



**INTERNATIONAL LABOUR ORGANIZATION**

**LAW GROWTH NEXUS II PROJECT**

**LABOUR LAWS AND THE DEVELOPMENT  
OF MICRO, SMALL AND MEDIUM  
ENTERPRISES**

**PARTICIPANTS HANDBOOK**

@2012

**LGN**  
Law Growth  
Nexus Project

Contributing to a more Enabling Policy  
Environment for SME Development



International  
Labour  
Organization

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## FOREWORD

The Law Growth Nexus II (**LGN II**) is a project of the International Labour Organization whose envisaged overall outcome is **more and better jobs in the MSMEs sector**.

The LGN II- Kenya is focused on MSMEs operating in the public transport sector whose large segment is in what is commonly known as “**matatu transport industry**”. The Law Growth Nexus II Project (LGN II-**Kenya**) is promoting the “win- win territory” where it is possible to reduce compliance costs for MSMEs and simultaneously improve social protection for workers in those enterprises. The LGN II- **Kenya** supports the uptake of, and exposure to Labour Laws in the MSMEs sector by making strategic contributions to a more enabling policy environment for MSMEs development in Kenya. The development of this handbook is part of this initiative.

This Handbook is an awareness resource pack on Labour Laws. It provides essential learning materials as well as help boxes and samples for quick reference and adoption. There are annexes which provides extra reference materials. The Handbook targets policy makers, legal and regulatory development and enforcement institutions, MSMEs workers and owners, and Business Development Service Providers.

The Handbook has been developed through a participatory approach whereby ILO tripartite partners, MSMEs representatives, matatu industry leaders and regulatory agencies were involved at every critical stage.

We wish to thank all those who provided support during the development of this manual. Special thanks goes to ILO Tripartite Partners, National Project Steering Committee and ILO project Team

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8. Grace Sebageni - LGN II Chief Technical Advisor
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**Eunice Mathenge**  
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## ACRONYMS

|         |   |
|---------|---|
| BDS     | Business Development Service                          |
| CDC     | Centre for Disease Control                            |
| CMA     | Capital Markets Authority                             |
| CS      | Communication Strategy                                |
| COTU    | Central Organization for Trade Union                  |
| DMSED   | Department for Micro and Small Enterprise Development |
| ETR     | Electronic Tax Register                               |
| FKE     | Federation of Kenya Employers                         |
| GDP     | Gross Domestic Product                                |
| HBC     | Home- Based Care                                      |
| HCC     | Harmonization and Coordination Committee              |
| HIV     | Human Immunodeficiency Virus                          |
| IDUs    | Injecting Drug Users                                  |
| ILO     | International Labour Organization                     |
| IRA     | Insurance Regulatory Authority                        |
| KNASP   | Kenya National AIDS Strategic Plan                    |
| KNFJKA  | Kenya National Federation of Jua Kali Association     |
| KRA     | Kenya Revenue Authority                               |
| MADCOWA | Matatu Drivers and Conductors Welfare Association     |
| MOA     | Matatu Owners Association                             |
| MoL     | Ministry of Labour                                    |
| MSMEs   | Micro and Small Enterprises                           |
| MSM     | Men who have Sex with Men                             |

|        |   |
|--------|---|
| MSMEs  | Micro Small and Medium Enterprises                              |
| MTCT   | Mother- to- Child Transmission                                  |
| MWA    | Matatu Welfare Association                                      |
| NACC   | National AIDS Control Council                                   |
| NACOSH | National Council for Occupational Safety and Health             |
| NHIF   | National Hospital Insurance Fund                                |
| NLLs   | New Labour Laws   |
| NSSF   | National Social Security Fund                                   |
| PEP    | Post Exposure Prophylaxis                                       |
| PLHIV  | People Living with HIV  |
| PLWAs  | People Living with AIDS   |
| PMTCT  | Prevention of Mother-to- Child Transmission                     |
| SME    | Small and Micro Enterprises                                     |
| STI    | Sexually Transmitted Infections                                 |
| TLB    | Transport Licensing Board                                       |
| UNAIDS | Joint United Nations Programme on HIV and AIDS                  |
| UNGASS | United Nations General Assembly Special Session on HIV and AIDS |
| UNFPA  | United Nations Fund For Population Activities                   |
| WHO    | World Health Organization                                       |

## INTRODUCTION

The development of the Participants' Handbook is part of the initiative being implemented by International Labour Organization's Law-Growth Nexus II Project (LGN II) whose envisaged overall outcome is” **more and better jobs in the MSMEs sector**”. Other immediate objectives of the project are:

- ◆ To nurture respect for the rule of (labour) law among MSMEs in priority sectors;
- ◆ To strengthen the capacity of ILO constituents to engage in social dialogue on the nexus between Labour Law compliance and MSMEs development,
- ◆ To facilitate sector-specific regulatory reform and more specifically for the matatu sector in Kenya, and
- ◆ To strengthen the capacity of MSMEs to comply with the revised Labour Law.

### PURPOSE OF THE HANDBOOK

- The handbook is most suitable for use by participants who have attended ILO's Labour Law Nexus training sessions. It is also a reference material for the training of trainers as well as participants
- Its broad objective is to enhance the capacity of the MSMEs to have a broader understanding of the Labour Laws and progressively create an enabling environment for compliance.
- Its main focus is to create awareness on the need for decent jobs from Matatu industry through innovative implementation strategies by legal and regulatory agencies.

### CONTENTS OF THE HANDBOOK

This Handbook has ten modules and in each module there are sub topics. The following are the modules:

- Module 1** Definitions of MSMEs, Labour laws and the Informal Economy
- Module 2** Impact of Constitution on MSMEs (emphasis on Bill of Rights)
- Module 3** Major aspects of Labour Laws highlighting the Core Labour Standards.
- Module 4** The Contribution of Labor Laws to the overall business environment that determines the job creation capabilities of enterprises.
- Module 5** Scope and coverage of labour Laws in Kenya to MSMEs.
- Module 6** Challenges in compliance of Labour Laws.
- Module 7** Incentives for MSMEs to formalize and comply with Labour Laws.
- Module 8** Implementation and enforcing Labour Laws in MSMEs
- Module 9** HIV and & AIDS and MSMEs- Matatu industry.
- Module 10** Country examples of the innovative practices in extending labour and labour related laws.

