

CAYMAN ISLANDS



EMPLOYMENT LAW, 2004

(Law 3 of 2004)

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CAYMAN ISLANDS



EMPLOYMENT LAW, 2003

(Law 3 of 2004)

**A LAW TO PROVIDE FOR THE REGULATION OF THE EMPLOYER-EMPLOYEE
RELATIONSHIP; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

PART I - INTRODUCTORY

Short title and commencement

1. (1) This Law may be cited as the *Employment Law, 2003*.
- (2) This Law shall come into operation on such date as the Governor may by Order specify and the Governor may appoint different dates for the coming into operation of different portions of this Law.
- (3) Without limiting the generality of subsection (2), sections 6 (5) (b) and 63 (both relating to workers' compensation) and other provisions dependant upon these provisions shall come into force on 1st December, 2005 or such later date as the Governor may by Order appoint.

Interpretation

2. (1) In this Law —
“**adjudicating authority**” means the Grand Court, a court of summary jurisdiction or Employment Tribunal;



“**arrangement**” in relation to anything that is to be agreed between an employer and an employee means something that the Law does not require to be stipulated in the contract of employment but arises from it;

“**authorised officer**” means the Director or any officer from the Department of Employment Relations generally or specifically authorised to do the things in relation to which the expression is used, including employment inspectors and conciliation officers;

“**average daily wage**” means the daily wage of a wage-earning employee derived from multiplying his basic hourly wage by the average number of hours worked per day during the preceding twelve months or since his date of hire if he has been employed for less than twelve months;

“**best employment practice**” means the internationally accepted practice regarding any aspect of employment;

“**basic wage**” means the ordinary wage due to an employee and does not include gratuities;

“**basic salary**” means the ordinary salary due to an employee and does not include gratuities;

“**child**” means a person under the age of fourteen years;

“**casual employee**” has the meaning assigned to it in section 3;

“**complaint**” means a formal complaint regarding any employment-related matter made to the Director by —

- (a) an employer, employee, employers’ group or employees’ group; or
- (b) any government authority or department, or any agent thereof, having an interest in enforcing any employment-related Law;

“**constructive dismissal**” means a form of unfair dismissal by which the employer does not expressly dismiss an employee but creates or allows the creation or continuance of circumstances in the workplace which do not make it reasonably practicable for the employee to remain in employment;

“**contract of employment**” means a written agreement made between an employer and an employee by which a contract of service is instituted;

“**court**”, except where the context indicates otherwise, means a court of summary jurisdiction, established by section 3 of the *Summary Jurisdiction Law (1995 Revision)*;

“**Department**” means the Department of Employment Relations established by section 73;

“**Director**” means the Director of Employment Relations appointed under section 73;

“**disability**” means a mental or physical impairment;

“**discrimination**” means the unreasonable disadvantaging of any person;



“**employee**” means a person who is or should be under a written contract of employment with an employer, and includes a person whose services have been interrupted by a suspension of work during a period of leave or temporary lay-off;

“**employee of managerial level**” means a person who plans, organises, controls, co-ordinates or directs the business of an employer or part of that business, and who is paid a salary rather than wages,

- (a) and includes a person whose job is concerned with the formulation of policy and decision-making regarding that policy;
- (b) but does not include a lower and middle-level supervisor or a supervisor who does not substantially contribute to policy formulation or interpretation and who does not have substantial decision-making responsibilities;

“**employee of professional level**” means a person who performs professional functions and is paid a salary rather than wages;

“**employer**” means a person who has entered into, or should have entered into, a written contract of employment with an employee and includes an employment agency or other agent, representative or manager of such person, who is placed in a position of authority over an employee and includes a predecessor-employer and successor-employer;

“**employment-related Laws**” means

- (a) this Law and regulations made hereunder;
- (b) any written laws relating to pensions, workers’ compensation, trade and business licensing, or trade unions;
- (c) any other written laws directly or indirectly relating to employment;

“**employment-related matter**” means a matter relating to an employment-related Law;

“**essential services**” means persons engaged in the police service, prison service or other government security services, fire services, medical services and such other services as the Governor may by regulation prescribe;

“**Governor**” means Governor in Cabinet;

“**gratuity**” means money paid to one who renders service to a patron, customer or client in appreciation for good service or as an additional charge levied by or on behalf of an employer in excess of the basic contractual obligation of that patron, customer or client;

“**household domestic**” means a person employed in a private home or residence as a maid, child minder, gardener or similar household help;

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

“**Minister**” means the Minister responsible for the administration of this Law;

“**Monthly Record**” means a Monthly Record of Gratuities referred to in section 38;

“**national minimum basic wage**” means the wage prescribed as such under section 23;

“**notice to remedy**” means a notice issued under section 68;

“**operator of a workplace**” means one or more persons responsible for operating, managing or supervising a workplace, and includes any person with actual, apparent or ratified authority to act on behalf of that person and, for clarification purposes, includes the employer and owner of a business;

“**overtime pay**” means pay referred to in section 29;

“**parental leave**” means maternity leave or paternity leave;

“**part-time employee**” means

(a) an employee whose contract of employment requires him to work less hours than the standard work week adopted by the employer;

(b) a seasonal employee;

“**pension benefits**” means the benefits referred to in the relevant law relating to pensions;

“**physical disability**” means physical incapacitation due to illness, injury or birth defect;

“**predecessor-employer**” means an employer who has transferred his business to a new or different owner such that an employee of the first employer continues to be employed by the new owner;

“**probation period**” means a period of employment referred to in section 8;

“**pro-rata basis**” means, in reference to the benefits accruing to part-time and seasonal employees, the proportional relationship between the average number of hours worked per week by such employee during the preceding twelve months, or since his date of hire if he has been employed for less than twelve months, and the standard work week adopted by the employer for all of his wage-earning employees;

“**public holiday**” means a day declared to be a Public Holiday under the *Public Holiday Law (1995 Revision)*;

“**redundancy**” means a situation where the tasks an employee was hired to perform no longer exist and the employee is as a result severed from employment whether the cause is

(a) lack of, or substantial reduction in, customers or orders;

(b) retrenchment;



- (c) installation of labour-saving machinery or the employer's going out of business;
- (d) a hurricane, earthquake or other Act of God; or
- (e) any other reason similar to the above;

“remuneration” means wages or salary;

“salary” means an amount of money paid to an employee by an employer on a regular basis, such as fortnightly or monthly, and not paid on an hourly, daily or piece-work basis;

“seasonal employee” means an employee engaged in an activity which does not take place all-year round or one which is substantially reduced during certain times of the year to such an extent that it is necessary or expedient to lay-off some or all employees temporarily;

“service employee” means an employee of a service employer, which employee works in the Islands, is a wage-earner as opposed to a salaried employee, and actively provides services to patrons on behalf of a service employer, either directly or indirectly, and whose job is not of managerial or professional level;

“service employer” means an employer carrying on the business of a hotel, condominium, restaurant, place of entertainment or other licensed premises, employing service employees, whether or not gratuities are received in respect of the services provided by his business;

“severance pay” means severance pay referred to in section 43;

“sick leave” means leave referred to in section 17;

“standard work week” means the number of hours adopted by an employer as a standard work week and applied to all wage-earners of that employer;

“successor-employer” pay means a person who takes over the business, or a part thereof, of a predecessor-employer and continues to employ an employee hired by the predecessor-employer;

“summary court” means a court of summary jurisdiction, constituted under the *Summary Jurisdiction Law (1995 Revision)*;

“terms of employment” means the terms stated in a contract of employment or which are applied as a matter of law;

“wage” means an amount of money paid to an employee by an employer for the services rendered by that employee and paid on an hourly, daily or piece-work basis;

“workers’ compensation” means the provision offered by an employer to his employees to ensure their compensation in the event of injury to their person, damage to their property or occupational diseases, where such injury, property

damage or occupational disease occurs in or in relation to the workplace, or otherwise in the service of the employer;

“**workplace**” means premises in which an employee is employed to work and includes a shop, office, factory or other licensed premises, as well as a household employing a domestic or such other place as the Governor may, under section 61 (2), designate as a workplace.

- (2) Wherever in this Law reference is made to an agreement in relation to terms of employment, such reference means agreement in writing as part of a contract of employment and, for the avoidance of doubt, it is hereby declared that anything that constitutes an “arrangement” as defined in subsection (1) does not, unless otherwise stated, have to be agreed in writing but the parties may make it part of the contract of employment if they so wish.

Application

3. (1) This Law applies to all employees, including —
- (a) public servants; and
 - (b) employees of churches and charitable organisations,
- but does not apply to casual employees as defined in subsections (2), (3), (4) and (5).
- (2) A casual employee means a person who is employed by the same employer for a period not exceeding thirty calendar days’ continuous employment, and does not include a seasonal employee.
- (3) Where an employee who has been employed for less than thirty calendar days is laid off and is re-called within seven calendar days, the days shall be totalled and if they exceed thirty calendar days, he shall not be considered to be a casual employee.
- (4) Subsection (3) applies also to cases where a person is employed for more than two periods of time, that is to say, all periods of employment must be added so long as the laying off does not exceed seven calendar days between each period of employment.
- (5) Notwithstanding the other provisions of this section, where an employee works for a total period of ninety days or more in a year for the same employer, he shall not be considered to be a casual employee.
- (6) Sections 28 (overtime pay in general) and 29 (rate of overtime pay) shall not apply to employees in essential services except to such extent as the Governor may by regulation prescribe.



PART II - BASIC TERMS OF EMPLOYMENT

Minimum standards may be exceeded

4. Nothing in this Law prohibits an employer from establishing conditions of service more favourable to an employee than the minimum standards established by or under this Law.

Standards lower than minimum prohibited

5. (1) An employer who offers or provides employment under lesser terms of employment than those prescribed by or under this Law is guilty of an offence.
- (2) Where a provision in a contract of employment contravenes this Law, that provision is void to the extent of the inconsistency.

Contract of employment

6. (1) Except as may otherwise be specifically provided in this Law, every employer shall enter into a written contract of employment with each employee and the contract shall contain all the terms of his employment but need not specify terms that are part of the contract as a matter of law.
- (2) For the avoidance of doubt it is declared that where the contract does not contain a provision that is required as a matter of law, the contract is deemed to contain the minimum standard prescribed by law.
- (3) The contract referred to in subsection (1) shall be in accordance with Form 1 of the Schedule to this Law and —
- (a) shall also contain such other terms as may be prescribed pursuant to section 91;
- (b) may contain such additional terms, not in abrogation of the minimum standards required as a matter of law, as the parties may wish to include.
- (4) An employer shall ensure that within the first seven days of employment at least two originals of the contract of employment are signed and one of them is furnished to the employee.
- (5) Each employer shall make arrangements regarding pension, workers' compensation and health insurance coverage to such extent as may be provided in any law relating to the same.
- (6) Whenever there is a change of circumstances that renders the contract at variance with the changed circumstances, the employer shall forthwith notify the employee and the two shall agree on new terms.
- (7) An employer who contravenes this section is guilty of an offence.
- (8) The Governor shall make regulations for the payment of admission-of- guilt fines for employees who violate this section and other matters relating to the same.

Re-employment and severance pay

7. (1) Where an employee has lost his employment but is re-employed by the same employer within thirty days, his employment shall be regarded as continuous with this earlier period of employment.
- (2) Except as provided in subsection (3), where an employee does not receive his severance pay within thirty days of termination, his employment shall be regarded as continuous with his earlier period of employment for purposes of calculating his period of employment in relation to severance pay and any other benefit which, under this Law, accrues on the basis of longevity.
- (3) In relation to subsection (2), the period for construction and agricultural workers is ninety days.
- (4) For purposes of calculating an employee's due under subsections (2) and (3), the period during which accrual continues stops running —
- (a) when a complaint is filed under this Law; or
 - (b) upon the expiry of a reasonable time from the date on which the employee knew or should have known of the facts giving rise to the complaint.

Probation

8. (1) A new employee may, by written contract, agree with the employer to be employed on probationary terms and if probation is agreed upon it shall not exceed six months.
- (2) At the end of the initial probationary period the employer and employee may, by further written contract, extend that period for one additional term not exceeding six months and such further agreement shall be appended to the initial contract of employment.
- (3) During the period of probation an employee shall be given reasonable training in the duties of his position and the employer shall in a timely manner inform him of his progress in that regard.
- (4) One day's notice per month of employment is required for an employee on probation to terminate his employment with his employer and a like period, subject to section 56, is required for an employer to terminate an employee on probation except that, in the case of termination by an employer, the employer shall, in addition, comply with any request that may be made under section 13 (1).
- (5) Upon confirmation of employment after a probationary period, all benefits under this Law shall be deemed to have accrued from the beginning of the probationary period and where the period of probation was extended, the benefits shall be deemed to have accrued from the beginning of the first period of probation.



Termination of fixed-term contracts

9. Where the contract of employment is for a fixed term, it shall, without further notice, terminate automatically on the expiration of that term unless extended by prior agreement or unless the terms of the contract specify otherwise.

Termination by notice of employer

10. (1) Unless a contract stipulates a longer period of notice for termination of a contract of employment, an employer shall give notice in writing in accordance with the following —
- (a) for an employee on probation, section 8 (4) applies; and
 - (b) for all other employees, notice shall be at least equal to the interval of time between the employee's pay days, but the maximum period of notice required in any circumstances shall be thirty days.
- (2) An employer may,
- (a) without giving notice, terminate the employment of an employee if at the same time he pays the employee the sum he would have earned had he worked throughout the period of notice;
 - (b) after having given notice to an employee, terminate the employment prior to the effective date of termination, if he pays the employee a sum equivalent to that which he would have paid if the employee had worked up to the end of the period of notice.
- (3) If the employer has not exercised an option provided by subsection (2), he may, at the employee's regular remuneration, require the employee to render his normal services until the effective date of termination under the notice.
- (4) Where an employer has given notice under subsection (1) and has not exercised an option provided in subsection (2) but the employee chooses to quit his job prior to the effective date of termination under the notice, the employer shall, from the date the employee leaves employment, be discharged from the obligation to pay remuneration.
- (5) Where an employee leaves employment in the circumstances set out in subsection (4), the date of actually leaving employment shall, for all purposes, be the last day worked, unless the circumstances leading up to the early departure of the employee amount to constructive dismissal, in which case the employer shall be obliged to pay all remuneration up to what should have been the last day of work under the notice.
- (6) Nothing in this section shall be construed as allowing an employer to terminate the employment of an employee without complying with sections 55, 56 or any other law governing the grounds upon which employment may be terminated.

