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THE EMPLOYMENT AND LABOUR LAWS (MISCELLANEOUS
AMENDMENTS) ACT, 2015

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NOTICE

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This Bill to be submitted to the National Assembly is published for general information to the general public together with a statement of its objects and reasons.

Dar es Salaam,
29th May, 2015

OMBENI Y. SEFUE
Secretary to the Cabinet

A Bill

for

An Act to amend certain employment and labour laws.

ENACTED by Parliament of the United Republic of Tanzania.

PART I
PRELIMINARY PROVISIONS

Short title

1. This Act may be cited as the Employment and Labour Laws (Miscellaneous Amendments) Act, 2015.

Amendment of
certain laws

2. The laws relating to employment and labour matters specified in different Parts of this Act are amended in the manner stipulated in the respective Parts.

PART II
AMENDMENT OF THE EMPLOYMENT AND LABOUR RELATIONS ACT,
(CAP. 366)

Construction
Cap. 366

3. This Part shall be read as one with the Employment and Labour Relations Act, hereinafter referred to as the “principal Act”.

Amendment of
section 4

4. The principal Act is amended in section 4, by inserting in appropriate alphabetical order the following new definitions:
““employment” means the performance of a contract of employment by parties to the contract, under employer-employee relationship;
“specific task” means a task which is occasional or seasonal and is non-continuous in nature;”.

Amendment of
section 14

5. The principal Act is amended in section 14, by inserting the words “within or” between the words “work” and “outside” appearing in subsection (2).

Amendment of
section 31

- 6.** The principal Act is amended in section 31, by-
- (a) deleting subsection (6) and substituting for it the following:

“(6) With the consent of an employee, the employer may require or permit such employee to work for the employer during a period of annual leave on condition that such employee shall not work for a continuous period of two years.”
 - (b) deleting subsection (7) and substituting for it the following new subsection:

“(7) Subject to subsections (6) and (8), an employer shall pay the employee one month salary *in lieu* of annual leave to which that employee is entitled or was called upon to work.”.

Amendment of section 38

7. The principal Act is amended in section 38, by deleting the word “sixty” and substituting for it the word “thirty” appearing in subsection (3).

Amendment of section 72

8. The principal Act is amended in section 72, by-

- (a) deleting the full stop appearing at the end of subsection (4) and substituting for it with a “full colon”;
- (b) adding immediately after subsection (4) the following proviso:

“Provided that such deduction complies with the terms and conditions prescribed in the regulations.”

Amendment of section 73

9. The principal Act is amended in section 73, by deleting the word “Commission” and substituting for it the words “Labour Commissioner” wherever it appear in that section.

Addition of section 102A

10. The principal Act is amended by adding immediately after section 102 the following section:

“Inconsistency with written laws

102A. In case of conflict between this Act and any other written law relating to employment standards, the standards stipulated under this Act shall prevail.”

PART III
AMENDMENT OF THE LABOUR INSTITUTIONS ACT,
(CAP. 300)

Construction
Cap. 300

11. This Part shall be read as one with the Labour Institution Act, hereinafter referred to as the “principal Act”.

Amendment of
section 14

12. The principal Act is amended in section 14, by-

- (a) deleting paragraph (c) of subsection (1); and
- (b) deleting subsection (2) and substituting for it the following:
“(2) The Commission may offer to mediate a dispute that has not been referred to it.”

Amendment of
section 31

13. The principal Act is amended in section 31, by adding immediately after paragraph (b) of subsection (2) the following new paragraph:
“(c) before assuming duties of office, shall take and subscribe to an oath or affirmation.”

Amendment of
section 35

14. The principal Act is amended in section 35, by-

- (a) deleting subsection (3) and substituting for it the following:
“(3) The wage board shall consist of the following members-

 - (a) in case of the private sector:
 - (i) the chairman;
 - (ii) the Secretary;
 - (iii) four members recommended by the council to represent

- interests of employees;
 - (iv) four members recommended by the Council to represent interests of the employer;
 - (v) four members recommended by the Council to represent interests of the Government; and
 - (vi) three members nominated by virtue of their professions, appointed by the Minister responsible for labour;
- (b) in case of public sector-
- (i) the Chairman;
 - (ii) the Secretary;
 - (iii) four members recommended by the council to represent interests of employees;
 - (iv) four members recommended by the council to represent interests of Government;
 - (v) two members

nominated by virtue
of their professions,
appointed by the Minister
responsible for Public Service.

