

SPECIAL ISSUE

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REPUBLIC OF KENYA

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SENATE BILLS, 2024

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**THE LABOUR RELATIONS (AMENDMENT) (NO. 3)
BILL, 2024**

A Bill for

AN ACT of Parliament to amend the Labour Relations Act to prohibit deduction of agency fees from the wages of a unionisable employee who is not a member of a trade union.

ENACTED by the Parliament of Kenya as follows —

1. This Act may be cited as the Labour Relations (Amendment) (No. 3) Act, 2024.

Short title.

2. The Labour Relations Act herein referred to as the “principal Act” is amended by deleting the words “agency fees” appearing in the heading to Part VI.

Amendment of heading of Part VI of the Cap. 233.

3. The principal Act is amended by deleting section 49.

Deletion of section 49 of Cap. 233.

MEMORANDUM OF OBJECTS AND REASONS

Statement of the Objects and Reasons for the Bill

The principal object of the Bill is to prohibit deduction of agency fees from the wages of a unionisable employee, who is not a member of a trade union, but is covered by the trade union's collective agreement. The Bill is in line with Article 36 (2) of the Constitution that states that a person shall not be compelled to join an association of any kind. Additionally, Article 41 (2) (c) of the Constitution also states that every worker has the right to participate in the activities and programmes of a trade union.

The Bill seeks ensure that unionisable workers enjoy fair labour practices.

The Bill also seeks to ensure that trade unions and employers observe the national values and principles of governance including good governance, integrity, transparency and accountability.

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

The Bill does not delegate legislative powers nor does it limit the fundamental rights and freedoms.

Statement on how the Bill concerns county governments

Under the Fourth Schedule to the Constitution, counties are mandated to implement national labour standards and employment policy in the counties. Since most employees are from the counties, the Bill will have an impact on the net wages of unionisable employees who are not members of trade unions.

This is therefore a Bill that concerns counties in terms of Article 110(1) (a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 19th August, 2024.

GEORGE MUNGAI MBUGUA,
*Vice-Chairperson,
Labour and Social Welfare Committee.*

Part VI of Cap. 233 which it is proposed to amend—

**PART VI – TRADE UNION DUES, AGENCY FEES AND
EMPLOYERS’ ORGANISATION FEES.**

Section 49 of Cap. 233 which it is proposed to amend—

49. Deduction of agency fees from unionisable employees covered by collective agreements

(1) A trade union that has concluded a collective agreement registered by the Employment and Labour Relations Court with an employer, group of employers or an employers’ organisation, setting terms and conditions of service for all unionisable employees covered by the agreement may request the Cabinet Secretary to issue an order requiring any employer bound by the collective agreement to deduct an agency fee from the wages of each unionisable employee covered by the collective agreement who is not a member of the trade union.

(2) A request in accordance with sub-section (1) shall—

- (a) be signed by the authorized representatives of the trade union and employer, group of employers or employers’ organisation;
- (b) supply a list of all employees prepared by the employer in respect of whom a deduction shall be made;
- (c) specify the amount of the agency fee, which may not exceed the applicable trade union dues; and
- (d) specify the trade union account into which the dues shall be paid.

(3) An employer in respect of whom the Cabinet Secretary has issued an order as specified in subsection (1) shall commence deducting agency fees from the employees named in the Cabinet Secretary’s notice within thirty days of receiving the Cabinet Secretary’s notice.

(4) The Cabinet Secretary may vary an order issued under this section on application by the trade union and the employer, group of employers or employers’ organisation concerned.

(5) A member of a trade union covered by a collective agreement contemplated by subsection (1) who resigns from the union, is immediately liable to have an agency fee deducted from his wages in accordance with this section.

(6) If a collective agreement is implemented retrospectively after registration by the Industrial Court, the agency fee shall be deducted and paid to the trade union for the period of retrospective implementation in accordance with this section.