FEDERATION OF KENYA EMPLOYERS
The Voice of Employers

PRESS STATEMENT ISSUED BY THE FKE MANAGEMENT BOARD ON SEPTEMBER 15,2023

Good afternoon, members of the press.

Thank you for joining us this afternoon as we hold this press briefing to share some of the outcomes of the FKE Management Board meeting that took place this morning.

The Management Board (MB) discussed, among other key issues, the general state of the economy, & its impact on businesses and the legislative changes that affect employers and the economy at large.

A. THE STATE OF BUSINESS OPERATING ENVIRONMENT,

The Business Environment remains challenging to the employers.

i. Lack of predictability in the legal and policy framework has greatly disrupted the business operations. Employers are no longer able to plan their costs and inputs. Stability and predictability of the business environment is important for proper functioning of the Business environment.

ii. Tax Increases brought about by the Finance Act 2023 coupled with the already high electricity tariffs and tight monetary policy, have slowed consumption which is the main driver of domestic demand in Kenya.

iii. Kenya lost over $345 million worth of Foreign Direct Investment (FDI) and other investment inflows in three months as economic growth plummeted over unfriendly policies.

iv. The banking sector is beginning to report a rising backlog of bad debts as a result of the high cost of living and punitive fiscal and monetary policies (taxation, government spending and interest rate changes) that have eroded household and business incomes.

v. The American investment advisory firm Morgan Stanley Capital International (MSCI) Inc has dropped Kenya's listed firms from its index review over the worsening business environment.

Employers are appealing to the government to provide a stable and less costly business operating environment. The government needs to commit to long-term development plans and give enough lead time for businesses to adjust their budgets before making far reaching policy changes.

B. HIGH COST OF LIVING

Kenya is currently grappling with the high cost of living which threatens our social fabric.

We are facing a challenge of shrinking disposable income and increasing prices. This is impacting negatively on the quality of life. Working population are getting into a situation where they can hardly afford to meet the health, education, food and shelter need of their households.

We appeal to the Executive and Parliament to address this matter by involving all stakeholders in the process of developing policies that reduce poverty and enhance economic growth.

The pump fuel prices increase from today is going to exacerbate the already high cost of living situation. The governments need to consider the adverse impact this is having on households and jobs as this will directly impact the ordinary citizens.

C. UNFAVORABLE TAX REGIME

We support the government's effort to widen the tax base and generate more tax revenues to fund the bottom-up economic development plan. However, we are concerned about the adverse effects the initiatives have on the cost of doing business and on the citizens. The policy needs to help spur increased production and consumption thereby increasing business activity while creating formal income opportunities for the masses. As income rises, the majority will enter tax paying brackets and pay taxes. In addition, when enterprises generate more revenues and profits, the taxes they pay will increase. The sharp increase in business operating costs, will most likely increase informality, and shrink the formal wage employment as many businesses especially the MSMEs will not be able to afford the costs associated with operating in the formal sector.

We request the government to reconsider their strategies including those in the Draft Medium Term Revenue strategy for Financial Years 2024/2025 to 2026/2027. We propose that the government pursues the following three principles to spur economic growth and to protect jobs. These are:

1. Maintain low tax rates. Work on reducing the individual tax burden, whether to an individual corporate/organization or to an individual natural person. The underpinning philosophy in tax management should not be taxing people and corporates into poverty. It should instead support many businesses and persons to increase their productivity and thereby enter into the tax bracket.
2. Budget with what we have. The challenge with our budgeting process is that we do not prioritize our programs. We want to fund every item on the "wish list". The reality is that resources are limited, and we have to live within our means as a country.

3. Improve people's trust in Government. The trust deficit and wastages in public spending have led to low confidence in public programs. The government suffers from high trust deficit and low confidence by the citizens. The government needs to first deliver results in the programs already underway. In addition, the government needs to drastically reduce wastages in public spending.

D. LEGISLATIVE CHANGES

There are several legislative changes that have far reaching implications to Kenyans and employers. Some of the Bills currently under discussions are:

1) Social Health Insurance Bill, 2023
2) Primary Health Care Bill, 2023
3) Facility Improvement Financing Bill, 2023
4) Digital Health Bill, 2023
5) Employment (Amendment) Bill, 2022

1. Proposed Universal Health Coverage (UHC) Bills, 2023

a) The effort to provide UHC in Kenya is noble and the Federation supports the overall objective of granting every person in Kenya their fundamental right to health care.

b) The challenge has been establishing a viable funding mechanism for the UHC. The current model puts the burden on the formal workers and employers, which will lead to increased business costs, reduce employee take home pay and destabilize the labour sector. FKE holds the view that this model will face challenges given that the formal wage employment is only 15% of the total wage employment. The envisioned contribution by every Kenyan also poses major challenges.

c) As envisioned by the Constitution and the tripartite labour sector arrangements, the Federation champions meaningful stakeholders' engagement including the Government, employers, workers, health-care providers and other stakeholders in the health sector, insurance sector and the public, to gain support and ownership.

d) FKE appreciates the efforts made by the Ministry of Health to seek stakeholders' views and hope that employers' views as submitted to the Ministry of Health regarding the proposed Bills will be taken into consideration and the UHC proposed Bills amended to capture the vies of employers before being passed by Parliament. **For Example,**

i. The Federation noted with concern that (the formal) employers' have been omitted from the Board, yet we play a critical role. Employers are central to the provision and implementation of this health care as envisaged in this Bill and have always served on such boards alongside trade unions & the government.

