

LABOUR ACT, 2023

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LABOUR ACT, 2023

AN ACT ENTITLED

An Act to regulate the recruitment of labour, apprenticeship, the rights of employers and employees and for connected matters.

[]
ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Labour Act, 2023.

2. Interpretation

In this Act unless the context otherwise requires –

“apprentice” means a person who has entered into a contract of employment for a period during which the employer undertakes, on predetermined conditions, to provide methodical and complete vocational

training to that person who in return undertakes to serve the employer as an employee for the duration of the contract;

“apprenticeship contract” means a written or oral contract entered into by a person with an employer who undertakes to employ the person and train or provide methodical and complete vocational training for a trade in the course of which the apprentice is bound to work in the employer’s service, or business;

“Authority” means the National Accreditation and Quality Assurance Authority;

“bargaining agent” means a trade union which has agreed with an employer to represent category of that employer’s employees in negotiations concerning any matter which may be the subject of a trade or commercial dispute;

“Bureau” means the Gambia Bureau of Statistics;

“business” includes any trade or profession and any activity carried on by a body of persons for the purpose of making profit, whether corporate or unincorporated;

“casual worker” means a person, engaged by the day and from day to day who is paid on a daily basis and whose engagement by one and the same employer does not exceed 14 consecutive working days customary in the business in which the worker is engaged;

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

“collective agreement” means an agreement in writing regarding working conditions and terms of employment concluded between an employer, a group of employers’ organisations, and one or more representative workers’ organisations;

“Commissioner” means the Commissioner of Labour;

“commissioner of injuries” means the Commissioner responsible for the administration and enforcement of the injuries Compensation Act;

“Constitution” means the Constitution of The Republic of The Gambia;

“contract of employment” means an agreement of service or apprenticeship (whether oral or in writing, express or implied) between an employer and a person by which that person undertakes to make his or her services personally available to the employer in return for remuneration;

“Department” means the Department of Labour;

“disability” in relation to an individual, means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on a person’s social and economic participation;

“disciplined forces” includes the Armed Forces, Navy, Police Force, Intelligence Service and the Prisons Service;

“dock worker” includes transit shed labourer and tally clerk;

“domestic service” means a service provided by a person engaged to work wholly or mainly around a dwelling house, connected with that dwelling house or personally to those residing in that dwelling house and does not include service in connection of any trade, business or profession carried on by the employer in such dwelling house;

“employee” means-

- (a) a person who offers his or her services under an oral or written contract of employment, whether express or implied,
- (b) a person who offers his or her services personally to another whether under a contract of employment on a continuous, part-time, temporary or casual basis,
- (c) a person, including a tenant share cropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person-
 - (i) in a position of economic dependence, and
 - (ii) under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor, or
- (c) where the context requires, a former employee;

“employer” means-

- (a) a person, corporation, public authority, governing body of an unincorporated association, partnership or any other institution or organization whatsoever that enters into a contract of employment to employ a person as an employee, and includes an heir, successor and an assignee of the employer, and
- (b) includes where the context requires, a former employer;

“employment agency” means the business of providing services for the purpose of supplying employers with employees;

“employers’ organization” means an organization of employers established by employers, the principal purposes of which are the representation and promotion of employers’ interest and the regulation of relations between employers and employees and which is registered under this Act;

“enterprise” includes a body corporate, individual business, partnership and other group of people doing business;

“expatriate” means a non-Gambian working in The Gambia that possess skills that are rarely available in The Gambia;

“expatriate quota” means the allowable expatriates to be employed by businesses operating or wishing to operate in The Gambia;

“industrial action” means a concerted withdrawal of labour or restriction on the part of employees, or a lockout by which one or more employers deny work to employees;

“industrial undertaking” means-

- (a) a mine quarry or any other work for the extraction of minerals,
- (b) an undertaking in which-

- (i) articles are produced, manufactured, altered, cleaned, ornamented, finished, adapted for sale, broken up or demolished, or
- (ii) materials are transformed,
- (c) an undertaking engaged in food processing, agro-processing activities, ship building or in the generation, transformation or transmission of electricity or motive power and energy of any kind,
- (d) an undertaking engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition work;

“Joint Industrial Council” means a Joint Industrial Council established under this Act;

“labour only sub-contractor” means an employer or a person who, by himself or herself or through others, procures, engages, hires or supplies, or attempts to procure, engage, hire or supply, an employee to be employed by himself or herself or any other person, where the employee does not provide services to the employer but supplies them to a client or contractor;

“lockout” means the act of an employer closing an enterprise or business place, the suspension of work, or the refusal to continue to employ any number of employees, with a view to inducing or compelling employees directly, indirectly, or through their bargaining agent, to accept conditions of employment which the employer has offered, which offer had been rejected;

“management grade” means a level of employee who –

- (a) has a duty to supervise other employees or organise the work of other employees, or to participate in the administration of a business as distinct from directly participating in the production of goods, and
- (b) is designated by the employer as engaged in management;

“Minister” means the Minister responsible for Trade, Industry, Regional Integration and Employment and **“Ministry”** shall be construed accordingly;

“Officer” means a public official, including the Commissioner, a labour officer authorised by him or her, and where the context requires, any other person authorised to administer or give effect to this Act or any other law relating to the employment of persons in The Gambia;

“picketing” means the act of employees standing outside a place of work with the intention of persuading other employees not to enter the place of employment during a labour unrest;

“recruiter” means a person who recruits employees for other persons;

“register” means the registration done by the Registrar General;

“remuneration” means all things of monetary value payable directly or indirectly by the employer to the employee on account of his or her employment;

“strike” means the voluntary suspension of work, collectively agreed upon and carried out by the employees in defence of their common interests.

“trade dispute” means any dispute between an employer and an employee or between an employer and a group of employees over any of the following matters-

- (a) a term or condition of employment or performance of work,
- (b) the engagement or non-engagement of a person,
- (c) the demotion, suspension, termination or imposition of any other penalty or discipline on an employee,
- (d) the complaint of an employee concerning his or her employment,
- (e) the machinery for negotiation of any of the matters specified in subsection (a) to (d) or for the settlement of a grievance or dispute relating to an employee;

“trade union” means any organization registered under this Act in which employees participate, and which exists for the purpose of dealing with employers on behalf of employees to promote and protect the economic and social interest of employees;

“Tribunal” means the Industrial Tribunal established under this Act;

“victimisation” means an act of aggression in an organisation by one employee or group who targets another employee for the purpose of causing harm to the employee. Harm to the employee includes physical, psychological or emotional damage that can last a lifetime;

“wages” means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by national laws or regulations, which are payable in virtue of written or unwritten contract of employment by an employer to an employee for work done or to be done for services rendered or to be rendered; and

“workplace” means the place at which work is performed.

3. Application

- (1) Subject to subsection (2,) this Act applies to all forms of employment by an employer.
- (2) The Act does not apply to -
 - (a) the Civil Service;
 - (b) the Armed Forces, except persons employed in a civil capacity by it; and
 - (c) any of the disciplined forces, except persons employed in a civil capacity by them.
- (3) Notwithstanding subsection (1), the Minister may extend the application of this Act to any class of persons excluded in this section by an Order published in the *Gazette*.

PART II – ADMINISTRATION OF LABOUR MATTERS

4. The Commissioner of labour

- (1) There is established by this Act, the position of Commissioner of Labour who shall be appointed by the Public Service Commission in

accordance with the Public Service Rules and Regulations and the Scheme of Service of the Department.

- (2) The Commissioner shall be responsible for the administration of this Act and for such other matters relating to employment as the Minister may direct.

5. Authorisation of Officers by the Commissioner

- (1) The Commissioner may authorise an Officer of the Department of Labour to exercise any or all of his or her powers to enforce the Act, subject to such conditions as the Commissioner may provide.
- (2) An authorisation shall be in writing and may be revoked at any time by written notice.
- (3) The Commissioner shall notify the Minister whenever he or she gives or revokes an authorisation.

6. Functions of the Commissioner

The functions of the Commissioner include –

- (a) receiving and investigating all representations made to him or her concerning the application of this Act;
- (b) providing information and advice to employers and employees on matters relating to the application of this Act;
- (c) making periodic inspections of workplaces to ensure full compliance with this Act and any other law relating to employment; and
- (d) providing information and advice and preparing such reports as may be necessary for the administration of the Act.

7. Certificate of authority

- (1) The Commissioner shall furnish a certificate of authority to every Officer authorised by him or her under section 5.
- (2) An Officer shall-

- (a) in the course of carrying out his or her functions, produce his or her certificate of authority on the request of any person affected by the authority; and
 - (b) surrender the certificate to the Commissioner if so requested.
- (3) The Commissioner shall, so far as is reasonably practicable, endorse on the certificate of authority, the date of its revocation.

8. Impersonating an officer

A person who impersonates an Officer of the Department of Labour or a person authorised by the Commissioner, commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasis or imprisonment not less than one year or to both fine and imprisonment.

9. Powers of entry

- (1) The Commissioner or a Medical Officer may, for the purpose of enforcing this Act or any other law relating to the employment of persons, including the Injuries Compensation Act,

[Cap.56:04]

- (a) subject to subsection (2), enter-
 - (i) a workplace freely and without prior notice, at any hour of the day or night,
 - (ii) during the day, any premise which he or she reasonably believes to be a workplace;
- (b) carry out any examination, test or inquiry which he or she considers necessary in order to satisfy himself or herself that the provisions of this Act or any other law relating to the employment of persons, or the recruitment or housing of employed persons, are being strictly observed, and in particular, may-
 - (i) interrogate, alone or in the presence of witnesses, the employer or employees on any matter concerning the application of this Act and any other law relating to the employment of persons,

- (ii) require the production of any record, book, register or other document, the keeping of which is prescribed by this Act or any other law relating to the employment of persons or conditions of work, and make a copy of or take an extract from a document,
 - (iii) enforce the posting of any notice required by this Act or any other law relating to the employment of persons, and
 - (iv) take or remove, for purpose of analysis, samples of materials and substances used or handled, but the employer or the employer's representative must be notified of any sample or substance taken or removed under this section;
- (c) require from employers and employees, information regarding remuneration, working hours and conditions of work;
- (d) inspect any record of accidents or occupational diseases kept by the employer pursuant to the Injuries Compensation Act or any other law and require from an employer information on the causes and circumstances relating to any accident or occupational disease that may have occurred on the employer's premises or in the course of employment;

[Cap.56:04]

- (e) be accompanied by a member of the Gambia Police Force if he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty; and
 - (f) take steps, with a view to remedying defects observed in plant lay-out, installation or working methods which he or she reasonably believes constitute a threat to the health or safety of employees.
- (2) The Commissioner or Medical Officer shall not enter the private home of an employer pursuant to subsection (1), except with the consent of the employer or under the authority of a warrant issued by a Judicial officer.

- (3) A person exercising authority under subsection (1) (e), may give an order requiring-
- (a) such alteration to the plant installation or layout, to be carried out, the date it takes effect and the corrective action required to terminate its effectiveness, as may be necessary to secure compliance with the legal provisions relating to health and safety of employees; or
 - (b) where there is imminent danger to the health or safety of the employees, the taking of measures, including plant closure with immediate executory force.
- (4) In this section, “**employment of persons**” includes the recruitment of persons for employment and the provision by the employer of housing and food for employees or persons being recruited for employment.
- (5) Where the Commissioner or an authorised officer removes any article from the premises of the employer, he or she shall give to the employer or his or her representative, written notification of the article taken or removed and provide for the safe custody of the article until such time as the article may be returned or where appropriate, discarded.

10. Notification of presence of officer on visit

An officer who is on an inspection visit shall notify the employer or the employer’s representative of his or her presence, unless he or she considers that such notification may be prejudicial to the performance of his or her duties.

11. Employer’s duties during inspection visits

An employer shall -

- (a) afford each employee, an opportunity and the necessary facilities to communicate freely with an officer; and
- (b) when so requested, afford every reasonable assistance to the officer.

12. Prohibition of victimisation

- (1) An employer shall not victimise an employee for anything done by the employee in pursuance of the provisions of this Part.

(2) For the purpose of this section, victimisation includes –

- (a) physical assaults;
- (b) physical abuse;
- (c) psychological abuse;
- (d) bullying;
- (e) harassment;
- (f) racial bias;
- (g) sexual harassment;
- (h) malicious gossip; or
- (i) undermining a person's authority.

(3) An employer who contravenes subsection (2) commits an offence and is liable on conviction to a fine not less than ten thousand dalasis.

13. Prohibition against divulging information

(1) An Officer shall not, while in office or subsequently, reveal any manufacturing or commercial secret or working process, which comes or came to his or her knowledge in the course of his or her duties.

(2) An Officer shall treat as confidential, the source of any complaint about a contravention of this Act and shall not reveal to the employer or the employer's representative that an inspection is being done in consequence of a complaint.

14. Prohibition against conflict of interest

An Officer shall not have any direct or indirect interest in an enterprise under his or her supervision.

15. Assistance to small enterprises

An Officer shall, in exercise of his or her powers-

- (a) take into account the size, capitalization and degree of formality of the operation of an enterprise under his or her supervision; and
- (b) make all reasonable efforts to assist small and informal enterprises in understanding and complying with this Act and any other law relating to the employment of persons.

16. Other powers of the Commissioner

(1) The Commissioner may –

- (a) where a person is sick or the condition of his or her employment is not conducive to the timely recovery of his or her health, require the employer, at the earliest opportunity and at his or her own expense, to send the person to the hospital; and
 - (b) prohibit the further engagement of an employee at any place of employment where the conditions in the place do not comply with the requirements of this Act or Regulations made under it.
- (2) Where any question, difference or dispute concerning the employment relationship arises between an employee and an employer, either party may report the matter to the Commissioner who shall take such steps as he or she deems expedient to encourage an amicable settlement between the parties.
- (3) Where the Commissioner initiates an amicable settlement subject to subsection (2), the employee shall be asked whether he or she is a member of a trade union and if so, an appropriate official of the trade union shall be informed in writing of the matter.