(4) A member appointed under this subsection shall not be a member of the Council.

(5) The appointment of a member under this section shall consider the terms and conditions as may be prescribed in the regulations.”

(b) renumbering subsections (4) to (8) as subsections (6) to (10) respectively.

Amendment of
section 39

15. The principal Act is amended in section 39, by-

(a) deleting subsection sub section (1) and substituting for it the following:

“(1) After considering the report and recommendations of the wage board and the council, the Minister shall make a wage order determining the minimum wage and other conditions of employment for employees in any sector and area of economy-”

(b) inserting new subsection (2) as follows:

“(2) For the purpose of this section “Council” includes Public Service Joint Staff Council established under the Public Service (Negotiating Machinery) Act;

(c) by deleting subsection (5), and substituting for it the following:

“(5) Where the Minister fails to make a wage order within thirty days after receipt of the wage board and council’s report, the

Cap. 105

aggrieved party may, within thirty days, files the matter before the Labour Court which shall compel the matter within sixty days from the date of filling the application.”

- (d) renumbering sub section (2),(3),(4),(5) and (6) as sub section (3),(4),(5),(6) and (7).

Amendment of section 42

16. The principal Act is amended in section 42, by-

- (a) deleting subsection (1), and substituting for it the following:

“(1) The Labour Commissioner shall provide staff members of the Ministry available to assist wage board in the performance of its functions.”

- (b) inserting immediately after subsection (1), the following:

“(2) The wage board may form sub-committees to assist in the performance of its functions.”

- (c) re-numbering sub section (2) as sub section (3).

Amendment of section 43

17. The principal Act is amended in section 43, by deleting subsection (3) and substituting for it the following:

“(3) The Minister shall appoint Assistant Labour Commissioners to assist Labour Commissioner in the performance of his functions.”

Amendment of section 45

18. The principal Act is amended in section 45(1), by adding immediately after paragraph (i) the following new paragraphs:

- “(j) educate, advise and oversee the implementation of labour laws;
- (k) conduct and scrutinize any election or ballot of registered trade union or employers’ association if required to do so by the Labour Court or at the request of the union or association concerned; and
- (l) upon request, provide employees, employers, registered trade organisations and federations advice and training in skills for avoidance, prevention and settlement of disputes.”

PART IV
AMENDMENT OF THE PUBLIC SERVICE ACT,
(CAP.298)

Construction
Cap. 298

19. This Part shall be read as one with the Public Service Act, hereinafter referred to as the “principal Act”.

Amendment of
Section 6

- 20.** The principal Act is amended in Section 6, by -
- (a) adding the words “Review and” between the words “Performance” and “Appraisal” appearing in subparagraph (ii) of paragraph (a) of subsection (1);
 - (b) adding immediately after subsection (2) the following provision-
 - “(3) Every Permanent Secretary shall facilitate and oversee career development of cadres of employees under their respective Ministry.”
 - (c) renumbering subsections (3) to (7) as subsections (4) to (8).

Amendment of
section 8

- 21.** The principal Act is amended in section 8, by -
- (a) deleting paragraph (f) of subsection (3) and substituting for it the following:
 - “(f) to facilitate and approve schemes of service in the service;
 - (g) be the authority in respect of transfer of employees in the service; and”
 - (b) renaming paragraph (g) as (h).”
 - (c) adding immediately after subsection (5) the following new subsection:
 - “(6) The Permanent Secretary (Establishment) may delegate powers of transfer of employees in the service stipulated under paragraph (g) of subsection (3) to heads of executive agencies specified under section 6(1).”

Addition of
section 34A

- 22.** The principal Act is amended by adding immediately after section 34, a new section:
- “Overriding effect **34A.** Where there is an inconsistency between the provisions of this Act and any other law governing executive agencies, public institutions or such other public service offices, the provision of this Act shall prevail.”

PART V
AMENDMENT OF THE PUBLIC SERVICE (NEGOTIATING
MACHINERY) ACT,
(CAP.105)

Construction
Cap.105

23. This Part shall be read as one with the Public Service (Negotiating Machinery) Act, hereinafter referred to as the “principal Act”.

Amendment of
section 2

24. The principal Act is amended in section 2, by deleting the phrase “or to compel the employer” appearing under the definition of the term “lock-out”.

