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Mauritius: Act No. 9 of 1996; The Training and Employment of Disabled Persons Act 1996

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MAURITIUS

THE TRAINING AND EMPLOYMENT OF DISABLED PERSONS ACT 1996

Act No. 9 of 1996

I assent

C. UTEEM

23 May 1996

President of the Republic

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ENACTED by the Parliament of Mauritius, as follows -

1. Short title

This Act may be cited as the Training and Employment of Disabled Persons Act 1996.

2. Interpretation

In this Act -

"Board" means the Training and Employment of Disabled Persons Board established under section 3;

"disabled person" means a person

(a) with a physical, mental or sensory disability, including a visual, hearing or speech functional disability, which gives rise to barriers inhibiting him from participating at an equal level with other members of society in activities, undertakings or fields of employment that are open to other members of society; and

(b) who is willing and able to work

"employer" means any person who has in his regular employment 35 or more employees;

"exempt employer" means an employer who is exempt under section 13(7) from employing any disabled person but not from paying such contribution as may be directed under that section;

"member" means a member of the Board and includes the Chairperson;

"Minister" means the minister to whom responsibility for the subject of social security and national solidarity is assigned;

"suitable employment" means such employment as a disabled person may, having regard to his disability, be reasonably engaged in, and includes any work which a disabled person may, on a contract of service or for services, be called upon to perform at his residence or in any other premises.

3. Establishment of the Board

(1) There is established for the purposes of this Act, a Board to be known as the Training and Employment of Disabled Persons Board.

(2) The Board shall be a body corporate.

(3) The Board shall consist of the following members

(a) a Chairperson to be appointed by the minister;

(b) a representative of the Ministry of Social Security and National Solidarity;

(c) a representative of the Ministry for Civil Service Affairs.,

(d) a representative of the Industrial and Vocational Training Board;

(e) the Director of the Medical Unit of the Ministry of Social Security and National Solidarity.,

(j) a representative of the Ministry of Employment, Manpower Resources and Training;

(g) a representative of the Ministry of Industrial Relations;

(h) 4 persons appointed by the Minister to represent the interests of disabled persons;

(i) 2 representatives of employers to be appointed by the Minister.

(4) The Chairperson and the representatives of employers and disabled persons shall be appointed for such term as the Minister may determine.

(5) In the absence of the Chairperson from any meeting of the Board, the representative of the Ministry of Social Security and National Solidarity shall preside at that meeting and shall, in relation to that meeting, exercise the functions and have all the powers of the Chairperson.

(6) Seven members of the Board shall constitute a quorum.

(7) The Board may appoint such committees and co-opt such persons to such committees, as it may deem necessary.

(8) Subject to this section, the Board shall regulate its meetings and proceedings in such manner as it thinks fit.

(9) The members of the Board shall be paid such fees or allowances as the Minister may determine.

4. Functions of the Board

The functions of the Board shall be to

(a) prevent, as provided under section 16, discrimination against disabled persons resulting from or arising out of their disability;

(b) encourage the establishment of appropriate vocational centres and other institutions for the training of disabled persons;

(c) operate and encourage schemes and projects for the training and employment of disabled persons;

(d) improve generally the social and economic status and condition of disabled persons;

(e) perform such other functions, not inconsistent with this Act, as the Minister may, in writing, specify or approve.

5. General Fund

The Board shall establish a General Fund

(a) into which all money received by the Board shall be paid; and

(b) out of which all payments required to be made by the Board shall be effected.

6. General Manager

(1) The Board shall, with the approval of the Minister, appoint on such terms and conditions as it may think fit, a General Manager.

(2) The General Manager shall be entitled to attend every meeting of the Board and take part in its deliberations but shall not be entitled to vote on any matter before the Board.

(3) In the discharge of his functions, the General Manager shall act in accordance with such directions he may receive from the Board.

