

## **CHAPTER 226**

### **THE EMPLOYMENT ACT**

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## CHAPTER 226

### THE EMPLOYMENT ACT

*Commencement:* 7 August, 2006

**An Act to provide for the laws governing individual employment relationships and to provide for related matters.**

#### PART I—PRELIMINARY

##### **1. Application of Act**

(1) Except as otherwise provided in this Act, this Act applies to all employees employed by an employer under a contract of service.

(2) This Act does not apply to—

- (a) employers and their dependent relatives when dependant relatives are the only employees in a family undertaking, as long as the total number of dependent relatives does not exceed five; and
- (b) the Uganda Peoples' Defence Forces, other than their civilian employees.

(3) The Minister may, after consultation with the Board and after taking due account of all Conventions and other international instruments ratified by Uganda, by regulations exclude from the application of all or part of this Act, limited categories of employed persons in respect of whom special problems of a substantial nature arise.

(4) The Minister may, after consultation with the Board, by regulations exclude from the application of all or part of this Act, categories of employed persons whose terms and conditions of employment are governed by special arrangements, provided those arrangements afford protection that is equivalent to or better than the provisions of this Act from which those categories are being excluded.

(5) Except where the contrary is provided, nothing in this Act applies to employment outside Uganda.

## **2. Interpretation**

In this Act, unless the context otherwise requires—

“affiliated union” means any Labour Union affiliated to a Federation of Labour Unions;

“Board” means the Labour Advisory Board established by section 20;

“business” includes any trade, profession, undertaking, operation or establishment, whether public, cooperative or private;

“casual employee” means a person who works on a daily or hourly basis where payment of wages is due at the completion of each day’s work;

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

“Commissioner” means the Commissioner in the Ministry responsible for labour;

“continuous service” means an employee’s service with the same employer as defined in Part VIII of this Act;

“contract of apprenticeship” means a contract of service

(a) where there is an obligation on the employer to take all reasonable steps to ensure that the employee is taught, and acquires, the knowledge and skills of that industry, by means of practical training received in the course of the employee’s employment; and

(b) where there is a provision for formal recognition of the fact that the employee has acquired the knowledge and skills intended to be acquired when the employee has done so;

“contract of service” means any contract, whether oral or in writing, whether express or implied, where a person agrees in return for remuneration, to work for an employer and includes a contract of apprenticeship;

“currency point” has the value assigned to it in Schedule 1 to this Act;

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

“disability” means any permanent—

(a) physical disability or impairment;

(b) physical illness;

(c) psychiatric illness;

(d) intellectual or psychological disability or impairment;

(e) loss or abnormality of physiological, psychological or anatomical structural function;

- (f) reliance on a guide dog, wheelchair, or any other remedial means; and
- (g) presence in the body of organisms capable of causing illness;

“disciplinary code” means the code set out in Schedule 2 to this Act;

“dismissal from employment” means the discharge of an employee from employment at the initiative of his or her employer when the said employee has committed verifiable misconduct;

“employee” means any person who has entered into a contract of service or an apprenticeship contract, including, without limitation, any person who is employed by or for the Government of Uganda, including the Uganda Public Service, a local authority or a parastatal organisation but excludes a member of the Uganda Peoples’ Defence Forces;

“employer” means any person or group of persons, including a company or corporation, a public, regional or local authority, a governing body of an unincorporated association, a partnership, parastatal organisation or other institution or organisation whatsoever, for whom an employee works or has worked, or normally worked or sought to work, under a contract of service, and includes the heirs, successors, assignees and, transferors of any person or group of persons for whom an employee works, has worked, or normally works;

“forced or compulsory labour” means all work or service which is extracted from any person under the threat of a penalty, including the threat of any loss of rights or privileges and for which that person has not offered himself or herself voluntarily;

“HIV” means Human Immune Deficiency Virus;

“Industrial Court” means the Industrial Court established by the Labour Disputes (Arbitration and Settlement) Act;

“labour officer” means the Commissioner or a district labour officer;

“labour union” means a labour union registered under the Labour Unions Act;

“light work” means work that is not physically, mentally and socially injurious to a child;

“migrant worker” means a person who migrates or has migrated from one country to another with a view to being employed by another person and includes any person regularly admitted as a migrant worker;

- “mine” means any undertaking, whether public or private, for the extraction of any substance from on or under the surface of the earth by means involving the employment of persons underground;
- “Minister” means the Minister responsible for labour matters;
- “pay period” means the relevant period, whether of a day, week, fortnight or month by reference to which an employee is entitled to receive his or her wages;
- “parties” means the parties to a contract of service;
- “President” means the President of Uganda;
- “probationary contract” means a contract of employment, which is not of more than six months duration, is in writing and expressly states that it is for a probationary period;
- “public service” means service by or for the Government of Uganda and includes persons employed in the public service, parastatal organisations and local authorities, but does not include a member of the Uganda Peoples’ Defence Forces;
- “qualified medical practitioner” means a Government medical officer or a registered medical practitioner;
- “recruitment” includes all operations undertaken with the object of obtaining or supplying the labour of persons who do not continuously offer their services at the place of employment;
- “regulations” means regulations made under section 96;
- “termination of employment” means the discharge of an employee from an employment at the initiative of the employer for justifiable reasons other than misconduct, such as, expiry of contract, attainment of retirement age, *etc.*;
- “termination” has the meaning given to it under section 64;
- “union member” means a member of a labour union or other organisation representative of the interests of workers;
- “wages” means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable under an oral or written contract of service for work done or to be done, or for services rendered or to be rendered but excluding any contributions made or to be made by the employer in respect of his or her employee’s insurance, medical care, welfare, education, training, invalidity, retirement pension, post service gratuity or severance allowance;
- “week” means a period of seven consecutive days.



### 3. Provisions in agreement

A provision in an agreement, or a contract of service shall be void where—

- (a) it excludes or limits the operation of any provision of this Act to the detriment of the employee; or
- (b) it precludes any person from—
  - (i) presenting a complaint under this Act to a labour officer;
  - (ii) initiating or enforcing any proceedings under this Act; or
  - (iii) giving evidence in connection with any such complaints or proceedings referred to in paragraphs (i) and (ii) unless that provision forms part of a written agreement for the settlement of a dispute that has been approved by a labour officer as fair and reasonable in all the circumstances.

## PART II—GENERAL PRINCIPLES

### 4. Forced labour

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

- (2) The term “forced or compulsory labour” does not include—
  - (a) any work or service extracted by virtue of compulsory military service laws for work of a purely military character;
  - (b) any work or service which forms part of the normal civic obligations of the citizens of Uganda;
  - (c) any work or service extracted from any person as a consequence of a conviction by a court of law, provided that the work or service is carried out under the supervision and control of a public authority and that the person is not hired out to or placed at the disposal of a private individual, company or association; and
  - (d) any work or service extracted in cases of an emergency, such as in the event of war or disaster or threat of calamity in any circumstance that would endanger the existence or the wellbeing of the whole or part of the population.

(3) Any person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding forty-eight currency points or to imprisonment for a term of two years, or both and to a fine of four currency points for each day or part of the day on which the breach continues.

**5. Discrimination in employment**

(1) In the interpretation and application of this Act, it shall be the duty of all parties, including the Minister, labour officers and the Industrial Court to seek to promote equality of opportunity, with a view to eliminating any discrimination in employment.

(2) Without prejudice to subsection (1), in the interpretation and application of this Act, it shall be the duty of all parties, including the Minister, a labour officer and the Industrial Court, to promote and guarantee equality of opportunity for persons who, as migrant workers, or as members of their families, are lawfully within the territory of Uganda.

(3) Discrimination in employment shall be unlawful and for the purposes of this Act, discrimination includes any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, the HIV status or disability which has the effect of nullifying or impairing the treatment of a person in employment or occupation, or of preventing an employee from obtaining any benefit under a contract of service.

(4) Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements of that particular job shall not be deemed to be discrimination.

(5) The Minister may, by regulations limit the range of jobs open to migrant workers.

(6) The Minister and the Board shall, in performing their duties, seek to give effect to the principle of equal remuneration for male and female employees for work of equal value.

(7) Every employer shall pay male and female employees equal remuneration for work of equal value.

**6. Sexual harassment in employment**

(1) An employee shall be sexually harassed in that employee's employment if that employee's employer, or a representative of that employer—

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

(2) Where an employee is sexually harassed in any way described in subsection (1) by the employer or representative of an employer, the employee is entitled to lodge a complaint with a labour officer and the labour officer shall have the powers to make all of the orders he or she could have made if the complaint was a complaint about unjustified disciplinary penalty or unjustified dismissal.

(3) For the purposes of this section, a representative of an employer is a person who is employed by that employer, who either has authority over the employee alleging sexual harassment or is in a position of authority over other employees in the work place of the employee alleging sexual harassment.

(4) Every employer who employs more than twenty-five employees is required to have in place measures to prevent sexual harassment occurring at their work place.

### PART III—ADMINISTRATION AND JURISDICTION

## 7. Administration of Act

(1) The administration of this Act shall be the responsibility of the directorate of labour acting under the authority of the Minister, as well

as the local authorities as may be required under the Local Governments Act.

(2) The Commissioner may delegate, on the request of a district, to a district labour officer the exercise of any of his or her powers and the performance of any of his or her duties under this Act, generally or in part, and may revoke the delegation by written notice at any time.

