

THE EMPLOYMENT CODE ACT, 2019

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GOVERNMENT OF ZAMBIA

ACT

No. 3 of 2019

Date of Assent: 11th April, 2019

An Act to regulate the employment of persons; prohibit discrimination at an undertaking; constitute the Skills and Labour Advisory Committees and provide for their functions; provide for the engagement of persons on contracts of employment and provide for the form and enforcement of the contracts of employment; provide for employment entitlements and other benefits; provide for the protection of wages of employees; provide for the registration of employment agencies; regulate the employment of children and young persons; provide for the welfare of employees at an undertaking; provide for employment policies, procedures and codes in an undertaking; repeal and replace the Employment Act, 1965, the Employment (Special Provisions) Act, 1966, the Employment of Young Persons and Children Act, 1933 and the Minimum Wages and Conditions of Employment Act, 1982; and provide for matters connected with, or incidental to, the foregoing.

[11th April, 2019

ENACTED by the Parliament of Zambia

Enactment

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Employment Code Act, 2019, and shall come into operation on the date appointed by the Minister by statutory instrument.

Short title
and
commencement

“employee” means a person who, in return for wages, or commission, enters into a contract of employment and includes a casual employee and a person employed under a contract of apprenticeship made in accordance with the Apprenticeship Act, but does not include an independent contractor or a person engaged to perform piece work; Cap. 275

“employer” means a person who, in return for service enters into a contract of employment and includes an agent, representative, foreman or manager of the person, who is placed in authority over the person employed;

“employment agency” means a person providing market services including—

(a) matching offers of, and applications for, employment without the employment agency becoming a party to the employment relationship which may arise;

(b) employing persons with a view to making them available to a third party, who may be a natural or legal person that assigns their tasks and supervises the execution of these tasks; or

(c) services relating to job seeking as may be prescribed by the Minister, in consultation with the Tripartite Consultative Labour Council, in accordance with the Industrial and Labour Relations Act; Cap. 269

“employment relationship” means a relationship between employer and employee where work is carried out in accordance with instructions and under the control of an employer and may include—

(a) the integration of the employee in the organisation of the undertaking where the work is—

(i) performed solely or mainly for the benefit of an employer; and

(ii) carried out personally by the employee; or

(b) work—

(i) carried out within specific working hours or at an undertaking specified by the employer;

(ii) which is of a particular duration and has a certain permanency;

(iii) that requires the employee’s availability;

- (iv) which requires the provision of tools, materials and machinery by the employer; and
- (v) that is remunerated and constitutes the employee's sole or principal source of income;

“flexibilisation” means an employment practice characterised by different aspects of human resource management, such as—

- (a) pay flexibility, which is focused on performance related pay and pay bargaining;
- (b) contractual flexibility, which includes non-permanent contracts of service, sub-contracting and outsourcing;
- (c) task flexibility, which allows employees to perform various activities; and
- (d) working hours flexibility, which focuses on part-time working, job sharing and flexihours of work;

“full pay” means basic pay, allowances and the cash equivalent of any allowances in kind applicable for a period not exceeding one month, but does not include payments in respect of any bonus;

“full-time” means employment under a contract of employment that requires work to be done for the maximum hours per week, not exceeding a total of 48 hours, stipulated by an employer;

“gratuity” means a payment made to an employee in respect of a person's service on the expiry of a long-term contract of employment based on basic pay earnings that have accrued to the employee during the term of service;

“immediate family” means a spouse, child, parent, guardian, sibling, grandchild, grandparent or dependant of an employee;

“HIV” has the meaning assigned to the acronym in the National HIV/AIDS/STI/TB Council Act, 2002;

“hourly rate” means the applicable rate of pay per hour as stipulated by an employer for regular employment, except that such rate shall not be less than a rate prescribed under section 75 on minimum wages;

“justifiable reason” includes—

- (a) seniority, experience or length of service;
- (b) merit;
- (c) the quantity or quality of work performed; and
- (d) other criteria of a similar nature;

“Labour Advisory Committee” means the Committee constituted under section 99;

“Labour Commissioner” means the person appointed as Labour Commissioner under section 9;

“labour inspector” means a person appointed as a labour inspector under section 123;

“labour officer” means a person appointed as labour officer under section 9;

“long-term contract” means a contract of service for—

- (a) a period exceeding twelve months, renewable for a further term; or
- (b) the performance of a specific task or project to be undertaken over a specified period of time, and whose termination is fixed in advance by both parties;

“management” has the meaning assigned to the word under the Industrial and Labour Relations Act;

Cap. 269

“night” means the period between 18:00 hours in the evening and 06:00 hours in the morning;

“part-time” means employment under a contract of employment that stipulates fewer working hours per week than those stipulated for full-time by an employer;

“permanent contract” means a contract of employment, if not terminated in accordance with this Act, expires on the employee’s attainment of the retirement age specified under a written law;

“permit” means an employment agency permit issued under section 109;

“permit holder” means a person issued with a permit under section 109;

“permissible reason” means—

- (a) engagement under a contract of apprenticeship;
- (b) engagement for a probationary period;
- (c) temporary employment;
- (d) seasonal employment;
- (e) flexibilisation;
- (f) employment due to a temporary increase in the volumes of work which is expected to last for less than 12 months;
- (g) employment of a person who is not a citizen and is to work, subject to a work permit for a defined period;
- (h) the position of the employee is funded by an external source for a limited period;
- (i) the employee is retained by the employer past the normal or agreed retirement age;
- (j) the terms of employment of the employee are regulated by a written law or public policy; or
- (k) engagement of a management employee, with the consent of that employee;

Cap. 1

“person” has the meaning assigned to the word in the Constitution;

“piece work” means any work the pay for which is estimated by the amount of work performed irrespective of the time occupied in its performance;

Cap. 272

“public holiday” means a day declared as a public holiday in accordance with the Public Holidays Act;

Cap. 1

“public officer” has the meaning assigned to the words in the Constitution;

“redundancy” means the termination of a contract of employment in accordance with section 55;

“redundancy payment” means the sum that an employee, whose employment has been terminated due to redundancy, is entitled to receive from the employer and any applicable third party scheme;

“regular” means employment of an employee on an on-going basis under a permanent or long-term contract;

“repealed Acts” means the Employment Act, 1965, the Employment (Special Provisions) Act, 1966, the Employment of Young Persons and Children Act, 1933, and the Minimum Wages and Conditions of Employment Act, 1982; Cap. 268, Cap. 270, Cap. 274, Cap. 276

“seasonal employment” means employment under contract of employment where the timing and duration of the contract is influenced by seasonal factors including climate, agricultural or business peak cycle;

“severance pay” means the wages and benefits paid to an employee whose contract of employment is terminated in accordance with section 54;

“short-term” means a period not exceeding twelve months;

“Skills Advisory Committee” means the Committee constituted under section 63;

“temporary employment” means employment under a contract of employment where a person is engaged to do relief work in the absence of a substantive employee;

“third party scheme” includes any arrangement where by an agreement between an employer and a third party, or operation of law, a sum due to an employee becomes payable on the occurrence of a determined event;

“trade union” has the meaning assigned to the words under the Industrial and Labour Relations Act; Cap. 269

“Tripartite Consultative Labour Council” means the Tripartite Consultative Labour Council established under the Industrial and Labour Relations Act; Cap. 269

“undertaking” means a company, firm, trade, business, an industry or any other kind of enterprise, a statutory body or corporation or a local or public authority or a branch or division of the local or public authority; and

“wage” means the pay, remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by a contract of employment which are payable by an employer to an employee for work done or to be done or for services rendered or to be rendered.

4. Subject to the other provisions of this Act, this Act shall not— Compliance with other laws
- (a) relieve an employer or employee of any duty or liability imposed on the employer or employee by any other written law; or

(b) limit any powers conferred on a public officer by any written law.

Non-discrimination at undertaking

5. (1) An employer shall promote equal opportunity in employment and eliminate discrimination in an undertaking.

(2) An employer shall not, in any employment policy or practice discriminate, directly or indirectly, against an employee or a prospective employee—

(a) on grounds of colour, nationality, tribe or place of origin, language, race, social origin, religion, belief, conscience political or other opinion, sex, gender, pregnancy, marital status, ethnicity, family responsibility, disability, status, health, culture or economic grounds; and

(b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

(3) For the purposes of this Act, it is not discrimination to—

(a) take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in an undertaking;

(b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job;

(c) restrict employment to citizens or in accordance with section 65; or

(d) restrict access to limited categories of employment where it is necessary in the interest of state security.

(4) An employer shall pay an employee equal wages for work of equal value.

(5) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units.

Protection of persons with disabilities Act No. 6 of 2012 Act No. of 2019

6. An employer shall comply with the provisions of the Persons with Disabilities Act, 2012, and the Mental Health Act, 2019 in relation to the employment of a person with a disability.

Prohibition of casualisation

7. (1) An employer shall not engage in casualisation.

(2) An employer who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding four hundred thousand penalty units.

(3) In addition to the penalty under subsection (2), an employer shall pay an employee any accrued benefits attaching to the employment status of the employee as determined by an authorised officer.

(4) An authorised officer shall, in determining the employment status of, and accrued benefits due to, an employee under subsection (3), consider the following:

- (a) the number of hours worked each week by that employee;
- (b) whether a roster system is published in advance;
- (c) whether the employment pattern is regular;
- (d) whether a mutual expectation of continuity of employment exists;
- (e) whether the employer requires notice before that employee is absent or on leave;
- (f) whether the employee has a reasonable expectation that work will be available;
- (g) whether that employee works according to consistent starting and finishing times; and
- (h) any other relevant facts necessary to determine the status of the employment relationship.

(5) Where an employer fails to pay the accrued benefits due to an employee as determined by the authorised officer, the accrued benefits shall be a debt due to the employee and shall summarily be recoverable as a civil debt.

(6) In this section—

“casualisation” means an employment practice where an employer, without permissible reason, engages or re-engages an employee on a temporary or fixed basis, to perform work which is permanent in nature—

- (a) that results, without justifiable reason, in the different treatment of an employee compared to a full-time or other category of employee of the employer; or
- (b) which has the effect of enabling the employer to avoid any obligations, or depriving an employee of any rights under this Act;

“permanent in nature” means—

- (a) work that is not short term, has regular or systematic hours of work, and has an expectation of continuing; or

(b) a position in an undertaking that is necessary for the continued or sustainable operation of the undertaking or is core to the objectives of the undertaking.

Prohibition of forced labour

8. (1) A person shall not engage or subject another person to perform forced labour.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

PART II

THE LABOUR COMMISSIONER

Labour Commissioner and other staff

9. (1) The President shall, on the recommendation of the Civil Service Commission, appoint as a public officer, the Labour Commissioner, who is responsible for the administration of the provisions of this Act.

(2) The Civil Service Commission shall appoint assistant labour commissioners, labour officers and other officers that are necessary for the administration of this Act.

(3) The Labour Commissioner may, subject to this Act, and the general or special directions of the Minister, delegate any of the Labour Commissioner's functions to a labour officer, labour inspector or any person as may be necessary for the administration of this Act.

Powers of Labour Commissioner

10. (1) The Labour Commissioner may—

- (a) enter freely at any reasonable time, whether by day or by night to inspect, any premises or conveyance where the Labour Commissioner reasonably believes persons are employed;
- (b) enter by day any premises in order to carry out any examination, test or inquiry that the Labour Commissioner considers necessary in order to determine if the provisions of this Act are being complied with;
- (c) interview, whether alone or in the presence of a witness, an employer or employee on any matter concerning the application of a provision of this Act;
- (d) question a person who the Labour Commissioner considers has useful information, except that the person shall not be required to answer any question that may tend to prejudice or incriminate that person;

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- (e) require the production for examination of any book, register, account or other document, the keeping of which is prescribed by this Act;
- (f) make copies of documents or to take extracts of documents that the Labour Commissioner may consider necessary;
- (g) remove a book, register, account or other document that the Labour Commissioner may consider necessary; and
- (h) enforce the posting of notices in a place and manner that may be prescribed.
- (2) The power under subsection (1)(a) shall, in relation to a private dwelling house or any land or building occupied as a private dwelling, be exercised during the day with a warrant.
- (3) Where the Labour Commissioner removes a book, register, account or other document under subsection (1)(g), the Labour Commissioner shall give a receipt in respect of the book, register, account or other document to the employer or the employer's representative and return the book, register, account or other document as soon as is practicable after achieving the purpose for which it was removed.
- (4) The Labour Commissioner shall, on the occasion of an inspection or visit, notify the employer or the employer's representative of the Labour Commissioner's presence, unless the Labour Commissioner considers that the notification may be prejudicial to the performance of the Labour Commissioner's duties.
- (5) Where the Labour Commissioner has reason to believe that a provision of this Act is likely to be or has been contravened, the Labour Commissioner may—
- (a) issue a written notice specifying the contravention and the preventative or remedial measure to be undertaken within a specified period; and
- (b) if necessary, order suspension of further work, except that an employee shall be on full pay, until the preventive or remedial measure referred to in paragraph (a) is undertaken and approved by the Labour Commissioner.
- (6) An employer who is directed to prevent or rectify a contravention under subsection (5) may—
- (a) where the period within which the preventative or remedial measure is to be carried out is specified, appeal to the Minister against the direction, within seven days before the expiry of the period specified in the notice; or

(b) where no period is specified, appeal to the Minister no later than seven days from the receipt of the direction.