Termination by notice of employee

11. (1) Unless a contract stipulates a longer period for termination of a contract of employment, an employee shall give notice in writing in accordance with the following —
- (a) for an employee on probation, section 8 (4) applies;
 - (b) for all other employees, notice shall be equal to the interval of time between pay days, but the maximum period of notice required in any circumstances shall be thirty days.
- (2) An employee who fails to give adequate notice (which complies with subsection (1)) may, at the employer's option,
- (a) be dismissed prior to the date on which appropriate notice would have expired and the effective date of his dismissal shall be back-dated by the same number of hours or days by which the employee's notice, or lack of it, fell short of the requirement; and
 - (b) forfeit all vacation leave accrued during the calendar year in which he leaves employment.

Reasons and certificates of termination

12. (1) Where, subsequent to the expiration of an employee's probation period the employer has terminated the employee's employment, the employee may, within fourteen days of termination, request the employer to furnish him with a statement of the reasons for termination and the employer shall, if the employee so requests, also furnish a copy of the statement to the Director.
- (2) Where a contract of employment is terminated after confirmation in employment and the employee so requests within one year of being notified of the termination, the employer shall, within fourteen days of the request, furnish the employee with a certificate specifying the dates of engagement and termination as well as the type of work the employee was employed to perform.
- (3) In proceedings relating to the fairness of a dismissal or of any other proceedings directly or indirectly relating to the contract of employment, the contents of any statement issued under subsection (1) or (2) bind the employer unless it is shown that the contents were falsified by fraud, mistake or misrepresentation.
- (4) An employer who, after being requested, fails or neglects to furnish a statement or certificate under subsection (1) or (2), as the case may be, shall not, in proceedings referred to in subsection (3), introduce evidence favourable to him as to facts which should have been recited in the statement or certificate.



- (5) For the avoidance of doubt, it is declared that the duty to furnish a statement or certificate under subsections (1) or (2) is discharged on the first occasion that the employer furnishes a statement or certificate that complies with either of those subsections.
- (6) An employer who fails or neglects to furnish a statement or certificate under subsection (1) or (2) is guilty of an offence.

PART III - LEAVE

Application of Part II

- 13.** For the purposes of this Part, it is declared that where an employee is on probation —
- (a) his leave shall accrue but he shall not be entitled to take it until the probation is over;
 - (b) he shall not be entitled to take parental leave but the period for which he is on probation shall, once he is confirmed, be computed for the purposes of determining whether or not he is entitled to parental leave.

Vacation and compassionate leave

- 14.** (1) An employee is entitled to leave with pay in accordance with the scale specified in subsection (3), and such leave shall be taken in the year following its accrual, and only after the employee has been in employment for at least twelve months, unless otherwise agreed under subsection (2).
- (2) An employee and employer may by contract or arrangement agree that leave shall, at the end of each month, accrue proportionately to the yearly entitlement in order to facilitate its taking before the completion of twelve months of employment.
- (3) Minimum vacation leave entitlement is as follows —
- (a) for a period of continuous employment not exceeding four years, two weeks;
 - (b) for a period of continuous employment exceeding four years but not exceeding ten years, three weeks;
 - (c) for a period of continuous employment exceeding ten years, four weeks.
- (4) An employer in a seasonal undertaking shall proportion leave in accordance with the time worked by his employees during each year and by contract or arrangement may require that employees take leave during times of low business.
- (5) Vacation leave shall be in addition to public holidays, sick leave and rest periods prescribed under this Law.

- (6) The dates upon which leave is to be taken shall be fixed by arrangement between the employer and employee.
- (7) By arrangement between the employer and employee, vacation leave not yet earned may be taken in advance.
- (8) Vacation leave is not cumulative and shall be taken or sold back to the employer annually unless otherwise agreed by contract or by arrangement.
- (9) An employer shall not compel a wage earning employee to forego vacation leave, but may offer to pay to the employee his regular or a higher rate of remuneration to forego all or part of his accrued vacation leave.
- (10) Except where leave is forfeited under section 11 (2), whenever the employee's employment is terminated, the employer shall pay him a sum equivalent of his average daily wage for each vacation day due to him and for any public holiday not taken at the employer's request.
- (11) The rate of vacation pay shall not be less than the average daily wage of the employee at the beginning of the leave.
- (12) An employee shall, for each period of twelve months' employment, be entitled to five days' fully-paid compassionate leave on the death or serious illness of a member of his immediate family so long as the employee provides reasonable evidence of such death or illness to the employer.
- (13) Compassionate leave is not cumulative and the employee shall not in any circumstances be paid in lieu of such leave if the leave is not taken.
- (14) In this section —
 - “**serious illness**” means a period of a person's admittance to a hospital as an in-patient, recuperation from such hospitalisation and includes a period of overseas travel related to such hospitalisation or recuperation;
 - “**immediate family**” means a parent, spouse or child and includes any other person whom the employee holds in the same regard as a member of his immediate family and the employer, on reasonable evidence being provided, recognises as such.

Part-time employees

- 15. A part-time employee shall earn leave in the ratio that his actual hours of work bear in relation to the standard work-week adopted by the employer under this Law.



Public-holiday pay

- 16.** (1) If an employee does not work on a public holiday but works on the immediately preceding normal work day or the immediately succeeding normal work day, he shall, with respect to that holiday, be paid the basic wage he would normally have received for work performed on that day had it not been a public holiday, except that an employee who is scheduled to work on a public holiday but fails to do so without good cause shall not be paid for that public holiday.
- (2) An employee who works on a public holiday shall, for the hours actually worked on that day, —
- (a) be paid at double the normal rate of pay; or
 - (b) receive, during a normal work day, equivalent time off with basic pay for the hours actually worked on the public holiday.
- (3) Where an employee is called out to work on a public holiday and reports for work, he shall be deemed to have worked a full normal work day, —
- (a) and, for the hours actually worked, be paid in accordance with subsection (2) (a);
 - (b) but, for the hours during which he did not actually work, be paid at normal rate;
 - (c) and, if the employee works on a public holiday beyond what would have been normal working hours had the day not been a public holiday, he shall also receive pay in accordance with subsection (2) (a).
- (4) For the avoidance of doubt, an employee may by arrangement between the employer and himself take time off at another time in lieu of taking a public holiday in which case he shall be remunerated at the basic daily wage for the holiday and for the time off taken in lieu of the holiday.
- (5) An employer may agree with employees of professional level and employees of managerial level that with respect to public holidays they shall be paid less than double the normal rate or not be paid at all and the contract may make different provisions for different classes of employees of professional level and employees of managerial level.
- (6) An employee on probation is entitled to payment for public holidays on the same terms as a confirmed employee.

Sick leave

- 17.** (1) An employee is entitled to sick leave on workdays, or parts thereof, during which he is ill or physically incapable of work.
- (2) Sick leave shall be taken only in connection with actual illness or other physical incapacity for work

- (a) and for the first two days, the employee does not need to produce a physician's certificate;
- (b) but for a third and subsequent consecutive day, a physician's certificate shall be produced,

and for the avoidance of doubt it is declared that when a physician's certificate is produced under paragraph (b) it shall cover the first two days as well.

- (3) Except in the circumstances specified in subsection (4), a physician's certificate evidencing an employee's illness or physical incapacitation shall be accepted by an employer as satisfactory evidence of that illness or incapacitation for the purpose of entitlement to sick leave pay unless the employer can prove otherwise.
- (4) An employer is not obliged to accept a physician's certificate where he has reasonable grounds to suspect that the certificate was procured in furtherance of a course of absenteeism.
- (5) Where an employer has reasonable grounds to believe that the request for sick leave is part of a course of absenteeism, an employer may require an employee to furnish him with a physician's certificate even where the sick leave requested is shorter than two days.
- (6) Where an employee takes sick leave in excess of the maximum leave allowed and the employer is of the view (supported by two medical practitioners who certify that the employee is likely in future to need more than his normal entitlement to sick leave) that the employee is thereby unfit to continue in employment, the employer may terminate the services of the employee.
- (7) An employee who is ill or physically incapacitated such that he is unable to work shall notify his employer of that fact as soon as it is reasonably practicable or, where he is incapable of personally informing the employer, procure someone else to so inform the employer.

Sick leave pay

- 18.** (1) A full-time employee is entitled to ten days' sick leave for every twelve-month period of employment and a part-time employee is entitled to sick leave calculated on a *pro-rata* basis in relation to the number of days accrued by a full-time employee.
- (2) The period of twelve months referred to in subsection (1) shall be computed from the beginning of employment or the anniversary date of employment, but where the leave is not taken at the end of that period, it shall be forfeited unless otherwise agreed in the contract of employment or by prior arrangement.



- (3) Where an employee is injured in the course of his duties and the injury arises out of the nature of his employment, the number of paid sick-leave days shall be increased from ten to fifteen.
- (4) Unless otherwise expressly stated in this Law, the requirements of section 18 shall be applied as far as practicable to a work-related injury.
- (5) During a period of sick leave an employee shall be paid the basic daily remuneration he would have received if he had worked on those days.

Maternity leave: childbirth

- 19.** (1) A female employee who becomes pregnant and who, at the expected date of delivery, will have been employed by the same employer for at least twelve months or who last gave birth at least twelve months before that date and while working with the same employer is entitled to twelve calendar weeks' maternity leave.
- (2) Where a female employee becomes pregnant but has not completed the relevant period of twelve months referred to in subsection (1), she is still entitled to maternity leave but that leave and pay shall be calculated on a *pro-rata* basis in relation to the period of twelve weeks but the scale of paid, partly paid and unpaid leave shall be applied in the same way as it applies where full maternity leave is granted even if that means that all her maternity leave days will be paid or partly paid.
- (3) An employee entitled to maternity leave under subsection (1) is entitled to receive and the employer shall pay —
- (a) for the first twenty working days, the basic pay;
 - (b) for the next twenty working days, one-half of the basic pay;
 - (c) for the rest of the maternity leave, no pay.
- (4) A female employee who, at the expected date of delivery, will have been employed for at least twenty-four months or who last gave birth at least twenty-four months before that date and while working with the same employer is also entitled to twelve calendar weeks' maternity leave but remuneration for that leave shall be governed by subsection (5).
- (5) An employee entitled to maternity leave under subsection (4) is entitled to receive and the employer shall pay —
- (a) for the first forty working days, the basic wage; and
 - (b) for the rest of the maternity leave, no pay.
- (6) A female employee may take maternity leave in such a way that it covers periods before and after actual childbirth and in negotiating with the employer how leave is to be taken, the employee may of her own volition obtain and furnish the employer with a physician's certificate to the effect that she is unable to work or that working would be damaging to her health or the health

of the child, and an employer may, at any time during an employee's pregnancy, require her to be examined by a physician with a view to determining the same.

- (7) Maternity leave that is unused will not accrue and is not remunerable.

Maternity leave: adoption

- 20.** (1) A female employee who has worked for the same employer for twenty-four months without taking maternity leave or who last took maternity leave (whether on account of child birth or adoption) at least twenty-four months previously and adopts a child is entitled to adoption leave of nine calendar weeks and to receive basic pay for a period of twenty-five working days of that period of time.
- (2) Where a female employee has not completed the relevant period of twenty-four months referred to in subsection (1), she is still entitled to adoption leave but that leave and pay shall be calculated on a *pro-rata* basis in relation to the period of nine calendar weeks therein referred to.
- (3) A female employee who adopts a child may take adoption leave in such a way that it covers periods before and after adoption.
- (4) For the purposes of subsection (1), a female employee adopts a child when she assumes the care of the child with a view to adoption by her or by her and her spouse jointly.
- (5) Maternity leave that is unused will not accrue and is not remunerable.

Paternity leave: childbirth

- 21.** (1) A male employee who is the biological father of a child and who at the expected date of delivery will have been employed by the same employer for at least twenty-four months or who last went on paternity leave on account of a birth that took place at least twenty-four months before that date and while working with the same employer may request, and the employer may grant, two weeks' paternity leave.
- (2) Where the male employee has not completed the relevant period of twenty-four months referred to in subsection (1), but has served for at least six months, he may still request and the employer may grant paternity leave but, if granted by the employer, that leave and pay shall be calculated on a *pro-rata* basis in relation to the period of leave stated in subsection (1).
- (3) An employee who is granted paternity leave is entitled to receive and the employer shall pay —
- (a) for the first five working days, the basic pay;
- (b) for the next five working days, no pay,



and in calculating the leave days, public holidays shall be counted as working days.

- (4) A male employee may request to take paternity leave in such a way that it covers periods before and after actual childbirth and the employer may grant such request.

Paternity leave: adoption

- 22.** (1) A male employee who has worked for the same employer for twenty-four months without taking paternity leave or who last took paternity leave (whether on account of adoption or the giving of birth by a female partner) at least twenty-four months previously while working with the same employer and adopts a child may request, and the employer may grant, paid adoption leave of one calendar week.
- (2) For the purposes of subsection (1), a male employee adopts a child when he assumes the care of the child with a view to adoption by him or by him and his partner jointly.
- (3) Where a male employee has not completed the twenty-four month period of employment referred to in subsection (1), but has served for at least six months, he may still apply and the employer may grant adoption leave but that leave and pay shall be calculated on a *pro-rata* basis in relation to the period of one week therein referred to.
- (4) A male employee may request that adoption leave be granted in such a way that it covers periods before and after he assumes care of the child.

