

REPUBLIC OF KENYA



Paper Laid by
the chairperson,
Departmental
Committee on
Health, Housing,
Labour and
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D. Oguti
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**DEPARTMENTAL COMMITTEE ON HEALTH,
HOUSING, LABOUR AND SOCIAL WELFARE**

**REPORT ON THE OCCUPATIONAL SAFETY AND
HEALTH BILL, 2007**

**CLERKS CHAMBER,
PARLIAMENT BUILDINGS,
NAIROBI**

MAY, 2007

PROPOSED AMENDMENTS TO THE OCCUPATIONAL SAFETY AND HEALTH BILL, 2007

1.0 PREFACE

Mr. Speaker, Sir,

The Departmental Committee on Health, Housing, Labour and Social Welfare was constituted at the commencement of the Ninth Parliament pursuant to the provisions of Standing Order No. 151. The said Standing Order No. 151 (1) (c) mandates the Committee, among other things:-

(c) to study and review all legislation after the First Reading subject to the exemptions under Standing Order No. 101 A (4)

2.0 SUBJECTS

The Committee's subjects are as follows:-

- (a) Health;
- (b) Housing;
- (c) Labour; and,
- (d) Social Welfare.

The Committee oversees the performance of the following Ministries:-

- (a) Health;
- (b) Labour and Human Resource Development;
- (c) Housing; and
- (d) Sports, Gender, Culture and Social Services.

3.0 MEMBERSHIP

The Committee comprises the following Members:-

- The Hon. (Dr.) Hezron Manduku, MP – **Chairman**
- The Hon. Tobias Ochola Ogur, MP
- The Hon. Reuben Ndolo, MP
- The Hon. Norman M. G. K. Nyagah, MP

The Hon. (Dr.) Naomi Shaaban, MP
The Hon. Zebedeo J. Opore, MP
The Hon. Abdalla Ngozi, MP
The Hon. (Prof.) Julia Ojiambo, MP
The Hon. William Boit, MP
The Hon. Benson Mbai, MP
The Hon. David Koros, MP

4.0 SUMMARY

Mr. Speaker, Sir,

On behalf of the Departmental Committee on Health, Housing, Labour and Social Welfare, I am pleased to present to the House the Committee's recommendations on the Occupational Safety and Health Bill, 2007, pursuant to the provisions of Standing Order 162. The Bill was referred to the Committee after it was read a First Time in the House on 9th May, 2007.

I take this opportunity to thank all Members of the Committee and the secretariat for their dedication and hard work and their desire to improve the Bill.

The Committee held a number of sittings and held a workshop to deliberate on the Bill with various stakeholders some of whom sent in their memoranda. The stakeholders' views have been incorporated in the form of proposed amendments.

4.1 BACKGROUND

Mr. Speaker, Sir,

The Occupational Safety and Health Bill, 2007 seeks to repeal and replace the Factories and Other Places of Work Act (Cap 514). The bill provides for the safety and health of workers in all work places in Kenya.

Mr. Speaker, Sir,

This bill is specific on the obligations of employers, employees and occupiers of buildings so as to secure a safe work place. A safe workplace will ensure that our workforce remains healthy and

productive for long while at the same time reducing the cost of treatment and insurance arising from occupational accidents and diseases.

During field visits to workplaces, this Committee was astounded to find employees working under unhygienic and unsafe buildings and workplaces. Some employers were not providing protective gear to their employees while some workers were in the habit of not using the protective clothing and gears provided by the employer. This bill, upon enactment into law, will ensure the safety of workers and other people lawfully present in work places.

6.0. CONCLUSION

Our failure to review labour laws in Kenya has led to the continued suffering and abuse of human rights in the labour sector contrary to the Constitution of Kenya and International Conventions that Kenya has ratified. The Committee recommends the enactment of this Bill into law but with the attached proposed amendments.



