Tafsiri Nyepesi ya Sheria za Kazi - Tanzania

Sheria ya Majadiliano ya Utumishi wa Umma Na. 19 ya 2003

Sheria ya Ajira na Mahusiano Kazini Na. 6 ya 2004

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Katika kitabu kilichotangulia cha "Mtaala ya Elimu kwa Vyama vya Wafanyakazi, kulikuwa na sura ya Sheria za Kazi. Sheria hizi ambazo ni mpya inabidi zieleweke katika matumizi yake. Hivyo basi baada ya kuutumia mtaala huo, wadau ambao ni wanachama wa Vyama vya Wafanyakazi walipendekeza kuwa Sheria hizo zitafsiriwe katika namna ambayo itawezesha matumizi yake kuwa rahisi.

Kazi hii ambayo imechukua muda wa miezi tisa imetokana na mashauriano, na majaribio katika warsha mbalimbali.

Ni mategemeo yetu kwamba mchango huu utasaidia kukikidhi kiu ya elimu kwa ajili ya wanachama wa Vyama vya Wafanyakazi - Tanzania na wale wote wenye kuhitaji kuelewa Sheria hizi za Kazi zinavyotumika au zinavyoweza kutumika.

Nawatakia matumizi mema.

Peter Haeussler
Mkurugenzi Mkazi
Friedrich Ebert Foundation

December, 2009

SURA YA KWANZA

UTANGULIZI

Sheria ya Ajira na Uhusiano Kazini ya mwaka 2004, iliyoanza kutumika tarehe 05/01/2007 ni matokeo ya mabadiliko ya sheria za kazi, yaliyotokana na sababu mbalimbali; ikiwa ni pamoja na:-

(a) Mabadiliko ya mfumo wa uchumi (uchumi wa soko)
(b) Utandawazi
(c) Mabadiliko ya siasa kutoka Chama kimoja kwenda vyama vingi vya siasa
(d) Haja ya kuwa na vyama huru vya wafanyakazi
(e) Kuzingatiwa kwa mapatano ya ILO
(f) Mapungufu ya sheria zilizokuwepo

Wafanyakazi wanaohusika na Sheria hii

Sheria hii inawahusu wafanyakazi wote walioajiriwa Tanzania Bara isipokuwa walioajiriwa katika utumishi wa:-

(a) Jeshi la Wananchi wa Tanzania
(b) Polisi
(c) Magereza
(d) Jeshi la Kujenga Taifa

Madhumuni ya Sheria

Madhumuni ya Sheria ni:

(a) Kukuza uchumi kwa kuongeza ufanisi, tija na haki ya jamii.
(b) Kuwa na mfumo wa sheria utakaohakikisha kuwapo uhusiano wenye ufanisi na wa haki katika ajira. Pamoja na kuweka viwango vya chini vya masharti ya kazi.
(c) Kuwa na mfumo wa sheria utakaowezesha kufanyika majadiliano ya pamoja baina ya vyama vya Wafanyakazi na Waajiri au Jumuiya za Waajiri.
(d) Kuthibiti matumizi ya mgomo na kufungia nje kama njia ya utatuzi wa migogoro ya kazi.
(e) Kuwa na mfumo wa utatuzi wa migogoro kwa njia ya usuluhishi, uamuzi na mahakama.
(f) Kuingiza haki za kikatiba zinazohusiana na ajira katika sheria.
(g) Kuzingatia mapatano ya ILO kwa kuyaingiza katika sheria.

SURA YA PILI

ASASI ZA KAZI

Asasi za kazi zimeanzishwa kwa mujibu wa Sheria za Asasi za Kazi, 2004 kila moja ikiwa na majukumu yake ya ushauri, usimamizi, kuzuia na kutatua migogoro ya kazi. Asasi hizo ni:-

(a) Baraza la kazi, uchumi na jamii (BARAZA)
(b) Tume ya Usuluhishi na Uamuzi (TUME)
(c) Kamati ya Huduma Muhimu (KAMATI)
(d) Bodi za Ujira (BODI)
(e) Usimamizi wa kazi na Ukaguzi (IDARA YA KAZI)
(f) Mahakama ya kazi

BARAZA

Muundo wa Baraza

Baraza linaundwa na Wajumbe 17, Mwenyekiti, Wajumbe wanne wanaowakilisha Wafanyakazi, Wajumbe wanne wanaowakilisha Waajiri, Wajumbe wanne wanaowakilisha Serikali na Wataalam wanne, wawili upande wa Wafanyakazi na wawili upande wa Waajiri.

Kazi za Baraza

Kazi za Baraza ni kuishauri Serikali kuhusu masuala yote yanayohusu Kazi, Uchumi na Jamii kama vile ukuzaji uchumi Sera za Soko la Ajira, mabadiliko ya Sheria za kazi n.k.

Muda wa Wajumbe kukaa madarakani

Wajumbe watakaa madarakani kwa kipindi cha miaka mitatu na wanaweza kuteuliwa tena.

TUME

Tume ya Usuluhishi na Uamuzi ni Idara huru ya Serikali, ambayo kazi yake ni kusuluhisha na kuamua migogoro ya kazi. Tume pia inaweza kutoa ushauri na mafunzo kuhusu mbinu za kuzuia na kutatua migogoro, kusimamia uchaguzi wa Vyama vya Wafanyakazi na Jumuiya za Waajiri n.k.

Mamlaka ya Wasuluhishi na Waamuzi

Wasuluhishi na Waamuzi wana mamlaka ya:-

(a) Kumwita shaurini mtu yeyote kwa ajili ya kumuhoji au kuhudhuria shauri iwapo itaona mtu huyo ni muhimu katika kutatua mgogoro.
(b) Kumwita mtu yeyote anayehodhi nyaraka au kitu chochote kinachohusika katika utatuzi wa mgogoro ili ahojiwe kuhusu nyaraka au kitu hicho au akiwasilishe mbele ya Tume
(c) Kuapisha, kupokea uthibitisho kutoka kwa mashahidi.
(d) Kumuhoji mtu yeyote kuhusu jambo lolote linalohusiana na mgogoro.

KAMATI

Kamati ya Huduma Muhimu ni sehemu ya Tume, na inaundwa na wajumbe watano wenye elimu, maarifa na uzoefu wa Sheria za Kazi na uhusiano kazini. Kazi za kamati ni:-

(a) Kubainisha na kutaja huduma muhimu kwa mujibu wa Sheria
(b) Kuamua migogoro inayohusiana na huduma muhimu

Kamati ina mamlaka ya:-

(a) Kumuita shaurini mtu yeyote kwa ajili ya kumuhoji, iwapo kuhudhuria kwake ni muhimu kuisaidia Kamati kutekeleza majukumu yake.
(b) Kumuita mtu yeyote anayehodhi nyaraka au kitu chochote kinachohusiana na kazi za Kamati ili ahojiwe kuhusu nyaraka au kitu hicho au akiwasilishe mbele ya **K**amati.
(c) Kuapisha, kupokea uthibitisho kutoka kwa mashahidi.
(d) Kumuhoji mtu yeyote kuhusu jambo lolote linalohusiana na kazi za **K**amati.

BODI

Bodi ya ujira zinaweza kuteuliwa kwa kuzingatia sekta au eneo. Bodi za ujira zinateuliwa na Waziri. Bodi za ujira zinaundwa na Wajumbe nane kwa kuzingatia utatu.

Kazi za Bodi ni:-

(a) Kufanya uchunguzi kuhusu kima cha chini cha mshahara na masharti ya ajira
(b) Kusaidia kuanzisha na kukuza majadiliano ya pamoja baina ya Vyama vya Wafanyakazi na Waajiri
(c) Kutoa mapendekezo kwa Waziri kuhusu kima cha chini cha mshahara na masharti ya ajira.

Mamlaka ya Bodi

(a) Kumhoji mtu ambaye anaweza kutoa taarifa kuhusiana na uchunguzi inaoufanya
(b) Kumtaka mtu yeyote kwa maandishi kutoa taarifa, nyaraka, kitabu au kitu chochote kitakachosaidia uchunguzi
(c) Kuitisha mikutano ya hadhara
(d) Kuwezesha majadiliano ya pamoja kuhusu kima cha chini cha mshahara baina ya Vyama vya Wafanyakazi na Waajiri au Jumuiya za Waajiri.

Taarifa ya Bodi

Bodi ikishamaliza uchunguzi wake itatoa taarifa yake kwa Waziri ikionyesha

(a) Ung'amuzi wa Bodi
(b) Mapendekezo kuhusu

    (i) Kima cha chini cha mshahara katika sekta au eneo husika
    (ii) Masharti yoyote maalum ya ajira katika sekta au eneo husika.

Agizo au Tamko la Ujira

Agizo au Tamko la ujira likitolewa na Waziri linabana Waajiri na Wafanyakazi katika sekta au eneo husika kuzingatia na linakuwa sehemu ya viwango vya ajira.

IDARA YA KAZI

Idara ya Kazi inaongozwa na Kamishna wa Kazi na Naibu wake ambao uteuzi wao unafanywa na Rais, wakiwa na jukumu la kusimamia utekelezaji wa Sheria za Kazi.

Chini yao wapo Makamishna wa Kazi wasaidizi watatu wanaoongoza Idara ya Uhusiano Kazini, Ukaguzi wa Kazi na Hifadhi ya Jamii. Na mwisho ni Maafisa wa Kazi.

Mamlaka ya Maafisa wa Kazi

Maafisa wa kazi wanayo mamlaka ya kuingia eneo la mwajiri kufanya ukaguzi, upekuzi, kukamata nyaraka, kuchukua sampuli, vipimo, kupiga picha, kumhoji mtu yeyote, kufungua mashitaka Mahakamani dhidi ya mtu anayekiuka Sheria za Kazi na kuendesha mashitaka kwa jina la Kamishna.

Amri ya Kuzingatia Sheria

Afisa wa Kazi anaweza kutoa amri ya kumtaka mwajiri azingatie Sheria za Kazi endapo atabaini mwajiri anakiuka Sheria za Kazi.

MAHAKAMA YA KAZI

Mahakama ya Kazi ni Divisheni ya Mahakama Kuu ya Tanzania. Mahakama itakuwa imetimia kwa ajili ya kusikiliza shauri iwapo Jaji atakuwa amekaa na waungwana washauri wa Mahakama wawili. Hata hivyo Jaji atakaa peke yake wakati wa:-

(a) Kusikiliza maombi
(b) Wadaawa wakiamua washauri wasiwepo
(c) Iwapo ni muhimu kwa utatuzi wa haraka wa mgogoro

Uwakilishi

Wadaawa wanaweza kuwakilishwa mbele ya Mahakama na:-

(a) Ofisa wa Chama cha Wafanyakazi, Jumuiya ya Waajiri; au
(b) Wakili; au
(c) Mtu yeyote wa chaguo lao

Rufaa

Rufaa dhidi ya uamuzi wa Mahakama ya Kazi zitapelekwa Mahakama ya Rufaa ya Tanzania kwa masuala ya kisheria tu.

SURA YA TATU

KINGA ZA MSINGI

Sheria imeweka kinga maalum za msingi ili kuhakikisha mazingira ya kazi yanakuwa ya staha na heshima kwa kukataza ajira ya mtoto, ajira ya shuruti na kupiga marufuku ubaguzi katika ajira. Makatazo haya yanawahusu pia, Jeshi la Wananachi wa Tanzania, Polisi, Magereza na Jeshi la Kujenga Taifa.

Katazo la ajira ya mtoto

Ni marufuku kuajiri mtoto mwenye umri chini ya miaka kumi na nne. Mtoto mwenye umri wa miaka kumi na nne anaweza kuajiriwa kufanya kazi nyepesi, ambazo hazihatarishi au kuathiri afya yake, makuzi yake, mahudhurio shuleni au katika mafunzo, maadili n.k.

Hairuhusiwi kumuajiri mtoto mwenye umri chini ya miaka kumi na nane kufanya kazi katika migodi, viwanda na kwenye reli. Hata hivyo mtoto huyo anaweza kufanya kazi katika sehemu hizo kama sehemu ya mafunzo kwa vitendo chini ya usimamizi maalum.

Katazo la ajira ya shuruti

Hairuhusiwi kumshurutisha, au kumlazimisha mtu kufanya kazi pasipo ridhaa yake. Kazi za shuruti zinajumuisha pia kazi ambazo mtu hulazimika kufanya kulipia deni, kufanya akiwa amefungiwa au anazolazimika kuzifanya baada ya kupewa vitisho mbalimbali ikiwa ni pamoja na kitisho cha kuadhibiwa. Hata hivyo kazi zifuatazo sio kazi za shuruti:

(a) Kazi za kijeshi kwa mujibu wa sheria ya ulinzi wa taifa
(b) Majukumu ya kawaida ya raia
(c) Kazi katika kutekeleza hukumu au amri ya mahakama chini ya usimamizi wa mamlaka za serikali.
(d) Kazi wakati wa hali ya hatari au majanga.
(e) Kazi za jamii ambazo jamii yenyewe wamekubaliana kidemokrasia kuzifanya.

Katazo la ubaguzi

Waajiri wanakatazwa kuwabagua wafanyakazi wao kwa namna yoyote ile kwa misingi ya rangi, utaifa, kabila au sehemu ya asili atokapo mtu, mbali, utaifa wa asili, daraja la mtu katika jamii, itikadi ya siasa au imani ya kidini, jinsi, jinsia, ujauzito, hadhi ya ndoa au majukumu ya kifamilia, umri na ukimwi. Unyanyasaji ni ubaguzi pia. Hata hivyo sio ubaguzi:-

(a) Kutoa upendeleo maalum kwa madhumuni ya kuleta usawa na kuondoa ubaguzi mahali pa kazi.
(b) Kumtofautisha, kumuondoa au kumpendelea mtu kutokana na mahitaji ya kazi.
(c) Kuajiri raia kwa mujibu wa sheria.

Waajiri ni lazima watengeneze mpango maalum unaoonyesha namna wanavyotoa fursa sawa na kuondoa ubaguzi mahali pa kazi na kuusajili mpango huo kwa Kamishna wa Kazi.

Ni marufuku kwa vyama vya wafanyakazi, Jumuiya za Waajiri kufanya ubaguzi katika:-

(a) Kuingiza wanachama, kuwakilisha wanachama na kusitisha uanachama;
(b) Sera na mazoea ya ajira;
(c) Makubaliano ya pamoja.

SURA YA NNE

VIWANGO VYA AJIRA.

Viwango vya ajira ni masharti ya msingi katika ajira ambayo kila mwajiri anapaswa kuzingatia. Madhumuni ya kuwekwa viwango vya ajira ni kuwalinda wafanyakazi wasiingie katika mikataba ya ajira isiyo ya haki. Viwango hivi vinaweza kuboreshwa kupitia mkataba binafsi au makubaliano ya pamoja.

Mkataba wa Ajira

Msingi wa uhusiano wa kiajira baina ya mfanyakazi na mwajiri ni mkataba wa ajira. Mkataba wa ajira unaweza kuwa wa mdomo au wa maandishi. Ili kuhakikisha mambo ya msingi yanawekwa wazi Sheria inamtaka mwajiri kumpa mfanyakazi maelezo ya ajira yake kwa maandishi baada ya siku sita kuanzia siku ambayo mfanyakazi aliajiriwa, isipokuwa pale ambapo mfanyakazi amepewa mkataba wa maandishi ukiainisha waziwazi mambo hayo. Maelezo hayo ni haya yafuatayo:

a) Jina, umri, anuani na jinsi ya mfanyakazi.

b) Mahali pa kuajiriwa.

c) Kazi za kufanya

d) Tarehe ya kuanza kazi

e) Aina ya muda wa mkataba

f) Mahali pa kazi

g) Saa za Kazi

h) Ujira na marupurupu.

Maelezo haya ni lazima yaeleweke vizuri kwa mfanyakazi. Mabadiliko yoyote ya maelezo ya ajira ni lazima yafanyike baada ya mwajiri kushauriana na mfanyakazi na kumpa taarifa ya mabadiliko hayo kwa maandishi.
Maelezo haya ni lazima yaeleweke vizuri kwa mfanyakazi. Mabadiliko yoyote ya maelezo ya ajira ni lazima yafanyike baada ya mwajiri kushauriana na mfanyakazi na kumpa taarifa ya mabadiliko hayo kwa maandishi.

Aina za Mikataba ya Ajira

Sheria ya Ajira na Uhusiano Kazini imeigawa mikataba ya ajira katika aina kuu tatu: Mikataba isiyokuwa na Muda Maalum, Mikataba ya Muda Maalum na Mikataba ya Kazi Maalum.

- **Mikataba Isiyokuwa na Muda Maalum**
  Mkataba usiokuwa na muda maalum ni mkataba ambao ukomo wa ajira haujatajwa waziwazi. Chini ya mkataba huu mfanyakazi anweza kuendelea na kazi mpaka kufikia umri wa kustaafu endapo haitatokea sababu yoyote ya kusitisha ajira kabla ya umri huo wa kustaafu.

- **Mkataba wa Muda Maalum**
  Mkataba wa Muda Maalum ni mkataba ambao kipindi cha ajira kimewekwa wazi na tarehe ya ukomo wa ajira ipo wazi na inajulikana. Hata hivyo Sheria imeeleza wazi kuwa aina hii ya mkataba itawahusu waledi na wafanyakazi wa kada ya uongozi.

- **Mkataba wa Kazi Maalum**
  Mkataba wa Kazi Maalum ni aina nyingine ya mkataba wa muda maalum ambao muda wake hutegemea kumalizika kwa kazi na malipo hufanyika kwa siku au baada ya kumalizika kwa kazi husika.

- **Wafanyakazi wasio na Mikataba inayoeleweka**
  Waajiri wengi katika kukwepa haki za Kisheria za Wafanyakazi, huwafanyisha kazi wafanyakazi katika mtindo ambao uhusiano wa kiajira hauwekwi wazi. Kwa kuzingatia hali hiyo Sheria imeweka dhana inayokanushika na kuainisha vigezo ambavyo vikiwepo itachukuliwa kuwa uhusiano baina ya watu hao, anayefanya kazi na anayefanyiwa kazi ni uhusiano wa kiajira. Vigezo hivyo ni:

- Namna ya ufanyaji kazi wa mtu huyo unasimamiwa na ni kwa maelekezo ya mtu mwingine.

- Saa za kazi za mtu huyo zinasimamiwa na ni kwa maelekezo ya mtu mwingine.

- Kwa mtu anayefanya kazi katika Shirika, mtu huyo ni sehemu ya Shirika.

- Mtu huyo amefanya kazi kwa mtu mwingine kwa wastani wa angalau saa 45 kwa mwezi katika kipindi cha miezi mitatu iliyopita.
- Mtu huyo anamtegemea kiuchumi mtu anayemfanyia kazi au kumtolea huduma.
- Mtu huyo anapatiwa vitendea kazi na mtu mwingine.
- Mtu huyo anafanya kazi au kutoa huduma kwa mtu mmoja tu.

Kuwepo kwa vigezo hivyo kunamaanisha kwamba mfanyakazi anachukuliwa kuwa ni mwajiriwa mpaka hapo itakapothibitika vinginevyo.

SAA ZA KAZI

Matumizi

Wafanyakazi wanaosimamia na kuongoza wafanyakazi wengine kwa niaba ya mwajiri au mfanyakazi ambaye anaripoti moja kwa moja kwa kiongozi mwandamizi hawahusiki na kiwango cha saa za kazi.

Saa za kazi za kawaida

Saa za kazi za kawaida kwa mfanyakazi kufanya kazi ni saa 9 kwa siku na saa 45 kwa wiki.

Siku za Kawaida za Kazi

Siku za kawaida za kazi ni sita. Kwa kuzingatia ukomo wa saa 45 kwa wiki, ni dhahiri kuwa iwapo mfanyakazi anafanya kazi saa 9 kwa siku atafanya kazi siku 5 katika wiki na yule anayefanya kazi saa 8 kwa siku ndiye atafanya kazi siku 6 kwa wiki.

Hata hivyo mfanyakazi anayefanya kazi saa 9 kwa siku anaweza kufanya kazi siku ya sita ambayo itakuwa ni saa za ziada.

Saa za Ziada

Kazi katika saa za ziada zitafanyika kwa makubaliano. Kwa msingi huo ili mfanyakazi afanye kazi saa za ziada ni lazima yawepo makubaliano, na makubaliano hayo yahakikishe saa za ziada hazizidi tatu (3) kwa siku na saa 50 katika mzunguko wa wiki.

Mfanyakazi atakayefanya kazi saa za ziada anastahili kulipwa 1.5 ya mshahara wake wa saa kwa kila saa ya ziada aliyofanya kazi.

Mfano
Mshahara wa James ni sh. 150,000/= kwa mwezi. James amefanya saa za ziada 30 katika mwezi. Je! James atapata shilingi ngapi katika mwezi huo?

Atapata

1: Mshahara wa saa:

$$= \frac{150{,}000}{4.333 \times 45}$$

$$= \frac{150{,}000}{195} \quad = 769/20$$

2: Saa za Ziada:

$$= \quad 769.20 \times 1.5 \times 30 \quad = 34{,}614$$

James atapata Tsh. 150,000/= + 34,614/= = 184,614/=

Kazi za Sikukuu

Mfanyakazi atakayefanya kazi siku za sikukuuu anastahili kulipwa mara mbili ya mshahara wake saa kwa kila saa aliyofanya kazi siku ya sikukuu.

Mfano:

Je! Endapo James alifanya pia saa 8 siku ya Sikukuu katika mwezi huo atalipwa sh. Ngapi?

$$769.20 \times 2 \times 8 = \quad 12{,}307.20$$

Katika mwezi huo James atapata:

=	Mshahara	150,000/=
=	Saa za Ziada	34,614/=
=	Saa za Siku ya Sikukuu	12,307.20
	JUMLA	**196,921.20/=**

Wiki ya kazi nyingi:
Kwa makubaliano maalum, mfanyakazi anaweza kufanya kazi kwa saa 12 kwa siku bila kulipwa malipo ya saa za ziada, ili mradi mfanyakazi huyo asifanye kazi kwa zaidi ya saa 45 kwa wiki na si zaidi ya siku 5 kwa wiki na si zaidi ya saa za ziada 10 kwa wiki.

Mfano
Mfanyakazi anaweza kufanya kazi kwa utaratibu ufuatao katika wiki.

=	Jumatatu	Saa 12
=	Jumanne	Saa 12
=	Jumatano	Saa 12
=	Alhamisi	Saa 9
	JUMLA	**Saa 45**

Endapo watafanya kazi na saa za ziada basi itabidi wafanye kazi kwa utaratibu ufuatao:

=	Jumatatu	Saa 12
=	Jumanne	Saa 12
=	Jumatano	Saa 12
=	Alhamisi	Saa 12
=	Ijumaa	Saa 7
	JUMLA	**Saa 55**

* Alhamisi kuna saa 3 za ziada na Ijumaa saa zote 7 ni za ziada.

Kuwastanisha muda wa kazi

Kwa makubaliano ya pamoja baina ya Chama cha Wafanyakazi na mwajiri muda wa kazi unaweza kupangwa kutegemea mahitaji ya mwajiri na bila kujali kizuizi cha muda wa kazi wa saa 12 kwa siku. Mfanyakazi katika utaratibu huu atafanya kazi kwa muda usiozidi saa 40 kwa wiki na saa za ziada zisizozidi 10 kwa wiki.

Makubaliano hayo ya pamoja yanapaswa yasizidi mwaka mmoja. Chini ya utaratibu huu muda wa kazi unaweza kutofautiana katika wiki mbalimbali ili mradi saa za kufanya kazi zisizidi ukomo uliowekwa kisheria.

Mfano

Chama cha Wafanyakazi na Mwajiri wanaweza kukubaliana kuwastanisha muda kwa kipindi cha miezi sita. Hivyo basi muda wa kazi kwa kipindi cha miezi hiyo sita kitakuwa saa za kazi za kawaida x wiki 4 x miezi 6

= 40 x 4 x 6 = 960

Kwa hiyo Mwajiri anaweza kupanga muda wa kazi kulingana na mahitaji yake ndani ya mzunguko wa miezi sita kwa kuwataka wafanyakazi wafanye kazi kwa muda mrefu katika baadhi ya wiki na muda mfupi katika baadhi ya wiki. Kitu cha msingi ni kuhakikisha wafanyakazi hawafanyi kazi kwa zaidi ya saa za kawaida 40 kwa wiki na saa za ziada 10 kwa wiki.

Kazi za Usiku

Kazi za usiku ni zile zinazofanyika baada ya saa mbili kamili usiku na kabla ya saa 12 kamili alfajiri.

Hairuhusiwi kwa Mwajiri kuwataka au kuwaruhusu kufanya kazi usiku wafanyakazi wafuatao:

(a) Wajawazito ambao wamebakiza miezi miwili (2) kabla ya tarehe wanayotarajia kujifungua au kabla ya hapo kwa ushauri wa Daktari.

(b) Wazazi miezi miwili (2) baada ya kujifungua au zaidi ya hapo kwa ushauri wa Daktari.

(c) Watoto wenye umri chini ya miaka kumi na nane (18).

(d) Mfanyakazi yeyote mwenye uthibitisho toka kwa Daktari kuwa hawezi kufanya kazi usiku.

Mfanyakazi aliyefanya kazi usiku anastahili kulipwa posho ya kufanya kazi usiku ya angalau asilimia tano (5%) ya mshahara wake wa saa kwa kila saa aliyofanya kazi usiku.

Mfanyakazi mshahara wake ni Tsh. 150,000/= kwa mwezi amefanya kazi usiku kwa siku tano katika mwezi na katika kila siku aliyofanya kazi usiku alifanya kazi kwa saa nane.

Je! Atapata shilingi ngapi posho ya kufanya kazi usiku?

1: Tafuta mshahara wa saa:

$$= \frac{150{,}000}{4.333 \times 45}$$

$$= \frac{150{,}000}{195} = 769/20$$

2: Tafuta Saa alizofanya kazi usiku:

= Saa 8 x 5 = 40

3: Tafuta Posho ya Usiku:

$$= \frac{769/20 \times 40 \times 5}{100} = 1{,}538.40$$

Mapumziko ya Siku

Mwajiri ni lazima ampe mfanyakazi mapumziko ya angalau saa 12 mfululizo kati ya muda anaomaliza kazi na muda atakaoanza kazi siku inayofuata.

Muda wa mapumziko unaweza kupungua hadi kufikia saa 8 kwa makubaliano ya maandishi pale ambapo mfanyakazi atapata mapumziko ya angalau saa 3 katikati ya saa za kazi za kawaida au pale ambapo mfanyakazi anaishi katika eneo la kazi.

Mapumziko ya Wiki

Mwajiri ni lazima ampe mfanyakazi mapumziko ya angalau saa 24 mfululizo kati ya siku ya kawaida ya mwisho katika wiki na siku ya kwanza ya kazi ya kawaida ya wiki inayofuatia.

Muda huu wa mapumziko unajumuisha Jumapili isipokuwa pale ambapo kuna makubaliano yanayoelekeza vinginevyo.

Kwa makubaliano ya maandishi muda wa mapumziko ya wiki unaweza kuongezwa hadi kufikia saa 60 mfululizo kila baada ya wiki mbili au muda wa mapumziko kupunguzwa hadi kufikia saa 8 katika wiki yoyote iwapo muda wa mapumziko katika wiki inayofuata utaongezwa kwa kiwango sawa.

Mfanyakazi atafanya kazi siku ya mapumziko kwa makubaliano na mwajiri ni lazima amlipe mara mbili ya mshahara wake wa saa kwa kila saa atakayofanya kazi siku ya mapumziko.

Mapumziko ya Chakula

Mwajiri ni lazima ampe mfanyakazi mapumziko ya angalau dakika sitini (60) mfululizo kwa ajili ya kupata chakula pale mfanyakazi anapofanya kazi mfululizo kwa kipindi kisichopungua saa tano (5).

Wakati wa mapumziko kwa ajili ya chakula mfanyakazi anaweza kuendelea na kazi iwapo kazi hiyo haiwezi kuachwa au kufanywa na mtu mwingine na anapaswa kulipwa.

UJIRA

Mfanyakazi anastahili kulipwa mshahara usiopungua kima cha chini cha mishahara kilichopangwa kisheria.

Mshahara utapangwa kwa kuzingatia saa za kazi za kawaida na kwa msingi wa jedwali la pili la sheria;

(a) Mshahara wa mwezi gawa kwa 4.333 ni sawa na mshahara wa wiki.

(b) Mshahara wa wiki gawa kwa saa za kazi za kawaida katika wiki ni sawa na mshahara wa siku.

(c) Mshahara wa siku gawa kwa saa za kazi za kawaida katika siku ni sawa na mshahara wa saa.

(d) Endapo mfanyakazi analipwa mshahara kwa vigezo vingine tofauti na kigezo cha saa za kazi, itachukuliwa kuwa mfanyakazi huyo analipwa mshahara kwa wiki kwa utaratibu ufuatao:

(i) Jumla ya kiasi alicholipwa katika kipindi cha wiki 13 kabla ya siku ya malipo gawa kwa 13; au

(ii) Kama amefanya kazi pungufu ya wiki 13, jumla ya kiasi alicholipwa gawa kwa wiki alizofanya kazi kabla ya malipo.

Mshahara ni lazima ulipwe

a) Wakati wa saa za kazi.

b) Mahali pa kazi.

c) Katika siku iliyokubalika kuwa siku ya malipo.

d) Kwa kuwekwa kwenye bahasha iliyofungwa.

e) Kwa kuzingatia kipindi cha malipo yaani siku, wiki, wiki mbili au mwezi kwa mujibu wa mkataba wa mfanyakazi.

Mwajiri ni lazima atoe 'salary slip'

MAKATO

Mwajiri anaruhusiwa kukata makato yafuatayo kutoka mshahara wa mfanyakazi:

a) Kwa mujibu wa Sheria kama vile Kodi, Michango ya Pensheni, n.k.

b) Kwa amri ya Mahakama au Tuzo ya Mwamuzi.

c) Marejesho ya Mkopo iwapo mfanyakazi ameelekeza au kuridhia kwa maandishi.

d) Ada ya Chama cha Wafanyakazi baada ya kutoa idhini kwa Fomu TUF. 6.

Kila mfanyakazi analo jukumu la kutunza mali za mwajiri, endapo mfanyakazi ataharibu mali za mwajiri kwa uzembe, mwajiri anaweza kumkata mfanyakazi mshahara wake kufidia hasara iliyotokea. Hata hivyo kabla ya kuchukua hatua hiyo mwajiri anapaswa kuhakikisha kuwa:

a) Anazingatia utaratibu wa haki.

b) Hasara au uharibifu umetokea wakati mfanyakazi akiwa kazini na kwa sababu ya kosa la mfanyakazi.

c) Anampa mfanyakazi maelezo ya maandishi ya kiasi cha deni, chanzo cha uharibifu au hasara na hesabu za namna deni hilo lilivyofikiwa.

d) Mfanyakazi anapewa nafasi ya kujitetea na kupinga deni hilo, chanzo na namna hesabu za deni hilo zilivyofikiwa.

e) Jumla ya deni isizidi kiwango halisi cha hasara au uharibifu.

f) Makato yasizidi robo ya mshahara wa mfanyakazi.

LIKIZO

Wafanyakazi wafuatao wanastahili likizo ya malipo:

(a) Waliofanya kazi kwa zaidi ya miezi sita mfululizo.

(b) Wafanyakazi wa msimu.

(c) Wafanyakazi waliofanya kazi kwa kipindi tofauti kwa mwajiri mmoja katika mwaka iwapo vipindi husika vikijumlishwa vitazidi miezi sita.

Mfanyakazi ana haki ya kupata likizo zifuatazo:

a) Likizo ya mwaka.

b) Likizo ya uzazi kwa akina mama.

c) Likizo ya ugonjwa.

d) Likizo ya Uzazi kwa akina baba

e) Likizo ya huruma au majukumu ya kifamilia.

Likizo ya mwaka mzunguko wake ni miezi 12 na likizo nyingine zilizobaki mzunguko wake ni miezi 36.

Likizo ya mwaka

a) Mfanyakazi anastahili kupewa likizo ya siku 28 mfululizo katika mzunguko wa miezi 12.

b) Siku za likizo zinaweza kukatwa na mwajiri iwapo mfanyakazi alipewa ruhusa mbalimbali.

c) Mwajiri anaweza kuamua siku ya kuanza likizo mfanyakazi ndani ya miezi sita kuanzia siku ambayo mfanyakazi alistahili kuanza likizo.

d) Muda wa kuanza likizo baada ya miezi 6 unaweza kuongezwa kwa makubaliano iwapo yapo mahitaji ya uendeshaji na nyongeza ya muda wa kuanza likizo isizidi miezi 12.

e) Mfanyakazi hapaswi kufanya kazi wakati wa likizo.

f) Hairuhisiwi kumlipa mfanyakazi pesa badala ya likizo (kununua likizo) isipokuwa tu wakati wa kusitisha ajira.

g) Likizo ya mwaka haitakiwi kuchukuliwa wakati wa likizo nyingine au wakati wa kipindi cha notisi ya kusitisha ajira.

h) Mwajiri ni lazima amlipe mfanyakazi mshahara wake wakati wa likizo.

i) Mwajiri ni lazima amlipe mfanyakazi malipo mengine yanayoambatana na likizo kwa mujibu wa Tamko au Amri ya kima cha chini cha mshahara na masharti ya ajira.

Likizo ya Uzazi kina mama

a) Mfanyakazi anastahili likizo ya uzazi ya malipo ya siku themanini na nne (84) au siku mia moja (100) iwapo atajifungua mtoto zaidi ya mmoja katika mzunguko wa miezi 36.

b) Mfanyakazi analo jukumu la kutoa notisi ya ujauzito kwa mwajiri miezi mitatu kabla ya tarehe anayotarajia kujifungua. NOTISI hiyo inapaswa iambatane na uthibitisho kutoka kwa Daktari.

c) Mfanyakazi anaweza kuanza likizo ya uzazi wiki nne kabla ya tarehe anayotarajia kujifungua au kabla ya hapo kwa uthibitisho wa Daktari.

d) Mfanyakazi anaweza kuanza kazi wiki sita baada ya kujifungua. Isipokuwa kama daktari atathibitisha kuwa anaweza kuanza kazi kabla ya muda huo kumalizika,

e) Mwajiri anakatazwa kumtaka au kumruhusu mfanyakazi mjamzito au anayenyonyesha kufanya kazi zenye madhara kwa afya ya mfanyakazi huyo au afya ya mtoto wake.

f) Endapo kazi za kawaida za mfanyakazi zina madhara kwa afya yake au ya mtoto wake, mwajiri ni lazima amtafutie kazi nyingine kwa masharti yale yale ya ajira yake.

g) Mfanyakazi anastahili kupewa saa mbili (2) kila siku kwa ajili ya kunyonyesha.

h) Mwajiri anawajibika kutoa likizo ya malipo ya uzazi kwa vipindi vinne (4) tu.

i) Endapo mtoto aliyezaliwa atafariki ndani ya mwaka mmoja tangu kuzaliwa, na mfanyakazi akapata mtoto mwingine ndani ya mzunguko huohuo wa likizo, mfanyakazi atastahili kupata likizo nyingine ya malipo ya siku themanini na nne (84).

j) Ni kinyume cha Sheria kumwachisha kazi mfanyakazi kwa sababu ya ujauzito au majukumu ya kifamilia.

k) Mfanyakazi aliyemaliza likizo ya uzazi ataendelea na ajira yake kwa masharti yaleyale ya ajira yake.

Likizo ya Uzazi ya kina baba

a) Mfanyakazi anastahili angalau siku tatu (3) za likizo ya uzazi ya baba katika mzunguko wa miezi thelathini na sita (36) bila kujali idadi ya matukio.

b) Mfanyakazi atapoteza haki za likizo endapo atashindwa kuchukua likizo hiyo ndani ya siku saba (7) baada ya mtoto kuzaliwa.

c) Mfanyakazi analo jukumu la kuthibitisha mtoto aliyezaliwa ni wake.

Likizo ya Ugonjwa

a) Mfanyakazi anastahili likizo ya ugonjwa ya angalau siku 126 katika mzunguko wa miezi 36.

b) Katika siku 63 za kwanza mfanyakazi anastahili kulipwa mshahara kamili na katika siku 63 zinazofuata anastahili kulipwa nusu mshahara.

c) Kabla ya kuchukua likizo ya ugonjwa mfanyakazi anapaswa kuwasilisha kwa Mwajiri uthibitisho wa Daktari.

d) Endapo mfanyakazi anastahili kulipwa wakati wa likizo ya ugonjwa kwa mujibu wa Sheria, mfuko wowote au makubaliano ya pamoja, Mwajiri atakuwa hana jukumu la kumlipa mfanyakazi huyo wakati wa likizo.

Likizo ya Huruma au Majukumu ya Kifamilia

Mfanyakazi anastahili angalau siku nne (4) za likizo ya malipo katika mzunguko wa miezi 36 bila kujali idadi ya matukio kwa sababu zifuatazo:

(i) Kuugua au kifo cha mtoto.

(ii) Kifo cha mke/mume, mzazi, babu, bibi, mjukuu au ndugu wa kuzaliwa.

Mfanyakazi anaweza kupewa siku zaidi ya nne (4) na mwajiri kwa tukio moja au matukio mengine katika mzunguko wa likizo, siku ambazo zinaweza kupunguzwa katika likizo ya mwaka au kutolipwa mshahara wa siku hizo.

Angalizo:

Siku za likizo zinaweza kuongezwa kupitia makubaliano ya pamoja au kanuni za mwajiri.