PART IV - REMUNERATION AND HOURS OF WORK

National minimum basic wage

- 23.** (1) Subject to subsection (2), the Governor may by Order prescribe a national minimum basic wage (in this Part referred to as “the minimum basic wage”).
- (2) No Order shall be made under subsection (1) until the Governor has considered
 - (a) the recommendations of the Minimum Wage Advisory Committee (in this Part referred to as “the Committee”) established under section 24;
 - (b) the views of the Minister on the recommendations of the Committee; and
 - (c) any other views the Minister may wish to convey to the Governor in that regard.
- (3) A minimum basic wage prescribed under subsection (1) shall not apply to wages paid to persons who are by law required to attend school.

National Minimum Wage Advisory Committee

- 24.** (1) The Minimum Wage Advisory Committee is hereby established to investigate and enquire into all matters related to the appropriate level of a minimum basic wage and to make recommendations to the Governor in that regard.
- (2) The Governor may make regulations governing the procedures of the Committee but, subject to subsections (3) to (9), the Committee has power to regulate its own proceedings.
- (3) The Committee shall consist of not less than nine members recommended by the Minister responsible for labour and appointed by the Governor, and shall comprise —
- (a) three employers;
 - (b) three employees; and
 - (c) three representatives of Government, one of whom shall be from the Ministry responsible for labour.
- (4) In appointing members of the Committee, the Governor shall designate one member of the Committee as Chairman.
- (5) A quorum of the Committee shall be five members, comprising the Chairman and at least one member each from employers, employees and Government.
- (6) All questions arising at a meeting of the Committee shall be determined by a majority of all the members present including the Chairman, and so long as the quorum stipulated in subsection (5) is observed, no such determination of the Committee shall be invalid by reason of vacancy or absence.
- (7) The Committee may, at any time, call in the aid of an assessor, specially qualified in a matter relevant to its considerations.
- (8) The Committee is empowered to request evidence from witnesses and request production of relevant documents.
- (9) The Committee shall, if requested by the Minister, make interim reports and interim recommendations, as the Minister may require, and shall, as soon as reasonably practicable after the conclusion of its deliberations, make a full and final report, including recommendations, to the Minister.

Failure to pay minimum wage

- 25.** (1) Where a minimum basic wage has been established it shall be an offence for an employer to employ or pay an employee at a basic wage less than that established minimum.
- (2) Where it comes to the attention of the Director that an employer is in breach of the minimum basic wage requirement, he shall inform the employer accordingly, giving any details he may have, and require the employer to respond.



- (3) If, after the response of the employer referred to in subsection (2), the Director is of the view that there has been a violation, he shall convey to the employer concerned the details of the violation and request him, within a period of time stated in the notice, to pay the employee concerned his dues and if the employer does not, within the period specified in the notice, provide evidence satisfactory to the Director that the employee concerned has been paid his dues, the Director shall refer the matter to the Attorney-General who may institute criminal charges under this Law.
- (4) Upon the conviction of an employer under this section, the court shall, in addition to any fine or other penalty, order that the employer pay to the employee concerned such of his dues as remain to be paid as well as interest at the rate of ten per cent per annum, or any other rate the Governor may by regulation prescribe, from the date the underpaid wages were originally due to the date when the balance is paid.
- (5) An order made under subsection (4) for payment of remuneration shall be enforced in the same manner as if it were a fine.
- (6) In calculating the remuneration to be paid to an employee for the purposes of this section, gratuities shall be disregarded.

Rest periods

- 26.** (1) An employer shall allow an employee at least twenty-four consecutive hours of rest in each seven-day period.
- (2) An employer shall allow an employee who works an eight-hour shift or longer —
- (a) a rest break of at least fifteen minutes; and
 - (b) a meal break of at least thirty minutes,
- and the employee shall be paid at his basic wage for the fifteen-minute break but the remuneration for the meal break shall be agreed by contract between the employer and employee.
- (3) An employer in a “specified industry” (as defined in subsection (4)) shall, during each period of work, allow an hourly-paid employee, —
- (a) during each period of work of three to five hours, a minimum of fifteen minutes’ break;
 - (b) during each period of eight hours or more, a minimum of two breaks of at least fifteen minutes each; and
 - (c) during each period of more than five hours a meal break of at least thirty minutes, in addition to the breaks specified in (a) or (b),
- and the employee shall be paid for each of the fifteen-minute breaks at his basic wage, but the remuneration for the meal break shall be agreed by contract between the employer and the employee.

- (4) For the purposes of subsection (3) “**specified industries**” are —
 - (a) construction;
 - (b) manufacturing;
 - (c) heavy-equipment operating;
 - (d) hospitality;
 - (e) water sports;
 - (f) gardening or landscaping;
 - (g) household domestic work; and
 - (h) retail business.
- (5) An employer who does not comply with the requirements of subsections (1), (2) and (3) is guilty of an offence.
- (6) Rest and meal breaks required by subsections (2) and (3) and any other rest and meal breaks shall be taken at such times as are agreed between the employer and employee having regard to all the circumstances.

Standard work week

- 27.** (1) Except as provided in section 28 (1) and (2) (relating to overtime, contracting out of overtime and receipt of benefits in lieu of overtime pay), the number of hours comprising a standard work week shall be agreed by contract between the employer and employee but shall not, for full time employees, be less than thirty-seven and one half hours nor exceed forty hours in any period of one hundred and sixty-eight hours.
- (2) All employers shall establish a standard work week that —
- (a) shall be stated in the contract of employment of all employees; and
 - (b) shall be applied to all wage-earning employees.
- (3) The Governor may for any particular industry or classes of industry by regulation prescribe a standard work week different from the one prescribed in subsection (1).

Overtime pay in general

- 28.** (1) Except as provided in subsections (2) and (3), an employee who works in excess of his standard work week shall, for those overtime hours, receive overtime pay or, instead of overtime pay, receive time-off with pay at his basic wage, during normal working hours, equivalent to the overtime hours worked.
- (2) An employer shall negotiate with the relevant trade union or, where there is no trade union, with a category of employees, with a view to agreeing with the employees as a group whether the hours in excess of the standard work week shall be remunerated at regular or other specified higher pay (amounting or not amounting to full overtime pay) provided that —



- (a) contracting out of overtime pay shall not be allowed with respect to time exceeding forty-five hours and any agreement purporting to provide otherwise is void;
 - (b) where the contract of employment includes, and the employee is enjoying, any payment or benefit that is not required under this Law and which is equivalent to the overtime pay to which he would have been entitled, the employee shall not be entitled to overtime pay.
- (3) A contract may provide that an employee of managerial level, an employee of professional level or salaried employee shall
- (a) not receive overtime pay; or
 - (b) receive overtime pay less than is prescribed in section 30; or
 - (c) receive overtime pay less than basic pay.
- (4) An employer who contravenes subsection (1) is guilty of an offence.
- (5) Upon the conviction of an employer under this section, the court shall, in addition to any fine or other penalty, order that the employer pay to the employee concerned such of his dues as remain to be paid as well as interest at the rate of ten per cent per annum, or any other rate the Governor may prescribe, from the date the underpayments were originally due to the date when the balance is paid.
- (6) An order made under subsection (5) in relation to the unpaid remuneration shall be enforced in the same manner as if it were a fine.
- (7) In calculating the remuneration to be paid to an employee for the purposes of this section, gratuities shall be disregarded.

Rate of overtime pay

- 29.** For overtime work an employer shall pay at least one and one-half times an employee's basic wage.

Form of remuneration

- 30.** (1) The remuneration payable under a contract of employment may be paid in money or in kind, which means payment by provision of food, a dwelling or similar provision, as may be agreed in the contract of employment so long as —
- (a) at least fifty percent of the total remuneration is paid in money;
 - (b) no payment in kind shall include liquor, drugs or any illegal substance; and
 - (c) payment in kind is fairly evaluated on the basis of its cost to the employer.
- (2) An employer who contravenes this section is guilty of an offence.

Pay statements

- 31.** (1) For each pay period, the employer shall furnish the employee with a pay statement in Form 2 of the Schedule.
- (2) An employer who contravenes subsection (1) is guilty of an offence.

Deductions

- 32.** (1) An employer shall not make any deductions from the remuneration payable to an employee except in accordance with this section or any other law.
- (2) Whether or not he has the consent of the employee, an employer shall not make any deduction from the remuneration payable to an employee or receive any payment from an employee or allow any other person to receive payment from an employee on behalf of the employer for —
- (a) the cost of anything done or required to be done by the employer under this or any other law;
 - (b) obtaining or retaining employment with the employer;
 - (c) any purported fine imposed by the employer;
 - (d) poor or negligent work, other than a shortfall in cash collected by an employee for the employer or in a cash float provided to the employee by the employer;
 - (e) any injury to the materials or property of the employer, unless the injury is caused by the wilful misconduct of the employee; or
 - (f) the actual or reasonable cost to the employer of any materials, tools and implements that the employer is required by this Law or any other employment-related Law to provide.
- (3) An employer may deduct from an employee's remuneration —
- (a) a deduction imposed by law;
 - (b) money advanced by the employer, so long as the amount deducted accords with the agreement made between the employer and employee at the time of the advance;
 - (c) any payment into any welfare, insurance, union dues or other similar fund which an employee has authorised to be deducted;
 - (d) money the deduction of which an employee has expressly authorised in writing where such authorisation is not in conflict with any part of this or any other law.
- (4) Total deductions in any period shall not exceed one-third of the gross money remuneration of the employee for that pay period, but this does not apply to interest on, and repayments of, negotiated loans nor to the recovery of money advanced as contemplated in subsection (3) (b).
- (5) An employer who contravenes this section is guilty of an offence.



Periods and time of pay

- 33.** (1) Remuneration shall be paid on a regular periodic basis and no period shall exceed one month.
- (2) The payment of remuneration shall be made on ordinary working days and within ordinary working hours.
- (3) An employer who contravenes this section is guilty of an offence.

Interest on unlawful deductions

- 34.** In any proceedings for the recovery of any sum that may have been unlawfully deducted, the employee is entitled to recover, in addition to the principal sum, interest at the rate of ten percent per annum or such other rate of interest as the Governor may by regulation prescribe.

Work accounts

- 35.** (1) An employer shall, in addition to the pay statement referred to in section 31, keep a work account, in Form 3 of the Schedule, with respect of each employee.
- (2) For an employee paid on a piece-work basis, the work account shall show the work done in addition to the time worked.
- (3) An employer shall preserve each work account for at least three years.
- (4) Upon a demand by an authorised officer or on the request of any employee, the employer shall make the employee's work account available for inspection.
- (5) An employer who contravenes this section is guilty of an offence.

PART V - GRATUITIES

Application of Part V

- 36.** (1) This Part does not apply to a service employer —
- (a) who allows service employees to keep gratuities paid to them and does not add to the basic bill of a customer an additional charge as a gratuity to be collected by the employer; and
- (b) who has complied with subsection (2) and has been granted an exemption thereunder.
- (2) An employer to whom subsection (1) (a) applies shall lodge with the Director a Declaration as to Keeping of Gratuity in Form 4 of the Schedule and the Director shall, if he is satisfied that the declaration is true and correct, issue an exemption in Form 5 of the Schedule exempting that employer from this Part.

- (3) Nothing in this Part forbids a service employer to whom this Part applies from entering into an agreement with his service employees actually rendering a service directly to customers to share gratuities with other wage earning employees who do not directly render a service to customers.

Distribution plan

- 37.** (1) A service employer who intends to charge gratuity shall, before doing so, register with the Director a Plan for Distribution of Gratuities in Form 6 of the Schedule.
- (2) Subject to subsection (3), an employer who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding five thousand dollars or to imprisonment for six months, or both.
- (3) Where an employer has filed the Plan for Distribution of Gratuities (in Form 6) but the Director is of the view that it does not comply with the provisions of subsection (1), he shall bring the shortcoming to the attention of the employer concerned and request him to make the adjustments necessary for the Plan to comply with that subsection.
- (4) No charges shall be filed under this section until the Director is satisfied, after giving the service employer concerned an opportunity to remedy any shortcomings, that the employer is unwilling or unable to file a Plan for Distribution of Gratuities that complies with subsection (1).

Monthly records

- 38.** (1) A service employer who collects or charges gratuities in addition to the bill rendered to the customer shall maintain a Monthly Record of Gratuities in Form 7 of the Schedule.
- (2) An employer shall keep under his custody or control a copy of the Monthly Record for three years, and shall keep it in such place as to be able to produce it on demand if so required under subsection (3).
- (3) An authorised officer or any service employee may request the production of the Monthly Record and if so requested the service employer shall produce it for the inspection of the authorised officer or the employee and allow the taking of copies if requested.
- (4) A service employer who in a Monthly Record makes a statement that he knows or may be expected to know is false or misleading, or who fails to distribute gratuities as required by this Law, is guilty of an offence and liable on conviction to a fine of twenty-five thousand dollars and imprisonment for six months, or both.
- (5) A service employer who contravenes subsection (1), (2) or (3) is guilty of an offence and liable on conviction to a fine of five thousand dollars or imprisonment for six months, or both.



Rate of gratuity to be displayed

- 39.** (1) A service employer who intends to charge a gratuity shall display, in a conspicuous place, a notice indicating the rate of gratuity to be charged and a statement that the gratuity charged is not obligatory, and any employer who fails to display such notice or displays such notice in a place that is not conspicuous is guilty of an offence and liable on conviction to a fine of ten thousand dollars.
- (2) It is sufficient compliance with subsection (1) if the rate of gratuity and the statement of its non-obligatory nature is shown on a menu or other document that would normally be read by customers.
- (3) When gratuity is charged, the rate charged and the fact that it is not obligatory shall be indicated on the bill and an employer who fails to so indicate is guilty of an offence and liable on conviction to a fine of ten thousand dollars.

Maximum rate of gratuity

- 40.** (1) The Governor may, by regulations, prescribe the maximum rate of gratuity that may be charged by service employers.
- (2) For the avoidance of doubt, it is declared that the fact that a rate of gratuity is prescribed under subsection (1) or that an account rendered includes a gratuity does not imply that the customer is obliged to pay that gratuity amount.