## **8. Appointment of officers**

(1) Subject to any written law relating to the appointment of a person to the public service, there shall be appointed a Commissioner who shall be responsible for the implementation of the provisions of this Act, acting under the directions of the Minister.

(2) Notice of the appointment of a Commissioner shall be published in the *Gazette*.

(3) The Commissioner shall have all the powers of a labour officer including the powers set out in sections 10, 11, 12 and 13.

(4) Every district service commission shall appoint a district labour officer and such other officers as may be necessary for purposes of administering this Act.

(5) For the avoidance of doubt, every district shall have at least one district labour officer.

## **9. Labour inspection**

(1) The provisions of this section are in addition to and not in derogation of any other powers or duties conferred or imposed on any person by this or any other Act.

(2) A labour officer is empowered to engage in labour inspection which shall include—

- (a) securing the enforcement of legal provisions relating to conditions of work and the protection of workers while engaged in their work;

- (b) the supply of technical information and advice to employers, employees and their organisations concerning the most effective means of complying with the legal provisions; and
- (c) bringing to the notice of the Minister defects or abuses not specifically covered by existing legal provisions.

## **10. Powers of labour officer**

- (1) A labour officer is empowered—
  - (a) to enter freely and without previous notice at any hour of the day or night, any workplace for inspection;
  - (b) to enter by day, any premises which he or she may have reasonable cause to believe to be liable to inspection; and
  - (c) to carry out any examination, test or inquiry which he or she may consider necessary in order to satisfy himself or herself that the legal provisions are being strictly observed, and in particular—
    - (i) to question, alone or in the presence of witnesses, the employer or the staff of the undertaking, on any matters concerning the application of this Act, or other legal provisions made under this Act;
    - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by law in order to ascertain whether they are in conformity with the legal provisions, and to copy those documents or make extracts from them;
    - (iii) to enforce the posting of notices required by law; and
    - (iv) to take or remove for purposes of analysis, samples of materials and substances used or handled, subject to the employer or his or her representative being notified of any samples or substances taken or removed for that purpose.
- (2) Notwithstanding subsection (1), a labour officer shall, where he or she believes that there is a present or imminent danger to the health or safety of the workers, close the workplace without the prior approval of the Commissioner except that the labour officer shall inform the Commissioner within forty-eight hours of the closure of the workplace.
- (3) A labour officer may by order, and after the approval of the Commissioner—

- (a) require an employer to remedy any defect in the plant layout or working methods which, in the opinion of the labour officer, constitutes a threat to the health or safety of the workers; and
- (b) close down a workplace or discontinue any work process if he or she is of the opinion that there is imminent danger to the health or safety of the workers.

(4) An order made under subsections (2) and (3) shall be subject to appeal before the Industrial Court.

(5) Except where a labour officer considers it to be prejudicial to the performance of his or her duties, a labour officer shall notify the employer, or their representative immediately on his or her arrival at a working place, for purposes of an inspection visit.

(6) A labour officer acting in good faith is not liable for any loss or cause of action that may arise out of his or her carrying out of the provisions of this section.

## **11. Settlement of grievances**

(1) Where an employer neglects or refuses to fulfil the terms of a contract of employment, or where a complaint or a labour dispute arises as to the rights or liabilities of either party under a contract of employment or under this Act, the aggrieved party may report the matter to a labour officer.

(2) A labour officer shall on receipt of a report under subsection (1) resolve the matter by agreement between the parties, involving as much as is practically possible in the negotiations, the workers or the labour union that may be present at the aggrieved party's workplace.

## **12. Power of labour officer to investigate and dispose of complaints**

(1) A labour officer to whom a complaint has been made under this Act shall have the power to—

- (a) investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation, arbitration, adjudication or such procedure as he or she thinks appropriate and acceptable to the parties to

- the complaint with the involvement of any labour union present at the place of work of the complainant;
- (b) require the attendance of any person as a witness or require the production of any document relating to the complaint after reasonable notice has been given;
  - (c) hold hearings in order to establish whether a complaint is or is not well founded in accordance with this Act or any other law applicable and the labour officer shall, while conducting the hearing employ the most suitable means he or she considers best able to clarify the issues between the parties;
  - (d) presume the complaint settled if the complainant fails to appear within a specified period; or
  - (e) adjourn the hearing to another date.

(2) The labour officer shall, while exercising the powers under paragraph (a) state the reasons for his or her decision on a complaint.

### **13. Power of labour officer to prosecute**

(1) A labour officer may institute civil or criminal proceedings before the Industrial Court in respect of a contravention or alleged contravention of this Act or regulations made under this Act, and may prosecute and appear in his or her own name in respect of the proceedings.

(2) The rules of evidence shall apply in any criminal proceedings under this Act, but shall not apply in any civil proceedings before the Industrial Court.

### **14. Obstruction of officers**

A person commits an offence where he or she—

- (a) willfully delays or obstructs any labour officer in the exercise of any power, duty or function under this Act;
- (b) fails to comply with any reasonable directions, order, requirement, request, demand or inquiry of a labour officer, made or given in pursuance of any power conferred upon the labour officer by this Act; or
- (c) conceals or otherwise prevents or attempts to conceal any person from appearing before, or being examined by a labour officer.

**15. Criminal offences**

(1) Any person who records or causes to be recorded wrong, inaccurate or deficient information in an employee's records of service, whether retained by the employer or communicated to a labour officer, with an intention to defraud the employee or the employer or any public authority, or who acts so as to conceal such fraudulent acts, commits an offence.

(2) It is an offence for an employer or employee to fail, without justifiable cause to reply to a labour officer's written request for information within a period of fourteen days from the time that request was received by the employer or the employee as the case may be.

(3) Where a court imposes a fine under this section, the court may order part of or all of the fine to be paid to an employee or employer, as the case maybe, who has suffered loss as a consequence of the commission of the offence.

**16. Conflict of interest**

A labour officer shall not place himself or herself in any position that involves a conflict of interest.

**17. Labour officer not to reveal trade secrets**

A labour officer shall not reveal, during or after the period of his or her appointment, any manufacturing or commercial secrets or working processes or confidential information which come to his or her knowledge in the performance of his or her duties.

**18. Returns and statistics**

The Commissioner may require an employer to furnish in writing returns and statistics, whether periodical or otherwise, of the number of employees, the rates of remuneration and any other conditions of service affecting such employment.



## 19. Annual report

The Commissioner shall publish an annual report of inspection services covering the following matters—

- (a) developments with regard to relevant laws and regulations;
- (b) the staff under the jurisdiction of the Commissioner;
- (c) statistics of workplaces liable to inspection and the number of workers employed in the workplace;
- (d) findings in the course of inspection;
- (e) statistics of industrial accidents and occupational diseases;
- (f) statistics of people with disabilities in workplaces and any aids being provided by the employer; and
- (g) statistics of proceedings brought before the Industrial Court and of their disposal.

## 20. Labour Advisory Board

(1) There is established a board to be known as the Labour Advisory Board which shall consist of—

- (a) a chairperson;
- (b) the Commissioner as an *ex officio* member;
- (c) public officers and representatives of employers and employees not exceeding ten, as the Minister may appoint, by notice in the *Gazette*; and
- (d) one representative of persons with disabilities.

(2) Appointments made under this section shall be for a period of three years and except for good cause, no person shall be removed from the Board before the expiry of his or her term of appointment.

(3) The Chairperson of the Board shall be appointed by the Minister and, shall be a person well versed in labour matters and of high moral calibre.

(4) The representative of employers and employees shall be nominated for appointment to the Board by the Federations of Employers and Federations of Labour Unions, respectively.

(5) Without prejudice to the generality of the Minister's power of appointment, there shall be an equal number of representatives of employers and employees appointed to the Board at any one time.

(6) The Board shall meet as many times as are necessary for the conduct of its business, but shall meet at intervals of not more than three months between each meeting.

## **21. Functions of Board**

(1) The functions of the Board are to advise the Minister on any matter falling under this Act and on any other matters affecting employment and industrial relations as may be referred to the Board by the Minister.

(2) The Board shall exercise its powers and perform its functions in such manner and subject to such conditions set out in the regulations.

(3) Where it is proposed to introduce measures designed to encourage and promote collective bargaining, the Minister shall seek the views of the Board on the measures, before their introduction.

(4) Subject to subsection (1), the Board shall advise the Minister on the following—

- (a) matters concerning relations between Uganda and the International Labour Organisation, including the making of replies and comments to questionnaires and proposed texts of international labour standards, the taking of action necessary to comply with the obligations of membership of the International Labour Organisation, and any proposed denunciation of a ratified Convention;
- (b) aspects of vocational guidance and vocational training;
- (c) matters concerning the operation of the employment service and the development of the employment service policy;
- (d) the formulation and development of policies designed to promote the granting of paid educational leave to workers for the purposes of—
  - (i) training;
  - (ii) labour union social and civic education; and
  - (iii) labour union education; and
- (e) the formulation and development of a national policy on vocational rehabilitation and the employment of persons with disabilities.

(5) The Minister shall, in consultation with and after approval of the Minister responsible for finance, fix the remuneration for the members of the Board.

#### **PART IV—EMPLOYMENT RELATIONSHIP**

### **22. General**

A person shall not be employed under a contract of service except in accordance with this Act.

### **23. Continuation of contracts in force**

All contracts of service valid and in force at the commencement of this Act shall continue in force and shall be deemed to have been made under this Act.