SURA YA TANO

USITISHAJI AJIRA

Usitishaji ajira ni kukoma kwa mkataba wa ajira, kutokana na sababu mbalimbali kama vile; kujiuzulu au kuacha kazi mfanyakazi, mfanyakazi kuachishwa kazi na mwajiri wake kwa kupewa au kutokupewa NOTISI, kutorejewa mkataba wa muda maalum kwa mfanyakazi anayetarajia mkataba huo kurejewa, kukataliwa na Mwajiri kuanza kazi baada ya likizo ya uzazi, mfanyakazi kushindwa kuendelea na ajira baada ya mwajiri kujenga mazingira magumu kwa mfanyakazi kuendelea na kazi, kuachishwa kazi kwa sababu ya utovu wa nidhamu, uwezo mdogo wa kufanya kazi, kutohitajika, mahitaji ya uendeshaji ya mwajiri, kwa makubaliano, kwa kumaliza kazi maalum, kwa tukio litakalofanya vigumu kuendelea na mkataba, kifo, n.k.

Usitishaji ajira usio halali

Usitishaji ajira kwa sababu zifuatazo si halali:

a) Mfanyakazi kutoa taarifa ambazo anapaswa kuzitoa kwa mujibu wa sheria.

b) Mfanyakazi kushindwa au kukataa kufanya jambo lolote linalokatazwa na sheria.

c) Mfanyakazi kutekeleza haki zake kwa mujibu wa sheria.

d) Mfanyakazi kuwa mwanachama wa Chama cha Wafanyakazi.

e) Mfanyakazi kushiriki katika shughuli halali za Chama cha Wafanyakazi ikiwemo mgomo halali.

f) Ulemavu

g) Ujauzito

h) Ubaguzi.

Usitishaji ajira kwa uonevu

Mwajiri atakayeshindwa kuthibitisha mambo yafuatayo hapa chini anapositisha ajira ya mfanyakazi atakuwa amemwachisha mfanyakazi huyo kwa uonevu. Mambo hayo ya msingi kuthibitisha ni:

a) Sababu za kusitisha ajira ni halali.

b) Sababu za kusitisha ajira ni za haki kwa maana zinahusiana na utovu wa nidhamu, uwezo mdogo wa kufanya kazi, kutohitajika, mahitaji ya uendeshaji ya Mwajiri.

c) Utaratibu uliotumika kusitisha ajira umezingatia misingi ya haki.

Usitishaji ajira kwa sababu ya utovu wa nidhamu

Utovu wa nidhamu ni moja ya sababu zinazoweza kusababisha Mwajiri amuachishe kazi mfanyakazi. Hatua za nidhamu zinapaswa zichukuliwe hatua kwa hatua kwa madhumuni ya kurekebisha tabia ya mfanyakazi badala ya kuadhibu. Mwajiri anapaswa kutoa ushauri nasaha, onyo la mdomo, onyo la maandishi pale ambapo mfanyakazi anaendeleza utovu wa nidhamu. Kuachisha kazi kunapaswa kuwe hatua ya mwisho kabisa katika kusimamia nidhamu mahali pa kazi.

Mwajiri anapaswa kuweka kanuni za nidhamu zinazoeleza namna wafanyakazi wanavyopaswa kutunza nidhamu mahali pa kazi. Mwajiri anapaswa kuwafahamisha wafanyakazi wote kuhusu kanuni hizo wakati wa kuajiri, wakati wa vikao au kubandika katika mbao za matangazo, ni vizuri iwapo kila mfanyakazi atapatiwa nakala yake.

Kanuni za utendaji mzuri zimeweka mwongozo wa namna ya kusitisha ajira kwa haki. Kila mwajiri anapaswa kuzingatia mwongozo huo ambao unaanisha mambo makuu mawili ya kuzingatia sababu za kusitisha ajira na utaratibu ambao Mwajiri anapaswa kuzingatia wakati wa kusitisha ajira.

Sababu

a) Lazima ziwepo sababu halali za kusitisha ajira kwa mfano: wizi, shambulio, n.k.

b) Sababu zisiwe sababu zinazokatazwa na sheria kwa mfano: ujauzito, ulemavu, n.k.

Kabla ya kumwachisha kazi mfanyakazi mwajiri ni lazima afikirie kwa makini na kuangalia endapo:

a) Mfanyakazi amekiuka Kanuni za Nidhamu.

b) Kanuni iliyokiukwa ni ya haki.

c) Mfanyakazi alikuwa anafahamu kanuni aliyoikiuka.

d) Kanuni iliyokiukwa inaeleweka na haina utata.

e) Kanuni iliyokiukwa imekuwa ikitumika kwa usawa kwa wafanyakazi.

f) Adhabu ya kuachishwa kazi ndiyo muafaka kwa kosa lililotendwa.

Kosa la kwanza halihalalishi adhabu ya kuachisha kazi isipokuwa pale itakapothibitika kosa ni kubwa kiasi cha kuharibu uhusiano wa kiajira kiasi cha kutovumilika. Makosa makubwa yanayoweza kuhalalisha mfanyakazi kuachishwa kazi kwa kosa la kwanza ni:

a) Kukosa uaminifu kulikokithiri kama vile kughushi, wizi, n.k.

b) Kuharibu mali kwa kukusudia.

c) Kuhatarisha usalama wa watu wengine kwa makusudi.

d) Uzembe uliokithiri.

e) Kushambulia.

f) Ukaidi uliokithiri.

Hata hivyo kabla ya kuchukua hatua ya kumwachisha kazi mfanyakazi kwa makosa makubwa Mwajiri anapaswa aangalie kwa makini mazingira ya kosa lilivyotendeka, aina ya kazi, afya na usalama na uwezekano wa kosa kurudiwa. Mwajiri anapaswa azingatie pia, utendaji wa mfanyakazi, kumbukumbu za utumishi wake, kwa maana ya rekodi yake ya utumishi, muda wa utumishi, rekodi yake ya nidhamu na hali yake binafsi.

Utaratibu wa Haki

Kabla ya kuchukua hatua za nidhamu dhidi ya mfanyakazi, Mwajiri ni lazima afanye uchunguzi wa awali kuona iwapo ipo haja ya kuitisha kikao cha nidhamu. Endapo Mwajiri ataona ipo haja ya kuitisha kikao cha nidhamu anapaswa afanye mambo yafuatayo:

a) Kumpa taarifa mfanyakazi ya tuhuma kwa namna ambayo atazielewa kikamilifu tuhuma hizo.

b) Mfanyakazi apewe muda wa kutosha kuandaa utetezi kwa kuzingatia uzito wa kosa. Muda huo usipungue saa 48.

c) Mfanyakazi aelezwe waziwazi haki yake ya kuwakilishwa na mfanyakazi mwenzake au kiongozi wake wa Chama mahali pa kazi.

d) Ateue Mwenyekiti wa Kikao ambae hajahusika na suala lililosababisha kikao kiitishwe kusikiliza shauri hilo.

e) Mfanyakazi apewe fursa ya kuita mashahidi na kuwahoji kwa kuwadodosa mashahidi wa Mwajiri.

f) Endapo matokeo ya kikao yatakuwa kupatikana na hatia mfanyakazi adhabu isitolewe papo hapo. Nafasi itolewe kwa mfanyakazi kutoa hoja za kupunguziwa adhabu kabla ya adhabu kutolewa.

g) Endapo mfanyakazi anayetuhumiwa ni kiongozi wa Chama cha Wafanyakazi katika ngazi yoyote, Mwajiri ni lazima atoe nafasi kwa kiongozi huyo kuwakilishwa na mtendaji wa Chama katika kikao cha nidhamu.

h) Endapo adhabu inayotolewa ni kuachishwa kazi Mwajiri ni lazima atoe sababu na aeleze haki ya mfanyakazi kukata rufaa ngazi ya juu au kupeleka rufaa yake Tume ya Usuluhishi na Uamuzi.

i) Mfanyakazi ni lazima apewe nakala ya fomu ya kusikiliza shauri baada ya kikao cha nidhamu.

Usitishaji ajira kwa sababu ya uwezo mdogo wa kazi

Uwezo wa mfanyakazi unaweza kupungua kutokana na ugonjwa, kuumia au utendaji usioridhisha. Kila sababu inapaswa kushughulikiwa kwa namna ya pekee.

Utendaji usioridhisha

Sheria inatambua haki ya mwajiri kuweka viwango vya kazi, viwango ambavyo wafanyakazi wanapaswa kuzingatia katika utendaji wao ili mradi viwango hivyo ni vya haki na vinavyotekelezeka na kufahamika kwa wafanyakazi.

Upimaji utendaji wa mfanyakazi
Iwapo utendaji wa mfanyakazi hauridhishi, mwajiri anapaswa kufanya yafuatayo:

a) Kumpa taarifa mfanyakazi kwamba utendaji wake haufikii viwango vilivyowekwa.

b) Kumpa mfanyakazi maelekezo, mafunzo na miongozo kwa lengo la kuboresha utendaji.

c) Kufanya vikao vya mara kwa mara na mfanyakazi pamoja na kumpa ushauri.

d) Kutoa fursa na muda wa kutosha kwa mfanyakazi kuboresha utendaji wake.

Iwapo utendaji wa mfanyakazi utakuwa hauridhishi hata baada ya kupewa muda wa kutosha, mwajiri ni lazima amwandikie mfanyakazi kumweleza mambo yafuatayo:

a) Kwamba utendaji wake bado hauridhishi na hajafikia viwango vinavyotakiwa.

b) Kwamba anaweza kuachishwa kazi iwapo hataboresha utendaji wake Mwajiri anapaswa kufanya uchunguzi kwa madhumuni ya kubaini:

- Sababu za utendaji usioridhisha.
- Endapo upo uwezekano wa kumbadilishia kazi mfanyakazi au kumwondolea baadhi ya majukumu.

Wakati wa uchunguzi, Mwajiri ni lazima amshirikishe mfanyakazi pamoja na mwakilishi wake ambaye anaweza kuwa mfanyakazi mwenzake au kiongozi wake wa Chama mahali pa kazi.

Endapo Mwajiri ataamua kumwachisha kazi mfanyakazi kwa sababu ya utendaji usioridhisha mwajiri ni lazima aitishe kikao ambapo:

- Mfanyakazi atapewa tuhuma.
- Mfanyakazi atapewa nafasi ya kujitetea.
- Mfanyakazi atawakilishwa na mfanyakazi mwenzake au kiongozi wa Chama mahali pa kazi.

Katika kikao hicho mwajiri anapaswa kuangalia njia mbadala tofauti na kumwachisha kazi mfanyakazi.

Usitishaji ajira kwa wafanyakazi waliopo katika kipindi cha majaribio

Madhumuni ya kuwekwa kipindi cha majaribio ni kupima uwezo wa mfanyakazi kuona kama anafaa kwa kazi alioyoajiriwa kufanya.

Kipindi cha majaribio kinapaswa kisiwe kirefu sana na kisizidi miezi kumi na mbili kwa kuzingatia aina ya kazi. Viwango vya utendaji vinavyotakiwa na utamaduni na mazoea ya sekta husika.

Wakati wa kipindi cha majaribio mwajiri anapaswa kukutana na mfanyakazi mara kwa mara kupima utendaji na kujadiliana naye ikiwezekana kumpa miongozo mbalimbali, mafunzo na ushauri.

Mwajiri kwa kushauriana na mfanyakazi anaweza kuongeza muda wa majaribio.

Endapo katika kipindi cha majaribio mwajiri ataona utendaji wa mfanyakazi hauridhishi mwajiri anaweza kusitisha ajira. Kabla ya kuchukua hatua ya kusitisha ajira mwajiri ni lazima:

a) Amtaarifu mfanyakazi akieleza kutoridhishwa na utendaji wake.

b) Ampe mfanyakazi nafasi ya kujibu na kujitetea dhidi ya tuhuma hiyo.

c) Awe amempa muda wa kutosha mfanyakazi kuboresha utendaji wake au tabia na mfanyakazi kushindwa.

d) Ampe nafasi ya kuwakilishwa na mfanyakazi mwenzake au kiongozi wa Chama mahali pa kazi katika mchakato wote.

Usitishaji ajira kwa sababu ya ugonjwa au kuumia

Ugonjwa na kuumia inaweza kuwa sababu ya kusitisha ajira. Kabla ya mwajiri kuchukua hatua hiyo ni lazima afanye uchunguzi wa kina kubaini mambo yafuatayo:

a) Chanzo cha ugonjwa au kuumia.

b) Kiwango cha ugonjwa au kuumia.

c) Endapo ugonjwa au matokeo ya kuumia ni ya muda au ya kudumu.

Katika kubaini mambo hayo mwajiri ni lazima aongozwe na maoni ya Daktari aliyesajiliwa.

Endapo itabainika kuwa chanzo cha ugonjwa au kuumia kunatokana na kazi jukumu la Mwajiri kuendeleza ajira ya mfanyakazi ni kubwa.

Mambo mengine ya kuchunguza kabla ya kusitisha ajira ni:

d) Kuangalia uwezekano wa kuendeleza ajira ya mfanyakazi katika hali aliyonayo.

e) Kuwepo kwa mfuko wa fidia kwa mfanyakazi au pensheni.

Ugonjwa wa kudumu au matokeo kudumu ya kuumia

Endapo ugonjwa utakuwa wa kudumu au matokeo ya kuumia ni ya kudumu Mwajiri anapaswa kufikiria hatua tofauti na kusitisha ajira kama vile:-

a) Kumbadilishia mfanyakazi kazi.
b) Kumsaidia mfanyakazi kufanya kazi katika hali ya ulemavu aliyonayo.

Kama uwezekano huo haupo basi mwajiri anaweza kusitisha ajira.

Ugonjwa wa muda au matokeo ya muda ya kuumia

Endapo itabainika kuwa mfanyakazi atakuwa nje ya kazi kwa muda mrefu, mwajiri ni lazima achunguze na aangalie namna atakavyoendeleza ajira ya mfanyakazi badala ya kusitisha ajira kwa kufanya yafuatayo:

a) Kumbadilishia kazi mfanyakazi kwa muda.

b) Kumpa mfanyakazi kazi nyepesi

c) Kumpa mfanyakazi kazi mbadala.

d) Kumpa mfanyakazi nafasi ya kustaafu mapema.

Mambo ya msingi kwa mwajiri kuzingatia katika uchunguzi wake ni pamoja na:

a) Aina ya kazi.

b) Muda ambao mfanyakazi atakosekana kazini.

c) Kiwango cha ugonjwa au kuumia.

d) Uwezekano wa kumbadilishia kazi mfanyakazi kwa muda au kumsaidia mfanyakazi kufanya kazi katika hali aliyonayo.

Endapo chanzo cha tatizo ni matumizi mabaya ya madawa na kilevi, ushauri nasaha na kumrekebisha mfanyakazi ndiyo hatua sahihi kwa mwajiri kufikiria na kuchukua.

HIV/UKIMWI

Hairuhusiwi kusitisha ajira ya mfanyakazi kwa sababu ya HIV/UKIMWI, mfanyakazi mwenye tatizo hilo ni lazima aendelee na kazi kwa masharti yake ya kawaida ya kazi kwa kadri afya yake itakavyoruhusu. Endapo itatokea mfanyakazi huyo kushindwa kuendelea na kazi zake za kawaida, Mwajiri ni lazima ambadilishie kazi bila kuathiri ujira wake. Pale ambapo mfanyakazi atakuwa mgonjwa kiasi cha kushindwa kuendelea na ajira, basi utaratibu wa haki wa kusitisha ajira ni lazima ufuatwe.

Mfanyakazi ni lazima ashirikishwe na kushauriana naye wakati wote wa mchakato wa kubaini chanzo, kiwango, n.k. cha ugonjwa au kuumia na ni haki yake kuwakilishwa na mfanyakazi mwenzake au kiongozi wake wa Chama mahali pa kazi wakati wa mchakato huo.

Kabla ya kufikia uamuzi wa kusitisha ajira ya mfanyakazi kwa sababu ya ugonjwa au kuumia Mwajiri ni lazima aitishe kikao kati yake na mfanyakazi akiwa na mwakilishi wake. Katika kikao hicho Mwajiri ataeleza sababu zake za kutaka kusitisha ajira na kutoa nafasi kwa mfanyakazi na mwakilishi wake kubeza sababu hizo, na kutoa hoja zao. Mwajiri ni lazima azingatie hoja zilizotolewa na mfanyakazi na mwakilishi wake na kama anazikataa atoe sababu.

Mfanyakazi ni lazima afahamishwe matokeo ya kikao kwa maandishi.

Usitishaji ajira kwa sababu ya kutohitajika

Kutohitajika ni moja ya sababu za kusitisha ajira. Kuna aina mbili za kutohitajika:

a) Mfanyakazi kutofaa katika kazi kwa sababu ya tabia au hulka yake.

b) Mfanyakazi kuwa na uhusiano mbaya na wafanyakazi wenzake, wateja, au watu wengine muhimu kwa shirika.

Kabla ya kuchukua hatua ya kusitisha ajira mwajiri ni lazima:

a) Aweke kumbukumbu za matukio aliyoyafanya mfanyakazi husika na kusababisha matatizo au kuvurugika kazi.

b) Amuonye na kumshauri mfanyakazi au kupendekeza hatua za kurekebisha hali hiyo kabla ya kusitisha ajira.

Kabla ya kuchukua hatua ya kusitisha ajira, Mwajiri ni lazima atoe fursa ya haki kwa mfanyakazi:

a) Kutafakari na kujibu tuhuma.

b) Kuondoa chanzo cha tatizo.

c) Kupendekeza njia mbalimbali tofauti na kusitisha ajira.

Usitishaji wa ajira kwa sababu ya mahitaji ya uendeshaji

Mahitaji ya uendeshaji ya Mwajiri ni moja ya sababu za kusitisha ajira. Mahitaji ya uendeshaji ya Mwajiri, yamegawanyika katika mafungu makuu matatu yafuatayo:

a) Mahitaji ya kiuchumi yanayohusiana na usimamizi wa fedha.

b) Mahitaji ya teknoklojia kwa maana ya kupatikana teknolojia mpya inayosababisha baadhi ya wafanyakazi kutokuwa na kazi za kufanya.

c) Mahitaji ya kubadili mpangilio wa shughuli za Shirika kutokana na kuunganisha biashara, mabadiliko ya biashara, n.k.

Mashauriano

Mwajiri kabla ya kusitisha ajira za wafanyakazi kwa sababu ya mahitaji ya uendeshaji (kupunguza) ni lazima afanye mashauriano na wafanyakazi kupitia Chama cha Wafanyakazi au moja kwa moja na wafanyakazi iwapo hakuna Chama cha Wafanyakazi.

Madhumuni ya kushauriana na kuziwezesha pande zote husika kufikia makubaliano kuhusu:

a) Sababu za kupunguza wafanyakazi.

b) Hatua za kuzuia upunguzaji au kupunguza idadi ya watakaopunguzwa kama vile kuwahamishia kwenye kazi nyingine baadhi ya wafanyakazi, kustaafu mapema, kupunguzwa kwa hiari, likizo bila malipo, n.k.

c) Vigezo vya kuchagua watakaopunguzwa kama vile (LIFO), uzoefu, stadi maalum, sifa, upendeleo maalum, n.k.

d) Muda wa zoezi la kupunguza wafanyakazi.

e) Kiinua mgongo.

f) Hatua za kupunguza makali ya kukosa kazi kama vile kupewa muda wa kutafuta kazi nyingine.

Utoaji wa taarifa

Kabla ya mchakato wa mashauriano kuanza Mwajiri anapaswa kutoa taarifa muhimu kwa Chama cha Wafanyakazi au Wafanyakazi kwa maandishi akieleza:

a) Sababu za kupunguza.

b) Hatua mbadala za kuzuia au kupunguza idadi ya watakaopunguzwa na kwa nini haziwezekani.

c) Idadi ya wafanyakazi anaokusudia kuwapunguza na kazi zao.

d) Mapendekezo ya vigezo vitakavyotumika.

e) Muda wa zoezi.

f) Mapendekezo ya kiinua mgongo.

g) Msaada atakaotoa mwajiri kwa watakaopunguzwa.

Fursa ya mlishonyuma

Mchakato wa mashauriano ni lazima utoe nafasi kwa Chama cha Wafanyakazi au Wawakilishi wa Wafanyakazi:

a) Kukutana na kuwataarifu wafanyakazi maendeleo ya mashauriano.

b) Kukutana na Mwajiri na

c) Kuomba, kupokea na kuchambua taarifa muhimu kukiwezesha Chama au Wawakilishi wa Wafanyakazi kuelewa kwa ufasaha taarifa hizo na kushauriana na Mwajiri kwa madhumuni ya kufikia makubaliano kuhusu hatua mbalimbali za kushughulikia zoezi hilo.

Usuluhishi

Endapo hakuna makubaliano yoyote, suala hilo litapelekwa mbele ya Tume kwa usuluhishi.

Katika kipindi cha usuluhishi cha siku 30 Mwajiri haruhusiwi kupunguza. Siku 30 zikipita bila makubaliano yoyote kufikiwa, Mwajiri anaweza kuwapunguza kazi wafanyakazi.

Upendeleo wa kuajiriwa upya

Wafanyakazi watakaopunguzwa watapewa upendeleo wa kuajiriwa kwanza endapo zitatokea nafasi ili mradi wawe na sifa zinazotakiwa na mfanyakazi awe alieleza nia ya kuajiriwa upya nafasi ikitokea na yapo makubaliano ya pamoja baina ya Mwajiri na Chama.

Usitishaji ajira kwa kutoa taarifa

Upande wowote baina ya Mwajiri na mfanyakazi, unaweza kusitisha mkataba wa ajira kwa kutoa taarifa (notisi) ya maandishi ikieleza sababu za kusitisha ajira na tarehe ya kutolewa taarifa hiyo.
Muda wa taarifa ya kusitisha ajira unapaswa usipungue:

a) Siku saba (7) iwapo taarifa itatolewa katika mwezi wa kwanza wa ajira.

b) Kwa mfanyakazi aliyefanya kazi zaidi ya mwezi:

(i) Siku nne (4) iwapo mfanyakazi analipwa mshahara wake kila siku au kila wiki.

(ii) Siku ishirini na nane (28) iwapo mfanyakazi analipwa mshahara wake kila mwezi.

Muda wa taarifa unaweza kuongezwa kwa makubaliano.

Hairuhusiwi kutoa taarifa ya kusitisha ajira wakati wa likizo au kutoa taarifa hiyo sambamba na likizo.

Mwajiri anaweza kusitisha ajira ya mfanyakazi na kumlipa mshahara badala ya taarifa.

Mfanyakazi anayo haki ya kukata rufaa Tume ya Usuluhishi na Uamuzi endapo hajaridhika na hatua ya Mwajiri kusitisha ajira kwa taarifa au kwa malipo badala ya taarifa.

Kusimamishwa kazi

Mwajiri anaweza kumsimamisha kazi mfanyakazi kwa sababu kuu mbili:

a) Kupisha uchunguzi pale ambapo mfanyakazi anakabiliwa na tuhuma za nidhamu au uwezo mdogo wa kazi.

b) Adhabu kwa kosa la utovu wa nidhamu, ili mradi kusimamishwa kazi hakutazidi siku thelathini (30).

Mfanyakazi anayesimamishwa kazi kupisha uchunguzi anastahili kulipwa mshahara wake kamili pamoja na marupurupu yake.

Mfanyakazi anayeadhibiwa kwa kusimamishwa kazi hastahili kulipwa mshahara kwa kipindi atakachosimamishwa kazi.

Nafuu anazostahili mfanyakazi aliyeachishwa kazi kwa uonevu

Mahakama au Mwamuzi, wakithibitisha kuwa mfanyakazi aliachishwa kazi kwa uonevu, wanaweza kuamuru:

a) Mfanyakazi arejeshwe kazini bila masharti yoyote; au

b) Mfanyakazi aajiriwe upya kwa masharti yoyote yatakayowekwa na Mahakama au mwamuzi; au

c) Mfanyakazi alipwe fidia isiyopungua mishahara ya miezi kumi na mbili.

Mwajiri anapoamua kutomrejesha kazini au kutomuajiri upya mfanyakazi

Mwajiri akiamua kutomrejesha kazini au kutomuajiri upya mfanyakazi kama alivyoamuriwa na Mahakama au Mwamuzi, anapaswa kumlipa mfanyakazi huyo mafao yake yote na haki zake zote ikijumuisha mishahara yake kuanzia siku aliyoachishwa kazi kwa uonevu hadi siku ya malipo, pamoja na mishahara ya miezi kumi na mbili (12).

Malipo ya Kisheria mfanyakazi anapoachishwa kazi

Mfanyakazi aliyeachishwa kazi, anastahili kulipwa malipo yafuatayo:

a) Mshahara badala ya taarifa kama hakupewa taarifa.

b) Mshahara kwa kazi aliyofanya kabla ya kuachishwa.

c) Likizo ambazo hajaenda.

d) Siku za likizo ambayo mzunguko wake haujakamilika.

e) Kiinua mgongo, angalau mshahara wa siku saba kwa kila mwaka kamili ambao mfanyakazi amefanya kazi kwa mwajiri. Hata hivyo mfanyakazi aliyeachishwa kazi kwa utovu wa nidhamu au aliyeachishwa kazi kwa sababu ya uwezo, kutohitajika au mahitaji ya uendeshaji na kukataa ajira mbadala.

f) Nauli yake na familia pamoja na mizigo mpaka mahali alipoajiriwa.

Mfanyakazi aliyeachishwa kazi anastahili pia kupatiwa Cheti cha Utumishi.

SURA YA SITA

UHURU WA KUJUMUIKA NA VYAMA VYA WAFANYAKAZI

Uhuru wa kujumuika ni moja ya haki inayolindwa na Sheria ya Ajira na Uhusiano Kazini ambapo kila Mfanyakazi aliyeajirwa anayo haki ya kuunda na kujiunga na Chama cha Wafanyakazi pamoja na kushiriki katika shughuli halali za Chama chake.

Hata hivyo uhuru huu umeweka mipaka kwa baadhi ya Wafanyakazi wafuatao:-

(a) Hakimu anaweza kuuunda au kujiunga na Chama cha Maafisa wa Mahakama pekee,

(b) Mwendesha Mashitaka anaweza kuunda au kujiunga na Chama cha Waendesha mashitaka au watendaji wengine wa Mahakama pekee.

(c) Mfanyakazi meneja Mwandamizi, ambaye kwa nafasi yake kazini anatengeneza sera kwa niaba ya Mwajiri na ana mamlaka ya kuingia katika makubaliano ya pamoja na Chama cha Wafanyakazi kwa niaba ya Mwajiri, anaweza asijiunge na Chama cha Wafanyakazi cha Wafanyakazi wasio Mameneja Waandamizi.

Haki ya Uhuru wa kujumuika inatoa kinga ya kutobaguliwa kwa mfanyakazi anayetekeleza haki hii na kwa mtendaji au kiongozi wa Chama au Shirikisho, anapotekeleza majukumu yake halali.

Hali kadhalika Chama chini ya haki ya Uhuru wa kujumuika kinakuwa na haki ya:-

(a) kutengeneza Katiba yake,

(b) Kupanga na kuendesha mambo yake ya ndani na shughuli halali bila kuingiliwa.

(c) Kujiunga au kuunda Shirikisho

(d) Kushiriki katika shughuli halali za Shirikisho

(e) Kujirishirikisha na Vyama au Mashirikisho ya kiulimwengu, kuchangia na kupokea misaada ya kifedha kutoka kwa vyama au mashirikisho hayo

Utaratibu wa kuunda Chama cha Wafanyakazi

Chama cha Wafanyakazi kinaanzishwa na Wafanyakazi wasiopungua 20.

Wafanyakazi hao wanapaswa kuitisha kikao chao cha kuanzisha Chama, ambapo watajiorodhesha na kutia saini zao katika rejista ya mahudhurio. Watamteua Katibu wa Kikao ambaye atatayarisha muhtasari wa kikao wenye azimio la kuanzisha Chama.

Katika kuanzisha Chama cha Wafanyakazi mambo yafuatayo ni lazima kuzingatiwa:-

(a) Chama kiwe ni Chama halisi cha Wafanyakazi

(b) Kisiwe Chama kwa madhumuni ya kupata faida

(c) Kiwe Chama huru kwa maana kisianzishwe na Mwajiri au Jumuiya ya Waajiri

(d) Kianzishwe na Wafanyakazi wasiopungua 20

(e) Kiwe na Katiba na Kanuni zinazozingatia kifungu cha 47 cha Sheria;

(f) Kiwe na jina lisilofanana na jina la Chama kingine, kuzuia mkanganyiko au kuwapotosha watu

(g) Kiwe na makao yake makuu ndani ya Jamhuri ya Muungano wa Tanzania

Utaratibu wa kusajili chama

Chama cha Wafanyakazi kinapaswa kujisajili ndani ya miezi sita kuanzia tarehe ya kuanzishwa kwake.

Maombi ya usajili yatafanyika kwa kujaza fomu maalum ambayo itajazwa kikamilifu na kusainiwa na Katibu wa Kikao kilichoazimia kuanzisha Chama.

Fomu hiyo ya maombi inapaswa kuambatana na nakala zilizothibitishwa za rejista ya mahudhurio, na muhtasari wa kikao kilichoanzisha Chama na nakala zilizothibitishwa za Katiba na Kanuni, na kuziwasilisha kwa Msajili wa Vyama vya Wafanyakazi na Jumuiya za Waajiri.

Msajili atakisajili Chama baada ya kuridhika kuwa kimetimiza masharti yote muhimu yaliyowekwa na Sheria. Iwapo Msajili hataridhika kwa maana ya Chama kushindwa kutimiza masharti ya Sheria anaweza kutoa nafasi ya kurekebisha kasoro au atakataa kusajili kwa kuwapa notisi waleta maombi, akieleza sababu za hatua yake hiyo. Asiyeridhika na uamuzi wa Msajili anayo haki ya kukata rufaa Mahakama ya Kazi.

Wajibu wa Chama kilichosajiliwa

Chama kilichosajiliwa kinapaswa kuwasilisha kwa Msajili kila ifikapo tarehe 31 Machi ya kila mwaka taarifa zifuatazo:-

(a) Taarifa za Fedha zilizokaguliwa kwa kipindi cha fedha kinachoishia tarehe 31 Desemba ya mwaka uliopita

(b) Orodha ya Wanachama inayoonyesha jumla ya Wanachama kwa kipindi kinachoishia tarehe 31 Desemba ya mwaka uliopita

(c) Majina ya viongozi walioteuliwa au kuchaguliwa na anuani zao ndani ya siku 30 tangu uteuzi au uchaguzi kufanyika

(d) Mabadiliko ya kanuni ndani ya siku 30 kuanzia siku ya mabadiliko hayo

Chama kina jukumu la kutunza kwa miaka iliyopungua mitano kumbukumbu zifuatazo:-

(a) Orodha ya Wanachama katika fomu maalum

(b) Mihutasari ya vikao

(c) Karatasi za kura

Wajibu wa kuzingatia katiba ya chama

Chama cha Wafanyakazi kinapaswa wakati wote kutekeleza shughuli zake kwa mujibu wa Katiba, kanuni na mazoea . Endapo itatokea Chama kimeshindwa kuzingatia Katiba yake, Msajili au Wanachama wanaweza kupeleka maombi Mahakama ya Kazi kutengua suala hilo lililofanyika kinyume cha Katiba.

Kabla ya maombi kupelekwa Mahakamani, taratibu za ndani za Chama ni lazima zifuatwe kwanza isipokuwa kama kwa maslahi ya Chama ni vizuri maombi hayo kusikilizwa bila utaratibu wa ndani ya Chama..

Haki za Chama

Chama cha Wafanyakazi kilichosajiliwa kinazo haki zifuatazo:-

(a) Haki ya kuingia eneo la Mwajiri

(b) Makato ya ada

(c) Kuwa na wawakilishi wake mahali pa kazi

(d) Likizo kwa viongozi wake.

Haki ya kuingia eleo la mwajiri

Mwakilishi yeyote wa Chama cha Wafanyakazi kilichosajiliwa anayo haki ya kuingia eneo la Mwajiri kwa ajili ya :-

(a) Kuingiza Wanachama

(b) Kuwasiliana na Wanachama

(c) Kuwawakilisha Wanachama dhidi ya Mwajiri

(d) Kuitisha mikutano ya Wafanyakazi

(e) Kusimamia upigaji wa kura kwa mujibu wa Katiba ya Chama

Hali kadhalika Chama kinayo haki ya kuanzisha Tawi lake mahali pa kazi ambapo kina Wanachama zaidi ya kumi.

Chama cha Wafanyakazi kinachotambuliwa kinayo haki ya kupatiwa nyenzo na mwajiri kwa ajili ya kuendeshea shughuli zake mahali pa kazi.

Haki hii ya kuingia eneo la Mwajiri itatolewa kwa masharti maalumu kuhusiana na muda au mahali ambapo haki hizo zitatekelezwa kwa madhumuni ya kulinda maisha au mali au kuvurugika kwa kazi.

Makato ya Ada

Mwajiri anapaswa kukata ada ya Chama kutoka katika mshahara wa mfanyakazi endapo mfanyakazi huyo atatoa idhini ya kukatwa mshahara kwa kujaza Fomu Na. TUF 6.

Mwajiri akishakata ada, anapaswa kuwasilisha ada hiyo kwa Chama ndani ya siku saba baada ya mwisho wa mwezi ambao makato haya yamefanyika.

Mwajiri akishindwa kuwasilisha makato hayo ndani ya siku zilizotajwa hapo juu bila sababu za msingi anapaswa kukilipa Chama riba ya asilimia tano ya kiasi ambacho hakijawasilishwa kwa kila siku aliyokaa na fedha hizo.

Mfanyakazi anaweza kutengua idhini yake ya kukatwa ada kwa kutoa taarifa ya mwezi mmoja kwa Mwajiri na Chama na mwezi mmoja ukipita mwajiri atasitisha makato hayo.

Mwajiri anapowasilisha makato hayo kwa Chama anapaswa kuambatanisha orodha ya Wanachama waliokatwa ada na nakala ya kutengua idhini ya kukatwa ada kama ipo.

Wawakilishi wa Chama

Wawakilishi wa Chama mahali pa kazi wanapatikana kwa mujibu wa Katiba ya Chama aidha muda wao wa kushika madaraka au utaratibu wa kuwaondoa ni kwa mujibu wa Katiba ya Chama chenyewe.

Chama cha Wafanyakazi kinayo haki ya kuwa na wawakilishi wake mahali pa kazi kwa kuzingatia idadi ya wanachama kama ifuatavyo

(a) Wanachama wasiozidi tisa - Mwakilishi mmoja

(b) Wanachama kuanzia kumi mpaka ishirini - wawakilishi watatu

(c) Wanachama kuanzia ishirini na moja mpaka mia moja - wawakilishi kumi

(d) Wanachama zaidi ya mia moja - wawakilishi kumi na tano, miongoni mwao watano lazima wawe wanawake kama wapo na ni wanachama.

Wawakilishi wa Chama mahali pa kazi wana majukumu yafuatayo:-

(a) Kuwawakilisha Wanachama kwenye vikao vya kushughulikia malalamiko na nidhamu

(b) Kuwasilisha hoja kwa niaba ya Wanachama kuhusiana na Kanuni; Afya na usalama na Ustawi wao.

(c) Kushauriana na Mwajiri kuhusu tija mahali pa kazi

(d) Kukiwakilisha Chama wakati wa ukaguzi na uchunguzi unaofanywa na wakaguzi kwa mujibu wa Sheria yoyote ya kazi.

(e) Kuhakikisha Mwajiri anazingatia Sheria za kazi.

(f) Kufanya kazi za Chama kwa mujibu wa Katiba ya Chama

(g) Kuendeleza uhusiano mzuri kazini

(h) Kutekeleza jukumu lolote walilokubaliana na Mwajiri.

Wawakilishi wa Chama wanayo haki ya kupewa muda wa kutosha kutekeleza majukumu yao bila kukatwa mshahara na wanayo haki pia ya kupewa na mwajiri taarifa zote muhimu zitikazowawezesha kutekeleza majukumu yao kikamilifu.

Haki hizi zitatolewa kwa masharti yatakayohakikisha haki hizi zinatekelezwa vizuri bila kuvuruga kazi.

Likizo

Wawakilishi wa Chama mahali pa kazi wanayo haki ya kupewa likizo ya malipo na Mwajiri kwa ajili ya kuhudhuria mafunzo yanayohusiana na majukumu yao. Halikadhalika viongozi wa Chama cha Wafanyakazi na wa Shirikisho ambalo Chama ni mwanachama wanayo haki ya kupata likizo ya malipo kwa ajili ya kutekeleza majukumu yao ya Chama au Shirikisho.

Utaratibu wa kupata haki za chama

Chama cha Wafanyakazi kilichosajiliwa kinachotaka kutekeleza haki za Chama kinapaswa kimtaarifu Mwajiri kwa kujaza Fomu na. CMA 3 kikiainisha haki ambazo kinataka kuzitekeleza na mahali pa kazi ambapo kinataka kikatekeleze haki hizo.

Mwajiri akishapokea fomu hiyo anapaswa kukutana na Chama ndani ya siku thelathini na kama itawezekana kufikia makubaliano ya pamoja yatakayotoa haki hizo, na kuweka utaratibu wa kuzitekeleza. Endapo hapatakuwapo makubaliano au Mwajiri kushindwa kukutana na Chama ndani ya muda uliowekwa, Chama kinaweza kupeleka mgogoro huo mbele ya Tume kwa ajili ya usuluhishi. Usuluhishi ukishindikana Chama kinaweza kupeleka mgogoro huo Mahakama ya kazi kwa uamuzi.

Usitishaji wa haki za chama

Haki za Chama zinaweza kusitishwa iwapo Chama kitakiuka makubaliano ya msingi ya utoaji haki hizo au amri ya Mahakama inayotoa haki hizo.