(7) The Minister shall, determine an appeal lodged under subsection (6) within thirty days.

(8) An employer who fails to comply with a directive of the Labour Commissioner under subsection (5) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(9) An employer who is aggrieved with the decision of the Minister under this section may, appeal to the High Court.

(10) The powers conferred or imposed on the Labour Commissioner in this section are in addition to any other powers conferred or imposed on the Labour Commissioner by or under any other written law.

(11) The powers conferred on the Labour Commissioner under this section may be exercised by a labour officer or labour inspector.

Certificate of
appointment

11. (1) The Labour Commissioner shall provide a labour officer with a certificate of appointment in the prescribed form, which is *prima facie* evidence of the labour officer's appointment.

(2) A labour officer shall, in performing any function under this Act—

(a) be in possession of the certificate of appointment referred to in subsection (1); and

(b) show the certificate of appointment to any person who requests to see the certificate or is subject to an inspection under this Act.

(3) A person who forges or unlawfully alters a certificate of appointment referred to in subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Power to
require
returns
Act No. 13
of 2018

12. (1) Subject to the Statistics Act, 2018, the Labour Commissioner may require an employer or employment agency to collect statistics that the Labour Commissioner may reasonably consider necessary in respect of any employees or persons engaged through an employment agency.

(2) The Labour Commissioner may require an employer or employment agency to submit returns, in the prescribed manner and form, based on statistics, and at intervals that the Labour Commissioner may consider necessary.

(3) A person who fails to comply with a requirement of the Labour Commissioner under this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units.

13. (1) A public officer who discharges a duty of a public nature under the provisions of this Act shall not have any pecuniary interest, directly or indirectly, in any undertaking under that public officer's supervision.

Duties of
public
officer

(2) A person who, in the exercise of the powers or in the performance of the person's duties under this Act, acquires information relating to the financial affairs, or the secret processes, or the plant or equipment of a person, firm or business, shall not, except for the purposes of legal proceedings under this Act, disclose that information to another person.

(3) The duty not to disclose confidential information under subsection (2), does not apply where the information is required by—

- (a) a court of law or any person who, by law, is vested with the power to compel the disclosure of the information;
or
- (b) the Labour Commissioner or any person acting for the purposes of performing the Labour Commissioner's or person's functions under this Act.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

PART III

EMPLOYMENT RELATIONSHIP

Division 3.1 - Contract of Employment

14. Subject to the other provisions of this Act relating to the employment of an expatriate, an employer shall, in filling an employment vacancy, employ a citizen except where a citizen does not possess the skills required for that job or a citizen does not apply for that job.

Prioritisation
of
employment
for citizen

15. A person shall not be employed under a contract of employment, except in accordance with the provisions of this Act

Governing
law of
contract of
employment

16. (1) Subject to subsection (3), a person shall not, except under prescribed conditions, employ or cause to be employed, a person under the age of fifteen years.

Minimum
contractual
age

(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) Subsection (1) does not apply to a person who has—

(a) been formally exempted from compulsory school attendance in terms of the Education Act, 2011; and

(b) failed to secure admission to a suitable school or whose enrolment has been cancelled or terminated by the school authorities or for good cause by a parent, except that in either case, the person shall only be employed on —

(i) prescribed terms and conditions; and

(ii) approval, by an authorised officer, of the nature of the person's employment.

Act No. 23
of 2011

Medical
examination

17. (1) Subject to subsection (3), an employer may, prior to entering into a contract of employment with an employee, require the employee to be medically examined by a medical doctor for purposes of determining the fitness of the employee to undertake the work for which the employee is proposed to be employed.

(2) A medical doctor shall, on medically examining a person under subsection (1)—

(a) prepare a duly signed medical certificate in respect of the medical examination; and

(b) send the duly signed medical certificate to both the prospective employer and employee.

(3) An employer shall keep a confidential file containing the medical information of an employee in respect of a medical examination carried out under subsection (1).

(4) An employer shall not disclose to any person, information contained in a confidential file under subsection (3), unless the employee to whom the information relates consents to that disclosure.

(5) An employer that contravenes subsection (4), commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Record of
oral contract
of
employment

18. An employer shall ensure that a record of the contract of employment is prepared and maintained for each employee under an oral contract of employment as set out in the First Schedule.

19. (1) A contract of employment may take one of the following forms: Types of contracts

- (a) a permanent contract;
- (b) a contract for a long-term;
- (c) a contract for a specific task;
- (d) a contract for a probationary period not exceeding 3 months.

(2) Subject to sections 52 and 53, a permanent contract may be terminated by either party.

(3) A contract for a specified period of time shall automatically expire on the date specified for its expiration and notice shall not be required for its expiration at that time, except that expiration before the specified period shall be done in accordance with the provisions of this Act.

(4) A contract to perform a specific task shall terminate on the completion of the task required without the requirement for a notice of termination by either party.

(5) A contract of employment may provide for a probationary period in accordance with this Act.

20. In the absence of any agreement to the contrary, an oral contract of employment shall be a contract for the period by reference to which wages are calculated, except that where wages are calculated by reference to any period of less than a day, then, in the absence of any agreement to the contrary, the oral contract shall be a daily contract. Presumption as to period of oral contract of employment

21. (1) A party to an oral contract of employment for a period not exceeding one month shall, where that person continues in employment after the expiry of the term of the contract, be presumed to have entered into a new oral contract for a further period of one month and be subject to the same terms and conditions as those of the expired contract. Presumption as to new contract of employment

- (2) This section does not apply to a —
- (a) contract expressed to be terminable without notice;
 - (b) contract specifically expressed to be a long-term contract and not renewable; and
 - (c) daily contract where the wages are paid daily.

22. (1) Where an employer engages an employee for a period of six months or more or for a number of working days equivalent to six months or more within a year, the contract of employment shall be in writing. Contract of employment required to be in writing

(2) An employer shall, on engaging an employee, read and explain the terms of the contract of employment to the employee and the employee shall enter into the contract voluntarily and with full understanding of the terms of that contract.

(3) An employee who consents to entering into a contract of employment may indicate consent by either signing the contract or affixing, on the contract, a thumb or finger print in the presence of a person other than the employer.

(5) Where an employee is illiterate or cannot understand the language in which the contract is written, or the provisions of the contract of employment, the employer shall have the contract attested in accordance with this Act and explained to the employee in a language that the employee understands.

(6) An employer who is a party to a contract of employment under subsection (1) shall notify the Labour Commissioner, in writing within thirty days of the engagement of the employee.

(7) A person who contravenes the provisions of this section is liable to an administrative penalty.

Contents of
written
contract of
employment

23. (1) An employer shall prepare a written contract of employment specifying the rights and obligations of the parties to the contract and include the minimum particulars of the contract as set out in the Second Schedule.

(2) Where the terms of a written contract of employment change, the employer shall, with the consent of the employee, revise the contract to reflect the change and provide the employee with a copy of the revised contract of employment.

(3) An employer shall, where the employer terminates a written contract of employment, keep the contract for a period of five years after the termination.

Contract of
employment
not binding
on family of
employee

24. A contract of employment shall not bind the family of an employee except where it makes a separate provision for a family member.

Attestation

25. (1) An employer shall, within thirty days of entering into a written contract of employment under section 22 (5) submit three copies of the contract to an authorised officer for the purpose of attestation.

(2) An employer who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine of one hundred penalty units for each day that the offence continues.

26. (1) An authorised officer shall, on receipt of a written contract of employment for attestation under section 25, ensure that—

Duty of authorised officer in attesting written contract of employment

- (a) the employee fully understands and freely consents to the written contract of employment and that the employee's consent is not obtained by coercion or undue influence or as a result of misrepresentation or mistake;
- (b) the terms of the written contract of employment are not in conflict with this Act or any other written law;
- (c) where applicable, the provisions relating to a medical examination under section 17 is complied with;
- (d) the employee makes a declaration that the employee is not bound by any previous written contract of employment; and
- (e) the written contract of employment is, in all circumstances, equitable.

(2) An authorised officer shall, within thirty days of receipt of a written contract of employment under section 25—

- (a) attest the written contract of employment; or
- (b) refuse to attest the written contract of employment where the requirements of subsection (1) are not met and give reasons for the refusal.

(3) An authorised officer shall, after attesting a written contract of employment under subsection (2)—

- (a) return two copies to the employer, one of which shall be given to the employee; and
- (b) retain one copy.

(4) Where an authorised officer refuses to attest a written contract of employment under subsection (2)(b), the contract is void and the authorised officer shall give an employer an opportunity to rectify the written contract of employment and re-submit that written contract for attestation within a period specified by the authorised officer.

27. (1) An employee may be employed for a probationary period, not exceeding three months, for the purpose of determining that employee's suitability for appointment.

Probation

(2) An assessment of an employee shall be taken by the employer during the probationary period and the result of the assessment shall be communicated to the employee before the end of the probationary period.

(3) Where, during the probation period, an employer determines after an assessment that an employee is not suitable for the job, the employer shall terminate the contract of employment by giving the employee at least twenty-four hours' notice of the termination.

(4) An employer who is satisfied with the performance of an employee after a probation period shall notify the employee, in writing, of the confirmation of employment, except that where the employer does not notify the employee, in writing, of the confirmation, the employee shall be confirmed in the position from the date of the expiry of the probation period.

(5) A probationary period under subsection (1) may be extended for a further period not exceeding three months.

(6) An employee shall, unless the contract of employment or collective agreement provides otherwise, have the same rights and obligations during the probation period as an employee who has successfully completed the probation period.

(7) An employee on probation may terminate the contract of employment by giving the employer at least twenty-four hours' notice of the termination.

(8) An employee who is re-employed by the same employer for the same job within a period of two years from the date of termination of the contract of employment with that employer shall not be subject to probation, where the termination was not performance related.

Transfer of
contract of
employment

28. (1) An employer shall not transfer any rights arising under a contract of employment to another employer without—

(a) the written consent of the employee;

(b) notifying the employee's representative of the proposed transfer; and

(c) the endorsement by an authorised officer of the particulars of the transfer on the contract.

(2) A transfer of rights made in contravention of subsection (1) is void.

(3) An authorised officer shall, before endorsing any particulars of transfer on a contract of employment, ensure that—

(a) the employee fully understands the nature of the transaction and freely consents to the transfer without coercion, undue influence or as the result of misrepresentation or mistake;

- (b) the employee’s representatives are notified by the employer of the employer’s intention to transfer the employee;
- (c) where there is any change in the nature of the work to be performed, or in the place where that work is to be performed, and a medical examination of the employee is desirable, that the employee has been medically examined in accordance with section 17; and
- (d) the employer and employee have entered into an agreement to carry forward the liabilities of the employee to an undertaking, or to pay any outstanding liabilities due to the employee before the transfer of the employee.

29. Where an employee refuses to be transferred to another employer under section 28, the contract of employment of the employee shall terminate and the employee shall be entitled to a severance pay.

Refusal to consent to transfer to other employer

30. (1) An authorised officer may, before attesting a contract of employment outside the Republic, require an employer or an employment Agency to give security by bond, and provide a surety resident within the Republic as approved by an authorised officer.

Security in certain contracts of employment

(2) The bond provided for under subsection (1) shall provide for the due performance of the contract by the employer on the terms that an authorised officer may consider reasonable, or in lieu of that bond, an authorised officer may require the employer to deposit in cash the sum that the officer may consider necessary to guarantee the performance.

(3) A bond entered into for the purposes of this section is enforceable by an authorised officer according to its purpose without any assignment and is binding as a deed without being sealed.

(4) The money recovered under a bond shall be applied by an authorised officer in or towards satisfaction of a claim of an employee employed under that contract of employment and any balance remaining after the satisfaction of that claim shall be paid to the employer.

31. (1) Subject to the other provisions of this Act, where a contract of employment made within the Republic relates to employment in another country—

Contract of employment outside Republic

- (a) a person who has not attained the minimum age of capacity for entering into contracts as prescribed by the law of that foreign country shall not be capable of entering into the contract;

(b) the conditions for termination of the contract of employment shall be determined by the law of that foreign country; and

(c) the Labour Commissioner shall cooperate with the appropriate authority of that foreign country to ensure the enforcement of section 30.

