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LAWS OF KENYA

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**EMPLOYMENT ACT**

CHAPTER 226

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**CHAPTER 226**

**EMPLOYMENT ACT**

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**CHAPTER 226**

**EMPLOYMENT ACT**

[Date of assent: 22th October, 2007.]

[Date of commencement: 2nd June, 2008.]

**An Act of Parliament to repeal the Employment Act, declare and define the fundamental rights of employees, to provide basic conditions of employment of employees, to regulate employment of children, and to provide for matters connected with the foregoing**

[Act No. 11 of 2007, L.N. 8/2008, L.N. 61/2008, Corr. No. 1/2008.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Employment Act, 2007.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**authorised officer**” means a labour officer, employment officer or medical officer;

“**Board**” means the National Labour Board;

“**casual employee**” means a person the terms of whose engagement provide for his payment at the end of each day and who is not engaged for a longer period than twenty-four hours at a time;

“**child**” means a person who has not attained the age of eighteen years;

“**collective agreement**” means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, group of employers or employers’ organization;

“**contract of service**” means an agreement, whether oral or in writing, and whether expressed or implied, to employ or to serve as an employee for a period of time, and includes a contract of apprenticeship and indentured learnership but does not include a foreign contract of service to which Part XI of this Act applies;

“**dependent**” means a member of an employee’s family or a relative who substantially depends on that employee for his livelihood;

“**Director**” means a person appointed as the Director of Employment;

“**disability**” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person’s social and economic participation;

“**employee**” means a person employed for wages or a salary and includes an apprentice and indentured learner;

**“employer”** means any person, public body, firm, corporation or company who or which has entered into a contract of service to employ any individual and includes the agent, foreman, manager or factor of such person, public body, firm, corporation or company;

**“forced or compulsory labour”** means any work or service which is extracted from any person under the threat of any penalty, including the threat of a loss of rights or privileges, which is not offered voluntarily by the person doing the work or performing the service;

**“HIV”** means the Human Immune-Deficiency Virus;

**“industrial undertaking”** includes—

- (a) a mine, quarry and other works for the extraction of any substance from the surface or under the surface of the earth;
- (b) a factory or a place where raw materials are manufactured, processed or packaged;
- (c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephone installation, electrical undertaking, gas work, water work or other work of construction, as well as the preparation for or laying of the foundations of any such work or structure; or
- (d) transport of passengers or goods by road, rail, or inland waterway, including the handling of goods at docks, quays, wharves and warehouses, but excluding transport by hand:

Provided that—

- (i) the Minister, if he sees fit so to do, having regard to the nature of the work involved in any employment carried on in any industrial undertaking, may by order declare that the employment shall be excluded from the provisions of this Part relating to industrial undertakings, and thereupon the employment shall be deemed not to be employment in an industrial undertaking for the purposes of this Part;
- (ii) an undertaking of which a part only is an industrial undertaking shall not for that reason alone be deemed to be an industrial undertaking;

**“labour inspector”** means a person appointed as a labour inspector;

**“labour officer”** means a person appointed as the Commissioner of Labour, a Senior Deputy Commissioner of Labour, a Deputy Commissioner of Labour, an Assistant Commissioner of Labour, a Chief Industrial Relations Officer, a Deputy Chief Industrial Relations Officer, a Senior Labour Officer, an Industrial Relations Officer or a Labour Officer;

**“lock-out”** means the closing of a place of employment or the suspension of work or refusal by an employer to employ any employees—

- (a) for the purpose of compelling the employees of the employer to accept any demand in request of a trade dispute; and



(b) not for the purpose of finally terminating employment;

“**migrant worker**” means a person who migrates to Kenya with a view to being employed by an employer and includes any person regularly admitted as a migrant worker;

“**mine**” includes an undertaking, whether public or private, for the extraction of a substance from the surface, or from under the surface of the earth;

“**Minister**” means the Minister for the time being responsible for labour matters;

“**organisation**” includes employees’ trade unions and employers’ organisations;

“**parties**” means the parties to a contract of service;

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

“**probationary contract**” means a contract of employment, which is of not more than twelve months duration or part thereof, is in writing and expressly states that it is for a probationary period;

“**redundancy**” means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous and the practices commonly known as abolition of office, job or occupation and loss of employment;

“**Registrar**” means the Registrar of Trade Unions;

“**remuneration**” means the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee;

“**strike**” means the cessation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work, for the purpose of compelling their employer or an employers’ organization of which their employer is a member, to accede to any demand in respect of a trade dispute;

“**task**” means such amount of work as can, in the opinion of an authorised officer, be performed by an employee in an ordinary working day;

“**trade union**” means an association of employees whose principal purpose is to regulate relations between employees and employers and includes an employers’ organisation;

“**woman**” means a female of the age of eighteen years or above;

“**worst form of child labour**” with respect to juveniles, means their employment, engagement or usage in any activity comprising of—

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

- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work 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;

“**young person**” means a child who has attained the age of sixteen years but has not attained the age of eighteen years.

### **3. Application**

(1) This Act shall apply to all employees employed by any employer under a contract of service.

(2) This Act shall not apply to—

- (a) the armed forces or the reserve as respectively defined in the Armed Forces Act (Cap. 199);
- (b) the Kenya Police, the Kenya Prisons Service or the Administration Police Force;
- (c) the National Youth Service; and
- (d) an employer and the employer’s dependants where the dependants are the only employees in a family undertaking.

(3) This Act shall bind the Government.

(4) The Minister may, after consultation with the Board and after taking account of all relevant conventions and other international instruments ratified by Kenya, by order exclude from the application of all or part of this Act limited categories of employees in respect of whom special problems of a substantial nature arise.

(5) The Minister may, after consultation with the Board, by order exclude from the application of all or part of this Act categories of employed persons whose terms and conditions of employment are governed by special arrangements:

Provided those arrangements afford protection that is equivalent to or better than that part of the Act from which those categories are being excluded.

(6) Subject to the provisions of this Act, the terms and conditions of employment set out in this Act shall constitute minimum terms and conditions of employment of an employee and any agreement to relinquish, vary or amend the terms herein set shall be null and void.

## PART II – GENERAL PRINCIPLES

### **4. Prohibition against forced labour**

(1) No person shall use or assist any other person in recruiting, trafficking or using forced labour.

- (2) The term “forced or compulsory labour” shall not include—
- (a) any work or service exacted by virtue of compulsory military service laws for work of a purely military character:  
Provided that forced or compulsory recruitment of children for use in armed conflict shall be deemed to be forced or compulsory labour;
  - (b) any work or service which forms part of the normal civic obligations of the citizens of Kenya;
  - (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired out to or placed at the disposal of private persons, companies or associations;
  - (d) any work or service exacted in cases of an emergency, such as in the event of war or disaster or threat of calamity in any circumstance that would endanger the existence or the well-being of the whole or part of the population; and
  - (e) minor communal services performed by the members of the community in the direct interest of the said community, provided the members of the community or their representatives are consulted.

(3) A person who contravenes the provisions of this section commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

#### **5. Discrimination in employment**

- (1) It shall be the duty of the Minister, labour officers and the Industrial Court—
- (a) to promote equality of opportunity in employment in order to eliminate discrimination in employment; and
  - (b) to promote and guarantee equality of opportunity for a person who is a migrant worker or a member of the family of the migrant worker, lawfully within Kenya.

(2) An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.

(3) No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee—

- (a) on grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, mental status or HIV status;
- (b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.

(4) It is not discrimination to—

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

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- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job;
- (c) employ a citizen in accordance with the national employment policy; or
- (d) restrict access to limited categories of employment where it is necessary in the interest of State security.

(5) An employer shall pay his employees equal remuneration for work of equal value.

(6) An employer who contravenes the provision of the section commits an offence.

(7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.

(8) For the purposes of this section—

- (a) “**employee**” includes an applicant for employment;
- (b) “**employer**” includes an employment agency;
- (c) an “**employment policy or practice**” includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment on disciplinary measures.

[Corr. No. 1/2008.]

## 6. Sexual harassment

(1) An employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker—

- (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express—
  - (i) promise of preferential treatment in employment;
  - (ii) threat of detrimental treatment in employment; or
  - (iii) threat about the present or future employment status of the employee;
- (b) uses language whether written or spoken of a sexual nature;
- (c) uses visual material of a sexual nature; or
- (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee’s employment, job performance, or job satisfaction.

(2) An employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment.

(3) The policy statement required under subsection (2) may contain any term the employer considers appropriate for the purposes of this section and shall contain—

- (a) the definition of sexual harassment as specified in subsection (1);
- (b) a statement—
  - (i) that every employee is entitled to employment that is free of sexual harassment;
  - (ii) that the employer shall take steps to ensure that no employee is subjected to sexual harassment;
  - (iii) that the employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer's direction, who subjects any employee to sexual harassment;
  - (iv) explaining how complaints of sexual harassment may be brought to the attention of the employer; and
  - (v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.

(4) An employer shall bring to the attention of each person under the employer's direction the policy statement required under subsection (2).

### PART III – EMPLOYMENT RELATIONSHIP

#### **7. Contract of service**

No person shall be employed under a contract of service except in accordance with the provisions of this Act.

