

THE LABOUR RELATIONS ACT, 2007

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SCHEDULES

AN ACT of Parliament to consolidate the law relating to trade unions and trade disputes, to provide for the registration, regulation, management and democratisation of trade unions and employers organisations or federations, to promote sound labour relations through the protection and promotion of freedom of association, the encouragement of effective collective bargaining and promotion of orderly and expeditious dispute settlement, conducive to social justice and economic development and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I – PRELIMINARY

Short title.

1. This Act may be cited as the Labour Relations Act, 2007.

Interpretation.

2. In this Act, unless the context otherwise requires—

“authorised representative” means –

- (a) the general secretary of a trade union;
- (b) an employer or the chief executive officer of an employer;
- (c) the secretary of a group of employers;
- (d) the chief executive or association secretary of an employers’ organisation; or
- (e) any person appointed in writing by an authorised representative to perform the functions of the authorised representative.

“award” means an award made by the Industrial Court;

“Board” means the National Labour Board;

“collective agreement” means a written agreement concerning any terms and conditions of employment made between a trade union and an employer, group of employers or organisation of employers;

“Committee of Inquiry” means a Committee of Inquiry appointed by the Minister to inquire into any matter relevant to a trade dispute;

“contract of service” means any agreement, whether oral or in writing, expressed or implied, to employ or to serve as an employee in return for remuneration, and includes contract of apprenticeship and indentured learnership;

“conciliation” means the act or process of conciliating;

“contract of apprenticeship and learnership” means a contract of service where there is –

- (a) an obligation on the employer to take all reasonable steps to ensure that the employee is taught, and acquires the knowledge and skills of that industry, by means of practical training received in the course of the employee’s training and employment; and
- (b) a provision for formal recognition of the fact that the employee has acquired the knowledge and skills intended to be acquired where the employee has done so;

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

“employer” means any person, public body, firm, corporation or company, who or which has entered into a contract of service to employ any individual, and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

“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 matter” means a matter concerning any terms or conditions of, or affecting, employment;

“executive director” means the head of an employers’ organisation or employers’ federation;

“executive board” means the body, by whatever name called, to which the management of the affairs of a trade union is entrusted, and includes the chairman, the general secretary and the treasurer of any trade union;

“federation” means a federation of trade unions or a federation of employers;

“funds of a trade union” includes all funds received for and on behalf of a trade union with the exception of provident fund dues;

“general-secretary” means the national secretary of a registered trade union;

“group of employers” means two or more employers who voluntarily associate together for the purposes of negotiating with a trade union and who do not form an employers’ organisation;

“Industrial Relations Charter” means a tripartite agreement between the Government, the most representative employers’ organisation, and the most

representative employees organisation for the regulation of labour and industrial relations in Kenya.

“Judge” means a Judge of the Industrial Court;

“lock-out” means the closing of a place of employment, the suspension of work, or the refusal by an employer to continue to employ any number of employees –

- (a) for the purpose of compelling any employees of the employer to accept any demand in respect of a trade dispute; and
- (b) not for the purpose of finally terminating employment;

“Minister” means the Minister for the time being responsible for labour matters;

“officer” when used with reference to a trade union or employers’ organisation, means a person employed by that trade union or employers’ organisation;

“official” when used with reference to a trade union or employers’ organisation, means a duly elected official of a trade union or employers’ organisation including a member of the executive and a branch official;

“procedural agreement” means any agreement which sets out a dispute resolution procedure in that agreement;

“recognition agreement” means an agreement in writing made between a trade union and an employer, group of employers or employers’ organisation regulating the recognition of the trade union as the representative of the interests of unionisable employees employed by the employer or by members of an employers’ organisation;

“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 and the practice commonly known as abolition of office, job or occupation and loss of employment;

“registered employers’ organisation” means an employers’ organisation registered or deemed to be a registered employers’ organisation under this Act;

“registered office” means the registered head office of a trade union;

“registered trade union” means a trade union registered or deemed to be registered as a trade union under this Act;

“Registrar” means the Registrar of Trade Unions;

