

SPECIAL ISSUE

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**THE INDUSTRIAL TRAINING (AMENDMENT)
BILL, 2019**

A Bill for

**AN ACT of Parliament to amend the Industrial
Training Act.**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Industrial Training (Amendment) Act, 2019.

Short title.

2. The Industrial Training Act hereinafter referred to as “the principal Act” is amended in section 3A by deleting paragraph (b).

Amendment of section 3A of Cap. 237.

3. The principal Act is amended by deleting section 5B and substituting therefor the following new section—

Deletion of section 5B of Cap. 237.

Training levies.

5B. (1) The Commissioner-General of the body responsible for the assessment and collection of revenue shall be responsible for collecting training levies from employers.

No.2 of 1995.
Cap. 470.

(2) For purposes of this Act, the Commissioner-General shall have all the powers conferred on the Commissioner-General by the Kenya Revenue Authority Act and Income Tax Act.

(3) An employer shall pay the training levy to the Commissioner-General at the time when an employee’s salary is payable and shall be remitted to the Commissioner-General not later than the fifth day of the month following the month in which the levy becomes due.

(4) The training levy collected under this section shall be paid into the Training Levy Fund.

(5) A training levy shall be charged every month at one hundred shillings per employee.

(6) A training levy shall not be deducted from the emoluments of an employee.

Cap. 470.
No.2 of 1995.

(7) Subject to the provisions of this Act, the Income Tax Act and the Kenya Revenue Authority Act shall apply in this Act including in respect of—

- (a) the payment and recovery of the levies and penalties;
- (b) assessment of levy payable;
- (c) filing of returns;
- (d) the furnishing of information and production of documents; and
- (e) keeping of records.

4. Section 5C of the principal Act is amended by—

Amendment of
section 5C of Cap.
237.

(a) deleting the marginal note and substituting therefor the following new marginal note—

“Distribution of training levies”.

- (b) deleting sub-section (1A);
- (c) deleting sub-section (2) and substituting therefor the following new sub-section—

“(2) The Director-General, acting on the advice of the Board, shall make payments out of the Fund not later than the fifteenth day of each month as follows—

- (a) sixty percent of the training levies collected shall be used for the reimbursement of employers for the training costs incurred including costs and wages of apprentices, interns or indentured learners while attending training courses or industrial attachment;
- (b) twenty percent of the training levies collected shall be used for funding the establishment and operation of technical and vocational education and training institutions established across the country;
- (c) ten percent of the training levies collected shall pursuant to section 12(1)(e) of the Higher Education Loans Board Act be allocated and

disbursed to the Higher Education Loans Management Board for purposes of funding the training of students in technical and vocational education and training institutions;

No. 3 of 1995.

- (d) ten percent of the training levies collected shall be used for such other expenditure related to training as may be approved by the Board.

5. Part II of the First Schedule to the Kenya Revenue Authority Act is amended by inserting the following new paragraph immediately after paragraph 10—

Amendment of the First Schedule to No.2 of 1995.

(10A) The Industrial Training Act (Cap. 237.)

MEMORANDUM OF OBJECTS AND REASONS

The principal object of the Bill is to amend the Industrial Training Act Cap. 237 in order to provide for the mechanisms of implementing the Act in terms of collecting the training levies which is currently a function of the National Industrial Training Authority. As it is presently, the Authority is unable to perform the function of assessing and collecting training levies bestowed on it by virtue of section 3A of the Act effectively as there exist no proper mechanisms of collecting training levies from employers. Further, the Act has no mechanisms in which the Authority can identify potential employers and levy the training fees, there are no timelines for employers to remit the levies, the amount levied is too minimal and there are no penalties and sanctions to guard against non-remittance of the levies by employers. The training and skills development of Kenyans in various industrial sectors of the country is an issue that need not be overstated as it serves as a catalyst for social, economic and political development of any nation. In this regard, this Bill seeks to amend the Act in order to provide-

- (a) that the Kenya Revenue Authority shall have the mandate of assessing and collecting training levies from employers;
- (b) for timelines within which employers shall remit training levies;
- (c) that the Income Tax Act and the Kenya Revenue Authority Act shall apply in respect of payment and recovery of the levies and penalties; and
- (d) for the formula of distributing the training levies collected by the Kenya Revenue Authority.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers nor does it limit fundamental rights and freedoms.

Statement that the Bill does not concern County Governments

The Bill does not concern County Governments in terms of Article 110 (1) (a) of the Constitution and it does not affect the functions and powers of County Governments recognized in the Fourth Schedule to the Constitution.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may not occasion additional expenditure of public funds.

Dated the 28th February, 2019.

