

BILL

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THE EMPLOYMENT ACT, 2022

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SCHEDULE

No.



2022

Sierra Leone

A BILL ENTITLED

The Employment Act, 2022

Short title.

Being an Act to consolidate and improve the law relating to labour and employment, to provide for the promotion of equal opportunity and elimination of discrimination in employment and occupation and to provide for other related matters.

Enacted in the []

] Date of commencement.

ENACTED by the President and Members of Parliament in this present Parliament assembled.

PART I – PRELIMINARY

Interpretation. 1. In this Act, unless the context otherwise requires-

“apprentice” means a person above the age of 14 years under training at a workplace with an employer or craftsman to acquire knowledge and skill, art or trade within the period specified for the training;

“award” means a judgment or decision by the High Court;

“business” means a trade, undertaking, operation or establishment, whether corporate, public or private;

“casual worker” means a worker contracted to work for a limited period of up to 6 months and such work shall not include those normally performed by regular workers in the workplace;

“Code of Practice on Discipline” means the Code of Practice on Discipline set out in the Schedule;

“Commissioner” means the Commissioner of Labour appointed by the Public Service Commission for the purpose of the administration and implementation of this Act;

“contract of employment or service” means a contract or agreement containing the conditions and terms of employment or service, whether written or oral, whether expressed or implied, individually or collectively, for a definite or indefinite period, whereby a worker agrees in return for wages or other remuneration to work for an employer, employing organisation, institution or business establishment, including a contract of apprenticeship, in the public or private sector;

“court” means the High Court;

“day’s rest” means a period of rest comprising at least 24 consecutive hours;

“disability” means a physical, sensory, mental or other impairment which has a substantial long-term adverse effect on a person’s ability to carry out normal day-to-day activities;

“discrimination” includes a distinction, exclusion or preference made on the basis of colour, disability, political opinion, national extraction, marriage, pregnancy and maternity, race, religion or belief, sexuality, sex, membership of a trade union, organisation or social origin, that has the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation;

“earnings” include wages and allowances paid to a worker by an employer and the value of food, fuel, accommodation, overtime payment or other special remuneration or benefit in kind;

“employer” means a person or group of persons including a government, a public or local authority, firm, corporation or company, partnership, business, or any other entity whatsoever for whom one or more workers work, have worked or normally work under a contract of employment and includes the heirs, successors and assignees of the employer;

“employers’ organisation” means an organisation of employers that has among its principal objects the regulation of collective relations between employers and workers;

“environment” means a working environment or premises in which work is done by a worker;

“equal remuneration” means rates of remuneration established without discrimination;

“federation” includes the Sierra Leone Employers’ Federation;

“forced or compulsory labour” means work or service which is performed by a person –

- (a) under the menace of a penalty and for which the person has not offered himself voluntarily; or
- (b) coerced to work through the use of violence or intimidation; or by debt bondage, retention of identity papers or threats of denunciation to immigration authorities;

“health” in relation to work means not merely the absence of disease or infirmity but it also includes the physical and mental elements affecting health which are directly related to safety and hygiene at work;

“industrial action” means a temporary show of dissatisfaction by employees by a concerted withdrawal of labour or restriction upon the availability or quantity of labour on the part of workers, strike, slowdown or working to rule in order to protest against bad working conditions or low pay and to increase bargaining power with the employer and to force the employer to improve them by reducing productivity in a workplace, usually organised by trade unions or other organised labour;

“intern” means a student or trainee who works, sometimes without pay, in order to gain work experience or satisfy requirements for a qualification;

“internship” means a programme or period of work experience offered by a firm, corporation, company, organisation or government to help students and graduates gain relevant skills and

experience in a particular field of work or trade or to satisfy a requirement for a qualification;

“Joint Consultative Committee” means an advisory committee appointed by the Minister to advise generally on labour matters under the law governing regulation of wages and industrial relations;

“Joint National Negotiating Board” means the Joint National Negotiating Board for workers established by the law governing regulation of wages and industrial relations;

“labour officer” means an officer appointed by the Public Service Commission in whom the Commissioner may delegate his functions and powers generally or in part for the effective and efficient performance of his functions under this Act;

“Minister” means the Minister responsible for labour and “ministry” shall be construed accordingly;

“national minimum wage” means the national minimum wage established by the Minister in accordance with section 3 of the Minimum Wage Act, 1997;

“night work” means work which is performed between 8:00 o’clock in the evening and 6:00 o’clock in the morning;

“outworker” means a worker to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished, repaired, or adapted for sale in his home or on other premises, not in the control or management of the person who gave out the articles or materials;

“pay statement” means a statement issued by an employer under section 56;

“person” means a person or group of persons, company, firm, corporation or any other kind of body including their agents;

“probationary contract” means a contract of employment for not more than 6 months period;

“Public Service Commission” means a body established under subsection (1) of section 151 of the Constitution of Sierra Leone (Act No.6 of 1991);

“qualified medical practitioner or personnel” means a Government Medical Officer or a medical practitioner registered in accordance with the Medical and Dental Surgeons Act, 1966 (Act No. 3 of 1966);

“redundancy” means an involuntary loss of employment by a worker due to circumstances where an employer have to let go of one or more workers due to circumstances unrelated to job performance or behavior.

“remuneration” includes the ordinary, basic or minimum wage or salary and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by an employer to a worker, arising out of the worker’s employment;

“severance pay” means the benefit or entitlement given to a worker by his employer at the end of his contract of employment or service;

“strike” means the cessation of work or refusal to work organised by a body of workers as a form of protest, typically in an attempt to gain a concession or concessions from their employer;

“summary dismissal” means the discharge of a worker from an employment due to breach of dismissible offence as prescribed in section 91;

“supervisor” means a worker having authority, in a workplace, to recommend the hire, transfer, suspension, layoff, recall, promotion, discharge, reward or discipline of other workers or to recommend such action;

“termination of employment” means the discharge of a worker from employment;

“trade dispute” means a disagreement or difference between employers and workers connected with the employment, the terms of employment or with the conditions of labour of workers and includes a dispute connected with any of the following -

- (a) terms and conditions of employment including remuneration for employment;
- (b) the engagement of a worker;
- (c) the times at which or the conditions under which work is, or is not performed;
- (d) the demotion, suspension or imposition of other penalty or discipline of a worker;
- (e) the termination of an agreement by which work is to be performed;
- (f) the grievance or complaint of a worker in respect of his employment;
- (g) the machinery for negotiating the disputes or for the settlement of a work-related dispute;

“trade union” means an organisation of workers that has among its principal objects the regulation of collective relations between workers and employers;

“violence and harassment” means a range of unacceptable behaviours, practices or threats, whether a single occurrence or repeated, that aim at, result in or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment directed against a person in the workplace;

“volunteer” includes a person of working age who engages in an unpaid, noncompulsory work to produce goods or provide service for a community or organisation;

“wage” means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law, which is payable by virtue of a written or unwritten contract of employment by an employer to a worker for work done or to be done or for services rendered or to be rendered;

“week” means a period of 5 working days;

“workplace” means a place where workers need to be or to go by reason of their work and which is under the direct or indirect control of an employer;

“worker” means a person who has entered into or works under a contract of employment or other contract with an employer, including a contract of service, a contract concerning learning or a contract personally to execute any work or labour and an outworker.

2. (1) This Act shall apply to all employers and workers in Sierra Leone, except where the contrary is expressly stated. Application.

(2) Notwithstanding subsection (1), the Minister may, by statutory instrument, after consultation with the Joint Consultative Committee, exempt a person, class of persons, trade, industry or undertaking whose terms and conditions of employment are governed by special arrangements, from the operation of all or any of the provisions of this Act.

(3) The Minister may, by statutory instrument, extend the application of this Act to any category of persons excluded from the application of this Act under section 3.

3. This Act shall not apply to the armed forces, police force, fire force, correctional service of Sierra Leone excluding their civilian workers. Non application.

PART II - ADMINISTRATION AND JURISDICTION

4. There shall be a Commissioner of Labour appointed by the Minister. Public Service Commission who shall be responsible for all matters relating to labour and for the administration, implementation and enforcement of this Act. Commissioner

5. (1) The Commissioner shall, in the exercise of his functions under this Act, have power to - Powers of Commissioner.

- (a) enter into a workplace for inspection without previous notice;
- (b) carry out examination, test or inquiry, which he considers necessary, in order to ensure that the rights of workers under this Act have not been violated and in particular to -

- (i) question, alone or in the presence of witnesses, an employer or staff on any matter under this Act;
 - (ii) require the production of books, registers or other documents relating to conditions of work and to copy such documents or take extracts from them;
 - (iii) enforce the posting of notices prescribed under this Act;
- (c) take or remove, for the purpose of analysis, samples of materials and substances used or handled;
- (d) issue to an employer, an improvement notice or prohibition notice, on such conditions as may be prescribed, to remedy a defect in plant layout or working methods which in his opinion constitutes to be a threat to the health or safety of a worker;
- (e) order the temporary seal of a workplace or the discontinuation of a work process –
- (i) for non-compliance with relevant labour laws; or
 - (ii) on an imminent danger to the safety and health of workers;
- (f) order the closure of a workplace or discontinuation of any work process where an employer fails to remedy a defect under paragraph (d); and

- (g) institute civil or criminal proceedings in the High Court in respect of a contravention or alleged contravention of this Act or any other law relating to labour and employment.

(2) The Commissioner may, for the effective and efficient performance of his functions under this Act, delegate his functions and powers generally or in part, to a director or labour officer authorised under this Act and may, at any time, by notice in writing, revoke such delegation.

(3) The Commissioner or a person authorised by him shall not be personally liable for any act or omission in the exercise of his functions and powers under this Act.

6. The Commissioner or a person authorised by him shall - Obligations
of
Commissioner.
- (a) not have direct or indirect interest in an undertaking under his supervision;
 - (b) not disclose information obtained by him, except to persons acting in the execution of this Act, in so far as such information may be necessary for the performance of his duties;
 - (c) treat as absolutely confidential, the source of complaint made under this Act or action taken in consequence of such complaint.
7. A person who - Obstruction
of
Commissioner.
- (a) wilfully delays or obstructs;
 - (b) hinders, prevents or molests;
 - (c) fails to comply with a direction, order, requirement or request for information or document, demand for or inquiry;
 - (d) fails to honour an invitation to a conciliation meeting;

- (e) provides inaccurate or deficient record or information, with an intention to defraud or deceive;
- (f) conceals or attempts to conceal or otherwise prevents a person from appearing before or being examined by the Commissioner or any person authorised by him in the exercise of any power, duty or function under this Act,

commits an offence and is liable, upon conviction, to a fine not less than 40 months national minimum wage in respect of each offence or to imprisonment for a term not less than 12 months or to both such fine and imprisonment.

Annual
report.

8. (1) The Commissioner shall, within 4 months after the end of the financial year, submit to the Minister a report on the performance of his functions during that year and on its policy and programmes.

- (2) An annual report under subsection (1), shall include
 - (a) the accounts and annual financial statement of the office of the Commissioner;
 - (b) the status of this Act and any other law relating to labour and employment;
 - (c) the staff of the office of the Commissioner;
 - (d) statistics of –
 - (i) workplaces liable to inspection and the number of employees employed therein;

-
- (ii) inspection visits, violations and offences, and penalties imposed;
 - (iii) industrial accidents and occupational diseases; and
 - (iii) proceedings brought before the High Court and of their disposal; and
 - (iv) any other relevant labour or employment information.

