

**ACT 651**  
**LABOUR ACT, 2003**  
**ARRANGEMENT OF SECTIONS**  
*Preliminary*

**SECTION**

1. Scope of application.

*Public Employment Centres and Private Employment Agencies*

2. Establishment of centres and registration of agencies.
3. Functions of the centres.
4. Registration of unemployed persons.
5. Employment through centres or agencies.
6. Employment data.
7. Private employment agencies.

*Protection of Employment*

8. Rights of employer.
9. Duties of employers.
10. Rights of a worker.
11. Duties of workers.
12. Contract of employment.
13. Written statement of particulars of contract of employment.
14. Prohibition of restrictive conditions of employment.
15. Grounds for termination of employment.
16. Types of contract of employment.
17. Notice of termination of employment.
18. Remuneration on termination of employment.
19. Exception.

*General Conditions of Employment*

*Annual Leave with Pay*

20. Leave entitlement.
21. Continuous service.
22. Interruption of work by public holidays, sickness of worker.
23. Voluntary interruption of work.
24. Sick leave not part of annual leave.
25. Leave to be uninterrupted.
26. Employer to bear cost of leave interruption.
27. Record of employment, leave.
28. Worker may take leave in two equal parts.
29. Leave entitlement to be restored to suspended worker on reinstatement.
30. Termination of employment not to affect leave entitlement earned.

## SECTION

31. Agreement to forgo leave to be void.
32. Sub-part not applicable to family concerns.

*Hours of Work*

33. Maximum hours of work.
34. Different hours of work.
35. Paid overtime.
36. Shifts.
37. Manual labourers.
38. Unpaid overtime.
39. Commencement and closing of work.

*Rest Periods*

40. Undertakings to which sections 40 to 44 apply.
41. Daily rest period.
42. Weekly rest period.
43. Rest periods not to include public holidays.
44. Exceptions.

*Employment of Persons with Disability*

45. Registration of persons with disability.
46. Special incentives.
47. Notification of employment of persons with disability.
48. Particulars of contract of employment.
49. Persons with disability in public service posts.
50. Employment not to cease upon disablement.
51. Length of notice of termination.
52. Transfer of persons with disability.
53. Training.
54. Sections 45 to 53 to be read as one with other relevant enactment.

*Employment of Women*

55. Night work or overtime by pregnant women.
56. Prohibition of assignment of pregnant women.
57. Maternity, annual and sick leave.

*Employment of Young Persons*

58. Prohibition of employment of young persons in hazardous work.
59. Health of young persons.
60. Registration of young persons.
61. Interpretation.

*Fair and Unfair Termination of Employment*

## SECTION

- 62. Fair termination.
- 63. Unfair termination of employment.
- 64. Remedies for unfair termination.
- 65. Redundancy.
- 66. Exceptions.

*Protection of Remuneration*

- 67. Payment of remuneration.
- 68. Equal pay for equal work.
- 69. Prohibited deductions.
- 70. Permitted deductions.
- 71. Employer not to compel workers to use its store.
- 72. Paid public holidays.

*Special Provisions relating to Temporary Workers and Casual Workers*

- 73. Right to employ and application of sections 73 to 78.
- 74. Casual worker.
- 75. Temporary worker.
- 76. Remuneration of temporary and casual workers.
- 77. Payment of remuneration for public holidays.
- 78. Interpretation.

*Trade Unions and Employers' Organisations*

- 79. Freedom of association.
- 80. Formation of trade union or employers' organisation.
- 81. Organisational rights.
- 82. Independence of trade unions and employers organisations.
- 83. Application for registration.
- 84. Certificate of registration.
- 85. Rules of trade unions and employers' organisations.
- 86. Register of trade unions and employers' organisations.
- 87. Protection against discrimination.
- 88. Effect of registration.
- 89. Change of name.
- 90. Amalgamation.
- 91. Registration of change of name and amalgamation.
- 92. Alteration of rules.
- 93. Federation.
- 94. Accounts and audit.
- 95. Audited financial statements.

*Collective Agreement*

## SECTION

96. Collective agreement.
97. Duty to negotiate in good faith.
98. Contents of collective agreement.
99. Collective bargaining certificate.
100. Variation of certificate.
101. Negotiating committees.
102. Negotiations by negotiating committee or joint negotiating committee.
103. Negotiations may be conducted by a union officer or member.
104. Failure to negotiate.
105. Effect of collective agreement.
106. Notice of collective agreement to workers.
107. Duration of collective agreements.
108. Provision for dispute settlement.
109. Power to extend collective agreements.
110. Effect of extension of collective agreements.
111. Union dues.

*National Tripartite Committee*

112. Establishment of National Tripartite Committee.
113. Functions of the National Tripartite Committee.
114. Meetings of the National Tripartite Committee.
115. Regional and district tripartite committees.

*Forced Labour*

116. Prohibition of forced labour.
117. Interpretation of "forced labour".

*Occupational Health, Safety and Environment*

118. General health and safety conditions.
119. Exposure to imminent hazards.
120. Employer to report occupational accidents and diseases.
121. Specific measures.

*Labour Inspection*

122. Labour inspection.
123. Appointment of inspectors.
124. Powers of labour inspectors.
125. Inspectors to maintain confidentiality.
126. Obstruction of inspectors.

*Unfair Labour Practices*

127. Discrimination.
128. Interference by employers in union affairs.

## SECTION

- 129. Employer to facilitate workers' trade union business.
- 130. Interference that causes financial loss.
- 131. Union activities during working hours.
- 132. Complaints.
- 133. Commission to make orders.
- 134. Appeals.

*National Labour Commission**Establishment and Functions of the National Labour Commission*

- 135. Establishment of Commission.
- 136. Composition of the Commission.
- 137. Qualification of chairperson and other members of the Commission.
- 138. Functions and independence of the Commission.
- 139. Powers of the Commission.
- 140. Meetings of the Commission.
- 141. Committees of the Commission.
- 142. Allowances for members of the Commission and its committees.
- 143. Tenure of office of members.
- 144. Regional and district committees of the Commission.
- 145. Functions of a regional or district labour committee.
- 146. Meetings of a regional or a district labour committee.
- 147. Secretariat for the Commission.
- 148. Expenditure of the Commission.
- 149. Accounts and audit.
- 150. Reports from regional and district labour committees.
- 151. Annual reports of the Commission.
- 152. Regulations by the Commission.

*Settlement of Industrial Disputes*

- 153. Settlement by negotiation.
- 154. Mediation.
- 155. List of mediators and arbitrators.
- 156. Appointment of arbitrators.
- 157. Voluntary arbitration.
- 158. Arbitration award.
- 159. Notice of intention to resort to strike or lockout.
- 160. Strike and lockout.
- 161. Cooling-off period.
- 162. Essential services.
- 163. Prohibition of strike or lockout in respect of essential services.
- 164. Compulsory reference to arbitration.
- 165. Powers of arbitrators.
- 166. Vacancy in arbitration panel.
- 167. Publication of compulsory arbitration award and effect of arbitration awards on existing employment contracts.

*Strikes*

## SECTION

- 168. Illegal strike or lockout.
- 169. Legal effect of lawful strike or lockout.
- 170. Temporary replacement of labour.
- 171. Picketing.

*Miscellaneous Provisions*

- 172. Enforcement of orders of the Commission.
- 173. Offences by body of persons.
- 174. Regulations.
- 175. Interpretation.
- 176. Modification of existing enactments.
- 177. Repeals and amendment.
- 178. Savings and transitional provisions.
- 179. Commencement.

## SCHEDULES

## FIRST SCHEDULE

*Written Statement of Particulars of Contract of Employment*

## SECOND SCHEDULE

*Form of Notice to Employer*

## THIRD SCHEDULE

*Enactments Repealed*

## FOURTH SCHEDULE

*Enactment Amended*

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## ACT 651

LABOUR ACT, 2003<sup>1</sup>

**AN ACT to amend and consolidate the laws relating to labour, employers, trade unions and industrial relations; to establish a National Labour Commission and to provide for matters related to these.**

*Preliminary***1. Scope of application**

This Act applies to all workers and to all employers except the Armed Forces, the Police Service, the Prison Service and the Security and Intelligence Agencies specified under the Security and Intelligence Agencies Act, 1996 (Act 526).

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1. The Act was assented to on 8th October, 2003 and notified in the *Gazette* on 10th October, 2003.

*Public Employment Centres and Private Employment Agencies***2. Establishment of centres and registration of agencies**

(1) The Minister shall by executive instrument establish public employment centres for the performance of the functions stated in section 3.

(2) A centre established under subsection (1) is answerable to the Minister.

**3. Functions of the centres**

Each centre shall

- (a) assist unemployed and employed persons to find suitable employment and assist employers to find suitable workers from among such persons;
- (b) take appropriate measures to
  - (i) facilitate occupational mobility with a view to adjusting the supply of labour to employment opportunities in the various occupations;
  - (ii) facilitate geographical mobility with a view to assisting the movement of unemployed and employed persons to areas with suitable employment opportunities; and
  - (iii) facilitate temporary transfers of unemployed and employed persons from one place to another as a means of meeting temporary local maladjustment in the supply of or demand for unemployed persons;
- (c) assist in social and economic planning by providing labour market information to stakeholders to ensure a favourable employment situation;
- (d) provide vocational guidance facilities to young persons;
- (e) provide arrangements for the registration, employment, training and retraining of persons with disability; and
- (f) provide arrangements for the registration of employed and unemployed persons
  - (i) with recognised technical, vocational or professional qualifications or those without these qualifications but have had experience of a level higher than that of an artisan;
  - (ii) who are of the level of supervisors or foremen;
  - (iii) with experience at administrative, managerial or senior executive levels; and
  - (iv) who have received training at the tertiary level.

**4. Registration of unemployed persons**

(1) An unemployed person may make an application in the prescribed form to the appropriate centre for registration in the appropriate register.

(2) On receipt of the application, the officer in charge of the centre shall enter the particulars of the application in the appropriate register and issue to the applicant a certificate of registration in the prescribed form.

#### **5. Employment through centres or agencies**

An employer may employ any worker either through a centre or a private employment agency.

#### **6. Employment data**

(1) The Chief Labour Officer or an officer authorised by the Chief Labour Officer shall submit to every employer a questionnaire relating to employment of workers by the employer within the respective centre.

(2) The employer shall complete and return the questionnaire to the Chief Labour Officer or the authorised officer within fourteen days after the expiry of every three months.

(3) Where an employer fails or refuses to complete and return the questionnaire as required under subsection (2) the Chief Labour Officer shall direct the employer to do so within a specified time, and the employer shall comply with the direction.

#### **7. Private Employment Agencies**

(1) A person shall not establish or operate a private employment agency unless that person is a corporate body, has applied to, and has been granted a licence by the Minister.

(2) A licence granted by the Minister under subsection (1) is valid, subject to the terms and conditions stipulated in the licence, for a period of twelve months.

(3) The licence of an agency may be renewed for a period of twelve months on application made to the Minister.

(4) There shall be paid by an agency for the issue or renewal of the licence the fee that the Minister may by Legislative Instrument prescribe.

(5) An agency may recruit workers for employment in a country outside the Republic if it is authorised to do so under its licence and if there exists an agreement between the Government and that other country.

(6) An agency shall submit to the Minister not later than fourteen days after the end of every three months, returns in respect of workers recruited for employment, whether in the Republic or outside the Republic, during that period.

(7) An agency shall refund fifty percent of the fees paid by a client to the agency, if the agency is unable to secure a job placement for the client after the expiration of three months.

(8) The Minister shall revoke the licence of an agency that fails to comply with subsection (6).



*Protection of Employment***8. Rights of employer**

Subject to this Act and any other enactment, the rights of an employer include the right to

- (a) employ a worker, discipline, transfer, promote and terminate the employment of the worker;
- (b) formulate policies, execute plans and programmes to set targets;
- (c) modify, extend or cease operations; and
- (d) determine the type of products to make or sell and the prices of its goods and services.

**9. Duties of employers**

Without prejudice to the provisions of this Act and any other enactment, in a contract of employment or collective agreement, the duties of an employer include the duty to

- (a) provide work and appropriate raw materials, machinery, equipment and tools;
- (b) pay the agreed remuneration at the time and place agreed on in the contract of employment or collective agreement or by custom without a deduction except deduction permitted by law or agreed between the employer and the worker;
- (c) take practicable steps to ensure that the worker is free from risk of personal injury or damage to health during and in the course of the worker's employment or while lawfully on the employer's premises;
- (d) develop the human resources by way of training and retraining of the workers;
- (e) provide and ensure the operation of an adequate procedure for discipline of the workers;
- (f) furnish the worker with a copy of the worker's contract of employment;
- (g) keep open the channels of communication with the workers; and
- (h) protect the interests of the workers.

**10. Rights of a worker**

The rights of a worker include the right to

- (a) work under satisfactory, safe and healthy conditions;
- (b) receive equal pay for equal work without distinction of any kind;
- (c) have rest, leisure and reasonable limitation of working hours and a period of holiday with pay as well as remuneration for public holidays;
- (d) form or join a trade union;

- (e) be trained and retrained for the development of skills; and
- (f) receive information relevant to the work of the worker.

