

ANGUILLA

LABOUR CODE, 2003

ARRANGEMENT OF SECTIONS

PART I**PRELIMINARY***Section*

1. Short title
2. National policy underlying Code
3. Interpretation
4. Application of this Code
5. Enforcement against Government as an employer
6. Establishment of working conditions above minimum standards in Code

PART II**ADMINISTRATION**

7. Principles of administration
8. Labour Commissioner
9. Duties and responsibilities of Commissioner
10. Institution of proceedings
11. Commissioner to have powers of Inspector
12. Appointment of Labour Inspectors
13. Duties and responsibilities of Inspectors
14. Powers of Inspectors
15. Action of Inspector in case of threat to safety or health
16. Inspection of premises where domestic servants are employed
17. Notification of presence
18. Limitations and restrictions on inspectors
19. Records and returns
20. Obligations of employers
21. Offences and penalties in relation to Commissioner and Inspectors
22. Liability of agent, etc
23. Victimization
24. Annual reports
25. Limitation of liability

PART III**SETTLEMENT OF DISPUTES**

26. Procedure for the settlement of disputes
27. Action by Minister
28. Referral to Arbitration Tribunal or Board of Inquiry

29. Appointment of Arbitration Tribunal
30. Findings of Tribunal binding
31. Appointment of Board of Inquiry
32. Powers of Tribunal and Board to summon witnesses and administer oaths
33. Summons of Tribunal and Board to be obeyed
34. Failure to obey Summons of Tribunal or Board
35. Tribunal and Board to regulate own proceedings
36. Arbitration Ordinance not to apply

PART IV

ADVISORY COMMITTEES

37. Tripartite consultation
38. Advisory committees
39. Reports of committee
40. Orders
41. Variation of orders

PART V

BASIC CONDITIONS OF EMPLOYMENT

42. Public policy
43. Conformity with Code generally
44. Forms of employment contracts
45. Statement of working conditions
46. Probationary period
47. Rest periods and standard working hours
48. Meal intervals
49. Premium pay
50. Limitation on overtime
51. Payment where employee stopped or prevented from working full day or shift
52. Pay for period of stand-by or being on call
53. Payment in respect of public holidays
54. Payment for work on public holidays
55. Form of wages
56. Wages to be paid to employee
57. Deductions
58. Statement of deductions
59. Limitations on attachment or seizure of wages
60. Gratuities
61. Periods and place of wage payments
62. Employee not to be required or coerced regarding manner of spending wages or to use stores or services
63. Employees' leave rights generally
64. Vacation leave
65. Vacation leave pay
66. When vacation leave to be paid
67. Public holidays etc. not to affect vacation leave

68. Mutual agreement affecting vacation leave
69. Vacation leave pay upon termination of employment
70. Sick leave
71. Sick leave for periodic employees
72. Sick leave pay and social security benefit
73. Entitlement to maternity leave
74. Additional period of maternity leave
75. Payment of maternity benefits
76. Employee not to be given notice of dismissal while on maternity leave
77. Special leave for jury service and other purposes
78. Penalties and employee's right to recover
79. Penalty for not paying minimum basic wage rate
80. Penalties where person other than employer may be violator

PART VI

TERMINATION OF EMPLOYMENT, DISCIPLINARY ACTION, AND CONTINUITY OF EMPLOYMENT

81. Limitation on termination of employment by employer
82. Meaning of unfair dismissal
83. Constructive dismissal
84. Appeals against unfair dismissal
85. Burden of proof
86. Remedies for unfair dismissal
87. Retirement of employee entitled to age benefit under social security act
88. Termination of employment contract within probationary period and short-term contracts
89. Termination of employment with notice
90. Notice periods
91. Payment in lieu of notice
92. Time off to seek alternative employment
93. Recovery of wages and notice pay
94. Winding up of employer's business etc
95. Death of employer
96. Certificate of employment
97. Continuity of employment
98. Rights of employees on change of ownership
99. Effect of sale of business
100. Commissioner to be informed of intended multiple terminations for reasons of redundancy
101. Employee's notice of termination
102. Summary dismissal for serious misconduct
103. Disciplinary action
104. Termination for repeated misconduct, breach of contract, or unsatisfactory performance

PART VII

SEVERANCE PAYMENTS AND GRATUITIES FOR LONG SERVICE

105. Right of severance pay
106. Methods of calculation of severance pay

107. Entitlement to severance pay not to be affected by other payments
108. Severance pay, when payable; temporary termination; payment of interest
109. Reduction in pay because of redundancy
110. Limitation on severance pay
111. Recovery of severance pay
112. Liability of predecessor and successor employers
113. Long service gratuity

PART VIII

EQUALITY OF TREATMENT IN EMPLOYMENT

114. Objectives
115. Interpretation
116. Definition of “discrimination”
117. Prohibition of “discrimination”
118. Bona fide occupational qualifications
119. Belongers preferred
120. Special positive action
121. Sexual harassment
122. Equal remuneration
123. Partnerships
124. Employer and employee organisations
125. Inducement to discriminate
126. Burden of proof
127. Exceptions
128. Offences and penalties
129. Remedies

PART IX

PROTECTION OF YOUNG PERSONS AND CHILDREN

130. Prohibition of employment of children
131. Liability of parent or guardian
132. Restrictions on employment of young persons
133. Registers to be kept
134. Government’s vacation work programme for students
135. False representation as to age and penalties

PART X

HEALTH, SAFETY AND WELFARE

136. Interpretation
137. Exemptions and extensions
138. Non-exclusivity of provisions of this Part
139. Registration of workplaces

- 140. Health
- 141. Safety
- 142. Welfare
- 143. Special protective measures
- 144. Obligations of persons employed
- 145. Prohibition of deduction of wages
- 146. Regulations and orders
- 147. Accident and safety programme
- 148. Special powers of inspector
- 149. Reports by employer
- 150. Offences
- 151. Multiple offences
- 152. Penalties for specific offences
- 153. Penalties for offences for which no express penalty is provided
- 154. Power of court to order cause of contravention to be remedied
- 155. Penalty for person actually committing offence for which operator is liable
- 156. Proceedings where inspector or operator believes the offender to be other than operator
- 157. Prosecution of offences and recovery and applications of fines
- 158. Special provisions as to evidence
- 159. Service and sending of documents
- 160. Power of court to modify agreements and apportion expenses
- 161. Saving

PART XI

WORK PERMITS

- 162. Interpretation
- 163. Application
- 164. Prohibition against employment
- 165. Applications for work permit
- 165A. Interim work permits
- 166. Action upon application for work permit, renewal or extension
- 167. Penalty applicable to employees or self-employed persons
- 168. Penalty applicable to employers
- 169. False statements in application, etc
- 170. Fees

PART XII

MISCELLANEOUS

- 171. Limitation upon referring dispute or complaint
- 172. Limitation upon prosecution
- 173. Labour clauses in public contracts
- 174. Conflict between this Code and other law
- 175. Regulations and Orders
- 176. Repeals and savings

I Assent

Peter Johnstone
Governor

ANGUILLA

No. /2003

BILL FOR

The Labour Code, 2003

A Bill for an Act to prescribe minimum conditions of employment, to provide for the resolution of disputes between employees and employers and for the administration and observance of labour laws generally and other matters connected therewith.

[Gazetted: 2003] [Commencement: Section 1]

ENACTED by the Legislature of Anguilla

PART I**PRELIMINARY****Short title**

1. This Act (hereinafter referred to as “this Code”) may be cited as the Labour Code, 2003 and shall come into force on such date as the Governor may, by Proclamation published in the *Gazette*, appoint.

National policy underlying Code

2. The expressions of national policy provided in this section underlie and shall be used in the interpretation of the provisions of this Code.

(1) The interests of employees, employers, and the public should be taken into account and their representative organizations duly consulted in connection with the formulation and periodic revision of the law relating to labour and in connection with the resolution of issues arising in the enforcement of those laws.

(2) Employers and employees are free, through the processes of collective bargaining or otherwise, to agree on wages and other conditions of employment provided such agreements do not infringe the minimum conditions presented in this Code.

(3) Employers and employees are free to associate with one another, or with their representative associations in order to improve their economic situation, without interference, restraint, or coercion.

(4) The conditions of employment of all employees should, at the least, be such as to enable employees to obtain, for themselves and their families, the basic necessities of life to which all human beings are entitled.

(5) The employment conditions of employees should be those which serve to preserve their health, safety, and welfare, and to prevent industrial accidents.

(6) Equal service or work should attract equal remuneration and conditions of employment regardless of nationality, age, gender, race, colour, ethnic origin, religion, political belief, family responsibility, marital status, disability, or sexual orientation of the employee.

(7) Employers should aim to maximize profits by competing on the basis of managerial efficiency and use of entrepreneurial skills rather than by seeking to reduce or otherwise derogate from their employees' working conditions.

Interpretation

3. In this Act, unless the context otherwise requires—

"basic wage" means that part of an employee's remuneration for services which is payable in money for his normal hours of work;

"child" means a person under the age of fifteen years;

"collective agreement" means any contract between one or more employers or their representatives, and two or more employees or their representatives, relating to the terms and conditions of employment or any other matter of mutual interest;

"Commissioner" means the person for the time being appointed to or acting in the post of Labour Commissioner by virtue of section 8;

"compulsory school age" is that period during which a child or young person is required to attend school under the Education Ordinance, or any other law for the time being amending or replacing it;

"conditions of employment" refers to the elements of hire and termination of employment, the remuneration, hours, duties and the surrounding terms of employment and to all other factors directly related to the employment arrangement;

"confinement" means labour resulting in the birth of a living child or labour after not less than twenty-eight weeks of pregnancy resulting in the birth of a child, whether alive or dead;

"continuous employment", for the purposes of section 73 (1) and Part VII, means an uninterrupted period of employment with an employer, and any predecessor-employer, provided that any break in employment not exceeding six months shall not be deemed to break continuity of employment, but in any case, the duration of such breaks shall not, count as employment for the purposes of calculating entitlements to severance pay or gratuities for long service as may be provided by regulations made under section 113;

"dispute" or "complaint" means any difference between one or more employers or organisations representing employers and one or more employees or organisations representing employees relating in whole or in part to any matter covered by this Code or any law relating to labour or generally arising out of the relationship between the employer and the employee;

"employee" means any person who enters into or works under, or who stands ready to enter into or work under, or where a contract of employment has been terminated for any reason, a person who entered into or worked under, a contract with an employer, personally to perform any services or labour, whether the contract be oral or written, expressed or implied; and the term includes a person whose services or labour have been interrupted by a suspension of work during a period of leave, temporary lay-off, strike, or lockout, as well as an apprentice whose services or labour may be designed primarily to train such apprentice;

"employer" includes a person, body corporate, undertaking, association, public authority, or body of persons, who or which employed, employs, or stands ready to employ, a person under an employment contract;

"employment contract" means any contract, whether expressed or implied and whether written or oral, under which it is agreed that one person (the employee) will perform certain services for another (the employer), and the term shall include any indenture or contract of apprenticeship or engagement as a commission agent;

"essential services" means the Water and Sewerage Services, Fire and Rescue Services, Electricity Generation and Distribution Services, Telephone Services and Hospital Services;

"established employee" means a public officer or a person employed by the Government whose salary is paid from or out of the personal emoluments included in the Official Estimates of Anguilla;

"gratuities" means remuneration, in money, received by an employee from customers, whether directly or through an employer and whether individually or shared with fellow employees;

"gross wage" means the total remuneration for services received in money, in kind, and in privileges or allowances, including gratuities and premium pay;

"hours of work" means the period during which an employee's services are under the control of his employer, and includes all rest, meal or break periods of fifteen minutes or less, and hours of work earned on a public holiday for which the employee should not suffer loss of pay;

"inspector" means any person appointed as Labour Inspector in accordance with the provisions of section 12;

"lock-out" means—

- (a) the exclusion by an employer of any or all of his employees from any premises on or in which work provided by the employer has been performed; or
- (b) the total or partial discontinuance by the employer of his business or the provision of work, with a view to inducing his employees, or any persons in the employ of any other employer or employers to agree to, or to comply with, any demands or proposals relating to any dispute, or to abandon any demand or modification of any such demand;

"long service gratuity" means the right to remuneration, or the amount thereof, which may be possessed by an employee whose employment is terminated in accordance with regulations made under section 113;

"Minister" means the Minister responsible for the administration of this Code;

"night work" means work performed between the hours of 10:00 p.m. on one day and 5:00 a.m. on the following day;

"non-established employee" means a person who is employed by the Government whose wage or salary is paid from or out of funds other than personal emoluments included in the Official Estimates of Anguilla;

"normal hours of work" means those hours of work for which no premium pay is due under the provisions of section 49;

"parent or guardian" means a parent or guardian of a child or young person and includes any person who is liable for the maintenance of, who has the custody of or has control over a child or young person, or who has or would have a direct benefit from the earnings of the child or young person;

"part-time employment" means an employment contract in which the employee is required to provide his services each week, but for less than 30 hours in any week;

"periodic employment" means an employment contract, or succession of employment contracts with the same employer, or a successor-employer, in which an employee is required to provide his services at intervals, so that the employee is not, in any twelve month period, continuously employed by that employer, and the term includes casual employment;

"predecessor-employer", in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership or in the part of an undertaking in which that person is involved, is no longer the employer of that person;

"premium pay" refers to the form of payment mentioned in section 49;

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

"requirements", "obligations", or "provisions", include the requirements, obligations, or provisions of any regulations or orders made under this Code;

“severance pay” means the right to remuneration, or the amount thereof, which may be possessed by an employee whose employment is terminated under the circumstances defined in Part VII;

"ship" means any seagoing ship or boat of any description registered in Anguilla;

"strike" means the refusal or failure in concert by two or more employees of an employer to continue, whether completely or partly, to work or to resume their work or to comply with the terms and conditions of employment applicable to them, or the retardation by them of the progress of work, or the obstruction by them of work with a view to inducing such employer or any other employer, to agree to, or to comply with, any demands or proposals relating to any dispute or to abandon any demand or modification of any such demand;

"substantially equivalent employment" means employment at work which, although not identical to that which is the basis of comparison requires similar skills, affords relatively similar prospect of progression, and pays a relatively equal wage;

"successor-employer", in relation to the employment of a person, is one who, in consequence of a change occurring in the ownership of an undertaking or in that part of the undertaking in which the person is involved, has become the new employer of that person;

“undertaking” comprises public and private undertakings and any branch thereof and includes—

- (a) mines, quarries, and other works for the extraction of minerals from the earth;
- (b) workplaces in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including undertakings engaged in ship-building, or in the generation, transformation or transmission of electricity, gas or motive power of any kind;
- (c) building and civil engineering works, including constructional, repair, maintenance, alteration and demolition work;
- (d) enterprises engaged in the transport of passengers or goods by road, rail, sea, inland waterway or air, including the handling of goods at docks, quays, wharves, warehouses or airports;
- (e) commercial establishments;
- (f) postal and telecommunication services;
- (g) establishments and administrative services in which the persons employed are mainly engaged in clerical work;
- (h) newspaper and printing establishments;
- (i) hotels, boarding houses, restaurants, clubs, cafés and other refreshment houses;
- (j) establishments for the treatment and care of the sick, infirm or destitute and of orphans;
- (k) theatres and places of public entertainment;

- (l) utilities engaged in the provision of water, sewerage, and waste disposal services;
- (m) enterprises engaged in farming, cropping, fishing or other forms of agriculture;

"unfair dismissal" refers to a termination of employment which may be an unfair dismissal under Part VI;

"wages" means any money or other thing paid or contracted to be paid, delivered, or given at periodic intervals, as recompense, reward, or remuneration for services or labour done;

"workplace" means a place at which work is performed, and includes property belonging to or occupied by the Government;

"young person" means a person who has ceased to be a child and who is under the age of eighteen years.