Classes of employees entitled to gratuity

- 41.** (1) The Governor may, by regulations, prescribe the classes of employees in service undertakings who shall be entitled to be included in the distribution of gratuities.
- (2) In exercise of the power conferred by subsection (1), the Governor may prescribe classes by —
- (a) description of position;
 - (b) type of work;
 - (c) level of remuneration;
 - (d) other terms of employment; or
 - (e) a combination of any of the criteria set out in paragraphs (a) to (d).

Actual distribution of gratuity

- 42.** (1) A service employer to whom section 37 (1) applies shall, within the first ten days of a month, according to his Plan for Distribution of Gratuities, distribute to his service employees all gratuities collected by him or on his behalf during the previous month.
- (2) With each monthly distribution of gratuities required by subsection (1), the employer shall furnish the employee with a Gratuity-Distribution Statement in

Form 8 of the Schedule, and the employer shall keep a copy of the form for three years.

- (3) A service employer who fails to furnish a Gratuity-Distribution Statement referred to in subsection (2) shall be guilty of an offence.
- (4) A service employer who contravenes subsection (1) is guilty of an offence and liable on conviction to a fine of twenty-five thousand dollars or to imprisonment for twelve months, or both, and upon conviction the court shall order that the amount which was found not to have been paid to the employees shall be paid to those employees within seven days of the date of the conviction or such longer period as the court may order, and if the court does not so order, such order shall be deemed to have been made by virtue of the conviction.
- (5) For the avoidance of doubt it is declared that a service employee who ceases to be a service employee is entitled to participate in the distribution of all gratuities collected by his employer or former employer for the period of time that the service employee was employed in that undertaking.
- (6) A service employer who fails to furnish a Gratuity-Distribution Statement is guilty of an offence.

PART VI - SEVERANCE PAY

General right to severance pay

43. (1) Upon termination of an employee by an employer for any reason other than termination for cause, an employee who has been employed for one year or more is entitled to receive, in addition to any other entitlements, severance pay calculated in accordance with this Part.
- (2) In the event of the winding up or bankruptcy of an employer, severance pay obligations shall have priority to all other debts, secured or unsecured, and shall be paid in full unless the money or property available is insufficient.
- (3) Severance pay shall be payable to an employee for the full period of his employment, including any probationary period.

Computation of severance pay

44. (1) Severance pay shall consist of one weeks' wages for each completed twelve-month period of employment with that employer, the relevant weekly wages being the highest basic wage that the employee earned in the preceding twelve months prior to termination.
- (2) Severance pay for a part-time employee shall be calculated on a *pro-rata* basis.



Severance pay: when payable

- 45.** (1) Except as otherwise provided in this section, severance pay shall be paid simultaneously with the termination of employment.
- (2) Where upon termination a date of recall is given and that date is more than thirty days from the date of termination, severance pay shall be paid on the date of termination.
- (3) Where no date of recall is given —
- (a) and by the end of the thirtieth day of lay off the employee has not been recalled; or
- (b) has been recalled but the effective date of resumption of duty is more than thirty days from the date of termination,
- severance pay shall be paid on the thirty-first day of lay off, in which case interest shall be paid at the rate of ten per cent per year calculated from what would have been the original due date of severance pay under subsection (1).
- (4) Where an employee resumes duty after the thirty days referred to in subsection (3) —
- (a) and severance pay was paid within the period referred to in subsection (3), the employee shall, except as set out in subsection (5), for all purposes, including future severance pay, be considered to be a new employee;
- (b) and severance pay and interest have not fully been paid the employee shall, except as set out in subsection (5), still be considered a new employee but remain entitled to his dues with interest at the rate stated in subsection (3).
- (5) Where an employee under subsection (4) resumes duty with the same employer within one year of his termination date, all of his periods of previous employment with that employer shall be combined when determining his benefits that are accrued based on longevity, such as vacation leave and some paternity leave benefits.
- (6) This section applies to employees in agriculture and construction with the words “ninety days” substituted for the words “thirty days” and the words “ninety-first day” substituted for the words “thirty-first day”.

Severance pay where employer’s business transferred

- 46.** (1) Where on the transfer of an undertaking in which he is employed an employee is terminated and, without break in service, is offered the same or similar employment under the same or similar conditions by the successor-employer in that same undertaking or part thereof, he is not entitled to severance pay.

- (2) Where an employee accepts employment with the successor-employer, his date of employment for the purposes of severance pay shall be the date on which he was hired by the predecessor-employer.
- (3) For the avoidance of doubt, it is declared that where, in the circumstances set out in subsection (1), an employee chooses not to continue in employment, he may, within thirty days of takeover, terminate his employment in the same way he would have terminated it had the business not been transferred and, in that case, he is entitled to such payments and other benefits as may be provided under the terms he enjoyed under the predecessor-employer.

Liability of predecessor and successor-employer

- 47.** (1) Where an employee accepts employment with a successor-employer under section 46 (2) then, in the event of a subsequent termination by that successor-employer, the successor-employer shall be responsible for the employee's severance pay, which amount shall be based on his full tenure of employment with the successor-employer and all predecessor-employers.
- (2) Where severance pay relating to an employee who has been temporarily laid off becomes due before he resumes duty and in the meantime the business of the employer is transferred, the predecessor employer and the successor-employer shall be jointly and severally liable for payment of the severance pay plus interest at the rate stated in section 45.

Record of hiring dates

- 48.** (1) An employer shall maintain a record of each employee's hiring date together with a record of all temporary terminations and re-employments and, where there was a predecessor-employer, the employee's hiring date shall be that on which the employee was first hired.
- (2) An employee may request to see his record of hiring date and, if he does, the employer shall make the record available for inspection.
- (3) An employer who contravenes subsection (1) or (2) is guilty of an offence.
- (4) Where, by virtue of the fact that the requirement under subsection (1) was not in effect on the relevant date, there is no existing record of an employee's hiring, the employer and employee shall determine the hiring date by agreement and in default of agreement the hiring date shall be determined pursuant to section 49.

Settlement of disputes as to date of hiring

- 49.** Where a question arises as to the date of hiring or as to whether or in what amount severance pay is due, then the employee or employer or their respective representatives may seek resolution by filing a complaint with the Director, who shall deal with the matter as stated in section 78.



Penalties relating to severance pay

- 50.** (1) Where the Grand Court, a court of summary jurisdiction or an Employment Tribunal finds an employer liable for severance pay, it shall, in addition to an order to pay severance pay under this Law and any other orders it may give, order the employer to pay to the severed employee a penalty not in excess of twelve weeks' pay.
- (2) If a penalty is ordered under subsection (1) the amount of the penalty to be paid is in the discretion of the adjudicating authority, up to the maximum prescribed in that subsection, and in exercising that discretion the adjudicating authority shall take into account all the circumstances of the case, but in no event shall a penalty be ordered unless the employer has previously been adjudicated to have been in violation of severance pay provisions, that violation taking place within the two years immediately preceding the date of the violation before the adjudicating authority.
- (3) For the avoidance of doubt, it is declared that the mere fact that the employer violated severance pay provisions in the preceding two years is not in itself sufficient reason for ordering a penalty to be paid.

PART VII - RETIREMENT AND RESIGNATION ALLOWANCES**Entitlement to retirement or resignation allowance**

- 51.** (1) An employee who —
- (a) attained the age of sixty years; and
 - (b) has worked with his employer for one year or more; and
 - (c) voluntarily retires or resigns from employment,
- shall be paid by the employer, in addition to other entitlements, a retirement or resignation allowance, as the case may be, equal to one week's pay at the highest basic rate in the preceding one year, for each completed year of his employment with that employer.
- (2) For the avoidance of doubt, the word "voluntarily" as used in subsection (1) also applies to resignation or retirement due to ill-health or on the recommendation of a medical doctor.
- (3) A part-time employee's retirement or resignation allowance shall be calculated on a *pro-rata* basis.
- (4) An employer who is required to pay retirement or resignation allowance may offset the amount of the allowance by any pension plan contributions made by him to the pension plan of the employee concerned.
- (5) An employer who contravenes subsection (1) is guilty of an offence.

Dispute as to amount of allowance

- 52.** Where a question arises as to the amount of retirement or resignation allowance, section 49 applies to disputes concerning retirement or resignation allowance in the same way that it applies to disputes relating to severance pay.

PART VIII - DISMISSALS

Application of Part VIII

- 53.** Except as set out in section 8 (4), this Part applies only to an employee
- (a) who has completed his probationary period, whether or not he has been officially confirmed in his appointment; or
 - (b) who, not being an employee who was employed on probation, has completed three months' of continuous employment with his employer.

Expiry of contracts

- 54.** For the avoidance of doubt, it is declared that no question of fairness or otherwise of termination of employment arises where a contract has come to an end by the expiry of its time.

Fairness and unfairness of dismissal

- 55.** (1) Subject to subsections (2) and (3), a dismissal is fair if the employer acted reasonably in the circumstances and, in addition, the reason assigned by the employer for the dismissal is —
- (a) in accordance with this Law;
 - (b) that the employee was made redundant;
 - (c) that the employee could not continue to work in the position he held without contravention of a requirement of this or any other law; or
 - (d) some other substantial reason of a kind which would entitle a reasonable employer to dismiss him.
- (2) Where an employee is dismissed, he shall, in addition to any remuneration and severance pay that may be due, be paid for earned vacation leave and any other benefits accrued at the time of termination, and the wage rate for the payment of such benefits shall be the same as the wage rate determined for his severance pay.
- (3) A dismissal is unfair where the reason for the dismissal was that the employee was made redundant but it is shown that the circumstances constituting the redundancy did not apply equally to one or more other employees in the same undertaking, who were employed to perform the same kind of work and who were not dismissed by the employer, and



- (a) the employee made redundant was chosen based on any form of discrimination as defined in this Law or the Constitution; or
 - (b) that the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons justifying a departure from that arrangement or procedure in his case.
- (4) Where the employee is found to have been constructively dismissed, then the dismissal is unfair.
- (5) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantive merits of the case having regard to all the circumstances.

Termination for cause

- 56.** (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in relation to his employment of such a serious nature that the employment relationship cannot reasonably be expected to continue, and such conduct includes, but is not limited to, the employee
- (a) committing a criminal offence in the course of employment without the consent, express or implied, of the employer;
 - (b) behaving immorally in the course of his duties; or
 - (c) taking, or being under the influence of, alcohol or an illegal drug during the hours of his employment.
- (2) Where an employee is guilty of misconduct or substandard performance that is not sufficiently serious to justify his employer terminating him under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer shall give the employee a warning in Form 9 of the Schedule, and one warning is sufficient for misconduct, whereas two warnings are required for substandard performance.
- (3) Warning for substandard performance shall be accompanied by remedial instruction and training.
- (4) Where an employer has given the employee one warning for misconduct and two warnings for substandard performance as set out in Form 9, he may summarily dismiss the employee and, if he does so, it shall be presumed that the dismissal is fair unless the employee proves otherwise.
- (5) Nothing in subsection (4) shall be construed as preventing an employer from dismissing an employee summarily where the employee is guilty of serious misconduct.
- (6) Where the employee has been given a warning for misconduct or warnings for substandard performance as set out in Form 9 and the employer does not

summarily dismiss the employee following such warnings, and if the employee, within twelve months following the receipt of the final warning, is guilty of any misconduct or substandard performance of any kind in relation to his work, the employer may, without further notice, terminate the employment immediately or take such other action as may have been specified in the written warning.

- (7) Misconduct includes but is not limited to absenteeism.
- (8) For the avoidance of doubt, an employee fairly dismissed for cause is not entitled to severance pay or to compensation for any other accrued benefits.

Signing of warnings

- 57.** (1) An employee's signature on a warning (required by Form 9) is an acknowledgement of receipt and not an admission of its contents.
- (2) Where the employee refuses to sign the warning, the employer shall indicate on the warning that the warning was presented to the employee, indicating the time and place, and that the employee refused to sign it.

Initiation of proceedings

- 58.** (1) Where a question arises as to whether an employee has been unfairly dismissed, the employee may file a complaint of unfair dismissal with the Director and the complaint shall be dealt with by the Director in accordance with section 79 and otherwise in accordance with this Law.
- (2) Without limiting the effect of any rule of admissibility of evidence or fairness, the warnings referred to in section 56 are admissible before an adjudicating authority as evidence and the Director may (in exercise of his power under section 78) refer to them.
- (3) A complaint under subsection (1) must be filed within one year of the date of receipt of the letter of dismissal.

Remedies for unfair dismissal

- 59.** (1) Where upon a complaint of unfair dismissal the Employment Tribunal, summary court or Grand Court has determined that the dismissal was unfair, it may —
- (a) order payment by the employer of a sum of money by way of compensation; or
 - (b) reinstate the employee with back pay for the period of unemployment.
- (2) Subject to subsection (3), in making an award of compensation under subsection (1), the Employment Tribunal, summary court or Grand Court shall have regard to —
- (a) the length of the continuous employment of the employee;



- (b) the likelihood of the employee finding comparable employment;
 - (c) the remuneration of the employee immediately preceding the dismissal;
 - (d) the length of time until retirement age of the dismissed employee and any entitlement to pension he may then have;
 - (e) the degree of unfairness of the dismissal; and
 - (f) such other matters as may be reasonable or as may be prescribed.
- (3) The amount of an award of compensation under subsection (1) (a) shall not exceed one week's wages for each completed year of service with that employer.
- (4) Where an Employment Tribunal, summary court or Grand Court finds that an employer dismissed an employee unlawfully, it shall, in addition to any other orders it may give, order the employer to pay to the severed employee a penalty, the maximum of which shall be twelve weeks' pay.
- (5) Where a penalty is ordered under subsection (4), the amount of the penalty to be paid is in the discretion of the Employment Tribunal, summary court or Grand Court, subject to the maximum therein specified, and that discretion shall be exercised taking into account all the circumstances of the case, but no penalty shall be ordered unless the employer is adjudicated to have previously unlawfully dismissed an employee, the dismissal taking place in the two years immediately preceding the dismissal in issue before the Employment Tribunal, summary court or Grand Court.
- (6) For the avoidance of doubt, it is declared that the mere fact that the employer violated fair dismissal provisions in the preceding two years is not in itself sufficient reason for ordering a penalty to be paid.
- (7) In the case of an appeal (filed under section 80) in respect of a dismissal for which an award has been made by the Employment Tribunal under this section, the summary court or Grand Court shall, in making its own award of damages, be guided by subsection (2), (3), (4), (5) and (6), and may —
- (a) affirm the award of the Employment Tribunal;
 - (b) if it is of the view that the award was manifestly inadequate, make a higher award ;
 - (c) if it is of the view that the award was manifestly excessive, reduce the award;
 - (d) make such other order generally as it thinks fit.
- (8) For the avoidance of doubt, it is declared that, except as provided in section 94, complaints shall come before the summary court or Grand Court in accordance with the appeal procedures prescribed in section 80.