#### **11. Duties of workers**

Without prejudice to the provisions of this Act, the duties of a worker in a contract of employment or collective agreement, include the duty to

- (a) work conscientiously in the lawfully chosen occupation;
- (b) report for work regularly and punctually;
- (c) enhance productivity;
- (d) exercise due care in the execution of assigned work;
- (e) obey lawful instructions regarding the organisation and execution of the worker's work;
- (f) take reasonable care for the safety and health of fellow workers;
- (g) protect the interests of the employer; and
- (h) take proper care of the property of the employer entrusted to the worker or under the immediate control of the worker.

#### **12. Contract of employment**

(1) The employment of a worker by an employer for a period of six months or more or for a number of working days equivalent to six months or more within a year shall be secured by a written contract of employment.

(2) A contract of employment shall express in clear terms the rights and obligations of the parties.

#### **13. Written statement of particulars of contract of employment**

Subject to the terms and conditions of a contract of employment between an employer and a worker, the employer shall within two months after the commencement of the employment furnish the worker with a written statement of the particulars of the main terms of the contract of employment in the form set out in the First Schedule, signed by the employer and the worker.

#### **14. Prohibition of restrictive conditions of employment**

An employer shall not in respect of a person seeking employment, or of persons already in the employment

- (a) require that person to form or join a trade union or to refrain from forming or joining a trade union;
- (b) require that person to participate or refrain from participating in the lawful activities of a trade union;
- (c) refuse to employ the person because of that person's membership of a trade union;
- (d) promise the person a benefit or an advantage for not participating in trade union activities; or

- (e) discriminate against the person on grounds of gender, race, colour, ethnic origin, religion, creed, social or economic status, disability or politics.

#### **15. Grounds for termination of employment**

A contract of employment may be terminated,

- (a) by mutual agreement between the employer and the worker;
- (b) by the worker on grounds of ill-treatment or sexual harassment;
- (c) by the employer on the death of the worker before the expiration of the period of employment;
- (d) by the employer if the worker is found on medical examination to be unfit for employment;
- (e) by the employer because of the inability of the worker to carry out work due to
  - (i) sickness or accident; or
  - (ii) the incompetence of the worker; or
  - (iii) the proven misconduct of the worker.

#### **16. Types of contract of employment**

Where by a contract of employment a worker is entitled to be paid,

- (a) remuneration at a monthly rate, the contract is a contract from month to month;
- (b) remuneration at a weekly rate, the contract is a contract from week to week; or
- (c) remuneration at a rate other than a monthly or weekly rate, the contract is a contract determinable at will.

#### **17. Notice of termination of employment**

(1) A contract of employment may be terminated at anytime by either party giving to the other party,

- (a) in the case of a contract of three years or more, one month's notice or one month's pay in lieu of notice;
- (b) in the case of a contract of less than three years, two weeks' notice or two weeks' pay in lieu of notice; or
- (c) in the case of contract from week to week, seven days' notice.

(2) A contract of employment determinable at will by either party may be terminated at the close of any day without notice.

(3) A notice required to be given under this section shall be in writing.

(4) The day on which the notice is given shall be included in the period of the notice.

**18. Remuneration on termination of employment**

(1) When a contract of employment is terminated in the manner stated in section 15, the employer shall pay to the worker,

- (a) the remuneration earned by the worker before the termination;
- (b) the deferred pay due to the worker before the termination;
- (c) the compensation due to the worker in respect of sickness or accident; and
- (d) in the case of foreign contract, the expenses and necessities for the journey and repatriation expenses in respect of the worker and accompanying members of the family in addition to any or all of the payments specified in paragraphs (a), (b) and (c) of this subsection.

(2) The employer shall pay to the worker not later than the date of expiration of the notice the remuneration due to the worker at that date.

(3) Where a notice is not required, the payment of the remuneration due shall be made not later than the next working day after the termination.

(4) Despite section 17 (1), either party to a contract of employment may terminate the contract without notice if that party pays to the other party a sum equal to the amount of remuneration which would have accrued to the worker during the period of the notice.

**19. Exception**

The provisions of sections 15, 16, 17 and 18 are not applicable where in a collective agreement there are express provisions with respect to the terms and conditions for termination of the contract of employment which are more beneficial to the worker.

*General Conditions of Employment**Annual Leave with Pay***20. Leave entitlement**

(1) In an undertaking every worker is entitled to not less than fifteen working days leave with full pay in a calendar year of continuous service.

(2) The expression “full pay” means the worker’s normal remuneration, without overtime payment, including the cash equivalent of a remuneration in kind.

**21. Continuous service**

(1) Continuity of service shall not be regarded as interrupted by mere change of ownership or management of the undertaking.

(2) Where the work is not regularly maintained throughout the year, the requirement of continuous service shall be deemed to have been met if the worker has worked for not less than two hundred days in the particular year.

**22. Interruption of work by public holidays, sickness of worker**

Public holidays and absence from duty due to sickness certified by a medical practitioner, and pregnancy and confinement, shall not affect the annual leave entitlement of a worker.

**23. Voluntary interruption of work**

A period during which a worker is absent from normal duties with the permission of the employer on account of the worker's participation in voluntary communal work, the discharge of civic duties or the granting of special leave with or without pay, shall not be counted as part of the worker's annual leave.

**24. Sick leave not part of annual leave**

A period of absence from work allowed owing to sickness, which is certified by a medical practitioner, and which occurs after the commencement of and during annual leave shall not be computed as part of the leave.

**25. Leave to be uninterrupted**

(1) A worker is entitled to enjoy an unbroken period of leave but an employer, in cases of urgent necessity, may in accordance with this section, require a worker to interrupt leave and return to work.

(2) Where a worker is required by the employer to interrupt leave in the circumstances specified in subsection (1) the worker shall not forfeit the right to the remainder of the leave but shall take the leave anytime thereafter.

(3) Where a worker takes annual leave at the end of a calendar year, the leave may continue except as provided in subsection (1) without interruption, into the following year.

**26. Employer to bear cost of leave interruption**

An employer who requires a worker to interrupt annual leave in the circumstances stated in section 25, shall make up to the worker the reasonable expense incurred on account of the interruption, and also resumption of the leave by the worker.

**27. Record of employment, leave**

(1) A worker shall, as much as may be possible, be given notice of the date of commencement of the annual leave, at least thirty days before the worker takes the leave.

(2) An employer shall to keep a record showing,

- (a) the date of employment of each worker employed by the employer and the duration of the annual leave to which the worker is entitled,
- (b) the dates on which the annual leave is taken by each worker, and
- (c) the remuneration received by each worker in respect of the annual leave.

**28. Worker may take leave in two equal parts**

Without prejudice to the provisions of sections 20 to 32, a worker may be permitted to take annual leave in two approximate equal parts.

**29. Leave entitlement to be restored to suspended worker on reinstatement**

Where a worker, suspended from the service of the employer prior to disciplinary or criminal proceedings being taken against the worker is reinstated, the worker is entitled to take the leave the worker would have had if the worker had not been suspended.

**30. Termination of employment not to affect leave entitlement earned**

(1) Where the employment of a worker is terminated, the worker is entitled to annual leave in proportion to the period of service in the calendar year.

(2) The worker shall not be deprived of any other grants or awards to which the worker is entitled including payment in lieu of notice of termination.

(3) Subsections (1) and (2) do not apply to cases where the employer has the right to dismiss a worker without notice.

**31. Agreement to forgo leave to be void**

An agreement to relinquish the entitlement to annual leave or to forgo the leave is void.

**32. Sub-part not applicable to family concerns**

Sections 20 to 31 do not apply to a person employed in an undertaking in which only members of the family of the employer are employed.

*Hours of Work***33. Maximum hours of work**

The hours of work of a worker shall be a maximum of eight hours a day or forty hours a week except in cases expressly provided for in this Act.

**34. Different hours of work**

The rules of an undertaking or its branch may prescribe hours of work different from eight hours a day on one or more days in the week, subject to the following:

- (a) where shorter hours of work are fixed, the hours of work on the other days of the week may be proportionately longer than eight hours but shall not exceed nine hours a day or a total of forty hours a week;
- (b) where longer hours of work are fixed the average number of hours of work reckoned over a period of four weeks or less shall not exceed eight hours a day or forty hours a week; or

- (c) in the case of an undertaking the work of which is of a seasonal nature, where longer hours of work are fixed, the average number of hours of work over a period of one year shall not exceed eight hours a day except that the hours of work which may be fixed under this paragraph shall not exceed ten hours a day.

### **35. Paid overtime**

(1) Subject to subsections (2) and (3), where a worker in an undertaking works after the hours of work fixed by the rules of that undertaking, the additional hours done shall be regarded as overtime work.

(2) A worker in an undertaking referred to in subsection (1) may not be required to do overtime work unless that undertaking has fixed rates of pay for overtime work.

(3) A worker shall not be compelled to do overtime work except for undertakings or enterprises

- (a) the very nature of which requires overtime in order to be viable; or
- (b) which are subject to emergencies that require that workers engage in overtime work in order to prevent or avoid threat to life and property.

### **36. Shifts**

Workers may be employed in shifts, but the average number of hours reckoned over a period of four weeks or less shall not exceed eight hours a day or forty hours a week if there is an established time-table for the shifts.

### **37. Manual labourers**

(1) The Minister may prescribe shorter hours of work for workers in jobs declared to be manual labour and in jobs likely to be injurious to health.

(2) Work for which shorter hours are prescribed under section (1) shall be deemed to be equivalent to work done on the basis of eight hours a day for the purposes of all rights which may flow from the employment.

### **38. Unpaid overtime**

Despite section 35, a worker may be required to work beyond the fixed hours of work without additional pay in certain exceptional circumstances including an accident threatening human lives or the very existence of the undertaking.

### **39. Commencement and closing of work**

The time of commencement and closing of a worker's hours of work in an undertaking shall be fixed by the rules of the undertaking concerned subject to the following:

- (a) in the case of operations underground, work commences when the worker enters the cage or lift to go down and ends when the worker leaves it at the surface; and
- (b) in the case of operations underground, where the workplace is reached by going down a gallery, the hours of work are reckoned from the time when the worker enters the gallery to the time when the worker leaves it at the surface.

*Rest Periods***40. Undertakings to which sections 40 to 44 apply**

In an undertaking

- (a) where the normal hours of work are continuous, a worker is entitled to at least thirty minutes break in the course of the work, but the break forms part of the normal hours of work; and
- (b) where the normal hours of work are in two parts, the break should not be of less than one hour duration and does not form part of the normal hours of work.

**41. Daily rest period**

(1) Without prejudice to section 40, a worker shall be granted a daily continuous rest of at least twelve hours duration between two consecutive working days.

(2) The daily rest of the worker in an undertaking operating on a seasonal basis may be of less than ten hours but of not more than twelve hours duration over a period of at least sixty consecutive days in the calendar year.

**42. Weekly rest period**

A worker shall, in addition to the rest periods provided in sections 40 and 41, be given a rest period of forty-eight consecutive hours, in every seven days of normal working hours, and the rest period may, for preference, start from Saturday and end on the Sunday following and shall wherever possible, be granted to all of the workers of the undertaking.

**43. Rest periods not to include public holidays**

The rest periods specified in sections 40 to 42 do not include public holidays.

**44. Exceptions**

Sections 33 and 34 and sections 40 to 43 do not apply to task workers or domestic workers in private homes.

*Employment of Persons with Disability***45. Registration of persons with disability**

- (1) A person with disability may apply to the centre for registration.
- (2) The centre shall on registration of a person with disability, issue that person a certificate of registration in a form determined by the Chief Labour Officer.

**46. Special incentives**

- (1) Special incentives shall be provided to an employer who employs persons with disability.
- (2) Special incentives shall be given to a person with disability engaged in a business or enterprise.
- (3) The special incentives shall be determined by the Minister.



**47. Notification of employment of persons with disability**

An employer who employs a person with disability shall notify the nearest centre of the employment and where the employer fails to do so, the Chief Labour Officer shall direct the employer to comply.

**48. Particulars of contract of employment**

A contract of employment with a person with disability shall include the particulars of the job or post, the working hours, amount of remuneration, transport facilities, and the special privileges which that person shall be accorded by virtue of the employment.

**49. Persons with disability in public service posts**

Persons with disability who enter the public service shall be appointed on the same terms as persons without disability, irrespective of whether they are allowed to work fewer hours; and shall be classified in accordance with their previous period of qualifying service for the purposes of promotion and other public service awards.

**50. Employment not to cease upon disablement**

The employment of a person who suffers disability after the employment, shall not cease if the residual capacity for work is such that that person can be found employment in the same or some other corresponding job in the same undertaking, but if a corresponding job cannot be found, the employment may be terminated by notice.

**51. Length of notice of termination**

The length of notice of termination required to be given in the case of a person with disability shall not be shorter than one month.