### **24. Oral and written contracts**

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

### **25. Attestation**

(1) A contract of service made with an employee who is unable to read or understand the language in which the contract is written shall be attested to.

(2) Attestation shall be by means of a written document drawn up by a magistrate or labour officer and before attesting to the contract the magistrate or labour officer shall—

- (a) ascertain that the employee has freely consented to the contract and that his or her consent has not been obtained by coercion, undue influence, misrepresentation or mistake;
- (b) ensure that the contract complies with this Act; and
- (c) be satisfied that the employee has duly understood the terms of the contract before giving his or her final agreement to it.

(3) The magistrate or labour officer shall give a copy of the document recording the attestation to the employer and to the employee, but the original

of the document recording the attestation shall be retained by the magistrate or labour officer.

(4) A contract which should have been, but was not, attested to as provided for under this section may be enforced at the instance of the employee and the absence of attestation shall not prejudice in any way the rights of the employee.

## **26. Variation or exclusion of provisions of Act**

(1) Except where expressly permitted by this Act, an agreement between an employer and an employee which excludes any provision of this Act shall be void and of no effect.

(2) Nothing in this section shall prevent the application by agreement between the parties, of terms and conditions, which are more favourable to the employee than those contained in this Act.

## **27. Transfer of contract**

(1) Except as provided for by subsection (2), a contract of service shall not be transferred from one employer to another without the consent of the employee.

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

(3) A transfer referred to in subsection (2) shall not interrupt the employee's continuity of service, and the service shall continue with the transferee as if he or she were the transferor.

## **28. Death of employer**

Where the employer's personal or legal position formed the basis of the employment relationship with the employee, the death of an employer shall

cause the contract of service to terminate one month from the date of the employer's death, unless it is otherwise legally terminated within that period.

## **29. Insolvency of employer**

(1) The bankruptcy or winding up of the employer's business shall cause the contract of service of any employee to terminate one month from the date of the bankruptcy or the winding up order.

(2) Subsection (1) shall not apply where, notwithstanding the occurrence of bankruptcy or winding up, the business continues to operate or is transferred.

(3) An employee's claim for wages and other entitlements in case of bankruptcy or winding up shall be governed by section 47.

## **30. Inability to pay wages**

(1) Where an employer is unable, or refuses, to pay wages, a labour officer, on the application of any employee of that employer, shall declare the contract of service terminated.

(2) The termination referred to in subsection (1) shall be without prejudice to all outstanding and accrued rights arising under this Act, the contract of service or any other law.

## **31. Employment of children**

(1) A child under the age of twelve years shall not be employed in any business, undertaking or work place.

(2) A child under the age of fourteen years shall not be employed in any business, undertaking or workplace, except for light work carried out under supervision of an adult aged over eighteen years, and which does not affect the education of a child.

(3) A person shall not continue to employ any child under the age of fourteen years after being notified in writing by a labour officer that the employment or work is not light work meeting the criteria in subsection (2).

(4) A child shall not be employed in any employment or work which is injurious to his or her health, dangerous or hazardous or otherwise unsuitable and an employer shall not continue to employ a child after being notified in writing by a labour officer that the employment or work is injurious to health, dangerous or otherwise unsuitable for that child.

(5) A child shall not be employed between the hours of 7:00 p.m. and 7:00 a.m.

(6) Any person, including a labour union or employer's organisation, may complain to a labour officer if he or she considers that a child is being employed in breach of this section.

(7) A person who is aggrieved by a decision of a labour officer under this section may appeal to the Industrial Court.

### **32. Medical examination**

(1) The Minister may, by regulations, require persons over the age of eighteen years seeking employment involving exposure to hazards specified by regulations to undergo medical examination before being engaged by an employer and at regular intervals thereafter.

(2) Where a medical examination is required under this section, it shall be carried out by a qualified medical practitioner and shall be certified by a district medical officer in the presence of a labour officer.

(3) Where a medical examination is required under this section, the results of the medical examination shall be kept confidential by the medical practitioner, and shall not be disclosed to any other person, other than the person who is the subject of the medical examination, without that person's consent.

### **33. Special categories of employees**

Without prejudice to the generality of the preceding sections of this Part, the Minister shall on the recommendation of the Board make regulations governing the employment of persons with disabilities, apprentices and other categories of employees, who in his or her opinion, are in need of special protection under the law.

**34. Notification of vacancies**

(1) Every employer shall notify a district labour officer of any employment vacancy whenever it occurs.

(2) The Minister may, by regulations, exempt specified categories of employers from the provisions of this section.

**35. Departure from Uganda**

An employee shall not, without his or her consent, be required to accompany his or her employer outside Uganda, unless his or her contract expressly provides so.

**36. Migrant workers**

(1) No person shall organise the illicit or clandestine movement of migrants for employment for purposes of departing from, passing through or arriving in Uganda, or give assistance to any organisation for that purpose.

(2) A person shall not employ a person whom he or she knows to be unlawfully present in Uganda.

(3) Any person who contravenes this section commits an offence.

**37. Recruitment permits**

(1) A person or his or her agent or messengers, shall not engage in the business of operating a recruitment agency, unless he or she is in possession of a valid recruiting permit issued by the Commissioner.

(2) A recruiting permit shall be subject to such conditions as the Commissioner may require, and may be revoked at any time for good cause.

(3) This section shall not apply to recruitment for employment

(a) as a domestic servant; or

(b) on non-manual labour.

(4) Nothing in this section shall be taken as restricting or prohibiting official labour exchanges operated by or with the approval of the Commissioner.

(5) Recruitment agencies shall submit returns of their operations to the Commissioner.

(6) The Minister shall make regulations governing the operations.

(7) Any person who acts in breach of this section commits an offence.

### **38. Repatriation**

(1) An employee recruited for employment at a place which is more than one hundred kilometres from his or her home shall have the right to be repatriated at the expense of the employer to the place of engagement in the following cases—

- (a) on the expiry of the period of service stipulated in the contract;
- (b) on the termination of the contract by reason of the employee's sickness or accident;
- (c) on the termination of the contract by agreement between the parties, unless the contract contains a written provision to the contrary; and
- (d) on the termination of the contract by order of the labour officer, the Industrial Court or any other court.

(2) Where the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the expense of the employer, in the event of the employee's repatriation or death.

(3) Where an employee has been in employment for at least ten years, he or she shall be repatriated at the expense of the employer, irrespective of his or her place of recruitment.

(4) A labour officer may, notwithstanding anything in this section, exempt an employer from the obligation to repatriate in circumstances where the labour officer is satisfied that it is just and equitable to do so, having regard to any agreement between the parties or in the case of the summary dismissal of an employee for serious misconduct.



## PART V—WAGES AND RELATED NOTICES

**39. Duty of employer to provide work**

- (1) Every employer shall provide his or her employee with work
  - (a) in accordance with the contract of service;
  - (b) during the period for which the contract is binding; and
  - (c) on the number of days equal to the number of working days expressly or impliedly provided for in the contract.
- (2) The duty in subsection (1) shall not apply if—
  - (a) the contract is frustrated;
  - (b) its performance is suspended;
  - (c) it is prevented by an act of God or civil strife;
  - (d) the employee has terminated the contract of service.
- (3) Without prejudice to the generality of subsections (1) and (2), an employer is not liable to provide work where interruptions to his or her business activities are caused by
  - (a) natural calamities;
  - (b) a strike, go-slow or other industrial action;
  - (c) subject to subsection (6), economic or technological reasons which result in a shortage or reduction of work that is beyond the employer's control.
- (4) Where an employer fails to provide work as required by this section, he or she shall pay to the employee, in respect of every day on which he or she shall so fail, wages at the same rate as if the employee had performed a day's work.
- (5) Subsection (3) shall not apply if on any day the employer offers, at the same wage rate, suitable alternative employment which the employee refuses or fails to undertake.
- (6) The exemption from the duty of the employer to provide work arising under subsection (3)(c) is limited to a maximum of fifteen days in any one six month period.

**40. Entitlement to wages**

(1) Subject to subsection (2), wages shall be paid in legal tender to the employee entitled to payment.

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

(3) Notwithstanding anything in this section, the Minister may, after consultation with the Board, by regulations provide for the partial payment of wages in the form of allowances in kind, and in no case shall alcoholic beverages or noxious drugs, in industries or occupations in which payment in the form of such allowances is customary or desirable, be for the personal use of the employee and his or her family, and the value attributed to such allowance shall be fair and reasonable.

(4) An employee shall not be obliged to make use of any shops established by the employer for the use of his or her employees or services operated in connection with the undertaking.

(5) Wages shall not be payable to any employee in respect of any period where he or she has been sentenced and imprisoned by a court of law.

(6) An employee is not entitled to receive wages in respect of any period where he or she is absent from work without authorisation or good cause except that, in the case of an employee who has completed at least three months' continuous service with his or her employer, the following shall not constitute absence without good cause—

- (a) absence attributable to the occurrence of exceptional events preventing the employee from reaching his or her place of work or from working;
- (b) absence attributable to a summons to attend a court of law or any other public authority having power to compel attendance; or
- (c) absence attributable to the death of a member of the employee's family or dependent relative, subject to a maximum of three days' absence on any one occasion and a maximum of six days in any one calendar year.