17. Report of breach of Injuries Compensation Act

An Officer who in the exercise of his or her authority under this Act discovers a breach of the Injuries Compensation Act, he or she shall report it to the Commissioner of Injuries.

18. Obstruction of officers

(1) A person who-

- (a) wilfully obstructs, hinders or delays the Commissioner in the exercise of any of his or her functions under this Act;
- (b) without reasonable cause, fails to comply with any lawful direction given or made by the Commissioner under this Act;
- (c) without reasonable cause, fails to produce any book, register or other document which he is required to produce under this Act;
- (d) conceals any employee who is required to appear or be questioned by the Commissioner, or otherwise who prevents any such employee from so appearing or being questioned;
- (e) wilfully or without reasonable cause, refuses or neglects to supply within the specified time, information required by the Commissioner;
- (f) wilfully supplies or causes to be supplied to the Commissioner any false information; or
- (g) refuses to answer any questions lawfully put by the Commissioner for the purposes of this Act,

commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dalasis or to imprisonment not exceeding three years, or to both fine and imprisonment.

(2) Notwithstanding subsection (1), a person is not obliged to answer any question or make any statement that may incriminate him or her.

(3) The Commissioner may institute proceedings in his or her own name against any person for any contravention of, or offence committed under this Act, and may appear in and conduct any such proceedings.

- (4) A prosecution for an offence under this Act shall not be instituted after the expiration of one year from the date of the commission of the offence.

19. Employer to furnish statistics

- (1) An employer of more than five persons shall supply in writing to the Commissioner on or before a date fixed by the Commissioner, such information as he or she may request concerning the employment of persons by the employer.
- (2) This section does not apply to an employer who is exempted by written notification of the Minister to the Commissioner.

20. Duty of certain Employers to furnish information

- (1) An employer of more than five persons shall furnish the Commissioner in writing, such information as he or she may request concerning the employment of persons by the employer.
- (2) This section does not apply to an employer who is exempted by written notification of the Minister to the Commissioner.

21. Commissioner to forward information to Gambia Bureau of Statistics

The Commissioner shall forward all information received by him or her under section 20 –

- (a) to the Gambia Bureau of Statistics in a form specified by the Bureau; and
- (b) on request, to any other agency of Government authorised to receive it.

22. Duty of the Commissioner to report a contravention of this Act

Where the Commissioner considers that a contravention of this Act has occurred, he or she may take such steps as may be necessary to report the matter to –

- (a) the Police; or
- (b) any other appropriate public authority,

for legal redress.

PART III – LICENSING OF PRIVATE EMPLOYMENT AGENCIES

23. License to operate private employment agency

- (1) A person shall not establish or operate a private employment agency unless he or she –
- (a) operates as a corporate body; and
 - (b) has been granted a license by the Minister.
- (2) A license granted by the Minister shall, subject to the terms and conditions stipulated in the license, be valid for a period of one year and may be renewed.
- (3) The Minister shall prescribe the fees for the grant or renewal of a license.

24. Recruitment of employees

- (1) An Agency licensed under this Part shall not recruit employees for employment in a country outside The Gambia unless –
- (a) it is authorised to do so under its license; and
 - (b) there exists an agreement between The Gambia and that other country for recruitment of employee.
- (2) An Agency shall submit to the Minister not later than fourteen days after the end of every three months, returns in respect of employees recruited, both within The Gambia or outside, during that period.

25. Revocation of License

The Minister may revoke the license of an Agency that fails to comply with this Part.

PART IV – LABOUR ADVISORY BOARD

26. Establishment of the Labour Advisory Board

There is established by this Act, the Labour Advisory Board.

27. Composition of the Board

- (1) The Board shall consist of –
 - (a) the Permanent Secretary of the Ministry;
 - (b) the Solicitor General and Legal Secretary;
 - (c) two representatives of employers, nominated by the employers' association and appointed by the Minister;
 - (d) two representatives of employees, nominated by the Trade Union and appointed by the Minister;
 - (e) the Commissioner of Labour, who shall be the Secretary to the Board; and
 - (f) an independent person appointed by the Minister, who shall be the Chairperson.
- (2) The non-ex-officio members of the Board shall be appointed for a term of three years and may only be re-appointed once.
- (3) A non-ex-officio member of the Board may be removed by the Minister if he or she –
 - (a) is convicted of an offence involving misconduct, dishonesty or fraud;
 - (b) is unable to perform his or her functions due to infirmity of mind or body or for any cause; or
 - (c) knowingly engages in any activity detrimental to the interest of the board.
- (4) A member may resign his or her position on giving at least three months' notice of his or her intention in writing to the Minister.
- (5) The Board may regulate the conduct of its meetings.

28. Functions of the Board

- (1) The Board shall advise the Minister on any matter concerning-
- (a) legislation on labour industrial relations;
 - (b) matters which the Minister or Commissioner is required by this Act to consult the Board;
 - (c) employment, industrial relations or organization of employers or employees;
 - (d) the operation of the Industrial Injuries Compensation Scheme;
 - (e) the operation of the Factories Act, and any other provision made concerning the safety of employees;
(Cap.56:02)
 - (f) international labour standards of the International Labour Organisation, including their setting, ratification, implementation, reporting requirement, or denunciation; and
 - (g) the employment of persons in The Gambia.
- (2) The Board shall review the classification of grades of employment and the wage levels established for trade tested employees, and submit its recommendations to the Minister and the Chairperson of the appropriate Joint Industrial Council.

29. Advice of the Board

The Board shall provide its advice in writing to the person requesting it, or through such other means as it deems appropriate.

PART V – EXPATRIATE QUOTA ALLOCATION BOARD

30. Establishment of the Expatriate Quota Allocation Board

There is established by this Act, the Expatriate Quota Allocation Board.

31. Composition of the Expatriate Quota Allocation Board

The Expatriate Quota Allocation Board shall comprise the –

- (a) Permanent Secretary of the Ministry, who shall be the Chairperson;
- (b) Permanent Secretary, office of the President;
- (c) Permanent Secretary, office of the Vice President;
- (d) Permanent Secretary, Ministry of Gender, Children and Social Welfare;
- (e) Permanent Secretary, Ministry of Finance and Economic Affairs;
- (f) Permanent Secretary, Ministry of Tourism and Culture;
- (g) Permanent Secretary, Ministry of Higher Education, Research, Science and Technology;
- (h) Permanent Secretary, Ministry of Interior;
- (i) Commissioner General, Gambia Revenue Authority;
- (j) Commissioner of Labour;
- (k) Director General of The Gambia Immigration Department;
- (l) Solicitor General and Legal Secretary;
- (m) Chief Executive Officer of the Gambia Investment and Export Promotion Agency;
- (n) Managing Director, Social Security and Housing Finance Corporation;
- (o) head of the Employment Directorate at the Ministry, who shall be the Secretary to the Board;
- (p) a representative from the Gambia Chamber of Commerce and Industry; and
- (q) one representative from the Trade Unions.

32. Functions of the Expatriate Quota Allocation Board

(1) The Expatriate Quota Allocation Board shall notwithstanding section 9A of the Pay Roll Tax Act, -

[Cap. 83:04]

- (a) review all applications for expatriate quota and advise the Minister;
- (b) issue guidelines for expatriate quota applications and monitor their implementation;
- (c) organise conferences, trainings, seminars and workshops on the implementation of the expatriate quota system;
- (d) ensure that decisions are taken on applications within five working days from the date of receipt of an application and send its recommendation to the Minister for approval or otherwise within fourteen days;
- (c) liaise with the Gambia Revenue Authority to ensure that no payment is received under the Pay Roll Act for expatriate quota without the prior approval of the Minister; and
- (d) take all necessary steps to ensure compliance with its processes and procedures.

[Cap. 83:04]

(2) An application for Expatriate Quota shall be in accordance with the Expatriate Quota Regulations issued by the Minister under this Act.

33. Secretary of the Expatriate Quota Allocation Board

(1) The Secretary to the Expatriate Quota Allocation Board shall –

- (a) coordinate all processes relating to expatriate quota applications;
- (b) supervise the Expatriate Quota Secretariat;

- (c) receive all applications processed by the Expatriate Quota Secretariat and forward them to the Expatriate Quota Allocation Board;
- (d) prepare the agenda for all meetings of the Expatriate Quota Allocation Board in consultation with its Chairperson and send notices for meetings to members;
- (e) keep records of all meetings and decisions of the Expatriate Quota Allocation Board and reports received from the Expatriate Quota Secretariat;
- (f) develop a database of all data relating to the implementation of the expatriate quota system;
- (g) convey decisions of the Minister to the Expatriate Quota Secretariat for onward transmission to the Applicants;
- (h) keep the Expatriate Quota Allocation Board up to date with the level of implementation of all approvals given by the Minister; and
- (i) perform any function that may from time to time be assigned to him or her by the Expatriate Quota Allocation Board.

(2) The Board may regulate the conduct of its meetings.

34. Establishment of the Expatriate Quota Secretariat

- (1) There is established by this Act, the Expatriate Quota Secretariat which shall be headed by the Commissioner of Labour.
- (2) The Expatriate Quota Board shall be supported by the Expatriate Quota Secretariat.

35. Functions of the Expatriate Quota Secretariat

The Expatriate Quota Secretariat is responsible for –

- (a) the sale of expatriate quota application forms;
- (b) receiving and processing all applications to ensure compliance with the regulations and guidelines of the Expatriate Quota Allocation Board;

- (c) collating all application forms and submitting them to the Secretary appointed under section 34 for onward transmission to the Expatriate Quota Allocation Board;
- (d) issuing demand notes to successful applicants for payment of Pay Roll Tax to The Gambia Revenue Authority;
- (e) issuing Expatriate Quota certificate to successful applicants upon receiving the receipt of payment of the Pay Roll Tax at The Gambia Revenue Authority;
- (f) maintaining a database of records of all information and documents relating to expatriate quota;
- (g) submitting monthly reports to the Expatriate Quota Allocation Board through the Secretary on payment and monitoring of the implementation of the expatriate quota; and
- (h) such functions as may be assigned to it by the Secretary to the Board.

36. Establishment and composition of the Monitoring and Enforcement Committee

- (1) There is established by this Act, the Expatriate Quota Monitoring and Enforcement Committee.
- (2) The Expatriate Quota Monitoring and Enforcement Committee shall comprise of a representative of the -
 - (a) Gambia Immigration Department;
 - (b) Department of Labour;
 - (c) Gambia Revenue Authority; and
 - (d) The Ministry.

37. Functions of the Committee

- (1) The Monitoring and Enforcement Committee is responsible for conducting periodic and spot inspections of all establishments that employ non-Gambians who are liable to Pay Roll Tax in compliance with this Act and the Pay Roll Tax Act.

[Cap. 83:04]

- (2) The Committee may assist applicants to fill the expatriate quota application form and sensitise the public on the expatriate quota system.

38. Training of Gambians by employers

- (1) Notwithstanding anything contained in the Immigration Act and the Pay Roll Act, an employer of an expatriate to whom an expatriate quota is granted by the Minister, shall employ a Gambian counterpart to understudy the holder of the expatriate position to ensure expatriates working in the country transfer research, development and technology, knowledge and skills to Gambian understudies.

[Cap.16:02]

[Cap. 83:04]

- (2) The Expatriate Quota Board shall not grant an expatriate quota to an employer for a position where the knowledge, skills or expertise for the position exists locally.

39. Offences and penalties against this Part

- (1) An employer who employs an expatriate without acquiring an expatriate quota clearance or fails to renew the expatriate quota clearance allocated to the employer commits an offence and is liable on conviction to a fine of not less than five hundred thousand dalasis.
- (2) An employer who fails to employ a Gambian to understudy an expatriate employee commits an offence and is liable on conviction to a fine of not less than five hundred thousand dalasis.

PART VI – THE INDUSTRIAL TRIBUNAL

40. Establishment of the Industrial Tribunal

- (1) There is established by this Act, the Industrial Tribunal.
- (2) The Tribunal shall operate in all regions of The Gambia and in such other place as the Chief Justice may determine.

41. Composition of, Resignation and Vacancy in, the Tribunal

- (1) The Tribunal shall be presided over by a First-Class Magistrate as the Chairperson and a panel of four members appointed by the Chief Justice, on the recommendation of the Judicial Service Commission.
- (2) The quorum of the Tribunal shall be of three members.
- (3) The Judicial Service Commission may, in making a recommendation under subsection (1), consult with the Ministry, organisations of employers, trade unions and the management of public corporations.
- (4) The members of the Tribunal shall be-
 - (a) persons with experience in Industrial relations, law, management, trade unionism or industrial relations;
 - (b) appointed for a term of three years and may only be reappointed once; and
 - (c) paid such sitting allowances as may be approved by the Judicial Service Commission.
- (5) A member of the Tribunal may resign his or her office by notice in writing addressed to the Chief Justice.
- (6) Where the Chief Justice is satisfied that a member is-
 - (a) incapacitated by physical or mental illness as certified by the Medical Board; or
 - (b) otherwise unfit to discharge the functions of his or her office,

he or she shall declare the position vacant and refer the vacancy to the Judicial Service Commission for recommendation of a suitable replacement.

42. Officers of the Tribunal

- (1) The officers of the Magistrate's Court appointed under section 24 of the Courts Act shall provide secretariat support for the Tribunal.

