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LABOUR LAW

(2011 Revision)

Law 30 of 1987 consolidated with Laws 18 of 1989, 24 of 1993, 10 of 1995, 10 of 1999, 18 of 2000, 21 of 2006, 24 of 2010 and 9 of 2011 and with the Labour (Time Variation) Regulations, 1992.

Revised under the authority of the Law Revision Law (1999 Revision).

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Originally made-

Regulations 1992-1st September, 1992.

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Note (not forming part of the Law): This revision replaces the 2007 Revision which should now be discarded.

LABOUR LAW

(2011 Revision)

ARRANGEMENT OF SECTIONS

PART I - Introductory

1. Short title
2. Definitions
3. Application
4. Establishment of conditions above minimum standards
5. Conformity with the law
6. Statement of working conditions
7. Re-employment within thirty days of termination
8. Probation period
9. Termination: fixed term contract
10. Termination by notice: employer's notice
11. Termination by notice: employee's notice
12. Statement upon termination

PART II - Leave

13. Application of leave provisions
14. Vacation leave
15. Part-time employees
16. Public holiday pay
17. Sick leave
18. Sick leave pay
19. Maternity leave

PART III - Remuneration and Hours of Work

20. National Minimum Basic Wage
21. Minimum Wage Advisory Committee
22. Penalty for not paying minimum wage
23. Rest period
24. Standard work week
25. Occasions for overtime pay
26. Overtime pay not necessary if parties agree to the contrary
27. Overtime pay
28. Form of wages
29. Deductions

30. Periods and time of wage payments
31. Offences and employee's rights in respect of wages
32. Work accounts
33. Statement of wages

PART IV - Gratuities

34. Definitions in this Part
35. Minimum gratuity may be prescribed
36. Employees entitled to gratuities may be prescribed
37. All gratuities to be distributed
38. Service employer to keep records
39. Notice of rate or amount of gratuity to be displayed

PART V - Severance Pay

40. Right to severance pay generally
41. Computation of severance pay
42. Severance pay, when payable: temporary termination
43. Severance pay where employer's business transferred
44. Liability of predecessor and successor-employers
45. Record of hiring dates
46. Determination of disputes

PART VI - Retirement/resignation Allowance

47. Retirement/resignation allowance
48. Determination of disputes-retirement/resignation allowances

PART VII - Unfair Dismissal

49. Unfair dismissal: general
50. Termination after fixed term of employment
51. Dismissal for good cause
52. Termination for misconduct
53. Termination for failure to perform duties in satisfactory manner
54. Initiation of proceedings
55. Remedies for unfair dismissal

PART VIII - Health, Safety and Welfare at Work

56. General application
57. Registration of work places
58. General duty of employers
59. Health

60. Safety
61. Welfare
62. Special protective measures
63. Notification of accidents
64. Duties of persons employed
65. Remedial notices
66. Offences against this Part
67. Responsibility for enforcement
68. Time for commencement of prosecution
69. Power of Grand Court to modify agreements and apportion expenses
70. Power to make regulations

PART IX - Administration

71. Appointment of Director, Deputy Director and inspectors
72. Responsibilities of Director
73. Powers of Director, Deputy Director and inspectors
74. Labour Tribunals
75. Procedure to be followed on a complaint to Director
76. Enforcement of award of Labour Tribunal
77. Establishment of Appeals Tribunal
78. Appeals from decision of Labour Tribunal
79. Appeals to Grand Court

PART X - General Penalties and Miscellaneous

80. Discrimination because of race, etc.
- 80A. Worst forms of child labour
81. Penalties
82. Specific offences
83. Special provisions as to evidence
84. Service and sending of documents
85. General regulation making powers
86. Directions

LABOUR LAW
(2011 Revision)

PART I - Introductory

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|---|-------------|
| 1. This Law may be cited as the Labour Law (2011 Revision). | Short title |
| 2. In this Law- | Definitions |

“Appeals Tribunal” means the tribunal established under section 77;

“basic wage” means the ordinary wage due to an employee under his contract of employment;

“casual employee” means a person who is employed upon an irregular or intermittent basis;

“charitable organisation” means one accepted and registered as such by the Director;

“Chief Officer” means the chief officer in the Ministry responsible for labour or his designate

“child” means a juvenile under the age of fourteen years;

“complaint” means a formal complaint made to the Director under section 46 or 54;

“conditions of service” or “conditions of employment” refers to the elements of hire and termination of employment, to the remuneration, hours of work, duties and the surrounding terms of employment and to all other factors related to the employment arrangement;

“contract of employment” means any agreement, understanding or arrangement whatever, whether written or oral, express or implied, whereby it is agreed between an employee and an employer that the employee will be employed under a contract of service;

“Court” save where the context indicates otherwise, means the Summary Court;

“Director” means the Director of Labour appointed under section 71(1);

“employee” means any individual who enters into or works under or stands ready to enter into or work under a contract of employment with an employer whether the contract be oral or written, express or implied; and the term includes a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off;

“employees of managerial level” include persons who plan, organise, control, co-ordinate or direct the business of an employer or a part of such business;

“employees of professional level” include persons who perform professional functions in the fields of physical and natural sciences, engineering, law, medicine, religion, education, literature, art, entertainment or sport;

“employer” means any person who has entered into or stands ready to enter into a contract of employment with an employee, and includes any agent, representative or manager of such person who is placed in authority over an employee;

“Governor” means Governor in Cabinet;

“gratuity” means any money or other thing of value collected or received from a customer or client of any business which is in excess of the basic contractual liability of that customer and is, or is purported to be, collected or received in respect of the quality of service afforded to that customer and, without prejudice to the generality of the foregoing, includes any sum whether calculated on the basis of a fixed percentage or otherwise, levied on the amount charged to the customer of any hotel, condominium, restaurant, licensed premises or other place of entertainment, and expressed to be in respect of service;

“household domestic” means a person employed in a private home as a maid or gardener;

“inspector” means an inspector appointed under section 71;

“juvenile” means a person under the age of seventeen years;

“maternity” means childbirth;

1997 Revision

“mental disability” has the same meaning as in the Mental Health Law (1997 Revision);

“Minister” means the Minister charged with responsibility for this Law under section 9 of the Constitution;

“National Minimum Basic Wage” means the current basic wage prescribed by the Governor under section 20;

“operator of a workplace” means each and every person responsible for operating, managing or supervising a workplace, and includes any person with actual, apparent or ratified authority to act on behalf of that person;

“overtime pay” has the meaning assigned to it by section 27;

“part-time employee” is an employee whose contract of employment requires him to work less than the standard work week;

“predecessor-employer” in relation to the employment of an individual as it affects his right to severance pay, means a person by whom that individual was employed, and who subsequently transferred the business in which that person

was employed to a new owner in circumstances that the employment of the employed individual is continued by the new owner of the business;

“probation period” means a period of employment governed by section 8;

“public holiday” means a day declared to be a Public General Holiday under the Public Holidays Law (2007 Revision);

“redundancy” means a situation in which, by virtue of a lack of customers or of orders, retrenchment, the installation of labour-saving machinery, an employer’s going out of business, force majeure or any other reason, tasks which a person was last employed to perform no longer exist;

“remedial notice” means a notice under section 65;

“severance pay” has the meaning assigned to it by section 40;

“sick leave” means leave taken under section 17;

“standard work week” has the meaning assigned to it by section 24(1);

“successor-employer” in relation to the employment of an individual as it affects his right to severance pay, means a person who takes over the business in which that individual is employed from a predecessor-employer of that individual and continues to employ him in the same employment;

“wage” means any money together with any other thing agreed to be paid or given by an employer to an employee as recompense, reward or remuneration for services rendered under a contract of employment but does not include tips or gratuities; and

“workplace” means any premises in which any employee is employed to work and, without prejudice to the generality of the foregoing, includes any shop, office, licensed premises or factory; but does not include, in respect of a household domestic employed there, a private home.

3. This Law does not apply to-

Application

- (a) the public service:
Provided that the Personnel Regulations, 2006 from time to time applying to the public service shall not prescribe or permit conditions of service which are less favourable to the employee than those required by this Law;
- (b) charitable organisations; or
- (c) churches.

4. Nothing in this Law shall be construed as prohibiting an employer from establishing conditions of service more advantageous to any employee than those minimum employment standards established by this Law.

Establishment of conditions above minimum standards

Conformity with the Law

5. (1) Subject to section 4, any employer who offers or provides employment under terms and conditions of employment which do not conform to this Law commits an offence.

(2) Any provision in any contract of employment which contravenes this Law, or which establishes conditions of service which fall below the minimum employment standards established by this Law, shall be, to the extent of such contravention, void and of no effect.

Statement of working conditions

6. (1) Every employer who enters into a contract of employment with an employee other than a casual employee or a person employed as a household domestic shall, within ten working days of entering into such contract, furnish the employee with a written statement of his conditions of employment in accordance with subsection (2).