Ikitokea hali hiyo ya ukiukwaji wa makubaliano Mwajiri anaweza kupeleka mgogoro huo mbele ya Tume kwa ajili ya usuluhishi. Usuluhishi ukishindikana, anaweza kupeleka mgogoro huo Mahakama ya Kazi, akiiomba Mahakama isitishe makubaliano ya kutoa haki hizo au iondoe amri yake ya kutoa haki hizo.

SURA YA SABA

MAJADILIANO YA PAMOJA

Majadiliano ya pamoja ni majadiliano yanayofanyika baina ya Chama cha Wafanyakazi kinachotambuliwa na Mwajiri kama wakala wa Wafanyakazi katika majadiliano kwa upande mmoja, na Mwajiri au Jumuiya ya Waajiri kwa upande mwingine.

Vyama vya Wafanyakazi zaidi ya kimoja vilivyosajiliwa vinaweza kuunda mseto na kutambuliwa kwa pamoja kama wakala wa wafanyakazi katika majadiliano ya pamoja.

Majadiliano ya pamoja ni njia mojawapo ya kutatua migogoro ya kazi.

Majadiliano haya yanaweza kuihusu sehemu moja ya kazi, au sehemu nyingi za kazi kwa pamoja.

Utambuzi

Ili Chama cha Wafanyakazi kiweze kushiriki katika majadiliano ya pamoja, kinapaswa kuingia katika makubaliano ya kutambuliwa na Mwajiri kama wakala pekee wa Wafanyakazi katika majadiliano ya pamoja.

Sifa ya msingi kwa Chama kuweza kutambuliwa ni kuwa na Wanachama wengi miongoni mwa Wafanyakazi katika kitengo cha majadiliano.

Kitengo cha majadiliano ni kundi la Wafanyakazi ambalo Chama kinatambuliwa au kinastahili kutambuliwa kama wakala wa kundi hilo la Wafanyakazi. Kwa lugha nyingine ni kundi ambalo litahusika na makubaliano yoyote yatokayofikiwa baina ya Chama na Mwajiri baada ya majadiliano.

Kitengo cha majadiliano kinaweza kujumuisha kada maalum ya Wafanyakazi ambao wana maslahi yanayofanana.

Utaratibu wa Chama kuomba kutambuliwa

Chama cha Wafanyakazi kinachotaka kutambuliwa na Mwajiri kama wakala pekee wa wafanyakazi katika majadiliano ya pamoja, kinapaswa kujaza fomu maalum (Fomu Na. CMA 2), na kuwasilisha kwa mwajiri husika au Jumuiya ya Waajiri kutegemea wanataka kujadiliana na nani. Katika fomu hiyo, Chama

cha Wafanyakazi kinapaswa kupendekeza kitengo cha majadiliano wanachotaka kukiwakilisha na kuambatanisha ushahidi wa nyaraka unaothibitisha kuwa kina uwakilishi mkubwa katika kitengo hicho cha majadiliano.

Mwajiri akishapokea fomu hiyo anapaswa kukutana na Chama cha Wafanyakazi husika ndani ya siku thelathini (30) na ikiwezekana wafikie makubaliano ya kukitambua Chama kama wakala pekee wa Wafanyakazi katika kitengo cha majadiliano.

Endapo Mwajiri atashindwa kukutana na Chama cha Wafanyakazi ndani ya siku thelathini au Mwajiri na Chama wameshindwa kufikia makubaliano, Chama kinaweza kupeleka mgogoro huo mbele ya Tume kwa ajili ya usuluhishi.

Usuluhishi utafanyika ndani ya siku thelathini kuanzia siku rufaa ilipopokelewa na Tume au zaidi ya siku thelathini kwa makubaliano ya maandishi ya pande husika. Ikitokea usuluhishi umeshindikana Chama kinaweza kupeleka mgogoro huo Mahakama ya Kazi kwa uamuzi.

Mahakama ya Kazi inaweza kuiagiza Tume isimamie zoezi la upigaji kura iwapo mgogoro unahusu uwakilishi au idadi ya Wanachama katika kitengo cha majadiliano.

Jukumu la kujadiliana kwa nia njema

Mwajiri au Jumuiya ya Waajiri iliyokitambua Chama cha Wafanyakazi wanapaswa kujadiliana nacho kwa nia njema. Hali kadhilika Chama cha Wafanyakazi nacho, kina jukumu hilo hilo la kujadiliana kwa nia njema na Mwajiri au Jumuiya ya Waajiri iliyowatambua.

Jukumu la kujadiliana kwa nia njema linajumuisha mambo yafuatayo:-

(a) Kuheshimu Wawakilishi wa pande zote

(b) Kujiandaa kikamilifu na majadiliano kabla ya majadiliano yenyewe kwa kuandaa mapendekezo na kupata ridhaa ya wanaowawakilisha.

(c) Kutobadilisha badilisha wawakilishi katika majadiliano bila sababu za msingi

(d) Kuhudhuria vikao kwa wakati

(e) Kutoa sababu kwa kila pendekezo lililowasilishwa.

(f) Kupokea mapendekezo ya upande wa pili na kuyatafakari, na kama hayakubaliki, kutoa sababu za kutoyakubali.

Jukumu la kujadiliana kwa nia njema linakitaka Chama kilichotambuliwa kuwawakilisha kwa haki Wafanyakazi wote bila kubagua ndani ya kitengo cha majadiliano, hata wasio Wanachama wake.

Kinyume cha kujadiliana kwa nia njema ni kujadiliana kwa nia mbaya na hii hutokea pale ambapo vitendo vya upande husika vinaashiria hana nia ya kweli ya kufikia makubaliano. Vitendo ambavyo vinaweza kuchukuliwa kuwa ni kujadiliana kwa nia mbaya ni pamoja na:-

(a) Kutoa madai makubwa yasiyotekelezeka bila sababu za msingi

(b) Kukataa bila sababu za msingi kupunguza baadhi ya mapendekezo

(c) Kukataa kutoa taarifa zinazohitajika kuwezesha majadiliano kufanyika

(d) Kutumia lugha isiyofaa, matusi, kejeli na dharau wakati wa majadiliano

(e) Kuchelewesha majadiliano bila sababu za msingi

(f) Kuweka masharti yasiyo na msingi ili majadiliano yaendelee

(g) Kuwazunguka wawakilishi wa upande mwingine wakati wa mchakato wa majadiliano

(h) Kuanza kuchukua hatua za upande mmoja kama vile kubadilisha masharti ya kazi au kugoma kabla majadiliano hayajamalizika.

Mchakato wa majadiliano utakuwa umekamilika iwapo pande zote zitakuwa zimekubaliana au upande mmoja umetangaza kukwama kwa majadiliano. Upande wowote katika mchakato wa majadiliano unaweza kutangaza kukwama kwa majadiliano baada ya:-

(a) Upande huo kujaribu kwa nia njema kufikia makubaliano bila mafanikio baada ya kusubiri kwa kipindi kirefu.

(b) Upande mwingine kutenda vitendo ambavyo vinaashiria hawataki kujadiliana

(c) Upande mwingine unajadili kwa nia mbaya.

Masuala yanayoweza kujadiliwa katika majadiliano ya pamoja

Masuala yanayoweza kujadiliwa katika majadiliano ya pamoja ni kama yafuatayo:-

(a) Mishahara na aina nyingine za ujira

(b) Masharti na hali ya ajira

(i) Masharti ya ajira ni masharti yaliyomo katika mkataba wa ajira kwa kuelezwa waziwazi au kwa kuchukuliwa kuwa ni masharti ya ajira kama vile saa za kazi, muda wa likizo, muda wa notisi n.k. na

(ii) Hali ya ajira ni mambo ambayo kwa kawaida yanaambatana na ajira kama vile Kanuni za kusimamia nidhamu mahali pa kazi, huduma za kantini, Afya na Usalama n.k.

(c) Posho, marupurupu na mafao ya ajira

(d) Sera na mazoea ya ajira kuhusiana na ajira mpya, uteuzi, mafunzo, uhamisho, upandaji vyeo, kusimamisha wafanyakazi, nidhamu na usitishaji wa ajira.

(e) Uhusiano kazini ikiwemo:-

(i) Haki za Chama

(ii) Taratibu za majadiliano na utatuzi wa migogoro

(iii) Taratibu za malalamiko, nidhamu na usitishaji ajira.

(f) Mambo yoyote yatakayokubaliwa na pande zote husika.

Jukumu la kutoa taarifa muhimu

Mwajiri analo jukumu la kutoa kwa Chama kinachotambulika, taarifa zote muhimu zitakazokisaidia Chama kushiriki kikamilifu, kwenye mashauriano na majadiliano ya pamoja na Mwajiri au Jumuiya ya Waajiri.

Madhumuni ya kutoa taarifa hizo ni kuwezesha mchakato wa majadiliano au mashauriano uweze kufanyika kwa urahisi kadiri iwezekanavyo. Kuhakikisha majadiliano yanafanyika kwa nia njema, na kufanya mazingira ya kuaminiana kwa pande zote za majadiliano.

Kwa kawaida Mwajiri anapaswa kutoa taarifa zile tu zinazohusiana na suala linalojadiliwa.

Hata hivyo Mwajiri halazimishwi kutoa taarifa ambazo:-

(a) Anayo kinga kisheria kutozitoa

(b) Akizitoa atakuwa anakiuka amri/zuio alilowekewa na Sheria au Mahakama

(c) Ni za Siri, ambazo zinaweza kusababisha madhara kwa mfanyakazi au mwajiri iwapo zitatolewa, madhara kama Mwajiri kupoteza wateja, wagavi kukataa kumletea mali muhimu au huduma, mabenki kukataa kumkopesha, kushindwa kupata fedha za kuongeza mtaji wa biashara.

(d) Taarifa binafsi za mfanyakazi bila ridhaa ya mfanyakazi husika.

Utaratibu wa kuomba taarifa

Kwa kawaida Chama cha Wafanyakazi kinapohitaji taarifa kinapaswa kumtaarifu Mwajiri kwa maandishi mapema iwezekanavyo, ili kutoa nafasi kwa mwajiri kuandaa na kuwasilisha taarifa hizo, hivyo Chama kinapaswa kieleze kwa ufasaha na usahihi ni taarifa zipi kinahitaji na sababu za kuhitaji taarifa hizo.

Chama cha Wafanyakazi kitakachopewa taarifa za siri au za mtu binafsi kina wajibu wa kutunza siri hizo na kutozitoa taarifa hizo kwa mtu yeyote asiyehusika zaidi ya Wanachama na washauri wake.

Makubaliano ya Pamoja

Makubaliano ya pamoja ni makubaliano ya maandishi baina ya Chama cha Wafanyakazi kwa upande mmoja na Mwajiri au Jumuiya ya Waajiri kwa upande mwingine, kuhusiana na suala lolote la kazi.

Makubaliano haya yanapaswa kusainiwa na pande zote husika na yakishatiwa sahihi yanazibana pande zote kuyatekeleza isipokuwa kama itakubaliwa vinginevyo. Licha ya kuzibana pande husika za makubaliano hayo yaani Chama cha Wafanyakazi na Mwajiri au Jumuiya ya Waajiri, makubaliano hayo yanawabana pia Wanachama wa Chama husika na Wafanyakazi ambao sio Wanachama wa Chama cha Wafanyakazi kilichoingia katika makubaliano waliomo katika kitengo cha majadiliano.

Makubaliano hayo yataendelea kuwabana Waajiri au Wafanyakazi waliokuwa sehemu ya makubaliano hayo wakati yanaanza kutumika wakiwemo Wanachama wa Chama cha Wafanyakazi au Jumuiya ya Waajiri waliojiuzulu.

Makubaliano hayo yatawabana pia Waajiri na wafanyakazi waliojiunga na Jumuiya ya Waajiri au Chama cha Wafanyakazi baada ya makubaliano hayo kuanza kutumika.

Makubaliano hayo yanaweza kusitishwa na upande wowote kwa kutoa notisi isipokuwa kama itakubaliwa vinginevyo.

Nakala ya makubaliano hayo inapaswa ipelekwe kwa Kamishna wa Kazi.

Makubaliano ya ada ya uwakala

Makubaliano ya ada ya uwakala ni makubaliano yanayofikiwa baina ya Chama cha Wafanyakazi kinachotambuliwa kwa upande mmoja, na Mwajiri kwa upande mwingine, kukata ada ya uwakala kutoka katika mishahara ya Wafanyakazi wasio wanachama kwa sababu ya kufaidika na huduma ya Chama, ili mradi makubaliano hayo yazingatie mambo yafuatayo:-

(a) Wafanyakazi watakaohusika ni wale waliomo kwenye kitengo cha majadiliano peke yake.

(b) Wafanyakazi wasio Wanachama wasilazimishwe kwa namna yoyote kuwa Wanachama wa Chama cha Wafanyakazi.

(c) Kiwango cha ada ya uwakala isizidi kiwango cha ada wanayolipa Wanachama

(d) Ada ya uwakala itakayokatwa kutoka kwa wasiowanachama itunzwe na Chama katika akaunti tofauti na akaunti ya ada za Wanachama

(e) Pesa zitakazokusanywa zitumike katika kuendeleza na kulinda maslahi ya kijamii na kiuchumi ya Wafanyakazi katika sehemu hiyo ya kazi. Maslahi ya kijamii na kiuchumi ya Wafanyakazi ni kama yafuatayo:- Masuala ya kazi yanayoathiri ajira au uhusiano kazini, elimu ya wafanyakazi n.k.

Ushirikishwaji wafanyakazi

Chama cha Wafanyakazi kinachotambuliwa kwa upande mmoja na Mwajiri au Jumuiya ya Waajiri, wanaweza kufikia makubaliano ya pamoja ya kuanzisha Baraza la ushirikishwaji Wafanyakazi mahali pa kazi na katika kufanya hivyo wanaweza kuomba msaada na ushauri wa Tume.

Kuondolewa kwa utambuzi

Utambuzi wa Chama cha Wafanyakazi kama wakala pekee wa Wafanyakazi katika kitengo cha majadiliano unaweza kuondolewa iwapo wanachama wa Chama hicho watapungua na kuwa pungufu ya nusu ya Wafanyakazi katika kitengo cha majadiliano. Ili mradi iwe imepita miezi sita (6) kuanzia tarehe ya Chama kutambuliwa.

Utaratibu wa kuondoa utambuzi

Chama kikipoteza uwakilishi katika kitengo cha majadiliano, Mwajiri anapaswa kukipa notisi ya miezi mitatu (3) kiongeze uwakilishi wake. Iwapo Chama kitashindwa kuongeza idadi ya Wanachama baada ya miezi hiyo mitatu kupita, Mwajiri anayo haki ya kuondoa utambuzi.

Chama kinachotambuliwa kikipoteza uwakilishi, Chama kingine ambacho kina uwakilishi mkubwa kinaweza kuomba kutambuliwa kama wakala pekee wa majadiliano wa Wafanyakazi katika kitengo cha majadiliano.

SURA YA NANE

MIGOMO

Mgomo ni usimamishaji wa kazi, unaofanywa na Wafanyakazi kwa lengo la kumlazimisha au kumshurutisha Mwajiri wao au Mwajiri mwingine au Jumuiya ya Waajiri ambayo Mwajiri wao ni mwanachama, kukubali madai ya Wafanyakazi, au Mwajiri kubadili au kuacha madai yake dhidi ya Wafanyakazi, madai ambayo yanahusiana na mgogoro wa maslahi.

Haki ya kugoma

Kila mfanyakazi anayo haki ya kugoma. Hata hivyo haki hii ya kugoma ni kwa migogoro ya maslahi peke yake. Kwa msingi huo chini ya Sheria ya Ajira na Uhusiano Kazini, Wafanyakazi hawaruhusiwi kugoma iwapo mgogoro wao ni lalamiko au mgogoro wa kudai haki.

Kuzuizi cha kugoma

Pamoja na haki ya kugoma kutolewa kwa kila mfanyakazi, wapo baadhi ya Wafanyakazi ambao wamenyimwa haki hiyo. Wafanyakazi hao ni hawa wafuatao:-

(i) Wafanyakazi katika huduma muhimu

(ii) Wafanyakazi ambao wanapaswa kuendelea na kazi wakati wa mgomo kwa makubaliano ya pamoja ya utoaji huduma kwa kiwango cha chini.

(iii) Wafanyakazi ambao wanabanwa na makubaliano ya kupeleka mgogoro huo kwenye uamuzi

(iv) Wafanyakazi ambao wanabanwa na makubaliano ya pamoja au TUZO ya mwamuzi inayosimamia suala la mgogoro.

(v) Mahakimu, Waendesha Mashitaka au Watumishi wengine wa Mahakama.

(vi) Wafanyakazi wanaobanwa na Tangazo la Kima cha Chini cha Mshahara na Masharti ya kazi yanayosimamia suala la mgogoro katika mwaka wa kwanza wa kutumika Tangazo hilo.

Utaratibu wa mgomo

Ili mgomo uwe halali ni lazima wafanyakazi wafuate hatua zifuatazo:-

(a) Mgogoro uwe mgogoro wa maslahi

(b) Mgogoro uwasilishwe Tume ya Usuluhishi na Uamuzi kwa ajili ya usuluhishi kwa kutumia fomu maalum (Fomu CMA 1)

(c) Mgogoro uwe umeshindikana kusuluhishwa ndani ya siku 30 au zaidi kadri pande husika zitakavyokubaliana

(d) Kura za kuunga mkono mgomo zipigwe na wafanyakazi husika kwa mujibu wa Katiba ya Chama cha Wafanyakazi.

(e) Notisi ya saa 48 ya kuanza mgomo itolewe kwa Mwajiri. Saa 48 zitakazohesabiwa ni saa za kawaida za kazi na notisi ni lazima ieleze mgomo utakuwa wa siku ngapi.

Hata hivyo wafanyakazi wanaweza kugoma bila kufuata utaratibu huo hapo juu, endapo itatokea Mwajiri akabadilisha masharti ya kazi bila kushauriana nao.

Endapo itatokea hali hiyo, wafanyakazi wanachotakiwa kufanya ni kuwasillisha mgogoro kwenye Tume kwa fomu maalum (Fomu CMA 1) wakimtaka Mwajiri kutotekeleza mabadiliko hayo au kama ameshaanza kutekeleza, kuyarejesha masharti ya awali kabla ya mabadiliko.

Endapo Mwajiri hatatekeleza madai yaliyoelezwa na Wafanyakazi ndani ya saa 48 kuanzia saa aliyopokea nakala ya fomu ya mgogoro, wafanyakazi wanaweza kugoma.

Vitendo vinavyokatazwa wakati wa mgomo

(a) Piketi, kuunga mkono mgomo

(b) Kutoajiri na kutumia wafanyakazi wapya mbadala wakati wa mgomo

(c) Kuwafungia Waajiri ndani ya eneo la kazi

(d) Kuwazuia Waajiri kuingia katika eneo la kazi

Kiwango cha chini cha utoaji huduma

Chama cha Wafanyakazi na mwajiri wanaweza kufikia makubaliano ya pamoja ya utoaji wa huduma kwa kiwango cha chini wakati wa mgomo ambapo Wafanyakazi wachache wataendelea kutoa huduma wakati mgomo ukiendelea.

Endapo hakuna makubaliano ya pamoja, Mwajiri anaweza kuwasilisha maombi kwenye kamati ya Huduma Muhimu, kubainisha au kuomba baadhi ya wafanyakazi waendelee na kazi wakati wa mgomo iwapo kiwango hicho cha chini cha huduma ni muhimu katika kuzuia uharibifu wa mali au mashine wakati wa mgomo.

Madhara ya mgomo usiofuata utaratibu au kutenda vitendo vinavyokatazwa

Endapo wafanyakazi wanashiriki mgomo ambao unafanyika bila kuzingatia utaratibu uliowekwa na Sheria, au wanatenda vitendo vilivyokatazwa, Mahakama ya Kazi imepewa mamlaka ya:

(a) Kutoa Amri ya Zuio kumzuia mtu yeyote kushiriki katika mgomo huo au kutenda kitendo kilichokatazwa.

(b) Kuamuru kulipwa fidia kwa hasara iliyosababishwa na mgomo huo au kitendo hicho kilichokatazwa.

Kitendo cha kupinga

Kitendo cha kupinga ni usimamishaji wa kazi unaofanywa na Wafanyakazi kwa madhumuni ya kukuza na kulinda maslahi yao ya kijamii na kiuchumi, lakini sio kwa madhumuni ya kugoma au kwa haki ambayo Sheria imeweka utaratibu wa kuidai.

Utaratibu wa kushiriki katika kitendo cha kupinga.

Mfanyakazi anaweza kushiriki katika kitendo cha kupinga iwapo:-

(a) Kitendo hicho kimeitishwa na Chama cha Wafanyakazi au Shirikisho la Vyama vya Wafanyakazi.

(b) Chama au Shirikisho liwe limetoa notisi kwa Baraza ikieleza:-
   (i) Sababu za kitendo hicho, na
   (ii) Muda na namna kitendo hicho kitafanyika.

(c) Siku thelathini ziwe zimepita kuanzia tarehe ya notisi kupokelewa kwenye Baraza.

(d) Chama au Shirikisho liwe limetoa notisi ya angalau siku kumi na nne (14) ya kuanza kwa kitendo cha kupinga.

Kizuizi cha kushiriki kitendo cha kupinga.

Wafanyakazi katika huduma muhimu na wale iliyokubaliwa watoe kiwango cha chini cha huduma, hawaruhisiwi kushiriki katika kitengo cha kupinga.

SURA YA TISA

UTATUZI WA MIGOGORO

Migogoro ya kazi ni migogoro inayohusisha Mwajiri au Jumuiya ya Waajiri kwa upande mmoja na mfanyakazi au Chama cha Wafanyakazi kwa upande mwingine.

Migogoro ya kazi imegawanyika katika sehemu kuu mbili, migogoro ya maslahi na migogoro ya kudai haki au lalamiko.

Mgogoro wa maslahi

Mgogoro wa maslahi ni mgogoro wowote ambao si lalamiko. Kwa mfano:-

(a) Mgogoro kuhusu nyongeza ya mshahara

(b) Mgogoro wa kuhusu kupunguzwa au kuongezwa saa za kazi

(c) Mgogoro kuhusu kurejewa makubaliano ya pamoja n.k.

Lalamiko

Lalalamiko ni mgogoro wowote unaotokana na matumizi, tafsiri na utekelezaji wa:-

(a) Makubaliano au mkataba baina ya Mwajiri na Mfanyakazi

(b) Makubaliano ya pamoja baina ya Chama cha Wafanyakazi na Mwajiri au Jumuiya ya Waajiri.

(c) Sheria za Kazi

(d) Sehemu VII ya Sheria ya Merchant Shipping Act, 2003

Mfano wa mgogoro wa haki au lalamiko ni:-

(a) Kushindwa kulipa mshahara

(b) Kukiuka makubaliano ya pamoja

(c) Kushindwa au kukataa kutekeleza yaliyokubaliwa katika Mkataba wa Ajira

(d) Kukiuka Sheria

Taratibu za utatuzi wa migogoro ya kazi

Sheria imeweka utaratibu wa utatuzi wa migogoro kwa njia ya Usuluhishi, Uamuzi na Mahakama. Vile vile Sheria imetoa nafasi kwa wadau kukubaliana njia au namna ya kutatua migogoro yao. Migogoro yote ya kazi ukiachia ile ambayo wadau wamekubaliana vinginevyo inapaswa ianzie hatua ya usuluhishi kwenye Tume isipokuwa pale ambapo Sheria imeelekeza vinginevyo.

Usuluhishi

Usuluhishi ni hatua ya kwanza kabisa ya utatuzi wa migogoro.

Uwasilishaji mgogoro mbele ya Tume

Mgogoro utawasilishwa kwenye Tume kwa kutumia fomu maalum ya rufaa. (Fomu CMA 1) na utawasilishwa katika Ofisi ya Tume inayosimamia eneo ambamo mgogoro umetokea. Kabla ya kuiwasilisha kwenye Tume, mlalamikaji anapaswa ampatie nakala ya fomu hiyo mlalamikiwa na anapoiwasilisha kwenye Tume anatakiwa kutoa ushahidi unaothibitisha kuwa tayari alishampelekea nakala ya fomu hiyo mlalamikiwa.

Fomu hiyo inaweza kupelekwa kwa mlalamikiwa kwa njia kuu tatu:-

- Mkono
- Nukushi
- Rejista ya posta

Muda wa kuwasilisha mgogoro kwenye Tume

Migogoro yote inayohusu usitishaji ajira inapaswa iwasilishwe kwenye Tume ndani ya siku thelathini (30) kuanzia siku ulipotokea, na migogoro mingine inapawa iwasilishwe ndani ya siku sitini (60).

Endapo mgogoro utachelewa kuwasilishwa ndani ya siku zinazotakiwa, mlalamikaji anapaswa kujaza fomu maalum (fomu CMA 7) ya kuomba kuleta mgogoro wake nje ya muda. Fomu hiyo inapaswa iambatane na Taarifa ya maombi pamoja na hati ya kiapo.

Kuteuliwa msuluhishi

Mara baada ya kupokea rufaa iliyowasilishwa Tume itateua Msuluhishi wa kusuluhisha mgogoro huo na itatoa notisi (hati wito) ya angalau siku kumi na nne (14) kwa wadaawa.

Usuluhishi ni nini?
Usuluhishi ni mchakato, katika mchakato huo mtu huru asiyekuwa na upande wowote katika mgogoro husika anajaribu kuwasaidia wadaawa kutatua mgogoro. Katika mchakato huo Msuluhishi anaweza kukutana na wadaawa kwa pamoja au mmoja mmoja pekee.

Msuluhishi hapaswi kulazimisha watu wapatane, anachoweza kufanya ni kutoa mapendekezo yatakayosaidia kumaliza mgogoro. Wenye dhima ya kumaliza mgogoro ni wadaawa wenyewe.

Msuluhishi anazo siku thelathini (30) za kusuluhisha, siku hizo zinaweza kuongezwa kwa makubaliano ya maandishi ya wadaawa wenyewe.

Mara baada ya usuluhishi kufikia tamati, Msuluhishi anapaswa kutoa hati ya kusuluhisha au kutosuluhisha Mgogoro (Fomu CMA 5) akiainisha aina ya mgogoro na kueleza iwapo mgogoro umesuluhishwa au hapana.

Endapo mgogoro umesuluhishwa, Msuluhishi anapaswa kuandika makubaliano hayo vizuri ambayo yatasainiwa na pande zote husika. Upande wowote unaweza kuomba makubaliano hayo yawe TUZO ya Mwamuzi.

Uwakilishi wakati wa usuluhishi
Mdaawa katika mgogoro wakati wa usuluhishi anaweza kuwakilishwa na:-

(a) Ofisa wa Chama cha Wafanyakazi au mwanachama mwenzake.

(b) Wakili

(c) Mtu yeyote aliyemchagua

Hatua zinazofuata usuluhishi ukishindikana
Endapo msuluhishi atashindwa kusuluhisha, mdaawa anaweza:-

(a) Iwapo mgogoro ni wa maslahi

  (i) Kutoa notisi ya nia ya kugoma au kufungia nje

(b) Iwapo mgogoro ni mgogoro wa haki au lalamiko:-

  (i) Kupeleka mgogoro huo kwenye hatua ya uamuzi; au

  (ii) Kupeleka mgogoro huo Mahakama ya Kazi.

Hata hivyo Sheria inampa msuluhishi uwezo na mamlaka ya kuendelea kusuluhisha mgogoro huo hata baada ya mgogoro kuingia hatua nyingine.

Madhara ya kushindwa kuhudhuria Usuluhishi
Madhara ya kutohudhuria usuluhishi yanategemea aina ya mgogoro. Iwapo mgogoro ni mgogoro wa maslahi na aliyeshindwa kuhudhuria usuluhishi ni mlalamikaji, Msuluhishi anaweza kuongeza siku thelathini (30) zaidi ya zile alizonazo kisheria. Na kama mlalamikiwa ndiye aliyeshindwa kuhudhuria, msuluhishi anaweza kupunguza siku za usuluhishi.

Iwapo mgogoro ni mgogoro wa haki au lalamiko, msuluhishi anaweza kuutupilia mbali mgogoro huo, endapo aliyeshindwa kuhudhuria ni mlalamikaji au kusikiliza shauri upande mmoja endapo aliyeshindwa kuhudhuria ni mlalamikiwa. Kabla ya kuchukua hatua hiyo Tume itajiridhisha kuwa wadaawa walitaarifiwa ipasavyo.

Hata hivyo Tume inaweza kubadilisha uamuzi wake endapo upande ulioumizwa na uamuzi huo, utawasilisha maombi kwa utaratibu uliowekwa mbele ya Tume, ndani ya siku kumi na nne (14) na tume kuridhika kuwa mdaawa alikuwa na sababu za msingi zilizomfanya ashindwe kuhudhuria.

Uamuzi
Uamuzi ni mchakato ambao mtu aliyeteuliwa kuwa Mwamuzi anasikiliza ushahidi na hoja za wadaawa na kisha kutatua mgogoro kwa kutoa uamuzi na TUZO ya maandishi, ikieleza sababu za uamuzi huo.

Migogoro inayotatuliwa kwa njia ya uamuzi
Kama ilivyo katika usuluhishi mgogoro katika hatua ya Uamuzi utasikilizwa na kuamuliwa katika Ofisi ya Tume inayosimamia eneo ambamo mgogoro umetokea.

Migogoro ambayo itasikilizwa na kuamuliwa kwa njia ya uamuzi ni:-

(a) Migogoro ya maslahi katika huduma muhimu

(b) Lalamiko juu ya

  (i) Uhalali wa kusitisha ajira
  (ii) Madai yoyote yatokanayo na ukiukwaji wa Mkataba wa ajira ambayo kiasi kinachodaiwa kipo ndani ya mamlaka ya kifedha ya Mahakama ya Hakimu Mkazi

(iii) Mgogoro wowote utakaoletwa na Mahakama ya Kazi kwa ajili ya kuamuliwa na Tume

Utaratibu wa kuwasilisha mgogoro kwa ajili ya uamuzi
Mara baada ya Msuluhishi kushindwa kusuluhisha mgogoro, atatoa hati ya kushindwa kusuluhisha, akieleza waziwazi aina ya mgogoro pamoja na masuala yasiyobishaniwa na yanayobishaniwa.

Hati ya kushindwa kusuluhisha itatolewa na msuluhishi, mlalamikaji anaweza kuomba Tume iupeleke mgogoro huo katika hatua ya uamuzi.

Wadaawa wanaposhindwa kutatua mgogoro wao kwa njia ya usuluhishi na mgogoro kuwasilishwa katika ngazi ya uamuzu, Tume itateua Mwamuzi wa kusikiliza na kuamua mgogoro huo na itatoa notisi (hati wito) ya angalau siku kumi na nne (14) kwa wadaawa.

Utaratibu wa kusikiliza na kuamua mgogoro
Mwamuzi anayo mamlaka ya kuamua namna atakavyoliendesha shauri kwa madhumuni ya kutatua mgogoro husika kwa haraka na kwa haki na kwa kuzingatia kiini cha mgogoro bila kubanwa sana na masuala ya kiufundi.

Katika ngazi ya uamuzi shauri litapitia hatua tano muhimu zifuatazo:-

(i) Utangulizi
(ii) Hoja za ufunguzi na kuanisha masuala ya kubishaniwa
(iii) Ushahidi
(iv) Hoja za hitimisho; na
(v) Tuzo

Uwakilishi katika ngazi ya uamuzi
Mdaawa katika mgogoro uliopo katika ngazi ya uamuzi anaweza kuwakilishwa na:-

(a) Ofisa wa Chama cha Wafanyakazi au mwanachama wenzake;

(b) Wakili

(c) Mtu yeyote aliyemchagua

Madhara ya kushindwa kuhudhuria usikilizaji wa shauri
Endapo upande wowote katika shauri utashindwa kuhudhuria usikilizaji wa shauri, mwamuzi anaweza kufanya mambo yafuatayo:-

(a) Iwapo aliyeshindwa kuhudhuria ni mlalamikaji, Mwamuzi anaweza kulifuta shauri.

(b) Iwapo aliyeshindwa kuhudhuria shauri ni mlalamikiwa, Mwamuzi anaweza kusikiliza shauri upande mmoja.

Mwamuzi anaweza kutengua uamuzi wake, endapo upande ulioumizwa na uamuzi huo utawasilisha maombi ndani ya siku kumi na nne (14), na Tume kuridhika kuwa mdaawa alikuwa na sababu za msingi zilizomfanya ashindwe kuhudhuria.

Utoaji tuzo
Mwamuzi akishamaliza kusikiliza shauri anapaswa kutoa uamuzi uliosainiwa pamoja na Tuzo ndani ya siku thelathini (30) akieleza sababu za uamuzi huo.

Tuzo itakayotolewa itazibana pande zote za mgogoro na inaweza kukazwa katika Mahakama ya Kazi kama Amri ya Mahakama.

Marejeo
Hakuna haki ya kukata rufaa dhidi ya uamuzi na Tuzo ya Mwamuzi. Mtu asiyeridhika na uamuzi na Tuzo ya Mwamuzi anaweza kuwasilisha maombi ya marejeo Mahakama ya Kazi ndani ya wiki sita (6) kuanzia tarehe ya uamuzi na Tuzo hiyo.

Mahakama ya Kazi inaweza kutengua uamuzi na Tuzo ya Mwamuzi kwa maombi au kwa hatua zake yenyewe, endapo itabainika kulikuwepo kasoro za kisheria katika uamuzi na Tuzo hiyo.

MAHAKAMA
Mahakama ya Kazi inayo mamlaka ya kipekee kuhusiana na masuala ya matumizi, tafsiri na utekelezaji wa Sheria ya Ajira na Uhusiano Kazini na Sheria nyingine za kazi pamoja na kutoa maamuzi juu ya:-

(a) Rufaa kutokana na maamuzi ya Msajili wa Vyama vya Wafanyakazi na Waajiri.

(b) Mapitio na marejeo ya:-

(i) Tuzo ya Mwamuzi
(ii) Maamuzi ya Kamati ya Huduma Muhimu

(c) Mapitio ya maamuzi, Kanuni na miongozo itolewayo na Waziri

(d) Malalamiko yanayopaswa kusikilizwa na Mahakama ya Kazi

(e) Migogoro inayopaswa kutolewa maamuzi na Mahakama ya Kazi

(f) Maombi ikiwemo:-

(i) Amri ya tamko au
(ii) Amri ya Zuio

Utaratibu wa kuwasilisha Lalamiko
Mlalamikaji yeyote anayetaka kuwasilisha lalamiko lake Mahakama ya Kazi atawasilisha lalamiko hilo kwa kuwasilisha maelezo ya lalamiko kama ilivyoelekezwa katika Fomu na. 1 ya jedwali la kanuni za Mahakama Kazi, 2007.

Lalamiko linapaswa liwasilishwe Mahakamani ndani ya siku thelathini (30) tangu kushindwa usuluhishi mbele ya Tume, endapo lalamiko hilo linahusu usitishaji wa ajira na siku sitini (60) kwa aina nyingine ya malalamiko.

Kesi ya Uwakilishi
Endapo walalamikaji wengi wana malalamiko yanayofanana dhidi ya Mwajiri wanaweza kufungua shauri la uwakilishi kwa ruhusa ya Mahakama ambapo mmoja au wachache miongoni mwao watawawakilisha walalamikaji wengine.

Uwasilishaji wa nyaraka Mahakamani
Nyaraka zote zitawasilishwa kwa Msajili zikiwa katika nakala za kutosha kwa:-

(a) Mkono; au

(b) Rejista ya posta; au

(c) Kwa nukushi au barua pepe

Nyaraka zitakazowasilishwa kwa mkono ni lazima ziwe nakala halisi na endapo nyaraka hizo zitawasilishwa kwa nukushi au barua pepe, nakala zake halisi ni lazima ziwasilishwe ndani ya siku kumi na tano kuanzia siku zilipotumwa.

Kikao cha Awali na Usuluhishi
Mara baada ya pande zote kuwasilisha nyaraka zao kwa maana ya maelezo ya lalamiko, mabezo na maelezo ya nyongeza ya lalamiko, Msajili ataitisha kikao cha awali na kujaribu kutatua mgogoro kwa njia ya usuluhishi pamoja na kujaribu kukubaliana juu ya mambo mbalimbali ya msingi.

Endapo wadaawa watafikia makubaliano ya kumaliza mgogoro, Msajili atatayarisha hati ya makubaliano itakayosainiwa na pande zote za mgogoro na makubaliano hayo yatakuwa Tuzo au Amri ya Mahakama.

Endapo Wadaawa watashindwa kumaliza mgogoro wao kwa njia ya usuluhishi, watatayarisha tamko la pamoja la kushindwa kutatua mgogoro na kutia sahihi zao. Baada ya hapo Msajili atawasilisha Jalada ya kesi hiyo kwa Mheshimiwa Jaji kwa maelekezo na hatua zaidi.

Maombi
Maombi ya mapitio, marejeo na yale ya kingwala yatawasilishwa kwa njia ya maombi au samansi ya faragha ikiungwa mkono na hati ya kiapo.

Maombi mengine yatawasilishwa kwa njia ya taarifa ya maombi ikiungwa mkono na hati ya kiapo.

Rufaa
Rufaa itawasilishwa, kwanza kwa kutoa notisi ya rufaa kwa mtu au taasisi ambayo uamuzi wake unakatiwa rufaa na nakala kuwasilishwa kwa Msajili wa Mahakama.

Mara baada ya kupokea notisi ya rufaa mtu au taasisi ambayo uamuzi wake unakatiwa rufaa, itatayarisha mwenendo wa shauri kwa maandishi na sababu za uamuzi na kuwasilisha kwa Msajili wa Mahakama ndani ya siku kumi na tano.