[Cap.6:01]

- (2) The officers of the Tribunal –
- (a) may exercise such powers and perform such duties, in so far as they are applicable to the business of the Tribunal, as those exercised or performed by them in the Magistrate's Court; and
 - (b) shall be subject to the same liabilities and penalties and have the same protections as attached by virtue of the Courts Act to a person exercising or performing similar powers or duties under that Act.
- (3) The Commissioner may, in addition to the officers of the Tribunal specified in this section, authorise any public officer to assist in conciliation proceedings under this Act.

43. Appearance before the Tribunal

A person may appear before a Tribunal in person or may be represented by –

- (a) a Legal Practitioner;
- (b) a representative of a trade union or an employer's association; or
- (c) any other person of his or her choice.

44. Tribunal hearings

The hearings of the Tribunal shall be open to the public, except in cases where sexual harassment is alleged, which may be held in camera.

45. Immunity of members of the Tribunal

A member of the Tribunal shall have similar protection and privileges for any act done in the execution of his or her duties as is by law given to a Magistrate in the execution of his or her office.

46. Jurisdiction of the Tribunal

- (1) Subject to subsection (2), the Tribunal shall exercise jurisdiction in respect of all individual claims arising under a contract of employment and agency contracts and other labour related disputes.
- (2) The Tribunal has jurisdiction in any matter specified in subsection (1) against any person in The Gambia at the time the claim is brought, whether or not the cause of action arose in The Gambia or the person by or against whom the complaint is brought, is ordinarily resident in The Gambia.
- (3) Subject to the original jurisdiction of the High Court, the Tribunal has exclusive original jurisdiction in any matter specified in subsection (1).

47. Set-off and adjustment of claims

- (1) The Tribunal may exercise all the powers of a First-Class Magistrate in respect of proceedings before it, but has unlimited jurisdiction to make pecuniary awards.
- (2) The Tribunal may, in proceedings before it –
 - (a) adjust and set-off one against the other, all claims of the parties arising out of or incidental to the employment relation between them, whether under provisions of this Act or otherwise; and
 - (b) direct the payment by one party to the other of any sum it finds due.

48. Cancellation of employment contract

The Tribunal may order the cancellation of a contract of employment, subject to such conditions as to payment of remuneration or other money due under the contract or damages or compensation as the Tribunal sees fit to impose, but shall not make an order in respect of any non-contractual right granted by this Act.

49. Business to be conducted according to Rules

- (1) The Tribunal shall receive claims, conduct its proceedings, make awards and orders and conduct its business in accordance with Industrial Tribunal Rules issued by the Minister under this Act.
- (2) The Minister may from time to time amend the Tribunal Rules.

PART VII – RIGHTS AND DUTIES OF EMPLOYERS AND EMPLOYEES

50. Rights of an employer

Subject to this Act, an employer has the right to –

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

51. Duties of an employer

Without prejudice to the other provisions of this Act and any other enactment for the time being in force, in any contract of employment or collective agreement, an employer shall –

- (a) provide work and appropriate raw materials, machinery, equipment and tools to employees;
- (b) pay the agreed remuneration at the time and place agreed in the contract of employment or collective bargaining agreement or by-law agreed between the employer and the employee;
- (c) take all practicable steps to ensure that the employee is free from risk of personal injury or damage to his or her health during and in the course of the employee's employment or while lawfully on the employer's premises;
- (d) develop human resources by way of training and retaining of employees;

- (e) provide and ensure the operation of an adequate procedure for discipline of the employees;
- (f) furnish the employees with a copy of their contract of employment;
- (g) keep open the channels of communication with the employees; and
- (h) protect the interests of the employees.

52. Rights of an employee

An employee has the right to fair labour practices, including the right to-

- (a) work under satisfactory, safe and healthy conditions;
- (b) receive equal pay for equal work without distinction of any kind;
- (c) rest, leisure and reasonable limitation of working hours and period of holidays with pay as well as remuneration for public holidays;
- (d) form, join, participate, and organise a trade union;
- (e) be trained and retained for the development of his or her skills; and
- (f) receive information relevant to his or her work.

53. Duties of an employee

Without prejudice to the other provisions of this Act, an employee under any contract of employment or collective agreement, shall-

- (a) work conscientiously in his or her occupation;
- (b) report for work regularly and punctually;
- (c) enhance productivity of his or her employer's business;
- (d) exercise due care in the execution of assigned work;

- (e) obey lawful instructions regarding the organisation and execution of his or her work;
- (f) take all reasonable care for the safety and health of fellow employees;
- (g) protect the interests of his or her employer at all times; and
- (h) take proper care of the property of the employer entrusted to his or her immediate control.

PART VIII – EMPLOYMENT OF CHILDREN

54. Prohibition of child labour

- (1) Subject to subsection (2) and the Children's Act, a person shall not engage a child in any public or private agricultural, industrial or nonindustrial undertaking.

[Cap. 45:01]

- (2) Subsection (1) does not apply to work done in a vocational or technical school or other training institution, if the work is-

- (a) approved and supervised by a public authority; or
- (b) an integral part of the educational or vocational training programme for which the school or institution is responsible.

55. Hazardous work

- (1) Subject to the Children's Act, a person shall not engage a child in any occupation or activity that is likely to be-

- (a) harmful to the health, safety, education, morals or development of the child; or
- (b) prejudicial to his or her attendance at school or any other vocational or technical training program.

[Cap. 45:01]

- (2) The Minister may, in consultation with relevant organisations of employers and employees, specify by notice published in the *Gazette*, occupations or activities, which in his or her opinion, are likely to have the effect mentioned in subsection (1).

56. Registry of employed children

An employer shall keep a register of any person under the age of eighteen years, employed by or working for him or her.

57. Liabilities of parents or guardians

A parent or guardian of a child who by his or her wilful default or neglect to exercise due care, causes a child to enter into employment in contravention of this Act, commits an offence.

58. False certificate or representation as to age

Where a child is employed in contravention of this Act on a false representation of his or her age, by, or with the knowledge of his or her parent or guardian, that parent or guardian commits an offence.

59. Offences against this Part

Subject to the Children's Act, a person who contravenes a provision under this Part commits an offence and is liable on conviction to a fine of not less than one hundred thousand dalasis or imprisonment for a term not exceeding five years or to both the fine and imprisonment.

[Cap. 45:01]

PART IX – EMPLOYMENT OF WOMEN

60. Night work or overtime by pregnant employees

(1) Except with his or her written consent, an employer shall not-

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

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

- (3) Upon receipt of a complaint, the Commissioner shall investigate the complaint, make his or her decision on the matter and issue such directives as may be appropriate, which shall be binding on the employer.
- (4) Notwithstanding subsection (2), a pregnant employee may seek redress before the Industrial Tribunal.

61. Protection of assignment of pregnant women

- (1) An employer shall not assign, whether permanently or temporarily-
 - (a) a pregnant employee to a post outside her place of employment after the completion of the fourth month of pregnancy, and
 - (b) if the assignment, in the opinion of a medical practitioner or midwife, is detrimental to her health.
- (2) The pregnant employee may present a written complaint to the Commissioner against the employer who contravenes subsection (1) or seek redress before the Tribunal.

62. Maternity leave

- (1) A female employee, on production of a medical certificate issued by a medical officer indicating the expected date of her confinement, is entitled to a period of six months maternity leave with pay in accordance with the Women's Act.
[Women's Act 2010]
- (2) A female employee who is nursing her unweaned child, is entitled each working day, at a time convenient to her, at least-
 - (a) two nursing breaks of thirty minutes each; or
 - (b) one nursing break of one hour;during her working hours.
- (3) An employer shall not dismiss a female employee during her absence from work on maternity leave.

- (4) A female employee may be granted a periodic time off during working hours for antenatal care subject to certificate provided by a registered medical practitioner.
- (5) An employer shall, where the employer sends an employee on forced leave, pay the employee basic pay during the period of the forced leave.
- (6) The Minister may, by Regulations, prescribe the circumstances under which an employee is required to be sent on forced leave.
- (7) In this Part –

“forced leave” means a situation where an employee is required to take a temporary leave of absence from work against his or her own will.

“night work” in relation to women, means work at any time within a period of eleven consecutive hours that includes the seven consecutive hours occurring between ten o’clock in the evening and seven o’clock in the morning but in industrial undertakings which are influenced by the seasons, the work may be reduced to ten hours in sixty days of the year; and

“nursing mother” means a woman breastfeeding a child for a period of not more than eighteen months after delivery.

63. Paternity leave

A male employee who becomes a father is entitled to claim within six months of the birth of the child, a period of ten working days, as paternity leave with pay in accordance with the Women’s Act.

[Women’s Act 2010]

PART X – EMPLOYMENT OF PERSONS WITH DISABILITIES

64. Special incentive

- (1) The Department of Labour shall promote employment opportunities and career advancement for persons with disabilities in the labour market.

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

65. Notification of employment of persons with disabilities

An employer who employs a person with disability shall notify the Commissioner of the employment and where the employer fails to do so, the Commissioner shall direct the employer to comply.

66. Particulars of contract of employment

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

67. Employment not to cease upon disablement

- (1) An employer shall not terminate the employment of an employee who becomes disabled if his or her residual capacity for work is such that he or she can be employed in the same or some other corresponding job in the same workplace.
- (2) If no such corresponding job can be found in the same workplace, the employment may be terminated by notice.

68. Transfer of persons with disabilities

- (1) Subject to subsection (2), an employee who becomes disabled may be transferred to another job within the same workplace if the other job can be regarded in the light of all relevant circumstances as a corresponding job.
- (2) The relevant circumstances mentioned in subsection (1) include –
 - (a) the person's qualifications;
 - (b) the person's physical condition;

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

69. Training of employed persons with disabilities

Where it is necessary to train or re-train a person with disability to overcome any aspect of his or her disability in order to cope with any aspect of his or her employment, the employer shall arrange for his or her training or re-training at the employer's expense.

PART XI - LABOUR ONLY SUB-CONTRACTING

70. Labour only sub-contracting

- (1) A person who operates as a labour only sub-contractor without a certificate of exemption issued under this Act commits an offence in respect of each employee engaged by him or her.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine not less than five hundred dalasis each day on each offence or imprisonment for a period not exceeding two years, or to both the fine and imprisonment and to deportation from The Gambia if he or she is not a citizen of The Gambia.

71. Arrangements to use non-exempted labour only sub-contracting

- (1) A person who enters into a contract or arrangement for labour only services with a labour only sub-contractor who does not hold a certificate of exemption issued under this Act-
 - (a) is deemed for all purposes to be the employer whose services he or she obtains under the contract or arrangement; and
 - (b) commits an offence in respect of each person whose services he or she obtains.
- (2) A person who commits an offence under subsection (1) is liable on conviction to a fine of not less than fifty thousand dalasis for each offence.

72. Application for exemption

A person seeking an exemption to operate as a labour only sub-contractor shall apply in writing to the Commissioner, specifying-

- (a) the clients or contractors to whom he or she intends to supply an employee;
- (b) the categories of employees he or she intends to supply; and
- (c) any exceptional terms and conditions of employment he or she anticipates will be applicable to the employees.

73. Certificate of exemption

(1) The Commissioner may issue a certificate of exemption if he or she is satisfied that -

- (a) the circumstances which led to the desire of the client or contractor to secure labour by way of a labour only subcontractor are wholly exceptional; and
- (b) without resort to the labour only sub-contracting, Gambian employees will lose or fail to secure employment.

(2) The Commissioner may only issue a certificate of exemption on the following conditions-

- (a) labour-only subcontractor will only supply labour to the persons specified in the certificate;
- (b) the terms and conditions of employment are not less favourable than those that might reasonably be expected by the employees in that part of The Gambia;
- (c) a person to whom the certificate is issued makes appropriate contributions to all statutory social security, industrial injuries, training and insurance funds appropriate to the employees;
- (d) a person to whom the certificate is issued makes a return to the Commissioner not less than once in every three months showing the -

- (i) charge he or she makes to each client or contractor,
 - (ii) numbers and classes of employees supplied to each client or contractor,
 - (iii) wages paid to each class of employees in each case during the whole of the period since the previous return; and
 - (e) a person to whom the certificate is issued deposits an approved bank guarantee.
- (3) The Commissioner may charge such fee as is approved by the Minister for the issue of a certificate of exemption and the filing of the required returns.
- (4) A certificate of exemption issued by the Commissioner shall –
- (a) state the name and address of the exempted person and company; and
 - (b) state the date of commencement and expiry of the certificate.
- (5) A certificate of exemption shall remain in force for not more than three years, and may be renewed on satisfaction of the conditions laid down in this section.
- (6) A labour-only subcontractor operating under a certificate of exemption issued under this section is deemed for all purposes to be the employer of the employees engaged by him or her.

PART XII - MAINTENANCE AND DEVELOPMENT OF HUMAN RESOURCES

74. Obligation to ensure competence

- (1) An employer shall ensure that-

- (a) newly engaged or transferred employees are either able to undertake their job adequately and safely or are provided with appropriate training to enable them to do so; and
 - (b) where new work methods are introduced to an existing job, adequate training is provided as would enable an employee of reasonable ability, in the performance of the job before the introduction, to continue to perform his or her work adequately and safely under the changed circumstances.
- (2) Where an employee may reasonably be considered to have qualified to receive a trade certificate as result of the training, he or she-
 - (a) is deemed to have applied to be examined for the trade certificate; and
 - (b) shall notify the examining authority of the application.

75. Remuneration during period of training

An employer shall pay to his or her employee during any period of training, wages not less than the amount the employee was entitled to receive immediately before the commencement of the period of training.