(3) The Minister shall, on receipt of an annual report by the Commissioner under subsection (1), lay copies of the report before Parliament within 2 months.

9. (1) The office of the Commissioner shall have such directorates and departments or divisions as may be necessary for the expedient and efficient performance of the functions of the Commissioner including –

Directorates
departments,
etc.

- (a) Policy, Planning and Research;
- (b) Labour and Employment Directorate;
- (c) Occupational Safety and Health;
- (d) Social Protection.

(2) A directorate of the office of the Commissioner under subsection (1), shall be headed by a Director.

10. The Commissioner shall, in the performance of his functions under this Act, be assisted by officers appointed by the Public Service Commission to be known as labour officers.

Labour
officers.

Other staff.

11. In addition to the directors and labour officers, the office of the Commissioner shall have such other staff as may be necessary for the efficient and effective performance of the functions of the Commissioner.

PART III - FREEDOM OF ASSOCIATION

Right to form or join trade union.

12. (1) A worker may form or join a trade union of his choice for the promotion and protection of his economic and social interests or withdraw his membership from such trade union and in particular, a worker may -

- (a) take part in the formation of a trade union;
- (b) be a member of a trade union and take part in lawful activities of a trade union;
- (c) hold office in a trade union;
- (d) take part in a trade union election;
- (e) be elected an officer of a trade union;
- (f) exercise a right conferred by this Act or any other law relating to labour and employment or assist another worker or trade union to exercise such rights.

(2) An employer, employers' organisation or a person acting on behalf of an employer or employers' organisation, shall not, with respect to a worker or a person seeking employment-

- (a) require him not join a trade union or to relinquish his trade union membership;

-
- (b) take prejudicial action, including termination or dismissal, against a worker or other person by reason of his trade union membership or participation in legitimate trade union activities;
 - (c) otherwise discriminate against a worker because of his exercise or anticipated exercise of a right conferred by this Act;
 - (d) threaten a worker that he will suffer disadvantage from exercising a right conferred by this Act;
 - (e) promise a worker a benefit or advantage for not exercising a right conferred by this Act;
 - (f) restrain or seek to restrain a worker, by a contract of employment or otherwise, from exercising a right conferred by this Act and a contractual term which purports to exert such restraint shall be null and void;
 - (g) impose a discipline or disadvantage upon a worker, who is lawfully on strike or locked out, for refusing to do work normally done by that worker, unless such work must be done to prevent an actual danger to life, health or safety.

(3) Nothing in this section shall be interpreted as preventing an employer from terminating or otherwise disciplining a worker for just cause, in accordance with this Act.

(4) An employer or employer's organisation that seeks, by any kind of threat to intimidate a worker during negotiations of a collective agreement is guilty of unfair labour practice and is liable upon conviction to a fine not less than 15 months national minimum wage.

(5) An employer or employer's organisation that discriminates, intimidates, or harasses a worker with respect to the employment or conditions of employment because the worker is a member or an officer of a trade union or on account of race, religion, gender, religious dress code, HIV, AIDS, political opinion, region, marriage, age, disability condition or ethnicity commits an offence and is liable upon conviction to a fine of not less than 17 months national minimum wage and shall take appropriate steps to ensure there is a remedy to such action and prevent a reoccurrence.

(6) An employer or employer's organisation that seeks by –

- (a) intimidation or harassment;
- (b) threat of termination or dismissal;
- (c) imposition of a penalty;
- (d) giving or offering to give a wage increase or any other favourable alteration of terms of employment; or
- (e) any other means,

to induce a worker to refrain from becoming or continuing to be a member or officer of a trade union commits unfair labour practice and is liable upon conviction to a fine not less than 16 months national minimum wage and shall take appropriate steps to ensure there is a remedy to such action and prevent a reoccurrence.

Right to
form or join
employers'
organisation.

13. (1) An employer may form or join an employers' organisation of his choice for the promotion and protection of his economic and social interests or withdraw his membership from such organisation.

(2) An employer may -

- (a) take part in the formation of an employers' organisation or federation;
- (b) be a member of an employers' organization or federation and take part in the lawful activities of an employers' organisation;
- (c) hold office in an employers' organisation or federation;
- (d) exercise any and all rights conferred by this Act or any other enactment or assist another employers' organisation to exercise such rights.

(3) A worker or group of workers that seeks to intimidate or disrupt the business of an employer during negotiations of a collective agreement commits an unfair labour practice and is liable upon conviction to a fine not less than 6 months national minimum wage.

14. A complaint of infringement of the rights and protections under this Act may be referred to the High Court. (2) Where the High Court finds that a complaint referred to it under subsection (1) is well founded, it shall make such order as it may deem fit to secure compliance with this Act, including an order for the restoration to him of any benefit or advantage and for the payment of compensation or a fine.

Remedies
for
infringement
of freedom
of
association.

15. (1) Violence and harassment in the workplace is prohibited.

Violence and
harassment
at work
prohibited.

(2) In the case of violence and harassment including sexual prohibited. harassment, the victim may make a complaint based on dispute resolution procedures and in accordance with the regulations or grievance procedures of the workplace.

(3) Where a complaint made under subsection (1) is not resolved to the reasonable satisfaction of the complainant, he may make a complaint to the Commissioner and if the Commissioner finds that the complaint is well founded, he shall order an investigation into the complaint.

(4) Upon completion of an investigation under subsection 3, and if there is sufficient evidence of violence and harassment including sexual harassment, the Commissioner shall, after consultation with the Minister, refer the complaint to the High Court.

(5) Where the High Court finds that the complaint is well founded, it shall –

- (a) grant suitable protection against victimisation or retaliation against complainants, victims, witnesses or whistlers;
- (b) protect the privacy and confidentiality of those involved;
- (c) ensure that the requirements of privacy, confidentiality are not misused; and
- (d) impose appropriate sanctions.

(6) A person shall not prevent easy access to suitable, safe, fair and effective means of making a complaint of violence and harassment including sexual harassment that occurs in the workplace.

(7) A person who contravenes subsection (6) commits an offence and is liable, on conviction, to a fine of not less than 15 months national minimum wage.

Forced
labour
prohibited.

16. (1) A worker shall not be required to perform forced or compulsory labour including -

-
- (a) work in fulfilment of social responsibilities of a communal, cultural or religious nature;
 - (b) work or service which forms part of the normal communal or civil obligations of citizens;
 - (c) work or service performed in cases of emergency, that is to say in the event of force majeure, that would endanger the existence or the well-being of the whole or part of the population; or
 - (c) communal service of a kind which is performed by the members of the community in the direct interest of the community, provided that the members of the community or their direct representatives have been consulted by the relevant authorities in regard to the need for such services.

(2) A person who exacts or imposes forced labour or causes or permits forced labour for his own benefit or for the benefit of another person, commits an offence and is liable, on conviction, to a fine of not less than 30 months national minimum wage or to imprisonment for a period of not less than 12 months or to both fine and imprisonment and pay compensation to the victim of forced labour.

17. (1) Discrimination in employment or occupation is prohibited and a person discriminated against may make a complaint by himself or by another person on his behalf.

Non-discrimination in employment or occupation.

(2) An employer shall not dismiss an injured worker, discriminate against or disadvantage a worker in respect of the worker's employment or occupation, or alter the worker's position to the detriment of the worker by reason only that the worker-

- (a) makes a complaint about a matter which the worker considers is not safe or is a risk to his health;
- (b) is a member of a safety and health association;
- (c) exercises any of his functions as a member of a safety and health association;
- (d) sustained a degree of disability as a result of workplace injury; or
- (e) is pregnant or experiencing a maternity condition.

(3) An employer who contravenes subsection (2) commits an offence and is liable to a fine not less than 10 months national minimum wage or to imprisonment for a term of not less than 6 months or to both such fine and imprisonment.

(4) Notwithstanding any written law to the contrary, where a person is convicted of an offence under subsection (2), the High Court may, in addition to imposing the penalty under subsection (3), make one or both of the following orders –

- (a) that the offender pays within a specified period, as a compensation to the person against whom the offender has discriminated such damages as the court may deem fit; or
- (b) that the worker be reinstated or reemployed in his former position or, where that position is not available, in a similar or suitable position.

18. (1) An employer shall pay equal remuneration for men and women workers for work of equal value and for that purpose, an employer shall conduct a job evaluation to ensure that the principle of equal remuneration for men and women workers for work of equal value is applied. Equal

(2) An employer who contravenes subsection (1) commits an offence and upon conviction, is liable to a fine not less than 12 months national minimum wage.

19. (1) There shall be implied in every contract for the supply of goods or services to government departments, public, private institutions or local government authorities a "fair terms and conditions of employment" clause. Fair terms
and conditions
of
employment
clause in
contracts.

(2) A "fair terms and conditions of employment" clause under subsection (1) shall imply that a supplier of goods or services to a government department, public or private institution or local government authority undertakes to -

- (a) recognise and respect the freedom of the workers of its suppliers to belong to trade unions of their choice;
- (b) ensure that the workers of its suppliers enjoy terms and conditions of employment that are not less favourable than those established for work of the same character in that trade or industry in the place where the work is carried out, regulated by-
 - (i) collective bargaining agreement or other recognised machinery of negotiation between employers and trade union representatives or between substantial proportions of the employers and workers in that trade or industry; or

- (ii) conciliation award or a government wages order.
- (c) where the conditions of labour are not regulated in the manner referred to in paragraph (b) in the area where the work is carried on, ensure that workers of its suppliers enjoy terms and conditions of employment not less favourable than-
 - (i) those established by collective agreement or other recognised mechanism of negotiation including, conciliation award or government wages order, for work of the same character in that trade or industry in the nearest locality or area; or
 - (ii) the general level observed in the trade or industry in which its suppliers are engaged, by employers whose general circumstances are similar.

(3) A complaint may be made to the High Court by a trade union or an employers' organisation alleging a breach of subsection (2) and the High Court may order the supplier to pay to the workers concerned such sum or sums by way of compensation as it deems just and equitable in all the circumstances.

PART IV – BASIC EMPLOYMENT OBLIGATIONS

Notification
of business
activities.

20. (1) A person, organisation or institution in Sierra Leone -
- (a) intending to open a new business;
 - (b) commences business activity;

- (c) changes the operation of a previous establishment or business activity; or
- (d) enters into an agreement that has labour and employment relations element,

shall notify the Commissioner in writing of his intention before opening, commencing, changing the operation of such business activity.

(2) The Commissioner shall, upon receipt of the notice under subsection (1), take such steps as may be necessary to satisfy himself that -

- (a) the premises in which the business is to be operated is suitable for use as a workplace of the nature stated in the notice; and
- (b) the person, organisation or institution opening, commencing, changing the operation of such business is in adherence to the relevant labour laws.

21. Where the Commissioner is satisfied that -

Registration
of workplace.

- (a) the premises in which the business is to be operated is suitable for use as a workplace of the nature stated in the notice; and
- (b) a person, organisation, institution or business intending to open, commence or changing the operation of a business, he shall register the workplace.

22. (1) An employer, in the public or private sector, shall notify the Commissioner of any employment vacancy whenever it occurs for the purposes of employment statistics and labour market information.

