

HUMAN RESOURCE DEVELOPMENT ACT

Act 27 of 2003 — 1 October 2003
(unless otherwise indicated)

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HUMAN RESOURCE DEVELOPMENT ACT

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Human Resource Development Act.

2. Interpretation

In this Act—

“Chairperson” means the Chairperson of the Council appointed under section 7;

“committee” means a committee established by the Council under section 12 and does not include a sectoral committee;

“Council” means the Human Resource Development Council established under section 3;

“Director” means the Director of the Council appointed under section 13;

“employee” –

- (a) means an employee of the Council other than the Director; but
- (b) does not include an employee referred to in section 18;

“Fund” means the National Training Fund set up pursuant to section 16;

“household worker” means a worker governed by the Domestic Workers (Remuneration Order) Regulations 1983;

“insured person” has the same meaning as in the National Pensions Act;

“levy” –

- (a) means the levy under section 18; and
- (b) includes the surcharge under section 19;

“member” means a member of the Council and includes the Chairperson;

“Minister” means the Minister to whom responsibility for the subject of human resource development is assigned;

“sectoral committee” means a committee established by the Council under section 11.

[S. 2 amended by s. 22 (a) of Act 9 of 2015 w.e.f. 14 May 2015.]

PART II – HUMAN RESOURCE DEVELOPMENT COUNCIL

3. Establishment of Council

(1) There is established for the purposes of this Act the Human Resource Development Council.

(2) The Council shall be a body corporate.

4. Objects of Council

The objects of the Council shall be to –

- (a) promote human resource development in line with national economic and social objectives;
- (b) stimulate a culture of training and lifelong learning at the individual, organisational and national levels for employability and increasing productivity; and

- (c) provide the necessary human resource thrust for successful transformation of the economy of the country into a Knowledge Economy.

5. Functions of Council

The functions of the Council shall be to—

- (a) advise the Minister on the formulation of human resource development policies and strategies;
- (b) establish linkages between the education and training systems and the workplace;
- (c) provide a forum for constant dialogue and consensus building among stakeholders on all matters relating to human resource development;
- (d) take appropriate measures to reduce the mismatch between demand and supply of human resource;
- (e) commission research in the field of human resource development;
- (f) encourage employers to invest in the training of their employees with a view to upgrading their skills and acquiring new skills;
- (g) initiate and monitor studies on the relevance and impact of training activities in relation to the socio-economic development of the country;
- (h) promote knowledge management and benchmarking at enterprise and national levels with a view to improving the effectiveness of human resource development;
- (i) identify and monitor the implementation of appropriate skills development and apprenticeship schemes and programmes;
- (j) monitor the participation of employers, employees, and job seekers in training schemes and programmes;
- (k) develop schemes for retraining and multi-skilling;
- (l) provide incentives for training institutions to acquire and upgrade their equipment and facilities;
- (m) manage the National Training Fund; and
- (n) perform such other functions as are necessary to further the objects of the Council.

6. Powers of Council

The Council may do such things as appear requisite and advantageous in furtherance of its objects and may, in particular—

- (a) acquire, hold and dispose of assets;

- (b) employ its funds to defray expenses in connection with the performance of its functions;
- (c) impose a training levy on employers;
- (d) charge or waive fees in respect of any services provided by the Council; and
- (e) receive grants-in-aid and donations.

7. Membership of Council

(1) The Council shall consist of—

- (a) a Chairperson, to be appointed by the Minister in consultation with the Mauritius Employers' Federation;
- (b) the Financial Secretary or his representative;
- (c) the Permanent Secretary of the Ministry;
- (d) the Permanent Secretary of the Ministry responsible for the subject of labour or his representative;
- (e) the Director of the Mauritius Institute of Training and Development;
- (f) 3 representatives of the key economic sectors, to be appointed by the Minister after consultation with the Mauritius Employers' Federation;
- (g) one representative of registered trade unions from the private sector, to be appointed by the Minister;
- (h) 2 persons having experience in the field of human resource development, to be appointed by the Minister.

(2) Every member of the Council, appointed under subsection (1) (a) and (f) to (h), shall hold office for a period of 2 years and shall be eligible for re-appointment.

(3) Every member shall be paid from the Fund such remuneration and allowances as the Minister may determine.

[S. 7 amended by s. 22 (b) of Act 9 of 2015 w.e.f. 14 May 2015.]

8. Meetings of Council

(1) The Council shall meet at least once every month and at such time and place as the Chairperson may direct.

(2) The Chairperson shall call a meeting of the Council within 7 days of the receipt of a written request for that purpose addressed to him by any 3 other members of the Council.

(3) Six members of the Council shall constitute a quorum.

(4) Subject to this Act, the Council shall regulate its meetings and proceedings in such manner as it may determine.

[S. 8 amended by s. 22 (c) of Act 9 of 2015 w.e.f. 14 May 2015.]

PART III – COMMITTEES

9. —

[S. 9 repealed by s. 22 (d) of Act 9 of 2015 w.e.f. 14 May 2015.]