#### **8. Oral and written contracts**

The provisions of this Act shall apply to oral and written contracts.

#### **9. General provision of contract of service**

(1) A contract of service—

- (a) for a period or a number of working days which amount in the aggregate to the equivalent, of three months or more; or
- (b) which provides for the performance of any specified work which could not reasonably be expected to be completed within a period or a number of working days amounting in the aggregate to the equivalent of three months,

shall be in writing.

(2) An employer who is a party to a written contract of service shall be responsible for causing the contract to be drawn up stating particulars of employment and that the contract is consented to by the employee in accordance with subsection (3).

(3) For the purpose of signifying his consent to a written contract of service an employee may—

- (a) sign his name thereon; or
- (b) imprint thereon an impression of his thumb or one of his fingers in the presence of a person other than his employer.

(4) Where an employee is illiterate or cannot understand the language in which the contract is written, or the provisions of the contract of service, the employer shall have the contract explained to the employee in a language that the employee understands.

#### **10. Employment particulars**

(1) A written contract of service specified in section 9 shall state particulars of employment which may, subject to subsection (3), be given in instalments and shall be given not later than two months after the beginning of the employment.

(2) A written contract of service shall state—

- (a) the name, age, permanent address and sex of the employee;
- (b) the name of the employer;
- (c) the job description of the employment;
- (d) the date of commencement of the employment;
- (e) the form and duration of the contract;
- (f) the place of work;
- (g) the hours of work;
- (h) the remuneration, scale or rate of remuneration, the method of calculating that remuneration and details of any other benefits;
- (i) the intervals at which remuneration is paid; and
- (j) the date on which the employee's period of continuous employment began, taking into account any employment with a previous employer which counts towards that period; and
- (k) any other prescribed matter.

(3) The statement required under this section shall also contain particulars, as at a specified date not more than seven days before the statement, or the instalment containing them, is given of—

- (a) any terms and conditions relating to any of the following—
  - (i) entitlement to annual leave, including public holidays, and holiday pay (the particulars given being sufficient to enable the employee's entitlement, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated);
  - (ii) incapacity to work due to sickness or injury, including any provision for sick pay; and

- (iii) pensions and pension schemes;
- (b) the length of notice which the employee is obliged to give and entitled to receive to terminate his contract of employment;
- (c) where the employment is not intended to be for an indefinite period, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end;
- (d) either the place of work or, where the employee is required or permitted to work at various places, an indication of that place of work and of the address of the employer;
- (e) any collective agreements which directly affect the terms and conditions of the employment including, where the employer is not a party, the person by whom they were made; and
- (f) where the employee is required to work outside Kenya for a period of more than one month—
  - (i) the period for which that employee is to work outside Kenya;
  - (ii) the currency in which remuneration is to be paid while that employee is working outside Kenya;
  - (iii) any additional remuneration payable to the employee, and any benefits due to the employee by reason of the employee working outside Kenya; and
  - (iv) any terms and conditions relating to the employee's return to Kenya.

(4) Subsection (3)(a)(iii) does not apply to an employee of a body or authority if—

- (a) the employee's pension rights depend on the terms of a pension scheme established under any provision contained in or having effect under any Act; and
- (b) any such provision requires the body or authority to give to a new employee information concerning the employee's pension rights or the determination of questions affecting those rights.

(5) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.

(6) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(7) If in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer.

[Corr. No. 1/2008.]

## **11. Statement of initial particulars**

(1) If in the case of a statement under section 10 there are no particulars to be entered under subsection (2)(d) or (j) or under any of the other provisions of section 10(2) or (3), that fact shall be stated in the statement.

(2) A statement under section 10 may refer the employee for particulars of any of the matters specified in section 10(3)(a)(ii) and (iii) to the provisions of any other document which is reasonably accessible to the employee.

(3) A statement under section 10 may refer the employee for particulars of either of the matters specified in section 10(3)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee.

(4) The particulars required by section 10(2) and (3) shall be included in a single document.

(5) Where before the end of the period of two months after the beginning of an employee's employment the employee is to begin to work outside Kenya for a period of more than one month, the statement under section 10 shall be given to him not later than the time when he leaves Kenya in order to begin work.

(6) A statement shall be given to a person under section 10 even if his employment ends before the end of the period within which the statement is required to be given.

[Corr. No. 1/2008.]

## **12. Statement on disciplinary rules**

(1) A statement under section 10 shall—

- (a) specify the disciplinary rules applicable to the employee or refer the employee to the provisions of a document which is reasonably accessible to the employee which specifies the rules;
- (b) specify the person to whom the employee may apply—
  - (i) if dissatisfied with any disciplinary decision relating to the employee; and
  - (ii) for the purpose of seeking redress of any grievance relating to his employment and the manner in which an application shall be made; and
- (c) where there are further steps to be taken consequent to any such application, explain the steps or refer the employee to the provisions of a document which is accessible to the employee which explains the steps.

(2) Subsection (1) shall not apply to rules, disciplinary decisions, grievances, or procedures relating to health or safety at work.

(3) This section shall not apply where as at the date the employee starts work the employer has employed less than fifty employees.

## **13. Statement of changes**

(1) If, after the material date there is a change in any of the particulars required under sections 10 and 12, the employer shall give to the employee a written statement containing particulars of the change.

(2) For the purposes of subsection (1)—

- (a) in relation to particulars which are included or referred to in a statement given under section 10 otherwise than in instalments, the material date is the date to which the statement relates;
- (b) in relation to a matter particulars of which—



- (i) are included or referred to in an instalment of a statement given under section 10; or
- (ii) are required by section 11(4) to be included in a single document but are not included in an instalment of a statement given under section 10 which does include other particulars to which that provision applies, the material date is the date to which the instalment relates; and
- (c) in relation to any other matter the material date is the date by which a statement under section 10 is required to be given.

(3) A statement under subsection (1) shall be given at the earliest opportunity and, in any event, not later than—

- (a) one month after the change in question; or
- (b) where that change results from the employee being required to work outside Kenya for a period of more than one month, the time when the employee leaves to start work if that is earlier.

(4) A statement under subsection (1) may refer the employee to the provision of a document which is accessible to the employee for a change in any of the matters specified in section 10(3)(ii) and (iii) and section 12(1)(a) and (c).

(5) A statement under subsection (1) may refer the employee for a change in either of the matters specified in section 10(3)(e) to the law or to the provisions of any collective agreement directly affecting the terms and conditions of the employment which is reasonably accessible to the employee.

(6) Where, after an employer has given to an employee a statement under section 10 either—

- (a) the name of the employer is changed without any change in the identity of the employer; or
- (b) the identity of the employer is changed in circumstances in which the continuity of the employee's period of employment is not broken, and subsection (7) applies in relation to the change,

the person who is the employer immediately after the change is not required to give to the employee a statement under section 12 but the change shall be treated as a change within subsection (1).

(7) Subsection (6) applies in relation to a change if it does not involve any change in any of the matters, other than the names of the parties, particulars of which are required by sections 10 and 11 to be included or referred to in the statement under subsection (1).

(8) A statement under subsection (1) which informs an employee of a change referred to in subsection (6)(b) shall specify the date on which the employee's period of continuous employment began.

[Corr. No. 1/2008.]

#### **14. Reasonably accessible document or collective agreement**

In sections 11, 12 and 13, references to a document or collective agreement which is reasonably accessible to an employee are references to a document or collective agreement which—

- (a) the employee has reasonable opportunities of reading in the course of his employment; or
- (b) is made reasonably accessible to the employee in some other way.

**15. Informing employees of their rights**

An employer shall display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place, which is accessible to all the employees.

**16. Enforcement**

(1) Where an employer does not give an employee a statement as required by section 10, 12 or 13 or an itemised pay statement as required by section 20, the employee may file a complaint with the labour officer and the complaint shall be deemed to be a complaint filed under section 87.

(2) Where as a result of a complaint arising out of section 10, 12, 13 or 20 the Industrial Court determines particulars which ought to have been included or referred to in a statement given under these sections, the employer shall be deemed to have given to the employee a statement in which those particulars were included or referred to as specified in the decision of the Industrial Court.

(3) Where under subsection (1) the Industrial Court has to determine whether the statement given complies with a statement under section 10, 13 or 20 the Industrial Court may—

- (a) confirm the particulars as included or referred to in the statement given by the employer;
- (b) amend those particulars; or
- (c) substitute other particulars for them as the Industrial Court may determine to be appropriate, and the statement shall be deemed to have been given by the employer to the employee in accordance with the court's decision.

(4) A person who fails to give to an employee a statement as required by section 10, 12, 13 or 20 commits an offence and shall, on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(5) Where a person contravenes the sections specified in subsection (1), a court, on application of the employee or the labour officer on behalf of the employee may, in addition to the penalty specified in subsection (4) order any remedy specified in subsection (3).

[Corr. No. 1/2008.]

**PART IV – PROTECTION OF WAGES****17. Payment, disposal and recovery of wages, allowances, etc.**

(1) Subject to this Act, an employer shall pay the entire amount of the wages earned by or payable to an employee in respect of work done by the employee in pursuance of a contract of service directly, in the currency of Kenya—

- (a) in cash;
- (b) into an account at a bank, or building society, designated by the employee;
- (c) by cheque, postal order or money order in favour of the employee; or

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- (d) in the absence of an employee, to a person other than the employee, if the person is duly authorised by the employee in writing to receive the wages on the employee's behalf.