## MODULE 1

### DEFINITIONS OF MSMEs, LABOUR LAWS AND THE INFORMAL ECONOMY

#### 1.1. Introduction

The Micro, Small and Medium Enterprises (MSMEs) constitute an important foundation for the socio-economic transformation as envisaged in the *Kenya Vision 2030* (Republic of Kenya, 2011b). The significance of the MSME sector to Kenya's economic growth, employment creation, income generation and poverty reduction cannot be over emphasized. It contributes an estimated 18.4 per cent of the country's Gross Domestic Product (GDP) and employed 8.83 million workers or 80.6 per cent of the total employment in 2010 (Republic of Kenya, 2008). The sector is a seedbed for innovation and entrepreneurship, and constitutes a breeding ground for medium and large industries.

The transport and communications sector is critical in catalyzing and driving the social and economic transformation required for the attainment of Kenya's vision (Republic of Kenya, 2009). The sector is one of the most resilient and largest contributor to the country's GDP and employment. It accounted for about 10 per cent of the GDP, and provided 5.5 per cent and 3.1 per cent of the total formal and informal sector jobs in 2010, respectively (Republic of Kenya, 2011c).

Road transport constitutes an important component of the transport and communications sector. Road transport accounts for more than 50 per cent of the value of output in the transport and communications sector. The value of output of the road transport sub-sector increased from 50.2 per cent in 2006 to 55.9 per cent in 2010 (Republic of Kenya, 2011a). It also accounts for over 93 per cent of Kenya's domestic freight and passenger traffic (Republic of Kenya, 2009). Among the vehicles used in road transport are *matatus* and motor omni buses.

*Matatus* and motor omnibuses are at the core of road passenger and freight traffic in Kenya (Republic of Kenya, 2009; Ndungu, *et al.*, 2004). The significance of these modes of transport is manifested in the phenomenal increase in the number of Public Service Vehicle (PSV) licenses issued by the Transport Licensing Board (TLB) in respect of these categories of vehicles.

## 1.2. Definition of MSMEs

The biggest dilemma is to have one universally accepted definition. This is because there are different criteria used in defining MSME and they include:

- ☐ Number of workers is used as a criterion in applying working conditions related regulation
- ☐ Threshold in capital Investment
- ☐ Turnover is used to determine the tax bracket

### • Definition of MSMEs (the Kenyan Perspective)

| MSME Category                 | Employment | Turn Over    | Registered Capital                            |
|-------------------------------|------------|--------------|---|
| Micro                         | 1 – 10     | <500,000     | Manufacturing: < 10m<br>Service: < 5m         |
| Small                         | 11 – 49    | 500,000 – 5m | Manufacturing: 5m – 10m<br>Service: 5m - <20m |
| Medium                        | 50– 99     | > 5m         | > 20m   |
| <b>Source: MSE Bill, 2009</b> |            |              |   |

#### Note 1

**\*The number of workers remains a common denominator in the definitions of MSMEs worldwide. Labour Law application will continue to refer to number of workers as distinctive criterion for exemption.**

#### Note 2

**Definition: Labour Law** is a body of laws, administrative rulings, and precedents which address the legal rights of, and restrictions on working people and their organizations.

#### Note 3:

##### DEFINITION OF INFORMAL ECONOMY:

- a) Employment which is not formally recognised; workers in the informal economy generally have no contracts, no fixed hours of work and no employment benefits.
- b) A sector which encompasses all jobs which are not recognised as normal sources of income and on which taxes are not paid. Example: Hawkers, street traders, market traders.

**Note 4:** Informal economy can be a source of cheap labour as no allowance is needed for tax purpose. In Kenya much of the work done by women is in the informal sector and this includes activities such as petty trading, small scale agriculture and crafts.

**Note 5:** In Kenya, the MSMEs are defined as businesses in both formal and informal sectors, classified into farm and non-farm categories employing 1 – 99 workers. The definition based on employment is inhibitive as it does not directly relate to the turnover of the firm. Definition based on turnover may be ideal as it can reflect the ability of the firm to bear increased costs. In addition, most MSMEs are family owned and use family labour making it difficult to strictly enforce labour regulations

**Note 6** The MSMEs Bill 2009 defines MSMEs as follows:

A farm, trade, service, industry or business activity whose annual turnover does not exceed Kshs. 5 million and/or employing not more than 50 employees; and in the case of the manufacturing sector where the investment in plant and machinery or the registered capital does not exceed Kshs. 50 million; and in the service sector and farming enterprises where the investment in equipment or registered capital does not exceed Kshs. 20 million. The employment /turnover/registered capital capping is lower for Micro Enterprises than for Small Enterprises. Any business whose annual turnover is below Kshs. 500,000 is tax exempted (Kenya Revenue Authority)

**Note 7** Section 2 of the Traffic Act (Cap. 403), Laws of Kenya defines a *matatu*: as a public service vehicle with a seating capacity for not more than 25 passengers, excluding the driver. The Act also defines a motor omnibus as a public service vehicle with a seating accommodation for more than 25 passengers, excluding the driver. In this study, the *matatu* industry is taken to mean an industry where *matatus* and motor omni buses operate.

### 1.3. A Case for MSMEs and Matatu Sector

The matatu sector in Kenya is a dynamic sector with peculiar characteristics. Some of the characteristics are:

1. Dominant presence in both rural and urban areas.
2. Ownership ranging from individual and family to corporate.
3. Entry to business has no inhibitive restrictions -you can buy and operate the matatu as long you have a transport license from Transport Licensing Board.
4. Employment is male dominated and, therefore, does not comply with the principle of gender equity.
5. Dominant age of those employed in the sector is 24 - 40 years.
6. Jobs in the industry are precarious as the sector only attracts the youth who are pushed into it by the high levels of unemployment in the country.
7. Majority of the workers are drivers and conductors as each vehicle must have the two. Drivers are, however, the majority .
8. Education of employees in the sector varies with majority being primary and secondary school leavers.
9. Labour Laws are not currently enforced in the sector.
10. Both the employer's organization and worker's unions have not captured the sector in their membership hence collective bargaining instruments do not apply.
11. Casual and temporary contracts of service are the dominant forms of



engagement in the *matatu* industry due to the high risk nature of the business; high mortality rates of the enterprises; and preference of daily engagements by most of the industry employees. In relative terms, touts, managers, conductors and drivers bear the greatest burden of such form of engagement.