Application of this Code

4. (1) To the extent that provisions of this Code purport to apply to employers, they shall apply to all employers operating or doing business in Anguilla, including the Government as the employer of its non-established employees, but they shall not bind the Government as the employer of its other employees, except that Part X shall bind the Government in relation to those other employees.

(2) To the extent that provisions of this Code apply to employees, they shall apply to all employees of employers operating or doing business in Anguilla, including the non-established employees of the Government, but they shall not apply to

- (a) established employees; and
 - (b) members of the Royal Anguilla Police Force.
- (3) The provisions of this Code shall not apply to persons
- (a) holding the status of diplomatic agents; or
 - (b) who the Minister may, by declaration, exempt from the provisions of this Code.

Enforcement against Government as an employer

5. Where the Government as an employer is in contravention of any provision of this Code or any regulations or Orders made thereunder, which contravention is described therein as an offence carrying with it a liability to a penalty upon summary conviction, notwithstanding anything to the contrary provided in relation thereto, no criminal proceedings shall be commenced, instituted or laid against the Crown but instead civil proceedings may be instituted or commenced by the employee aggrieved against the Crown, and the court may grant such relief as has been claimed or as the court sees fit including any sum owing to the employee by way of wages, holiday pay or other sum owing to the employee arising out of his employment.

Establishment of working conditions above minimum standards in Code

6. Nothing in this Code shall be construed as prohibiting an employer, either unilaterally by individual contract with an employee or with employees, or by collective agreement with employee

representatives, from establishing working conditions more advantageous to employees than those minimum standards, which are set forth in this Code.

PART II

ADMINISTRATION

Principles of administration

7. The following principles shall govern the administration of this Code—
- (a) responsibilities shall be fixed, so that administrators of this Code, employers and employees and their representatives, and the general public know the persons responsible for the administration of this Code;
 - (b) uniform procedures, to the extent practicable, shall be established and publicized;
 - (c) where standards or criteria are set forth in one or more provisions of this Code, they shall be adhered to in the administration of this Code;
 - (d) administration of this Code shall be speedy;
 - (e) to the extent practicable, all actions taken by administrators of this Code shall be recorded in writing and, except where they are self-evident, reasons for the actions shall be set forth in such writing;
 - (f) voluntary adjustment or settlement of issues, without formal action by the administrators, is to be encouraged, and any such adjustment or settlement, unless clearly contrary to the purposes of this Code, shall be accepted as disposing of the issues adjusted or settled;
 - (g) actions of administrators of this Code shall be publicized to the extent practicable, provided that nothing herein shall be construed as requiring that the efforts of the administrators to secure voluntary adjustment or settlement of issues or the actions or statements of parties engaged therein shall necessarily become matters of public knowledge;
 - (h) persons to whom the administration of any provisions of this Code is entrusted shall act, in connection therewith, impartially and without interference.

Labour Commissioner

8. There shall be a Labour Commissioner who shall be in charge of the Labour Department, subject to the general direction of the Minister.

Duties and responsibilities of Commissioner

9. (1) The Commissioner shall administer such laws and regulations as may be in force from time to time regulating relationships in the field of labour.
- (2) Without prejudice to the generality of subsection (1), the Commissioner shall—

- (a) be available to assist in the resolution of any question arising out of employer-employee relationships whether or not such question arose out of a labour law;
- (b) participate in the preparation, co-ordination and administration of national employment policy;
- (c) provide technical advice to the Government in all labour matters;
- (d) keep under review the situation of the unemployed, employed and under-employed and draw attention to the terms and conditions of employment and working life of the employed and under-employed and submit proposals for improvement;
- (e) make technical advice available to employers and employees and their respective organizations at their request;
- (f) make his services available to employers and their respective organizations with a view to promoting effective co-operation between the Government, employers and employees;
- (g) receive all questions, complaints, petitions or notifications of differences regarding employment between employers and employees; and
- (h) investigate and resolve disputes or complaints pursuant to Part III.

Institution of proceedings

10. The Commissioner may institute proceedings in respect of any offence committed under the provisions of this Code and such proceedings may be prosecuted by him or on his behalf by an inspector or a police officer.

Commissioner to have powers of inspector

11. The Commissioner shall have all the powers conferred upon an inspector.

Appointment of labour inspectors

12. (1) The Governor, after consultation with the Public Service Commission, may appoint labour inspectors to assist the Commissioner in the execution of his duties.

(2) An inspector shall be furnished with a certificate of appointment in the form approved by the Commissioner, and when visiting any premises or questioning any person in connection with the exercise of his powers shall, upon request, produce and display the certificate.

Duties and responsibilities of inspectors

13. An inspector shall, under the general directions of the Commissioner—

- (a) ensure that the laws in force concerning conditions of employment and the protection of employees in their occupation are being duly applied;
- (b) give technical information and advice whenever necessary, to employers and employees as to the most effective means of complying with existing laws;

- (c) submit to the Commissioner inspection reports from time to time and indicate in those inspection reports difficulties or abuses not specifically covered by the existing laws;
- (d) compile such statistical data in the course of his duties as he may be instructed by the Commissioner to establish; and
- (e) assist, as required, in the resolution of disputes or complaints.

Powers of inspectors

14. An inspector may—

- (a) enter freely and without previous notice at any hour of the day or night any workplace liable to inspection;
- (b) enter by day any premises which he may have reasonable cause to believe to be liable to inspection;
- (c) interrogate alone or in the presence of witnesses, the employer or any person in or at a workplace on any matter concerning the application of the requirements of the law relating to labour;
- (d) carry out any examination, test or enquiry which he may consider necessary in order to ensure that the requirements of the law are being observed;
- (e) require the production of any books, registers or documents, the keeping of which is prescribed by any law relating to conditions of employment, in order to see that they are in conformity with the provisions of this Code, and copy such documents or make extracts from them;
- (f) enforce the posting of notices as required by law;
- (g) take or remove from any workplace for purposes of analysis, samples of materials and substances used or handled, subject to the employer or the employer's representative being notified at the time of such taking or removal of any such samples or substances;
- (h) require from any employer, information as to the number of employees and the wages, hours and conditions of employment of such employees or returns consisting of such information; and
- (i) arrange to be accompanied by a police officer into any place in or on which the inspector has reasonable cause to apprehend serious obstruction in the execution of his duty.

Action of inspector in case of threat to safety or health

15. Where an inspector has reasonable cause to believe that at any workplace, the building, the layout of machinery and equipment or working method constitute a threat to the safety or health of any employee, he shall serve written notice upon the owner or person in charge of such workplace requiring such owner or the person in charge to carry out within a specified time, such alterations to the workplace, the building, layout or working of machinery and equipment or working method as

may be necessary to secure compliance with the law relating to the safety or health of the employees and if such owner or the person in charge does not comply with such directions, he commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Inspection of premises where domestic servants are employed

16. Notwithstanding the provisions of paragraphs (a) and (b) of section 14, an inspector shall not visit or inspect any private premises where domestic servants are employed or believed to be employed except between the hours of 8:00 a.m. and 6:00 p.m.

Notification of presence

17. On the occasion of an inspection or visit, an inspector shall notify the employer or his representative of his presence, unless he considers that such notification may be prejudicial to the performance of his duties.

Limitations and restrictions on inspectors

18. (1) An inspector shall—

- (a) not have a direct or indirect interest in any enterprise under his inspection or supervision;
- (b) not reveal at any time manufacturing or commercial secrets or working processes which may come to his knowledge in the course of his duties; and
- (c) treat as confidential, the source of any complaint bringing to his notice a defect or breach of the law and shall give no intimation to the employer or his representative that a visit of inspection was made in consequence of the receipt of such complaint.

(2) A person who contravenes the provisions of this section commits an offence and is liable on summary conviction to a fine of one thousand dollars or to Imprisonment for a term of six months or to both.

Records and returns

19. (1) An employer shall keep at an address in Anguilla an accurate record, in such form as the Commissioner may approve, in respect of each employee showing—

- (a) the employee's name, address and hiring dates, either by the employer or by a predecessor-employer;
- (b) the number of hours worked each day in each pay period;
- (c) the basic and other wages paid to the employee for each pay period; and
- (d) the leave taken by the employee by type, duration and date.

(2) Where an employee's services have been terminated for any reason, an employer shall preserve the employee's records referred to in sub-section (1) for a period of not less than six years after the date of termination.

(3) Upon demand by an employee, the employer shall make available his record for inspection and copying by such employee or his representative.

(4) An employer who contravenes subsection (1), (2) or (3) commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(5) Notwithstanding sub-section (1), if there is no present record of an employee's latest hiring date by virtue of the fact that the requirement of subsection (1) was not in effect upon such date, the question of the employee's hiring date shall be one to be disposed of by the procedures set forth in section 26.

(6) The Commissioner may, within such period as may be determined by notice in the *Gazette*, or any newspaper circulating in Anguilla, require employers to submit returns containing such particulars and information contained in the employers' records kept in terms of sub-section (1) as may be so determined and specified.

(7) The Commissioner may from time to time compile, analyse and tabulate statistics collected by way of returns submitted in terms of this section and cause, subject to the directions of the Minister, such statistics, or abstracts therefrom to be published in such form as may be determined by the Commissioner, provided that such published statistics shall not permit a particular employer, employee, or agricultural or industrial undertaking to be identified.

Obligations of employers

20. An employer whose premises are visited by an inspector shall—

- (a) permit the inspector access to any place or undertaking to be inspected;
- (b) furnish the inspector with any information as will enable him to carry out the duties of his office; and
- (c) grant to the employees and their representatives, every facility for communicating freely with the inspector when on a visit of inspection.

Offences and penalties in relation to Commissioner and inspectors

21. A person who—

- (a) hinders or obstructs the Commissioner or an inspector in the exercise of the powers and duties conferred on him by this Code,
- (b) fails or refuses to permit his employees free access to and communication with an inspector while on a visit of inspection,
- (c) refuses or wilfully neglects to furnish the Commissioner or an inspector, any information or return or particular that may be required of the employer under this Code, or
- (d) knowingly furnishes, or causes, or allows to be furnished to the Commissioner or an inspector, any information or return which is false in any material particular,

commits an offence and is liable on summary conviction to a fine of one thousand dollars.

Liability of agent, etc.

22. Where any act or default is committed for which the owner or person in charge is liable under this Code, then the director, secretary, agent, or servant of such owner or the person in charge shall be deemed to have committed that offence unless such director, secretary, agent or servant proves that the offence was committed without his consent or connivance.

Victimization

23. (1) A person who commits an act of victimization against another person commits an offence and is liable on summary conviction to a fine of two thousand dollars.

(2) For the purposes of subsection (1), a person shall be taken to commit an act of victimization against another person if the first-mentioned person subjects or threatens to subject the other person to any detriment—

- (a) on the ground that the other person—
 - (i) has made, or proposes to make, a complaint under this Code;
 - (ii) has brought, or proposes to bring, proceedings under this Code against any person;
 - (iii) has furnished or proposes to furnish, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under this Code;
 - (iv) has attended or proposes to attend an inquiry under this Code or to provide evidence or testimony as a witness; or
 - (v) has made a good faith allegation that a person has committed an act of discrimination in contravention of this Code.
- (b) on the ground that the first-mentioned person believes that the other person has done, or proposes to do, an act or thing referred to in paragraph (a).

Annual reports

24. The Commissioner shall, as soon as practicable after the thirty-first day of December in each year, prepare and furnish the Minister with a report, in such form as the Minister may approve, on the operations of the Labour Department during the preceding twelve months, and such report shall be laid before the House of Assembly by the Minister.

Limitation of liability

25. No proceedings shall be brought against compensation payable by, the Commissioner, an inspector, or any other officer employed in carrying out the provisions of this Code in respect of any act done in good faith under this Code.

PART III

SETTLEMENT OF DISPUTES

Procedure for the settlement of disputes

26. (1) Any dispute or complaint arising out of any matter covered by this Code or any law relating to labour or generally out of the relationship between the employer and the employee may be referred by either party concerned or his representative to the Commissioner for settlement.

(2) Upon receipt of such reference, the Commissioner shall investigate the matter and make every effort to dispose of the issue raised therein by voluntary settlement in accordance with industrial relations practice, and in pursuance thereof he may—

- (a) request the parties to meet with him jointly or separately;
- (b) request the parties to state the facts as they know them and their respective positions on the issues;
- (c) request the parties to present witnesses and he may examine any person in relation to the issues, either alone or in the presence of others, at his discretion; and
- (d) utilize the process of conciliation or mediation or any other device designed to facilitate voluntary adjustment.

(3) Where the Commissioner fails to achieve a settlement after twenty-one days from the date of reference on the basis of the provisions of subsection (2) or such longer period as the parties may agree, he shall transmit the matter, with a full report thereon, to the Minister.

Action by Minister

27. On receipt of a report transmitted by the Commissioner under section 26(3), the Minister may—

- (a) remit the matter to the Commissioner with such instructions as he considers fit;
- (b) himself attempt to achieve a voluntary settlement of the issue, taking whatever steps he deems appropriate; or
- (c) refer the matter to a Board of Inquiry or an Arbitration Tribunal within seven days in accordance with the provisions of section 28, as the case may be.

Referral to Arbitration Tribunal or Board of Inquiry

28. (1) Where, after the expiration of a period of twenty-one days from the date of transmission in accordance with the provisions of section 26(3) or such longer period as the parties may agree, the Minister fails to achieve a settlement using the processes set out in section 27(b), he may—

- (a) refer the matter to an Arbitration Tribunal for settlement where—
 - (i) the dispute is one involving essential services;
 - (ii) in the opinion of the Minister the dispute is likely to endanger the health and safety of the public; or

- (iii) the dispute is one involving the application of any provision of any law, collective agreement or contract of employment;
- (b) in the case of a dispute other than a dispute mentioned in paragraph (a), refer the matter for recommendation to a Board of Inquiry, if the parties agree in advance to accept the recommendation of such Board; or
- (c) in the case of a dispute other than a dispute mentioned in paragraphs (a) and (b), give notice in writing to the parties concerned that he intends to refer the dispute to an Arbitration Tribunal for settlement.

(2) Where the Minister has given notice under paragraph (c) of sub-section (1), he shall refer the dispute to an Arbitration Tribunal for settlement unless, within fourteen days from the date on which he gave such notice, he receives written notice from either the employees' representative, or in the absence of such representative, from a majority of the employees involved in the dispute, that the majority of such employees object to the reference of the dispute to arbitration and agrees to withdraw the complaint.

(3) Where the dispute or complaint is one referred to in sub-section (1) (a), no strike or lock-out shall take place unless the time limits set out in sections 26(3), 27, and subsection (1) of this section have not been complied with, and any strike, lock-out or other industrial action which has begun shall cease on reference of the matter to arbitration.

Appointment of Arbitration Tribunal

29. (1) In accordance with the provisions of section 27, or subsection (1) (a) of section 28, the Minister may appoint an Arbitration Tribunal (hereinafter referred to as "the Tribunal"), to settle any dispute or complaint transmitted to him under subsection (3) of section 26.

