

Rwanda

Ministerial Order determining Modalities of Electing Workers' Representatives and fulfillment of their Duties

Ministerial Order 1 of 2014

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The Minister of Public Service and Labour;

Pursuant to the Constitution of the Republic of Rwanda of 04 June 2003 as amended to date, especially in Articles 121 and 201;

Pursuant to Law n° 13/2009 of 27/05/2009 regulating labour in Rwanda, especially in Article 162;

Reviewing Ministerial Order n° 09 of 13/07/2010 determining the modalities of electing workers' representatives and fulfillment of their duties;

After consideration and approval by the Cabinet, in its session of 10 September 2014;

HEREBY ORDERS:

Chapter One General provisions

Article One – Purpose of this Order

This Order determines modalities of electing workers' representatives and conditions of execution of their mission.

Article 2 – Scope of application

The provisions of this Order shall apply to all enterprises governed by the Law regulating labour in Rwanda.

In the Enterprise with different branches, each branch shall elect workers' representatives and alternates.

Article 3 – Number of staff

The employer with at least 10 workers shall organize elections for workers' representatives. The number of workers' representatives cannot be changed during a workers' representative's term of office due to an increase or reduction in number of workers in the enterprise.

Chapter II

Number of workers' representatives, alternates and their term of office

Article 4 – Number of workers' representatives and their alternates

The number of workers' representatives and alternates shall be elected in an enterprise employing the following number of employees:

- 1° from 10 to 29 workers: 1 representative and 1 alternates;
- 2° from 30 to 49 workers: 2 representatives and 2 alternates;
- 3° from 50 to 99 workers: 3 representatives and 3 alternates;
- 4° from 100 to 249 workers: 4 representatives and 4 alternates;
- 5° from 250 to 500 workers: 5 representatives and 5 alternates;
- 6° with an additional of 1 representative and 1 alternate for every further 500 workers, up to a maximum of 10 workers' representatives and 10 alternates.

Workers' representatives shall be elected from workers' of the Enterprise. Each representative shall have an alternate elected in the same conditions that will replace him/her in case of excusable absence, death, resignation, dismissal and transfer from the enterprise, change of professional category, termination of contract, retirement and loss of eligibility.

The elected workers' representatives in enterprise shall comprise at least 30% of women if possible.

Article 5 – Term of office of workers' representatives

Members of workers' representatives are elected for three (3) years term of office. They may be re-elected.

If a workers' representative is no longer employee of an enterprise, his/her responsibilities also end.

Once a workers' representative resigns, he/she shall inform the employer and give copy to the District Labour Inspector.

An acting workers' representative who is shall serve the remaining term of office of the one he/she has replaced.

Chapter III

Election of workers' representatives

Article 6 – Establishing electoral committee in enterprise

Employer after consultation with employees shall establish enterprise electoral committee of three (3) employees in four (4) weeks before the end of term of office of workers' representative.

The employer may after consultation with the employees or representatives of trade unions in enterprise, increase the number of electoral committee members.

The electoral committee shall be comprised of an odd number of members of both sexes.

A trade union operating in enterprise may delegate a representative to be part of electoral committee.

The electoral committee members shall choose among themselves the chairperson, vice-chairperson, secretary and others for fulfilment of its duties.

Article 7 – Responsibilities of electoral committee

The electoral committee has the following responsibilities:

- 1° to organize elections of workers' representatives in enterprise;
- 2° to verify and approve the voters list in the enterprise submitted by employer within 15 days before the elections;
- 3° to verify and approve the list of trade unions candidates or individual candidates submitted by employer;
- 4° to request the employer to find another candidate to replace the candidate who does not fulfill the requirements for electoral committee;
- 5° to hear all claims concerning the preparation and conduct of elections;
- 6° to display the voters list on the notice board at least seven (7) days before elections;
- 7° to check whether the employer treats the list of candidates equally;
- 8° to publish election results not exceeding 2 days after elections;
- 9° to post results of elections on enterprise notice board;
- 10° to dissolve elections within enterprise if they were held in violation of this Order;
- 11° to correct the number of votes obtained by the list;
- 12° to verify whether the quorum on voting list of 50% is achieved in order for elections to be valid;
- 13° to prepare ballot papers to be used in elections;
- 14° to designate persons to help the electoral committee in voting counting;
- 15° to register and allow candidates not on the voting list on polling day to vote;
- 16° to write an *ad hoc* report and send it to the employer and give copy to District labour inspector of the area;
- 17° to resolve issues of candidates excluded due to conflicts of interests in the enterprise.