## Basic Facts on Matatu Industry in Kenya

Currently we have 94,000 PSV vehicles

1. 70,000 of this are Matatus (All capacities)
2. Owned by approximately 65,000 investors
3. 70,000 X 5pp = 350,000 employees ranging from drivers to conductors and other support staff
4. 70,000 x Kshs 3500 x 25 days x 12 months = Kshs. 73.5 Billion, estimated, annual turnover

The above scenario depicts the Matatu Sector as a sector that can be modeled to provide more decent and sustainable jobs. Selection of the sector as a pilot sector for the Kenya's Labour Law Nexus is based on the following criteria:

- Geographical coverage area – country wide
- There are very many small and medium enterprises in the sector
- There is part compliance with the law
- Existing regulations such as: “must get a TLB report”
- Has been a key sector of focus by the Government due to repeated cases of road accidents
- Has potential for employment creation if well managed e.g. currently it employs the owner, driver and conductor
- Have decent work deficit
- Currently is comprised of temporary jobs
- The sector has also some players who comply with the law and have well laid terms of engagement between employers and employees e.g. freight owners
- The sector is expanding very fast
- Existing partnerships with the sector include –TLB, Matatu Owners Association, SACCOs, Ministry of Roads and the traffic police
- Has large opportunity for gender growth once the sector is streamlined and sanity prevails

## MODULE 2

### CONSTITUTION AND IMPLICATION TO MSMEs

***Caution:*** This chapter only highlights essential Articles and sections of the Constitution that have direct implication on MSMEs labour practices. The entire Constitution is available for further reference.

#### Preamble:

We, the people of Kenya:-

**ACKNOWLEDGING** the supremacy of the Almighty God of Creation:

**HONOURING** those who heroically struggled to bring freedom and justice to our land:

**PROUD** of our ethnic, cultural and religious diversity, and determined to live in peace and unity as one indivisible sovereign nation:

**RESPECTFUL** of the environment, which is our heritage, and determined to sustain it for the benefit of future generation:

**COMMITTED** to nurturing and protecting the well-being of individual, family, communities and nation:

**RECOGNIZING** the aspirations of all Kenyans for a government based on the essential values of human rights, equality, freedom, democracy, social justice and rule of law:

**EXERCISING** our sovereign and inalienable right to determine form of governance of our country and having participated fully in the making of this Constitution:

**ADOPT, ENACT** and give this Constitution to ourselves and to the future generation

**GOD BLESS KENYA**

## 2.1. Supremacy of the Constitution, State and Religion

### **Article 2:** Supremacy of the Constitution:

- The Constitution is the supreme law of the country and is binding on all persons and state organs at both levels of government
- No person may claim or exercise State authority except as authorized under the Constitution
- The validity and legality of the Constitution cannot be challenged in any court or by any State organ
- The general rules of international law and treaties and conventions ratified by Kenya form part of the laws of Kenya

### **Article 8:** State and Religion:

- The Constitution does not provide for State religion.

## 2.2. National Values and Principles of Governance

**Article 10 (1)** – The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them-

- (a) Applies or interprets this Constitution;
- (b) Enacts, applies or interprets any laws; or
- (c) Makes or implements public policy decision.

**Article 10 (2)** – The national values and principles of governance include-

- (a) Patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of people;
- (b) Human dignity, equity, and social justice, inclusiveness, equality, human rights, non discrimination and protection of the marginalized;
- (c) Good governance, integrity, transparency and accountability; and
- (d) Sustainable development

## 2.3 BILL OF RIGHTS

## **Part 1- General Provisions relating to the Bill of Rights**

### **Article 19: Rights and Fundamental Freedoms**

- (1) The Bill of Rights is an integral part of the Kenya's democratic state and is the framework for social, economic, and cultural policies,
- (2) The purpose of the Bill Rights is:
  - to recognize and protect human rights and fundamental freedoms;
  - to preserve the dignity of individuals and communities; and
  - to promote social justice and the realization of the potential of all human beings.
- (3) The rights and fundamental freedoms in the Bill of Rights –
  - (a) belong to each individual and are not granted by the State;
  - (b) do not exclude other rights and fundamental freedoms not in the Bill of Rights, but recognized or conferred by law, except to the extent that they are inconsistent with this Chapter: and
  - (c) Are subject to the limitations contemplated in this Constitution.

### **Article 20: Application of Bills of Rights**

- (1) The Bill of Rights applies to all law and binds all state organs and all persons.
- (2) Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.

### **Article 21: Implementation of the Rights and Fundamental Freedoms**

- (1) It is the fundamental duty of the State and every State organs to observe, respect, protect, promote and fulfill the rights and fundamental freedoms in the Bill of Rights.
- (2) All State organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized

communities, and members of particular ethnic religious or cultural communities.

### **Article 22: Enforcement of the Bill of Rights**

- (1) Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened
- (2) In addition to the person acting in their own interest, court proceedings under clause (1) may be constituted by:-
  - a) a person acting on behalf of another person who cannot act in their own name;
  - b) a person acting as member of, or in the interest of , a group or class of persons;
  - c) a person acting in the public interest; or
  - d) an association acting in the interest of one or more of its members.

### **Article 23: Authority of Courts to uphold and enforce the Bill of Rights**

- a) The High Court has jurisdiction, in accordance with Article 165 (High Court) to hear and determine applications for redress of a denial, violation or infringement of or threat to rights or freedoms in the Bill of Rights.
- b) Parliament shall enact law to give jurisdiction to subordinate courts to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- c) Remedies are a declaration of rights, an injunction, a conservatory order, a declaration of invalidity, compensation and order of judicial review

### **Article 25: Fundamental Rights and Freedoms that may not be limited**

Despite any other provision in this Constitution, the following rights and fundamental freedoms shall not be limited:

- (a) Freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) Freedom from slavery or servitude;

- (c) Right to a fair trial; and
- (d) Right to an order of habeas corpus

### **Article 26: Right to Life**

- (1) Every person has the right to life
- (2) The life of a person begins at conception
- (3) A person shall not be deprived of life intentionally, except to the extent authorized by this Constitution or other written law

### **Article 27: Equality and Freedom from Discrimination**

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic and cultural and social spheres.
- (4) The state shall not discriminate directly or indirectly against any person on any grounds, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).