(2) A Tribunal shall consist of one person appointed by Order by the Minister, which person may be appointed *ad hoc* or for a renewable period of one year and the Minister may decide to have both an *ad hoc* and permanent Tribunal.

(3) A person appointed to constitute a Tribunal under subsection (2) shall not be removed while being in charge of a case or before the expiry of his term except for stated misbehaviour or incapacity to perform his duties whether arising from infirmity of body or mind.

(4) The Minister shall appoint two assessors, one representing the employer and the other representing the employee, who shall be nominated by their respective representative organizations, or in the absence of such respective organizations by the employer and the employee respectively, to assist the Tribunal appointed under subsection (1).

(5) If the employer or employee fails to nominate a representative within fourteen days of notification by the Minister, the Minister may appoint a representative on his behalf.

Findings of Tribunal binding

30. (1) The findings of a Tribunal shall be binding upon the parties to the dispute and may only be appealed to the High Court on a point of law.

(2) Non compliance with the findings of a Tribunal is an offence and any person guilty of such offence is liable on summary conviction to a fine of five hundred dollars or to imprisonment for

a term of six months or both. In addition the court may having regard to the finding of the Tribunal make such order as it considers necessary to enforce the finding of the Tribunal.

Or

(2) Where a person or organisation has failed to comply with any decision of the Tribunal, any organisation or person affected thereby may, after 14 days from the date on which the decision was made or the date provided in it for compliance, whichever is the later date, file in the High Court a copy of the decision.

(3) A decision of the Tribunal that has been filed in the Court pursuant to subsection (2) shall be registered in the High Court and, when registered shall have the same force and effect, and proceedings may be taken thereon, as if the decision were a judgement obtained in the High Court.

Appointment of Board of Inquiry

31. (1) For the purpose of inquiring into, reporting on, and making recommendations for the settlement of any dispute or complaint which has been transmitted to him under subsection (3) of section 26, the Minister, in accordance with the provisions of section 27 or subsection (1)(b) of section 28, may appoint a Board of Inquiry (hereinafter referred to as "the Board").

(2) The Board shall consist of such number of members, who shall be appointed by the Minister, as he may determine.

(3) Where the number of members is more than one, an equal number shall be appointed to represent employers and employees respectively on their nomination or on the nomination of their respective organizations, where such organizations exist.

(4) The Minister shall appoint a person who does not represent the interests of employers or employees to be the Chairman of the Board.

(5) The Board shall enquire into any matter referred to it and as soon as possible submit its report and recommendations thereon to the Minister, who shall release such report and recommendations to the parties to the dispute.

Powers of Tribunal and Board to summon witnesses and administer oaths

32. (1) A Tribunal or a Board may summon any person to attend before such Tribunal or Board, as the case may be, and to give evidence or to produce any document or other record in the possession or under the control of such person.

(2) A summons under this section may be served either personally or by registered post.

(3) A Tribunal or a Board may administer oaths or take the affirmation of any witness appearing before them.

(4) A person who makes a false statement under oath or affirmation commits an offence and is liable on summary conviction to a fine of five hundred dollars.

Summons of Tribunal and Board to be obeyed

33. Any person summoned pursuant to section 32(1) to attend and give evidence or to produce any document or other record before a Tribunal or a Board shall be—

- (a) bound to obey the summons served upon him;
- (b) entitled to the same right or privilege as he would have before a court.

Failure to obey summons of Tribunal or Board

34. A person who fails to obey a summons served upon him pursuant to section 32 (1) commits an offence and is liable on summary conviction to a fine of five hundred dollars.

Tribunal and Board to regulate own proceedings

35. A Board or Tribunal, as the case may be, shall regulate its own proceedings.

Arbitration Ordinance not to apply

36. The Arbitration Ordinance shall not apply to any proceedings of a Tribunal under this Code or to any award made by it.

PART IV**ADVISORY COMMITTEES****Tripartite consultation**

37. The Minister shall consult with employers and employees or their respective representatives, if any, from time to time in such manner as he may think fit, on any matter affecting the relationship between employers and employees and conditions of working life in general.

Advisory Committees

38. (1) The Minister may appoint Advisory Committees to investigate the conditions of employment in general or of a particular trade or occupation, the extent of unemployment, the cost of living, and the general conditions of the economy of Anguilla and to make recommendations to the Minister on those matters, and as to the minimum basic wage rate which should be payable in respect of any trade or occupation or employment in general.

(2) A Committee shall consist of an equal number of employers and employees and representatives of such other interest groups, as the Minister deems appropriate.

(3) The Minister shall appoint a person who does not represent the interests of employers or employees to be chairman of a Committee.

(4) The members representing employers and employees shall be appointed after consultation with representatives of the employers and employees concerned.

(5) A Committee may hold public meetings before which it may, by public notice, invite employers and employees, and their representatives to appear and make recommendations.

(6) A Committee may engage the services of one or more assessors, who in the opinion of the Committee, is or are qualified in the matter under investigation.

(7) Any person may, by written notice signed by the chairman of a Committee, be required to—

- (a) attend any meeting of the Committee and give evidence under oath or otherwise;
- (b) produce at any such meeting any document or other records which, in the opinion of the Committee, is relevant to the matter under investigation; and
- (c) furnish such particulars as may be required by the Committee.

(8) Where, for the purposes of subsection (7), a witness declines to answer any question or produce any document or other record on the ground that it will tend to incriminate him, or on any other lawful ground, he shall neither be required to answer such question or produce such document or other record, nor be liable for any penalties for refusing to do so.

(9) A person who wilfully fails to comply with a notice addressed to him under subsection (7) or without lawful excuse fails to answer any question or to produce any document, commits an offence and is liable on summary conviction to a fine of three hundred dollars.

(10) All questions arising at any meeting of a Committee shall be determined by a majority of votes of all members, including the chairman, who are present, and no such determination of the Committee shall be considered invalid by reason of any vacancy or absence among the members.

(11) The Minister may make rules prescribing the powers, duties and procedures of any Advisory Committees appointed under subsection (1) of this section.

Reports of Committee

39. (1) A Committee shall—

- (a) issue interim reports with recommendations upon request by the Minister; and
- (b) issue a final report with recommendations within one month of completing its investigation.

(2) The reports referred to in sub-section (1) shall be addressed and delivered to the Minister, along with specially concurring, minority and dissenting reports, if any.

Orders

40. (1) Having regard to the recommendations of the Committee, the Minister shall issue an Order prescribing the conditions of employment, or the minimum basic wage rate payable for employment, in any industry, trade, occupation or employment.

(2) For the purposes of this Act, the reference to minimum basic wage shall be construed to mean minimum basic wage in monetary terms.

Variation of Orders

41. The Minister may vary the provisions of an Order made pursuant to this Part, but only with like advice and in the manner set out in this Part.

PART V**BASIC CONDITIONS OF EMPLOYMENT****Public policy**

42. The following expressions of public policy underlie and shall be used in the interpretation of this Part—

(1) An employee should know what his job consists of, what his employment conditions are, and, if his employment is terminated, the reason for the termination.

(2) An employee is entitled to reasonable breaks in employment, whether because of physical disability or for rest and rehabilitation.

(3) In the interests of spreading employment opportunities and of preventing industrial accidents, there shall be a reasonable limitation upon working hours of employees.

(4) To the extent that circumstances dictate that working hours be reasonably extended, premium pay ought to be received therefor.

Conformity with Code generally

43. An employer shall not provide employment nor is an employee obliged to accept employment, under terms and conditions, which do not conform generally to the provisions of this Code.

Forms of employment contracts

44. (1) It shall be lawful for an employer and employee to enter into an individual employment contract, either written or oral, which specifies conditions of employment, but any provision thereof which—

(a) establishes conditions which fall below the minimum employment standards established by this Code shall be void;

(b) requires that the employee refrain from associating with other employees or with a trade union for collective bargaining purposes shall be void.

(2) Where an employment contract for a fixed term is renewed on one or more occasions so that the total period involved is twelve months or more, such contract shall, for the purposes of this Code, be deemed to be for an indefinite period.

(3) When it appears to a Tribunal appointed in accordance with section 29 that a fixed term employment contract is renewed in such a way as to evade the provisions of this Code, the Tribunal shall determine such contract to be for an indefinite period.

(4) It shall be lawful for an employer, or group of employers, to enter into a written collective agreement with two or more employees or their representatives.

(5) A copy of an agreement reached under sub-section (4) shall be lodged in the prescribed manner with the Commissioner within seven days of being signed by the parties to the agreement, for registration as a collective agreement.

(6) A collective agreement lodged for registration under this section which, in the opinion of the Commissioner, is in conflict with the requirements of section 43 shall be returned to the parties for amendment, and shall not be registered by the Commissioner until he is satisfied that the provisions of that section have been met.

Statement of working conditions

45. (1) Where an employee is engaged by an employer for a term of employment exceeding three months, the employer shall furnish the employee with a written statement within ten days of engagement containing at least—

- (a) the name and address of the employer and employee and the general responsibilities and related duties for which the employee is being hired;
- (b) the regular hours of work and rest periods;
- (c) the starting pay, and methods of computing the same;
- (d) the term of employment, if other than indefinite;
- (e) the period of probation (if any); and
- (f) the employee's leave and vacation entitlement.

(2) With respect to persons currently employed for periods exceeding three months on the date of the coming into force of this Code, each employer shall, if he has not already done so, within twenty days after such date, furnish each such person with a written statement which shall set forth—

- (a) the name and address of the employer and employee and the general responsibility and related duties for which the employee is being hired;
- (b) the regular hours of work, and rest periods;
- (c) the starting pay, and methods of computing the same;
- (d) the term of employment, if other than indefinite;
- (e) the period of probation (if any); and
- (f) the employee's leave and vacation entitlement.

(3) Where, subsequent to the giving of a statement under subsection (1) or (2), the employer desires to change the responsibilities and related duties of an employee as set forth in such statement, he shall at the time he effectuates any such change, furnish such employee with a new written statement.

(4) Notwithstanding subsection (3), where there is no organization representing an employee who is employed for an indefinite period, the employer shall in consultation with the employee

review the employee's wages and other terms and conditions of employment at least once in every two years.

Probationary period

46. (1) The probationary period of any employee shall not exceed three months, except in the case of an employee of the rank of a supervisor or above, where the probationary period may not exceed six months.

(2) Notwithstanding subsection (1)—

(a) where the contract of employment does not exceed three months, no probationary period need be included in the contract of employment, but if such a contract does specify a probationary period, the provisions of section 45 (1) shall apply; and

(b) the employer may, after consultation with the employee or his representative extend the probationary period for a further period not exceeding the duration of the original probationary period, where it is in the interest of the employee to do so.

(3) During the probationary period the employee shall be given reasonable training and general orientation in the duties and responsibilities of the position for which he was hired and the employee shall be kept informed of his progress.

Rest periods and standard working hours

47. (1) Except where otherwise provided by a collective agreement, every employer shall permit each of his employees to enjoy in every period of seven consecutive days a period of rest comprising at least twenty-four consecutive hours.

(2) The standard work-day shall be eight hours and the standard workweek forty hours.

(3) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part IV and after approval of the Governor in Council, vary the standards prescribed in this section by issuing an Order to that effect.

Meal intervals

48. (1) An employer shall not require or permit an employee—

(a) to work for more than five hours continuously without a meal interval of not less than one hour, or, where subsection (2) has been applied, of not less than the agreed time;

(b) to perform any work during his meal interval.

(2) An employer may agree with his employee to reduce the employee's meal interval to not less than thirty minutes.

(3) For the purposes of this section, a period of work interrupted by an interval of less than one hour, or, in the case of a meal interval regulated by an agreement under subsection (2), by an interval of less than the agreed time, shall be deemed to be uninterrupted.

Premium pay

49. (1) Subject to subsections (3) and (4), for any work done by an employee for his employer at the employer's request, on a rest day, or in excess of eight hours on any work-day or in excess of forty hours in any week, the employer shall pay the employee at the rate of at least one and one half times his basic rate of pay, and hours for a holiday shall be counted as hours worked towards a forty-hour week.

(2) The Minister may, after considering the recommendations of an Advisory Committee appointed under Part IV, vary the standards prescribed in this section by issuing an Order to that effect.

(3) In arranging for overtime work, the employer shall take into account the special circumstances of young persons under eighteen years of age, pregnant women, nursing mothers and handicapped persons.

(4) The provisions of subsection (1) shall not apply to salaried employees holding positions of supervision or management whose terms and conditions of employment shall be fixed at a level which adequately compensates them.

(5) An employer shall not classify an employee as holding a position of supervision or management under subsection (4) if his duties and compensation are not commensurate with such status and a Tribunal appointed under this Act or a court may inquire into the matter and make a determination giving due regard to this rule and to the right of an employer to manage his business.

Limitation on overtime

50. (1) Except as provided in subsection (2), an employer shall not employ any person in excess of twelve hours in any period of twenty-four hours or in excess of sixty hours in any period of one hundred and sixty eight hours.

(2) The Commissioner may, in his discretion, approve in writing a temporary increase in the hours of work authorised by this Code in any establishment in the following circumstances—

- (a) in the case of an accident, actual or threatened or urgent work to the plant or equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the establishment,
- (b) in the event of abnormal pressure of work due to special circumstances in so far as the employer could not be expected to resort to other measures,
- (c) in order to prevent the loss of perishable goods, but in no case shall the night rest period or, for employees working at night, the day rest period be less than eight hours.

Payment where employee stopped or prevented from working full day or shift

51. (1) Where an employee is required to report for work and does so but is prevented from working by an act of God or *force majeure*, or is stopped from working by his employer or anyone lawfully acting for him, payment to such employee shall be made on the following basis—

- (a) where such employee has worked for more than half a day, the employer shall pay such employee wages for a full day, or where such employee works for half a day or

less than half a day, so however that the total number of hours worked is not less than two and one half hours, the employer shall pay such employee wages for half a day;

- (b) where such employee has worked on a shift basis and such employee has worked more than half of the shift, the employer shall pay such employee wages for a full shift, or where such employee has worked half of the shift or less than half of the shift, so however that the total number of hours worked is not less than two and one half hours, the employer shall pay such employee wages for half a shift;
- (c) where such employee works for less than two and one half hours, he shall be paid for the time so worked at his basic hourly rate of pay.

Pay for period of stand-by or being on call

52. (1) Where an employee is required by his employer to remain on stand-by or on call for any period on a scheduled work-day, he shall be regarded as being on duty for that period and be paid wages accordingly.

(2) Where an employee is required by his employer to remain on stand-by or on call for any period in excess of eight hours on a scheduled work-day, the employer shall pay to the employee, wages at the rate of at least one and one-half times his basic hourly rate for the period involved.

(3) Where an employee is required by his employer to remain on stand-by or on call for any period on a rest day, the employer shall pay to the employee, wages at the rate of at least one and one-half times his basic hourly rate of pay for the period involved.

(4) Where an employee is required by his employer to remain on stand-by or on call on a public holiday, the employer shall pay to the employee, in addition to any wage which he would have received had the employee not worked on that public holiday, an hourly wage at the rate of at least one and one-half times his basic hourly rate of pay for the period involved.

(5) Where the employer provides the employee with a cellular phone or beeper for the stand-by or on-call period, the employer shall only pay to the employee wages at the rate of his basic hourly rate for the period involved.

