

Rwanda

Ministerial Order relating to Employees' Representatives

Ministerial Order 19 of 2020

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Ministerial Order relating to Employees' Representatives

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Commenced on 19 March 2020

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The Minister of Public Service and Labour;

Pursuant to the Constitution of the Republic of Rwanda of 2003 revised in 2015, especially in Articles 121, 122 and 176;

Pursuant to Law n° 66/2018 of 30/08/2018 regulating labour in Rwanda, especially in Article 114;

Having reviewed Ministerial Order n° 01 of 11/11/2014 determining the modalities of electing workers' representatives and fulfilment of their duties;

After consideration and approval by the Cabinet, in its meeting of 28/01/2020;

ORDERS:

Chapter One

General provision

Article One – Purpose of this Order

This Order determines:

- 1° modalities of electing employees' representatives and their substitutes;
- 2° responsibilities of employees' representatives;
- 3° modalities for fulfilment of responsibilities by employees' representatives.

Chapter II

Determination of the number of employees' representatives, that of substitutes and their mandate

Article 2 – Enterprise eligible to elect employees' representatives and their substitutes

An enterprise with at least ten (10) employees must organize elections for employees' representatives and their substitutes.

Article 3 – Determination of the number of employees' representatives and their substitutes

The number of employees' representatives and their substitutes is determined in the following manner:

- 1° an enterprise with ten (10) to twenty-nine (29) employees elects one (1) employees' representative and one (1) substitute;
- 2° an enterprise with thirty (30) to forty-nine (49) employees elects two (2) employees' representatives and two (2) substitutes;
- 3° an enterprise with fifty (50) to ninety-nine (99) employees elects three (3) employees' representatives and three (3) substitutes;
- 4° an enterprise with one hundred (100) to two hundred and forty nine (249) employees elects four (4) employees' representatives and four (4) substitutes;
- 5° an enterprise with two hundred and fifty (250) to four hundred ninety-nine (499) employees elects five (5) employees' representatives and five (5) substitutes;
- 6° an enterprise with five hundred (500) to nine hundred ninety-nine (999) employees elects six (6) employees' representatives and six (6) substitutes;
- 7° an enterprise with one thousand (1,000) to one thousand four hundred and ninety-nine (1,499) employees elects seven (7) employees' representatives and seven (7) substitutes;
- 8° an enterprise with one thousand and five hundred (1,500) to one thousand nine hundred ninety-nine (1,999) employees elects eight (8) employees' representatives and eight (8) substitutes;
- 9° an enterprise with two thousand (2,000) to two thousand five hundred (2,500) employees elects nine (9) employees' representatives and nine (9) substitutes;
- 10° an enterprise with above two thousand five hundred (2,500) employees elects ten (10) employees' representatives and ten (10) substitutes.

In any case, the number of employees' representatives and substitutes may not exceed ten (10) respectively.

Without prejudice to the provisions of Paragraph One of this Article, in case an enterprise has many branches, each branch must elect employees' representatives and their substitutes.

The number of employees' representatives and their substitutes can neither be reduced nor increased as a result of change in number of employees in the enterprise if the representatives and their substitutes are still serving their term of office.

Employees' representatives and their substitutes are elected from employees of the enterprise and the number of elected representatives and their substitutes must comprise at least thirty percent (30%) of women, where possible.

Article 4 – Term of office of employees' representatives and that of their substitutes

Employees' representatives and their substitutes are elected for a renewable term of office of three (3) years.

An employee representative or a substitute who intends to resign informs in writing the employer and reserves a copy to the labour inspector of the District where the enterprise is established.

Any employee representative or substitutes who substitutes another serves for the remaining term of office of his or her predecessor.

Chapter III

Election of employees representatives and their substitutes and modalities for election

Section One – Election of employees' representatives

Article 5 – Establishment of the electoral committee in the enterprise

The management of the enterprise, within four (4) weeks preceding the end of the employees' representatives term of office and after consultation with employees, nominates three (3) employees that compose the electoral committee in the enterprise.

Subject to provisions of Paragraph One of this Article, the management of the enterprise may, after consultation with the employees or representatives of trade unions in an enterprise, increase the number of electoral committee members.

The electoral committee must be an odd number of members and comprise of male and female employees, where possible.

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

The electoral committee must choose among its members the Chairperson, Vice-Chairperson and Secretary for the fulfilment of its duties.

Article 6 – Responsibilities of the electoral committee

The electoral committee has the following responsibilities:

- 1° to organise elections of employees' representatives and their substitutes in an enterprise;
- 2° to verify and approve the voters list in the enterprise submitted by the employer within fifteen (15) days before the election takes place;
- 3° to verify and approve the list of candidates submitted by the employer;
- 4° to request the employer to submit the name of a candidate who replaces another candidate who does not meet the requirements;
- 5° to receive petitions concerning the preparation and conduct of the elections;
- 6° to display the voters list in an appropriate place at least seven (7) days before elections are held;
- 7° to announce the election results;
- 8° to invalidate the elections held in the enterprise, if conducted in violation of provisions of this Order;
- 9° to correct the number of votes obtained;
- 10° to verify whether the quorum on voting list of fifty per cent (50%) is achieved in order for elections to be valid;
- 11° to prepare ballot papers to be used in elections;
- 12° designate persons to assist the electoral committee in the counting of votes;
- 13° to register and allow voters who do not appear on the voting list to vote on the polling day;
- 14° to prepare a report to be sent to the employer and a copy to the labour inspector of the District where the enterprise is located;

15° to decide on non-eligibility cases due to conflicts of interests of candidates.