Notification
of job
vacancies.

(2) Information received by the Commissioner under subsection (1) may be used order to -

- (a) determine the demand and supply of labour in different sectors of the economy; or
- (b) enhance effective labour management in Sierra Leone.

(3) An employer that fails to comply with subsection (1) commits an offence and is liable upon conviction to a fine of not less than 6 months national minimum wage.

**Employment
and training.**

23. (1) An employer shall, for the purpose of employment and training, give first consideration to Sierra Leoneans.

(2) Where an employer cannot employ a Sierra Leonean for a particular position due to the unavailability of trained personnel locally, the employer -

- (a) may hire a foreign expert to occupy such position; and
- (b) develop and submit to the Commissioner, a training and succession plan for the transfer of such skills to Sierra Leoneans.

**Employment
returns and
statistics.**

24. (1) In addition to any other powers conferred upon him by this Act, the Commissioner shall submit to an employer, a questionnaire relating to statistical data of workers employed or recruited for employment, the rates of wages and other conditions of service affecting such employment.

(2) An employer shall complete and return a questionnaire under subsection (1) to the Commissioner, not later than 2 weeks from the date of receipt of the questionnaire.

(3) An employer that fails to comply with subsection (2), commits an offence and is liable to a fine of not less than 6 months national minimum wage and in the case of a second or subsequent offence against the same provision, the offender shall be subject to a fine of not less than 3 months national minimum wage.

25. (1) An employer shall, for the payment of terminal benefits, -

Employer to establish separate terminal benefits account.

(a) establish separate "end of service" or "gratuity benefits" bank account in line with the International Financial Reporting Standards and International Accounting Standards; and

(b) submit to the Commissioner annually, a status report of the account.

(2) The signatories to an end of service or gratuity benefits account established under subsection (1) shall, in the case of unionised workers, be the employer and accredited workers' representatives.

(3) Withdrawal from an end of service or gratuity benefits account shall not be effected, without prior notice in writing to the Commissioner.

26. (1) A foreign employer or worker who intends to travel out of Sierra Leone shall obtain labour travelling clearance from the Commissioner in order to ascertain that the foreign employer or worker has no employment or labour related obligations to the government, workers or employers in Sierra Leone.

Labour travelling clearance.

(2) A foreign employer or worker that fails to obtain Labour Travelling Clearance under subsection (1) shall be denied exit out of Sierra Leone.

Registration with professional body or institution.

27. An expatriate or foreign professional who is required by law to register with a professional body or institution in Sierra Leone, including the Sierra Leone Medical and Dental Association, the Sierra Leone Bar Association, the Association of Certified Chartered Accountants and the Sierra Leone Institute of Engineers, shall not work or operate in Sierra Leone unless-

- (a) he is registered with the appropriate professional body or institution; and
- (b) submits proof of such registration to the Commissioner.

Professional approval for labour related research.

28. (1) An individual or institution shall not engage in labour or labour related research in Sierra Leone unless he -

- (a) informs the Commissioner in writing prior to the commencement of such research; and
- (b) submits the following documents to the Commissioner -
 - (i) a hard copy of the full research proposal; and
 - (ii) brief curriculum vitae of the lead researcher; and
 - (iii) any other relevant document or information that may be required by the Commissioner.

Publication of annual report.

29. The Commissioner shall publish an annual report on his inspection services which shall contain information relating to -

-
- (a) developments of this Act and other laws relating to labour and employment;
 - (b) the directorates, directors, labour officers and other staff under the supervision of the Commissioner;
 - (c) statistics of;
 - (i) workplaces and the number of workers employed therein;
 - (ii) inspection visits, violations and penalties imposed;
 - (iii) industrial accidents and occupational diseases; and
 - (iv) cases brought before the High Court and of their disposal; and
 - (d) any other relevant labour and employment information.

PART V - EMPLOYMENT CENTRES AND BASIC RECRUITMENT PROCESSES.

30. There shall be, within the Ministry or in such places as the Minister may, after consultation with the Commissioner determine, employment centres which shall be responsible to –

- (a) receive applications for employment-
- (b) issue labour cards; and
- (c) unemployment certificates.

Recruitment
by employer.

31. (1) An employer may employ or recruit a person either through -

- (a) the employment centre;
- (b) private employment agency;
- (c) by interview arising from an advertisement;
or
- (d) application received.

(2) An employer who employs or recruits a person on an application received through a private employment agency shall inform the Commissioner in writing in order to ensure compliance with this Act.

Reward not
demanded or
accepted.

32. A person shall not demand or accept directly or indirectly to be from a person seeking employment, or from a person acting on his behalf, money, gift, or other consideration whatever for providing him with employment other than such fee as may be prescribed.

PART VI - CONTRACT OF EMPLOYMENT AND OTHER TERMS AND CONDITIONS

Vetting and
attestation of
contract of
employment.

33. (1) A contract of employment or service, terms and conditions of service, personnel policies, human resource manuals or any contract of other document that regulates labour and employment relations, excluding Collective Bargaining Agreements between an employer and a worker, shall not be binding or valid for the purposes of labour and employment unless it is vetted and attested by the Commissioner.

(2) An employer who acts in contravention of subsection (1) commits an offence and upon conviction is liable to a fine not less than 12 months national minimum wage.

(3) The original of the document recording the attestation shall be retained by the Commissioner.

(4) A vetted and attested personnel policy or human resource manual regulating labour and employment relations shall not be binding or valid for more than 3 years from the date attested by the Commissioner under subsection (1).

(5) Notwithstanding subsection (1), the absence of a vetted and attested contract of employment or service shall not prejudice the rights of a worker and his accrued entitlements for the period he has served the employer.

34. The Commissioner shall, by notice served upon an employer, cancel a contract of employment, excluding a Collective Bargaining Agreement, that has been entered into by a worker with an employer, on grounds that, the contract is in contravention of this Act, or any other Act or that the nature of the employment is dangerous or immoral or is likely to be injurious to the safety and health of the worker or for any other cause as may be prescribed.

Cancellation
of contract
of
employment
or service.

35. (1) For the purpose of this Act, fixed term contract of employment or service shall be a contract of employment between an employer and a worker for a specific period.

Fixed term
contract of
employment
or service.

(2) A fixed term contract of employment or service below 6 months shall be renewed once only.

(3) A fixed-term contract worker who have served the same employer continuously for a period of 12 months or more shall be entitled to all accrued benefits as provided by relevant trade group agreement or other better terms.

(4) Notwithstanding subsection (3), in the case of a consultant or independent contractor, the payments for a fixed term contract of employment shall be a consolidated amount fixed in advance.

36. A contract of employment valid and in force at the commencement of this Act shall -

Continuing
contract.

(a) continue to be in force after its commencement, provided that such contracts are not in conflict with this Act;

- (b) be deemed to be made under this Act and the parties thereto shall be subject to and entitled to such terms and conditions as are provided under this Act.

Oral and written contract of employment.

37. A contract of employment, other than a contract which is required by this Act or any other Act to be made in writing, may be made orally and this Act, save as otherwise expressly provided, shall apply to oral and written contracts of employment.

Agreement for less than national minimum wage void.

38. A provision in a contract of employment for the payment of wages at less than the rate fixed by the Joint National Negotiating Board shall be null and void.

Agreement to exclude operation of Act void.

39. A provision in an agreement, whether or not it is a contract of employment, shall be void in so far as it purports to-

- (a) exclude or limit the operation of a provision of this Act to the detriment of a worker; or
- (b) precludes a person from-
 - (i) presenting a complaint under this Act to the Commissioner or the High Court;
 - (ii) initiating or enforcing proceedings under this Act in the High Court; or
 - (iii) giving evidence in connection with a complaint or proceeding, unless contained in a written agreement in relation to an alternative dispute settlement mechanism.

Agreement for payment of wages in contravention of Act void.

40. (1) An agreement for the payment of wages in contravention of this Act is void. (2) Subsection (1) is not a bar to a worker being paid, in accordance with this Act, for work performed in the past.

41. (1) Except where expressly permitted, an agreement between an employer and a worker by which the provisions of this Act are excluded or varied in any way shall be void as to those provisions of such agreement and of no effect in law.

Variation
of terms.

(2) Nothing in this section shall prevent the application, by collective agreement or otherwise, of terms and conditions which are more favourable to a worker than those contained in this Act.

42. (1) A contract of employment shall not be transferred from one employer to another without the consent of the worker and prior notification of the Commissioner, save as provided by subsection (2).

Transfer of
contract.

(2) Where a trade or business is transferred in whole or in part, the contract of service of a worker employed at the date of transfer shall automatically be transferred to the transferee and all rights and obligations between the worker and the transferee shall continue to apply as if they had been rights between the worker and the transferor.

(3) A transfer under subsection (2) shall not interrupt a worker's continuity of service and the service shall continue with the transferee as if it is with the transferor.

(4) Subsection (2) shall not transfer or otherwise affect the liability of a person to be prosecuted for, convicted of, and sentenced for an offence committed before such transfer.

43. (1) Casual or temporary work shall be -

Casual or
temporary
work.

(a) seasonal or intermittent in nature; and

(b) for a period not exceeding 6 months.

(2) Casual or temporary work shall not be work of routine nature and the remuneration may be calculated on a daily basis.

(3) A casual or temporary worker who is employed by the same employer for a continuous period not more than 6 months shall be treated as a permanent worker.

(4) Without prejudice to the terms and conditions of employment, mutually agreed to by the parties to an agreement, 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 casual or temporary worker.

(5) Casual or temporary worker shall be entitled to rent, transport, medical, relocation or risk allowances, and any other allowances as specified by relevant trade group agreements or other better terms, where required or applicable.

Remuneration
of casual and
temporary
worker.

44. (1) The minimum remuneration of a temporary or casual worker shall be determined, where a temporary worker or a casual worker is required to work on -

- (a) weekdays only, his minimum daily wage shall not be below the national minimum wage when multiplied by 22 working days;
- (b) an hourly basis only, his minimum hourly rate shall not be less than the national minimum wage when multiplied by 22 working days.

(2) A temporary worker or a casual worker shall not be entitled to any remuneration for each day or hour the worker is absent from work during the week or month.

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

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

45. (1) An employer who employs a person to whom a minimum rate of wage fixed by the Joint National Negotiating Board or a Trade Group record of Negotiating Council is applicable, shall keep wages as are necessary to show that this Act is complied with in relation to that person.

Employer to keep record of wages.

(2) An employer who contravenes subsection (1), commits an offence and upon conviction shall be liable to a fine not less than of 2 months national minimum wage.

(3) A person who –

- (a) makes, or cause to be made, or knowingly allows to be made a wage sheet or a record of wages or payments, which is false in any material particular;
- (b) produces or causes to be produced, or knowingly allows to be produced, such record to the Commissioner, knowing the same to be false; or
- (c) furnishes information to the Commissioner, knowing the same to be false,

commits an offence and upon conviction is liable to a fine not less than 15 months national minimum wage.

46. (1) The bankruptcy or winding-up of an employer's business shall cause the contract of employment of a worker to terminate one month from the date of bankruptcy or winding-up, unless it is otherwise terminated for just cause within that period.

Insolvency of employer.

(2) This section shall not apply where, notwithstanding the occurrence of such bankruptcy or winding-up, the business continues to operate under public ownership or is transferred.