### **Article 28: Human Dignity**

Every person has inherent dignity and right to have that dignity respected and protected.

### **Article 36: Freedom of Association**

- (1) Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association.
- (2) A person shall not be compelled to join an association of any kind.
- (3) Any legislation that requires registration of an association of any kind shall

provide that:-

- i. Registration may not be withheld or withdrawn unreasonably; and
- ii. There shall be a right to have a fair hearing before a registration is cancelled.

#### **Article 41: Labour Relations**

- (1) Every person has a right to fair labour practices
- (2) Every worker has the right-
  - (a) to fair remuneration;
  - (b) to reasonable working conditions
  - (c) to form, join, or participate in the activities and programs of a trade union; and
  - (d) to go on strike.
- (3) Every employer has the right-
  - (a) to form and join an employers organisation; and
  - (b) to participate in the activities and programmes of an employers organisation.
- (4) Every trade union and every employers' organisation has the right-
  - (a) to determine its own administration, programmes and activities;
  - (b) to organize; and
  - (c) to form and join a federation.
- (5) Every trade union, employers' organization and employer has the right to engage in collective bargaining.

#### **Article 43: Economic and Social Rights**

- (1) Every person has a right:-
  - (a) to the highest attainable standard of health, which includes the right to health care services, including reproductive health care;
  - (b) to accessible and adequate housing, and to reasonable standard of sanitation;
  - (c) to be free from hunger, and have adequate food of acceptable quality;
  - (d) to clean and safe water in adequate quantities; and Education

## 2.4 Implications of the Constitution to MSMEs

**Note 1:** The preamble is part and parcel of the Constitution. This Constitutional commitment is to all Kenyans and to the future generation. It is a commitment to protect the well-being of individual, family, communities and nation. The matatu industry interfaces with Kenyans regardless of one's economic, political and social status. Actions that are deemed to contravene the Constitution are punishable

**Note 4:** The values automatically apply in the management of the Labour Relations Act. MSMEs, including the matatu industry players, are expected to comply with the Labour Relations Act, treat employees, customers and clients with human dignity, adhere to human rights standards and not to discriminate with respect to National Values. Technically and practically, National Values apply to all Kenyans including in and outside workplace. They are enforceable (Article 25B) against all persons, public officers and State officers

### **Note 5:**

**Article 23-** Authority of the courts to uphold and enforce the bill of rights  
A suit brought under the Bill of Rights may attract any of the remedies enumerated under article 23(3) including compensation- for instance on claims of unfair labour practice

The jurisdiction in labour and employment disputes may also be adjudicated by the Industrial Court (Employment and Labour Relations Court)

**Article 29-** Freedom and security of the person

Freedom includes the right not to be subjected to torture in any manner whether physical or psychological

**Section 76** of OSHA provides for ergonomics at the workplace which includes protection of employees against mental strain, manual handling of loads in excess of 50kg – has been entrenched in the Constitution

**Article 30-** Protection from slavery, servitude and forced labour

### **Implication:**

Slavery and servitude are amongst the rights that cannot be limited



Reinstatement as provided under section 12(6) of the Labour Institutions Act, 2007 and section 49(3) of the Employment Act, 2007 may be subjected to constitutional challenge in so far as it amounts to bondage of employer and worker

## **Article 41: Labour Relations**

### **Implication:**

Providing for fair labour practice to everyone implies that the right may be applied to natural persons, juristic persons including persons at the fringes of employment relationship (employer can also ask for fair labour practice, such as asking an employee who leaves without notice to pay salary)

Rights under Article 41 already provided for in the various labour legislation

Means the rights can be enforced as constitutional rights and freedoms attracting constitutional remedies such as judicial review, compensation, declaratory orders and nullification

The MSMEs, as business entities, operate within a constitutionally-determined legal environment. The very constitution demands that any and all citizens, including corporate and MSMEs citizens, be subject to the provisions of the Constitution and any other laws enacted based on the Constitution.

It is for this reason that all MSMEs are subjected to the instrument that governs the affairs of the nation. The Labour Laws, in particular, are applicable to and affect the operations of all enterprises, MSMEs included.

MSMEs would understand that by being compliant with the laws of the land, they would be major beneficiaries of the laws in areas to be specified by Government. Government is, therefore, expected to indicate to them the soft areas of benefit such as tax breaks, soft loans and so on.

## MODULE 3

# MAJOR ASPECTS OF LABOUR LAWS HIGHLIGHTING THE CORE LABOUR STANDARDS

### 3.1. Background on the Current Labour Laws

Through specialized committees and Task Forces, the country came up with the new Labour Laws in 2007 and gave them to Parliament for enactment and subsequently to the President for assent.

The principal object of the bills, which subsequently became law, was to repeal and replace the six core Labour Laws, that is; The Employment Act Cap. 226, The Regulation of Wages and Conditions of Employment Act Cap. 229, The Trade Disputes Act, Cap. 234, The Trade Unions Act Cap. 233, Workmen's Compensation Act Cap. 236 and The Factories and Other Places of Work Act Cap. 514.

### 3.2. Objectives of the New Labour Laws

The principal objective of enacting the current Labour Laws was to repeal previous Labour Laws in order to conform to the emerging needs of the nation in the area of labour relations and labour management in general.

The other intention was to renew the Labour Law system to conform with the International Labour Standards and other ILO Conventions to which Kenya is a signatory.

Overall the current laws go a great extent to support the necessary development in the country with the Vision 2030 in focus.

Therefore, the Kenya Labour Laws are now brought to conform to the current challenges and demands of national development and international labour standards.

### 3.3 Highlights of the New Labour Laws

The salient features of the current Labour Laws are as follows:

## 1. Employment Act No 11 2007

The Employment Act establishes the basic minimum terms and conditions of employment bringing into sharp focus issues covering employee probationary contracts, migrant workers, worst forms of child labour, employee dependants, forced or compulsory labour and Human Immuno-deficiency Virus and AIDS. This is the principle piece of legislation that governs the relationships between employers and employees.