(2) The written statement referred to in subsection (1) shall state-

- (a) the job title, a brief statement of the general responsibilities and duties of the employee and of any special requirements or conditions of the job;
- (b) the regular hours of work, together with any particular terms or conditions relating to the hours of work;
- (c) the rate of remuneration, or the method by which it may be calculated;
- (d) the intervals at which remuneration is to be paid;
- (e) in the case of employees whose pay is normally stated on some basis other than hourly, the hourly equivalent save that in the case of persons remunerated wholly or in part by commission the rate of commission should be stated;
- (f) the period of employment, if other than indefinite;
- (g) the period of probation, if any;
- (h) the employee's holiday entitlement or the method by which it may be calculated;
- (i) the employee's entitlement to sick leave; and
- (j) the length of notice which the employee is obliged to give and is entitled to receive to terminate the contract of employment.

(3) Whenever, subsequent to the giving of a statement under subsection (1) or (2), any material change is made in any of the terms of employment set out in the statement, the employer shall forthwith furnish the employee with an amended statement embodying the change.

(4) An employer who fails to furnish a statement pursuant to subsections (1) to (3) within seven days of being requested in writing by the employee to whom it relates to do so commits an offence.

7. Any person who is re-employed by the same employer or, where the severance pay required under this Law has not been paid to the employee, by the successor-employer, within thirty days of the termination of his employment, shall not be regarded as a new employee, but his employment shall be regarded as continuous with his earlier period of employment for the purposes of the calculation of his period of probation and of any benefits under this Law.

Re-employment within
thirty days of
termination

8. (1) A new employee may, if mutually agreed in writing between himself and his employer, be employed on probationary terms for an initial period not exceeding six months in duration.

Probation period

(2) At the end of the initial probationary period that period may be extended by mutual agreement for a term not exceeding a further six months, provided that such agreement shall be in writing and signed by both parties thereto.

(3) During his probation period, an employee shall be given reasonable training in the duties of the position for which he was hired, and shall be kept informed of his progress.

(4) At any time during his probation period an employee's employment may be terminated but reasons for such termination shall be given to the employee.

(5) Upon confirmation of employment after a probationary period all earned benefits under this Law shall be deemed to have accrued from the commencement of the probationary period.

9. Where the contract of employment is for a fixed term it shall terminate automatically and without further notice on the expiration of that term unless previously extended by prior agreement, or unless the terms of the contract specify otherwise.

Termination: fixed term
contract

10. (1) Subject to sections 9, 51, 52 and 53, an employer shall give advance notice in writing to the affected employee of an intention to terminate that person's employment-

Termination by notice:
employer's notice

- (a) with respect to an employee within his probation period, at least twenty-four hours notice; and
- (b) with respect to all other employees, notice at least equal to the interval of time between the employee's pay days:

Provided that in no case need the period of notice exceed thirty days unless an employment contract calls for a longer notice period.

(2) Having given due advance notice to terminate employment, an employer may terminate the employment prior to the effective date of termination under the notice, provided that he pay the employee a sum equivalent to that which he would have paid if the employee had worked throughout the period.

(3) If the employer has not exercised the option provided in subsection (2), he may require the employee to render his normal services until the effective date of termination under the notice, at the regular wage last being received by the employee.

(4) An employer, having given due advance notice to terminate employment and not having exercised the option provided in subsection (2), shall be discharged forthwith of any obligation to pay the involved employee's regular wage upon the employee voluntarily quitting his employment prior to the effective date of termination under the notice.

(5) The provisions of this section are subject to the provisions of Part VII.

Termination by notice:
employee's notice

11. (1) Subject to section 9, an employee shall give notice to his employer of an intention to quit employment-

- (a) during his probation period, at least twenty-four hours advance notice;
- (b) when a period of notice is required by his contract of employment, that period; and
- (c) in all other cases, notice equal to the interval of time between his pay days or thirty days, whichever is the less.

(2) Any employee who fails to give sufficient advance notice under subsection (1) may, at the employer's option-

- (a) be dismissed prior to the date that he intended voluntarily to quit by the number of hours or days by which the employee's notice fell short of the required period of advance notice; and
- (b) forfeit all vacation leave accrued during the current employment year.

Statement upon
termination

12. (1) Where an employer has, subsequent to the expiration of an employee's probation period, terminated the employee's employment the employer shall, upon a request being made by the employee at any time within fourteen days after the termination of his employment, furnish within fourteen days to the said employee a written statement of the reason for the action, and if the employee so requests send a copy thereof to the Director.

(2) In all cases of termination of a contract of employment the employer shall, upon a request made by the employee concerned at any time within one year of the expiry of the period specified in the notice, furnish within fourteen

days of such request a certificate specifying the dates of his engagement and termination and the type of work on which he was employed.

(3) An employer who furnishes a statement or certificate under subsection (1) or (2) shall be conclusively bound by the contents thereof in any proceeding under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

(4) An employer who fails to furnish either a statement or certificate under subsection (1) or (2) shall be prohibited from introducing evidence as to any facts which might have been recited in the said statement or certificate in any proceedings under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

(5) An employer who fails to furnish either a statement or certificate under subsection (1) or (2) commits an offence.

(6) For the avoidance of doubt, the duty to furnish a statement or certificate pursuant to subsection (1) or (2) is discharged on the first occasion an employer furnishes such a statement or certificate.

PART II - Leave

13. This Part applies to every employee who is not a casual employee and who has completed his probation period or any lawful extension thereof. Application of leave provisions

14. (1) Subject to section 15, every employee to whom this Part applies shall be entitled to, and his employer shall give him, earned vacation leave with pay of the number of working days that is necessary if taken in an unbroken period to give him at least the period of earned leave in each twelve month period of employment which is specified in respect of each such period in subsection (3): Vacation leave

Provided that the entitlement to earned vacation leave under this subsection shall only arise when the employee has completed the twelve month period of employment to which it relates.

(2) The proviso to subsection (1) shall not apply where the employer and employee have agreed in writing that the entitlement of earned vacation leave shall accrue proportionately to the employee at the end of each month during each twelve month period of employment.

(3) The minimum entitlement of earned leave referred to in subsection (1) is -

| Period of employment | Minimum annual entitlement to |
|----------------------|-------------------------------|
|----------------------|-------------------------------|

| | earned leave in respect of each twelve month period of employment |
|--|--|
| Not exceeding 4 completed years | 2 weeks |
| Exceeding 4 but not exceeding 10 completed years | 3 weeks |
| Exceeding 10 completed years | 4 weeks |

The minimum annual entitlement of earned leave shall be in such proportions and at such time as the employer and employee shall agree.

(4) The Governor may, by regulations, prescribe that employers in such industries or businesses as may be specified in the regulations, being industries or businesses which have seasonal employment requirements, shall-

- (a) proportion leave in accordance with the time worked by their employees during each year; and
- (b) require their employees to take their leave during such periods in each year as may be specified in the regulations as being the agreed leave periods for the employer's industry or business.

(5) Earned vacation leave shall be above and beyond and shall not include any public holiday leave as provided for by section 16, any sick leave as provided for by section 17 or any daily or weekly non-work periods as provided for by section 23.

(6) The dates for the taking of earned vacation leave shall be fixed by agreement between employer and employee.

(7) By mutual agreement the employer may advance vacation leave not yet earned.

(8) The earned vacation leave specified in subsection (1) is not a cumulative entitlement and shall be taken annually in an unbroken time period, unless the employer and employee agree otherwise.

(9) An employer shall not compel an employee to forego the taking of earned vacation leave even though he pays or offers to pay in lieu thereof and in addition to the employee's normal wage, the wage the employee would have received had he taken the leave.

(10) Any person whose employment is terminated for any reason shall, subject to paragraph (a) of section 11(2), thereupon receive, in respect of every day of earned vacation leave due him at the time of such termination, a cash sum equal to the remuneration for each such day. Once an employee has completed his probationary period, payment of such a sum in respect of earned vacation leave shall be granted on a pro-rata basis if or when his employment is terminated notwithstanding that he has not completed the twelve month period to which it

relates. Where such remuneration would normally include any thing other than money then the amount due on termination shall include the cash equivalent of such thing, calculated in accordance with paragraph (c) of section 28 (1).

(11) The rate of pay for each day of earned vacation leave shall not be less than the basic daily wage of the employee concerned at the commencement of the vacation leave.

(12) Every employee to whom this Part applies shall, in addition to any entitlement to earned vacation leave, be entitled (during each twelve month period of employment) to a maximum of five days compassionate leave on the occurrence of a death or serious illness in the employee's immediate family provided reasonable evidence of such serious illness or death is provided to the employer; and for the purposes of this entitlement the employee's immediate family means the spouse, parents and children of the employee.

