

EMPLOYEES' COUNCILS ACT, NO.32 OF 1979

Acts
Nos. 32 of 1979,
5 of 1984.

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF EMPLOYEES' COUNCILS IN STATE UNDERTAKINGS AND TO SPECIFY THEIR FUNCTIONS. TO PROVIDE FOR EMPLOYEE PARTICIPATION IN GOVERNING BODIES OF SUCH UNDERTAKINGS, AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OF INCIDENTAL THERETO.

[15th June, 1979]

Short Title and
date of operation.

1. (1) This Act may be cited as the Employees' Councils Act, No.32 of 1979.

(2) The provisions of this Act shall come into operation on such date or dates as the Minister may time to time appoint by Order published in the *Gazette**. Different dates may be appointed by the Minister for the coming into operation of different Parts of this Act.

Application of
this Act.

2. (1) The Minister may, by Order published in the Gazette declare that the provisions of this Act shall apply to every State undertaking belonging to any such class or category of State undertaking specified in the Order.

(2) Every State undertaking to which the provisions of this Act applies by virtue of an Order made under subsection (1) is hereinafter referred to as a "specified undertaking".

PART I

PRELIMINARY

Administration of
this Act.

3. (1) The Commissioner of Labour (hereinafter referred to as the "Commissioner") shall, unless otherwise provided for in this Act, be in charge of the general administration of this Act.

(2) There may be appointed such number of Deputy Commissioners, Senior Assistant Commissioners and Assistant Commissioners of Labour, and other officers as may be required for the purposes of carrying out or giving effect to the provisions of this Act.

(3) Every Deputy Commissioner, Senior Assistant Commissioner, and Assistant Commissioner of Labour shall in the exercise, discharge and performance of his powers, functions and duties be subject to any general or special directions of the Commissioner.

This Act shall be in
addition to and
not in derogation
of any other law.

4. The provisions of this Act shall be in addition to and not in derogation of the provisions of the Trade Unions Ordinance or of any other written law relating to employers or employees.

Agreements contrary
to the provisions
of this Act to be
null and void.

5. Any agreement, whether oral or in writing, or whether expressed or implied, whereby any right conferred on an employee by this Act is in any way affected or modified to his disadvantage or whereby any liability imposed on an employer by this Act is in any way removed or reduced shall be null and void in so far as it affects or modifies such right or removes or reduces such liability.

* *Gazette* No. 40 of 8th June, 1979.

PART II

ESTABLISHMENT OF EMPLOYEES'
COUNCILS

Establishment
of Employees'
Councils.

6. Subject to the provisions of this Part, there shall be established an Employees' Council (hereinafter referred to as the "Council") in every specified undertaking, within six months of the date on which the provisions of this Act commence to apply to such undertaking.

Constitution
of first
Electoral Board.

7. (1) In respect of every specified undertaking, the Commissioner shall appoint the first Electoral Board which shall consist of five members of whom two shall be eligible employees of the undertaking. The Commissioner shall appoint one member to be the Chairman of the Board.

(2) The first Electoral Board of a specified undertaking shall be constituted within six weeks of the date on which the provisions of this Act commence to apply to such undertaking.

Commissioner
to appoint
Electoral Board.
[§ 2, 5 of 1984]

8. The Commissioner shall, subject to the provisions of subsection (4) of section 15, appoint an Electoral Board not less than two months before the expiry of the term of such Council and such Electoral Board shall consist of five eligible employees of whom one shall be appointed to be the Chairman of such Electoral Board.

Eligibility of
employees to be
elected and to
vote at elections of
the Council.

9. Every eligible employee in any specified undertaking shall be entitled to be elected to and to vote at elections for membership of the Council established in such undertaking.

Number of
members consisting
a Council.

10. The Council of a specified undertaking shall consist of such number of members according to the number of eligible employees regularly employed in such undertaking, determined as follows:-

- (a) where the number of eligible employees does not exceed fifty the Council shall consist of three members;
- (b) where the number of eligible employees exceeds fifty but does not exceed one hundred and fifty the Council shall consist of five members;
- (c) where the number of eligible employees exceeds one hundred and fifty but does not exceed three hundred the Council shall consist of seven members;
- (d) where the number of eligible employees exceeds three hundred but does not exceed six hundred the Council shall consist of nine members;
- (e) where the number of eligible employees exceeds six hundred but does not exceed one thousand the Council shall consist of eleven members; and
- (f) where the number of eligible employees exceeds one thousand the Council shall consist of eighteen members.

Mode of election
of members
of the Council.