(3) On the insolvency or winding-up of an employer's business, the claim of a worker or those claiming on his behalf to wages and other payments to which he is entitled under this Act shall have priority over all other debts except for debts owed in respect of judicial fees.

Employer
to provide
work.

47. (1) An employer shall provide his worker with work in accordance with the worker's expressed or implied contract of employment.

(2) An employer shall not be liable to provide work where interruptions to his business activities are caused by-

- (a) force majeure;
- (b) strike, go-slow or other industrial action;
- (c) economic insecurity or technological reasons which result in a shortage or reduction of work that is beyond the employer's control.

Entitlement
to wages.

48. (1) Wages shall be paid in legal tender to a worker entitled thereto.

(2) Notwithstanding subsection (1), an employer may, with the prior written agreement of the worker, pay wages by bank cheque or by direct payment to the worker's account.

(3) A worker shall not be entitled to receive wages in respect of a period when he is absent from work without authorisation or good cause.

(4) For the purposes of subsection (2), in the case of a worker who has completed at least 3 months continuous service with his employer, the following shall constitute absence with good cause-

- (a) the occurrence of force majeure preventing the worker from reaching his place of work or from working;
- (b) a summons to attend a court of law or any other public authority having power to compel attendance;

- (c) the death of a member of a worker's family or dependant relative, subject to a maximum of 3 days' absence on any one occasion and a maximum of 12 days in any one calendar year;
- (d) sickness or wedding of the worker or his dependents.

(5) Subject to paragraphs (a), (b) and (c) of subsection (4), a worker has an obligation to inform the employer of his absence or intended absence from work within 24 hours.

(6) A worker who has completed at least 3 months continuous service and is absent from work on account of one of the situations specified in subsection (4) shall be entitled to receive wages as though he had not been absent from work and had fully performed his duties under the contract of employment throughout the absence and his wages shall not, by reason of the absence, be subject to any deduction.

49. Upon the death of a worker during the term of a contract of employment, his heirs or dependents shall be entitled to wages and other remuneration due to the worker.

Death of worker.

50. (1) A person who qualifies for the national minimum wage shall be paid a wage by his employer in respect of his work in any pay reference period at a rate which is not less than the national minimum wage.

Workers to be paid minimum wage.

(2) A person shall qualify for the national minimum wage if he is -

- (a) a worker;
- (b) is working, or ordinarily works, in Sierra Leone under a contract of employment made orally or in writing.

(3) For the purposes of subsection (1), a “pay reference period” is such period as may be prescribed for the purpose.

Payment of wages to another.

51. Except when it is expressly provided by the law, a person shall not receive the wages due to a worker on behalf of such worker without the written permission of the worker to whom such wages are due.

Prohibition of deductions.

52. (1) Save as otherwise expressly permitted by this Act, the entire amount of wages earned by or payable to a worker shall be paid directly to the worker and an employer shall not make a deduction from the wages of a worker unless it is a permitted deduction.

(2) An employer who makes a deduction from a worker’s salary without his consent, that is not permitted under section 53, commits an offence and upon conviction is liable to a fine not less than 6 months national minimum wage.

Permitted deductions.

53. The following shall be deducted from the remuneration due a worker -

- (a) an amount in respect of tax, rate, subscription or contribution imposed by law;
- (b) an amount representing a contribution to a provident or pension fund or scheme established or maintained by an employer or some other person and approved by the Commissioner;
- (c) a reasonable charge agreed in writing by the worker for food or drink, other than intoxicating liquor, lodging clothing supplied by an employer to a worker, where the employer has made clear that such deductions would be made before the food, drink, lodging or clothing was supplied, and where the worker has agreed in writing to these conditions;

-
- (d) a reasonable rent or other reasonable charge for accommodation provided by an employer for the worker, or a worker's family, where the worker has agreed in writing to such a deduction and the worker is free from coercion to make use of such accommodation;
- (e) the cost for loss of, or damage to tools or goods expressly entrusted to a worker by his employer for safe custody or for loss of money for which a worker is responsible, where—
- (i) such loss or damage is directly attributable to the neglect or fault of the worker;
- (ii) the Worker has agreed in writing to such deductions and provided that the amount of such deductions shall not exceed the amount of loss to the employer;
- (f) union dues, deducted in accordance with section 55.

54. (1) Without prejudice to any other liability for a contravention of this Act, an employer who acts in contravention of section 52 shall repay wages withheld or wrongfully deducted from the worker. Employer to repay wages wrongfully deducted.

(2) A request for repayment by a worker shall be made to the Commissioner or the High Court not later than 2 years after the allegedly unlawful deduction was made.

55. (1) Subject to subsection (2), upon the request of a trade union to whom a collective bargaining certificate has been issued, an employer shall— Deduction from wages for paying dues to trade union.

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- (a) make deductions from the wages of a worker eligible to be a member of the union for the purpose of paying dues to the trade union; and
 - (b) pay any sum so deducted to the trade union.

(2) A worker who does not consent to be a trade union member may contract out of the arrangement for deduction from his wages for the purpose of paying dues to the trade union system in writing.

(3) An employer who refuses to make deduction from the wages for the purpose of paying dues to a trade union in accordance with subsection (1) is liable to pay to the trade union as penalty, a sum equal to 5 percent of the total amount of the deduction for each month during which the sums are not paid to the trade union, in addition to the union dues.

Employer to provide itemised pay statement.

56. (1) An employer shall provide, with each payment of a worker's wages, an itemised pay statement in writing in simple English which the worker may reasonably be expected to understand, which sets out-

- (a) the worker's gross wages due at the end of that particular pay period;
- (b) the amount of every deduction from the worker's wages during that pay period and the purpose for which each deduction was made; and
- (c) the worker's net wages payable at the end of that pay period.

(2) Where an employer fails to provide a pay statement as required under subsection (1) or fails to provide such a statement that is

accurate, a worker shall have the right of complaint to the Commissioner or trade union.

(3) The Commissioner, acting following a complaint made by a worker under subsection (2), shall -

- (a) issue one or more written statements in lieu of a pay statement which an employer failed to issue; or
- (b) amend an inaccuracy in a pay statement issued in respect of which a complaint was made.

(4) The Commissioner may, in addition to issue one or more written statements in lieu of a pay statement or amending an inaccuracy in a pay statement under subsection (4), order an employer to pay to a worker the aggregate of any deductions made by the employer from the worker's wages in a manner that was not in accordance with an accurate pay statement.

(5) A written statement issued by the Commissioner in lieu of or in amendment of an employer's pay statement shall for all purposes be regarded as if it had been duly issued by the employer in accordance with subsection (1).

57. A loan or advance of wages by an employer to a worker employer shall be made without interest and shall only be enforceable by the if made in accordance with an agreement in writing in a form and in a language which the worker or his representative may reasonably be expected to understand and which is signed by the worker.

Loan by
employer
to worker.

58. (1) Where work stores for the sale of commodities to workers are established or services are operated in connection with a workplace, the workers concerned shall be free from any coercion to make use of such stores or services.

Work stores.

(2) Goods and services in work stores shall be provided at fair and reasonable prices.

Written particulars of employment.

59. (1) A worker shall be entitled to receive from his employer, notice in writing of the following particulars of employment, including-

- (a) the full names and addresses of the parties to the contract of employment;
- (b) the date on which employment under the contract begins, specifying the date from which the worker's period of continuous service shall commence;
- (c) the title and description of the job the worker is employed to do;
- (d) the place where the worker's duties are to be performed;
- (e) the wages which the worker is entitled to receive or the means by which they can be calculated, and in either case the intervals at which they will be paid and the deductions or other conditions to which they will be subject;
- (f) the rates of overtime pay applicable to the worker;
- (g) the worker's normal hours of work and the shifts or days of the week on which the work is to be performed;
- (h) the number of days' annual leave to which the worker is entitled and his entitlement to wages during such leave;

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- (i) the terms or conditions relating to incapacity for work due to sickness or injury, including provision for sick pay;
 - (j) the length of notice in excess of that provided by this Act, required for lawful termination of the contract by the employer or worker;
 - (k) any collective agreement affecting the terms and conditions of the worker's employment; and
 - (l) any disciplinary rules applicable to the worker.

(2) For any or all of the information required by subsection (1), the employer may in writing refer the worker to a document which is reasonably accessible to the worker during working hours at the place of work and which contains the relevant information in a form and in a language that the worker can reasonably be expected to understand.

(3) A notice of particulars of employment under subsection (1) shall be given by the employer to the worker not later than 12 weeks after the date on which employment commences.

(4) Where there has been an agreed change affecting any of the particulars of employment under subsection (1), an employer shall issue a written notice of the change to the worker, within a period of 4 weeks of the change taking effect.

(5) An employer shall retain a copy of the written particulars of employment issued under subsection (1), and of any changes thereto, and shall produce such copy on demand to the Commissioner, trade union or the High Court.

(6) In a dispute between an employer and a worker concerning the terms and conditions of employment, the written particulars of employment referred to in subsection (1) together with any notice of change thereto, shall be admissible evidence of the existence of the terms and conditions about which there is dispute, and there shall be a rebuttable presumption that the terms and conditions of employment are accurately stated in the written particulars and in any notified changes thereto.

Weekly rest.

60. (1) A worker shall not be required to work for his employer for more than 5 consecutive days without at least a day's rest, which shall be taken on such day as is customary or as shall be agreed between the parties.

(2) The Minister may, after consultation with the Joint Consultative Committee, by regulation, exclude from the operation of this section, persons holding high managerial positions in a workplace.

(3) The Minister may, after consultation with the Joint Consultative Committee and with the consent of a worker, by regulation, grant temporary exemption from the provisions of this section-

- (a) in case of accident, actual or imminent force majeure or urgent work to premises or equipment, but only so far as may be necessary to avoid serious interference with the ordinary working of the workplace;
- (b) in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures; and
- (c) in order to prevent the loss of perishable goods.

(4) Where temporary exemptions are made under subsection (3), a worker shall be granted compensatory rest of a total duration at least equivalent to that provided for by subsection (1) and such compensatory rest must be provided within 2 months of the rest period missed.

(5) Where a worker is employed on a contract under which wages are calculated by reference to a period of one week or more, no deduction shall be made from his wages on account of him not working or not attending at his place of work on weekly rest day.

61. (1) Subject to paragraph (b) of subsection (2), a worker shall not be required to work more than 8 hours per day. Length of working day.

(2) Notwithstanding subsection (1), an employer and worker may, by contract, agree that the normal working hours per day are to be –

- (a) less than 8 hours; or
- (b) more than 8 hours, provided that any such agreement does not require the worker to work more than 10 hours per day.

62. (1) Subject to paragraph (b) of subsection (2), a worker shall not be required to work more than 48 hours per week. Length of working week.

(2) Notwithstanding subsection (1), an employer and worker may by contract agree that the normal working hours per week are to be –

- (a) less than 40 hours; or
- (b) more than 40 hours, provided that such agreement does not require a worker to work more than 48 hours per week.