Amendment of
section 4

25. The principal Act is amended in paragraph (c) of section 4(3) by-

(a) deleting the word “four” appearing in paragraph (e) of sub-section (3) and substituting for it the word “five”;

(b) adding immediately after subparagraph (ii) new subparagraph (iii) as follows:

“(iii) a representative of regional administration and local government authorities.”

(c) renumbering subparagraphs (iii) and (iv) as subparagraphs (iv) and (v).

Amendment of
section 7

26. The principal Act is amended in section 7, by deleting subsection (2) and substituting for it the following:

“(2) The Service Joint Staff Council shall meet twice in a year.”

Amendment of
section 26

27. The principal Act is amended by repealing section 26 and replacing it with the following new section:

“Rights and
conditions
to strike
and lock-
out

Part-

26.-(1) Subject to the provisions of this

- (a) every public servant has a right to strike in respect of a dispute; and
- (b) every employer has a right to lock-out in respect of a dispute.

(2) A public servant may take part in a strike if the following conditions are satisfied:

- (a) there is a dispute;
- (b) the dispute is not resolved;
- (c) a ballot strike has been conducted under the supervision of the Labour Officer and the majority of the public servants in the respective Service Scheme support the strike;
- (d) sixty days have passed since notice was served to the Government, counting from the date on which a ballot strike was cast.

(3) An employer may take part in a lockout if the following conditions are satisfied:

- (a) there is a dispute;
- (b) the dispute is not resolved;
- (c) a forty eight hours notice has been served to the Chairman of a branch of trade union presenting the majority of employees at the work place, counting from the date of

- Amendment of section 27
- submission of the notice to the Chairman of the trade union.”
- 28.** The principal Act is amended by repealing section 27 and replacing it with the following:
- “Strikes and lockout not allowed
- 27.** Nothing in this Act shall authorize the striking or locking-out by public servants or employer in any employment or service rendered the result of which may cause interruption or continued interruption which endangers life, health or personal safety of the whole or part of the population.”
- Amendment of section 28
- 29.** The principal Act is amended in section 29, by deleting the words “or lock-out” wherever they appear in that section.
- Amendment of section 29
- 30.** The principal Act is amended in section 28, by deleting the words “or lock-out” wherever they appear in that section.
- Amendment of Schedule
- 31.** The principal Act is amended in the Schedule by adding immediately after item 1(c) a new item 1A as follows:
- “Criteria for division of regions
- 1A.** For the purpose of paragraph 1(c), where a new region is established by-
- (a) subdivision of a region, the new region shall be in the same zone with the subdivided region; or
- (b) subdivision of more than one region belonging to different zones, the Minister shall, decide the zone in which the new region shall belong.”

PART VI
AMENDMENT OF THE NATIONAL SOCIAL SECURITY FUND ACT
(CAP. 50)

Construction
Cap. 50

32. This Part shall be read as one with the National Social Security Fund Act, hereinafter referred to as the “principal Act”;

Amendment of
section 2

33. The principal Act is amended in section 2, by deleting the definition of the word “wages” and substituting for it the following:

“wages” means remuneration in money paid to an employee under a contract of service or apprenticeship whether at a payable fixed or determinable intervals of time-

- (a) in respect of the normal period of work to be performed by an employee;
- (b) where payment is calculated in relation to set tasks or journeys completed by the employee;
- (c) where payment is calculated in relation to the volume of work done, in respect of the volume completed by the employee, and includes any allowance paid by the employer to the employee directly or indirectly in respect of living and any payment of wages instead of notice of termination of employment.”

PART VII
AMENDMENT OF THE LAPF PENSIONS FUND ACT

(CAP. 407)

Construction
Cap. 407

34. This Part shall be read as one with the LAPF Pensions Fund Act, hereinafter referred to as the “principal Act”;

Amendment of
Section 33

35. The principal Act is amended in section 33, by-

- (a) redesignating section 33 as subsection (1) of section 33; and
- (b) adding the following new subsections:

“(2) Notwithstanding subsection (1) Members whose statutory terms of employment prescribe a shorter age of retirement such as Police Force or Prison Service or Fire and Rescue may retire in such manner as prescribed by such terms.

(3) Pensionable officer of the Police Force Prison Service, Fire and Rescue who has worked for a consecutive period of 25 years, may retire at any time thereafter.”

OBJECT AND REASONS

This Bill proposes to amend certain labour laws namely the Employment and Labour Relations Act, Cap. 366; the Labour Institutions Act, Cap. 300; the Public Service Act, Cap, 298; the Public Service (Negotiation Machinery) Act, Cap 105 and the National Social Security Act, 2015.

