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THE LABOUR RELATIONS (AMENDMENT) BILL, 2019

A Bill for

AN ACT of Parliament to amend the Labour Relations Act

ENACTED by the Parliament of Kenya, as follows—

Short title.

1. This Act may be cited as the Labour Relations (Amendment) Act, 2019.

Amendment of section 76 of No.14 of 2007.

2. The Labour Relations Act hereinafter referred to as "the principal Act" is amended in section 76 by inserting the words "Expect as provided in section 81A" immediately before the words "A person" appearing in the opening paragraph.

Amendment of section 78 of No.14 of 2007.

3. Section 78 of the principal Act is amended in sub-section (1) by deleting paragraph (f).

Amendment of section 81 of No.14 of 2007.

4. Section 81 of the principal Act is amended by inserting the words "for more than five days" immediately after the words "essential service" appearing in sub-section (3).

Insertion of new sections into No.14 of 2007.

5. The principal Act is amended by inserting the following new sections immediately after section 81—

Limitation on the right of every worker to go on strike in essential services.

81A. (1) Pursuant to Article 24 of the Constitution, the right of every worker to go on strike as enshrined under Article 41(2) (d) of the Constitution is limited in respect of workers who provide essential services contained in the Fourth Schedule.

(2) The limitation of this right is necessary to avoid interruption of essential services which would endanger the health, life and safety of the population or any part of the population.

Procedure for protected strikes in essential services sector.

81B. (1) A trade union intending to call for a strike by workers who provide essential services shall take a ballot vote prior to issuing a notice of intention to hold strike.

(2) A strike shall be approved to be held by a trade union in any of the essential service if it has been approved by not less than fifty percent of the members eligible to vote under section 33 of this Act.

(3) The ballot vote shall be valid for a period of two months from the date the vote is taken and if no strike is held within such period, a trade union shall take a fresh ballot vote for approval to call for a new strike.

(4) If upon the expiry of the five days period referred to in section 81, the trade dispute relating to the strike shall not have been resolved, the dispute shall be referred to the industrial court for adjudication.

Strike in essential services not in compliance with the Act.

81C. (1) An employee who continues to take part in a strike relating to the essential service upon the expiry of the five days period and following the referral of the trade dispute to the industrial court, commits an offence and shall be liable upon conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both.

(2) An official of a trade union who fails to call to an end a strike upon the expiry of the five days period and upon referral of the dispute to the industrial court, commits an offence and shall be liable upon conviction to a fine of not less than five million shillings or to imprisonment for a term of not less than five years or to both.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons

The principal object of the Bill is to amend the Labour Relations Act, 2007. The Bill sets out the requirements that must be met by a trade union prior to calling and holding a strike in any of the essential services sector. This is with a view of guarding against the interruption of essential services which would endanger the health, life and safety of the population.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill limits the right of every worker to go on strike as enshrined in Article 41(2) (d) of the Constitution.

Statement that the Bill does not concern County Governments

The Bill sets out the requirements that must be met by a trade union prior to calling and holding a strike in any of the essential services sector. In view of this, the Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 28th February, 2019.

KIMANI ICHUNGWA,
Member of Parliament.

Section 76 of No. 14 of 2007 which the Bill proposes to amend—

Protected strikes and lock-outs

76. A person may participate in a strike or lock-out if—

(a) the trade dispute that forms the subject of the strike or lock-out concerns terms and conditions of employment or the recognition of a trade union;

(b) the trade dispute is unresolved after conciliation—

(i) under this Act; or

(ii) as specified in a registered collective agreement that provides for the private conciliation of disputes; and

(c) seven days written notice of the strike or lock-out has been given to the other parties and to the Minister by the authorised representative of—

(i) the trade union, in the case of a strike;

(ii) the employer, group of employers of employers' organisation, in the case of a lock-out.

Section 78 of No. 14 of 2007 which the Bill proposes to amend—

Prohibited strikes or lock-outs

78. (1) No person shall take part in a strike or lock-out or in any conduct in contemplation of a strike or lock-out if—

(a) any law, court award or a collective agreement or recognition agreement binding on that person prohibits a strike or lock-out in respect of the issue in dispute;

(b) the subject matter of the strike or lock-out is regulated by a collective agreement or recognition agreement binding on the parties to the dispute;

(c) the parties have agreed to refer the trade dispute to the Industrial Court or to arbitration;

(d) in the case of a dispute concerning the recognition of a trade union, the trade union has referred the matter to the Industrial Court;

(e) the trade dispute was not referred for conciliation in terms of—

(i) this Act; or

(ii) a collective agreement providing for conciliation;

(f) the employer and employees are engaged in an essential service;

(g) the strike or lock-out is not in furtherance of a trade dispute; or

(h) the strike or lock-out constitutes a sympathetic strike or lock-out.

(2) For the purposes of this section—

(a) an employee engages in a sympathetic strike if the employee participates in a strike in support of a trade dispute in respect of which the employee's employer—

(i) is not a party to the dispute; or

(ii) is not represented by an employer's organisation that is a party to that dispute; or

(b) an employer engages in a sympathetic lock-out if the employer locks-out an employee in support of a trade dispute—

(i) to which the employer is not a party; or

(ii) in respect of which the employer is not represented by an employer's organisation that is a party to dispute.

Section 81 of No. 14 of 2007 which the Bill proposes to amend—

Essential services

81. (1) In this Part "essential services" means a service the interruption of which would probably endanger the life of a person or health of the population or any part of the population.

(2) The Minister, after consultation with the Board—

(a) shall from time to time, amend the list of essential services contained in the Fourth Schedule; and

(b) may declare any other service an "essential service" for the purpose of this section if a strike or lock-out is so prolonged as to endanger the life, person or health of the population or any part of the population.

(3) There shall be no strike or lock-out in an essential service.

(4) Any trade dispute in a service that is listed as or is declared to be an essential service may be adjudicated upon by the Industrial Court.

(5) A collective agreement may provide that any service may be deemed to be an essential service.