PART IX - HEALTH, SAFETY AND WELFARE

Application of Part IX

- 60.** (1) This Part applies to workplaces.
- (2) Whenever it appears necessary or expedient the Governor may by regulations extend the definition of “workplace” contained in section 2 to any place that is not covered in that definition so that this Part may apply to such place.
- (3) Unless otherwise expressly stated, this Part shall be in addition to, not in substitution for, or diminution of, any other law.

Registration of workplaces

- 61.** (1) Every employer, other than one who employs a household domestic, who commences to operate a workplace shall, within one month of commencement, file Form 10 of the Schedule with the Director.
- (2) Upon receipt of Form 10, the Director may, if he is of the view that the workplace —
- (a) fully complies with this Part or any regulations made pursuant thereto, register the workplace;
 - (b) substantially complies with this Law or any regulations made pursuant thereto, register the workplace subject to such remedial terms and conditions as he thinks fit;
 - (c) refuse to register the workplace and, where he does so, shall state the changes the employer needs to effect for the workplace to be registered.
- (3) Whenever there is a material change in any of the particulars appearing in any notice filed under subsection (1), the employer or person operating the workplace shall, within one month of the change taking place, file with the Director a written notice indicating the change.

General duty of operator of workplace

- 62.** Every operator of a workplace shall, as far as is reasonably practicable, ensure that the health, safety and welfare of his employees at, around, or in relation to, the workplace is preserved and promoted.

Workers’ compensation insurance

- 63.** Every employer shall provide for the benefit of each of his employees protection from on-the-job accidents, injuries, and work-related illnesses or diseases, in the form of a workers’ compensation insurance policy covering all employees or in the alternative the employer may become bonded against the possibility of employee injuries or accidents in an amount determined by the Director.



Health, safety and welfare generally

- 64.** (1) To safeguard and reasonably protect the health, safety and welfare of employees and others performing any duties therein, the operator of any workplace shall ensure that, in addition to the matters prescribed in subsection (2), the workplace —
- (a) is clean;
 - (b) is not overcrowded;
 - (c) has reasonable temperatures, if the operation is indoors;
 - (d) has adequate ventilation and lighting;
 - (e) has adequate drainage and plumbing;
 - (f) has adequate electrical infrastructure;
 - (g) has sanitary drinking facilities with an adequate supply of drinking water;
 - (h) implements hurricane rules and procedures as may be promulgated from time to time;
 - (i) implements fire hazard rules and procedures as may be promulgated from time to time;
 - (j) has, in the event of emergencies, adequate means and avenues of escape;
 - (k) has adequate and well-maintained facilities for employees to sit, when appropriate, during their workday;
 - (l) has adequate and well-maintained on-site first-aid equipment;
 - (m) has adequate restrooms;
 - (n) has appropriate waste disposal procedures and storage facilities for hazardous materials;
 - (o) has reasonable access to a source of food or has a canteen; and
 - (p) has such other facilities as are reasonably necessary for the health, safety and welfare of employees in that line of business.
- (2) In addition to the matters prescribed in subsection (1), the operator of a workplace shall ensure that
- (a) machinery used in the workplace is operated and maintained in a manner consistent with safety and in compliance with the standards and guidelines recommended by the manufacturer;
 - (b) all buildings and parts thereof are of proper construction and are well-maintained.

Additional duties of operator of workplace

- 65.** It is the duty of an operator of a workplace to ensure that —



- (a) employees are protected from poisonous, noxious or toxic substances used or present in the workplace, including the prevention of consumption of food or drink in areas where such substances are used or are present, and the provision of emergency wash-down facilities;
- (b) suitable safety gear is required to be worn and is in fact worn when employees are using or are around machines or processes in relation to which the use of such gear is recommended;
- (c) suitable goggles or other protective gear is worn when there is a risk of eye injury;
- (d) suitable protective equipment is worn when a reasonable risk of bodily injury exists from any process or equipment used;
- (e) where employees are involved in a process involving injurious or offensive substances or to conditions exposing them to wet or cold conditions, suitable protective gear and clothing are provided, worn and maintained;
- (f) where a process involves exposure to heat or steam, facilities to protect workers appropriately are provided and maintained; and
- (g) misuse of equipment or space within the workplace is prohibited by warning signs.

Notification of accidents, injuries and diseases

- 66.** The operator of a workplace, including a person employing a household domestic, shall, in Form 11 of the Schedule, forthwith notify the Director of the occurrence of an accident or injury, not being minor in nature, occurring to an employee, and also of any occupational disease or illness that occurs to an employee.

Duties of employees

- 67.** (1) Employees in a workplace shall, in order to protect their health, safety and welfare, make use of all means, appliances, conveniences and equipment provided by the employer under this Law and as may be recommended by the manufacturer of the equipment used.
- (2) An employee shall not —
- (a) wilfully or negligently interfere with, misuse or damage any means, appliance, convenience or equipment provided by the employer under this Law;
 - (b) wilfully or negligently ignore or disregard any rule regarding the safe use of equipment or space designated by his employer; or
 - (c) wilfully or negligently ignore or disregard a recommendation of the manufacturer for the safe use of any equipment used in the workplace.



- (3) No employee shall wilfully or negligently by act or omission to act do anything that is likely to endanger him or others.
- (4) Employees shall follow all procedures that are prescribed by regulations, recommended by manufacturers or customary in that line of business with respect to the use of any particular substance or material used in the workplace.
- (5) An employer or authorised officer may lay a complaint before the Director against an employee who contravenes this section.
- (6) An employee who contravenes this section is guilty of an offence and is liable to a fine of twenty-five dollars.
- (7) The Governor shall make regulations for the payment of admission of guilt fines for employees who violate this section and other matters relating to the same.

Notices to remedy

- 68.** (1) Subject to subsection (9), where the Director is of the opinion that an employer is in breach of this Part or of any regulations made hereunder, he may serve upon that undertaking a notice to remedy.
- (2) A notice to remedy shall state the provision of this Part which has been breached, the action to be taken to address the breach and the time-frame within which remedial action must be taken.
 - (3) The right of appeal prescribed in section 80 (1) (b) applies to a person served with a notice to remedy.
 - (4) Except as provided in subsection (6), section 81 (2) applies in relation to the effect of an appeal.
 - (5) Where a notice to remedy is upheld in whole or in part, the summary court shall make such order as it thinks fit including, but not limited to, fixing a further time for compliance with the notice or such part of it as still stands.
 - (6) Where the Director, after consultation with the Chief Environmental Health Officer, which fact shall be stated in the notice, is of the opinion that there is imminent danger to the health or safety of employees, the notice shall not automatically be stayed (as stated in section 81 (2)) by the filing of an appeal, but the summary court, once seised of the matter, may make such interim order as it thinks fit.
 - (7) Any person intending to appeal against the issuance of a notice under subsection (6) may within fourteen days of the issuance of the notice apply to the summary court for a stay of the effect of that notice, pending hearing of the appeal, and the summary court may grant such a stay upon any terms as it sees fit, including the requirement that any appeal be brought within a specified time.

- (8) Without limiting the general power conferred in subsection (1), a notice to remedy may require —
 - (a) the immediate or later cessation of any activity, operation or process;
 - (b) the immediate or later vacation of any premises;
 - (c) the alteration of any plant or premises; or
 - (d) the introduction of such temporary measures as may be necessary or expedient pending the institution or completion of permanent measures.
- (9) The Director shall not serve a notice to remedy that requires closure of a workplace unless he has first obtained the consent in writing of the Minister.

Offences against this Part

- 69.** (1) An operator of a workplace who contravenes any provision of this Part is guilty of an offence.
- (2) An operator of a workplace who is served with a notice to remedy and fails to comply with the requirements thereof or within such time as a court may order is guilty of an offence and liable on summary conviction to a fine of one thousand dollars and to a further fine of one hundred dollars per day for each day on which the non-compliance continues after service of notice.
- (3) Where an act or default for which an operator of a workplace is liable is in fact the act or default of any other person, that other person is also guilty of an offence and liable to the same penalty as if he were the operator of the workplace.

Inquests into, and prosecutions, for accidents

- 70.** (1) Notwithstanding any law to the contrary, where as a result of a work-related accident a formal investigation is made under any law or a coroners' inquest is held and a report is produced indicating that this Part or any regulations made pursuant thereto were not complied with at the time of or before the accident, summary proceedings in a criminal court may be instituted in respect of such non-compliance within two years following the date of the report or the conclusion of the inquest.
- (2) A copy of every report with respect to or in consequence of a work-related accident which is made by an authority appointed to hold a formal investigation under any law shall be sent by that authority to the Director.



Modification of agreements and apportioning of expenses

- 71.** (1) Where a workplace or part thereof is under lease and the lease agreement between the owner and the operator of the workplace prevents the making of alterations to the workplace necessary for the workplace to conform to any requirement imposed by or under this Part or regulations made hereunder, the Grand Court may, upon the application of either party, order such adjustments to be made to the lease agreement as will facilitate the making of alterations to the workplace in order to bring it into conformity with this Part or regulations made hereunder.
- (2) Where the Grand Court makes an order under subsection (1), it may, in addition, make an order specifying how the expenses of the alterations will be apportioned.

Regulations relating to workplaces

- 72.** The Governor may make regulations —

- (a) prescribing the standards to be achieved in respect of any obligations or duties contained in this Part and the methods of achieving them;
- (b) prescribing special conditions, safeguards or procedures to be applied to any particular substance or material;
- (c) prescribing safety measures to be taken in respect of machinery, either generally or of any specified type, including but not limited to the fencing of such machinery or any parts thereof;
- (d) prescribing safety measures to be taken in respect of any process, activity or operation of any type; and
- (e) prohibiting any substance.

PART X - ADMINISTRATION AND DISPUTE SETTLEMENT**Department of Employment Relations**

- 73.** (1) There is hereby established a Department of Employment Relations comprising a Director of Employment Relations and such authorised officers and staff as may be necessary for the proper administration and enforcement of this Law.
- (2) The Director shall on a regular basis routinely conduct or cause to be made inspections to ensure that this Law is being complied with and investigate or cause to be investigated complaints that may be filed in relation to this Law.
- (3) The Director and all other staff of the Department shall be employees of the Government.

- (4) The expenses arising out of or incidental to the functioning of the Department shall be borne out of the general revenues of the Islands.
- (5) In addition to any other functions conferred on the Director by this or any other Law, the Director shall —
 - (a) provide such services as may be prescribed by regulations for the purposes of finding employment for employees or potential employees and supplying employers with such employees;
 - (b) promote appropriate education and training of employees employed or intending to be employed in any employment by —
 - (i) providing or facilitating the provision of courses for the education and training of employees or potential employees;
 - (ii) providing information about courses and qualifications in relation to any employment;
 - (iii) assisting employees in finding facilities and trainers in order to be trained for employment;
 - (iv) providing any other advice or assistance regarding education and training of employees as may be necessary or prescribed in relation to employment services;
 - (c) promote and facilitate the implementation of best employment practices in the workplace by —
 - (i) providing assistance to small businesses with respect to employment relations and in establishing the use of contracts, warning notices to employees, accident reports, health and safety standards in the workplace, and compliance with all the Laws related to employment in the Islands;
 - (ii) providing assistance to any employer or employee to enable him comply with the Laws, regulations or guidelines from time to time in effect in the Islands;
 - (d) collect, compile and assimilate data regarding —
 - (i) employment statistics, including but not limited to rates of unemployment;
 - (ii) statistics on the number of complaints filed with the Director, conciliation attempts that are successful, conciliation attempts that are unsuccessful, cases sent to the Employment Tribunals, results from Employment Tribunals, types of cases heard by the Employment Tribunals, the length of time for resolution of various types of cases;
 - (iii) any other statistical data regarded by the Director as essential to the proper operation of the Department and compliance with employment-related Laws.



- (6) Subject to any specific restrictions made by or under this Law, the Director shall have all such powers as are necessary or expedient for the better carrying out of the purposes of this Law.
- (7) The Director may on the report of any person or of his own volition refer any dispute or matter to the Employment Tribunal for adjudication.

Powers of entry and inspection

- 74.** (1) Subject to the rest of this section, in the performance of his functions under this Law, an authorised officer has power to enter any workplace without previous notice at any time during the working hours of that particular workplace, but timing of such entries shall be so as not to interfere with peak times of business, unless there is a compelling interest in that time period, and —
- (a) carry out any examination, test, inquiry or inspection which is reasonably necessary to establish the proper observance of this Law or any other employment-related Law, or direct the employer or any other person that controls the workplace to conduct such examinations, tests, inquiries or inspections;
 - (b) be accompanied and assisted by any other person and bring into the workplace any equipment necessary to carry out the authorised officer's functions;
 - (c) take photographs and measurements, and make sketches and recordings;
 - (d) require the employer, or any other person that controls the workplace, to ensure that the workplace or any place or thing in the workplace specified by the authorised officer is not disturbed for a reasonable period pending any examination, test, inquiry or inspection;
 - (e) require the employer, or any other person that controls the workplace, to produce any records, documents or information required to be maintained by this or any other employment-related Law and permit the authorised officer to examine and make copies or take extracts of any such records, documents or information;
 - (f) require the employer, or any other person that controls the workplace, to make or provide statements in any form and manner that the authorised officer specifies, about the observance of this or any other employment-related Law;
 - (g) question, alone or in the presence of witnesses, an employer or any other person that controls the workplace, or, subject to subsection (3), any employee, on any matters concerning the observance of this or any other employment-related Law; or
 - (h) do anything that is necessary or expedient to ensure observance of this Law or any other employment-related Law.