Article 8 – Electoral colleges

Workers' representatives shall be elected by the following colleges:

- 1° Salaried employees college;
- 2° Salaried Executive Staff College.

Each Electoral College shall have a list of voters established by the management of the Enterprise.

In case of conflicts on above mentioned lists of staff, Employer and Trade unions shall be consulted to agree on the lists of salaried Executive staff and salaried Employees through mutual agreements.

In case there is no Trade Union in an Enterprise, the employer and District labour inspector upon request by employees shall establish the lists of salaried Executive staff and salaried employees through mutual agreements.

Failure to agree through mutual agreement, the issue will be settled by the Director of Labour Administration in the Ministry of Public Service and Labour on request by employer or employees.

Article 9 – Joint colleges

In case of the enterprise with equal or less than 29 employees in two colleges, the employer shall make a single college.

Article 10 – Eligibility to vote

In order to vote, a worker shall satisfy the following conditions:

- 1° having 18 years of age;
- 2° having voting rights;
- 3° having fixed or unfixed term contract for at least 6 months during the calendar year preceding the elections;
- 4° daily workers' having worked continuously for at least six (6) months preceding the elections

Article 11 – Eligibility to stand for election

Any worker who has worked in an enterprise for at least a year shall be eligible to stand for office.

Article 12 – Persons who are not allowed to stand for elections

The following persons shall not be elected as workers' representatives in an enterprise:

- 1° spouse and parents of the owner or head of an enterprise;
- 2° brothers and sisters of the owner or the head of an enterprise at first degree;
- 3° members of the Board of Directors;
- 4° legal Representatives;
- 5° head of Human Resource department;
- 6° any other employee with responsibilities that can conflict with the responsibilities of workers' representative;
- 7° any person who performs some activities in an enterprise but who is not an employee of that particular enterprise.

However, if there is disagreement of two parties on above mentioned list of employees, the District Labour Inspector of the area shall be requested in writing to take the decision.

Article 13 – Submission of lists of candidates

Workers' representatives and alternates are elected using ballot papers from each list of candidates.

The candidates' lists shall be established separately per electoral college for workers' representatives and alternates.

A list of candidates for electing workers' representatives and alternates may be submitted by:

- 1° a trade union, federation or confederation of trade unions having legal personality and which operate in the enterprise;
- 2° independent employees in an enterprise, as authorised by the District labour inspector in case trade unions or federation of unions fail to submit a list of candidates.

Article 14 – Indication of Trade Union affiliation

The Trade union which has submitted the list of candidates shall indicate the affiliation federation so that the votes got in election be allocated to its affiliation federation or confederation.

In case where a trade union, federation or confederation of trade unions have not submitted the list of candidates, employer shall request in writing to District labour inspector to authorize the list of independent candidates to stand for elections.

The list shall indicate the name of enterprise, full identity of a candidate and duration of service.

In case the independent candidates submitted their list of candidates, the results obtained shall be allocated to them.

Article 15 – Handing candidates lists to the enterprise head

The lists of candidates shall be handed to the head of the enterprise who shall acknowledge receipt. They shall be accompanied with a letter signed by each candidate testifying the submission of his/her candidature.

Article 16 – Number of candidates

No one shall present his/her candidature on several lists. The number of candidates on list of trade union shall not exceed the number of seats.

Article 17 – Period for presentation of candidature

The presentation of candidatures shall start ten (10) days before the elections and end three (3) days before the polling day.

Article 18 – Equal treatment of candidates lists

The electoral committee shall check whether Management of the enterprise treats the lists of candidates on an equal footing, particularly with regard to the place of display, meeting rooms and other facilities provided to the candidates.

Article 19 – Electoral campaign

Electoral campaign shall be done in the same way Trade Unions use when recruiting the members in enterprise. Campaigns are not allowed on the polling day.

For independent candidates, electoral campaigns shall be conducted in enterprise in working hours after agreement with the employer on specific hours and days.

Article 20 – Modalities and venue of voting

Workers' representatives shall be elected by using secret ballots in the enterprise during working hours.

Each voting room shall have one or two voting booths.

Each electoral college shall have one and same ballot box.

Article 21 – Verification of the voters

A copy of each voter's list approved by the electoral committee shall be available in each voting room.

Members of the Electoral committee shall check whether each voter is registered on the list of the Electoral College and tick in front of the name to indicate that he/she is going to vote.

