LABOUR LAWS
Simplified Popular Version for the Micro, Small and Medium Enterprises in Kenya

Contributing to a More Enabling Policy Environment for MSME Development

Law Growth Nexus Project
SIMPLIFIED POPULAR VERSION OF LABOUR LAWS FOR MSME’s

Contributing to a More Enabling Policy Environment for MSME Development
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In 2002, the 90th Session of The International Labour Conference concluded that growth of the informal economy could be traced to inappropriate, ineffective policies coupled with the lack of conducive legal and institutional frameworks and the lack of effective implementation of policies and laws; hence the need to find solutions in a “win-win” territory, where enterprise growth and workers’ protection converge.

The legal structure and the body of laws on which it is based collectively form a bridge or nexus between unregulated, poor quality and unsustainable development and regulated, higher quality, rights based and sustainable development.

It is against this background that the International Labour Organization (ILO), in collaboration with its key constituents—Government, Workers and Employers in Kenya and Zambia formulated the Law Growth Nexus II project to address these challenges in the public transport (“matatu”) and construction industry in Kenya and Zambia, respectively.

The project is aligned to the Decent Work Country Programme (DWCP) which, in Kenya identifies Social Protection, Employment Creation and Social Dialogue as priority areas for consideration. The project is geared towards respect for the rule of law, building the capacity of social partners to engage in social dialogue, facilitating sector-specific regulatory reform and strengthening the capacity of MSMEs to comply with labour laws.
In realizing some of the objectives, the project devised a strategy of producing a simplified version of labour and labour-related laws. To this end, a firm of consultants – Beacons Training and Consultants Ltd were identified to prepare a ‘simplified popular version of labour laws for the “matatu” sub-sector in Kenya’- a document whose application extends beyond the matatu sub-sector and also to all sub-sectors in the wider informal and formal economy country-wide.

To ensure a high quality product, the project’s stakeholders subjected the consultants’ draft to a very interactive validation workshop which drew participation from a wide cross-section of stakeholders and key actors in the public transport sector as well as labour law enforcement agencies. These included officials from the Ministries of Labour and Co-operative Development, the Nairobi City Inspectorate, Federation of Kenya Employer (FKE), Central Organization of Trade Unions (COTU(K), the Matatu Welfare Association (MWA), the Matatu Owners Association (MOA) and the Matatu Drivers’ and Conductors’ Welfare Association (MADCOWA).

As a Ministry, it is our belief that the simplified version of labour and labour-related laws will enable both the workers and employers in the “matatu” sub-sector understand some of the key provisions of the labour and labour–related laws that affect them and appreciate the benefits of compliance which, by and large, is expected to be realized through a co-operational, rather than adversarial approach. One of the key advantages of this initiative is that it will help in the achievement of compliance against a backdrop of diminished Government resources (staff, transport, etc)
which would otherwise facilitate full labour inspection and other compliance monitoring measures.

The simplified version of labour law passes the test of sustainability by virtue of its inherent characteristics of applicability to all sectors of both the informal and formal economy; currently and in future.

I wish to convey the Governments’ appreciation to the International Labour Organization (ILO) for selecting Kenya as one of the two (2) countries in Africa to benefit from a project of such importance and also for providing the resources necessary for its implementation.

On the production of the quality popular version of simplified labour laws, I wish to thank the ILO Law Growth Nexus II Project team led by the Chief Technical Advisor, Ms Grace Tiberondwa Sebageni and the National Co-ordinator, Ms Eunice Mathenge, the Projects Technical Committee members, Beacons Training and Consultants’ Ltd, led by Mr. Harun K. Mwaura and the stakeholders representatives from the above-mentioned organizations (who validated the consultants’ work) for their insights and dedication in the production of the simplified labour laws.

Dr. S.T Nyambari, MBS
LABOUR COMMISSIONER
### Abbreviations

<table>
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<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>COTU</td>
<td>Central Organization for Trade Unions</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>MADCOWA</td>
<td>Matatu Drivers and Conductors Welfare Association</td>
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<td>MSE</td>
<td>Micro and Small Enterprises</td>
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<td>MOA</td>
<td>Matatu Owners Association</td>
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<td>MWA</td>
<td>Matatu Welfare Association</td>
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<td>MSME</td>
<td>Micro, Small and Medium Enterprises</td>
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INTRODUCTION

Micro, small and medium Enterprises (MSMEs) are a major source of employment and income generation in the world today. Governments in both developing and developed countries have recognized the importance of these enterprises and have sought to promote the business environments that facilitate and foster their growth. In developing countries, much of the activity in this area has focused on improving aspects of the legal and policy environment considered to directly influence MSME development and entry into the formal economy such as business registration, licensing, taxation and access to finance.

Although the MSME sector is responsible for generating a large number of jobs, these jobs are often of a very precarious nature. Many workers in MSMEs have insecure incomes and experience a wide range of decent work deficits. These decent work deficits are particularly extensive in developing countries where most MSMEs operate below the scope of regulatory frameworks.

Labour Law is a key tool for promoting enterprise growth for equitable economic development and decent work. It is also consistent with international labour standards. However application of labour law to this sector presents challenges stemming from a lack of awareness and poor understanding of the provisions of the law.

This booklet provides a simplified popular version of labour laws affecting the MSME sector in Kenya. The intention is to simplify and popularize the Labour Laws for this sector to easily understand and
comply, for an orderly growth to begin to set in. It is anticipated that compliance with labour laws by the sector players especially the employers, employees and government will lead to increased productivity and business growth and eventually to more investment in the sector.

The booklet has been developed under the Law Growth Nexus Project (LGN). The project is being implemented by the ILO together with its tripartite partners: the Government of Kenya through the Ministry of Labour, the Federation of Kenya Employers and the Central Organization of Trade Unions (COTU). Other partners include the Micro Small Enterprises Authority (MSEA), National Transport and Safety Authority (NTSA), Matatu Welfare Association (MWA), Matatu Owners Association (MOA), Matatu Drivers and Conductors Welfare Association (MADCOWA) and selected Business Development Service providers among others. The booklet also includes other laws relevant to the matatu sub sector which is classified under MSMEs and operates at the informal end of this classification.

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LABOUR LAWS THAT ARE RELEVANT TO THE MSME SECTOR

2.1. The Constitution of Kenya

The Constitution of Kenya is the supreme law in the nation and binds all persons and State organs. According to Article 3, every person has an obligation to respect, uphold and defend the Constitution. In regard to labour laws, the Constitution provides for core national values, various rights and freedoms as well as obligations as provided below-

**Article 10** – outlines the following national values and principles of governance that bind every person - patriotism, national unity, rule of law, democracy and participation of the people, human dignity, equity, social justice, human rights, non-discrimination, transparency, accountability and sustainable development.

**Article 36** – recognizes your right to freedom of association, which includes the right to form, join and participate in activities of any association. An association can be formed by employers like matatu owners or workers like drivers and conductors. In addition, one cannot be compelled to join an association or a union and before the registration of an association is cancelled, a person must be given fair hearing.

**Article 41** – recognizes your right to fair labour practices-
a. As a worker, you have the right to fair pay (wage and other related allowances) reasonable working conditions, to join and participate in the activities and programmes of a trade union and to go on strike;
b. As an employer, you have the right to form and join an employer’s organization and to participate in the programmes and activities of an employers programme;
c. Every trade union and employers organization has a right to determine its own administration, programs and activities, to organize and to form and join a federation.
d. Every trade union, employers organization or employer has the right to engage in collective bargaining.

Article 43 recognizes your economic and social rights (health, education, housing, food).