Payment in respect of public holidays

53. Where an employee does not work for his employer on a public holiday, he shall suffer no loss of pay, that is to say, he shall be paid the basic wage he would have received for the work performed on that day, had it not been a public holiday, provided that—

- (a) he worked on his scheduled work-day immediately before and his scheduled work day immediately after the said public holiday; and
- (b) the public holiday was not one of his scheduled work-days.

Payment for work on public holidays

54. (1) Where an employer causes an employee to work on a public holiday, the employer shall pay to the employee, in addition to the basic wage the employee is entitled to by virtue of section 53, his basic hourly rate of pay for each hour worked on that day.

(2) In the case of employees remunerated on a piece work basis or by the task, the expression "basic rate of pay" shall, for the purposes of this section, be deemed to be equal to the employee's earnings over the period of thirteen weeks immediately preceding the date payment is made, divided by the number of days worked during that period.

(3) The provisions of this section shall not apply to—

- (a) persons holding positions of supervision or management whose basic rate of pay and other terms and conditions of employment shall be fixed by their employers at a level which adequately compensate them;
- (b) employees who are remunerated on a piece work basis or by the task and are not subject to continuous supervision.

Form of wages

55. (1) The money wages of an employee shall be payable in legal tender, provided that the payment of wages by cheque on a bank in Anguilla or by postal order shall be deemed to be payment in legal tender in cases in which payment in such manner is customary or necessary or is consented to by the employee.

(2) Where an employer pays an employee's wages by cheque drawn on a bank in Anguilla and the cheque is dishonoured by non-acceptance upon presentment for payment, the employer is liable to pay to the employee, in addition to the employee's wages, one-tenth of the employee's wages.

(3) Nothing contained in subsection (1) shall be construed as prohibiting the giving of food, a dwelling-place, or other allowances and privileges in addition to money wages as a remuneration for services, except that—

- (a) such allowances and privileges shall not include any alcoholic beverage or any noxious drugs;
- (b) such allowances are appropriate for the personal use and benefit of the employee and his family; and
- (c) such allowances and privileges are fairly evaluated at cost to the employer.

(4) Nothing in this section shall be construed as prohibiting the distribution to an employee of gratuities received from customers of the employer as part of remuneration for services, and the amount distributed in gratuities shall not be considered a part of any basic wage which has been fixed by an Order made under section 40.

Wages to be paid to employee

56. Wages shall be paid directly to the employee to whom they are due or to a person specified by him in writing except as provided in section 58.

Deductions

57. (1) Subject to subsection (2), an employer may deduct from wages payable to an employee under any contract of employment the following—

- (a) any tax, rate, or other deduction imposed by any law;
- (b) any money advanced by the employer by way of loan, provided the amount deducted accords with the agreement made between the employer and the employee at the time of the loan, and that no interest, discount, or similar charge may be imposed on such loan;
- (c) any sum of money which an employee has authorised in writing to be deducted for other purposes, except for the purpose of obtaining or retaining employment or for or in respect of any fine, or for bad or negligent work or for injury to the materials or other property of the employer (save when the injury is occasioned by the wilful misconduct of the workman).

(2) The total sum which may be deducted or stopped in any pay period shall not exceed one-third of the gross wage (excluding the value of any payments in kind) of the employee in the applicable pay period.

Statement of deductions

58. Where an employer makes a deduction from an employee's wages, he shall, simultaneously with the payment made, furnish the employee with an accurate statement of wages earned and describe the deduction made.

Limitations on attachment or seizure of wages

59. (1) Notwithstanding anything to the contrary contained in any other law, the remuneration of an employee shall be liable to attachment or seizure in execution only within the following limits—

- (a) up to one-half in respect of maintenance payments;
- (b) up to one-third in respect of all debts of any kind and however contracted.

(2) The proportion prescribed in subsection (1) (b) shall not be applicable cumulatively on the ground that there are several debts or several creditors, the maximum proportion in all cases remaining fifty percent of the remuneration.

(3) The sums attached or seized shall be divided among the claimants in proportion to their established claims.

Gratuities

60. (1) In any establishment in which the customer pays a gratuity which is a specified percentage of the customer's bill, such gratuity shall be pooled and there shall be established in the establishment a Gratuities Committee, (hereinafter called "the Committee") for the periodic distribution of the amount so accumulated over every period of four weeks.

(2) The Committee shall consist of an equal number of representatives of the employer and the employees and shall be respectively appointed by them, and the total number of such members shall not be less than two or more than four.

(3) From the total amount of gratuity accumulated over every period of four weeks 5% may be retained by the employer for administrative expenses, and the remainder of the gratuity shall be

distributed among such employees of the establishment on such basis as may be agreed from time to time between the representatives of the employer and the employees, where such representatives exist, or between the employer and the employees.

(5) A record shall be prepared showing the total amount of gratuity accumulated in each period of four weeks, the amount retained by the employer for administrative expenses, the list of employees to whom the balance has been distributed and the amount paid to each of those employees.

Periods and place of wage payments

61. (1) Wages shall be paid at regular time intervals of—

- (a) not more than two weeks, in the case of employees whose wages are fixed by the hour, or day, or week, or fortnight, or by the piece of work performed,
- (b) not more than one month, in the case of employees whose wages are fixed on a monthly or annual basis, or
- (c) in the case of employees employed to perform a task the completion of which requires two weeks or more, not more than one fortnight in proportion to the amount of work completed, but that the provisions of this section shall not apply where a collective agreement is entered into fixing other intervals for the payment of wages.

(2) Payment of wages shall be made at or near the work place and on ordinary working days only, but where, for practical reasons, this requirement cannot apply, the employer shall allow the employee reasonable time off with pay and provide him with such facilities as may be necessary to enable him to receive his wages without personal inconvenience.

(3) Any arrangement under subsection (2) shall be approved in writing by the Commissioner.

(4) An employer shall not pay wages to any employee at or within any retail shop or place engaged in the sale of spirits, wine, beer, or other spirituous or fermented liquor, save and except such wages as are paid by the resident owner or occupier of such shop or place to any employee *bona fide* employed by him in that shop or place.

Employee not to be required or coerced regarding manner of spending wages or to use stores or services

62. An employer shall not impose in any employment contract, or attempt in any manner to coerce or require an employee to—

- (a) spend any part of his wages at any place or in a particular manner, or with any person;
or
- (b) purchase or make use of stores or services which may be available from shops or stores established at or in connection with any workplace.

Employees leave rights generally

63. Every employee shall be entitled to leave privileges during the course of his employment.

Vacation leave

64. (1) Subject to subsection (2), every employee who has successfully completed his probationary period shall be entitled to be granted vacation leave at the rates set out below in respect of each year of service—

- (a) employees with less than seven years service, to twelve normal working days; and
- (b) employees with seven years service and above, to eighteen normal working days.

(2) Where the employment contract provides for periodic employment, an employee shall qualify for the grant of vacation leave if he has worked with the same employer for an aggregate of not less than sixty-five days in any period of twelve months.

(3) An employee to whom subsection (2) applies shall be entitled to be granted one day of vacation leave for every twenty-six days worked, in any period of twelve months, and any fraction of a day which is obtained by dividing a number of days worked by twenty-six shall be reckoned as one day.

(4) Where the employment contract provides for part-time employment, an employee shall qualify for the grant of vacation leave in accordance with subsection (1).

Vacation leave pay

65. (1) An employee to whom subsection (1) or (4) of section 64 applies shall be paid, in respect of his vacation leave, at the basic rate, together with the cash equivalent of any payment in kind, at which he was paid in respect of the last normal working week, immediately prior to the commencement of such vacation.

(2) An employee to whom subsection (2) and (3) of section 64 applies shall be paid by his employer at the basic daily rate for each day of his vacation leave.

(3) An employee who is employed on a piece work basis or by the task shall, in respect of each day of his vacation leave, be paid 1/65th of the total basic wage, and of the cash equivalent of any payment in kind earned in respect of the last thirteen weeks of employment (which need not be consecutive) immediately preceding the commencement of his vacation leave.

When vacation leave pay to be paid

66. The payment of vacation leave pay shall be made not later than the last working day prior to the commencement of such vacation leave, unless the employer and the employee, or their representatives agree otherwise.

Public holidays, etc. not to affect vacation leave

67. (1) Public holidays, whether or not they fall during the period of vacation leave, and agreed regular days of rest shall not be counted as a part of the annual vacation leave provided in section 64.

(2) Periods of absence from work due to maternity leave, or to illness or injury for a period not exceeding three months, shall not be deducted from the period of an employee's service for the purpose of the calculation of vacation leave entitlement.

Mutual agreement affecting vacation leave

68. (1) The dates of the taking of earned vacation leave shall be fixed by agreement between the employer and the employee or their representatives and, by similar agreement, the employer may advance leave not yet earned.

(2) By mutual agreement between the employer and the employee or their representatives, the vacation leave earned by the employee may be allowed to accumulate for a period of two years.

(3) Where vacation leave is allowed to accumulate under subsection (2), such leave shall be granted and taken not later than six months after the end of the second year, and at least two weeks uninterrupted leave shall be taken before the end of the year following that in respect of which entitlement arises.

(4) Any agreement between the employer and the employee by which the employee would forego the taking of earned leave, shall be void and of no effect, notwithstanding that the employee would be paid by the employer the vacation leave remuneration to which he would be entitled if the leave were taken.

Vacation leave pay upon termination of employment

69. Any person whose employment is for any reason terminated shall receive vacation leave pay in respect of vacation leave earned but not yet taken, and such vacation leave pay shall be calculated proportionate to the length of service.

Sick leave.

70. (1) Except as is provided for by section 71, an employee who becomes ill is, where service with his employer has been for a continuous period of not less than three months but not exceeding ten years, entitled to sick leave with pay, for a period of twelve days in any one year.

(2) An employee who becomes ill after completing ten years of service entitled to sick leave with pay, for a period of eighteen working days in any one year.

(3) Where the employment contract provides for part-time employment, an employee shall be entitled to sick leave in accordance with subsection (1).

(4) An employee to whom this section applies shall not be entitled to sick leave with pay unless that employee—

- (a) notifies the employer of the illness on the first day of his absence; and
- (b) submits a medical certificate, signed by a physician or registered Government nurse, on the third day of his absence and the certificate shall indicate the likely period of absence if the illness lasts for more than two days.

Sick leave for periodic employees

71. (1) An employee whose employment is periodic, and who has worked for the same employer for a total of not less than sixty-five days in that year, shall be entitled to be granted sick leave with pay in that year, at the rate of one day for every twenty-six days worked.

(2) Any fraction of a day which is obtained by dividing a number of days worked by twenty-six shall be reckoned as one day.

(3) An employee to whom this section applies shall not be entitled to sick leave with pay unless he fulfils the conditions set out in section 70 (4) as regards notification and the submission of a medical certificate.

Sick leave pay and social security benefit

72. (1) Subject to sections 70 and 71 in respect of sick leave taken in any period of twelve consecutive months, the employer shall pay to the employee the basic wages, which he would have received had the employee worked on each of those days.

(2) The minimum daily rate of sick leave pay payable to an employee to whom section 71 applies shall be the total basic wage paid to the employee in respect of the normal working week nearest, preceding that in which the illness occurred divided by the number of working days in the employee's normal working week.

(3) Subject to the Social Security Ordinance, an employee who is entitled to sick leave pay under this section, as well as sickness benefit under the Social Security Ordinance shall receive pay under that Ordinance, and in addition the employer shall pay—

- (a) sick leave pay at the basic rate of pay in respect of any waiting period not paid under the Social Security Ordinance; and
- (b) the difference by which the daily basic rate of pay exceeds the daily rate of sickness benefit paid under the Social Security Ordinance for any day in respect of which sickness benefit is paid under that Ordinance.

(4) Subject to the Social Security Ordinance, an employee who is entitled to any injury benefit under the Social Security Ordinance shall not simultaneously be entitled to full pay for a period of sick leave under this section and any sick leave pay to which he is entitled shall be reduced by any amount due under that Ordinance.

(5) The reference in this section and section 75 to the Social Security Ordinance includes the regulations made thereunder.

Entitlement to maternity and paternity leave.

73. (1) On the production of a certificate from a medical practitioner stating the presumed date of confinement, a female employee who has completed twelve months continuous employment shall be granted a period of maternity leave by her employer.

(2) The period of maternity leave shall not be less than thirteen weeks of which not less than six weeks shall be taken after the date of confinement.

(3) The remainder of the period of maternity leave may be taken before the presumed date of confinement or following the period of compulsory leave, or partly before the presumed date of confinement and partly following the period of compulsory leave.

(4) The leave before the presumed date of confinement shall be extended by any period elapsing between that date and the actual date of confinement, and the period of compulsory leave to be taken after confinement shall not be reduced on that account.

(5) Where a female employee is granted maternity leave under this section, the husband of the employee shall, upon application, be granted leave without pay for such period as requested in the application, but in any case not exceeding two weeks, to be taken during the period his wife is on confinement.

Additional period of maternity leave

74. Where a female employee to whom section 73 applies has been granted maternity leave under that section, and a medical practitioner certifies that any illness necessitating absence from work arises out of pregnancy or confinement or both, the employer shall grant the employee an additional period of maternity leave not exceeding three months.

Payment of maternity benefits

75. Where a female employee has been granted leave in accordance with sections 73 and 74, she shall be entitled to any benefits as may be prescribed under the Social Security Act or any other law for the time being amending or replacing it.

Employee not to be given notice of dismissal while on maternity leave.

76. While a female employee is absent from work on maternity leave in accordance with sections 73 and 74 it shall not be lawful for an employer to give her notice of dismissal during such absence, or to give her notice of dismissal at such a time that the notice would expire during such absence.

Special leave for jury service and other purposes

77. (1) An employee required to attend court for jury service shall be granted leave with full pay by his employer for that purpose.

(2) An employee who is required to attend any hearing of a Tribunal or Board constituted in accordance with Part III shall be granted leave on full pay by his employer for the purpose of attending such hearing.

(3) Any employee who wishes to refer a dispute or complaint to the Commissioner concerning that employee's working conditions or contract of employment shall be given reasonable time off with full pay for that purpose.

Penalties and employee's right to recover.

78. (1) An employer who—

- (a) enters into any agreement or contract or gives any remuneration for employment contrary to section 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 or 62,
- (b) makes any deduction from the wages of an employee or receives any payment from an employee contrary to the sections mentioned in paragraph (a), or
- (c) otherwise contravenes any of the sections mentioned in paragraph (a),

commits an offence and is liable on summary conviction to a fine of five hundred dollars, and for a second or subsequent offence to a fine of one thousand dollars.

(2) An employee shall be entitled to recover in a court so much of his wages including any entitlement under section 55 (2) exclusive of sums lawfully deducted as shall not have been paid to him, plus interest at the rate of ten percent per annum.

(3) An employer who contravenes section 47 or 48 commits an offence.

(4) An employer who commits an offence under subsection (3) is liable on summary conviction to a fine of three hundred dollars, and in addition, the court may order the payment of any sum found due to any employee, if warranted by the circumstances.

(5) An employer who—

- (a) refuses or fails to allow an employee to take a paid vacation leave to which he is entitled under the provisions of this Part,
- (b) fails to pay an employee the vacation leave pay or proportionate vacation leave pay, sick leave pay, or special leave pay to which he is entitled under the provisions of this Part,

commits an offence and is liable on summary conviction to a fine of five hundred dollars, and in addition, if the court is satisfied that by reason of the offence the employer owes the employee a sum of money, it may order the payment of such sum, with or without interest, to the employee.

Penalty for not paying minimum basic wage rate

79. (1) Where a minimum basic wage rate has been fixed under section 40, an employer who fails to pay such wage rate commits an offence and is liable on summary conviction to a fine of five hundred dollars.

(2) Where an employer has been convicted of failure to pay the minimum basic wage rate to an employee, then, if notice of intention so to do had been served upon the employer with the summons, warrant, or complaint, evidence may be given of any failure on the part of the employer to pay wages at or above the minimum rate to that employee during the two years immediately preceding the date on which the information was laid or the complaint was served; and, on proof of the failure, the court may order the employer to pay to the employee such sum as in the opinion of the court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus ten percent interest from the date any wage was due until it is paid.

(3) The power given in subsection (2) shall not be in derogation of any right of the employee to recover wages in any other proceeding, but the employee shall not be entitled, by a combination of this and any other proceeding, to recover more than the sum of the difference referred to in subsection (2).

(4) Where an employer who is charged with an offence under this section proves to the satisfaction of the court that he used due diligence to enforce the execution of an Order made under section 40 and that the offence was in fact committed by an agent or some other person without the

employer's knowledge, consent, or connivance, he shall not be convicted of the offence, but this is without prejudice, to the power of the court—

- (a) to proceed against the agent or other person for the offence; and
- (b) to adjudge the employer to pay the sum due under subsection (2).

(5) On prosecution of an employer for failing to pay wages or rates at not less than the minimum wage or rate, the onus shall lie on that employer to prove that he has not paid wages at less than the minimum wage or rate.

Penalties where person other than employer may be violator

80. (1) Where an employer is charged with an offence under the provisions of this Part, the employer shall be entitled upon information duly laid by him, to have any other person whom the employer claims to be the actual offender brought before the court and if, after the commission of the offence is proved, the employer proves to the satisfaction of the court that he has used due diligence to comply with the provisions of this Part and that the other person has committed the offence in question without his knowledge, consent, or connivance, the other person shall be summarily convicted of the offence.

(2) If an offence is proved under subsection (1), the court may order the employer or the other person convicted thereunder to pay to the employee any sums found to have been lawfully owed under the provisions of this Part, and the order may be enforced in the same manner as a judgement or order in a civil case.

(3) The power of the court to issue an order under subsection (2) shall not be in derogation of any right of the employee to recover the sum by any other proceeding provided that no employee shall be entitled in any other proceeding to recover any amount which the court has ordered to be paid under subsection (2).

PART VI

TERMINATION OF EMPLOYMENT, DISCIPLINARY ACTION, AND CONTINUITY OF EMPLOYMENT

Limitation on termination of employment by employer

81. The employment contract of an employee shall not be terminated by an employer without a valid and fair reason for such termination connected with the capacity or conduct of the employee, or with the operational requirements of the undertaking, establishment or service, pursuant to section 88, 89, 102 or 104, and unless the notice requirements in section 90 are complied with.

Meaning of unfair dismissal

82. Without derogating from the generality of section 81, the termination of the employment contract of an employee on any of the following grounds shall be deemed to be unfair—

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

- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) making a complaint or participating in proceedings against the employer involving alleged violation of any law or regulation or having recourse to competent administrative authorities;
- (d) participation, or proposed participation in industrial action including a strike, which takes place in conformity with the provisions of this Code or any other labour relations law;
- (e) race, colour, sex, religion, ethnic origin, nationality, political opinion or affiliation, disability, or age except for purposes of retirement and restrictions on work and employment of young persons and children;
- (f) marital status, family responsibilities, pregnancy, or absence from work during maternity leave as certified by a medical practitioner;
- (g) temporary absence from work due to illness or injury as certified by a medical practitioner, provided that the employee informs the employer, and submits the certificate to his employer as soon as possible after two days on any one occasion;
- (h) absence from work due to compulsory military service or other civic obligation in accordance with law;
- (i) the exercise or proposed exercise of the right to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to life or health.

Constructive dismissal

83. (1) An employee is entitled to terminate his employment contract without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term, where the employer's conduct has made it unreasonable to expect the worker to continue the employment contract.

(2) Where the employment contract is terminated by the employee pursuant to subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer for purposes of this Code.

Appeals against unfair dismissal

84. In any case where an employee or his representative alleges that such employee has been unfairly dismissed and no settlement of the allegation is reached in direct discussion with the employer, the allegation may be referred to the Commissioner in accordance with the provisions of section 26, by either the employer or the employee, or by their representatives.

Burden of proof

85. (1) In any claim or complaint arising out of the dismissal of an employee it shall be for the employer to prove the reason for the dismissal, and if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair.

(2) In the circumstances referred to in section 83, it shall be for the employee to prove the reason, which made the continuation of the employment contract unreasonable.

(3) The test, generally as to whether or not a dismissal was unfair under section 82 or 83 is whether or not, under the circumstances the employer acted reasonably or unreasonably but even though he acted reasonably if he is mistaken as to the factual basis for the dismissal, his reasonableness shall be no defence, and the test shall be whether the actual circumstances which existed, if known to the employer would have reasonably led to the employee's dismissal.

Remedies for unfair dismissal

86. (1) Where, after any dispute referred to the Commissioner under section 84 is subsequently referred to a Tribunal by the Minister in accordance with the provisions of section 27, and the finding of the Tribunal is that the dismissal was unfair or illegal, the Tribunal may order either that the employee be reinstated (if this remedy is acceptable to both parties) or that compensation be paid in lieu of reinstatement.

(2) Where the Tribunal orders that compensation be paid, it shall take into account, *inter alia*—

- (a) any holiday pay earned, but not taken;
- (b) any wages lost by the employee, on account of the dispute, up to the date of determination of the issue by the Tribunal;
- (c) the termination notice to which the employee would have been entitled; and
- (d) the employment category of the employee, his seniority and the ease or difficulty with which he can secure alternative employment.

Retirement of employee entitled to age benefit under Social Security Act

87. (1) Where an employee reaches the age at which he becomes entitled to an age benefit under the Social Security Act, the employer and employee may agree on a date upon which the services shall be terminated.

(2) Any date agreed upon in terms of sub-section (1) shall take into account the notice periods specified in section 90.

Termination of employment contract within probationary period and short term contracts

88. (1) The employment contract of any employee may be terminated by the employer at any time during the probationary period for any valid reason with 24 hours notice.

(2) Where an employment contract is for a specified term not exceeding three months, an employer may terminate the employee's services for any valid reason with 24 hours notice.

Termination of employment contract with notice

89. (1) The employment contract of an employee may be terminated with notice or with pay in lieu of notice, for any valid reason connected with the capacity of the worker, or the operational requirements of the undertaking.

(2) Without derogating from the generality of sub-section (1), notice of termination may be given by an employer in any of the following circumstances—

- (a) where two medical practitioners certify that the employee is unfit to continue in employment because of an incapacity of the mind or body which has lasted for at least six months and which is likely to be permanent;
- (b) where the employee could not continue to work in the position held without contravention of a provision of a law;
- (c) where the employee is made redundant.

(3) For the purposes of this Code—

"redundancy" means where the work required of the employee has been affected because—

- (a) the employer has modernised, automated or mechanised all or part of his business;
- (b) the employer has discontinued or ceased to carry on all or part of his business;
- (c) the employer has reorganised or relocated his business to improve efficiency;
- (d) the employer's need for employees in a particular category has ceased or diminished;
- (e) it has become impossible or impracticable for the employer to carry on his business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a *force majeure* or an act of God; or
- (f) a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.

Notice periods

90. (1) Where an employer is required by section 89 to give an employee notice of termination of the employment contract, such notice shall be determined on the following basis unless a written contract provides more favourable terms—

- (a) where the employee's length of service does not exceed seven years, the period of notice shall be at least equivalent to the interval of time between the affected employee's pay days;
- (b) where the employee's length of service exceeds seven years but does not exceed fifteen years, the period of notice shall be at least one month;
- (c) where the employee's length of service exceeds fifteen years, the period of notice shall be at least two months.

(2) The periods of notice under subsection (1) shall not apply where the employer is entitled to summarily dismiss an employee under this Part.

(3) A notice of termination under subsection (1) shall not be given by an employer during an employee's period of absence on any leave granted under this Code.

Payment in lieu of notice

91. (1) In lieu of providing notice of termination, the employer may, at his discretion, pay the employee a sum equal to the wages and other remuneration and confer on the employee all other benefits that would have been due to the employee at the expiry of any required period of notice.

(2) An employer, having given notice to terminate employment, and not having exercised the option provided in sub-section (1), shall not be required to pay the employee's wages if and when that employee voluntarily quits his employment prior to the effective date of termination specified in the notice.

Time off to seek alternative employment

92. Where an employee has been given notice to terminate his employment contract as provided in section 90, he shall, if he so requests, be granted reasonable time off with pay by the employer to seek alternative employment.

Recovery of wages and notice pay

93. (1) Any amount due to an employee whose service has been terminated shall be paid to the employee by the employer not later than the last working day before such termination becomes effective.

(2) Without prejudice to any other method of recovery, an amount due as pay for a period of notice may be recovered by civil proceedings in a court.

Winding up of employer's business, etc

94. (1) The winding up or insolvency of an employer's business shall cause the employment contract of any employee to terminate one month from the date of winding up or the appointment of a receiver, unless it is otherwise terminated within that period pursuant to section 87, 88, 89, 102 or 104.

(2) This section shall not apply where, notwithstanding the winding up or insolvency, the business continues to operate or has been transformed.

(3) On the winding up or appointment of a receiver of an employer's business the claim of an employee, or those claiming on his behalf, to wages and other payments to which he is entitled under this Code or any contract shall have priority over all other creditors, including the Government and the social security system for the following amounts—

- (a) wages, overtime pay, commissions, and other forms of remuneration relating to work performed during the twenty-six weeks preceding the date of winding up or appointment of a receiver;
- (b) holiday pay due as a result of work performed during the two years preceding the date of winding up or appointment of a receiver;
- (c) amounts due in respect of other types of paid absence accrued during the twelve months preceding the date of winding up or appointment of a receiver;

- (d) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

Death of employer

95. When the employer's personal or legal position formed the basis of the contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless the contract is otherwise terminated in accordance with section 87, 88, 89, 102 or 104.

Certificate of employment

96. (1) Where on the termination of an employee's employment contract the employee requests a certificate of employment, the employer shall provide the employee with that certificate.

(2) The certificate of employment referred to in sub-section (1) shall include—

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's continuous service;
- (d) the duties upon which the employee was employed during the employment contract;
- (e) the wages and other remuneration payable at the date of termination of the contract.

(3) A certificate of employment shall not contain the reason for termination of the employment contract, or an evaluation of the employee's work unless requested by the employee.

(4) Cannot give new employer reasons for dismissal.

Continuity of employment

97. A temporary cessation of work on any of the following grounds shall not constitute a break in an employee's continuity of employment—

- (a) an industrial dispute;
- (b) illness, certified by a medical practitioner where the absence from work exceeds three days;
- (c) industrial injury;
- (d) maternity leave, certified by a medical practitioner;
- (e) the operation of any law;
- (f) an act of God or *force majeure*;
- (g) absence permitted or condoned by the employer;
- (h) temporary lay-off;

- (i) suspension;
- (j) leave without pay.

Rights of employees on change of ownership

98. (1) Where an employer disposes of all or part of his business to another employer, by sale lease or licence, the first-mentioned employer shall—

- (a) give at least one month's notice of that disposition to an employee who is affected by the disposition; and
- (b) upon disposition, pay to that employee all wages, holiday pay, severance pay, and any other entitlements due to him.

(2) Where a disposition referred to in sub-section (1) occurs, and the successor- employer offers any or all involved employees continued employment with the business, the employees shall be given a choice as to whether they—

- (a) wish to be paid their entitlements referred to in subsection (1) by the predecessor-employer, and start service anew with the successor-employer; or
- (b) wish to carry forward their service and accrued rights to the successor-employer.

(3) Where the employee accepts continued employment with the successor employer, and the employee takes up the option referred to in sub-section (2)(b), the arrangements made at the time of the disposition in respect of the employee including details of the employee's length of service and accrued rights shall be notified to the Commissioner by the successor employer in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

(4) Where the employer is a body corporate and the ownership or majority ownership of that body corporate changes hands, whether by sale or otherwise, then for the purposes of subsections (1) and (2), that change shall be deemed to be a change of employer.

Effect of sale of business

99. Where a person for any reason sells or disposes of a business, all of the obligations under this Code of the person selling or otherwise disposing of the business are binding on the person acquiring the business.

Commissioner to be informed of intended multiple terminations for reasons of redundancy

100. (1) Where an employer intends to terminate simultaneously the employment contract of three or more employees on the grounds of redundancy, he shall notify the Commissioner as soon as practicable, and save in exceptional circumstances, not less than one month before the effective date of termination.

(2) The notification to the Commissioner shall state the number and categories of employees to be terminated, the reasons for such action, the period over which the termination is to take place and whether there has been any consultation with a trade union or any other representative of the employees, or with the employees themselves, and the results of that consultation.

(3) The Commissioner shall, as soon as possible after receipt of the notification under subsection (1), inform the Minister of its contents.

Employee's notice of termination

101. (1) An employee who has been engaged for a specified term of employment and who intends to quit his employment at the end of the specified term need give no advance notice of such intention unless the terms of his employment contract specify otherwise.

(2) All other employees must give advance notice to their employers of an intention voluntarily to terminate their employment, which shall correspond to the periods of notice required of employers specified in sections 88 and 90 and where the contract of employment is not in writing, the period of notice to be given by the employee shall not exceed two weeks.

(3) Where an employee has given notice in accordance with sub-section (2), the employer may, at his discretion, require the employee to cease employment at the commencement of the period of notice, and simultaneously pay the employee a sum equal to the wages and other remuneration, and all other benefits that would have been due to the employee at the expiry of the required period of notice.

(4) Where an employee fails to give the employer notice as required in sub-section (2), the employee shall be liable to pay to the employer an amount equal to the single time pay which the employee would have received had he worked for such part of the notice period as was not served.

(5) Where an employee is liable to make any payment under subsection (4), the employer may deduct the amount payable from monies (if any) due to the employee from the employer.

Summary dismissal for serious misconduct

102. (1) An employer is entitled to dismiss summarily without notice, an employee who is guilty of serious misconduct of such a nature that it would be unreasonable to require the employer to continue the employment contract.

(2) The serious misconduct referred to in subsection (1) is restricted to that conduct which is directly related to the employment contract and has a detrimental effect on the business and it includes, but is not limited to, situations in which the employee has—

- (a) conducted himself in a manner as to clearly demonstrate that the employment contract cannot reasonably be expected to continue;
- (b) been convicted of an offence in the course of his employment, the penalty for which prevents the employee from meeting his obligations under his employment contract for twelve working days or more.

(3) When terminating an employment contract under the provisions of this section, the employer shall provide the employee with a written statement of the precise reason for the action, and the employer shall be conclusively bound by the contents therein in any proceeding testing the fairness of the dismissal.

(4) An employer who fails to provide the statement referred to in sub-section (3) shall be stopped from introducing testimony as to facts which might have been included in the statement, in any proceeding testing the fairness of the dismissal.

Disciplinary action

103. (1) An employer shall be entitled to take disciplinary action other than dismissal when it is reasonable to do so under the circumstances.

(2) For purposes of this section, "disciplinary action" includes

(a) a written warning;

(b) suspension from duty for a period not exceeding one week without pay.

(3) In deciding what is reasonable under the circumstances pursuant to subsection (1), the employer shall have regard for the nature of the violation, the terms of the employment contract, the employee's duties, the pattern and practice of the employer in similar situations, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(4) Where action is taken by an employer in accordance with this section, he shall advise the employee concerned in writing of the misconduct or action in breach of the employment contract, and of what steps the employer is likely to take in the event of any repetition of the behaviour in respect of which the disciplinary action is being taken.

(5) A complaint that any disciplinary action taken against an employee was unfair or unreasonable may be made by the employee to the Commissioner pursuant to section 26.

Termination for repeated misconduct, breach of contract, or unsatisfactory performance.

104. (1) Where an employee has been guilty of an offence in breach of his employment contract, or of any misconduct such that the employer cannot reasonably be expected to continue to employ him if it is repeated, the employer may, when taking disciplinary action in accordance with section 103, warn the employee that repetition of the behavior will result in summary dismissal.

(2) If the employee, after being warned pursuant to subsection (1), is guilty of the same or similar offence or misconduct in the following six months, the employer may terminate the employee's employment without further notice.

(3) An employer who dismisses an employee under sub-section (2) shall provide the employee with a written statement of the reasons for the action, and the principles set out in subsections (3) and (4) of section 102 shall apply to the provision of, or failure to provide, such statements.

(4) The employer shall be deemed to have waived his right to terminate the employment of an employee for misconduct if he has failed to do so within a reasonable period of time after having knowledge of the misconduct.

(5) Where, after the probationary period has expired, the employee is not performing his duties in a satisfactory manner, the employer may give him a written warning to that effect.

(6) If the employee, after being warned pursuant to subsection (5) and in compliance with subsection (7) does not, during the following three month period demonstrate that he is able to perform and has performed duties in a satisfactory manner, the employer may terminate the employment contract.

(7) The employment of an employee should not be terminated for unsatisfactory performance unless the employer has given the worker written warning pursuant to subsection (5), and appropriate instructions to correct the unsatisfactory performance, and the employee continues to perform his duties unsatisfactorily for a period of three months.

PART VII**SEVERANCE PAYMENTS AND GRATUITIES FOR LONG SERVICE****Right of severance pay**

105. (1) An employee whose period of continuous employment is at least twelve months is entitled to severance pay upon termination of such employment on any of the grounds specified in paragraphs (a), (b) or (c) of section 89(2), or section 94 or 95.

(2) An employee whose employment contract provides for periodic employment shall be deemed to satisfy the conditions as to length of service if he had worked with the same employer and any predecessor-employer, in at least four consecutive twelve-month periods, and had gained an entitlement to vacation leave under section 64(2) in each of those periods.

(3) An employee whose employment is terminated on or after the age of sixty-five years after ten years of continuous employment with an employer, shall, if he does not qualify for an age benefit under the Social Security Act, and there is no employer provided pension plan or similar scheme from which he will benefit, be entitled to severance pay.

Methods of calculation of severance pay

106. (1) In the case of an employee who is not a periodic employee, and who is paid on a piece-work basis, severance payment shall consist of one day's pay, at the employee's latest basic rate of pay, for each month or major fraction thereof, of his period of employment with his employer and any predecessor-employer.

(2) In the case of an employee who is not a periodic employee, and who is paid on a piece-work basis, or whose employment contract provides for part-time employment, one day's pay shall be equal to his earnings over the period of thirteen weeks immediately preceding the date of termination, divided by the number of days worked.

(3) In the case of a periodic employee, severance payment shall consist of—

- (a) one day's pay for each twenty-nine days worked;
- (b) any fraction of a day which is obtained by dividing a number of days worked by twenty-nine which shall be reckoned as one day; and
- (c) one day's pay which shall be calculated as equal to the total of his basic wage in the last twelve month period worked, divided by the number of days worked.

Entitlement to severance pay not to be affected by other payments

107. The payment of severance pay under section 105 shall not affect, nor shall it be affected by, the employee's entitlement, if any, to payment in lieu of notice under section 91, or to any compensatory award made under section 86.

Severance pay, when payable; temporary termination; payment of interest

108. (1) On the date of termination of employment of an employee entitled to severance pay under section 105, the employer shall pay severance pay computed in accordance with section 106.

(2) If the termination is stated as temporary, no severance pay need be paid to the terminated employee at the time of termination, provided that—

- (a) if the date of re-employment is more than six months immediately following the date of termination, severance pay shall be payable on the date of temporary termination,
- (b) if no date of re-employment is given, and three months has elapsed without the employee being re-employed, severance pay shall be payable immediately upon the expiration of the three-month period, in which case, interest at the rate of ten percent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) If, after severance pay has been paid in accordance with sub-section (1) or (2), the employee is again employed by the same employer, he shall, for subsequent severance pay purposes, be considered to be newly hired and the term of employment shall be considered to have commenced on the date of re-employment.

Reduction in pay because of redundancy

109. If an employee's employment contract in his last occupation is terminated because of redundancy, but he is offered other employment by the employer at a reduced wage, then the employee may accept the offered employment without forfeiture of severance pay, but if, having received severance pay, he accepts the offered employment, the employee shall be considered newly hired for the purposes of subsequent severance pay.

Limitation on severance pay

110. (1) Subject to the provisions of section 105, where the employment contract of an employee is terminated on the grounds set out in section 98, he shall be eligible for severance pay, unless—

- (a) he has otherwise elected in accordance with the provisions of that section; and
- (b) he has not been offered by a successor-employer an employment contract which is the same as that held prior to the disposal of the business.

(2) Where the employment contract of the employee continues either on the basis of an election made in accordance with the provisions of section 98, or on the basis of sub-section (1) of this section, then details of the employee's length of service and entitlements shall be communicated to the Commissioner in a statement signed by the employee and jointly by the predecessor-employer and successor-employer.

Recovery of severance pay

111. An employee may, without prejudice to any other remedy available to him recover by civil proceedings in a court of competent jurisdiction the severance payment to which he is entitled under this Part.

Liability of predecessor and successor employers

112. If an employee's employment contract is terminated because of redundancy with a date of re-employment less than six months after the date of termination, or with no date of recall given, and if the employer, prior to three months after the termination, sells his undertaking to a successor-employer, then using the standards set forth in section 98 if severance pay becomes due, the

predecessor-employer and the successor-employer shall be jointly liable for the payment of the severance pay, plus interest.

Long service gratuity

113. (1) The Minister may, after consultation with the Commissioner and such employees' and employers' organisations or representatives as he considers necessary, make regulations in relation to an employee's entitlement to, and an employer's obligation to pay, long service gratuity upon the termination of the employee's employment contract.

(2) Regulations made under subsection (1) shall take into account—

- (a) the methods by which long service gratuity is to be calculated;
- (b) an employee's entitlement, if any, to payment in lieu of notice under section 91, or to any compensatory award made under section 86;
- (c) an employee's right to recover payment for long service gratuity by legal action;
- (d) whether an employee who is qualified to be paid long service gratuity is entitled to such payment if he has been dismissed under section 102 or 104;
- (e) whether, in relation to paragraph (d), any criteria should be identified in effecting a payment, if any;
- (f) an employee's right, if any, to long service gratuity payment where the employee is made redundant but subsequently re-hired by the same employer; and
- (g) any other factor considered necessary to ensure the institution and proper administration of long service gratuity.

PART VIII

EQUALITY OF TREATMENT IN EMPLOYMENT

Objectives

114. The objectives of this Part are—

- (a) to eliminate discrimination against persons with respect to employment and occupation; and
- (b) to promote recognition and acceptance of the principle of equal opportunity and treatment in employment and occupation.

Interpretation

115. In this Part—

"de facto spouse" means a person who lives with another person as a husband or wife although not married to that person;

"disabled person" means an individual whose prospects of securing, retaining, and advancing in suitable employment are reduced as a result of a physical or mental impairment;

"family responsibility" means responsibilities in respect of any dependent family member;

"marital status" means the status or condition of being—

- (a) single;
- (b) married;
- (c) married but living separately and apart from one's spouse;
- (d) divorced;
- (e) widowed; or
- (f) the *de facto* spouse of a person of the opposite sex.

"sexual harassment" means unwanted conduct of a sexual nature, occurring on a second or subsequent time, in the workplace or in connection with the performance of work which is threatened or imposed as a condition of employment on the employee or which creates a hostile working environment for the employee, it being understood that one outrageous act shall be treated as if it were a second or subsequent time.

Definition of "discrimination"

116. (1) For the purposes of this Part, a person discriminates against another person if the first-mentioned person makes, on any of the grounds mentioned in subsection (2), any distinction, exclusion or preference the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.

(2) The grounds referred to in subsection (1) include—

- (a) race, colour, sex, religion, ethnic origin, nationality, political opinion or affiliation, disability, family responsibility, pregnancy, marital status or age except for purposes of retirement and restrictions on work and employment of young persons and children;
- (b) any characteristic which pertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic origin, indigenous population, nationality, political opinion, disability, family responsibility, pregnant state, marital status, or age except for purposes of retirement and restrictions on work and employment of young persons and children.

Prohibition of discrimination

117. (1) An employer, or any person acting or purporting to act on behalf of a person who is an employer, shall not, in relation to recruitment, selection or employment of any other person for purposes of training, apprenticeship or employment, discriminate against that other person in—

- (a) the advertisement of a job;

- (b) the procedures used for the purpose of determining who should be offered that employment;
 - (c) determining who should be offered employment;
 - (d) the terms or conditions on which employment is offered;
 - (e) the creation, classification or abolition of jobs.
- (2) An employer shall not discriminate against an employee—
- (a) in terms or conditions of employment afforded to that employee by the employer;
 - (b) in conditions of work or occupational safety and health measures;
 - (c) in the provision of facilities related to or connected with employment;
 - (d) by denying access, or limiting access to opportunities for advancement, promotion, transfer or training, or to any other benefits, facilities or services associated with employment;
 - (e) by retrenching or dismissing the employee; or
 - (f) by subjecting the employee to any other disadvantage.

Bona fide occupational qualifications

118 (1) Nothing in section 117 shall apply to any distinction, exclusion, or preference based on the grounds listed in section 116 (2) where a genuine occupational qualification exists.

- (2) For the purposes of this Part, genuine occupational qualification for a job exists where—
- (a) the essential nature of the job calls for a particular race, sex, religion, national origin, national extraction, indigenous population, ethnic origin, family responsibility, marital status or age, in dramatic performances or other entertainment for reasons of authenticity;
 - (b) in a religious institution, the essential nature of the job calls for a particular religious affiliation or belief, and the essential nature of the work would be materially different or unable to be carried out if performed by a person of a different religious affiliation or belief;
 - (c) the job needs to be held by a man or a woman to preserve privacy or to comply with recognised cultural practices; or
 - (d) the holder of the job provides individuals with personal services promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex; or
 - (e) on the grounds of disability it is shown that—

- (i) the disability in question was a relevant consideration in relation to the particular requirements of the employment concerned and the performance of the job would not be able to be carried out as a result of the disability; or
- (ii) special facilities or modifications, whether physical, administrative, or otherwise, are required to be made at the work place to accommodate the disabled person which the employer cannot reasonably be expected to perform.

Belonger's preference

119. (1) An employer shall—

- (a) seek to employ a believer in preference to a non believer where such believer is found to be qualified;
- (b) not dismiss a believer in preference to a non-believer.

(2) Subsection (1) shall not be construed as forbidding the taking of personnel actions genuinely related to an employee's capacity or conduct in relation to the employment in question.

Special positive action

120. Special measures taken by, or required of, employers of a temporary nature to promote equality of opportunity in employment based on the grounds set out in section 116 (1) shall not be deemed to be unlawful discrimination within the meaning of section 117.

Sexual harassment

121. Any act of sexual harassment against an employee committed by his employer, or an employee of that employer, shall constitute unlawful discrimination based on sex within the meaning of section 116.

Equal remuneration

122. (1) An employer shall pay equal remuneration to men and women performing work of equal value for the employer.

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

- (a) "equal remuneration" means rates of remuneration that have been established without differentiation based on the grounds of sex; and
- (b) "work of equal value" means work equal in value in terms of the demands it makes in relation to such matters as skill levels, duties, physical and mental effort, responsibility and conditions of work.

(3) The burden of proof to establish that equal remuneration has been paid shall rest on the employer.

Partnerships

123. (1) Where employment in a particular occupation is largely provided through partnership firms, it shall be an offence for such firms or for persons proposing to form themselves into such a partnership firm, to discriminate against any person on the grounds set out in section 116 (2)—

- (a) in the arrangements they make for the purpose of determining who should be offered a position as partner in the firm; or
- (b) by expelling persons from, or subjecting persons in the firm to, detrimental treatment.

(2) Subsections 1(a) and (b) do not apply if the treatment afforded to the partner or potential partner is based on a *bona fide* occupational qualification.

Employer and employee organizations

124. It is an offence for an organization of employers, trade unions, or other organizations of employees, or any other organization whose members carry on a particular profession or trade for the purpose of which the organization exists, to discriminate against any person on the grounds set out in section 116 (2)

- (a) by refusing or failing to accept that person's application for membership;
- (b) in the terms on which it is prepared to admit that person to membership; or
- (c) in the case of a person who is a member of the organization—
 - (i) by denying, limiting or deliberately omitting to afford him access to any benefits, facilities or services provided by the organization;
 - (ii) by depriving that person of membership or varying the terms of membership;
 - (iii) by limiting or depriving that person of access or acquisition to leadership positions within the organization; or
 - (iv) by subjecting that person to any other detriment.

Inducement to discriminate

125. (1) It is an offence to induce or attempt to induce, a person to do any act, which contravenes this Part by—

- (a) providing or offering to provide the person with any benefit; or
- (b) subjecting or threatening to subject the person to any detriment.

(2) An attempted inducement is not prevented from falling within subsection (1) because it is not made directly to the person in question, if it is made in such a way that the person is likely to hear it or hear of it.

Burden of proof

126. Except where otherwise provided in this Part, the person alleging a violation of this Part shall bear the burden of proving discrimination or inducement or attempted inducement, as the case may be.

Exceptions

127. Proof of exceptions where by any provision of this Part, conduct is excepted from conduct that is a contravention of this Part, the onus of proving the exception lies upon the party claiming the exception.

Offences and penalties under this Part

128. (1) Any person who—

- (a) commits an offence under section 124 or 125, or
- (b) otherwise contravenes the provisions of this Part commits an offence and, is liable on summary conviction to a fine of two thousand dollars, and for a second or subsequent offence, to a fine of five thousand dollars.

(2) Where any partnership, or group of persons proposing to form themselves into a partnership, contravenes the provisions of section 123 (1), the individual partners shall, upon the contravention being proved, be each liable to a fine of two thousand dollars, and for a second or subsequent offence, to a fine of five thousand dollars.

(3) Where an offence under this Part has been proved to have been committed by an employer who is not a natural person, and is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager or other officer, they shall each be liable to be proceeded against accordingly.

Remedies

129. (1) Without prejudice to any other remedy that may be available in any competent court, where any person who is aggrieved by any act or omission of an employer in contravention of the provisions of this Part, and no settlement of the issue is reached in direct discussion with the employer, the dispute may be referred for settlement to the Commissioner in accordance with the provisions of section 26.

(2) Where, after any dispute referred to the Commissioner in accordance with sub-section (1) is subsequently referred to a Tribunal by the Minister in accordance with the provisions of section 27, the Tribunal may, if an offence be proven, make an order or orders—

- (a) directing the payment of compensation by the employer, or any other person or body covered under the provisions of this Part, to the aggrieved employee for any loss caused directly or indirectly as a result of the contravention;
- (b) directing the employer or other relevant person or body covered under this Part to redress the contravention including an order to employ, re-employ or reinstate any person, notwithstanding that the vacancy in question has already been filled and notwithstanding that the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;

- (c) making any decision found to have been based on unlawful discrimination void;
- (d) prescribing any other remedy the Tribunal may deem fair and just to remedy the cause and effect of the act or omission of the employer.

PART IX

PROTECTION OF CHILDREN AND YOUNG PERSONS

Prohibition of employment of children

130. (1) A person shall not employ, or permit a child to be employed, as an employee, and a person who employs a child or permits him to work in contravention of this section commits an offence.

(2) This section shall not apply to the exercise of manual labour by a child under order of detention in a reformatory or industrial school, or by a child receiving instruction in manual labour in a school, provided that such work is approved and supervised by a public authority

Liability of parent or guardian

131. Where a child is found to be employed in contravention of this Part, the parent or guardian of that child shall be deemed to have committed an offence.

Restrictions on employment of young persons

132. (1) A person shall not employ a young person unless that young person has been found fit for the work he is expected to perform after a thorough medical examination, and thereafter his employment shall be subject to medical supervision until he is no longer a young person.

(2) A person shall not, without the prior written consent of the Minister responsible for education employ, during school hours, a young person who is within the compulsory school age.

(3) A person shall not employ a young person on night work, and for the purpose of this subsection "night work" means work performed between the hours of 8:00pm on one day and 5:00am on the following day.

Registers to be kept

133. (1) An employer shall keep a register of young persons employed by him.

(2) The register referred to in subsection (1) shall contain particulars of the names, addresses, and dates of birth of all young persons, and of the dates on which they enter and leave such employment, and the employer shall on request at any reasonable time, produce that register for inspection by any authorised public officer.

(3) An employer who contravenes this section commits an offence.

Government's vacation work programme for students

134. (1) The prohibitions and restrictions under this Part on the employment of children and young persons, save section 132 (3), shall not apply to students who participate in the Government's vacation work programme for students, except that no student shall be engaged to perform any work which by its

nature or the circumstances in which it is carried out is, in the opinion of the Commissioner, likely to jeopardize the health, safety or morals of the student.

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

- (a) the Chief Education Officer shall, where students are required to participate in a vacation work programme, prepare and submit a report to the Commissioner—
 - (i) in respect of the institutions in which the students are expected to work;
 - (ii) on the type of work the students will be engaged in;
 - (iii) on the duration of the work concerned; and
 - (iv) on the number of hours to be worked by the students;
- (b) the Commissioner may, after consultation with such persons as he considers necessary, prepare guidelines on the engagement of students to perform work under the vacation work programme.

False representation as to age and penalties

135. (1) A person who misrepresents the age of a child or young person for the purposes of this Part commits an offence.

(2) A person who is convicted of an offence under this Part is liable on summary conviction to a fine of three thousand dollars, and in the case of a second or subsequent offence to a fine of five thousand dollars.

PART X

HEALTH, SAFETY AND WELFARE

Interpretation

136. In this Part, unless the context otherwise requires—

"building operation" includes the construction, alteration, repair or maintenance, or the demolition, of a structure or harbour facility, bridge or viaduct, waterworks or reservoir, pipeline or aqueduct, sewer or sewage system;

"employee" includes a person performing duties in a workplace with the expressed or implied permission of the operator of the workplace, on a part or full-time basis, whether or not such person is receiving remuneration for his services, and the expression "to employ" shall be construed accordingly;

"factory" includes the premises in which manufacturing takes place, and the term includes any warehouse or storage place, building operation, harbour operation, mine or quarry;

"fumes" includes gases or vapours;

“harbour operations” includes any work performed at a harbour, whether natural or artificial, piers, jetties, or other installations in or at which ships can dock, obtain shelter, or ship or unship goods or passengers;

“machinery” includes all manufacturing equipment, and machines (whether operated manually or mechanically), prime movers of machines, units designed to transmit power or motion thereto or therefrom, units designed to transport items or persons in connection with a manufacturing process, appliances used in such process, and all the parts thereof;

"operator of a workplace" includes the owner of a building containing a workplace, the owner or hirer of a machine or implement used in a workplace other than the principal operator thereof to the extent that any obligation under this Part relates to persons who are employed in or about or in connection with such machine and who are in the employment or pay of such owner or hirer;

"owner" includes the lessor and lessee of a workplace;

"prime mover" includes an engine, motor, or other appliance which provides mechanical energy derived from steam, water, wind, electricity, the combustion of fuel, or other source of energy;

"sanitary conveniences" include urinals, water closets, earth closets, privies, ashpits, and any similar conveniences;

Exemptions and extensions

137. (1) The Minister may exempt from one or more of the provisions of this Part, any workplace or parts thereof, by issuing an Order to that effect.

(2) An Order made under subsection (1) shall set forth the reasons and terms of the exemption.

(3) The exemption shall be effective for no more than six months in the absence of an Order of extension by the Minister which shall set forth the reason for any such extension.

(4) Any extension made under subsection (3) shall be effective for not more than six months in the absence of an Order of further extension by the Minister which shall set forth the reason for further extension.

(5) Any Order of exemption or extension may contain conditions, which shall be met in order to qualify for the exemption or extension.

Non-exclusivity of provisions of this Part

138. Except where otherwise expressly provided, the provisions of this Part shall be in addition to, and not in substitution for or diminution of, the provisions of any other Part.

Registration of workplaces

139. (1) The operator of a workplace shall within one month of this Code coming into force, file with the Commissioner a notice stating the particulars prescribed by regulation, and a person who commences to operate a workplace subsequent to the coming into force of this Code shall, within one month of such commencement, file a similar notice.

(2) When there is a material change in any of the particulars appearing in the notice filed in accordance with subsection (1), the operator of that workplace shall file with the Commissioner a notice setting forth any such change, within one month of that change.

Health

140. The operator of a workplace shall, as particular circumstances require—

- (a) keep the workplace in a clean state;
- (b) keep it from becoming overcrowded;
- (c) maintain a reasonable temperature therein;
- (d) provide adequate ventilation therein;
- (e) provide adequate lighting;
- (f) provide effective means for draining floors; and
- (g) provide adequate sanitary conveniences.

Safety

141. (1) The operator of a workplace shall, as the particular circumstances require—

- (a) take adequate measures for the prevention of fire, and for adequate means of escape for employees;
- (b) ensure that all machinery used therein is operated and maintained in such a manner as to be safe for all employees;
- (c) ensure that the workplace is properly maintained;
- (d) ensure that a steam boiler is not put into use in any workplace unless he has obtained from the manufacturer of the boiler or from a competent person a certificate specifying the maximum permissible working pressure thereof;
- (e) ensure that a steam boiler is examined by a competent person at least once every fourteen months, and after that examination to procure from the examiner a certificate of the results thereof; and
- (f) file the certificates required under paragraphs (d) and (e) with the Commissioner within twenty eight days of the completion of the examination.

(2) The Minister, by issuing an Order with or without conditions, may exempt from any of the provisions of subsection (1) (d), (e) and (f) any class or type of steam boiler as to which he is satisfied that such provisions cannot be applied.

Welfare

142. The operator of a workplace shall, as the particular circumstances require—

- (a) make available adequate supply of wholesome drinking water;
- (b) provide and maintain suitable washing facilities;
- (c) provide accommodation for clothing not worn during working hours, and for the drying of work clothing;
- (d) provide and maintain suitable facilities for employees to sit during the course of their employment;
- (e) provide and maintain readily accessible first aid equipment; and
- (f) provide and maintain other facilities such as canteen, mess rooms, and rest rooms, as are reasonable under the circumstances.

Special protective measures

143. It shall be the responsibility of the operator of any workplace, as the particular circumstances may require, to ensure that—

- (a) no person is permitted to take any food or drink into any room where any lead, arsenic or other poisonous substance is used;
- (b) suitable goggles or protective screens are provided to protect the eyes of any persons employed in a process involving a special risk of injury to the eyes;
- (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;
- (d) no person employed therein is required manually to lift, carry, or move anything in excess of the maximum weight specified by any regulations made under this Part;
- (e) where a person is employed in any process involving exposure to wet or to any injurious or offensive substance, suitable protective clothing and appliances are provided and maintained;
- (f) where a process involves heat or steam, facilities adequate to protect workers therefrom are provided and maintained;
- (g) no person is required to use white phosphorous (sometimes called yellow phosphorous) in any process; and
- (h) with respect to any process involving the use of or exposure to products containing benzene (which term, as used herein, means the aromatic hydrocarbon C_6H_6 itself or any product the benzene content of which exceeds one percent by volume), harmless or less harmful substitutes are used if they are available but, if no such substitutes are available then—
 - (i) the process shall be, as far as is practicable, carried out in an enclosed system or where an enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the

removal of benzene fumes to the extent necessary for the protection of the health of the workers;

- (ii) the word "benzene" and appropriate danger signals shall be clearly visible on any container holding benzene; and
- (iii) each worker who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as about action to be taken if there is any evidence of poison.

Obligations of persons employed

144. (1) An employee to whom this Part applies shall make use of all means, appliances, conveniences or other things provided in pursuance of this Code for the health, safety and welfare of employees, to the extent that his employment involves their use.

(2) An employee shall not—

- (a) wilfully interfere with, misuse, or damage any such means, appliance, convenience or other thing;
- (b) wilfully and without reasonable cause do anything likely to endanger himself or others; or
- (c) enter, or remain, at a workplace, when under the influence of alcohol, addictive drugs, or any other substance which may adversely affect the health and safety of him or other persons in or about that workplace.

Prohibition of deduction of wages

145. The operator of a workplace shall not, in respect of the cost of anything done or to be done by him in pursuance of this Part or any regulations or Order issued thereunder, make any deduction from the sum contracted to be paid by him to any person employed, nor shall he receive or allow any other person to exact or to receive any payment in lieu of such deduction.

Regulations and Orders

146. (1) The Minister may make regulations prescribing the standards to be achieved in respect of any of the obligations set forth in this Part and the methods required to attain them, and he may establish advisory committees on which employers and employees are represented to assist him in this function.

(2) The Minister may, by Order—

- (a) require the operator of a workplace to take special measures bearing on the health, safety, or welfare of the employees therein;
- (b) require the operator of a workplace to take specified measures bearing on the health, safety or welfare of employees whose duties, related to the business of the workplace, are performed in whole or in part, outside the workplace;
- (c) require arrangements to be made for medical supervision in any workplace;

- (d) require medical examinations of employees in any workplace at the expense of the operator of the workplace to ascertain whether their health has been or is being adversely affected by their employment therein.

Accident and safety programme

147. The Commissioner may, with the approval of the Minister, undertake—

- (a) research into the cause, and the means, of preventing employment injury, and
- (b) programmes to reduce or prevent employment injury,

in the course of which he may cooperate with any other department of Government or any other organisation undertaking similar programmes.

Special powers of inspector

148. (1) An inspector may take for analysis samples of material used or intended to be used in a workplace which he thinks may prove on analysis to be likely to cause bodily injury to persons employed.

(2) An inspector who has reasonable cause to believe that a condition exists at a workplace which is likely to cause bodily harm to any persons employed or performing duties therein, shall serve written notice upon the operator thereof of an intention to recommend that the Minister issue an appropriate Order under section 146.

(3) When an inspector is of the opinion that the employment of any young person in the workplace or any process or part thereof is or may be prejudicial to that young person's health, he may serve written notice thereof on the operator of the workplace requiring the cessation of or the imposition of specified limitations upon that young person's employment, and, thereafter, the requirements of the notice shall become an obligation under this Part.

Reports by employer

149. An employer shall report to the Commissioner as soon as practicable—

- (a) all accidents involving an employee, or any other person present in the workplace, which result in disability for more than three days, or loss of life;
- (b) all other accidents, fires and explosions;
- (c) the collapse or failure of any building or structure; and
- (d) any accident to machinery or plant which results in the cessation of work beyond the shift or day on which the accident took place.

Offences

150. (1) A person who contravenes an obligation created under this Part or of any regulation or Order made thereunder, commits an offence.

(2) If such contravention is by an employee, the operator of the workplace shall also be liable if it is proved that the operator failed to take reasonable steps to prevent the contravention.

(3) Where an offence committed by the operator of a workplace under this Part or any Order or regulations made thereunder is proved to have been committed with the consent or connivance of, or to have been facilitated by any neglect on the part of any director, chairman, manager, other officer, or person other than the operator, he, as well as the operator, shall be deemed to have committed the offence and shall be liable to be proceeded against.

Multiple offences

151. Where an employer employs persons in a workplace other than in accordance with this Part or any regulation or Order made thereunder, there shall be deemed to be a separate contravention in respect of each person so employed.

Penalties for specific offences

152. (1) A person who fails to comply with section 139 commits an offence and is liable on summary conviction to a fine of five thousand dollars.

(2) A person who—

- (a) forges or counterfeits any certificate required by, under, or for the purposes of this Part or any regulation or Order made thereunder,
- (b) gives or signs any such certificate knowing it to be false in any material particular,
- (c) knowingly utters or makes use of such certificate so forged, counterfeited, or which is false as mentioned in paragraph (b),
- (d) knowingly utters or makes use of such certificate as applying to any person to whom it does not so apply;
- (e) falsely pretends to be an inspector,
- (f) wilfully connives in any such forging, counterfeiting, giving, signing, uttering, making use, personating, or pretending as provided by this subsection,
- (g) wilfully makes a false entry in any register, notice, certificate, or document required by, under, or for the purposes of this Part or any regulation or Order made thereunder,
- (h) wilfully makes or signs a false declaration required by, under, or for the purposes of this Part or any regulation or Order made thereunder, or
- (i) knowingly makes use of any such false entry or declaration as mentioned in paragraphs (g) and (h),

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

(3) The operator of a workplace who—

- (a) obstructs or delays an inspector in the due exercise of any power conferred on him by or under this Part,
- (b) refuses to answer or falsely answers, any inquiry authorised by or under this Part,

- (c) fails to produce any register, book, document or other record he is required by or under this Part to produce, or
- (d) conceals or prevents, or attempts to conceal or prevent, any person from appearing before or being examined by an inspector, commits an offence and is liable on summary conviction to a fine of one thousand dollars.

(4) If the offence described in paragraph (3) is committed in a workplace by a person other than the operator, both the person and the operator shall be deemed to have committed the offence.

(5) If any person suffers personal injury or dies, in consequence of the operator of the workplace having contravened any provision of this Part or any regulation or Order made thereunder, the operator commits an offence and is liable on summary conviction to a fine of five thousand dollars.

Penalties for offences for which no express penalty is provided

153. Subject as hereinafter in this Part provided, any person who commits an offence for which no express penalty is provided shall be liable on summary conviction to a fine of one thousand dollars, and on a second or subsequent conviction to a fine of three thousand dollars.

Power of court to order cause of contravention to be remedied

154. Where the operator of a workplace is convicted of an offence under this Part, the court may, in addition to or instead of imposing a fine, order him, within the time specified in the order, to take such steps as may be so specified for remedying the matters in respect of which the contravention occurred, and may, on application, enlarge the time so specified.