**52. Transfer of persons with disability**

(1) Subject to subsection (2), a person with disability in employment may be transferred to another job within the same undertaking if the other job can be regarded in the light of all relevant circumstances as a corresponding job.

(2) The relevant circumstances mentioned in subsection (1) in relation to a person with disability include

- (a) the person's qualifications;
- (b) the person's physical condition;
- (c) the person's place of residence; and
- (d) whether the transfer may worsen the conditions in which the person entered the employment.

**53. Training**

Where it is necessary to train or retrain a person with disability to overcome an aspect of the disability in order to cope with an aspect of that person's employment, the employer may provide or arrange at the employer's expense the training or retraining for that person.

**54. Sections 45 to 53 to be read as one with other relevant enactment**

Sections 45 to 53 shall be read as one with an enactment on the employment of persons with disability and where there is a conflict, the provisions of those sections shall prevail.

*Employment of Women***55. Night work or overtime by pregnant women**

(1) Unless with her consent, an employer shall not

- (a) assign or employ a pregnant woman worker to do a night work between the hours of ten o'clock in the evening and seven o'clock in the morning;
- (b) engage for overtime a pregnant woman worker or a mother of a child of less than eight months old.

(2) The pregnant woman worker or the mother may present a written complaint to the National Labour Commission established under section 135 against an employer who contravenes subsection (1).

(3) The Commission shall investigate the complaint and its decision on the matter shall, subject to any other law, be final.<sup>2</sup>

**56. Prohibition of assignment of pregnant women**

(1) An employer shall not assign, whether permanently or temporarily, a pregnant woman worker to a post outside her place of residence after the completion of the fourth month of pregnancy if the assignment, in the opinion of a medical practitioner or midwife, is detrimental to her health.

(2) The pregnant woman worker may present a written complaint to the Commission against the employer who contravenes subsection (1).

(3) The Commission shall investigate the complaint and its decision on the matter shall, subject to any other law, be final.<sup>3</sup>

**57. Maternity, annual and sick leave**

(1) A woman worker, on production of a medical certificate issued by a medical practitioner or a midwife indicating the expected date of her confinement, is entitled to a period of maternity leave of at least twelve weeks in addition to the period of annual leave she is entitled after her period of confinement.

(2) A woman worker on maternity leave is entitled to be paid her full remuneration and other benefits to which she is otherwise entitled.

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2. The law here includes the Constitution which in terms of clause (3) of article 125 gives final judicial power to the Judiciary.

3. See note 2.

(3) The period of maternity leave may be extended for at least two additional weeks where the confinement is abnormal or where in the course of the same confinement two or more babies are born.

(4) Where an illness, medically certified by a medical practitioner, is due to her pregnancy, the woman worker is entitled to additional leave as certified by the medical practitioner.

(5) Where an illness, medically certified by a medical practitioner, is due to her confinement the woman worker is entitled to an extension of the leave after confinement as certified by the medical practitioner.

(6) A nursing mother is entitled to interrupt her work for an hour during her working hours to nurse her baby.

(7) Interruptions of work by a nursing mother for the purpose of nursing her baby shall be treated as working hours and paid for accordingly.

(8) An employer shall not dismiss a woman worker because of her absence from work on maternity leave.

(9) For the purposes of sections 55, 56 and this section,

- (a) “**night work**” in relation to women, means work at any time within a period of eleven consecutive hours that includes the seven consecutive hours occurring between ten o’clock in the evening and seven o’ clock in the morning but in industrial undertakings which are influenced by the seasons, the work may be reduced to ten hours in sixty days of the year;
- (b) “**nursing mother**” means a woman with a child suckling at her breast for a period of not more than one year.

### *Employment of Young Persons*

#### **58. Prohibition of employment of young persons in hazardous work**

(1) A young person shall not be engaged in a type of employment or work likely to expose that person to physical or moral hazard.

(2) The Minister may, by legislative instrument, determine the type of employment that is likely to expose a young person to physical or moral hazard.

(3) An employer shall not employ a young person in an underground mine work.

(4) A person who contravenes subsection (1) or (3) commits an offence and is liable on summary conviction to a fine not exceeding one hundred penalty units.

**59. Health of young persons**

(1) An employer shall not employ a young person on a work unless a medical practitioner has certified that the young person is in good health and is medically fit for the work.

(2) Where a person fails to comply with subsection (1) that person shall be ordered by the Minister to have the medical examination conducted.

**60. Registration of young persons**

(1) An employer in an industrial undertaking shall keep a register of young persons employed in that undertaking and their dates of birth or their apparent ages.

(2) The Chief Labour Officer shall direct an employer who fails to comply with subsection (1) to do so within a specified time, and the employer shall comply with the direction.

**61. Interpretation**

For the purposes of sections 58 to 60,

“**industrial undertakings**” includes

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) undertakings 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 or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including construction, repair, maintenance, alteration and demolition work.

*Fair and Unfair Termination of Employment*

**62. Fair termination**

A termination of a worker's employment is fair if the contract of employment is terminated by the employer on any of the following grounds:

- (a) that the worker is incompetent or lacks the qualification in relation to the work for which the worker is employed;
- (b) the proven misconduct of the worker;
- (c) redundancy under section 65;
- (d) due to legal restrictions imposed on the worker prohibiting the worker from performing the work for which the worker is employed.

**63. Unfair termination of employment**

(1) The employment of a worker shall not be unfairly terminated by the worker's employer.

(2) A worker's employment is terminated unfairly if the only reason for the termination is

- (a) that the worker has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;
- (b) that the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;
- (c) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;
- (d) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;
- (e) in the case of a woman worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave;
- (f) in the case of a worker with a disability, due to the worker's disability;
- (g) that the worker is temporarily ill or injured and this is certified by a recognised medical practitioner;
- (h) that the worker does not possess the current level of qualification required in relation to the work for which the worker was employed which is different from the level of qualification required at the commencement of the employment; or
- (i) that the worker refused or indicated an intention to refuse to do a work normally done by a worker who at the time was taking part in a lawful strike unless the work is necessary to prevent actual danger to life, personal safety or health or the maintenance of plant and equipment.

(3) Without limiting the provisions of subsection (2), a worker's employment is deemed to be unfairly terminated if with or without notice to the employer, the worker terminates the contract of employment

- (a) because of ill-treatment of the worker by the employer, having regard to the circumstances of the case, or
- (b) because the employer has failed to take action on repeated complaints of sexual harassment of the worker at the workplace.

(4) A termination may be unfair if the employer fails to prove that,

- (a) the reason for the termination is fair, or
- (b) the termination was made in accordance with a fair procedure or this Act.

**64. Remedies for unfair termination**

(1) A worker who claims that the employment of the worker has been unfairly terminated by the worker's employer may present a complaint to the Commission.

(2) If on investigation of the complaint the Commission finds that the termination of the employment is unfair, it may

- (a) order the employer to re-instate the worker from the date of the termination of employment;
- (b) order the employer to re-employ the worker, in the work for which the worker was employed before the termination or in any other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or
- (c) order the employer to pay compensation to the worker.

## 65. Redundancy

(1) When an employer contemplates the introduction of major changes in production, programme, organisation, structure or technology of an undertaking that are likely to entail terminations of employment of workers in the undertaking, the employer shall

- (a) provide in writing to the Chief Labour Officer and the trade union concerned, not later than three months before the contemplated changes, the relevant information including the reasons for the termination, the number and categories of workers likely to be affected and the period within which the termination is to be carried out; and
- (b) consult the trade union concerned on measures to be taken to avert or minimise the termination as well as measures to mitigate the adverse effects of the terminations on the workers concerned, such as finding alternative employment.

(2) Without prejudice to subsection (1), where an undertaking is closed down or undergoes an arrangement or amalgamation and the close down, arrangement or amalgamation causes

- (a) severance of the legal relationship of worker and employer as it existed immediately before the close down, arrangement or amalgamation, and
- (b) as a result of and in addition to the severance that worker becomes unemployed or suffers a diminution in the terms and conditions of employment,

the worker is entitled to be paid by the undertaking at which that worker was immediately employed prior to the close down, arrangement or amalgamation, compensation, in this section referred to as "redundancy pay".

(3) In determining whether a worker has suffered a diminution in the terms and conditions of employment, account shall be taken of the past services and accumulated benefits, of the worker in respect of the employment with the undertaking before the changes were carried out.

(4) The amount of redundancy pay and the terms and conditions of payment are matters which are subject to negotiation between the employer or a representative of the employer on the one hand and the worker or the trade union concerned on the other.

(5) A dispute that concerns the redundancy pay and the terms and conditions of payment may be referred to the Commission by the aggrieved party for settlement, and the decision of the Commission shall, subject to any other law, be final.

## **66. Exceptions**

The provisions of this Part do not apply to the following categories of workers:

- (a) workers engaged under a contract of employment for a specified period of time or specified work;
- (b) workers serving a period of probation or qualifying period of employment of reasonable duration determined in advance; and
- (c) workers engaged on a casual basis.

### *Protection of Remuneration*

## **67. Payment of remuneration**

Subject to this Part, every contract of employment shall stipulate that the whole of the salary, wages and allowances of the worker shall be made payable in legal tender in addition to any non-cash remuneration and accordingly, a contract of employment that contains provisions to the contrary is void.

## **68. Equal pay for equal work**

Every worker shall receive equal pay for equal work without distinction of any kind.

## **69. Prohibited deductions**

(1) An employer shall not make any deduction by way of discount, interest or any similar charge on account of an advance of remuneration made to a worker in anticipation of the regular period of payment of remuneration.

(2) An employer shall not

- (a) impose a pecuniary penalty upon a worker for any cause whatsoever; or
- (b) deduct from remuneration due to a worker, any amount whatsoever, unless the deduction is permitted by section 70 or by any other law or is by way of repayment of an advance of remuneration lawfully made by the employer to the worker.

## **70. Permitted deductions**

(1) An employer may, with the consent of the worker, make any of the following deductions from the remuneration of the worker:

- (a) any amount due from the worker in respect of contributions to any provident, pension, or other fund or scheme agreed to by the worker;
- (b) any financial facility advanced by the employer to the worker at the written request of the worker or any facility guaranteed by the employer to the worker;

- (c) any amount paid to the worker in error, as remuneration, in excess of what the worker is legitimately entitled to, from the employer;
  - (d) on the written authority of the worker, any amount due from the worker as membership fee or contribution to an organisation of which the worker is a member;
  - (e) for meeting any loss suffered by the employer as a result of the loss of, or damage to, any property or thing used in connection with, or produced by, the employer's business and which is under the control of the worker;
  - (f) any deduction in compliance with an order made by the Commission.
- (2) No deduction shall be made under subsection (1) (f) unless the employer is satisfied,
- (a) that the loss or damage has been caused by the worker and the worker is clearly shown to be responsible;
  - (b) that the amount to be deducted is fair and does not exceed the actual value of the loss or damage suffered by the employer or that the amount represents a fair estimate of the loss or damage suffered;
  - (c) that the worker has been given reasonable opportunity to show cause why the deductions should not be made; and
  - (d) that the rate of the deductions is such as to avoid hardship to the worker and his or her dependants.

(3) Where a worker, who is aggrieved by any deduction made by his or her employer under subsection (1), is unable to resolve the matter with the employer, the worker may present a complaint in writing to the Commission.

(4) The Commission shall investigate the complaint and its decision on the matter shall, subject to any other law be final.<sup>4</sup>

#### **71. Employer not to compel workers to use its store**

Where an employer establishes a store for the sale of commodities to the workers or operates a service for them, the employer shall not coerce the workers to make use of the store or service.

#### **72. Paid public holidays**

A worker is entitled to be paid the worker's remuneration for public holidays.

#### *Special Provisions relating to Temporary Workers and Casual Workers*

#### **73. Right to employ and application of this Part**

(1) Subject to this Act, an employer may hire a worker on terms that suit the operations of the enterprise.

(2) Despite subsection (1), sections 74 to 78 do not apply to,

- (a) piece workers;

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4. The law here includes the Constitution which in terms of clause (3) of article 125 gives final judicial power to the Judiciary.



- (b) part-time workers;
- (c) sharecroppers;
- (d) apprentices;
- (e) sea-going personnel in the fishing industry who are wage earners; and
- (f) any person who works less than an average of twenty-four hours a week.

#### **74. Casual worker**

- (1) A contract of employment of a casual worker need not be in writing.
- (2) A casual worker shall
  - (a) be given equal pay for work of equal value for each day worked in that organisation;
  - (b) have access to the necessary medical facility made available to the workers generally by the employer;
  - (c) be entitled to be paid for overtime work by the employer in accordance with section 35; and
  - (d) be paid full minimum remuneration for each day on which the worker attends work, whether or not the weather prevents the worker from carrying on the worker's normal work and whether it is possible or not to arrange alternative work for the worker on such a day.

#### **75. Temporary worker**

- (1) A temporary worker who is employed by the same employer for a continuous period of six months and more shall be treated as a permanent worker.
- (2) Without prejudice to the terms and conditions of employment mutually agreed to by the parties, the provisions of this Act in respect of minimum wage, hours of work, rest period, paid public holidays, night work and sick leave are applicable to a contract of employment with a temporary worker.

