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LEGAL NOTICE NO. 202 OF 2015

THE INDUSTRIAL RELATIONS ACT, 2000
(Act No. 1 of 2000)THE CODES AND GUIDELINES SCHEDULE (AMENDMENT)
NOTICE, 2015
(Under Section 109)

In exercise of the powers conferred by Section 109 of the Industrial Relations Act, 2000 the Minister for Labour and Social Security issues the following Notice-

Citation and commencement

1. (1) This Notice may be cited as the Codes and Guidelines Schedule (Amendment) Notice, 2015.

(2) This Notice shall come into force on the date of publication in the gazette.

Amendment of Schedule

2. The Schedule in the Principal Act (Act No. 1 of 2000) is amended at its Heading before section 1, as follows—

(a) by deleting the words-

“CODE OF PRACTICE AND GUIDELINES
(Section 109)”

and replacing them with the following words-

“CODES OF PRACTICE AND GUIDELINES
(Under section 109)

Part I
General Code of Practice”; and

(b) by adding a new Part II at the end of section 45 of the Schedule as follows-

“Part II
Code of Practice for Industrial and Protest Action

Introduction

1. (1) In an effort to promote respect for industrial peace, harmony and stability to ensure that employees and employers are free to exercise their rights in terms of the Industrial Relations Act, this code seeks to provide guidelines on good practice.

(2) The Parties acknowledge that protest and industrial action must follow the procedures laid down in the Industrial Relations Act No.1 of 2000 as amended, in particular section 109 which provides for Codes and Guidelines.

(3) The Code of Practice for Industrial and Protest Action (hereinafter referred to as the "Code") is intended to provide practical guidance for the regulation of industrial or protest action.

Scope and Application

2. (1) This Code applies to the following-

- (a) employees;
- (b) employees' organizations and federations;
- (c) employers;
- (d) employers' organizations and federations;
- (e) Government;
- (f) police;
- (g) private security personnel;
- (h) municipalities; and
- (i) other relevant stakeholders,

(hereinafter referred to as Parties) during protest and industrial actions.

(2) This Code shall be taken into account by the Conciliation, Mediation and Arbitration Commission, Courts, or any other person in arriving at a decision in proceedings under the Industrial Relations Act.

Objectives

3. (1) It is the understanding of the Parties that lawful protest and industrial actions are protected under the Industrial Relations Act, while unlawful protest and industrial actions are not protected under the Industrial Relations Act, and matters involving public order, peace and security are within the jurisdiction of the Police as set out in other relevant legislation. There is always a possibility that any strike, demonstration, lock out, protest or any other industrial action may result in disturbance of public order, peace and security. To prevent this from happening there shall be a close coordination between and among employees, employers, Government and other agencies as prescribed in this Code.

(2) The objectives of the Code are to-

- (a) provide a framework for the orderly and peaceful conduct and management of protest and industrial action;
- (b) regulate the conduct of the Parties during protest and industrial action; and
- (c) promote public order, safety and industrial harmony to ensure that the right to protest and industrial action is respected.

Role and Conduct of Employee Organisations and Federations

4. The role of employee organisations, federations, shall be to-
- (a) ensure that the protest or industrial action is in accordance with the provisions of the Industrial Relations Act;
 - (b) obtain a route or location from the City or Town Council prior to the intended protest action, in terms of their bye-laws;
 - (c) appoint an official chief convenor, chief marshal and marshals who shall be members of the organisation or federation to oversee the protest or industrial action;
 - (d) to notify the other Parties in writing of the-
 - (i) issues in dispute;
 - (ii) estimated number of people likely to participate in the protest or industrial action; and
 - (iii) contact details of the chief convenor and chief marshal who shall be well versed with the contents of this Code;
 - (e) to notify the recipient party two days prior to the intended action in the case of delivery of petitions;
 - (f) provide the police with the proposed starting and finishing time for each day and also ensure a briefing at the start of each demonstration day; and
 - (g) ensure that employees do not carry or use any form of offensive weapons such as, but not limited to, fire arms, spears, sticks and stones, during industrial or protest action.

The Role and Conduct of Marshals

5. (1) The Marshals shall-
- (a) be individuals who are well versed with the relevant provisions of the Industrial Relations Act, this Code, the relevant collective agreement, if any and agreed demonstration route or location to ensure that the protest or industrial action is conducted peacefully.
 - (b) be identifiable with clearly marked arm bands or vests and be available throughout the protest or industrial action;
 - (c) conduct themselves in a peaceful and lawful manner and be unarmed;
 - (d) ensure that the demonstrators do not commit any action which may lead to a breach of peace or is unlawful including, but not limited to, any action which is or may be perceived to be violent or intimidating; and

- (e) co-ordinate with police in the maintenance of law and order before and during the course of protest or industrial action.

The Role and Conduct of the Police

6. (1) The involvement of the Royal Swaziland Police during protest and industrial action is for the purposes of providing protection services in maintaining public order and security. Further, their involvement will allow employees or employers to exercise their rights in terms of the Industrial Relations Act, in a lawful, orderly and peaceful manner.

