of any proposed wages order or wages order affecting them; and
 - (b) give notice in the prescribed manner, to the employees of any other matters as may be prescribed.
- (3) An employer who contravenes this section commits an offence.

54. Criminal liability of agent, employer

(1) Where the immediate employer of an employee is himself in the employment of another person and that employee is employed on the premises of that other person, that other person is for the purposes of this Part deemed to be the employer of that employee jointly with the immediate employer.

(2) Where an employer is charged with an offence under this Part, he shall be entitled, upon information duly laid by him and on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge.

- (3) If—
- (a) after commission of the offence has been proved the employer proves that the offence was due to the act or the default of that other person, that other person may be convicted of the offence; or
 - (b) the employer further proves that he has used all due diligence to ensure that he complied with the provisions of this Act, he shall be acquitted.
- (4) Where an employer seeks to rely on the provisions of subsection (2)—
- (a) the prosecution, as well as the person whom the employer claims to have committed the offence, shall have the right to cross-examine him if he gives evidence and to cross-examine any witnesses called by him in support of his case and to call rebutting evidence; and
 - (b) the court may make such order as it deems fit for the payment of costs by any party to the proceedings to any other party thereto.

(5) Where it appears to a labour officer that an offence has been committed in respect of which proceedings might be taken under this Part against an employer, and the officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of another person and that the employer could establish a defence under subsections (2) and (3), the officer may cause proceedings to be taken against that other person without first causing proceedings to be taken against the employer; and in any such proceedings the defendant may be charged with and, on proof that the offence was due to his act or default, be convicted of the offence with which the employer might have been charged.

54A. Establishment of an Inter-Ministerial Committee

(1) There is established an inter-ministerial Committee consisting of officers from—

- (a) the Ministry responsible for immigration;
- (b) the Ministry responsible for labour;
- (c) the Ministry responsible for security;
- (d) the Attorney-General; and
- (e) the Ministry responsible for foreign affairs.

(2) The officer from the Ministry responsible for labour shall be the chairperson of the Inter-ministerial Committee.

[Act No. 19 of 2014, s. 42.]

54B. Functions of the Inter-Ministerial Committee

The Inter-Ministerial committee shall be responsible for—

- (a) advising the Cabinet Secretary responsible for labour on matters related to work permits in relation with security issues; and
- (b) vetting the application for registration made by employment bureaus and agencies.

[Act No. 19 of 2014, s. 42.]

54C. Requirement for approval by the Inter-Ministerial Committee

Every employment bureau or agency shall be required to seek and obtain government approval prior to sending Kenyan Citizens for employment outside Kenya and for employment of foreigners within Kenya.

[Act No. 19 of 2014, s. 42.]

PART VII – EMPLOYMENT AGENCIES**55. Registration of employment agencies**

(1) The Director shall—

- (a) keep a register of employment agencies which have been registered under this Act; and
- (b) perform such other functions as are imposed or conferred upon the Director by this Act or any other written law.

(2) No person shall unless the person is registered under this Act—

- (a) carry out business as an employment agency; or
- (b) charge or recover any payment in connection with the procurement of employment through an employment agency.

[Act No. 12 of 2012, Sch.]

56. Application for registration

(1) An application for the registration of an employment agency shall be made to the Director in the prescribed form.

(2) The applications for registration made under subsection (1) shall be vetted by the Inter-Ministerial Committee established under section 54A.

(3) Upon an application made to the Director as specified in subsection (1), and after consultation with the Board, the Director shall grant the application and issue a certificate of registration to the applicant if satisfied that—

- (aa) the applicant has satisfied the vetting process under section 54A;
- (a) the applicant is qualified to own and manage an employment agency; and
- (b) the premises where the employment agency will carry out its business are suitable for use as an employment agency.

(4) The Director may have regard to any other relevant matters in deciding whether the application should be granted.

(5) The Director may refuse to grant an application made under this Act and give reasons for his refusal.

(6) A certificate of registration shall specify—

- (a) the name of the person to whom the certificate is issued;
- (b) the premises at which the business is to be conducted;
- (c) the period for which the certificate shall be in force;
- (d) the area, including any foreign country, in respect of which the business may be conducted;
- (e) the class or classes of person or employment in respect of which the business may be conducted; and
- (f) any conditions subject to which the business may be conducted.