(2) Where a contract of employment made in a foreign country relates to employment in the Republic, the provisions of this Act apply to that contract.

Inducing
person to
proceed
abroad
without a
contract of
employment

32. (1) A person shall not—

(a) induce or attempt to induce another person to proceed outside the Republic for the purpose of employment in contravention of this Act; or

(b) knowingly aid a person to proceed outside the Republic for the purposes of employment or transfer that person induced under paragraph (a).

(2) A person who contravenes subsection (1), commits an offence and liable, on conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

Division 3.2 - Minimum Employment Benefits

Repatriation

33. Where an employee has been brought from a place within the Republic to a place of employment by an employer, or by an employment agency acting on behalf of the employer, the employer shall pay the prescribed expenses of repatriating the employee to the place from which the employee was brought, on the—

(a) expiry of the period of service that is specified in the contract of employment;

(b) termination of the contract of employment by reason of the inability, refusal or neglect of the employer to comply with all or any of the provisions of the contract;

(c) termination of the contract of employment by agreement between the parties, unless the contract otherwise provides; or

(d) termination of the contract of employment by reason of the inability of the employee to perform the normal duties under the contract by reason of illness or accident not occasioned by the employee's own fault.

34. (1) An employer may provide transport or pay for the cost of transport to repatriate an employee entitled to repatriation under section 33.

Employer to provide transport on repatriation

(2) An employer shall, where that employer provides transport to an employee, take all necessary measures to ensure that the vehicle or vessel provided by that employer is suitable for the purpose as prescribed.

(3) In the case of a long journey, an employer shall make necessary arrangements for the health, safety and welfare of the employee and the employee's family during the journey.

(4) An employer who fails to comply with this section, or with a lawful order or direction of an authorised officer is liable to an administrative penalty.

35. (1) The Minister may, by statutory instrument, designate a public holiday under the Public Holidays Act as a paid public holiday and an employee shall be entitled to a holiday with full pay if the employee is not absent from duty without the permission of the employer or for a reasonable excuse, either on the day immediately preceding or on the day following the public holiday.

Paid Public Holidays Cap. 272

(2) Despite subsection (1), an employee or class of employees shall, where by virtue of any agreement or custom it is normal for an employee or class of employees to work on a day declared to be a paid public holiday, be entitled to payment of wages at a rate that may be agreed under a collective agreement, contract of employment or as prescribed.

36. (1) An employee, other than a temporary or casual employee, who remains in continuous employment with the same employer for a period of twelve consecutive months shall be granted, during each subsequent period of twelve months while the employee remains in continuous employment, annual leave on full pay at a rate of at least two days per month.

Annual leave

(2) The leave referred to under subsection (1) is in addition to any public holiday or weekly rest period, whether fixed by any law, agreement or custom.

(3) An employer shall in consultation with an employee, at the beginning of each year prepare an annual leave plan specifying when the leave under this section is to be taken by employees in the undertaking.

(4) Where an employer does not grant an employee leave, or an employer grants the employee leave less than the total leave

due under this section, the employer shall pay the employee wages in respect of the leave still due at the end of the period of twelve consecutive months.

(5) Despite subsection (1), an employer may, with the agreement of the employee, pay wages to the employee in lieu of any annual leave due to the employee under that subsection, and if any leave has been accumulated by an employee whose contract of employment has terminated or expired, the employer shall pay wages to the employee for the period of the accumulated leave.

Annual leave benefits formula

37. Subject to an agreement between the parties which is more favourable to an employee, an employee shall be paid annual leave benefits based on the formula as set out in the Fifth Schedule.

Sick leave and medical discharge

38. (1) An employee who is unable to perform that employee's normal duties due to illness or injury not occasioned by the employee's default shall notify the employer of the illness or injury and proceed on sick leave on production of a medical certificate from a health practitioner.

(2) Where an employee is incapacitated due to illness or injury not occasioned by the employee's default, the employee is entitled to sick leave under subsection (1), and—

(a) an employee on a short-term contract shall be paid full pay for the equivalent of twenty-six working days of the sick leave and thereafter, half pay for the equivalent of the next twenty-six working days of the sick leave; or

(b) an employee on a long-term contract shall be paid full pay during the first three months of the sick leave and thereafter, half pay for the next three months of the sick leave.

Act No. of 2019

(3) Despite subsection (2), this section shall not apply where the incapacity arises from an occupational related accident or disease as provided for under the Workers Compensation Act, 2019; and

Act No. of 2019

(4) Despite subsection (2), the wages payable to an employee under this section shall be reduced by the amount of any compensation received by the employee during the period of incapacity under the Workers Compensation Act, 2019.

(5) An employer may, on the recommendation of a medical doctor, discharge an employee on medical grounds where the employee does not recover from the illness or injury, under subsection (1), after six months of the date of the illness or injury, and the employee's entitlement to sick leave shall cease.

(6) An employee whose employment is terminated on medical grounds under subsection (4) is, in addition to any other accrued benefits, entitled to a lump sum of not less than three months' basic pay for each completed year of service.

(7) Subject to the provisions of any other written law, an employer shall not terminate a contract of an employee while any of the provisions of this section apply unless otherwise agreed between the employee and employer.

(8) Despite subsection (6), an agreement between the parties to a contract of employment shall not be less favourable than the provisions of this section.

39. An employee is entitled to compassionate leave with full pay for a period of at least twelve days in a calendar year where that employee has—

Compassionate
leave

- (a) lost a spouse, parent, child or dependant; or
- (b) a justifiable compassionate ground.

40. (1) An employee who has worked for a period of six months or more, shall be granted leave of absence with pay for a period not exceeding seven days in a calendar year to enable the employee to nurse a sick spouse, child or dependant, except that the employer may, before granting that leave, require the employee to produce a certificate from a medical doctor certifying that the spouse, child or dependant is sick and requires special attention.

Family
responsibility
leave

(2) An employee is entitled to three paid leave days per year to cover responsibilities related to the care, health or education for that employee's child, spouse or dependant.

(3) The days taken as leave under this section shall not be cumulative or deducted from the employee's accrued leave days.

41. (1) Subject to an agreement between an employer and an employee which is more favourable to the employee than the provisions of this section or a written law providing for maternity benefits, a female employee is, on production of a medical certificate, entitled to fourteen weeks maternity leave to be taken—

Maternity
leave

- (a) immediately preceding the expected date of delivery, except that at least six weeks maternity leave shall be taken immediately after delivery; or
- (b) after the delivery.

(2) The maternity leave under subsection (1) shall, in the case of a multiple birth be extended for a further period of four weeks.

(3) Where a female employee remains in continuous employment with the same employer for a period of twenty-four months immediately preceding the beginning of leave under this section, the maternity leave under subsection (1) shall be with full pay where the maternity benefits are not paid under a written law providing for maternity benefits.

(4) Where there is more than one employer from whom, or a third-party scheme from which, a female employee is entitled to claim maternity benefits, an employer who pays the maternity benefit is entitled to recover from the other employer or third-party scheme, as a civil debt—

(a) in the case of another employer, a contribution which shall bear a proportion to the amount of the maternity benefit paid to the employee as the number of days the employee worked for the other employer; or

(b) in the case of a third-party scheme, the reimbursement of the maternity benefit as may be prescribed.

(5) Despite subsection (1), a female employee who gives birth to a premature child is entitled to an extension of the maternity leave for a period that shall be recommended by a medical doctor.

(6) A female employee who remains in continuous employment with the same employer for a period of twelve months and suffers a miscarriage during the third trimester of pregnancy or bears a still born child is entitled to six weeks leave on full pay immediately after the miscarriage or still birth, except that the miscarriage or still birth shall be duly certified by a medical officer.

(7) On expiry of a female employee's maternity leave under subsection (1), the employee shall return to the job which the employee held immediately before the maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which applied to the employee before the maternity leave.

(8) A female employee may, immediately on expiry of maternity leave before resuming duties and with the approval of the employer, proceed on sick, annual, compassionate or other leave to which the employee is entitled.

(9) A female employee shall give notice in writing as may be reasonable in the circumstances, to the employer, of that employee's intention to proceed on maternity leave on a specified date and to return to work thereafter.

(10) A female employee shall not forfeit that employee’s annual leave entitlement under section 37 because of having taken maternity leave.

(11) In this section, “premature child” means a child born before thirty-seven weeks of gestation counting from the first day of the last menstrual cycle.

42. A female employee shall not resume work within six weeks of the date of the delivery of the employee’s child, unless a medical doctor certifies that the employee is fit to resume work. Fitness to resume work

43. Subject to section 50, an employer shall not, as a result of an employee’s pregnancy or maternity leave— Protection against dismissal connected with maternity leave

- (a) terminate that employee’s employment;
- (b) impose any penalty or disadvantage the employee; or
- (c) adversely change a condition of employment in respect of that employee.

44. (1) An employer shall not require a female employee to perform work in excess of a normal day’s work, two months before the employee’s estimated date of delivery. Protection from harmful work

(2) Subject to a recommendation by a health practitioner, a female employee who is pregnant shall not perform duties—

- (a) requiring continuous standing; or
- (b) that may be detrimental to that employee’s health and that of the employee’s unborn child.

(3) An employer shall, where a pregnant or nursing employee performs work that is detrimental to the employee’s health or that of the employee’s child or unborn child, offer the employee suitable alternative employment, if practicable, on terms and conditions that are not less favourable than that employee’s terms and conditions of employment.

(4) An employer shall exempt a female employee from working at night, if the employee is—

- (a) pregnant and in the third trimester of pregnancy; or
- (b) nursing a child who is aged six months or below.

45. (1) A female employee who is nursing that employee’s unweaned child, is entitled each working day, at a time convenient to the employee and having regard to the needs of the child, to at least— Nursing breaks

- (a) two nursing breaks of thirty minutes each; or
- (b) one nursing break of one hour.

- (2) The nursing break specified in subsection (1), shall
- (a) be for a period of six months from the date of delivery; and
 - (b) not be deducted from the number of paid hours of work of that female employee.

(3) Despite subsection (1), an employer and a female employee may enter into an agreement which is not less favourable than the provisions of this section.

Paternity
leave

46. Subject to an agreement between an employer and an employee which is more favourable to the employee than the provisions of this section, a male employee who remains in continuous employment with the same employer for a period of twelve months immediately preceding the beginning of leave under this section is entitled to at least five continuous working days paternity leave, if —

- (a) the employee is the father of the child;
- (b) the employee has submitted to the employer a birth record of the child; and
- (c) the leave is taken within seven days of the birth of a child.

Mother's
day

47. A female employee is entitled to one day's absence from work each month without having to produce a medical certificate or give reason to the employer.

Forced leave

48. (1) An employer shall, where the employer sends an employee on forced leave, pay the employee basic pay during the period of the forced leave.

(2) The Minister may, by statutory instrument, prescribe the circumstances under which an employee is required to be sent on forced leave.

Division 3.3 Suspension and Termination of Contract of Employment

Suspension
of employee

49. Where an employer reasonably believes that an employee has breached the employer's disciplinary rules and the employer decides to suspend the employee, the suspension shall be done in accordance with the disciplinary rules applicable to the employee.

Summary
dismissal

50. (1) An employer shall not dismiss an employee summarily except in the following circumstances:

- (a) where an employee is guilty of gross misconduct inconsistent with the express or implied conditions of the contract of employment;

- (b) for wilful disobedience to a lawful order given by the employer;
- (c) for lack of skill which the employee, expressly or impliedly, is warranted to possess;
- (d) for habitual or substantial neglect of the employee's duties;
- (e) for continual absence from work without the permission of the employer or a reasonable excuse; or
- (f) for a misconduct under the employer's disciplinary rules where the punishment is summary dismissal.

(2) Where an employer summarily dismisses an employee without due notice or payment of wages in lieu of notice, the employer shall, within four days of the dismissal, submit to a labour officer in the district in which the employee was working, a written report of the circumstances leading to, and the reasons for, the dismissal.

(3) A report under subsection (2), may be submitted through registered or electronic mail.

(4) Where a report is submitted through registered mail, the report shall be considered to have been submitted to a labour officer within four days of the dismissal if the envelope within which it is contained bears a postmark dated not later than three days following the dismissal.

(5) A labour officer shall record the details of a report submitted under subsection (2), in a register maintained for that purpose.

(6) A person who fails to comply with the provisions of subsection (2), is liable to an administrative penalty.

51. (1) An employer who summarily dismisses an employee under section 50 shall pay the employee, on dismissal, the wages and other accrued benefits due to the employee up to the date of the dismissal.

Right to wages on dismissal for lawful cause

(2) An employer who fails to comply with Subsection (1), is liable to an administrative penalty.