The Bill is divided into six parts, whereby Part I deals with preliminary provisions which contains short title and the manner in which several labour laws are amended.

Part II of the Bill proposes to amend the Employment and Labour Relations Act, Cap. 366. It is proposed to amend section 4, by introducing new definition of the terms “employment” and “specific task” in order to give the specific meaning required in the implementation of the provisions of the said Act.

Additionally, section 31 is amended in subsections (6) and (7) so as to make it possibilities for an employer to obtain the consent of an employee for the forfeiture of his annual leave on certain condition. The aim of this amendment is to enable the employer to obtain service from the employee even when he is on leave as long as the employee compromise his annual leave. The amendment also gives room for the employee to choose whether he wishes to work or go on leave.

Nevertheless, section 73 is amended purposely to enable commission to remain with its primary roles of dispute resolution.

Finally, this part proposed to introduce a new section 102A in order to confer over-riding effect to the Employment and Labour Relations Act where there is conflicts with any other written law regarding employment standards stipulated under the Employment and Labour Relations Act.

Part III of the Bill proposes to amend the Labour Institutions Act, Cap. 300. The Bill proposes to amend section 14 by giving the Commission the power to mediate a dispute that has not been referred to it.

Section 35 is also amended in order to have only two National Wage Boards, one for public and the other one for private sector, so as to have a minimum set out of wage, terms and conditions of employment.

A part from that, section 43 is amended so as to empower the Minister to appoint Assistant Labour Commissioners who shall assist the Labour Commissioner in the performance of his functions.

It is also proposed to amend section 45 so as to give Labour Officers additional powers to educate oversee and implement labour laws, to conduct or scrutinize any election or ballot of registered trade union or employers association by court order or at the request of a respective union or association.

Part IV proposes to amend the Public Service Act whereby Section 6 of the said Act is amended by adding new sub-section (3) which requires each permanent Secretary to facilitate and oversee career development of the Employees under his respective ministries.

The part further purposes for the addition of section 34A which provide for the supremacy of the Act over any other written laws when matters of public Service are in question.

Part V proposed to amend the Public Service (Negotiating Machinery) Act whereby Several sections are purposed to be amended with a general view of providing for criteria for decision of regions.

Part VI established the National Social Security Fund by adding the definition of the term “wages” to include remuneration of money paid to an employee under the contract of service in respect of normal period of work to be performed by an employee or where the payment is calculated in relation to set tasks or journey completed by the employee and it includes any allowance paid by the employer to the employee in respect of living and any payment of wages in lieu of notice of termination of employment.

Part VII propose to amend the LAPF Pensions Act, Cap. 407 with view to expressly provide for the granting of pension to members of Police Force, Prison Service and Fire and Rescue who retire in accordance with requirement of the laws governing their engagement. This is to make it commensurate with the Public Service Retirement Benefits Act, Cap. 371 and will make LAPF Pensions Scheme equally competitive to other pension schemes.

MADHUMUNI NA SABABU

Muswada huu unapendekeza kufanyia Marekebisho Sheria za Kazi ziitwazo Sheria ya Ajira na Mahusiano kazini, Sura ya 366; Sheria ya Taasisi za Kazi, Sura ya 300, Sheria ya Utumishi wa Umma, Sura ya 298, Sheria ya Chombo cha Utumishi wa Umma cha Majadiliano, Sura ya 105 na Sheria ya Taifa ya Mfuko wa Hifadhi ya Jamii ya mwaka 2015.

Muswada umegawanyika katika Sehemu Sita. Sehemu ya Kwanza inahusika na masharti ya utangulizi yenye jina fupi na namna ambayo Sheria za Kazi zimerekebishwa.

Sehemu ya Pili inapendekeza kurekebisha Sheria ya Ajira na Mahusiano Kazini, Sura ya 366. Sehemu hii inapendekeza kurekebisha kifungu cha 4 kwa kuongeza maana mpya ya neno “ajira” na “kazi maalum” ili kuipa maana mahusus ili kuweza kutekeleza masharti ya Sheria hii.

Vile vile, kifungu cha 31 kinarekebishwa kwenye vifungu vidogo vya (6) na (7) ili kupata ridhaa ya mwajiriwa kutokwenda likizo yake ya mwaka kwa masharti fulani. Lengo la marekebisho hayo ni kumwezesha Mwajiri kupata huduma ya Mwajiriwa hata kama yuko likizo ili mradi mwajiriwa ameridhia kutochukua likizo ya mwaka. Marekebisho haya pia yanatoa fursa kwa mwajiriwa kuchagua kwenda likizo au kuendelea kufanya kazi.