After elections, members of the Electoral committee shall verify whether the quorum on voting list of 50% was achieved in order for elections to be valid.

Article 22 – Ballot papers

Ballot papers shall be prepared by the electoral committee in order to be submitted to voters.

With regard to the election of the same electoral college, ballot papers shall be the same and have the same colour.

Article 23 – Voting

It shall be compulsory to vote in a voting booth. No one shall be authorized to vote for somebody else even if he/she has a power of attorney, except for the physically persons with disabilities authorized to appoint people to help him/her in voting exercise.

Each voter's vote shall be certified by signature or finger print affixed on the electoral list in front of names of candidates.

Each voter casting his/her vote shall place his/her ballot paper in ballot box after voting.

Electoral committee shall make employee to sign in front of his/her names to avoid double voting.

Article 24 – Choosing from lists of candidates

Voters shall choose a list from lists of different candidates. No voter shall remove a name or add another one on the ballot paper.

Article 25 – Choosing from independent candidates

The voter will choose independent candidates without exceeding the number of seats allowed to his/her college.

Article 26 – Voting Quorum for electing workers' representatives and their alternates

In order to conduct the elections of workers' representatives and their alternates, the quorum for all eligible workers to vote and on voting list shall be 50%.

In case the list composed of candidates of trade unions in each electoral college is not elected at 51% of the listed voters, the independent candidates shall inform District labour inspector on District level who will authorize them to campaign and be elected as workers' representatives and their alternates in an enterprise.

The workers' representatives from independent candidates shall be elected without respecting the 50% of the listed voters in enterprise.

In case there is no candidates submitted to be elected as workers' representatives in an enterprise, the elections in that particular enterprise shall be postponed within seven (7) working days.

The concerned parties mentioned in Article 13 of this Order shall establish the list of candidates in order to have workers' representatives elected in an enterprise.

Article 27 – Counting in public

Electoral committee shall count votes in public.

Electoral committee may designate at least three (3) persons to help in votes counting.

Article 28 – Counting ballot papers

Before counting the votes of each list, Electoral committee, shall count the ballot papers first.

If the number of ballot papers exceeds the number of voters signed or put finger print on the voters' list, electoral committee shall make a report accordingly.

Article 29 – Blank and spoilt ballots

Blank, spoilt ballot papers and ballot papers different from those officially used in elections shall be annexed to the elections report.

The ballot is spoilt if:

- 1° it contains names exceeding the number of seats to fill;
- 2° nothing has been written on the ballot paper;
- 3° the voter has identified himself/herself;
- 4° the ballot paper is of a different colour from that used in the election;
- 5° it contains names of persons who did not present their candidature.

Article 30 – Allocating seats to lists of candidates

In counting votes cast from each list, only the valid cast votes and votes not spoilt shall be considered.

The number of seats allocated to each list shall be obtained by dividing the number of votes obtained by that list by the electoral quorum.

Seats yet to be filled shall be allocated to those lists with the biggest balances.

In case two lists have the same balances and there is only one seat to fill, that seat shall be allocated to the list which has obtained the biggest number of votes.

In case candidates on two lists tie in votes, the seat shall be allocated as follows:

- 1° if two candidates are of different sex, the seat shall be given to the female candidate;
- 2° if two candidates are of the same sex, the seat shall be given to the most experienced candidate in the enterprise.

Article 31 – Allocating seats to candidates on lists of trade unions

On each list, the seats to fill shall be allocated to the candidates according to the order of presentation on the list submitted.

Article 32 – Allocating seats to independent candidates

The seats shall be allocated to candidates according to the order of votes and in case of a tie-vote, the seat shall be allocated to the female candidate, and if the two candidates are of the same sex, to the most ancient candidate in the enterprise.

In case independent workers' representatives are fully elected, the remaining candidates on list become alternates basing on results obtained.

Article 33 – Report on elections

Upon completion of the voting exercise, members of the electoral committee shall make a report and send it to the employer and give a copy to the District Labour Inspector.

This report shows at least the following main points:

- 1° the name of enterprise, District and Sector where it is located;
- 2° the number of all employees for distribution seats for election of workers' representatives and their alternates;
- 3° the number of all contesting seats and its distribution in electoral colleges;
- 4° the number of employees in every electoral college, the number of the voters on voting list, votes of workers' representatives and for alternates and distributions of votes to Trade union or independent candidates;
- 5° names of elected workers' representatives and their alternates.