(13) In subsection (12)-

“serious illness” includes any period of a person's admittance to hospital as in-patient, recuperation from such hospitalisation or any period of overseas travel related to such hospitalisation or recuperation.

15. Part-time employees shall earn vacation leave in the ratio that their actual hours of employment bear to the standard work week. Part-time employees

16. (1) If an employee does not work on a public holiday he shall be paid the basic wage he would normally have received for work performed on that day had it not been a public holiday, provided he has worked his scheduled work day immediately before and his scheduled work day immediately after the said public holiday. Public holiday pay

(2) Subject to subsection (3), if an employee does work on a public holiday he shall be paid at double his normal rate of pay for the hours actually worked that day, and where he works less than the full day he shall, in addition, be paid at the normal rate for any hours by which the time actually worked falls short of his normal working day.

(3) For the avoidance of doubt the provisions of subsections (1) and (2) are not cumulative so that where an employee does work on a public holiday it is not necessary to add his entitlement under subsection (2) to the basic wage referred to in subsection (1).

(4) An employee may, by mutual agreement between himself and his employer, take time off in lieu of a public holiday in which case he shall not be paid double pay for working on any such holiday.

(5) In the case of employees at professional or managerial level and above, the parties to a contract of employment may agree that subsections (1) and (2) shall not apply, in which case the employee shall not be paid double pay for working on a public holiday.

(6) Notwithstanding section 13, an employee serving a probationary period under section 8 is entitled to payment for public holidays.

Sick leave

17. (1) Subject to this section, each employee is entitled to sick leave on workdays, or parts thereof, during which he is ill or otherwise physically incapacitated for work.

(2) Sick leave shall be taken only in connection with actual illness or other physical incapacitation for work, evidence of which, in the form of a doctor's certificate or other satisfactory means, shall be furnished by the involved employee at any time upon request of the employer made under subsection (5) and in any event in respect of the third and any subsequent consecutive days of such leave.

(3) A doctor's certificate furnished by an employee which provides evidence that the employee was ill or otherwise physically incapacitated from working for his employer on a particular day shall be satisfactory evidence of that illness or incapacity for the purpose of the entitlement of the employee to sick leave pay under this Part.

(4) Subsection (3) shall not require an employer to accept a doctor's certificate as evidence of an employee's sickness or incapacity where there are reasonable grounds for the employer to suspect that the certificate has been procured in furtherance of, or as part of, a course of absenteeism.

(5) An employer may require an employee to furnish him with a medical certificate in respect of any purported sick leave, no matter how short, where the employer is of the opinion that it forms part of a pattern of absenteeism.

(6) In the event that the employer considers that the extent of sick leave taken renders the employee unfit to continue in his employment and terminates the employment therefore, the fairness of the termination shall be determined under Part VII.

(7) Every employee who is ill or otherwise physically incapacitated so as to justify his absence from work under subsection (1) shall notify his employer of that fact as soon as reasonably practicable.

Sick leave pay

18. For the first ten days of sick leave taken during any period of twelve consecutive months, calculated from the date of commencement of employment

and any anniversary date thereof, an employee shall be paid the basic wage which he would have received had he worked on those days.

19. (1) Every female employee shall be entitled to twelve calendar weeks' maternity leave in any twelve month period: Maternity leave

Provided that if the employee has not completed twelve months of employment with her employer her maternity leave shall be calculated on a pro-rata basis for the time that she has worked.

(2) An employee entitled to maternity leave under subsection (1) shall be entitled to receive and her employer shall pay-

- (a) in respect of any entitlement to maternity leave for a period not exceeding twenty working days, the basic wage that the employee would have received had she worked on those days; and
- (b) in respect of any period of entitlement to twenty working days maternity leave next following the first twenty days, one half of the amount of the basic wage she would have received had she worked on those days.

(3) At any time during the period of maternity leave the employer may require, and the employee shall thereupon furnish, a doctor's certificate to demonstrate that the leave is being taken on account of maternity.

(4) Subject to subsection (3), maternity leave may be taken in whatever proportions before and after actual childbirth that the employee wishes, provided that an employee shall not work where a doctor certifies that it would, by reason of pregnancy, be deleterious to the health of the employee for her to work, and an employer may, at any time during pregnancy, require an employee to be examined by a doctor with a view to determining whether it would be deleterious to her health to continue work.

(5) A female employee who adopts a child under three years of age shall be entitled to adoption leave of nine calendar weeks and to receive from her employer the basic wage that the employee would have received had she worked on the days of her entitlement to adoption leave for a period not exceeding fifteen working days of that entitlement.

(6) Adoption leave may be granted to any female employee once in any thirty-six calendar month period.

PART III - Remuneration and Hours of Work

National Minimum
Basic Wage

20. (1) Subject to subsection (2), the Governor may, by Order, prescribe a National Minimum Basic Wage.

(2) An Order under subsection (1) may only be made, varied, amended or revoked after consideration of recommendations made to the Minister by a Minimum Wage Advisory Committee established under section 21.

(3) Any National Minimum Basic Wage prescribed under subsection (1) shall not apply to the payment of wages to juveniles required by any law to attend school.

Minimum Wage
Advisory Committee

21. (1) The Governor may establish a Minimum Wage Advisory Committee to investigate and enquire into all matters related to the appropriate level of a National Minimum Basic Wage, and to make recommendations as to the minimum rates of wages which should be payable.

(2) The Governor may make rules governing the procedure of any such Committee, but, subject to any such rules and to subsections (3) to (9), the Committee shall have power to regulate its own proceedings.

(3) The Committee shall consist of not less than eight members who shall be appointed by the Governor, and who shall comprise equal numbers of employers and employees, together with such other representatives of such other interests as he may see fit.

(4) The Governor shall designate one member of the Committee as Chairman thereof.

(5) The quorum of the Committee shall be five members, including the Chairman.

(6) All questions arising at any meeting of the Committee shall be determined by a majority of votes of all members, including the Chairman, who are present, and subject to sub-section (5), no such determination of the Committee shall be invalid by reason of any vacancy or absence among the members.

(7) The Committee may, at any time it deems it expedient to do so, call in the aid of one or more assessors, specially qualified in the opinion of the Committee in the matter under investigation.

(8) The Committee shall have power to take evidence from witnesses, to require the production of relevant documents and to take evidence on oath.

(9) The Committee shall make such interim reports of its investigations and recommendations as the Minister may from time to time require, and shall, as soon as possible after the conclusion of its investigations and deliberations, make a final report, including recommendations, to the Minister.

22. (1) Where a National Minimum Basic Wage has been fixed under section 20 it shall be an offence for an employer to employ or to pay any employee at a basic wage less than the minimum wage prescribed by the Order.

Penalty for not paying minimum wage

(2) Subsection (1) shall not apply to the payment of wages to juveniles to whom section 20(3) applies.

(3) Where an employer has been convicted of an offence under subsection (1) then, if notice of an intention so to do had been served upon him with the summons or warrant, evidence may be given before sentence of any failure on the part of the employer to pay wages at the minimum rate to the employee concerned during the two years immediately preceding the date on which the information was laid and, on proof or admission of the failure, the Court upon sentencing the employer may order him to pay to the employee, in addition to any fine or other penalty, such sum as in the opinion of the Court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus interest at the rate of ten per cent per annum from the date any wage was due until it is paid.

(4) An order made under subsection (3) may be enforced in the same manner as if it were a fine.

(5) In calculating the wage paid to an employee for the purposes of the application of this section gratuities shall be disregarded.

23. (1) Every employer shall permit each of his employees to enjoy, in every period of seven consecutive days, a period of rest comprising at least twenty-four consecutive hours.

Rest period

(2) Every employer in a specified industry or business shall permit each of his hourly-paid employees during each period of work-

- (a) of three to five hours, a minimum of fifteen minutes break;
- (b) of more than five hours, a minimum of two breaks of fifteen minutes each; and
- (c) of more than five hours, and in addition to any entitlement to breaks under paragraph (a) or (b), a meal break of thirty minutes,

the employee to be paid for the period of each fifteen minute break (but not for the period of any meal break) the wage the employee would, but for the break, have

otherwise been entitled to receive.

(3) For the purposes of subsection (2) the specified industries and businesses are-

- (a) construction;
- (b) manufacturing;
- (c) heavy equipment operators;
- (d) hospitality; and
- (e) gardening or landscaping.

(4) Any employer who does not comply with any requirement imposed on him by subsection (1) or (2) commits an offence.

(5) Any employee not entitled to the breaks specified in subsection (2) is nevertheless entitled to reasonable rest and meal breaks.

(6) All rest and meal breaks required by subsection (2), and all other rest and meal breaks to which an employee is entitled under subsection (5), shall, having regard to all the circumstances of the employment concerned, be taken at such reasonable times as are agreed between the employer and the employee.

Standard work week

24. (1) The standard work week shall not exceed forty-five hours in any period of one hundred and sixty-eight hours and the standard work day shall not exceed nine hours.