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

(8) An employer who is not incorporated or resident in Uganda shall be required by a labour officer to pay a bond assessed at the equivalent of one month's wages for each employee employed, or to be employed, by that employer.

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

#### **41. Death of employee**

(1) Where an employee dies during the term of a contract of service, his or her heirs or legal representatives shall be entitled to the wages and any other remuneration due to the employee at the date of death.

(2) Where any employee dies at his or her workplace, or on the way to his or her place of work, the employer shall be required to notify the death to the district labour officer who shall notify the Commissioner.

(3) Where an employee dies while at work, or while travelling to his or her place of work, their employer shall be required to transport the employee's body to a place of burial notified by that employee's next of kin.

#### **42. Payment of wages**

(1) The payment of wages in legal tender shall take place at the place of the employee's work or, if he or she works at more than one location, the premises of his or her employer from which he or she works or from which his or her work is administered.

(2) Payment of wages shall not take place in premises licensed for the sale of alcoholic beverages or in places of amusement, except in the case of employees whose place of work is in such premises.

(3) An employer shall not impose in any contract of service, any agreement, or condition, as to the place where, or the manner in which, or the person with whom, any wages paid to an employee shall be expended and an agreement or condition which contravenes this section shall be invalid.

- (4) In the absence of a prior written agreement to the contrary—
- (a) an employee engaged to work for one day at a time shall be paid his or her wages at the end of that day;
  - (b) an employee paid by the hour, day or week shall be paid his or her wages at the end of that hour, day or week;
  - (c) an employee paid fortnightly or monthly shall be paid at the end of each fortnight or month; and
  - (d) an employee engaged to be paid by the piece of work done or by results shall be paid at intervals of not more than one fortnight.

(5) Where the employee is being housed by the employer, the employee shall not be required to vacate the premises until he or she has been paid his or her terminal benefits.

(6) On the termination of his or her employment in whatever manner, an employee shall, within seven days from the date on which the employment terminates, be paid his or her wages and any other remuneration and accrued benefits to which he or she is entitled.

#### **43. Payment of wages to another**

Except where it is expressly provided by law, no person may receive the wages due to any employee on behalf of that employee without the written permission of the employee to whom the wages are due.

#### **44. Prohibition on certain deductions**

(1) Except as otherwise permitted by this Act or any other law, remuneration earned by or payable to an employee shall be paid directly to the employee.

(2) No deduction shall be made from the wages of an employee with a view to ensuring a direct or indirect payment to his or her employer or the employer's representative or to any intermediary for the purpose of obtaining or retaining employment.

(3) All employers shall be required to provide employees with the equipment, tools and material necessary for that employee to perform his or her duties, and shall not require that employee to pay the employer, or any other person, for the equipment, tools or material.

#### **45. Permitted deductions**

(1) The following deductions from remuneration due to an employee are permitted—

- (a) an amount in respect of any tax, rate, subscription or contribution imposed by law;
- (b) where the employee has previously given his or her written consent to a deduction being made, the deduction being in respect of any amount representing a contribution to any provident or pension fund or scheme established or maintained by the employer or some other person;
- (c) deduction by way of reasonable rent or other reasonable charge for accommodation provided by the employer for the employee, or the employee's family, where the employee has agreed to the deduction; and
- (d) union dues, deducted in accordance with section 48.

(2) Notwithstanding the provisions of any other law, an employer shall not deduct from the wages of an employee the cost of any protective gear or tools of trade which are provided by the employer.

(3) The attachment of wages by operation of law shall be permitted, but any such attachment shall not be more than two-thirds of all remuneration due in respect of that pay period.

#### **46. Repayment**

(1) Without prejudice to any other liability for a breach of the provisions of this Part, an employer who acts in contravention of the

provisions of this Part is liable to repay any remuneration wrongfully withheld or wrongfully deducted from the employee.

- (2) A request for repayment by an employee under this Part—
  - (a) shall be made to a labour officer; and
  - (b) shall be made not later than six years after the allegedly unlawful deduction has been made.

#### **47. Preferential claims**

Notwithstanding any other law to the contrary, on the bankruptcy or winding up of an employer's business, the claim of an employee or those claiming on his or her behalf, wages and other payments to which he or she is entitled under this Act, shall have priority over all other claims which have accrued in respect of the twenty six weeks immediately preceding the date on which the declaration of bankruptcy or winding up is made.

#### **48. Union dues**

(1) In this section, the expression “union dues” means any regular or periodic subscription required to be paid by a union member to any labour union of which he or she is a member under the rules, as a condition of his or her membership, but does not include any pay or subscription for a particular object or purpose.

(2) The general secretary of a labour union or his or her representative may issue to every employer who employs any person who is a member of a labour union a written notice attached with the written consent of the respective employee, requiring the employer—

- (a) to deduct from the wages of his or her employees who are members of the labour union such sums specified as union dues in the notice, and such deductions shall be made at the periods specified in the notice; and
- (b) to pay to the labour union the sums deducted in accordance with this section.

(3) Where an employer to whom a notice has been given under subsection (2) refuses or fails to comply with the provisions of the notice, he or she shall be liable to pay to the labour union a sum equal to three percent

of the total amount of the deduction for each month during which the sums are not paid to the union, the outstanding in addition to the union dues.

#### **49. Pay statements**

(1) Every employee shall receive with each payment of his or her wages an itemised pay statement from his or her employer, in writing, in a form and language which the employee may reasonably be expected to understand, which shall set out—

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

(2) Where an employer fails to provide a pay statement as required by this section, or fails to provide a statement that is accurate, an employee shall have the right of complaint to a labour officer.

(3) A labour officer, following a complaint made under this section shall have the power to issue one or more written statements which shall take the place of any pay statements the employer has failed to issue, or amend any inaccuracies in any pay statement issued in respect of which a complaint has been made.

(4) A labour officer shall have the power to order the employer to pay to the employee the aggregate of any deductions from the employee's wages made by the employer in a manner that was not in accordance with an accurate pay statement.

(5) Any written statement issued by the labour officer in place of or in amendment of the employee's pay statement shall, for all purposes, be regarded as if it had been duly issued by the employer in accordance with subsection (1).

**PART VI—RIGHTS AND DUTIES IN EMPLOYMENT****50. Weekly rest**

(1) An employee shall not be required to work for an employer for more than six consecutive days without a day's rest, which shall be taken on any day which is customary or as shall be agreed between the parties.

(2) The Minister may by regulations exclude from the operation of this section—

- (a) persons holding high managerial positions; and
- (b) persons working in family establishments employing not more than five dependent relatives.

**51. Pay calculation**

(1) Where an employee is employed on a contract under which wages are calculated by reference to a period of one week or more, a deduction shall not be made from his or her wages on account of his or her not working or not attending at his or her place of work, on the weekly rest day.

(2) Wages payable under a contract of employment—

- (a) shall be assumed to be in respect of a forty-eight hour week in the absence of an agreement to the contrary and;
- (b) in the absence of a written agreement to the contrary, hours worked in excess of forty-eight hours in any one week shall be regarded as “overtime hours” for the purposes of this Part.

**52. Length of working hours per week**

(1) Subject to subsections (2) and (3), in all establishments, the maximum working hours for employees shall be forty-eight hours per week.

(2) The employer and the employee may agree that the maximum working hours per week shall not be less than forty-eight hours.

(3) Subject to subsection (4), an employer and employee may agree that the normal working hours in a week shall be more than forty-eight hours.



(4) Hours of work shall not, except as provided in subsection (5), exceed ten hours per day or fifty-six hours per week.

(5) Where persons are employed in shifts, it shall be permissible to employ persons in excess of ten hours in any one day or forty-eight hours in any one week, where the average number of hours over a period of three weeks exceeds neither ten hours per day nor fifty-six hours per week.

(6) In any establishment where the maximum working hours are at least eight hours per day, a thirty minute break shall be granted each day to the employees.

(7) The Minister may, after consultation with the Board, and subject to the provisions of this section and section 53, regulate the maximum number of hours per week including overtime work, which may be worked in any industry or occupation and may, by order, provide for temporary exceptions in extraordinary situations where the public interest so requires.

(8) Where hours in excess of eight hours per day or forty-eight hours per week are worked, they shall, in the absence of a written agreement to the contrary, be remunerated at the minimum rate of one and a half times of the normal hourly rate if the overtime is on the normal working days, and at two times the hourly rate where the overtime is worked on gazetted public holidays.

### **53. Annual leave and public holidays**

- (1) Subject to the provisions of this section—
  - (a) an employee shall, once in every calendar year, be entitled to a holiday with full pay at the rate of seven days in respect of each period of a continuous four months' service, to be taken at such time during such calendar year as may be agreed between the parties; and
  - (b) an employee shall be entitled to a day's holiday with full pay on every public holiday during his or her employment or, where he or she works for his or her employer on a public holiday, to a day's holiday with full pay at the expense of the employer on some other day that would otherwise be a day of work.

(2) Where an employee who works on a public holiday receives, in respect of such work, pay at not less than double the rate payable for work on a day that is not a public holiday, that employee shall not be entitled to a day's holiday with full pay *in lieu* of the public holiday.

(3) Subject to subsection (2), any agreement to relinquish the right to the minimum annual holiday as prescribed in this section, or to forego such a holiday, for compensation or otherwise, shall be null and void.

(4) This section shall apply only to employees—

- (a) who have performed continuous service for their employer for a minimum period of six months;
- (b) who normally work under a contract of service for sixteen hours a week or more.