- (2) No authorised officer may enter in or be in a household unless —
 - (a) prior notice has been given and he has the consent, freely given, of an occupier of that household, which consent shall not be unreasonably withheld; or
 - (b) authorised to do so by a warrant issued under subsection (8).
- (3) Notwithstanding anything contained in this section, a person is entitled to keep confidential to himself anything that relates to his health status and also identifies him.
- (4) An authorised officer may do all the things referred to in subsection (1) whether or not —
 - (a) the authorised officer or the person with whom the authorised officer is dealing is in the workplace;
 - (b) the workplace is still a workplace;
 - (c) the employer's employees work in the workplace;
 - (d) the person who was in control of the workplace is still in control of it;
 - (e) the employees are still employed by the employer; or
 - (f) for a record, document or information, the record, document or information is in —
 - (i) the workplace;
 - (ii) the place where the authorised officer is; or
 - (iii) another place.
- (5) An authorised officer who enters a workplace or a former workplace under this section may take or remove a sample of a substance or thing for analysis, or seize and retain any material, substance or thing for the purpose of —
 - (a) monitoring conditions in the place;
 - (b) determining the nature of any material or substance in the place;
 - (c) determining whether or not this Law has been, is being or is likely to be complied with; or
 - (d) gathering evidence to support the taking of enforcement action.
- (6) Where under this section an authorised officer removes or retains a sample, material, substance or thing from a work place, the following provisions apply —
 - (a) as soon as it is reasonably practicable after removing or retaining it, the authorised officer shall give the employer or other person apparently in charge of the workplace written notice of —
 - (i) what has been or is being removed or retained;
 - (ii) why it has been or is being removed or retained; and



- (iii) where it will be kept in the meantime;
- (b) subject to paragraph (c), within seven days of removing or retaining it, the authorised officer shall give the employer or other person apparently in charge of the workplace written notice of whether the inspector intends to return or destroy any items so removed;
- (c) where it is practicable to do so, the sample, material, substance or thing shall be returned to its owner —
 - (i) when it is no longer required for any purpose under this Law or any other employment-related Law; or
 - (ii) if a court earlier orders its return.
- (7) This section does not allow an authorised officer to take a sample from a person's body unless the authorised officer has that person's informed consent to the taking of the sample.
- (8) A court which, upon an application on oath, is satisfied that there is reasonable ground for believing that a household is a place in which a person is employed or is the only practical means through which a place in which a person is employed may be entered, may issue a warrant authorising an authorised officer named in the warrant to enter that household or any part of that household that is, or is the only practicable means through which the authorised officer may enter, a place where a person is employed.
- (9) Where an authorised officer enters a workplace under the authority of this Law and is unable, despite reasonable efforts, to find any person apparently in charge, the authorised officer shall before leaving the workplace leave a written notice stating —
 - (a) the authorised officer's identity;
 - (b) the address of a place where he may be contacted;
 - (c) the date and time of entry; and
 - (d) the authorised officer's reason for leaving without carrying out his functions.
- (10) Notwithstanding anything contained in this section, all persons shall enjoy the privilege against self-incrimination.

Certificates of appointment as authorised officers

- 75.** (1) The Director shall issue to each authorised officer a picture identification document (in this section referred to as a “certificate of appointment”) evidencing his appointment as such.
- (2) An authorised officer who enters a workplace under the authority of this Law or any other employment-related Law shall, on first entering, and, if requested

at any later time, show his certificate of appointment to the person apparently in charge of the workplace or to any person to whom he directs a request.

Power to issue citations

- 76.** (1) Whenever in the opinion of an authorised officer an offence has been committed under this Law or any employment-related Law, the authorised officer shall report the matter to the police.
- (2) An authorised officer may issue a citation to the person concerned, commanding him to appear before the Director or an authorised officer.

Employment Tribunals

- 77.** (1) There shall be Employment Tribunals for the purpose of hearing complaints from employers, employees, employers' groups, trade unions or any other party with sufficient interest in an employment-related matter.
- (2) An Employment Tribunal shall comprise three persons appointed by the Governor, two of whom the Governor shall designate as Chairman and Deputy Chairman, respectively.
- (3) The Chairman shall be a person who is or was, subject to subsection (4), qualified to practice law in the Islands and the Deputy Chairman and third member shall be one person each from the employers' sector or the employees' sector.
- (4) No person who has practised as a lawyer before shall be appointed Chairman under subsection (3) unless he was in good standing when he ceased to practise law and has not since committed an act which would render him liable for disciplinary action by his licensing body.
- (5) Members of an Employment Tribunal shall hold and vacate office under the terms of their instruments of appointment, but may resign office by notice in writing to the Governor and any such member who ceases to hold office, by resignation or otherwise, shall be eligible for re-appointment from time to time.
- (6) A member whose appointment ceases under his instrument of appointment while sitting on a panel shall remain a member of that panel until all complaints before it at the time at which his appointment would have ceased have been disposed of by the Employment Tribunal.
- (7) The Governor may, by regulations, provide for the constitution, procedures, staffing and expenses of Employment Tribunals.



Procedure for handling complaints

- 78.** (1) Any complaint arising from the provisions of this Law shall be made to the Director who shall deal with it in accordance with this section unless, in his view, the complaint is frivolous and vexatious, or is as a result of the complainant's own malice or ill-will, in which case the Director will advise the complainant of his findings and decision.
- (2) Any person who is dissatisfied with a decision of the Director to declare a complaint frivolous and vexatious under subsection (1) may appeal to the Grand Court on the grounds that the decision was made —
- (a) in bad faith;
 - (b) without taking into account relevant considerations;
 - (c) taking into account irrelevant considerations;
 - (d) on the basis of a view of fact or law that could not reasonably be entertained.
- (3) On receipt of a complaint the Director shall, within thirty days, notify the employer or the employee, as the case may be, and give him a copy of the complaint and of any documents filed in support thereof, inviting a response in writing.
- (4) Where there are filed at or about the same time a number of complaints raising substantially the same issue the Director may consolidate them into a joint complaint.
- (5) The Director may forward the complaint and any response received as well as any documentation in support of either side to an authorised officer, who shall investigate and discuss the complaint with both sides and make an attempt to settle it amicably between the complainant and the respondent.
- (6) Where a settlement is reached, the authorised officer shall so record on the case file and return it to the Director who shall take or cause to be taken such steps as may be necessary to reduce the settlement to writing for signature by the parties.
- (7) Where due to failure or refusal of either party to submit to or agree on a settlement, or for any other cause, an authorised officer is unable to effect a settlement, he shall so note on the file of the case, indicating the attempts he has made to settle the matter and any other relevant information, and thereafter refer the matter back to the Director, who shall then refer the matter to the Employment Tribunal as soon as is reasonably practicable, but in any event within thirty days.
- (8) Within thirty days after receiving a case file from the Director, the Employment Tribunal shall fix a date for the hearing of the complaint and such date shall not be more than sixty days, or such other period of time as the

Governor may by regulation prescribe, from the date when the case was received from the Director.

- (9) Failing conciliation attempts by an authorised officer to resolve a joint complaint and on its referral to the Employment Tribunal, the Tribunal may hear the joint complaint as a single proceeding or may, if it considers it necessary or expedient, sever the proceedings.
- (10) As soon as the date of the hearing has been fixed, it shall be notified forthwith to the parties, who shall be invited to attend.
- (11) If a party fails to attend the hearing and the Employment Tribunal is satisfied that notice was served and that there is no justification for that party's failure to attend, the Tribunal shall hear any other party attending and decide the matter on the basis of the complaint and any documents or written representations made by the parties, including those of the party failing to attend.
- (12) An Employment Tribunal shall give a reasoned decision in writing within sixty days of the conclusion of the hearing or such other period as the Governor may by regulation prescribe and a copy of the decision shall be made available to all parties to the dispute.
- (13) A reasoned decision can be made in summary form except —
 - (a) when the Tribunal is of the view that the decision is likely to be appealed or have far-reaching ramifications in the field of employment; or
 - (b) where regulations made under subsection (14) specifically require that the particular type of decision be supported by a fully reasoned decision.
- (14) The Governor may by regulations prescribe that any class of cases involving fundamental human rights that may be enshrined in the Constitution shall require a fully reasoned decision.
- (15) The decision of an Employment Tribunal upon a complaint shall, subject to the right of appeal conferred by section 80, be final and binding between the parties.
- (16) With respect to the instituting of criminal proceedings, the provisions of this Law shall be construed as being in addition to and not in derogation of any other procedures provided under any law.

Awards and penalties: enforcement

- 79.** (1) A person who refuses or neglects to comply with a decision or order of an Employment Tribunal is guilty of an offence.
- (2) An award made by an Employment Tribunal for a sum of money may be enforced in the same manner as a judgment of the summary court or Grand Court for the payment of a sum of money, and using the same personnel.



- (3) Where an Employment Tribunal finds an employer to be in violation of this or any other employment-related Law and it is found that the same employer, in the two years immediately preceding the date of the violation before the Tribunal, committed a violation of a similar nature and was accordingly adjudicated to be in violation, it may, in addition to any other order made to redress the complaint, order a penalty to be paid to the employee.
- (4) The amount of the penalty referred to in subsection (3) shall be in the discretion of the Tribunal, which shall take into account all the circumstances of the case, including the two-year history of the employer concerned, but the penalty shall not exceed twelve weeks' pay of the aggrieved employee.
- (5) A penalty shall not be awarded solely by reason that the employer concerned committed a violation of a similar nature in the two years immediately preceding the date of the violation before the Tribunal.
- (6) Subsection (2) applies also to penalties levied under this Law.
- (7) An Employment Tribunal shall have the jurisdiction to hear and determine any matter relating to any dispute concerning any rights conferred by or under this Law and may make such decisions and orders as may be necessary or expedient to give effect to those rights.

Appeal from Employment Tribunal

80. (1) A party dissatisfied by —

- (a) a decision of an Employment Tribunal may, within fourteen days of notification of the decision appeal to a summary court, which shall examine the record from the Employment Tribunal and may, in addition, if it considers it necessary or expedient to do so, hear all the evidence again before making its own findings; or
 - (b) a notice to remedy issued under section 69 may, within fourteen days of the service of the notice, appeal to a summary court, which shall hear the matter and make a determination.
- (2) Except as provided in section 69 (6), the filing of an appeal pursuant to subsection (1) (relating to appeals to the summary court) operates as an automatic suspension of the need to comply with an award or other order made by the Employment Tribunal or a notice to remedy issued under section 68, but, subject only to subsection (8) of this section, the filing of an appeal from the summary court to the Grand Court shall not operate as an automatic suspension of the need to comply with an award or order of the summary court.
- (3) Decisions of an Employment Tribunal under this Law may be made public at the discretion of the Tribunal.

- (4) No member of an Employment Tribunal shall be liable in any civil court for any act done or ordered to be done in good faith in the discharge or purported discharge of his functions under this Law, unless it is proved that he acted maliciously or without reasonable cause.
- (5) Any party dissatisfied by a decision of a summary court may, within fourteen days of the decision, appeal to the Grand Court but only on a point of law or any matter with respect to which judicial review would lie against a public authority (including but not limited to an allegation of bias or other impropriety against the Employment Tribunal), and the decision of the Grand Court upon an appeal shall be final and binding on all the parties.
- (6) In the handling of appeals under this section, the summary court and the Grand Court shall, subject only to this Law, apply the same rules of procedure as they apply in similar civil matters heard under their general jurisdiction.
- (7) For the avoidance of doubt, it is declared that subsection (7) of section 59 (relating to the powers of a summary court and Grand Court in appeals) applies to the summary court or Grand Court in relation to variation of a penalty referred to in section 59 in the same way that it applies to awards referred to in that subsection.

PART XI - MISCELLANEOUS

Limitation period for filling complaints

- 81.** (1) Except as stated in subsection (2) or otherwise stated in this Law, complaints to the Director shall be brought within one year from the date when the complainant became aware of, or would with reasonable diligence have become aware of, the facts giving rise to the complaint.
- (2) Complaints relating to compensation with respect to accidents and injuries shall be filed within two years from the date of the accident or injury, but where there is an inquest, section 70 (1) applies.
- (3) Without limiting the effect of any law relating to the limitation of time within which actions of the relevant class may be brought, it is declared that the relevant limitation period shall stop running when a complaint is filed with the Director.

In-house complaint procedures

- 82.** An employer shall establish in his undertaking a procedure for the handling of complaints and shall, for that purpose, identify in the contract of employment and elsewhere as required in this Law a person (who may be himself, a supervisor or employer's agent) as the person to whom complaints by the employee should first be directed for resolution before filing a complaint with the Director.



Discrimination

- 83.** (1) An employer or prospective employer shall not, on the grounds specified in subsection (2), discriminate in relation to —
- (a) the framing of and advertisement for a job, including but not limited to qualifications for a job;
 - (b) selection for interview and conduct thereof;
 - (c) the decision to hire, promote, discipline or dismiss;
 - (d) terms of employment;
 - (e) any other matter directly or indirectly related to employment or prospective employment.
- (2) An employer or prospective employer shall not unreasonably discriminate on grounds of —
- (a) race;
 - (b) colour;
 - (c) sex;
 - (d) religion;
 - (e) national extraction;
 - (f) sexual preference;
 - (g) disability, so long as the ability to perform is not substantially impaired;
 - (j) pregnancy or the possibility thereof;
 - (k) age;
 - (l) political belief;
 - (k) conscience;
 - (l) any criteria that may be specified in the Constitution.
- (3) An employer shall not directly or indirectly engage in or permit the occurrence of sexual or other kinds of harassment of the employee in or around the workplace or condone any such occurrence.
- (4) An employer who contravenes subsection (1), (2) or (3) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for twelve months, or both.