52. (1) A contract of employment terminates in the manner stated in the contract of employment or in any other manner in which a contract of employment is deemed to terminate under this Act or any other law, except that where an employer terminates the contract, the employer shall give reasons to the employee for the termination of the employee's contract of employment; and

Termination and expiration of contract of employment

(2) An employer shall not terminate a contract of employment of an employee without a valid reason for the termination connected

with the capacity or conduct of the employee or based on the operational requirements of the undertaking.

(3) An employer shall not terminate the contract of employment of an employee for reasons related to an employee's conduct or performance, before the employee is accorded an opportunity to be heard.

(4) An employer shall not terminate a contract of employment of an employee based on reasons relating to—

(a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, acting or having acted in the capacity of, an employee's representative;

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or recourse to administrative authorities;

(d) a discriminatory ground under section 5;

(e) family responsibilities relating to taking care of a member of an employee's immediate family;

(f) absence from work during maternity or paternity leave; or

(g) temporary absence from work during sick leave or injury.

(5) An employer shall bear the burden of proof that the termination of a contract of employment was fair and for a valid reason.

(6) An employee who has reasonable cause to believe that the employee's services have been terminated contrary to this section may report the matter to an authorised officer under section 121 or, within thirty days of the termination lay a complaint before the court.

(7) A contract of employment expires—

(a) at the end of the term for which it is expressed to be made;

(b) on the death of the employee before the end of the term specified in the contract;

(c) on the employee attaining the applicable retirement age, where the contract of employment is permanent in nature; or

(d) in any other manner in which a contract of employment lawfully expires or is deemed to expire, under this Act or any other law.

53. (1) An employee whose contract of employment is intended to be terminated is entitled to a period of notice, or compensation in lieu of notice, unless the employee is guilty of misconduct of a nature that it would be unreasonable to require the employer to continue the employment relationship.

Notice for
termination
of contract
of
employment

(2) An employer shall, where the contract of employment does not provide for a period of notice, give—

- (a) twenty-four hours for a contract of employment not exceeding one month;
- (b) fourteen days for a contract of employment of more than one month but not exceeding three months; and
- (c) thirty days for a contract of employment of more than three months, except that notice to terminate a contract of employment of more than six months shall be in writing.

(3) An employer shall not give a notice of termination—

- (a) during a period of leave taken under this Act; or
- (b) to run concurrently with any period of leave taken under this Act.

(4) An employer who does not give notice to an employee shall pay the employee the wages that the employee would have received if the employee had worked during the notice period.

(5) Where an employee refuses to work during the notice period under subsection (2), an employer may deduct, from any money due to the employee on termination, the amount that would have been due to the employee if the employee had worked during the notice period.

(6) Where an employer terminates a long-term contract of employment under this section, the employer shall pay the employee gratuity which is prorated according to the period of employment.

54. (1) An employer shall pay an employee a severance pay, where the employee's contract of employment is terminated or has expired, in the following manner:

Severance
pay

- (a) where an employee has been medically discharged from employment, in accordance with section 38(5);
- (b) where a contract of employment is for a fixed duration, severance pay shall either be a gratuity at the rate of not less than twenty-five percent of the employee's basic pay earned during the contract period or the retirement benefits provided by the relevant social security scheme that the employee is a member of, as the case may be;

(c) where a contract of employment of a fixed duration has been terminated, severance pay shall be a gratuity at the rate of not less than twenty-five percent of the employee's basic pay earned during the contract period as at the effective date of termination;

(d) where a contract of employment has been terminated by redundancy in accordance with section 55, the severance pay shall be a lumpsum of two months' basic pay for each year served under the contract of employment; or

(e) where an employee dies in service, the severance pay shall be two months' basic pay for each year served under the contract of employment.

(2) Where an employee dies before receiving the severance pay, the employer shall pay the severance pay to the employee's estate in accordance with the Intestate Succession Act or the Wills and Testate Estates Act.

Cap. 59
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(3) The severance pay under this section shall not be paid to a casual employee, a temporary employee, an employee engaged on a long-term contract or an employee serving a period of probation.

(4) The Minister shall prescribe the formula for the minimum computation of severance pay.

Termination
by
redundancy

55. (1) An employer is considered to have terminated a contract of employment of an employee by reason of redundancy if the termination is wholly or in part due to —

(a) the employer ceasing or intending to cease to carry on the business by virtue of which the employees were engaged;

(b) the business ceasing or diminishing or expected ceasing or diminishing the requirement for the employees to carry out work of a particular kind in the place where the employees were engaged; or

(c) an adverse alteration of the employee's conditions of service which the employee has not consented to.

(2) Where an employer intends to terminate a contract of employment by reason of redundancy, the employer shall—

(a) give notice of not less than thirty days to the employee or a representative of the employee of the impending redundancy and inform the representative on the number of employees, if more than one to be affected and the period within which the termination is intended to be carried out;

- (b) afford the employee or representative of the employees an opportunity to consult on the measures to be taken to minimise the termination and the adverse effects on the employee; and
 - (c) not less than sixty days prior to effecting the termination, notify an authorised officer of the impending termination by reason of redundancy and submit to that authorised officer information on—
 - (i) the reasons for the termination by redundancy;
 - (ii) the number of categories of employees likely to be affected;
 - (iii) the period within which the redundancy is to be effected; and
 - (iv) the nature of the redundancy package.
- (3) Subject to section 57, an employee whose contract of employment has been terminated by reason of redundancy shall—
- (a) unless better terms are agreed between the employer and the employee concerned or the employee's representatives, be entitled to a minimum redundancy payment of not less than two months' pay for every year served and other benefits the employee is entitled to as compensation for loss of employment; and
 - (b) be paid the redundancy payment not later than the last day of duty of the employee, except that where an employer is unable to pay the redundancy payment on the last day of duty of the employee, the employer shall continue to pay the employee full wages until the redundancy package is paid.

56. (1) Subject to the Constitution, an employer who is unable to pay an employee a redundancy payment in accordance with section 55 due to the employer's financial incapacity, may apply to the Labour Commissioner for exemption from paying the redundancy payment—

Exemption
from paying
redundancy
package
Cap. 1

- (a) as a lumpsum; or
 - (b) on or before the date of expiry of the notice of redundancy.
- (2) An application under subsection (1) shall be accompanied with—
- (a) proof of the employer's financial incapacity to pay the redundancy payment as a lumpsum or not later than the date of the expiry of the notice of redundancy; and

(b) where the employer is unable to pay the redundancy payment as a lumpsum, the employer's proposed payment plan specifying the proposed instalments of the redundancy payment and dates of payment.

(3) Where the Labour Commissioner considers that the employer's proposed payment plan under subsection (2), is not reasonable, the Labour Commissioner shall propose an alternative payment plan.

(4) The Labour Commissioner shall, within thirty days of receipt of an application under subsection (1)—

(a) grant the exemption, with or without conditions; or

(b) refuse to grant the exemption, and give reasons for the refusal.

(5) The Labour Commissioner may revoke an exemption granted under subsection (4) if—

(a) the exemption was granted on materially incorrect or misleading information;

(b) there has been a material change of circumstances since the exemption was granted; or

(c) the employer exempted fails to comply with any condition on which the exemption was granted.

(6) The Labour Commissioner shall, where the Labour Commissioner proposes to revoke an exemption granted under subsection (4) give notice, in writing, of the proposed action to the employer to which the exemption was granted and request the employer to submit to the Labour Commissioner, within seven days of the notice, any representation which the employer may wish to make on the proposed revocation.

(7) An employer who fails to comply with a condition of exemption is liable to an administrative penalty; and

(8) An employer shall, where the employer pays an employee a redundancy package in accordance with this section, submit proof of the payment to the Labour Commissioner, within seven days of the payment.

(9) This section does not apply to—

(a) an employer who ceases to carry on business by reason of bankruptcy or compulsory liquidation;

(b) a casual employee;

(c) a temporary employee;

(d) an employee engaged for a long-term and the redundancy coincides with the expiration of that term; or

(e) an employee on probation.

57. Where, within nine months from the date when the notice of termination of employment under section 55 takes effect, the circumstances leading to the redundancy of an employee have changed and an employer wishes to fill a vacancy occasioned by that redundancy, the employer shall offer a contract of employment, in respect of the vacancy, to the employee previously declared redundant, before considering any other applicant.

Re-
engagement
of redundant
employees

58. An employee's contract of employment shall expire by reason of retirement, where the employee attains the age of retirement under a written law.

Expirationby
retirement

59. (1) Despite the provisions of subsection (2) an employer shall, on the termination of a contract of employment, give an employee a certificate of service indicating—

Certificate of
service,
testimonial
or reference

(a) the name of the employer;

(b) the name of the employee;

(c) the date of engagement;

(d) the date of discharge;

(e) the nature of employment;

(f) the employer's account number with any fund or scheme under which statutory contributions have been or will be remitted to the fund or scheme on behalf of the employee;

(g) the employee's national registration number and membership number in the fund or scheme during the course of the contract; and

(h) a statement of the amount of statutory and any supplementary contributions paid by the employer to the fund or scheme during the course of the contract.

(2) An employer may give a testimonial, reference or certificate of character to an employee at the termination of the employee's service.

(3) Despite subsection (2), an employer who knowingly gives a false testimonial, reference or certificate of character to an employee is liable for any loss or damage caused to a third person who, by reason of the false testimonial, reference or certificate of character, has been induced to take the employee into the employer's service.

(4) A person who fails to give a certificate of service under subsection (1), is liable to an administrative penalty.

Division 3.4 - Employment of Expatriates

Duties of employer employing expatriate

60. (1) Subject to the other provisions of this Act, an employer who employs an expatriate in an undertaking shall—

- (a) where practicable, designate an understudy of that expatriate;
- (b) submit to the Labour Commissioner a schedule of training programmes and management succession of the understudy; and
- (c) submit to the Labour Commissioner annual returns in the prescribed manner and form.

(2) For the purposes of this section, “understudy” means a citizen identified to work as a trainee under the supervision of an expatriate employee—

- (a) to improve the understudy’s skills within two years or a period that may be determined by the Labour Commissioner; and
- (b) where applicable, with a view of eventually taking over the job.

Prohibitions relating to employment of expatriates Act No. 18 of 2010

61. (1) Subject to the Immigration and Deportation Act, 2010, an employer shall not—

- (a) employ, in the name of the employer, an expatriate to engage in work that is not a critical skill under a list prepared under section 65 (1)(d);
- (b) cause the expatriate to engage in work other than that authorised under the permit issued in accordance with the Immigration and Deportation Act, 2010;
- (c) dismiss or lay off a citizen or resident as a result of having employed an expatriate; or
- (d) exert coercion, threat, or any other illegal means on an expatriate for the expatriate to engage in work without the consent of the expatriate.

Act No. 8 of 2010

(2) An employer who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years or to both.

Register of expatriate staff in Republic

62. (1) The Labour Commissioner shall keep and maintain a Register of expatriates which contains—

- (a) the name and nature of business of the undertaking in which an expatriate is employed;
- (b) the name, sex and nationality of the expatriate;
- (c) the qualifications of the expatriate;
- (d) the position in which the expatriate is employed; and
- (e) any other information that the Labour Commissioner may determine.

(2) The Register shall be kept in the custody of the Labour Commissioner and shall be open for inspection by members of the public during normal office hours.

(3) The Labour Commissioner may, on an application by a person, issue to that person a certified extract from the Register on payment of the prescribed fee.

(4) Subject to this Act, a copy of the last published and printed Register shall be evidence admissible in all legal proceedings of what is contained in that Register and the absence of the name of the expatriate from that copy, shall be *prima facie* evidence that the expatriate is not registered.

Division 3.5 - The Skills Advisory Committee

63. (1) There is constituted the Skills Advisory Committee.

Constitution
of Skills
Advisory
Committee

(2) The Third Schedule applies to the Skills Advisory Committee.

64. (1) The Skills Advisory Committee consists of the following part-time members, appointed by the Minister:

Composition
of Skills
Advisory
Committee

- (a) the Labour Commissioner, as Chairperson; and
- (b) a representative of the
 - (i) Attorney-General;
 - (ii) ministry responsible for national planning;
 - (iii) ministry responsible for commerce;
 - (iv) ministry responsible for science and vocational training;
 - (v) ministry responsible for higher education;
 - (vi) Department of Immigration;
 - (vii) Office of the President;
 - (viii) most representative federation of employers' organisations; and
 - (ix) most representative federation of trade unions.

(2) The members of the Skills Advisory Committee shall elect a Vice-Chairperson from among the members.

(3) The Minister shall assign persons employed in the Ministry to perform secretarial and administrative functions that the Skills Advisory Committee may require for the performance of its functions under this Division.