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- Shifts. 63. Where a worker is employed in shifts, it shall be permissible to employ him in excess of 10 hours in any one day or 48 hours in any one week, if the average number of hours over a period of 3 weeks or less exceeds neither 10 hours per day or 48 hours per week and in either case, the worker shall agree in writing to such hours.
- Rest breaks. 64. In a workplace where the normal working hours are 8 hours per day, or more, a minimum of 30 minutes break shall be granted each day to a worker, unless otherwise agreed by the parties, no remuneration shall be required in respect of the break period.
- Overtime work . 65. (1) Subject to sections 61 and 62, the number of hours which may be worked in excess of 8 hours per day or 40 hours per week, and the remuneration therein shall be a matter for agreement between an employer and a worker, a Trade Group Negotiating Council or the Joint National Negotiating Board.
- (2) Where hours in excess of 8 per day or 40 per week are worked, the worker shall, in the absence of a written agreement, be remunerated at the hourly rate, plus a supplement which shall be 50% for week days and 100% for weekends and public holidays.
- (3) Where hours in excess of 8 hours per day or 40 per week are worked, they shall, in the absence of a written agreement to the contrary, be remunerated at the rate of the average hourly rate, plus a supplement, which shall be 50% for the first 4 hours in excess of 40 in a week, and 100% for any such hours exceeding 4.
- Payment for night work. 66. Subject to section 72, a worker shall be entitled to be paid in respect of night work at a rate which represents not less than the normal hourly rate for day work plus a supplement of not less than 30% of the day's rate of pay.
- Certificate of service. 67. (1) On the termination of a contract of employment, an employer shall provide a worker with a certificate of service indicating-
- (a) the names and addresses of the employer and worker;

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- (b) the nature of the employer's business;
 - (c) the length of the worker's period of continuous service with the employer;
 - (d) the capacity in which the worker was employed prior to termination; and
 - (e) the reason or reasons for the termination of the Worker's employment, where the worker so requests, but in the absence of such a request the reasons shall not be stated.
- (2) A certificate of service under subsection (1), shall –
- (a) not contain a judgement on or evaluation of a worker's work but, if requested by the worker or by some other person, the employer may provide it in a separate document;
 - (b) so far as is reasonably practicable, be written in language that the worker may be expected to understand.

68. (1) An employer, who is sued by a worker in respect of injury caused by the negligence of a fellow worker, shall not have as a defence, the fact that the workers were in common employment and disciplinary actions may be taken against the worker who caused the injury to his fellow worker.

Common
employment
not a defence

(2) A provision contained in a contract of employment or in an agreement collateral thereto shall be void in so far as it would have the effect of excluding or limiting liability of an employer in respect of injuries caused to a worker or apprentice by the negligence of persons in common employment with him.

Probationary
contract not
a defence.

69. (1) The maximum length of a probationary contract for a worker shall not exceed 6 months.

(2) An employer shall not employ a worker under a probationary contract on more than one occasion, unless the worker is, on a second or subsequent occasion, employed to do work of a substantially different nature to that which he was employed to do on the first occasion.

(3) Without prejudice to sections 82 and 83, a contract for a probationary period may be terminated by either party by giving not less than 7 days' notice of termination or by payment, by the employer to the worker, of 7 days wages in lieu of notice.

Continuous
service.

70. (1) Continuous service shall begin from and include the first day on which a worker begins to work for an employer and shall continue up to and including the last day on which that work finishes.

(2) In the event of change of management or ownership of a workplace, a worker shall be paid his full entitlements and any other statutory allowances.

(3) It shall be presumed, unless the contrary is shown, that the employment of a worker with an Employer is continuous whether or not the Worker remains in the same job.

(4) A worker's continuous service shall not be treated as interrupted if the Worker is absent from work due to -

- (a) his taking annual leave, maternity or paternity leave, sick leave or any other leave in accordance with this Act, any other enactment, contract or collective agreement;
- (b) his suspension, with or without pay, in accordance with this Act, any other enactment, contract or collective agreement;

-
- (c) the termination of his employment prior to his reinstatement or re- engagement in accordance with this Act, any other enactment, contract or collective agreement;
 - (d) having been temporarily laid-off by the employer;
 - (e) action in pursuance of a strike, lock- out or other industrial action in which he did not participate; or
 - (f) an agreement of his employer.

(5) A period of time elapsing in the circumstances referred to in subsection (4) shall count for the period of calculating the continuous period of employment.

(6) Where a worker is engaged in an occupation in which it is customary to employ some workers only at certain seasons of the year and that worker is employed for successive seasons, the worker shall be deemed to have been continuously employed for the aggregate of all the time he has actually performed work for his employer for successive seasons.

PART VII - LEAVE ENTITLEMENTS AND MATERNITY PROTECTION

71. (1) Subject to subsections (4) and (5), a worker is entitled *Annual leave.* in each year to a period of leave determined in accordance with subsection (2).

(2) A worker's leave year, for the purposes of this Act, begins-

- (a) on such date during the calendar year as may be provided for in his contract of employment or a relevant agreement; or

(b) where there are no provisions of a contract of employment or other relevant agreement, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Leave to which a worker is entitled under this Act may be taken in instalments and an employer shall permit the worker to take leave in the year in which it is due.

(4) A worker who has served the same employer or workplace continuously for a period of one year shall be entitled to at least one month of his basic salary as annual leave allowance for each completed year of service or as prescribed by collective agreements or other better terms.

(5) In a situation where the worker is prevented or restrained from taking annual leave by an employer because of the exigencies of work, the worker shall be entitled to one and half month of his basic salary in lieu of his annual leave entitlement or as prescribed by collective agreements or other better terms.

Maternity

72. (1) Upon presentation of a medical certificate issued by a certified medical practitioner or a midwife certifying the expected date of delivery or the actual date of delivery, as the case may be, a female worker shall be entitled to not less than 14 weeks' maternity leave in accordance with this Act, any other enactment, contract or collective agreement, on full remuneration.

(2) During the period when a female worker is on maternity leave in accordance with subsections (1) and (2), her normal benefits and entitlements including her contractual rights and the accumulation of pension rights as well as her legitimate expectations to advancement and seniority, shall continue uninterrupted in the manner in which they would have been had she not gone on such leave and her period of employment shall not be considered to have been interrupted, reduced or broken by the exercise of her right to maternity leave.

(3) An employer shall not terminate the employment of a female worker during pregnancy or maternity leave.

(4) A female worker shall have right to return to the job which she held immediately prior to her maternity leave and on terms and conditions not less favourable than those which would have applied had she not been absent unless-

- (a) that job has ceased to exist because of economic, technological or organisational reasons;
- (b) she is incapable of continuing to perform that job; or
- (c) on grounds not related to the pregnancy or birth of the child and its consequences or nursing.

(5) The burden to prove that the reasons for termination or dismissal are unrelated to pregnancy or childbirth and its consequences or nursing under subsection (5), shall rest with the employer.

(6) In either of the circumstances under paragraph (a) or (b) of subsection (4), the employer shall take reasonable steps to find the female worker a suitable alternative job within the workplace and where a suitable alternative job cannot be found or if the female worker unreasonably refuses the offer of a job, the employer shall be entitled to terminate her employment with notice in writing, if the employer so requests, subject to providing severance pay under section 80 and to the requirements redundancy under section 82 and disciplinary penalties under section 83.

(7) Where sickness arising out of pregnancy or during confinement, affecting either the mother or her baby, and making the mother's return to work inadvisable, the right to return under subsection (5) shall be available within 20 weeks of the date of confinement or miscarriage.

(8) A female worker shall be entitled to the rights mentioned in subsections (1) and (3) after giving not less than 7 days' advance notice to her employer of her intention to take maternity leave or such shorter period as is reasonable in the circumstances, and after giving not less than 7 days' notice of her intention to return to work.

(9) An employer shall not terminate or dismiss a female worker because of her absence from work on maternity leave.

Request for pregnancy test prohibited.

73. (1) An employer shall not request for pregnancy test or a certificate of such a test when female worker is applying for employment except where required for work that is-

- (a) of high risk to the health of a pregnant woman; or
- (b) prohibited or restricted for pregnant or nursing women by law.

Night work.

74. (1) A female worker may be employed during the night in a workplace, as long as her safety, health and security is guaranteed and not exposed to a dangerous working environment.

(2) Unless with her consent, a female worker shall not be employed on night work during the period of 10 weeks before and 10 weeks after child birth, or during such additional period before or after childbirth in respect of which a medical certificate is produced by her stating that an additional period is necessary for the health of the mother or of the child and the Employer shall, where reasonably practicable, provide a transfer to day work for such a female worker during the additional period.

(3) An employer shall not engage a pregnant female worker or a mother of a child of less than 8 months old for overtime.

(4) A pregnant female worker or mother may present a written complaint to the Commissioner against an employer who contravenes subsection (1).

(5) The Commissioner shall investigate the complaint and his decision on the matter shall, subject to any other law, be final.

(6) The Minister may, after consultation with the Joint Consultative Committee, by regulation, provide for exemptions from the application of this section in special circumstances.

75. (1) An employer shall not assign, whether permanently or temporarily, a pregnant worker to a post outside her place of residence after the completion of the 4th month of pregnancy, if the assignment, in the opinion of a medical practitioner or midwife, is detrimental to her health.

Protection
of
assignment
of pregnant
worker.

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

(3) The Commissioner shall investigate the complaint and his decision on the matter shall, subject to any other law, be final. Underground 76. A worker above 18 years may, except where prohibited work, under this Act or any other law, be employed in or allowed to be for the purpose of employment below ground.

76. A worker above 18 years may, except where prohibited under this Act or any other law, be employed in or allowed to be the purpose of employment below ground.

Underground
work

77. (1) For the purpose of this Act, a male worker is entitled to 2 weeks paternity leave upon the birth of his child in accordance with this Act, any other enactment, contract or collective agreement.

Paternity
leave.

(2) Upon the birth of his child, a male worker shall give one week written notice to his employer of his intention to proceed on paternity leave

(3) Notwithstanding subsections (1) and (2), a male worker shall not be entitled to more than one paternity leave per year

(4) A male worker on paternity leave shall be entitled to full remuneration.

Sick leave.

78. (1) An Employer shall grant a worker, who is absent from work through sickness, sick leave in accordance with this Act, any other enactment, contract or collective agreement.

(2) For a worker to be entitled to sick leave under subsection (1), he shall-

(a) notify or cause to be notified, as soon as is reasonably practicable, his employer of his absence and the reason for it; and

(b) produce a written certificate signed by a registered medical practitioner or personnel certifying the worker's incapacity for work and duration of such incapacity.

(3) An employer may require that the certificate referred to in paragraph (b) of subsection (2) be obtained from registered medical practitioner or personnel nominated by him, provided that in such a case the employer shall be responsible for any fees and transport costs payable in connection with the issuing of the certificate.

PART VIII - RISK ALLOWANCES AND END OF SERVICE ENTITLEMENTS

Risk allowance.

79. (1) In addition to any allowances prescribed in this Act or a collective agreement, the following allowances shall be, where applicable, payable to a worker-

(a) steam boiler watch keeping allowance;

(b) night patrol allowance;

(c) health or medical allowance;

-
- (d) cooking allowance;
 - (e) cash handling allowance;
 - (f) diving allowance;
 - (g) relocation allowance;
 - (h) travelling allowance;
 - (i) night work allowance;
 - (j) housing or rent allowance;
 - (k) transport allowance;
 - (l) out of station allowance;
 - (m) firefighting allowance;
 - (n) waste collection allowance; and
 - (o) acting allowance.

