

Tanzania

## Regulation of Wages and Terms of Employment Act Chapter 300

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# Tanzania

## Regulation of Wages and Terms of Employment Act

### Chapter 300

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*[Note: This legislation has been thoroughly revised and consolidated under the supervision of the Attorney General's Office, in compliance with the Laws Revision Act No. 7 of 1994, the Revised Laws and Annual Revision Act (Chapter 356 (R.L.)), and the Interpretation of Laws and General Clauses Act No. 30 of 1972. This version is up-to-date as at 31st July 2002.]*

*[Acts Nos. 15 of 1951; 41 of 1967; C.A. Act No. 2 of 1962; R.L. Cap. 300]*

**An Act to provide for the establishment of Minimum Wage Boards and Wages Council and for the regulation of the remuneration and terms of employment of employees and for other related matters.**

### Part I – Preliminary provisions (ss. 1-3)

#### 1. Short title

This Act may be cited as the Regulation of Wages and Terms of Employment Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

"**board**" means a minimum wage board established under the provisions of subsection (1) of section 4 of this Act;

"**council**" means a wages council established under the provisions of section 6 of this Act;

"**court**" means the Industrial Court of Tanzania;

"**employee**" means a person who is employed in any employment to which this Act applies, and includes employees who are employed by or under the Government the same way and to the same extent as if the Government were a private person but does not include—

- (a) a person in the Armed Forces; or
- (b) a person in the Police Force or the Prisons Service;

"**Minister**" means the Minister responsible for labour;

"**outworker**" means an employee to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own home or in other premises not in the control or management of the person who gave out the articles or materials;

"**wages council order**" means an order under the provisions of section 6 of this Act establishing a wages council.

#### 3. Application

This Act may apply to employment generally or in any area of Tanzania or may be limited in its application to any category of employment either generally or in any area of Tanzania as the Minister may by order in the *Gazette* appoint, and any such order may be exempted from the application of the

Act or any such employees or any class of employees either generally or in any area of Tanzania or in any category of employment whether generally or in any area of Tanzania.

## Part II – Establishment of minimum wage boards (ss. 4-5)

### 4. Establishment of minimum wage boards and determination of basic minimum wages

- (1) The Minister may, if he is of the opinion that it is expedient to fix a basic minimum wage in respect of any employees or class of employees not exempted from the application of this Act make an order establishing a minimum wage board to enquire into the matter.
- (2) Before establishing a minimum wage board under subsection (1), the Minister shall publish in the *Gazette* a notice of his intention to establish such board and every such notice shall set forth the proposed terms of reference of the board intended to be established and shall specify the time within which any objection to the proposed establishment of the board or to any of the proposed terms of reference shall be sent to the Minister.
- (3) Every objection shall be in writing and shall state—
  - (a) the specified grounds of objection;
  - (b) the omissions, additions or modifications asked for,and the Minister shall consider any such objection made by or on behalf of any person appearing to him to be affected, being an objection sent to the Minister within the time specified in the notice, but shall not be bound to consider any other objection.
- (4) After considering the objections which the Minister is required by subsection (3) to consider, the Minister may—
  - (a) proceed to make an order establishing a board as proposed by him in the notice or subject to such modifications as he may think fit; or
  - (b) abandon the intention to establish the proposed board and make no order.
- (5) Every order establishing a board shall be published in the *Gazette* and in at least one local newspaper circulating in Tanzania, and the order shall come into operation on the date on which it is so published in the *Gazette* or on such later date as may be specified therein.
- (6) Where a board is established in accordance with this section, the board shall proceed to consider the matters within its terms of reference and shall submit its recommendations relating to such matters to the Minister.
- (7) The recommendations of a board shall be deemed to be a wages regulation proposal within the meaning of section 10 of this Act.

### 5. General provisions as to minimum wage boards

- (1) The provisions of the First Schedule to this Act shall have effect with respect to the constitution, officers and proceedings of a minimum wage board.
- (2) Where any matter is referred under section 4 of this Act to a minimum wage board the board shall make all such investigations as appear to it to be necessary.
- (3) A minimum wage board shall, for the purposes of any inquiry under this Act, have all the powers of a Commission of inquiry under the Commissions of Inquiry Act<sup>1</sup> in relation to the summoning of witnesses and the production of books, plans and documents, and as to contumacy of and indemnity to witnesses.