**Part II** provides for general principles on:

- Prohibition against forced labour
- Discrimination in employment and
- Sexual harassment
- No discrimination - race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, and mental status or HIV status

**Part III** deals with major improvements from the old law in the following areas:

- Contract of service,
- Records keeping by employer
- Disciplinary rules and procedures
- Employers now required to issue written contracts for even short term

**Part IV** deals with payment to employees:

- The major changes in this part are that employer cannot deduct more than 2/3 of the salary of an employee
- All employees shall be entitled to itemized pay slip or salary statement

**Part V** provides for the basic conditions of a contract of service including:

- Hours of work
- Annual leave
- Maternity leave
- Sick leave
- Housing, water, food and medical attention.
- New provision on maternity leave – three months without forfeiture of annual leave
- Introduces paternity leave of fourteen days for new fathers

**Part VI** deals with termination and dismissal:

- Law provides for service pay for every year worked to an employee – terminated
- Further - the Minister may require an employer to insure his employees against the risk of redundancy.
- Employers required to give and justify reasons for termination of employment

- Law discourages unfair dismissals

**Part VII** regulates the engagement of children in employment:

- Prohibits the employment constituting any of the worst forms of child labour
- Also sets the minimum age and conditions of employment of a child

**Part VIII** deals with the protection of workers in the event of insolvency of an enterprise.

**Part IX** provides the requirements for an employer:

- To keep employment records for up to five years
- To have them available for inspection

**Part X** deals with employment management:

The employer required to notify the Director of Employment on existing vacancies, termination of employment including abolition of offices. This is expected to enhance employment policy in general and planning in particular.

**Part XI** outlines the requirements for a foreign contract of service

**Part XII** sets out the complaints procedure and jurisdiction in cases of disputes between the employee and employer.

**Part XIII** contains miscellaneous provisions.

The Employment Act is a pivotal law to all other Labour Laws as it sets pace to the application of all the others. The Act represents a major paradigm shift from the past law and especially in the area of conformity with the ILO Conventions and International Labour Standards.

## 2. Labour Institutions Act No. 12 2007

The principal object of the Labour Institutions Act is to establish institutions and relevant bodies for the administration and management of labour relations and provides for their functions, powers and duties.

The institutions include:

- The National Labour Board
- The Industrial Court (**The Industrial Court was hived off from this Act immediately the Industrial Court Act No 20 of 2011 was enacted**)
- Committee of Inquiry

- Labour Administration and Inspection
- The Wages Council and
- Employment Agencies

**Part I** deals with matters of general interpretation and application.

- The Act shall not apply to armed forces and, Kenya Police, the Prisons Service, Administration Police, Administration Police Force, and the National Youth Service.

**Part II** establishes the National Labour Board – to advise the Minister on all matters relating to workers, employers and labour relations in general and specific areas.

- The board - composed of members appointed by the Minister for Labour
- Members drawn from the most representative federation of trade unions and federation of employers' organizations, independent members and Government officials.

**Part III** of the Act establishes the Industrial Court with a principal judge and as many judges. **(Note: The entire sections is now under Industrial Court Act No. 20 of 2011)**

**Part IV** empowers the Minister for Labour to appoint a Committee of Inquiry to look into any matter that appears to him to be connected with or relevant to a trade dispute. This committee shall submit its recommendations to the Minister.

**Part V** provides for the offices of Commissioner for Labour, the Director of Employment, the Registrar of Trade Unions, etc for the administration of laws relating to labour and employment.

**Part VI** provides for establishment of the Wages Council to advise the Minister on fixing of minimum wages and terms of conditions of service for various sectors of the economy.

**Part VII** regulates the operations of the employment agencies - currently they are without formal control.

The Act requires that the Agencies be registered with the Director of Employment.

### 3. The Labour Relations Act No 14 2007

The Principal object of the Act is to provide a legal framework to promote freedom of association and the right to collective bargaining.

- It also streamlines the registration process of trade unions, employers' organizations and federations of trade unions and employers' organizations.
- It also promotes the expeditious and conclusive settlement of disputes.

**Part I** of the Act contains preliminary provisions, which include the general interpretation and application clauses.

**Part II** contains provisions for protection of the freedom of association of employees and employers

**Part III** provides for the establishment and registration of trade unions and employers' organizations.

- It sets out the procedure for application and registration, and
- The suspension and cancellation of registration of trade unions and employers' organizations.

**Part IV** stipulates who may become a member, official or officer of a trade union or employers' organization.

- It also provides the manner in which election of officials of a trade union or employers' organization shall be conducted.

**Part V** makes provision for the management of the property, funds and accounts of a trade union or employers' organisation.

**Part VI** provides for deduction of trade union dues and agency fees, as well as payment of employers' organization fees.

**Part VII** provides for recognition of trade unions and collective agreements by employers.

- It provides for the election of trade union representatives and also provides for officials of a trade union to access to employers premises without undue hindrance.
- In addition the Act provides for the process for registration of collective agreements as well as alternative dispute resolution mechanisms through independent conciliators agreed upon by the parties.

**Part VIII** deals with trade dispute resolution.

- It empowers the Minister to appoint conciliators to resolve disputes arising under the Act.
- The Minister is also empowered under this part to appoint a Committee of

Inquiry which reports back to the Minister.

**Part IX** makes provision for adjudication of trade disputes by the Industrial Court.

- The Act introduces mechanisms for urgent referral of cases to the Industrial Court on matters concerning recognition of trade unions, redundancy, strikes and lockouts, and disputes in essential services.

**Part X** provides for the management of strikes and lockouts.

- This includes the period of notice for strikes and lockouts and how the aggrieved party can obtain prohibition orders to avert a strike or lockout.

**Part XI** contains miscellaneous provisions.

#### 4. The Occupational Safety and Health Act No. 15 2007

The Act repealed the Factories and Other Places of Work Act (Cap. 514). It provides for the safety and health of workers in all workplaces in Kenya.

**Part I** provides for preliminary matters.

- Clause 3 extends the application of the Act to every workplace including offices, schools, academic institutions and plantations.
- Clause 4 establishes codes of practices for use at workplaces.

**Part II** specifies the general obligations placed on employers, employees, self-employed persons, designers and suppliers in order to achieve a safe workplace.

**Part III** contains the administrative aspects of the Act. Clause 27 establishes the National Council for Occupational Safety and Health.

- The Council will advise the Minister on occupational death and injuries and occupational diseases.

**Part IV** sets out the powers and duties of enforcement officers appointed under the Act.

- Clause 42 provides for workplace safety advisors who will carry out safety and health audits of a workplace.