Functions of
Skills
Advisory
Committee

65. (1) The functions of the Skills Advisory Committee are to—

(a) advise the Minister on measures necessary to ensure that—

(i) citizens are accorded priority in respect of an opportunity for employment;

(ii) affirmative action in employment and labour relations is taken in favour of citizens in accordance with the Citizens Economic Empowerment Act, 2006;

(iii) certain categories of employment are restricted to citizens where it is necessary in the interest of state security;

(iv) citizens are accorded the same wages as an expatriate for work of equal value; and

(v) the welfare of citizens in employment and labour relations is promoted;

(b) act as an advisory and consultative body on matters relating to the employment of expatriates;

(c) carry out surveys and research in expatriate skills required in the Republic; and

(d) prepare a list of critical skills.

(2) The Skills Advisory Committee may request, in writing, any undertaking to furnish to the Skills Advisory Committee information required for the purposes of the performance of its functions under this Division.

(3) In this section, “critical skills” means special or scarce academic or professional qualification, standards of education or skills required in the Republic.

Act No. 9 of
2006

PART IV

PROTECTION OF WAGES

When wages,
due and
payable

66. (1) Subject to subsections (3) and (4) an employer shall pay the wages of an employee—

(a) in the case of a monthly contract of employment, each month, from the last day of payment;

- (b) in the case of a fortnightly contract of employment from fortnight to fortnight, on the last day of each fortnight;
- (c) in the case of a contract of employment from week to week, on the last day of each week;
- (d) in the case of an employee employed for a task or piece work, on the completion of the task or piece work, except that where an employee is employed to do piece work, an employer may, with the consent of the employee, accumulate the wages due to the employee for the period not exceeding one month, as may be agreed by the parties;
- (e) in the case of an employee employed to perform a journey, on the completion of the journey; or
- (f) in any other case, in accordance with the terms of the contract of employment.

(2) The wages of an employee shall fall due and be paid at regular intervals not being later than the fifth day following the date on which they fall due under subsection (1).

(3) Despite subsection (2), in the case of an employee who is engaged on a contract of employment for payment of wages at a daily or an hourly rate, the employer may accumulate the wages for a period not exceeding one month with the consent of the employee except that an employer shall pay an employee on demand any accumulated wages due to the employee in the event of the contract of employment being terminated by either party to the contract.

(4) An employer shall on the termination of a contract of employment, pay an employee all wages additional to basic pay including overtime pay and allowances on the date of termination of the contract of employment.

(5) An employer who fails to comply with subsection (4) is liable to an administrative penalty.

(6) Subsections (1), (2) and (3) do not apply to the payment of an allowance or bonus where the allowance or bonus does not form part of any payment due under the contract of employment.

67. (1) An employer shall pay an employee the wages in the currency of the Republic, except that where an employee so requests, in writing, or if the provisions of any collective agreement or conditions of service applicable to the employee so provide, payment may be made—

Method of
payment of
wages

(a) into an account at a bank or building society, being an account standing in the name of the person to whom the payment is due, or an account standing in the name of that person jointly with one or more other persons;

(b) by postal order;

(c) by money order;

(d) by cheque; or

(e) by an electronic payment system.

(2) An employer may, in the absence of an employee, pay the wages of the employee to a person other than the employee where the employee has duly authorised the person, in writing, to receive the wages on the employee's behalf.

(3) Where possible, wages shall be paid on work days.

(4) An employer may pay an employee, in addition to wages, allowances in kind where that payment is customary or agreed to by the employee or provided for in a collective agreement or in accordance with any written law, except that the payment, being an allowance in kind, shall be for the personal use and benefit of the employee, and the employee's family, and shall not be in the form of liquor or drugs.

Authorised
deductions

68. (1) Despite any other provisions of this Code, an employer may make deductions from the wages payable to an employee in respect of—

(a) taxation and other deductions under a written law;

(b) contributions to any registered social security, medical or other fund or scheme to which the employee is required by law or has agreed in writing to contribute;

(c) any salary advance made to the employee by the employer on the terms agreed to by the employer and employee;

(d) any amount due to a third party to whom, on the terms consented to in writing by the employee or as required by a judgment of the Court, the employer has given assurance or security from any money owed to the employee by the employer;

(e) an amount paid to the employee in error, in excess of wages due to the employee;

(f) a reasonable amount for any damage done to, or loss of, any property lawfully owned by or in the custody of the employer, where the damage or loss is occasioned by

any deliberate or negligent action or omission on the employee's part as proved through the employers disciplinary process; and

(g) an amount equal to any shortage of money or goods entrusted to the employee by the employer, which shortage arose through the employee's negligence or dishonesty as proved through the employer's disciplinary process.

(2) An employer shall remit a deduction made in respect of a contribution under subsection (1) to the fund or scheme in accordance with a written law.

69. An employer shall not make any deductions from wages payable to an employee or any amount paid to the employee as an advance of wages in consideration of, or as a reward for, providing employment for the employee or for retaining that employee in employment.

Unauthorised deductions

70. (1) Subject to section 68, an employer shall not limit or attempt to limit the right of an employee to dispose of that employee's wages in any manner which that employee considers fit.

Disposal of wages

(2) An employer may establish a shop for the sale of provisions generally to the employees, but an employee shall not be compelled by a contract, collective agreement or order, written or oral, to purchase provisions at that shop.

71. (1) An employer shall keep a record of the wages paid to each employee and of every deduction from the wages and the reason for the deduction.

Record of wage payments to be kept by employer

(2) An employer shall, during normal working hours make the record under subsection (1) available for inspection by an authorised officer.

72. An employer shall, before an employee commences employment or when changes in the nature of the employment take place, explain to the employee the rate of wages and conditions relating to the payment of the wages.

Explanation of wages and conditions of employment

73. (1) An employer shall, at the end of a long-term contract period, pay an employee gratuity at a rate of not less than twenty-five percent of the employee's basic pay earned during the contract period.

Payment of gratuity

(2) Where an employee's contract of employment is terminated in accordance with this Code, the employee shall be paid gratuity prorated in accordance with the period of employment.

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- Hours of work
- 74.** (1) The normal days' work of a full-time employee—
- (a) shall consist of eight hours of actual work; and
 - (b) may begin on any day of the week, including a public holiday, where that employee works on a public holiday.
- (2) An employer and an employee, other than a part-time employee, may agree that the employee works in excess of the stipulated hours without added remuneration if the number of hours covered in a week does not exceed forty-eight hours or a lesser number of hours that may be specified in a contract of employment or collective agreement.
- (3) Where a casual employee, other than a part-time employee, has completed forty-eight hours of work or a lesser number of hours as specified in a contract of employment in less than six days in a week, the employer shall pay the employee six normal days basic wages in respect of that week.
- Over time
- 75.** (1) Subject to subsection (2), an employer shall pay an employee who works in excess of forty-eight hours in a week, one and half times the employee's hourly rate of pay.
- (2) An employer shall pay a watchperson or guard who works in excess of sixty hours a week one and half times the watchperson's or guard's hourly rate of pay.
- (3) An employer shall pay an employee who works on a public holiday or on a weekly rest day, where the public holiday or weekly rest day does not form part of the employee's normal working week, double the employee's hourly rate of pay.
- (4) An employer shall, in calculating the hourly rate of pay in a month, divide the actual amount received by the employee in basic wages for that month—
- (a) by two hundred and eight hours for a full-time employee, other than a watchperson or guard; and
 - (b) by two hundred and forty hours for a full-time watchperson or guard.
- Weekly rest
- 76.** (1) An employee is entitled to a rest day of at least twenty-four consecutive hours in every period of seven consecutive days.
- (2) The weekly rest day under subsection (1) shall be any day in respect of which the employee is not required to work under the employee's contract of employment.

- 77.** Subject to an agreement between an employer and an employee which is more favourable to the employee, than the provisions of this section, an employer shall grant to the employee on each working day—
- (a) a meal break of one hour; and
 - (b) one health break of at least twenty minutes or two health breaks of at least ten minutes each.
- 78.** An employer shall not pay wages to an employee in respect of any period during which the employee is imprisoned under any law or otherwise detained in lawful custody.
- 79.** A person commits an offence if that person—
- (a) employs or continues to employ an employee without the intention to pay, or without having reasonable grounds for believing that the wages of the employee can be paid as they become due;
 - (b) without reasonable excuse, fails on demand to pay in accordance with section 66 any wages due to an employee; or
 - (c) makes any deductions from wages, other than those authorised in this Part.
- (2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

PART V

EMPLOYMENT OF YOUNG CHILDREN AND YOUNG PERSONS

- 80.** In this Part, unless the context otherwise requires—
- “covered worksite” means a public or private undertaking and includes a commercial, agricultural or domestic worksite and an undertaking in which only members of the same family are employed;
- “industrial undertaking” means
- (a) a mine, quarry and other works for the extraction of minerals from the earth;
 - (b) an industry in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including the generation, transformation and transmission of electricity or motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration or demolition of a building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telecommunications installation, electrical undertaking, gas work, waterworks or other work of construction, and the preparation for, or laying the foundations of, the work or structure;

(d) transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand;

(e) cordwood cutting; and

(f) a commercial or an agricultural undertaking;

“light work” means work that the Minister may, by statutory instrument, prescribe to be light work;

“Permanent Secretary” means the Permanent Secretary of the ministry responsible for general education;

“police officer” means a police officer of or above the rank of Inspector;

“worst form of labour” includes—

(a) all forms of slavery and all practices similar to slavery, such as the sale and trafficking of young children and young persons, the use or procuring of young children for begging, debt bondage, serfdom forced and compulsory labour and forced or compulsory recruitment of young children and young persons for use in armed conflict;

(b) the use, procuring or offering of a young child or young person for prostitution, production of pornography or for pornographic performances;

(c) the use, procuring or offering of a young child or a young person for illicit activities, such as the production and trafficking of illegal drugs; and

(d) work that by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of a young child or young person;

“young child” means a person under the age of fifteen years; and

“young person” has the meaning assigned to the words in the Constitution.

81. (1) A person shall not employ a child in a public or private industrial undertaking or in any branch of the industrial undertaking.

Prohibition
of
employment
of child in
industrial
undertakings

(2) This section shall not apply to work done by children in technical schools or similar institutions, where the work is approved and supervised by the Permanent Secretary or a person appointed by the Permanent Secretary for that purpose.

(3) A person who contravenes this section commits an offence and is liable, on conviction to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

82. (1) Subject to subsection (2), a person shall not employ a child in a covered work site.

Prohibition
of
employment
of child in
covered work
site

(2) Despite subsection (1), a child aged between thirteen and fifteen years may be engaged in light work that is not—

(a) likely to be harmful to the child's health or development;
and

(b) prejudicial to that child's—

(i) attendance at an institution of learning; or

(ii) participation in vocational orientation or training approved by a competent authority or the child's capacity to benefit from the institution.

(3) Subsection (1) shall not apply to—

(a) work constituting the participation of the child in artistic performances in accordance with a statutory instrument, issued by the Minister, prescribing—

(i) the number of hours to be worked;

(ii) the conditions in which the work may be undertaken; and

(iii) other matters that the Minister may consider necessary; and

(b) work done by a child as part of the child's education, where the work is approved and supervised by the Permanent Secretary or a person appointed by the Permanent Secretary for that purpose, or a person in charge of an institution of learning.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Prohibition of employment of child or young person in worst form of labour

83. (1) Despite any other provision in this Code, a person shall not employ a young child or young person in any type of employment or work, which by its nature or the circumstances in which it is carried out constitutes a worst form of labour.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) The Minister may, after consultation with the relevant trade unions and employers' associations, prescribe the employment of young children or young persons in any type of employment or work, if the Minister is satisfied that the—

(a) health, safety and morals of the young children or young persons are fully protected; and

(b) young children or young persons have received adequate and specific instruction or vocational training in the relevant branch of activity.

Prohibition of employment of young person in industrial undertaking
Cap. 275

84. (1) A person shall not employ a young person in an industrial undertaking, unless the young person is either—

(a) employed under a contract of apprenticeship entered into under the Apprenticeship Act; or

(b) in possession of a certificate signed by an authorised officer authorising the employment of a young person.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Register of young persons in industrial undertaking

85. (1) An employer in an industrial undertaking shall keep and maintain a register of young persons employed in the industrial undertaking, specifying their names, dates of birth, dates of employment and any other information prescribed by the Minister.

(2) An employer shall produce the register under subsection (1) for inspection when required to do so by an authorised officer or police officer.

(3) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Prohibition of employment of young person in night work

86. (1) A person shall not employ a young person to perform work at night in an industrial undertaking or in any branch of the industrial undertaking, other than an undertaking in which only members of the same family are employed.

(2) Despite subsection (1), a person may employ a young person over the age of sixteen years to perform work, which by reason of the nature of the process, is required to be carried on continuously day and night and during the night in the following industrial undertakings or work:

- (a) manufacture of iron and steel processes in which reverberatory or regenerative furnaces are used, and galvanising of sheet metal or wire, except the pickling process;
- (b) glass works;
- (c) manufacture of paper;
- (d) manufacture of raw sugar; or
- (e) gold mining reduction work.