General penalty

- 84.** (1) Where a person commits an offence against this Law or any regulations made hereunder for which no specific penalty is provided, he is liable on summary conviction —
- (a) for a first offence, to a fine of two thousand five hundred dollars, or to imprisonment for six months, or both;



- (b) for a second or subsequent offence, to a fine of five thousand dollars, or to imprisonment for twelve months, or both.
- (2) Where the offence is a continuing one, then, in addition to the penalty specified in subsection (1), the offender is liable to a further fine of one hundred dollars for every day or part of a day during which the offence continues.

False entries and declarations

85. A person who —

- (a) knowing it to be false, makes a false entry in a register, notice, certificate or other document which is required by or for the purposes of this Law or regulations hereunder to be made, kept, served or sent;
 - (b) in a declaration required by this Law or regulations hereunder to be made or signed, knowingly makes or signs a false declaration; or
 - (c) knowing it to be false, makes use of any such false entry or declaration,
- is guilty of an offence and liable on summary conviction to a fine of five thousand dollars, or to imprisonment for twelve months, or both.

Use of prescribed forms

- 86.** Whenever forms are prescribed in this Law, slight deviations therefrom not affecting the substance or calculated to mislead do not invalidate them.

Obstruction of officers

87. A person who, without reasonable cause, —

- (a) refuses to answer or gives a false answer to any question being asked in pursuance of this Law or regulations made hereunder;
 - (b) fails to produce any register, book, document or record required to be kept by or under this Law, or any other document reasonably related to the lawful operation or otherwise of the business or its practices;
 - (c) prevents or attempts to prevent any person from appearing before or being examined by an authorised officer in the lawful execution of his duties under this Law or regulations made hereunder; or
 - (d) otherwise obstructs or delays an authorised officer in the exercise of any power conferred on him by or under this Law,
- is guilty of an offence.



Records to be evidence

- 88.** Where an entry in a register or record is required to be made by this Law or any regulation made hereunder, by or on behalf of an employer or the operator of a workplace, any such entry shall be admissible against him in any proceeding as evidence of the facts stated in it.

Service of documents

- 89.** (1) Any notice, complaint, decision or other document required or authorised to be served under this Law or regulations made hereunder may be served on any person by sending it by prepaid registered post to his present or last known address, or, —
- (a) on an individual, by handing it to him or by leaving it at his residence;
 - (b) on a firm, by handing it to any partner thereof or by leaving it at the principal place of business of that firm;
 - (c) on a limited company, by handing it to an officer of the company or by leaving it at its registered office; and
 - (d) on the operator of a workplace, in any manner set out in paragraphs (a) or (b).
- (2) Any document intended to be served on the employer or operator of a workplace may be addressed to “the operator” or to “the employer” at the proper address of the workplace without further name or description.

Indemnity of officers

- 90.** The Government shall indemnify its Minister and officers against all claims, damages, costs, charges or expenses incurred by them in the discharge or purported discharge of their functions or duties under this Law or any employment-related Law, except claims, damages, costs, charges or expenses caused by their actions done in bad faith.

General power to make regulations

- 91.** (1) The Governor may make regulations for the better carrying into effect of this Law or prescribing any matter which is required or permitted to be prescribed under this Law.
- (2) Without limiting the generality of the power specified in subsection (1), the Governor may make regulations —
- (a) prescribing the form of any notice, application, complaint or other document required by or under this Law;
 - (b) varying any form contained in the Schedule to this Law in order to bring it into conformity with the relevant sections of the body of this Law.

- (3) Regulations made under this Law may create offences, the maximum penalty for which shall not exceed that specified by section 88.

Governor may give directives

- 92.** The Governor may give any officer or statutory authority carrying out a function under this Law (other than an Employment Tribunal or, for the avoidance of doubt, a court) directions as to the execution of that function and where any such directions are given, that officer or authority shall comply.

Prohibition of retaliation against employee

- 93.** (1) No employer shall dismiss, or reduce the hours worked, benefits or remuneration to, or reduce the status of, an employee who has filed or caused to be filed a complaint in regard to an employer's abuse, violation or contravention of any provision of this Law, or otherwise cause such employee to suffer from any retaliation or retribution, provided that the complaint was laid or caused to be laid by the employee in good faith and not as a result of the employee's own malice, ill-will or default under this Law.
- (2) An employer who contravenes the provisions of subsection (1) is guilty of an offence and liable on conviction to a fine of five thousand dollars, or to imprisonment for twelve months, or both.

Right of access to courts and exhaustion of administrative remedies

- 94.** (1) Nothing in this Law shall be construed as taking away the right of direct access to a court of law subject only to the following conditions —
- (a) Any complaint arising under this Law shall first be made to the Director, with reference to an Employment Tribunal as may be provided under this Law, for administrative resolution;
 - (b) Where a matter has been settled through mediation, conciliation, arbitration or similar means, or by the parties themselves, and the settlement has been effected in writing, there shall be no access to the courts by way of reopening of the complaint, but the settlement may be challenged on the same grounds as a written contract may be challenged;
 - (c) Where a matter has been set down for hearing by an Employment Tribunal (whether or not the complainant has been notified), the matter shall not be withdrawn from the Employment Tribunal and the parties shall be limited to the appeal processes provided for in section 81 and otherwise under this Law.
- (2) For the avoidance of doubt, it is declared that after the exhaustion of all administrative remedies, and after an Employment Tribunal has decided a matter, either party may appeal under section 80 (1).



- (3) A person aggrieved by a decision of the Grand Court may appeal to the Court of Appeal.

Powers of courts on appeal

- 95.** On an appeal of a matter which was heard by an Employment Tribunal, the summary court and the Grand Court shall, subject only to this Law, have all the powers of the Tribunal but all the limits to the jurisdiction of either court placed upon it by the law governing that particular court apply except that the summary court shall not, in hearing appeals under this Law from an Employment Tribunal, be bound by the monetary limit to its civil jurisdiction as contained in the *Summary Jurisdiction Law (1995 Revision)*.

Precedence of this Law

- 96.** Where this Law conflicts with any other employment-related Law, this Law prevails.

Repeal and transition

- 97.** (1) The *Labour Law (2001 Revision)* is repealed but all subsidiary legislation made under that Law continues in force so long as it is not in conflict with the Law and, if it is, the subsidiary legislation is void to the extent of the inconsistency.
- (2) If at the coming into operation of this Law the Governor has not appointed office bearers for the equivalent or approximately equivalent bodies created under this Law, the old office bearers shall, notwithstanding anything contained in this Law, continue in office and exercise powers under this Law as if they had been appointed under this Law until the Governor appoints the office bearers in accordance with this Law.
- (3) Without limiting the operation of any other law, wherever in this Law an entitlement —
- (a) is based on a period of time, the time occurring before the coming into operation of this Law shall, in the absence of express words to the contrary, be counted in addition to the time occurring at and after the coming into operation;
 - (b) is based upon the holding of a status, the entitlement shall not, in the absence of express words to the contrary, be adversely affected by the fact that the status was acquired before the coming into operation of this Law;
 - (c) is based upon the happening of an event, the entitlement shall not, in the absence of express words to the contrary, be adversely affected by the fact that the event took place before the coming into operation of this Law.

- (4) For the avoidance of doubt, any complaint —
- (a) laid before the Director or an Employment Tribunal prior to the coming into effect of this Law shall be adjudicated under the provisions of the *Labour Law, 1987*, as if that Law had not been repealed by this Law;
 - (b) arising from events occurring and concluded prior to the coming into effect of this Law shall be adjudicated under the provisions of the *Labour Law, 1987*, as if that Law had not been repealed by this Law;
 - (c) arising from circumstances or events occurring prior to the coming into effect of this Law, but continuing thereafter, shall be adjudicated under the provisions of this Law.

This Law binds Crown

98. This Law binds the Crown in right in the Islands.



SCHEDULE**FORMS****EMPLOYMENT LAW****FORM 1****CONTRACT OF EMPLOYMENT****[Section 6]****The parties**

1. _____, employer [insert name of employer]
_____ [insert address of employer]
_____ [insert daytime telephone number of employer]

and

_____, employee [insert name of employee]
_____ [insert address of employee]
_____ [insert daytime telephone number of employee]

Duration

2. This contract commences on _____. [insert day, month and year]
The last day of the contract is _____. [insert last day]

(or)

The contract is for an indefinite period of time _____. [tick if applicable]

Termination

3. The notice period for termination of this contract for either party is _____
_____. [insert period of time for notification]



Notice shall be in writing, addressed to the parties at the addresses shown above, and either delivered by hand or posted.

Job title and responsibilities

4. The employee is employed as _____. [insert job title]

The general responsibilities and duties of the employee are as follows:

_____,

together with such other related duties as may be assigned from time to time.

Special requirements and/or conditions

5. The special requirements/conditions for this job are as follows:

_____. [insert N/A if inapplicable]

Standard Work Week

6. The standard work week is _____ hours. [insert 37 ½, 40, 45, 48, or as the case may be]

Hours of work

7. The employee's regular hours of work are from _____ to _____ each weekday and from _____ to _____ on Saturday. [insert N/A if inapplicable to Saturday and generally adjust as necessary]. The following particular terms relate to the employee's hour of work _____

_____. [insert any particulars] [insert N/A if inapplicable]



Remuneration

8. The employee's rate of remuneration will be \$ _____ per week/fortnight/month/other [please state], that amount being calculated at the rate of \$ _____ per hour, and shall be paid _____ [state intervals or dates when remuneration will be paid] and/or the commission shall be calculated as follows _____.

Overtime pay

9. The employee is a wage-earner and will be paid weekly/monthly/other _____ [please state]. Overtime will be paid at one and one-half times the hourly rate and public holidays will be at double the hourly rate or compensation time-off at basic pay in accordance with the Employment Law.

(or)

The employee is a salaried employee: Overtime pay at one and one-half times basic pay is not applicable. [choose one option, i.e., between wage-earner and salaried employee]

Pay statement

10. The employee will, with each wage/salary payment made, receive a pay statement in the form prescribed by section 32 of the Employment Law.

Probation

11. The employee's probationary period will be _____ [insert the period of any probation] [insert N/A if inapplicable] and with regard to the period of probation section 9 of the Employment Law, a copy of which is attached, applies.

Breaks

12. The employee, being in an industry other than a “specified industry” as defined in section 27 of the Employment Law, is entitled to a rest break of fifteen minutes and a meal break of _____ [insert “thirty minutes” or longer time] during an eight hour period of work each day. The employee will be paid at the regular rate for the fifteen-minute break, and the meal break _____ remunerable. [insert “is” or “is not”] The remuneration for the meal break shall be at the rate of _____. [if applicable, indicate the rate]

(or)

The employee is an hourly-paid employee employed in a “specified industry” as defined in the Employment Law, being construction, manufacturing, heavy-equipment operating, hospitality, water sports, gardening or landscaping, and household domestic work, and is entitled to a break of _____ [insert “fifteen-minutes” or longer period] during a three to five-hour workday; or during a five to eight-hour workday _____ [insert “two fifteen-minute breaks” or more breaks of longer duration]; and during each period of more than five hours, a meal break of at least thirty minutes, in addition to any breaks specified in this clause. The employee will be paid at the regular rate for the fifteen-minute break, and the meal break _____ remunerable. [insert “is” or “is not”]. The remuneration for the meal break shall be at the rate of _____. [if applicable, indicate the rate]

Leave

13. The employee is entitled to _____ days vacation leave, at his basic pay each year. Vacation pay earned will be paid at the time leave is taken. Vacation



leave should be requested at least two weeks prior to the first day of the requested leave.

Sick leave

14. The employee is entitled to sick leave of ten days, paid at his basic rate per annum. Sick leave is only to be taken when the employee is ill or otherwise incapacitated. The employee is required to contact the employer as soon as reasonably practicable to report the necessity of taking sick leave. A medical certificate is not necessary for the first two days of leave. Where the employee takes three days consecutive sick leave or more, the employee must on returning to work present the employer with a physician's certificate to cover all the consecutive days of leave from the beginning. The employer reserves the right to waive the physician's certificate requirement verbally.

Severance pay

15. Severance pay will be one week per twelve-month period of employment completed with the employer and will be payable immediately upon termination. If it is contemplated that the employee will be rehired within thirty days, payment of severance pay will be paid on the thirty-first day if the employee has not been rehired within thirty days.

(or)

The Employee is employed in agriculture/construction [delete one] and if it is contemplated that the employee will be rehired, severance pay will be due and payable in ninety days from termination date if he has not been rehired in that time period. [delete one option]

Workers' compensation

16. Workers' compensation protection is provided by the employer in the event of injury or accident on the job resulting in any form of incapacity or death. Workers' compensation provision is by policy number _____ with _____. [insert name of insurance company]

(or)

The employer has become bonded against the liability in relation to the employee's injury or accident in or relating to the workplace, in the amount of _____ Dollars. [insert the amount]

Pension

17. An employee pension plan is in place in accordance with the Law for the time being in force relating to pensions, and the details of the plan will be made available by the employer to the employee as soon as reasonably practicable but in any case within 14 days of the signing of this contract by the employee.

Dispute settlement

18. A method of conflict resolution is in place. Should the employee have a complaint or wish to discuss any issue regarding his employment in relation to other employees, pay, scheduling, working conditions, safety or otherwise, those issues are to be referred to _____, the manager/employer [insert name of manager or employer]. If the issue is not resolved at this level then it may be taken to the Director of Employment Relations for resolution by conciliation, mediation or arbitration, or, failing resolution by the other means, by submission to the Employment Tribunal.



Dismissal

19. (1) Nothing in this contract prevents the employer from dismissing an employee summarily, without warning, if the employee is guilty of serious misconduct.

(2) Where the misconduct is not serious, the employer may dismiss the employee after only one warning, giving the employee one month in which to improve his conduct.

(3) Where the employee is guilty of substandard performance, the employer may dismiss the employee after three written warnings.

(4) Should the employee be presented with a warning, he will be required to sign it. Signing does not indicate that the employee agrees with the contents of the warning but indicates that the employee has seen it.