Msajili akishapokea nyaraka hizo atamkabidhi mrufani ambaye anapaswa kutayarisha hoja za rufaa na kuziwasilisha mahakamani ndani ya siku kumi na tano tangu akabidhiwe nyaraka. Mrufani anapaswa kumpa mjibu rufani nakala ya hoja zake za rufaa.

Utatuzi wa migogoro kwa makubaliano
Wadau wanaweza kukubaliana kutatua migogoro yao kwa utaratibu wa uamuzi chini ya "The Arbitration Act" na kwa utaratibu wa Usuluhishi na uamuzi kwa mujibu wa makubaliano ya pamoja ili mradi migogoro hiyo itasuluhishwa na kuamuliwa, kitaalam haraka na kwa haki.

SURA YA KUMI

SHERIA YA BARAZA LA MAJADILIANO LA UTUMISHI WA UMMA, 2003 (PUBLIC SERVICE/NEGOTIATING MACHINERY ACT 2003)

Sheria hii lengo lake ni kuwezesha ushirikishwaji wa watumishi wa Umma katika majadiliano na Serikali kuhusu maslahi na ustawi wao na kutoa nafasi kwa watumishi wa umma kujadili na kuishauri Serikali masuala mbalimbali yahusuyo utumishi wa umma. Sheria pia imeweka utaratibu wa utatuzi wa migogoro katika utumishi wa umma.

UANZISHWAJI WA MABARAZA YA PAMOJA

Madhumuni ya kuanzishwa mabaraza ya pamoja ni:-

(a) Kujenga ushirikiano baina ya Serikali kama mwajiri na watumishi wa Umma kupitia vyama vyao vya Wafanyakazi.

(b) Kuweka mazingira yatakayowezesha kufanyika kwa majadiliano baina ya Serikali na watumishi wa Umma kuhusu masuala yahusuyo ufanisi na ustawi wa watumishi wa umma na;

(c) Kuweka mfumo wa kushughulikia Malalamiko ya watumishi wa umma.

Mabaraza hayo ya pamoja ni haya yafuatayo:-

(a) Baraza la Pamoja Serikali Kuu.

(b) Baraza la Pamoja la Walimu.

(c) Baraza la Pamoja la Serikali za Mitaa.

(d) Baraza la Pamoja la Afya.

(e) Baraza la Pamoja Zimamoto, Uokoaji na Uhamiaji.

Mabaraza haya ni vyombo vya majadiliano vinavyotoa uwanja kwa watumishi wa Umma kushirikishwa.

Muundo wa Mabaraza haya ni kama ifuatavyo:-

(a) Mwenyekiti na Makamu Mwenyekiti wanaoteuliwa na Waziri anayehusika na utumishi wa Umma kutoka katika majina mawili yaliyopendekezwa na Chama cha Wafanyakazi na Waziri wa Wizara husika.

(b) Watumishi wa umma wanne wanaoteuliwa na Chama cha Wafanyakazi na Katibu.

(c) Maofisa wanne wa Serikali wanaoteuliwa na Waziri anayehusika na utumishi wa umma wakiwakilisha:-

(i) Wizara inayohusika na utumishi wa umma.
(ii) Wizara inayohusika na Fedha.
(iii) Wizara inayohusika na masuala ya uhusiano kazini.
(iv) Wizara mama inayohusika na huduma ambamo Baraza limeundwa.

Chama cha Wafanyakazi na Waziri wahakikishe wanateua watu ambao wana uwezo wa kufanya maamuzi wakati wa majadiliano.

MUDA WA KUKAA MADARAKANI MWENYEKITI NA MAKAMU MWENYEKITI

Mwenyekiti na Makamu Mwenyekiti watakaa katika madaraka yao kwa kipindi cha miaka mitatu na wanaweza kuteuliwa kwa kipindi kingine kimoja.

KAZI ZA BARAZA LA PAMOJA

Kazi za Baraza Ni:-

(a) Kuishauri Serikali kuhusiana na masuala yanayohusu ustawi wa watumishi wa umma.

(b) Kujadili na kutoa mapendekezo kwa Serikali kwa suala lolote linalohusu maslahi, ustawi na ufanisi kwa upande wa watumishi wa umma.

(c) Kujadili na kutoa ushauri kwa Serikali kwenye jambo lolote ambalo Serikali imeomba ushauri.

(d) Kujadili kuhusu masharti na matakwa ya ajira kwa watumishi wa umma.

(e) Kujadili jambo lolote litakaloletwa na Baraza la Pamoja la utumishi wa umma.

AKIDI NA VIKAO
Akidi inayotakiwa kwa ajili ya kikao kufanyika ni wajumbe saba (7).

Baraza litafanya vikao viwili kwa mwaka ndani ya robo mwaka ya kwanza ya mwaka wa fedha wa Serikali.

Baraza pia linaweza kuitisha vikao visivyo vya kawaida iwapo litatokea jambo linalohitaji kufanyiwa kazi na kuamuliwa.

MAAMUZI YA MABARAZA YA PAMOJA
Maamuzi yote yatakayofanywa na Baraza la Pamoja juu ya jambo lolote ni lazima yapelekwe kwenye Baraza la Pamoja la Utumishi wa Umma kwa kuidhinishwa.

Baraza la Pamoja la Utumishi wa Umma likishapokea uamuzi wa Baraza la Pamoja kwa ajili ya kuidhinishwa linaweza kufanya mambo yafuatayo:-

(a) Kuidhinisha baada ya kufanya marekebisho au bila kufanya marekebisho na kupeleka uamuzi huo kwa Waziri, au;

(b) Kuahirisha uidhinishaji mpaka hapo muda muafaka utakapowadia au;

(c) Kurejesha tena jambo hilo kwa Baraza la Pamoja kwa maelekezo ya kuangaliwa upya jambo hilo.

BARAZA KUU LA PAMOJA LA UTUMISHI WA UMMA

Baraza hili ndilo chombo cha juu cha majadiliano na ushauri katika utumishi wa umma.

Baraza hili linaundwa na wajumbe wafuatao:

(a) Mwenyekiti na Makamu Mwenyekiti wanaoteuliwa na Rais kutoka katika orodha ya majina yanayowasilishwa na Waziri.

(b) Wajumbe wanane kutoka Vyama vya Wafanyakazi wanaoteuliwa na vyama vya Wafanyakazi.

(c) Wajumbe nane wanaoteuliwa na Waziri kuwakilisha Serikali.

Mtu yeyote ambaye ni mwanachama wa Chama cha Wafanyakazi au mtumishi wa Umma hapaswi kuwa Mwenyekiti au Makamu Mwenyekiti.

Katibu wa Baraza atateuliwa na Waziri kutoka miongoni mwa watumishi wa umma na Katibu Msaidizi wa Baraza atateuliwa na Vyama vya Wafanyakazi.

KAZI ZA BARAZA KUU LA PAMOJA LA UTUMISHI WA UMMA

Kazi za Baraza Kuu la Pamoja la utumishi wa umma ni kama ifuatavyo:-

(a) Kuishauri Serikali juu ya mambo yanayohusu ustawi wa watumishi wa Umma;

(b) Kujadili na kutoa mapendekezo kwa Serikali juu ya jambo lolote kuhusu maslahi, ustawi na ufanisi kwa upande wa watumishi wa Umma;

(c) Kujadili na kutoa ushauri kwa Serikali juu ya jambo lolote ambalo Serikali imeomba ushauri wa Baraza;

(d) Kufanya majadiliano juu ya mambo mbalimbali kuhusu masharti na matakwa ya ajira kwa watumishi wa umma kwa ujumla au kwa kundi la watumishi wa umma;

(e) Kuidhinisha na kusajili au kujadili jambo lililowasilishwa kutoka kwenye Mabaraza ya Pamoja;

(f) Kuamua rufaa zilizowasilishwa dhidi ya maamuzi ya Mabaraza ya Pamoja; na;

(g) Kuanzisha jambo lolote muhimu na kulipeleka kwenye Mabaraza ya Pamoja kwa ajili ya kujadiliwa na kuamuliwa.

KIMA CHA CHINI CHA MSHAHARA

Ni marufuku kwa Baraza Kuu la Pamoja la utumishi wa Umma kujadili, kutoa ushauri au mapendekezo kuhusiana na kima cha chini cha mshahara au jambo lolote linalohusiana na Bodi ya Kima cha Chini cha Mshahara au Baraza la Ujira au chombo chochote kilichoteuliwa kufanya shughuli hiyo kwa mujibu wa sheria inayohusika na masuala ya kima cha chini cha mshahara.

Iwapo litajitokeza suala lolote kuhusiana na kima cha chini cha mshahara au jambo lolote linalohusiana na Bodi ya Ujira au Baraza la Ujira au chombo chochote kilichoteuliwa kufanya shughuli hiyo, basi jambo hilo linapaswa kupelekekwa kwenye chombo husika.

MUDA WA KUKAA MADARAKANI
Mjumbe wa Baraza Kuu la Pamoja la Utumishi wa Umma atakaa madarakani kwa kipindi cha miaka mitatu (3) na anaweza kuteuliwa tena.

AKIDI NA VIKAO
Akidi ya kikao ni wajumbe kumi na nne (14). Baraza litafanya kikao cha kawaida mara moja katika kila mwaka na litajitengenezea taratibu zake lenyewe za kuendesha vikao vyake.

Baraza linapaswa kufanya kikao chake cha kawaida katika robo mwaka ya pili ya mwaka wa fedha wa Serikali na linaweza kufanya kikao kisicho cha kawaida wakati wowote litakapojitokeza jambo linalolazimu kikao kuitishwa au mara baada ya kuwasilishwa jambo lolote kutoka kwenye Mabaraza ya Pamoja.

Jambo lolote linalotaka hatua za Serikali kuchukuliwa linapaswa kuwasilishwa na Baraza kwa Waziri ifikapo tarehe 15 Desemba.

KUJAZA NAFASI WAZI
Pale inapotokea nafasi ya mjumbe ipo wazi kwa sababu yoyote ile, nafasi yake itajazwa kwa utaratibu utakaoelezwa na Waziri na atakaa madarakani kwa kipindi kilichobakia.

UTARATIBU WA KUTOA USHAURI NA UTATUZI WA MIGOGORO
Pale ambapo Baraza Kuu la Pamoja la Utumishi wa Umma linapoamua kuishauri Serikali linapaswa kuwasilisha kwa Waziri ripoti ya maandishi iliyotiwa sahihi na Mwenyekiti au mjumbe mwingine aliyependekezwa kutia sahihi kwa niaba ya Mwenyekiti na Makamu Mwenyekiti au mjumbe mwingine aliyependekezwa kutia sahihi kwa niaba ya Makamu Mwenyekiti. Waziri akishapokea ripoti hiyo ataipitia na kuishauri Serikali ipasavyo.

Baraza litafahamishwa uamuzi wa Serikali katika kikao cha baraza kinachofuata.

Makubaliano
Makubaliano yoyote yatakayofikiwa na Baraza la Pamoja la Utumishi wa Umma kuhusu mgogoro utokanao na masharti na matakwa ya ajira ya watumishi wa Umma, yatakuwa kwa maandishi na kutiwa sahihi na Mwenyekiti au mjumbe yeyote aliyeteuliwa kutia sahihi kwa niaba ya Mwenyekiti na kupelekwa kwa Waziri.

Waziri anapaswa kuyakubali makubaliano aliyoyapokea.

Pale ambapo makubaliano hayo yatakubaliwa bila marekebisho yanakuwa TUZO

Pale ambapo Waziri amefikiri ipo haja ya jambo hilo kutazamwa zaidi, atayarejesha makubaliano hayo kwenye Baraza kwa majadiliano zaidi.

TUZO yoyote itakayotolewa itakuwa ya mwisho na itaibana Serikali na watumishi wa Umma ambao wanahusika na makubaliano hayo kwa kipindi cha miezi kumi na mbili kuanzia tarehe ambayo TUZO hiyo imetolewa.

Hairuhusiwi kuleta kama ajenda ya majadiliano jambo lolote ambalo limo ndani ya makubaliano au kubadilisha makubaliano kabla ya kupata ruhusa ya Waziri isipokuwa pale ambapo muda wa miezi kumi na mbili umemalizika.

TUZO iliyotolewa inapaswa kutangazwa na Waziri katika Gazeti la Serikali.

BARAZA LINAPOSHINDWA KUFIKIA MAKUBALIANO
Inapotokea Baraza kushindwa kufikia makubaliano katika mgogoro wowote, Mwenyekiti na Makamu Mwenyekiti watapeleka ripoti kwa Waziri, ripoti ambayo watakuwa wametia sahihi zao au imetiwa sahihi na walioteuliwa kufanya hivyo kwa niaba yao.

Ripoti inayopelekwa kwa Waziri inapaswa ndani yake iwe na:-

(a) Muhtasari wa majadiliano ya Baraza na;

(b) Taarifa ya jambo lililokuwa likijadiliwa.

UWASILISHAJI MGOGORO MAHAKAMANI
Waziri akipokea ripoti ya Baraza anaweza kufanya yafuatayo:-

(a) Kurejesha mgogoro huo kwenye Baraza kwa Majadiliano zaidi iwapo atabaini:-

(i) Baraza halikuzingatia mambo ya msingi au yale yanayohusiana na mgogoro au;

(ii) Baraza limezingatia mambo ambayo siyo ya msingi au ambayo hayahusiani na mgogoro.

(iii) Baraza kulipa uzito usiokuwa na sababu suala au jambo husika.

(iv) Baraza halikutumia taarifa muhimu zinazohusiana na mgogoro, kiasi cha kuhitaji juhudi zaidi zifanyike kutatua mgogoro kwa njia ya majadiliano.

(b) Kuwasilisha mgogoro Mahakama ya Kazi.

Mahakama ya Kazi inatakiwa kuwasilisha ripoti kwa Waziri baada ya kuupitia kwa makini mgogoro husika.

Waziri anapaswa kurejesha mgogoro kwenye Baraza au kuuwasilisha Mahakama ya Kazi ndani ya siku ishirini na moja, hata hivyo iwapo Waziri katika mazingira maalum yanayolazimisha kuahirishwa kwa uwasilishaji au urejeshaji wa mgogoro anaweza kuahirisha kwa kipindi kisichozidi siku thelathini.

UTOAJI WA TUZO
Waziri anatakiwa awasilishe kwa Rais ndani ya siku kumi na nane ripoti aliyopokea toka Mahakama ya Kazi akiambatanisha maoni yake.

Mara baada ya kupokea ripoti ya Mahakama na maoni ya Waziri Rais anaweza kutoa TUZO ya mgogoro.

TUZO inayotolewa na Rais inaweza kuanza kutumika kinyume nyume kama itakavyoamuliwa na inapaswa itolewe ndani ya siku ishirini na moja kuanzia tarehe ripoti ya Mahakama ya Kazi na maoni ya Waziri yamewasilishwa kwake.

Pale ambapo kwa maoni ya Rais yapo mazingira maalum yanayoweza kusababisha kuahirishwa kwa utoaji TUZO, utoaji TUZO utaahirishwa kwa kipindi atakachotaja Rais.

KUCHAPISHWA KWA TUZO KATIKA GAZETI LA SERIKALI

TUZO iliyotolewa na Rais ni lazima ichapishwe katika gazeti la Serikali na itaanza kutumika kuanzia tarehe ya kuchapishwa kwake.

Iwapo itaelezwa kuwa TUZO itaanza kutumika kinyumenyume, TUZO itaanza kutumika tarehe iliyoonyeshwa kwenye TUZO.

Kila TUZO itolewayo na Rais itaibana Serikali na watumishi wa umma wanaohusika kwa kipindi cha miezi kumi na mbili (12). Hairuhusiwi kuleta kama ajenda ya majadiliano jambo lolote ambalo limo ndani ya TUZO au kuleta maombi ya kubadilisha TUZO kabla ya kipindi cha miezi 12 kumalizika; isipokuwa kama itapatikana kabla ruhusa ya Waziri ya maandishi.

MGOMO NA KUFUNGIA NJE

Kila mtumishi wa Umma ana haki ya kushiriki katika mgomo au kufungia nje.

Mtumishi wa Umma atashiriki katika mgomo au kufungia nje iwapo masharti yafuatayo yatakuwa yametimizwa:-

(a) Pawepo na mgogoro unaoendelea au lalamiko; na

(b) Mgogoro au lalamiko halijatatuliwa;

(c) Kura za kuunga mkono mgomo zimepigwa kwa usimamizi wa Afisa wa Kazi na watumishi walio wengi wameunga mkono mgomo;

(d) Notisi ya siku 60 imetolewa kwa Serikali kuanzia siku kura ya kuunga mkono mgomo ilipopigwa.

Mtumishi yeyote wa Umma atakayeshiriki katika mgomo au kufungia nje bila kufuata utaratibu atakabiliwa na hatua za kinidhamu.

Watumishi wa Umma ambao kazi zao zikisimama au kuingiliwa kwa namna yoyote zitahatarisha maisha, afya au usalama wa watu, hawaruhusiwi kugoma au kufungia nje.

UCHOCHEZI

Ni marufuku mtu ye yote yule awe mtumishi wa Umma au asiye mtumishi wa Umma, kushawishi au kuchochea mtumishi wa Umma kushiriki katika mgomo au kufungia nje kinyume cha sheria.

Mtu wa namna hiyo:-

(a) iwapo ni mtumishi wa Umma atakabiliwa na hatua za kinidhamu.

(b) Iwapo si mtumishi wa Umma atakabiliwa na hatua za kijinai.

Endapo matokeo ya mgomo huo usiofuata sheria ni uharibifu wa mali za Muajiri, mtumishi ye yote wa umma aliyeshiriki katika mgomo au kufungia nje au mtu yeyote aliyechochea atapaswa kufidia uharibifu huo.

KIZUIZI CHA UBAGUZI

Mwajiri ye yote anakatazwa kumbagua mtumishi wa umma kwa sababu ya ushiriki wa mtumishi huyo katika mgomo au kufungia nje au kwa sababu ya kuwa kiongozi wa Chama cha Wafanyakazi kilichoitisha mgomo huo.

BARAZA KUU LA WAFANYAKAZI

MUUNDO WA BARAZA

Baraza linaundwa na wajumbe thelathini na tatu kama ifuatavyo:-

(a) Mwenyekiti ambaye ni Katibu Mkuu anayehusika na watumishi wa Umma.

(b) Makamu Mwenyekiti ambaye atachaguliwa kutoka miongoni mwa wajumbe wanaowakilisha Vyama vya Wafanyakazi.

(c) Watendaji saba wanaowakilisha Mkoa ambao watateuliwa kwa kuzingatia uwakilishi wa kanda kama ifuatavyo:-

(i) Kanda ya Kaskazini - Arusha, Kilimanjaro, Manyara na Tanga.

(ii) Kanda ya Mashariki - Dar es Salaam, Pwani na Morogoro.

(iii) Kanda ya Kusini - Lindi Mtwara na Ruvuma

(iv) Kanda ya Nyanda za Juu Kusini - Iringa, Mbeya na Rukwa.

(v) Kanda ya Magharibi - Kigoma, Tabora na Shinyanga.

(vi) Kanda ya Ziwa - Mwanza, Kagera na Mara.

(vii) Kanda ya Kati - Dodoma na Singida.

(d) Watendaji tisa wanaowakilisha Wizara, Idara za Serikali na Mamlaka za Serikali za Mitaa kama ifuatavyo:-

(i) Mjumbe mmoja anayeteuliwa na Waziri.

(ii) Wajumbe watatu wanaoteuliwa na Katibu Mkuu Kiongozi.

(iii) Kamishna wa Kazi.

(iv) Afisa Elimu Mkuu.

(v) Mjumbe mmoja kutoka ofisi ya Utumishi wa Umma, kitengo cha jinsia.

(vi) Wajumbe watatu wanaoteuliwa na Waziri anayehusika na Serikali za Mitaa.

(e) Wajumbe ishirini na moja kutoka miongoni mwa watumishi wa umma wataochaguliwa kama ifuatavyo:-

(i) Wajumbe saba wanaowakilisha watumishi wa Umma mikoani.

(ii) Wajumbe saba wanaowakilisha Wizara na Idara za Serikali.

(iii) Wajumbe saba wanaoteuliwa na Vyama vya Wafanyakazi.

MUDA WA KUKAA MADARAKANI

Wajumbe wa Baraza ukiacha Katibu Mkuu utumishi wa umma, Kamishna wa Kazi na Afisa Elimu Mkuu watakaa madarakani kwa kipindi cha miaka mitatu tangu wateuliwe au kuchaguliwa na wanaweza kuteuliwa au kuchaguliwa tena.

Mjumbe wa Baraza atakoma kuwa mjumbe iwapo:-

(a) Muda wa kukaa madarakani umekwisha.

(b) Amekoma kuwa mtumishi wa umma.

(c) Amehamishwa katika Mkoa wa Kanda nyingine.

(d) Ameshindwa kuhudhuria vikao vitatu mfululizo vya Baraza.

Kwa wajumbe ambao ujumbe wao umetokana na madaraka yao ujumbe wao utakaoma mara anapoondoka katika madaraka hayo.

KATIBU WA BARAZA

Katibu na Katibu Msaidizi wa Baraza la Pamoja la Watumishi wa Umma watakuwa ndio Katibu na Katibu Msaidizi wa Baraza Kuu la Wafanyakazi.

KUJAZA NAFASI WAZI

Nafasi wazi itajazwa na mjumbe atakayeteuliwa au kuchaguliwa kwa kipindi kilichobakia.

AKIDI

Akidi ya Baraza ni wajumbe kumi na nane, uamuzi wa Baraza utafikiwa kwa wajumbe walio wengi kuunga mkono hoja hiyo.

VIKAO

Kikao cha Baraza kitafanyika mara moja kwa mwaka, kwa wakati na mahali itakapoamuliwa.

Mwenyekiti anaweza kuitisha kikao kisicho cha kawaida iwapo itakuwepo haja ya kufanya hivyo.

Vikao vitaongozwa na Mwenyekiti na asipokuwepo Makamu Mwenyekiti, wasipokuwepo wote, wajumbe watachagua Mwenyekiti wa muda miongoni mwao kuongoza kikao.

Kamati za Baraza

- Baraza linaweza kuunda kamati mbali mbali kuwezesha kutekeleza majukumu yake kwa ufanisi.

- Kamati zinaweza kumshirikisha kama mjumbe wake mtu ye yote ambaye sio mjumbe wa Baraza kwa ajili ya kutoa utaalam katika baadhi ya mambo.

Baraza lina uwezo wa kutengeneza Kanuni zake za kuendesha vikao vyake.

Kazi za baraza

Baraza lina kazi zifuatazo:-

(a) Kuishauri Serikali kuhusu taratibu za upandishaji vyeo na hatua za nidhamu kwa watumishi wa Umma.

(b) Kuishauri Serikali kuhusu hatua za kuchukua kuhakikisha matokeo mazuri katika utoaji huduma.

(c) Kuishauri Serikali kuhusu mabadiliko ya taratibu kuu za Serikali na masharti ya kazi na huduma.

Baraza linapaswa kuwasilisha ripoti kwa Katibu Mkuu Kiongozi ambaye akipokea ripoti hiyo anapaswa kuyapitia mapendekezo yake na kuyaasili kwa madhumuni ya kuboresha utumishi wa Umma.

THE PUBLIC SERVICE (NEGOTIATING MACHINERY) ACT, 2003

ARRANGEMENT OF SECTIONS

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2. Interpretation.

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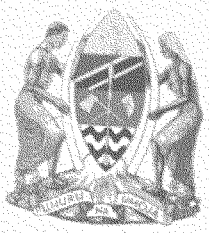

No. 19 OF 2003

I ASSENT,

Benjamin W. Mkapa

President

30th January, 2004.

An Act to make better provisions for the participation of public servants in negotiating and rendering advice to the government and settling, disputes in the public service; to repeal the Civil Service (Negotiating Machinery) Act, 1962 and the Local Government Negotiating Machinery, 1982 and to provide for related matters.

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

Short title and commencement

1.–(1) This Act may be cited as Public Service (Negotiating Machinery) Act, 2003.

(2) This Act shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

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

"Act" means the Public Service (Negotiating Machinery) Act, 2003;

"award" means a final decision of the President made under section 23 of this Act and includes acceptance of the agreement by the Minister under section 17(2);

Act No. 8 of 2002

"Chief Secretary" has the meaning ascribed to it under the Public Service Act, 2002;

Act No. 41 of 1967

"Court" means the Industrial Court established under the Industrial Court Act, 1967 or any successor, court thereto;

"dispute" means any matter regarding the terms and conditions of service of public servants which was a subject of consideration by the Council and to which the Government and the trade unions have failed to reach an agreement;

"lock-out" means the closing of a place of employment, by the employer done in consequence of a dispute, not with the intention of finally determining employment, but with a view to compelling persons employed by him or to compel the employer to accept terms or conditions of, or affecting employment;

"member" means a member of the Service Joint Staff Council and, as the case may be, a member of the Public Service Joint Staff Council and includes the Chairmen and Vice-Chairmen;

"Minister" means the Minister responsible for public service management matters;

"Permanent Secretary" means the Permanent Secretary responsible for public service management matters;

"public servant" has the meaning ascribed to it under the Public Service Act, 2002;

"public service" means the public service as defined in the Public Service Act, 2002;

"Service" means the public service in the Government of the United Republic of Tanzania;

"strike" means the cessation of work by public servants or a concerted refusal by any number of public servants to continue to work or a concerted interruption of work or performance of work on a go-slow basis by any number of public servants, done through their trade union or unions as a means of compelling their employer or any person to aid other public servants in compelling their employer or any person acting on behalf of the employer, to accept or not to accept the terms and conditions of employment;

"trade union" means any registered trade union the member of which includes employees in the public service.

PART II

ESTABLISHMENT OF THE JOINT STAFF COUNCILS

Objective of the Joint Staff Councils

3.-(1) For the purposes of achieving the objectives of this Act, both the Service Joint Staff Council and Public Service Joint Staff Council shall, within the limits of their functions:

(a) secure the greatest measure of co-operation between the Government, in its capacity as an employer, and the public servants through their respective trade unions;

(b) provide conducive environment that would bring about consultation and negotiation between the Government and public servants on matters affecting the efficiency and well-being of the public service; and

(c) provide for the machinery for dealing with the grievances for public servants.

(2) For the purposes of facilitation of the meetings of the Service Joint Staff Council, Public Joint Staff Council and the Master Workers Council, the Government shall pay for the costs of such meetings.

Establishment of Service Joint Staff Council

4.-(1) There shall be established for the purposes of putting in place the mechanism and facilitation of negotiations and participatory consultations by each Service Scheme, the Service Joint Staff Council.

(a) the Civil Service Joint Staff Council;

(b) the Teachers Service Joint Staff Council;

(c) the Local Government Joint Staff Council;

(d) Health Service Joint Staff Council;

(e) Fire and Rescue Services and Immigration Service Joint Staff Council;

(2) The Service Joint Staff Council shall be negotiating body which shall, with respect to the terms and conditions of service, provide a forum for discussion by public servants serving in the service scheme referred to under subsection (1).

(3) Every Service Joint Staff Council shall consist of.-

(a) a Chairman and a Vice-Chairman who shall be appointed by the Minister from amongst two persons who shall be recommended by the most representative trade union representing the category of the Service Scheme in question and two other persons recommended by the Minister responsible for the Service Scheme in question;

(b) four public servants nominated by the respective trade union, and the Secretary;
(c) four Government officials nominated by the Minister being: -
(i) a representative of the Ministry responsible for public service;
(ii) a representative of the Ministry responsible for finance;
(iii) a representative of the Ministry responsible for labour relations; and
(iv) a representative of the Ministry responsible for the service scheme.

(4) In nominating persons referred to under paragraphs (b) and (c) of subsection (3), the Trade Union and the Minister shall ensure that the nominee are such persons who are able to make decisions on any matter which is the subject of negotiation.

Tenure of Office of the Chairman, etc of the Service Joint Staff Council

5. The Chairman and the Vice Chairman shall each hold office for a period of three years and shall be eligible for reappointment for one further term.

Functions of the Service Joint Staff Council

6. The functions of the Service Joint Staff Council shall be-

(a) to advise the Government on matters relating to the welfare of public servants to which that Service Joint Council belong;
(b) to discuss and make recommendations to the Government on any matter concerning interest, well-being and efficiency on part of public servants;
(c) to discuss and advice the Government on any matter on which the Government has requested for advice;
(c) to negotiate on matters relating to the terms and conditions of service with respect to the public servants generally or to the Service Scheme to which that Service Joint Council belong; and
(d) to discuss any matter which may be referred to it by the Public Service Joint Staff Council.

Quorum and meetings of Service Joint Staff Council

7.-(1) The quorum for a meeting of the Service Joint Staff Council shall be seven members.

(2) The Service Joint Staff Council shall hold meetings twice a year within the first quarter of each financial year of the Government.

(3) Notwithstanding subsection (2), the Service Joint Staff Council may hold an extra-ordinary meeting if there exist any matter which requires immediate consideration and determination.

Decisions of the Service Joint Staff Council.

8.-(1) All decisions on any matter which was a subject of consideration and determination by the Service Joint Staff Council shall be referred to the Public Service Joint Staff Council for endorsement.

(2) Where the Public Service Joint Staff Council receives a decision on a matter referred to it by the Service Joint Staff Council for consideration and endorsement it may -

(a) endorse with or without amendment and forward the matter to the Minister; or

(b) defer its endorsement until such other time as may be appropriate; or

(c) refer back the matter to the Service Joint Staff Council with a direction for further consideration.

Establishment and composition of the Public Service Joint Staff Council

9.- (1) There shall be established a Public Service Joint Staff Council which shall be the highest participatory negotiating and consultative body in the public service.

(2) The composition of the public Service Joint Staff council shall be-

(a) the Chairman and the Vice-Chairman who shall be appointed by the President from a list of persons submitted as such by the Minister;

(b) eight members from the trade unions representing the Council who shall be appointed by the trade unions; and

(c) eight members appointed by the Minister to represent the Government.

(3) For the purposes of subsection (1), a person shall not be appointed a Chairman or a Vice Chairman who is a member of a trade union or a public servant.

(4) In recommending persons for appointment as Chairman and Vice Chairman, the trade unions and the Government shall each nominate two persons whose names shall be forwarded to the President.

(5) The Secretary and Assistant Secretary shall be appointed on the basis that the Secretary shall be appointed by the Minister from among the public servants and the Assistant Secretary shall be appointed by the trade unions.

Functions of the Public Service Joint Staff Council

10.- The functions of the Public Service Joint Staff Council shall be-

(a) to advise the Government on matters relating to the welfare of public servants;

(b) to discuss and make recommendations to the Government on any matter concerning interests, well-being and efficiency on part of public servants;

(c) to discuss and advice the Government on any matter on which the Government has requested for advice of the Council;

(d) to negotiate on matters relating to the terms and conditions of service with respect to the public servants generally or to specified category of public servants;

(c) to approve and register or discuss any matter referred to it by the Service Joint Staff Council;

(f) determine appeal referred to it arising from the decision of the Service Joint Staff Council; and

(g) to initiate any matter of important and refer the same for consideration, opinion or determination by the Service Joint Staff council

Prohibition in relation to minimum wage

11.-(l) The Service Joint Staff Council and the Public Service Joint Staff Council shall not consider, offer advice or make recommendations relating a Minimum Wage or any matter in connection with the Minimum Wage Board or Wages Council or any other body appointed or ought to be appointed pursuant to the provisions of the Regulation of Wages and Terms of Employment Ordinance or any other law for the time being in force.

(2) Where there is any matter concerning the minimum wage or any matter in connection with which the Minimum Wage Board or Wages Council or any other body appointed or ought to be appointed, such a matter shall be referred to the Minimum Wage Board, the Wages Council or, as the case may be, that other body which has been appointed or which is ought to be appointed.

Tenure of office of members of the Public Service Joint Staff Council

12. A member of the Public Service Joint Staff Council shall hold office for a period of three years and shall be eligible for re- appointment

Quorum and meetings of the Public Service Joint Staff Council

13.-(1) Subject to subsection (1) of section 14 , the Public Service Joint Staff Council shall meet once in every year and shall, for the purposes of discharging its functions, regulate its own proceedings.

(2) Fourteen members shall constitute a quorum for the meeting of the Public Service Joint Staff Council.

Public Service Joint Staff Council's meetings

14.-(l) The Public Service Joint Staff Council shall hold its ordinary meeting during the second quarter of each financial year of the Government and may hold extra-ordinary meetings at any time during which a matter giving rise to the meeting requires or soon after a matter has been referred to it by the Service Joint Staff Council.

(2) Any matter which is a subject of consideration by the Public Service Joint Staff Council which, by its nature, calls for action or measures to be taken in compliance therewith by the Government shall be determined and recommendation submitted to the Minister not later than 15th day December.

Cessation and filling of vacancies of members

15. Where any member of the Public Service Joint Staff Council ceases to be as such, his position shall be filled by a member appointed in accordance with the procedures as may be set out by the Minister and shall hold office and perform duties as a member for the rest of the remaining period.

PART III

PROCEDURE FOR RENDERING ADVICE AND DISPUTES SETTLEMENT

Advice to the Govern-ment

16.-(l) Where the Public Service Joint Staff Council has considered a matter and, in relation therewith it is minded to advice the Government as such, it shall submit in writing a report to the Minister which shall be signed by the Chairman or any other member nominated on that behalf by the Chairman and by the Vice-Chairman or any other member nominated on that behalf by the Vice-Chairman.

(2) Where a report is made to the Minister, he shall consider it and advise the Government accordingly.

(3) A decision of the Government made pursuant to or consequent upon advice given according to this section may be reported back to the Public Service Joint Staff Council at its subsequent meeting.

Agreements reached in Public Service Joint Staff Council and publication of the Minister's award

17.-(1) An agreement reached by the Public Service Joint Staff Council or any matter referred to the Public Service Joint Staff Council by the Service Joint Staff Council for approval in relation to any dispute regarding terms and conditions of service of public servants shall be recorded in writing and signed by the Chairman or any other member nominated on that behalf by the Chairman and be forwarded to the Minister.

(2) On receipt of the agreement the Minister shall accept the agreement.

(3) Where the agreement is accepted by the Minister without modification, it shall ipso facto, be an award.

(4) Where the Minister considers that there is a need for further consideration of the matter, he shall refer it back to the Public Service Joint Staff Council for further negotiation.

(5) Every award made shall be final and binding upon the Government and the public servants to whom the agreement relates for a period of twelve months beginning on the date on which the award was made.

(6) No application to negotiate another agreement relating to any matter that has been covered by the agreement or vary the agreement on a matter which involves or which have the effect of making variation to agreement shall, save with the prior permission of the Minister, be placed upon the agenda or discussed by the Public Service Joint Staff Council unless twelve months have expired.

(7) Every award shall be published by the Minister in the *Gazette* and shall take effect on the date specified in the agreement..

Report to Minister where no agreement in Public Service Joint Staff Council is reached

18.-(1) Where the Public Service Joint Staff Council is unable to reach agreement on any dispute, the Chairman and the Vice-Chairman of the Council shall submit a report to the Minister signed by both of them or by their nominees.

(2) The report shall contain as precise as possible:

(a) minutes of deliberations of the Public Service joint Staff Council; and

(b) memorandum on the subject matter of the deliberations.

(3) As much as possible the report shall state the dispute in relation to which an agreement has not been reached.

Reference of dispute to the Public Service Joint Staff Council or Court

19. Where a report is made to the Minister pursuant to subsection (1) of section 18, the Minister may-

(a) upon finding that the Public Service joint Staff Council was unable to reach any agreement because:

(i) it did not take into account any material issue or matte, relevant to the dispute under consideration; or

(ii) it took into account any issue or matters which were irrelevant or immaterial to the dispute: or

(iii) it lent undue weight or consideration to any issues or matters; or

(iv) it did not have the benefit of any relevant or material information,

so that further efforts are required to be made to settle the dispute through negotiation by the Public Service Joint Staff Council in which case he shall refer the dispute back to the Public Service Joint Staff Council; or

(b) refer the dispute to the Court.

Re-consideration of dispute by the Public Service

20. Where the Minister has referred the dispute back to the Public Service Joint Staff Council, it shall re-consider the dispute with a view to reach an agreement and where an agreement is reached the provisions of subsection (1) and (2) of section 17 shall apply in relation therewith.

Consider-ation of dispute by court

21. Where the Minister has referred the dispute to the Court, the Court shall consider the matter, and submit the report in respect thereof to the Minister.

Time for reference

22. Reference to the Public Service Joint Staff Council or to the Court shall be made within twenty one days from the date on which the report was made to the Minister pursuant to section 18 unless, in the opinion of the Minister, there are special circumstances which make it necessary or desirable to postpone the reference for such further period or periods not exceeding thirty days in the aggregate, as the Minister may in writing allow.

Award by the President

23.- (1) Where the report of the Court in respect of any dispute referred to it is submitted to the Minister, he shall, in any case, without delay and within fourteen days of such receipt, submit the report with any comments he may wish to make thereon to the President.

(2) On receipt of the report of the Court and comments of the Minister, the President may make an award on the dispute.

(3) An award made by the President may be expressed to have retrospective effect and shall be made within twenty one days from the date on which the report of the Court and the comments of the Minister were submitted to the President.

(4) Where, in the opinion of the President, there are special circumstances which makes it necessary or desirable to postpone making the award for such period or periods as the President may state, the award shall stand deferred until such period or periods as the President has stated.

(5) In any proceedings conducted pursuant to the provisions of this Act, a certificate made under the hand of the Minister to the effect that-

(a) the President has or has not made an award on or by a date specified therein; or

(b) the President has not postponed the period for making an award; and

(c) the President has postponed such period of making the award and has instead specified further period within which the award is to be made,

shall be admissible in evidence and shall, in the absence of any proof to the contrary, be conclusive evidence of the facts stated therein.