(2) An employer shall pay wages to an employee on a working day, and during working hours, at or near to the place of employment or at such other place as may be agreed between the employer and the employee.

(3) An employer shall not pay wages to an employee in any place where intoxicating liquor is sold or readily available for supply, except in the case of employees employed to work in that place.

(4) No person shall give or promise to any person any advance of money or any valuable consideration upon a condition expressed or implied that the person or any dependant of that person shall enter upon any employment.

(5) If, in a contract of service or collective agreement, provision is made for the payment of any allowance in kind to an employee with the employee's consent the payment may with such consent be made only if, the allowance—

- (a) is for the personal use and benefit of the employee; and  
(b) does not consist of or include any intoxicating spirit or noxious drug.

(6) Notwithstanding the provisions of any law for the time being in force, whenever an attachment has been issued against the property of an employer in execution of a decree against him, the proceeds realised in pursuance of that execution shall not be paid by the court to a decree-holder until a decree obtained against the employer in respect of the wages of employees has been satisfied to the extent of a sum not exceeding six months' wages of those employees.

(7) Nothing in subsection (6) shall prevent an employee from recovering any balance due after such satisfaction, by ordinary process of law.

(8) Subsection (6) shall not apply if the attachment is issued against an employer undergoing insolvency as defined under Part VIII in which case the provisions under that Part shall apply.

(9) If an employer advances to an employee a sum in excess of the amount of one month's wages of the employee or, in the case of an employee employed under a written contract of service, a sum in excess of the amount of two months' wages of that employee, the excess shall not be recoverable in a court of law.

(10) A person who—

- (a) subject to section 19, wilfully fails to make payment of or to tender the wages earned by or payable to an employee in accordance with subsection (1); or

(b) contravenes any of the provisions of subsections (2), (3), (4) and (5), commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(11) No employer shall limit or attempt to limit the right of an employee to dispose of his wages in a manner which the employee deems fit, nor by a contract of service or otherwise seek to compel an employee to dispose of his

wages or a portion thereof in a particular place or for a particular purpose in which the employer has a direct or indirect beneficial interest.

[Corr. No. 1/2008.]

### **18. When wages or salaries due**

(1) Where a contract of service entered into under which a task or piece-work is to be performed by an employee, the employee shall be entitled—

- (a) when the task has not been completed, at the option of his employer, to be paid by his employer at the end of the day in proportion to the amount of the task which has been performed, or to complete the task on the following day, in which case he shall be entitled to be paid on completion of the task; or
- (b) in the case of piece-work, to be paid by his employer at the end of each month in proportion to the amount of work which he has performed during the month, or on completion of the work, whichever date is the earlier.

(2) Subject to subsection (1), wages or salaries shall be deemed to be due—

- (a) in the case of a casual employee, at the end of the day;
- (b) in the case of an employee employed for a period of more than a day but not exceeding one month, at the end of that period;
- (c) in the case of an employee employed for a period exceeding one month, at the end of each month or part thereof;
- (d) in the case of an employee employed for an indefinite period or on a journey, at the expiration of each month or of such period, whichever date is the earlier, and on the completion of the journey, respectively.

(3) The provisions of this section shall not affect an order, judgment or award of the Industrial Court or an agreement between an employee and his employer the relevant terms of which are more favorable to the employee than the provisions of this section.

(4) Where an employee is summarily dismissed for lawful cause, the employee shall, on dismissal be paid all moneys, allowances and benefits due to him up to the date of his dismissal.

(5) Upon the termination of a contract of service—

- (a) by effluxion of time, it shall be the duty of the employer to ensure that the employee is paid the entire amount of the wages earned by or payable to the employee and of the allowances due to him as have not been paid;
- (b) by dismissal, the employer shall, within seven days, deliver to a labour officer in the district in which the employee was working a written report specifying the circumstances leading to, and the reasons for, the dismissal and stating the period of notice and the amount of wages in lieu thereof to which the employee would, but for the dismissal, have been entitled; and the report shall specify the amount of any wages and other allowance earned by him since the date of the employee's dismissal.

(6) No wages shall be payable to an employee in respect of a period during which the employee is detained in custody or is serving a sentence of imprisonment imposed under any law.

#### **19. Deduction of wages**

(1) Notwithstanding section 17(1), an employer may deduct from the wages of his employee—

- (a) any amount due from the employee as a contribution to any provident fund or superannuation scheme or any other scheme approved by the Commissioner for Labour to which the employee has agreed to contribute;
- (b) a reasonable amount for any damage done to, or loss of, any property lawfully in the possession or custody of the employer occasioned by the wilful default of the employee;
- (c) an amount not exceeding one day's wages in respect of each working day for the whole of which the employee, without leave or other lawful cause, absents himself from the premises of the employer or other place proper and appointed for the performance of his work;
- (d) an amount equal to the amount of any shortage of money arising through the negligence or dishonesty of the employee whose contract of service provides specifically for his being entrusted with the receipt, custody and payment of money;
- (e) any amount paid to the employee in error as wages in excess of the amount of wages due to him;
- (f) any amount the deduction of which is authorised by any written law for the time being in force, collective agreement, wage determination, court order or arbitration award;
- (g) any amount in which the employer has no direct or indirect beneficial interest, and which the employee has requested the employer in writing to deduct from his wages;
- (h) an amount due and payable by the employee under and in accordance with the terms of an agreement in writing, by way of repayment or part repayment of a loan of money made to him by the employer, not exceeding fifty percent of the wages payable to that employee after the deduction of all such other amounts as may be due from him under this section; and
- (i) such other amounts as the Minister may prescribe.

(2) No employer shall make a deduction from the wages payable to an employee as an advance of wages in consideration of, or as a reward for, the provision of employment for that employee, or for retaining the employee in employment.

(3) Without prejudice to any right of recovery of any debt due, and notwithstanding the provisions of any other written law, the total amount of all deductions which under the provisions of subsection (1), may be made by an employer from the wages of his employee at any one time shall not exceed

two-thirds of such wages or such additional or other amount as may be prescribed by the Minister either generally or in relation to a specified employer or employee or class of employers or employees or any trade or industry.

(4) An employer who deducts an amount from an employee's remuneration in accordance with subsection (1)(a), (f), (g) and (h) shall pay the amount so deducted in accordance with the time period and other requirements specified in the law, agreement court order or arbitration as the case may be.

(5) An employer who fails to comply with the provisions of subsection (4) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years, or to both.

(6) Where proceedings are brought under subsection (5) in respect of failure by the employer to remit deductions from an employee's remuneration, the court may, in addition to fining the employer order the employer to refund to the employee the amount deducted from the employee's wages and pay the intended beneficiary on behalf of the employee with the employer's own funds.

## **20. Itemised pay statement**

(1) An employer shall give a written statement to an employee at or before the time at which any payment of wages or salary is made to the employee.

(2) The statement specified in subsection (1) shall contain particulars of—

- (a) the gross amount of the wages or salary of the employee;
- (b) the amounts of any variable and subject to section 22, any statutory deductions from that gross amount and the purposes for which they are made; and
- (c) where different parts of the net amount are paid in different ways, the amount and method of payment of each part-payment.

(3) This section shall not apply to a casual employee or an employee engaged on piece-rate or task-rate terms or for any period not exceeding six months.

(4) The Minister may exclude any category of employees or employees employed in any sector from the application of this section.

## **21. Statement of statutory deductions**

(1) A pay statement issued in accordance with section 20 need not contain separate particulars of statutory deductions if—

- (a) it contains an aggregate amount of statutory deduction, including that deduction; and
- (b) the employer has given to the employee, at or before the time at which the pay statement is given, a statement of statutory deductions specified in subsection (2).

(2) A statement of statutory deductions shall be—

- (a) in writing;

- (b) contain, in relation to each deduction comprised in the aggregate amount of deductions, particulars of—
    - (i) the amount of the deduction;
    - (ii) the intervals at which the deduction is to be made; and
    - (iii) the purpose for which it is made; and
  - (c) in accordance with subsection (5), effective at the date on which the pay statement is given.
- (3) A statement of statutory deductions may be amended by—
- (a) the addition of a new deduction;
  - (b) a change in the particulars; or
  - (c) the cancellation of an existing deduction, by notice in writing, containing particulars of the amendment given by the employer to the employee.
- (4) An employer who has given to an employee a statement of statutory deductions shall—
- (a) within the period of twelve months beginning on the date the first statement of statutory deductions was given; and
  - (b) at intervals of not more than twelve months afterwards, re-issue it in a consolidated form incorporating any amendments notified in accordance with subsection (3).
- (5) For the purposes of subsection (2)(c), a statement of deductions—
- (a) becomes effective on the date on which it is given to the employee; and
  - (b) ceases to be effective at the end of the period of twelve months beginning on that date or, where it is re-issued in accordance with subsection (4), at the end of the period of twelve months beginning with the date of the last re-issue.