Hata hivyo, kifungu cha 73 kimefanyiwa marekebisho kwa nia ya kuiwezesha Tume kubakia na jukumu lake la msingi la kutatua migogoro.

Mwisho Sehemu hii inapendekeza kuwepo kwa kifungu kipya cha 102A kuweka mamlaka yenye nguvu zaidi katika Sheria ya Ajira na mahusiano kazini ambapo kuna mkinzano wa sheria nyingine kuhusiana na viwango vya ajira vilivyowekwa chini ya Sheria hii.

Sehemu ya Tatu ya Muswada inapendekeza marekebisho ya Sheria ya Taasisi za Kazi, Sura ya 300. Muswada unakusudia kurekebisha kifungu cha 14 kwa kuipa Tume mamlaka ya kusuluhisha mgogoro ambao haujaletwa kwake.

Hali kadhalika, kifungu cha 35 kinafanyiwa marekebisho ili kuwa na Bodi mbili za mshahara kitaifa, moja kwa Sekta binafsi na nyingine ya sekta ya umma. Dhamira ikiwa ni kuweka kima cha chini cha mshahara, vigezo na masharti ya ajira.

Mbali na hiyo, kifungu cha 43 kinafanyiwa marekebisho ili kumpa Waziri mamlaka ya kuteua Makamishna wa Kazi Wasaidizi watakaomsaidia Kamishna wa Kazi katika kutekeleza majukumu yake.

Inapendekezwa pia, kufanyia marekebisho kifungu cha 45 ili kuwaongezea mamalaka Maafisa Kazi kuelimisha, kusimamia na kutekeleza sheria za kazi, kuratibu uchaguzi wa vyama vya wafanyakazi vilivyosajiliwa au vyama vya waajiri vilivyosajiliwa kwa mujibu wa amri ya mahakama au kwa ombi la vyama vya wafanyakazi au waajiri.

Sehemu ya Nne, inapendekeza kufanyia marekebisho Sheria ya Utumishi wa Umma, ambapo kifungu cha Sita cha Sheria hiyo kinafanyiwa marekebisho kwa kuongeza kifungu kidogo cha (3) kinachomtaka kila Katibu Mkuu kusimamia maendeleo ya kazi ya wafanyakazi chini ya Wizara husika.

Vile vile, Sehemu hii inapendekeza kuongeza kifungu cha 34A ambacho kinaainisha ukuu wa Sheria hii juu ya Sheria nyingine yoyote pale ambapo masuala ya utumishi wa umma yamehusishwa.

Sehemu ya Tano, inapendekeza kufanyia marekebisho Sheria ya Chombo cha Majadiliano cha Utumishi wa Umma, ambapo vifungu kadhaa vinarekebishwa kwa azma ya kuweka masharti na vigezo vya kufanyia maamuzi.

Sehemu ya Sita inarekebisha Sheria ya Taifa ya Mfuko wa Hifadhi ya Jamii, kwa kuongeza tafsiri ya neno “ujira” ili kujumuisha malipo anayolipwa mwajiriwa chini ya mkataba wa huduma kuhusu kipindi cha kazi cha kawaida cha mwajiriwa au malipo yatakayofanyika kwa ajili ya kazi maalum na safari alizofanya mwajiriwa na pia kujumuisha marupurupu yanayolipwa na mwajiri kwa mwajiriwa kwa ajili ya kuishi na malipo ya ujira kwa mujibu wa notisi ya kusitisha ajira.

Sehemu ya Saba inapendekeza kufanya marekebisho katika Sheria ya Mfuko wa Pensheni ya Serikali za Mitaa, Sura ya 407 kwa madhumuni ya kuwezesha LAPF kushindana na mifuko mingine ya hifadhi ya jamii. Marekebisho haya yatawezesha LAPF kupata wanachama ambao ni askari polisi, maofisa magereza na maofisa wa kikosi cha zima moto ambao sheria inayosimamia ajira zao imeainisha muda mfupi wa kustaafu ukilinganisha na watumishi wengine wa Serikali.

Dar es salaam,
25 Mei, 2015

GAUDENTIA M. KABAKA
Waziri wa Kazi na Ajira