Article 48 – provides for accessing justice (this may be seen in light of the services available to all workers and employers under provisions of the labour laws particularly the Labour Relations and Industrial Court Acts).

Article 49 provides for the right of an arrested person such as –
• the right to be informed immediately in a language that one understands, the reason for arrest
• the right to remain silent
• the right to communicate with an advocate and other persons whose assistance is necessary
• right not to be compelled to make confession or admission that could be used as evidence against the person
• right to be brought before the court as soon as reasonably
possible but not later than 24 hours after arrest

**Article 50**—provides for fair hearing of any dispute by the application of law by means of courts or other legally created neutral body or tribunal (Industrial Court in case of labour disputes).

### 2.2. The International Labour Standards

The International Labour Organization (ILO) is the United Nations specialized agency that seeks to promote rights at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues globally. ILO provides standards and principles to be adopted in every country in relation to labour issues. The key ILO standards and principles related to the MSME sector.

#### 2.2.1. The ILO: 1998 Declaration on Fundamental Principles and Rights at Work

The declaration provides for-

- a. Freedom of association and the right to collective bargaining;
- b. The effective abolition of child labour;
- c. The elimination of discrimination in respect of employment and occupation.

#### 2.2.2. The principle of “Freedom of Association” ILO Convention No. 87

**Article 2**

All workers and employers have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization.

**Article 3**
a. 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 administrative activities and to formulate their programmes.

b. The public authorities shall refrain from any interference in the enjoyment of this right.

Article 4
Workers’ and employers’ organization 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 any such organization, federation and confederation shall have the right to affiliate with international organizations of workers and employers.

2.2.3. ILO Convention No. 98 (On the Right to Organize and Collective Bargaining)
Article 1
a. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
b. Such protection shall apply more particularly in respect of acts calculated to:
   i. make the employment of a worker subject to the conditions that he shall not join a union or shall relinquish trade union membership;
   ii. cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in activities outside working hours or, with the consent of the employer within working hours.

Article 2
a. Workers’ and employers’ organizations shall enjoy adequate protection against any acts of interference by each other or each others’ agents or members in their establishment, functioning or administration.
b. In particular, acts which are designed to promote the establishment of workers’ organizations under the domination of employers or employers’ organizations, or to support workers’ organizations by financial or other means, with the objective of placing such organizations under the control of employers or employers’ organizations, shall be deemed to constitute acts of interference within the meaning of this Article.

2.2.4. ILO Convention 100: Equal remuneration: provides for equality in pay and other related benefits at work for work of equal value.
2.2.5. ILO Convention 111: Discrimination in employment and occupation - states the principle of equality of opportunity or treatment in employment or occupation irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

2.2.6 Job creation in small and medium-sized enterprises Recommendation (No. 189, 1998) - Provides that the fundamental role of SMEs is recognized in creating full, productive and freely chosen employment including increased participation of disadvantaged and marginalized groups. It addresses in more detail the issue of workers’ rights in small enterprises. It calls upon Members to review their labour and social legislation to ensure that they meet the needs of small and medium-sized enterprises, while guaranteeing adequate protection and working conditions for their workers.

2.2.7 Promotional Framework for Occupational Safety and Health Convention (No. 187, 2006) stipulates (Article 4) that Members shall establish a national system that should include support mechanisms for the progressive improvement of occupational safety and health “in micro-enterprises, in small and medium-sized enterprises and in the informal economy

2.2.8 Employment Policy Convention (No. 122, 1964) - Convention calls upon the member States to adopt, as a major goal of social and economic policy, the objective of full, productive and freely chosen employment with availability of productive jobs.

2.2.9 Hours of Work Convention (No. 1, 1919), which sets the eight-hour day and forty-eight hour week norm
2.3. The Employment Act, 2007

Purpose of the Act
The purpose of the Act is to-

a. define and declare the fundamental rights of employees;

b. provide basic conditions of employment of employees;

c. regulate the employment of children.

Protection of Wages:

Main Objectives of Labour Laws
a. Establish minimum terms and conditions of employment

b. Promote good labour relations

c. Provide procedures and institutions of managing labour issues at various levels

d. Enforcement of the laws

e. To help establish order and respect necessary for socio-economic growth

Application:
This Law applies to all employees employed under a contract of service by an employer. Terms and conditions set out in this Law shall constitute minimum terms and conditions of employment of employees in that contract.
Provisions of the Employment Act that you need to know:

a. Basic wages and terms of employment (hours of work, rest periods, annual leave, maternity/paternity leave.)
b. Different employment contracts
c. Powers of labour inspectors/officers to inspect working conditions

Interpretation of some of the most relevant terms and concepts:

a. “Casual Employee” – an employee whose contract provides for his payment at the end of each day and who is not engaged for a longer period than 24 hours at a time.
b. “Contract of Service” – any contract of service whether it is verbal or written or implied.
c. “Child” - a person who is under 18 years.
d. “Collective Agreement” – a registered agreement (by the Industrial Court) containing terms and conditions of employment in writing between a workers’ trade union and an employer or group of employers.
e. “Employee” – a person employed for wages (payment in cash not in kind).
f. “Employer” – any person (public body, firm, company, agency) who enters into a contract of service with an individual (employee).
g. “Industrial Undertaking” includes transport of passengers or goods by road, rail etc.

h. “Labour Inspector” – a person (in the Labour Department) appointed to carry out inspections (on terms and conditions of employment).

i. “Trade Union” – an association of employees for regulating relations between workers and employers.

**General Principles:**

**Section 5** – prohibits discrimination in employment on basis of race, tribe, gender, religion, language, nationality, colour, disability, pregnancy, mental or HIV status – equal work for equal payment. The employer should ensure that there is no discrimination in employment.

**Section 6** – prohibits sexual harassment at the workplace. Every employer is supposed to have policy on sexual harassment if he/she has employed more than 20 employees.

**Employment Relationship:**

**Section 7** provides that all contracts of service must be in accordance with the Act, whether oral or written.

**Sections 7, 8 and 9** – provide that all contracts of employment over 3 months and above are in writing.
A simplified Contract of Service under this Act would include the following, among others:

a. Name, age, permanent address and sex of the employee;
b. Name of the employer;
c. Job description e.g. Driver, Conductor, Manager, etc);
d. Date employment started;
e. Nature and duration of Contract;
f. Place of work;
g. Hours of work;
h. Pay and methods of calculating the pay and other benefits;
i. Intervals in payment for annual leave, public holidays, and payment during public holidays and overtime hours;
j. Notice period for the leave days;
k. Fringe benefits;
l. Pension scheme;
m. Statutory deductions;
n. Length of notice, sick leave and
o. Injury at workplace.
p. Termination of the Contract by either the employer of the employee.
Section 10 provides for the particulars to be stated in a Contract of Service.

Sections 11 and 12 – require that an employer with over 50 employees must have disciplinary rules and procedures that are well displayed at the workplace.

Protection of Wages:

Why you need to know the Basics of Labour Laws:

a. To know your rights;

b. To know what is required of you;

c. To know who or what institutions exist to help you in case of labour problems;

Sections 13, 14, 15 and 16 provide employees have reasonable access to these rules including information about their rights and observe them.

Section 17 – provides for the payment of wages in Kenya currency in cash, or by cheque, or through a bank account. Payment in kind is discouraged. Any person who fails to make payment to an employee is liable to a fine of Kshs.100,000/-, or imprisonment of two years or both.
Section 18 – wages are due at the end of every month, week or day depending on the terms of engagement. When an employee is dismissed the employer is to deposit any monies owed to the employee to the nearest labour office within seven days.

Section 19 – provides for the deduction of wages on account of negligence, damages to property, loan recovery to SACCOS or banks, absence from duty, any amount paid in error, any amount equal to shortage in money and statutory deductions.

Section 20 – Every employee is entitled to a pay slip at the end of the period of engagement.

Section 24 – Every employer shall report the death of any employee to the Labour Officer and any payments made to the dependants within 30 days.

Rights and Duties in Employment:
Section 27 – Every employee is entitled to one rest day in every period of seven days.

Section 28 – Every employee is entitled to 21 working days annual leave with full pay.

Section 29 – A female employee is entitled to three months maternity leave with full pay.
Section 30 – After 2 months of service every employee is entitled to 7 days sick leave with full pay and 7 days sick leave with half pay.

Section 31 – Every employer to provide housing near place of work or pay sufficient sum of money for rent to an employee.

Sections 32 and 33 – Provide for sufficient supply of wholesome water and food at the workplace.

Section 34 – Provides that every employer should ensure proper medical attention to his workers at a nearby health clinic or government health facility.

Termination or Dismissal:

Termination of Service:

a. Reasons for termination clearly given;
b. Written notice (one month) or pay instead of notice;
c. If not satisfied with the reasons for the termination you can make complaint through the union or to the labour office.

Section 35 – Provides for the giving of written notice or pay instead of the notice by either party intending to terminate service.

Section 37 – A casual employee whose contract of service has been continuous for more than a month is entitled to terminal benefits like any other permanent employee.

Section 40 – Termination on account of redundancy an employee is entitled to all terminal benefits as well as payment of severance pay of not less than 15 days for each completed year of service.
Section 42 – Probationary contracts should not exceed more than six months but may be extended to a maximum of twelve months upon agreement.

Section 44 – Provides for summary dismissal to any employee on account of absenteeism for more than one day, drunkenness, negligence of duty, use of abuse language, failing to obey a proper order from your superiors, arrest for criminal offence and not released on bond within 14 days, and commits reasonable detriment to employers’ property.

Sections 45 and 46 – No employer shall terminate an employee unfairly.

Sections 47 and 48 – All unfair dismissal should be reported to the labour officer within three months from date of dismissal and can be represented by a trade union official or an official from employers’ organization but not an advocate.

Section 51 – Every employee is entitled to a certificate of service upon termination or dismissal. The employer can be fined Kshs.100,000/- for default, or six months imprisonment or both.

Protection of Children:
Sections 52 to 65 provides for the protection and prohibition of children against the worst forms of child labour. Any employer who employs, engages or uses children in any form of engagement that is detrimental to their physical, mental, moral and health growth is liable to a penalty of Kshs.500,000/- or twelve months imprisonment or both.
**Insolvency of Employer:**
*Sections 66 to 73* – protects the wages of not more than six months and terminal benefits of employees if the company is declared insolvent or bankrupt.

**Employment Records:**
*Sections 74 and 75* – provide that every employer shall keep a written record of all employees employed by him/her for a period relating to the preceding thirty-six months and can be fined Kshs.100,000/- for making any false entry, or six months imprisonment or both.

**Disputes Settlement Procedures:**
*Section 87* – provides any employer or employee who refuses to fulfill a contract of service may file a complaint to the Labour Officer or lodge a suit in the Industrial Court which has jurisdiction to determine all cases employers and employees in Kenya.

**Miscellaneous Provisions:**
*Section 91* – provides for the Minister in consultation with the National Labour Board to make rules and regulations that would make the administration and compliance of this law more effective.

### 2.4. The Labour Institutions’ Act 2007

**Purpose:**
The purpose of the Act is to establish labour institutions and to provide for their functions, powers and duties.
Section 3 – Interpretations of Some Relevant Terms and Concepts:
b. “Industrial Court” means the Industrial Court established under this Act;
c. “Committee of inquiry” means a committee appointed by the Minister to look into any matter to do with labour issues.

Section 4 – Application:
This Act applies to all employees including those working in Medium and Small enterprises except the armed forces.

Section 28 – Committee of Inquiry

Sections 28 and 29 – provide for the Minister who can appoint any Committee of Inquiry to any matter regarding a trade dispute(s) reported under this Act and submit a report to the Minister.

Section 34 - authorizes Labour Officer to enter any work place to inspect.

A Labour Inspector inspecting work environment.
Purpose of Labour Inspections
a. To give advice and information to workers and employers at the workplace
b. To ensure minimum conditions of work (wages, hours of work, health and safety etc.) are observed
c. To observe, note and receive information that would help improve working conditions

Sections 34, 35, 36 and 37 – provide for the powers of a Labour Officer, Employment Officer and Medical Officer to perform his/her duties under this Act and also has penalty of Kshs.100,000/- or imprisonment of six months or both to any person who obstructs or hinders the above officers from performing their duties.

Sections 39 and 40 – provide for how offences committed by a company are handled and all entries in register or a written record are considered acceptable evidence in court.

Section 41 – all authorized officers are required to keep all information acquired in the course of their duties as confidential, failure to which carries a fine of Kshs.100,000/-, or six months imprisonment or both.
Wages Councils

Section 43 – provides for the establishment of a General Wages Council and Agricultural Wages Council. Other sectoral wages’ councils can also be established after the NLB in consultation with the Minister to approve it.

Section 44 – provides for functions of the wages councils (especially advising the Minister on wages and other conditions of work).

Sections 48, 49, 50 and 51 – provide that wages’ orders constitute minimum terms and conditions of employment. Any employer who fails to do so commits an offence and a Labour Officer can institute proceedings in a court of law.

Sections 53 and 54 – require that an employer keeps records of his employees for at least three years and is also criminally liable where he employs an agent to sub-contract some of his work.

2.5. The Labour Relations Act, 2007

Purpose:
The purpose of the Act is to provide for the-
a. registration, regulation, management and democratization of trade unions and employer organizations or federations
b. promotion of good employer/employee labour relations;
c. protection of freedom of association;
d. promotion and encouragement of collective bargaining;
e. speedy settlement of labour disputes;
f. establishment of sustainable social justice and economic development.
What you need to know in Labour Relations Act
a. Encourages good relations at work
b. Formation of trade union for representation
c. Methods of settling work related disputes

Preliminary:
Section 2 – Interpretation of Relevant Terms and Concepts:
a. “Award” means an award (ruling) made by the Industrial Court;
b. “Collective Agreement” means a written agreement concerning any terms and conditions of employment made between a trade union and an employer;
c. “Contract of Service” means any agreement between an employer and employee for service for payment;
d. “Conciliation” means the act of uniting disputing parties;
e. “Employee” means a person employed for wages or a salary and includes a trainee or learner;
f. “Employer” means a person or company who, or which has entered into a contract of employment to employ any individual;
g. Employment Matter” means a matter concerning any terms or conditions of employment;
h. “Federation” means a body of trade unions or body of employers;
i. “Recognition Agreement” means an agreement in writing made between a trade union and an employer, regulating the recognition of the trade union as the representative of unionisable employees employed by the employer;
j. “Redundancy” means the loss of employment by involuntary means through no fault of an employee;
k. “Sector” means an industry or service;
l. “Trade Disputes” means a dispute or difference between employers and employees concerning any employment matter;
m. “Trade Union” means an association of employees whose main aim is to regulate relations between employees and employers;
n. “Unionisable employees” means an employee who qualifies for membership of a trade union.

Section 3 – Application:
This Act applies to all sectors including Micro Small and Medium Enterprises except the armed and police forces.

Freedom of Association:

How do I Benefit from the Union?
a. Representation in case of disputes;
b. Negotiations for better wages and other working conditions;
c. Can stand for elections as a union official or worker or employer representative;
d. Training for good performance and conduct:
Section 4 (1) – every employee has the right to:

a. Participate in forming a trade union or federation of trade unions.
b. Join a trade union; or
c. Leave a trade union.

4(2) Every member of a trade union has the right, subject to the constitution of that trade union to:

a. Participate in its lawful activities;
b. Participate in the election of its officials and representatives.
c. Stand for election and eligible for appointment as an officer or official and, if elected or appointed to hold office; and
d. Stand for election or seek for appointment as a trade union representative and if elected or appointed to carry out the relevant functions as per this Act or a collective agreement.

Section 5 (1)– No person shall discriminate against an employee or any person seeking employment for exercising this right.

5 (2) No person shall do, or threaten to do any of the following: -
a. Bar an employee seeking employment from becoming a member of the trade union, or require an employee to give up trade union membership.
b. Prevent from participating in any proceedings specified in this Act.
c. Dismiss or prejudice an employee or a person seeking employment because of past, present or anticipated trade union membership.

**Officials and Members of Trade Unions and Employers’ Organization:**

**Section 31** – The officials of a trade union or employers’ organization must be engaged in the sector for which the trade union or employers organization are registered.

**Section 33** – No person shall be a voting member of a trade union unless employed in the sector for which the union is registered.

**Recognition of Trade Unions and Collective Agreements:**

**Section 54** – Recognition will be granted to a Trade Union after the Union has recruited a simple majority of unionisable employees.

**Section 57** – An employer that has recognized a trade union shall conclude a collective agreement with the recognized trade union setting out terms and conditions of service for all unionisable employees covered by the recognition agreement.

**Section 59(3)** – The terms of the collective agreement shall be included in the contract of employment of every employee covered by the collective agreement.
Dispute Resolution:
Section 62
1. A trade dispute may be reported to the Minister by, or on behalf of a trade union or Employer, that is a party to the dispute.

2. A trade dispute concerning the dismissal or termination of an employee shall be reported to the Minister within: Ninety (90) days of the dismissal; or Any longer period that the Minister, on good cause permits.

Section 65 - Within twenty-one (21) days of a trade dispute being reported, the Minister will appoint a conciliator to attempt to resolve the dispute unless the collective agreement procedures have not been exhausted or the issues are not for negotiation.

Section 66 - A person appointed to conciliate a dispute shall be a public officer, or an appointee of the Minister.

Section 67 - The conciliator or conciliation committee may mediate between the parties; conduct a fact-finding exercise and make recommendations or proposals to the parties for settling the dispute.

Section 68 If the dispute is settled through conciliation, the parties and the conciliator will sign an agreement.
Adjudication of Disputes:

Section 73
1. If a trade dispute is not resolved after conciliation, a party to the dispute may refer it to the Industrial Court.
2. A trade dispute may only be referred to the Industrial court by the authorized representative of an employer or trade union.

Section 74
A trade union may refer a dispute to the Industrial Court as a matter of urgency if the dispute concerns:

a. Recognition of a trade union
b. Redundancy
c. Employers and employees engaged in essential services.
2.6. The Industrial Court Act No 20 of 2011

Purpose
The purpose of the Act is to establish the Industrial Court and to grant it powers to handle employment and labour relations. It is an institution of Labour that provides the means of social and economic justice for better relations at the workplace.

Preliminary:

The Industrial Court
a. Handles all labour disputes that fail to be settled at lower level
b. Helps in establishing good labour relations at workplace
c. Open to trade unions and individuals with labour related cases

Section 2 — Some Relevant Interpretations:
a. “Collective Agreement” means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer.
b. “Court” means the Industrial Court.
c. “Employee” means a person employed for wages or salary and includes a trainee or learner.
d. “Employer” means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual.
e. “Federation” means a registered federation of trade unions or employers’ organization.
f. “Trade Unions” means a registered association of employees whose main aim is to regulate direct and manage relations between employees and employers and includes an employers’ organization.
Section 3 – Principal Objectives:

a. Enable the Court to easily and conveniently offer fair, speedy and harmonious resolution of disputes governed by this Act.

b. To help the Court achieve this objective, the parties involved shall be expected to take part in the proceedings of the Court, and to obey the directions and orders of the court.

Establishment and Constitution of the Court

Section 4 – establishes the the Industrial Court for the purpose of settling employment and industrial relations disputes and the promotion, protection and maintenance of good employment and labour relations in Kenya.

Powers of the Court

a. The Court has power to hear and make a ruling on all disputes referred to it, relating to employment and labour relations on matters of:

   i. employees;
   ii. an employer and a trade union.
   iii. a trade union and a member thereof.
   iv. the registration and election of trade union officials; and
   v. the registration and enforcement of collective agreements.

b. The Court has power to make any of the following orders –
   i. Injunctions in cases of urgency
ii. A prohibitory order;
iii. An order for specific performance
iv. A declaratory order;
v. An award of compensation
vi. An award of damages (under this Act)
vii. An order of reinstatement of any employee within 3 years of dismissal, subject to such conditions as the Court thinks fit; or
viii. Any other suitable relief as the court may deem fit to grant.

c. The court may, subject to the rules, make such orders as to costs as the Court considers just.

**Enforcement of Court Orders**

13. An award of the Court shall be enforceable in accordance with the rules made under this Act.

**Proceedings Before the Court**

19. Except as otherwise provided, the proceedings of the Court shall be in public.
22. A party to the proceedings may act in person or be represented by an advocate, an office bearer or official of the party’s trade union or employers’ organization.
2.7. The Occupational Safety and Health Act 2007

Purpose
The purpose of the Act is to provide for the safety, health and welfare of workers and everyone lawfully present at workplaces and to establish the National Council for Occupational Safety and Health.

Occupational Safety and Health Act: Need to know:
- Your safety, health and wellbeing safeguarded
- Your responsibility to keep workplace safe explained
- What constitutes workplace defined
- Powers of safety officers to inspect explained
- Provision of safety committees

Section 2 – Interpretation:
- “Noise” – noise means that sound which disturbs and is able to cause noise induced deafness on a human being;
- “Occupier” – means the person or persons actually occupying a workplace, whether as the owner or not and includes an employer;
- “Owner” – means the person receiving the rents or profits of a premises whether on his own account or as an agent.
- “Premises” – means any place and, particularly includes any vehicle, vessel aircraft or hovercraft
- “Risk” means the possibility of occurrence of a harmful effect from a substance on people or the environment and the heaviness of the consequence of that harmful effect;
- “Workplace” is the place where a worker is in the time of performing the duties given to him/her by the employer;
Section 3 - Application:
The Act applies to all workplaces where any person is at work, whether temporarily or permanently.

Section 6 – General Duties (Responsibility):

a. It is the duty of every person in charge of a workplace to ensure the safety, health and welfare of all people at work in that workplace.

b. Every person in charge of a workplace shall provide adequate information, instructions, training and supervision to ensure the safety and health of persons at work in that workplace.

c. RISK ASSESSMENT – The person in charge of a workplace shall carry out appropriate risk assessments for purposes of the safety and health of persons at work and, use such results, to adopt preventive and protective strategies to ensure that under all conditions of their intended use, all chemicals, machinery, equipment, tools and processes in his/her charge are safe and without risk to health and comply with the requirements of safety and health standards in this Act.

d. The person in charge of a workplace shall take immediate steps to stop any operation or activity where there is an imminent and serious danger to safety and health and to evacuate all persons employed as appropriate.

Section 10 – Duty not to Charge Employees for Things Done or Provided:
An employer shall not make any deduction from an employee’s payment or impose, or permit to be imposed on any of his employees any charge in respect of anything done or provided in pursuance of this Act or any of the rules made under the act.
Section 12 – Duties of a Self-employed Person:
Every self-employed person shall take all necessary measures to ensure his own safety and health and that of any other person in his workplace or within the environs of his workplace;

Section 13 – Duties of Employees:
a. Every employee shall, while at the workplace ensure his own safety and health and that of other persons who may be affected by his acts or omissions at the workplace;
b. Co-operate with his employer or any other person in the carrying out of any duty or responsibility imposed on the employer or that other person by this Act or any regulation made hereunder;

Section 14 – Duty to Report any Dangerous Situations:
Every employee shall report to the immediate supervisor any situation which the employee has a good reason to believe presents a serious danger to the safety or health of that employee or of other person in the same premises. Such danger must be removed before work resumes in that workplace.

Section 16 - Prohibition against Creation of Hazards:
No person shall engage in any improper activity or behaviour at the workplace, which might create or be hazardous to that person or any other person. Improper behavior such as being rowdy, fighting, practical jokes, unnecessary running or jumping or similar conduct.
Cleanliness:
Every workplace shall be kept in a clean state, and free from harmful odour, secretion or discharge arising from any drain, sanitary convenience or nuisance

Safe use of plant, machinery and equipment:
All plant, machinery and equipment whether fixed or mobile for use either at the workplace or as a workplace, shall only be used for work which they are designed for and be operated by a competent person.

Transmission machinery:
Every part of a pulley, system of fast and loose pulleys, coupling, driving-belt, gears and shafts shall be securely fenced to prevent injury to workers

Other machinery:
Every dangerous part of any machinery, shall be securely fenced to prevent injury to workers
Any flywheel directly connected to an engine, motor or other appliance which provides mechanical energy and every moving part of any such appliance shall be securely fenced to prevent injury to workers

Hand-held and Portable Power Tools and Equipment: Every employer shall be responsible for the safe condition of tools and equipment used by his employees, including tools and equipment which may be furnished by the employees;

The employer shall ensure that no equipment or portable power tools shall be used in an environment that contains or is likely to contain flammable vapours or substances unless they are intrinsically safe for such environments.
Chains, Ropes and Lifting Tackle:
For the purpose of raising or lowering persons, goods or materials, no chain, rope or lifting tackle shall be used unless it is of good construction, sound material, adequate strength and free from patent defect:-

Every Air Receiver shall:
a. be thoroughly cleaned and undergo a thorough examination by an approved person at least once in every period of twenty four months or after any extensive repairs;
b. have marked upon it, so as to be plainly visible, the safe working pressure;
c. be fitted with a suitable safety valve so adjusted as to permit the air to escape as soon as the safe-working pressure is exceeded.

Ladders:
Every ladder to be issued in a workplace shall be of good construction, sound material adequate strength and suitable for the purpose for which it is used and shall be properly maintained.

No ladder shall be used unless:
a. it is securely fixed in a position to prevent it from slipping or falling, except that when this is impracticable, a person shall be stationed at the base of the ladder to prevent it from slipping or falling;
b. it stands on a firm and level footing except in the case of suspended ladder;
c. it is secured where necessary to prevent undue swaying or sagging;
Ergonomics (suitable and friendly) at workplace:
Every employer shall take necessary steps to ensure that workstations, equipment and work tasks are adapted to fit the employee and the employee’s ability including protection against mental strain.

Fire prevention:
All stocks of highly inflammable substances shall be kept either in a fire-resistant store or in a safe place outside any occupied building (or workplace).

a. No tank or vessel which contains or has contained any explosive or inflammable substance shall be subjected to any welding, brazing or soldering operation or to any cutting operation which involves the application of heat, until all practicable steps have been taken to remove the substance and any fumes arising therefrom, or to render them non-explosive or non-inflammable; and, if any plant, tank or vessel has been subjected to any such operation, no explosive or inflammable substance shall be allowed to enter the plant, tank or vessel until the metal has cooled sufficiently to prevent any risk of igniting the substance.

b. Precautions with Respect to Explosive or Inflammable Dust or Gas in every workplace or workroom there shall be:

c. Provided and maintained, and conspicuously displayed and free from any obstruction so as to be readily acces-
possible, means for extinguishing fire, which shall be adequate and suitable having regard to the circumstances of each case; and
d. Present persons trained in the correct use of such means of extinguishing fire during all working hours.
e. Every occupier of a workplace shall design evacuation procedures to be used during any emergency and have the procedures tested at regular intervals.

**Drinking Water:**
Every person in charge of a workplace shall provide and maintain an adequate supply of wholesome drinking water at suitable points conveniently accessible to all persons employed.

**Meals in Certain Dangerous Trades:**
No person shall be permitted to take their meals in a workplace where a poisonous or an injurious substance is used so as to give rise to any dust or fume.

**Control of Air Pollution, Noise and Vibration:** every workplace where:

a. Work process produces dust or fume or other impurity which is likely to be injurious to employees all practicable measures shall be taken to protect the employees against inhaling the dust or fume or other impurity and to prevent it accumulating in any workroom;
b. The level of noise or vibration emitted can cause damage the ears or is able to injure the health, all possible measures shall
be taken by the employer to ensure the elimination or control of such noise for purposes of protecting any person who may be exposed;
c. Any vibration, which is passed to the human body through solid structures, is harmful to health or otherwise dangerous, all possible control, preventive and protective measures shall be taken by the employer to protect the safety and health of persons likely to be exposed to the vibration.

**Offences and General Penalty:**
Any person who commits an offence under this Act for which no express penalty is provided shall on conviction be liable to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three months or both.

Purpose
The purpose of the Act is to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment.

What should happen in case of work related Injuries:
a. Immediately report to employer or the supervise;
b. Employer to report to the National Council Occupational Safety and Health soonest possible;
c. Continue with doctors treatment until you are assessed to state level of injuries by the doctor;

Section 2 – Interpretation:
“Accident” means an accident arising out of an employee’s employment and in the course of that employment and resulting in personal injury;
“Dependant” means: -
  a. the widow (wife of deceased) or widower (husband of deceased) of an employee;
  b. a child of the employee who has not attained the age of eighteen years including a posthumous child (born after death), a stepchild and an adopted child, adopted prior to the accident, but excluding a child who is married or who is self supporting;
  c. a parent, step-parent or an adoptive parent who adopted such employee if he adopted prior to the accident or death;
d. a child of the employee not covered by paragraph (b);
e. a brother, sister, half-brother, half-sister or parent, grandparent, or grandchild of an employee; and
f. any other person who at the time of the accident was wholly dependent upon the employee for the necessaries of life.

Where an employee leaves two or more widows, such widows are entitled to share such compensation as would be payable to a single widow of the deceased employee.

“Director” means the Director of Occupational Safety and Health Services.
“Earnings” means money earned by an employee at the time of the accident;
“Employee” means a person who has been employed for wages or a salary under a contract of service.
“Employer” means any person who employs an employee including an agent of the employer;
“Injury” means a personal injury and includes the contracting a disease defined in the Act;
“Medical advisory panel” means a panel appointed from medical and occupational health and safety practitioners to advise the Director for workmen compensation;
“Minister” means the Minister for the time being responsible for labour matters;
“Permanent disablement” means permanent injury or disfigurement;
“temporary disablement” means, a condition of temporary nature caused by an accident which results in the loss of or reduces wage-earning capacity in the work at which such employee was employed at the time of accident;
Section 3 – Application:
This Act applies to all employees, (including those in the MSMEs and the Matatu Sub-sector).

Section 7 – Obligations of Employers:

a. Every employer shall obtain and maintain an insurance policy, to cover any liability the employer may incur under this Act to any of his employees;
b. An employer shall keep a register or other record of the earnings and other required particulars of all employees; and shall retain the register, record for a period of at least six years after the date of the last entry in that register or record.
c. Every employer carrying on business in Kenya shall register with the Director and furnish the Director with the required particulars of their business;
d. An employer shall, within thirty days of change of business particulars, notify the Director of any change of the business particulars.
e. When an employer registered by the director ceases to carry on business for any reason, shall notify the Director before winding up the business.

Section 10 – Right to Compensation:

a. An employee who is involved in an accident resulting in the employee’s disablement or death is subject to the provisions of this Act, and entitled to the benefits (compensation) provided for under this Act.
b. An employer is liable to pay compensation in accordance with
the provisions of this Act to an employee injured while at work.
c. An 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.
d. For the purposes of this Act, an occupational accident or disease resulting in serious disablement or death of an employee is deemed to have arisen out of and in the course of employment if the accident was due to an act done by the employee in the interest of the business of the employer even though the employee was, at the time of the accident acting:
i. in contravention of any law or any instructions by or on behalf of his employer; or
ii. Without any instructions from his employer.

Special Circumstances in Which the Director May Order Compensation:
i. If in a claim for compensation under this Act it appears that the contract of service of the employee concerned is in doubt.
ii. The Director may approve compensation for the claim as if the contract was valid at the time of the accident.
iii. **Employee requiring constant assistance:** If an injury in respect of which compensation is payable causes disablement of such a nature that the employee is unable to perform the essential functions of life without the constant assistance of another person, the Director shall grant an allowance in addition to any other benefit provided for under this Act, towards the cost of such help as may be required for a specified period, which allowance shall be reviewed from time to time.
Claims against third parties:
If an occupational accident or disease in respect of which compensation is payable, was caused in circumstances resulting in another person other than the employer concerned (in this section referred to as the ‘third party’) being liable for damages in respect of such accident or disease
a. The employee may claim compensation in accordance with this Act and may also institute action for damages in a court against the third party; and
b. The employer or insurer by whom compensation in respect of that accident or disease is payable may institute action in a court against the third party for the recovery of compensation that the employer or insurer, as the case may be, is obliged to pay under this Act.

Section 21 – Reporting of Accidents:
a. An employer shall report an accident to the Director in the required manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.
b. An employee who is injured in an accident or his dependant, shall, when reporting the accident or thereafter at the request of the employer or Director, provide such information and documents as may be prescribed or as the employer or Director may request.
c. A claim for compensation shall be lodged by or on behalf of the claimant in the prescribed manner within twelve months after the date of the accident or, in the case of death, within twelve months after the date of death.
d. If a claim for compensation is not lodged within 12 months after the date of accident or death, a right to benefits in accordance with this Act shall lapse.

e. An employee shall not be paid compensation in respect of one or more accidents if it amounts to more than the compensation payable in respect of permanent total disablement.

f. If an employee dies as a result of an injury caused by an accident, compensation shall be paid to the dependants of the employee in accordance with the provisions set out and subject to the maximum and minimum amount determined by the Minister after consultation with the Council.

g. Compensation payable in accordance with the provisions of this Act may, for reasons deemed by the Director to be sufficient, be:

h. Paid to the Public Trustee to be applied for the benefit of the dependants of a deceased employee;

i. Invested or applied to the advantage of the employee or the dependants of an employee;

j. Paid to the employee or the dependant of an employee entitled thereto, or to any other person on behalf of such employee or dependant, in installments or in such other manner as the Director may deem fit.

k. In order to determine compensation, the earnings of an employee are deemed to be the monthly rate at which the employee was being remunerated by the employer at the time of the accident, including-

l. The value of any rations, living quarters or both supplied by the employer to the employee to the date of the accident or report of disease;
m. Allowances paid regularly; and
n. Any overtime payment or other special remuneration of a regular nature or for work ordinarily performed; but will exclude: -
i. payment for intermittent overtime;
ii. payment for non-recurrent occasional services;
iii. amounts paid by an employer to an employee to cover any special expenses; and
iv. ex-gratia payments whether by the employer or any other person.

Section 34 - provides for compensation to be paid to the legal dependants of the worker if work related injury results in death.

Section 38 – Occupational Diseases:
a. An employee shall as soon as possible after the commencement of an occupational disease give written notice thereof to the employer or to the employer where the employee was last employed, and in the prescribed manner to the Director.
b. The commencement of an occupational disease is deemed to be the date on which a medical practitioner diagnosed that disease for the first time or such earlier date as the medical practitioner may determine if it is more favourable to the employee.

Section 45 Medical Aid:
a. An employer shall provide and maintain such appliances and services for the rendering of first aid to his employees in case of any accident as may be prescribed in any other written law in respect of the trade or business in which the employer is engaged.
b. If an employee is injured in an accident, which necessitates the employee’s transportation to a
hospital or medical facility; or from a hospital or medical facility to the employee’s residence, the employer shall make the necessary conveyance available.

c. An employer, who demands, receives, deducts or recovers from an employee a contribution towards the cost of medical aid supplied or to be supplied in accordance with the provisions of this Act, commits an offence.


A National Provident Fund Institution (State Corporation) whose mandate among others is:-

a. Collecting fund contributions from employer into the workers’ (members) accounts;

b. Investing (on behalf of the members) in profitable economic areas;

c. Eventually paying out the various benefits in accordance with the provisions of the law.

Interpretation of Some Relevant Terms:-

Section 13 - Special contribution in respect of casuals at the rate of one (1) shilling for every full 20 shillings with no contribution from the worker’s wage;

Section 19 – Benefits:

a. Old age – benefits paid out upon attainment of 55 years by a member;

b. Invalidity – benefits paid upon incapacitation resulting in inability to work gain fully any more;
c. Survivors – benefits paid out to legal dependants of a worker upon death;
d. Withdrawal – benefits paid out to a worker on attaining age 50 and not in gainful employment;
e. Emigration – benefits paid out to a worker who has permanently left the country;
f. Funeral grant – paid out to assist in funeral expenses for a member who has died (currently 2,500 shillings).

**Application**
Applies to all workers including government employees.

**Section 15** provides that member’s benefits cannot be attached or levied for any debt. Even in the event of bankruptcy, member’s benefits would go to his/her account or the trustee’s account.

**Section 34** provides for the powers of the Enforcement Officer to enter the employer’s work premises and inspect to ensure compliance with the law.

**Section 40** provides that any members money lost and recovered through a court action must be credited into his account.

Some on-going reforms in the Act and its administration.
OTHER LAWS RELATING TO THE MSME SECTOR
3.1. The Societies’ Act
The Societies Act, Cap 108 regulates the operations of associations such as those ones formed by different groups in the matatu sub-sector. The Act requires that the associations be registered under the Act and comply with other requirements, such as, holding annual general meetings, maintaining books of accounts and to have constitution or rules. The Act also prohibits associations that would be formed in order to pursue illegal or unlawful activities.

3.2. The Micro and Small Enterprises Act 2012
The Micro Small Enterprises Act, 2012 seeks to promote development of the micro small enterprises by-

a. Providing an enabling business environment
b. Facilitating access to business development services ny micro and small enterprises
c. Facilitating formalization and upgrading of informal micro and small enterprises
d. Promoting an entrepreneurial culture
e. Promoting representative associations;

The Act-

a. Establishes the office of the Registrar of micro and small enterprises who is responsible for registering micro and small enterprises under the Act
b. Provides that any micro and small enterprise that intends to benefit under the Act must be registered under the Act
c. Micro Small and Medium Enterprises Authority which is charged
with the responsibility for among others –
- Formulating and reviewing policies and programs for micro and small enterprises;
- Monitoring and evaluating the implementation of existing policies and programs
- Coordinating, harmonizing and facilitating integration of various public and private activities and programs for micro and small enterprises
- Facilitating research related to development of micro and small enterprises
- Promoting innovation and development of products by micro and small enterprises

d. Establishes the Micro Small and Medium Enterprises Fund to support development of MSME access to credit and building their capacity.
CHAPTER 4

OTHER LAWS RELATING TO THE MATATU SUB SECTOR
The Traffic Act Cap 403

The Traffic Act regulates the road transport services such as use of motor vehicles on the road, licensing, control of traffic and regulation of persons working in the transport services industry. The Traffic Act affects the labour related issues in Matatu Sub-sector in the following ways:

a. Section 98 of the Act;
   i. Requires matatu drivers and conductors to be licensed.
   ii. Prohibits any person from employing a matatu driver or conductor who is not licensed.

b. Section 103 prohibits any person while obtaining passengers for public service vehicle from touting or making noise or using instruments that are a nuisance to the public. Conviction for offending this rule attracts a penalty of a fine not more than sh. 30,000 and sh. 50,000 for any further or following conviction or imprisonment for term not exceeding 12 months.

The late Hon. John Michuki. He was instrumental in enacting the new traffic laws.
c. **Section 103A requires** –

i. every driver and every conductor of a public service vehicle to wear a special badge and uniform which is navy blue for driver and maroon in colour for conductor.

ii. **every driver of a public service vehicle to undergo a compulsory testing after every 2 years to ascertain his or her competence**.

iii. owners of public service vehicles employ at least one driver and one conductor holding certificates of good conduct issued by the relevant authority.

iv. that the driver and conductor of Public Service Vehicle shall only take up employment after vetting and shall be paid a monthly salary by the owner.

Contravening this section attracts a fine of not less than sh. 10,000 or an imprisonment of not more than 12 months.

*Dangerous and indecent travel*
d. Section 103C prohibits –
   i. a person who is not the designated driver of a public service vehicle from driving while not being authorized
   ii. the driver of a public service vehicle from letting an unauthorized person to drive the vehicle

e. Traffic Rules of 2011

Rule 63 regulates the behavior and conduct of matatu driver and conductor by obligating them: -
   i. To behave in a respectful and orderly manner.
   ii. Not to smoke in the matatu when it has passengers on board.
   iii. To take reasonable measures to ensure safety of passengers in or when entering or alighting from the matatu.
   iv. Not to deliberately deceive or refuse to inform any passenger as to the fare for any journey.
   v. Not to obstruct any person with the authority to examine the matatu.
   vi. Not to play loud music in a way that is nuisance to the passengers or road users.

Rule 64 on obligations of the drivers: -
   a. Prohibits the matatu driver to engage in conversation with the conductor or any person while driving; to stop on the road except where authorized.
   b. Requires the matatu driver to stop the matatu to the farthest left side of the road or nearside of the road when picking passengers.
a Rule 65 on the obligations of the conductor: –
a. Prohibits the conductor from distracting the driver’s attention without good reason or speak to him unless it is necessary.
b. Not to allow the matatu to remain stationary on a road except where allowed to stop, not to work under the influence of alcohol and drugs, not to direct the driver to pick passengers in a non designated area.

Rule 65A

a. Requires the driver and conductor to wear a special badge and uniform (blue for driver and maroon for conductor).
b. Requires the owner of a public service vehicle to employ at least one driver and conductor who must be of good conduct.
c. Requires the driver and conductor to be paid a permanent salary by the owner of public service vehicle

Rule 71 requires the driver of a matatu to display his recent photograph.
SPECIAL ISSUE

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT
LEGAL NOTICE NO.219

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY ACT

(No. 33 of 2012)

IN EXERCISE of the powers conferred by section 54 of the National Transport and Safety Authority Act, the cabinet secretary for Transport and Infrastructure, in consultation with the board, makes the following Regulations-

THE NATIONAL TRANSPORT AND SAFETY AUTHORITY (OPERATION OF PUBLIC SERVICE VEHICLES) REGULATIONS, 2013

PART 1- PRELIMINARY

1. These regulations may be cited as the National Transport and Safety Authority (Operation of public Service Vehicles) Regulations, 2013

2. In these Regulations, unless the context otherwise requires “Act” means the National Transport and Safety Authority Act, No. 33 of 2012
“Appeals Board” means the transport Licensing Appeal Board established under section 39 of the Act;

“Authority” means the National Transport and Safety Authority established under section 3 of the Act;

“Cabinet Secretary” has the meaning assigned to it under the Act;

“City” has the meaning assigned to it under the Urban Areas and No. 13 of 2011 Cities Act;

“Commuter service” means a transport service offered by a public service vehicle which commences and terminates its services within the boundaries of a City or other urban area or between such city or urban area and its satellite towns;

“Corporate body” means a limited liability company registered under the Companies Act, and includes a cooperative society registered under the Cooperative Societies Act and a society registered under the Societies Act;

“License” means a license issued by the Authority under the Act for the operation of a public service vehicle;

“Licensee” means a person to whom a license is issued under the Act;

“Long distance passenger service” means a transport service, other than a commuter service, offered by a public service vehicle;
“Long distance night time passenger service” means a passenger service, other than a commuter service, offered by a public service vehicle registered to operate from or after the hours of 6pm or whose scheduled time of arrival at its destination is after 9pm;

“Owner” means the registered owner of the public service vehicle;

“Operator” means the corporate body with operational responsibility over the public service vehicle on a day to day basis either as the registered owner of the vehicle or pursuant to the terms of a contract or franchise with the registered owner of the vehicle;

“Public Service Vehicle’ has the meaning assigned to it under the Act;

“Satellite town” means a town that serves as a place of residence for a large number of persons who commute regularly to a neighboring city or urban area;

“Third Party Motor Vehicle Insurance” means an insurance policy by that name issued in respect to a public service vehicle pursuant to the provisions of the Third Party Vehicle Insurance Act;

“Urban area” has the meaning assigned to it under the Urban Areas and Cities Act, 2011.
3. (a) These Regulations shall apply to all public service vehicles operating on a public road in Kenya.

4. A person shall not operate a public service vehicle without a valid license issued by the Authority.

5. (i) A person desirous of operating public service vehicles shall be a member of a body corporate which shall-
   (a) Be licensed to operate if the body corporate owns a minimum of thirty serviceable vehicles registered as public service vehicles or in respect to which an application for a license has been or is to be lodged with the Authority;
   (b) Have in its employment a staff complement which must include at a minimum-
       (i) A driver in respect to each public service vehicle;
       (ii) An inspector for each route on which the public service vehicle is intended to operate;
       (iii) An office manager
       (iv) An accounts clerk; and
       (v) A qualified mechanic or a contract under which the services of a mechanic are outsourced;
   (c) Have in place a code of conduct approved by the Authority governing its employees, agents and sub-contractors;
   (d) Have in place a documented management system, safety management system based on ISO 39001:2012 “Road Traffic Safety Management Systems” or equivalent and customer complaints handling system;
   (e) Comply with labour laws and regulations including in respect to statutory deductions, health and safety of the workplace, Work Injuries Benefits Act insurance, statutory leave days and written contracts of employment for staff; and
(f) Where it operated public service vehicles in the immediately preceding calendar year fully complied with the requirements of these regulations in the immediately preceding year.

(2) The Authority may-
(a) refuse to issue a public service vehicle license to an applicant who fails to comply with any of the minimum conditions stipulated in sub-regulation(1); or
(b) at its discretion issue a license conditional on the requirement that the applicant demonstrates compliance within a stipulated period failing which the license shall be withdrawn upon expiry of the stipulated period.

6. A person applying for a license shall submit to the Authority certified copies of-
(a) Certificate of registration as a company under the Companies Act, or a cooperative society under the Cooperatives Societies Act;
(b) A list of its directors and senior management officers;
(c) A lease or certificate of ownership of the head office from which it is operating or intends to operate the public service vehicle business;
(d) Audited accounts in respect of the immediate preceding financial year;
(e) Personal Identification Number certificate issued by the Kenya Revenue Authority;
(f) A tax compliance certificate issued by the Kenya Revenue Authority;
(g) Where the vehicle was previously operated by a licensee other than the operator applying for its licensing, a letter of no objection issued by the previous licensee;
(h) A description of the operator’s management system, safety management system and customer complaints handling system;

(i) An inventory of the equipment and facilities available to the operator for the operation of the passenger transport service;

(j) The code of conduct for the employees, agents and sub-contractors;

(k) A list of the staff it has in its employment and their job descriptions and qualifications;

(l) The contracts of the drivers of the public service vehicle in respect to which the application for the licenses is being made;

(m) The driving license, identity card, and certificate of good conduct of each person who shall drive the public service vehicles in respect to which the application for the licenses is being made;

(n) A valid certificate of roadworthiness issued by the Authority of each vehicle in respect to which an application is being made.

(o) The certificate of ownership or other evidence of ownership in the name of the owner of the vehicle or a contract or franchise agreement between the applicant and the operator or intended operator of the vehicle; and

(p) The current third party insurance with an insurer which meets minimum conditions prescribed by the Authority.

7. Every operator of licensed public service vehicles shall-

(a) Display at a conspicuous place on the vehicle a sticker or an identification mark approved by the Authority;

(b) Ensure that the driver and conductor, if any, wears the prescribed uniform and identification badge while at work;
(c) The driver of the vehicle adheres to the approved routes, schedule and drop off and pick up points;
(d) Ensure that passengers are treated courteously;
(e) Ensure that music played does not exceed the prescribed limits in the course of the journey;
(f) Ensure that passengers are issued with tickets or receipts for fare paid and, as from the 1st July, 2014, it operates a cashless fare system;
(g) Report any accidents involving their vehicles immediately to the relevant authorities;
(h) On a weekly basis and, in the case of a long distance passenger service, before the commencement of each journey, have the vehicle inspected by a qualified mechanic for defects according to a check list which shall cover at a minimum tyres, lights, safety belts, brake pads, wipers and warning horn;
(i) Keep a record of the defects identified during the defects inspection for a minimum period of six months and of the actions taken to rectify the defects;
(j) Boldly display at the front rear and sides of the vehicle the name of the Sacco or company under which the vehicle operates; and
(k) Ensure that no vehicle is transferred from one Sacco or company to another without the approval of the Authority.

8. Every operator of a public service vehicle shall submit a report to the Authority on a quarterly basis with particulars of:
(a) Any accidents in which any of the vehicles it is operating may have been involved during the reporting period and shall attach a certified copy of the report of its investigation of the cause of each accident and action taken in respect to each accident;
(b) The number and nature of passenger complaints received during the reporting period and action taken in respect to each complaint;

(c) Any members who have ceased to be its members during the reporting period, if any;

(d) The vehicles which may have been added or removed from the list of vehicles it is operating during the reporting period;

(e) Any drivers who may have ceased to be employees during the reporting period and the reasons; and

(f) The traffic offences committed by the drivers during the reporting period and the penalties imposed against the body, the drivers or other employees during the reporting period.

9. Every operator of a commuter service vehicle shall ensure that a driver, conductor or any other staff member employed to work in the vehicle-

(a) Does not work for a period longer than eight hours in any twenty four hour period;

(b) Receives a regular salary and is not paid a commission based on the number of trips made per day;

(c) Does not tout, make loud noise or harass passengers or other persons in, or awaiting to board a vehicle;

(d) At all times only picks up and drops off passengers at designated bus stops; and

(e) Complies with the by-laws or County legislation of the County or city or urban area within which the vehicle is registered to operate.

10. (1) A person shall not operate a long distance night time passenger service vehicle without a valid license issued by the Authority.
(2) A person applying for a long distance night passenger service license shall specify-
   (a) Whether the service is intended to be offered during the day only; or
   (b) During both daytime and night time.

11. Every operator of a long distance passenger service vehicle shall-
   (a) Have in place or outsource a fleet management system capable of recording speed and location of the vehicle at any one time;
   (b) Subscribe to a data storage system capable of storing data on vehicle speed, location and operation for a period of thirty days and when required by the Authority provide the data to the Authority before the expiry of the prescribed storage period;
   (c) Before the commencement of each journey arrange for the taking of a passenger manifest
   (d) Operate or subscribe to an outsourced control Centre;
   (e) Ensure that, except for small parcels and letters, the long distance passenger vehicle does not carry cargo other than luggage accompanying a passenger travelling on the bus and carried as hand luggage to be placed in the overhead lockers on board the bus or in the hatch under the vehicle;
   (f) Ensures that, except for courier services, the long distance passenger vehicle does not operate as a commercial cargo carrier and does not have a cargo carrier mounted on the roof; and
   (g) Ensure or subscribe to an accident and emergency mutual aid system.
12. Every operator of a nighttime long distance passenger service shall-
   (a) Employ drivers certified by the Authority to drive on the particular route or routes at night time and meets conditions imposed by the Authority;
   (b) Ensure that no driver driving a long distance night time passenger public service vehicle works for a period exceeding eight hour night in a shift;
   (c) Ensure that a person driving a long distance night time passenger service takes a break of a minimum of eight hours before the next night shift;
   (d) Plan the journey in a manner that allows for a thirty minute refreshment break for both the driver and passengers at an appropriate location or facility every three to four hours in the course of the journey; and
   (e) Employ two drivers for each vehicle.

13. A person shall take out an insurance cover for a public service vehicle where the Insurance company-
   (a) Is licensed by the Insurance Regulatory Authority under the Insurance Act to provide that category of insurance;
   (b) Submits to the Authority a report on claims made in respect to accidents involving public service vehicles it has insured and compensation paid in the immediately preceding year; and
   (c) Submits to the Authority its customer service charter and claims payment policy.

14. A person aggrieved by the decision of the Authority taken under these Regulations may within fourteen days of receiving the decision appeal to the Appeals Board.
15. (1) A person who-
(a) Operates a public transport vehicle without a valid license issued by the Authority in respect to that vehicle;
(b) Drives a public service vehicle in breach of any provision of these regulations; or
(c) Provides false information to the Authority, commits an offence and is liable, on conviction, to a fine not exceeding Fifty Thousand Shillings or to imprisonment for a term not exceeding one year or both.

(2) The Authority may in addition to any other penalty prescribed under these Regulations-
(a) Cancel or withdraw the license of a public service vehicle operated by an operator who has been convicted of an offence under these Regulations;
(b) Cancel or revoke the license or certificate of a driver who has been convicted of an offence under these Regulations; or
(c) Where it deems necessary order that all vehicles belonging to the SACCO or Company involved be subjected to inspection.

16. Regulation 11 shall come into operation on the first day of February, 2014.

Dated the 16th December, 2013

MICHAEL KAMAU
Cabinet Secretary for Transport and Infrastructure.
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