76. Quality of training

- (1) The Authority may at any time, inspect any training facility provided or used by an employer and make recommendations as to the conduct and quality of training provided at the facility.
- (2) An employee undergoing training, or a trade union acting on his or her behalf, may at any time before or within one month of the conclusion of a training, complain to the Authority that the conduct, nature or quality of the training will not provide the skills needed to enable the employee do his or her job.
- (3) Where a complaint is made under subsection (2), the Authority shall conduct an inquiry and if it finds the complaint wholly or partially wellfounded, shall give such recommendations as are necessary to ensure that adequate training is provided for the employee.
- (4) An employer or operator of the training facility that fails to comply with the recommendations of the Authority under subsection (3) is liable on conviction to a sum equivalent to five times the wages which the employee would be entitled to receive during the whole period of training.

- (5) On receipt of the sum specified under subsection (4), the Tribunal shall, in consultation with the Authority, arrange to provide a suitable alternative course of training for the employee.

77. Apprenticeship

- (1) Unless otherwise provided in this section, every employer shall maintain one suitable apprentice for every ten employees, each of whom shall be engaged on a course of apprenticeship approved by the Authority.

- (2) Without prejudice to subsection (1)-

(a) an employer of less than an aggregate of ten persons at all its establishments; or

(b) any other employer,

may send such number of his or her employees as approved by the Authority to one or more courses approved by the Authority conducted by a technical institute or by the employer.

- (3) The Authority may, on the application by an employer, permit the substitution of some other suitable course of training for any one or more of the apprenticeships required by subsection (1).

- (4) The Minister may by Order published in the *Gazette*, exempt an employer from the provisions of subsection (1).

- (5) An apprenticeship commenced by reason of this section shall not be terminated because-

(a) the number of those employed by the employer falls below the number required to institute a course of apprenticeship; or

(b) he or she becomes exempt from the obligation imposed by subsection (1).

78. Terms of apprenticeship

(1) An employer who is party to a contract of employment with an apprentice shall retain the apprentice and offer him or her appropriate training throughout the term of the contract, unless-

- (a) subject to the Injuries Compensation Act, a personal injury to the apprentice has made it reasonably impracticable to continue that training; or

[Cap.56:04]

- (b) the apprentice has been dismissed.

(2) An employer who has an apprentice and proposes to go out of business before the completion of the period of apprenticeship, shall-

- (a) arrange to transfer the apprenticeship to another suitable employer; or
- (b) if the apprentice reasonably refuses the transfer or no transfer is offered, pay to the Authority, compensation of such amount as may be prescribed by the Minister for each uncompleted year or part of an uncompleted year of the apprenticeship.

(3) Section 77(5) applies to the continuation of an apprenticeship by the Authority under subsection (2).

(4) An amount of compensation payable by reason of subsection (2) is deemed to be a debt owed by the employer and is to be so treated on the insolvency, winding up or death of the employer.

79. Application for trade testing

(1) An employee who wishes to secure a certificate of competence in any trade or occupation to which a trade certificate is normally available may apply to the Authority for examination and certification.

(2) The Commissioner shall refer to the Authority or such other examining body as may be appropriate, an application made to him or her under subsection (1).

(3) The Authority or other examining body referred to in subsection (2) shall, after appropriate examination, that the applicant is qualified to receive a trade certificate in respect of one or more trades, issue the applicant with the appropriate trade certificate.

80. Trade and job classification

- (1) The Labour Advisory Board may revise the recognised trade and job classifications and the descriptions applicable to them in respect of a Joint Industrial Council.
- (2) The Labour Advisory Board shall not revise trade and job classifications in any collective agreement made between one or more trade unions and one or more employers or organisations of employers.

81. Employment service and registry of job seekers

- (1) The Commissioner shall establish and maintain an employment service registry to bring together persons offering and seeking employment at the Department of Labour.
- (2) The Commissioner shall take such measures as he or she deems fit to promote the use of the employment service registry, including –
 - (a) maintaining the registry at the Department of Labour in a way that makes it an effective tool for matching employers with job seekers;
 - (b) encouraging employers to notify the employment service of vacancies in their establishments;
 - (c) encouraging job seekers to register their availability for work;
 - (d) consulting with trade unions, employers' organisations, and the Labour Advisory Board on how to make the employment service effective; and
 - (e) establishing services designed to attract users of the employment service registry throughout The Gambia.

PART XIII - CONTRACTS OF EMPLOYMENT

82. Types of contracts

- (1) Unless otherwise provided by this Act, this Part applies to all types of contracts of employment.
- (2) A contract of employment may be in any one of the following forms –
 - (a) an unspecified period of time;
 - (b) a specified period of time; or
 - (c) a specific task.

83. Nullity of provisions prohibiting trade union membership

A term or condition, whether express or implied, in a contract of employment-

- (a) prohibiting an employee from becoming or remaining a member of a trade union or any other organisation representing employees; or
- (b) purporting to subject the employee to any penalty, loss of benefit or detriment by reason of membership of the trade union or organisation,

is null and void.

84. Probationary period

- (1) In a contract of employment for a skilled employee, the parties may agree on the duration of the probationary period, which shall not exceed twelve months.
- (2) In a contract of employment for –
 - (a) a semi-skilled employee, the probationary period shall not exceed six months; and
 - (b) an unskilled employee, the probationary period shall not exceed three months.
- (3) During a probationary period, either party may terminate contract of employment at any time without notice and without regard for the requirement set out in section 90 of this Act.

- (4) In this section, “skilled employee” means an employee in an enterprise who through acquisition, of knowledge, attitude and behaviour, has special ability to do something.

85. Statement of employment particulars

- (1) Where a contract of employment is contemplated, the employer shall, prior to or on the commencement of the contract not later than fourteen working days, give the employee, a written statement of the particulars of the employment.

- (2) The statement shall contain –

- (a) the name of the employee and the name and address of the employer;
- (b) the date the employment begins or began, as the case may be;
- (c) the date on which the period of continuous employment of the employee begins or began, in the case for an employee whose services is transferred to the employer;
- (d) the title of the job which the employee is employed to do;
- (e) a description of the work for which he or she is employed;
- (f) the scale of rate of wages, or the method of calculating wages;
- (g) the intervals at which wages are paid;
- (h) the normal working hours;
- (i) the period of probation, if any;
- (j) the length of the notice which the employee is obliged to give and entitled to receive in respect of termination of his or her contract of employment;
- (k) the period for which the employment is expected to continue where the employment is not intended to be permanent; or

the date when the employment is to end, where it is for a fixed term;

- (l) the place of work or, where the employee is required or permitted to work at various places, an indication of that and of the address of the employer;
- (m) any collective agreements which directly affect the terms and conditions of employment including, where the employer is not a party, the persons by whom the collect agreements were made; and
- (n) any terms and conditions relating to any of the following-
 - (i) entitlement to holidays and holiday pay, the particulars given being sufficient to enable the entitlement of the employee, including any entitlement to accrued holiday pay on the termination of employment, to be precisely calculated,
 - (ii) incapacity for work owing to sickness or injury, including for any sick pay or a health scheme, or
 - (iii) pensions and pension schemes.

(3) For the purpose of this section –

“employer” means a person, body corporate, and undertaking or body of persons that has in his, her or its employment at least five employees;

“normal working hours”, in relation to an employee, means those hours which are stated in his contract of employment to be his normal working hours.

86. Itemized pay statement

- (1) An employee has the right to receive from his or her employer, at or before the time of the payment of his or her wages, a written itemized pay statement.
- (2) The statement shall include particulars of the –
 - (a) gross amount of wages;

- (b) amount of any variable or fixed deduction from the gross amount, and the purposes for which those deductions are made;
 - (c) net amount of wages payable; and
 - (d) date of payment and the dates of pay period.
- (3) An employer who fails to comply under this section is liable on conviction to a fine of not less than five hundred dalasis for each day in default.

87. Contract of employment to be in writing

- (1) An employer shall provide each employee with a contract of employment in writing.
- (2) A contract which is not in writing as required under subsection (1) is enforceable by the employee but not by the employer, but where the omission to make the contract in writing is due to the wilful act of the employee, the contract is enforceable by both parties.
- (3) An employee shall be given forty-eight hours to read and consult on the proposed employment contract before signing it.

88. Prohibition of restrictive conditions of employment

An employer shall not in respect of any person seeking employment, or already in his, her or its employment –

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

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

89. Grounds for termination of employment

A contract of employment may be terminated by –

- (a) mutual agreement of the employer and the employee;
- (b) the employee on grounds of ill-treatment or sexual harassment;
- (c) the employer if the employee is found on medical examination, to be unfit for employment;
- (d) the employer because of the inability of the employee to carry out his or her work due to –
 - (i) sickness or disability,
 - (ii) incompetence, or
 - (iii) proven misconduct; or
- (e) the employer if an employee is convicted of a felony by a court of competent jurisdiction.

90. Termination of contract

- (1) Subject to sections 91 and 128, a contract of employment for an unspecified period of time may be terminated by either party.
- (2) A contract of employment for a specified period of time terminates automatically on the date specified for its termination and, unless it is expressly prolonged, no notice is required for its termination.
- (3) A contract of employment to perform a specific task terminates on the completion of the task and no notice of termination is required of either party.
- (4) A contract is deemed to be for an unspecified period of time, if -
 - (a) an employee is regularly and repeatedly employed and paid wages on the basis of completion of work which can be

completed in less than twenty-four hours; and

- (b) the effect of a contract of employment that is purported to be for a specified period of time or a specific task, is the filling on a lasting basis, of a post connected with the normal and permanent activity of an undertaking.

91. Notice on termination of contracts for an unspecified period of time

(1) Subject to subsection (2), a contract of employment for an unspecified period of time may be terminated by either party, on giving the following minimum periods of notice in writing where the -

- (a) contract is to pay wages at a monthly rate, one-month notice;
- (b) contract is to pay wages at bi-weekly rate and the employee has been-
 - (i) employed for less than six years, two weeks' notice, and
 - (ii) continuously employed for at least six years, one month's notice;
- (c) contract is to pay wages at a weekly rate and the employee has been –
 - (i) employed for less than two years, one week's notice,
 - (ii) continuously employed for a period of not less than two years but not exceeding six years, two weeks' notice, and
 - (iii) continuously employed for at least six years, one month's notice;
- (d) contract is to pay wages at a daily or hourly rate and the employee has been –
 - (i) employed for less than six months, one day notice,
 - (ii) continuously employed for a period of not less than six months but not exceeding two years, one week's notice, and

(iii) continuously employed for a period of not less than two years but less than six years, two week's' notice;

(e) employee has been continuously employed for a period of at least six years, two months' notice.

(2) An employee who has been continuously employed for a period of more than six years shall, notwithstanding the rate at which he or she is paid, give to his or her employer not less than one month's notice.

(3) Where the contract of employment for unspecified period of time is to pay wages at any rate other than an annual rate, not provided for in subsections (1) and (2), either party may determine the contract at the close of any day without notice.

(4) The minimum period of notice for a contract of employment for a specified period of time is fourteen days.

92. Freedom to agree on a more favourable notice

(1) Nothing in this Act prevents the parties to a contract of employment for an unspecified period of time from agreeing on a notice of termination which is more beneficial to either party than those required by section 90.

(2) An agreement for a less period of notice than those required by section 90 is null and void.

93. Notice in case of redundancy

An employee whose contract of employment is terminated by the employer for reasons set out in section 141 is, notwithstanding the employer's compliance with the requirements of that section, entitled to six months' notice.

94. Payment in lieu of notice

(1) Section 91 does not prevent either party from waiving his or her right to notice on any occasion or from accepting payment in lieu of notice.

(2) An employer shall, in lieu of providing notice of termination –

- (a) pay the employee, a sum equal to the remuneration that would have been received; and
 - (b) confer on the employee, all other benefits due to him or her, up to the expiration of the required period of notice.
- (3) If an employee terminates a contract of employment without notice in a case where notice is required, and the employer has not waived the right to notice, the employee-
 - (a) shall pay to the employer, in lieu of notice, a sum equal to the remuneration that would otherwise have been due to the employee up to the expiration of the required period of notice; and
 - (b) is entitled to be paid remuneration and to receive such other benefits as may have accrued at the date of termination.

95. Remuneration on termination of employment

- (1) When a contract of employment is terminated in the manner stated in section 136, the employer shall pay to the employee-
 - (a) any remuneration earned by the employee before the termination;
 - (b) any deferred pay due to the employee before the termination; and
 - (c) any compensation due to the employee in respect of sickness or accident; and
 - (d) in the case of a foreign contract, the expenses and necessities for the journey and repatriation expenses in respect of the employee and accompanying members of his or her family in addition to any or all of the payments specified in subsections (a), (b) and (c).
- (2) The employer shall pay to the employee not later than the date of the expiration of the notice, the remuneration owed to the employee as at that date.

- (3) Where no notice is required, the payment of all remuneration due to the employee shall be made not later than the next working day after the termination.

96. Certificate of termination

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

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

- (2) The certificate referred to in subsection (1) shall not contain an evaluation of the employee's work unless the employee requests the evaluation.

97. Transfer of contract

- (1) Except as provided in subsection (2), a contract of employment shall not be transferred from one employer to another without the consent of the employee.
- (2) The contract of employment of all employees at the date of the transfer of an enterprise or part of an enterprise shall, except in the case of a transfer by a Receiver on the insolvency of an enterprise, automatically be transferred to the transferee.
- (3) All the rights and obligations between the employees and the transferor at the date of the transfer shall continue to apply as if they were rights and obligations between the employees and the transferee.

- (4) A thing done before the transfer, by or in relation to the transferor in respect of the employees, shall be deemed to have been done by or in relation to the transferee.
- (5) The provisions of subsections (2) (3) and (4) do not absolve a person of the liability to be prosecuted and convicted for any offence committed before the transfer of the undertaking.
- (6) A transfer of a contract of employment is subject to the provisions of this Act on labour only sub-contracting, as if the transfer involved a new employment.
- (7) When the consent of the employee is required under subsection (1), the Commissioner may take all reasonable measures to satisfy himself or herself that the employee freely consents to the transfer.
- (8) In this section, “**transfer**” includes sale and any disposition of an enterprise or part of an enterprise.