#### **76. Remuneration of temporary and casual workers**

- (1) Subject to this section, the minimum remuneration of a temporary worker or a casual worker shall be determined as follows:
  - (a) where a temporary worker or a casual worker is required to work on week-days only, the minimum monthly remuneration is the amount represented by the worker's daily wage multiplied by twenty-seven;
  - (b) where a temporary worker or a casual worker is required to work every day in the week, the minimum monthly remuneration is the amount represented by three hundred and sixty-five times his daily wage divided by twelve.
- (2) A temporary worker or a casual worker referred to in subsection (1) (a) is not entitled to one twenty-seventh of the minimum monthly remuneration as specified in that paragraph for each day the worker is absent from work during the month.
- (3) A temporary worker or a casual worker referred to in subsection (1) (b) is not entitled to a twenty-eighth, twenty-ninth, thirtieth or thirty-first part of the minimum

remuneration as specified in that paragraph for each day the worker is absent from work during the month, depending on whether the month consists of twenty-eight, twenty-nine, thirty or thirty-one days.

(4) An employer shall pay a temporary worker or a casual worker the full minimum remuneration for each day on which the worker attends work, whether or not wet weather prevents the worker from carrying on with normal work and whether it is possible or not to arrange alternative work for the worker on that day.

(5) A temporary worker or a casual worker is entitled to be paid for overtime work by the employer in accordance with section 35.

#### **77. Payment of remuneration for public holidays**

(1) An employer shall pay each temporary or casual worker in respect of every public holiday the full remuneration which would have been payable to the temporary or casual worker for a full day's work if that day had not been a public holiday.

(2) Where a temporary or casual worker attends and performs work of a full day or more on a public holiday, the employer shall pay the worker in addition, the remuneration which would have been payable to the temporary or casual worker for the work if that day had not been a public holiday.

(3) Where a temporary or casual worker attends and performs work for part only of a public holiday, the employer shall pay the worker in addition to the remuneration provided under subsection (1), the proportion of the remuneration for a full day's work on that day if that day had not been a public holiday, represented by the number of hours for which the temporary or casual worker has performed work.

(4) A payment required to be made under subsection (1), (2) or (3) in respect of a public holiday shall be made after the public holiday in the same manner as the worker is normally paid.

(5) When an employer fails to comply with subsection (1), (2), (3) or (4), the temporary worker or the casual worker aggrieved by the non-compliance of the employer may present a written complaint to the Commission for determination and the parties shall abide by the decision of the Commission.

(6) The Commission may order the employer to pay the sum of money that appears to the Commission to be due to the temporary worker or the casual worker on account of the remuneration payable under this section, and may in that order specify the time within which the payment shall be made.

#### **78. Interpretation**

For the purposes of sections 73 to 77

**"temporary worker"** means a worker who is employed for a continuous period of not less than one month and is not a permanent worker or employed for a work that is seasonal in character;

**"casual worker"** means a worker engaged on a work which is seasonal or intermittent and not for a continuous period of more than six months and whose remuneration is calculated on a daily basis.

*Trade Unions and Employers' Organisations***79. Freedom of association**

(1) A worker has the right to form or join a trade union of the worker's choice for the promotion and protection of the worker's economic and social interests.

(2) Despite subsection (1), a worker whose function is normally considered as

- (a) policy making,
- (b) decision making,
- (c) managerial,
- (d) holding a position of trust,
- (e) performing duties that are of highly confidential nature, or
- (f) an agent of a shareholder of an undertaking,

may not form or join trade unions.

(3) Subject to subsection (4), the classes of workers referred to in subsection (2) shall be determined by agreement between the employer and the workers or trade unions.

(4) In determining whether a worker falls within the class of workers referred to in subsection (2), the parties shall consider the organisational structure and job descriptions or functions of the worker concerned.

**80. Formation of trade union or employers' organisation**

(1) Two or more workers employed in the same undertaking may form a trade union.

(2) Two or more employers in the same industry or trade, each of whom employs not less than fifteen workers may form or join an employers' organisation.

**81. Organisational rights**

A trade union or employers' organisation has the right to

- (a) draw up its constitution and rules, elect its officers and representatives;
- (b) organise its administration and activities and formulate its own programmes;
- (c) take part in the formulation, and become a member of a federation of trade unions or employers' organisations and participate in its lawful activities; and
- (d) affiliate to and participate in the activities of, or join international workers or employers' organisations.

**82. Independence of trade unions and employers' organisations**

A trade union or an employers' organisation is not subject to the control of or be financially or materially aided by a political party.

**83. Application for registration**

(1) A trade union or employers' organisation shall apply in writing to the Chief Labour Officer to be registered.

(2) An application for registration under subsection (1) shall be submitted with the constitution, rules, names of officers and office address of the trade union or employers' organisation.

(3) If, after considering the application, the Chief Labour Officer is satisfied that

- (a) there has been compliance with subsection (2);
- (b) the applicant is a trade union or employers' organisation duly established under any enactment for the time being in force as a body corporate;
- (c) the internal organisation of the trade union or employers' organisation conforms to democratic principles;
- (d) the name of the trade union or employers' organisation does not closely resemble that of another registered trade union or employers' organisation, so as to mislead or confuse the public;
- (e) the rules of the trade union or employers' organisation are in conformity with section 85; and
- (f) the constitution or rules of the trade union or employers' organisation do not discriminate on the grounds stated in section 87 against any person,

the Chief Labour Officer shall register the trade union or employers' organisation.

**84. Certificate of registration**

A trade union or an employers' organisation registered under section 81 shall be issued with a certificate of registration by the Chief Labour Officer.

**85. Rules of trade unions and employers' organisations**

The rules of a trade union or an employers' organisation shall include provisions in respect of the following matters:

- (a) the name of the trade union or organisation;
- (b) the registered office to which correspondence and notices may be addressed;
- (c) the principal objects of the trade union or employers' organisation;
- (d) the qualifications for membership;
- (e) the grounds on which an officer or a member may be suspended or dismissed from office or membership;
- (f) the procedure for suspension or dismissal of an officer or a member;
- (g) the membership fees and other subscriptions payable;
- (h) the manner of dissolution of the trade union or employers' organisation and disposal of its assets;
- (i) the manner of altering, amending or revoking its constitution or rules; and

- (j) the powers, functions and duties of officers of the trade union or employers' organisation.

#### **86. Register of trade unions and employers' organisations**

The Chief Labour Officer shall keep and maintain a register of trade unions and employers' organisations, in which shall be entered the prescribed particulars relating to them and the alterations or changes affecting them.

#### **87. Protection against discrimination**

(1) A trade union or employers' organisation shall not discriminate in its constitution or rules against a person on grounds of race, place of origin, political opinion, colour, religion, creed, gender or disability.

(2) The Chief Labour Officer shall not register a trade union or employers' organisation which contravenes subsection (1), unless the trade union or employers' organisation takes steps to rectify the defect in its constitution or rules within a period specified by the Chief Labour Officer.

#### **88. Effect of registration**

The rights and powers conferred on trade unions or employers' organisations under this Act shall be exercised only if the trade unions or employers' organisations are registered in accordance with this Act.

#### **89. Change of name**

(1) A trade union or an employers' organisation may change its name in accordance with the requirements of its constitution or rules.

(2) A change of name shall not affect the rights or obligations of the trade union or employers' organisation or its members otherwise the change is not valid.

#### **90. Amalgamation**

Any two or more trade unions or employers' organisations may in accordance with the requirements of their constitutions or rules, amalgamate to form one trade union or employers' organisation.

#### **91. Registration of change of name and amalgamation**

(1) A written notice concerning a change of name or amalgamation duly signed by officers of the trade union or employers' organisation or the amalgamated trade union or employers' organisation shall be registered with the Chief Labour Officer within fourteen days after the change of name or amalgamation.

(2) The Chief Labour Officer shall direct the officer of a trade union or employers' organisation which fails to comply with subsection (1) to do so within a period specified by the Chief Labour Officer, and the officer shall comply with the direction, failing which the change is not valid.

**92. Alteration of rules**

(1) An alteration of the rules of a trade union or an employers' organisation shall be registered with the Chief Labour Officer by the trade union or the employers' organisation.

(2) The Chief Labour Officer shall direct the officer of the trade union or employers' organisation which fails to comply with subsection (1) to do so within a period specified by the Chief Labour Officer, and the officer shall comply with the direction.

**93. Federation**

A federation of trade unions or a federation of employers' organisations is subject to the provisions of this Act applicable to trade unions or employers' organisations.

**94. Accounts and audit**

(1) A trade union or an employers' organisation registered under this Act shall

- (a) keep books and records of accounts of its income, expenditure, assets and liabilities, and
- (b) prepare annual financial statements consisting of the income and expenditure statements in respect of each financial year of the trade union or employers' organisation and a balance sheet showing its assets, liabilities and financial position at the end of that financial year.

(2) The books and records of accounts and financial statements shall be audited within six months after the end of its financial year by an auditor appointed by the trade union or employers' organisation.

**95. Audited financial statements**

A trade union or an employers' organisation shall, within seven months after the end of its financial year, submit to the Chief Labour Officer a copy of its audited financial statement.

*Collective Agreement***96. Collective agreement**

Subject to this Act, a collective agreement relating to the terms and conditions of employment of workers, may be concluded between one or more trade unions on one hand and representatives of one or more employers or employers' organisations on the other hand.

**97. Duty to negotiate in good faith**

(1) The parties to the negotiation of a collective agreement shall negotiate in good faith and make every reasonable effort to reach an agreement.

(2) For the purpose of subsection (1), either party to the negotiation shall make available to the other party information relevant to the subject matter of the negotiation.

(3) When an information disclosed for the purpose of the negotiation of a collective agreement is not made public, the information shall be treated as confidential by the party receiving the information and shall not be disclosed to a third party without the prior written consent of the party providing the information.

(4) The parties to the negotiation of a collective agreement shall not make false or fraudulent misrepresentations with regards to matters relevant to the negotiations.

#### **98. Contents of collective agreement**

Without prejudice to the other provisions of this Act and subject to the agreement between the parties, a collective agreement may include provisions on the following matters:

- (a) the class or category of workers to which it relates;
- (b) the conditions of work, including the hours of work, rest period, meal breaks, annual leave, occupational health and safety measures;
- (c) the remuneration and the method of calculating the remuneration of the workers;
- (d) the period of probation and conditions of probation;
- (e) the period of notice of termination of employment, transfer and discipline;
- (f) the procedures for the avoidance and settlement of disputes arising out of the interpretation, application and administration of the agreement;
- (g) the principles for matching remuneration with productivity; and
- (h) the essential services within the establishment.

#### **99. Collective bargaining certificate**

(1) A trade union shall make an application to the Chief Labour Officer for a certificate appointing that trade union as the appropriate representative to conduct negotiations on behalf of the class of workers specified in the collective bargaining certificate with the employers of the workers.

(2) An application made under subsection (1) shall include

- (a) the description of the class of workers in respect of whom the application is made and their estimated number, and
- (b) the number of workers of that class who are members of the trade union by whom the application is made.

(3) The class of workers may be specified in a certificate issued under this section by reference to the employer of the workers or to the occupation of the workers or in any other manner sufficient to identify them.

(4) The Chief Labour Officer shall, subject to the Regulations made by the Minister, determine which union shall hold a collective bargaining certificate for the class of workers in a situation where there is more than one trade union at the workplace.

(5) A collective bargaining certificate will be issued to a union for the same class of workers at a particular time.

(6) A certificate issued under this section shall have effect although some of the workers of the class specified are not members of the trade union appointed under the certificate.

(7) A certificate issued under this section shall be published in the *Gazette* by the Chief Labour Officer.

(8) At any time after the issue of a certificate under this section, the Chief Labour Officer may

- (a) at the request of either the trade union or employer's organisation, and
- (b) after consultation with the trade union or employers' organisation,

withdraw the certificate without affecting the right of the trade union to apply for a fresh certificate under this section.

(9) A trade union which is dissatisfied or aggrieved with a decision of the Chief Labour Officer under sections 79 to 95 or sections 96 to 111 may apply to the National Labour Commission for redress.

#### **100. Variation of certificate**

(1) At any time after the issue of a certificate under section 99 the Chief Labour Officer may, after consultation with the trade union named in the certificate and the appropriate employers' organisation, issue an amending certificate varying the class of workers specified in the certificate and a reference in this Act to a certificate issued under section 99 shall be deemed to include that certificate as amended under this section.

(2) The issuance of an amending certificate shall not affect the membership of a standing negotiating committee or a joint standing negotiating committee appointed under section 101, but the employer or workers of the class specified in the certificate as varied by the amending certificate, may nominate representatives to act either in the place of or together with their existing representatives.

(3) When an amending certificate is issued, the Chief Labour Officer shall publish a copy of the amending certificate in the *Gazette*.