(2) The Governor may, by Order, revise this standard for any industry or enterprise specified in the Order.

Occasions for overtime pay

25. (1) An employer shall pay overtime pay to an employee for every hour of work in excess of the standard work week or a standard work day.

(2) Notwithstanding subsection (1), the parties to a contract of employment may provide, either generally by an agreement in writing or specifically in relation to any period of less than one week by an oral agreement, that the employee shall work more than the hours provided for by the standard work week and shall receive time-off equivalent to the extra hours in lieu of overtime pay.

(3) Notwithstanding subsection (1), in the case of employees at professional or managerial level and above, the parties to a contract of employment may agree that no overtime should be paid, in which case the obligation to pay overtime to that employee in accordance with subsection (1) shall not apply.

(4) Any employer who contravenes subsection (1) commits an offence.

(5) In addition to any fine imposed for an offence under subsection (4) the Court may, before or upon sentencing the employer, order him to pay to the employee any overtime pay due for any period in respect of which an offence was committed.

(6) Any sum ordered to be paid under subsection (5) may be enforced as a fine.

26. Non-managerial employees may agree with an employer that no overtime will be paid for the extra hours worked by such employee provided that such agreement shall be requested by the employee and entered into voluntarily by him. Any such agreement shall be approved by and registered with a Labour Tribunal and shall not take effect until and unless this section is complied with. A Labour Tribunal shall, before approving and registering such agreement, satisfy itself that the agreement was requested by the employee and voluntarily entered into and it may require such evidence as it deems necessary to so satisfy itself.

Overtime pay not necessary if parties agree to the contrary

27. (1) Overtime pay shall, unless the employer and the employee agree in writing to the contrary, consist of at least one-and-one half times an employee's basic hourly wage per hour.

Overtime pay

(2) Any agreement entered into under this section is subject to section 26 being complied with.

28. (1) The remuneration payable under a contract of employment may be paid in money or in kind, which expression means payment by the provision of food, a dwelling place or such other allowances and privileges as may be agreed in the contract of employment:

Form of wages

Provided that-

- (a) at least fifty per cent of the total remuneration shall be paid in money;
- (b) no payment in kind shall include any noxious drugs or intoxicating liquor; and
- (c) any payment in kind must be fairly evaluated on the basis of its cost to the employer.

(2) The money wages of an employee shall be paid in legal tender, provided however that the payment of wages by cheque, by direct deposit or by postal order shall be permitted if it is with the express consent of the employee, which consent may be withdrawn on one calendar month's notice, provided that such consent may not be unreasonably withheld or withdrawn.

Deductions

29. (1) An employer shall not make any deductions from the wages payable to an employee under any contract of employment except in accordance with subsections (2) to (4).

(2) Without prejudice to subsection (1) and notwithstanding paragraph (e) of subsection (3), an employer shall not make any deduction from the wages payable to an employee or require or receive any payment from an employee, or allow any other person to deduct, or require or receive any payment from an employee, in respect of-

- (a) the cost of anything done or required to be done by the employer under this Law or any regulations made hereunder;
- (b) obtaining or retaining employment with the employer;
- (c) any fine imposed by the employer;
- (d) bad or negligent work, other than a shortfall in cash collected by an employee on behalf of an employer or in a cash float provided to the employee by the employer; or
- (e) any injury to the materials or property of the employer, save when the injury is occasioned by the wilful misconduct of the employee.

(3) There may be deducted-

- (a) any deduction imposed by any law;
- (b) any money advanced by the employer (whether paid to the employee himself or to some other person at his request) in anticipation of the regular payment of the employee's wages, provided the amount deducted accords with the agreement made between employer and employee at the time of the advance, and provided that no interest, discount or similar charge may be imposed on such advance;
- (c) the actual or reasonable estimated cost to the employer of any materials, tools and implements which, although not obliged to provide, the employer has supplied to the workman at the latter's request;
- (d) any payment into any welfare, insurance or other similar fund which an employee has authorised to be deducted;
- (e) subject to subsections (2) and (4), any sum of money the deduction of which an employee has expressly authorised in writing; and
- (f) any wages deducted by virtue of the suspension of an employee where the employee has been given a written warning under section 52(2) or 53(1) and the employee has been guilty of further misconduct or has continued to perform his duties unsatisfactorily.

(4) The total which may be deducted in any period shall not exceed one-third of the gross money wage of the employee for that pay period, provided that this shall not apply to interest on and repayments of negotiated loans nor to the recovery of money advanced as contemplated in paragraph (b) of subsection (3) provided that the deduction accords with the agreement made at the time of the advance.

30. (1) Wages shall be paid on a regular periodic basis, and no period in respect of which wages earned by an employee are payable shall exceed one month.

Periods and time of wage payments

(2) The payment of wages shall be made on ordinary working days only and within ordinary working hours.

31. (1) Any employer who-

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to section 28, 29 or 30;
- (b) makes any deduction from the wages of any employee or receives any payment from any employee contrary to the said sections; or
- (c) otherwise contravenes the said sections, commits an offence.

Offences and employee's rights in respect of wages

(2) In addition to the offence under subsection (1), an employee shall be entitled to recover by action in the appropriate Court so much of his wages, exclusive of sums lawfully deducted, as shall not have been actually paid to him together with interest thereon at the rate of ten per cent per annum.

32. (1) Every employer who employs ten or more persons shall keep an accurate work account in respect of each employee, which shall record his time worked (by pay periods), his leave taken (by type), and the basic and other wages paid to him for each pay period.

Work accounts

(2) In the case of an employee paid on a piece-work basis the work account shall show the work done instead of the time worked.

(3) An employer to whom subsection (1) applies shall preserve each work account, with respect to each entry therein, for at least two years.

(4) Upon demand by any employee, an employer required to maintain a work account under sub-section (1) in respect of that employee shall make it available to him for inspection.

(5) Any employer who contravenes this section commits an offence.

- Statement of wages 33. (1) An employer shall, in respect of any given wage or gratuity payment, within one week of the making of the payment, furnish that employee forthwith with a precise statement in writing showing how the said payment was made up.
- (2) Without prejudice to the generality of subsection (1), whenever an employer makes any deduction from an employee's wages, a statement furnished under subsection (1) shall include the amount deducted and the nature of the deduction.
- (3) Any employer who fails to furnish a statement under subsection (1) commits an offence.

PART IV - Gratuities

- Definitions in this Part 34. In this Part-
- “service employee” means an employee of a service employer who is within a class or description of employees prescribed by regulations made for the purpose of section 36(1) and who works in the Islands; and
- “service employer” means an employer carrying on the business of a hotel, condominium, restaurant, licensed premises or other place of entertainment where the employer collects or receives gratuities in respect of services provided by the business.
- Minimum gratuity may be prescribed 35. (1) The Governor may, by regulations, prescribe the minimum rate of gratuity that is to be shown or included in accounts rendered to customers of hotels, condominiums, restaurants, licensed premises or other places of entertainment:
- Provided that the Governor may, in writing, upon application of a specific business, exempt any specific business from the regulations made under subsection (1) where the employer does not collect or receive gratuities in respect of services provided by a business mentioned in this subsection.
- (2) Different minimum rates of gratuity may be prescribed for different types of businesses or different activities within a type of business.
- (3) A person carrying on a business or an activity of a business in respect of which a minimum rate of gratuity has been prescribed in accordance with subsection (1) shall show or include in all accounts rendered to customers of the business a gratuity at a rate not less than that prescribed.
- (4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine of ten thousand dollars.

(5) The prescription of a minimum rate of gratuity in respect of a business or an activity carried on by a business, or the inclusion of a gratuity in an account rendered by a business does not imply a contractual obligation on the part of a customer of that business to pay any gratuity shown or included in an account rendered on behalf of the business.

(6) Notwithstanding subsection (3), it is not an offence under that subsection for a business to state that a gratuity shown or included in an account rendered on behalf of the business is shown or included at the minimum rate recommended by the Government and that payment of the gratuity is discretionary.

36. (1) The Governor may, by regulations, prescribe classes of employees who are entitled to be included in the distribution of gratuities by a service employer.

Employees entitled to gratuities may be prescribed

(2) Classes of employees may be prescribed for the purpose of subsection (1) by-

- (a) the description of their position;
- (b) the type of work they undertake;
- (c) the level of their remuneration; or
- (d) the terms of their employment,

or by any combination of these matters.

37. (1) A service employer shall distribute all gratuities collected or received by him amongst his service employees twice monthly on the day that service employees' wages or salaries are paid-

All gratuities to be distributed

- (a) in accordance with a scheme approved by and registered with the Director; or
- (b) where no such scheme is registered, in accordance with a formula prescribed by the Governor by regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months, and the service employer shall be required to distribute the gratuity in respect of which he was convicted amongst his service employees within such period as the court may order.