## Part III – Establishment of wages councils (ss. 6-9)

### 6. Establishment of wages councils

Notwithstanding the provisions of sections 4 and 5 of this Act, the Minister, if he is of the opinion that no adequate machinery exists for the effective regulation of the remuneration or the terms of employment of any employees or any class of employees not exempted from the application of this Act any employment to which this Act applies, may by order establish a wages council to perform, in relation to such employees or class of employees, the functions specified in this Act.

### 7. Making of wages council orders

- (1) Before making a wages council order, the Minister shall publish in the *Gazette* a notice of his intention to make such order, specifying a place or places where copies of a draft may be inspected, and a time (which shall not be less than thirty days from the date of the publication) within which any objection to the draft order shall be sent to the Minister.
- (2) Every objection shall be in writing and shall state—
  - (a) the specific grounds of objection,
  - (b) the omissions, additions or modifications asked for,and the Minister shall consider any such objection made by or on behalf of any person appearing to him to be affected, being an objection sent to the Minister within the time specified in the notice, but shall not be bound to consider any other objection.
- (3) If there are no objections which the Minister is required by the last preceding subsection to consider, or if, after considering all such objections, he is of the opinion that all those objections will be met by modifications which he proposes to make under this subsection, or are frivolous, he may make the order either in terms of the draft or subject to such modifications, if any, as he thinks fit, being modifications which, in his opinion, do not effect important alterations in the character of the draft order as published.
- (4) Where the Minister does not proceed under the last preceding subsection he may, if he thinks fit, withdraw the draft order, or amend it and if he amends it otherwise than in accordance with subsection (3) of this section all the provisions of this section shall have effect in relation to the amended draft order as they have effect in relation to an original draft order.
- (5) Where the Minister makes a wages council order, he shall publish it in the *Gazette* and in at least one local newspaper circulating in Tanzania, and the order shall come into operation on the date on which it is so published in the *Gazette* or on such later date as is specified therein.

### 8. Abolition and variation of field of operation of wages councils

The Minister may at any time by order abolish or vary the field of operations of a wages council, and the provisions of the last preceding section shall apply in all such cases.

### 9. General provisions as to wages councils

- (1) The provisions of the Second Schedule to this Act shall have effect with respect to the constitution, officers and proceedings of wages councils.
- (2) A wages council shall consider any matter referred to it by the Minister with reference to the industrial conditions prevailing as respects the employees and employers in relation to whom it operates, and shall make a report on the matter to the Minister and may, if it thinks it expedient, make of its own motion a recommendation to the Minister and where such a recommendation is so made the Minister shall forthwith take it into consideration.

## Part IV – Wages regulation orders (ss. 10-23)

### 10. Power to fix remuneration and terms of employment

- (1) Subject to and in accordance with the provisions of this section, a wages council shall have power to submit to the Minister proposals (hereinafter referred to as wages regulation proposal) for prescribing the remuneration to be paid and the terms of employment to be provided, either generally or for any particular work, by their employers to or for all or any of the employees in relation to whom the council operates.
- (2) Before submitting any wages regulation proposals to the Minister, a wages council shall make such investigations as it thinks fit and shall publish in the *Gazette* and in at least one local newspaper circulating in the country notice of the proposals, stating the place where copies of the proposals may be obtained and the period, not being less than twenty-one days, within which written representations with respect to the proposals may be sent to the council, and the council shall consider any written representations made to it within that period and shall make such further enquiries as it considers necessary and may then submit the proposals to the Minister either without amendment or with such amendments as it thinks fit having regard to the representations:

Provided that if the council, before publishing its proposals, resolves that, in the event of no representation with respect to the proposals being made to it within the said period, the proposals shall be submitted to the Minister, the council shall, if no representation be made, submit the proposals to the Minister.