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

“strike” means the cessation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work for the purpose of compelling their employer or an employers’ organisation of which their employer is a member to accede to any demand in respect of a trade dispute;

“trade dispute” means a dispute or difference, or an apprehended dispute or difference, between employers and employees, between employers and trade unions, or between an employers’ organisation and employees or trade unions, concerning any employment matter, and includes disputes regarding the dismissal, suspension or redundancy of employees, allocation of work or the recognition of a trade union;

“trade union” means an association of employees

whose principal purpose is to regulate relations between employees and employers, including any employers' organisation;

“unionisable employee” in relation to any trade union means the employees eligible for membership of that trade union.

Application.

3. This Act shall not apply to any person in respect of his employment or service —

- (a) in the armed forces, or in any reserve force thereof;
- (b) in the Kenya Police, the Administrative Police Force, the Kenya Prisons Service and the National Youth Service, or in any reserve force or service thereof.

PART II – FREEDOM OF ASSOCIATION

Employee's right to freedom of association.

4.(1) Every employee has the right to -

- (a) participate in forming a trade union of federation of trade unions;
- (b) join a trade union; or
- (c) leave a trade union.

(2) Every member of a trade union has the right, subject to the constitution of that trade union to -

- (a) participate in its lawful activities;
- (b) participate in the election of its officials and representatives;
- (c) stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and

- (d) stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this Act or a collective agreement.

(3) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of that federation to -

- (a) participate in its lawful activities;
- (b) participate in the election of any of its office bearers or officials, and
- (c) stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office.

Protection of
employees.

5. (1) No person shall discriminate against an employee or any person seeking employment for exercising any right conferred in this Act.

(2) Without limiting the general protection conferred by sub-section (1), no person shall do, or threaten to do any of the following -

- (a) require an employee or a person seeking employment not to be or become a member of a trade union or to give up membership of a trade union;
- (b) prevent an employee or person seeking employment from exercising any right conferred by this Act or from participating in any proceedings specified in this Act;
- (c) dismiss or in any other way prejudice an employee or a person seeking

employment—

- (i) because of past, present or anticipated trade union membership;
- (ii) for participating in the formation or the lawful activities of a trade union;
- (iii) for exercising any right conferred by this Act or participating in any proceedings specified in this Act; or
- (iv) for failing or refusing to do something that an employee may not lawfully permit or require an employee to do.

(3) No person shall give an advantage, or promise to give an advantage, to an employee or person seeking employment in exchange for the person not exercising any right conferred by this Act or not participating in any proceedings in terms of this Act:

Provided that nothing in this section shall prevent the parties to a dispute from concluding an agreement to settle that dispute.

Employer's right to
freedom of
association.

6.(1) Every employer has the right to—

- (a) participate in forming an employers' organisation or a federation of employers organisation; and
- (b) subject to its constitution, join an employers organisation or a federation of employers' organisations.

(2) Every member of an employers' organisation has the right, subject to the constitution of that employers' organisation to—

- (a) participate in its lawful activities;
- (b) participate in the election of any of its office bearers or officials; and
- (c) stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office.

(3) Every employer, whether or not that employer is a member of an employers' organisation that is a member of a federation of employers organisations, has the right, subject to the constitution of that federation to -

- (a) participate in its lawful activities;
- (b) participate in the election of any of its office bearers or officials;
- (c) stand for election and be eligible for appointment as an office bearer or official; and
- (d) stand for election or seek appointment as an office bearer and if elected or appointed to hold office.

(4) An employer that is a juristic person may exercise the right to stand for election and hold office in an employer's organisation or federation of employers organisation through a representative.

Protection of
employers' rights.

7. (1) No person shall discriminate against an employer for exercising any right conferred by this Act.