98. Death of employer

If the employer’s personal or legal position formed the basis of a contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer’s death, unless it –

- (a) is otherwise terminated in accordance with section 129 within that period; or
- (b) expressly provides otherwise.

99. Death of employee

The death of an employee terminates a contract of employment, but the next-of-kin of the deceased employee is entitled to claim from the employer from the date of the employee’s death any –

- (a) remuneration or other benefits due to the employee at the date of his or her death; and
- (b) property of the employee in the possession of the employer.

100. Imprisonment of employee

Where an employee's appointment is terminated because of his or her imprisonment, the termination constitutes a dismissal of the employee.

101. Change of place of employment

- (1) Subject to subsection (2), unless expressly provided in the contract of employment, an employee is not bound to continue in employment if the employer moves the employee's place of employment more than forty kilometres from its previous location.
- (2) An employee is deemed to have consented to move to the new location if he or she continues in employment at that location for a period of four weeks without protest.

102. Departure from The Gambia

Unless expressly provided in the contract of employment, an employer shall not, without the consent of an employee, require the employee to accompany him or her out of The Gambia.

103. Termination of contract due to the change of employment

- (1) Where section 101 or 102 applies and the employee is unwilling to change his or her place of employment or accompany the employer out of The Gambia, the contract is deemed to be terminated by reason of the unwillingness.
- (2) Where a contract is deemed to be terminated under subsection (1), the employee is entitled to a sum equal to the remuneration due to him or her under the contract as if he or she had worked normally under the contract until the earliest date at which, but for the removal, it would have been terminable.

104. Winding-up of employer and severance

- (1) Where in a voluntary winding-up of an employer's business, the Receiver does not renew a contract of employment, he or she shall be responsible for terminating the contract in a way that is permissible under the contract.
- (2) The compulsory winding-up of an employer's business-

- (a) operates to terminate any contract of employment with that employer; and
 - (b) does not prevent the renewal of that contract by the Receiver or any other person carrying on the business.
- (3) On the insolvency or winding-up of an employer's business, the following claims of an employee or those claiming on his on her behalf, have priority over all other creditors, other than any claim for taxes levied by the Government -
 - (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the six months preceding the date of the declaration of insolvency or windingup;
 - (b) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up; and
 - (c) amounts due in respect of other types of paid absence accrued during the six months preceding the date of the declaration of insolvency or winding-up.
- (4) Subsection (3) applies where the business of an employer or a part of it is sold or transferred on application of a person holding a mortgage charge, lien or decree.
- (5) The proceeds of a sale or an attachment under subsection (4) shall not be distributed until the person responsible for the distribution has taken reasonable steps to determine the remuneration and other benefits due-
 - (a) to each employee of the business;
 - (b) to each employee by order of the Tribunal; and
 - (c) in respect of any contributions to social security or other social benefit funds required by the laws of The Gambia.

- (6) An employer shall pay an employee a severance-pay, where the employee's contract of employment is terminated or has expired, in the following manner-
- (a) where an employee has been medically discharged from employment;
 - (b) where a contract of employment is for a fixed duration, severance pay shall either be a gratuity at the rate of not less than twenty-five percent of the employee's basic pay earned during the contract period or the retirement benefits provided by the relevant social security scheme that the employee is a member of, as the case may be;
 - (c) where a contract of employment of a fixed duration has been terminated, severance pay shall be a gratuity at the rate of not less than twenty-five percent of the employee's basic pay earned during the contract period as at the effective date of termination;
 - (d) where a contract of employment has been terminated in accordance with this section the severance pay shall be a lump sum of two months' basic pay for each year served under the contract of employment;
 - (e) where an employee dies in service, the severance pay shall be two months' basic pay for each year served under the contract of employment;
 - (f) where a contract of employment has been terminated as a result of the insolvency or winding up of a business, the severance pay shall be two months' basic pay for each year served under the contract of employment; or
 - (g) where a contract of employment has been terminated as a result of transfer of business or sale of shares, the severance pay shall be two months' basic pay for each year served under the contract of employment.
- (7) The severance pay under this subsection shall not be paid to a casual employee or an employee serving a period of probation.
- (8) Where an employee dies before receiving the severance pay, the employer shall pay the severance pay to the employee's estate in accordance with the Intestate Estates Act.

[Cap.14:02]

PART XIV – TERMS AND CONDITIONS OF EMPLOYMENT

105. Minimum conditions

- (1) The provisions under this Part are minimum requirements and nothing in this Act shall prevent parties to a contract of employment from agreeing to more beneficial terms and conditions of employment.
- (2) A provision of a contract of employment which purports to provide terms and conditions less beneficial than those provided under this Part shall, unless expressly provided in this Act, be null and void and any appropriate provision of this Act shall be substituted for that provision.
- (3) An employer who enters into a contract of employment knowing that it contains terms that are null and void by subsection (2) is liable, in an action before the Industrial Tribunal, to pay the employee concerned, in addition to any damages for breach of the relevant provisions of this Part, further compensation of such amount as may be prescribed.

106. Work or wages during a contract

- (1) In a contract of employment, an employer shall provide the employee concerned -
 - (a) work for all days expressly or impliedly designated as working days under the contract; or
 - (b) wages for the work done at the same rate as if the employee had performed a day's work,

if the employee presents himself or herself for the work and is able and willing to work.

- (2) Subsection (1) does not apply-
 - (a) if on a working day, the employer offers suitable alternative employment which the employee unreasonably refuses or fails to undertake; or
 - (b) to a public authority in respect of those it employs on a casual or semi-casual basis.

107. Medical examination of employees

- (1) A person entering into a contract of employment to which this section applies shall, at the expense of the employer, be examined by a medical officer, not more than one month before the commencement of employment, and the employer shall keep a written report of the examination.
- (2) This section applies to employment –
 - (a) as a dock worker;
 - (b) in a processing plant;
 - (c) as a driver of a motor vehicle;
 - (d) of security guards from private security companies;
 - (e) in an occupation involving the preparation or handling of food for human consumption;
 - (f) in a hotel or catering service;
 - (g) as a fisher folk or in a fish-processing plant;
 - (h) which may reasonably be anticipated to continue for six months or more on a major project financed in whole or in part by a foreign Government or an international organisation; and
 - (i) in any other sector specified by the Minister by Order published in the *Gazette*.
- (3) If it is not reasonably practicable to comply with the requirement of subsection (1), the medical examination shall take place as soon as is reasonably practicable after the commencement of the employment.

108. Safety equipment for employees

- (1) An employer who engages an employee in an activity specified in the safety Regulations issued by the Minister shall supply the employee, free of charge, the safety equipment or device specified in that Regulations.

- (2) A safety equipment or device supplied by an employer shall be of such nature and quality as to provide the employee adequate protection, so far as is reasonably practicable, from the risk occasioned by the activity in which he or she is engaged.
- (3) The Minister may, after consultation with the Minister responsible for health and the Labour Advisory Board, by Order published in the *Gazette*, amend, extend or revoke any of the provisions of the Safety Regulations.
- (4) An employee to whom an employer has supplied a safety equipment or device shall use the equipment so far as reasonably practicable.
- (5) A person who wilfully –
 - (a) destroys or damages a safety equipment or safety device; or
 - (b) obstructs the proper operation or use of the equipment or safety device,

commits an offence and is liable on conviction to a fine of not less than ten thousand dalasis or imprisonment for a term of not less than six months, or to both the fine and imprisonment.

109. Entitlement to annual leave and public holiday

- (1) An employee is entitled to accumulate days of annual leave provided for by a Joint Industrial Council agreement, collective agreement, or otherwise by his or her contract of employment.
- (2) Whenever a period of annual leave entitlement is specified by reference to a period of more than one month, the appropriate proportion of the entitlement is deemed to accrue for each month of employment.
- (3) An employer shall, in consultation with the employee, determine and grant the date for the taking of annual leave.
- (4) An amount of annual leave entitlement accumulated but not used at the time an employment is terminated shall be paid to the employee, calculated according to subsection (6).

- (5) An employee is entitled to his or her regular remuneration for each public holiday, and his or her period of annual leave shall be extended by one working day with full pay for each public holiday that falls within the period of leave and would have been an ordinary working day for the employee.
- (6) Payment for each day of an employee's annual leave shall be made at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment, excluding bonus and overtime pay.

110. Sick leave entitlement

- (1) An employee is entitled to accumulate days of paid sick leave provided for by a Joint Industrial Council Agreement, collective agreement, or otherwise by his or her contract of employment, up to a maximum of the entitlement attainable by any twelve months of employment upon the production of a medical certificate.
- (2) An employer may use paid sick leave days in respect of any of normal work on which an employee is unable to perform his or her usual work because of bodily or mental illness, disease or injury.
- (3) The payment for any day of paid sick leave shall be at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for normal work on that day, including both overtime and bonus pay.

111. Retirement age for employees

- (1) The retirement age for employees shall be sixty years.
- (2) Notwithstanding subsection (1), a contract of employment that fixes a retirement age after an employee's sixtieth birthday is valid.

PART XV – OCCUPATIONAL SAFETY, HEALTH AND WELFARE

112. Registration of work places

- (1) Every person who operates a workplace shall, within six months of the coming into force of this Act, file with the Commissioner, a written notice stating the particulars and location of the workplace.

(2) Whenever there is a material change in any of the particulars appearing in the notice required in subsection (1), the person operating the workplace shall file with the Commissioner –

- (a) a written notice setting forth any such change, within one month of the effectuation of same; and
- (b) with respect to any further material change, file a similar notice within one month of the effectuation of any such further change.

113. Health of employees

For the purpose of safeguarding the health of employees in workplaces, the employer of every workplace shall –

- (a) keep the workplace in a clean state;
- (b) prevent it from becoming overcrowded;
- (c) maintain a reasonable temperature within the workplace;
- (d) provide adequate ventilation;
- (e) provide lighting sufficient to avoid employee's eyestrain;
- (f) provide effective means for draining floors; and
- (g) provide suitable and sufficient sanitary conveniences.

114. Safety of employees

(1) For the purpose of ensuring the safety of persons employed in or performing any duty in a workplace, the following shall apply to every workplace –

- (a) adequate measures shall be taken for the prevention of fire therein and for adequate means of escape for persons employed;
- (b) all machinery used shall be operated and maintained in such a manner as to ensure the safety for all employees; and

(c) all walls, partitions, floors, stairs, passages and gangways shall be of sound construction and properly maintained.

(2) Employers shall have measures in place to cater to the safety, health, accessibility and welfare needs of disabled employees.

115. Welfare of employees

For the purpose of contributing to the welfare of employees in a workplace, the employer shall provide and maintain –

- (a) an adequate supply of wholesome drinking water;
- (b) washing facilities;
- (c) accommodation for clothing not worn during working hours, and for the drying of work clothing;
- (d) suitable facilities for employed persons to sit during the course of their employment;
- (e) readily accessible first aid equipment; and
- (f) sanitary facilities.

116. Special protective measures

(1) The employer of any workplace shall ensure that-

- (a) a person is not permitted to take food or drink in a room where lead, arsenic or other poisonous substance is used;
- (b) suitable goggles or protective screens shall be provided to protect the eyes of a person employed in a process involving a special risk of injury to the eyes;
- (c) where a work process involves a reasonable possibility of injury to other parts of an employee's body, suitable protective equipment is furnished;
- (d) where a person is employed in any process involving exposure to wet, injurious or offensive substances, suitable

protective clothing and appliances are provided and maintained;

- (e) where a process involves heat or steam, adequate facilities to protect employees therefrom are provided and maintained;
 - (f) a person is not required to use white phosphorous or yellow phosphorous in any process; and
 - (g) with respect to a process involving the use of or exposure to products containing benzene, harmless or less harmful substitutes are used if they are available, but, if no such substitute is available then –
 - (i) the process shall be, as far as is practicable, carried out in an enclosed system, or where an enclosed system is not practicable, the place of work in which the process is carried out shall be equipped with effective means to ensure the removal of benzene fumes to the extent necessary for the protection of the health of the employee,
 - (ii) the word benzene and appropriate danger signals shall be clearly visible on any container holding benzene, and
 - (iii) each employee who may be exposed to benzene shall receive appropriate instructions about safeguarding health and preventing accidents, as well as about action to be taken if there is any evidence of poisoning.
- (2) The employer of any workplace shall notify the Commissioner in such manner and in such particularity as the Minister may by regulations prescribe, of any industrial accident which occurs within the workplace or to any employee and the occurrence of any occupational disease among his or her employees.
- (3) In this section, “**benzene**” means the aromatic hydrocarbon C₆ H₆ itself or any product the benzene content of which exceeds one per cent by volume.

117. Duties of employees under this Part

- (1) A person employed in a workplace to which this Part applies shall make use of all facilities, appliances, conveniences or other things provided in pursuance of this Act for the safety, health and welfare of employees, to the extent that his or her employment involves its use.
- (2) A person employed in a workplace shall not wilfully interfere with, misuse, or damage any such means, appliance, convenience or other thing.
- (3) A person employed in a workplace or in any other place shall not wilfully and without reasonable cause, do anything likely to endanger himself or herself or others.

118. Prohibition of deduction of wages

The operator of a workplace shall not make a deduction of the cost of anything to be done by him or her in pursuance of this Act from the sum contracted to be paid by him or her to any person employed by him or her.