- (3) Where the Minister receives any wages regulation proposal in pursuance of the provisions of this section or section 7, he shall submit the proposal to the court together with such comments as he may wish to make.
- (4) On receipt of any wages regulation proposal from the Minister, the court shall proceed to consider the same together with any comments which the Minister may have submitted in respect thereto, and shall submit its recommendations in respect thereof to the Minister.
- (5) In considering any wages regulation proposal under subsection (4) the court shall have the same powers and shall be subject to the same obligations, with such modifications as may be necessary, as if such proposal was a matter referred to it under the Industrial Court of Tanzania Act<sup>2</sup>.
- (6) On receipt of the recommendations of the court in respect of any wages regulation proposal the Minister shall, with the approval of the President—
  - (a) make an order (hereinafter referred to as a wages regulation order) giving effect to such proposals either—
    - (i) as submitted by the council or board, as the case may be; or
    - (ii) with such modifications as the President may authorise,and such wages regulation order shall take effect, subject to the provisions of subsection (7) of this section, from such day as may be specified therein; or
  - (b) reject the proposal and make no order.
- (7) The date to be so specified under subsection (6) of this section shall be a date subsequent to the date of the wages regulation order, and where the date so specified does not correspond with the beginning of the period for which wages are paid, the wages regulation order shall, as respects any employee affected, become effective as from the beginning of the next such period following the date specified in the order.

- (8) As soon as the Minister has made a wages regulation order, he shall give notice of the making thereof to the council or board, as the case may be, and shall publish the wages regulation order in the *Gazette* and in at least one local newspaper circulating in the country for the purpose of informing, so far as practicable, all persons who will be affected.
- (9) Any wages regulation proposals and any wages regulation orders for giving effect thereto may make different provision for different cases, and may also contain provision for the amendment or revocation of previous wages regulation orders.
- (10) The Minister may, after consultation with the court and with the approval of the President, by order published in the *Gazette* exempt any employees or class of employees from any wages regulation order, made under this section and where any employees or class of employees are exempted from any wages regulations order, such order shall cease to apply to such employees or class of employees from the date of the publication of exemption order or from such later date as may be specified in the exemption order.

## 11. Computation of remuneration

- (1) Subject to the provisions of this section, any reference in this Part of this Act to remuneration shall be construed as a reference to the amount obtained or to be obtained in cash by the employee from his employer after allowing for any deduction lawfully made for the purpose of a contribution to any approved provident or pension fund or scheme, or any deferred pay.
- (2) Notwithstanding anything contained in subsection (1) of this section, wages regulation proposals and wages regulation orders may contain provisions authorising specified benefits or advantages, being benefits or advantages provided by the employer or by some other person under arrangements with the employer in pursuance of the terms and conditions of any legal or contractual obligation imposed upon the employer, and not being benefits or advantages the provision of which is illegal by virtue of any other law, to be reckoned as payment of wages by the employer *in lieu* of payment in cash, and defining the value at which any such benefits or advantages are to be reckoned.
- (3) Remuneration (including a basic minimum wage) fixed by a wages regulation order is hereinafter referred to as "statutory minimum remuneration".

## 12. Effect and enforcement of wages regulation orders

- (1) If a contract between an employee to whom a wages regulation order applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, or does not provide for the terms of employment prescribed in a wages regulation order it shall have effect as if for that less remuneration there were substituted the statutory minimum remuneration, and as if there were inserted the prescribed terms of employment as aforesaid.
- (2) If an employer fails to pay to an employee to whom a wages regulation order applies remuneration not less than the statutory minimum remuneration, or fails to provide any such employee with the terms of employment prescribed in the order, that employer commits an offence and on conviction is liable to a fine not exceeding four hundred shillings for each offence, and where the employer or any other person charged as a person to whose act or default the offence was due has been found guilty of an offence under this section consisting of a failure to pay remuneration not less than the statutory minimum remuneration, the court may order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid to the employee by way of remuneration, if the provisions of this Part had been complied with, and the amount actually so paid.