**Part V** empowers the Minister to exempt some classes of workplaces from registration where the Minister is satisfied that adequate arrangements are in place to protect employees.



**Part VI** places a safety and health obligation on the occupier of a workplace. The occupier must ensure that a workplace is clean, not crowded, well lit and ventilated, has proper drainage and adequate provision for sanitary conveniences.

**Part VII** provides for the safe use of machinery and equipment. The part provides for safe construction, maintenance and testing.

**Part VIII** provides for general safety requirements including use of dangerous liquids, storage, ladders, fire preventing ergonomics and evacuation procedures in the event of an emergency in the workplace.

**Part IX** deals with the safe handling, storage and use of chemicals and hazardous substances in the workplace.

**Part X** makes provision for the basic welfare facilities at a workplace.

- These include clean drinking water, washing facilities, accommodation for clothing not used during working hours, sitting facilities and first aid.

**Part XI** requires an employer to issue a permit to work in hazardous work processes.

- Examples are the repair of electrical installations, confined spaces, maintenance and repair of steam boilers.
- The part provides for training and supervision of apprentices and indentured learners and inexperienced workers.
- It also provides for the supply of protective clothing and appliances and medical surveillance.

**Part XII** provides for safety in buildings that are let as separate workplaces.

- It also covers safety in dock work, wharves, quays and plants erected over water and other buildings where steam boilers, hoists and lifts are used.

**Part XIII** provides for offences, penalties and legal proceedings.

**Part XIV** empowers the Minister to make rules and regulations.

- This part also establishes the occupational safety and health fund.
- The part further provides for posting of an abstract of the Act, rules and notices in a prominent position at the workplace, and
- Also the keeping of a general register and annual return of employees by the employer.



## 5. The Work Injury Benefits Act No. 13 2007

This Act has introduced a legal framework which is compliant with **International Labour Organization Conventions** on the compensation of employees, ensures adequate compensation for employees who are injured at work or who contract work-related diseases and to extend insurance cover to all employees.

**Part II** provides for the obligation of employers to obtain an insurance policy to cover the employer's liability under the provision of the Act

**Part III** provides for an employee's right to compensation.

**Part IV** provides for the procedure of reporting accidents that occur during employment.

**Part V** provides for compensation for disablement and death.

**Part VI** provides for notification of occupational diseases and compensation for an employee who contracts an occupational disease.

- It also provides for the appointment of a multi sectoral advisory panel to advise the Director on matters relating to occupational diseases and compensation.

**Part VII** provides for medical aid to be provided by an employer. This includes first aid facilities, conveyance of an employee to and from a medical facility and payment of medical expenses.

**Part VIII** provides for appeals to the Industrial Court against the decisions of the Director. Disputes over compensation shall also be referred to the Industrial Court.

**Part IX** contains miscellaneous provisions such as providing for the Director of Occupational Safety and Health Services who will administer the Act.

**NOTE:** On 4<sup>th</sup> March 2009, Justice J.B. Ojwang' delivered his judgment in petition No. 185 of 2008 filed by the Law Society of Kenya against the Attorney General on behalf of the Minister for Labour. The Law Society of Kenya had petitioned the High Court for a declaration that the following sections of the Work Injury Benefits Act are unconstitutional: sections 4, 7(1), 10(4), 16, 23(1), 25(1), 52(1) and (2) and 58(2).

*After hearing the parties the Judge declared the following sections of the Work Injury Benefits Act, 2007 unconstitutional and therefore null and void ; sections 4, 7(1) and (2), 10(4), 16,21(1), 23(1), 25(1)and (3), 52(1)and (2) and 58(2).*

## **6. Industrial Court Act No. 20 of 2011**

(Note: The provisions of this Act were previously under the Labour Institutions Act No 12 of 2007 (Part III)

### **The Principal Objective**

- (1) The principal objective of this Act is to enable the Court to facilitate the just, expeditious and proportionate resolution of disputes governed by this Act
- (2) The Court shall in the exercise of its powers under this Act or the interpretation of the rights of individuals and parties, seek to give effect to the principle objective in subsection (1)
- (3) The parties and their representatives, as the case may be, shall assist the Court to further the principal objective and, to that effect, to participate in the proceedings of the Court and to comply with directions and orders of the Court

### **Part II — establishment and constitution of the court**

Provides for the establishment of the Court, compositions of the Court, qualifications of appointment of judges of the Court, tenure of office of judges of the Court, remuneration, officers of the Court, qualification of appointment of Registrar of the Court, functions of the Registrar of the Court

### **Part III—Jurisdiction of the Court**

- (a). Provides for the Jurisdiction of the Court whereby, the Court shall have exclusive original and appellate jurisdiction to hear and determine all disputes referred to it in accordance with Article 162(2) of the Constitution and the provisions of this Act or any other written law which extends jurisdiction to the Court relating to employment and labour relations including

(b). It also provides for disputes relating to or arising out of employment between an employer and an employee, disputes between an employer and a trade union, disputes between an employers' organisation and a trade unions organisation, disputes between trade unions, among others .....

(c) The Act provides for enforcement of court orders, the seal of the Court, alternative dispute resolution, review of orders of the Court, appellate jurisdiction

## **Part IV—Proceedings of the Court**

Provides for proceedings before the Court, general powers of the Court, quorum of the Court and representation before the Court

## **Part V—The Employment and Labour Relations Rules Committee**

Provides for establishment of the committee, composition of the committee, quorum for the committee, Secretary to the committee. Powers of the Chief Justice

## **Part VI— Miscellaneous Provisions**

Provides for Gender equity and equal opportunities, access to justice regulations repeal of Part III of No. 12 of 2007, transitional provisions, proceedings pending in the Industrial Court, existing contracts and regulations relating to employment and labour relations

### **3.4 ILO Core Conventions**

**( please see the Convention for other details)**

#### **1. C98. Right to Organise and Collective Bargaining Convention, 1949 ratified in 1964**

**Article 1.** Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment

**Article 2.** Workers' and Employers' organizations shall enjoy adequate protection against any acts of interference by each other or each other's agents or members in their establishment, functioning or administration

#### **2. C100. Equal Remuneration Convention, 1951 ratified in 2001**

**Article 1.** For the purpose of this Convention –  
The term “**remuneration**” includes the ordinary, basic or minimum wage or salary and any additional emoluments.... Payable by the employer to the worker.