## **22. Power to amend provisions on pay and statements of deductions**

The Minister may on the advice of the Board—

- (a) vary the provisions of sections 20 and 21 as to the particulars which must be included in a pay statement or a statement of statutory deductions by adding items to, or removing items from, the particulars listed in those sections or by amending any such particulars; and
- (b) vary the provisions of section 21(4) and (5) so as to shorten or extend the periods specified in those subsections, or those periods as varied from time to time under this section.

## **23. Security bond for wages**

(1) An employer who is not incorporated or resident in Kenya may be required by the Minister to pay a bond assessed at the equivalent of one month's wages for all employees employed or to be employed by the employer.

(2) A bond paid by any employer shall be held by the Minister on behalf of that employer in a separate interest bearing account and shall not be used for any purpose other than paying wages and other entitlements to that employer's employees in the event of default by that employer.

#### **24. Death of an employee**

(1) When the death of an employee from any cause whatsoever is brought to the notice or comes to the knowledge of the employee's employer, the employer shall as soon as practicable thereafter, give notice of the death in the prescribed form to the labour officer or, if there is no labour officer, to the district commissioner of the district in which the employee was employed.

(2) Upon the death of an employee during the term of a contract of service, the legal representatives of the employee shall, upon proof of capacity as required by law, be entitled to be paid wages and any other remuneration and property due to the employee as at the date of death within thirty days of submitting the proof.

(3) The employer of the deceased employee shall, within seven days of such payment provide the labour officer or in his absence the district commissioner with evidence of the payment.

(4) Where on expiry of three months after the employee's death—

- (a) no legal representative has laid claim to the wages or property of the employee; or
- (b) where the employer is in doubt of or has rejected any claim made to the wages or the property of the employee,

the employer, shall deliver to the labour officer or district commissioner, as the case may be, all wages due to the employee at the date of his death and shall deliver to him all property of the deceased employee to be held by the labour officer or the district commissioner in trust subject to the Law of Succession Act (Cap. 160) or any other written law applicable to the disposal of a deceased person's property.

(5) Where an employee is, during the course of his employment killed or incapacitated by injury for a period exceeding three days, his employer shall as soon as practicable, send to the labour officer or, if there is no labour officer to a district commissioner a report in the prescribed form.

#### **25. Repayment of remuneration wrongfully withheld or deducted**

(1) Without prejudice to any other liability for a breach of the provisions of this Part, an employer who contravenes the provisions of this Part commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both and shall be required to repay any remuneration wrongfully withheld or wrongfully deducted from the employee.

(2) An employee may file a complaint under this Part—

- (a) to a labour officer;
- (b) not later than three years after the alleged unlawful deduction has been made.



## PART V – RIGHTS AND DUTIES IN EMPLOYMENT

**26. Basic minimum conditions of employment**

(1) The provisions of this Part and Part VI shall constitute basic minimum terms and conditions of contract of service.

(2) Where the terms and conditions of a contract of service are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the Industrial Court are more favourable to an employee than the terms provided in this Part and Part VI, then such favourable terms and conditions of service shall apply.

**27. Hours of work**

(1) An employer shall regulate the working hours of each employee in accordance with the provisions of this Act and any other written law.

(2) Notwithstanding subsection (1), an employee shall be entitled to at least one rest day in every period of seven days.

**28. Annual leave**

(1) An employee shall be entitled—

- (a) after every twelve consecutive months of service with his employer to not less than twenty-one working days of leave with full pay;
- (b) where employment is terminated after the completion of two or more consecutive months of service during any twelve months' leave-earning period, to not less than one and three-quarter days of leave with full pay, in respect of each completed month of service in that period, to be taken consecutively.

(2) An employer may, with the consent of the employee divide the minimum annual leave entitlement under subsection (1)(a) into different parts to be taken at different intervals.

(3) Unless otherwise provided in an agreement between an employee and an employer or in a collective agreement, and on condition that the length of service of an employee during any leave-earning period specified in subsection (1)(a) entitles the employee to such a period, one part of the parts agreed upon under subsection (2) shall consist of at least two uninterrupted working weeks.

(4) The uninterrupted part of the annual leave with pay referred to in subsection (3) shall be granted and taken during the twelve consecutive months of service referred to in subsection (1)(a) and the remainder of the annual leave with pay shall be taken not later than eighteen months from the end of the leave earning period referred to in subsection (1)(a) being the period in respect of which the leave entitlement arose.

(5) Where in a contract of service an employee is entitled to leave days in excess of the minimum specified in subsection (1)(a), the employer and the employee may agree on how to utilize the leave days.

**29. Maternity leave**

(1) A female employee shall be entitled to three months maternity leave with full pay.

(2) On expiry of a female employee's maternity leave as provided in subsections (1) and (3), the female employee shall have the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.

(3) Where—

(a) the maternity leave has been extended with the consent of the employer; or

(b) immediately on expiry of maternity leave before resuming her duties a female employee proceeds on sick leave or with the consent of the employer on annual leave; compassionate leave; or any other leave,

the three months maternity leave under subsection (1) shall be deemed to expire on the last day of such extended leave.

(4) A female employee shall only be entitled to the rights mentioned in subsections (1), (2) and (3) if she gives not less than seven days notice in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.

(5) The notice referred to in subsection (4) shall be in writing.

(6) A female employee who seeks to exercise any of the rights mentioned in this section shall, if required by the employer, produce a certificate as to her medical condition from a qualified medical practitioner or midwife.

(7) No female employee shall forfeit her annual leave entitlement under section 28 on account of having taken her maternity leave.

(8) A male employee shall be entitled to two weeks paternity leave with full pay.

[Corr. No. 1/2008.]

**30. Sick leave**

(1) After two consecutive months of service with his employer, an employee shall be entitled to sick leave of not less than seven days with full pay and thereafter to sick leave of seven days with half pay, in each period of twelve consecutive months of service, subject to production by the employee of a certificate of incapacity to work signed by a duly qualified medical practitioner or a person acting on the practitioner's behalf in charge of a dispensary or medical aid centre.

(2) For an employee to be entitled to sick leave with full pay under subsection (1), the employee shall notify or cause to be notified as soon as is reasonably practicable his employer of his absence and the reasons for it.

(3) For the purposes of subsections (1) and (2) "**full pay**" includes wages at the basic rate excluding deductions from the wages allowable under section 19.

(4) For purposes of subsection (1), the twelve continuous months of service shall be deemed to commence on the date of the employment of the employee and on such subsequent anniversary dates of employment.

(5) An employer shall have the right to place all his employees on an annual cycle of an anniversary date falling on a day to be determined by the employer.

### **31. Housing**

(1) An employer shall at all times, at his own expense, provide reasonable housing accommodation for each of his employees either at or near to the place of employment, or shall pay to the employee such sufficient sum, as rent, in addition to the wages or salary of the employee, as will enable the employee to obtain reasonable accommodation.

(2) This section shall not apply to an employee whose contract of service—

- (a) contains a provision which consolidates as part of the basic wage or salary of the employee, an element intended to be used by the employee as rent or which is otherwise intended to enable the employee to provide himself with housing accommodation; or
- (b) is the subject matter of or is otherwise covered by a collective agreement which provides consolidation of wages as provided in paragraph (a).

(2) The Minister may, on the recommendation of the Board by notice in the *Gazette*, exclude the application of this section to a category of employees and such category of employees shall be dealt with as shall be specified in the notice.

### **32. Water**

An employer shall provide a sufficient supply of wholesome water for the use of his employees at the place of employment and, as the case may be, within a reasonable distance of any housing accommodation provided for the employees by the employer.

### **33. Food**

(1) An employer shall, where the provision of food has been expressly agreed to in or at the time of entering into a contract of service, ensure that an employee is properly fed and supplied with sufficient and proper cooking utensils and means of cooking, at the employer's expense.

(2) The provisions of this section shall not be deemed to impose upon an employer any liability in respect of an employee during the time the employee is absent from his place of employment without the permission of the employer or without other lawful excuse.

### **34. Medical attention**

(1) Subject to subsection (2), an employer shall ensure the sufficient provision of proper medicine for his employees during illness and if possible, medical attendance during serious illness.

(2) An employer shall take all reasonable steps to ensure that he is notified of the illness of an employee as soon as reasonably practicable after the first occurrence of the illness.

(3) It shall be a defence to a prosecution for an offence under subsection (1) if the employer shows that he did not know that the employee was ill and that he took all reasonable steps to ensure that the illness was brought to his notice or that it would have been unreasonable, in all the circumstances of the case, to have required him to know that the employee was ill.

(4) This section shall not apply where—

- (a) the illness or injury to the employee was contracted during a period when the employee was absent from his employment without lawful cause or excuse;
- (b) the illness or injury is proved to have been self inflicted;
- (c) medical treatment is provided free of charge by the Government or under any insurance scheme established under any written law which covers the employee.

#### PART VI – TERMINATION AND DISMISSAL

### 35. Termination notice

(1) A contract of service not being a contract to perform specific work, without reference to time or to undertake a journey shall, if made to be performed in Kenya, be deemed to be—

- (a) where the contract is to pay wages daily, a contract terminable by either party at the close of any day without notice;
- (b) where the contract is to pay wages periodically at intervals of less than one month, a contract terminable by either party at the end of the period next following the giving of notice in writing; or
- (c) where the contract is to pay wages or salary periodically at intervals of or exceeding one month, a contract terminable by either party at the end of the period of twenty-eight days next following the giving of notice in writing.