ii. The Authority will largely depend on the contributions of employees in formal employment. This means that accurate deduction and timely remission of these contributions will be done by employers, hence the need for employers' representation on the Board.

iii. Kenya has ratified ILO Convention 144 on Tripartite Consultations and hence recognizes the tripartism engagement. Hence the labour sector representation is not complete when you have only Government and workers without employers. Further the Bill refers to employers under various sections and it is clear that employers' role is envisaged in the Bill. FKE should be part of the Board.

iv. The labour relations Act recognizes tripartism in the labour sector. This should not be disregarded in the UHC reforms.

e) This morning we also woke up to the news that the National Assembly has reduced publication days for the digital Health Bill, 2023 and Social Health Insurance Bill, 2023 from 14days to 6 and 3 days respectively. This will compromise the quality of public participation.

2. Employment (Amendment) Bill,

The Employment (Amendment)Bill, 2022 seeks to amend the Employment Act, 2007 providing for the **"right to disconnect"** to employees. In essence, the Bill seeks to establish the right of an employee not to be contacted by the employer beyond the contracted working hours unless there is an emergency.

2.1 FKE Position on the Proposed Amendments

FKE **does not** support the proposed Employment (amendments) Bill 2022 for the reasons that;

a) The proposed amendments introduce radical and stringent measures that will curtail the employers' prerogative to manage enterprises and pose challenges to Industrial Relations in Kenya. These proposed changes negate the essence of freedom and the realities of the labour market.
b) The employers' administrative prerogative should not be curtailed by legislation. The changes, in our view, infringe on the employer's right to manage the enterprise on a day-to-day basis.
c) If passed, the Bill will create two centers of managerial power and ultimately cause disharmony and indiscipline in workplaces. The ILO has provided instruments which have been successful in managing working hours and overtime payment.
d) The Bill is too prescriptive and requires that employers develop policies to regulate phone usage by employees outside work hours. An employee has the right to keep their phone on or off if it is a personal phone. If the phone is an official one, then the employee is under obligation to use it as required by the enterprise. If the nature of the business

requires a shift system or extension of working time to meet the business demands, then such laws which are prescriptive in nature will hamper flexibility in work arrangements.

e) The payment of overtime is already provided for in law (the General Wages Order) to address situations where employees work beyond set hours. Most Collective Bargaining Agreements (CBAs) provide for flexibility in the management and regulation of working time. To our knowledge, no Union or employee has raised any concerns to warrant the passing of this law.

f) Flexibility is important for the Labour sector in the **"new normal"** which emphasizes on results (output). The employer and the employee should be allowed to agree among themselves on what arrangements work best for them. This Bill will make it hard for the employer and employee to effectively respond to emerging challenges such as those presented by covid-19 pandemic and the new workplace realities.

g) The engagement between an employer and employee during and out of work hours is a management issue and should not be legislated. This should be addressed through the Collective Bargaining Agreements (CBAs) and the Human Resource Policy Manuals at workplaces according to the unique operational requirements and needs of specific enterprises.

I want to appeal to the policymakers to move away from the piecemeal amendments to the employment act and labour laws. We need to think of comprehensive review of the labour laws as we did in 2007. This will give us the opportunity to address most emerging issues in a way in a better way.

3. Repeal of the NITA Act

The Presidential working Party on Education Reforms (PWPER) was formed to address issues around Competency-Based Education (CBE), governance, financing, equity, and inclusion in the education sector. The report whose scope touched on: Basic Education, Tertiary and University Education was handed to the President on 1st August 2023.

The report of the PWPER has several recommendations which some of them needs to be reconsidered. These include:

a) Repealing the Industrial Training Act and merging the National Industrial Training Authority (NITA) with TVET Curriculum Development Assessment and Certification Council (CDACC)
b) Transferring the training levy functions from NITA to the proposed amalgamated funding body i.e. Tertiary Education Placement and Funding Board
c) Merging the training and assessment component of NITA with TVET CDACC
d) Overlapping the mandate of Agencies within TVET space therefore, compromising service delivery due to conflicting and competing interests. There is overlapping of functions among TVET Act, NITA Act, KNEC Act, KICD Act and KMTC Act.

The Federation has always advocated investment in measures that create more job opportunities and improve productivity such as skills development, through strengthening organizations such as the National Industrial Training Authority (NITA) to execute their mandate fully to deliver on skills development and the employment Agenda.

These recommendations will put employers at a disadvantage because: -

First

a) NITA has a mandate of undertaking occupational training which is aligned to the Government's Bottom-up economic Transformation Agenda (BETA) as it focuses on enhanced productivity at the workplace through sustained partnership with employers.

Secondly,

b) The role played by NITA to facilitate apprenticeship and indentured learning; will be lost if the industrial training Act is repealed.

And lastly,

c) The training levy fund is dependent on contributions by employers. It is not a government fund like others. Thus, the proposed merger would not serve the intended purpose of the training levy fund and will hamper industrial training at a time when relevant skills are needed in the labour market.

We thank you for your attention and we are now ready to take your questions.

Asanteni Sana.

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