Article 7 – Electoral colleges

Employees' representatives are elected by the following colleges:

- 1° college of staff;
- 2° college of managers.

Each Electoral College has a list of voters elaborated by the management of the enterprise.

In case of conflict on the list of voters, the employer and employees settle the conflict amicably.

If the conflict is not settled by the employer and employees, the case is sent to labour inspector of the area where the enterprise is located.

If the labour inspector does not settle the conflict, the case is referred to the Minister in charge of labour.

Article 8 – Joint colleges

In case the number of employees in the enterprise equals or is less than twenty-nine (29) in the two colleges provided for in Article 7 of this Order, the employer elaborates a single college.

Article 9 – Requirements for voting

In order to vote, the employee must:

- 1° appear on the list of employees of the enterprise;
- 2° not have been deprived of the right to vote;
- 3° have been employed by the enterprise for at least six (6) consecutive months before elections of employees' representatives are held.

Provisions of point 3° of Paragraph One of this Article do not apply for newly created enterprises.

Article 10 – Persons not allowed to stand as candidates

The following employees are not allowed to stand for elections as employees' representatives in an enterprise:

- 1° employee who has not yet worked in the enterprise for at least a year;
- 2° spouse, child or parents of the employer or of the owner of enterprise;
- 3° brother and sister of the employer or of owner of the enterprise;
- 4° member of Board of Directors of the enterprise;
- 5° legal representative of the enterprise;
- 6° head of human resource department;
- 7° any other employee with responsibilities that can conflict with the responsibilities of employees' representative;
- 8° any person who performs activities for the enterprise but who is not an employee of that enterprise.

Provisions of point One of Paragraph One of this Article do not apply for newly created enterprises.

Article 11 – Submission of candidacy

An employee who intends to be elected as employee representative is required to submit his or her candidacy to the employer.

The submission of candidacy starts ten (10) days before the elections are held and closes three (3) days before the Election Day.

In case an employee who submits a candidacy is a member of a trade union, he or she indicates a federation in which he or she belongs to.

Article 12 – Equal treatment of candidates

The electoral committee verifies whether the management of the enterprise treats all candidates equally.

Article 13 – Electoral campaign

Candidates campaign in the enterprise within working hours after agreement with the employer with regard to time and days.

It is forbidden to campaign on the voting day.

Article 14 – Modalities and venue of voting

Employees' representatives are elected through secret ballots in the premises of the enterprise during working days and hours.

Each voting room in the enterprise must have at least one polling booth.

Article 15 – Verification of voters

Before the election, members of the electoral committee verify whether the quorum is obtained in order for election to be valid.

Members of the electoral committee verify that a person who wants to vote is registered on the list of voters.

After a voter has voted, a member of the electoral committee ticks in front of name of the voter to indicate that he or she has voted.

Article 16 – Quorum for election

In order to proceed to the elections of the employees' representatives and their substitutes, the employees entitled to vote and registered on the voting list must be at least fifty per cent (50%) of all employees of the enterprise.

Article 17 – Voting

Employees' representatives and their substitutes are elected using ballot papers. A voter votes in a polling booth.

An employee votes by signing or placing a finger print on the ballot paper in front of names of the candidates of his or her own choice to certify voting.

An employee places his or her ballot paper in a ballot box after voting and signs in front of his or her name on the list of voters.

No employee is authorized to vote for another even if he or she was given power of attorney, except for employee with disabilities that prevent him or her from voting who is allowed to designate a person to assist him or her in voting.

In case there are no candidates to be elected as employees' representatives and their substitutes, elections are postponed for a period not exceeding seven (7) working days.

Article 18 – Vote counting

Electoral committee selects at least three (3) persons to assist in counting votes.

Electoral committee in the enterprise counts votes in public.

Article 19 – Counting ballot papers

Before proceeding with the counting of the votes, the electoral committee, counts the ballot papers.

When the number of ballot papers is greater than the number of voters who have affixed their signature or fingerprint to the list of election, it is captured in the minutes of electoral operations.

Article 20 – Invalid ballot papers

Invalid ballot papers are attached to the elections' minutes.

The ballot paper is invalid if:

- 1° it contains names exceeding the number of seats to fill;
- 2° nothing is written on the ballot paper;
- 3° a voter who used it has identified himself or herself;
- 4° it is of a different colour from that used in the election;
- 5° it contains names of persons who did not present their candidacy;
- 6° it is different from used ballots.

Article 21 – Statement on the electoral operations

At the end of the elections, members of the electoral committee make a statement on the electoral operations and send it to the employer with copy to the District labour inspector.