- (3) Where proceedings are brought under the last preceding subsection in respect of an offence consisting of a failure to pay remuneration not less than the statutory minimum remuneration, then, if notice of intention has been served with the summons, warrant or complaint—
- (a) evidence may, on the employer or any other person charged as a person to whose act or default the offence was due having been found guilty of the offence, be given of any like contravention on the part of the employer or such other person in respect of any period during the twelve months immediately preceding the date of the offence; and
  - (b) on proof of the failure, the court may order the employer or such other person to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid during that period to the employee by way of remuneration, if the provisions of this Part had been complied with, and the amount actually so paid.
- (4) The powers given by this section for the recovery of sums due from an employer to an employee shall be in addition to and not in derogation of any right to recover such sums by civil proceedings:
- Provided that no person shall be liable to pay twice in respect of the same cause of action.

### **13. Powers of officers to institute proceedings**

An officer acting under this Act may if it appears to him that a sum is due from an employer to an employee by reason of the payment to him of remuneration less than the statutory minimum remuneration, institute on behalf of and in the name of that employee proceedings for the recovery of that sum.

### **14. Employee waiting for work on employer's premises to be deemed to be employed**

- (1) Subject to the provisions of this section, for the purpose of calculating the amount due to an employee employed in any occupation in respect of which a wages regulation order has been made, such employee shall be deemed to have been employed for all the time during which he was present on the premises of his employer, unless such employer proves, to the satisfaction of the court, that he was so present without such employer's express consent or that he was so present for some purpose not connected with his employment other than that of waiting for work to be given to him to perform:
- Provided that—
- (a) where a person resides on the premises of an employer, he shall not be deemed to be employed for any time during which he is present on the premises by reason only of the fact that he is so resident; and
  - (b) an employee while present during normal meal times in a room or place in which no work is being done shall be deemed to be present for a purpose not connected with his employment; and
  - (c) an employee shall not, whatsoever may be the form of contract under which he is employed, be deemed to be employed for any period during which he is voluntarily absent from his employment or has been excused from duty by the employer on account of illness, and, upon proof by the employer that an employee was absent from his employment without cause assigned the burden of proof that he was not voluntarily absent shall rest upon the employee.
- (2) Nothing in subsection (1) shall render it necessary to remunerate any person employed as a daily paid labourer in respect of any time during which he is present on his employer's premises before the time appointed for the commencement or after the termination of work for which he is engaged.

- (3) Notwithstanding anything to the contrary in subsections (1) to (3) of this section, the statutory minimum remuneration shall not be payable—
- (a) unless the employee shall be capable of and available for work, and, if his normal work is not available, shall be willing to perform such duties outside his normal occupation as the employer may reasonably require; or
  - (b) if the employer shall be unable to provide the employee with work because of a strike, breakdown of machinery or other circumstances beyond his control.

### 15. Permits to infirm and incapacitated persons

- (1) If, as respects any employee employed or desiring to be employed in such circumstances that a wages regulation order applies or will apply to him, a Labour Officer is satisfied on application being made to him for a permit under this section either by the employee or the employer or a prospective employer that the employee is affected by infirmity or physical incapacity which renders him incapable of earning the statutory minimum remuneration, he may, subject to such directions as may be given him by the Labour Commissioner, and if he thinks fit, grant, subject to such conditions, if any, as he may determine, a permit authorising the employment of such employee at less than the statutory minimum remuneration, and while the permit is in force the remuneration authorised to be paid to the employee by the permit shall, if those conditions are complied with, be deemed to be the statutory minimum remuneration.
- (2) Where an employer pursuant to any document purporting to be a permit granted under the preceding subsection authorising the employment of an employee at less than the statutory minimum remuneration employs any employee, then, if the employer has notified the Labour Officer in question that, relying on that document, he is employing or proposing to employ that employee at a specified remuneration, the document shall, notwithstanding that it is not or is no longer a valid permit relating to that employee, be deemed, subject to the terms thereof and as respects only any period after the notification, to be such a permit until notice to the contrary is received by the employer from the Labour Officer.