(2) The Minister may, in consultation with the Joint Consultative Committee, by statutory instrument, prescribe standard allowances payable to workers for any of the allowances under subsection (1), any other enactment, contract or collective agreement.

80. (1) A worker who has served the same employer continuously for a period of one year or more and whose services are terminated for reasons other than gross misconduct, or a worker who retires, dies, resigns, shall be entitled to severance pay or end of service benefit in accordance with this Act, any other enactment, contract or collective agreement.

(2) Subsection (1) shall not apply where a worker is fairly dismissed with justification for committing a misconduct under subsection (3) of section 91 during employment.

(3) Where a contract of employment is terminated by reason of the death of the worker, the severance pay or end of service benefit shall be paid to the surviving spouse or children of the deceased worker or, in the absence of such a spouse or children, to such other dependent, relative or guardian of a minor dependent relative.

(4) A complaint that severance pay or end of service benefit under subsection (3) has not been paid may be presented to the Commissioner who shall, if he finds the complaint to be well founded, make a declaration to that effect and order payment of the amount due.

(5) On the death, retirement, termination, resignation or redundancy of a worker, his end of service benefits shall be paid within a period of one month, and an employer who fails to comply with this provision, commits an offence and is liable to a fine of not less than 24 months national minimum wage.

(6) An employer may be allowed to make a payment plan to the Commissioner for the payment of end of service benefits to his former worker within a period of one month specified under subsection (5) and that no payment plan for end of service benefits shall exceed 2 instalments.

(7) An employer, who fails to honour a payment plan made to the Commissioner, commits an offence and shall be liable to a fine of not less than 24 months national minimum wage.

Employer offer may better conditions of service.

81. Without prejudice to any provision in this Act, an employer may in consultation with a worker and his representative, where he has the ability to do so, offer better terms and conditions than are provided for in this Act or a collective agreement or terms and conditions of employment or service.

Redundancy.

82. (1) Where an employer contemplates the closing down, merging or the introduction of changes in production, programme, organisation, structure or technology of a workplace that are likely to result to redundancy of employment of a worker, he shall-

- (a) provide in writing to the Commissioner and trade union, where applicable, not later than 3 months before the contemplated changes, relevant information including the reasons for termination, the number and categories of workers likely to be affected and the period within which termination is to be carried out; and

-
- (b) consult the trade union or workers concerned on measures to be taken to avert or minimise the number of workers to be terminated as well as measures to mitigate the adverse effects of termination on the workers, such as finding alternative employment.
 - (c) the principle of "last in, first out" shall be adopted in the discharge of the particular category of workers affected, subject to all factors of relative merit, including skill, ability and reliability;
 - (d) an employer shall use his best endeavours to negotiate redundancy payments to all discharged workers;
 - (e) in the case of force majeure or an emergency situation arising out of a natural disaster or outbreak of diseases that may have severe negative impacts on the employer's business and result to reduction in work force or closure of the business, the employer shall not pay redundancy compensation but shall pay end of service benefit and other entitlements that may be due a worker;
 - (f) this section shall not preclude an employer to take cognisance of provisions prescribed in a collective agreement or other better terms in respect of redundancy.

83. (1) An employer shall be entitled to impose a disciplinary penalty only when it is reasonable to do so in the particular circumstances. Disciplinary penalties.

(2) The question of what disciplinary penalty is reasonable shall be decided by considering -

- (a) nature of the neglect;
- (b) failure or alleged failure on the part of a worker;
- (c) the penalty imposed by the employer;
- (d) the procedure followed by the employer in imposing the penalty;
- (e) the actual amount of any damage incurred;
- (f) the previous conduct of the worker;
- (g) the personal circumstances of the worker;
- (h) the circumstances of the infringement;
- (i) the contents of the Code of Practice on Discipline as set out in the Schedule.

(3) An employer shall apply the reason for disciplinary action or termination consistently with the way in which it has been applied to other workers in the past, and consistently as between 2 or more workers who participate in the misconduct under consideration.

(4) For purposes connected with a worker's employment, an infringement of disciplinary rules should be disregarded after the expiry of one year in which the worker has not committed any further disciplinary breach.

(5) A complaint that a disciplinary penalty is unreasonable or unjustified may be presented to the Commissioner.

(6) Where the Commissioner finds that the complaint is well founded, he may make any of the following orders-

- (a) that the original penalty be revoked;
- (b) that the original penalty be revoked and replaced by another specified lesser penalty;
- (c) that the employer pay to the worker the wages which would otherwise have been due for the period of suspension without pay; or
- (d) that the employer repays to the worker any time or monetary penalty imposed on the worker.

(7) Subject to paragraph (a) of subsection (6) where a penalty has been revoked, no reference to it shall appear in the worker's personal record and where the penalty has been reduced, only the lesser penalty shall be noted in the worker's record.

(8) The right of a worker to make a complaint under this section shall be without prejudice to any right that worker may enjoy under a collective agreement.

(9) Subject to subsection (6) the Commissioner shall refer the matter to the High Court if the employer fails to comply.

84. (1) A contract without reference to limit of time may be terminated by either party upon giving one month notice or pay one month basic salary in lieu of notice. Notice of termination.

(2) The notice referred to in subsection (1) shall, except when given by a non-literate worker, be given in writing and shall be in a form and language that the worker to whom it relates can reasonably be expected to understand and the period of notice shall exclude the day on which the notice is given.

(3) An agreement to exclude the operation of this section shall be of no effect but nothing in this section shall prevent-

- (a) the parties to a contract from agreeing to a longer period of notice of termination than is provided in this section;
- (b) an employer waiving the right to receive notice on any occasion;
- (c) a worker from accepting payment in lieu of notice in accordance with section 85;
- (d) an employer from declining to give notice of termination where a worker is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue the employment during the notice period;
- (e) a worker from declining to give notice of termination where the employer's conduct has made the continuation of the employment relationship unreasonable or intolerable; and
- (f) either party from otherwise terminating a contract for lawful cause in accordance with this Act.

(4) An outstanding period of annual leave to which a worker is entitled on the termination of his employment shall not be included in any period of notice to which he is entitled under this section.

Payment
in lieu of
notice of
termination.

85. (1) An employer may pay a worker in lieu of providing notice of termination and in such a case, the worker shall be paid a sum equal to the wages and other accrued entitlement and the employer shall confer on the worker all such other benefits that would have been owing or due to the worker up to the expiry of any notice of termination.

(2) Where a worker terminates a contract without notice in circumstances in which notice is required and the employer has not waived the right to notice, the worker shall be entitled only to be paid such wages and other remuneration and to receive such other benefits as where accrued due at the date of termination.

86. (1) Where an employer contemplates termination of not less than 10 workers over a period of not more than 4 weeks for reasons of an economic, technological, structural or force majeure, he shall- Collective termination.

- (a) consult the affected workers on measures to be taken and reason for termination;
- (b) provide the representatives, if any, of the union or unions to which a collective bargaining certificate has been issued with relevant information, in good time, including the reasons for the termination contemplated, the number and categories of workers likely to be affected and the period over which the terminations is to be carried out;
- (c) give representatives an opportunity for negotiation on measures to be taken to avert, minimise or mitigate the adverse effects of the terminations before any termination is undertaken;
- (d) notify the Commissioner in writing of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations is intended to be carried out.

(2) For the purposes of paragraph (a) of subsection (1), "good time" shall be a period of at least 4 weeks before the first of the terminations is to take effect, except where the employer can show that it is not reasonably practicable to comply with such a time limit.

(3) A complaint may be referred to the High Court by the Commissioner that the employer has failed to comply with this section.

(4) Where the High Court finds that a complaint is well founded, it shall grant an appropriate remedy.

Fair
termination
of
employment.

87. (1) 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 a worker is incompetent in relation to the work for which the worker is employed;
- (b) the proven gross misconduct of a worker;
- (c) redundancy under section 82;
- (d) due to legal restriction imposed on a worker prohibiting the worker from performing the work for which he is employed.

(2) In deciding whether an employer has shown that he acted in accordance with justice and equity and to establish a potentially fair reason for termination, regard shall be had to the following -

- (a) the provisions of the Code of Practice on Discipline set out in the Schedule;
- (b) the procedures adopted by an employer in reaching the decision to terminate, communicating the decision to a worker, and dealing with an appeal against the decision;
- (c) the conduct and capability of a worker up to the date of termination;
- (d) the extent to which an employer has complied with any statutory requirement connected with the termination, including the issuing of a certificate of service under section 67;

- (e) the extent to which an employer consistently applied the reason for termination to other workers in the past or as between 2 or more workers who participated in the misconduct or showed similar lack of capability to that under consideration.

88. (1) For the avoidance of doubt the following reasons do not constitute fair reasons for termination or for the imposition of a disciplinary penalty- Unfair termination of employment

- (a) the fact that a worker took, or proposed to take, leave to which he was entitled under this Act, an agreement or a contract;
- (b) a worker's refusal or proposed refusal to join or withdraw from a trade union;
- (c) a worker's initiation or proposed initiation of a complaint or other legal proceedings against his employer, except where such conduct is, in the opinion of the Commissioner or High Court, wholly irresponsible and without foundation;
- (d) a worker's providing information, giving evidence or complying with a lawful requirement in respect of paragraph (h);
- (e) a worker's participation or proposed participation in a lawful strike or other industrial action;
- (f) a worker's organisation or proposed organisation of a strike or other industrial action; and
- (g) 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;

- (h) that the worker seeks office as, or is acting or has acted in the capacity of, a workers' representative;
- (i) that the worker has filed a complaint or participated in proceedings against the employer involving alleged violation of this Act or any other enactment;
- (j) the worker's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;
- (k) in the case of a female worker, due to the pregnancy of the worker or the absence of the worker from work during maternity leave;
- (l) in the case of a worker with a disability, due to the worker's disability;
- (m) that the worker is temporarily ill or injured and this is certified by a recognised medical practitioner or personnel;
- (n) 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 his employment; or
- (o) that the worker refused or indicated an intention to refuse to do 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.

(2) Notwithstanding subsection (1), a worker's employment is deemed to be unfairly terminated if,-

-
- (a) with or without notice to the employer, the worker terminates the contract of employment because -
- (i) of ill-treatment of the worker by the employer, having regard to the circumstances of the case; or
 - (ii) the employer has failed to take action on repeated complaints of violence or sexual harassment of the worker at the workplace.
- (b) the employer fails to prove that-
- (i) the reason for the termination is fair; or
 - (ii) the termination was made in accordance with a fair procedure and in accordance with this Act.

89. (1) In a claim arising out of termination it shall be for the employer to prove the reasons for the termination, and if the employer fails to do so there shall be a conclusive presumption that the termination was unfair within the meaning of section 88. Justification
for
termination.

(2) The reason or reasons for termination are those matters which an employer at the time of termination genuinely believed to exist and which caused him to terminate a worker.

(3) In deciding whether an employer has proven the reasons for the termination, the contents of a certificate of service referred to in section 64 informing the worker of the reasons for termination of employment shall be taken into account.

90. (1) A worker who claims that his employment has been unfairly terminated by the employer may present a complaint to the Commissioner. Remedies
for unfair
termination.

(2) If upon investigation of a complaint, the Commissioner finds that the termination of the employment of a worker is unfair, he 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, either in the work for which the worker was employed before the termination or in other reasonably suitable work on the same terms and conditions enjoyed by the worker before the termination; or
- (c) consider the termination to be an act of redundancy;
- (d) order the employer to pay compensation of not less than 24 months national minimum wage in addition to other entitlements to the worker.