(2) The main role of the Police is to-

- (a) provide the maintenance of law and order in any protest or industrial action. The police have a general duty to uphold the law and may intervene if there is reasonable apprehension of breach of peace and particularly if there is anticipated violence and disorder;
- (b) uphold the law and take reasonable measures to keep the peace, protect the public and enforce criminal law;
- (c) avoid unlawful interference in lawful protest and industrial action and maintain law and order, thus protecting the citizens and property;
- (d) coordinate with the chief convener and the chief marshal of the protest or industrial action and further liaise with the officer responsible for the affected enterprise, or ministry concerning required information on the protest or industrial action;
- (e) in consultation with the municipal authorities, make security preparation for the route or location where the action will take place, including agreeing on the number of lanes to be used to avoid traffic congestion;
- (f) ensure that the protest or industrial action does not lead to any disturbance of public order and safety;
- (g) be stationed at an appropriate distance from the protest or industrial action having due regard to public safety and protection of property.
- (h) in the case of real threats towards public order and security, take the necessary police action in accordance with a firm and measurable manner and in accordance with the prevailing laws, against Parties deemed responsible if any activities arise from the protest or industrial action in the form of criminal actions including but not limited to vandalism, violence, hostage-taking and offensive actions;
- (i) take compulsory action through summons, arrest, searches, seizure, investigation and detention of any person who is alleged to have committed a crime during protest or industrial action in accordance with the existing laws and regulations;
- (j) ensure compliance with the Police Act and Code of Ethics; and
- (k) inform members of the public on the intended industrial or protest action.

(3) Police deployed in an area to handle strikes, protest actions, lockout and other forms of industrial action, shall-

- (a) act in a professional and proportionate manner;
- (b) remain impartial in dealing with the Parties to the controversy;
- (c) have a principle that all Parties are equal before the law;
- (d) always bear in mind that the Parties are not their adversaries but are partners in the quest for industrial peace and public order;
- (e) not be involved in any industrial dispute negotiations. It is not the function of the police to take any view of the merits of the particular dispute giving rise to the industrial action;

(4) The Police have the responsibility to enforce criminal law. They may arrest employers or employees for participation in violent conduct or attending the industrial action armed with dangerous weapons.

Role and Conduct of Government

7. The responsibility of Government is to-

- (a) promote harmonious industrial relations in all work places so as to attain economic and social stability and development. Government should restore the balance of power.
- (b) ensure effective and meaningful consultations that facilitate social dialogue and tripartism as dynamic processes that have unique capacity and great potential to contribute to progress in many different and challenging situations.
- (c) provide a climate and infrastructure that will progressively maximize the quality and security of the lives of its citizens, and make the best use of the country's resources.
- (d) ensure that all existing legislation is aligned to the Constitution and in conformity with international standards and jurisprudence.
- (e) be transparent and open in addressing the issues of concern timeously upon receipt of any petition envisaged by the Industrial Relations Act 2000.
- (f) make proper arrangements to receive a petition prior to its delivery.

Role and Conduct of Employers Organizations and Federations

8. (1) The role of the Employers shall be to -

- (a) follow the procedures laid down in labour legislation in pursuit of industrial action;
- (b) ensure timely notification of relevant structures of the intended industrial action;
- (c) make proper arrangements to receive a petition prior to its delivery; and
- (d) ensure that privately employed private security personnel, adhere to the provisions of this Code.

(2) In this regard, private security personnel shall-

- (a) in protecting and securing the safety of people and property; use only sufficient and reasonable force necessary to overcome the risk or danger posed by strikes or hostile crowd; and
- (b) be subsidiary to members of the Royal Swaziland Police Service on matters pertaining to law enforcement and crime prevention.

Responsibilities of all the Parties

9. The responsibilities of all the Parties are to-

- (a) respect the law of the land and ensure that any industrial or protest action is conducted in an orderly and peaceful manner;
- (b) observe and respect the constitutional rights of those who are not party to the protest and industrial action;
- (c) develop clear lines of communication amongst the Parties involved;
- (d) agree on how to deal with individuals who deviate from the objectives or cause disturbance to the peaceful running of the industrial or protest action, who are either part or not part of the action; and
- (e) educate their members and the general public on the provisions of this Code.

Consultations and planning for envisaged protest action

10. (1) On the day that the employees, employees' federations or organisations submit a notice for protest action to the chairperson of the Labour Advisory Board, a copy of the notice shall be submitted to the National Commissioner of Police.

(2) Not less than seven (7) days prior to the commencement of the envisaged protest action, the National Commissioner of Police shall convene the first planning meeting with the conveners of the proposed action. Notice of the meeting shall also be given to municipalities, humanitarian agencies and other stakeholders, but in the event that they fail to attend, the meeting shall proceed in their absence.

(3) Not less than two (2) days before the commencement of the action, the National Commissioner of Police shall convene the last and final formal briefing and planning meeting.

(4) Two days after the protest action, the National Commissioner of Police shall convene a debriefing meeting with the conveners, municipalities, humanitarian agencies and other stakeholders.

Humanitarian agencies, private security companies, other security forces and uniformed agencies

11. (1) The Parties shall ensure that humanitarian agencies are invited to their planning meetings and that arrangements are made for their interventions in the protest action.

(2) The Parties shall provide each other with information on private security companies, security forces and uniformed agencies engaged to assist them in the protest action.

Breach of the Code

12. Without prejudice to other remedies provided by other laws, a violation of this Code shall be dealt with in terms of the provisions of the Industrial Relations Act, 2000.

Amendment

13. The Minister may, after consultation with the Labour Advisory Board, amend this Code.”

WINNIE K. MAGAGULA
MINISTER FOR LABOUR AND SOCIAL SECURITY