JUDE NJOMO,
Member of Parliament.

Section 3A of Cap 237 which is proposed to be amended—

3A. Powers and functions of the Authority

The Authority shall be responsible for—

- (a) industrial training;
- (b) assessing and collecting industrial training levy and fees;
- (c) regulating trainers registered under section 7C;
- (d) developing industrial training curricula;
- (e) integrating labour market information into skills development;
- (f) harmonizing curricula and certificates of competence;
- (g) assessing industrial training, testing occupational skills and awarding certificates including Government trade test certificates;
- (h) equating certificates;
- (i) accrediting institutions engaged in skills training for industry;
- (j) associating or collaborating with any other body or organization within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (k) charging for goods and services offered by the Authority; and
- (l) performing any other duties and functions as may be conferred on it by this Act or by any other written law.

Section 5B of Cap 237 which is proposed to be amended—

5B. Training levies

(1) The Minister may make a training levy order for the purpose of giving effect to proposals submitted by the Board and approved by him, and the order may provide for the amendment of a previous training levy order.

(2) A training levy order may contain provisions as to the evidence by which a person's liability to the levy or his discharge of that liability may be established, and as to the time at which any amount payable by any person by way of the levy shall become due and the manner in which it shall be recoverable by the Director-General.

(3) If any person fails to pay an amount payable by him by way of the training levy within the time prescribed by the training levy order a sum equal to five per cent of that amount shall be added to the amount for

each month or part of a month thereafter that the amount due remains unpaid.

(4) A person who fails to comply with any provision of a training levy order shall be guilty of an offence and shall be liable to a fine not exceeding one hundred thousand shillings and if such failure continues after a conviction, such person shall be liable to a penalty not exceeding fifty thousand shillings for every month or part thereof during which such failure is continued;

(5) The court before which any person is convicted of an offence under subsection (4) may, without prejudice to any civil remedy, order such person to pay to the Fund the amount of any levy or any other sum due, together with any interest or penalty thereon, found to be due from such person to the Fund.

(6) Without prejudice to any other remedy, any training levy due under this Act plus the five percent penalty imposed by this section that remains unpaid shall be recoverable summarily by the Authority as a civil debt due to the Authority.

Section 5C of Cap 237 which is proposed to be amended—

Disbursement powers of Director-General

(1) There is established a fund in respect of each industry, as may be determined by the Board, to be known as the Training Levy Fund.

(1A) There shall be paid into the Fund all industrial training levy contributions for each industry, as may be determined by the Board.

(2) The Director-General, acting on the advice of the Board, may make payments out of a Fund for any of the following purposes—

- (a) the payment of maintenance and travelling allowances to persons attending training courses;
- (b) the making of grants or loans to persons providing courses or training facilities;
- (c) the payment of fees to persons providing further education in respect of persons who receive it in association with their training;
- (d) the reimbursement of an employer for all or part of his training costs including costs and wages of apprentices or indentured learners while attending training courses or industrial attachment;
- (e) the payment of sitting allowances and travelling, accommodation and entertainment expenses for members of Committees and any

sub-committees set up under them while attending meetings of those Committees and sub-committees;

- (f) the payment of examiner's fees for setting, moderating, invigilating and marking proficiency tests for apprentices and indentured learners, and their travelling and accommodation expenses;
 - (g) the payment of honoraria to instructors for conducting evening courses; and
 - (h) such other expenditure related to training as may be approved by the Board.
- (3) Deleted by Act No. 34 of 2011, s. 10.
- (4) Deleted by Act No. 34 of 2011, s. 10.
- (5) Deleted by Act No. 34 of 2011, s. 10.
- (6) Deleted by Act No. 34 of 2011, s. 10.
- (7) Deleted by Act No. 34 of 2011, s. 10.

PART II of the First Schedule to No. 2 of 1995

1. Traffic Act (Cap. 403).
2. Transport Licensing Act (Cap. 404).
3. Second - Hand Motor Vehicles Purchase Tax Act (Cap. 484).
4. The Civil Aviation Act (Cap. 394).
5. The Widows' and Children's Pensions Act (Cap. 195).
6. The Parliamentary Pensions Act (Cap. 196).
7. The Betting, Lotteries and Gaming Act (Cap. 131).
8. The Stamp Duty Act (Cap. 480).
9. The Horticultural Crops Development Authority (Imposition of Fees and Charges) Order, 1995 (L.N. 228 of 1995).
10. The Standards Levy Order, 1990 (L.N. 267 of 1990).
11. The Government Lands Act (Cap. 280)
12. The Sugar Act (No. 10 of 2001).
13. The National Social Security Fund Act, 2013.