Publication of Presidential award

24.-(1) Every award made by the President shall be published in the *Gazette* and shall take effect from the date of such publication.

(2) Where an award is expressed to be retrospective it shall take effect from the date specified in the award.

Award to be binding

25. Every award made by the President shall be binding upon the Government and public servants to whom the award relates for a period of twelve months and no application shall be made to vary the award or make any matter which involves the variation of the award, unless there is prior written permission of the Minister, and shall not, in any cases, be placed upon the agenda of or discussed within the Public Service Joint Staff Council until the expiration of such period of twelve months.

PART IV

STRIKES AND LOCK-OUTS

Rights and conditions to strike and to lock-out

26.-(1) Subject to subsection (2), it shall be a right to any public servant to take part in a strike or lock-out.

(2) A public servant may take part in a strike or lock-out if the following conditions have been satisfied-

(a) there is a subsisting dispute or a complaint; and

(b) the dispute or complaint has not been resolved; and

(c) a ballot strike has been conducted under the supervision of the Labour Officer and the majority of public servants of the respective Service Scheme support the strike; and

(d) a sixty days notice has been served to the Government, counting from the date on which a ballot strike was cast, of the intension to strike has elapsed.

(3) Any public servants who violate the provisions of subsection (2) may be subjected to disciplinary action.

Strike and lock-out not allowed

27. Nothing in this Act shall authorize the striking or locking out by public servants in any employment or services rendered to the Central and the Local Government Authorities or any other person that causes the interruption or continued interruption which endangers the life, health or personal safety of the whole or part of the population.

Incite-inents

28.-(1) Any person being a public servant or not who persuades or incites any public servant to take part in a strike or lock-out contrary to the provisions of sections 26 and 27 shall:

(a) in the case of public servant, render himself the subject of disciplinary measures, including but not limited to deduction from his salary, any amount of money that may be considered to be commensurate to the loss occasioned to the employer;

(b) in the case of a person who is not a public servant, render himself the subject of criminal proceedings.

(2) If as a result of participation by a public servant in a strike or lock-out contrary to this Act, any damage is caused to property of employer, any public servant who took part in the strike or lock-out or any person who persuaded or incited such public servant to take part in the strike or lock-out shall be liable to make good of the damage to such property.

Prohibi-tion of acts of discrimi-nation

29. An employer shall not treat or do any act or omission calculated to show disfavor or inspire fear of security of employment on part of a public servant or do any act of discrimination against any public servant by reason that such public servant took part in a strike or lock-out or is a leader or activist of a trade union which inspired or incited public servants to take part in the strike or lock-out.

PART V

ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE MASTER WORKERS COUNCIL

Estab-lishment of a Master Workers Council

30.-(1) There shall be established for purposes of participation of public servants in implementation of public business, a Master Workers Council.

(2) The provisions of the Schedule to this Act shall have effect as to the composition, tenure of office, proceedings of meetings and other matters relating to the Council.

(3) Notwithstanding the provisions of subsection (1), each Ministry, Independent Department, Regions, Local Government Authority, Government Institutions and Executive Agencies shall establish Workers Council in the manner as the Minister may, by regulation, prescribe.

Function of the Master Workers Council

31. Subject to the provisions of section 6, the functions of the Master Workers Council in relation to the business for which it is established shall be:

(a) to advise the Government on procedures for promotion and disciplinary measures in respect of public servants;

(b) to advise the Government on measures to be taken in order to ensure effective delivery of services;

(c) to advise the Government on the changes that are to be made to the Government Standing Orders and conditions of work and service;

Submission of recommendations

32. Where the Master Workers Council decides to make recommendations to the Government, it shall submit such recommendations through the Minister.

Report of the Master Workers Council

33.-(1) The Master Workers Council shall cause in every year to be prepared and published a report and submit it to the Chief Secretary.

(2) Upon receipt of the report the Chief Secretary shall consider such recommendations and adopt them for purposes of improving the public service.

PART VI

MISCELLANEOUS PROVISIONS

Disapplication of Cap.15

34. The Arbitration Ordinance shall not apply in relation to pay proceedings, Agreement or award under this Act.

Regulations

35. The Minister may make regulations for the better carrying out of the provisions and purposes of this Act and, without prejudice to the generality of the foregoing, may make regulations prescribing any thing that is to be prescribed under this Act.

Repeal of Cap. 484 and Act No. 11 of 1982

36. The Civil Service (Negotiating Machinery) Act, 1962 and the Local Government Negotiating Machinery Act, 1982 are hereby repealed.

Transitional provisions and savings Cap, 484 and Act No. 11 of 1982

37.-(1) Notwithstanding the repeal of the Civil Service (Negotiating Machinery) Act, 1962 and the Local Government Negotiating Machinery Act, 1982:

(a) all subsidiary legislation, and all other administrative orders, directions or instructions made, given or issued under or in pursuance of the provisions of the Civil Service (Negotiating Machinery) Act, 1962 as well as the Local Government Negotiating Machinery Act, 1982 which were in force on commencement of this Act, shall be deemed to have been made, given or issued under or in pursuance of the provisions of this Act, and shall remain in force until revoked, cancelled or rescinded by subsidiary legislation, administrative orders, directions or instructions made or issued under this Act;

(b) the Chairman, members and officers of the Master Workers' Council shall, from the date of commencement of this Act, continue to hold office on the terms and conditions of service on which they were each appointed unless their appointments are revoked, and shall for that purpose be deemed to be the Chairman, members and officers respectively of the Master Workers Council appointed in accordance with the provisions of this Act.

(2) The President may, by Notice in the *Gazette,* at any time before the expiry of twenty four months from the commencement of this Act, make such consequential transitional or supplementary provisions as he may consider necessary for facilitating effective performance by the Master Workers Council of its functions.

SCHEDULE

(Made under section 30(2))

Provisions relating to the Master Workers Council

Composition of the Master Workers Council

1. The Master Workers Council shall consist of thirty three members drawn as follows-

(a) the Permanent Secretary of the Office of Public Service Management who shall be the Chairman;

(b) the Vice Chairman who shall be elected from amongst the members of the Master Workers Council representing trade unions;

(c) seven executives representing regions who shall be appointed in a representative capacity of Zones as follows-

(i) Northern Zone that consists of Kilimanjaro, Arusha, Manyara and Tanga regions;

(ii) Eastern Zone that consists of Dar es Salaam, Pwani and Morogoro regions;

(iii) Southern Zone that consists of Lindi, Mtwara and Ruvuma regions;

(iv) Southern Highlands Zone that consists of Iringa, Mbeya and Rukwa regions;

(v) Western Zone that consists of Kigoma, Tabora and Shinyanga regions;

(vi) Lake Zone that consists of Mwanza, Kagera and Mara regions;

(vii) Central Zone that consist of Dodoma and Singida.

(d) nine executive officers representing Ministries, Government Department and the Local Government Authorities as follows-

(i) one member who shall be appointed by the Minister;

(ii) three members appointed by the Chief Secretary.

(iii) the Commissioner for Labour;

(iv) the Chief Education Officer;

(v) one member from the Office of Public Service Management Gender Unit;

(vi) three members who shall be appointed by the Minister responsible for local government authorities;

(e) teenty one members from the public services employees who shall be elected as follows-

(i) seven members representing the public service employee from the regions;

(ii) seven members representing the public service employees from the Ministries and Government Departments; and

(iii) seven members appointed by trade union;

Tenure of office

2.-(1) The members of the Master Workers Council other than the members appointed under sub paragraphs (a) and (d) (iii) and (iv) of paragraph 1, shall hold office for a period of three years from the date of appointment or election and shall be eligible for re-appointment or re-election.

(2) The member of the Master Worker Council shall cease to be a member if-

(a) his tenure of office has expired;

(b) he ceases to be a public service employee;

(c) he is transferred to a region falling within a different zone;

(d) he fails to attend to at least three Master Worker Councils meetings consecutively.

(3) In the case of the Master Worker Council's member who is a member by virtue of his holding some office he shall cease to be a member upon ceasing to hold that office.

3. The Secretary and the Assistant Secretary of the Public Service Joint Staff Council shall be the Secretary and Assistant Secretary of the Master Workers Council. Secretary and Assistant Secretary

4. Where a Master Worker Council member ceases to be a member in accordance with the provisions of paragraph 3(2), and (3) his vacant position shall be filled with a member elected or appointed in accordance with the prescribed procedures and he shall perform his duties for the remaining period and he may be eligible for re-election, or as the case may be, reappointment. Vacancy

5. Eighteen members of the Master Workers Council shall constitute a quorum at any meeting and all acts, matters or things to be done by the Master Workers Council shall be decided by a simple majority of the members present. Quorum

6.—(1) The Master Worker Council shall ordinarily meet at such times and places as it deems necessary for the transaction of its business but shall meet at least once in a year. Meetings of the Master Worker Council

(2) The Chairman, may at any time when necessary, call an extra ordinary meeting of the Master Worker Council.

(3) The Chairman or in his absence, the Vice Chairman, shall preside over every meeting of the Master Workers Council, and in the absence of both the Chairman and Vice Chairman, members present shall appoint a member from amongst themselves to preside over the meeting.

7.—(1) The Master Worker Council may establish, in relation to a matter or matters of a particular kind, such number of committees as may be necessary for the proper discharge of the functions of the Master Worker Council taking into account the Master Workers Council's needs and priorities. Committees

(2) The Committee may co-opt as members of such committee any person who is not a member of the Master Worker Council to provide expertise to a matter or matters of a particular kind.

8. Subject to the provisions of this Schedule, the Master Workers Council may make rules to regulate its own meetings. Master Worker Council to regulate its own proceedings

Passed in the National Assembly on the 6th November, 2003.

.....

Clerk of the National Assembly

EMPLOYMENT AND LABOUR RELATIONS ACT, 2004

ARRANGEMENT OF SECTIONS

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THE UNITED REPUBLIC OF TANZANIA

NO. 6 OF 2004

I ASSENT,
Benjamin W. Mkapa
President
4th June, 2004.

An Act to make provisions for core labour rights, to establish basic employment standards, to provide a framework for collective bargaining, to provide for the prevention and settlement of disputes, and to provide for related matters.

[.....]

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1.—(1) This Act may be cited as the Employment and Labour Relations Act, 2004 and shall come into operation on the date as the Minister may by notice published in the Gazette, appoint.

(2) Notwithstanding the provisions of subsection (1), the Minister may appoint different dates for the commencement of different Parts of this.

Application

2.—(1) This Act shall apply to all employees including those in the public service of the Government of Tanzania in Mainland Tanzania but shall not apply to members, whether temporary or permanent, in the service of:

(i) the Tanzania Peoples Defence Forces;
(ii) the Police Force;
(iii) the Prisons Service; or
(iv) the National Service.

(2) The Minister may, after consultation with the Council and the relevant Minister responsible for the service or services excluded under subsection (1) of this section, by notice publish in the Gazette, determine the categories of employees employed in the said services who may be excluded services to whom this Act may apply.

(3) The provisions of sections 5, 6 and 7 shall apply to members of the forces and services referred to in subsection (1).

Objects

3. The principal objects of this Act shall be -

(a) to promote economic development through economic efficiency, productivity and social justice;

(b) to provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work;

(c) to provide a framework for voluntary collective bargaining;

(d) to regulate the resort to industrial action as a means to resolve disputes;

(e) to provide a framework for the resolution of disputes by mediation, arbitration and adjudication;

(f) to give effect to the provisions of the Constitution of the United Republic of Tanzania of 1977, in so far as they apply to employment and labour relations and conditions of work; and

(g) generally to give effect to the core Conventions of the International Labour Organisation as well as other ratified conventions.

Interpretation Act No. 7 of 2004

4. In this Act, unless the context requires otherwise-

"arbitrator" means an arbitrator appointed under section 19 of the Labour Institutions Act, 2004;

"basic wage" means that part of an employee's remuneration paid in respect of work done during the hours ordinarily worked but does not include-

(a) allowances, whether or not based on the employee's basic wage;

(b) pay for overtime worked in terms of section 19(5);

(c) additional pay for work on a Sunday or a public holiday; or

(d) additional pay for night work as required under section 20(4);

"child" means a person under the age of 14 years; provided that for the employment in hazardous sectors, child means a person under the age of 18 years;

"collective agreement" means a written agreement concluded by a registered trade union and an employer or registered employers' association on any labour matter;

"Commission" means the Commission for Mediation and Arbitration established under section 12 of the Labour Institutions Act, 2004; Act No. 7 of 2004

cc complaint" means any dispute arising from the application, interpretation or implementation of-

(a) an agreement or contract with an employee;

(b) a collective agreement;

(c) this Act or any other written law administered by the Minister;

(d) Part VII of the Merchant Shipping Act, 2003; Act No. 21 of 2003

"Council" means the Labour, Economic and Social Council established under section 3 of the Labour Institutions Act, 2004; Act No. 7 of 2004

"dispute"_

(a) means any dispute concerning a labour matter between any employer or registered employers' association on the one hand, and any employee or registered trade union on the other hand; and

(b) includes an alleged dispute;

"dispute of interest" means any dispute except a complaint;

"employee" means an individual who-

(a) has entered into a contract of employment; or

(b) has entered into any other contract under which-

(i) the individual undertakes to work personally for the other party to the contract; and

(ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or

(c) is deemed to be an employee by the Minister under section 98(3);

"employer" means any person, including the Government and an executive agency, who employs an employee;

"employer" association" 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;

Act No. 7 of 2004 "Essential Services Committee" means the Essential Services Committee established under section 29 of the Labour Institutions Act, 2004;

"federation" means either an association of trade unions or an association of employers' associations;

Act No. 7 of 2004 "Labour Commissioner" means the Labour Commissioner appointed under section 43(l) of the Labour Institutions Act, 2004;

"Labour Court" means the Labour Division of the High Court established under section 50 of the Labour Institutions Act, 2004;

"Labour matter" means any matter relating to employment or labour relations;

"lockout" means a total or partial refusal by one or more employers to allow their employees to work, if that refusal is to compel them to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

Act No. 7 of 2004 "mediator" means a mediator appointed under section 19 of the Labour Institutions Act, 2004;

"Minister" means the Minister for the time being responsible for labour;

"operational requirements" means requirements based on the economic, technological, structural or similar needs of the employer;

"organization" means a trade union or an employers' association;

"protest action" means a total or partial stoppage of work by employees for the purpose of promoting or defending the socio-economic interests of workers but not for a purpose-

(a) referred to in the definition of strike; or

(b) a dispute in respect of which there is a legal remedy;

"registered organization" means a registered trade union or registered employers' association;

"Registrar" means the Registrar appointed under section 43(2) of the Labour Institutions Act, 2004; Act No. 7 of 2004

"reinstatement" means that the contract of employment has revived with all its incidents and that the employee is entitled to all his rights during the period of absence from actual service;

"remuneration" means the total value of all payments, in money or in kind, made or owing to an employee arising from the employment of that employee;

"strike" means a total or partial stoppage of work by employees if the stoppage is to compel their employer, any other employer, or an employers' association t o which the employer belongs, to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

"trade union" means any number of employees associated together for the purpose, whether by itself or with other purposes, of regulating relations between employees and their employers or the employers' associations to which the employers belong.

PART II
FUNDAMENTAL RIGHTS AND PROTECTIONS

Sub-Part A - Child Labour

Prohibition of child] labour

5.-(1) No person shall employ a child under the age of fourteen years.

(2) A child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child's health and development; and does not prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child's capacity to benefit from the instruction received.

(3) A child under eighteen years of age shall not be employed in a mine, factory or as crew on a ship or in any other worksite including non-formal settings and agriculture, where work conditions may be considered hazardous by the Minister. For the purpose of this subsection, "ship" includes a vessel of any description used for navigation.

(4) No person shall employ a child in employment-

(a) that is inappropriate for a person of that age;

(b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

(5) Notwithstanding the provisions of subsection (3), any written law regulating the provisions of training may permit a child under the age of eighteen to work-

(a) on board a training ship as part of the child's training;

(b) in a factory or a mine if that work is part of the child's training.

(c) in any other worksites on condition that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or vocational training in the relevant work or activity.

(6) The Minister shall make regulations-

(a) to prohibit, or place conditions on the employment of children under eighteen years of age;

(b) to determine the forms of work referred to in sub-section (4) of this Act and to make provision for the regular revision and updating of the list of hazardous forms of work.

(7) It is an offence for any person-

(a) to employ a child in contravention of this section;

(b) to procure a child for employment in contravention of this section.

(8) In any proceedings under this section, if the age of the child is in issue, the burden of proofing that it was reasonable to believe, after investigation, that the child was not underage for the purposes of this section shall lie on the person employing or procuring the child for employment.

Sub-Part B - Forced Labour

Probibition of forced labour

6.-(1) Any person who procures, demands or imposes forced labour, commits an offence.

(2) For the purposes of this section, forced labour includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented but does not include-

(a) any work exacted under the National Defence Act, 1966 for work of a purely military character; Act No. 24 of 1966

(b) any work that forms part of the normal civic obligations of a citizen of the United Republic of Tanzania;

(c) any work exacted from any person as a consequence of a conviction in a court of law, provided that the work is carried out under the supervision and control of a public authority and that the person is not hired to, or placed at, the disposal of private persons;

(d) any work exacted in cases of an emergency or a circumstance that would endanger the existence or the well-being of the whole or part of the population;

(e) minor communal services performed by the members of a community in the direct interest of that community after consultation with them or their direct representatives on the need for the services.

Sub-Part C: Discrimination

Prohibition of discrimination in the work-place

7.-(1) Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.

(2) An employer s hall register, with t he Labour Commissioner, a plan to promote equal opportunity and to eliminate discrimination in the work place.

(3) The Labour Commissioner may require an employer-

(a) to develop a plan prescribed in subsection (2); and

(b) to register the plan with the Commissioner.

(4) No employer shall discriminate, directly or indirectly, against an employee, in any employment policy or practice, on any of the following grounds:

(a) colour;
(b) nationality;
(c) tribe or place of origin;
(d) race;
(c) national extraction;
(f) social origin;
(g) political opinion or religion;
(h) sex;
(i) gender;
(j) pregnancy;
(k) marital status or family responsibility;
(1) disability;
(m) HIV/Aids;
(n) Age; or
(o) station *of* life.

(5) Harassment of an employee shall be a form of discrimination and shall be prohibited on any one, or combination, of the grounds prescribed in subsection (4).

(6) It is not discrimination -

(a) to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;

Act No. 9 of 1999

(b) to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job; or

(c) to employ citizens in accordance with the National Employment Promotion Services Act, 1999,

(7) Any person who contravenes the provisions of subsections (4) and (5), commits an offence.

(8) In any proceedings-

(a) where the employee makes out a prima facie case of discrimination by the employer on any of the grounds prescribed in subsection (4), it shall be the duty of the employer to prove-

(i) that the discrimination did not take place as alleged; or

(ii) that the discriminatory act or omission is not based on any of those grounds; or

(b) employer shall prove a defence in terms of subsection (6) if the discrimination did take place on a ground stipulated in subsection (5);

(c) the Labour Court or arbitrator, as the case may be, shall take into account any plan registered with the Labour Commissioner under this section.

(9) For the purposes of this section-

(a) "employer" includes an employment agency;

(b) "employee" includes an applicant for employment;

(c) an "employment policy or practice" includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures.

(10) For the avoidance of doubt every employer shall take positive steps to guarantee equal remuneration for men and women for work of equal value.

Prohibition of discrimination in trade unions and employer associations

8.-(1) No trade union or employers' association shall discriminate, directly or indirectly, against any of the grounds prescribed in subsection (4) of section 7-

(a) in its admission, representation or termination of membership;

(b) in any employment policy or practice prescribed in sub-section (9) of section 7;

(c) in any collective agreement.

(2) Any person who contravenes the provisions of subsection (1), commits an offence.

Sub-Part D - Freedom Of Association

Employee's right to freedom of association

9.-(1) Every employee shall have the right-

(a) to form and join a trade union;

(b) to participate in the lawful activities of the trade union.

(2) Notwithstanding the provisions of subsection (1)-

(a) a magistrate may only form or join a trade union that restricts its membership to judicial officers;

(b) a prosecutor may only form or join a trade union that restricts its membership to prosecutors or other court officials;

(c) a senior management employee may not belong to a trade union that represents the non-senior management employees of the employer.

(3) No person shall discriminate against an employee on the grounds that the employee-

(a) exercises or has exercised any right under this Act or any other written law administered by the Minister;

(b) belongs to or has belonged to a trade union; or

(c) participates or has participated in the lawful activities of a trade union.

(4) No person shall discriminate against an official of an office bearer of a trade union or federation for representing it or participating in its lawful activities.

(5) Any person who contravenes the provisions of subsections (3) and (4), commits an offence.

(6) For the purposes of this section -

(a) "employee" includes an applicant for employment;

(b) "senior management employee" means an employee who, by virtue of that employee's position-

(i) makes policy on behalf of the employer; and

(ii) is authorised to conclude collective agreements on behalf of the employer.

Employer's right to freedom of association

10.-(1) Every employer shall have the right-

(a) to form and join an employer's association;

(b) to participate in the lawful activities of an employers' association,

(2) No person shall discriminate against an employer on the grounds that the employer-

(a) exercises or has exercised a right under the Act;

(b) belongs or has belonged to an employees Association;

(c) participates or has participated in the lawful activities of an employers' association.

(3) No person shall discriminate against an official or office bearer of an employer's association or federation for representing it or participating in its lawful activities.

(4) Any person who contravenes the provisions of subsections (2) and (3), commits any offence.

Rights of trade unions and employers' associations

11. Every organisation has the right to-

(a) determine its own constitution;

(b) plan and organise its administration and lawful activities;

(c) join and form a federation;

(d) participate in the lawful activities of a federation;

(e) affiliate with, and participate in the affairs of any international workers' organisation or international employers' organisation

or the International Labour 0rganisation, and to contribute to, or receive financial assistance from those organisations.

PART III
EmPLOYMENT STANDARDS

Sub-Part A - Preliminary

Application of this Part

12.-(1) Subject to the provisions of subsection (2), the provisions of Sub-Parts A to D and F shall not apply to seafarers whose terms and conditions of employment are regulated under the Merchant Shipping Act, 2003.

Act No. 21 of 2003

(2) Notwithstanding the provisions of subsection (1), the provisions of this Part apply to seafarers who work on fishing vessels and shall be to the extent that in the event there is any conflict between the provisions of this Act and the Merchant Shipping Act and its regulations, the provisions of this Act shall prevail.

Act No. 21 of 2003

(3) Where the provisions of any written law relating to vocational training regulates an employment standard stipulated in section 13(l) of this Act, the provisions of that other law shall apply.

Employment Standards

11.-(1) A provisions of this Act on wage determination that stipulates a minimum term and condition of employment shall be an employment standard.

(2) An employment standard constitutes a term of a contract with an employee unless -

(a) a term of the contract contains a term that is more favourable to the employee;

(b) a provision of an agreement alters the employment standard to the extent permitted by the provisions of this Part;

(c) a provision of any collective agreement, a written law regulating employment, wage determination or exemption granted under section 100 alters the employment standard.

Contracts with employees

14.-(1) A contract with an employee shall be of the following types-

(a) a contract for an unspecified period of time;

(b) a contract for a specified period of time for professionals and managerial cadre,

(c) a contract for a specific task.

(2) A contract with an employee shall be in writing if the contract provides that the employee is to work outside the United Republic of Tanzania.

Written staternent of particulars

15.-(1) Subject to the provisions of subsection (2) of section 19, an employer shall supply an employee, when the employee commences employment, with the following particulars in writing, namely -

(a) name, age, permanent address and sex of the employee;

(b) place of recruitment;

(c) job description;

(d) date of commencement-

(e) form and duration of the contract;

(f) place of work;

(g) hours of work;

(h) remuneration, the method of its calculation, and details of any benefits or payments in kind, and

(i) any other prescribed matter.

(2) If all the particulars referred to in subsection (1) are stated in a written contract and the employer has supplied the employee with that contract, then the employer may not furnish the written statement referred to in section 14.

(3) If an employee does not understand the written particulars, the employer shall ensure that they are explained to the employee in a manner that the employee understands.

(4) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the written particulars to reflect the change and notify the employee of the change in writing.

(5) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(6) If in any legal proceedings, an employer fails to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated in subsection (1) shall be on the employer.

(7) The provisions of this section shall not apply to an employee who works less than 6 days in a month for an employer.

Informing employees of their rights

16. Every employer shall display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place.

Sub-Part B - Hours of work

Application of this Sub-Part

17.-(1) The provisions of this Sub-Part shall not apply to employees who manage other employees on behalf of the employer and who report directly to a senior management employee specified in section 9(6)(b).

(2) The provisions of sections 19(1), 19(3) and 23(1), 24(1) and 25(1) shall not apply to work in an emergency which cannot be performed by employees during their ordinary hours of work.

Interpretation

18. For the purposes of this Sub-Part-

(a) "day" means a period of 24 hours measured from the time when the employee normally starts work, and "daily" has a corresponding meaning;

(b) "overtime" means work over and above ordinary hours of work;

(c) "week" means a period of seven days measured from the day the employee normally starts the working week and "weekly" has a corresponding meaning.

Hours of work

19.-(1) Subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day.

(2) Subject to this Sub-Part, the maximum number of ordinary days or hours that an employee may be permitted or required to work are-

(a) six days in any week;

(b) 45 hours in any week; and

(c) nine hours in any day.

(3) Subject to this Sub-Part, an employer shall not require or permit an employee to work overtime-

(a) except in accordance with an agreement; and

(b) more than 50 overtime hours in any four week cycle.

(4) An agreement under subsection (3) may not require an employee to work more than the 12-hour limit contained in subsection (1).

(5) An employer shall pay an employee not less than one and one-half times the employee's basic wage for any overtime worked.

Night work

20.-(1) In this section, "night" means the hours after twenty hours and before six hours.

(2) It is prohibited for an employer to require or permit -

(a) pregnant employees to work at night -

(i) two months before the expected date of confinement; or

(ii) before that date if the employee produces a medical certificate that she is no longer fit to perform night work;

(b) mothers to work at night -

(i) for a period of 2 months after the date of birth;

(ii) before that date if the mother requests to work and produces a medical certificate that her and the baby's health shall not be endangered;

(iii) after that date if the mother produces a medical certificate that she is not yet fit to perform night work or that the baby's health does not permit the employee to work night shift;

(c) children under 18 years of age;

(d) an employee who is medically certified as unfit to do night work.

(3) An employer shall transfer any employee working night shift who becomes certified as unfit to do night work unless it is impracticable.

(4) An employer shall pay an employee at least 5% of that employee's basic wage for each hour worked at night and if the hours worked are overtime hours, the 5% shall be calculated on the employee's overtime rate.

(5) For the purposes of this section, a medical certificate means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which. acceptance may not be unreasonably withheld.

Compressed working week

21.-(l) A written agreement shall require or permit an employee to work up to twelve hours in a day, inclusive of any meal interval, without receiving overtime pay.

(2) An agreement under subsection (1) shall not require or permit an employee to work-

(a) more than 5 days in a week;

(b) more than 45 hours in a week;

(c) more than 10 hours overtime in a week.

22.-(1) Notwithstanding the provisions of section 19, or 24, a collective agreement shall provide for the averaging of the ordinary and overtime hours of work over an agreed period.

(2) A collective agreement in subsection (1) shall not require or permit an employee to work more than an average of -

(a) 40 ordinary hours of work per week calculated over the agreed period;

(b) ten hours overtime per week calculated over the agreed period.

(3) A collective agreement prescribed in subsection (1) shall not permit averaging for a period longer than a year.

Break in working day

21.-(1) Subject to this Part, an employer shall give an employee who works continuously for more than five hours a break of at least 60 minutes.

(2) An employer may require an employee to work during a break only if the work cannot be left unattended or cannot be performed by another employee.

(3) An employer shall not be obliged to pay an employee for the period of a break unless the employee is required to work, or to be available for work, during the break.

Daily and weekly rest periods

24.-(1) An employer shall allow an employee-

(a) a daily rest period of at least 12 consecutive hours between ending and recommencing work;

(b) a weekly rest period of at least 24 hours between the last ordinary working day 1 n t he week and t he first ordinary working day of the next week.

(2) A daily rest period may be reduced to 8 hours if-

(a) there is a written agreement to that effect; and

(b) the ordinary working hours are interrupted by an interval of at least three hours; or

(c) the employee lives on the premises of the workplace.

(3) A weekly rest period may, by written agreement, provide for-

(a) a rest period of at least 60 consecutive hours every two weeks; or

(b) a reduced weekly rest period by 8 hours if the rest period in the following week is extended equivalently.

(4) An employee may only work during the weekly rest period referred to in subsection (1) if the employee has agreed to do so and provided that the employer shall pay the employee double the employee's hourly basic wage for each hour worked during the period.

Public holidays Cap. 93

25. If an employee works on a public holiday specified in the Public Holidays Ordinance, the employer shall pay the employee double the employee's basic wage for each hour worked on that day.

Sub-Part C- Remuneration

Calculation of wage rates

26.-(1) The provisions of this section apply, when, for any purpose of this Act, it is necessary to determine the applicable hourly, daily, weekly or monthly rate of pay.

(2) The hourly, daily, weekly or monthly wage rates shall be determined in accordance with the Table provided for in the First Schedule.

(3) Where an employee is employed on a basis other than time worked, that employee shall be considered, for the purposes of this section, to be paid on a weekly basis and that employee's basic weekly wage shall be calculated on the amount earned -

(a) over the immediately proceeding 13 weeks, or

(b) if the employee has been in employment for less than 13 weeks, that period.

Payment of renumeration

27.-(1) An employer shall pay to an employee any monetary remuneration to which the employee is entitled-

(a) during working hours at the place of work on the agreed pay day,

(b) in cash, unless the employee agrees otherwise, in which case the payment shall be made either by-

(i) cheque payable to the employee; or

(ii) direct deposit into an account designated by the employee in writing; and

(c) in a sealed envelope, if the payment is made in cash or by cheque.

(2) Each payment prescribed in subsection (1) shall be supported by a written statement of particulars in the prescribed form which-

(a) shall accompany the payment if the payment is in cash or by cheque;or

(b) shall be given to the employee in a sealed envelope if the payment is by direct deposit.

(3) Remuneration shall be due and payable at the end of contract period provided the employer may pay an advance before the due day on a mutually agreed day and, if such day is not agreed, at least once on completion of half the contract period. Such advance shall not be considered a loan and shall not attract interest.

(4) Notwithstanding the provisions of subsection (1), the Minister may by regulations provide for the partial payment of remuneration in the form of allowance in kind, but in no case alcoholic beverages or noxious drugs, in industries or occupations in which payment in the form of such allowance is customary or desirable, and any such allowance in kind shall be for the personal use of the employee and his or her family, and the value attributed to such allowance shall be fair and reasonable.

(5) Any employer who contravenes the provisions of this section, commits an offence.

Deductions and other acts concerning remuneration

28.-(1) An employer shall not make any deduction from an employee's remuneration unless-

(a) The deduction is required or permitted under a written law, collective agreement, wage determination, court order or arbitration award; or

(b) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt.

(2) A deduction under subsection (1)(b) may be made to reimburse an employer for loss or damage only if-

(a) the loss or damage occurred in the course of employment and was due to the fault of the employee;

(b) the employer has submitted to the employee, in writing, the cause, the amount and calculation of the debt;

(c) the employer has given the employee a reasonable opportunity to challenge the cause, amount or calculation;

(d) the total amount of the debt does not exceed the actual amount of the loss or damage;

(e) the total deductions from the employee's remuneration under this subsection do not exceed one quarter of the employee's remuneration in money.

(3) An agreement to make a deduction under subsection (1)(b) in respect of goods or services purchased by the employee shall specify the cause, amount and calculation of the debt.

(4) An employer who deducts an amount from an employee's remuneration under subsection (1) for payment to another person shall pay the amount to the person in accordance with any requirements specified in the agreement, law, determination, court order or arbitration award.

(5) An employer shall not require or permit an employee to-

(a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or

(b) acknowledge receipt of an amount greater than the remuneration actually received.

(6) Notwithstanding the provisions of any other law on bankruptcy or winding up of an employer's business, the claim of an employee or

those claiming on behalf of the employee of any remuneration to which the employee is entitled under this Act, shall be the claim that which have accrued in respect of the twenty six weeks immediately preceding the date on which the declaration of bankruptcy or winding-up is made.

(7) Any person who contravenes the provisions of this section, commits an offence.

Sub-Part D - Leave

Application of this Sub-Part

29.-(1) Subject to the provisions subsection (2), an employee with less than six months service shall not be entitled to paid leave under the provisions of this Part.

(2) Notwithstanding the provisions of subsection (I)-

(a) an employee employed on a seasonal basis is entitled to paid leave under the provisions of this Part;

(b) an employee, with less than six months service and who has worked more than once in a year for the same employer, shall be entitled to paid leave under the provisions of this Part if the total period worked for that employer exceeds six months in that year.

Interpretation in this Sub-Part

30.-(1) For the purpose of this Sub-Part-

(a) "day" includes any rest period prescribed in section 24;
(b) "leave cycle" means -

(i) in respect of annual leave, a period of 12 months consecutive employment with an employer following-

(aa) subject to subsection (2), an employee's commencement of employment; or

(bb) the completion of the last 12 months leave cycle.;

(ii) in respect of all other forms of leave conferred under this Sub-Part, a period of 36 months' consecutive

(aa) subject t o s subsection (2), a n employee's c ornmencement of employment; or

(bb) the completion of the last 36 months leave cycle;

(c) "paid leave" means any leave paid under this Part and calculated on an employee's basic wage.

(2) Notwithstanding the provisions of subsection (1)(b)(i)(aa) and (ii)(aa), an employer and employee may agree to a standard leave cycle provided that an employee's entitlement to paid leave under this Sub-Part is not prejudiced.

Annual leave

31.-(1) An employer shall grant an employee at least 28 consecutive days' leave in respect of each leave cycle, and such leave shall be inclusive of any public holiday that may fall within the period of leave.

(2) The number of days referred to in subsection (1) may be reduced by the number of days during the leave cycle which, at the request of the employee, the employer granted that employee paid occasional leave.

(3) An employer may determine when the annual leave is to be taken provided that it is taken no later than -

(a) six months after the end of the leave cycle; or

(b) twelve months after the end of the leave cycle if -

(i) the employee has consented; and

(Ii) the extension is justified by the operational requirements of the employer.

(4) An employer shall pay an employee the remuneration the employee would have been paid had the employee worked during the period of leave before the commencement of the leave.

(5) An employer s hall not require o r permit a n employee t o take annual leave in place of any leave to which the employee is entitled under this Part.

(6) An employer shall not require or permit an employee to work for the employer during any period of annual leave.

(7) Subject to the provisions of subsection (8), an employer shall not pay an employee an amount of money in substitution for the annual leave to which that employee is entitled, whether or not the employee agrees to such payment.

(8) An employer shall pay an employee a pro *rata* amount for annual leave accrued-

(a) subject to the provisions of subsection (9), at the termination of employment; or

(b) at the expiry of each season in respect of an employee employed on a seasonal basis.

(9) An employee is not entitled to be paid any pro rata amount for accrued annual leave if the employee has not taken the leave within the periods and circumstances prescribed in subsection (3).

O 0) The pro rata amount of annual leave referred to in subsection (8) shall be calculated at the rate of one day's basic wage for every 13 days the employee worked or was entitled to work.

Sick leave

32.-1) An employee shall be entitled to sick leave for at least 126 days in any leave cycle.

(2) The sick leave referred to in subsection (1) shall be calculated as follows-

(a) the first 63 days shall be paid full wages;

(b) the second 63 days shall be paid half wages.

(3) Notwithstanding the provisions of subsection (2), an employer shall not be required to pay an employee for sick leave if-

(a) the employee fails to produce a medical certificate; or

(b) the employee is entitled to paid sick leave under any law, fund or collective agreement.

(4) F or the purposes o f this section, 'medical certificate' in means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Maternity leave

33.-(1) An employee shall give notice to the employer of her intention to take maternity leave at least 3 months before the expected date of birth and such notice shall be supported by a medical certificate.

(2) An employee may commence maternity leave-

(a) at any time from four weeks before the expected date of confinement;

(b) on an earlier date if a medical practitioner certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee shall work within six weeks of the birth of her child, unless a medical practitioner certifies that she is fit to do so.

(4) Subject to the provisions of subsections (2) and (3), the employee may resume employment on the same terms and conditions of employment at the end of her maternity leave.

(5) No employer shall require or permit a pregnant employee or an employee who is nursing a child to perform work that is hazardous to her health or the health of her child.

(6) Subject to the provisions of subsections (7) and (8), an employee shall be entitled, within any leave cycle, to at least-

(a) 84 days' paid maternity leave; or

(b 100 days paid maternity leave if the employee gives birth to more than one child at the same time.

(7) Notwithstanding the provisions subsection (6)(a), an employee is entitled to an additional 84 days paid maternity leave within the leave cycle if the child dies within a year of birth.

(8) An employer is only obliged to grant paid leave for 4 terms of maternity leave to an employee in terms of this section.

(9) Where an employee performs work that is hazardous to her health or that of her child, her employer shall offer her suitable alternative employment, if practicable, on terms and conditions that are no less favourable than her terms and conditions.

(10) Where an employee is breast-feeding a child, the employer shall allow the employee to feed the child during working hours up to a maximum of two hours per day.

(11) For the purposes of this section, "medical certificate" means a certificate issued by a registered medical practitioner, including a midwife, or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Paternity and other forms of leave

34.-(1) During any leave cycle, an employee shall be entitled to-

(a) at least 3 days paid paternity leave if-

(i) the leave is taken within 7 days of the birth of a child; and

(ii) the employee is the father of the child;

(b) at least 4 days paid leave for any of the following reasons-

(i) the sickness or death of the employee's child;

(ii) the death of the employee's spouse, parent, grandparent, grandchild or sibling.