(5) An employee is entitled to receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he or she has not received such a holiday, or compensation *in lieu* of the holiday.

#### **54. Sick pay**

(1) An employee who has completed not less than one month's continuous service with an employer and who is incapable of work because of sickness or injury is entitled to sick pay as follows—

- (a) for the first month's absence from work he or she is entitled to full wages and every other benefit whether for his or her family or himself or herself stipulated in the contract of service; and
- (b) if at the expiration of the second month the sickness of the employee still continues, the employer is entitled to terminate the contract of service on complying with all the terms of the contract of service up to the time of termination of employment.

(2) For the employee to be entitled to sick pay as referred to in subsection (1), the employee shall—

- (a) notify or cause to be notified as soon as is reasonably practicable, his or her employer of his or her absence and the reason for it; and
- (b) produce, if requested by his or her employer and at intervals of not less than one week, a written certificate signed by a qualified

medical practitioner certifying his or her incapacity for work and duration of the incapacity.

(3) The employer may require that the certificate referred to in subsection (2)(b) be obtained from a qualified medical practitioner other than the company medical practitioner except that, in such a case the employer is responsible for any fees and transport costs payable in connection with the issuing of the certificate.

(4) This section applies to employees who are normally employed for at least sixteen hours a week.

(5) This section shall not derogate from any person's rights under the Workers Compensation Act.

## **55. Maternity leave**

(1) A female employee shall, as a consequence of pregnancy, have the right to a period of sixty working days leave from work on full wages hereafter referred to as "maternity leave", of which at least four weeks shall follow the childbirth or miscarriage.

(2) A female employee who becomes pregnant shall have the right to return to the job which she held immediately before her maternity leave or to a reasonably suitable alternative job on terms and conditions not less favourable than those which would have applied had she not been absent on maternity leave.

(3) In the event of sickness arising out of pregnancy or confinement, affecting either the mother or the baby, and making the mother's return to work inadvisable, the right to return mentioned in subsection (2) shall be available within eight weeks after the date of childbirth or miscarriage.

(4) A female employee is entitled to the rights mentioned in subsections (1), (2) and (3) if she gives not less than seven days' notice in advance or a shorter period as may be reasonable in the circumstances, of her intention to return to work.

(5) The notices referred to in subsection (4) shall be in writing if the employer so requests.

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

#### **56. Paternity leave**

(1) A male employee shall, immediately after the delivery or miscarriage by a wife, have the right to a period of four working days' leave from work yearly herein referred to as paternity leave.

(2) An employee referred to in subsection (1) shall be entitled to the payment of his full wages during the said paternity leave.

(3) A male employee shall, after the paternity leave, have the right to return to the job which he held immediately before his paternity leave.

#### **57. Notice periods**

(1) A contract of service shall not be terminated by an employer unless he or she gives notice to the employee, except—

- (a) where the contract of employment is terminated summarily in accordance with section 68; or
- (b) where the reason for termination, is attainment of retirement age.

(2) The notice referred to in this section shall be in writing, and shall be in a form and language that the employee to whom it relates can reasonably be expected to understand.

(3) The notice required to be given by an employer or employee under this section shall be—

- (a) not less than two weeks, where the employee has been employed for a period of more than six months but less than one year;
- (b) not less than one month, where the employee has been employed for a period of more than twelve months, but less than five years;
- (c) not less than two months, where the employee has been employed for a period of five, but less than ten years; and
- (d) not less than three months where the service is ten years or more.

(4) Where the pay period by reference to which the employee is paid his or her wages is longer than the period of notice to which the employee would be entitled under subsection (3), the employee is entitled to notice equivalent to that pay period.

(5) An agreement between the parties to exclude the operation of this section shall be of no effect, but this shall not prevent an employee accepting payment *in lieu* of notice.

(6) Any outstanding period of annual leave to which an employee is entitled on the termination of the employee's employment shall not be included in any period of notice which the employee is entitled to under this section.

(7) During the notice period provided for in subsection (3), the employee shall be given at least one-half-day off per week for the purpose of seeking new employment.

## **58. Written particulars**

(1) An employee is entitled to receive from his or her employer notice in writing of the following particulars of employment—

- (a) the full names and addresses of the parties to the contract of service;
- (b) the date on which employment under the contract began, specifying the date from which the employee's period of continuous service for the purposes of this Act shall commence;
- (c) the title of the job that the employee is employed to do;
- (d) the place where the employee's duties are to be performed;
- (e) the wages which the employee 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 shall be subject;
- (f) the rate of any overtime pay applicable to the employee;
- (g) the employee's normal hours of work and the shifts or days of the week on which such work is to be performed;
- (h) the number of days' annual leave to which the employee is entitled and his or her entitlement to wages during such leave;
- (i) the terms or conditions relating to incapacity for work due to sickness or injury, including any 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 employee; and
- (k) the terms or conditions relating to incapacity for work due to sickness or injury, including any provisions for sick pay.

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

(3) The notice referred to in subsection (1) shall be given by the employer to the employee not later than twelve weeks after the date on which employment commences.

(4) Where there has been an agreed change affecting any of the matters referred to in subsection (1), the employer shall issue a written notice to the employee of the change.

(5) An employer shall retain a copy of the written particulars issued under subsection (1), and of any changes in them and shall produce the copy on demand, to a labour officer.

## **59. Written particulars to act as evidence**

Where there is any dispute between an employer and employee concerning the terms and conditions of employment

- (a) the written particulars referred to in section 58, together with any notice of change, shall be admissible evidence of the existence of the terms and conditions about which there is a dispute; and
- (b) 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.

## **60. Certificate of service**

(1) On the termination of a contract of service an employer, if so requested by the employee, shall provide the employee with a certificate indicating—

- (a) the names and addresses of the employer and employee;
- (b) the nature of the employer's business;
- (c) the length of the employee's period of continuous employment with the employer;
- (d) the capacity in which the employee was employed prior to termination;
- (e) the wages payable at the date of termination of the contract; and
- (f) where the employee so requests, the reason or reasons for the termination of the employee's employment.

(2) The certificate referred to in subsection (1) shall not contain any judgment on or evaluation of the employee's work, but where it is requested by the employee, the employer may provide it in a separate document.

(3) The certificate referred to in subsection (1) shall, so far as is practicable, be written in a language the employee may reasonably be expected to understand.

#### **PART VII—DISCIPLINE AND TERMINATION**

##### **61. Disciplinary penalties**

(1) This section and sections 62 and 63 shall apply where an employer imposes a disciplinary penalty, other than dismissal, on an employee because of neglect, failure or alleged failure on the part of an employee to carry out his or her duties under his or her contract of service.

- (2) "Disciplinary penalty" for the purposes of this Part includes—
  - (a) a written warning;
  - (b) reprimand; and
  - (c) suspension from work.

(3) An employer is entitled to impose a disciplinary penalty only where it is reasonable to do so in the particular circumstances and what is reasonable shall be decided by considering—

- (a) the nature of the neglect, failure or alleged failure on the part of the employee, the penalty imposed by the employer, the procedure followed by the employer in imposing the penalty, the reformed conduct of the employee and if any the personal circumstances of the employee; and

(b) the disciplinary code set out in Schedule 2 to this Act.

(4) An employee shall not be suspended from work for more than fifteen days in any six-month period.

(5) Except in exceptional circumstances an employer who fails to impose a disciplinary penalty within fifteen days from the time he or she becomes aware of the occurrence giving rise to disciplinary action, shall be deemed to have waived the right to do so.

## **62. Suspension**

(1) Whenever an employer is conducting an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee with half pay.

(2) Any suspension under subsection (1) shall not exceed four weeks or the duration of the inquiry, whichever is the shorter.

## **63. Complaint by employee**

(1) Where an employee believes that an employer was not justified in imposing a disciplinary penalty on him or her, or in imposing a suspension with half pay, the employee may, within a period of four weeks after the imposition of the penalty or suspension, make a written or oral complaint to a labour officer.

(2) Where a complaint under this section has been made to a labour officer, the officer shall—

- (a) investigate the circumstances leading to the imposition of the disciplinary penalty, and in the course of these investigations he or she shall consult any labour union, if any, established in the business in which the employee is employed; and
- (b) seek to settle the matter in the first instance by mediation.

(3) Where a complaint under this section has been made, a labour officer shall, except where the employer has withdrawn the disciplinary penalty imposed or has paid the employee for the period of the suspension, decide whether it was reasonable for the employer to impose the disciplinary penalty or the suspension with half pay.



(4) The labour officer shall communicate his or her decision under subsection (3), including the reasons for that decision in writing to the employer and to the employee.

(5) Where a labour officer decides that the imposition of a disciplinary penalty or the suspension with half pay was unreasonable, the labour officer may make an order—

- (a) that the original penalty be revoked;
- (b) that the original penalty be revoked and be replaced by another specified lesser penalty; or
- (c) that the employer pay to the employee the wages which would otherwise have been due for the period of suspension with half pay.

(6) Where in an order by the labour officer under subsection (5), the penalty has been revoked, no reference to the penalty shall appear in the employee's personal record but where the penalty has been reduced, only the lesser penalty shall be noted in the record.

(7) The Minister may, by regulations, provide that this section shall apply only to disciplinary fines in excess of a specified sum, and to periods of suspension in excess of a specified duration.