11. Every member of a Council shall be elected by secret ballot by the eligible employees of the specified undertaking.

Power of Minister
to make rules.

12. (1) The Minister may make rules in respect of the following matters:-

- (a) the manner and procedure of elections of members of Employees' Councils;
- (b) the representation of different categories of employees on a Council;
- (c) representation of sections or branches of an undertaking on a Council established in respect of such undertaking; and
- (d) any matter incidental to or connected with any of the matters aforesaid.

(2) The rules made by the Minister shall be binding on the employees, employer and Council of every specified undertaking.

Functions of
the Electoral
Board.

13. (1) The Electoral Board shall perform all acts and do all things as may be necessary for the purpose of conducting the election of the members of the Council.

(2) Without prejudice to the generality of the powers conferred by subsection (1), the Electoral Board shall -

(a) explain to the employees in the specified undertaking the purpose and effect of the provisions contained in this Act and the nature and functions of the Council;

(b) call for and receive nominations of candidates for election to membership of the Council;

(c) arrange, hold and supervise the elections of the members of the Council.

[§3, 5 of 1984]

(3) If the Electoral Board fails to carry out its functions within a period of two months from the appointment of such Electoral Board, the Commissioner shall carry out such functions and the provisions of this Act shall apply as though a reference to the Electoral Board were a reference to the Commissioner.

Commissioner to
decide branch or
section of an
undertaking, &c.

14. Where any question arises as to whether an undertaking is a branch or section of a specified undertaking for the purpose of the establishment of a Council or as to whether an employee is an eligible employee or not, such question shall be decided by the Commissioner whose decision thereon shall be final.

Election petitions.

15. (1) Any three or more eligible employees shall be entitled to petition the Commissioner against an election result, within fourteen days of the announcement of such result, if it appears to them that in the conduct of such election, there has been an infringement of any rule relating to the eligibility to vote or of any provision, relating to the electoral procedure.

(2) Where the Commissioner is satisfied after such inquiry as he considers necessary that there has been an infringement of any rule relating to the eligibility to vote or of any provision relating to the electoral procedure he shall set aside the election unless he is of opinion that such infringement would not have altered or affected the result of such election.

(3) The decision of the Commissioner on such petition shall be final.

[§4, 5 of 1984]

(4) Where the Commissioner sets aside the election under subsection (2) he shall without delay, appoint an Electoral Board for the purpose of conducting the election of a new Council, in that specific undertaking.

Election offences.

16. Every person who -

(a) obstructs the conduct of the election of the members of a Council;

(b) restricts the right of an eligible employee to vote at the election stand for election;

(c) attempts to influence an election by imposing or threatening to impose any disadvantage or disability on any eligible employee;

(d) attempts to influence an election by granting or promising any advantage or benefit to any eligible employee,

shall be guilty of an offence.

Cost of election.

17. The cost of the election of members of a Council shall be borne by the specified undertaking.

Duty of employers to grant leave without loss of pay to enable employees to vote.

18. Any person, being the employer of any other person who is entitled to vote at any election of the member of a Council or who is a candidate at any such election, or who being a member of an Electoral Board is called upon to perform any duty as a member of an Electoral Board, shall, upon application in writing in that behalf made by such other person, grant such other person leave, without loss of pay for such period of time as may be required for any one of the aforesaid purposes.

Term of office of Council.

19. The term of office of a Council shall unless it is earlier terminated under section 20 be two years.

Where term of office is terminated earlier.

20. (1) The term of office of a Council shall terminate -

- (a) if at any time after the lapse of one year from the date of commencement of the term of office of that Council the number of eligible employees regularly employed in the specified undertaking is found to have been increased or decreased by one-half;
- (b) if the majority of the members of the Council, including those not present, decide that the term of office of the Council shall be terminated;
- (c) if the Council is dissolved by the Commissioner in accordance with the provisions of this Act.

(2) Where the term of office of a Council ceases in the circumstances referred to paragraph (b) or paragraph (c) of subsection (1), such Council shall continue to deal with all current business until a new Council is elected.

Dissolution of Council by the Commissioner.

21. (1) The Commissioner may order the dissolution of a Council where he is satisfied after such inquiry as he may consider necessary that there has been gross negligence in the exercise of its statutory duties on the part of that Council.

(2) Where a Council is dissolved as provided in subsection (1), the Commissioner shall without delay appoint an Electoral Board for the purpose of conducting the election of the members of the Council in that specified undertaking.

Commissioner may remove any member of the Council.