The statement on the electoral operations indicates at least the following major elements:

- 1° name of enterprise, District, Sector and Cell where it is located;
- 2° number of all employees, those who voted and those who are voted;
- 3° exact number of votes obtained by candidates;
- 4° names of elected.

Article 22 – Publication of election results

The electoral committee publishes and posts the results of election on the enterprise' notice board in a period not exceeding two (2) days following elections.

Article 23 – Complaints on elections results

An employee or a member of trade union may lodge a complaint on elections results to the electoral committee in forty eight (48) hours after the publication of the elections results. The electoral committee provides a response within seventy two (72) hours.

In case the complaint is not solved by the electoral committee, it is submitted to the District labour inspector in three (3) working days following the seventy two (72) hours referred to in Paragraph One of this Article who, in also responds within two (2) days from the receipt of the complaint.

In case the complaint is not solved by the District labour inspector, it is submitted to the Minister in charge of labour within five (5) days, who in turn takes a decision within one (1) month.

Article 24 – Rectification of voting results

The electoral committee may:

- 1° decide that a candidate is not eligible and replace him or her with another candidate who has obtained the highest votes;
- 2° nullify the election if it was conducted contrary to the provisions of this Order.

When an election is nullified, another election is conducted within twenty (20) days from the date of annulment.

Article 25 – Employees' representatives coordination committee

After elections, employees' representatives and their substitutes elect among themselves a coordination committee and inform the employer in writing.

Chapter IV

Responsibilities of employees' representatives and modalities for their fulfilment

Section One – Responsibilities of employees' representatives

Article 26 – Responsibilities of employees' representatives

Employees' representatives have the following responsibilities:

- 1° to represent the employees in all matters related to work;
- 2° to submit to the labour inspection any complaint or any issue relating to application of the laws;
- 3° to ensure that laws relating to employee's health and safety are complied with and provide advice on ensure compliance;
- 4° to provide opinions on measures and conditions of reducing employees due to lack of employment or the employer's decision to restructure the enterprise;
- 5° to inform the employer of what can be done for the smooth running of the work and the improvement of production in the enterprise.

Section 2 – Modalities for fulfilment of responsibilities by employees' representatives

Article 27 – Time for fulfilling responsibilities of employees' representative

An employees' representative is given a specified time on a monthly basis for the execution of his or her responsibilities as agreed upon through collective agreements or particular agreement with the employer. The time is considered as the employees' representative working hours.

Unused time cannot be carried forward to the following month or be subject to any compensation whatsoever.

A substitute is given a specific time for fulfilling his or her responsibilities when he or she is replacing an employee's representative. In case of temporary replacement due to justifiable absence, the time used by substitute is deducted from the time entitled to the employee's representative.

Article 28 – Place of meeting

The employer must provide to employees' representatives a place where they can conduct meetings in order to enable them to accomplish their attributions. In case of open sites where there are no rooms, the employer facilitates the meetings of the employees' representatives to the possible extent.

Article 29 – Announcements of employees' representatives

Employees' representatives are allowed to share announcements related to their mission. Those announcements pass by the head of the enterprise before being published.

Article 30 – Providing necessary information to employees' representatives

Except for information whose disclosure may prejudice the interests of the enterprise, the head of enterprise provides to employees' representatives key enterprise information on business status, upon request, to ensure effective execution of their responsibilities.

Both parties agree on the nature of key information to be provided.

Key information to be provided include at least those related to:

- 1° annual balance sheets;
- 2° profit and loss accounts;
- 3° company's development plans.

Article 31 – Meeting with employees' representatives and their substitutes

At least once a year, the employer jointly meets employees representatives and their substitutes in order to exchange views on employment matters, adopt a report on previously raised issues, how they were treated and take due resolutions about the pending ones.

In case of emergency, employees' representatives are received by the employer upon their request without delay either collectively or individually, depending on the nature of the issues to be examined.

Article 32 – Professional secrecy

An employee representative must maintain professional secrecy even when he or she is no longer an employee's representative within the concerned enterprise.

Article 33 – Invitation to meetings of experts or managers

Employees' representatives may invite experts or managers to attend employees' representatives meetings when dealing with a particular issue to give advice or information on the issue on agenda.

Article 34 – Register of complaints and suggestions

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

That register must be made available to the employees of the enterprise in case they wish to know what is recorded in. It is also shown to the labour inspector at District level or national level, upon request.

Chapter V Miscellaneous and final provisions

Article 35 – Replacement of an employees' representative

Replacement of an employees' representative is done in the following circumstances:

- 1° absence with excuse;
- 2° death;
- 3° resignation;
- 4° end of contract;
- 5° dismissal;
- 6° transfer;
- 7° change of professional category ranking the employee in the category of persons non-eligible to be employees' representative;
- 8° retirement;
- 9° loss of eligibility to represent employees.

Article 36 – Protection of employees' representatives

An employees' representative cannot be dismissed on the basis of fulfilment of his or her duties.

Article 37 – Repealing provision

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

Article 38 – Commencement

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