(3) A service employee is entitled to participate in the distribution of all gratuities collected or received by his employer in respect of the premises at which the employee is employed for services provided after the date the employee became a service employee at those premises.

(4) A person who ceases to be a service employee is entitled to participate in the distribution of all gratuities collected or received by his employer or former

employer in respect of the premises at which the employee was employed for services provided before the date the person ceased to be a service employee at those premises.

Service employer to
keep records

38. (1) A service employer shall keep a record of -
- (a) the total amount of gratuities collected or received by him in each month he provides services to customers;
 - (b) each account rendered to a customer of the employer showing-
 - (i) the service provided;
 - (ii) the amount charged for the service;
 - (iii) the amount of gratuity shown or included; and
 - (iv) the date on which, or the period during which, the service was provided;
 - (c) the amount received or collected by the employer in respect of each account rendered by the employer showing-
 - (i) the amount received by the employer in respect of the service;
 - (ii) any amount collected or received by way of gratuity; and
 - (iii) the date on which the amount referred to in subparagraph (i) was collected or received;
 - (d) any gratuities collected or received by the employer otherwise than as referred to in paragraph (c)(ii);
 - (e) the name of each service employee of the employer who carried out any duties for the employer during any period when the employer was providing services to customers; and
 - (f) each distribution of gratuities made to service employees showing-
 - (i) the period in respect of which the distribution was made;
 - (ii) the date of the distribution; and
 - (iii) the amount paid to each service employee,

and a person who fails to do so commits an offence and is liable on conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months.

(2) For the purpose of paragraph (c)(ii) of subsection (1), any amount paid under paragraph (c)(i) of subsection (1) that exceeds the amount charged under paragraph (b)(ii) of subsection (1) is to be regarded as a gratuity.

(3) Any service employer who keeps a record for the purpose of subsection (1) that he knows or ought reasonably to know is false or misleading commits an offence and is liable on conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months.

(4) Any service employer who fails to provide to the Director, in a format approved for the purpose by the Director and within six weeks of the end of a

month, details of the gratuities received by the service employer during that month and the manner in which those gratuities were distributed, commits an offence and is liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

(5) Where a service employer provides details of gratuities to the Director in accordance with subsection (4) but fails -

- (a) at the same time, to make available on request a copy of the details to service employees referred to in the details; and
- (b) to make these details available for at least two weeks,

commits an offence and is liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

(6) Any service employer who, when requested to do so by the Director, fails to-

- (a) produce to the Director for inspection the record kept by the employer for the purpose of subsection (1); and
- (b) provide to the Director a copy or print out of the information stored in the record,

commits an offence and is liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

(7) Any person required to keep a record for the purpose of subsection (1) who fails to retain any record made for the purpose of that subsection for at least three years commits an offence and is liable on conviction to a fine of five thousand dollars and to imprisonment for six months.

(8) In this section-

“record” means any means by which information may be stored and retrieved.

39. (1) Any service employer who fails to display, in a place where it may be easily seen by a customer of the employer, a notice stating the rate of gratuity applicable to services provided by the employer commits an offence and is liable on conviction to a fine of ten thousand dollars.

Notice of rate or amount
of gratuity to be
displayed

(2) It is sufficient compliance with subsection (1) if the rate of gratuity is shown on a menu or other document that would normally be read by customers of the employer.

PART V - Severance Pay

Right to severance pay generally

40. (1) Every employee whose term of continuous employment with an employer and any predecessor-employer has in aggregate exceeded one year is entitled to receive, in addition to any other payments which may be due to that employee, upon termination of his employment by his employer for any reason, other than a dismissal which is within paragraph (a), (b) or (c) of section 51(1), severance pay, being payment in money calculated in accordance with this Part.

(2) In the case of the bankruptcy or winding up of an employer any liability for severance pay shall be paid in priority to all other debts, secured or unsecured, and shall be paid in full unless the property available is insufficient to meet them.

(3) Severance pay shall be payable to an employee for the full period of his employment, including any period of employment prior to the 1st March, 1988, if that employment is terminated on or after the 1st March, 1988.

Computation of severance pay

41. (1) Severance pay shall consist of one weeks wages, at the employee's latest basic wage, for each completed twelve month period of his employment with his employer and any predecessor-employer.

(2) In the case of part-time employees their entitlement to severance pay shall be calculated on the basis of the ratio that their actual hours of employment bear to the standard work week.

Severance pay, when payable: temporary termination

42. (1) Subject to subsections (2), (3) and (4), simultaneously upon the termination of the employment of any employee entitled to severance pay, the employer shall pay to that employee severance pay calculated in accordance with this Part.

(2) If the termination is stated to be temporary, no severance pay need be paid to the employee at the time of such temporary termination except-

- (a) where the date of recall, if one is given at the time of termination, is thirty days or more in the future, severance pay shall be payable on the date of termination; or
- (b) if no date of recall is given at the time of termination, severance pay shall be payable thirty days from the termination if the employee shall not then have been recalled; in which case, interest at ten per cent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) Subsection (2) shall apply to employees in agriculture and construction with the words “six months” substituted for the words “thirty days” in both places where they occur in that subsection.

(4) Where payment of severance pay has been made, with interest where due under paragraph (b) of subsection (2), and the employee is subsequently recalled to his former or substantially equivalent employment or is again hired by the same employer, he shall be considered to be newly hired and his term of employment, for subsequent severance pay purposes, shall be considered to have commenced on the date of his recall or rehire.

43. Where an employee’s employment is terminated upon the transfer in ownership of the business in which he is employed-

Severance pay where employer’s business transferred

- (a) where without any break in service the employee is offered the same employment by a successor-employer in that same business, or part of business, he is not entitled to severance pay by reason of that termination; and
- (b) where he accepts such employment with the successor-employer his tenure of employment, for subsequent severance pay purposes, shall date from his original hiring by the first of a series of predecessor-employers.

44. (1) Where an employee accepts employment with a successor-employer under paragraph (b) of section 43 then, in the event of a subsequent termination of that employment by that successor-employer, the successor-employer shall be responsible for the payment of the employee’s severance pay computed on the basis of his full tenure of employment by himself and all predecessor-employers.

Liability of predecessor and successor-employers

(2) Where an employee’s employment is temporarily terminated with a date of recall given him less than six months in the future or with no date of recall given him, and if within six months thereafter the employer transfers his business to another, then (using the standards set forth in section 42) if severance pay subsequently becomes due without the employee having been recalled, the transferring employer and the person to whom his business was transferred shall be jointly and severally liable for the payment of the severance pay plus interest.

45. (1) Every employer shall maintain an accurate record of the hiring date of each of his employees, together with the dates of all temporary terminations and re-employments, and for the purposes of this section the said hiring date shall be that on which the employee was first hired, either by the employer or by a predecessor-employer.

Record of hiring dates

(2) Upon the request of any employee, the employer shall make that employee’s record of hiring available to him for inspection.

(3) A person who fails to comply with subsection (1) or (2) commits an offence.

(4) Where, on the 1st March, 1988, there was no present record of an employee's hiring by virtue of the fact that the requirement of subsection (1) was not in effect upon the relevant dates, the employer and the employee shall determine the hiring date by agreement, and in default of agreement the question of the employee's hiring dates shall be determined under section 46.

Determination of disputes

46. (1) Should any question arise as to the date of hiring or as to whether or in what amount severance pay is due to an employee, then the employee, or the employer, or their respective representatives, may seek a resolution of the question by filing a complaint as to severance pay in writing with the Director.

(2) Should the question involve a group of employees under similar circumstances they may file a joint complaint.

(3) Should there be filed at or about the same time a number of complaints raising the same or substantially similar issues, the Director may direct that they be consolidated into a single proceeding.

PART VI - Retirement/resignation Allowance

Retirement/resignation allowance
2010 Revision

47. (1) An employee other than a person specified in paragraph (b) of section 25(2) of the National Pensions Law (2010 Revision) and who-

- (a) has worked with his employer for a period of one year or more;
- (b) voluntarily retires or resigns from such employment; and
- (c) is not entitled to a pension under the National Pensions Law (2010 Revision),

shall be paid by the employer in addition to any other allowance or monies to which he is otherwise entitled a retirement/resignation allowance equal to one week's wages, at the employee's latest basic wage, for each completed twelve month period of his employment with his employer.

(2) In the case of a part time employee his entitlement to a retirement/resignation allowance shall be calculated on the basis of the ratio that his actual hours of employment bear to the standard work week.

Determination of disputes-
retirement/resignation allowances

48. (1) Should any question arise as to the date of hiring or as to whether or in what amount the retirement/resignation allowance is due to an employee, then the employee, the employer, or their respective representatives, may seek a resolution of the question by filing a complaint as to retirement/resignation allowance in writing with the Director.

(2) Should the question involve a group of employees under similar circumstances they may file a joint complaint.