(2) Without limiting the general protection conferred by sub-section (1), no person shall do, or threaten to do any of the following—

- (a) require an employer not to be or become a member of an employers' organisation or to give up membership of an employer organisation;
- (b) prevent an employer from exercising any right conferred by this Act or from participating in any proceedings specified in this Act;
- (c) in any way prejudice an employer:-
 - (i) because of past, present or anticipated employers' organisation membership;
 - (ii) for participation in the formation of the lawful activities of an employers' organisation;
 - (iii) for exercising any right conferred by this Act or participation in any proceedings specified in this Act; or
 - (iv) failing or refusing to do something that an employer may not lawfully do.

(3) No person shall give an advantage, or promise to give an advantage to an employer in exchange for the employer not exercising any right conferred by this Act or not participating in any proceedings provided for in this Act: Provided that, nothing in this section shall prevent the parties to a dispute from concluding an agreement to settle that dispute.

Rights of trade unions, employers' organisation and federations.

8. Every trade union , employers' organisation or federation has the right to—

- (a) subject to the provisions of this Act-
 - (i) determine its own constitution and rules; and

- (ii) hold elections to elect its officers;
- (b) plan and organise its administration and lawful activities;
- (c) participate in forming a federation of trade unions or a federation of employers organisations;
- (d) join a federation of trade unions or a federation of employers organisations, subject to its constitution, and to participate in its lawful activities; and
- (e) affiliate with, and to participate in the affairs of any international workers organisation or international employers organisation or the international labour organisation, and to contribute or receive financial assistance from those organisations.

Provision may not be varied by agreement.

9. A provision in any contract of employment or collective agreement, whether concluded before or after the commencement of this Act, that contradicts or limits any provision of this section is invalid, unless the contractual provision is expressly permitted by this Act.

Disputes under Part.

10. If there is a dispute about the interpretation or application of any provision of this Part, any party to the dispute may refer the dispute in writing—

- (a) to the Minister to appoint a conciliator as specified in Part VIII; or
- (b) if the dispute is not resolved at conciliation, to the Industrial Court for adjudication.

Burden of proof.

11. In any proceedings under this Act—

- (a) a party that alleges that a right or protection

conferred by this part has been infringed shall prove the facts of the conduct; and

- (b) the party who is alleged to have engaged in that conduct shall prove that their conduct did not infringe any provision of this Part.

PART III –ESTABLISHMENT AND REGISTRATION OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS

Establishment of a
trade union or
employers'
organisation.

12.(1) No person shall recruit members for the purpose of establishing a trade union or employers' organisation unless that person has obtained a certificate from the Registrar issued under this section.

(2) An application for the certificate referred to in subsection (1) shall—

- (a) be signed by two persons who are promoting the establishment of the trade union or employers' organisation;
- (b) specify the name of the proposed trade union or employers' organisation; and
- (c) contain any other prescribed information.

(3) The Registrar shall issue a certificate within thirty days of receiving an application unless –

- (a) the application is defective; or
- (b) the name of the proposed trade union or employers' organisation is the same as that of an existing trade union or employers' organisation or is sufficiently similar so as to mislead or cause confusion.

(4) A certificate issued under subsection (3) shall specify that—

- (a) the promoters may undertake lawful activities in order to establish a trade union or employers' organisation; and
- (b) an application for the registration of the trade union or employers' organisation shall be made to the Registrar within six months of the date of issue of the certificate.

(5) The Registrar may withdraw a certificate issued under this section if the Registrar has reason to believe that—

- (a) the certificate was obtained by fraud, misrepresentation or as a result of a mistake; or
- (b) any person has undertaken an unlawful activity, whether in contravention of this Act or any other law, on behalf of the proposed trade union or employers' organisation.

Application to register a trade union or employers' organisation.

13. A trade union or employers' organisation shall apply to the Registrar for registration within six months of receiving a certificate issued under section 12.

Requirements for registering a trade union.