(8) The right of an employee to make a complaint under this section shall be without prejudice to any right an employee may enjoy under an agreement between an employer or group of employers and any labour union.

#### **64. Termination**

(1) Termination shall be deemed to take place in the following instances—

- (a) where the contract of service is ended by the employer with notice;
- (b) where the contract of service, being a contract for a fixed term or task, ends with the expiry of the specified term or the completion of the specified task and is not renewed within a period of one week from the date of expiry on the same terms or terms not less favourable to the employee;

- (c) where the contract of service is ended by the employee with or without notice, as a consequence of unreasonable conduct on the part of the employer towards the employee; and
- (d) where the contract of service is ended by the employee, in circumstances where the employee has received notice of termination of the contract of service from the employer, but before the expiry of the notice.

(2) The date of termination shall, unless the contrary is stated, be deemed to be—

- (a) in the circumstances governed by subsection (1)(a), the date of expiry of the notice given;
- (b) in the circumstances governed by subsection (1)(b), the date of expiry of the fixed term or completion of the task;
- (c) in the circumstances governed by subsection (1)(c) or subsection (1)(d), the date when the employee ceases to work for the employer; and
- (d) in the circumstances when an employee attains normal retirement age.

## **65. Notification and hearing before termination**

(1) Notwithstanding any other provision of this Part, an employer shall, before reaching a decision to dismiss an employee, on the grounds of misconduct or poor performance, explain to the employee, in a language the employee may be reasonably expected to understand, the reason for which the employer is considering dismissal and the employee is entitled to have another person of his or her choice present during this explanation.

(2) Notwithstanding any other provision of this Part, an employer shall, before reaching any decision to dismiss an employee, hear and consider any representations which the employee on the grounds of misconduct or poor performance, and the person, if any chosen by the employee under subsection (1) may make.

(3) The employer shall give the employee and the person, if any, chosen under subsection (1) a reasonable time within which to prepare the representations referred to in subsection (2).

(4) Irrespective of whether any dismissal which is a summary dismissal is justified, or whether the dismissal of the employee is fair, an employer who fails to comply with this section is liable to pay the employee a sum equivalent to four weeks' net pay.

(5) A complaint alleging a failure on the part of the employer to comply with this section may be joined with any complaint alleging unjustified summary dismissal or unfair dismissal, and may be made to a labour officer by an employee who has been dismissed, and the labour officer shall have power to order payment of the sum mentioned in subsection (4) in addition to making an order in respect of any other award or decision reached in respect of the dismissal.

(6) A complaint under subsection (5) shall be made within three months after the date of dismissal.

## **66. Probationary contracts**

(1) Section 65 does not apply where a dismissal brings to an end a probationary contract.

(2) The maximum length of a probationary period is six months, but it may be extended for a further period of not more than six months with the agreement of the employee.

(3) An employer shall not employ an employee under a probationary contract on more than one occasion.

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

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

(1) In any claim arising out of termination, the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair within the meaning of section 70.

(2) The reason or reasons for dismissal shall be matters, which the employer, at the time of dismissal, genuinely believed to exist and which caused him or her to dismiss the employee.

(3) In deciding whether an employer has satisfied this section, the contents of a certificate such as is referred to in section 60 informing the employee of the reasons for termination of employment shall be taken into account.

## **68. Summary termination**

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

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

(3) An employer is entitled to dismiss summarily, and the dismissal shall be termed justified, where the employee has, by his or her conduct indicated that he or she has fundamentally broken his or her obligations arising under the contract of service.

## **69. Complaint to labour officer in case of summary dismissal**

(1) Where an employee complains that he or she has been summarily dismissed without justification, he or she may, within six months after the date of dismissal, present a complaint to a labour officer who shall seek to settle the matter in the first instance by mediation.

(2) A labour officer presented with a claim under this section shall decide whether the dismissal was justified in the circumstances, having regard to section 74 and to the disciplinary code set out in Schedule 2 to this Act.

(3) Where a labour officer decides that a summary dismissal was unjustified, he or she shall inform the parties of the decision and shall order the employer to pay—

- (a) the net wages which the employee would have earned had he or she been given the period of notice to which he or she was entitled under this Act or under his or her contract of service;
- (b) where the dismissal ends the contract before the completion of any service upon which the employee's wages become due, the proportion of the wages due for the period of time for which the employee has worked; and
- (c) any other losses consequent upon the dismissal and arising between the date of dismissal and the date of expiry of the period of notice referred to in paragraph (a).

(4) The right of the employee to present a complaint under this section shall be in addition to his or her right of complaint of unfair dismissal and any other infringement of his or her statutory rights.

(5) The right of an employee to make a complaint under this section shall be in addition to any right an employee may enjoy under an agreement between the employer or group of employers and a labour union.

(6) For any complaint of unfair dismissal, the burden of proving that a dismissal has occurred rests on the employee, and the burden of justifying the grounds for the dismissal rests on the employer.

## **70. Unfair termination**

(1) An employee who has been continuously employed by his or her employer for at least thirteen weeks immediately before the date of termination, shall have the right to complain that he or she has been unfairly terminated.

(2) A complaint made under this section shall be made to a labour officer within three months of the date of dismissal, or such later period as the employee shall show to be just and equitable in the circumstances.

(3) No complaint under this section may be made by an employee whose services have been terminated or who has been dismissed under a probationary contract.

(4) The right of an employee to make a complaint under this section shall be in addition to any right an employee may enjoy under an agreement between an employer or group of employers and a labour union.

- (5) Where court finds that a dismissal is unfair, the court may—
  - (a) order the employer to reinstate the employee;
  - (b) order the employer to pay compensation to the employee.
- (6) The court shall require the employer to reinstate or re-employ the employee unless—
  - (a) the employee does not wish to be reinstated or re-employed;
  - (b) the circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;
  - (c) it is not reasonably practicable for the employer to reinstate or re-employ the employee; or
  - (d) the dismissal is unfair only because the employer did not follow a proper procedure.

## **71. Representation**

(1) In any complaint made under sections 63, 69 and 70, a party may be represented by an advocate in the proceedings before a labour officer, and a party may also be assisted by or represented by any official of a labour union or any official of an employer's organisation.

(2) Substantive justice shall be administered without undue regard to technicalities.

## **72. Criteria for unfair termination**

- (1) A termination shall be unfair for the purposes of this Part where—
  - (a) the termination is for any of the reasons specified in section 74; or
  - (b) it is found out that in all the circumstances of the case, the employer did not act in accordance with justice and equity in terminating the employee from service.
- (2) In deciding whether it was just and equitable for an employer to terminate the services of an employee, a labour officer shall consider—
  - (a) code of discipline set out in Schedule 2 to this Act;
  - (b) the procedures adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;

- (c) the conduct and capability of the employee up to the date of termination;
- (d) the extent to which the employer has complied with any statutory requirement connected with the termination, including the issuing of a certificate under section 60 and the procedural requirements set out in section 65; and
- (e) the previous practice of the employer in dealing with the type of circumstances which led to the termination.

### **73. Role of other employees**

In deciding whether a complaint made under section 69 is well founded, a labour officer shall consult the other employees, if any, in the business in which the employee was employed.

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

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

- (a) a female employee's pregnancy, or any reason connected with her pregnancy;
- (b) the fact that an employee took, or proposed to take, any leave to which he or she was entitled under the law or a contract;
- (c) an employee's membership or proposed membership of a labour union;
- (d) participation or proposed participation in the activities of a labour union outside working hours or, with the consent of the employer, within working hours;
- (e) an employee's seeking of office as, or acting or having acted in the capacity of, an officer of a labour union or a workers' representative;
- (f) an employee's refusal or proposed refusal to join or withdraw from a labour union;
- (g) an employee's race, colour, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability;
- (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his or her employer, except where the conduct is, in the opinion of the labour officer, wholly irresponsible and without foundation; and

- (i) an employee's temporary absence from work for any period up to three months on reliable grounds, including illness or injury.

## **75. Industrial action**

(1) The organisation or intended organisation of a strike or other form of industrial action shall not constitute a fair reason for dismissal or the imposition of a disciplinary penalty where the strike or other industrial action is lawful.

(2) The participation or intended participation of an employee in a strike or other form of industrial action shall not constitute a fair reason for dismissal or for the imposition of a disciplinary penalty where the strike or other industrial action is lawful.

## **76. Remedies for unfair termination**

Where a labour officer decides that an employee's complaint of unfair termination under section 70 is well founded, the labour officer shall, subject to subsections (2) and (3) of section 70 give the employee an award or awards of compensation specified in section 77.

## **77. Compensatory order**

(1) An order of compensation to an employee who has been unfairly terminated shall, in all cases, include a basic compensatory order for four weeks' wages.

(2) An order of compensation to an employee whose services have been unfairly terminated may include additional compensation at the discretion of the labour officer, which shall be calculated taking into account the following—

- (a) the employee's length of service with the employer;
- (b) the reasonable expectation of the employee as to the length of time for which his or her employment with that employer might have continued but for the termination;
- (c) the opportunities available to the employee for securing comparable or suitable employment with another employer;
- (d) the value of any severance allowance to which an employee is entitled under Part IX of this Act;



- (e) the right to press claims for any unpaid wages, expenses or other claims owing to the employee;
- (f) any expenses reasonably incurred by the employee as a consequence of the termination;
- (g) any conduct of the employee which, to any extent caused or contributed to the termination;
- (h) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and
- (i) any compensation, including *ex gratia* payments, in respect of termination of employment paid by the employer and received by the employee.