119. Issuance of regulations under this Part

- (1) The Minister may –
 - (a) Issue regulations prescribing the standards to be achieved in respect of any of the obligations set forth in this Part and the methods required to attain them; and
 - (b) establish advisory committees on which employers and employees are represented, to assist him or her in this function.
- (2) The Minister may, in consultation with the Commission of Labour, issue an Order-
 - (a) requiring the employer of a workplace to take special measures bearing on the safety, health or welfare of the employees;
 - (b) requiring such alteration of the workplace or to any plant to be carried out in such manner and within such time as may be specified in the said order as necessary to comply with the requirements of this Act or of any subsidiary legislation made hereunder; and
 - (c) introduce such temporary measures as may be necessary to remove an imminent danger to the safety or health of employees.

- (3) The Minister may, in consultation with the Commission of Labour, issue an Order, requiring-
- (a) the operator of a workplace to take specified measures bearing on the safety, health or welfare of employees whose duties, related to the business of the workplace, are performed in whole or in part outside the workplace;
 - (b) arrangements to be made for medical supervision in any workplace; and
 - (c) medical examinations of employees in any workplace at the expense of the operator of the workplace to ascertain whether their health has been or is being adversely affected by their employment therein.

120. Accident and safety programs

The Minister, acting through the Commissioner, may undertake-

- (a) research into the cause of and the means of preventing employment injury, in the course of which he or she may cooperate with any other unit of Government or any other organisation undertaking similar research; and
- (b) programs to reduce or prevent employment injury, in the course of which he or she may co-operate with any other unit of Government or any other organisation undertaking similar programs.

121. Offences under this Part

A person who contravenes an obligation under this Part shall be liable on conviction to a fine not less than two hundred thousand dalasis or to a term of imprisonment of not less than two years or to both fine and imprisonment.

PART XVI – PROTECTION OF WAGES

122. Payment of wages

- (1) The wages payable to an employee shall be paid in accordance with the terms of the contract of employment ordinarily on the employee's normal work day and at the employee's normal place of work, unless specially agreed between the employee and employer.
- (2) The agreed wages may only be changed by agreement of both parties provided they are paid -
 - (a) at least as frequently as once fortnightly, in the case of an employee whose wages are-
 - (i) fixed by the hour, day or week, or
 - (ii) calculated solely on a piece-work or task-work basis; or
 - (b) at least once a month in the case of an employee whose wages are fixed on a monthly or yearly basis.
- (3) Subject to subsection (2), where the contract of employment is for a specific task, wages may be paid on the completion of the task or, if the employer and the employee so agree, weekly, fortnightly or monthly, in which case the contract will not be considered to be one for a specific task.
- (4) The remuneration payable to an employee-
 - (a) shall be paid to the employee or to a person specified by him or her in writing;
 - (b) shall be paid in legal tender; and
 - (c) may, with the consent of the employee, be paid by cheque in the sum of the wages payable, or by direct payment to an account with a bank operating in The Gambia.
- (5) Subject to subsection (6), partial payment of wages in the form of allowances-in-kind may be made in enterprises or occupations where allowances are customary and the-
 - (a) allowances are appropriate for the personal use and benefit of the employee and the employee's family; and
 - (b) value attributed to an allowance is fair and reasonable.

- (6) An employer shall not pay wages in the form of liquor or noxious drugs under any circumstance.
- (7) Subject to subsection (2), wages shall be deemed to be due in the case of—
 - (a) a casual employee, at the end of the day;
 - (b) an employee employed for a period of more than a day but not exceeding one month, at the end of that period;
 - (c) an employee employed for a period exceeding one month, at the end of each month or part thereof; and
 - (d) an employee employed for an indefinite period or on a journey, at the expiration of each month or of such period, whichever date is the earlier, and on the completion of the journey, respectively.

123. Pay statement and deductions

- (1) An employer shall provide an employee, with each payment of wages, an accurate itemised statement from the employer in a form which sets out the-
 - (a) employee's gross wages due at the end of the pay period;
 - (b) amount of every deduction from the employee's wages during the pay period and the purpose for which each deduction was made; and
 - (c) employee's net wages payable at the end of the pay period.
- (2) The deductions that may be agreed in a contract of employment are deduction-
 - (a) of a reasonable charge for food, drink, lodging or clothing supplied by the employer to the employee, provided that no compulsion, by means of any contract or otherwise, has been imposed on the employee to purchase or otherwise incur the charges that are the basis for the deduction;

- (b) representing reasonable rent or other reasonable charge for accommodation provided by the employer for the employee or the employee's family;
 - (c) for recovery of any advance made to the employee or in order to adjust a previous overpayment of wages;
 - (d) of any tax, contribution to a statutory social security, superannuation, industrial injury or national insurance scheme, or any other charges imposed by any law of The Gambia;
 - (e) of any contribution to a pension fund, superannuation scheme or friendly society organized by the employer, if the employee has given written consent to the deduction in advance and the entire deduction is applied for the benefit of the employee;
 - (f) of any dues to a trade union of which the employee is a member, if the employee has given written consent to the deduction is remitted directly to the trade union or its authorised official, subject only to retention by the employer of a reasonable charge, if any, for the cost of making and remitting the deduction; and
 - (g) of reasonable compensation for damage to, or loss of, goods or monies expressly entrusted to the employee by his or her employer for safe custody and for which the employee is required to account if the loss or damage is directly attributable to the neglect or fault of the employee and the employee is employed on such work as may reasonably be expected to impose the responsibility.
- (3) The total of all deductions made in any one wage period shall not exceed one-third of all remuneration due in that wage period.
- (4) A reduction in remuneration that occurs on account of the-
- (a) disciplinary suspension from work of an employee; or
 - (b) failure of an employee to report from work on a normal work day,

does not constitute a deduction for the purposes of this section if the amount not paid does not exceed the proportion of the wages payable for

the period of absence or one twenty-sixth part of the wages payable for one month in respect of each day of the absence.

124. Attachment of wages

A court of civil jurisdiction shall not make an order for the attachment of wages or other benefits due to an employee.

125. Payment on termination

All remuneration and accrued benefits due to an employee on the termination or completion of his or her contract of employment shall be paid to the employee on the day of the termination or completion of the contract.

126. Nullity of provisions imposing conditions contrary to this Part

- (1) A practice or provision of a contract of employment which imposes conditions contrary to the requirement of this Part is null and void.
- (2) An employer who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

127. Recovery of prohibited payment

- (1) An employee is entitled to recover by action in the Tribunal, any amount paid or not paid in contravention of any provision of this Part.
- (2) An employee who induced the payment or non-payment under subsection (1) may only recover such amount as exceeds the benefit to him or her derived from the contravention.
- (3) In addition to an award under subsection (1), the Tribunal may, if an employee makes an application concerning a contravention within two years of convention, order the employer to give the Commissioner at intervals of not less than once a month, for a period not exceeding two years, such information as shall in the opinion of the Tribunal show the absence of any further contravention of this Part.

PART XVII – DISCIPLINE, DISMISSAL AND REDUNDANCY

128. Justification for disciplinary action

- (1) In this Part, a “disciplinary action” includes –
 - (a) a written warning;
 - (b) suspension; and
 - (c) demotion.
- (2) An employer is entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances of the case.
- (3) Subject to sub-section (4), an employer -
 - (a) shall not impose a fine or other monetary penalty on an employee; and
 - (b) is not obliged to pay wages to an employee for the period the employee is absent from work without permission of the employer or reasonable excuse.
- (4) An employer may deduct an amount of money from an employee’s wages to cover the costs of any property wilfully damaged by the employee.
- (5) In deciding whether the employee has acted reasonably, the Tribunal or Court shall take into account the nature of the violation, the employee’s duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred, and the previous conduct and circumstances of the employee.

129. Justification for termination or taking disciplinary action

- (1) An employer shall not terminate an employee’s appointment unless there is a valid reason for the termination based on the –
 - (a) capacity or conduct of the employee; or
 - (b) operational requirements of the enterprise.

(2) The following reasons do not constitute valid reasons for dismissal or taking of disciplinary action-

- (a) an employee's pregnancy or maternity leave, race, colour, sex, religion, political opinion, national extraction, ethnic or social origin;
- (b) an employee's absence from work for a period of less than two weeks because of sickness or injury;
- (c) an employee's actual, perceived or suspected HIV/AIDS status or any other non-communicable disease;
- (d) an employee removing or attempting to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health;
- (e) an employee's exercise of a right to freely associate, which includes –
 - (i) membership in a trade union,
 - (ii) refusal or indication of an intention to refuse, to join a trade union,
 - (iii) participation or proposed participation in a legal industrial action, and
 - (iv) refusal to do any work normally done by an employee who is engaged in industrial action;
- (f) an employee's refusal, except in circumstances of national emergency or grave emergency to his or her employer, to work for more than the number of hours permitted by any law, collective agreement, or established work rule;
- (g) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws, regulation or collective agreement; or

- (h) the institution of a police investigation involving the employee, concerning a matter not connected with the suitability of the employee for employment.

130. Unfair dismissal

A dismissal is unfair if it is not in conformity with section 129 or is a constructive dismissal under section 133.

131. Fair termination

A termination of an employee's employment is fair if it is based on the following –

- (a) the proven misconduct of the employee;
- (b) redundancy under section 141; or

a legal restriction imposed on the employee prohibiting him or her from performing the work for which he or she is employed.

132. Unfair termination of employment

- (1) The employment of an employee shall not be unfairly terminated by the employer.
- (2) An employee's employment shall be deemed to be terminated unfairly if the only reason for the termination is-
 - (a) that the employee has joined, intends to join or has ceased to be a member of a trade union or intends to take part in the activities of a trade union;
 - (b) that the employee seeks office as, or is acting or has acted in the capacity of an employer's representative;
 - (c) that the employee has filed a complaint or has participated in the proceedings against the employer involving an alleged violation of this Act or under regulations made under this Act;
 - (d) the employee's gender, race, colour, ethnicity, origin, religion, creed, social, political or economic status;

- (e) due to the employee's disability;
 - (f) that the employee is temporarily ill or injured and this is certified by a qualified medical practitioner;
 - (g) that the employee does not possess the current level of qualification required in relation to the work for which the employee was employed which is different from the level of qualification required at the commencement of his or her employment; or
 - (h) that the employee refused or indicated an intention to refuse to do any work done by an employee who at the time was taking part in a lawful strike unless the work is necessary to prevent an actual danger to life, personal safety or health or the maintenance of plant and equipment.
- (3) Without limiting the provisions of sub-section (2), an employee's employment is deemed to be unfairly terminated if with or without notice to the employee, the employer terminates the contract of employment because—
 - (a) of the ill treatment of the employee by the employer, having regard to the circumstances of the case; or
 - (b) the employer has failed to take action to repeated complaints of sexual harassment of the employee of the workplace.
- (4) A termination may be unfair if the employer fails to prove that the—
 - (a) reason for the termination is fair; or
 - (b) termination was made in accordance with a fair procedure under this Act.

133. Summary dismissal

- (1) An employer may summarily dismiss an employee on the following grounds—

- (a) serious misconduct, inconsistent with the fulfilment of the expressed or implied conditions of his or her contract of employment which makes it unreasonable to expect the employer to continue the employment relationship;
 - (b) habitual or substantial neglect through absence or otherwise, of his or her duties;
 - (c) lack of skill that the employee expressly or by implication holds himself or herself to possess; or
 - (d) misrepresentation on which the contract of employment was based.
- (2) “**Summary dismissal**” under this section means the termination of the contract of employment of the employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

134. Constructive dismissal

An employee is entitled to terminate the contract of employment without notice or with less notice than the employer is entitled by any statutory provision or contractual term if the employer’s conduct has made it unreasonable to expect the employee to continue the employment relationship.

135. Resignation

An employee is deemed not to have voluntarily resigned from employment unless there is clear evidence of the employee’s deliberate intention to resign.

136. Suspension pending dismissal or prosecution

- (1) Where an employer has reason to believe that grounds exist for dismissing an employee, the employer may suspend the employee without pay during a period of investigation for a period not exceeding two weeks.
- (2) Where an employer has taken action in accordance with section 137, the employee concerned may be suspended without pay until he or she is dismissed or the employer resolves not to dismiss him or her, or for three days, whichever is less.

- (3) Where an employee is suspended without pay under subsection (1) or (2) but is not consequently dismissed, the employer shall pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.
- (4) Notwithstanding subsections (1), (2) and (3), where the conduct of an employee is the subject of an inquiry by a competent authority, the employer may if he or she considers it necessary in the interest of the undertaking, suspend that employee without pay during all or any part of time covered by the inquiry, subject to subsection (4).

137. Notification and hearing before dismissal

- (1) Before dismissing an employee, the employer shall-
 - (a) explain to the employee the reason for which the employer is considering dismissing that employee; and
 - (b) hear and consider any representations made in the defence of the employee.
- (2) The employer shall give the explanation pursuant to subsection (1) in the presence of the employee and any other person the employee may choose to accompany him or her.
- (3) Before taking action under subsection (1), the employer shall, if the employee chooses not to be accompanied by another person, explain to the employee the advantage of being so accompanied.
- (4) Any proof that an employer failed to satisfy an obligation under subsections (1) and (2) raises a rebuttable presumption that the employer did not act with justice and equity in dismissing the employee.

138. Reason for dismissal

- (1) There is a conclusive presumption that the dismissal of an employee is unfair if, in a claim of complaint arising out of the dismissal, the employer fails to provide the reason for dismissal.
- (2) In addition to providing that an employee was dismissed for reasons stated in section 129(1), an employer is required to show that in all

circumstances of the case he or she acted with justice and equity in dismissing the employee.