(4) When an amending certificate is issued extending the class of workers specified in the original certificate, and there is in force a collective agreement which applies to the workers of the class specified in the original certificate, the trade union named in the certificate shall take the steps that appear to it to be appropriate for bringing that agreement to the attention of the workers to whom the agreement is extended by the amending certificate.

(5) When an amending certificate is issued excluding any persons from the class of workers specified in the original certificate, and there is in force a collective agreement which applied to those persons, the amending certificate shall not affect that application of the agreement to them, or a right to vary it, but a collective agreement made after the issue of the amending certificate by another trade union shall have effect despite anything in the previous agreement.



**101. Negotiating committees**

(1) The trade union appointed in a certificate issued under section 99 and the employer of the workers of the class to which the certificate relates shall each nominate their representatives authorised to conduct negotiations on their behalf, and the representatives shall constitute a standing negotiating committee to negotiate on matters referred to it.

(2) A standing negotiating committee referred to in subsection (1) shall make rules governing its procedure.

(3) A standing negotiating committee or joint standing negotiating committee set up under this section shall have the power to appoint sub-committees to which it may delegate any of its functions under this Act.

**102. Negotiations by negotiating committee or joint negotiating committee**

(1) Negotiations on the matters connected with the employment or non-employment or with the terms of employment or with the conditions of employment of any of the workers of the class specified in a certificate issued under section 99, shall be conducted through the standing negotiating committee or the joint standing negotiating committee.

(2) Either party represented on the committee may give notice to the other party requiring them to enter into negotiations on the matters which may properly be dealt with by the committee.

(3) An agreement concluded between the parties shall be in writing and signed by a duly authorised member of the committee representing each party and two copies of the agreement shall be deposited with the Commission and the Chief Labour Officer.

**103. Negotiations may be conducted by a union officer or member**

(1) Without prejudice to section 101, an officer or a member of a trade union who is duly appointed by the trade union, may conduct negotiations on a matter connected with the employment or non-employment or terms of employment or conditions of employment of a worker who belongs to the class of workers specified in the certificate.

(2) A person conducting negotiations under this section may give notice to the parties requiring them to enter into negotiations on the matters which may be properly dealt with by that person and both parties shall make every reasonable effort to come to an agreement on the matters to which the notice relates.

(3) An agreement concluded between the parties shall be in writing and signed by the person conducting the negotiations.

(4) Rules made under subsection (2) of section 101 may be applicable to negotiations conducted under this section and to any other matters relating to the negotiations.

**104. Failure to negotiate**

If the party on whom a notice is served under subsection (2) of section 102 or subsection (2) of section 103, does not within fourteen days after service of the notice take any steps to enter into negotiations, the Commission shall direct the party to enter into negotiations immediately, and the party shall comply with the directive.

**105. Effect of collective agreement**

(1) An agreement concluded by a trade union through a standing negotiating committee or a joint standing negotiating committee shall, so far as the terms of the agreement permit, apply to the workers of the class specified in the certificate.

(2) The provisions of a collective agreement, concerning the terms of employment and termination of employment, and personal obligations imposed on, and rights granted to, a worker or employer, shall be regarded as terms of a contract of employment between each worker to whom the provisions apply and the employer.

(3) The provisions that have effect as terms of a contract of employment under subsection (2), shall continue to have effect after the expiration of the collective agreement, so long as they have not been varied by agreement of the parties or in pursuance of this Act.

(4) The rights conferred on a worker by a collective agreement shall not be waived by the worker and, if there is a conflict between the terms of a collective agreement and the terms of a contract not contained in the collective agreement, the collective agreement shall prevail unless the terms of the contract are more favourable to the worker; and it is immaterial whether or not the contract was concluded before the collective agreement.

(5) The withdrawal of a certificate appointing a trade union under subsection (8) of section 99 shall not affect the validity of a collective agreement made by the trade union before the certificate was withdrawn, but a collective agreement which is made by another trade union after the withdrawal of the certificate shall have effect despite anything in the previous agreement.

**106. Notice of collective agreement to workers**

The parties to the negotiations shall bring the terms of the concluded collective agreement to the notice of the workers concerned.

**107. Duration of collective agreements**

(1) A collective agreement concluded under section 103 shall be for a term of at least one year.

(2) A party to a collective agreement shall not give notice under section 102 requiring the other party to negotiate with respect to a matter governed by a collective agreement unless, at the time when the notice is served, that agreement is due, either as a result of the notice given under this section or otherwise, to expire within twenty-eight days after the service of the notice.

(3) Where a notice is not given under subsection (2) by either party within thirty days after the expiration of the collective agreement, the collective agreement shall be deemed to have continued in force until rescinded by the parties.

**108. Provision for dispute settlement**

A collective agreement shall contain a provision for final and conclusive settlement under sections 135 to 167 of the differences between the persons to whom the agreement applies.

**109. Power to extend collective agreements**

(1) Where it appears to the Chief Labour Officer that

- (a) all or any of the terms of a collective agreement are suitable for application to a class of workers who are engaged in the same kind of work, or who work in the same area, as the workers to whom the collective agreement applies, and
- (b) that the parties who concluded the agreement were sufficiently representative of the workers to whom the agreement is to apply and their employers,

the Chief Labour Officer may direct that those terms of the collective agreement shall apply in relation to that class of workers and their employers as they apply in relation to workers of the class specified in the certificate and their employers.

(2) The Chief Labour Officer shall not issue a directive under subsection (1) unless, three months before issuing the directive, the Chief Labour officer has, after consultation with the appropriate employers' organisations and the trade unions concerned, published in the *Gazette*, a notice

- (a) describing the class of workers to whom it is proposed to apply the agreement, setting out the text of the collective agreement, and
- (b) giving particulars of the manner in which and the time within which objections to the proposal may be submitted to the Chief Labour Officer.

(3) The Chief Labour Officer shall take appropriate steps to bring the contents of the notice to the attention of employers and workers affected by the proposals.

(4) The Chief Labour Officer shall not issue a directive under subsection (1) applying the terms of an agreement to workers who were not in the class described in the notice given under subsection (2).

(5) Where a collective agreement, the terms of which are applied by a directive issued under subsection (1) ceases to have effect, the directive shall cease to have effect on the same date.

**110. Effect of extension of collective agreements**

(1) A directive issued under section 109 that extends the provisions of a collective agreement on terms of employment and termination of employment, and personal obligations imposed on, and rights granted to a worker, shall be regarded as terms of a contract of employment between each worker to whom those provisions apply and his or her employer.

(2) The terms of a contract of employment under subsection (1) shall continue to have effect after the directive ceases to have effect so long as those provisions have not been varied by agreement between the parties or in pursuance of this Act.

(3) The rights conferred on a worker by a directive issued under section 109 shall not be waived by the worker and, if there is a conflict between the term extended by the directive and the terms of a contract, the directive shall prevail, unless the terms of the contract are more favourable to the worker.

### **111. Union dues**

(1) A trade union to which this section applies may issue to the employer of the workers who are members of that trade union, a notice in the form set out in the Second Schedule requesting the employer

- (a) to deduct from the wages of the workers covered by a certificate issued under section 99, the sums specified by the trade union, and
- (b) to pay over the sums deducted as may be directed by the trade union, and, subject to this section, the employer shall comply with the notice.

(2) A trade union to which this section applies may, on issuing a notice in the form set out in the Second Schedule or subsequently, issue a further notice requesting the employer, out of the amounts which the employer is to pay over to the trade union, to remit a proportion stated in the notice directly to a specified branch of the trade union.

(3) A sum deducted in accordance with a notice given under this section shall be in discharge of the liability of the respective member of the trade union to pay dues to that trade union.

(4) A sum which an employer has in accordance with a notice under this section deducted from the wages of a worker to the trade union shall be paid over not more than one month after the date on which the wages are paid, and the trade union may sue in its own name for any sum which ought to have been paid to the trade union.

### *National Tripartite Committee*

### **112. Establishment of National Tripartite Committee**

There is hereby established a National Tripartite Committee which shall be composed of

- (a) the Minister as the chairperson,
- (b) five representatives of the Government,
- (c) five representatives of employers' organisations, and
- (d) five representatives of organised labour.

### **113. Functions of the National Tripartite Committee**

(1) The National Tripartite Committee shall

- (a) determine the national daily minimum wage;
- (b) advise on employment and labour market issues, including labour laws, international labour standards, industrial relations and occupational safety and health;

- (c) consult with partners in the labour market on matters of social and economic importance; and
- (d) perform any other functions that the Minister may request for the promotion of employment development and peace in the labour sector.

(2) The Minister shall publish in the *Gazette* and in the public media that the Minister may determine, a notice of the national daily minimum wage determined under subsection (1).

(3) The Ministry shall provide the National Tripartite Committee with the secretarial services that the Committee may require for the effective performance of its functions.

#### **114. Meetings of the National Tripartite Committee**

(1) The National Tripartite Committee shall meet at least once in every three months at the times and at the places determined by the members.

(2) The quorum for a meeting of the National Tripartite Committee shall be nine members with at least two members each representing the Government, organised labour and employer's organisations.

(3) The National Tripartite Committee may invite an interest group to attend any of its meetings.

(4) Except as otherwise provided in this section, the National Tripartite Committee shall regulate its proceedings.

#### **115. Regional and district tripartite committees**

(1) The National Tripartite Committee may set up sub-committees of the Committee in the regions and districts that it considers necessary for the effective performance of its functions.

(2) The composition of a regional or district sub-committee of the National Tripartite Committee shall be determined by the Committee except that there shall be equal representation of Government, organised labour and employer's organisations.

(3) The Ministry shall provide a sub-committee with the secretarial services that the sub-committee may require.

### *Forced Labour*

#### **116. Prohibition of forced labour**

(1) A person shall not be required to perform forced labour.

(2) An employer shall exact or cause to be exacted, or permit to be exacted, forced labour from a worker for the benefit of the employer.

(3) An employer convicted of an offence under subsection (2) is liable to a fine not exceeding two hundred and fifty penalty units.

**117. Interpretation of “forced labour”**

For the purposes of section 116 “**forced labour**” means work or service that is exacted from a person under threat of a penalty and for which that person has not voluntarily offered to work, but does not include

- (a) labour required as a result of a sentence or order of a Court;
- (b) labour required of a member of a disciplined force or service as his or her duties;
- (c) labour required during a period when the country is at war or in the event of an emergency or calamity that threatens life and well-being of the community, to the extent that the requirement of the labour is reasonably justifiable in circumstances of a situation arising or existing during that period for the purpose of dealing with the situation; or
- (d) labour reasonably required as part of normal communal or other civic obligations.

*Occupational Health, Safety and Environment*

**118. General health and safety conditions**

(1) An employer shall ensure that a worker employed by the employer works under satisfactory, safe and healthy conditions.

(2) Without limiting the scope of subsection (1), an employer shall

- (a) provide and maintain at the workplace, plant and system of work that are safe and without risk to health;
- (b) ensure the safety and absence of risks to health in connection with use, handling, storage and transport of articles and substances;
- (c) provide the necessary information, instructions, training and supervision having regard to the age, literacy level and any other circumstances of the worker to ensure, so far as is reasonably practicable, the health and safety at work of those other workers engaged in the particular work;
- (d) take steps to prevent contamination of the workplaces by, and protect the workers from, toxic gases, noxious substances, vapours, dust, fumes, mists and other substances or materials likely to cause risk to safety or health;
- (e) supply and maintain at no cost to the worker adequate safety appliances, suitable fire-fighting equipment, personal protective equipment, and instruct the workers in the use of the appliances or equipment;
- (f) provide separate, sufficient and suitable toilet and washing facilities and adequate facilities for the storage, changing, drying and cleansing from contamination of clothing for male and female workers;
- (g) provide adequate supply of clean drinking water at the workplace; and

- (h) prevent accidents and injury to health arising out of, connected with, or occurring in the course of, work by minimising the causes of hazards inherent in the working environment.

(3) A worker shall use the safety appliances, fire-fighting equipment and personal protective equipment provided by the employer in compliance with the employer's instructions.

(4) An employer is not liable for injury suffered by a worker who contravenes subsection (3) where the injury is caused solely by non-compliance by the worker.

(5) An employer who, without reasonable excuse, fails to discharge any of the obligations under subsection (1) or (2), commits an offence and is liable on summary conviction to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding three years or to both the fine and the imprisonment.

#### **119. Exposure to imminent hazards**

(1) When a worker finds a situation at the workplace which the worker has reasonable cause to believe presents an imminent and serious danger to the life, safety or health, of the worker, the worker shall immediately report this fact to the immediate supervisor and leave that situation.

(2) An employer shall not dismiss or terminate the employment of a worker or withhold the remuneration of a worker who has left a work situation which the worker has reason to believe presents imminent and serious danger to the life, safety or health of the worker.

(3) An employer shall not require a worker to return to work in circumstances where there is a continuing imminent and serious danger to the life, safety or health of the worker.

#### **120. Employer to report occupational accidents and diseases**

An employer is required to report as soon as practicable and not later than seven days from the date of the occurrence to the appropriate government agency, occupational accidents and diseases which occur in the workplace.