(3) The maximum amount of additional compensation which may be awarded under subsection (2) shall be three month's wages of the dismissed employee, and the minimum shall be one month's wages.

#### **78. Calculation of weeks' wages**

For the purposes of this Part, a week's wages shall be calculated as follows—

- (a) where an employee's wages are the same for each pay period, a week's wages shall be the amount paid or payable to the employee in respect of a full working week under his or her contract of service as it applied immediately before the date of dismissal;
- (b) where an employee's wages under his or her contract of service vary from one pay period to another according to the amount of work done by the employee during that period, a week's wages shall be the average wage received or payable in respect of a full working week by the employee, and the average wage shall be calculated by reference to the thirteen weeks of employment immediately preceding the date of dismissal;
- (c) where an employee's wages under his or her contract of service vary from one pay period to another according to the total number of hours which he or she works during a particular pay period, a week's wages shall be the wages received or payable by the employee for a working week of an average length which shall be calculated by reference to the average number of hours worked in each week by the employee during the thirteen weeks of employment immediately preceding the date of dismissal.

**79. Settlement of termination cases**

Notwithstanding the provisions of this Act, an agreement between an employer and employee stating that no complaint in respect of a termination shall lie to a labour officer, or where a complaint made under section 63 or 69 shall not be considered, and an agreement made between the employer and employee shall—

- (a) be in writing;
- (b) be signed by the employer and the employee; and
- (c) contain the written statement of a labour officer to the effect that the terms of the agreement are fair and reasonable in the circumstances, and that the employee's entitlements under this Act and under the contract of service have been paid.

**80. Collective termination**

(1) Where an employer contemplates terminations of not less than ten employees over a period of not more than three months for reasons of an economic, technological, structural or similar nature, he or she shall—

- (a) provide the representatives of the labour union, if any, that represent the employees in the undertaking with relevant information, and in good time which shall be a period of at least four weeks before the first of the terminations shall take effect, except where the employer can show that it was not reasonably practicable to comply with such a time limit having regard to the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations shall be carried out, and the information in paragraph (a) shall include the names of the representatives of the labour union if any that represent the employees in the undertaking;
- (b) 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 are intended to be carried out.

(2) Any employer who acts in breach of this section commits an offence.

## PART VIII—CONTINUITY OF EMPLOYMENT

**81. Basis of continuity**

Continuous service shall begin from and include the first day on which an employee begins to work for an employer and shall continue up to and include the last day on which that work shall be completed.

**82. Definition of continuous service**

(1) Subject to the provisions of this section, “continuous service” means an employee’s period of uninterrupted service with the same employer.

(2) There shall be a rebuttable presumption that the service of an employee with an employer shall be continuous, whether or not the employee remains in the same job.

(3) Any week or part of a week in which an employee is employed for sixteen hours or more shall count in calculation as a period of continuous service.

(4) Consecutive periods of employment with two successive employers where the successor has taken over the business of the former employer as receiver, liquidator, personal representative, or heir, or upon transfer of the whole or part of the business shall be deemed to constitute a single period of continuous service with the successor.

**83. Continuity of employment**

(1) An employee’s continuous service shall not be regarded as broken where an employee is absent from work—

- (a) due to his or her taking annual leave, study or education leave, maternity leave or sick leave in accordance with this Act or the provisions of an agreement or his or her contract of service;
- (b) due to his or her suspension, with or without pay, in accordance with this Act or the provisions of an agreement or his or her contract of service;
- (c) due to having been temporarily laid off by his or her employer;
- (d) due to a strike, lockout or other industrial action in which he or she did not participate;

- (e) due to a sentence of imprisonment for an offence unrelated to his or her work; or
- (f) in accordance with the agreement of his or her employer.

(2) Any period of time elapsing in a situation referred to in subsection (1) shall count for the purposes of calculating the length of continuous service.

#### **84. Treatment of periods**

The following periods shall not break the continuity of service and shall count for the purposes of calculating the length of continuous service—

- (a) any period during which the employee is absent from work because of his or her participation in a strike or other industrial action; and
- (b) any interval between an employee's two periods of employment with the same employer where the employer has agreed that, in consideration of the employee refunding or agreeing to refund any severance allowance and other terminal benefits received, service shall be regarded as continuous.

#### **85. Seasonal employment**

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

(2) For the purpose of this section, “employed” means employed under a contract of service for a minimum of sixteen hours per week.

### **PART IX—SEVERANCE ALLOWANCE**

#### **86. When severance allowance is due**

Subject to this Act, an employer shall pay severance allowance where an employee has been in his or her continuous service for a period of six months or more and where any of the following situations apply—

- (a) the employee is unfairly dismissed by the employer;

- (b) the employee dies in the service of his or her employer, otherwise than by an act occasioned by his or her own serious and wilful misconduct;
- (c) the employee terminates his or her contract because of physical incapacity not occasioned by his or her own serious and wilful misconduct;
- (d) the contract is terminated by reason of the death or insolvency of the employer;
- (e) the contract is terminated by a labour officer following the inability or refusal of the employer to pay wages under section 30; or
- (f) such other circumstances as the Minister may, by regulations, provide.

**87. No severance allowance under summary dismissal**

(1) No severance allowance shall be paid in circumstances where an employee—

- (a) is summarily dismissed with justification;
- (b) is dismissed by the employer and unreasonably refuses to accept an offer of re-employment by the employer at the same place of work, under no less favourable terms and wage rate than he or she was employed at immediately prior to the dismissal; or
- (c) abandons his or her employment, or absconds from his or her place of work without leave for a period of more than three days without any explanation being provided to the employer.

(2) No severance allowance shall be paid where—

- (a) the employer is a partnership and the employee's employment ceases on the dissolution of the partnership, and the employee either enters the employment of one or more of such partners immediately after such dissolution or the employee is offered, and unreasonably refuses employment on less favourable terms by one or more of such partners;
- (b) the employee's employer dies, and the employee either enters the employment of the personal representative, widow, widower, or any heir of the deceased employer or immediately after such death, he or she is offered, and unreasonably refuses employment on less favourable terms by any such person or persons; or
- (c) the contract which is terminated is a probationary contract.

(3) Where an employee accepts employment in the circumstances mentioned in subsection (2)(a), there shall be no break in continuity of service and the new employer or employers shall assume responsibility for all rights, including severance allowance of the employee arising in connection with his or her period of employment with his or her former employer or employers.

#### **88. Calculation of amount of severance allowance**

The calculation of severance pay shall be negotiable between the employer and the workers or the labour union that represents the workers.

#### **89. Bonus and other payments**

(1) Any gratuity, bonus, or pay other than what is provided for in this Act paid by an employer to an employee on the cessation of his or her employment shall be taken into account in the calculation of any severance allowance, and the amount of the gratuity, bonus, or any other similar payment shall be deducted from any severance allowance which is due.

(2) Subject to this section, the right to a severance allowance shall be in addition to any other rights enjoyed by an employee in relation to his or her employer, and shall be subject to the same rights of set-off or compensation or counterclaim as are available against wages or any other remuneration due under a contract of service.

#### **90. Payment of severance allowance**

(1) Where severance allowance is payable to an employee, it shall be paid on the cessation of employment or on the grant of any leave of absence pending the cessation of employment, whichever occurs earlier.

(2) Where severance allowance is payable in respect of a deceased employee, it shall be paid to the surviving spouse of the employee within thirty days of the employer being informed of the employee's death or, where there is no spouse, such other adult, dependent relative or guardian of a minor dependent relative as the labour officer may decide.

**91. Failure to pay severance allowance**

(1) Any employer who is liable to pay severance allowance and who willfully and without good cause fails to pay the allowance in the manner and within the time provided under this Act commits an offence.

(2) Any employer who commits an offence under this section shall pay a fine calculated at two times the amount of severance allowance payable, and the fine shall be payable to the same person and in the same way as the severance allowance is payable.

**PART X—JURISDICTION, REMEDIES AND APPEALS****92. Jurisdiction over claims; remedies**

(1) Except where the contrary is expressly provided for by this or any other Act, the only remedy available to a person who claims an infringement of any of the rights granted under this Act shall be by way of a complaint to a labour officer.

(2) A labour officer shall have jurisdiction to hear, and to settle by conciliation or mediation a complaint—

- (a) by any person alleging an infringement of any provision of this Act; or
- (b) by either party to a contract of service alleging that the other party is in breach of the obligations owed under this Act.

(3) Where there is an infringement of this Act, the labour officer shall have the power to order a party to comply with the provisions of this Act and, in accordance with its provisions, make the aggrieved party whole.

(4) Where there is a breach of obligations owed under a contract of service, the labour officer shall have the power to order a party to respect the obligations owed and, in accordance with the terms of the contract, to make the aggrieved party whole.

(5) Where the labour officer has found both an infringement of the Act and a breach of obligations owed under a contract of service, the remedy he or she shall order shall not result in double recovery for the aggrieved party.

(6) A claim in tort arising out of the employment relationship shall be brought before a court and the labour officer shall not have the jurisdiction to handle such a claim.

(7) Where within ninety days of the submission of a complaint under this Act to a labour officer, he or she has not issued a decision on the complaint or dismissed it, the complainant may pursue the claim before the Industrial Court.