(2) Subsection (1) shall not apply in the case of a contract of service whose terms provide for the giving of a period of notice of termination in writing greater than the period required by the provision of this subsection which would otherwise be applicable thereto.

(3) If an employee who receives notice of termination is not able to understand the notice, the employer shall ensure that the notice is explained orally to the employee in a language the employee understands.

(4) Nothing in this section affects the right—

- (a) of an employee whose services have been terminated to dispute the lawfulness or fairness of the termination in accordance with the provisions of section 46; or
- (b) of an employer or an employee to terminate a contract of employment without notice for any cause recognised by law.

(5) An employee whose contract of service has been terminated under subsection (1)(c) shall be entitled to service pay for every year worked, the terms of which shall be fixed.

- (6) This section shall not apply where an employee is a member of—
- (a) a registered pension or provident fund scheme under the Retirement Benefits Act;
  - (b) a gratuity or service pay scheme established under a collective agreement;
  - (c) any other scheme established and operated by an employer whose terms are more favourable than those of the service pay scheme established under this section; and
  - (d) the National Social Security Fund.

[Act No. 3 of 1997.]

### **36. Payment in lieu of notice**

Either of the parties to a contract of service to which section 35(5) applies, may terminate the contract without notice upon payment to the other party of the remuneration which would have been earned by that other party, or paid by him as the case may be in respect of the period of notice required to be given under the corresponding provisions of that section.

### **37. Conversion of casual employment to term contract**

- (1) Notwithstanding any provisions of this Act, where a casual employee—
- (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
  - (b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more,

the contract of service of the casual employee shall be deemed to be one where wages are paid monthly and section 35(1)(c) shall apply to that contract of service.

(2) In calculating wages and the continuous working days under subsection (1), a casual employee shall be deemed to be entitled to one paid rest day after a continuous six days working period and such rest day or any public holiday which falls during the period under consideration shall be counted as part of continuous working days.

(3) An employee whose contract of service has been converted in accordance with subsection (1), and who works continuously for two months or more from the date of employment as a casual employee shall be entitled to such terms and conditions of service as he would have been entitled to under this Act had he not initially been employed as a casual employee.

(4) Notwithstanding any provisions of this Act, in any dispute before the Industrial Court on the terms and conditions of service of a casual employee, the Industrial Court shall have the power to vary the terms of service of the casual employee and may in so doing declare the employee to be employed on terms and conditions of service consistent with this Act.

(5) A casual employee who is aggrieved by the treatment of his employer under the terms and conditions of his employment may file a complaint with the labour officer and section 87 of this Act shall apply.

[Corr. No. 1/2008.]

### **38. Waiver of notice by employer**

Where an employee gives notice of termination of employment and the employer waives the whole or any part of the notice, the employer shall pay to the employee remuneration equivalent to the period of notice not served by the employee as the case may be, unless the employer and the employee agree otherwise.

[Corr. No. 1/2008.]

### **39. Contract expiring on a journey may be extended**

If the period expressed in a contract of service expires, or if an employee seeks to terminate a contract where no agreement is expressed respecting its duration while the employee is engaged on a journey, the employer may, for the purpose of the completion of the journey, extend the period of service for a sufficient period, but in any case not exceeding one month, to enable the employee to complete the journey.

### **40. Termination on account of redundancy**

(1) An employer shall not terminate a contract of service on account of redundancy unless the employer complies with the following conditions—

- (a) where the employee is a member of a trade union, the employer notifies the union to which the employee is a member and the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
- (b) where an employee is not a member of a trade union, the employer notifies the employee personally in writing and the labour officer;
- (c) the employer has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee of the particular class of employees affected by the redundancy;
- (d) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy; the employer has not placed the employee at a disadvantage for being or not being a member of the trade union;
- (e) the employer has where leave is due to an employee who is declared redundant, paid off the leave in cash;
- (f) the employer has paid an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
- (g) the employer has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.

(2) Subsection (1) shall not apply where an employee's services are terminated on account of insolvency as defined in Part VIII in which case that Part shall be applicable.

(3) The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established under written law or by any firm underwriting insurance business to be approved by the Minister.

[Corr. No. 1/2008.]

#### **41. Notification and hearing before termination on grounds of misconduct**

(1) Subject to section 42(1), an employer shall, before terminating the employment of an employee, on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee shall be entitled to have another employee or a shop floor union representative of his choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before terminating the employment of an employee or summarily dismissing an employee under section 44(3) or (4) hear and consider any representations which the employee may on the grounds of misconduct or poor performance, and the person, if any, chosen by the employee within subsection (1), make.

#### **42. Termination of probationary contracts**

(1) The provisions of section 41 shall not apply where a termination of employment terminates a probationary contract.

(2) A probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee.

(3) No employer shall employ an employee under a probationary contract for more than the aggregate period provided under subsection (2).

(4) A party to a contract for a probationary period may terminate the contract by giving not less than seven days' notice of termination of the contract, or by payment, by the employer to the employee, of seven days' wages in lieu of notice.

#### **43. Proof of reason for termination**

(1) In any claim arising out of termination of a contract, the employer shall be required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination shall be deemed to have been unfair within the meaning of section 45.

(2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

#### **44. Summary dismissal**

(1) Summary dismissal shall take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(2) Subject to the provisions of this section, no employer has the right to terminate a contract of service without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

(3) Subject to the provisions of this Act, an employer may dismiss an employee summarily when the employee has by his conduct indicated that he has fundamentally breached his obligations arising under the contract of service.

(4) Any of the following matters may amount to gross misconduct so as to justify the summary dismissal of an employee for lawful cause, but the enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (3) shall not preclude an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal if—

- (a) without leave or other lawful cause, an employee absents himself from the place appointed for the performance of his work;
- (b) during working hours, by becoming or being intoxicated, an employee renders himself unwilling or incapable to perform his work properly;
- (c) an employee wilfully neglects to perform any work which it was his duty to perform, or if he carelessly and improperly performs any work which from its nature it was his duty, under his contract, to have performed carefully and properly;
- (d) an employee uses abusive or insulting language, or behaves in a manner insulting, to his employer or to a person placed in authority over him by his employer;
- (e) an employee knowingly fails, or refuses, to obey a lawful and proper command which it was within the scope of his duty to obey, issued by his employer or a person placed in authority over him by his employer;
- (f) in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or
- (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his employer or his employer's property.

#### **45. Unfair termination**

(1) No employer shall terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove—

- (a) that the reason for the termination is valid;
- (b) that the reason for the termination is a fair reason—
  - (i) related to the employee's conduct, capacity or compatibility; or
  - (ii) based on the operational requirements of the employer; and



- (c) that the employment was terminated in accordance with fair procedure.

(3) An employee who has been continuously employed by his employer for a period not less than thirteen months immediately before the date of termination shall have the right to complain that he has been unfairly terminated.

(4) A termination of employment shall be unfair for the purposes of this Part where—

- (a) the termination is for one of the reasons specified in section 46; or
- (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employment of the employee.

(5) In deciding whether it was just and equitable for an employer to terminate the employment of an employee, for the purposes of this section, a labour officer, or the Industrial Court shall consider—

- (a) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
- (b) the conduct and capability of the employee up to the date of termination;
- (c) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate under section 51 and the procedural requirements set out in section 41;
- (d) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and
- (e) the existence of any previous warning letters issued to the employee.

#### **46. Reasons for termination or discipline**

The following do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty—

- (a) a female employee's pregnancy, or any reason connected with her pregnancy;
- (b) the going on leave of an employee, or the proposal of an employee to take, any leave to which he was entitled under the law or a contract;
- (c) an employee's membership or proposed membership of a trade union;
- (d) the participation or proposed participation of an employee in the activities of a trade union outside working hours or, with the consent of the employer, within working hours;
- (e) an employee's seeking of office as, or acting or having acted in the capacity of, an officer of a trade union or a workers' representative;
- (f) an employee's refusal or proposed refusal to join or withdraw from a trade union;

- (g) an employee's race, colour, tribe, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability;
- (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where the complaint is shown to be irresponsible and without foundation; or
- (i) an employee's participation in a lawful strike.

#### **47. Complaint of summary dismissal and unfair termination**

(1) Where an employee has been summarily dismissed or his employer has unfairly terminated his employment without justification, the employee may, within three months of the date of dismissal, present a complaint to a labour officer and the complaint shall be dealt with as a complaint lodged under section 87.

(2) A labour officer who is presented with a claim under this section shall, after affording every opportunity to both the employee and the employer to state their case, recommend to the parties what in his opinion would be the best means of settling the dispute in accordance with the provisions of section 49.

(3) The right of the employee to present a complaint under this section shall be in addition to his right to complain to the Industrial Court on the same issue and to the right to complain of any other infringement of his statutory rights.

(4) The right of an employee to make a complaint under this section shall be in addition to any right an employee may enjoy under a collective agreement.

(5) For any complaint of unfair termination of employment or wrongful dismissal the burden of proving that an unfair termination of employment or wrongful dismissal has occurred shall rest on the employee, while the burden of justifying the grounds for the termination of employment or wrongful dismissal shall rest on the employer.