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(4) The General Manager shall be responsible for

(a) co-ordinating the activities of the Board with Ministries, local authorities, employers and any association or organisation of disabled persons or any other institution in order to implement the measures recommended by the Board;

(b) providing and encouraging the training of disabled persons;

(c) assisting disabled persons to secure employment;

(d) the financial management of the General Fund;

(e) such other activities, not inconsistent with this Act, as may be approved by the Board.

7. Appointment of Staff

(1) The Board may, with the approval of the Minister, employ, on such terms and conditions as it thinks fit, such staff as may be necessary for the proper discharge of its functions.

(2) All staff employed by the Board shall be under the administrative control of the General Manager.

8. Powers of the Minister

The Minister may give directions of a general character to the Board, not inconsistent with this Act, and the Board shall comply with such directions.

9. Execution of documents

All documents shall be deemed to be executed by or on behalf of the Board if signed by the Chairperson and the General Manager or, in his absence, any other member designated by the Board.

10. Establishment of registers

The Board shall establish and maintain

- (a) a register of disabled persons; and
- (b) a register of employers.

11. The register of disabled persons

- (1) Every disabled person may apply to have his name and particulars entered in the register of disabled persons.
- (2) Every applicant under subsection (1) may be required to attend such interview, medical examination and other assessment as the Board may consider necessary.
- (3) Where the Board is satisfied that the applicant is a disabled person, it shall direct that the name of the applicant and his particulars be entered in the register.
- (4) The Board may, at any time, delete, subject to section 15, the name of a person from the register where it is satisfied that the name has been entered by misrepresentation or through fraudulent means or where the person has ceased to be a disabled person, and shall inform the person concerned accordingly.

12. The register of employers

- (1) Every employer shall apply to have his name entered in the register of employers and specify, in the application
 - (a) his full name, residential address and social security number;
 - (b) the registered name and address of his organisation;
 - (c) the number of employees In his organisation;
 - (d) the number of disabled persons he employs or may employ;
 - (e) the nature or description of any employment which he is providing or may provide to disabled persons;
 - (f) the name, address and nature of disability of any disabled person employed by him.
- (2) Every applicant may be required to attend an interview for the purposes of this Act.
- (3) Where the Board is satisfied that the application complies with subsection (1), the Board shall direct that the name of the applicant and the particulars specified in the application be entered in the register.

13. Duty to employ disabled persons

(1) Subject to the other provisions of this section, every employer shall employ such number of disabled persons as is specified in the Schedule.

(2) The Board may summon any employer to show cause, on such date and at such time as may be specified, why he is not complying with subsection (1).

(3) Every employer who fails or is unable to comply with subsection (1), either wholly or in part, shall inform the Board of the reasons for such non-compliance.

(4) The Board may hold a hearing or may require any of its committees to hold a hearing for the purposes of this section and where it does require any of its committees to hold such a hearing, any recommendation made by that committee shall be communicated to and be deemed a decision of the Board.

(5) A proper record shall be kept of all proceedings under subsection (4).

(6) The Board or any committee under subsection (4) shall, after the completion of the hearing, determine whether the employer cannot reasonably be expected, having regard to the nature of his business, to provide suitable employment to or to create suitable employment opportunities for the employment of disabled persons.

(7) The Board may, after making a determination under subsection (6)

(a) give such directions to an employer as it may consider reasonable and proper in all the circumstances including a direction that the employer shall pay to the Board such contribution as may be prescribed; or

(b) exempt the employer from his obligation to employ disabled persons.

(8) The employer shall, subject to section 14, comply with any direction of the Board under subsection (7).

14. Duty to provide suitable employment

(1) No disabled person shall be employed on work which, having regard to the nature of his disability, is not suitable.

(2) Where any dispute arises as to whether any work is or is not suitable for a disabled person, the dispute may be referred by the disabled person or his employer to the Board for determination.

(3) The Board shall, on being requested to make a determination under subsection (2)

(a) hear the parties to the dispute and such other persons as it considers necessary and make its determination; or

(b) require any of its committees to hold such a hearing and make the determination.