- (3) Failure by the employer to deliver to the employee at the time of dismissal a written statement of the reason for the dismissal raises a rebuttable presumption that the reason for dismissal was wrong or that the employer did not act with justice and equity in dismissing the employee, whichever may be applicable in the context of the case.
- (4) In the circumstances mentioned in section 134, the employee shall provide the reason which made the continuation of the employment relationship unreasonable.

139. Complaints of unfair dismissal

- (1) An employee may, within six months of the date of dismissal, complain to the Commissioner or to an official of a trade union of which he or she is a member that he or she has been unfairly dismissed irrespective of whether notice has been given or not.
- (2) Where a complaint is made to an official of a trade union, the official shall-
 - (a) collect such information as the Commissioner shall, by regulations, direct; and
 - (b) communicate the complaint and the accompanying information to the Commissioner within seven days of its receipt.
- (3) Where an official of a trade union fails to communicate the complaint to the Commissioner within twenty-seven weeks of the dismissal, the Commissioner may, on behalf of the employee, and notwithstanding any other provision of law, commence proceeding in a civil court for negligence against the trade union and the official concerned.
- (4) The right of an employee to make a complaint under this section is without prejudice to any right that he or she may enjoy under a collective agreement.
- (5) Where the Commissioner fails to settle the matter within one month of receipt of a complaint made to him or her, the employee or trade union may bring a claim before the Tribunal in accordance with the Rules set out in the Regulations of this Act.

140. Remedies for unfair dismissal

- (1) If the Tribunal finds that an employee's complaint of unfair dismissal is not well founded it shall dismiss the complaint.
- (2) If the Tribunal finds that a complaint is well founded, it shall uphold the complaint and-
 - (a) order reinstatement or re-engagement, or of the employee with such compensation, if any, as the Tribunal considers just and equitable; or
 - (b) award such compensation as the Tribunal considers just and equitable.
- (3) The Tribunal shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account, in particular, the wishes of the employee and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.
- (4) Where the Tribunal finds that the employee caused or contributed to the dismissal to any extent, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.
- (5) An award of compensation shall be such amount as the Tribunal considers just and equitable in the circumstances, having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal as well as the-
 - (a) reasonable expectation of the employee as to the period of time his or her employment with that employer might have continued but for the dismissal;
 - (b) opportunities available to the employee for securing other suitable employment;
 - (c) value of contractual benefits to which the employee might reasonably have expected to become entitled if he or she continued to be employed by the employer and, in particular,

to such benefits as might have accrued with increased seniority;

(d) value of statutory rights including pension rights of which dismissal has deprived the employee or frustrated the reasonable expectation of the employee that those rights would accrue; and

(e) value of an accrued benefit to which the employee was entitled before his or her dismissal and of which he or she has been deprived as a result of his or her dismissal.

141. Redundancy and re-organization

(1) Dismissal wholly or mainly for-

(a) economic, organizational, climatic or technical reasons, including mechanisation or automation; or

(b) the reason that the employer proposes to move the place of employment more than forty kilometres and the employee is whether not offered employment at the new place or declines the offer in accordance with section 101,

is deemed to be unfair if the employer is unable to show that he or she acted on sound business principles and has satisfied the conditions specified in subsection (2).

(2) Where an employer contemplates a dismissal for reasons set out in subsection (1), he or she shall -

(a) where they exist, consult the authorized representatives of any trade union which has members among the employees the employer contemplates should be dismissed and the relevant works committee;

(b) engage in consultations under paragraph (a) by, at least, supplying any person or group of persons required to be so consulted the following written information-

(i) an explanation of the circumstances giving rise to the need to dismiss,

(ii) an explanation for the rejection of any alternative course of action which the employer has considered,

provided that, where appropriate, the employer has considered the possibility of re-deploying or of re-training the employees concerned,

- (iii) a statement of any reasonable probability that a specified number of employees in specified categories may be re-employed by him or her within the twelve months following the dismissal, and
 - (iv) any other matter which the Commissioner may direct to be so communicated, either in a particular case or generally;
 - (c) in all cases where a selection is made for dismissal among a group of employees of the same class-
 - (i) make that selection in accordance with an agreement between the employer and a trade union representing the members of that class, or
 - (ii) if there is no agreement, make that selection on the principle of last in first out or on some other principle considered by the Tribunal to have been established and reasonable; and
 - (d) take all reasonable steps to secure that an offer of reengagement or of suitable alternative employment within not more than six months of the date of dismissal is made in writing before the dismissal or as soon as reasonably practicable after the dismissal and, in the case of an apprenticeship, that suitable provision for continuation of the apprenticeship or for employment as journeyman has been made.
- (3) An alternative employment is not considered suitable under subsection (2) if it involves work which-
- (a) the employee is not qualified to perform, or work of a substantially inferior grade to that which the employee was previously performing; or
 - (b) provides a significantly lower level of remuneration than that previously received by the employee.

(4) The provisions of subsection (1) and (2) do not apply to an employer-

- (a) of five or less employees in aggregate in all his or her establishments; or
- (b) that has agreed with a trade union with which he or she habitually negotiates in respect of the employees affected, a method of selection for dismissal and the terms of compensation for dismissal and that has honoured that agreement.

(5) An employer who-

- (a) has delivered to an employee a written undertaking to reengage the employee within not more than six months from the date of dismissal;
- (b) has agreed to pay to the employee a retainer in accordance with subsection (6) during the whole of the interval between dismissal and re-engagement; and
- (c) continuously honours the agreement,

is deemed to have satisfied the provisions of subsection (2).

(6) The minimum amount of the retainer mentioned in subsection (5) shall be-

- (a) fixed by each Joint Industrial Council as soon as possible after the coming into operation of this Act, and may be amended, from time to time;
- (b) established by agreement with a trade union representing the employee in question, if the employment in question is not covered by the agreement of a Joint Industrial Council; or
- (c) ten per cent of the employee's basic pay, where no rate is fixed as specified by subsection (a) or (b).

(7) An employer who has agreed to pay a retainer to a temporarily laid off employee may set off against his or her undertaking any amount of wages received by the employee from another employer during the period covered by the retainer; but if the employee does not disclose

to the employer the total amount of any alternative remuneration received during the period covered by the retainer, the employer is deemed to have satisfied the whole of his or her agreement without further payment.

- (8) Notwithstanding the requirements for the giving of notice for termination of a contract of employment under this Act, an employee dismissed by an employer for reasons set out in this section shall, notwithstanding an employer's compliance with the requirements of this section, receive a redundancy allowance of six months regular remuneration.

142. Agreed settlement

- (1) The Commissioner shall send a copy of all complaints received under section 139 to the Tribunal, endorsed with a note stating whether or not he or she intends to take steps to effect a settlement of the matter.
- (2) Where the Commissioner attempts to effect a settlement, he or she shall do so within one month of his or her receipt of the complaint and, at least before the end of that period, notify the Tribunal that a settlement has been effected or that settlement efforts have ceased.
- (3) A communication made by either party to the complaint in the course of settlement discussions undertaken by the Commissioner is not admissible as evidence in any proceedings in the Tribunal or any Court without the consent of the party who made the communication.
- (4) A settlement effected by any means, other than that specified in subsection (2), shall not be binding on either party to the complaint.
- (5) If a settlement is effected, the Commissioner shall record its terms in writing and notify the Tribunal.

143. Exemptions from this Part

- (1) The Minister may, in consultation with the Commission of Labour, exempt an employer or employers from the application of sections 128 to 135, on condition that the-
 - (a) employer or employers so exempted have agreed, in writing, with a trade union or trade unions whose members are his or her

employees to provide rights and mechanisms which, in the opinion of Minister, are at least as favourable to the employees as those provided in sections 128 to 134;

- (b) agreement makes provision for final resort to independent binding arbitration;
- (c) joint application for exemption has been made by the parties to the agreement, indicating those groups or classes of employees covered by the agreement; and
- (d) exemption applies only to groups or class of employees of the employer or employers concerned that are covered by the agreement.

(2) An exemption under this section shall be published by Order in the *Gazette*.

PART XVIII – FREEDOM TO ASSOCIATE, THE RIGHT TO COLLECTIVE BARGAINING AND INDUSTRIAL RELATIONS

144. Freedom to associate

Employers and employees have the right to establish and join employers' and employees' organisations of their own choice in accordance with the Constitution and other laws of The Gambia.

145. Organisation's rights

- (1) Employers' and employees' organisations have the right to draw up their own rules to elect their representatives, to organise their administration and activities, and to formulate their programmes, subject only to the Constitution and other laws of The Gambia.
- (2) Employers' and employees' organisations have the right to affiliate with international organisations of employers and employees, subject only to the Constitution and laws of The Gambia.

146. Prohibition of domination

- (1) An employer who does an act designed to promote the establishment of an employees' organisation under its domination, or to support an employees' organization by financial or other means, with the object of placing the organisation under his or her control, commits an offence

and is liable on conviction to a fine of not less than fifty thousand dalasis.

- (2) A person who has an interest in the matter may bring an action before the High Court alleging the offence specified in subsection (1).
- (3) A Court that finds an employer guilty of an offence specified in subsection (1) may also order the cancellation of the registration of the dominated employees' organisation.
- (4) The powers given by this section for remedying an employer's domination of an employees' organisation does not prevent any Court from fashioning a remedy which it deems adequate in the circumstances.

147. Joint industrial Council

- (1) There is established by this Act, a Joint Industrial Council consisting of members from the following industries, which shall be constituted in accordance with the provision of this Act –
 - (a) commerce;
 - (b) artisans;
 - (c) transport;
 - (d) the port industry; and
 - (e) agriculture and fisheries.
- (2) The Minister may-
 - (a) on the advice of the Labour Advisory Board, by Order published in the *Gazette*, constitute other Joint Industrial Councils as he or she deems necessary; and
 - (b) assign to the Joint Industrial Council supervision over the terms and conditions of employment of such categories of industry and of employees, on the advice of the Labour Advisory Board.

(3) The Minister may, on the advice of the Labour Advisory Board-

- (a) revise the assignment of categories of industry and of employees in respect of the Joint Industrial Council; and
- (b) terminate the operation of the Joint Industrial Council,

if he or she believes that adequate terms and conditions of employment will be maintained for all grades of employees.

(4) The Minister shall appoint to the Joint Industrial Council-

- (a) an equal number of representatives of employers' organisations and of registered trade unions; and
- (b) two independent members.

(5) A trade union which satisfies the Minister that it has in membership not less than twenty-five per cent of the employees in any three or more categories of employees, it is entitled to have at least one representative on the Joint Industrial Council.

(6) A registered trade union shall not have more than three times the number of members in the Joint Industrial Council.

148. Responsibilities of the Joint Industrial Council

(1) The Joint Industrial Council shall, by agreement of a majority of representatives of employers and of trade unions, fix the minimum terms and conditions of employment of any employee or category of employees within the industries or job categories, whether or not the employees are in management grades or are pensionable.

(2) The Joint Industrial Council shall fix minimum terms and conditions of employment for apprentices and, separately, for trained categories of employees possessing trade certificates.

(3) The Joint Industrial Council shall revise the minimum terms and conditions of employment every three years and shall fix the minimum conditions where upon revision, it is deemed necessary to fix.

(4) A provision of the Joint Industrial Council agreement, which is contrary to a valid direction of the Authority, is valid.

- (5) The Joint Industrial Council has the power to fix, amend or revoke any classification of trades but shall act on the recommendation of the Labour Advisory Board in accordance with section 81.
- (6) Nothing in this section permits the Joint Industrial Council to make an agreement which contravenes or derogates from the provisions of this Act or any other law.

149. Officers of the Joint Industrial Council

- (1) The members of the Joint Industrial Council shall, at the first meeting in each calendar year, elect for a twelve-month term, a chairperson and deputy chairperson from among its number.
- (2) An outgoing chairperson and deputy chairperson are eligible for reelection under subsection (1).

150. Rules of Joint Industrial Council

The Joint Industrial Council may adopt, replace or amend its rules of procedure, and the rules shall be consistent with the provisions of this Act.

151. Meetings of Joint Industrial Council

- (1) The chairperson, or if he or she is for any reason incapable of acting or fails or declines to, the deputy chairperson of the Joint Industrial Council shall convene a meeting of that Council at least once in every six months and, in any event, on the request of any three members of the Council and shall cause all members to be notified of the time and place of the meeting.
- (2) If both the chairperson and the deputy chairperson are incapable of acting or fail or decline to act in accordance with subsection (1), any three members of the Joint Industrial Council may convene a meeting of the Council and those members shall cause all members to be notified of the time and place of the meeting.
- (3) If the chairperson or deputy chairperson wilfully fails or declines to convene a meeting of the Joint Industrial Council as required by subsection (1), he or she shall, on the application of any member of the Council to the Industrial Tribunal, be removed from office, in which case

the Minister shall appoint a replacement within three months of the removal.

(4) If a meeting of the Joint Industrial Council properly convened under subsection (1) or (2) is postponed, or is not attended by a quorum as established in its rules of procedure or is, for any other reason, ineffective, the person convening the meeting shall reconvene the meeting after a reasonable interval and shall notify the members of the time and place of the meeting.

(5) If, at a meeting reconvened under subsection (4) because-

(a) at the first meeting there was no quorum on one side of the membership; or

(b) the first meeting was postponed at the request of one side of its membership,

there is no quorum on the same side, the reconvened meeting shall, notwithstanding anything in the Council's rules of procedure, be conclusively deemed to have a quorum and competent to conduct the business of the Council.

(6) A meeting reconvened under subsection (5) shall not be postponed again on the request of the same side and shall, if necessary, appoint an acting chairperson for the meeting.

(7) The Commissioner, or such person as he or she shall appoint for the purpose, may attend a meeting of the Joint Industrial Council in an advisory capacity.