(7) The Director may cancel the registration of an employment agency or vary the terms or conditions of any certificate of registration—

- (a) after due inquiry and for good cause, if the Director has notified the holder of the certificate of his intention to do so, and has given the holder the opportunity to make presentations to him, and has considered any representations which the holder has made; or
- (b) on the application of the holder of the certificate.

(8) Any person aggrieved by a decision of the Director made in the exercise of his functions under this section may appeal against such decision to the Industrial Court.

[Act No. 19 of 2014, s. 42.]

57. Duties of persons operating employment agencies

(1) Every person who operates or is in charge of an employment agency registered under this Act shall—

- (a) retain any record which, by regulations made under this Act, he is required to keep for a period of three years subsequent to the occurrence of the event recorded;
- (b) on demand by an employment officer made at any reasonable time during the period of three years specified in subregulation (3), produce the said record for inspection;
- (c) furnish to the Director such statistical information at such times and in such manner as may be prescribed.

(2) No person shall charge or receive in respect of anything done or to be done at an employment agency—

- (a) any fee or other payment or reward at a rate higher than that which may, from time to time, be prescribed for any particular area and class of business; or
- (b) any fee or other payment or reward, unless provision has been made for the charging of such fee, payment or reward in regulations made under this Act:

Provided that this subsection shall not apply to a business consultant carrying on business at the same place as an employment agency in respect of anything done in the course of such business other than the procurement of employment for clients.

58. Powers of employment officers

(1) An employment officer may, without notice and at any reasonable time during the day, enter upon any premises of an employment agency for the purpose of conducting any search therein where there are reasonable grounds for believing that such entry or search is necessary for the prevention, investigation or detection of an offence in terms of this Part.

(2) In the exercise of the powers conferred upon an employment officer by subsection (1), an employment officer may—

- (a) require a person conducting an employment agency to produce any books or documents which relate to his business and which are or have been in his premises or in his possession or custody, or under his control;
- (b) at any place require any person who has the possession, custody or control of any books or documents relating to the business of any person who is or was conducting an employment agency, to produce the books or documents;
- (c) examine and make extracts from, and copies of, any books or documents referred to in paragraph (a) or (b);

- (d) require an explanation of any entry in any books or documents referred to in paragraph (a) or (b); or
- (e) seize any book or document referred to in paragraph (a) or (b) that in his opinion, may afford evidence of the commission of an offence under this Act.

(3) An employment officer shall in the exercise of powers conferred by the subsection (2), exercise such reasonable care as to ensure that the smooth and efficient running of an employment agency is not unduly interfered with.

(4) Every employer whose premises are used as an employment agency, and every person employed by him, shall at all reasonable times during the day, furnish such reasonable facilities as may be required by an employment officer for entering the premises for the purpose of inspecting or examining the books and documents kept on the premises, or for making any inquiry in relation thereto.

(5) No person shall—

- (a) make a false statement—
 - (i) in any representation to an employment officer; or
 - (ii) when giving evidence to or before an employment officer investigating a case under this section which that person knows to be false in any material particular; or
- (b) refuse to answer any question which an employment officer, in the exercise of his functions under this section, asks him;
- (c) refuse to comply, to the best of his ability, with any requirement made by an employment officer in the exercise of his functions under this section; or
- (d) hinder an employment officer in the exercise of his functions under this section.

59. Offences

(1) A person who does not comply with—

- (a) any provision of this Part; and
- (b) the terms or conditions of any certificate of registration issued under section 56(2),

commits an offence.

(2) Notwithstanding subsection (1), nothing done to prevent any disruption in the smooth and efficient running of an employment agency shall be held to be in contravention of section 58(4).

60. Regulations

(1) The Minister may make regulations necessary for the purpose of giving effect to, or for the better administration, of this Part.

(2) Regulations made under subsection (1) may provide for—

- (a) the form in which an application is to be made for a certificate of registration;

- (b) the fee to be paid for a certificate of registration or copies thereof;
- (c) the fees which may be charged in respect of the business of an employment agency;
- (d) the surrender of certificates of registration where the conditions thereof are to be varied or where such certificates are to be cancelled;
- (e) the records to be kept in respect of an employment agency;
- (f) the qualification of the proprietor or persons running the employment agency; and
- (h) the nature and form of security to be given by the proprietor of the employment agency for any recruitment of employees under this Part.