(3) Where an employer fails to comply with an order made by the Commissioner under subsection (2), the Commissioner may refer the matter to the High Court for adjudication.

Summary dismissal.

91. (1) An employer shall not summarily dismiss a worker either on fixed or open terms of employment unless it is proven that the worker has been guilty of gross breach of duty, gross misconduct or gross insubordination and where this has not been proven, the dismissed worker shall be entitled to claim full remuneration.

(2) A summarily dismissed worker shall not be entitled to end of service benefit.

(3) The following conduct and violations shall be deemed to be gross breaches of duty, gross misconduct or gross insubordination and may dispense the employer from payment of end of service benefit for dismissal under this Act-

-
- (a) theft or wilful damage to the property of the employer;
 - (b) wilfully endangering the health and safety of the employer, a fellow worker or a member of the public;
 - (c) an unprovoked assault by a worker upon his fellow worker, the employer or his agent;
 - (d) commission of a criminal offence against his employer or his employer's property;
 - (e) being under the influence of alcohol or narcotics substance, proven by a satisfied medical practitioner.

(4) Notwithstanding subsection (2), such matters shall not preclude a worker from disputing whether the facts giving rise to the same, or whether any other conditions constitute justifiable or lawful grounds for the dismissal.

PART IX - UNFAIR DISMISSAL

92. (1) An employer shall not dismiss an employee unless, Unfair dismissal having regard to all the circumstances, there were substantial grounds justifying the dismissal.

(2) The dismissal of an employee shall be deemed to be an unfair if it results wholly or mainly from -

- (a) an employee's membership or proposed membership of a trade union;
- (b) an employee's engagement in activities ~~on~~ behalf of a trade union or excepted ~~body~~ under a trade union, where the times at which he engages in such activities are ~~outside~~ his hours of work or are times during his hours of work in which he is ~~permitted~~ under his contract of employment ~~between~~ him and his employer, so to engage;

- (c) an employee's religious or political opinion;
- (d) civil proceedings whether actual, threatened or proposed against the employer to which the employee is or will be a party or in which the employee was or is likely to be a witness;
- (e) criminal proceedings against the employer, whether actual, threatened or proposed, in relation to which the employee has made, proposed or threatened to make a complaint or statement to the prosecuting authority or to any other authority connected with or involved in the prosecution of the proceedings or in which the employee was or is likely to be a witness;
- (f) an employee's race, colour, age or sexual orientation;
- (f) an employee's pregnancy or matters connected therewith, unless the employee was, by reason of the pregnancy or matters connected therewith, unable to -
 - (i) adequately do the work for which she was employed; or
 - (ii) continue to do such work without contravention by her or her employer of a provision of a statute or instrument made under statute;
- (g) an employer's refusal, at the time of the dismissal, to offer an alternative employment-
 - (i) where there was employment with her employer that was suitable for her and in relation to which there was a vacancy, or

-
- (ii) on terms and conditions corresponding to those of the employment to which the dismissal related, so as to enable her to be retained in the employment of her employer notwithstanding pregnancy.
 - (h) dismissal of an employee due to redundancy where the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either because the selection of that employee for dismissal-
 - (i) resulted wholly or mainly from one or more of the matters that would not be a ground justifying dismissal, or
 - (ii) is in contravention of a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union representing him or has been established by the custom and practice of the employment concerned, relating to redundancy and there were no special reasons justifying a departure from that procedure.

(3) The dismissal of an employee shall not be deemed to be an unfair dismissal, if it results wholly or mainly from one or more of the following -

- (a) the capability assessed by reference to skill, aptitude, health or any other physical or mental quality competence or qualifications of the employee with reference to any degree, diploma or other academic, technical or professional qualification relevant to the position which he held and pertinent for performing work of the kind which he was employed by the employer to do;

- (b) the conduct of the employee:

Provided however, that the employer shall be obligated to show that it is fair to dismiss the employee;

- (c) the redundancy of the employee, and
- (d) the employee being unable to work or continue to work in the position which he held without contravention, by him or by his employer, of a duty or restriction imposed by or under any statute or instrument made under statute.

Remedies
for unfair
dismissal.

93. (1) Where an employee is dismissed and the dismissal is an unfair dismissal, the employee shall be entitled to redress consisting of whichever of the following the Commissioner or the High Court, as the case may be, considers appropriate having regard to all the circumstances -

- (a) re-instatement by the employer of the employee, where the employee so elects,-
- (i) in the position which he held immediately before his dismissal;
- (ii) on the terms and conditions on which he was employed immediately before his dismissal; and
- (iii) together with a term that the re-instatement shall be deemed to have commenced on the day of the dismissal, or

-
- (b) re-engagement by the employer of the employee either in the position which he held immediately before his dismissal or in a different position which would be reasonably suitable for him on such terms and conditions as are reasonable having regard to all the circumstances; or
 - (c) payment by the employer to the employee of such compensation as shall be reasonable in respect of any losses or damages incurred by him and attributable to the dismissal as is just and equitable having regard to all the circumstances including, actual loss and estimated prospective loss of income attributable to the dismissal and the value of any loss or diminution, attributable to the dismissal, the rights of the employee, or in relation to superannuation.

(2) In determining the amount of compensation payable under paragraph (c) of subsection (1), regard shall be had to -

- (a) the extent, if any, to which the losses or damages referred to in that subsection was attributable to an act, omission or conduct by or on behalf of the employer or on behalf of the employee;
- (b) the measures, if any, adopted by the employee or, as the case may be, his failure to adopt measures, to mitigate the loss; and
- (c) the extent, if any, of the compliance or failure to comply by the employer or employee with any procedure or code of practice relating dismissal;

- (d) the impact of the unfair dismissal on the employee's career progression.

Determination
of claims for
unfair
dismissal.

94. (1) A claim for unfair dismissal -

- (a) may be brought by the employee before -
- (i) the Commissioner, who shall make a recommendation; or
 - (ii) the High Court which shall make a determination, in relation to the claim.
- (b) shall be initiated by notice in writing, containing such particulars, if any, as may reasonably necessary or as may be specified in regulations made under this Act, to
- (i) the Commissioner or the High Court; and
 - (ii) the employer, within 12 months of the date of the dismissal or such other reasonable period as shall be permitted by the Commissioner or the High Court without prejudice however to any limitation period applicable.

(2) The Commissioner shall not hear a claim for redress under this Act if -

- (a) the High Court has made a determination in relation to the claim, or
- (b) a party concerned notifies the Commissioner in writing that he objects to the claim being heard by the Commissioner.

(3) An employee may, where a recommendation of the Commissioner in relation to a claim for redress under this Act is not carried out by the employer in accordance with its terms, bring the claim before the high Court by notice in writing containing such particulars as may be reasonable necessary to enable to complete and effectual determination of the matter and the Rules in force and applicable to the High Court in matters of this nature shall apply.

(4) The High Court shall not hear a claim for redress under this Act, except by way of appeal from a recommendation of the Commissioner, -

(a) if the Commissioner has made a recommendation in relation to the claim, or

(b) a party concerned, by notice in writing to the Commissioner, under paragraph (b) of subsection (2), objects to the claim being heard by the Commissioner.

(5) Proceedings under this section before the Commissioner shall be conducted otherwise than in public.

PART-X - PROTECTION OF CHILD LABOUR

95. (1) A child under the age of 15 years shall not be employed to perform work in a workplace. Child labour.

(2) A child under the age of 18 years shall not be employed to perform work underground.

(3) A child below the age of 18 years shall not be employed on night work or engaged for overtime work.

(4) A child under the age of 18 years shall not work or be employed to perform any work that is likely to jeopardise his health, safety, physical, mental, spiritual, moral or social development, or to interfere with his education.

(5) An employer shall not continue to employ such child after being notified in writing by the Commissioner that the employment or work is injurious to health, dangerous or otherwise unsuitable.

(6) An employer shall keep a register of all children under the age of 18 years employed by him and of the dates of their birth.

(7) An employer shall keep, and make available to the Commissioner, records indicating, in respect of children who are employed to work underground, including the mines, quarries and other works for the extraction of minerals from the earth, and who are under 18 years of age-

- (a) the date of birth, duly certified wherever possible;
- (b) the date at which the child was employed or worked underground for the first time;
- (c) the nature of the child's occupation; and
- (d) a certificate which attests fitness for employment but does not contain medical data.

(8) An employer shall make available upon request, lists of children who are employed or work underground and who are 18 years of age containing the information stipulated in paragraphs (a) to (d) of subsections (7).

(9) The Minister shall, after consultation with the Joint Consultative Committee, by statutory instrument, specify-

- (a) further restrictions or conditions applicable to work which a child over the age of 15 years and under the age of 18 years may perform;

-
- (b) a higher minimum age of employment than any of those specified in subsections (1), (2) or (3); and
 - (c) the exclusion from the application of subsections (1), (2) or (3) to a limited category of employment or work in respect of which special and substantial problems arise.

(10) An arrangement or scheme employed in a workplace, the object or effect of which is to compel children under the age of 18 years to work for in the interests of an employer shall be deemed to constitute forced labour in contravention of subsection (1) of section 16.

(11) Any person who employs a child or has a child perform work in breach of this section or any regulation made under it shall be guilty of an offence.

(12) In any court proceedings arising under this section, it shall be the duty of the defendant to prove that he reasonably believed the person not to be below the permitted age.

96. (1) The minimum age for the engagement of a child in light work shall be 13 years. Minimum age for light work.

(2) Light work constitutes work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school work.

97. (1) An employer in an industrial undertaking shall keep a register of young persons employed by him and of the dates of their births if known or of their apparent ages if their dates of birth are not known. Registration of young persons in industrial undertaking.

(2) An industrial undertaking is an undertaking other than one in commerce or agriculture and 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, adopted for sale, broken up or demolished, or in which materials are transformed including undertakings engaged in ship building, generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in the transport of passengers or goods by road or rail including the handling of goods at docks, quays, wharves, warehouses and airports.

PART XI - INTERNSHIP, VOLUNTEERING, APPRENTICESHIP AND EMPLOYMENT OF PERSONS WITH DISABILITY

Working
conditions
for interns.

98. (1) Interns who enter into an internship service may be required to work at most 8 hours per day, 40 hours per week and may be required to work overtime if he consents to do so.

(2) An employer shall give stipends or allowances to an intern.

Working
conditions for
volunteers.

99. (1) Volunteers may receive some form of stipend in kind, such as conditions for meal, transport or cash to cover out of pocket or living expenses incurred in connection with the voluntary work.

(2) Where stipend is given in cash, it shall not be above the existing national minimum wage during the period in which the work was undertaken and if stipend is given in cash is equal to or higher than the existing national minimum wage, the work cannot be considered as unpaid work.

100. The minimum age at which a child may commence an apprenticeship with a craftsman is 14 years or after completion of basic education. Minimum age for apprenticeship.

101. The responsibilities of a craftsman towards an apprentice under his care shall be to - Responsibilities of craftsman to apprentice.