The term “**equal remuneration**” for men and women workers for work of equal value refers to rates of remuneration established without discrimination based on sex.

### 3. C87. Freedom of Association and Protection of the Right to Organise

#### Convention, 1948 **not ratified yet**

##### Article 3

Workers' and employers' organizations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities to formulate their programmes.

##### Article 4

Workers' and employers' organizations shall not be liable to be dissolved or suspended by administrative authority.

##### Article 5

Workers' and employers' organizations shall have the right to establish and join federations and confederations.....

##### Article 7

The acquisition of legal personality by workers' and employers' organizations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

##### Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organizations, .... shall respect the law of the land.

##### Article 9

1. Application to the armed forces and the police shall be determined by the national laws or regulations.

### 4. C111 Discrimination (Employment and Occupation), 1958 **ratified in 2001**

#### Article 1.

1. For purposes of this Convention the term “**discrimination**” includes
  - (a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
  - (b) Such other discrimination which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

### 5. C29 Forced Labour Convention, 1930 **ratified in 1964**

(Also see: C105 Abolition of Forced Labour Convention, 1957) **ratified in 2001**

#### Article 2.

1. The term forced or “**compulsory labour**” shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.
2. The term “**forced or compulsory labour**” shall not include: –
  - (a) Any work or service exacted in virtue of compulsory military service laws for work of a purely military character;
  - (b) Any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country.
  - (c) Any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority
  - (d) Any work or service exacted in cases of emergency, in the event of war or a calamity or threatened calamity, such as fire, flood, famine, earthquake, and in general any circumstance that would endanger the existence or the wellbeing of the whole or part of the population;  
Minor community services... being performed by the members of the community in the direct interest of the said community-----.

## 6. C138 Minimum Age Convention, 1973 **ratified in 1979**

### Article 2.

Each Member which has specified a minimum age of 14 years.

### Article 3.

The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardize the health, safety or morals of young person's shall not be less than 18 years.

## 7. C182 Worst Forms of Child Labour Convention, 1999 **ratified in 2001**

### Article 3.

For the purposes of this Convention, the term “**the worst forms of child labour**” comprises: –

- All forms of slavery or practices similar to slavery
- The sale and trafficking of children
- Debt bondage and serfdom
- Forced or compulsory labour
- Forced or compulsory recruitment of children for use in armed conflict.

### 3.5 Other ILO Labour Standards/Conventions as covered in the Current Labour Laws

(Table 4.1- Other Labour Standards covered in the NLLs)

| Area                         | Legislation and Provision  | Contents of the Provisions   |
|------------------------------|--|--|
| Minimum wage                 | Sections 43-48 of the Labour Institutions Act No. 12 2007 and Section 4 (2) of the Act, which empowers the Minister for labour to exempt, upon recommendation by the National Labour Board and after taking into account all conventions and other international instruments ratified by Kenya, limited categories of employed persons from the provisions of the Act. | The Act establishes the Wages Council that is of tripartite nature. The council sets minimum wages and other other statutory terms and conditions of employment. The minimum wages are not uniform as they are dictated by sectors and location of employment. The monthly minimum wage for the agricultural sector ranged between Kshs. 2,536 and Ksh. 3,715 in 2008. In 2009, the agricultural minimum wages were increased by about 22%. Minimum wages of employees covered under the general order differ according to regions. In 2008, minimum wage workers in Nairobi, Mombasa and Kisumu were entitled to a monthly minimum wage ranging between Ksh. 5,195 and Ksh. 11,723; a range of Ksh. 4,792-11,031 for those in Municipalities and Ksh. 2,771-10,343 for employees in other urban areas. The minimum wages for these workers were increased by about 18% in 2009. |
| Overtime/working time limits | Employment Act No. 11 2007 part V Rights and Duties of Employment Section 27 (1) and (2)   | Working hours differs according to sectors but should not exceed 52 hours per week. Sectoral orders stipulate the statutory number of hours per week. Hours of work shall be regulated by the employer but employee is entitled to at least one rest day in every period of seven days. Overtime is voluntary and is paid at a rate of 1½ hours during normal working days and at double rates during rest days and public holidays.   |

|   |   |  |
|---|---|--|
| Annual leave  | Section 28 of the Employment Act No. 11 2007  | An employee is entitled to not less than twenty-one working days of leave with full pay. An employer may, with the consent of the employee divide the minimum annual leave entitlement under into different parts to be taken at different intervals, provided that one part of the parts agreed upon shall consist of at least two uninterrupted working weeks  |
| Social security (retirement, disability, death, sickness and health benefits) | National Social Security Fund Act (Cap. 258) and Work Injury Benefits Act No. 13 2007 | Membership to the National Social Security Fund (NSSF) is mandatory for all formal sector employers and employees. However, according to Legal notice 2009, the Minister has made it a requirement that all workers must be registered with NSSF. This therefore included MSMEs and self-employed Employees access their benefits/compensation in the event of normal retirement, death, disablement and upon leaving the country permanently. |
| Unemployment insurance  | Not provided for  | Not provided for   |
| Severance pay   | Section 40 of the Employment Act No. 11 2007  | One month's notice or one month's wages in lieu of notice is required for redundancy, and any leave days due should be paid in cash. Severance pay at the rate of not less than fifteen days pay for each completed year of service is applied.  |
| Workers' compensation   | Section 10 (1)- 20 of the Work Injury Benefits Act No. 13 2007                        | An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work. The employee is not entitled to compensation if an accident, not resulting in serious disablement or death, is caused by the deliberate and willful misconduct of the employee.  |
| Protection against unjust dismissal   | Sections 45 (1) and 46 of the Employment Act No 11 2007.                              | A termination of employment by an employer is unfair if the employer fails to prove that the reason for the termination is valid. Summary dismissal may apply if an employee is away without authorization, intoxicated, incapable of performing his/her work properly, willfully neglects to perform his/her work, using abusive and insulting language, among others   |
| Parental/family leave   | Section 29 (i) of the Employment Act No. 11 2007                                      | A female employee is entitled to three months maternity leave with full pay, without forfeiture of annual leave.<br>(2) On expiry of a female employee's maternity leave as provided in subsections (1) and (3), the female  |