14.(1) A trade union may apply for registration if—

- (a) the trade union has applied for registration in accordance with this Act;
- (b) the trade union has adopted a constitution that complies with the requirements of this Act, including the requirements set out in the First Schedule;
- (c) the trade union has an office and postal address within Kenya;
- (d) no other trade union already registered is—
 - (i) in the case of a trade union of employers or

of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or

- (ii) in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof:

Provided that the Registrar shall, by notice in the Gazette and in one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisation which appear to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing, within a period to be specified in the notice, any objections to the registration;

- (e) subject to subsection (2), only members in a sector specified in the constitution qualify for membership of the trade union;
- (f) the name of the trade union is not the same as that of an existing trade union, or sufficiently similar so as to mislead or cause confusion;
- (g) the decision to register the trade union was made at a meeting attended by the least fifty members of the trade union;
- (h) the trade union is independent from the control, either direct or indirect, of any employer or employers' organisations; and
- (i) the trade union's sole purpose is to pursue the activities of a trade union.

(2) Notwithstanding the provisions of subsection (1)(d), the Registrar may register a trade union consisting of persons working in more than one sector, if the Registrar is satisfied that the constitution contains suitable provisions to protect and promote the respective sectoral interests of the

employees.

Requirements for
registering
employers'
organisation.

15.(1) An employers' organisation may apply for registration if —

- (a) the employers' organisation has applied for registration in accordance with the requirements of this Act;
- (b) the employers' organisation has adopted a constitution that complies with the requirements of this Act, including the requirements of the First Schedule;
- (c) the employers' organisation has an office and postal address within Kenya;
- (d) no other employers' organisation already registered is-
 - (i) in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or
 - (ii) in the case of an association of trade unions, sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof.

Provided that the Registrar shall, by notice in the Gazette and in any one national daily newspaper with wide circulation, notify any registered trade union federation of trade unions or employers' organisation which appears to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union federation of trade unions or employers' organisation concerned to submit in writing within a period to be specified in the notice, any objections to the registration;

- (e) subject to subsection (2), the constitution of the employers' organisation specifies that only employers within a specified sector qualify for membership;
- (f) the name of the employers' organisation is not the same as that of an existing employers' organisation or sufficiently similar so as to mislead or cause confusion;
- (g) the decision to register was taken at a meeting attended by at least four members;
- (h) the employers' organisation is independent from the control, either directly or indirectly of any trade union or federation of trade unions;
- (i) the employers' organisation's primary purpose is to conduct the activities of an employer's organisation.

(2) Notwithstanding the provisions of subsection (1)(c), the Registrar may register an employers' organisation consisting of employers in more than one sector, if the Registrar is satisfied that the constitution contains suitable provision to protect and promote the respective sectoral interests of employers.

Requirements for
registering
federation of trade
unions.

16. The requirements for registration as federation of trade unions are—

- (a) the federation has applied for registration in accordance with this Act;
- (b) the federation has adopted a constitution that complies with the requirements of this Act;
- (c) the federation has an office and postal address in Kenya;

- (d) the constitution of the federation specifies that its members are registered trade unions only;
- (e) the federation was established at a meeting attended by the representatives of at least three registered trade unions with the mandate of their respective executive boards;
- (f) the name of the federation is not the same as one of an existing trade union or federation or sufficiently similar so as to mislead or cause confusion; and
- (g) the federation is independent from the control, either, directly or indirectly, of any employers' organisation or federation of employers.

Requirements for
registering a
federation of
employers.

17. The requirements for registration of a federation of employers are—

- (a) the federation has applied for registration in accordance with this Act;
- (b) the federation has adopted a constitution that complies with the requirements of this Act;
- (c) the federation has an office and postal address in Kenya;
- (d) the constitution of the federation specifies that its members are employers or registered employers' organisations;
- (e) any other trade union already registered is-
 - (i) in the case of a trade union of employers or of employees, sufficiently representative of the whole or of a substantial proportion of the interests in respect of which the applicants seek registration; or
 - (ii) in the case of an association of trade unions,

sufficiently representative of the whole or a substantial proportion of the trade unions eligible for membership thereof:

Provided that the Registrar shall, by notice in the Gazette and in any one national daily newspaper with wide circulation, notify any registered trade union, federation of trade unions or employers' organisation which appears to him to represent the same interest as the applicants of the receipt of such application and shall invite the registered trade union or federation of trade unions or employers' organisation concerned to submit, in writing within a period to be specified in the notice, any objections to the registration;

- (f) the federation was established at a meeting attended by the representatives of at least three members;
- (g) the name of the federation is not the same as one of an existing federation of employers or sufficiently similar so as to mislead or cause confusion;
- (h) it is independent from the control, either directly or indirectly of any trade union or federation of trade unions.