(3) This section does not apply to night work of young persons between the ages of sixteen and nineteen years in cases of emergency which—

- (a) could not have been foreseen or controlled;
- (b) are not of a periodical character; and
- (c) interfere with the normal working of the industrial undertaking.

(4) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

87. (1) An authorised officer, police officer or immigration officer may, with a warrant, at any reasonable time—

- (a) enter and search any premises of an industrial undertaking where information or documents relevant to an investigation may be kept;
- (b) examine, any document or article found on the premises that has a bearing on the investigation;
- (c) require the employer or any other person whom the authorised officer, police officer or immigration officer believes is in possession of, or has under that person's control, any record or document related to the employment of children or young persons, to produce the record or document to the authorised officer, police officer or immigration officer;
- (d) make enquiries of any other person whom the authorised officer, police officer or immigration officer has reasonable cause to believe has information relating to the employment of young children or young persons,

Powers of
authorised
officer,
police officer
or
immigration
officer

-
- either alone or in the presence of any other person as the authorised officer, police officer or immigration officer considers necessary;
- (e) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any document or article that has a bearing on the investigation, except that a person shall only be searched by a person of the same sex;
- (f) require information to be given about any document or—
- (i) the owner of the premises;
 - (ii) the person in control of the premises;
 - (iii) any person who has control of the document or article; or
 - (iv) any other person who may have the information;
- (g) take extracts from, or make copies of, any book or document found on the premises that has a bearing on the investigation;
- (h) use any computer system on the premises, or require assistance of any person on the premises to use that computer system to —
- (i) search any data contained in, or available from, the computer system;
 - (ii) reproduce any record from the data; or
 - (iii) seize any output from the computer for examination and copying; or
- (i) attach and, if necessary, remove from the premises for examination and safeguarding any document or article that appears to have a bearing on the investigation.
- (2) An authorised officer, police officer or immigration officer who removes a document from any premises under this section shall—
- (a) issue a receipt for the document to the owner of or person in control of the premises; and
 - (b) return the document as soon as practicable after achieving the purpose for which it was removed.
- (3) A person commits an offence if that person—
- (a) delays or obstructs an authorised officer, police officer or immigration officer in the performance of an authorised officer, police officer or immigration officer's functions under this Act;

- (b) refuses to give an authorised officer, police officer or immigration officer reasonable assistance that an authorised officer, police officer or immigration officer may require for the purpose of exercising the authorised officer, police officer or immigration officer's powers;
- (c) gives an authorised officer, police officer or immigration officer false or misleading information in answer to an inquiry made by an authorised officer, police officer or immigration officer; or
- (d) impersonates or falsely represents oneself to be an authorised officer, police officer or immigration officer.
- (4) A person convicted under subsection (3) is liable to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

PART VI

SPECIAL PROVISIONS

88. The provisions of this Part and of any regulations made under this Part shall have effect only during a period when a declaration of a state of emergency under the Constitution is in force.

Application
of Part
Cap. 1

89. (1) The President may, by statutory instrument, during a state of emergency make regulations that the President considers necessary or expedient in the public interest for securing the continued employment of employees and for regulating the conditions of service of employees whose continued employment is secured by virtue of the regulations.

Regulations
with respect
to
employment
during a
state of
emergency

(2) Despite the generality of the powers conferred by subsection (1), regulations may make provision for—

- (a) prohibiting the dismissal or the termination in any other manner of the employment of employees, whether or not previous notice of the dismissal or termination has been given to the employees, except in circumstances and on conditions, if any, that may be prescribed by or under the regulations;
- (b) the establishment of a tribunal for the purpose of reviewing the decisions of an officer or authority referred to in paragraph (a), including provision with respect to—
- (i) the constitution of the tribunal;
- (ii) the persons who may apply to the tribunal for the review of the decision;

(iii) the circumstances and manner in which and the conditions on which the application for review may be made;

(iv) the powers, practice and procedure of the tribunal in relation to the application for review; and

(v) any other provision as the President may consider to be expedient for the purposes of the regulations.

(3) Regulations under this section may—

(a) exempt or provide for the exemption of any person or class of persons from the operation of all or any of the provisions of the regulations;

(b) make different provision with respect to different areas in the Republic, different persons or classes of persons and different circumstances; and

(c) prescribe penalties for contravention of the regulations, not exceeding a fine of two hundred thousand penalty units.

Inconsistency with other written laws
Cap. 1
Cap. 108
Cap. 112

90. Regulations made under section 89 and anything done under the authority of these regulations shall have effect despite any provision of the regulations being inconsistent with any other enactment having the force of law in the Republic, other than this Act, the Constitution, the Emergency Powers Act or the Preservation of Public Security Act.

Republic not bound by Part

91. Nothing in this Part or in any regulations made under this Part shall be construed as binding the Republic.

PART VII

EMPLOYEE WELFARE

Division 7.1 - Housing and other needs

Housing of employees

92. An employer shall provide an employee housing, a loan or an advance towards the purchase or construction of a house, a guarantee facility for a mortgage or house loan on behalf of the employee or pay the employee housing allowance under—

Cap. 269

(a) a collective agreement registered under the Industrial and Labour Relations Act;

(b) a contract of employment; or

(c) the general conditions of service of the undertaking.

Water and sanitation for employees

93. (1) An employer shall ensure that an employee receives an adequate supply of water and sanitation facilities at the undertaking.

(2) An authorised officer may, where, in the opinion an authorised officer, the supply of water or sanitation facilities under

subsection (1), are inadequate or not reasonably protected or accessible for use, serve on the employer an order, in writing, requiring the employer to remedy the defect within reasonable time that may be specified in the order.

(3) A person who fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

94. (1) An employer shall, provide an employee with medical attention and medicines and where necessary, transport to a health facility during the illness of the employee under—

Medical attention

- (a) a collective agreement;
- (b) a contract of employment; or
- (c) the general conditions of service of the undertaking.

(2) Despite subsection (1) an incapacity falling within the provisions of any law relating to worker’s compensation shall be subject to the Workers Compensation Act, 2019.

(3) In this section, “health facility” has the meaning assigned to the words in the Health Professions Act, 2009.

Act No. of 2019
Act No. 24 of 2009

Division 7.2 - Employment Policies, Procedures and Codes

95. (1) An employer shall ensure that there exists in the undertaking an employment policy, procedure and code, including an HIV and AIDS policy, a health and wellness policy, harassment policy, performance management policy, grievance procedure and code of conduct.

Employment policies, procedures and codes

(2) An employer shall not, in any employment policy, produce or practice discrimination directly or indirectly against an employee or prospective employee.

(3) An employer shall bring to the attention of each employee under the employer’s direction, the policy, procedure and code under subsection (1).

(4) For the purposes of this section—

‘harassment’ has the meaning assigned to the words in the Anti-Gender Based Violence Act, 2011.

Act No. 1 of 2011

96. A person who fails to comply with a provision of this Division is liable to an administrative penalty.

Non-compliance with Division

Regulations on policies, procedures and codes

97. The Minister may, by statutory instrument, prescribe the essential components of a policy, procedure or code referred to under section 95.

Division 7.3 - Minimum wages and Conditions of Employment

Category of employees

98. This Division applies to the category of employees that the Minister may prescribe by statutory instrument.

Constitution of Labour Advisory Committee

99. (1) There is constituted the Labour Advisory Committee.
 (2) The Labour Advisory Committee shall be an *ad hoc* committee of the Tripartite Consultative Labour Council.
 (3) The Third Schedule applies to the Labour Advisory Committee.

Composition of Labour Advisory Committee

100. (1) The Labour Advisory Committee consists of the following part-time members appointed by the Minister—
 (a) two members representing the Government, one of whom shall be from the Ministry responsible for labour, as Chairperson;
 (b) two members nominated by the most representative federation of trade unions;
 (c) two members nominated by the most representative federation of employers' organisations;
 (d) two persons with knowledge and experience in the determination of minimum wages and conditions of employment; and
 (e) a representative of a national institution responsible for statistics.
 (2) The Vice-Chairperson of the Labour Advisory Committee shall be elected by the members from among themselves.

Functions of Labour Advisory Committee

101. The functions of the Labour Advisory Committee are to—
 (a) inquire into the wages and conditions of employment in any undertaking or sector in order to recommend minimum wages and conditions of employment; and
 (b) review at least every two years and make recommendations, to the Minister, on the minimum wages and conditions of employment for any group of employees;

Powers of Labour Advisory Committee

102. The Labour Advisory Committee may request, in writing, any person or body of persons to furnish to the Committee information in respect of employment and labour relations that the Committee may require for purposes of this Division.

- | | |
|---|---|
| <p>103. The Minister shall assign persons employed in the ministry responsible for labour to perform secretarial and administrative functions that the Labour Advisory Committee may require for the performance of its functions under this Division.</p> | Secretariat of
Labour
Advisory
Committee |
| <p>104. The minimum standards in this Division shall apply to all employees covered under this Division unless—</p> <p>(a) another law, contract of employment or collective agreement provides a term more favorable to the employee; or</p> <p>(b) the Minister, on the advice of the Labour Advisory Committee, varies a condition of the employment applicable to a sector or group of employees.</p> | Application
of minimum
standards |
| <p>105. (1) An employer shall, in respect of an employee, compile and maintain records of—</p> <p>(a) wages and allowances paid;</p> <p>(b) benefits given; and</p> <p>(c) any other matter required by this Code.</p> <p>(2) An employer commits an offence if that employer—</p> <p>(a) fails to compile and maintain records required under subsection (1);</p> <p>(b) knowingly makes, causes to be made or allows to be made any record referred to in subsection (1) which is false in any material particular; or</p> <p>(c) fails to comply with any regulations made under this Division;</p> <p>(3) An employer convicted of an offence under subsection (2) is liable to a fine not exceeding two hundred thousand penalty units.</p> | Duties of
employer |
| <p>106. Where the Minister considers that adequate provision does not exist for the effective regulation of minimum wages or minimum conditions of employment for a group of employees, the Minister may, after consultation with the Labour Advisory Committee, by statutory order, prescribe—</p> <p>(a) the rates of wages to be paid to employees by the hour, day, week or month;</p> <p>(b) the normal hours of work in any day or week;</p> <p>(c) the normal working days in any week or month;</p> <p>(d) the rates for any work done in excess of or outside the normal hours of work or the normal working days;</p> | Regulation of
wages and
conditions of
employment |

- (e) the rates of paid holidays or any conditions attaching to the granting of the holidays;
- (f) the rates of allowance for any food or housing; and
- (g) any other matter which by this Division is required to be prescribed or is necessary for carrying out the provisions of this Part.

PART VIII

EMPLOYMENT AGENCIES

Single
licensing
Act No. 3 of
2014

107. (1) The Labour Commissioner shall operate a single licensing system for the labour industry in accordance with the Business Regulatory Act, 2014.

Act No. 3 of
2014

(2) In this section “single licensing system” has the meaning assigned to the words in the Business Regulatory Act, 2014.

Prohibition
of operation
of
employment
agency
without
employment
agency
permit

108. (1) A person shall not operate an employment agency without an employment agency permit issued under this Act.

(2) A person who contravenes subsection (1) is liable to an administrative penalty.

Application
for
employment
agency
permit

109. (1) A person who intends to operate an employment agency shall apply to the Labour Commissioner in the prescribed manner and form on payment of the prescribed fee.

(2) The Labour Commissioner shall, within sixty days of receipt of an application made under subsection (1), issue the applicant with a permit on the terms and conditions that the Minister may prescribe.

(3) The Labour Commissioner may refuse to issue a permit to an applicant if—

- (a) the applicant fails to comply with any prescribed conditions precedent to the issuance of the permit;
- (b) a permit formerly held by the applicant is revoked; or
- (c) the applicant has been convicted of an offence under this Act or any other written law and is sentenced to imprisonment for a term exceeding six months, without the option of a fine within a period of five years preceding the date of application.

(4) The Labour Commissioner shall notify the applicant of the refusal to issue a permit and shall state the reasons for the refusal.

(5) A person who is aggrieved with the decision of the Labour Commissioner not to issue a permit under this section may, appeal to the Minister within thirty days of the date of receipt of the decision.

(6) A person who is aggrieved with the decision of the Minister may appeal to the High court.

110. (1) A permit shall remain valid for three years unless revoked by the Labour Commissioner or surrendered by an employment agency.

Validity of permit

(2) A permit granted under this Act is subject to the payment of an annual prescribed fee and the terms and conditions attached to that permit.

111. A permit holder shall display the permit issued under this Act, in a conspicuous place at the principal place of business.

Display of permit

112. (1) A permit holder shall not transfer a permit issued under this Part to a third party.

Prohibition of transfer of permit

(2) A person who contravenes subsection (1) is liable to an administrative penalty.