10. —

[S. 10 repealed by s. 22 (d) of Act 9 of 2015 w.e.f. 14 May 2015.]

11. Sectoral committees

(1) The Council shall establish a sectoral committee for each of the following sectors—

- (a) agriculture;
- (b) financial services;
- (c) information and communication technology;
- (d) manufacturing;
- (e) public service;
- (f) tourism.

(2) Every sectoral committee shall—

- (a) serve as liaison between the Council and its sector;
- (b) advise the Council on emerging economic trends and relevant training needs in its sector.

(3) The Council shall appoint—

- (a) such person as it may determine to chair each sectoral committee;
- (b) as members of each sectoral committee, such number of persons having experience in each of the sectors specified in subsection (1), as it may determine.

(4) Every sectoral committee shall regulate its meetings and proceedings in such manner as it may determine.

[S. 11 amended by s. 22 (e) of Act 9 of 2015 w.e.f. 14 May 2015.]

12. Committees

(1) The Council may establish such other committees for such purpose as it may determine and it may co-opt persons who are not members of the Council to the committees.

(2) The Council may—

- (a) delegate any of its powers to a committee but shall not be divested of any power so delegated and may at any time withdraw the delegation;
- (b) amend or set aside the decision of a committee.

(3) Every committee established under this section shall regulate its meetings and proceedings in such manner as it may determine.

PART IV – ADMINISTRATION

13. The Director

(1) There shall be a Director who shall be the chief executive officer of the Council.

(2) The Director shall be appointed by the Council, with the approval of the Minister, on such terms and conditions as it may determine.

(3) The Director shall—

- (a) provide technical and professional support to the Council;
- (b) monitor and ensure the proper implementation of the programme of work of the Council;
- (c) prepare such papers, documents and studies as may be requested by the Council;
- (d) be responsible for the execution of the policy of the Council and for the carrying out, controlling and managing of the day-to-day business and activities of the Council;
- (e) carry out such other duties as may be entrusted to him by the Council.

(4) The Director shall—

- (a) attend every meeting of the Council and other committees; and
- (b) take part in the deliberations of the Council but shall not be entitled to vote on any matter before the Council.

[S. 13 amended by s. 22 (f) of Act 9 of 2015 w.e.f. 14 May 2015.]

14. Appointment of employees

(1) The Council may employ, on such terms and conditions as it may determine, such employees as may be necessary for the proper discharge of its functions.

(2) Every employee shall be under the administrative control of the Director.

15. Conditions of service of employees

The Council may, with the approval of the Minister, make provision to govern the conditions of service of employees and, in particular, to deal with—

- (a) the appointment, dismissal, discipline, pay and leave of, and the security to be given by, employees;
- (b) appeals by employees against dismissal or any other disciplinary measures; and
- (c) the establishment and maintenance of provident and pension fund schemes, and the contributions payable to, and the benefits recoverable from, those schemes.

16. National Training Fund

- (1) The Council shall set up a National Training Fund—
 - (a) into which all monies received from any source by the Council shall be paid; and
 - (b) out of which—
 - (i) all payments and grants required to be made by the Council shall be effected; and
 - (ii) shall be paid into the Consolidated Fund established under section 103 of the Constitution, such surplus money not required for the purpose of subparagraph (i) as the Council may determine.
- (2) There shall be paid into the Fund—
 - (a) all monies appropriated by the National Assembly for the realisation of the objects of the Council;
 - (b) all monies collected by way of training levy;
 - (c) duties or fees levied by the Council;
 - (d) grants and donations;
 - (e) contributions or royalties received by the Council;
 - (f) interest on investments; and
 - (g) any monies lawfully accruing to the Fund.

[S. 16 amended by s. 17 of Act 15 of 2006 w.e.f. 7 August 2006.]

17. Protection from liability

No civil liability shall lie against any member or officer of the Council for any act or omission except in so far as the act or omission complained of was done in bad faith.

PART V – TRAINING LEVY

(Part V came into operation on 16 August 2004.)

18. Imposition of levy

(1) Subject to section 18A, every employer shall, in respect of every employee, other than a household worker, who is an insured person, pay a training levy in accordance with subsection (2).

(2) The levy under subsection (1) shall be payable on the employee's total basic wage or salary, excluding overtime, bonuses and allowances, in respect of a month at the rate specified in the First Schedule.

- (3) The levy payable under this section shall—
 - (a) be paid monthly together with a return in such form as the Ministry may approve;

- (b) be paid at the end of the completed month and in any case—
 - (i) where the levy is paid electronically, not later than the end of the month following the end of the completed month; or
 - (ii) where the levy is paid other than electronically, not later than 20 days after the end of the completed month;
- (c) be paid at the Contributions Section of the Ministry together with the contributions payable under the National Pensions Act and the National Savings Fund Act;
- (d) be credited by the Ministry to a separate account to be kept by the Ministry;
- (e) with respect to the rate specified for the National Training Fund in the Second Schedule, be remitted by the Ministry to the Council at such intervals and subject to such terms and conditions as may be agreed upon between the Ministry and the Council;
- (f) with respect to the rate specified for the Workfare Programme Fund in the Second Schedule, be credited by the Ministry to the Workfare Programme Fund set up under section 45 of the Employment Rights Act.