(3) Should there be filed at or about the same time a number of complaints raising the same or substantially similar issues, the Director may direct that they be consolidated into a single proceeding.

PART VII - Unfair Dismissal

49. (1) This Part shall only apply to an employee who has- Unfair dismissal: general

- (a) completed his probation period; or
- (b) in the case of an employee not employed on probationary terms, completed three months of continuous employment with his employer.

(2) Any termination by an employer of an employee's employment shall be fair if it is within section 50 or 51.

50. For the purposes of this Part, an employee is not unfairly dismissed if his employment is terminated at the expiration of a fixed term specified at the time of his employment. Termination after fixed term of employment

51. (1) Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is- Dismissal for good cause

- (a) misconduct of the employee within section 52(1);
- (b) that it is under section 52(3), namely misconduct following the receipt of a written warning;
- (c) that it is under section 53(2), namely failure of the employee to perform his duties in a satisfactory manner following the receipt of a written warning;
- (d) that the employee was redundant;
- (e) that the employee could not continue to work in the position he held without contravention (on his or on the employer's part) of a requirement of this or any other law; or
- (f) some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held,

and under the circumstances the employer acted reasonably.

(2) Where the reason for the dismissal of an employee was that he was redundant but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same undertaking, who

were employed to perform work of the kind he was employed to do and who have not been dismissed by the employer, and-

2011 Revision

- (a) that those other employees do not hold the same status as the redundant employee for the purposes of Parts III to V of the Immigration Law (2011 Revision) (Caymanian status, permanent residence and work permits); and
- (b) that the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case,

then, for the purposes of this Part, the dismissal shall be regarded as unfair.

(3) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantial merits of the case having regard to all the circumstances.

Termination for misconduct

52. (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employee has-

- (a) conducted himself in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue;
- (b) committed a criminal offence in the course of employment without the consent, express or implied, of the employer;
- (c) behaved immorally in the course of his duties; or
- (d) is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of his employment.

(2) Where an employee commits misconduct in or in relation to his employment that is not sufficiently serious to justify his employer terminating his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of any further misconduct.

(3) Where an employee has been given a written warning under subsection (2), if he has, within twelve months following the receipt of the written warning, commits misconduct of any kind in relation to his work, the employer may

terminate the employment of the employee, or take such other action as may have been specified in the written warning, without further notice.

(4) For the avoidance of doubt, misconduct includes, but is not limited to, absenteeism.

53. (1) Where an employee is no longer performing his duties in a satisfactory manner, the employer may give the employee a written warning which shall describe in what manner his performance is unsatisfactory and state the action the employer intends to take in the event of continuance.

Termination for failure to perform duties in satisfactory manner

(2) Where an employee has been given a written warning under subsection (1), if he does not, during the period of one month following the receipt of the written warning, commence performing his duties in a satisfactory manner, the employer may terminate his employment at the end of that one month period, or after the end of that period take such other action as may have been specified in the written warning without further notice.

54. (1) Should any questions arise as to whether an employee has been unfairly dismissed, the employee may seek a resolution of the question by filing a complaint of unfair dismissal with the Director.

Initiation of proceedings

(2) A complaint under subsection (1) must be filed within ninety days of the date of dismissal.

(3) Should the complaint involve a group of employees under similar circumstances they may file a joint complaint.

(4) Should there be filed at or about the same time a number of complaints raising the same or substantially similar issues, the Director may direct that they be consolidated into a single proceeding.

55. (1) Where, upon a complaint of unfair dismissal, a Labour Tribunal has determined that the dismissal was unfair it may order the payment by the employer to the person dismissed of a sum of money by way of compensation for unfair dismissal.

Remedies for unfair dismissal

(2) In making an award of compensation under subsection (1), a Labour Tribunal shall have regard to-

- (a) the length of the continuous employment of the person dismissed immediately preceding the dismissal;
- (b) the likelihood of the person dismissed finding other comparable employment;

- (c) the salary of the person dismissed immediately preceding the dismissal;
- (d) the period up to the likely retirement age of the person dismissed and any entitlement to a pension which he may then have;
- (e) the degree of unfairness of the dismissal; and
- (f) such other matters as may be prescribed.

(3) The amount of an award of compensation under subsection (1) shall not exceed one week's wages for each completed year of service.

(4) In the case of any action before any court in respect of a dismissal for which an award has been made under subsection (1), the court shall, in making any award of damages, take into account and deduct from the award of damages any sum awarded by a Labour Tribunal under subsection (1).

PART VIII - Health, Safety and Welfare at Work

General application

56. (1) Except as otherwise indicated, this Part applies to all workplaces.

(2) The Governor may, by regulations, extend the application of this Part to such installations or operations as may not be within the definition of "workplace", but to which it appears reasonable to extend it.

(3) Except where otherwise expressly provided, this Part shall be in addition to, and not in substitution for or diminution of, any other law and of the common law.

Registration of work places

57. (1) A person who commences to operate a workplace shall, within one month of such commencement, file with the Director a written notice stating the particulars prescribed in subsection (3).

(2) Whenever there is a material change in any of the particulars appearing in any notice filed under subsection (1), the person operating the workplace shall, within one month of it taking place, file with the Director a written notice setting forth such change.

(3) The particulars to be submitted by the operator of a workplace are-

- (a) the name of the operator of the workplace;
- (b) the address and location of the workplace;
- (c) a brief description of the work carried on in the workplace;
- (d) whether machines are used, and, if so, their nature;
- (e) the total number of persons employed in the workplace; and
- (f) where persons are employed in shifts, the maximum number employed at any one time.

58. Every employer shall ensure so far as is reasonably practicable the health, safety and welfare at work of his employees. General duty of employers
59. For the purpose of safeguarding the health of persons employed or performing any duty therein, the operator of every workplace shall- Health
- (a) keep it in a clean state;
 - (b) keep it from becoming overcrowded;
 - (c) maintain a reasonable temperature therein appropriate to the type of work being performed;
 - (d) provide adequate ventilation therein;
 - (e) provide adequate lighting therein;
 - (f) provide, where appropriate, effective means for draining floors; and
 - (g) provide suitable and sufficient sanitary conveniences.
60. For the purpose of ensuring the safety of persons employed or performing any duty therein, the operator of every workplace shall ensure that- Safety
- (a) adequate measures are taken for the prevention of fire therein;
 - (b) adequate means of escape are provided for persons employed therein;
 - (c) machinery used therein is operated and maintained in such a manner as to be safe for all employees; and
 - (d) any and all buildings comprised in the workplace and all parts thereof are of sound construction and properly maintained.
61. For the purpose of contributing to the welfare of persons employed or performing any duty therein, the operator of every workplace shall ensure that- Welfare
- (a) there is an adequate supply of wholesome drinking water;
 - (b) such facilities, as are reasonable under the circumstances, for employed persons to sit during the course of their employment, are provided and maintained;
 - (c) readily accessible first aid equipment is provided and maintained; and
 - (d) such other facilities (such as canteens, mess rooms and rest rooms) as are reasonable under the circumstances are provided and maintained.
62. It shall be the responsibility of the operator of every workplace to ensure that- Special protective measures
- (a) no person shall be permitted to partake of food or drink in any room where any lead, arsenic or other poisonous substance is used;

- (b) suitable goggles or protective screens are provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;
 - (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;
 - (d) where persons are employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances are provided and maintained; and
 - (e) where a process involves heat or steam, facilities adequate to protect workers therefrom are provided and maintained.
- Notification of accidents 63. The operator of every workplace shall forthwith notify the Director of any industrial accident not of a minor nature which occurs within the workplace or to any person in the employment of the operator and also of the occurrence of any occupational disease among any person or persons in his employment.
- Duties of persons employed 64. (1) Any person employed in a workplace shall make use of all means, appliances, conveniences or other things provided under this Law for the health, safety or welfare of employees, to the extent that his employment involves its use.
- (2) No employee shall wilfully interfere with, misuse or damage any such means, appliance, convenience or other things provided under this Law.
- (3) No employee shall wilfully and without reasonable cause do anything likely to endanger himself or others.
- (4) All employees shall follow any procedures in respect of any particular substances or materials prescribed in regulations.
- Remedial notices 65. (1) For the purposes of the enforcement of this Part, the Director may, where he is of the opinion that any steps are required to be taken by any person to ensure compliance with this Part or of any regulations made hereunder, serve upon that person a notice, hereafter referred to as a remedial notice.
- (2) A remedial notice shall state the requirement of this Part to which it relates, the steps to be taken and the time within which such steps must be taken.
- (3) Any person served with a remedial notice may appeal against the issue of such notice to the Appeals Tribunal under section 78. Subject to subsection (4), any such appeal shall operate as a stay of the requirements of the notice pending the determination of the appeal. Where the notice is upheld the Appeals Tribunal shall fix such further time for compliance with the notice as may seem to it appropriate.