152. Publication of agreement

(1) The Joint Industrial Council shall request the Minister to publish by notice in the *Gazette*, such minimum terms and conditions of employment on which it has agreed.

(2) The Minister shall, within one month of receipt of a request under subsection (1), either-

(a) publish, in the *Gazette*, notice of the agreement which constitutes the minimum terms and conditions of employment for employees or group of employees within the Joint Industry Council; or

- (b) refer any matter back to the Joint Industrial Council for reconsideration, and delay publications until the Joint Industrial Council again requests publication of the agreement in the same or an amended form.
- (3) The Minister shall not refer any matter back to the Joint Industrial Council for reconsideration of time.
- (4) Where the Joint Industrial Council fails to make a request for the Minister to publish the minimum terms and conditions of employment in the *Gazette* subject to subsection (1), the Minister may request the Joint Industrial Council to give sufficient reasons in writing for not revising the minimum terms and conditions of employment.

153. Effect of publication

- (1) Within the expiration of one month of the publication of notice of the Joint Industrial Council agreement, all employers of employees or groups of employees specified in the agreement shall observe terms and conditions of the employment not less favourable than those set out in the Notice.
- (2) On the coming into operation of the obligation specified in subsection (1), the terms and conditions of employment specified in the Notice shall be implied into the contract of employment of each employee to whom they apply and any provision less favourable in the contract is null and void.
- (3) Nothing in this Act prevents the formation of a valid contract of employment setting terms and conditions more beneficial than those provided by an agreement of the Joint Industrial Council.

154. Penalties for failure to apply terms and conditions of employment Council

- (1) An employer who applies terms and conditions of employment that are less favourable than those specified in the relevant published Joint Industrial agreement, commits an offence and is liable on conviction to a fine not less than five hundred dalasis for each day of the offence.
- (2) A Court that finds an employer guilty of the offence specified in subsection (1) may order the employer to pay to each affected

employee such sum as the Court shall determine as the appropriate monetary compensation for the benefit he or she has actually received and the benefit he or she would have received by reason of compliance with section 153.

- (3) The powers given by this section for the recovery of sums due from an employer are not in derogation from any right to recover those sums by civil proceedings but in the civil proceedings a sum recovered by reason of subsection (2) shall be taken into account and set off against the amount of damages awarded in those proceedings.

155. Special terms for persons with disabilities

- (1) An employee or other person desiring to be employed is affected by an infirmity or physical incapacity, which person who renders him or her incapable of performing work of a quantity and quality that justifies payment of the minimum remuneration specified in the Joint Industrial Council agreement, may apply for a permit authorising his or her employment at a specified rate less than the minimum remuneration set by the agreement.
- (2) An application under subsection (1) shall be made to the chairperson of the Joint Industrial Council, who shall grant the application subject to such conditions as he or she may determine.
- (3) Whenever the chairperson of the Joint Industrial Council receives an application under this section, he or she shall report the fact of the application and the action taken on it to the next meeting of the Joint Industrial Council.
- (4) On receiving the information in subsection (3), the Joint Industrial Council may withdraw the permit or amend, impose or revoke any condition attached to it, and any action taken shall come into force immediately.

156. Records and notices

- (1) The employer to whom the Joint Industrial Council agreement applies shall –
 - (a) keep, for not less than three years, records showing compliance with section 153; and

- (b) post, in a prominent place at the work place, a notice containing the terms of the agreement in a language that all employees understand.

(2) An employer who-

- (a) keeps a false or misleading record, or wilfully makes a false or misleading entry in a record; or
- (b) with intent to mislead, produces a false record or gives a false information,

commits an offence.

(3) An employer who fails to comply with any provision of this section commits an offence and is liable on conviction to a fine not less than five hundred dalasis for each day the offence continues.

157. Recruitment of dock workers

Dock workers shall be recruited under such terms and conditions as is in accordance with this Act.

158. Exemption from collective bargaining

- (1) The Minister shall, on the joint application of an employer and a trade union, exempt any category of employees, industry or establishment from the operation of the Joint Industrial Council agreement, if he or she is satisfied that there exist a machinery for voluntary collective bargaining sufficient to maintain adequate terms and conditions of employment in that category, industry, or establishment.
- (2) An exemption under subsection (1) shall be made published in the *Gazette*.
- (3) The Minister may, by Notice published in the *Gazette*, revoke or amend the exemption granted pursuant to subsection (1), if he or she is satisfied that the-
 - (a) machinery in question has wholly or partially ceased to exist; or

- (b) terms or conditions of employment have fallen below the minimum level established by the Joint Industrial Council agreement without satisfactory compensatory terms or conditions.
- (4) On the revocation of an exemption under subsection (3), the Joint Industrial Council agreement shall apply, but any term or condition previously applied to an employee that is-
 - (a) more beneficial than the corresponding term or condition in the Joint Industrial Council agreement shall continue to apply and be incorporated in the employees' contract of employment as a minimum condition; and
 - (b) less beneficial than the corresponding term or condition in the Joint Industrial Council agreement, shall become invalid and be replaced by the corresponding term of the Joint Industrial Council agreement.

159. Enforceability of voluntary agreements

- (1) Notwithstanding section 160, a collective agreement made between an employer and a trade union, in circumstances to which section 158 applies, is enforceable as a contract between the parties to the agreement.
- (2) A copy of an agreement falling within section 157 shall be reduced to writing and sent to the Commissioner who shall register the agreement, unless he or she is not satisfied that the writing adequately represents the term of the agreement between the parties.

160. Registration of voluntary agreements

- (1) The Commissioner shall register a written voluntary collective agreement, which is not exempted under section 158, on the application of both parties of the registration.
- (2) On receipt by both parties of notification of registration of a voluntary agreement under subsection (1), the agreement becomes enforceable as a contract between the parties to the agreement.

161. Enforcement as part of the contract of employment

The provisions of a collective agreement registered under section 159 or 160 which are to be applied to a class or group of employees is –

- (a) applicable to all employees in the class or group employed by a party to the agreement, irrespective of whether the employee is a member of the trade union which is party to the agreement; and
- (b) deemed to be incorporated into the contract of employment of each employee in the class or group.

162. Binding effect of procedural agreements

Where a collective agreement registered under section 159 or 160, which contains clauses directly applicable to the terms and conditions of employment of an employee or class of employees, those clauses are deemed to be incorporated as terms and conditions of the contracts of employment of the employee or class of employees.

163. Effect of procedural agreements of industrial action

A party to a collective agreement registered under section 159 or 160 shall not take any form of industrial action or impose any other sanction, including a withdrawal of labour or lockout in pursuit of an industrial dispute, if the agreement sets procedures for the settlement of disputes during the duration of the agreement, unless the dispute relates to a provision of an agreement which-

- (a) has fallen below the minimum standard set by the Joint Industrial Council; or
- (b) would have been set by the Joint Industrial Council but for the operation of section 158.

164. Time limit on binding agreements

- (1) When the Joint Industrial Council agreement or an agreement falling within section 158, 159 or 160 specifies a period of time during which a substantive provision shall operate without review, the substantive provision is binding on the parties and not subject to revision, alteration or cancellation during the period specified, but if the period specified exceeds three years it is deemed to be three years.

- (2) Where an agreement referred to in subsection (1) specifies no period of time during which it shall remain binding, it is deemed to remain binding for one year.
- (3) A party to an agreement may, not earlier than three months before the termination of the agreement, demand negotiation of a new agreement to take effect on or after termination of the agreement, and the other party to the agreement shall participate in good faith in the negotiation.

165. Works committee

- (1) An employer who employs fifty or more employees at a single establishment for a continuous period of three months shall set up a Works Committee on the request of a trade union which has, in membership, an employee at that establishment, unless a Works committee applicable to the employee already exist.
- (2) A Works Committee established in accordance with subsection (1) shall-
 - (a) not be disbanded if the number of employees at that establishment exceeds ten, whether or not any employee remains a member of a trade union; and
 - (b) operate in respect of all members of management or of all other employees as appropriate to the members of the trade union which requested its establishment.
- (3) A Works Committee shall comprise employees of the establishment elected by secret ballot at intervals determined by the employer, but at least once in every three years.
- (4) The members of the Works Committee shall be elected by the employees represented by the Committee as a whole, or by the employees voting by categories, as defined by the constitution of the Committee.
- (5) Voting for members of a Works Committee shall be readily accessible to all members of the electorate, and candidate shall be afforded not less than one reasonable opportunity to address a meeting of all the electorate.
- (6) Nothing in this section prevents the voluntary establishments of a Works Committee and the Committee when established is subject to the provisions of this section.

- (7) The management of an establishment shall consult a Works Committee, whether established under this section or voluntarily, on any proposal, which may affect the employment or the terms and conditions of employment of an employee represented by that Committee.

166. Commissioner as adviser

The Commissioner or a person acceptable to be nominated by him or her, may, if jointly invited by the parties involved, attend a Works Committee or a voluntary negotiation as an adviser, mediator or conciliator.

167. Requirements for sole bargaining agency

- (1) An employer shall grant a trade union sole bargaining right for a category of employees if the trade union has, in membership, at least thirty percent of the employees in that category at his or her establishment or group of establishments.
- (2) An employer shall not grant sole bargaining rights to a trade union if another trade union has more employees in membership among that category of employees at the establishment or group of establishments.
- (3) Subject to the provisions of subsections (1) and (2), if one or more trade unions have an aggregate membership of not less than forty-five per cent of the employees in a category of employees at an establishment where no more than one hundred employees in total are habitually employed, the union or unions may request the employer to constitute it or them as the sole bargaining agent for that category of employees.
- (4) Subject to the provisions of subsections (1) and (2), if one or more union have an aggregate membership of fifty percent plus one of the employees in a category of employees at an establishment where more than one hundred employees in total are habitually employed, the employer shall grant that union or those unions the sole bargaining right for that category of employees within three months from the date of a request by the union.
- (5) If an employer requested to grant sole bargaining rights by the reason of subsection (4) fails to do so within three months from the date of the

request, a trade union party to that request may at any time after the expiration of the one month complain to the Commissioner.

- (6) Where the Commissioner fails to settle the complaint referred to in subsection (5), a trade union party to that request may at any time after the expiration of the two months complain to the Tribunal.
- (7) The Tribunal may, if satisfied that the request has been duly made and the conditions specified in subsection (4) have been satisfied, order the employer to constitute the union or unions as the sole bargaining agent.
- (8) If an employer fails to implement an order made under subsection (7) within a reasonable period after it has been made, each director, member of the board, proprietor, partner or other person the Tribunal determines to be an employer, commits an offence and is liable on conviction to a fine not less than five hundred dalasis for every day of the failure to comply with the Tribunal's order.

168. Balloting

- (1) An employer may on receiving an application to establish a sole bargaining agency, organise a secret ballot among the employees in the specified category in order to determine the matters referred to in the Regulations.
- (2) An employer may, at the request in writing of not less than twenty percent of the employees in a category of employees subject to sole bargaining agreements, organise a secret ballot to determine whether sufficient support remains for continuation of the sole bargaining agency.
- (3) An employer shall not organise a secret ballot under subsection (2) within twelve months of a proceeding ballot organised under subsection (1).
- (4) The ballots mentioned in subsections (1) and (2) shall give one vote to each employee in the sole bargaining category and ask only those questions specified in the Regulations.
- (5) If a ballot discloses that –
 - (a) a sole bargaining agent or the trade union applying for sole bargaining agency has in membership less than thirty per cent

of the employees in the relevant category, the agency shall not be granted or shall be withdrawn as the case may be; and

- (b) the trade union has in membership less than forty-five per cent of the employee in that category, the employer shall be free to decide whether to grant or withdraw the agency, as the case may be.
- (6) Where on a ballot as to continuation of a sole bargaining agency, the answers to the optional questions disclose that the union having the sole agency has, in membership, less than forty-five per cent of the employees in the category and another trade union registered as efficient has, in membership, a higher percentage of the employees in that category, the employer shall withdraw the bargaining agency agreement with the first mentioned trade union.
- (7) Where a sole bargaining agency is withdrawn as a result of the provisions of subsection (5) or (6), the employer-
 - (a) may, if he or she wishes, withdraw check-off arrangements; and
 - (b) shall withdraw check-off arrangements with the former sole bargaining agent, if a sole bargaining agency in respect of that category of employees is subsequently granted to another trade union.
- (8) A sole bargaining agent shall negotiate in good faith on behalf of all the employees within the category of employees to which the agency relates, whether or not they are members of the union.

169. Check-off

- (1) Where a trade union or a group of trade unions constitute a sole bargaining agent, the union or group may request the employer to deduct union membership dues from the wages of union members and the employer shall comply with the request in the case of an employee who gives written consent to the deduction.
- (2) An employer shall remit the amount so deducted to the relevant Trade union or group, but may retain a sum, not exceeding five per cent of

the amount so deducted, to meet the cost of collecting and remitting the amount.

170. Conspiracy in trade disputes

- (1) An agreement or a combination by two or more persons to do or procure to be done an act in furtherance of a trade dispute does not constitute a criminal conspiracy if the act committed by one person would not be punishable as a crime.
- (2) An act done in pursuance of an agreement or a combination by two or more persons is, if done in furtherance of a trade dispute, not actionable unless the act is done without the agreement or combination.

171. Immunity from liability from interference with contract

An act done by a person in furtherance of a trade dispute is not actionable on the ground that it-

- (a) induces some other person to breach a contract of employment or to interfere with a contract of employment of some other person or with the rights of some other person to dispose of his or her capital or his or her labour; or
- (b) constitutes a threat to do any of the things mentioned in this section.

172. Immunity from action in tort against trade unions

An act done by or on behalf of a registered trade union in furtherance of a trade dispute is not actionable in tort against the trade union or against a person in a representative capacity for the trade union.

173. