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11. The Industrial Relations (Amendment) Act, 2014 SI

THE INDUSTRIAL RELATIONS (AMENDMENT) ACT, 2014

(Act No. 11 of 2014)

**I ASSENT****MSWATI III
KING OF SWAZILAND****AN ACT
ENTITLED**

AN ACT to amend the Industrial Relations Act, 2000, to provide for the registration of federations, give effect to certain international labour practices and other incidental matters.

ENACTED by the King and the Parliament of Swaziland.

Short Title and Commencement

1. (1) This Act may be cited as the Industrial Relations (Amendment) Act, 2014 and shall be read as one with the Industrial Relations Act, 2000 (hereinafter referred to as the "principal Act").

(2) This Act shall come into force on the date of publication in the Government Gazette.

Amendment of Section 26

2. Section 26 of the principal Act is amended by inserting after subsection (3), new subsections (4), (5), (6), (7), and (8) as follows-

"(4) A federation of trade unions and staff associations, as the case may be, shall be deemed to have been formed on the date on which two or more trade unions or staff associations, as the case may be, agree in writing, to form that federation.

(5) A federation of employers shall be deemed to have been formed on the date on which two or more employers or employer organisations or an employer and an employer organisation, agree in writing to form such a federation.

(6) An organisation eligible for membership in a federation under this Act has a right to membership in that federation if that organisation pays any fees that are properly payable to the federation, and has a right to remain a member as long as the organisation complies with the rules of the federation.

(7) An organisation eligible for membership in a federation has the right to join or not to join such federation.

(8) A person, organisation or federation shall not infringe the right of an organisation to belong or not to belong to a federation of the choice of the organisation."

Amendment of Section 28

3. Section 28 (3) of the principal Act is amended by inserting in line 3,
 - (a) the word “or” between the words “property,” and “from”;
 - (b) the words “or criminal” between the words “civil” and “liability”; and
 - (c) by inserting the word “act” between the words “negligent” and “or”.

Amendment of Section 32

4. Section 32 of the principal Act is amended as follows –

- (1) Subsection (2) -

- (a) in subsection (2) (b) by deleting the word “national” between the words “its” and “office”;
- (b) in subsection (2) (c) by deleting the word “an” between the words “and” and “address” and inserting the words “a physical”;
- (c) in subsection (2) (d) inserting the word “physical” between the words “the” and “address”;
- (d) by adding a new subsection (2) (f) to read as follows –

“(2) (f) within 6 months after the end of each financial year, a financial statement from a competent auditor stating that the accounts of the federation were audited for the preceding financial year”.

- (2) By adding a new subsection (5) to read as follows-

“(5) Copies of the documents and information provided to the Commissioner of Labour in terms of this section shall be kept in the office of the federation and shall be made available for inspection at the annual general meeting”.

Insertion of new sections 32bis, 32ter and 32quat

5. The principal Act is amended by inserting new sections 32bis, 32ter and 32quat as follows-

“Registration of federations

32bis. (1) Any federation seeking registration shall apply by submitting to the Commissioner of Labour-

- (a) a prescribed form that has been properly completed;
- (b) a copy of its constitution; and
- (c) any other relevant information that the Commissioner of Labour may require to determine whether or not the federation meets the requirements of registration.

(2) The Commissioner of Labour shall consider the application and may, where necessary, require further information in support of the application.

(3) Where the Commissioner of Labour is satisfied that the applicant meets the requirements for registration, the Commissioner of Labour shall register the applicant by entering the name of the applicant in the register of federations.

(4) Where the Commissioner of Labour is not satisfied that the applicant meets the requirements for registration, the Commissioner shall send the applicant a written notice of the decision and reasons for the decision and in that notice, shall inform the applicant that it has thirty days from the date of the notice to meet those requirements.

(5) If, within that thirty day period, the applicant meets the requirements for registration, the Commissioner of Labour shall register the applicant by entering the name of the applicant in the appropriate register.

(6) If within the thirty day period or any reasonable period thereafter the Commissioner of Labour concludes that the applicant has failed to meet the requirements for registration, the Commissioner of Labour shall-

- (a) refuse to register the applicant; and
- (b) notify the applicant in writing of that decision.

(7) After registering the applicant the Commissioner of Labour shall-

- (a) issue a certificate of registration in the name of the applicant; and
- (b) send the certificate and a certified copy of the registered constitution to the applicant.

(8) A person who is aggrieved by a decision of the Commissioner of Labour under this section may make an application to Court for a review of that decision.

Effect of registration of a federation

32ter. (1) A certificate of registration is sufficient proof that a registered federation is a body corporate.

(2) On registration, no civil proceedings except those expressly allowed by this Act may be brought against a federation or against any officer, representative or member thereof, in respect of any bona fide act done by or on behalf of that federation or in furtherance or purported furtherance of the interests of its members or of any one whose interests are substantially similar to those of its members.

(3) Subsection (2) shall not be construed to exempt a federation or any of its officers, representatives or members from obligations or contractual liability for goods or services incurred in respect of property or from any civil or criminal liability for any criminal, malicious, or negligent act or omission.

Constitution of a federation

32quat. (1) As far as this section is concerned and for the avoidance of any doubt, "member" means -

- (a) for purposes of forming a federation of trade unions or staff associations, two or more trade unions or staff associations; or
- (b) for purposes of forming a federation of employers, two or more employers or employer organisations or an employer and an employer organisation.

(2) The constitution of a federation shall include the following-

- (a) the name of the federation;
- (b) the offices in the federation among which shall be the offices of Chairperson, Secretary and Treasurer;
- (c) provision for an election by secret ballot to all offices at least once every four years, and for the naming of a temporary replacement if an office holder is disqualified or incapacitated from holding office;
- (d) provision for a general meeting open to all members at least once a year and for giving notice of at least twenty- one days' notice of that meeting to all members;
- (e) the number of terms a member is eligible for re-election into office;
- (f) a provision that any member may propose a resolution or question an officer at a meeting;
- (g) a provision that-
 - (i) the general meeting shall be the forum for deciding the policies of the federation and for reviewing the officers' conduct and the federation's affairs;
 - (ii) the officers of the federation and representatives are to be bound by decisions of a general meeting;
 - (iii) a general meeting may authorize a Committee or its members to act on its behalf on all or any matters referred to in this paragraph for a specific period;
- (h) the fees and other subscriptions payable, and the maximum period of arrears permitted before a member loses its good financial standing;
- (i) provision that subject to the terms of this Act and to the constitution of the federation, only delegates from members in good standing may vote in the election of officers, nominate a candidate for any office, be nominated for, or be elected to any office, or express views on candidates and other issues;
- (j) provision stating the qualification criteria for members' participation in elections of the federation;
- (k) provision for a disciplinary code of the federation;
- (l) the procedure for suspension or expulsion of an officer from office or of a member from membership;
- (m) provision for the keeping of full and accurate financial accounts by the treasurer or other appropriate officer, for the annual audit of those accounts by a competent auditor appointed by the federation , and for the availability to all members of a fully audited annual financial statement of account;
- (n) provision for the banking and investment of the funds of the federation;
- (o) provision for the paying out of the funds of the federation including the authority to sign cheques;

- (p) provision for amending the constitution;
- (q) the duration of its financial year;
- (r) provision for the appointment of trustees, if any;
- (s) provision for the inspection of the register of members and other books of the federation by any member;
- (t) provision for informing members of the progress and result of any progress of dialogue, debate or negotiation in which the federation is engaged;
- (u) provision for handling or managing protest actions called or intended to be called by the federation ; and
- (v) the manner of dissolving the federation.

(3) The constitution of a federation shall not impose any condition, obligation or restriction which is oppressive, unreasonable, offensive or unjust.

Amendment of Section 40

6. Section 40 of the principal Act is amended -

(1) in subsection (1) (c) by deleting the words " 14 days" and replacing them with the words "25 days".

(2) by replacing subsection (3) with a new subsection (3) as follows-

"(3) Where the matter is not resolved within a 10 day period after the Labour Advisory Board has put in place a mechanism to resolve the issues giving rise to the protest action, the period may be extended -

- (i) if the parties concerned agree;
- (ii) at the request of the party intending to take protest action;
- (iii) by the Labour Advisory Board where the party intending to take protest action fails without reasonable cause to attend meetings called by the Labour Advisory Board; or
- (iv) by the mechanism where there are prospects of resolving the matter."

(3) in subsection (4) by replacing the words " 7 day period referred to in subsection (2)" and replacing them with the words " 10 day period referred to in subsection (3).

(4) by deleting subsection (13) and inserting a new subsection (13) as follows-

"(13) A person who commits a criminal, malicious or negligent act during a protest action shall be liable under criminal or civil laws of the land".

Amendment of Section 97

7. The principal Act is amended in section 97 (1) by deleting the words "under this Act" in line 1 between the words "offence" and "has".