#### **121. Specific measures**

The Minister may, by legislative instrument, make Regulations providing for specific measures to be taken by employers to safeguard the health and safety of workers employed by them.

### *Labour Inspection*

#### **122. Labour inspection**

There shall be carried out inspection

- (a) to secure the enforcement of the provisions of this Act relating to conditions of work and the protection of workers at their workplaces, including the provisions relating to hours of work, wages, safety, health and welfare of the workers and the employment of young persons;

- (b) to provide technical information and advice to employers and workers concerning the most effective means of complying with this Act;
- (c) to bring to the notice of the Labour Department or the Commission any defects of this Act; and
- (d) to report to the Labour Department or the Commission other unfair labour practices or abuses not specifically provided for by this Act.

### **123. Appointment of inspectors**

Inspectors shall be appointed by the appointing authority of the Civil Service for the purposes specified in this Act.

### **124. Powers of labour inspectors**

(1) An inspector has power

- (a) to enter freely and without notice at any hour of the day or night to inspect any workplace during working hours;
- (b) to enter during the day or night any premises which the inspector has reason to believe are subject to inspection;
- (c) to carry out any examination, test or inquiry the inspector considers necessary in order to ensure that the provisions of this Act and the Regulations are complied with;
- (d) to interview, either alone or in the presence of witnesses, any employer or worker on any matter concerning the application and compliance with the provisions of this Act and the Regulations;
- (e) to require the production of any books, registers or other documents which relate to the terms and conditions of employment of the workers, in order to ascertain that these are in conformity with this Act and the Regulations and to copy the documents or make extracts from them;
- (f) to enforce the posting of notices required by or under this Act;
- (g) to take or remove for purposes of analysis samples of materials and hazardous or chemical substances used or handled by workers in the course of their employment; and
- (h) to direct employers to carry out alterations to buildings, installations and plant necessary to avert a danger or threat of danger to the health or safety of the workers within the period specified in the direction, but a such period shall not be allowed if the inspector is of the opinion that there is an imminent danger to the health or safety of the workers.

(2) An employer who is directed under subsection (1) (h) to carry out any alterations may,

- (a) where the period within which the alterations are to be carried out is specified, appeal to the Minister against the direction within seven days before the expiration of the period; or



- (b) where a period is not specified, appeal not later than seven days after the direction, against the direction, to the Minister.

(3) The decision of the Minister on the appeal shall, subject to any other law, be final,<sup>5</sup> and the employer shall abide by the decision and any related consequential order made.

(4) Where an appeal is lodged under subsection (2) the Minister shall direct the employer to take the interim measures that the employer considers necessary to avert a danger or threat of danger to the health or safety of the workers pending the determination of the appeal.

(5) An employer directed under subsection (1) (h) to carry out any alterations who does not appeal to the Minister against the direction shall

- (a) in the case of imminent danger to health or safety of workers, carry out the alterations immediately; or
- (b) where the period for the carrying out of the alterations is specified, carry out the alterations before the expiration of the period.

(6) An employer who fails to comply with a decision or order of the Minister or an inspector under subsection (2) or (4) commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units and in addition is liable to pay compensation to a person who proves having suffered loss, damage or injury as a result of the non-compliance by the employer.

#### **125. Inspectors to maintain confidentiality**

(1) An inspector

- (a) shall not have direct or indirect interest in an undertaking the inspector is required to inspect;
- (b) shall not divulge during or after termination of the inspector's service, any manufacturing or commercial secrets or working processes or confidential information which may have come to the inspector's knowledge in the course of duties;
- (c) shall not disclose the source of a complaint by which the inspector is informed of a contravention of provision of this Act or the Regulations, or intimate to the employer or the employer's representative that an inspection was carried out in consequence of the complaint.

(2) An inspector who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

#### **126. Obstruction of inspectors**

A person who wilfully obstructs a labour inspector in the performance of functions under this Act commits an offence, and is liable on summary conviction to a fine not exceeding two hundred and fifty penalty units or to a term of imprisonment not exceeding twelve months or to both the fine and the imprisonment.

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5. The law here includes the Constitution which in terms of clause (3) of article 125 gives final judicial power to the Judiciary.

*Unfair Labour Practices***127. Discrimination**

(1) A person who discriminates against any other person with respect to the employment or conditions of employment because that other person is a member or an officer of a trade union is guilty of unfair labour practice.

(2) A person who seeks by intimidation, dismissal, threat of dismissal, or by any kind of threat or by imposition of a penalty, or by giving or offering to give a wage increase or any other favourable alteration of terms of employment, or by any other means, seeks to induce a worker to refrain from becoming or continuing to be a member or officer of a trade union, is guilty of unfair labour practice.

(3) A worker or group of workers who by any kind of threat seeks to intimidate the employer during negotiations of a collective agreement, is guilty of unfair labour practice.

(4) Employers or employers' organisations who seek by any kind of threat to intimidate the worker during negotiations of a collective agreement, are guilty of unfair labour practice.

**128. Interference by employers in union affairs**

An employer who takes part in the formation of a trade union or, with the intention of adversely influencing a trade union, makes a contribution, in money or money's worth, to that trade union, is guilty of unfair labour practice.

**129. Employer to facilitate workers' trade union business**

(1) An employer shall, subject to notice of not less than twenty-four hours, allow an officer of a trade union whose members include any of the employer's workers, reasonable facilities and time to confer with the employer or workers on matters affecting the members of the trade union who are workers of the employer, and an employer who fails to give reasonable facilities and time is guilty of unfair labour practice.

(2) In this section "**reasonable facilities**" means the facilities that the employer and the workers may agree are reasonably required for the purposes stated in subsection (1).

**130. Interference that causes financial loss**

Subject to the other provisions of this Act, if a worker carries on an activity intended to cause serious interference with the business of the employer that may result in financial loss, the worker is guilty of unfair labour practice.

**131. Union activities during working hours**

(1) An officer of a trade union or any other person shall not during normal working hours attempt to persuade or induce a worker, not covered by a collective agreement, to become a member or an officer of a trade union while the worker is on the premises of the employer, without the consent of the employer.

(2) An officer of a trade union or any other person shall not during normal working hours confer with an employee on trade union matters while the worker is on the premises of the employer without the consent of the employer.

(3) A person who contravenes subsection (1) or (2) is guilty of unfair labour practice.

**132. Complaints**

The Commission shall enquire into and determine complaints of unfair labour practices brought before it in accordance with its rules of procedure.

**133. Commission to make orders**

(1) Where the Commission finds that a person has engaged in an unfair labour practice it may, make an order forbidding that person to engage or continue to engage in the activities specified in the order.

(2) Where the Commission finds that a person has engaged in an unfair labour practice under section 127 which involves the termination of employment of a worker, the alteration of the employment or of the conditions of the employment, the Commission may, make an order requiring the worker's employer

- (a) to take the steps specified in the order to restore the position of the worker, and
- (b) to pay to the worker a sum specified in the order as compensation for the loss of earnings attributed to the contravention.

(3) Where the Commission finds that a person has engaged in an unfair labour practice under section 128 by making a contribution to a trade union, the Commission may, order that the trade union refund the contribution.

(4) For the purposes of enforcing an order of the Commission under this section, the order shall have effect as if it were made by the High Court.

**134. Appeals**

A person aggrieved by an order, direction or decision made or given by the Commission under section 133 may, within fourteen days of the making or giving of the order, direction or decision, appeal to the Court of Appeal.

*National Labour Commission**Establishment and Functions of the National Labour Commission***135. Establishment of Commission**

There is established by this Act a National Labour Commission.

**136. Composition of the Commission**

(1) The Commission consists of:

- (a) the chairperson who shall be nominated by the employers' organisation and organised labour except that where there is failure to nominate a chairperson within sixty days as provided, the employers' organisation in consultation with organised labour shall submit the matter to a mediator agreed on by them, and
- (b) six representatives, two each nominated by the Government, employers' organisation and organised labour.

(2) The chairperson and the other members of the Commission shall be appointed by the President acting in consultation with the Council of State.

**137. Qualifications of chairperson and other members of the Commission**

A person is qualified to be appointed a member of the Commission if that person

- (a) does not hold office in a political party, and
- (b) has knowledge and expertise in labour relations and management, except that in the case of the chairperson, that person is also knowledgeable in industrial law.

**138. Functions and independence of the Commission**

(1) The functions of the Commission are,

- (a) to facilitate the settlement of industrial disputes;
- (b) to settle industrial disputes;
- (c) to investigate labour related complaints, in particular unfair labour practices, and take such steps as it considers necessary to prevent labour disputes;
- (d) to maintain a data base of qualified persons to serve as mediators and arbitrators;
- (e) to promote effective labour co-operation between labour and management; and
- (f) to perform any other function conferred on it under this Act or any other enactment.

(2) In the exercise of its adjudicating and dispute settlement function, the Commission is not subject to the control or direction of any person or authority.

**139. Powers of the Commission**

(1) The Commission shall exercise the following powers:

- (a) receive complaints from workers, trade unions, and employers, or employers' organisations
  - (i) on industrial disagreement, and
  - (ii) allegation of infringement of any requirements of this Act and the Regulations;
- (b) require an employer to furnish information and statistics concerning the employment of its workers and the terms and conditions of their employment in a form and manner the Commission considers necessary;
- (c) require a trade union or any workers' organisation to provide the information that the Commission considers necessary; and
- (d) notify employers and employers' organisations or workers and trade unions in cases of contravention of this Act and the Regulations and direct them to rectify any default or irregularities.

(2) Without prejudice to subsection (1), the Commission shall, in settling an industrial dispute, have the powers of the High Court in respect of

- (a) enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise;
- (b) compelling the production of documents; and

(c) the issue of a commission or request to examine witnesses abroad.

(3) The Commission shall in respect of its proceedings enjoy the same privileges and immunities pertaining to proceedings in the High Court.

#### **140. Meetings of the Commission**

(1) The Commission shall meet to settle industrial disputes, but shall meet at least once in every two months to consider matters affecting its administration and the performance of its functions.

(2) The Commission shall at its first meeting nominate one of its members as deputy chairperson.

(3) The quorum at a meeting of the Commission shall consist of the chairperson or, in the absence of the chairperson, the deputy chairperson and four other members of the Commission at least one person each representing Government, employers' organisation and organised Labour.

(4) The Commission may co-opt a person to attend meetings of the Commission as an adviser or a consultant.

(5) A person co-opted to attend a meeting of the Commission does not have the right to vote on a matter for determination or decision by the Commission.

(6) The Commission may permit to be in attendance at its meetings any other persons that the Commission may determine.

(7) Subject to subsection (2), the Commission shall regulate its own proceedings.

#### **141. Committees of the Commission**

(1) The Commission may appoint

- (a) a standing committee consisting of members of the Commission, or
- (b) an ad hoc committee consisting of non-members or both members and non-members of the Commission,

as the Commission considers necessary for the efficient performance of its functions.

(2) The Commission shall assign to any of its committees any of its functions that it may determine.

#### **142. Allowances for members of the Commission and its committees**

The members of the Commission shall be paid allowances determined by the Minister in consultation with the Minister responsible for Finance.

#### **143. Tenure of office of members**

(1) The members of the Commission shall hold office for a period of four years and are eligible for re-appointment after the expiration of their tenure of office.

(2) The chairperson or a member of the Commission may at any time resign from office by letter addressed to the President through the Minister.

(3) A member of the Commission may be removed from the Commission by the President for inability to perform the functions of office, for stated misbehaviour or for a just cause.

#### **144. Regional and district committees of the Commission**

(1) Despite section 141, the Commission may establish as it considers necessary, regional and district labour committees.

(2) The composition of a regional or district labour committee shall be determined by the Commission except that there shall be equal representation of Government, organised labour and employers' organisations.

(3) The members of a regional or district labour committee shall be persons with knowledge in industrial relations.

(4) A regional or district labour committee shall elect from among its membership, a chairperson and a deputy chairperson.

#### **145. Functions of a regional or district labour committee**

A regional or district labour committee shall perform in the respective Region or district any of the functions of the Commission assigned to it in writing by the Commission.

#### **146. Meetings of a regional or district labour committee**

The provisions under sections 140 to 143 in respect of the Commission shall apply with the modifications that are necessary to the regional and district labour committees provided for under this Act.

#### **147. Secretariat for the Commission**

The Commission and a regional or district labour committee of the Commission shall be provided with the secretarial services and staff that are necessary for the effective performance of its functions under this Act.

#### **148. Expenditure of the Commission**

There shall be appropriated annually to the Commission by Parliament the funds that the Commission requires to meet the expenditure of the Commission in the performance of its functions including those for its regional and district committees.

#### **149. Accounts and audit**

(1) The Commission shall keep books of account and proper records in relation to the books of account.

(2) The books of account and the records shall be in the form approved by the Auditor-General.

(3) The Auditor-General shall, within three months after the expiration of each financial year, audit the books of account and records of the Commission in respect of the preceding year.

(4) The financial year of the Commission shall be the same as the financial year of the Government.