(4) A proper record shall be kept of all proceedings held under subsection (3).

(5) Any determination made by the Committee under subsection (3)(b) shall be communicated to the Board and be deemed to be a determination of the Board.

(6) The Board shall inform the parties of its decision under subsections (3)(a) or (5).

15. Appeal

(1) Any disabled person or employer, as the case may be, who is aggrieved by

(a) the deletion of his name from the register, under section 11(4);

(b) a direction given by the Board under section 13(7); or

(c) a determination of the Board under section 14(3) or (5), may appeal, within 21 days of the notification of such cancellation, direction or determination, to the Judge in Chambers.

(2) The Judge in Chambers may, on an appeal, make such order as he thinks fit.

16. **Prohibition of discrimination**

(1) Subject to subsection (2), no employer shall discriminate against any disabled person in relation to

(a) any advertisement of employment;

(b) recruitment for and advancement in employment;

(c) determination or allocation of wages, salaries, pensions, leave or other such benefits;

(d) the provision of facilities related to or connected with any employment;

(e) any other matter related to employment.

(2) An employer shall not be deemed to have discriminated against a disabled person where

(a) the act or omission alleged to constitute the discrimination was not wholly or mainly attributable to the disability of the disabled person;

(b) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned;

(c) the employer has been exempted under this Act.

17. Donations and legacies

Article 910 of the Code Napoleon shall not apply to the Board.

18. Offences

(1) Any employer who

(a) fails to comply with any direction of the Board under section 13(7);

(b) discriminates against a disabled person;

(c) fails to register himself under this Act, shall commit an offence.

(2) Any person who

(a) commits an offence under this Act; or

(b) contravenes any regulations made under this Act, shall, on conviction, be liable to a fine not exceeding 4,000 rupees or to imprisonment for a term not exceeding 6 months.

19. Jurisdiction

Notwithstanding

a. section 114 of the Courts Act; and

b. section 72 of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall have jurisdiction to try all offences under this Act or any regulations made under this Act and may impose any penalty provided by this Act or by any regulations made under this Act.

20. Regulations

The Minister may make such regulations as he thinks fit for the purposes of this Act.

21. Repeals

The following enactments are repealed

(a) The Employment of Disabled Persons Act 1988;

(b) The Trust Fund for Disabled Persons Act 1988.

22. Transitional Provisions

(1) All the assets, rights and liabilities of the Fund shall vest in the Board.

(2) All proceedings, judicial or extra judicial, started by or against the Fund, shall be deemed to have been started by or against the Board.

(3) All employees of the Fund shall be deemed to have been transferred to the Board without losing their period of service and under the same terms and conditions of employment and any service with the Fund shall be deemed to be service with the Board.

(4) For the purposes of this section, "Fund" means the Trust Fund for Disabled Persons established under section 3 of the Trust Fund for Disabled Persons Act 1988.

23. Consequential amendments

(1) Subject to subsections (2) and (3), the Statutory Bodies (Accounts and Audit) Act is amended in Part 11 of the Schedule by

(a) deleting the words "Trust Fund for Disabled Persons";

(b) adding the following in its appropriate alphabetical place - Training and Employment of Disabled Persons Board

(2) For the purposes of the Statutory Bodies (Accounts and Audit) Act the period extending from the commencement of this Act to 30 June 1997 shall be deemed to be the first financial year of the Fund.

(3) Section 7(l) of the Statutory Bodies (Accounts and Audit) Act shall not apply in relation to the first financial year of the Fund.

(4) The auditor to be appointed under section 5(l) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

24. Saving

Notwithstanding the repeal of the "Employment of Disabled Persons Act 1988", any disabled person or employer who is registered under section 6 or 7 of that Act shall be deemed to have been validly registered under this Act.

25. Commencement

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on the second day of April one thousand nine hundred and ninety-six.