(6) No employee whose services have been terminated or who has been summarily dismissed during a probationary contract shall make a complaint under this section.

[Corr. No. 1/2008.]

#### **48. Representation**

In any complaint made under section 47, no advocate shall represent a party in the proceedings before a labour officer, but any party may be assisted or represented by an official of a trade union or an official of an employers' organisation notwithstanding the fact that the official is an advocate.

#### **49. Remedies for wrongful dismissal and unfair termination**

(1) Where in the opinion of a labour officer summary dismissal or termination of a contract of an employee is unjustified, the labour officer may recommend to the employer to pay to the employee any or all of the following—

- (a) the wages which the employee would have earned had the employee been given the period of notice to which he was entitled under this Act or his contract of service;

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- (b) where dismissal terminates the contract before the completion of any service upon which the employee's wages became due, the proportion of the wage due for the period of time for which the employee has worked; and any other loss consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a) which the employee would have been entitled to by virtue of the contract; or
- (c) the equivalent of a number of months wages or salary not exceeding twelve months based on the gross monthly wage or salary of the employee at the time of dismissal.

(2) Any payments made by the employer under this section shall be subject to statutory deductions.

(3) Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to the employer to—

- (a) reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or
- (b) re-engage the employee in work comparable to that in which the employee was employed prior to his dismissal, or other reasonably suitable work, at the same wage.

(4) A labour officer shall, in deciding whether to recommend the remedies specified in subsections (1) and (3), take into account any or all of the following—

- (a) the wishes of the employee;
- (b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination; and
- (c) the practicability of recommending reinstatement or re-engagement;
- (d) the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;
- (e) the employee's length of service with the employer;
- (f) the reasonable expectation of the employee as to the length of time for which his employment with that employer might have continued but for the termination;
- (g) the opportunities available to the employee for securing comparable or suitable employment with another employer;
- (h) the value of any severance payable by law;
- (i) the right to press claims or any unpaid wages, expenses or other claims owing to the employee;
- (j) any expenses reasonably incurred by the employee as a consequence of the termination;
- (k) any conduct of the employee which to any extent caused or contributed to the termination;
- (l) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and

- (m) any compensation, including *ex gratia* payment, in respect of termination of employment paid by the employer and received by the employee.

#### 50. Courts to be guided

In determining a complaint or suit under this Act involving wrongful dismissal or unfair termination of the employment of an employee, the Industrial Court shall be guided by the provisions of section 49.

#### 51. Certificate of service

(1) An employer shall issue to an employee a certificate of service upon termination of his employment, unless the employment has continued for a period of less than four consecutive weeks.

(2) A certificate of service issued under subsection (1) shall contain—

- (a) the name of the employer and his postal address;
- (b) the name of the employee;
- (c) the date when employment of the employee commenced;
- (d) the nature and usual place of employment of the employee;
- (e) the date when the employment of the employee ceased; and
- (f) such other particulars as may be prescribed.

(3) Subject to subsection (1), no employer is bound to give to an employee a testimonial, reference or certificate relating to the character or performance of that employee.

(4) An employer who wilfully or by neglect fails to give an employee a certificate of service in accordance with subsection (1), or who in a certificate of service includes a statement which he knows to be false, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

### PART VII – PROTECTION OF CHILDREN

#### 52. Interpretation

In this Part, except where the context otherwise requires—

“**employment**” means employment of a child in a situation where—

- (a) the child provides labour as an assistant to another person and his labour is deemed to be the labour of that other person for the purposes of payment;
- (b) the child’s labour is used for gain by any person or institution whether or not the child benefits directly or indirectly; and
- (c) there is in existence a contract for service where the party providing the service is a child whether the person using the services does so directly or by agent.

**53. Prohibition of worst forms of child labour**

(1) Notwithstanding any provision of any written law, no person shall employ a child in any activity which constitutes worst form of child labour.

(2) The Minister shall, in consultation with the Board, make regulations declaring any work, activity or contract of service harmful to the health, safety or morals of a child and subsection (1) shall apply to such work, activity or contract of service.

**54. Complaint to the labour officer or police officer**

(1) A person may make a complaint to a labour officer or a police officer of the rank of an inspector and above if that person considers any child to be employed in any activity which constitutes worst form of child labour.

(2) On receipt of a complaint under subsection (1), the labour officer or the police officer, as the case may be, shall within seven days investigate the complaint and submit his finding to the person who filed the complaint and to the Minister.

(3) Where the labour officer or the police officer considers it not expedient to conduct an investigation under subsection (2), he shall in writing inform the person and the Minister accordingly, giving reasons thereof.

(4) Notwithstanding subsection (2) employment of a child in any work constituting worst form of child labour shall constitute a cognisable offence punishable under section 64 or any other written law provided that no person shall be punished twice for the same offence.

**55. Powers of labour officer to cancel and prohibit contracts**

(1) A labour officer may, by notice in writing served upon an employer, terminate or cancel any contract of service, other than a deed of apprenticeship or indentured learnership lawfully entered into under the provisions of the Industrial Training Act (Cap. 237), which has been entered into by a child with the employer, on grounds that, in the opinion of that labour officer, the employer is an undesirable person, or that the nature of the employment constitutes worst forms of child labour or for any other cause which may be prescribed.

(2) A labour officer may, by notice in writing served upon any person, prohibit that person from employing a child in any class or description of employment specified in the notice, on grounds that, in the opinion of the labour officer, that person is an undesirable person, or that the nature of the employment constitutes worst forms of child labour or for any other cause which may be prescribed.

(3) A notice given under subsection (1) or subsection (2) shall be personally served upon the employer or the person to whom it is addressed.

(4) An employer, employee or person who is aggrieved by a notice given under subsection (1) or subsection (2) may, within thirty days after the date of service thereof, appeal in writing against that notice to the Industrial Court which may confirm or set aside the notice and the decision of the court shall be final.

(5) An employer or a person who, having been served with a notice under subsection (1) or subsection (2) which has not been set aside on appeal,

employs or continues to employ the child to whom the notice refers in or about the employment to which the notice relates, or any similar employment, or, as the case may be, employs any child in the employment to which the notice relates, or any similar employment, commits an offence.

(6) It shall not be an offence for an employer served with a notice given under subsection (1) to continue to employ the child to whom the notice refers during the period of thirty days limited for appeal or, if an appeal is lodged and subject to obtaining from the Industrial Court a temporary stay of execution of the labour officer's notice within, such period as the court may determine, pending the outcome of that appeal.

#### **56. Prohibition of employment of children between thirteen years and sixteen years of age**

(1) No person shall employ a child who has not attained the age of thirteen years whether gainfully or otherwise in any undertaking.

(2) A child of between thirteen years of age and sixteen years of age may be employed to perform light work which is—

- (a) not likely to be harmful to the child's health or development; and
- (b) not such as to prejudice the child's attendance at school, his participation in vocational orientation or training programmes approved by the Minister or his capacity to benefit from the instructions received.

(3) The Minister may make rules prescribing light work in which a child of between thirteen years of age and sixteen years of age may be employed and the terms and conditions of that employment.

#### **57. Prohibition of written contracts for child between thirteen and sixteen years of age**

Subject to the provisions of the Industrial Training Act relating to contracts of apprenticeship or indentured learnership, a person who employs a child of between thirteen and sixteen years of age, or causes such a child to be employed, or being the parent or guardian or other person having for the time being the charge of or control over the child, allows the child to be employed, otherwise than under a verbal contract of service commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

#### **58. Restriction in employing child of between thirteen and sixteen years of age to attend machinery**

(1) No person shall employ a child of between thirteen and sixteen years of age, other than one serving under a contract of apprenticeship or indentured learnership in accordance with the provisions of the Industrial Training Act, in an industrial undertaking to attend to machinery.

(2) No person shall employ a child in any opencast workings or sub-surface workings that are entered by means of a shaft or adit.

**59. Time restriction in employing a child**

(1) Subject to section 60, no person shall employ a child in an industrial undertaking between the hours of 6.30 p.m. and 6.30 a.m.

(2) Notwithstanding the provision of subsection (1), a person may employ a male young person in cases of emergencies which could not have been controlled or foreseen, and which interfere with the normal working of the industrial undertaking and which are not of a periodical nature.

(3) Notwithstanding the provision of subsection (1), the Minister may, after consultation with the Board, authorise an employer in writing to employ a young person for a specific period of the night subject to such conditions as the Minister may determine.

**60. Emergencies**

In case of a serious emergency, when the public interest demands it, the Minister may, by notice in the *Gazette*, suspend the operation of section 59.

**61. Registers of child in employment**

An employer who employs a child shall keep and maintain a register containing the following particulars of every child he employs—

- (a) age and date of birth;
- (b) date of entry into and of leaving the employment;
- (c) such other particulars as may be prescribed.

**62. Medical examination of a child employee**

An authorised officer may require a child in employment to be medically examined at any time during the period of the child's employment.

**63. Determination of age**

(1) If, during the hearing of a charge for an offence under this Act it is alleged that any person was at the date of the offence of, over or under a particular age, the court hearing the charge shall, after such inquiry as it considers necessary and after hearing any evidence which may be tendered by any party to the proceedings, determine the age of that person for the purposes of the proceedings, and the determination shall be final.