113. The Labour Commissioner may, on the application of a permit holder or on the Commissioner's own motion amend a permit where there are changes to the permit holder's business activity.

Amendment of permit

114. (1) Subject to subsection (2), the Labour Commissioner may suspend or revoke a permit if the permit holder—

Suspension or revocation of permit

(a) obtained the permit on the basis of fraud, negligence or misrepresentation;

(b) assigns, cedes or otherwise transfers the permit to a third party;

(c) fails to comply with any term or condition of the permit; or

(d) operates the business activity to which the permit relates contrary to this Act or any other written law.

(2) The Labour Commissioner shall, before suspending or revoking a permit, under subsection (1), notify the permit holder of the intention to suspend or revoke the permit in the prescribed manner and form and shall—

(a) give reasons for the intended suspension or revocation; and

(b) require the permit holder to show cause, within a specified period, why the permit should not be suspended or revoked.

(3) Where a permit holder takes remedial measures to the satisfaction of the Labour Commissioner within the period specified under subsection (2), the Labour Commissioner shall not suspend or revoke the permit.

(4) The Labour Commissioner may suspend or revoke a permit if the permit holder, after being notified under subsection (2), fails to show cause why the permit should not be suspended or revoked or does not take remedial measures to the satisfaction of the Labour Commissioner within the specified time.

(5) Where a permit is revoked, in accordance with this section, the permit holder shall surrender the permit to the Labour Commissioner and the Labour Commissioner shall cancel the permit, subject to conditions that may be imposed with respect to the winding up of the business or activity to which the permit relates.

Surrender of permit

115. (1) Where a permit holder decides to cease operations to which the permit relates, the permit holder shall notify the Labour Commissioner, in writing, and surrender the permit to the Labour Commissioner.

(2) The Labour Commissioner shall where a permit is surrendered under subsection (1), cancel the permit subject to conditions that may be imposed with respect to the winding up of the business or activity to which the permit relates.

Renewal of permit

116. (1) A permit holder may, within sixty days prior to the expiration of the period of validity of the permit, apply to the Labour Commissioner for the renewal of the permit in the prescribed manner and form on payment of the prescribed fee.

(2) The Labour Commissioner shall, within thirty days of receiving an application, for renewal of a permit, approve or reject the application, and where the application for renewal of the permit is rejected, give reasons.

Loss of permit

117. (1) A permit holder who loses a permit or whose permit is damaged shall inform the Labour Commissioner within fourteen days of the date of the loss or damage of the permit and shall, after a further period of fourteen days, apply to the Labour Commissioner for the issuance of a duplicate permit.

(2) The Labour Commissioner shall, on receipt of an application under subsection (1)—

(a) issue a duplicate permit on the terms and conditions that the Labour Commissioner may determine; or

(b) refuse the application and notify the permit holder, giving reasons for the refusal.

118. (1) An employee and the prospective employer shall where an employment agency matches an offer of, and application for, employment, determine the wages and conditions of employment.

Conditions
for operation
of
employment
agency and
fees

(2) An employment agency shall not—

(a) charge a prospective employee fees for matching services rendered except fees, not exceeding five percent of the employee's first wages with the successful employer, that may be payable in respect of services relating to job seeking;

(b) maintain a register of employees that the agency has placed with employers for purposes of charging the employees fees; and

(c) interfere with the employment relationship between the employer and employee, including on matters relating to breach of contract and settlement of disputes.

(3) An employment agency shall charge a prospective employer fees that may be agreed by the parties.

(4) An employment agency shall charge a prospective employee a registration fee not exceeding five hundred fee units, fifty percent of which shall be refunded to the prospective employee if the employment agency fails to secure a job placement for the prospective employee within three months of registration with the agency.

(5) An employment agency shall not provide employment to an employee without ensuring that the employee has a contract of employment with the employment agency before or on the commencement of the employment.

(6) An employment agency shall not assign an employee of the agency to a third party—

(a) to replace employees of the third party who are on lawful strike; or

(b) without ensuring that employees of the agency enjoy similar wages and conditions of employment with employees of the third party performing comparable tasks as the employees of the agency.

(7) An employment agency shall not interfere with the free transfer of an employee of the employment agency to the third party or another employer.

(8) A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Keeping of registers and submission of returns

119. An employment agency shall—

(a) keep and maintain registers and records that may be prescribed; and

(b) submit prescribed returns to the Labour Commissioner.

Offences by employment agency

120. (1) An employment agency commits an offence if that employment agency—

(a) knowingly deceives any person by giving false information; or

(b) makes or knowingly allows to be made any register, record or return which is false in any material particular.

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

PART IX

DISPUTES AND BREACHES OF CONTRACT

Disputes to be referred to authorised officer

121. (1) Subject to subsection (2), an aggrieved party may report a matter to an authorised officer where—

(a) an employer or employee neglects or refuses to comply with the terms of any contract of employment;

(b) any question, difference or dispute arises as to the rights or liabilities of a party to the contract or as to any misconduct, neglect or ill treatment of the party;

(c) an injury to a person, or damage to property of the party occurs; or

(d) an allegation of discrimination under section 5 is made by an employee or prospective employee.

(2) An authorised officer shall—

(a) take steps that the authorised officer may consider to be expedient to effect a settlement between the parties and, in particular, shall encourage the use of collective bargaining facilities, where applicable; and

(b) where an authorised officer fails to effect a settlement between the parties, the authorised officer may recommend that the aggrieved party refers the matter to court.

(3) This section does not apply where, by or under any written law, the matters referred to in this section are required to be settled in the manner provided in that law.

122. Where any question arises as to the age of an employee and sufficient evidence is not available as to the employee's age, a medical doctor may estimate the employee's age by the use of internationally acceptable medical standards for estimating the age of a person or from any information available, and the age so estimated shall, for the purposes of this Act, and unless and until the contrary is proved, be deemed to be the employee's true age.

Determination
of age

PART X

INSPECTORATE

123. The Civil Service Commission may appoint suitably qualified officers as labour inspectors for purposes of ensuring compliance with this Act on the terms and conditions that the Emoluments Commission may determine.

Labour
inspectors

124. (1) The Labour Commissioner shall provide a labour inspector with a certificate of appointment, in the prescribed form, which shall be *prima facie* evidence of the inspector's appointment.

Certificate of
appointment

(2) A labour inspector shall, in performing any function under this Act—

(a) be in possession of the certificate of appointment referred to in subsection (1); and

(b) show the certificate of appointment to any person who requests to see it or is subject to an inspection under this Act.

125. (1) A labour inspector may—

Powers of
labour
inspectors

(a) enter and search any premises where information or documents which may be relevant to an inspection may be kept;

(b) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any document or article that has a bearing on the inspection except that a person shall only be searched by a person of the same sex;

(c) examine any document or article found on the premises that has a bearing on the inspection;

(d) require information to be given about any document or article by—

(i) the owner of the premises;

(ii) the person in control of the premises;

-
- (iii) any person who has control of the document or article; or
 - (iv) any other person who may have the information;
- (e) take extracts from or make copies of, any book, or document found on the premises that has a bearing on the inspection; and
- (f) use any computer system on the premises or require assistance of any person on the premises to use that computer system to—
- (i) search any data contained in, or available to, the computer system;
 - (ii) reproduce any record from the data;
 - (iii) seize any output from the computer for examination and copying; or
 - (iv) attach and if necessary, remove from the premises for examination and safeguarding, any document or article that appears to have a bearing on the inspection.
- (2) A labour inspector who removes any document or article from any premises under paragraph (1), shall—
- (a) issue a receipt for the document or article to the owner of or person in control of the premises; and
 - (b) return the document or article as soon as practicable after achieving the purpose for which it was removed.
- (3) A person commits an offence if that person—
- (a) delays or obstructs a labour inspector in the performance of a labour inspector's functions under this Act;
 - (b) refuses to give a labour inspector reasonable assistance that the labour inspector may require for the purpose of exercising the labour inspector's powers;
 - (c) gives a labour inspector false or misleading information in answer to an inquiry made by the labour inspector; or
 - (d) impersonates or falsely represents oneself to be a labour inspector;
- (4) A person convicted of an offence under subsection (3), is liable, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.
- (5) A labour inspector shall furnish the Labour Commissioner with a written report and any other information relating to an inspection, as the Labour Commissioner may require.
- (6) Where an undertaking has discontinued its work or has been closed down and does not have premises, a labour inspector may require the production of the documents related to past

transactions at a reasonable place and time, including the office of the labour inspector or the office of any other establishment and the previous employer, or any other person who has custody of the documents shall produce them as required by the labour inspector.

(7) Nothing in this section requires a person to disclose or produce information or a document if the person would in an action in a court be entitled to refuse to disclose or produce the information or document.

PART XI

GENERAL PROVISIONS

126. (1) A person who is aggrieved with a decision of the Labour Commissioner may appeal to the Minister within thirty days of the date of receipt of the decision of the Labour Commissioner. Appeals

(2) A person who is aggrieved with the decision of the Minister may, appeal to the High court.

127. Where a contract of employment, collective agreement or other written law provides conditions more favourable to the employee, the contract, agreement or other written law shall prevail to the extent of the favourable conditions. Application of more favourable conditions of employment

128. (1) A person commits an offence if that person— General offences

- (a) induces or attempts to induce a person to be employed, or engages or attempts to employ any person by means of any force, threat, intimidation, misrepresentation or false pretence;
- (b) induces, or employs or instigates any other person to induce, an employee to cease employment in breach of the contract of employment, unless the act tending the inducement is lawful under the provisions of the Industrial and Labour Relations Act;
- (c) forges or counterfeits or utters any testimonial, reference or other certificate of the character of an employee, or falsely personates a person and as such either verbally or in writing gives a false, forged or counterfeit character of the person offering or intending to be employed;
- (d) offers oneself to be employed and asserts or pretends to have served in a service in which the person has not actually served;
- (e) attempts to be employed, by means of a false, forged or counterfeit testimonial, reference or other certificate of character or by means of a genuine testimonial,

reference or other certificate of character which is fraudulently altered or added to either by the person or with the person's knowledge;

- (f) by force, in any way prevents or endeavours to prevent any person from being employed or from accepting work from any employer;
- (g) wilfully obstructs, hinders or delays an authorised officer, police officer, immigration officer or a medical doctor in the exercise of any of the powers conferred on an authorised officer, police officer, immigration officer or medical doctor by this Act;
- (h) without reasonable cause, fails to comply with a lawful direction given or made by an authorised officer, police officer, immigration officer or medical doctor under this Act;
- (i) fails to produce a book, account, register or other document which the person is required to produce under this Act; or
- (j) conceals, or attempts to conceal, an employee who is required to appear before, or to be examined by, an authorised officer, police officer, immigration officer or medical doctor, or otherwise prevent, or attempt to prevent, the employee from so appearing or being examined.

(2) A person convicted of an offence under subsection (1), is liable to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offences committed partly in, and partly outside, Zambia

129. (1) Where this Act or any regulations, made in accordance with this Act, provides that a person commits an offence where the person does a particular act, the offence is deemed to have been committed in the Republic, even where the act is done partly outside the Republic.

(2) Where this Act provides that a person commits an offence where the person does two or more particular acts, the offence is deemed to have been committed in the Republic, even if some of those acts are done outside the Republic.

Offences by principal officer, shareholder or partner of body corporate or unincorporated body

130. Where an offence under this Act is committed by a body corporate or unincorporated body, with the knowledge, consent or connivance of the director, manager, shareholder or partner, that director, manager, shareholder or partner of the body corporate or unincorporated body commits an offence and is liable, on conviction, to the penalty or term of imprisonment specified for that offence.

131. (1) Subject to the other provisions of this Act, a person commits an offence if that person fails or refuses to carry out an act required to be done by that person within or before a particular time.

Continuing
acts or
offences

(2) A person convicted of an offence under subsection (1) is liable to a fine not exceeding one thousand penalty units for each day on which the failure or refusal continues.

132. Subject to the written consent of the Director of Public Prosecutions and where the Labour Commissioner is satisfied after an investigation, or where a person admits that the person has committed an offence under this Act, the Labour Commissioner may compound the offence by collection from that person a sum of money that the Labour Commissioner considers appropriate, but not exceeding fifty percent of the maximum amount of the fine to which that person would have been liable on conviction, and a person having made that payment shall not thereafter be prosecuted in relation to the offence so compounded.