(5) In the case of substandard performance, after the first warning, the employee will have three months to raise his level of performance. After the second warning, the employee will have two months to raise his level of performance. After the third warning, the employee will have one month to raise his level of performance.

(6) If the conduct of the employee does not improve after the warning referred to in subclause (2) above, or, the performance of the employee does not improve within one month of the final warning, the employee can be summarily dismissed.

(7) A dismissal under this clause means the forfeiture of the benefits not already earned and forfeiture of severance pay.

Law governing this agreement

20. This contract shall be governed by and be construed in accordance with the Laws of the Cayman Islands and in event of dispute the Laws of the Cayman Islands shall apply.

Agreement contains all terms

21. Except for any provision that applies by virtue of law, the employer and employee acknowledge that this document constitutes the entire agreement between them.

Amendments

22. No amendments or modifications to this contract shall be valid or binding unless made in writing and signed by both parties and specifying the date on which they shall come into operation.

Capacity of parties to sign

Both the employer and employee warrant that they have the requisite capacity, authority and permission to enter into this agreement.

Employer's signature_____

Name of signatory_____

Designation_____Date_____

Signature of witness_____

Name_____

Designation_____Date_____

Employee's signature_____

Name_____

Designation_____Date_____

Signature of witness_____



Name _____

Designation _____ Date _____

EMPLOYMENT LAW**FORM 2****PAY STATEMENT****[Section 31]**

Name of employer _____

Address of employer _____

Telephone number of employer _____

Fax number of employer _____

E-Mail address of employer _____

Name of employee _____

Date _____

Period: week number _____

Month number _____

Department _____

Pay method: cash/ cheque/ direct deposit/ postal order _____

Rate _____ Hours _____ Total pay (this period)

Less: deductions [state what they are for]

Advances _____

Cost of materials/tools/implements _____

Welfare _____

Insurance _____



Court-ordered deductions _____

Contribution to pension _____

Other authorised deductions _____

TOTAL DEDUCTIONS

NET PAY

Year to date:

Total pay _____

Total deductions _____

EMPLOYMENT LAW**FORM 3****WORK ACCOUNT****[Section 35]**

Name of employer _____

Address of employer _____

Telephone number of employer _____

Fax number of employer _____

E-Mail address of employer _____

Name of employee _____

Time worked, by pay period _____

Type and length of leave taken:

Vacation leave _____

Sick leave _____

Compassionate leave _____



Parental leave_____

Other leave_____

Payments:

Basic remuneration_____

Allowances_____ [itemise each]

Deductions_____ [itemise each]

For an employee paid on a piece-work basis, describe, also the work done,

EMPLOYMENT LAW**FORM 4****DECLARATION AS TO KEEPING OF GRATUITY****[Section 36]**

Employer's name _____

Employer's physical address _____

Employer's postal address _____

Employer's phone number _____

Employer's fax number _____

Employer's e-mail address _____



I/We the above-named employer declare, under section 37 (2) of the Employment Law, that I/We allow employees to keep gratuities paid to them and do not charge customers any sums of money in addition to their basic bill.

Signature of employer_____

Name of signatory_____

Designation_____Date_____

Signature of witness_____

Name_____

Designation_____Date_____

EMPLOYMENT LAW

FORM 5

EXEMPTION FROM GRATUITY PROVISIONS

[Section 36]

On the basis of the declaration that you
_____ [Insert name of employer]

of _____ [insert physical
address of the employer] have filed with me under section 37 of the
Employment Law, I, _____, [insert
name of Director of Employment Relations]

_____, Director of Employment
Relations, hereby exempt you from Part V of the Employment Law, which
relates to duties of employers who collect gratuity paid to employees or charge
a sum of money in addition to the basic bill of the customers, patrons or clients.



Signature of Director _____

Date _____

EMPLOYMENT LAW**FORM 6****PLAN FOR DISTRIBUTION OF GRATUITIES****[Section 37]**

Name of employer _____

Physical address of employer _____

Postal address of employer _____

Fax number of employer _____

E-mail address of employer _____

Address of employer _____

Phone number of employer _____

Name of employer's organisation or company _____

"I/We, _____, employers, undertake to distribute all gratuities collected from or charged to my/our patrons/customers/clients each month, to all service employees in my/our employ or having been in my/our employ during the period representing each month, on a monthly basis, with distribution being made the first two weeks following each month in which any gratuities are charged, pursuant to the requirements of the Employment Law."

Number of service employees in employer's employ at time of filing this plan



Total number of employees in employer's employ at the time of filing this plan

(including all service employees and those whose designation is other than service employee)

The average monthly amount of gratuities charged by the employer _____
_____ (if employer has charged gratuities in the past) (if the employer has not charged gratuities in the past, enter N/A).

The average monthly amount of gratuities received by the employer or organization _____
(if employer has received gratuities in the past) (if not, enter N/A).

The percentage amount of gratuity charged/to be charged to patrons/customers over and above the amount of the bill for service: _____ (%).

This business/organization is a single business/one of a chain/group of businesses (circle one).

[Where it is a chain or group] I/We are responsible for the following businesses _____

(and/or)

I/We own the following businesses _____

I/We, _____, employer/s, of _____

undertake to update the Director of Employment Relations through the Monthly Report required by section 39 (1) of the Employment Law of any changes in the



number of service employees and/or any other changes in the employer's/employers' organisation, and applicable to gratuities.

I/We, _____, employer/s, have read and understand the requirements of Part V of the Employment Law regarding gratuities.

I/We undertake to submit a Monthly Record of Gratuities.

I/We, _____, employer/s of _____

Organisation/Company have read and understand the penalties applicable under the Employment Law for failure to comply with the requirements thereof.

Signature of employer _____

Name _____

Designation _____ Date _____

Signature of witness _____

Name _____

Designation _____ Date _____

EMPLOYMENT LAW

FORM 7

MONTHLY RECORD OF GRATUITIES

[Section 38]

Number of customers/patrons/clients served in the month being reported:



from _____ to _____. (enter day/month/year)
(e.g. 01 January 2003 to 31 January 2003)

Total amount of service charges (exclusive of gratuity amount) charged to customers/patrons/clients in the month being reported

\$ _____

Total amount of gratuities charged to all customers/patrons/clients for the month being reported

\$ _____

Total amount of gratuities paid by customers/patrons/clients in the month being reported

\$ _____

The number of service employees in the employer's employ or having been in the employers' employ for the month being reported (updated monthly)

Total number of hours worked by all service employees, without assigning the number of hours worked by each employee, for the month being reported

Hourly amount of gratuities received by service employees for the month being reported

\$ _____

(This amount is figured by dividing the total number of hours worked by all service employees in the month being reported into the total amount of money in gratuities received by the employer or his organization in the month being reported. The result is the hourly amount to be paid to each service employee.)



Signature of employer_____

Name of signatory_____

Designation_____Date_____

Signature of witness_____

Name of witness_____

Designation_____Date_____

EMPLOYMENT LAW**FORM 8****GRATUITY- DISTRIBUTION STATEMENT****[Section 42]**

Employer's name_____

Employer's address physical address _____

Employer's postal address_____

Employer's phone number_____

Employer's fax number_____

Employer's e-mail address_____

Employee's name: _____

Matters relating to all service employees

Total amount of gratuities received for the period_____

_____ to _____

[enter day/month/year) (e.g. 01/January/2003 to 31/January/2003]

Total \$ _____

Total number of employees participating in distribution_____



Total number of hours worked by all employees participating in the distribution

Total amount of gratuity per hour _____

[weekly wage/ hourly rate/ terms of employment (part-time/full-time) _____

Matters relating to the particular employee

Total period of time with respect to which the employee will participate in gratuity _____ to _____

[enter day/month/year) (e.g. 01/January/2003 to 31/January/2003]

Hours particular employee worked this in relevant month:

Employee's start date: _____

Employee's end date (if applicable): _____

Number of hours worked by the employee _____

Gratuity payment to this employee: \$ _____

(e.g. total amount of gratuities collected in \$, divided by the total number of hours worked by all service employees this month, multiplied by the number of hours worked by this employee this month.)

Date of payment: _____

Notice to service employees:

Gratuities will be paid the first two weeks of the month following the end of the month to which they relate. Gratuities are paid for days worked only. Thus, no gratuities are paid for days-off/vacation/holiday-off/sick leave/paternity leave or other kinds of leave.

Your share of the monthly collection of gratuities will be calculated as follows:



The total number of hours worked by service employees per month, divided into the total amount of gratuities collected that month by the service employer. This equals the amount of money per hour that is due to a service employee from the gratuities collected. This amount per hour is then multiplied by the number of hours each service employee worked that month. This equals the amount of money a service employee will be paid per month as his share of the monthly gratuities of the employer.

Signature of employer_____

Name of signatory_____

Designation_____Date_____

Signature of witness_____

Name_____

Designation_____Date_____

EMPLOYMENT LAW

FORM 9

WARNING TO EMPLOYEE

[Section 56]

As per your contract of employment dated _____ a written warning notice is to be issued to you when your have misconducted yourself or your performance is substandard. You are required to sign this notice.



Your signature does not indicate your agreement with the contents of this notice. Your signature indicates only that you have received it.

Name of employee _____ Date _____

Name of employer: _____

This notice is served to you as written warning for the following reason(s):

Misconduct/substandard performance [indicate which one is applicable]

Details of misconduct/substandard performance [indicate]:

Action to be taken:

As this is a case of **MISCONDUCT**, you are entitled to one warning. Accordingly, you have _____ [insert a definite and reasonable period] from today to improve your conduct. IF YOUR CONDUCT DOES NOT CHANGE WITHIN THIS PERIOD, YOU WILL BE SUMMARILY DISMISSED, FORFEITING ANY UNEARNED BENEFITS AND FORFEITING ANY SEVERANCE PAY, IN ACCORDANCE WITH THE EMPLOYMENT LAW.

(or)



As this is a case of **SUBSTANDARD PERFORMANCE** for which you are entitled to two warnings, please note the following [delete below what does not apply]:

1. This is your FIRST WARNING regarding this substandard performance and you have _____ [insert a definite and reasonable period] from today during which you are not to repeat this kind of substandard performance.
2. As your substandard performance has not been corrected, this is your
SECOND AND FINAL WARNING regarding the same. You have
_____ [insert a definite and reasonable period] from today to
raise your level of performance. IF YOUR PERFORMANCE DOES NOT
IMPROVE WITHIN THE PERIOD SPECIFIED, YOU WILL BE SUMMARILY
DISMISSED, FORFEITING ANY UNEARNED BENEFITS AND FORFEITING ANY
SEVERANCE PAY, IN ACCORDANCE WITH THE EMPLOYMENT LAW.

Your first warning notice was issued to you on _____
(insert date)

Your second warning notice was issued to you on:

_____ (insert date)

Signature of employer/supervisor _____

Name _____

Designation _____ Date _____

Signature of witness _____ Name _____

Designation _____ Date _____

Signature of employee _____ Name _____

Designation _____ Date _____



Signature of witness: _____ Name _____

Designation: _____ Date _____

THE EMPLOYMENT LAW

FORM 10

REGISTRATION OF WORKPLACE

[Section 61]

Name of workplace:

Address of workplace _____

(street location, post office box and area)

Daytime phone number of workplace _____

Name of employer _____

Address of employer _____

Phone number of employer: _____

Description of work to be carried out in the workplace: _____

Machines to be used in the operation of the workplace and their functions

Time periods for any shift work _____



The number of persons employed or to be employed in the workplace:

Maximum number of persons who will be working at the same time

The name of the pension plan set up by or adopted by the employer and approved and registered by the Superintendent of Pensions (except public service pensions) for the benefit of the employees of the workplace

The name of the health insurance plan or policy provided by the employer for the benefit of the employees _____

The employer, _____, has purchased a workers' compensation policy with _____ [name the company or other entity]

(or)

has become bonded against the liability of employee injuries, accidents and occupational diseases in the amount of \$ _____

Name of the individual responsible for conflict resolution in the workplace



Employer/Manager/Supervisor

Signature of employer _____

Name of signatory _____

Designation _____ Date _____

Signature of witness _____

Name _____

Designation _____

Date _____

THE EMPLOYMENT LAW

FORM 11

NOTICE OF ACCIDENT OR DISEASE

[Section 67]

Name of injured employee _____

Date of birth _____

Date of accident _____

Time of accident _____

Location/address where the accident occurred _____

Vehicle, machine, tool or material involved in the accident/occurrence



Details of the injury or accident, or date when occupational disease was noticed
or diagnosed

Was the injured employee treated? Yes/No

If the injured employee was not treated, please state the reason (e.g. refused
treatment) _____

Where was the injured employee treated? Hospital/ doctor's office/ place of
accident/other (please give details) _____

Name of treating physician/nurse (if any) _____

Details of any treatment required/given _____



How was the injured employee transported to the place of treatment?
Ambulance/ taxi/car/other (please give details)

Were there any witnesses to the accident? Yes/No

If "Yes" please give details below for each witness:

Witness Number 1

Name _____

Residential address _____

Postal address _____

Home phone number _____

Work phone number _____

Home fax number _____

Work fax number _____

E-mail _____

Witness number 2

Name _____

Residential address _____

Postal address _____



Home phone number _____

Work phone number _____

Home fax number _____

Work fax number _____

E-mail _____

(continue on different page if more space is needed)

Describe how the accident occurred, what was the employee doing when the accident occurred? _____

Were the police notified? Yes/No

If "Yes" please give details below:

Police station _____ Date _____

Time of notification _____

Was the workers' compensation carrier notified? Yes/No

If "Yes" please give details below:

Name of compensation carrier _____

Date and time of notification to compensation carrier _____

Date and time of notification of Director of Employment Relations _____

Signature of employer _____

Name of signatory _____



Designation_____Date_____

Signature of witness_____

Name_____

Designation_____Date_____

Signature of employer_____Name of signatory_____

Designation_____Date_____

Signature of witness_____

Name_____

Designation_____

Date_____

Passed by the Legislative Assembly the 15th day of March, 2004.

LINFORD A. PIERSON

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.