22. The Commissioner may on receipt of a memorandum signed by not less than two-thirds of the members of a Council or by not less than one-half of the eligible employees of a specified undertaking alleging that any member of the Council is guilty of gross negligence in the exercise of his statutory duties, order the removal of such member from office.

Termination of membership.

23. The term of office of a member of the Council shall terminate on the expiry of the term of office of the Council, or on the resignation of such member, or on such member ceasing to be an eligible employee of the specified undertaking or an order of the Commissioner under section 21 or section 22.

Filling vacancies.

24. (1) Whenever the membership of any member of the Council is terminated, otherwise than on the expiry of the term of office of such Council, the Commissioner shall appoint an Electoral Board which shall within six weeks of such termination, take necessary action for the election of a member to fill such vacancy and the provisions of this Act relating to the election of the members of a Council shall, *mutatis mutandis*, apply to the election of such member.

(2) If the Electoral Board fails to carry out its functions within a period of six weeks, the Commissioner shall carry out its functions and the provisions of this Act shall apply to such election as though the reference to the Council were a reference to the Commissioner.

PART III

**CONDUCT OF BUSINESS OF EMPLOYEES'
COUNCILS**

Chairman and
Vice-Chairman of
the Council.

25. (1) The Council shall elect two of its members as Chairman and Vice-Chairman, respectively.

(2) Where the Councils is composed of representative of more than one category of employees, the Chairman and Vice-Chairman shall not be elected from the same category of employees.

(3) Unless otherwise decided by the Council the Chairman or if he is unable to act, the Vice-Chairman shall be entitled to represent the views of the Council.

Meeting of the
Council.

26. (1) Not later than one week after the election of the Council, the Electoral Board shall convene a meeting of the members of the Council for the elections under section 25.

(2) All subsequent meetings of the Council shall be convened by the Chairman of the Council.

(3) The Chairman shall draw up the agenda and conduct the proceedings of the Council. The Chairman shall give seven days' notice of the meetings of the Council to the members and inform the members of the agenda of such meetings.

(4) At the request of one-fourth of the members of the Council or of the employer the Chairman shall convene a meeting of the Council and place on its agenda the matter on which a discussion has been requested.

(5) The employer shall be invited to be present at the meetings which are convened at his request.

Decisions of
meetings of the
Council.

27. (1) The decision of the Council shall be the majority decision of the members present and voting.

(2) In the event of an equality of votes the Chairman shall have a casting vote.

(3) One-half of the members of the Council shall constitute a quorum for a meeting of the Council.

Minutes of
meetings.

28. (1) Minutes shall be kept of all proceedings at meetings of the Council giving the text of all decisions taken and the voting thereon. The minutes shall be signed by the Chairman and one other member. There shall be attached to the minutes a list of the members present signed by each such member.

(2) Where the employer is present at a meeting, that portion of the minutes which concern him shall be presented for his signature and a copy thereof shall be given to him.

Postponement of
decisions.

29. (1) If a majority of the representatives of any one category of employees are of the opinion that any decision of the Council considerably prejudices the interests of the employees whom they represent, a decision shall, at their request, be postponed for a period of one week so that an attempt may be made to reach an agreement.

(2) Not more than one postponement may be granted in respect of any such decision.

Standing Orders.

30. (1) Subject to the provisions of this Part, the Council may make Standing Orders in respect of the conduct of its business.

(2) Such Standing Orders shall take effect upon the approval of the Commissioner.

No extra remuneration for member of the Council.

31. No member of the Council shall be entitled to be paid any remuneration or allowance in respect of his functions as such member.

Duty of employers to grant leave to member of Councils.

32. (1) Every employee who is a member of the Council of a specified undertaking shall be granted leave by his employer, without less of pay for such periods as may be reasonably necessary for the due discharge and performance of his functions and duties as such member.

(2) The Council or its representatives may by prior appointment, consult the employer on any matter relating to the affairs of the Council during working hours.

(3) Any expense incurred by the Council of any specified undertaking in the discharge and performance of its functions and duties shall be defrayed by the employer.

(4) The employer shall provide the necessary premises and facilities for conducting the affairs of the Council.

Publication of report of Council activities.

33. (1) The Council shall publish a report of its activities once in every three months.

(2) A copy of each such report shall be furnished to the employer.

PART IV

OBJECTS AND FUNCTIONS OF EMPLOYEES' COUNCILS

Object of the Council.