Compounding
of offence
by Labour
Commissioner

133. (1) Subject to the other provisions of this Act, where the Labour Commissioner is satisfied, or where a person admits, that the person has contravened a provision of this Act which is not an offence, the Labour Commissioner may impose one or more of the following administrative sanctions:

Administrative
penalty

- (a) a caution not to repeat the conduct which led to the non-compliance with a provision of this Act;
- (b) a reprimand;
- (c) a directive to take remedial action or to make specific arrangements to redress identified non-compliance;
- (d) the restriction or suspension of certain specified business activities;
- (e) publication of a public notice of any prohibition or requirement imposed by the Labour Commissioner under this Part and of any rescission or variation thereof, and the notice may, if the Labour Commissioner considers necessary, include a statement of the reason for the prohibition, requirement, variation or rescission; and
- (f) a financial penalty not exceeding two hundred thousand penalty units.

(2) A person may within thirty days of receipt of an administrative sanction, appeal to the High Court against the administrative sanction.

Order for payment of compensation	<p>134. Where a person is convicted of an offence under this Act and it appears from the evidence that an employer or employee has suffered material loss or personal injury in consequence of the offence committed, the court may, in addition to any other lawful punishment imposed by it, order the person to pay to the employer or employee, compensation in respect of material loss or personal injury.</p>
General penalty	<p>135. A person who contravenes a provision of this Act for which a specific penalty is not provided in this Act, is liable, on conviction, to a fine not exceeding two hundred thousand penalty units.</p>
Immunity of authorised officer	<p>136. An action or other proceeding shall not lie or be instituted for, or in respect of, an act or thing done or omitted to be done in good faith by an authorised officer in the exercise or performance, of any of the powers, functions or duties conferred on an authorised officer under this Act.</p>
Regulations	<p>137. (1) The Minister may, by statutory instrument, make regulations for carrying out or giving effect to the provisions of this Act.</p> <p>(2) Despite the generality of subsection (1), regulations made under that subsection may make provisions for —</p> <ul style="list-style-type: none">(a) the fees to be charged under any provisions of this Act;(b) the duties of authorised officers and the form of identification documents to be issued to such officers;(c) the books, registers, accounts and other documents to be kept by employers with regard to the employment of, and the wages paid to, employees and providing for the inspection of the books, registers, accounts and other documents;(d) the particulars to be included in written contracts of employment;(e) the particulars to be recorded in records of oral contracts of employment and for all other matters relating to the making and cancellation of the records;(f) the classification of employees and the application to any class of employees of all or any regulations made under this section;(g) the details of notices to be displayed in terms of this Act;(h) the forms to be used for the purposes of this Act;(i) the returns and statistics to be furnished by employers in respect of employees;

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- (j) the declaration of public holidays as paid public holidays;
 - (k) the formula for computing severance pay;
 - (l) the manner and form in which applications shall be made for any permit or certificate issued under this Act, the particulars to be furnished in the application, the conditions subject to which the permit or certificate may be issued and the form of the permit or certificate;
 - (m) HIV and AIDS awareness in an undertaking;
 - (n) prescribing the ages at which young children and young persons may be employed in particular trades or occupations including matters relating to the employment of young children and young persons; and
 - (o) any other thing required for the effective administration and implementation of this Act.
- (3) Regulations made under this section may provide for the imposition of penalties, not exceeding the general penalty.
- (4) Regulations made under this section may make different provisions with respect to—
- (a) different areas of the Republic;
 - (b) different trades, industries or employment or classes of the trades, industries or employment; and
 - (c) different classes of persons.
- (5) The Minister may by statutory instrument amend the Schedule.

138. (1) The Employment Act, 1965, the Employment (Special Provisions) Act, 1966, the Employment of Young Persons and Children Act, 1933, and the Minimum Wages and Conditions of Employment Act, 1982, are repealed.

Repeal of
Cap. 268,
270, 274 and
276

(2) Despite subsection (1), the Fourth Schedule applies to the savings and transitional arrangements.

FIRST SCHEDULE

(Section 18)

RECORD OF ORAL CONTRACT OF EMPLOYMENT

A record of an oral contract of employment shall include the following particulars:

1. the name, sex, address and nationality of the employee;
2. the name, address and occupation of the employer;
3. the date of the employee's engagement and the capacity in which the employee is to be employed;
4. the type of contract;
5. the place of engagement;
6. the rate of wages to be paid and any additional payments in kind;
7. the intervals of payment of the wages; and
8. any other prescribed particulars.

SECOND SCHEDULE

(Section 23 (1))

MINIMUM PARTICULARS OF WRITTEN CONTRACT OF EMPLOYMENT

A written contract of employment shall include the following minimum particulars:

1. DETAILS OF EMPLOYER

- (a) the name of the employer;
- (b) the name of the undertaking in which the employee is to be employed;
- (c) the official address of the employer;
- (d) the nature of the business conducted by the employer.

2. DETAILS OF EMPLOYEE

- (a) the name of the employee;
- (b) the age of the employee;
- (c) the sex of the employee;
- (d) the permanent address of the employee;
- (e) the nationality of the employee;
- (f) the identity and social security numbers of the employee;
- (g) the place of engagement of the employee; and
- (h) any other particulars necessary for the employee's identification.

3. CONTRACT TERMS

- (a) the date of commencement, form and duration of the contract of employment;
- (b) the date on which the employee's period of service began, taking into account any employment with a previous employer that may count towards that period;
- (c) the place at which, or the geographical limits within which, any work under the contract is to be performed;
- (d) the ordinary working hours and days;
- (e) the wages to be paid and the scale or rate of wages, the method of calculating the wages and details of any other benefits;
- (f) the details of any cash payments, payments in kind or any other benefits;
- (g) the intervals of payment of the wages of the employee, monthly or at a shorter period, as the case may be;
- (h) if applicable, the particulars of any food to be provided under the contract or of any cash equivalent of the food;

- (i) the deductions to be made to an employee's wages;
- (j) the nature of the employment and tasks, where applicable and practical, and the general operations involved and such additional details as may be necessary to clarify, the nature of the work for which the employee has been contracted; and
- (k) any other prescribed particulars.

4. EXECUTION OF CONTRACT

The parties to a contract of employment shall execute the contract by—

- (a) appending a signature; or
- (b) affixing a thumb or finger print.

THIRD SCHEDULE

(Sections 63(2) and 99(3))

ADMINISTRATION OF COMMITTEE

- 1.** “associates” has the meaning assigned to the word in the Anti-Corruption Act, 2012; Interpretation Act No. 3 of 2012
- “committee” means the Skills Advisory Committee or the Labour Advisory Committee, as the case may be; and
- “relative” has the meaning assigned to the word in the Anti-Corruption Act, 2012. Act No. 3 of 2012
- 2.** (1) Subject to the other provisions of this Schedule, a member, except the members referred to under section 64 (1) (a) and 100 (1) (a), of the Committee shall hold office for a period of three years from the date of appointment and may be re-appointed for a further period of three years except that a member shall only hold office for two terms. Tenure of office of member and vacancy
- (2) The office of a member becomes vacant if that member—
- (a) dies;
 - (b) is adjudged bankrupt;
 - (c) is absent, without reasonable cause, from three consecutive meetings of the Committee of which the member has had notice;
 - (d) is legally disqualified from performing the duties of a member of the Committee;
 - (e) ceases to be a representative or member of the institution which the member is representing; or
 - (f) is convicted of an offence involving dishonesty or fraud under this Act or any other written law.
- (3) A member may resign from office by giving not less than one month’s notice in writing to the Minister.
- (4) Where a vacancy occurs in terms of subparagraph (2), the Minister shall appoint another member in place of the member who vacates office under subparagraph (2), and that member shall hold office for the remainder of the term.
- 3.** (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure. Proceedings of Committee
- (2) The Committee shall meet for the transaction of business, at places that the Chairperson may determine.
- (3) The Chairperson may, on giving notice of not less than fourteen days, call a meeting of the Committee and shall call a special meeting on giving a shorter notice where the urgency of any particular matter so determines.

(4) The quorum at a meeting of the Committee shall be five members of the Committee.

(5) There shall preside at any meeting of the Committee—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;
or

(c) in the absence of both the Chairperson and the Vice-Chairperson, a member as the members present may elect from among themselves for the purpose of that meeting.

(6) A decision of the Committee on any question shall be by a majority of votes of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have, in addition to a deliberative vote, a casting vote.

(7) Where a member is for any reason unable to attend any meeting of the Committee, the member may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and that person shall be considered to be a member for the purpose of that meeting.

(8) The Committee may invite any person whose presence, in its opinion, is desirable to attend and participate in the deliberations of a meeting of the Committee but that person shall have no vote.

(9) The validity of any proceedings, act or decision of the Committee shall not be affected by any vacancy in the membership of the Committee or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Committee shall cause minutes to be kept of the proceedings of every meeting of the Committee.

Allowances
of members

4. A member of the Committee shall be paid such allowances as may be determined by the Emoluments Commission.

Disclosure
of interest

5. (1) A person who is present at a meeting of the Committee at which a matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, disclose the interest and shall not, unless the Committee otherwise directs, take part in a consideration or discussion of, or vote on, a question relating to that matter

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

6. (1) A person shall not, without the consent in writing given by or on behalf of the Committee, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under the Act.

Prohibition of publication of, or disclosure of information to unauthorised persons

(2) A person who contravenes the provisions of subparagraph (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

(3) If any person, having any information which to the knowledge of that person has been published or disclosed in contravention of subparagraph (1), unlawfully publishes or communicates the information to any other person, the person commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

7. An action or proceeding shall not lie or be instituted against a member of the Committee for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise of or performance of any of the powers, functions or duties conferred under this Act.

Immunity of members and secretariat

FOURTH SCHEDULE

(Section 138(2))

SAVINGS AND TRANSITIONAL PROVISIONS

- Labour Commissioner
1. A person who before the commencement of this Act, was appointed as Labour Commissioner, labour officer or labour inspectors shall continue in office as if appointed under this Act.
- Accrued benefits under Minimum Wages and Conditions of Employment Act
Cap. 268
Cap. 270
Cap. 274
Cap. 276
2. (1) An employer shall compute the benefits of an employee who is entitled to the benefits that accrued, under any of the prior repealed Acts to the commencement of this Act.
- (2) An employer who computes the benefits under subparagraph (1) shall inform the employee of the computed benefits.
- Matters pending under repealed Acts
Cap. 268
Cap. 270
Cap. 274
Cap. 276
3. (1) An application pending before the Labour Commissioner under any of the repealed Acts shall be deemed to have been made to the Labour Commissioner in accordance with the corresponding provision of this Code and the Labour Commissioner shall ensure that the application complies with the provisions of this Act and the applicant shall comply with any request or direction of the Labour Commissioner to ensure that the requirements stipulated in this Act, with respect to an application, are complied with.
- (2) An investigation or proceeding commenced by the Labour Commissioner in accordance with any of the repealed Acts, and not concluded at the commencement of this Act may be continued by the Labour Commissioner.
- Cap. 268
Cap. 270
Cap. 274
Cap. 276
- (3) All appeal processes which, immediately before the commencement of this Act, were underway or pending under any of the repealed Acts shall proceed as if this Act had not been passed.
- Cap. 268
Cap. 270
Cap. 274
Cap. 276
- (4) Any directions given in accordance with any of the repealed Acts shall, unless contrary to this Act, continue in force until revoked, in accordance with this Act.
- Permits, certificates and authorisations
Cap. 268
Cap. 270
Cap. 274
Cap. 276
4. (1) A permit, certificate or authorisation granted in accordance with any of the repealed Acts shall continue to be valid for a period of one year from the commencement of this Act or until its expiry, revocation or surrender in accordance with its terms, whichever is the earlier, but subject to any rights or benefits accruing, or any liabilities suffered, under any of the repealed Acts.

(2) A permit, certificate or authorisation to be granted in accordance with any of the repealed Acts after the commencement of this Act shall be issued in accordance with this Act.

Cap. 268
Cap. 270
Cap. 274
Cap. 276

(3) A person claiming any existing right or privilege subsisting under any of the repealed Acts shall notify the Labour Commissioner of the right or privilege within one year of the commencement of this Act and if the person entitled to the right or privilege fails to notify the Labour Commissioner, the right or privilege shall terminate at the expiry of the one year period.

Cap. 268
Cap. 270
Cap. 274
Cap. 276

5. (1) A contract of employment entered into before the commencement of this Act in accordance with the repealed Acts shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to be a contract of employment entered into under this Act.

Existing
contracts to
continue in
force

(2) A written contract of employment entered into under the law for the time being in force in any other country, attested by a government officer of that country and performed within the Republic, is deemed to have been entered into under this Act, and the provisions of this Act shall, apply to the contract in relation to its performance in the Republic.

(3) Despite sub-paragraph (1), where a contract of employment made prior to the commencement of this Act is materially inconsistent with the provisions of this Act, an employer shall comply with the provisions of this Act within one year of the commencement of this Act.

FIFTH SCHEDULE

(Section 37)

CALCULATION OF ANNUAL LEAVE

Leave
benefits

1. Leave benefits
(FP x D) / 26 days
where FP = full pay
D = number of accrued leave days