Article 34 – Publication of election results

The electoral committee shall publish and post the results of election on the enterprises notice board without exceeding two (2) days after elections.

Article 35 – Workers' representatives coordination committee

After elections, workers' representatives and their alternates shall set up their coordination committee and inform employer in writing.

Article 36 – Hearing elections complaints

An employee or a member of trade union may send a complaint on elections results to electoral committee in 48 hours after the publication of the elections results. The electoral committee shall provide a response to the interested party in 72 hours.

If the complaint has not been solved by electoral committee, it shall be sent to District labour inspector in five (5) working days and he/she shall provide a response within two (2) days counted from the day he/she received the complaint.

If the complaint has not been solved by District labour inspector; the interested party shall send the complaint in 5 days to National Labour Council to provide a response within One (1) month.

Article 37 – Rectification of voting results

The electoral committee may:

- 1° decide that a candidate is not eligible and replace him/her with another from the same list who has obtained the highest votes.
- 2° cancel the election organized for the Electoral College if the election was held in conditions not acceptable under this Order.

In such a case, new election shall be done within twenty (20) days from the date of cancellation.

Chapter IV

Execution of responsibilities of workers' representatives

Article 38 – Time allowed to workers' representatives to exercise their responsibilities

Each workers' representative is entitled to specified time per month for the execution of his/her mission as agreed upon through collective agreements or particular agreement with the enterprise manager.

This time shall be deducted from the working hours of the representative. However, this time may exceed these limits with the agreement of the employer and be granted special payment at the normal rate.

Unused time may not be carried forward to the following month or be subject of any compensation whatsoever.

The alternate representative shall benefit from this free time only if he/she is replacing the substantive representative. In case of temporary replacement due to excusable absence, the time spent by the alternate shall be charged to that of the substantive representative.

Article 39 – Necessary premise

The employer shall provide to workers' representatives a place where they can conduct meetings in order to enable them to accomplish their duties. In case of open sites where there are no premises, he/she shall facilitate the meetings of the workers' representatives to the extent possible.

Article 40 – Display information of workers' representatives

Workers' representatives shall be allowed to display for their colleagues, information within their mission as set by the law regulating labour in Rwanda.

Such information shall be given to the head of the enterprise before it is displayed. Such information shall be displayed at the entrance of work places and in places provided for and reserved for trade unions communications.

Article 41 – Providing useful information

Except for very sensitive business information, the enterprise head/owner shall provide workers' representatives with key company information in order to facilitate them executing their mission.

The parties will agree on the nature of such key information, but this shall include at least:

- 1° annual balance sheets, profit and loss accounts as basic information usually requested for publication;
- 2° Company's development plans.

Article 42 – Secrecy

Members of the workers' representatives are bound to secrecy with regard to all business and industrial secrets.

Workers' representatives are obliged to maintain secrecy even if they are no longer workers' representatives in an enterprise.

Article 43 – Meetings with the head of enterprise

Workers' representatives shall meet the head of the enterprise at least once every quarter. They shall also meet without delay upon their request in case of emergency, either collectively or individually, depending on the nature of the issue at hand.

Article 44 – Meeting collectively workers' representatives and their alternates

At least once a year the employees shall meet collectively workers' representatives and their alternates in order to exchange views on employment matters, adopt a report on previously raised issues and how they were treated and take due resolutions about the pending ones.

Article 45 – Recourse to advice of experts

The workers' representatives may invite experts to attend workers' representatives meetings with a view to dealing with a particular subject. Such invitations may also be extended to managers in the enterprise.

The members of the workers' representatives may ask experts or directors of the enterprise information and advice in the meeting.

Article 46 – Recording complaints and suggestions

At every branch of enterprise, a special register shall be kept for recording complaints and suggestions made by workers' representatives as well as the replies of the employer.

This register shall be made available to the employees of the enterprise who wish to refer to it, one working day per week, in the half hour before or after work.

It shall also be made available to the District labour inspector, upon request.

Article 47 – Filing a complaint to National Labour Council

Any interested party may file a complaint to National Labour Council against the decisions of the electoral committee.

Article 48 – Filing a case to court

In case the National Labour Council has not provided a decision to the filed complaint in one (1) month, the interested person may file the case to a competent court.

Chapter V Final provisions

Article 49 – Repealing provision

Ministerial Order n° 09 of 13/07/2010 determining the modalities of electing workers' representatives and fulfillment of their duties and all prior provisions contrary to this Order are hereby repealed.

Article 50 – Commencement

This Order shall come into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.