Penalty for person actually committing offence for which operator is liable

155. Where an act or default for which the operator of a workplace is liable is in fact the act or default of some agent of the operator or other person, that agent, or other person commits an offence and is liable on summary conviction to the penalty prescribed for the offence as if he were the operator.

Proceedings where inspector or operator believes the offender to be other than operator

- 156.** (1) When it is made to appear to an inspector at the time of discovering an offence—
- (a) that an operator of the workplace has used all due diligence to enforce the execution of this Part,
 - (b) that the offence has been committed by a person other than the operator, and
 - (c) that the offence has been committed without the consent, connivance, or wilful fault of the operator,

the inspector shall proceed against the person whom he believes to be the actual offender.

(2) Where proceedings are brought against the operator, the operator shall be entitled upon information duly laid by him and on giving the prosecution no less than three days' notice in writing of his intention, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge.

(3) Where, in pursuance of subsection (2), a person is brought before the court, the operator may seek to prove—

- (a) that he used all due diligence to enforce the execution of this Part and of any relevant regulation and Order issued thereunder; and
- (b) that the person brought before the court has committed that offence in question without his consent, connivance, or wilful default.

(4) If the operator proves his case under subsection (3) to the satisfaction of the court, the other person shall be summarily convicted of the offence, instead of the operator,

(5) Where under this Part a person is substituted for the operator with respect to any provision of this Part, any order, summons, notice, or proceeding, which for the purpose of any such provision is by or under this Part required or authorised to be served on or taken in relation to the operator, shall be required or authorised to be served on or taken in relation to that person.

Prosecution of offences and recovery and applications of fines

157. (1) In any proceedings under this Part it shall be sufficient in the information to allege that the workplace is a workplace within the meaning of this Part and to state the name of the ostensible operator of the workplace.

(2) Where an offence is committed under this Part by reason of a failure to make an examination, enter a report, or do any other thing, at or within a time specified by this Part or by any regulation or Order made thereunder, the offence shall be deemed to continue until the examination is made, or a report entered, or the other thing done, as the case may be.

Special provisions as to evidence

158. (1) Where an entry in a register or record is required to be made by this Part or any regulation or Order made thereunder—

- (a) any entry made in such register or record by or on behalf of the operator of a workplace shall be admissible against him as evidence of the facts therein stated; and
- (b) the absence of the entry shall be admissible as evidence that the requirement has not been observed.

(2) Where, in any proceedings under this Part with respect to a young person, it appears to the court that the young person is of or below the age alleged by the defendant, the onus lies on the defendant to prove that the young person is not of or below that age.

Service of documents

159. (1) Any document (including any summons or order) required or authorised to be served under this Part may be served—

- (a) on any person by delivering it to him or by leaving it at, or sending it by post to, his last known address;

- (b) on any firm by delivering it to any partner thereof, or by leaving it at, or sending it by post to, the registered office of the firm;
- (c) on the operator of a workplace in the manner prescribed in paragraph (a) or (b), or by delivering it, or a true copy thereof, to any person apparently not under the age of sixteen years at the workplace.

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

Power of court to modify agreements and apportion expenses

160. In any premises the whole or any part of which has been let as a workplace—

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

Saving

161. The fact that an employer or employee has complied with or failed to comply with any of the provisions of this Part shall not dispose of any right of an employee to compensation, or of the liability or obligation of any employer or employee, under any enactment relating to compensation for employment injury, and with respect to any such rights, liabilities, or obligations, the provisions of that enactment shall govern.

¹PART XI

WORK PERMITS

Interpretation

162. In this Part, unless the context otherwise requires—

"engage in employment" means

- (a) take or continue in any employment,
- (b) practise any profession,

¹ Inclusion of this Part in the Code yet to be finalised depending on the policy of the Government.

- (c) engage in any trade or business or
- (d) engage or be employed in any form of occupation,

whether or not such employment, profession, trade, business or occupation is taken or continued, or is engaged in, practised or carried on, for reward, profit, or gain;

"self-employment" means employment on one's own behalf, and not under a contract of employment, express or implied; and

"work permit" means a work permit issued under the provisions of this Part.

Control of employment

163. (1) No person, other than a person belonging to Anguilla or the spouse of such a person shall engage in employment or self-employment in Anguilla unless he has been exempted from the provisions of this section as hereinafter provided or unless there is in force in relation to such person a valid work permit and he so engages in accordance with the terms and conditions specified in such permit.

Exemptions from the provisions of section 163

164. (1) The provisions of section 163 shall not apply to—

- (a) the judges and officers of the Eastern Caribbean Supreme Court;
- (b) members of Her Majesty's regular naval, military or air forces;
- (c) contracted persons in the service of the Government of Anguilla;
- (d) diplomatic representatives duly accredited to Anguilla or to the United Kingdom by or under the authority of Her Majesty;
- (e) representatives of the United Nations Organisation or any specialised agency thereof or of any similar international organisation of which the United Kingdom is a member;
- (f) representatives of any regional organisation of which Anguilla is a member; or
- (g) such other persons or classes of persons as the Governor may by order or certificate exempt;

if such persons are engaged in the employment in the capacity respectively by reason of which they are exempt from the application to them of section 163.

(2) Notwithstanding anything to the contrary in any other law, for the purpose of subsection (1) "officers of the Eastern Caribbean Supreme Court" do not include barristers or solicitors engaged in private practice.

Applications for work permit

165 (1) An application for a new work permit shall be made by the intended employer on behalf of the person for whom the permit is sought, by the filing with the Labour Department of an application

in the form prescribed and unless the applicant is a self-employed person, that application shall be accompanied by a statement in the form prescribed completed by the intended employer.

(2) An application for renewal of a work permit shall be made by or on behalf of the person for whom the permit is sought, by the filing with the Labour department of an application in the form prescribed and unless the applicant is a self-employed person, that application shall be accompanied by a statement in the form prescribed completed by the intended employer.

(3) An application for Work Permit to engage in employment as the employee of a person who is himself/herself an expatriate employee shall be made by the employer or intended employer, of that expatriate employee, on behalf of the person for whom the permit is sought, by the filing with the Labour Department of an application in the form prescribed and the application shall be accompanied by a statement in the form prescribed completed by the intended employer of that expatriate employee.

(4) The wages payable and all other responsibilities attached to an employer shall be borne by the expatriate employer to a person granted a work permit in accordance with the provisions of subsection (3).

Interim work permit

165A. An application for a interim work permit, or it's renewal shall be made by the person for whom the permit is sought, by the filing directly to the Minister responsible for labour, in the form prescribed and statement completed by an intended employer need not accompany this application.

Action upon application for work permit

166. (1) The Commissioner shall conduct an investigation of the conditions surrounding an application for a work permit or its renewal or extension, and make a report and recommendation to the Minister.

(2) In making such report and recommendation under subsection (1) the Commissioner shall—

- (a) take into consideration, among other things, the effect of the grant upon employment opportunities open to belongers; and
- (b) recommend that any work permit granted contain such condition or conditions as appear to be warranted under the circumstances, including the conditions that—
 - (i) there be assigned, from among those who are belongers, a counterpart-trainee to the position for which the work permit is being granted; and
 - (ii) as a condition of renewal there shall be filed periodic reports on the progress of the counterpart-trainee.

(3) Upon receipt of the report and recommendation, the Minister shall decide whether or not, and under what conditions, the work permit should be granted.

(4) A work permit signed by the Minister stating the conditions upon which the permit is granted shall be conclusive evidence of such conditions.

(5) Where a work permit is granted, it shall take the form prescribed, and its validity shall be dependent upon compliance with section 170.

(6) A work permit granted shall be effective for such period, not exceeding three years, as the Minister may allow.

Penalty applicable to employees or self-employed persons

167. (1) A person who fails to comply with the provisions of section 163 or 166, commits an offence, and is liable on summary conviction to a fine of five hundred dollars, and any work permit granted to him shall be cancelled.

(2) For the purposes of enforcing this Act, the Labour Commissioner shall have all the powers of a police officer.

Penalty applicable to employers

168. (1) An employer who employs a person—

(a) who requires a work permit without that person having first obtained such work permit,

(b) in non-compliance with the conditions attaching to that person's work permit,
commits an offence and is liable on summary conviction to a fine of five hundred dollars.

(2) Where an offence under subsection (1) is committed by a body corporate, the chairman and every director and every officer of the body corporate who knowingly authorises or permits the offence is liable on summary conviction to the same penalty as if they were individual employers.

False statements in application, etc.

169. A person who makes a false statement in any forms prescribed under section 165 which is filed with the Labour Department, or in response to any queries put to him in the course of an investigation made under section 166 (1), commits an offence, and is liable on summary conviction to a fine of one thousand dollars.

Fees

170. (1) Where a work permit or its exemption has been granted, there shall be paid such fee as may be prescribed by the Minister by Order.

(2) The Minister may prescribe different fees for different persons or categories of persons and for persons receiving different wages or salaries at such rates as may be prescribed.

(3) All fees for applications, work permits and exemption shall be paid into the Consolidated fund.

(4) Where a work permit is granted for any period less than one year, the amount of fees payable shall be pro rated as may by Order be determined by the Minister from time to time.

PART XII**MISCELLANEOUS****Limitation upon referring dispute or complaint**

171. (1) A person shall refer a dispute or complaint to the Commissioner within two years of the ground for the dispute or complaint coming to the knowledge of that person.

(2) The Commissioner shall not investigate or resolve a dispute or complaint referred to him after the two year period mentioned in subsection (1).

Limitation upon prosecution

172. No prosecution for any offence under this Code shall be instituted after the expiration of two years from the date on which the Commissioner becomes aware of the offence.

Labour clauses in public contracts

173. (1) A public contract shall be deemed to incorporate the Rules set out in the Schedule, as if the Rules were expressly set out in that contract.

(2) Every contractor shall keep displayed in a conspicuous place in his establishment and workplace for the information of the employees, a notice containing the conditions of their employment so printed that it may be read by all employees.

(3) In this section, a "public contract" arises where—

- (a) at least one of the parties to the contract is the Government or a statutory board;
- (b) the execution of the contract involves—
 - (i) the expenditure of funds by the Government or a statutory board; and
 - (ii) the employment of workers by the other party to the contract; and
- (c) the contract is for—
 - (i) the construction, alteration, repair or demolition of public works;
 - (ii) the manufacture, assembly, handling or shipment of materials, supplies or equipment; or
 - (iii) the performance or supply of services.

Conflict between this code and law

174. To the extent that there may be conflict or inconsistency between any other provision of this Code and any other law relative to labour matters, the provision of this Code shall prevail.

Regulations and Orders

175 (1) The Minister may make regulations and Orders for the administration, and for giving effect to the principles and provisions, of this Code.

(2) Regulations and Orders made under this section may provide that any breach of any regulation or Order shall be punished by the imposition of a fine of five thousand dollars.

(3) A regulation or Order made by the Minister shall be published in the *Gazette*.

(4) A regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be laid before the House of Assembly.

Repeals and savings

176. (1) The Labour Department Act, R.S.A. c. L5, Fair Labour Standards Act, R.S.A. c. F15, Trade Disputes (Arbitration and Inquiry) Act, R.S.A. c. T25, Employment of Children (Restriction) Act, R.S.A. c. E50 and Employment of Women, Young Persons and Children Act, R.S.A. c. E55 are repealed.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1),

- (a) any Rule, Order or Regulation made under such repealed enactments shall, until revoked, continue to be in force to the extent that such Rule, Order or Regulation is not inconsistent with the provisions of this Code;
- (b) any requirement performed, table of fees, licences or certificates issued, notice, decision, determination, direction or approval given, application made, or thing done, under any of the repealed enactments, shall, if in force on the date immediately prior to the coming into force of this Code, continue in force and, in the case of a licence or certificate, until the date of expiry of such licence or certificate as set out in such licence or certificate and shall, so far as it could have been made, issued, given or done under this Code have effect as if made, issued, given or done under the corresponding provisions of this Code.

SCHEDULE

[Section 173]

**LABOUR CLAUSES IN PUBLIC CONTRACTS
RULES**

- 1.** The contractor shall pay rates of wages and observe hours and conditions of employment, not less favourable than those established in the trade or industry in the district where the work is carried out, by collective agreement, other recognised machinery of negotiation or arbitration, between organisations of employers and employees which are representative respectively of substantial proportions of the employers and employees engaged in the trade or industry concerned (hereinafter referred to as "established rates and conditions"), or failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
- 2.** In the absence of any such established rates and conditions as defined in paragraph 1 the contractor shall pay rates of wages and observe hours and conditions of employment not less favourable than those which are or would be paid and observed in the trade or industry in which the contractor is engaged, by employers whose general circumstances are similar.
- 3.** Before being placed on any list of Government contractors, the contractor shall certify that to the best of his knowledge and belief the wages, hours of work and other conditions of employment of all employees employed by him in the trade or industry in which he is offering himself as a contractor are fair and reasonable having regard to paragraphs 1 and 2.
- 4.** In the event of any dispute or complaint arising as to what wages ought to be paid or what hours or other conditions of employment ought to be observed in accordance with the requirements of paragraphs 1 and 2, it shall, if not otherwise disposed of, be referred by the Labour Commissioner to the Minister who may, if he thinks fit, refer the matter to an Arbitration Tribunal in accordance with the provisions of this Code. In arriving at its decision, the Tribunal, in the absence of any established rates and conditions in the trade or industry concerned as specified in paragraph 1, shall have regard to any agreement, custom, practice, or award that may be brought to its notice relating to the wages, hours or conditions of employment of employees employed in a capacity similar to that of the employees to whom the dispute relates in trades or industries carried on under similar circumstances.
- 5.** The contractor shall keep proper wages books and time sheets showing the wages paid to and times worked by employees in the execution of the contract, and he shall, whenever required, produce such wages books and time sheets for inspection by any person authorised by the Labour Commissioner.
- 6.** (1) A sub-contractor shall be bound in all cases to conform to the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of the sub-contractors.

(2) The contractor shall not transfer or assign a contract or any portion thereof without the written permission of the Labour Commissioner.

(3) No portion of the work to be performed on a contract shall be done at the homes of the employees, except in so far as work is so performed by practice or custom.

- 7.** Contractors and sub-contractors shall recognise the freedom of their employees to be members of registered trade unions.
- 8.** A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of contract in respect of the work and labour performed in the execution of the contract unless and until he has filed together with his claims for payment a certificate—
- (a) showing the rates of wages and hours of employment of the various classes of employees employed in the execution of the contract;
 - (b) whether any wages in respect of the work and labour remain in arrears; and
 - (c) that all the labour conditions of the contract have been duly complied with.
- 9.** The contractor shall also from time to time furnish to the Labour Commissioner such further detailed information and evidence as the Labour Commissioner may require in order to satisfy himself that the conditions of these Rules are being complied with.
- 10.** In the event of default being made in payment of any money in respect of wages of employees employed on the contract and if a claim thereafter is filed with the Labour Commissioner and satisfactory proof thereof is furnished to the Labour Commissioner, the Labour Commissioner may, failing payment by the contractor, arrange for the payment of such claim out of the moneys at any time payable under the contract and the amount so paid shall be deemed payments to the contractor.
- 11.** Any contractor or sub-contractor who fails to comply with any of these rules shall cease to be approved as a contractor or sub-contractor for such period as the Labour Commissioner may determine.

Speaker

Passed by the House of Assembly this day of , 2003.

Clerk of the House of Assembly