(4) Notwithstanding section 78(3), where the Director, after consultation with the Chief Environmental Health Officer, is of the opinion that there exists an imminent danger to the health or safety of employees he may state that opinion in the remedial notice, in which case the operation of such notice shall not be automatically stayed by reason of any appeal, but any person proposing to appeal against the issue of such notice may apply forthwith to the Grand Court for a stay of the effect of the notice pending the hearing of the appeal, and the Grand Court may grant such a stay upon such terms as may to it seem just, including the requirement that any works be carried out or that any appeal be brought with specified time limits.

(5) Without prejudice to the generality of subsection (1), a remedial notice may require-

- (a) the cessation, immediate or otherwise, of any activity, operation or process;
- (b) the vacation, immediately or otherwise, of any premises;
- (c) the alteration of any premises or plant; or
- (d) the introduction of such temporary measures as may be expedient pending the institution or completion of permanent measures.

(6) The Director shall not serve a remedial notice that requires the closure of a workplace unless he has first obtained the consent in writing of the Minister.

66. (1) Any employer who contravenes the general duty imposed by section 58 commits an offence. Offences against this Part

(2) Any operator of a workplace who fails to discharge any obligation imposed upon him by section 57, 58, 59, 60, 61, 62 or 63 commits an offence.

(3) Any employee who contravenes section 64 commits an offence.

(4) Any person served with a remedial notice who fails to comply with the requirements thereof within the time specified therein, or within such further period as the Appeals Tribunal may allow under section 65(3), commits an offence and is liable on summary conviction to a fine of one thousand dollars and to a further fine of one hundred dollars per day for each day on which non compliance occurs after conviction.

(5) Where an act or default for which an employer or the operator of a workplace is liable is in fact the act or default of some other person, that other person shall also be deemed to have committed an offence and is liable to the same penalty as if he were the employer or operator.

67. The Director shall investigate complaints of violations of this Part and, on a regular basis, make routine checks of employers' compliance therewith. Responsibility for enforcement

Time for commencement of prosecution

68. (1) Notwithstanding any other law to the contrary, where, with respect to and in consequence of any accident in a workplace, a report is made by an authority appointed to hold a formal investigation under any law, or a coroner's inquest is held, and it appears from the report or from the proceedings at the inquest that this Part or any regulations made hereunder were not complied with at or before the time of the accident, summary proceedings against any person liable to be proceeded against in respect of such non-compliance may be commenced at any time within six months after the making of the report or the conclusion of the inquest as the case may be.

(2) A copy of every report with respect to and in consequence of any accident in a workplace which is made by an authority appointed to hold a formal investigation under any law, shall be sent by that authority to the Director.

Power of Grand Court to modify agreements and apportion expenses

69. In any premises the whole or any part of which has been let or is being used as a workplace-

- (a) where an agreement between the owner and the operator of the workplace prevents one or other from making alterations in the premises which are necessary to conform to any requirement or standard imposed by or under this Part or any regulations made hereunder, the Grand Court, upon the application of either party in an action joining the other, may, after a hearing, issue an order setting aside or modifying the agreement to permit the making of the necessary alterations; and
- (b) where alterations in the premises are necessary to conform to any requirement or standard imposed by this Part or any regulations made hereunder, the Grand Court, upon the application of the owner or the operator of the workplace in an action joining the other, may, after a hearing, issue an order apportioning the expenses of any such alterations.

Power to make regulations

70. The Governor may make regulations prescribing-

- (a) the standards to be achieved in respect of any of the obligations of this Part, or the methods required to attain them;
- (b) special conditions, safeguards or procedures to be applied to any particular substances or materials;
- (c) safety measures to be taken in respect of machinery, either generally or of any specified type, including but not limited to the fencing of such machinery or of any parts thereof;
- (d) safety measures to be taken in respect of any process, activity or operation of any type whatsoever; and
- (e) substances the use of which is prohibited.

PART IX - Administration

71. (1) There is established a Department of Human Resources, comprising the Director of Labour, the Deputy Director and such labour inspectors and other staff as may be necessary for the due administration and enforcement of this Law.

Appointment of
Director, Deputy
Director and inspectors

(2) The Director, Deputy Director, labour inspectors and all other staff of the Department shall be employed by the Government and their appointment and terms and conditions of employment are subject to the Public Service Management Law (2011 Revision) and any regulations made thereunder and to the Personnel Regulations in force from time to time.

2011 Revision

(3) The expenses of establishing the Department of Human Resources and all expenses arising out of or incidental to the performance of its functions shall be borne out of the general revenue of the Islands.

(4) In addition to any other functions conferred on the Chief Officer by or under this Law, the Chief Officer shall-

- (a) provide such services as may be prescribed by regulations for the purposes of finding Caymanians employment with employers or supplying employers with Caymanians for employment by them; and
- (b) encourage appropriate training of Caymanians employed or intending to be employed in any employment by-
 - (i) providing or facilitating the provision of courses for the training of Caymanians;
 - (ii) providing information about courses and qualifications in relation to any employment;
 - (iii) assisting Caymanians in finding facilities for being trained in any employment; and
 - (iv) providing such other advice or assistance as may be prescribed.

72. Whether or not a complaint has been filed the Director shall be charged with securing the proper observance of this Law.

Responsibilities of
Director

73. (1) The Director, Deputy Director and any labour inspector shall, for the performance of their functions under this Law have power to-

Powers of Director,
Deputy Director and
inspectors

- (a) enter any workplace without previous notice at any time during the working hours of that particular workplace;
- (b) carry out any examination, test or inquiry which he may consider necessary to satisfy himself that this Law is being observed;

- (c) question, alone or in the presence of witnesses, any employer or employee on any matters concerning the application of this Law; and
- (d) require the production of any records or documents required to be maintained by this Law and to copy or make abstracts of any such records or documents.

(2) The Director, Deputy Director or any labour inspector may institute criminal proceedings for any offence under this Law, and may appear before the Summary Court to conduct the prosecution in respect of any such offence.

Labour Tribunals

74. (1) There are established Labour Tribunals for the purpose of hearing complaints from employers and employees.

(2) The members of a Labour Tribunal shall be selected from a panel of persons appointed by the Governor.

(3) The person or persons constituting a Labour Tribunal shall be appointed by the Governor and where the Labour Tribunal consists of more than one person, the Governor shall designate which of them is to be chairman and deputy chairman.

(4) Members of panels appointed under this section shall hold and vacate office under the terms of the instruments under which they are appointed, but may resign office by notice in writing to the Governor; and any such member who ceases to hold office shall be eligible for re-appointment.

(5) A member of the panel who is a member of a Labour Tribunal when his membership of the panel ceases under the terms of the instrument appointing him, shall remain a member of the Labour Tribunal until all of the complaints before the Labour Tribunal at that time have been dealt with by the Tribunal.

(6) The Governor may, by regulations, provide for the constitution, procedure, staffing and expenses of the Labour Tribunals.

Procedure to be followed on a complaint to Director

75. (1) Upon receipt of a complaint the Director shall, within thirty days, notify the employer concerned, and shall give him a copy of the complaint and of any documents filed in support thereof, and shall invite his written representations upon the complaint.

(2) The Director shall consider the complaint and any representations upon the complaint made by the employer and make a report on the complaint to the Labour Tribunal.

(3) A report of the Director to a Labour Tribunal may recommend-

- (a) that the complaint be dealt with by a hearing held by a Labour Tribunal; or
- (b) that assistance offered by or on behalf of the Director to the complainant and employer, by way of conciliation or by other means, should be pursued in lieu of or before any hearing of the complaint by a Labour Tribunal.

(4) Within twenty-one days after receiving a report from the Director recommending that a Labour Tribunal hold a hearing of the complaint, a Labour Tribunal shall fix a date for the hearing of the complaint to be held within the second or third month next following its receipt of the report.

(5) The date of the hearing shall be notified forthwith to the employee and to the employer, who shall both be invited to attend.

(6) If any party fails to attend the hearing, a Labour Tribunal shall nevertheless hear any other party attending, and shall proceed to consider the case on the basis of the complaint, the hearing and any written representations made by the party failing to attend.

(7) A Labour Tribunal shall give a reasoned decision in writing within twenty-eight days of the conclusion of the hearing. A copy of its decision shall be delivered to all parties invited to attend under subsection (6).

(8) The decision of a Labour Tribunal upon a complaint shall, subject to section 79, be final and binding between the parties.

76. (1) Subject to section 78(3), any refusal to comply with any decision of a Labour Tribunal made under section 46 (severance pay), section 47 (retirement/resignation allowance), section 55 (unfair dismissal) or any other decision of a Labour Tribunal mentioned in section 78 is an offence.

Enforcement of award of Labour Tribunal

(2) An award made by a Labour Tribunal under section 46 (severance pay) or section 55 (unfair dismissal) may be enforced in like manner to a judgment of the Grand Court for the payment of a sum of money.