(4) Payment of the levy under this section may be made and the return submitted electronically in such manner and through such computer system as may be approved by the Ministry.

(5) With effect from such date as may be notified in the Gazette, the Ministry may direct that any matter, act or thing referred to in subsection (3) shall be made, submitted or done electronically, unless otherwise authorised.

(6) For the purpose of this Part—

“employee” has the same meaning as in the National Pensions Act but does not include a person employed by a private secondary school or a charitable institution;

“Ministry” means the Ministry responsible for the subject of social security.

[S. 18 amended by s. 15 (1) (a) of Act 3 of 2007 w.e.f. 1 March 2007; s. 70 (2) (a) and (b) of Act 33 of 2008 w.e.f. 2 February 2009.]

18A. Joint liability of employer and job contractor in sugar industry

- (1) Where an employer has recourse to a job contractor—
 - (a) he shall forthwith give written notice thereof to the Minister and specify in the notice the name and address of the job contractor, the duration and value of the contract, and the nature of work or service to be performed;
 - (b) the employer and the job contractor shall be jointly and severally liable to pay the levy under section 18 in respect of every employee employed by the job contractor in the performance of the work or service specified in the contract.

(2) For the purpose of this section—

“employer” has the meaning assigned to it under section 33 of the Employment Rights Act;

“job contractor” means a person who employs an employee for the performance of any work or service which he has contracted to do or provide for an employer;

“Minister” means the Minister to whom responsibility for the subject of social security is assigned.

[S. 18A inserted by s. 15 (1) (b) of Act 3 of 2007 w.e.f. 1 March 2007; amended by s. 70 (2) (c) of Act 33 of 2008 w.e.f. 2 February 2009.]

19. Surcharge for late payment of levy

Without prejudice to any legal proceedings which may be instituted under this Act, where a person fails, within the prescribed time, to pay the levy under section 18, he shall be liable to pay, in addition to the levy, a surcharge of 5 per cent on the unpaid levy excluding the surcharge for each month or part of the month during which the levy remains unpaid, provided that the surcharge does not, in the aggregate, exceed 100 per cent of the amount of unpaid levy.

20. Records

(1) Every person shall, for the purpose of section 18, keep a record specifying, in respect of each employee, his national identity number, full name, occupation, the total basic wage or salary, the pay period and the levy paid in relation to him.

(2) The record referred to in subsection (1) shall be made available on demand by the Ministry for examination.

21. Claim for unpaid levy

Where the Ministry is satisfied that the levy paid by the employer is not the full amount of levy to be paid, the Ministry may, by written notice served on the employer, make a claim of the amount of levy which in its opinion ought to be payable by the employer, and that amount shall thereupon be the amount of levy due to be paid under sections 18 and 19.

22. Recovery of unpaid levy

The Ministry may, without prejudice to any legal proceedings which may be instituted under this Act, recover any unpaid levy in the same manner as income tax is recoverable under Part XI of the Income Tax Act.

23. Offences

Any person who contravenes any provision of sections 18, 19, 20 and 21 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

PART VI – MISCELLANEOUS

24. Powers of Minister

The Minister may give such directions of a general character to the Council, not inconsistent with this Act, as he considers necessary in the public interest, and the Council shall comply with those directions.

25. Execution of documents

Every deed, act or document relating to the Council shall be signed by the Chairperson and the Director on behalf of the Council.

26. Donations and exemptions

(1) Article 910 of the Code Civil Mauricien shall not apply to the Council.

(2) Notwithstanding any other enactment, the Council shall be exempt from the payment of any charge, duty, fee, rate or tax.

27. Accounts

(1) The Council shall, on or before 31 October in every year, submit to the Minister a report together with an audited statement of accounts on the operation of the Council in respect of the 12 months ending on 30 June of the same year.

(2) The report of the Council shall be laid before the National Assembly.

28. Regulations

(1) The Council may, with the approval of the Minister, make such regulations as it thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide—

(a) for the levying of fees and taking of charges; and

(b) that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding 12 months.

(3) The Minister may, by regulations, amend the Schedule.

29. —

30. Consequential amendment

(1) – (4) —

(5) The auditor to be appointed under section 5 (1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

31. —

FIRST SCHEDULE

[Section 18 (2)]

RATE OF LEVY

One and a half per cent

[First Sch., previously Sch., replaced by s. 70 (2) (d) of Act 33 of 2008 w.e.f. 2 February 2009.]

SECOND SCHEDULE

[Section 18 (3)]

Rate of levy

National Training Fund

One per cent

Workfare Programme Fund

Half per cent

[Second Sch. added by s. 70 (2) (d) of Act 33 of 2008 w.e.f. 2 February 2009; GN 4 of 2014 w.e.f. 1 January 2014.]