(2) No conviction, order or judgment of a court under this Act shall be invalidated by any subsequent proof that the age of any person has not been correctly stated to, or determined by, the court.

(3) Subject to the provision of subsection (1), whenever any question arises as to the age of an employee and no sufficient evidence is available as to that employee's age, a medical officer may estimate the age of the employee by his appearance or from any available information, and the age so estimated shall, for purposes of this Act, and until the contrary is proved, be deemed to be the true age of the employee.

**64. Penalty for unlawful employment of child**

(1) A person who employs, engages, or uses a child in an industrial undertaking in contravention of the provisions of this Part, commits an offence.

(2) A person who uses a child in any activity constituting worst form of child labour commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both.

(3) It shall be a defence if the accused person proves that he genuinely had reason to believe that the child was above the age limit, which is the subject of the charge.

**65. Penalty in case of death or injury of a child**

(1) If a child is killed, dies or suffers any bodily injury in consequence of his employer having contravened any provision of this Part, the employer shall, in addition to any other penalty, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding twelve months or to both and the whole or any part of the fine may be applied for the benefit of the injured child or his family or otherwise as the Minister may direct.

(2) An employer shall not be liable under subsection (1)—

- (a) in the case of injury to health, unless the injury was caused directly by the contravention; and
- (b) if a charge against him under this Part in respect of the act or default by which the death or injury was caused has been heard and dismissed before the injury occurred.

**PART VIII – INSOLVENCY OF EMPLOYER****66. Insolvency of employer**

Where on an application made to him in writing by an employee or his representative the Minister is satisfied that—

- (a) the employer of an employee has become insolvent;
- (b) the employment of the employee has been terminated; and
- (c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,

the Minister shall, subject to section 69, pay the employee out of the National Social Security Fund, the amount to which, in the opinion of the Minister, the employee is entitled in respect of the debt.

**67. Definition of insolvency**

An employer is insolvent for the purposes of this Part—

- (a) if the employer is a person who—
  - (i) has been adjudged bankrupt or has made a composition or arrangement with his creditors; or
  - (ii) has died and his estate is to be administered in accordance with the Law of Succession Act;



- (b) if the employer is a company—
  - (i) a winding-up order or an administration order has been made, or a resolution for voluntary winding-up has been passed, with respect to the company; or
  - (ii) a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.

#### **68. Debts to which this Part applies**

This Part applies to the following debts—

- (a) any arrears of wages in respect of one or more months, but not more than six months or part thereof;
- (b) any amount which the employer is liable to pay the employee for the period of notice required by section 36 or for any failure of the employer to give the period of notice required by section 35(1)(b), and (c);
- (c) any pay in lieu of leave for annual leave days earned but not taken in accordance with section 28;
- (d) any basic award of compensation for unfair dismissal; and
- (e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice.

#### **69. Limitation on amount payable under section 68**

(1) The total amount payable to an employee in respect of any debt to which this Part applies, where the amount of the debt to which this Part applies, where the amount of the debt is referable to a period of time, shall not exceed—

- (a) ten thousand shillings or one half of the monthly remuneration whichever is greater in respect of any one month payable; or
- (b) in respect of a shorter period an amount proportionate to the shorter period based on the amount payable under paragraph (a).

(2) The Minister may, on the advice of the Board, by order in the *Gazette*, vary the limit specified in subsection (1).

#### **70. Role of relevant officer**

(1) Where a relevant officer has been, or is required to be, appointed in connection with an employer's insolvency, the Minister shall not make a payment under section 66 in respect of a debt until the Minister has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.

(2) A relevant officer shall, on the request of the Minister, provide the Minister with a statement for the purposes of subsection (1) as soon as is reasonably practicable.

(3) If the Minister is satisfied that he does not require a statement under subsection (1) in order to determine the amount of a debt which was owed to the employee on the appropriate date and remains unpaid, he may make a payment in respect of the debt without having received the statement.

(4) The following are relevant officers for the purposes of this section—

- (a) a trustee in bankruptcy or a permanent or interim trustee within the meaning of the Bankruptcy Act (Cap. 53);
- (b) a liquidator;
- (c) an administrator;
- (d) a receiver or manager;
- (e) a trustee under a composition or arrangement between the employer and his creditors; and
- (f) a trustee under a trust deed for his creditors executed by the employer.

#### **71. Complaint to Industrial Court**

(1) A person who has applied for a payment under section 66 may present a complaint to the Industrial Court—

- (a) that the Minister has failed to make the payment; or
- (b) that the payment made by the Minister is less than the amount which should have been paid.

(2) The Industrial Court shall not consider a complaint under subsection (1) unless it is presented—

- (a) before the end of the period of three months beginning with the date which the decision of the Minister on the application was communicated to the applicant; or
- (b) within such further period as the Industrial Court considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where the Industrial Court finds that the Minister should have made a payment under section 66, the Industrial Court shall—

- (a) make an award to that effect; and
- (b) declare the amount of any payment which it finds the Minister ought to make.

#### **72. Transfer of rights and remedies**

(1) Where, in pursuance of section 66, the Minister makes a payment to an employee in respect of a debt to which this Part applies—

- (a) on the making of the payment, any rights and remedies of the employee in respect of the debt or, if the Minister has paid only part of it, in respect of that part becomes rights and remedies of the Minister; and

- (b) any decision of the Industrial Court requiring an employer to pay that debt to the employee has the effect that the debt, or the part of it which the Minister has paid, is to be paid to the Minister.

(2) Where a debt or any part of a debt in respect of which the Minister has made a payment in pursuance of section 66 constitutes a preferential debt within the meaning of the Companies Act (Cap. 486), and the rights which become rights of the Minister in accordance with subsection (1) include any right arising under any such provision by reason of the status of the debt, or that part of it, as preferential debt.

(3) In computing payment for the purposes of subsection (2), the aggregate amount payable in priority to other creditors of the employer in respect of—

- (a) any claim of the Minister to be paid in priority to other creditors of the employer by virtue of subsection (2); and
- (b) any claim by the employee to be so paid made in the employee's own right,

any claim of the Minister to be paid by virtue of subsection (2) shall be treated as if it were a claim of the employee.

(4) The Minister shall be entitled, as against the employee, to be paid in respect of any claim made by the Minister the full amount of the claim before any payment is made to the employee in respect of any claim by the employee to be paid made in the employee's own right.

(5) Any sum recovered by the Minister in exercising any right, or pursuing any remedy, under this section shall be paid into the National Social Security Fund.

### **73. Power to obtain information**

(1) Where an application is made to the Minister under section 66 in respect of debt owed by an employer, the Minister may require—

- (a) the employer to provide him with such information as he may reasonably require for the purpose of determining whether the application is well founded; and
- (b) any person having the custody or control of any relevant records or other documents the Minister may require to produce for examination on behalf of the Minister any such records or document.

(2) A request for information, records or a document under subsection (1)—

- (a) shall be made by notice in writing to the person required to furnish the information, or produce the records or document; and
- (b) may be varied or revoked by a subsequent notice so given.

(3) A person who refuses or wilfully neglects to furnish any information or produce any record or document that he has been required to furnish or produce by a notice under this section commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(4) A person who in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement commits an offence.

(5) Where an offence under this section is committed by a body corporate and is proved—

- (a) to have been committed with the consent or connivance of; or
- (b) to be attributable to any neglect on the part of,

any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person and the body corporate commits an offence.

(6) Where a member of a body corporate manages the body corporate, subsection (5) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

#### PART IX – EMPLOYMENT RECORDS

##### **74. Records to be kept by employer**

(1) An employer shall keep a written record of all employees employed by him, with whom he has entered into a contract under this Act which shall contain the particulars—

- (a) of a policy statement under section 6(2) where applicable;
- (b) specified in section 10(3);
- (c) specified in section 13;
- (d) specified in sections 21 and 22;
- (e) of an employee's weekly rest days specified in section 27;
- (f) of an employee's annual leave entitlement, days taken and days due specified in section 28;
- (g) of maternity leave specified in section 29;
- (h) of sick leave specified in section 30;
- (i) where the employer provides housing, particulars of the accommodation provided and, where the wage rates are deconsolidated particulars of the house allowance paid to the employee;
- (j) of food rations where applicable;
- (k) specified in section 61;
- (l) of a record of warning letters or other evidence of misconduct of an employee; and
- (m) any other particulars required to be kept under any written law or as may be prescribed by the Minister.

(2) An employer shall permit an authorised officer who may require an employer to produce for inspection the record for any period relating to the preceding thirty-six months to examine the record.

(3) Where an employer who employs a child maintains a register in accordance with section 61, the employer shall be deemed to have complied with this section if the register contains in relation to each child, the particulars required to be kept by the employer under subsection (1).

**75. False entries, etc.**

A person who makes, causes to be made or knowingly allows to be made an entry in a register, record, book or other document whatsoever, required by this Act to be kept, which that person knows to be false in a material particular, or produces, furnishes, causes or knowingly allows to be produced or furnished, to an authorised officer, a register, record, book or other document which he knows to be false in a material particular, commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

[Corr. No. 1/2008]

**PART X – EMPLOYMENT MANAGEMENT****76. Notification of vacancies**

(1) This Part shall apply to an employer who employs twenty-five employees or more.