(2) Before paying an employee for leave under this section, an employer may require reasonable proof of the event prescribed in subsection (1).

(3) For the purpose of clarity-

(a) the 3 days referred to in subsection (1)(a) are the total number of days to which the employee is entitled irrespective of how many of the employee's children are born within the leave cycle;

(b) the 4 days referred to in subsection (1)(b) are the total number of days to which the employee is entitled irrespective of how many of the events prescribed in that paragraph occur within the leave cycle, but the employee may take more

days as may be authorised by the employer for the event and other subsequent events within the same leave cycle provided that such extra days will be without pay.

Sub-Part E- Unfair termination of employment

Application of this Sub-Part

35. The provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts.

Interpretation

36. For purposes of this Sub-Part-

(a) "termination of employment' ' includes-

(i) a lawful termination of employment under the common law;

(ii) a termination by an employee because the employer made continued employment intolerable for the employee; and

(iii) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;

(iv) a failure to allow an employee to resume work after taking maternity leave granted under this Act or any agreed maternity leave;

(v) a failure to re-employ an employee if the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them;

(b) "terminate employment" has a meaning corresponding to 'termination of employment'.

Unfair termination

37.-(1) It shall be unlawful for an employer to terminate the employment of an employee unfairly.

(2) A termination o f employment b y an employer is unfair i f t he employer fails to prove-

(a) that the reason for the termination is valid;

(b) that the reason is a fair reason-

(i) related to the employee's conduct, capacity or compatibility; or

(11) based on the operational requirements of the employer, and

(c) that the employment was terminated in accordance with a fair procedure.

(3) It shall not be a fair reason to terminate the employment of an employee-

(a) for the reason that-

(i) discloses information that the employee is entitled or required to disclose to another person under this Act or any other law;

(ii) fails or refuses to do anything that an employer may not lawfully permit or require the employee to do;

(iii) exercises any right conferred by agreement, this Act or any other law;

(iv) belongs, or belonged, to any trade union; or

(v) participates in the lawful activities of a trade union, including a lawful strike;

(b) for reasons-

(i) related to pregnancy;

(ii) related to disability, and

(iii) that constitute discrimination under this Act.

(4) In deciding whether a termination by an employer is fair, an employer, arbitrator or Labour Court shall take into account any Code of Good Practice published under section 99.

(5) No displinary action in form of penalty, termination or dismissal shall lie upon an employee who has been charged with a criminal offence which is substantially the same until final determination by the Court and any appeal thereto.

Termination based on operational requirements

38.-(1) In any termination for operational requirements (retrenchment), the employer shall comply with the following principles, that is to say, be shall -

(a) give notice of any intention to retrench as soon as it is contemplated;

(b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;

(c) consult prior to retrenchment or redundancy on-

(i) the reasons for the intended retrenchment;

(ii) any measures to avoid or minimise the intended retrenchment;

(iii) the method of selection of the employees to be retrenched;

(iv) the timing of the retrenchments; and

(v) severance pay in respect of the retrenchments,

(d) shall give the notice, make the disclosure and consult, in terms of this subsection, with-

(i) any trade union recognised in terms of section 67;

(ii) any registered trade union with members in the workplace not represented by a recognised trade union;

(iii) any employees not represented by a recognised or registered trade union.

(2) Where in the consultations held in terms of sub-section(l) no agreement is reached between the parties, the matter shall be referred to mediation under Part VIII of this Act.

(3) Where, in any retrenchment, the reason for the termination is the refusal of an employee to accept new terms and conditions of employment, the employer shall satisfy the Labour Court that the recourse to a lock out to effect the change to terms and conditions was not appropriate in the circumstances.

Proof in unfair termination proccedings

39. In any proceedings concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair.

Remedies for unfair terminatiion

40.-(1) If an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer-

(a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or

(b) to re-engage the employee on any terms that the arbitrator or Court may decide; or

(c) to pay compensation to the employee of not less than twelve months' remuneration.

(2) An order for compensation made under this section shall be in addition to, and not a substitute for, any other amount to which the employee may be entitled in terms *of* any law or agreement.

(3) Where an order of reinstatement or re-engagement is made by an arbitrator or court and the employer decides not to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment.

Sub-Part F Other incidents of* *Termination*

Notice of termination

41.-(1) If a contract of employment can be terminated on notice, the period of notice shall not be less than-

(a) seven days, if notice is given in the first month of employment; and

(b) after that-

(i) 4 days, j f t he e mployee is e employed o n a daily o r weekly basis; or

(ii) 28 days, if the employee is employed on a monthly basis.

(2) An agreement may provide for a notice period that is longer than that required in subsection (1) provided that, the agreed notice period is of equal duration for both the employer and the employee.

(3) Notice of termination shall be in writing, stating -

(i) the reasons for termination; and

(ii) the date on which the notice is given.

(4) Notice of termination shall not be given -

(a) during any period of leave taken under this Act; or

(b) to run. concurrently with any such period of leave.

(5) Instead of giving an employee notice of termination, an employer may pay the employee the remuneration that the employee would have received if the employee had worked during the notice period.

(6) Where an employee refuses to work during the notice period, an employer may deduct, from any money due to that employee on termination, the amount that would have been due to the employee if that employee had worked during the notice period.

(7) Nothing in this section shall affect the right of-

(a) an employee to dispute the lawfulness or fairness of a termination of employment under this Act or any other law;

(b) an employer or an employee to terminate employment without notice for any cause recognised by law.

Severance pay

42.-(1) For the purposes of this section, "severance pay" means an amount at least equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

(2) An employer shall pay severance pay on termination of emplo-ment if-

(a) the employee has completed 12 months continuous service with an employer; and

(b) subject to the provisions of subsection (3), the employer terminates the employment.

(3) The provisions of subsection (2) shall not apply-

(a) to a fair termination on grounds of misconduct;

(b) to an employee who is terminated on grounds of capacity compatibility or operational requirements of the employer but who unreasonably refuses to accept alternative employment with that employer or any other employer.

(4) The payment of severance pay under this section shall not affect an employee's right to any other amount payable under this or any other written law.

Transport to place of recruitment

43.-(1) Where an employee's contract of employment is terminated at a place other than where the employee was recruited, the employer shall either-

(a) transport of the employee and his personal effects to the place of recruitment,

(b) pay for the transportation of the employee to the place of recruitment, or

(c) pay the employee an allowance for transportation to the place of recruitment in accordance with subsection (2) and daily subsistence expenses during the period, if any, between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment.

(2) An allowance prescribed under subsection (1)(c) shall be equal to at least a bus fare to the bus station nearest to the place of recruitment.

(3) For the purposes of this section, "recruit" means the solicitation of any employee for employment by the employer or the employer's agent.

Payment on termination and certificates of employment

44.-(1) On termination of employment, an employer shall pay an employee-

(a) any remuneration for work done before the termination;

(b) any annual leave pay due to an employee under section 31 for leave that the employee has not taken;

(c) any annual leave pay accrued during any incomplete leave cycle determined in accordance with section 31 (1);

(d) any notice pay due under section 41(5); and

(c) any severance pay due under section 42;

(f) any transport allowance that may be due under section *43*.

(2) On termination, the employer shall issue to an employee a prescribed certificate of service.

PART IV
TRADE UNIONS, EMPLOYERS ASSOCIATIONS AND FEDERATIONS

Obligation to register

45.-(1) A trade union or employers' association shall register itself under this Part within *6* months of its establishment.

(2) A federation may register if it meets the requirements for registration of a federation in terms of section 46(3).

(3) It is an offence for a trade union or employer's association to operate as a union or association -

(a) after 6 months has expired of its establishment if it has not applied for registration under this Part; or

(b) unless it is registered under this Part.

Requirements for registration

46.-(1) The requirements for registration as a trade union are:

(a) it is a bona fide trade union;

(b) it is an association not for gain;

(c) it is independent of any employer or employer's association;

(d) it has been established at a meeting of at least 20 employees;

(e) it has adopted a constitution and rules that comply with provisions of section 47;

(f) it has adopted a name that does not resemble the name of another union so as to mislead or create confusion; and

(g) it has an address in the United Republic of Tanzania.

(2) The requirements for registration as an employers' association are:

(a) it is a bona fide employees association;

(b) it is an association not for gain;

(c) it has been established at a meeting of at least four employers;

(d) it has adopted a constitution and rules that comply with provisions of section 47;

(e) it has adopted a name that does not resemble the name of another employer association so as to mislead or create confusion; and

(f) it has an address in the United Republic of Tanzania.

(3) The requirements for registration as a federation are:

(a) it is a bona fide federation;

(b) it is a federation not for gain;

(c) it has been established at a meeting of at least five registered organisations of the same kind;

(d) it has adopted a constitution and rules that comply with seetion 47.

(e) it has adopted a name that does not resemble the name of another organisation or federation so as to mislead or create confusion;

(f) it comprises registered organisations only; and

(g) it has an address in the United Republic of Tanzania.

Constitutional requirements

47.-(1) The constitution and rules of a trade union, employers' association or federation shall -

(a) state that it is an organization not for gain;

(b) prescribe the qualifications for membership and the grounds and procedure for termination of membership;

(c) prescribe the membership fee or any method of determining the fee;

(d) prescribe rules for the convening and conduct of meetings, including the quorum required, and the minutes to be kept of, those meetings;

(e) establish the manner in which decisions are made;

(f) establish the office of secretary and define its functions;

(g) provide for office bearers, officials and define their respective functions;

(h) prescribe a procedure for the nomination and election of office bearers;

(i) prescribe a procedure for the appointment or nomination or election of officials-

(j) establish the circumstances and manner in which office bearers, officials and trade union representatives may be removed from office;

(k) establish t he circumstances and manner i n which a b allot shall be conducted;

(l) provide for the conduct of a ballot of the members in respect of whom-

(i) in the case of a trade union, the union may call upon to strike;

(ii) in the case of an employers' association, the association may call upon to lock out;

(iii) in the case of a federation of trade unions, the federation may call upon to engage in protest action;

(m) provide for banking and investing of money;

(n) establish the purposes for which its money may be used;

(o) provide for acquiring and controlling of property;

(p) prescribe a procedure for the amendment of the constitution and rules;

(q) prescribe a procedure for affiliation, or amalgamation-

(i) in the case of trade unions, with other registered unions;

(ii) in the case of employer associations, with other registered associations;

(iii) in the case of federations, with other federations;

(r) prescribe a procedure for affiliation to an international workers' association or an international employers, association;

(s) prescribe a procedure to dissolve the organisation or federation;

(t) any other prescribed matter.

(2) A constitution or rules of a registered organisation shall not -

(a) conflict with -

(i) the basic rights and duties set out in Part III of the Constitution of the United Republic of Tanzania, 1977;

(ii) the provisions of this law or any other written law; or

(b) evade any obligation imposed by any law.

Process of registration

48.-(1) Any organisation or federation may apply for registration, by submitting to the Registrar-

(a) a prescribed form that has been properly completed and signed by the secretary of the organisation or federation;

(b) a certified copy of the attendance register and minutes of its establishment meeting prescribed in section 46(l)(d), (2)(c) or (3)(c) , and

(c) a certified copy of its constitution and rules.

(2) Notwithstanding the provisions of subsection (1), the Registrar may require further information in support of the application.

(3) Where the Registrar is satisfied that the organisation. or federation has complied with the requirements of sections 46 and 47, he shall register the organisation or federation.

(4) Where the Registrar is not satisfied that the organisation or federation complies with the requirements of sections 46 and 47, he-

(a) may give the applicant an opportunity to rectify its application within a. stipulated period;

(b) may refuse the application and send the applicant a written notice of the decision and the reasons.

(5) After registering an organisation or federation, the Registrar shall-

(a) enter the name of the organisation or federation in the appropriate register;

(b) issue a certificate of registration to the organisation or federation.

Effect of registration

49.-(1) On registration, an organisation or federation shall be 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;

(ii) contract; and

(iii) hold, purchase or otherwise acquire and dispose of movable or immovable property.

(2) A registered organisation or federation shall not be an association in restraint of trade.

(3) The fact that a person is a member of a registered organisation or federation shall not make that person liable for any of the obligations or liabilities of the union or organisation.

(4) A member, office bearer, official of a registered organisation or federation shall not be personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith while performing their functions for or on behalf of the organisation or federation.

(5) A duly issued certificate of registration is sufficient proof that a registered organisation or federation is a body corporate.

(6) For the purposes of this section, "office bearer" in relation to a trade union includes a trade union representative prescribed in section 62.

Change of name or constitution

50.-(1) Any change of name or change to the constitution and rules of a registered organisation or federation shall have effect only when the Registrar approves the change under this section.

(2) A registered Organisation or federation may apply for the approval of a change of name or to its constitution and rules by submitting to the Registrar-

(a) the prescribed form duly completed and signed by the secretary;

(b) a copy of the resolution containing the wording of the change and

(c) a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.

(3) Notwithstanding the provisions of subsection (2), the Registrar may require further information in support of the application.

(4) The Registrar shall -

(a) consider the application and any further information supplied by the applicant; and

(b) if satisfied that the change to the constitution and rules corn-plies with the requirements prescribed in sections 46 and 47, approve the change by issuing the prescribed certificate approving the change; or

(c) if satisfied that the change of name does not resemble the name of another union so as to mislead or create confusion, approve the change by issuing a new certificate of registration reflecting the new name.

(5) Where the Registrar refuses to approve a change, he shall give written notice of that decision and the reasons for the refusal.

Accounts and audits

51.-(1) Every registered Organisation and federation shall, to the standards of generally accepted accounting practice, principles and procedures-

(a) keep books and records of its income, expenditure, assets and liabilities;

(b) for each financial year ending on 31 December, prepare financial statements in the prescribed form;

(c) arrange an annual audit of its books and records of accounts and its financial statements by a registered auditor;

(d) by 31 March of the following year, submit the financial statements and auditor's report to-

(i) a meeting of members or their representatives as provided for in the constitution of the organisation or federation; and

(ii) the Registrar.

(2) Every registered organisation and federation shall make its financial statements and auditor's report available to members for inspection at its offices.

Duties of a registered organisations and federations

52.-(1) In addition to the records required by section 51, every registered organisation or federation shall keep for five years-

(a) a list of its members in the prescribed form;

(b) the minutes of its meetings;

(c) the ballot papers.

(2) Every registered organisation or federation shall provide to the Registrar-

(a) by 31 March of the following year, an annual statement certified by the secretary showing the total number of members as of 31 December of the previous year;

(b) within 30 days of a request from the Registrar, a written explanation of anything relating to the statement of membership, the auditor's report or the financial statements:

Provided that, the Registrar shall not inquire into the financial affairs of any organisation unless there are serious grounds for believing that the organisation has infringed the law or that the funds of the organisation have been embezzled or otherwise misused;

(c) within 30 days of any appointment or election of its national office bearers, the names and work addresses of those office bearers;

(d) 30 days before a new address for service of documents will take effect, notice of that change of address.

Non-compliance with constitution

51.-(1) Where a federation or registered Organisation fails to comply with its constitution, the Registrar or member of the federation or registered Organisation may apply to the Labour Court for any appropriate order including-

(a) setting aside any decision, agreement or election;

(b) requiring the Organisation or federation or any official thereof to-

(i) comply with the constitution;

(ii) take steps to rectify the failure to comply;

(c) restraining any person from any action not in compliance with the constitution.

(2) Before the Labour Court hears an application prescribed in subsection (1), it shall satisfy itself that-

(a) the Organisations or federation's internal procedures have been exhausted; or

(b) it is in the best interests of the Organisation or federation that the application be heard notwithstanding that any internal procedures have not been exhausted.

Amalgamation of registered organisations and federations

54.-(1) Any registered-

(a) trade union may resolve to amalgamate with one or more registered trade unions; and

(b) employer's association may resolve to amalgamate with one or more registered employer's associations;

(c) federation may resolve to amalgamate with one or more fede-rations to form a confederation.

(2) The amalgamating organisations or federations may apply to the Registrar for registration of the amalgamated organisation or federation and the provisions of section 48, relating to registration process shall *mutatis mutandis* apply in relation to the application.

(3) After the Registrar has registered the amalgamated organisation or federation, he shall cancel the registration of each of the amalgamating organisations or federations by removing their names from the appropriate register.

(4) The registration of an amalgamated organisation or federation shall become effective from the date the Registrar enters its name in the appropriate register.

(5) Where the Registrar has registered an amalgamated organisation or federation-

(a) all the assets, rights, obligations and liabilities of the amalga-mating organisations or federations shall devolve upon and vest in the amalgamated organisation or federation; and

(b) the amalgamated organisation or federation shall succeed the amalgamating organisations or federations in respect of-

(i) any right that the amalgamating organisations or federations enjoyed;

(ii) any fund established under this Act or any other law;

(iii) any collective agreement or other agreement; and

(iv) any written authorisation by a member for the periodic d eduction o f Ievies o r subscriptions due t o the amalgamating organisations.

Cancellation of registration

55.-(1) The Registrar may apply to the Labour Court for an order to cancel the registration of a registered organisation or federation if that organisation or federation fails to comply with-

(a) the requirements for registration; or

(b) the provisions of this Part.

(2) Where the Labour Court may make any appropriate order including-

(a) cancelling the registration of an organisation or federation;

(b) giving the organisation or federation an opportunity to remedy any failure to comply.

(3) Where the registration of an organisation or federation is cancelled-

(a) all the rights enjoyed by it under this Act shall cease; and

(b) the organisation or federation shall be dissolved in accordance with the provisions of section 56.

Dissolution of trade union or employer,s association

56.-(1) The Registrar may apply to the Labour Court for the dissolution of any organisation that contravenes the provisions of section 45.

(2) An organisation or federation may apply to the Labour Court for its dissolution.

(3) Where the Labour Court makes an order for cancelling the registration of an organisation or federation under section 55(2), it may in addition make an order dissolving the organisation or federation.

(4) In accordance with the laws relating to bankruptcy, any interested person may apply to the Labour Court for dissolution of a registered organisation or federation on any ground of bankruptcy.

(5) The laws of bankruptcy, shall apply to an application prescribed in subsection (3) and any reference to a court in those laws shall be interpreted as referring to the Labour Court.

(6) In granting an order of dissolution under this section, the Labour Court may-

(a) appoint any suitable person as a liquidator on any appropriate conditions;

(b) decide where any residue of assets shall vest if the constitution and rules fail to do so.

Appeals from decisions of Registrar

57. Any person aggrieved by a decision of the Registrar made under this Part may appeal to the Labour Court, against that decision.

Publication in the Gazette

58.-(1) The Registrar shall publish a notice in the *Gazette* stating the following facts, that-

(a) an organisation or federation has been registered;

(b) the registration of any organisation or federation has been cancelled;

(c) a change of a name or amalgamation affecting any registered organisation or federation has been registered;

(d) an registered organisation or federation has been dissolved.

(2) Where the notice referred to in subsection (1) deals with registration of an organisation or federation, it shall contain a statement to the effect that, any person may view the constitution of that organisation or federation at the Registrar's office.

PART V

ORGANISATIONAL RIGHTS

59. For the purposes of this Part-

"authorised representative" means an office bearer or official of a trade union or any other person authorised to represent the trade union;

"employer's premises" includes any premises under the control of the employer where work is done or the employees are accommodated;

"labour laws" includes this Act and any other law relating to labour matters;

"registered trade union" includes two or more trade unions acting jointly;

"representative trade union" means a registered trade union that is the most representative trade union.

Access to employer's premises

60.-(1) Any authorised representative of a registered trade union shall be entitled to enter the employer's premises in order to-

(a) recruit members;

(b) communicate with members;

(c) meet members in dealings with the employer;

(d) hold meetings of employees on the premises;

(e) vote in any ballot under the union constitution.

(2) A registered trade union may establish a field branch at any workplace where ten or more of its members are employed.

(3) The employer shall provide a union recognised in terms of section 67 reasonable and necessary facilities to conduct its activities at the workplace.

(4) The rights under this section shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent undue disruption of work.

Deducti-on of trade union dues

61.-(1) An employer shall deduct dues of a registered trade union from an employee's wages if that employee has authorised the employer to do so in the prescribed form.

(2) The employer shall remit the deductions to the trade union within seven days after the end of the month in which the deductions are made.

(3) Where the employer fails to remit the union dues within the time specified in subsection (2), without reasonable grounds, the employer shall be liable to pay the union the equivalent of five percent of the total amount due for each day the dues remain un-remitted.

(4) An employee may revoke an authorisation by giving one month's written notice to the employer and the trade union.

(5) Where an employee revokes any authorization under subsection (3), the employer shall cease to make any deductions after the expiry of the notice.

(6) With each monthly remittance, the employer shall give a registered trade union-

(a) a list in the prescribed form of the names of the members in respect of whom deductions are required to be made;

(b) a copy of any notice of revocation under subsection (3).

Trade union representation

62.-(1) A registered trade union shall be entitled to-

(a) one trade union representative for one to nine members;

(b) three representatives for ten to twenty members;

(c) ten representatives for twenty one to one hundred members;

(d) fifteen representatives work places with more than one hundred members.

(2) In workplace with more than one hundred members, at least five of the trade union representatives shall represent women employees, if any who are employed and belong to the union.

(3) The constitution of a registered trade union shall govern the election, terms of office and removal from office of a trade union representative.

(4) Trade union representatives shall perform the following functions-

(a) to represent members in grievance and disciplinary hearings;

(b) to make representations on behalf of members in respect of rules; health and safety and welfare;

(c) to consult on productivity in the workplace;

(d) to represent the trade union in enquiries and investigations conducted by inspectors in terms of any labour laws;

(e) to monitor employer compliance with labour laws;

(f) to perform trade union functions under the union's constitution;

(g) to further good relations;

(h) to perform any function or role agreed to by the employer.

(5) Trade union representatives shall be entitled to reasonable paid time off to perform any of the functions referred to in subsection (4).

(6) The employer shall disclose to the trade union representatives any information relevant to the performance of their functions.

(7) The provisions of section 70 relating to disclosure of relevant information shall *mutatis mutandis apply* to any disclosure prescribed in subsection (6).

(8) The rights under this section are subject to any reasonable conditions to ensure the orderly exercise of the rights and that work is not unduly interrupted.

Leave for trade union activities

63. The employer shall grant reasonable paid leave to-

(a) trade union representatives referred to in section 62 to attend training courses relevant to their functions;

(b) office bearers of-

(i) a registered trade union, to perform the functions of their officer;

(ii) a registered federation, to which the representative union belongs, to perform the functions of their office.

Procedure for exercising organisational right

64.-(1) Any registered trade union may notify an employer in the prescribed form that it seeks to exercise a right conferred under this Part

(2) Within 30 days of the receipt of a notice under subsection (1), the employer shall meet with the trade union to conclude a collective agreement granting the right and regulating the manner in which the right is to be exercised.

(3) Where there is no agreement or the employer fails to meet with the trade union within 30 days, the union may refer the dispute to the Commission for mediation.

(4) Where the mediation fails to resolve the dispute, the trade union may refer the dispute to the Labour Court which s hall make appropriate orders.

(5 Any dispute over the interpretation or application of an order made under this section shall be referred to the Labour Court for decision.

Termination of organisational rights

65.-(1) Where a trade union materially breaches the terms and conditions for the exercise of organisational rights, the employer-

(a) may refer the issue to the Commission for mediation;

(b) if the mediation fails to resolve the issue, may apply to the Labour Court to-

(i) terminate any of the organisational rights granted to the trade union under a collective agreement; or

(ii) withdraw an order made under section 64.

(2) A Labour Court making a decision under this section may make any appropriate order including-

(a) requiring the union to take measures to ensure compliance with the conditions for the exercise of a right;

(b) suspending the exercise of a right for a period of time;

(c) terminating the organisational rights contained in a collective agreement or order made under section 64.

PART VI

COLLECTIVE BARGAINING

Interpretation

66. For the purposes of this Part -

(a) a "bargaining unit" -

(i) means any unit of employees in respect of which a registered trade union is recognised, or is entitled to be recognised, as the exclusive bargaining agent in terms of this Part;

(ii) includes a unit of employees employed by more than one employer;

(b) a "recognised trade union" means a trade union recognised by a collective agreement or in respect of an order made by the Labour Court under the provisions of section 67;

(c) a "registered trade union" includes two or more registered trade unions acting jointly.

Recognition as exclusive bargaining agent of employees

67.-(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit shall be entitled to be recognised as the exclusive bargaining agent of the employees in that unit.

(2) An employer or employers' association may not recognise a trade union as an exclusive bargaining agent unless the trade union is registered and represents the majority of the employees in the bargaining unit.

(3) A registered trade union may notify the employer or employers' association in the prescribed form that it shall seek recognition as the exclusive bargaining agent within an appropriate bargaining unit.

(4) Within thirty days of the notice prescribed in subsection (3), an employer shall meet to conclude a collective agreement recognising the trade union.

(5) Where there is no agreement or the employer fails to meet with the trade union within the thirty days, the union may refer the dispute to the Commission for mediation. The period of thirty days may be extended by agreement.

(6) If the mediation fails to resolve the dispute, the trade union or the employer may refer the dispute to the Labour Court for decision.

(7) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(8) In determining the appropriateness of a bargaining unit, the Labour Court shall -

(a) consider the following:

(i) the wishes of the parties;

(ii) the bargaining history of the parties;

(iii) the extent of union organisation among the employees of the employer or employers;

(iv) the employee similarity of interest;

(v) the organisational structure of the employer or employers;

(vi) the different functions and processes of the employer or employers and the degree of integration;

(vii) the geographic location of the employer or the employers;

(b) promote orderly and effective collective bargaining with a minimum of fragmentation of an employer's organisational structure.

(9) Any dispute over t he interpretation o r application o f a n order made under this section shall -

(a) be referred to the Commission for mediation; and

(b) if the mediation fails to resolve the dispute, be referred to the Labour Court for a decision.

(10) Nothing in this section precludes registered trade unions, employers, and registered employers' associations from establishing their own collective bargaining arrangements by collective agreement.

Duty to bargain in good faith

68.-(1) An employer o r employers. association s hall bargain i n good faith with a recognised trade union.

(2) A recognised trade union shall bargain in good faith with the employer or employers' association that has recognised it or is required to recognise it under the provisions of section 67.

Withd-rawalof recogni-tion

69.-(1) Where a recognised trade union ceases t o represent the majority of the employees in the bargaining unit, the employer shall,

(a) give the trade union notice to acquire a majority within three months;

(b) withdraw exclusive recognition, if it fails to acquire that majority at the expiry of the three months.

(2) Where a recognised union has ceased to represent the majority in the bargaining unit, any other trade union may request for new elections in order to demonstrate that the union has become the most representative;

Provided that, no application for the withdrawal of recognition of a union can be made within six months of the union being recognised as the exclusive collective bargaining agent.

(3) If a party to a collective agreement prescribed in section 67(10), or a party subject to a recognition order, materially breaches the agreement or order, the other party may apply to Labour Court to have recognition withdrawn by -

(a) terminating the recognition agreement;

(b) rescinding the recognition order.

(4) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(5) The Labour Court may make any appropriate order including-

(a) giving t he trade union a n opportunity t o become representative;

(b) altering the bargaining unit;

(c) suspending recognition for a period of time;

(d) withdrawing recognition.

Obligation to disclose relevant informa-

70.-(1) An employer that has recognised a trade union under this Part shall allow the union to engage effectively in collective bargaining.

(2) An employer shall not be obliged to disclose information that-

(a) is legally privileged;

(b) the employer cannot disclose without contravening a law or an order of court;

(c) is confidential and, if disclosed, may cause substantial harm to an employee or the employer;

(d) is private personal information relating to an employee without that employee's consent.

(3) A trade union that receives confidential or private personal information under this section -

(a) shall not disclose the information to any person other than its members and advisors;

(b) shall take reasonable measures to ensure that the information disclosed is kept confidential.

(4) If there is a dispute over disclosure of information, any party to the dispute may refer the dispute to the Commission for mediation.

(5) It the mediation fails, any party may refer the dispute to the Labour Court for decision.

(6) In making any decision, the Labour Court may -

(a) hold the proceedings in camera;

(b) take into account any previous breaches of confidentiality by the trade union or its members;

(c) order an employer to disclose any confidential information if, on balance, the effect of the non-disclosure may seriously impede the union's ability -

(i) to bargain effectively;

(ii) to represent employees effectively;

(d) order the disclosure of information on terms designed to limit any harm that may be caused by disclosure;

(c) order the trade union to pay damages for any breach of confidentiality;

(f) suspend or withdraw the right to disclosure.

Binding nature of collective agreements

71.-(1) Collective agreements shall be in writing and signed by the parties.

(2) A collective agreement shall be binding on the last signature unless the agreement states otherwise.

(3) A collective agreement shall be binding on

(a) the parties to the agreement;

(b) any members of the parties to the agreement;

(c) any employees who are not members of a trade union party to the agreement if the trade union is recognised as the exclusive bargaining agent of those employees under section 67.

(4) A collective agreement shall continue to be binding on employers or employees who were party to the agreement at the time of its commencement and includes resigned members from that trade union or employer association.

(5) A collective agreement becomes binding on employers and employees who become members of the parties to the agreement after its commencement.

(6) Unless a collective agreement provides otherwise, any party to an agreement may terminate the agreement on reasonable notice.

(7) The parties to a collective agreement shall be required to lodge a copy of the agreement with the Labour Commissioner.

Agency Shop agreements

72.-(1) An agreement that compels an employee to become a member of a trade union is not enforceable.

(2) A recognised trade union and employer may conclude a collective agreement providing for an agency shop.

(3) The requirements for a binding agency shop agreement are:

(a) the agreement applies to employees in the bargaining unit only;

(b) employees who are not members of the trade union are not compelled to become members;

(c) any agency fee deducted from the remuneration of an employee, who i s not a member, i s equivalent to, or Less than, the union dues deducted by the employer from the remuneration of a member;

(d) the amount deducted from both members and non-members shall be paid into a separate account administered by the trade union;

(e) the monies in that account may only be used to advance or defend the socio-economic interests of the employees in that workplace and shall not be used to pay -

(i) an affiliation fee to a political party; or

(ii) any contributions to a political party of person standing for political office.

(4) Notwithstanding the provisions of any law or contract, an employer may deduct an agency fee under an agency shop agreement that complies with the provisions of this section from an employee's wages without the consent of that employee.

(5) A trade union party to an agency shop agreement shall -

(a) appoint a registered auditor to audit the account prescribed in subsection (3) (d) annually;

(b) submit the auditor's report to the Labour Commissioner and to the Registrar within thirty days of the date of the report; and

(c) permit any interested person to inspect the report at the union's offices during office hours.

(6) A report by an auditor appointed by a trade union under this section shall include an opinion on whether the provisions of this section have been complied with.

(7) An agency shop agreement shall be -

(a) suspended for so long as the trade union is not representative;

(b) terminated once recognition is withdrawn under section 69.

(8) If an agency shop agreement is suspended or terminated, the provisions of this 'Section shall continue to apply in respect of any money remaining in the account prescribed in subsection (3)(d).

(9) For the purposes of this section, "agency shop" means a union security arrangement in terms of which employees in a bargaining unit, who are not members of the recognised trade union, are required to pay an agency fee to the trade union.

Workers' participation agreement

71.-(1) A recognised trade union and an employer or an employers' association may conclude a collective agreement establishing a forum for workers participation in a workplace.

(2) If a registered trade union, employer or employers' association wishes to establish a forum for workers' participation in any workplace, the union, employer or association may request the assistance of the Commission to facilitate discussions between the union, employer or association.

(3) The Commission shall facilitate any discussions concerning the establishment of a forum for workers participation in any workplace taking into account any code of good practice published by the Council on workers participation.

Disputes concerning collective agreements

74. Unless the parties to a collective agreement agree otherwise -

(a) a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission for mediation; and

(b) if the mediation fails, any party may refer the dispute to the Labour Court for a decision.

PART VII
STRIKES AND LOCKOUTS

Right to strike and to lockout

75. Subject to the Provisions contained in this Part -

(a) every employee has tile right to strike in respect of a dispute of interest; and

(b) every employer has the right to lockout in respect of a dispute of interest.

Restrictions on the right to strike or lockout

76.-(1) No person shall take part in a strike or a lock out or in any way conduct himself in a manner contemplating or in furtherance of a strike or lockout if-

(a) subject to the provisions of subsection (2), that person is engaged in an essential service referred to in section 77;

(b) that person is engaged in a minimum service prescribed in section 79;

(c) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;

(d) that person is bound by a collective agreement or arbitration award that regulates the issue in dispute;

(e) that person is bound by a wage determination that regulates the issue in dispute during the first year of that determination;

(f) that person is a magistrate, a prosecutor or other court personnel;

(9) the issue in dispute is a complaint;

(h) the procedures prescribed in sections 80, 81 and 82 have not been followed,

(2) Notwithstanding the provisions of subsection (1) (a), a person engaged in an essential service may strike or lockout if -

(a) there is a collective agreement providing for minimum services during a strike or lockout; and

(b) that agreement has been approved under section 77 by the Essential Services Committee.

(3) The following conduct associated with strikes and lockouts is prohibited:

(a) picketing -

(i) in support of a strike; or

(ii) in opposition to a lawful lockout;

(b) use of replacement labour in a lockout or a lawful strike;

(c) locking employers in the premises;

(d) preventing employers from entering the premises.

(4) For the purposes of this section, "replacement labour" means taking into employment any person to continue or maintain production during a strike or a lockout. It does not include the deployment of an employee to do the work of an employee on strike or subject to a lock-out provided that the deployment is with the consent of that employee.

Essential services

77.-(1) For the purposes of this section, "service" includes any part of a service.

(2) The following services are essential services:

(a) water and sanitation;

(b) electricity;

(c) health services and associated laboratory services;

(d) fire-fighting services;

(e) air traffic control and civil aviation telecommunications;

(f) any transport services required for the provision of these services.

(3) In addition to the services designated in subsection (2), the Essential Services Committee may designate a service as essential if the interruption of that service endangers the personal safety or health of the population or any part of it.

(4) Before the Essential Services Committee designates an essential service under subsection (3), it shall -

(a) give notice in the prescribed manner of the investigation inviting interested parties to make representations;

(b) conduct an investigation in the prescribed manner;

(c) make any written representations available for inspection;

(d) hold a public hearing a t which the interested parties in may make oral representations; and

(e) consider those representations.

(5) If the Essential Services Committee designates a service as an essential service, it shall publish a notice to that effect in the *Gazette*.

(6) The Essential Services Committee may vary or cancel a designation made under this section in accordance with the procedure set out in subsections (4) and (5) *mutatis mutandis*.

(7) Any party to a dispute as to whether or not a service is an essential service or an employer or an employee is engaged in an essential service shall refer the dispute to the Essential Services Committee for determination.

(8) The party who refers the dispute to the Essential Services Committee shall satisfy the Committee that a copy of the dispute has been served on all the other parties to the dispute.

(9) The Essential Services Committee shall determine the dispute as soon as possible.

Disputes of interest in essential services

78.-(1) Unless a collective agreement provides otherwise-

(a) any party to a dispute of interest in an essential service may refer the dispute to the Commission for mediation;

(b) if the mediation fails, any party to the dispute may refer the dispute to arbitration by the Commission.

(2) The provisions of subsection (1) shall apply if -

(a) the parties are bound by a collective agreement providing for minimum services during a strike or lockout; and

(b) the Essential Services Committee has approved that agreement in terms of section 79(2).

Minimum services (luring a strike or lockout

79.-(1) The parties to a collective agreement may agree to the provision of minimum services during a strike or a lockout.

(2) Any party to a collective agreement that provides for minimum services during a strike or lockout in an essential service may apply in the prescribed manner to the Essential Services Committee for approval of that agreement.

(3) An employer may apply in the prescribed manner to the Essential Services Committee for the designation of a minimum service if -

(a) a minimum service is necessary to prevent damage to property, machinery or plant during a strike or lawful lockout; and

(b) there is no collective agreement providing for minimum services during a strike or lockout.

Procedure for engagingin a lawful-strike

80.-(1) Subject to the provisions of this section, employees may engage in a lawful strike if -

(a) the dispute is a dispute of interest;

(b) the dispute has been referred in the prescribed form to the Commission for mediation;

(c) the dispute remains unresolved at the end of period of mediation provided under section 86(4) read with subsections (1) and (2) of section 87.

(d) the strike is called by a trade union, a ballot has been conducted under the union's constitution and a majority of those who voted were in favour of the strike; and

(e) after the applicable period referred to in paragraph (c), they or their trade union have given fourty eight hours notice to their employer of their intention to strike.

(2) If the dispute relates to the unilateral alteration of terms and conditions of employment, the employees and the trade union, may require the employer in the referral of the dispute under subsection (1)-

(a) not to implement any proposed change to terms and conditions; or

(b) if the employer has implemented the change, to restore the terms and conditions of employment that applied before the change.

(3) If the employer does not comply with the requirement referred to in subsection (2) within fourty eight hours of service of the referral on the employer, the employees and trade union may strike without complying with paragraphs (c) to (e) of subsection (1).

(4) Nothing in this section prevents a trade union and an employer or employers' association from agreeing to their own strike procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsections (1) to (3) shall not apply.

Procedure For engaging in a secondary strike

81.-(1) "Secondary strike" means a strike that is -

(a) in support of a lawful strike (the "primary strike") by other employees against their employer (the "primary employer"); or

(b) in opposition to a lockout (the "primary lockout") imposed by another employer (the "primary employer") against its employees.

(2) A trade union may only call a secondary strike if -

(a) fourteen days notice of the commencement of the secondary strike has been given to the secondary employer;

(b) there is a relationship between the secondary and primary employer that may permit the exercise of pressure;

(c) the secondary strike is proportional taking into account-

(i) the effect of the strike on the secondary employer;

(ii) the possible effect that the strike may have on resolving the dispute giving rise to the primary strike or primary lockout.