### 16. Employers not to receive premiums

- (1) Where an employee to whom a wages regulation order applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:
- Provided that nothing in this subsection shall apply to any such payment duly made in pursuance of any instrument of apprenticeship if such payment is made—
- (a) not later than four weeks after the commencement of the apprenticeship; or
  - (b) at any time with the approval of a wages council.
- (2) Any employer who contravenes this section commits an offence and on conviction is liable in respect of each offence to a fine of four hundred shillings and the court may, in addition to imposing a fine, order him to repay to the employee or other person by whom the payment was made the sum improperly received by way of premium.

### 17. Records and notices

- (1) The employer of any employees to whom a wages regulation order applies shall keep such records as are necessary in English and such other language as a Labour Officer may by permission in writing approve to show whether or not the provisions of this Part are being complied with as respects the said employees, and the records shall be retained by the employer for two years.
- (2) The employer of any employees shall exhibit in the prescribed manner in English and such other language as a Labour Officer may by permission in writing approve such notices as may be

prescribed for the purpose of informing the said employees of any wages regulation proposals or wage regulation order affecting them, and, if it is so prescribed, shall give notice in any other prescribed manner to the said employees of the said matters and of such other matter, if any, as may be prescribed.

- (3) An employer commits an offence if he fails to comply with any of the requirements of this section and on conviction is liable in respect of each offence to a fine not exceeding one hundred shillings, and to an additional fine of forty shillings for each day during which the omission continues after such conviction.

## **18. Criminal liability of agent and superior employer and special defence open to employer**

- (1) Where the immediate employer of any employee is himself in the employment of some other person and that employee is employed on the premises of that other person, that other person shall for the purposes of this Part be deemed to be the employer of that employee jointly with the immediate employer.
- (2) Where an employer is charged with an offence under this Part, he shall be entitled, on giving to the prosecution not less than three days' notice in writing of his intention, to have any other person to whose act or default he alleges that the offence in question was due, brought before the court at the time appointed for the hearing of the charge; and if, after the commission of the offence has been proved, the employer proves that the offence was due to the act or the default of that other person, that other person may be convicted of the offence, and, if the employer further proves that he has used all due diligence to secure that this Part and any relevant rule or order made are complied with, he shall be acquitted of the offence.
- (3) Where a defendant seeks to avail himself of the provisions of subsection (2) of this section—
  - (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him if he gives evidence and any witnesses called by him in support of his defence, and to call rebutting evidence;
  - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.
- (4) Where it appears to an officer acting for the purposes of this Part that an offence has been committed in respect of which proceedings might be taken under this Part against an employer, and the officer is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the employer could establish a defence under subsection (2) of this section, the officer may cause proceedings to be taken against the other person without first causing proceedings to be taken against the employer:

Provided that in any such proceedings the defendant may be charged with and, on proof that the offence was due to his act or default, be convicted of the offence with which the employer might have been charged.

## **19. Appointment of Labour Officers**

- (1) All officers appointed as Labour Officers under provisions of section 5 of the Employment Act<sup>5</sup> or any Act replacing the same, shall be deemed to be officers appointed to act for the purposes of this Act.
- (2) The Minister may appoint such other officers as he may deem necessary for carrying out the provisions of this Act.

- (3) Every officer acting under this Act shall be furnished by the Labour Commissioner with a certificate of his appointment or authority so to act and when so acting shall if so required by any person affected, produce the certificate to him:

Provided that any certificate of appointment issued under the provisions of the Employment Act<sup>4</sup> or any Act replacing the same, shall be deemed to be a certificate issued for the purposes of this Act.

## 20. Power of officers

- (1) An officer acting under this Act shall have power for the performance of his duties—
- (a) to require the production of wages sheets or other records of wages kept by an employer, and records of payments made to outworkers by persons giving out work, and any other such records as are required by this Part to be kept by employers, and to inspect and examine those sheets on records, and copy any material part;
  - (b) to require any person giving out work and any outworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or from whom the work is received, as the case may be, and with respect to the payments to be made for the work;
  - (c) at all reasonable times to enter any premises at which an employer to whom a wages regulation order applies carries on his business (including any place used, in connection with that business, for giving out work to outworkers and any premises which the officer has reasonable cause to believe to be used by or by arrangement with the employer to provide living accommodation for employees);
  - (d) to inspect and copy any material part of any list of outworkers kept by an employer or person giving out work to outworkers;
  - (e) to examine, with respect to any matters under this Part, any person whom he has reasonable cause to believe to be or to have been an employee to whom a wages regulation order applies or applied or the employer of any such person or a servant or agent of the employer employed in the employer's business and to require every such person so examined to give such information as may be necessary for the due carrying out of the provisions of this Act:

Provided that no person shall be required under paragraph (e) of this subsection to give any information tending to incriminate himself.