PART VIII – MISCELLANEOUS PROVISIONS

61. General penalty

A person who contravenes any provision of this Act for which no penalty is specifically provided shall be liable to a fine not exceeding fifty thousand shillings or, to imprisonment for a term not exceeding three months, or to both.

62. Rules

(1) The Minister may, after consultation with the Board, make rules for the better carrying into effect of the provisions of this Act, and in particular but without prejudice to the generality of the foregoing may—

- (a) prescribe anything which under this Act is to be or may be prescribed; or
- (b) provide for the powers of a wages council to enforce the attendance of witnesses and to take evidence on oath or otherwise on any matter concerned with the subject of an inquiry under this Act;

63. Repeal of Cap. 229, transitional and savings provision

(1) The Regulation of Wages and Conditions of Employment Act (Cap. 229) is repealed.

(2) Any regulation or other instrument made or issued under the Regulation of Wages and Conditions of Employment Act (Cap. 229) shall continue to have effect as if such regulation or other instrument were made or issued under this Act.

(3) The persons who, at the commencement of this Act are Judges of the Industrial Court and members of the Industrial Court shall be deemed to have been appointed under this Act.

(4) For the greater certainty and subject to subsection (3), the persons referred to in subsection (3) shall have and may exercise and perform all the powers and functions of a judge or member of the Industrial Court as the case may be.

(5) Every person who at the commencement of this Act is an employee of the Industrial Court (not then being under notice of dismissal or resignation) shall, on that day and subject to this Act, be deemed to be an employee of the Industrial Court on the same terms and conditions.

64. Existing laws

Any written law relating to the regulation of labour matters shall have effect subject to modification as may be necessary to give effect to this Act, and where the provisions of any law conflict with the provisions of this Act, the provisions of this Act shall prevail.

SCHEDULE

[Section 6.]

**PROVISIONS RELATING TO THE CONDUCT
OF BUSINESS AND AFFAIRS OF THE BOARD****1. Tenure of office and conduct of business of the Board**

(1) The chairman of the Board shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(2) Other than *ex officio* members, a member of the Board shall, subject to the provisions of this section, hold office for a period not exceeding three years on such terms and conditions as may be specified in the instrument of appointment, and shall be eligible for re-appointment for one further term of three years.

(3) A member other than the chairman or an *ex officio* member may—

- (a) at any time resign from office by notice in writing to the minister;
- (b) be removed from office by the Minister if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairman;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) is convicted of an offence involving fraud or dishonesty;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;
 - (v) is incapacitated by prolonged physical or mental illness;
 - (vi) is found to have acted in a manner prejudicial to the aims and objectives of this Act;
 - (vii) fails to comply with the provisions of this Act relating to disclosure; or
 - (viii) is otherwise unable or unfit to discharge his functions as a member of the Board.

(4) The Minister may remove a member nominated by a federation of trade unions or employers only after consultations with the federation that nominated the member.

(5) If a member of the Board is removed under subsection (4), the Minister shall fill the vacancy from nominations submitted by the federation that made the initial nomination.

2. Meetings of the Board

(1) The Board shall meet no less than four times in every financial year, and no more than four months shall elapse between the date of one meeting and the date of the next meeting:

Provided that the chairman may call a special meeting of the Board at any time where the chairman deems it expedient for the transaction of the business of the Board.

(2) Other than a special meeting, or unless three quarters of members agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board by the Secretary.

(3) The quorum for the conduct of business of the Board shall be half of the members' and unless a unanimous decision is reached, decisions shall be by a majority vote of the members present, and in the case of an equality of votes, the chairman or the person presiding shall have a casting vote.

(4) The chairman shall preside over all meetings of the Board, in which the chairman is present, but in his absence, the vice-chairman shall preside, and in his absence the members present shall elect one of their number who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(5) At the first meeting of the Board, the members shall elect a vice-chairman, not being a public servant, from among its members.

3. Disclosure of interests

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at the meeting of the Board at which the contract, proposed contract or matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose that fact and shall be excluded at the meeting at which the contract, proposed contract or matter is being considered.

(2) A disclosure for interest made under this section shall be recorded in the minutes of the meeting at which it is made.

4. Board may regulate procedure

Save as provided in this Schedule, the Board may regulate its own procedure.