(3) Employees engaged in the following services are prohibited from engaging in a secondary strike:

(a) the essential services referred to in section 77 in respect of which there is no approved collective agreement as prescribed in section 79(2); or

(b) agreed or determined minimum services as prescribed in section 79.

(4) Nothing in this section shall prevent a trade union and an employer or an employers' association from agreeing to their own requirements and procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of sub-sections (1) and (2) shall not apply.

Procedure for engage-ing in a lawful lockout

82.-(1) Subject to the provisions of subsection (2), an employer may engage in a lawful lockout if -

(a) the dispute is a dispute of interest;

(b) the dispute has been referred in the prescribed form to the Commission for mediation;

(e) the dispute remains unresolved at the end of the period of mediation prescribed in sections *86* and 87;

(d) after the applicable period referred to in paragraph (c) the employer or employers' association has given fourty eight hours notice t o the e mployees o r t heir trade union of t he intention to lockout.

(2) Nothing in this section shall prevent a trade union and an employer or an employers' association from agreeing to their own procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsection (1) shall not apply.

Nature of prote-ction of a lawful-strike or lockout

83.-(1) Notwithstanding the provisions of any law, including the common law, a lawful strike or lawful lockout shall not be -

(a) a breach of contract;

(b) a tort;

(c) a criminal offence.

(2) An employer shall not terminate the employment of an emp-loyee for -

(a) participating in a lawful strike; or

(b) not acceding to an employer's demand in a lockout.

(3) No civil or criminal proceedings shall be instituted against any person for participating in a lawful strike or lawful lockout.

(4) Notwithstanding the provisions of subsection (1), an employer shall not be obliged to remunerate an employee for services that the employee does not render during a lawful strike or lawful lockout, however -

(a) the employer shall continue to make its contribution and the employee's contributions to any funds that the employee is required to belong to by law or under the contract of employment during the strike or lockout;

(b) if the employer provides accommodation, the provision of food or other basic amenities of life, the employer shall continue to provide that accommodation, food or amenities during the strike or lockout;

(c) after the end of the strike or lockout, the employer may-

(i) deduct any of the employee's contributions referred to in paragraph (a) from the employee's remuneration;

(ii) deduct the agreed monetary value of the accommodation, food or amenities from the employee's remuneration with the consent of the employee.

(5) Where an employee does not consent to the deduction prescribed in subsection (4)(c)(ii), the employer may refer the dispute to mediation.

(6) Where the dispute referred to in subsection (5) is not resolved, the employer may refer it to the Labour Court for a decision.

(7) Nothing in subsection (4) shall prevent a trade union or employer or employers association from concluding a collective agreement that regulates the matters dealt with in that subsection differently.

Strikes and lock-outs not in compliance with this Part

84.--(I) Where a strike or lockout is not in compliance with this Act, or a trade union or employer or employers' association engages in prohibited conduct, the Labour Court shall have exclusive jurisdiction-

(a) to issue an injunction to restrain any person from-

(i) participating in an unlawful strike or lockout;

(ii) engaging in any prohibited conduct;

(b) to order the payment of just and equitable compensation for any loss attributable to the strike, lockout or conduct, having regard to -

(i) the degree of fault;

(ii) the cause of the strike, lockout or conduct;

(iii) any prior history of non-compliance;

(iv) the ability to pay;

(v) the extent of the harm;

(vi) the interests of collective bargaining;

(vii) the duration of the strike, lockout or conduct.

(2) The Labour Court may not issue an injunction unless fourty eight hours notice of the application has been given to the respondent.

(3) Notwithstanding the provisions of subsection (2), the Court may grant a shorter period on good cause and only if the respondent is given a reasonable opportunity to be heard.

(4) Other than in exceptional circumstances, the Labour Court may not make an order of compensation that may cause a trade union, employer or employer's association to become bankrupt.

Protest action

85,41) Subject to the provisions of subsection (2), an employee may take part in protest action if -

(a) the protest action has been called by a registered trade union or registered federation of trade unions;

(b) the union or federation has served a notice on the Council stating-

(i) the reasons for the protest action; and

(ii) the duration and form of the protest action;

(c) thirty days has elapsed from the date the notice was served; and

(d) the union or federation has given at least fourteen days notice of the commencement of the protest action.

(2) Employees engaged in the following services are prohibited from engaging in protest action:

(a) the essential services referred to in section 77 in respect of which there is no approved collective agreement as prescribed in section 79(2); or

(b) agreed or determined minimum services as prescribed in section 79.

(3) The Council shall convene a meeting within thirty days of the notice to -

(a) to resolve the matter giving rise to the protest action; and

(b) if unable to resolve the matter, secure an agreement with the trade unions or federation of trade unions calling for the protest action on the duration and form of the protest action in order to minimise the harm that may be caused by the protest action.

(4) In order to achieve the objects prescribed in subsection (3), the Council may -

(a) establish a tripartite committee to perform its functions under subsection (3) ,

(b) appoint a mediator after consultation with the Commission to mediate;

(c) apply to the Labour Court for a declaratory order prescribed in subsection (5).

(5) Any person who is likely to be, or has been, affected by the protest action may apply to the Labour Court for -

(a) an order restraining any person from taking part in protest action or in any conduct in contemplation or furtherance of an action that does not comply with the provisions of subsections (1) and (2);

(b) a declaratory order on the proportionality of any proposed action taking into account -

(i) the nature and the duration of the protest action;

(ii) the importance of the reasons for the protest action; and

(iii) the steps taken by the union or the federation to minimise the harm caused by the protest action.

(6) Subject to the provisions of subsection *(7),* any person who takes part in protest action that complies with this section enjoys the protections conferred on lawful strikes in terms of section 83.

(7) The protections conferred by subsection *(6) on* persons engaged in lawful protest action shall not apply to persons who do not comply with any declaratory order issued under paragraph (b) of subsection (5).

PART VIII

DISPUTE RESOLUTION

Sub-Part A - Mediation

Referral of disputes for mediation under this Act

86.-(1) Disputes referred to the Commission shall be in the prescribed form.

(2) The party who refers the dispute under subsection (1), shall satisfy the Commission that a copy of the referral has been served on the other parties to the dispute.

(3) On receipt of the referral made under subsection (1) the Commission shall -

(a) appoint a mediator to mediate the dispute;

(b) decide the time, date and place of the mediation hearing;

(c) advise the parties to the dispute of the details stipulated in paragraphs (a) and (b).

(4) Subject to the provisions of section 87, the mediator shall resolve the dispute within thirty days of the referral or any longer period to which the parties agree in writing.

(5) The mediator shall decide the manner in which the mediation shall be conducted and if necessary may require further meetings within the period referred to in subsection (4).

(6) In any mediation, a party to a dispute may be represented by -

(a) a member or an official of that party's trade union or employers' association; or

(b) an advocate.

(7) Where the mediator fails to resolve a dispute within the period prescribed in subsection (4), a party to the dispute may -

(a) if the dispute is a dispute of interest, give notice of its intention to commence a strike or a lockout in accordance with sections 80 or 82;

(b) if the dispute is a complaint -

(i) refer the complaint to arbitration; or

(ii) refer the complaint to the Labour Court.

(8) Notwithstanding the failure to resolve a dispute within the period stipulated in subsection (4), the mediator shall remain seized with the dispute until the dispute is settled and may convene meetings between the parties to the dispute in order to settle the dispute at any time before or during any strike, lockout, arbitration or adjudication.

Consequences of not attending a mediation-hearing

87.-(1) Where the employees or a trade union refer a dispute of interest to the Commission under section 86, the mediator may-

(a) extend the period stipulated under section 86(4) by a further thirty days if the employees or union fail to attend the hearing arranged by the Commission;

(b) shorten the period stipulated in section 86(4) if the employer or employers' association party to the dispute fail to attend the hearing.

(2) Where an employer or an employers' association refers a dispute of interest to the Commission under section 86, the mediator may-

(a) extend the period stipulated under section 86(4) by a further thirty days if the employer's or employer association fails to attend the hearing arranged by the Commission;

(b) shorten the period stipulated in section 86(4) if the employees or trade union party to the dispute fail to attend the hearing.

(3) In respect of a complaint referred under this Act, the mediator may -

(a) dismiss the complaint if the party who referred the complaint fails to attend a mediation hearing;

(b) decide the complaint if the other party to the complaint fails to attend a mediation hearing.

(4) The decision made under this section may be enforced in the Labour Court as a decree of a court of competent jurisdiction.

(5) The Commission may reverse a decision made under this section if -

(a) application is made in the prescribed manner; and

(b) the Commission is satisfied that there are good grounds for failing to attend the hearing.

Sub-Part B: Arbitration

Resolving disputes by compulsory arbitration

88.-(1) For the purposes of this section, a dispute means-

(a) a dispute of interest if the parties to the dispute are engaged in an essential service;

(b) a complaint over -

(i) the fairness or lawfulness of an employee's termination of employment;

(ii) any other contravention of this Act or any other labour law or breach of contract in which the amount claimed is below the pecuniary jurisdiction of the High Court;

(iii) any dispute referred to arbitration by the Labour Court under section 94(3)(a)(ii).

(2) If the parties fail to resolve a dispute referred to mediation under section 86, the Commission shall -

(a) appoint an arbitrator to decide the dispute;

(b) determine the time, date and place of the arbitration hearing; and

(c) advise the parties to the dispute of the details stipulated in paragraphs (a) or (b).

(3) Nothing in subsection (2) shall prevent the Commission from -

(a) appointing an arbitrator before the dispute has been mediated;

(b) determining the time, date and place of the arbitration hearing, which date may coincide with the date of the mediation hearing;

(c) advising the parties to the dispute of the details stipulated in paragraphs (a) and (b).

(4) The arbitrator -

(a) may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly;

(b) shall deal with the substantial merits of the dispute with the minimum of legal formalities.

(5) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses, and present arguments.

(6) If the parties to the dispute consent, the arbitrator may suspend proceedings and resolve the dispute through mediation.

(7) In any arbitration hearing, a party to a dispute may be represented by -

(a) member or official of that party's trade union or employers' association; or

(b) an advocate.

(8) An arbitrator may make any appropriate award but may not make an order for costs unless a party or a person representing a party acted in a frivolous or vexatious manner.

(9) Within thirty days of the conclusion of the arbitration proceedings, the arbitrator shall issue an award with reasons signed by the arbitrator.

Effect of an arbitration award

89.-(1) An arbitration award made under this Act shall be binding on the parties to the dispute.

(2) An arbitration award made under this Act may be served and executed in the Labour Court as if it were a decree of a court of law.

Correction of arbitration award

90. An arbitrator who has made an award under section 88(8) may, on application or on his own motion, correct in the award any clerical mistake or error arising from any accidental slip or omission.

Revision of arbitration award

91.-(1) Any party to an arbitration award made under section 8 8(8) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award -

(a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;

(b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact.

(2) The Labour Court may set aside an arbitration award made under this Act on grounds that -

(a) there was a misconduct on the part of the arbitrator;

(b) the award was improperly procured,

(3) The Labour Court may stay the enforcement of the award pending its decision.

(4) Where the award is set aside, the Labour Court may -

(a) determine the dispute in the manner it considers appropriate;

(b) make any order it considers appropriate about the procedures to be followed to determine the dispute.

Application of Arbitration Ordinance Cap. 15

92. The Arbitration Ordinance, does not apply to an arbitration conducted by the Commission.

Voluntary arbitration

91.-(1) Nothing in this Act prevents agreement to submit a dispute to arbitration.

Cap. 15

(2) The provisions of the Arbitration Ordinance, shall apply to any agreed submission of a dispute to arbitration provided that -

(a) notwithstanding the provisions of section 3 of the Ordinance, any dispute may be submitted to arbitration;

(b) any reference to the High Court in the Ordinance shall be interpreted as referring to the Labour Court.

Sub-Part C.: Adjudication

Jurisdiction of the Labour Court

94.-(1) Subject to the Constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and to decide -

(a) appeals from the decisions of the Registrar made under Part IV;

(b) reviews and revisions of -

(i) arbitrator's awards made under this Part;

(ii) decisions of the Essential Services Committee made under Part VII;

(c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;

(d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;

(e) any dispute reserved for decision by the Labour Court under this Act; and

(f) applications including -

(i) a declaratory order in respect of any provision of this Act; or

(ii) an injunction.

(2) The Labour Court may refuse to hear a complaint if -

(a) the complaint has not been referred to mediation by the Commission under section 86; or

(b) the provisions of that section have not been complied with; and

(c) the application is not urgent.

(3) Where a party refers a dispute to the Labour Court, the Court may -

(a) if it is a dispute that is required to be referred to the Labour Court in terms of this Act -

(i) decide the dispute; or

(ii) refer the dispute to the Commission to be decided by arbitration;

(b) if it is a complaint that is required to be referred to arbitration-

(i) refer the complaint to the Commission for it to be dealt with under section 88;

(ii) decide the complaint provided that it may make an appropriate order as to costs;

Sub-Part D - Dispute Procedure In Collective Agreements

Dispute resolution procedures in collective agreements

95.-(1) Nothing in this Part shall prevent a trade union on the one hand and an employer or employers' association on the other hand from concluding a collective agreement providing for the resolution of disputes not within the provisions of this Part.

(2) A collective agreement may depart from the provisions of this Part provided that the disputes are mediated or arbitrated in an independent, neutral, expedited and professional manner.

(3) A person bound by a collective agreement prescribed in this section may not refer a dispute to the Commission under the provisions of this Part.

(4) On application, the Labour Court, may set aside a provision of a collective agreement that does not comply with subsection (2).

PART IX

GENERAL, PROVISIONS

Records to be kept by employers and employees

96.-(1) Every employer and employee shall keep a record of the following information:

(a) the written particulars prescribed in section 15 and any changes to those particulars;

(b) any remuneration paid to the employee.

(2) Every employer shall retain the record of an employee prescribed in subsection (1) for a period of five years after the termination of that employee.

(3) An employer shall keep a record of the prescribed details of any -strike, lockout or protest action involving its employees.

(4) The Labour Commissioner, in the prescribed manner, may require information based on the records referred to in this section from an employer.

(5) An employer shall submit to the Labour Commissioner any information required in terms of subsection (4).

(6) Subject to the provisions of section 101, the Labour Commissioner may-

(a) compile, analyse and tabulate statistics collected from the information submitted under this section;

(b) and upon the Minister's direction publish those statistics.

Service of documents

97.-(1) A document required to be served on a registered organisation or federation in any civil or criminal proceedings shall be deemed to be duly served if it is-

(a) delivered to the registered office of the organisation or federation;

(b) delivered by registered post to its postal address; or

(c) served personally on an officer of the organisation or federation.

(2) For the purposes of this section, a "document" includes any notice, referral, submission, application or other document required to be served under this Act.

Regulations

98.-(1) The Minister may, in consultation with the Council, make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters-.

(a) all matters stated or required in this Act to be prescribed;

(b) the prohibition or regulation of employment of children under the age of eighteen years;

(c) the registration of plans for eliminating discrimination in the workplace;

(d) the form and manner in which written particulars of employment are to be given to an employee;

(e) regulating the payment of wages including payment of any money due to a deceased employee to the heirs or estate of that employee;

(f) the form and content of information and documentation to be supplied by the employer to its employees;

(g) regulating the procedure of registration of organisations and federations, the registers to be kept and the certificate of registration;

(h) the authorisation of access by trade union officials to employer premises for the purpose of recruiting, meeting and representing members;

(i) the deduction of trade union dues including authorisation and remittance of money to the registered trade union;

(j) the procedure for the recognition of registered trade unions;

(k) the lodgement of collective agreements with the Labour Commissioner;

(1) the procedure for investigations by the Essential Services Committee into essential services and minimum services;

(m) the books, records, accounts and other documents to be kept under this Act;

(n) the information to be furnished by an employer to the Labour Commissioner;

(o) the returns to be rendered by the employer to the Labour Commissioner;

(p) the fees to be charged for registration or any other service or matter prescribed or permitted by this Act; and

(q) occupational safety and health standards and the working environment secured by an appropriate system of inspection;

(r) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this Act.

(3) The Minister, after consultation with the Council, may, by notice in the *Gazette,* deem any category of persons to be employees for the purposes of this section, any provisions of this Act or any other written law in respect of which the Minister is responsible.

Guidelines and codes of good practice

99.-(1) The Minister, after consulting the Council, may-

(a) issue codes of good practice;

(b) issue guidelines for the proper administration of this Act;

(c) change or replace any code or guideline.

(2) Any code of good practice or guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette*.

(3) Any person, interpreting or applying this Act shall take into account any code of good practice or guideline published under this section, and where that person departs from the code or guideline, he shall justify the grounds for departure.

Exemptions

100.-(1) The Minister may exempt any employer or class of employers from any employment standard contained in sections 19, 20, 23 to 25, 27, 31 to 34, 41, 42 and 43.

(2) Before the Minister grants an exemption under this section -

(a) the employer or employers' organisation shall satisfy the Minister that they have consulted with the employees affected by the exemption or their registered trade union;

(b) he shall notify the affected employers and employees or their registered organisations of any proposed exemption and request representations to be submitted within a reasonable period:

(c) he shall take into account any representations made by the employees or their registered trade union;

(d) he shall strike a fair balance between the interests of the employers and their employees, taking into account any applicable International Labour Organisation Convention or recommendation.

(3) An exemption granted under subsection (1) shall -

(a) be in the prescribed form signed by the Minister, and the form shall include a statement of the employers, or category of employers affected by the exemption;

(b) include any conditions under which the exemption is granted;

(c) state the period of the exemption, which may be made retrospective to a date not earlier than the date of the application for exemption; and

(d) if the exemption is granted to a class of employers, be published in the *Gazette*.

(4) An exemption granted under this section may be amended or withdrawn by the Minister.

(5) If the exemption is published in the *Gazette* under subsection (3)(d), the Minister may amend or withdraw the exemption only by notice in the *Gazette* from a date stated in that notice.

(6) Any person who is aggrieved by the grant, amendment or withdrawal of an exemption or its terms or period, may apply for the review of the decision in the Labour Court.

Confidentiality

101.-(1) Subject to the provisions of subsection (2), it is an offence for any person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) does not apply if the information is disclosed in compliance with this Act -

(a) to enable a person to perform a function or exercise a power under this Act;

(b) in accordance with any written law;

(c) for the purpose of the proper administration of this Act;

(d) for the purposes of the administration of justice.

Penalties

102.-(1) A District Court and a Resident Magistrate's Court have jurisdiction to impose a penalty for an offence under this Act.

(2) Any person convicted of any of the offences referred to in sections 5 and 6, may be sentenced to -

(a) a fine not exceeding five million shillings;

(b) imprisonment for a term of one year;

(c) both to such fine and imprisonment.

(3) Any person convicted of any of the offences referred to in sections 7, 8 and 9 may be sentenced to a fine not exceeding five million shillings.

(4) Any person convicted of any of the offences referred to in sections 27, 28, 45(3) and 101 shall be sentenced to a fine not exceeding one million shillings.

(5) Any person aggrieved by the decision of a court under this section may appeal to the High Court.

Repeal and amendment of laws and savings provisions

101.-(1) The laws specified in the Second Schedule are repealed subject to the savings and transitional provisions set out in the Third Schedule.

(2) Each of the laws specified in the Second Schedule are amended to the extent specified in that Schedule.

(3) The Third Schedule governs the transition from the administration of the laws repealed under paragraph (1) to the administration of the matters in this Act.

FIRST SCHEDULE

(Made under section 26 (1))

Table for calculation of comparable wage rates

For the purpose of this Table -

"ordinary hours" do not include overtime hours;

"ordinary days" mean the days the employee ordinarily works in a week excluding any day falling within the weekly rest period stipulated in section 24;

"rate" is based on the employee's basic wage.

Table - Calculation of comparable wage rates

Basis of payment	To calculate hourly rates	To calculate daily rates	To calculate weekly rates	To calculate monthly rates
Employees whose basic wage is set by the hour		Multiply the hourly rate by the number of ordinary hours of work web day,	Multiply the hourly rate by the number of ordinary hours of work each week.	Calculate the weekly rate, then Multiply 'the calculated weekly rate by 4,333.
Employees whose basic wage is set by the day	Divide the daily rate by the number of ordinary hours of work each day		Multiply the daily rate by the number of ordinary days of work each week.	Calculate the weekly' rate, then Multiply the calculated weekly rate by 4,333
Employees whose basic wage is set by the week	Divide the weekly rate (or calculated weekly rate) by the number of ordinary hours of work each week.	Divide the weekly rate (or calculated weekly rate) by the number of ordinary days of work each week		Multiply the weekly rate (or calculated weekly rate) by 4,333.
Employees whose basic wage is set by the month	Divide the monthly rate by (4,333 times the number of hours ordinarily worked each week).	Divide the monthly rate by 4,333 times the number or days ordinarily worked each week.	Divide the monthly rate by 4,333,	

SECOND SCHEDULE

(Made under section 1 03 (1))

Section

Citation of law	Extent of repeal
Employment Ordinance (Cap. 366)	The whole
Regulation of Wages and Terms of Employment Ordinance (Cap 300)	The Whole
Wages and Salaries (General Revision) Act, 1974 (Act No. 22 of 1974)	The whole
Trade Union Act, 1998 (Act No. I 0 of 1998)	The whole
Security of Employment Act (Cap. 574)	The whole
Severance Allowances Act (Cap. 487)	The whole
Industrial Court of Tanzania Act, 1967 (Act No. 41 of 1967)	The whole

THIRD SCHEDULE

(Made. under section (103) (2), (3))

Savings and Transitional provisions

Interpretation

1. In this Schedule, unless the context requires otherwise -

"employers organisation" means an employer's organisation registered under the Trade Unions Act;

"federation" means a federation registered under the Trade Unions Act;

"repealed laws" means the laws repealed under section 103(l) and listed in the Third Schedule;

"trade union" means a trade union registered under the Trade Unions Act;

"Trade Unions Act" means the Trade Unions Act, 1998.

Act No. 10 of 1998

Existing trade unions employer's organisations and federations

2.-(1) A trade union, employer's organisation or federation registered under the repealed laws immediately before the commencement of this Act, shall be deemed to be registered under this Act.

(2) As soon as practicable after the commencement of this Act, the Registrar shall -

(a) enter the names and details of the trade unions, employers' organisations and federations into the appropriate registers prescribed under suction 48(5)(a) of this Act;

(b) issue a certificate in terms of section 48(5)(b) of this Act to the trade unions, employers' organisations and federations referred to in paragraph (a).

(3) If any provision of the constitution of a trade union, employers' organisation or federation does not comply with the requirements of sections 46 and 47 of this Act, the trade union, employers organisation or federation shall rectify its constitution and submit the rectifications to the Registrar within 6 months of the commencement of this Act.

(4) The provisions of section 50, shall apply *mutatis mutandis* in respect of a rectification under subparagraph (3).

(5) If a trade union, employers' organisation or federation fails to comply with sub-paragraph (3) or fails to make the requisite changes, the Registrar shall apply to the Labour Court to cancel the registration of the trade union, employers' organisation or federation because of its failure to comply with the provisions of this paragraph read together with sections 46 and 47 of this Act.

(6) Section 55, shall apply mutatis mutandis in respect of an application brought under sub-paragraph (5).

Pending applications for registration

3.-(1) Any pending application for registration, alteration of name or constitution in terms of the repealed laws shall be dealt with as if the application had been made under this Act.

(2) When dealing with an application referred to in sub-paragraph (1), the Registrar may-

(a) condone any technical non-compliance with this Act;

(b) require the applicant to amend its application in order to comply with this Act.

Organisational rights and recognition

4.-(1) For the purposes of this paragraph -

(a) organisational rights' means any of the following rights:

(i) the Tight to trade union representation in the workplace including the right to a committee or a field branch;

(ii) the right to facilities for trade union representatives in the workplace;

(iii) the right to disclosure of information;

(iv) the right to deduction of trade union dues and levies;

(v) the right of access to the employer premises for the purposes of recruitment of members, meeting with members and representing members;

(b) "recognition" means any agreement or practice in terms of which a trade union is recognised under the repealed laws for the purposes of negotiating terms and conditions of employment,

(2) A trade union shall retain any organisational rights conferred by-

(a) any of the repealed laws for a period of three years;

(b) any collective agreement in force at the commencement of this Act until the agreement's expiry, except that, if the agreement expires within two years of the commencement of this Act, the agreement shall be extended for a further year as if the repealed laws ha not been repealed.

(3) Any dispute referred to a labour officer under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(4) Where a trade union is recognised at the commencement of this Act, the employer shall continue to recognise the trade union for a period of three years unless another trade union is recognised as the exclusive bargaining agent under section 67.

(5) Any dispute over any organisational rights or recognition conferred under the repealed laws shall be decided by the Labour Court as if the repealed laws had not been repealed.

Negotiated or voluntary agreements

5.-(1) Any negotiated or voluntary agreement concluded before the commencement of this Act, whether or not the agreement has been registered by the Industrial Court under the repealed laws, shall be binding until its expiry provided that -

(a) if the agreement is due to expire after a year from the commencement of this Act, the agreement expires at the end of the year;

(b) subject to paragraph 4(2)(b), any renewal of any such agreement shall be done in terms of this Act.

(2) Any dispute arising from the application, interpretation or implementation of an agreement stipulated in sub-paragraph (1) shall be decided by the Labour Court as if the repealed laws had not been repealed.

The Employment Ordinance 366

6. Notwithstanding the repeal of the Employment Ordinance, the provisions of sections 100 and 102 relating to "provision of medicine and medical treatment" and "burial of deceased employees and dependants" shall continue to apply until they are repealed by another law."

Industrial Court awards

7.-(1) Subject to sub-paragraph (3), any trade dispute stipulated in the repealed laws that arose before the commencement of this Act shall be dealt with as if those laws had not been repealed.

(2) Subject to sub-paragraph (3), any trade dispute referred to the Industrial Court under section 4 of the Industrial Court of Tanzania Act or referred to the Court as a trade enquiry under section 8 of that Act before the commencement of this Act shall be dealt with as if those laws had not been repealed.

(3) Notwithstanding sub-paragraphs (1) and (2), a strike or a lockout that commences after the commencement of this Act shall be dealt with in terms of this Act.

(4) Any revision or interpretation of an award made by the Industrial Court shall be done as if the repealed laws had not been repealed.

(5) Any award made by the Industrial Court under the repealed laws shall remain in force until the expiry of the award.

References to conciliation boards

8.-(1) Any reference concerning a summary dismissal or disciplinary penalty that takes place before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(2) Any reference concerning a summary dismissal or disciplinary penalty referred to a conciliation board under the repealed laws shall be dealt with as if the repealed laws had not been repealed

Disputes referred to labour officers

9. Any dispute contemplated in the repealed laws arising before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

References to the Minister

10. Any reference to the Minister stipulated under the repealed laws shall be dealt with as if the repealed laws had not been repealed.

Matters before the ordinary courts

11.-(1) Any offence committed under the repealed laws before the commencement of this Act shall be dealt with as if the repeated laws had not been repealed.

(2) Any claim arising under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(3) Any suit or other civil proceedings commenced before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

Minister may authorise Commission to perform functions of conciliation board and Industrial Court

12.-(1) The Minister may, after consultation with the Commission, authorize the Commission by notice in the Gazette to perform the functions of conciliation boards or the industrial court in terms of paragraph 7 or 8-

(a) in respect of the whole or any specified part of Mainland Tanzania;

(b) with effect from a date specified in the *Gazette*.

(2) The authorisation of the Commission under sub-paragraph (1) shall not affect the competence of a conciliation board or the industrial court in terms of paragraph 7 or 8 to decide or finalise any matter that is partly heard at the date specified in the *Gazette*.

Disputes not finalised within 3 years

13. Disputes not finalised in terms of the repealed laws within 3 years of the commencement of this Act shall automatically fall within the jurisdiction of the Commission. The Commission shall have the power to arbitrate or refer the dispute to the Labour Court for decision. In determining the dispute under the provisions of this paragraph the substantive law at the time the dispute arose shall apply.

Minimum wages Cap. 300

14.—(1) Notwithstanding the repeal of the Regulation of Wages and Terms of Employment Ordinance -

(a) the Minister may, within 3 years of the commencement of this Act-

(i) establish a minimum wage board under section 4 of the Ordinance; and

(ii) make, with the approval of the President, a wages regulation order under section 10 fixing a basic minimum wage.

(b) the relevant provisions of the Ordinance shall apply to a board established and an order made in terms of paragraph (a).

G.N. No. 311 of 2002

(2) Subject to subsection (3), a Wages Regulation Order published under the Regulation of Wages and Terms of Employment Ordinance, shall remain in force after the commencement of this Act.

(3) If a wage determination is published under the Labour Institutions Act, 2003 any applicable wages regulations order stipulated in sub-paragraph (1) shall cease to apply to the employers and employees subject to the determination.

Subsidiary legislation

15. Any subsidiary legislation made under the repealed laws shall remain in force until they are -

(a) repealed by the Minister; or

(b) replaced by subsidiary legislation made under this Act.

Hours of work of domesti-cand security workers

16. Notwithstanding the provisions of section 19, the hours of work of domestic workers and security workers shall be a maximum of -

(a) 54 ordinary hours for the first year after the commencement of this Act;

(b) 51 ordinary hours for the second year after the commencement of this Act;

(c) 48 ordinary hours for the third year after the commencement of this Act; and

(d) 45 hours thereafter.

Written particulars

17. Each employer shall submit the written particulars contemplated in section 15 of this Act and applicable to an employee in employment at the commencement of this Act within a year of the commencement of this Act.

Passed in the National Assembly on the 14th April, 2004.

KIPENKA M. MUSSA,
Clerk of the National Assembly

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THE LABOUR INSTITUTIONS ACT, 2004

ARRANGEMENT OF SECTIONS

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2. Interpretation.

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THE UNITED REPUBLIC OF TANZANIA

NO. 7 OF 2004

I ASSENT,
Benjamin W. Mkapa
President
4th June, 2004

An Act to provide for the establishment of Labour Institutions, to provide for their functions, powers and duties, and to provide for other matters related to them.

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Labour Institutions Act, 2004 and shall come into operation on such date as the Minister may, by notice published in the *Gazette,* appoint.

Interpretation

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

"Commission" means the Commission for Mediation and Arbitration established under section 12;

"Council" means the Labour, Economic and Social Council established under section 3;

"ELRA" means the Employment and Labour Relations Act, 2004;

"Labour Commissioner" means the Labour Commissioner appointed in terms of section 43(1) and in the absence of the Labour Commissioner, the Deputy Labour Commissioner;

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"Labour Commissioner" means the Labour Commissioner appointed in terms of section 43(1) and in the absence of the Labour Commissioner, the Deputy Labour Commissioner;

"Labour Court" means the Labour Division of the High Court established in accordance with the provisions of section 50;

"labour laws" includes this Act and any other written law in respect of which the Minister is responsible;

"labour officer" means a labour officer stipulated in section 43(3) and includes the Labour Commissioner or the Deputy Labour Commissioner;

"Minister" means subject to section 34(a), the Minister for the time being responsible for labour matters;

"Permanent Secretary" means unless otherwise expressed in this Act, the Permanent Secretary of the Ministry responsible for Labour matters;

"Registrar of the Labour Court" means the Registrar appointed in terms of section 54;

"Registrar of Organisations" means the Registrar appointed in terms of section 43(2) and in the absence of the Registrar, the Deputy Registrar appointed in terms of subsection (2);

"Sector" means an industry or a service or part of an industry or a service.

PART II
LABOUR, ECONOMIC AND SOCIAL COUNCIL

Establishment of the Council

3. There is hereby established a Council for Labour, Economic and Social matters.

Composition of Council

4.-(1) The Council shall consist the following members to be appointed by the Minister in accordance with this section:

(a) a Chairperson who shall not be -

(i) a member, official or office bearer of a trade union, employers association or federation; or

(ii) an employee in the public service of the Government of the United Republic;

(b) sixteen other members, comprising -

(i) the Permanent Secretary and three other members to represent the interests of the Government;

(ii) four members to represent the interests of employers;

(iii) four members to represent the interests of employees; and

(iv) four members appointed because of their expertise in labour, economic, and social policy formulation.

(2) Prior to appointing a member of the Council, the Minister shall by notice in writing, invite nominations from -

(a) registered trade unions and federations of trade unions, if the member is to represent employees; or

(b) registered employers' associations and federations of employers' associations, if the member is to represent employers;

(c) those members of the Council representing the interests of employers and employees in respect of the members contemplated in subsection (1)(b)(iv).

(3) With the approval of the Minister, the Council may co-opt other members to assist it in the performance of its functions, and such members shall not vote at meetings of the Council.

Functions and powers of Council

5.-(1) The functions of the Council shall be-

(a) to advise the Government through the Ministry on any of the following matters -

(i) measure to promote economic growth and social equity;

(ii) economic and social policy;

(iii) any significant changes to social and economic policy before it is submitted to cabinet;

(iv) the promotion of a co-ordinated policy on labour, economic and social matters;

(b) to advise the Minister on -

(i) national labour market policy;

(ii) any proposed labour law before it is submitted to cabinet;

(iii) the prevention and reduction of unemployment;

(iv) any issue arising from the International Labour Organisation;

(v) any issue raised by any international or regional association of states of which the United Republic of Tanzania is a member;

(vi) codes of good practice;

(vii) collection and compilation of information and statistics relating to the administration of the labour laws;

(viii) any other labour matter referred to the Council by the Minister or the Council considers useful to achieve the objects of the labour laws;

(c) to ensure that employers and employees each nominate -

(i) assessors for appointment of the panels of assessors referred to in section 53;

(ii) individuals for appointment as members of the governing body of the Commission in terms of section 16;

(iii) individuals for appointment as members of the Essential Services Committee in terms of section 29;

(d) to survey and analyse social and economic affairs;

(e) to keep abreast of international developments in social and economic policy;

(f) to evaluate the effectiveness of legislation and policy affecting social and economic policy;

(g) to work in close cooperation with different ministries, statutory bodies, programmes and other forums or non-governmental agencies engaged in the formulation and the implementation of labour, economic, and social policy.

(2) In the performance of its functions, the Council may conduct -

(a) an investigation as it may consider necessary;

(b) research into labour, economic, and social policy.

(3) The Council may determine its own rules for the performance of its functions.

Tenure of office and terms and conditions of membership

6.-(1) A member of the Council -

(a) shall be appointed for three years; and

(b) may be re-appointed at the end of the term of office.

(2) A member of the Council shall be paid allowances for attending meetings, travel and subsistence at a rate to be determined by the Minister on the recommendations of the Permanent Secretary after consultation with the Permanent Secretary of the Office of Public Service Management.

Removal of members and filling of vacancies

7.-(1) The Minister shall remove a member from office if the member -

(a) has resigned in writing and delivered the resignation to the Permanent Secretary;

(b) no longer represents the interest in respect of which the member was appointed in terms of section 5 (1)(b)(i), (ii) or (iii);

provided that, removal of a member on this ground shall be done only if requested by the constituency whose interests that member represents ;

(c) is guilty of serious misconduct relating to the performance of the member's functions;

(d) is not able to perform the functions of a member (due to illness or any other reason);

(e) is absent from three meetings of the Council without permission or good cause;

(f) is declared bankrupt; or

(g) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(2) Whenever a vacancy occurs on the Council, the Minister shall appoint a member to fill that vacancy for the unexpired term of office while making such an appointment they shall comply with the provisions of section 4.

Committees of the Council

8.-(1) The Council may, for the purpose of performing its functions -

(a) establish committees to perform specific functions of the Council; and

(b) subject to the approval of the Minister, assign any of its functions to a committee on conditions it may deem necessary to impose.

(2) A committee appointed by the Council -

(a) shall be tripartite;

(b) comprise at least three of its own members; and

(c) may include any number of other committee members, but such members shall not vote in meetings of the committee if that committee has been assigned functions in terms of subsection (1)(b).

(3) Any function performed by a committee in terms of this section shall be deemed to be performed by the Council.

Meetings of the Council

9.-(1) The Chairperson shall call -

(a) at least three meetings of the Council in a calendar year;

(b) meetings of the Council in accordance with its rules;

(c) a special meeting of the Council -

(i) at the written and motivated request of four members; or

(ii) at the request of the Minister.

(2) The chairperson shall preside over all meetings of the Council at which the chairperson is present.

(3) If the chairperson is not present, the members may elect a chairperson from among their number to chair the meeting.

(4) The majority of the members of the Council constitute a quorum provided that there is at least one member representing each of the following interests -

(a) the government;

(b) employers; and

(c) employees.

(5) A decision of the majority of the members of the Council present at the meeting shall be the decision of the Council.

(6) In the case of a tied vote, the member presiding at the meeting shall have a casting vote in addition to that member's deliberative vote.

(7) The Council shall keep a written record of its meetings.

Administration of the Council

10.-(1) The Permanent Secretary -

(a) shall provide members of staff in the Ministry available to be a Secretariat of the Council in the performance of its functions; and

(b) may designate an officer in the Ministry to serve as a Secretary to the Council.

(2) The Council may contract with persons to assist it in the performance of its functions -

(a) after consultation with the Permanent Secretary; and

(b) with the approval of the Permanent Secretary as to the conditions of the contract.

Annual report of the Council

11. The Council shall submit an annual report of its activities in each calendar year to the Minister before 30 June of the next year.

PART III

COMMISSION FOR MEDIATION AND ARBITRATION

Establishment of Commission

12. There is hereby establishment a Commission for Mediation and Arbitration.

Independence and status of the Commission

13.-(1) The Commission shall be -

(a) an independent department of Government;

(b) shall not, in the performance of its functions, be subjected to the direction or control of any person or authority; and

(c) independent of any political party, trade union, employers' association, federation of trade unions or employers' associations.