34. The objects of the Council shall be -

- (a) the promotion and maintenance of effective participation of employees in the affairs of the specified undertaking;
- (b) the securing of the mutual co-operation of the employees and employer in achieving industrial peace and greater efficiency and productivity in the specified undertaking and with regard to matters connected therewith; and
- (c) the carrying out of such other matters as may be prescribed by the Minister by regulation.

Relationship between employee and the Council.

35. (1) It shall be the duty of the employer and the Council to work together in a spirit of mutual trust for the good of the specified undertaking and its employees, having due regard to the interest of the community.

(2) The employer and the Council shall secure that every person employed in the specified undertaking is treated with fairness in accordance with the principal of law.

(3) The employer and the Council shall refrain from doing anything likely to impair the efficiency and productivity of the specified undertaking.

Duties of the Council.

36. The general duties of the Council shall include the following:-

- (a) making recommendations to the employer on matters benefiting the specified undertaking and the employees; and
- (b) securing that effect is given to any written law affecting employees.

Council entitled to receive certain information.

37. The Council shall be entitled to receive information from the employer and advice from any person employed in the specified undertaking, on the following matters relating to such undertaking:-

- (a) methods of manufacture and work of a general nature;
- (b) the statement of financial accounts of the undertaking; and
- (c) other matters in respect of which the Council is entitled to the right of consultation under the provisions of this Act:

Provided that the Council shall not be entitled to any information and advice the furnishing of which is prejudicial to the business or other interests of the undertaking.

Meeting of employer and Council.

38. (1) The employer and the Council shall meet once in each month.

(2) The employer may nominate not more than five persons to represent him at such meetings.

(3) The employer and the Council shall discuss every disputed matter including any alleged contravention of the provisions of this Act, with a view to settlement.

(4) Any settlement of a disputed matter between the employer and the Council shall be binding on the employer, the Council and the employees in the specified undertaking.

Proceedings before Commissioner.

39. (1) Where a dispute is not settled between the Employees' Council and the employer, the employer or the Employees' Council may refer the dispute to the Commissioner for settlement.

(2) The employer, the Council and any trade union acting on behalf of its member, shall be entitled to participate in proceedings before the Commissioner of Labour.

Settlement before the Commissioner binding.

40. A settlement before the Commissioner shall be binding on the employer, the Council and the employees in the specified undertaking.

Council or a member of the council not to interfere in the management of the undertaking.

41. The Council or a member thereof shall not interfere by any unilateral action in the management of the specified undertaking.

Obstructing or hindering a member of the Council an offence.

42 (1) No person shall obstruct or hinder a member of the Council in the discharge of his functions.

(2) Any person who obstructs or hinders a member in the execution of his functions shall be guilty of an offence under this Act.

Member of the Council not to be prejudiced or favoured.

43. A member of the Council shall not be prejudiced or favoured by the employer by reason of any act or thing done in the exercise of his functions as such member.

Rights of the Council in respect of accident risks, & c.

44. The Council shall have the right -

- (a) to advise and assist the employer to take adequate steps to -
 - (i) prevent the occurrence of accidents by providing safety measures, and
 - (ii) eliminate any health hazards, on the premises of the specified undertaking;
- (b) to provide information and advice to Government departments and other institutions on such matters as may be referred to the Council for advice; and

(c) to promote the implementation of all such measures as may be necessary to prevent industrial accidents.

Right of consultation vested in the Council.

45. (1) The Council shall have the right of consultation with the employer in the following matters relating to the specified undertaking in so far as they are not determined by any written law:-

- (a) the hours of work, the preparation of the roster of shift workers, and intervals for meals and rest;
- (b) the time and place for payment of wages and other remuneration;
- (c) the preparation of the annual leave schedule;
- (d) the carrying out of vocational training;
- (e) the administration of welfare, recreational and social activities;
- (f) matters relating to the maintenance of order and discipline and the conduct of employees;
- (g) matters regarding transfers and dismissals of eligible employees;
- (h) matters concerning safety and occupational hazards.

(2) (a) The assignment of an employee to perform work of a different nature in the same undertaking without any change in the terms and conditions of his employment shall be deemed not to be a transfer unless such assignment places him in a less favourable position.

(b) In the case of employees who, by reason of the nature of their employment or rank, do not perform their duties at any one place, the change of the place where the work is to be performed shall be deemed not to be a transfer within the meaning of this section.

PART V

REPRESENTATION OF GOVERNING BODIES

Regulations to be made for election of employees of specified undertakings to governing bodies.

46. Regulations may be made providing for the appointment or election of employees of specified undertakings to governing bodies, the duration of office of, and terms and conditions applicable to, such employees and in respect of matters connected with or incidental to the matters aforesaid.