(8) A labour officer shall state the reasons for any decision taken on a complaint.

### **93. Appeals**

(1) A party who is dissatisfied with the decision of a labour officer on a complaint made under this Act may appeal to the Industrial Court in accordance with this section.

(2) An appeal under this section shall lie on a question of law, and with leave of the Industrial Court, on a question of fact forming part of the decision of the labour officer.

(3) The Industrial Court shall have power to confirm, modify or overturn any decision from which an appeal is taken and the decision of the Industrial Court shall be final.

(4) The Minister may, by regulations, make provision for the form which the appeal shall take.

## **PART XI—MISCELLANEOUS**

### **94. Criminal liability**

Nothing in this Act and no imposition of a disciplinary penalty for a breach of the disciplinary code shall exempt any person from being proceeded against, convicted or punished for a criminal offence.



**95. Penalties**

(1) Any person who contravenes a provision of this Act, for which no penalty is expressly provided is liable, on conviction, to a fine not exceeding twenty-four currency points and on a second or subsequent conviction for the same offence, is liable to a fine not exceeding forty-eight currency points or to imprisonment for a term not exceeding two years, or both.

(2) Where an employer acts in contravention of any provision of this Act not specifically designated as an offence, a labour officer may caution him or her in writing against repeating or continuing such behaviour and if, having received a written caution, the employer repeats the infringement in respect of which a caution, has been given, he or she commits an offence and is liable, on conviction, to a fine not exceeding twenty-four currency points or to imprisonment for a term not exceeding one year, or both.

(3) Where an employer already convicted under subsection (2) commits a subsequent offence against the same provision of the Act, the employer is liable to a fine not exceeding forty-eight currency points or to imprisonment for a term not exceeding two years, or both.

(4) Where a court imposes a fine under this Act, it may direct that the fine, when recovered, or such part of it as the court thinks fit, shall be applied to compensate any employer, employee or other person for any wrong done.

**96. Regulations**

(1) The Minister may, by statutory instrument, make regulations for the better carrying into effect the provisions of this Act.

(2) Without prejudice to the general effect of subsection (1), regulations may be made under subsection (1) for any or all of the following matters—

- (a) exclusion from the application of all or part of this Act, limited categories of employed persons in respect of whom special problems of a substantial nature arise;
- (b) exclusion from the application of all or part of this Act categories of employed persons whose terms and conditions of employment are governed by special arrangements;
- (c) limitation of the range of jobs open to migrant workers;

- (d) conditions for the exercise of the Board's powers and functions;
  - (e) medical examinations for persons over the age of eighteen seeking employment involving exposure to specified hazards;
  - (f) employment of persons with disabilities, apprentices and other categories of employees;
  - (g) specified hazards;
  - (h) exemption of specified categories of employers from notifying the district officer of any employment vacancy whenever it occurs;
  - (i) partial payment of wages in form of allowances in kind;
  - (j) exclusion of persons holding high managerial positions and persons working in family establishments from a rest after working for more than six consecutive days;
  - (k) the maximum number of working hours per week;
  - (l) limitation of application of disciplinary fines in excess of a specified sum and to periods of suspension in excess of a specified duration, where an employee believes an employer was not justified in imposing a penalty or suspension with half pay;
  - (m) situations where severance allowance is due;
  - (n) the form the appeal shall take;
  - (o) the process of recruitment by recruitment agencies; and
  - (p) any other matter under the Act.
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## **SCHEDULES**

### *Schedule 1*

Section 2

#### **Currency Point**

A currency point is equivalent to twenty thousand shillings.

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### *Schedule 2*

Sections 2, 61(3),  
69(2), 72(2)

#### **Disciplinary Code**

##### **1. Disciplinary rules**

(1) All organisations set up in accordance with this Act shall have disciplinary rules, and the form and content of the rules may vary according to the size and nature of the organisation.

(2) Disciplinary rules shall be in writing and shall be expressed in a manner and a language which the employer's employees may reasonably be expected to understand.

(3) Disciplinary rules shall be non-discriminatory and applied irrespective of race, colour, sex, religion, political opinion, national extraction, nationality, social origin, marital status or affiliation or intended affiliation to a union.

(4) A disciplinary penalty shall not be imposed on account of an employee's participation or proposed participation in the activities of a union outside working hours or, with the consent of the employer, within working hours, or in the organisation or proposed organisation of a strike or other industrial action that is lawful.

(5) In cases of minor infringements of work discipline, the employer shall deal with the situation by way of informal advice and correction rather than invoking the formal procedures.

(6) Where the union is represented at the place of work by a union branch, the employer shall consult the union branch before initiating disciplinary proceedings and penalties involving dismissal against an employee who is a union member.

(7) An employer shall keep a record of the nature of any offences, the consequential actions taken, the reasons for taking action, the lodging of an appeal, and the outcome of the appeal, and any other further developments.

(8) The copies of disciplinary rules shall be made readily available by the employer to every employee and shall be on permanent and prominent display to all employees.

(9) The disciplinary rules shall clearly indicate—

- (a) the employees to whom they apply;
- (b) the circumstances when the rules shall apply;
- (c) the content of the rules, expressed clearly in a form and in a language which the employees affected may be reasonably expected to understand; and
- (d) the penalties for infringement of the rules and the consequences of future infringements of the rules.

(10) The employer shall inform employees of their rights when accused of any infringements and of the procedures that shall be followed in investigating and dealing with complaints.

(11) The employer shall ensure that an employee faced with disciplinary action is—

- (a) fully aware of any complaints made against him or her and of the nature and consequences of any proceedings taken against him or her;
- (b) fully aware of the form the disciplinary proceedings shall take, including the possibility of appeals and the penalties for which he or she is liable if allegations are well founded;
- (c) given a reasonable length of time in which to prepare any representation which he or she may wish to make in answer to the allegations, or in explanation of his or her behaviour; and
- (d) given a reasonable opportunity to state his or her case, either personally or through a representative of his or her choice.

(12) In work places where there are a number of levels of supervisory and managerial posts, disciplinary rules shall make clear what level of management is authorised to initiate and implement any particular disciplinary action.

## **2. Disciplinary procedures**

(1) Disciplinary procedures shall be implemented without unnecessary delay, after proper investigations have been completed.

(2) Where a decision to implement a disciplinary procedure is taken, an employer shall at the first opportunity—

- (a) inform, preferably in writing, the employee of what is happening, in a form and language which he or she shall be expected to understand; and
- (b) remind the employee of his or her rights to prepare his or her case and or explanation, state his or her case and or explanation, and appeal against any decision.

## **3. Disciplinary penalties**

(1) In deciding on the imposition of a disciplinary penalty, the employer shall have regard to the circumstances of the employee as well as the circumstances of the infringement itself and, an employer shall not impose a disciplinary penalty more than fifteen days after the occurrence which gave rise to the disciplinary action.

(2) An employee is not liable to have his or her employment terminated on the commission of a first disciplinary infringement, except in exceptional circumstances, and dismissal for misconduct shall be reserved for cases of serious misconduct or repeated infringements of disciplinary rules.

(3) For a first minor infringement such as—

- (a) late arrival for work;
  - (b) unauthorised absence from work; or
  - (c) failure to apply himself or herself properly to his or her duties,
- an employee against whom it is decided to take formal disciplinary proceedings shall receive a written warning.

(4) In serious infringements, such as the employee's failure to obey the reasonable orders of the employer, the employee shall be penalised by the imposition of a reprimand.

(5) In cases of serious misconduct, or persistence in committing less serious acts, the appropriate penalty shall be dismissal, especially where the infringement consists of—

- (a) theft of or wilful damage to property of the employer;
- (b) wilful endangering of the safety of the employer, a fellow employee or a member of the public;
- (c) physical assault on an employer, a fellow employee or a member of the public; and
- (d) inability to perform work by reason of voluntary intoxication, whether by drink or drugs; or other misconduct of similar gravity.

(6) Where a decision to dismiss is taken, the dismissal shall be with notice, or wages *in lieu* of notice and summary dismissal shall be reserved for only the most extreme cases where dismissal is the appropriate penalty.

(7) Under normal circumstances, dismissal shall not be imposed as a penalty without the employee having received a final written warning that he or she was in danger of losing his or her job because of his or her conduct and before deciding on dismissal as the appropriate penalty, an employer shall first consider alternative penalties including the loss of privileges, job transfer or suspension without pay.

(8) Disciplinary proceedings and particularly the imposition of sanctions against labour union officials shall not be instituted without consulting the union.

(9) The fact that an employee is charged with, or remanded in custody or is convicted of a criminal offence for an act committed outside working hours shall not automatically give rise to a dismissal or other disciplinary action and consideration in such cases shall always be given to the extent to which such a conviction shall make the employee unsuitable for his or her work.

(10) For purposes connected with an employee's employment, an infringement of disciplinary rules shall be disregarded after the expiry of two years in which that employee has not committed any further disciplinary breach.

(11) Disciplinary penalties which may be imposed shall be limited to those prescribed in section 61 and shall be subject to the restrictions set out in subsections (4) and (5) of that section.

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**History:** Act 6/2006; S.I. 33/2006

### **Cross References**

Labour Disputes (Arbitration and Settlement) Act, Cap.  
227 Labour Unions Act, Cap. 228  
Local Governments Act, Cap. 138  
Workers Compensation Act, Cap. 233

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