(2) An employer shall notify the Director of every vacancy occurring in his establishment, business or work place in a prescribed form giving the following details—

- (a) the employer's name and full address;
- (b) details of the vacant post;
- (c) minimum qualification required of the person seeking to be employed;
- (d) the place of work; and
- (e) the type of work, whether casual, permanent or term contract; and
- (f) such other information as the Director may require.

(3) A vacancy shall be deemed to occur on the date—

- (a) an employer creates a post to be filled by an employee or decides to engage one;
- (b) an employee terminates or has his employment terminated by the employer and the employer abolishes the post.

**77. Notification of filling or abolition of post**

When a post, which has been notified to the Director as vacant, has been filled or has been abolished before being filled, the employer shall notify the employment service office of this in writing within two weeks of the filling of the post or of its abolition, as the case may be.

**78. Notification of termination of employment**

An employer shall notify the termination of every employment and of each lay-off of a person in writing to the nearest employment service office within two weeks of the termination or lay-off.

**79. Register of employees**

An employer shall keep a register in which the employer shall enter the full name, age, sex, occupation, date of employment, nationality and educational level of each of his employees and a return of employees for each calendar year, ending on 31st December containing such information shall be sent to the Director not later than 31st January of the following year.

**80. Exemptions**

The Minister may exempt any category of employers, any sector of industry or any industry from this Part, or any section of this Part or may vary the limit of its application provided under section 76(1).

[Corr. No.1/2008.]

**81. Offence under this Part**

An employer who contravenes any of the provisions of this Part commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

**PART XI – FOREIGN CONTRACTS OF SERVICE****83. Form and attestation**

A foreign contract of service shall be in the prescribed form, signed by the parties thereto, and shall be attested by a labour officer.

**84. Requirement before attestation**

A foreign contract of service shall not be attested unless the labour officer is satisfied—

- (a) that the consent of the employee to the contract has been obtained;
- (b) of the absence of any fraud, coercion or undue influence, and any mistake of fact, or misrepresentation which might have induced the employee to enter into the contract;
- (c) that the contract is in the prescribed form;
- (d) that the terms and conditions of employment contained in the contract comply with the provisions of this Act and have been understood by the employee;
- (e) that the employee is medically fit for the performance of his duties under the contract; and
- (f) that the employee is not bound to serve under any other contract of service during the period provided in the foreign contract.

**85. Security in foreign contract of service**

(1) When the employer who enters into a foreign contract of service does not reside or carry on business within Kenya, the employer shall, or where the employer resides in Kenya, the labour officer may require the employer to give

security by bond in the prescribed form, with one or more sureties resident in Kenya and approved of by the labour officer for the due performance of the contract in such sums as the labour officer considers reasonable.

(2) Where the employer has an authorised agent resident in Kenya, the Minister may require that the security bond specified in subsection (1) be given by the agent and the agent shall personally be bound by the terms of the bond notwithstanding the disclosure of his principal.

#### **86. Offence to induce person to proceed abroad under informal contract**

A person who—

- (a) employs, engages, or knowingly aids in the employment or engagement of, a person with the intention that when so employed or engaged that person shall proceed outside the limits of Kenya; or
- (b) induces or attempts to induce an employee to proceed outside the limits of Kenya,

unless he has under this Act, duly entered into a foreign contract of service with that person or employee, as the case may be, commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

### PART XII – DISPUTES SETTLEMENT PROCEDURE

#### **87. Complaint and jurisdiction in cases of dispute between employers and employees**

(1) Subject to the provisions of this Act whenever—

- (a) an employer or employee neglects or refuses to fulfill a contract of service; or
- (b) any question, difference or dispute arises as to the rights or liabilities of either party; or
- (c) touching any misconduct, neglect or ill-treatment of either party or any injury to the person or property of either party, under any contract of service,

the aggrieved party may complain to the labour officer or lodge a complaint or suit in the Industrial Court.

(2) No court other than the Industrial Court shall determine any complaint or suit referred to in subsection (1).

(3) This section shall not apply in a suit where the dispute over a contract of service or any other matter referred to in subsection (1) is similar or secondary to the main issue in dispute.

#### **88. General penalty and offences under other laws**

(1) A person, other than a child, who commits an offence under this Act, or contravenes or fails to comply with any of the provisions of this Act for which no penalty is specifically provided shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.

(2) Nothing in this Act shall prevent an employer or employee from being proceeded against according to law for an offence punishable under any other law in force.

(3) No employer or employee shall be punished twice for the same offence.

#### **89. Savings of contracts of service made abroad**

(1) Nothing in this Act shall prevent an employer or employee from enforcing their respective rights and remedies for any breach or non-performance of a lawful contract of service made outside Kenya, but the respective rights of the parties under that contract as well against each other as against third parties invading those rights may be enforced in the same manner as other contracts.

(2) Where a contract has been executed in conformity with this Part, it shall be enforced in the same manner as a contract entered into under this Act, but no written contract, tenor and execution of which are not in conformity with this Act shall be enforced as attains an employee who is unable to read and understand the contract and any such contract shall be deemed to be executed in conformity with this Act if it is signed by the names or marks of the contracting parties and bears, as concerns any illiterate parties, an attestation to the like effect as if prescribed by this Act.

(3) Where a contract is made in a foreign country, the contract shall be attested by a judge or magistrate, and shall be authenticated by the official seal of the court to which the judge or magistrate is attached.

#### **90. Limitations**

Notwithstanding the provisions of section 4(1) of the Limitation of Actions Act (Cap. 22), no civil action or proceedings based or arising out of this Act or a contract of service in general shall lie or be instituted unless it is commenced within three years next after the act, neglect or default complained of or in the case of continuing injury or damage within twelve months next after the cessation thereof.

### **PART XIII – MISCELLANEOUS PROVISIONS**

#### **91. Rules**

(1) The Minister may, after consultation with the Board, make rules providing for all or any of the purposes, for the administration of this Act or that may be necessary or expedient for carrying out the objects or purposes of this Act, and, without prejudice to the generality of the foregoing, for all or any of the following purposes—

- (a) prescribing anything which under this Act is to be or may be prescribed;
- (b) the conditions under which employees may be housed or employed, including sanitary arrangements and water supply;
- (c) the feeding of employees in cases where food is to be supplied by the employer under the contract of service, including the quantity, variety and kind of food to be supplied;
- (d) regulating the care of sick and injured employees;



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- (e) prescribing books to be kept and returns to be rendered by employers;
- (f) prescribing—
  - (i) for any period, the maximum number of hours during which any employee or class of employees, whether generally or in relation to any particular kind of employment, may be required to work;
  - (ii) the intervals to be allowed to them for meals and rest;
  - (iii) the holidays or half holiday, with or without pay and travelling expenses to be allowed to employees;
  - (iv) any other conditions to be observed in relation to their employment; and any such conditions may relate to feeding, housing, medical attendance, education, recreation, discipline or otherwise;
- (g) appointing labour supervisors where employees of one employer exceed the maximum prescribed;
- (h) the registration and employment of casual employees;
- (i) the establishment and administration of employment exchanges, including the procedure to be adopted for the notification of employment vacancies and opportunities;
- (j) prescribing the conditions of the employment of women, young persons or children in any specified trade or occupation;
- (k) prescribing the age at which a child may be employed;
- (l) requiring employers of children to furnish information and return to any specified officer in respect of such children or their employment or the conditions of their employment;
- (m) issue by employer or any class of employers to employees or any class of employees, whether generally or in relation to any particular kind of employment, of employment cards, and the forms of such cards;
- (n) prescribing particulars to be included in a certificate of service; and
- (o) prescribing the form, and providing for the display in places of employment, of notices relating to wages and the terms and conditions of employment.

(2) Any rules made under this section may impose conditions, require acts or things to be performed or done to the satisfaction of an authorised officer or a medical officer, empower any such officer to issue orders either verbally or in writing requiring acts or things to be performed or done or prohibiting acts or things from being performed or done, and may prescribe periods or dates upon, within or before which such acts or things shall be performed or done or such conditions shall be fulfilled.

(3) Any rules made under this section may distinguish between juveniles of different ages and sexes and, in relation to women or juveniles, between different localities, occupations and circumstances.

**92. Repeal of Cap. 226 and savings**

(1) The Employment Act is repealed.

(2) Except where otherwise provided, the provisions of this Act shall be in addition to, and not in substitution for or in derogation of, the provisions of any other Act.

(3) A term of contract of service, or foreign contract of service to which Part XI of this Act applies, made after the date of commencement of this Act which provides a condition of service or employment less favourable to an employee than the like condition of employment provided by this Act, shall be void to the extent that it is so less favourable, and the relevant condition of employment provided by this Act shall be deemed to have been included in and to form part of such contract or foreign contract of service as the case may be.

**93. Transitional provisions**

A valid contract of service, and foreign contract of service to which Part XI applies, entered into in accordance with the Employment Act (now repealed) shall continue in force to the extent that the terms and conditions thereof are not inconsistent with the provisions of this Act, and subject to the foregoing every such contract shall be read and construed as if it were a contract made in accordance with and subject to the provisions of this Act, and the parties thereto shall be subject to those provisions accordingly.

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