(2) The Government, public authorities and other registered organisations and federations shall provide such assistance and cooperation as may be required to ensure the effectiveness of the provisions of subsection (1).

(3) Subject to the provisions of this Act, the provisions of any written law relating to public departments shall apply to the Commission and the office of the Commission and any office established under the Commission shall be a public office.

Functions of the Commission

14.-(1) The functions of the Commission shall be to-

(a) mediate any dispute referred to it in terms of any labour law;

(b) determine any dispute referred to it by arbitration if-

(i) a labour law requires the dispute to be determined by arbitration;

(ii) the parties to the dispute agree to it being determined by arbitration;

(iii) the Labour Court refers the dispute to the Commission to be determined by arbitration in terms of section 94(3)(a)(ii) of the Employment and Labour Relations Act, 2004;

(c) facilitate the establishment of a forum for workers participation, if requested to do so in terms of section 72 of the Employment and Labour Relations Act.

(2) The Commission may -

(a) upon request, provide employees, employers and registered organisations and federations with advice and training relating to the prevention and settlement of disputes;

(b) offer to mediate a dispute that has not been referred to it;

(c) conduct or scrutinise any election or ballot of a registered trade union or employers' association if-

(i) required to do so by the Labour Court; or

(ii) at the request of the union or association concerned.

Powers of Commission

15.-(1) In the performance of its functions, the Commission may-

(a) appoint a director, mediators and arbitrators;

(b) assign mediators and arbitrators to mediate and arbitrate disputes in accordance with the provisions of any labour law;

(c) establish offices in areas and at administrative levels as it may determine;

(d) establish divisions of the Commission and assign particular responsibilities to them;

(e) make rules to regulate -

(i) its internal administration;
(ii) the practice and procedure for mediating disputes;
(iii) the practice and procedure for arbitrating disputes;
(iv) the practice and procedure of the essential services committee;

(f) publish guidelines;

(g) publish a code of ethics for mediators and arbitrators.

(2) The Commission shall, by notice in the *Gazette,* publish any rules or guidelines prescribed in subsection (1)(e) and (f),

Composition of the Commission

16.-(1) The Commission shall consist of -

(a) a chairperson, who shall not be -

(i) a member, official or office bearer of a trade union, employers association or federation; or

(ii) an employee in the public service;

(b) six other commissioners.

(2) The chairperson shall be appointed from among persons who have knowledge, experience and a considerable degree of involvement in labour matters.

(3) The President shall appoint -

(a) the Chairperson, from a list of three persons recommended by the Council;

(b) two Commissioners proposed by members of the Council representing the interests of employees;

(c) two Commissioners proposed by members of the Council representing the interests of employers;

(d) two Commissioners to represent the Government.

(4) The appointment referred to in subsection (3) shall be made on the recommendation of the Minister after the Minister has consulted with the Council.

Tenure and conditions of services of Commissioners

17.-(1) A Commissioner shall hold office for a period of three years and shall be eligible for re-appointment at the end of the term of office.

(2) The office of Commissioner shall not be a full time office and a commissioner shall not be paid a salary but shall be paid allowances for attending meetings, travel and subsistence at a rate determined by the Minister on the recommendation of the Permanent Secretary after consultation with the Permanent Secretary of the Office of Public Service Management.

(3) The office of a Commissioner shall become vacant if the Commissioner-

(a) resigns; or

(b) is removed from office in terms of subsection (4).

(4) The President, on the recommendations of the Minister, shall

remove a Commissioner from office if the Commissioner -

(a) no longer represents the interest in respect of which the member was appointed in terms of section 16(3);
provided that, removal of a Commissioner on this ground shall be done only if requested by the constituency whose interests that Commissioner represents;

(b) is guilty of serious misconduct relating to the performance of the Commissioner's functions;

(c) is not able to perform the functions of a Commissioner (due to illness or any other reason);

(d) is absent from three consecutive meetings of the Commission without permission or good cause;

(e) is declared bankrupt; or

(f) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(5) The Minister shall consult with the Council before making a recommendation to the President to remove a Commissioner from office.

(6) Whenever an office of a Commissioner becomes vacant, the President, shall appoint a commissioner to fill that vacancy for the un-expired term of office and while making such an appointment, he shall comply with the provisions of section 16(3).

Director of the Commission

18.-(1) There shall be appointed a Director and a Deputy Director of the Commission.

(2) The Commission, after consultation with the Minister shall, appoint a Director and a Deputy Director from among persons who are knowledgeable, skilled and experienced in labour relations and dispute prevention and resolution.

(3) The Director shall be the chief executive of the Commission and subject to the general directions and control of the Commission-

(a) be responsible for carrying out the policy decisions of the Commission and the day to day administration and

management of the affairs of the Commission;

(b) perform the functions that are conferred on the Director by any labour law or delegated to the Director by the Commission;

Act No. 6 of 2004

(c) may mediate and arbitrate disputes referred to the Commission under the Employment and Labour Relations Act.

(4) The Director shall, unless in any particular case the Commission otherwise directs in writing, attend all meetings of the Commission but shall have no vote.

(5) The Director, in consultation with the Commission, may delegate any of his functions or the function of the Commission to any mediator, arbitrator or member of staff.

(6) Notwithstanding any provisions in this Act, the Director may refer any dispute referred to the Commission to the Labour Court for its decision if it is in the public interest to do so.

Mediators and arbitrators

19.-(1) The Commission shall appoint as many mediators and arbitrators as it considers necessary to perform the functions of the Commission.

(2) The Commission may appoint mediators and arbitrators on either a full-time or part-time basis and on terms and conditions determined by it, in consultation with the Office of the Public Service Management.

(3) When appointing a mediator or arbitrator, the Commission shall have due regard to the need to constitute an independent and professional Commission.

(4) The Commission shall prepare a code of conduct for mediators and arbitrators and ensure that they comply with the code of conduct in performing their functions.

(5) The Commission shall be responsible for the control and discipline of mediators and arbitrators provided that the control or discipline does not amount to interference with the independence of the

mediator or arbitrator in any dispute.

(6) The Commission may remove a mediator or arbitrator from office only for-

(a) serious misconduct relating to the functions of a mediator or arbitrator;

(b) incapacity relating to the functions of a mediator or arbitrator;

(c) a material violation of the code of conduct referred to in subsection (4).

(7) Nothing in this Act or the Employment Labour Relations Act precludes-

(a) a person being appointed as both a mediator and an arbitrator under this section;

(b) such a person from being assigned to perform both capacities in respect of a dispute.

(8) An assignment of a person in terms of subsection (7)(b) shall only take place where there are published rules and guidelines regulating the performance of such persons.

Powers of mediators and arbitrators

20.-(1) Mediators and arbitrators appointed in terms of this Act may-

(a) summon any person for questioning or to attend a mediation or arbitration hearing if the mediator or arbitrator considers that, that person's attendance shall assist in the resolution of the dispute;

(b) summon any person who is believed to have possession or control of any book, document or object relevant to the resolution of the dispute, to appear before the mediator or arbitrator to be questioned and to produce the book, document or object;

(c) administer an oath or accept an affirmation from any person called to give evidence; and

(d) question any person about any matter relevant to the dispute.

(2) The Commission shall pay the prescribed witness fee to each person who appears before a mediator or arbitrator in response to a summons issued in terms of this section.

(3) Any person, who does or omits to do any of the acts provided for in paragraphs (a) to (i) of this subsection, commits contempt of the Commission:

(a) if, after having been summoned to appear before a mediator or arbitrator, the person, without good cause, fails to appear at the place, date and time stated in the summons;

(b) if, after having appeared in response to a summons, the person fails to remain in attendance until excused by the mediator or arbitrator;

(c) by refusing to take the oath or to make an affirmation as a witness when a mediator or arbitrator so requires;

(d) by refusing to answer any question fully or to the best of that person's knowledge and belief subject to any law entitling that person to refuse to do so;

(e) if the person, without good cause, fails to produce any book, document or object specified in the summons;

(f) if the person wilfully hinders a mediator or arbitrator in performing any function conferred by or in terms of any labour law;

(g) if the person insults, disparages or belittles a mediator or arbitrator, or prejudices or improperly influences proceedings or improperly anticipates a mediator's or arbitrator's decision;

(h) by wilfully interrupting the mediation or arbitration proceedings or misbehaving in any other manner during those proceedings;

(i) by doing anything else in relation to the Commission which, if done in relation to a court of law, would have been contempt of court.

Oaths

21. A Commissioner, the Director, mediator and arbitrator shall, before entering upon the duties of office, take and subscribe to an oath for the due performance of the functions of office as set out in the Schedule to this Act.

Staff of the Commission

22.-(1) The Director may appoint staff after consulting the Commission.

(2) The Commission, in consultation with the Office of the Public Service Management, shall determine the remuneration of staff members.

(3) The Director shall be responsible for the control and discipline of the staff.

Finance of the Commission

23.-(1) The funds and resources of the Commission shall consist of-

(a) moneys appropriated by Parliament;

(b) donations, grants or bequests as the Commission may from time to time receive without compromising the independence of the Commission;

(c) such other moneys or property accruing to the Commission-

(i) under any written law; or

(ii) in any other manner in the performance of its functions.

(2) The Commission shall be responsible to the National Assembly in accounting for its revenue and expenditure.

(3) The financial year of the Commission begins on first July in each year and ends on thirtieth June of the next year.

(4) In each financial year, at a time determined by the Minister, the Commission shall submit to the Minister a detailed annual budget for the next financial year including the Commission's estimated income and expenditure and the requested appropriation from Parliament.

(5) In preparing its estimates under subsection (4), the Commission shall have regard to the advice of the Minister and the Minister

responsible for Finance.

(6) The Minister shall, upon receipt of an annual budget, table the budget before the National Assembly.

Accounts and audits

24.-(1) The Commission shall -

(a) keep proper books of accounts and records of its income, expenditure, assets and liabilities;

(b) take all reasonable measures to ensure that the resources of the Commission are safeguarded and utilised in the most economic, efficient and effective manner;

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(c) prepare appropriation accounts in accordance with the Public Finance Act, 2001;

(d) prepare annual accounts in accordance with generally accepted accounting practice in respect of all its transactions.

(2) The accounts of the Commission shall be audited by the Controller and Auditor General in respect of each financial year.

(3) After the audit, the Controller and the Auditor General shall certify the accounts of the Commission and submit the report to the Commission.

Power to contract

25.-(1) The Commission may contract with any person to -

(a) do work for the Commission;

(b) perform any function on behalf of the Commission.

(2) Any person with whom the Commission contracts shall be bound by the requirements of independence that binds the Commission under section 13.

Delegation of Commission's powers

26.-(1) The Commission may delegate in writing any of its functions, other than the functions prescribed below, to any member of the Commission, the director, a committee of the Commission, and a mediator or arbitrator appointed in terms of section 19. The functions that the Commission shall not delegate are:

(a) appointing the director;

(b) appointing mediators and arbitrators under section 19;
(c) approving the annual or supplementary budget for submission to the Minister in terms of section 23;

(2) The Commission may attach conditions to a delegation and may amend or revoke a delegation at any time.

(3) The Commission may vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsection (1).

Limitation of liability and limitation of disclosure

27.-(1) The Commission shall be liable for any loss suffered by any person as a result of any act performed or omitted in good faith in the course of exercising the functions of the Commission.

(2) The Commission may not disclose to any person, or in any court, any information or document acquired on a confidential basis or without prejudice in the course of mediation.

(3) In this section, "Commission" includes the Commission, a Commissioner and any person employed, appointed or contracted by the Commission.

Annual report of the Commission

28.-(1) Within six months after the end of the financial year, the Commission shall prepare and submit to the National Assembly through the Minister an annual report in respect of that year containing-

(a) a copy of the audited accounts of the Commission;
(b) the auditor's report on those accounts;
(c) a report on the operations of the Commission; and
(d) any other information that the Minister may require.

(2) The Minister shall table the report with the National Assembly as soon as reasonably practicable.

PART IV
ESSENTIAL SERVICES COMMITTEE

Establishment of Essential Services Committee

29. There is hereby established an Essential Services Committee within the Commission.

Functions of Essential Service Committee

30. The functions of the Essential Services Committee shall be -

(a) to designate essential services in terms of section 76(3) of Employment and Labour Relations Act; and

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(b) to determine disputes about whether or not an employee or employer is engaged in a designated essential service.

Appointment of Essential Service Committee

31.-(1) The Minister shall in consultation with the Council-

(a) appoint five members with knowledge and experience of labour law and labour relations as members of the Essential Services Committee; and

(b) appoint one of such members to be a Chairperson of the Committee.

(2) The Chairperson and members of the Essential Services Committee -

(a) shall be appointed for three years; and

(b) may be re-appointed at the end of the term of office.

(3) The Minister, on the recommendations of the Permanent Secretary may determine the allowances to be paid to members of the Essential Services Committee for attending meetings, travel and subsistence.

(4) The Permanent Secretary shall consult with the Permanent Secretary of the Office for Public Service Management prior to the or making a recommendation stipulated in sub-section (3).

(5) The Minister shall remove a member from office if the member-

(a) has resigned in writing and delivered the resignation to the Permanent Secretary;

(b) is guilty of serious misconduct relating to the performance of the member's functions;

(c) is not able to perform the functions of a member (due to illness or any other reason); or

(d) is absent from three consecutive meetings of the Essential Services Committee without permission or good cause;

(e) is declared bankrupt;

(f) is convicted of a criminal offence and sentenced to imprisonment without an option of a fine.

(6) Whenever a vacancy occurs on the Essential Services Committee, the Minister shall appoint a member to fill that vacancy for the un-expired term of office and while making such an appointment he shall comply with the provisions of subsection (1).

Powers of Essential Services Committee

32.-(1) The Essential Services Committee may-

(a) summon for questioning any person to attend a hearing if the Committee considers that, that person's attendance will assist in the performance of its functions;

(b) summon any person, who is believed to have in his possession or control of any book, document or object relevant to the performance of its functions, to appear before the Committee to be questioned and to produce the book, document or object;

(c) administer an oath or accept an affirmation from any person called to give evidence; and

(d) question any person about any matter relevant to the performance of its functions.

(2) Nothing in subsection (1) shall require any person to answer any question or furnish any information, book, document or object if there is a lawful ground for not doing so.

(3) The Commission shall pay the prescribed witness fee to each person who appears before a mediator or arbitrator in response to a subpoena issued in terms of this section.

Administration of Essential Services Committee

33.-(1) The Essential Services Committee may make rules for the conduct of its meetings.

(2) The Commission shall provide staff available to be a Secretariat

of the Essential Services Committee to assist it in the performance of its functions.

PART V

WAGE BOARDS

Interpretation

34. For the purpose of this Part, 'Minister' means-

(a) the Minister for the time being responsible for the public service if the sector in respect of which the provisions of this Part are to apply is the whole or part of the public service; or

(b) the Minister for the time being responsible for labour matters in respect of any other sector.

Appointment of wage boards

35.-(1) The Minister may appoint a wage board in respect of a sector and area to investigate remuneration and terms and conditions of employment in any sector and area and shall report to the Minister on its findings and recommendations.

(2) The Minister shall publish a notice in the *Gazette* prescribing-

(a) the names of the individuals appointed as members of the wage board;

(b) the terms of reference of the investigation including-

(i) the sector and area to be investigated;

(ii) the categories and classes of employees to be included in the investigation;

(iii) the matters to be investigated; and

(c) an invitation to members of the public to make written representations within a period prescribed in the notice;

(3) A wage board shall consist of the following members to be appointed by the Minister-

(a) a Chairperson;
(b) a member nominated by the members of the Council who represents the interests of employees;

(c) a member nominated by the members of the Council who represents the interest of employers.

(4) A member of a wage board shall hold office until-

(a) the Minister discharges the wage board;

(b) the Minister has removed the member in terms of subsection (5);

(5) The Minister-

(a) may remove a member from office at any time;

(b) shall remove a member from office if the member-

(i) has resigned in writing and delivered the resignation to the Permanent Secretary;

(ii) is guilty of serious misconduct relating to the performance of a member's functions;

(iii) is not able to perform the functions of a member (due to illness or any other reason);

(iv) is absent from three consecutive meetings of the wage board without permission or good cause;

(v) is declared bankrupt;

(vi) is convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

(6) Whenever a vacancy occurs on a wage board, the Minister shall appoint a member to fill that vacancy in accordance with subsections (2) and (3).

(7) The Minister, upon the recommendation of the Permanent Secretary may determine the allowances to be paid to a member of a

wage board for attending meetings, travel and subsistence.

(8) The Permanent Secretary shall consult with the Permanent Secretary of the Office for Public Service Management prior to making a recommendation stipulated in subsection (7).

Functions and powers of a wage board

36.-(1) The functions of a wage board shall be within its terms of reference that is -

(a) to conduct an investigation on a minimum remuneration and other conditions of employment;

(b) to promote collective bargaining between registered trade unions, employers and registered employers' associations;

(c) to make recommendations to the Minister on a minimum wage and conditions of employment.

(2) In the performance of its functions within its terms of reference, a wage board may-

(a) question any person who may be able to provide information relevant to any investigation;

(b) require, in writing, any person to furnish any information, book, document or object that is material to the investigation;

(c) conduct public hearings;

(d) facilitate negotiations on a minimum remuneration and conditions of employment between registered trade unions, employers and registered employers' associations in the sector.

(3) It shall be an offence to refuse to answer any question or furnish any information, book, document or object without a lawful ground for that refusal.

(4) At the request of a wage board, the Commission shall provide a mediator to facilitate the negotiations stipulated in subsection (2)(d).

Report of wage board

37. In any investigation, a wage board shall take into account-

(a) articles 22 and 23 of the Constitution of the United Republic of Tanzania;

(b) any applicable Convention or recommendation of the International Labour Organisation, whether or not the United Republic of Tanzania is a signatory to the convention;

(c) all representations and other information submitted to it;

(d) all relevant factors including-

(i) the ability of employers to carry on their businesses successfully;

(ii) the operation of small, medium and micro-enterprises;

(iii) the operation of new enterprises;

(iv) the cost of living;

(v) the alleviation of poverty;

(vi) the minimum subsistence level;

(vii) the remuneration and terms and conditions of employment of employees employed in the East African Community in the sector;

(viii) any collective agreements providing for remuneration and terms and conditions of employment in the sector;

(ix) the likely impact of any proposed condition of employment on current employment or the creation of employment;

(x) any other relevant matter.

Report of wage board

38.-(1) On completion of an investigation and after considering all representations made to it , a wage board shall prepare and submit a report to the Minister, which shall consist of-

(a) the board's findings;

(b) its recommendations on-

(i) minimum wage for the sector and area;

(ii) any term and condition of employment particular to the

sector or area, including any variation of a basic employment condition referred to in section 9 of the Employment and Labour Relations Act.

(2) If as a result of any facilitation on the part of a wage board, the registered trade unions, employer organisations and employers in the sector conclude a collective agreement on the matters referred to in sub-section (1)(b), the Board-

(a) shall recommend the extension of that agreement to all employers and employees in the sector and area if the parties to the agreement are sufficiently representative of employers and employees in the sector and area; or

(b) may recommend the extension of the agreement or provisions of the agreement to all employers and employees in the sector and area if the parties to the agreement are not sufficiently representative of employers and employees in the sector and area.

(3) If a member of a wage board does not agree with a board's report or any part thereof, he shall submit a minority report which shall be accompanied with the board's report.

Making of a wage order

39.-(1) After considering a report and recommendations of a wage board appointed in terms of section 35, the Minister may make a wage order determining the minimum wage and other conditions of employment for employees in any sector and area of the economy-

(a) in accordance with the recommendations;

(b) by notice in the *Gazette*; and

(c) with effect from a date specified in the *Gazette*.

(2) A wage order may, in respect of a sector and area-

(a) set minimum rates of remuneration;

(b) provide for the adjustment of minimum rates of remuneration;

(c) set minimum terms and conditions of employment including any variation of basic conditions of employment referred to in section 13 of the Employment and Labour Relations Act;

(d) regulate task based work, piece work, home work and contract work;

(e) set minimum standards for housing and sanitation for employees who reside on the premises of the employer;

(f) specify minimum conditions for trainees;

(g) regulate workplace training and education;

(h) regulate any other matter concerning remuneration or other terms and conditions of employment.

(3) Any provision of a wage order may apply to all or some of the employers and employees in the sector and area concerned.

(4) If the Minister does not accept a recommendation of a wage board, the Minister may refer the recommendations back to the board for its reconsideration indicating the matters on which the Minister disagrees with the board.

(5) If the Minister does not make a wage order within sixty days after receipt of the board's report, or decides not to make a wage order on the basis of the recommendations by the wage board, then the Minister shall within fourteen days table the report and recommendations to the National Assembly, and if applicable he shall attach reasons for not making an order -

(a) after the decision, if the National Assembly is in Session;

(b) if the National Assembly is not in Session, after the commencement of the next Session of the National Assembly.

(6) Every employer shall keep workers informed of the minimum wage rates in force by posting notices at the workplace or by any other more effective means.

Period of operation of wage order

40.-(1) The provisions of a wage order shall remain binding until they are-

(a) suspended or cancelled by the Minister in accordance with subsection (2);

(b) amended or superseded by a new wage order; or

(c) superseded by a collective agreement.

Legal effect of wage order

(2) The Minister, after consulting the Wage Board and the parties to a wage order, may suspend or cancel all or part of the order by publishing a notice in the *Gazette*.

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41.-(1) A wage order shall be binding on all employers and employees described in the notice.

(2) If a matter regulated in Part III of the Employment and Labour Relations Act, is also regulated by a wage order, the provisions in the order shall prevail.

Administration of wage board

(3) Any worker who has been paid wages below the prescribed minimum wage may apply to the District Court or Resident Magistrate's Court for the recovery of the amount by which the worker was underpaid.

42.-(1) The Labour Commissioner -

(a) shall provide staff members of the Ministry available to assist a wage board in the performance of its functions;

(b) may designate an officer in the Ministry to serve as a secretary to a wage board.

(2) A wage board may contract persons to assist it in the performance of its functions-

(a) after consultation with the Labour Commissioner; and

(b) with the approval of the Permanent Secretary as to the contractual conditions of employment.

Appointment of Labour Commissioner and other officers

PART VI

LABOUR ADMINISTRATION AND INSPECTION

Act No. 6 of 2004

43.-(1) The President, shall appoint a Labour Commissioner and a Deputy Labour Commissioner, who shall be responsible for the administration of the labour laws.

(2) The Minister, shall appoint a Registrar of Organisations and a Deputy Registrar, who shall be responsible for the regulation of trade unions, employer organisations and federations under Part IV of the Employment and Labour Relations Act.

(3) The Minister shall appoint Assistant Labour Commissioners to head the sections of Labour Relations, Labour Inspection and Social Security.

Delegation

(4) There shall be as many labour officers as are necessary to administer and enforce the labour laws.

44.-(1) The Labour Commissioner, in writing, may delegate to the Deputy Labour Commissioner, Assistant Labour Commissioners or any labour officer, any of the Commissioner's powers, functions and duties.

(2) The Registrar of Organisations, in writing, may delegate to the Deputy Registrar any of the Registrar's powers, functions or duties.

(3) The Labour Commissioner or Registrar of Organisations, as the case may be, may-

(a) attach conditions to a delegation and may amend or revoke a delegation at any time;

(b) vary or set aside any decision made by a person acting in terms of a delegation made in terms of subsections (1) or (2).

Power of Labour Officers

45.-(1) For the purposes of the administration of labour laws, a labour officer may-

(a) at any reasonable time enter any premises with a prescribed certificate of authorisation and-

(i) require that the premises or any part of it shall not be disturbed during an inspection as long as it is reasonably necessary to search the premises;

(ii) search for and examine any information book,

document or object;

(iii) seize, make a copy of any information, book, document or object;

(iv) take a sample of any object found;

(v) take measurements, readings, recordings or photographs; and

(vi) question any person on the premises;

(b) order, in the prescribed form, any person to appear before him at a specified date, time and place and to question that person;

(c) require any person who has control over any information, book, document or object to furnish it and explain any entry in the information, book or document or on the object;

(d) examine, make a copy or seize any book, document or object produced in terms of paragraph (c);

(e) take a sample of any object produced in terms of paragraph (c);

(f) give directions on where notices required in terms of this Act are to be posted;

(g) request a member of the Police Force to assist in the exercise of the powers referred to in this subsection;

(h) request any person to assist as an interpreter or otherwise in the exercise of the powers referred to in this subsection; and

(i) institute proceedings in the Resident's or District Court in respect of any contravention of any labour law and may appear and prosecute in the name of the Labour Commissioner.

(2) Any information, book, document, sample or object referred to in this section shall be relevant to the enforcement and administration of the labour laws.

(3) A labour officer shall issue a receipt for any book, document or

object seized in terms of this section.

(4) If asked, a labour officer shall produce the certificate referred to in subsection (1)(a).

(5) Any police officer requested to assist in terms of subsection (1), or any person requested to assist in terms of subsection (1), may accompany the labour officer as if that member or person were a labour officer.

(6) Any individual in charge of any premises on which individuals are employed shall provide facilities as may be reasonably required in order for a labour officer to exercise the powers referred to in subsection (1).

Compliance order

46.-(1) A labour officer who has reasonable grounds to believe that an employer has not complied with a provision of the labour laws, he may issue a compliance order in the prescribed form.

(2) The labour officer shall serve the compliance order on-

(a) the employer;

(b) any registered trade union with members among the employees affected by the order;

(c) each employee affected by it.

(3) The failure to serve the stipulated order on the persons stipulated in subsection (2)(b) shall not invalidate the order.

(4) The employer shall display a copy of the order prominently at a place accessible to the affected employees at each workplace named in the order.

(5) An employer shall comply with a compliance order issued in terms of subsection (1) within the time period stated in the order.

Objections to compliance order

(6) The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the

order and has not objected to the order in terms of section 47(1).

47.-(1) An employer may object in writing to a compliance order issued in terms of section 46 within 30 days of receipt of that order.

(2) The employer shall-

(a) serve the objection on the Labour Commissioner;

(b) serve a copy of the objection on any registered trade union with members among the employees;

(c) display a copy of the objection in a prominent place accessible to the employees affected by the order.

(3) The Labour Commissioner, on good cause, may condone a late objection made in terms of subsection (1).

(4) After considering any representations by the employer, the employees or a registered trade union, the Labour Commissioner-

(a) may confirm, modify or cancel an order;

(b) shall specify the period within which the employer shall comply with any confirmed or modified order.

(5) The Labour Commissioner shall serve a copy of the order made under subsection (4) on-

(a) the employer;

(b) any registered trade union with members among the employees affected by the order;

(c) the employees affected by the order.

(6) The failure to serve a copy of the order on the persons stipulated in subsection (5)(b) and (c) shall not invalidate the order.

(7) If the Labour Commissioner confirms or modifies an order made under subsection (4), the employer shall comply with that order within the time period specified in that order.

Appeals from order of Labour Commissioner

(8) The Labour Commissioner may apply to the Labour Court to enforce the compliance order if the employer has not complied with the order and has not lodged an appeal in terms of section 48.

48.-(1) An employer may appeal to the Labour Court against an order of the Labour Commissioner within 30 days of receipt of the order.

(2) Upon an application by the employer, the Labour Court may, on such terms and such conditions as it may impose, suspend the order of the Labour Commissioner pending the final order of the Labour Court or any other appeal against the decision of the Labour Court.

(3) The Labour Court, on good cause, may condone any appeal made after the 30 days has expired.

(4) The Labour Court may confirm, modify or cancel an order, and the order in respect of which is confirmed, modified or cancelled shall specify the period within which the employer shall comply with the confirmed or modified order.

Offences in relation to Labour Officers

49.-(1) Subject to subsection (2), any person who commits any of the following acts shall be guilty of an offence -

(a) hindering or obstructing a labour officer in the performance of the officer's functions or the exercise of the officer's powers;

(b) refusing or failing to answer, without good reason, any question put by a labour officer in terms of section 45 (1)(a)(vi) or (1)(c);

(c) refusing or failing to appear in terms of section 45 (1)(b);

(d) refusing or failing to furnish any information, book, document or object after being required to do so in terms of section 45 (1)(c);

(e) wilfully furnishing false and misleading information to a labour officer;

(f) refusing or failling to comply with any lawful request of, or lawful order by, a labour officer or any other person performing a function in terms of this Act or any other labour law;

(g) falsely claiming to be a labour officer.

(2) It shall not be an offence to refuse to answer a question or produce any information, book, document or object if there is a lawful ground for the refusal.

Establishment and constitution of a Labour Court

PART VII
LABOUR COURT

50.-(1) There shall be established a Labour Division of the High Court.

(2) The Labour Division of the High Court shall consist of:-

(a) such number of Judges as the Chief Justice may consider necessary;

(b) two panels of assessors appointed in terms of section 53.

(3) The Labour Division of the High Court shall be constituted by a Judge sitting with at least two assessors nominated by the presiding Judge from each of the panels appointed in terms of sub section (2) (b) of this section, provided that, it shall not be necessary for the Judge to sit with assessors:-

(a) in application proceedings;

(b) if the parties to the dispute agree; or

(c) if it is necessary for the expeditious resolution of proceedings.

(4) The decision of the Labour Court shall be made by the Judge after taking into account the opinions of the assessors, if any. If the Judge does not agree with such opinions, the Judge shall give reasons.

(5) No proceedings of the Labour Division of the High Court shall be invalid for the reasons only that:-

(a) the appointment of an assessor was defective;

(b) after the commencement of the proceedings, the Court proceeds without an assessor because-

(i) an assessor is unable to sit; or

(ii) the Judge of the Labour Court removes the assessor from the proceedings in the interest of the administration of justice.

Jurisdiction of the Labour Court

(6) The Chief Justice may exempt the Labour Court from the requirement of filing fees in any labour matter filed before it.

Powers of the Labour Court

51. Subject to the Constitution and the labour laws, the Labour Court has exclusive civil jurisdiction over any matter reserved for its decision by the labour laws.

52.-(1) In the performance of its functions, the Labour Court shall have all the powers of the High Court.

(2) Subject to the provisions of subsection (1), on application of any of the parties and after hearing such parties as desired to be head or on its own motion without such notice, the Labour Court may at any stage transfer any matter submitted and pending before it for trial or disposal,

provided that, the matter is not resolved for the exclusive jurisdiction of the Labour Court by labour laws to another Court of competent jurisdiction.

Assessors

(3) Where any matter has been transferred under subsection (2), the competent Court shall proceed to retry it or proceed from the state at which it was transferred.

53.-(1) The panels of assessors referred to in section 50(2)(c) shall be constituted as follows:

(a) an employer panel drawn from a list of names nominated by the members of the Council representing the interests of employers; and

(b) an employee panel drawn from a list of names nominated by

the members of the Council representing the interests of employees.

(2) The Judge in charge may remove a person from a panel referred to in subsection (1) only-

(a) if that person has resigned in writing and delivered the resignation to the Registrar of the Labour Court;

(b) for misconduct inconsistent with the ethics of an assessor;

(c) for inability to perform the functions of an assessor (due to illness or any other reason);

(d) because that person fails to attend a hearing without permission of the presiding judge or good cause;

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(c) because that person is declared bankrupt;

(e) because that person is convicted of a criminal offence and sentenced to imprisonment without the option of a fine.

Rules of the Labour Court

54. There shall be a Registrar and Deputy Registrar of the Labour Court appointed in terms of the High Court Registries Rules, 1984.

Representation in the Labour

55.-(1) The Chief Justice, after consultation with the Minister, shall make rules to govern the practice and procedure of the Labour Court.

(2) The rules shall by notice be published in the *Gazette.*

56. In any proceedings before the Labour Court, a party to the proceedings may appear in person or be represented by-

(a) an official of a registered trade union or employers' organisation; or

Appeals from the decisions of the Labour Court

(b) a personal representative of the party's own choice;

(c) an advocate.

57. Any party to the proceedings in the Labour Court may appeal

against the decision of that Court to the Court of Appeal of Tanzania on a point of law only.

References by Labour Commissioner to the Labour Court and of Appeal of Tanzania

58. The Labour Commissioner may-

(1) refer any point of law, other than the point of law referred to in subsection (2), to the Labour Court;

(2) refer a point of law to the Court of Appeal if-

(a) there are conflicting decisions of the Labour Court in respect of the same point of law; and

(b) the parties to the proceedings in those decisions have not appealed.

(3) The Labour Commissioner shall serve any reference under subsections (1) and (2) on the Council.

(4) Any registered organisation or registered federation with an interest in the subject matter of any reference under subsection (1) or subsection (2) may apply to the Court to which the reference is made to be joined as parties to the proceedings.

Confidentiality

PART VIII
GENERAL

59.-(1) Subject to provisions of subsection (2), it shall be an offence for any person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) shall not apply if the information is disclosed in compliance with this Act-

(a) to enable a person to perform a function or exercise a power under this Act;

(b) in accordance with any written law;

Burden of proof

(c) for the purpose of the proper administration of this Act;

(d) for the purposes of the administration of justice.

60.-(1) In any proceedings concerning a contravention of any labour law, it shall be for the employer -

(a) to prove that a record maintained by or for that employer is valid and accurate;

(b) who has failed to keep a record required by any labour law, to prove compliance with any provision of those laws.

(2) In any civil proceedings concerning a contravention of a labour law-

(a) the person who alleges that a right or protection conferred by any labour law has been contravened shall prove the facts of the conduct said to constitute the contravention unless the provisions of subsection (1)(b) apply; and

(b) the party who is alleged to have engaged in the conduct in question shall then prove that the conduct does not constitute a contravention.

Presumption as to who is an employee

61. For the purposes of a labour law, a person who works for, or renders services to, any other person is presumed, until the contrary is proved, to be an employee, regardless of the form of the contract, if any one or more of the following factors is present:

(a) the manner in which the person works is subject to the control or direction of another person;

(b) the person's hours of work are subject to the control or direction of another person;

(c) in the case of a person who works for an organisation, the person is a part of that organisation;

(d) the person has worked for that other person for an average of at least 45 hours per month over the last three months;

(e) the person is economically dependent on the other person for whom that person works or renders services;

(f) the person is provided with tools of trade or work equipment by the other person; or

Guidelines

(g) the person only works for or renders services to one person.

62.-(1) The Minister, after consultation with the Council, may-

(a) issue guidelines for the proper administration of this Act;

(b) change or replace a guideline.

(2) Any guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette.*

(3) Any person interpreting or applying this Act shall take into account any guideline published under this section.

(4) If a person departs from the guideline, that person shall justify the departure. Offences

63.-(1) It shall be an offence to contravene sections 36, 49 and 59 of this Act.

(2) It is an offence to -

(a) attempt to influence improperly a person who is performing a function in terms of this law or any other labour law;

(b) obtain or attempt to obtain any document by means of fraud, false pretences, or by presenting or submitting a false or forged document;

(c) pretend to be any person appointed in terms of this Act or any other labour law;

(d) furnish false information knowing that the information is false;

(e) hinder or obstruct any person performing a function in terms of this Act or any other labour law. Penalties

64.-(1) A District Court which includes a Resident Magistrate's Court shall have jurisdiction to impose a penalty for an offence under this Act.

(2) Any person convicted of any of the offences referred to in section 63 (1) shall be liable to-

(a) a fine not exceeding five million shillings;

(b) imprisonment for a period of 3 months;

(c) both a fine and imprisonment.

(3) Any person convicted of any of the offences referred to in sub-section (2) of section 63 shall be liable to-

(a) a fine not exceeding ten million shillings;

(b) imprisonment for a period of 6 months;

Regulations

(c) both a fine and imprisonment.

65.-(1) The Minister, after consultation with the Council, may make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1) of this section, the Minister may make regulations for or in respect of all or any of the following matters -

(a) all matters stated or required in this Act to be prescribed;

(b) conduct of investigations by the Council;

(c) procedure for appointing members of the Council to represent the interests of employers and employees;

(d) regulate the establishment and conduct of committees of the Council;

(e) appointment and discharge of wage boards;

(f) regulate investigations, public hearings and facilitation of negotiations by wage boards;

(g) procedure for the suspension, cancellation, amendment or

suspension of a wage order;

(h) regulate the exercise of labour officers' powers of investigation and prosecution;

(i) regulate the issuing of compliance orders and objections to those orders;

(j) regulate the removal of members, commissioners, mediators and arbitrators from office;

(k) regulate annual reports of the Council and the Commission.

Savings and Transitional provisions

66.-(1) For the purpose of this section "repealed laws" means the laws repealed under section 103 of the Employment and Labour Relations Act.

(2) The Labour Commissioner, Registrar of Trade Union, Deputy Registrar of a Trade Union and labour officers appointed under the repealed laws are deemed to be appointed under this Act as the Labour Registrar of Organizations, Deputy Registrar of Organisations and labour officers respectively.

SCHEDULE

OATHS OF OFFICE

(Made under section 21)

OATH FOR COMMISSIONERS

I,....., having been appointed a Commissioner of the Commission for Mediation and Arbitration, do swear/affirm that I will discharge my functions without bias and will not directly or indirectly reveal any information that comes into my possession without the authorisation of the Commission or the Labour Court.

SO HELP ME GOD

Sworn/Affirmed before me on this .....day of .....20...

.....
President

OATH FOR DIRECTOR, MEDIATOR OR ARBITRATOR

I,....., having been appointed a Director /Mediator /Arbitrator of the Commission for Mediation and Arbitration, do swear/affirm that I will discharge my functions without bias and will not directly or indirectly reveal any information that comes into my possession without the authorisation of the Commission or the Labour Court.

SO HELP ME GOD

Sworn/Affirmed before me on this .....day of .....20...

.....
Judge of the High Court

Passed in the National Assembly on the 15th April, 2004

KIPENKA M. MUSSA
Clerk of the National Assembly