77. (1) There is established an Appeals Tribunal, whose quorum shall be three, consisting of a Chairman and eight other members for the purpose of hearing appeals against decisions of a Labour Tribunal under section 78.

Establishment of Appeals Tribunal

(2) The members of the Appeals Tribunal are appointed by the Governor and hold office for one year, but may be re-appointed from time to time for such further one year periods as the Governor may consider appropriate.

(3) The Governor may appoint two of the eight other members of the Appeals Tribunal to be Deputy Chairmen, either of whom is authorised to perform all the functions of the Chairman in relation to the hearing of appeals.

(4) The Governor may, by regulations, provide for the constitution, procedure, staffing and expenses of the Appeals Tribunal.

Appeals from decision
of Labour Tribunal

78. (1) Any person aggrieved by-

- (a) any decision of a Labour Tribunal upon a complaint where the award exceeds five hundred dollars;
- (b) the service of a remedial notice;
- (c) any decision of a Labour Tribunal that his dismissal was fair;
- (d) any refusal of a Labour Tribunal to register an overtime agreement; or
- (e) any decision of a Labour Tribunal that no award should be made,

may, within fourteen days of notification of the decision or service of the notice, appeal to the Appeals Tribunal:

Provided that an employee may appeal an award of less than five hundred dollars where he claims that the award should have exceeded five hundred dollars.

(2) An appeal under subsection (1) is brought by giving notice in writing to the chairman of the Appeals Tribunal.

(3) The giving of a notice of appeal pursuant to subsection (2) operates as a stay upon any award made by a Labour Tribunal.

(4) The notice of appeal under subsection (2) shall also be served upon a Labour Tribunal and in the case of an appeal from a decision of a Labour Tribunal upon a complaint, upon all persons who were invited to appear before a Labour Tribunal under section 75(6).

(5) Upon receipt of a notice the Chairman of the Tribunal shall fix a date for the hearing of the appeal, being not less than one month nor more than three months from the date of his receipt of the notice of appeal, and shall give notice of that date forthwith to the appellant and to all parties who were entitled to receive the notice of appeal pursuant to subsection (4).

(6) All persons entitled to receive the notice of appeal pursuant to subsection (4) shall be entitled to appear at and be heard upon the hearing of the appeal, or upon any adjourned hearing.

(7) The Governor may prescribe the procedure to be followed at the hearing of an appeal under this section, but in default of such prescription the procedure shall be at the discretion of the Chairman of the Tribunal.

(8) Within twenty-eight days from the conclusion of the hearing of the appeal the Tribunal shall reach a decision upon the appeal and shall deliver a notification of that decision, together with written reasons therefor, to every party who appeared at the hearing of the appeal.

(9) The decision of the Tribunal upon an appeal shall, subject to section 79, be final and binding upon all parties.

(10) Decisions of a Labour Tribunal and of the Appeals Tribunal under this Law may be made public at the discretion of the respective body and neither any member of a Labour Tribunal or of the Appeals Tribunal shall be liable in any Civil Court for any act done or ordered to be done in good faith in the discharge of his functions under this Law, unless it is proved that he acted maliciously and without reasonable cause.

79. (1) An appeal may be made to the Grand Court from a decision of the Appeals Tribunal upon a point of law only. Appeals to Grand Court

(2) Subject to subsection (1), no decision of a Labour Tribunal or the Appeals Tribunal shall be open to challenge or review in any Court of Law upon any grounds whatsoever.

(3) An appeal pursuant to subsection (1) shall not operate as a stay of any award, order or decision of a Labour Tribunal or the Appeals Tribunal, or of the effect of any notice, unless the Grand Court so orders.

(4) An application for a stay shall be made by ex parte application.

PART IX - General Penalties and Miscellaneous

80. (1) No person (whether an employer or an employee) shall discriminate with respect to any person's hire, promotion, dismissal, tenure, wages, hours or other conditions of employment, by reason of race, colour, creed, sex, pregnancy or any reason connected with pregnancy, age, mental or physical disability (provided their ability to perform the job is not impaired), political belief or the exercise of any rights under this or any other Law. Discrimination because of race, etc.

(2) Subsection (1) shall not be construed as prohibiting the taking of any personnel action genuinely related to an employee's ability to discharge the duties of the employment in question.

Worst forms of child
labour

(3) A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

80A. (1) A person shall not -

- (a) hold a child in slavery, servitude or debt bondage;
- (b) require a child to perform forced or compulsory labour;
- (c) subject a child to forced or compulsory recruitment for use in armed conflict;
- (d) use, procure or offer a child for prostitution, for the production of pornography or for pornographic performances;
- (e) use, procure or offer a child for production or trafficking of drugs or for activities which involve the unlawful carrying of, or use of, firearms or other weapons; or
- (f) subject to subsection (2), require a child to perform any other work prescribed which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.

(2) In determining the types of work under subsection (1)(f) for the purposes of making Regulations in accordance with section 85(1), the Governor shall consult with organisations representing employers and organisations representing workers and shall have regard to -

- (a) work which exposes children to physical or psychological or sexual abuse;
- (b) work underground, underwater, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; and
- (d) work under particular difficult conditions such as work for long hours during the night or work where the child is confined to the premises of the employer.

(3) Notwithstanding subsections (1)(f) and (2) and section 85, the Governor may make Regulations to authorize the employment of, or work by, a child of age sixteen years or over where the health and morals of the child are fully protected and the child has received adequate specific instruction or vocational training relevant to the employment or work.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or to both.

(5) In this section -

“child” means a person under the age of eighteen years;

“debt bondage” means an arrangement whereby a person is forced to pay off a loan with direct labor in place of currency, over an agreed or indefinite period;

“firearms” means firearms as defined in the Firearms Law (2008 Revision); and

“servitude” means the state of being a slave or completely subject to a person more powerful.

81. (1) A person who commits an offence against this Law or any regulations made hereunder for which no other penalty is provided is liable on summary conviction for a first offence to a fine of two thousand five hundred dollars and to imprisonment for six months, and in the case of a second or subsequent offence to a fine of five thousand dollars and to imprisonment for twelve months. Penalties

(2) Where this Law creates a continuing offence, then in addition to the penalty under subsection (1), a person who commits such an offence is liable to a further fine of one hundred dollars for every day or part of a day during which the offence has continued.

82. (1) A person who- Specific offences

- (a) wilfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Law or any regulations made hereunder to be kept, served or sent;
- (b) wilfully makes or signs a false declaration required by, under or for the purposes of this Law or any regulation or order hereunder; or
- (c) knowingly makes use of any such false entry or declaration as aforesaid,

commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

(2) A person who -

- (a) obstructs or delays the Director, Deputy Director or an inspector in the due exercise of any power conferred on him by or under this Law;
- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Law;
- (c) fails to produce any register, book, document or other record he is required by or under this Law to produce; or
- (d) prevents, or attempts to prevent, any person from appearing before or being examined by the Director, Deputy Director or an inspector,

commits an offence and is liable on summary conviction to a fine of two thousand

five hundred dollars and to imprisonment for six months, and, in the case of a second or subsequent conviction within two years from the last conviction for a previous offence, to a fine of five thousand dollars and to imprisonment for twelve months.

Special provisions as to evidence

83. Where an entry in a register or record is required to be made by this Law, or any regulation made hereunder, by or on behalf of an employer or the operator of a workplace, any such entry shall be admissible against him in any proceedings as evidence of the facts stated in it.

Service and sending of documents

84. (1) Any notice, complaint, decision or other document required or authorised to be served under this Law may be served on any person by sending it by prepaid registered post to his last known address, or -

- (a) on any individual by handing it to him, or by leaving it at his residence;
- (b) on any firm by handing it to any partner thereof, or by leaving it at the principal place of business of such firm;
- (c) on any limited company by handing it to an officer of the company, or by leaving it at its registered office; and
- (d) on the operator of a workplace (even though it be a limited company) in any such manner as aforesaid.

(2) Any such document intended to be served upon the operator of the workplace may be addressed to "the operator" at the proper address of the workplace without further name or description.

(3) Subsections (1) and (2) shall apply (with the necessary modifications) to the sending of any documents required or authorised to be sent under this Law.

General regulation making powers

85. (1) The Governor may make regulations for carrying this Law into effect, for prescribing all matters or things which are required or permitted to be prescribed under this Law and, without prejudice to the generality of the foregoing, for-

- (a) prescribing the form of any notice, application, complaint or other document required by this Law; and
- (b) varying any time periods established or required by this Law.

(2) Any regulations made under this Law may create offences, the maximum penalty for which shall not exceed that set by section 81.

Directions

86. The Governor may give to any officer or statutory authority carrying out a function under this Law directions as to the execution of such function; and where any such directions are given, that officer or authority shall comply with the directions.

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Kim Bullings
Clerk of Cabinet

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