PART VI

GENERAL

Commissioner or officer authorized by him to issue directions to employer.

47. The Commissioner or any officer nominated by him may direct an employer to furnish to the Commissioner or such officer before a date specified in the direction -

- (a) a return containing such particulars in respect of all or any of the employees of that employer as may be specified in the direction;
- (b) such information or explanation in respect of any particulars stated in any return furnished by that employer as may be specified in the direction; and
- (c) a true copy of any register required by this Act to be kept by that employer or any part of such register.

Offences and penalties.

48. Every person who -

- (a) contravenes or fails to comply with any of the provisions of this Act; or
- (b) makes default in complying with any direction or order made or given under this Act; or
- (c) knowingly furnishes or causes to be furnished any false return, or information required to be furnished under section 47,

shall be guilty of an offence and shall on conviction before a Magistrate be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment.

Penalty for offence for which no penalty is prescribed.

49. Every person guilty of an offence under this Act for which no penalty is prescribed shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a period not exceeding one year or to both such fine and imprisonment.

Liability of certain persons in respect of offences committed by bodies corporate or unincorporate.

50. In the case of any offence under this Act committed by a body of persons -

- (a) where the body of persons is a body corporate, every director and officer of that body corporate;
- (b) where the body of persons is a firm, every partner of that firm;
- (c) where the body of persons is an unincorporated body, the president, manager, secretary and every other officer of that unincorporated body,

shall be deemed to be guilty of the offence.

Protection for members of Employees' Councils against victimization by employers.

51. No employer shall do any act prejudicial to any employee who is a member of the Employees' Council, based on his status or activities as a member of the Employees' Council, in so far as such employee acts in conformity with the provisions of this Act.

No prosecution for offence without sanction of Commissioner.

52. No prosecution for an offence under this Act shall be instituted except by or with the written sanction of the Commissioner.

Prosecution no bar to civil action.

53. No prosecution instituted under this Act against any person for any offence under this Act shall be a bar to any civil action brought against such person in respect of any matter arising out of this Act.

Regulations.

54. (1) The Minister may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations in respect of matters which are stated or required by this Act to be prescribed or authorized to be made.

(3) Every regulation made by the Minister under this Act shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(4) Every regulation made by the Minister shall, as soon as convenient after the date of its publication, be brought before Parliament for approval. Any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval but without prejudice to anything previously done thereunder.

(5) Notification of the date on which any regulation made by the Minister is deemed to be rescinded shall be published in the Gazette.

Interpretation.

55. In this Act, unless the context otherwise requires -

“casual employee” means any employee employed by an employer to perform work of a casual nature on not more than one hundred and eighty days in any year in the aggregate;

“Commissioner” means the person for the time being holding the office of the Commissioner of Labour and includes -

(a) any person for the time being holding the office of Deputy or Senior Assistant Commissioner or Assistant Commissioner of Labour;

(b) in respect of any power, duty or function of the Commissioner under this Act, any person authorized in writing by the Commissioner to exercise such power, perform such duty or discharge such function;

“disputed matter” includes any industrial dispute;

“eligible employee” means any employee other than a casual employee or a temporary employee or an employee employed in a managerial or supervisory capacity;

“employer” means any person who employs or on whose behalf any other person employs any employee and includes a body of employers (whether such body is corporate or unincorporate) and any person who on behalf of any other person employs any employee;

“governing body” used with reference to a specified undertaking means the board of directors of that undertaking or other body of persons, by whatever name called, having control over the management and administration of that undertaking;

“industrial dispute” means any dispute or difference between an employer and an employee or between employers and employees connected with the employment or non-employment, or the terms of employment or with conditions of labour or the termination of employment or the reinstatement in employment of any person;

“public corporation” means any corporation, board or other body which was or is established under any written law, other than the Companies Ordinance,* with funds or capital wholly or partly provided by the Government by way of grant, loan or otherwise;

“salary” means remuneration earned by an employee in accordance with the terms and conditions of his employment and includes any cost of living allowance or special living allowance but does not include any bonus or payment in respect of overtime;

“State undertaking” means any public corporation or any business undertaking vested in the Government under any written law or any branch or section of such corporation or business undertaking;

“temporary employees” means any employee employed temporarily by an employer to perform work of a temporary nature on not more than one hundred and eighty days in any year in the aggregate.

* Repealed by Companies Act, No.17 of 1982. Act, No. 17 of 1982 repealed by Act, No. 7 of 2007.