Application for
registration.

18.(1) An application to register a trade union, employers' organisation or federation shall be made to the Registrar in Form A set out in the Second Schedule, accompanied by—

- (a) the prescribed fee;
- (b) a certified copy of the constitution of the trade union or employers' organisation; and
- (c) a certified copy of the attendance register and minutes of the meeting at which the trade union, employers' organisation or federation was

established.

(2) An application to register a trade union shall be signed by seven members of the trade union.

(3) The Registrar may—

- (a) call for further information for the purposes of evaluating an application for registration; or
- (b) give an applicant for registration an opportunity to rectify the application within a period specified by the Registrar.

(4) If the proposed name of a trade union, employers' organisation or federation is the same or sufficiently similar to that of an existing organisation so as to mislead or cause confusion, the Registrar shall –

- (a) request the applicant for registration to alter the name of the trade union or employers' organisation or federation; or
- (b) not register the trade union, employers organisation or federation until a suitable alteration has been made.

Registration of trade unions, employers' organisation or federation.

19.(1) If the Registrar is satisfied, after consulting the Board, that a trade union, employers' organisation or federation that has applied for registration meets the requirements of the Act, the Registrar shall register that trade union, employers organisation or federation and shall—

- (a) issue a certificate of registration in Form B set out in the Second Schedule; and
- (b) enter the name and details of the trade union, employers' organisation or federation in the appropriate register in Form C set out in the Second Schedule.

(2) A certificate of registration issued under subsection (1) is conclusive evidence that the trade union, employers' organisation or federation has been duly registered under this Act unless it is proved that the certificate has been withdrawn or cancelled.

Refusal to register a trade union, employers' organisation, or federation.

20. If the Registrar is not satisfied that a trade union, employers' organisation or federation meets the requirements for registration and refuses the application for registration, the Registrar shall advise the trade union, employers' organisation or federation of the reasons for that refusal in Form D set out in the Second Schedule.

Effect of registration.

21. A trade union, employers' organisation or federation shall be registered as a body corporate—

- (a) with perpetual succession and a common seal;
- (b) with the capacity in its own name to—
 - (i) sue and be sued; and
 - (ii) enter into contracts; and
- (d) hold, purchase or otherwise acquire and dispose of movable and immovable property.

Objects in restraint of trade not unlawful.

22. A registered trade union, employers' organisation or federation is not an association in restraint of trade and its objects may not, by reason only that they are in restraint of trade—

- (a) be deemed to be unlawful so as to render any member of the trade union liable to criminal prosecution for conspiracy or otherwise; or
- (b) be unlawful so as to render void or voidable any agreement or trust.

Consequences of failure to register.

23.(1) No person shall perform any act in furtherance of a trade union or employers' organisation unless that trade union or employers' organisation—

(a) is registered under this Act; or

(b) an application for its registration is being considered.

(2) Notwithstanding the provisions of subsection (1), an employers' organisation or trade union may undertake activities in order to secure compliance with the requirements for registration if-

(a) the Registrar has issued a certificate specified under section 12; and

(b) less than six months have elapsed from the time the registrar issued a notice as requested under section 14.

(3) The provisions of this section do not apply to any activity undertaken for the purpose of -

(a) defending proceedings against a trade union or employers' organisations; or

(b) dissolving the trade union or employers' organisation and disposing of its funds in accordance with its rules.

(4) No person shall act or purport to act as an officer or official of a trade union or employer's organisation that is not registered or has had its registration cancelled.

Registered office.

24.(1) Every trade union, employers' organisation or federation shall—

(a) have a physical office and postal address to which all communication and notices may be addressed; and

(b) give notice of its physical office and postal address and of any change of office or address