- (2) An officer acting under this Act may institute proceeding in a subordinate court for any offence thereunder and may conduct any such proceedings.
- (3) An officer acting under this Act shall not disclose any information obtained in the exercise of the powers conferred by this section without the consent of the employer concerned otherwise than in connection with the execution of this Act:

Provided that nothing in this subsection shall apply to a disclosure of any information made for the purpose of any criminal proceedings which may be taken by virtue of this Act or otherwise;

- (4) Any officer who contravenes the provisions of subsection (3) commits an offence and on conviction is liable to a fine not exceeding two thousand shillings.

## 21. Penalty for failing to allow inspection or hindering any officers

Any person who obstructs an officer acting under this Act in the exercise of any power conferred by this Act or refuses to comply with any requirement of such an officer made in the exercise of any such power, commits an offence and on conviction is liable to a fine not exceeding four hundred shillings.

## 22. **Penalty for false entries or records, producing false records or giving false information**

If any person makes or causes to be made or knowingly allows to be made any entry in a record required by this Part to be kept by employers, which he knows to be false in a material particular, or, for any purpose connected with this Part, produces or records furnishes, or causes or knowingly allows to be produced or furnished, any wages sheet, record, list or information which he knows to be false in a material particular, commits an offence and on conviction is liable to a fine not exceeding four hundred shillings or to imprisonment for a term not exceeding three months, or to both.

## 23. **Void agreement**

Any agreement which is in conflict with the provisions of this Part shall to the extent to which such conflict exists be deemed to be void.

## **Part V – Machinery for the improvement of relations between employers and employees (ss. 24-26)**

## 24. **Interpretation**

In this Part—

"**undertaking**" includes any agricultural, commercial, industrial or mining undertaking providing employment to which this Act applies;

"**staff committee**" means a body of persons representative both of the employer and the employees, set up by an employer in any undertaking after consultation with the employees with the object of—

- (a) giving the employees a wider interest in, and a greater responsibility for the conditions under which their duties are performed;
- (b) providing a recognised and direct channel of communication between the employees and the employer on all matters affecting their joint or several interests; and
- (c) promoting throughout the undertaking a spirit of co-operation in securing the efficiency of the undertaking and the contentment of the staff engaged therein.

## 25. **Assistance of Labour Commissioner and Labour Officers in forming staff committees**

The Labour Commissioner and any Labour Officer shall give such advice and assistance as may be required for the creation and establishment of staff committees in any undertaking to the circumstances of which staff committees would be appropriate, and for the encouragement of such staff committees when established.

## 26. **Notification of staff committees**

- (1) Every employer who establishes a staff committee shall report the fact to the Labour Commissioner through the Labour Officer of the area concerned and submit to him a copy of its constitution and rules.
- (2) Any alteration of the constitution or rules of the staff committee shall be notified to the Labour Commissioner.
- (3) Upon receipt of such information the Labour Commissioner shall enter particulars in a register to be kept by him for such purpose.

## Part VI – General provisions (ss. 27-29)

### 27. Rules

The Minister may make rules generally for the better carrying out of the objects or purposes of this Act, and without prejudice to the generality of the foregoing such rules may—

- (a) provide for the powers of a council and a board to enforce the attendance of witnesses and to take evidence on oath or otherwise on any matter concerned with the subject of an inquiry under this Act;
- (b) regulate the establishment, constitution and management of staff committees;
- (c) prescribe all matters which are authorised or required by this Act to be prescribed.

### 28. Expenses

Any expenses incurred in carrying this Act into operation shall be defrayed out of the Consolidated Fund of the United Republic of Tanzania.

### 29. Repeal

*[Repeals the Minimum Wages Ordinance.]*