|  |  |  |
|--|--|--|
|  |  | employee shall have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave. In addition, Section 29(8) of the Employment Act (2007) grants male employees a paternity leave of two weeks with full pay   |
| Collective bargaining and freedom of association | Sections 4 and 8 of the Labour Relations Act 14 2007 recognizes the right of workers to freedom of association while Sections 54, 57, 59 and 60 specifies the obligation of employers to recognize legitimate trade unions for purposes of collective bargaining | Every employee has a right to join and participate in the activities of the trade union of his/her choice. The unions have to confirm that they have in their membership at least a simple majority of the unionisable employees   |
| Anti-discrimination/equal employment opportunity | Section 5 of the Employment Act No 11 2007 and<br>Section 5 of the Labour Relations Act No. 14 2007  | Both Acts outlaw discrimination at the workplace. The statutes prohibits discrimination in employment and related matters, and outlines conditions which may not be deemed as discrimination. The Employment Act (2007) places the burden of proof on the employer accused of discriminatory tendencies. An employer who contravenes these provisions commits an offence and is liable for conviction under the statutes<br>Section 6 of the Employment Act outlaws Sexual harassment at workplace. Every employer with at least 20 employees must after consultation with the employees or their representatives, issue a policy statement on sexual harassment. Hitherto, there have been only the constitutional protections against discrimination. Now the employer is charged with the responsibility of eliminating discrimination on the grounds of race, colour, sex, tribe, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV. An employer is obliged to pay equal remuneration for work of equal value. |
| Prohibition on forced labour/child labour.       | Employment Act No. 11 2007   | Section 4 of the Employment Act (2007) prohibits forced labour and provides conditions which do not constitute forced labour. The Act defines forced labour as any work or service which is extracted from any person under the threat of any penalty, including the threat of loss of rights or privileges, is not offered voluntarily by the person doing the work or performing the service. Any person who violates the provisions is liable to a fine of up to Kshs. 500,000/- or imprisonment for a term not exceeding two years or both. Section 53 of the Employment Act (2007) prohibits worst forms of child labour. Under the Act, a child is defined as any person who has not attained the age of 18 years. Section 56 of the Act prohibits   |



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|  |   | employment of children between 13-16 years of age; Section 57 prohibits children from being engaged via written contracts and specifies a fine of at most Kshs. 100,000 and/or imprisonment for a term of at, most 6 months for violation; Section 58 disallows employment of children between 13-16 years to attend to machinery while Section 59 gives time restriction in employing a child. According to the Act, children are prohibited from working in an industrial undertaking between 6.30 pm and 6.30 am. This means that night work is prohibited for children  |
| Occupational Safety and Health Standards   | Sections 7-9 of the Occupational Safety and Health Act No. 15 2007. Every employer must be registered with the Occupational Safety and Health Services within the prescribed period and in the prescribed manner and also furnish him with prescribed particulars of the business. In changes in the particulars must be notified to the Director within 30 days. | Sections 6 of the Occupational Safety and Health Act (2007) require every occupier (employer) to ensure the safety, health and welfare at work of all persons working in his workplace. Every employer must, according to the Act (Section 7) prepare a safety and health policy statement and put in place a safety and health committee with representation from workers and management   |
| Advance notice and consultation (for large-scale lay-offs) placement after dismissal | Section 40 of the Employment Act No. 11 2007  | The Act provides for advance notice before being declared redundant and section 35 provides for notice of termination of employment while section 41 provides for notification and hearing before termination on grounds of gross misconduct<br>The notice of termination is to be explained orally if necessary to an employee in a language that the employee understands. Where an employee gives notice of termination of service and the employer waives the notice period or part of it thereof, the employer must pay to the employee the equivalent remuneration to the notice period unless otherwise agreed by the two parties. |
| Informing employees of their rights  | Section 15 of the Employment Act No. 11 2007  | There is a requirement for an employer to display in a conspicuous place a statement in the prescribed form of the rights of the employee under the Employment Act (2007). The employee may enforce these rights by filing a complaint with a labour officer or the Industrial Court. The Court may confirm, amend or substitute the particulars given in the statements required under this part.  |
| Protection of rights and entitlements on transfer of undertaking                     | Section 40 of the Employment Act No. 11 2007  | Provides for advance notice before being declared redundant and Section 35 provides for notice of termination of employment while section 41 provides for notification and hearing before termination on grounds of misconduct  |

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| Type of employment contract | Sections 7-15 of the Employment Act No. 11 2007 | <p>Employment contracts are defined and these contracts may be on regular, casual, fixed term and probationary basis.</p> <p>Employment contracts should be in writing and should include: name (employer and employee) age, permanent address, sex of employee, nature of job, date of commencement, contract period, working hours, remuneration and benefits</p> <p>Section 9 of the Act provides that a contract of service may be oral or written but if it is for 3 or more months or for specified work which would take working days equivalent to 3 months, it must be in writing. In the previous Employment Act (Cap.226, which is now repealed), the requirement was 6 months. It is still the duty of the employer to issue the contract letter. The employer now has the added duty to explain the terms of the contract to the employee, if he is illiterate, in a language that the employee understands. The contract is to be signed or thumb printed by the employee and witnessed by a person other than the employer.</p> |
| Definition of MSMEs         | Section 2 of MSMEs Bill (2009)                  | <p>Defines Micro and Small Enterprise as a farm, trade, service, industry or business activity whose annual turnover does not exceed Kshs. 5 million and/or employing not more than 50 employees; and in the case of the manufacturing sector where the investment in plant and machinery or the registered capital does not exceed Kshs. 50 million; and in the service sector and farming enterprises where the investment in equipment or registered capital does not exceed Kshs. 20 million. The employment /turnover/ registered capital capping is lower for Micro Enterprises than for Small Enterprises.</p>  |
| Sick Leave                  | Section 30 of Employment Act No 11 2007         | <p>An employee who has worked for an employer for at least two months is entitled to seven days sick leave with full pay and a further seven days sick leave with half pay in each period of twelve consecutive months of service. General order and other orders issued under the Regulation of Wages and Conditions of Employment Act with favourable terms to continue, however. This means that for all practical purposes the sick leave entitlement remains 30 days with full pay and 15 days with half pay every 12 months.</p>   |

Source: Labour Laws, and MSMEs Bill (2009)