HON. DR. HEZRON MANDUKU, MP
CHAIRPERSON,
DEPARTMENTAL COMMITTEE ON HEALTH, HOUSING, LABOUR
AND SOCIAL WELFARE COMMITTEE

22/12/07

**PROPOSED AMENDMENTS TO THE OCCUPATIONAL SAFETY AND
HEALTH BILL, 2007**

SHORT TITLE: - agreed to

CLAUSE 1: - agreed to

CLAUSE 2: That Clause 2 be amended as follows:

(i) That a new interpretation be inserted read "**employer means an employer as defined in the labour relations Act**"

(ii) That the interpretation of "**court**" be amended by deleting the words "**magistrates court**" appearing in the first line and substituting therefor with the words "**subordinate labour court as defined in the labour institutions Act**"

CLAUSE 3: - agreed to

CLAUSE 4: That Clause 4 be amended as follows:

That subsection (1) be amended by deleting the word "**of this**" appearing after the word "**provision**" and substituting therefor with the words "**under this**".

CLAUSE 5: - agreed to

CLAUSE 6: That Clause 6 be amended as follows:

That subsections (1) (3) (4) and (5) be amended by inserting the words "**or employer**" after the word "**occupier**".

CLAUSE 7: That Clause 7 be amended as follows:

That subsection (1) be amended by inserting the words "**or employer**" after the word "**occupier**".

CLAUSE 8: That Clause 8 be amended as follows:

(i) That subsection (1) and (2) be amended by inserting the words "**or employer**" after the word "**occupier**".

(ii) That subsection (1) be amended by deleting;

(a) the words "**a employee, injure the employee or**" appearing after the word "**dismiss**" in the first line and substituting therefor with the word "**injure**".

(b) the letter "**a**" appearing after the word "**disadvantage**" in the second line and substituting therefor with the word "**an**".

(c) the word "only" appearing in the fifth line.

CLAUSE 9: That Clause 9 be amended as follows:

- (i) That subsection (1) be amended by inserting the words "or employer" after the word "occupier".
- (ii) That subsection (1)(a) be amended by deleting the word "twenty" appearing in the first line and substituting therefor with the word "ten"
- (iii) That subsection (3) be amended by inserting the words "or employer" after the word "occupier".

CLAUSE 10: - agreed to

CLAUSE 11: That Clause 11 be amended as follows:

That subsection (1) be amended by inserting the words "or employer" after the word "occupier".

CLAUSE 12: - agreed to

CLAUSE 13: That Clause 13 be amended as follows:

- (i) That subsection (1) (a) be deleted and subsequent subsections be renumbered accordingly.
- (ii) That subsection (1)(d) be amended by inserting the words "or her" after the words "him" and "his" appearing in the third line.

CLAUSE 14 to CLAUSE 22: - agreed to

CLAUSE 23: That Clause 23 be amended as follows:

- (i) That subsection (7) be amended by deleting the words "subsection 4" appearing after the word "under" in the second line and substituting therefor with the words "subsection 5".
- (ii) That subsection (9) be amended by deleting the word "an" appearing before the word "notice" in the first line and substituting therefor with the letter "A".
- (iii) That a new subsection (10) be inserted to read "A person aggrieved by a decision of the Director made under this section may, within fourteen days from the date of the decision, appeal to an appeals committee appointed by the minister under section 46".

CLAUSE 24: That Clause 24 be amended as follows:
That the entire subsection (6) be deleted.

CLAUSE 25 and CLAUSE 26: - agreed to

CLAUSE 27: That Clause 27 be amended as follows:

- (i) That a new subsection (g) be inserted to read "**the establishment of a safety and health institute to be known as the Occupational Safety and Health Institute to undertake research into all aspects of safety and health and to conduct safety and health skills training for occupational safety and health officers and other persons.**"
- (ii) That subsection (g) be renumbered to read subsection (h).

CLAUSE 28: That Clause 28 be amended as follows:

That subsection (7) be amended by inserting the words "**from moneys provided for by Parliament**" after the word "**Council**" appearing in the second line.

CLAUSE 29 to 43: - agreed to

CLAUSE 44: That Clause 44 be amended as follows:

- (i) That subsection (9) be amended deleting the word "**appeal**" appearing before the word "**committee**" and substituting therefor with the word "**appeals**".
- (ii) That subsection (a) be amended by deleting the word "**excepted**" appearing after the word "**be**" in the first line and substituting therefor with the word "**exempted**".