#### **150. Reports from regional and district labour committees**

A regional or district labour committee shall submit to the Commission annual reports within the period that the Commission may direct on its activities, and shall submit any other reports as the Commission may request.

#### **151. Annual reports of the Commission**

(1) The Commission shall, within eight months after the end of each financial year, submit to the Minister an annual report on the activities of the Commission during that year.

(2) The report shall include a copy of the audited accounts of the Commission in respect of the financial year and the report of the Auditor-General on the audited accounts.

(3) The Minister shall within two months of the receipt of the annual report from the Commission submit the report to Parliament with the comments that the Minister considers necessary.

#### **152. Regulations by the Commission**

- (1) The Commission may, by legislative instrument, make Regulations providing for
- (a) the procedure for negotiation, mediation and arbitration proceedings, and
  - (b) other matters necessary for the effective discharge of its functions under this Act.

(2) Regulations made under subsection (1) shall be under the signature of the chairperson of the Commission or in that person's absence under the signature of the deputy chairperson.

### *Settlement of Industrial Disputes*

#### **153. Settlement by negotiation**

The parties to an industrial dispute are under an obligation to negotiate in good faith with a view to reaching a settlement of the dispute in accordance with the dispute settlement procedures established in the collective agreement or contract of employment.

#### **154. Mediation**

(1) Subject to the time limit in respect of essential services, if the parties fail to settle a dispute by negotiation within seven days after the occurrence of the dispute, either party or both parties by agreement may refer the dispute to the Commission and seek the assistance of the Commission for the appointment of a mediator.

(2) Where the Commission is satisfied that the parties have not exhausted the procedures established in the collective agreement or have not agreed to waive those procedures, the Commission shall order the parties to comply with those procedures within the time determined by the Commission.

(3) When the Commission is satisfied that

- (a) the parties have exhausted the procedures established in the collective agreement,
- (b) the parties have failed to settle the dispute, and
- (c) none of the parties has sought the assistance of the Commission to appoint a mediator,

the Commission shall request the parties to settle the dispute by mediation within three days of the Commission becoming aware of the non-resolution of the dispute.

(4) Where the parties agree to mediate and at the end of the mediation proceedings there is settlement of the dispute, the agreement between the parties as regards the terms of the settlement shall be recorded in writing and signed by the mediator and the parties to the dispute.

(5) The settlement agreement referred to in subsection (4) is binding on the parties unless the agreement states otherwise.

(6) When at the end of mediation proceedings, an agreement is not reached, the mediator shall immediately declare the dispute as unresolved and refer the dispute to the Commission.

#### **155. List of mediators and arbitrators**

(1) The Commission shall maintain a list of qualified persons who are knowledgeable in industrial relations to serve as mediators or arbitrators for each Region.

(2) Appointments of mediators or arbitrators may be made from the list of mediators and arbitrators.

(3) A person appointed an arbitrator or a member of an arbitration panel is not qualified to serve in that capacity if that person has a financial or any other interest in the undertaking or employers' or workers' organisation involved in the dispute.

#### **156. Appointment of arbitrators**

Subject to the Arbitration Act, 1961 (Act 38), or any general enactment on dispute resolution, the parties to an industrial dispute shall agree on the method of appointment of arbitrators or an arbitration panel and in the absence of an agreement by the parties the Commission shall appoint an arbitrator or an arbitration panel.

#### **157. Voluntary arbitration**

(1) When mediation fails under section 154 (6) and the dispute is referred to the Commission, the Commission shall with the consent of the parties refer the dispute to an arbitrator or an arbitration panel appointed under section 156.

(2) The parties to an industrial dispute shall, within three days after the appointment of an arbitrator or an arbitration panel under section 156, submit to the arbitrator in writing a statement of the issues or questions in dispute signed by one or more of the parties or their representatives.

(3) The arbitrator shall as soon as possible appoint a time and place for the hearing and notify the parties.



(4) If a party fails to appear before the arbitrator after the expiration of seven days after being so notified, the arbitrator shall proceed to hear and determine the dispute.

#### **158. Arbitration award**

(1) The decision of the arbitrator or a majority of the arbitrators shall constitute the award and is binding on the parties.

(2) The arbitrator shall communicate the award in writing to the parties and the Commission within seventy-two hours after the award has been made except where the Commission is the arbitrator.

#### **159. Notice of intention to resort to strike or lockout**

Where

- (a) the parties fail to agree to refer the dispute to voluntary arbitration, or
- (b) the dispute remains unresolved at the end of the arbitration proceedings,

either party intending to take strike action or institute lockout, shall give written notice of this to the other party and the Commission, within seven days after failure to agree to refer the dispute to voluntary arbitration or the termination of the proceedings.

#### **160. Strike and lockout**

(1) A party to an industrial dispute who has given notice of intention to resort to a strike or lockout under section 159 may do so only after the expiration of seven days from the date of the notice and not at any time before the expiration of that period.

(2) If the dispute remains unresolved within seven days from the commencement of the strike or lockout, the dispute shall be settled by compulsory arbitration under section 164.

#### **161. Cooling-off period**

(1) A party to an industrial dispute shall not resort to a strike or lockout during the period when negotiation, mediation or arbitration proceedings are in progress.

(2) A party who contravenes subsection (1) is liable for the damage, loss or injury suffered by any other party to the dispute.

#### **162. Essential services**

(1) In an industrial dispute that affects workers engaged in an essential service, the parties to the dispute shall endeavour to settle the dispute within three days of the occurrence of the dispute by negotiation.

(2) If after the expiration of the three days, the dispute remains unresolved, the parties shall within twenty-four hours of the expiry of the three days, refer the dispute to the Commission for settlement by compulsory arbitration under section 164.

(3) The Commission shall take immediate steps, but not later than three days after the dispute has been referred to it, to settle the dispute by compulsory arbitration under section 164.

**163. Prohibition of strike or lockout in respect of essential services**

An employer carrying on, or a worker engaged in, an essential service shall not resort to a lockout or strike in connection with or in furtherance of an industrial dispute involving the workers in the essential service.

**164. Compulsory reference to arbitration**

(1) When a dispute is referred to compulsory arbitration in pursuance of section 160 or 162, the Commission shall be the arbitrators and shall serve on the parties a notice

- (a) stating what, in its opinion, are the unresolved issues between the parties, and
- (b) asking the parties whether they agree to those issues.

(2) The Commission shall, within fourteen days after service of the notice, determine the dispute by compulsory arbitration.

(3) A compulsory arbitration shall be composed of three members of the Commission, one member each representing Government, organised labour and an employers' organisation.

(4) In a compulsory arbitration, the decision of the majority of the arbitrators shall constitute the award and is binding on the parties.

**165. Powers of arbitrators**

An arbitrator appointed under section 156 or 164 shall have the powers of the High Court in respect of enforcing attendance of persons before the arbitrator or examining those persons on oath or affirmation and compelling the production of documents.

**166. Vacancy in arbitration panel**

(1) In an arbitration composed of more than one arbitrator, where a vacancy occurs in their number, the arbitrators may with the consent of the parties, act despite the vacancy.

(2) Where the parties fail to give their consent as required under subsection (1), the party whose number of arbitrators is affected by the vacancy, shall appoint another arbitrator to fill the vacancy immediately; failing that the Commission shall appoint another arbitrator to fill the vacancy.

(3) In a compulsory arbitration, where a vacancy occurs in the arbitration panel, the other member of the Commission representing the interest group of the absent arbitrator shall fill the vacancy.

**167. Publication of compulsory arbitration award and effect of arbitration awards on existing employment contracts**

(1) The award of the Commission in a compulsory arbitration shall, immediately on completion be published in the *Gazette* by the Commission.

(2) An award published under subsection (1) is final and binding on the parties unless challenged in the Court of Appeal on questions of law within seven days after the publication of the award.

(3) Subject to an appeal, an award arising from a voluntary or compulsory arbitration shall prevail over a contract of employment or collective agreement in force at the time of the award and the terms of the contract of employment or collective agreement shall be deemed to have been modified as far as may be necessary in order to conform to the award.

### *Strikes*

#### **168. Illegal strike or lockout**

(1) Subject to sections 159 and 160, a strike or lockout is legal if it is in sympathy with or in support of a strike action taken by another worker or group of workers against their employer on account of an industrial dispute with the employer.

(2) A person who declares or instigates or incites others to take part in a strike or lockout or acts in furtherance of a strike or lockout which is illegal under subsection (1) is liable for the damage, loss or injury suffered by any other person as a result of the illegal strike or lockout.

(3) The form of a strike or lockout in sympathy with another body or organisation shall be in a form agreed on with the management of the sympathisers and shall not disrupt the operational activities of the enterprise whose workers are sympathisers.

(4) Without prejudice to subsection (2), a worker who takes part in an illegal strike may have the services terminated by the employer without notice for breach of contract of employment or may forfeit remuneration in respect of the period during which the worker is engaged in the illegal strike.

(5) Without prejudice to subsection (2), an employer who resorts to illegal lockout is liable to pay the unpaid remuneration of the workers.

(6) Regulations may provide further for matters relating to sympathy strikes.

#### **169. Legal effect of lawful strike or lockout**

(1) During a lawful strike or lockout, the employment relationship between the employer and the workers shall not be affected by the strike or lockout and a termination of the contract of employment as a result of the lawful strike or lockout is void.

(2) Civil proceedings shall not be brought against a worker, an employer, a trade union or an employers' organisation or an officer or a member of the trade union or employers' organisation in respect of a lawful strike or lockout action taken in conformity with the provisions of this Act.

(3) A provision of sections 168 to 171 shall not render lawful an act of physical coercion or violence against a person or damage to the property of a person where the act or damage is an offence under the Criminal Offences Act, 1960 (Act 29).

#### **170. Temporary replacement of labour**

(1) An employer may not employ a person to perform the work of a worker participating in a lawful strike unless the work is necessary to secure essential minimum maintenance services at the undertaking.

(2) A worker has the right to refuse to do a work normally performed by the worker who is participating in a lawful strike except that the worker shall not refuse to perform the work if it is necessary to secure minimum maintenance services.

(3) A dispute as to whether a work is necessary to secure minimum maintenance services shall be referred to the Commission for determination, and the decision of the Commission shall, subject to any other law, be final.<sup>6</sup>

(4) For the purposes of this section, “**minimum maintenance services**” are those services in an undertaking the interruption of which would result in material damage to equipment and machinery and which by agreement between the workers and the employer under a collective agreement should be maintained during strike or lockout.

#### **171. Picketing**

(1) It is lawful in furtherance of a lawful strike or lockout for a person to be present at or near not less than ten metres away from the workplace or former workplace or place of business of the employer or former employer, for the purpose of peacefully communicating information or peacefully persuading any other person not to enter the workplace or place of business, work or deal in or handle the employers’ products or do business with the employer.

(2) Picketing is unlawful if it is conducted at a place less than ten metres away from the workplace or place of business of the worker, and a person who engages in an unlawful picketing is liable for the damage, loss or injury suffered by any other person as a result of the unlawful picketing.

#### *Miscellaneous Provisions*

#### **172. Enforcement of orders of the Commission**

Where a person fails or refuses to comply with a direction or an order issued by the Commission under this Act the Commission shall make an application to the High Court for an order to compel that person to comply with the direction or order.

#### **173. Offences by body of persons**

- (1) Where an offence under this Act is committed by a body of persons, then
- (a) where the body of persons is a body corporate, every director of that body corporate is deemed to have also committed the offence,
  - (b) where the body of persons is a firm, every partner of that firm is deemed to have also committed the offence, and
  - (c) where the body of persons is a worker’s union or group of workers, every officer or leader of the union or group of workers is deemed to have committed the offence.

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6. The law here includes the Constitution which in terms of clause (3) of article 125 gives final judicial power to the Judiciary.

(2) A person shall not be convicted of an offence under subsection (1), if that person proves that the offence was committed without the knowledge of, or due diligence was exercised by that person to prevent the commission of the offence.

#### 174. Regulations

The Minister may by Legislative Instrument, make Regulations,

- (a) for securing the compliance in this country with the provisions of an international convention relating to labour made applicable to Ghana whether before or after the commencement of this Act;
- (b) relating to sympathy strikes;
- (c) providing for the conditions and procedure for granting licences to private employment agencies;
- (d) relating to the performance of the National Tripartite Committee;
- (e) on specific measures to be taken by employers to safeguard the health and safety of their workers;
- (f) specifying special incentives provided for under section 46 (3);
- (g) prescribing the fees for licences granted under paragraph (c);
- (h) prescribing the scale of fees chargeable by the private employment agencies; and
- (i) generally for carrying into effect the provisions of this Act.