- (a) train and instruct the apprentice in a trade to the best of the ability, skill and knowledge of the craftsman and to the best ability of the apprentice or cause the apprentice to be trained in a trade under the supervision of the craftsman;
- (b) responsible for any harm caused to the apprentice in the course of his training;
- (c) provide food for the apprentice unless otherwise agreed;
- (d) provide a safe and healthy environment for the apprentice;
- (e) responsible for the moral training of the apprentice; and
- (f) act in the best interest of the apprentice generally.

102. (1) The parent, guardian or relative of an apprentice shall enter into an apprenticeship agreement with the craftsman under whose care the apprentice is placed. Apprenticeship agreement.

(2) An apprenticeship agreement under subsection (1), shall-

- (a) be in accordance with the custom which pertains to the specific trade but shall not include the performance of an induction ceremony which may conflict with the rights of the child.
- (b) contain such matters as may be agreed between the parties and may include a provision that -
 - (i) the parent, guardian or relative shall bear the cost of protective clothing and the basic tools for the training of the apprentice;
 - (ii) the craftsman is to provide shelter for the apprentice; and
 - (iii) the craftsman is to give the apprentice an allowance of not less than 50% of the minimum daily wage for his daily sustenance.
- (c) be in writing and shall contain provisions that are in the best interest of the parties and the apprentice; and
- (d) be submitted to the Commissioner for vetting and attestation

(3) Where either party to an apprenticeship agreement contravenes the terms, the agreement shall immediately lapse unless there is a contrary intention in the agreement.

Duties of
apprentice.

103. An apprentice shall diligently and faithfully obey and serve the craftsman to whom he is apprenticed and shall agree -

-
- (a) that he will not absent himself from the apprenticeship without permission;
 - (b) to prevent deliberate damage to the property of the craftsman; and
 - (c) not to conceal any damage to the property of the craftsman.

104. (1) The conditions for the release of an apprentice upon the completion of his training shall not be exploitative and shall be in accordance with the best interest of the apprentice. Release of apprentice.

(2) A craftsman shall on completion of a period of apprenticeship issue a certificate of release to the apprentice which shall indicate that the apprentice has completed his training.

(3) A craftsman who refuses to issue a certificate of release under subsection (2), without just cause commits an offence and upon conviction, is liable to a fine not less 6 months national minimum wage.

105. (1) Before a person under the age of 21 years may be employed or perform work underground or hazardous work, he shall undergo a medical examination for fitness for work, including an X-ray of the lungs medical examination which shall be conducted annually until the person reaches the age of 21 years. Medical examination for fitness for work.

(2) The Minister shall require other persons seeking employment in occupations at workplaces involving exposure to specified hazards to undergo medical examination prior to being engaged by an employer and at regular intervals thereafter.

(3) Where a medical examination is required under this section, it shall be carried out by a qualified medical practitioner and certified by the Commissioner and no expense shall be involved for the person examined or his family.

Employment
of persons
with disability.

106. (1) A person with disability may apply to the employment centre for registration for employment.

(2) Where a person with disability has applied for registration at the employment centre, he shall be issued a certificate of registration in such form as may be specified by the Commissioner.

Special
incentives
for
employment
of persons
with
disability.

107. Special incentives shall be provided to -

- (a) an employer who employs and provides special facilities for persons with disability;
- (b) a person with disability engaged in a business or enterprise,

in the form of tax deduction which will be determined by the Minister responsible for finance and the National Revenue Authority, consistent with the Disability Act, 2011.

Persons
with disability
in public
service.

108. Persons with disability in the public service shall be appointed on the same terms as persons without disability, irrespective of whether they are allowed to work for 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.

Employment
not to cease
upon
disablement.

109. A person, who suffers disability after the employment, shall not be terminated if his residual capacity for work is such that he can be found employable in the same or some other corresponding job in the same workplace, but if no such corresponding job can be found, the employment may be terminated by notice.

Length of
termination
notice for
persons with
disability.

110. The length of notice of termination required to be given in the case of a person with disability shall not be less than 2 months.

111. (1) A person with disability in employment may be transferred to another job within the same workplace if the other job can be regarded in the light of all relevant circumstances as a corresponding job.

Transfer of persons with disability.

(2) The relevant circumstances in relation to a person with disability includes-

- (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.

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

Training for persons with disability.

PART XII - MISCELLANEOUS

113. (1) The Minister may, by statutory instrument, make Regulations for giving effect to this Act.

Regulations.

(2) Notwithstanding the generality of subsection (1), the Minister may make Regulations -

- (a) governing the employment of women, persons with disability, apprentices, interns and such other categories of persons who in his opinion are in need of special protection under the law;
- (b) regulating private employment agencies operating in Sierra Leone, after consultation with the Joint Consultative Committee.

Criminal liability.

114. (1) Nothing in this Act or imposition of a disciplinary penalty for a breach of the disciplinary code in accordance with this Act shall exempt a person from being proceeded against, convicted or punished for a criminal offence.

Penalties.

115. (1) A person who commits an offence in contravention of this Act for which no penalty is expressly stated shall be liable to a fine not less than 5 months national minimum wage and in the case of a second or subsequent offence against the same provision, the offender shall be subject to a fine of not less than 10 months national minimum wage.

(2) Where a person acts in contravention of a provision of this Act not specifically designated as an offence, the Commissioner may caution him in writing against repeating or continuing such behaviour and if, having received such written warning, the person -

- (a) repeats the infringement, he commits an offence and upon conviction shall be liable to a fine of not less than 5 months national minimum wage;
- (b) commits a second or subsequent offence against the same provision, shall be subject to a fine of not less than 10 months national minimum wage.

Repeals.

116. (1) The following enactments are hereby repealed-

- (a) Employers and Employed (Amendment) Act Cap. 212 of 1962;
- (b) The Registration of Employees Act, 1947 Cap. 213;
- (c) African Labourers short title (Employment at Sea) Act, 1937, Cap. 214;
- (d) The Recruitment of Workers 1941 Cap. 216;

- (e) The Employers and Employed Act, 1935, Cap 212;
- (f) Section 8 (h) of the Chiefdom Councils Act Cap. 61.

(2) Notwithstanding subsection (1), any rules regulations, orders, notices, prescription and other instruments or directives issued under the repealed Acts and in existence immediately before the commencement of this Act, shall continue in operation until their expiration or until their express repeal or revocation or cancellation.

(3) An investigation, prosecution and other legal proceeding instituted or commenced under the repealed Acts and which have not been concluded before the commencement of this Act, shall be continued and concluded in all respects as if that Act had not been repealed.

SCHEDULE (Section 83(2)(i), 87(2))
(a))

CODE OF PRACTICE ON DISCIPLINE

1. (1) An organisation, institution or business establishment shall have disciplinary rules, that may vary, in form and content, according to its size and nature. Disciplinary rules.

(2) Disciplinary rules should be in writing and be expressed in a manner and in a language which Workers may reasonably be expected to understand. They should be made available to every Worker and should be permanently and prominently displayed where they can be read by all Workers.

(3) Disciplinary rules should be non-discriminatory and applied irrespective of race, colour, national extraction or ethnic origin, social origin, religion, creed or political opinion, sex, marital status, family responsibilities, or disability.

(4) No disciplinary penalty or termination or dismissal should be imposed on a worker for taking part in the formation of any union or federation, being a member of any union, taking part in their lawful activities, holding office in such union or Federation, taking part in the election, being elected or being a candidate or acting in the capacity of such union or federation, or exercising any right conferred or recognized by this Act, or assisting any worker or representative to exercise such rights.

(5) No disciplinary penalty or termination should be imposed on any worker for organising or participating in any strike that is lawful. Where a penalty or termination is imposed in respect of a strike or other industrial action which is unlawful, the employer should act consistently as between two or more Workers who organise or participate in the strike or other industrial action.

(6) No disciplinary penalty should be imposed on any worker who refuses to do any work normally done by a worker or workers who are on a lawful strike, unless such work must be done to prevent actual danger to life, health, or personal safety.

(7) Where there is a union recognized as bargaining agent, the employer should observe the terms of any collective agreement relating to discipline or termination, or, in the absence of such an agreement, should consult with the Commissioner of Labour or any authorised labour officer before imposing any disciplinary penalty or termination on a worker.

(8) Employers should keep records specifying the nature of any disciplinary offences, the actions taken and the reasons for such actions, the lodging of an appeal, and any further developments.

(9) Disciplinary rules should clearly indicate-

- (a) the Workers to whom they apply;
- (b) the circumstances in which the rules will apply;
- (c) the content of the rules;

-
- (d) the penalties for infringement of the rules, and the consequences of future infringements of the rules.

(10) Disciplinary rules should inform workers of their rights when accused of infringements and of the procedures that will be followed in investigating and dealing with complaints. In particular, they should ensure that a worker faced with disciplinary action is-

- (a) fully aware of any complaints made against him and of the nature and consequences of any proceedings taken against him;
- (b) fully aware of the form which the disciplinary proceedings will take, including the possibility of appeals and the penalties which may be imposed if the allegations are found to be well founded;
- (c) given a reasonable length of time in which to prepare any representations he may wish to make in answer to the allegations, or in explanation of his behaviour;
- (d) given a reasonable opportunity to state his case, either personally or through a workers' Committee representative, an official of the recognised union or a fellow worker.

(11) In workplaces where there are a number of levels of supervision and management, disciplinary rules should make clear what level of management is authorised to initiate and implement particular disciplinary action or termination/dismissal.

2. (1) Disciplinary procedures should be implemented without unnecessary delay, as soon as the Employer has decided, after proper investigation, that they are warranted in the circumstances of the case.

Disciplinary procedures.

(2) When a decision to implement a disciplinary procedure is taken, an Employer should, at the first opportunity-

- (a) inform in writing, the Worker of what is happening, in a form and a language which he can reasonably be expected to understand;
- (b) remind the worker of his rights to prepare and state his case and appeal against any decision.

(3) For a first infringement (for example late arrival for work, unauthorised absence from work or failure to apply himself properly to his duties), a worker against whom it is decided to take disciplinary actions should receive a written warning after a written query.

(4) Where a decision to terminate is taken, such termination should generally be with notice or Wages in lieu of notice. Termination without notice should be reserved only for gross misconduct.

MEMORANDUM OF OBJECTS AND REASONS

The purpose of this Bill is to consolidate and improve the law relating to labour and employment, to provide for the promotion of equal opportunity and elimination of discrimination in employment and occupation and to provide for other related matters.

The Bill is divided into 11 parts-

- Part I -** makes provision for the interpretation and definition of words used throughout the Bill, the application and non-application of the Bill.
- Part II -** deals with the administration and jurisdiction of the office of the Commissioner of Labour.
- Part III -** provides guarantees for the freedom of association of employers and workers.
- Part IV -** makes provision for the basic employment obligations including notification of business activities and registration of workplace.
- Part V -** provides for employment centres and basic recruitment processes.
- Part VI -** deals with contract of employment and other terms and conditions of service.
- Part VII -** deals with leave entitlements and maternity protection.
- Part VIII -** deals with matters relating to risk allowances and severance of employment.

- Part IX -** deals with matters relating to unfair dismissal
- Part X -** makes provision for the protection of child labour.
- Part XI -** deals with internship, volunteering, apprenticeship and employment of persons with disability.
- Part XII -** contains miscellaneous provisions including the power to make regulations, criminal liability, imposition of penalties and repeals.

MADE this day of , 2022

Alpha Osman Timbo
Minister of Labour and Social Security

FREETOWN,
SIERRA LEONE