CLAUSE 45: That Clause 45 be amended as follows:

That subsection (1) and (2) be amended by deleting the word "**except**" appearing in the second and first lines respectively and substituting therefor with the word "**exempt**".

CLAUSE 46: That Clause 46 be amended as follows:

- (i) That subsection (1) and (4) be amended by inserting the number **23** after the word "**section**" in the third lines respectively.
- (ii) That subsection (2), (3), (4) and (5) be amended by deleting the word "**appeal**" appearing after the word "**an**" and substituting therefor with the word "**appeals**".

CLAUSE 47 to CLAUSE 56: - agreed to

CLAUSE 57: That Clause 57 be amended as follows:

That subsection (6) be amended by deleting the word "an" appearing before the word "certificate" in the first line.

CLAUSE 58 to CLAUSE 90: - agreed to

CLAUSE 91: That Clause 91 be amended as follows:

That subsection (1) be amended by inserting the words "or employer" after the word "occupier".

CLAUSE 92: That Clause 92 be amended as follows:

That subsection (1) be amended by inserting the words "or employer" after the word "occupier" appearing in the first line.

CLAUSE 93: That Clause 93 be amended as follows:

That Clause 93 be amended by inserting the word "or employer" after the word "occupier" appearing in the first line.

CLAUSE 94: That Clause 94 be amended as follows:

That Clause 94 be amended by inserting the word "or employer" after the word "occupier" appearing in the first line.

CLAUSE 95: That Clause 95 be amended as follows:

That Clause 95 be amended by inserting the word "or employer" after the word "occupier" appearing in the first line.

CLAUSE 96: - agreed to

CLAUSE 97: That Clause 97 be amended as follows:

That Clause 97 be amended by inserting the word "an" before the word "employer" appearing in the first line

CLAUSE 98: agreed to

CLAUSE 99: That Clause 99 be amended as follows:

That subsection (4) be amended by inserting the words "or employer" after the word "occupier" appearing in the first line.

CLAUSE 100: That Clause 100 be amended as follows:

That Clause 100 be amended by deleting the word "**an**" appearing after the word "**where**" in the second line and substituting therefor with the letter "**a**".

CLAUSE 101 to 107: - agreed to

CLAUSE 108: That Clause 108 be amended as follows:

- (i) That subsection (1) be amended by deleting the word "**in**" appearing after the word "**contravention**" in the first line.
- (ii) That subsection (2) be amended by deleting the letter "**a**" appearing after the word "**by**" in the first line and substituting therefor with the word "**an**".

CLAUSE 109 to 113: - agreed to.

CLAUSE 114: That Clause 114 be amended as follows:

That subsection (3)(c) be amended by deleting the word "**consent**" appearing in the first line and substituting therefor with the word "**knowledge**".

CLAUSE 115 to 126: - agreed to

CLAUSE 127: That Clause 127 be amended as follows:

- (i) That subsection (1) be amended by deleting subsection (a) and renumbering subsequent subsections.
- (ii) That subsection (6) be amended by deleting the word "**thinks**" appearing after the word "**minister**" in the third line and substituting therefor with the word "**deems**".

CLAUSE 128 and 129: - agreed to.

SECOND SCHEDULE: - That the second schedule be amended as follows:

- (i) That the subsection (13) be amended by inserting the words "**diethylene dioxide (dioxin)**" after the word "**containing**" appearing in the second line.
- (ii) That subsection (14) be amended by inserting the words "**methyl bromide**" after the word "**containing**" appearing in the second line.

- (iii) That subsection (15) be amended by inserting the words "**chlorinated naphthalene**" appearing after the word "**containing**" in the second line.
- (iv) That subsection (22) be amended by deleting the word "**which**" appearing after the word "**tar**" and substituting therefor with the word "**pitch**".

NINTH SCHEDULE: That the Ninth Schedule be amended as follows:
That the title of the ninth schedule be amended by deleting the word "**use**" appearing after the word "**is**" in the third line and substituting therefor with the word "**use**".