#### 175. Interpretation

In this Act, unless the context otherwise requires,

“**arbitrator**” includes a panel of arbitrators;

“**Auditor-General**” includes an auditor appointed by the Auditor-General;

“**centre**” means a public employment centre established under section 2;

“**Commission**” means the National Labour Commission established under section 135;

“**contract of employment**” means a contract of service whether express or implied, and if express whether oral or in writing;

“**Court**” means a court of competent jurisdiction;

“**district committee**” means a district labour committee of the Commission;

“**domestic worker**” means a person who is not a member of the family of a person who employs that person as house help;

“**employer**” means a person who employs a worker under a contract of employment;

“**employers’ organisation**” means any organisation of employers established by employers the principal purposes of which are the representation and promotion of employers’ interests and the regulation of relations between employers and workers and which is registered under section 84;

**“essential services”** includes areas in an establishment where an action could result in a particular or total loss of life or pose a danger to public health and safety and any other services that the Minister may by legislative instrument determine;

**“industrial dispute”** means a dispute between an employer and one or more workers or between workers and workers which relates to the terms and conditions of employment, the physical condition in which workers are required to work, the employment and non-employment or termination or suspension of employment of one or more workers and the social and economic interests, of the workers but does not include a matter concerning the interpretation of this Act, a collective agreement or contract of employment or a matter which by agreement between the parties to a collective agreement or contract of employment does not give cause for industrial action or lockout;

**“lockout”** means the closing of a workplace, the suspension of work by an employer or refusal by an employer to employ or re-engage a number of the workers, in consequence of an industrial dispute;

**“manual labour”** means a work performed by hands or physical labour;

**“medical practitioner”** means a medical practitioner registered under the Medical and Dental Act, 1972<sup>7</sup> or any other law for the time being in force;

**“midwife”** means a midwife registered under the Nurses and Midwives Act, 1972<sup>8</sup> and does not include a traditional births attendant;

**“Minister”** means the Minister assigned responsibility for Labour;

**“person with disability”** means an individual who, on account of injury, disease or congenital deformity, is substantially handicapped in obtaining or keeping employment or in engaging, in a work on the individual’s own account, of a kind which apart from that injury, disease or deformity would be suited to the age, experience and qualification of the individual;

**“picketing”** means the action whereby workers outside a place of work intend to persuade other workers not to enter the place of employment during labour unrest;

**“private employment agency”** means a body corporate which acts as an intermediary for the purpose of procuring employment for a worker or recruiting a worker for an employer;

**“Region”** means a Region of Ghana;

**“regional committee”** means a regional labour committee of the Commission;

**“Regulations”** means any of the relevant Regulations made under this Act;

**“remuneration”** includes the basic or minimum wage or salary and an additional emolument payable directly or indirectly by the employer to the worker on account of the worker’s employment;

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7. N.R.C.D. 91.

8. N.R.C.D. 117.

“repatriation expenses” includes

- (a) subsistence and travelling expenses of the worker and accompanying members of his or her family during the journey to and from the place of employment, and
- (b) subsistence expenses during the period, between the date of expiration of the contract and the date of repatriation;

“sexual harassment” means an unwelcome, offensive or importunate sexual advances or request made by an employer or superior officer or a co-worker to a worker, whether the worker is a man or woman;

“standing joint negotiating committee” means a body consisting of representatives of two or more trade unions and one or more trade unions and employer’s representatives established for purposes of collective bargaining and is authorised by or on behalf of those trade unions and employers’ representatives to enter into collective agreements on their behalf;

“strike” means an action by two or more workers acting in concert which is intended by them to restrict in any way the service they normally provide to the employer or diminish the output of the service with a view to applying coercive pressure upon the employer, and includes sympathy strike and those activities commonly called a work-to-rule, a go-slow or a sit-down strike;

“task worker” means a person who performs a piece of work for a fee;

“trade union” includes an association of workers the principal purposes of which are to promote and protect their economic and social interests and which is registered under section 84 and a federation of trade unions registered under this Act;

“undertaking” includes the business of an employer;

“worker” means a person employed under a contract of employment whether on a continuous, part-time, temporary or casual basis;

“workplace” includes a place where a worker needs to be or to go by reason of the work which is under the direct or indirect control of the worker;

“young person” means a person of or above eighteen years of age but below twenty-one years.

#### **176. Modification of existing enactments**

The provisions of an enactment of relevance to this Act in existence before the coming into force of this Act shall have effect subject to the modifications that are necessary to give effect to this Act, and to the extent that a provision of that enactment is inconsistent with this Act, the provisions of this Act shall prevail.

#### **177. Repeals and amendment**

- (1) The enactments specified in the Third Schedule are repealed.
- (2) The enactment specified in the first column of the Fourth Schedule is amended in the manner specified in the second column.

**178. Savings and transitional provisions**

(1) Despite the repeal of the enactments specified in the Third Schedule, a statutory instrument made under those enactments and in force immediately before the commencement of this Act are continued in force until amended, revoked or otherwise dealt with under this Act.

(2) The Trades Union Congress and the trade unions (whether affiliated to the Trade Union Congress or not) which are in existence immediately before the commencement of this Act shall not be required to apply for registration by reason only of the coming into force of this Act.

(3) On the coming into force of this Act, and until the National Tripartite Committee provided for section 110 is composed, the administrative arrangement in existence on the National Tripartite Committee shall continue to operate.

**179. Commencement**

This Act shall come into force on the date that the Minister shall by executive instrument appoint.<sup>9</sup>

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9. The Act came into force on the 31st day of March, 2004 under the Labour Act (Commencement) Instrument, 2004 (E.I. 3 of 2004).



SCHEDULES

FIRST SCHEDULE

[Section 13]

*Written Statement of Particulars of Contract of Employment*

1. Name of employer .....
  2. Name of employee .....
  3. Date of first appointment .....
  4. You are employed as (job title or grade) .....
  5. Your rate, method and interval of pay is .....
  6. Your hours of work are .....
  7. Your periods of holidays and details of holiday pay are .....
  8. The conditions relating to incapacity to work due to sickness or injury and the details of sick pay, if any, are .....
  9. Details of social security or pension scheme .....
  10. Amount of notice to terminate employment to be given by:
    - (a) the employer .....
    - (b) the worker .....
  11. The disciplinary rules applicable to you are .....
  12. The procedure for dealing with any grievances or dispute is .....
  13. Overtime payment, if any .....
- Date .....

.....  
*Signature of employer*

.....  
*Signature of worker*

SECOND SCHEDULE

[Section 111 (1)]

*Form of Notice to Employer*

TO .....

(Name of employer)

On behalf of the ..... trade union, I request you to deduct from the wages of your employees covered by the certificate issued under section 99 of the Labour Act, 2003, ..... cedis monthly in discharge of their trade union dues and to pay the amounts to such account as may be directed by the Chief Labour Officer.

SECOND SCHEDULE—continued

This notice does not apply to wages payable by any employer within 7 days of the receipt of the notice.

.....	Name
.....	Signature
.....	Title of officer
.....	List of members

THIRD SCHEDULE

[Section 175 (1)]

Enactments Repealed

- The Conspiracy and Protection of Property (Trade Disputes) (Cap. 90)
- The Trade Unions Ordinance (Cap. 91)
- The Trade Unions (Amendment) Ordinance, 1953 (No. 19)
- The Trade Unions (Amendment) Decree, 1966 (N.L.C.D. 110)
- The Trade Disputes (Arbitration and Inquiry) (Cap. 93)
- The Industrial Relations Act, 1965 (Act 299)
- The Industrial Relations Act, 1965 (Amendment) Decree, 1967 (N.L.C.D. 189)
- The Industrial Relations (Amendment) Decree, 1972 (N.R.C.D. 22)
- The Labour Decree, 1967 (N.L.C.D. 157)
- The Labour (Amendment) Decree, 1967 (N.L.C.D. 212)
- The Labour (Amendment) Decree, 1969 (N.L.C.D. 331)
- The Labour (Amendment) Decree, 1969 (N.L.C.D. 342)
- The Labour (Amendment) Decree, 1969 (N.L.C.D. 368)
- The Labour (Amendment) Decree, 1973 (N.R.C.D. 150)
- The Labour (Amendment) Decree, 1976 (S.M.C.D. 33)
- The Labour (Amendment) Decree, 1976 (S.M.C.D. 42)
- The Public Service (Negotiating Committee) Law, 1992 (P.N.D.C.L. 309)

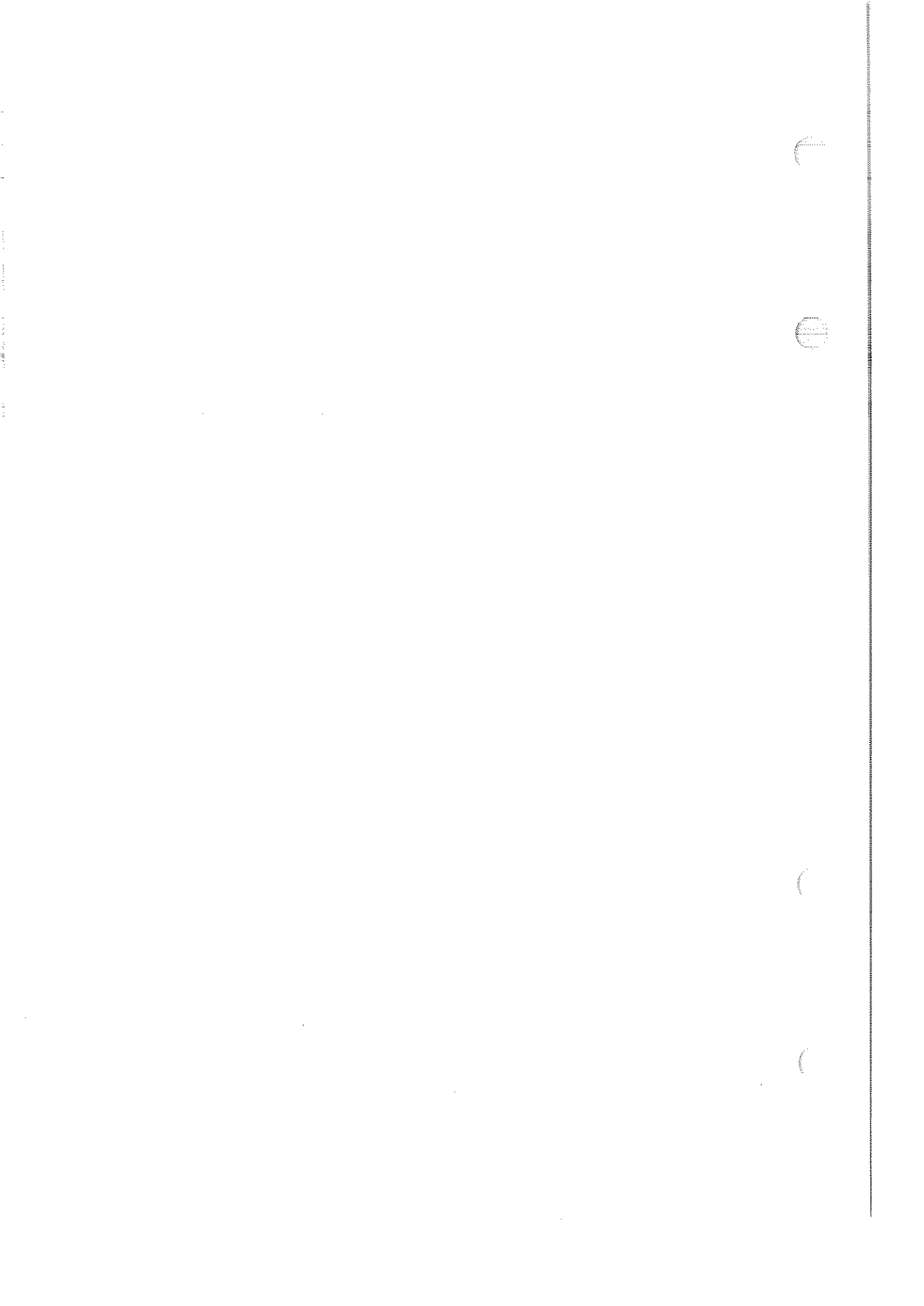
## FOURTH SCHEDULE

[Section 175 (2)]

*Enactment Amended*

COLUMN 1	COLUMN 2
<i>ENACTMENT</i>	<i>HOW AFFECTED</i>
Children's Act, 1998 (Act 560)	Section 93 is amended by the deletion of the words "and young persons" wherever they occur. Section 95 (1) is amended by the deletion of the words "and young persons". Section 124 is amended by the deletion of the definition of "young person".

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**S.M.C.D. 77****LAND AND BUILDINGS (ACQUISITION) ACT, 1977<sup>1</sup>**

**AN ACT to provide for the vesting of a certain property in the Republic.**

**House No. 340/2 Independence Avenue, Accra deemed to have been vested under A.M.C. Agreement.**

Despite anything to the contrary, the interests in the land and buildings formerly known as House Number 340/2 Independence Avenue and now known as House No. 71 Independence Avenue in Accra shall, with effect from the 1st day of January, 1975 be deemed to have been transferred to the Republic as being part of the fixed assets of the African Manganese Company transferred by Agreement made between the Government and that Company and dated 19th September, 1975 but free from all encumbrances.

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1. This Act was issued as the Land and Buildings (Acquisition) Decree, 1977 (S.M.C.D. 77) made on the 10th day of November, 1977 and notified in the *Gazette* on the 25th March, 1977.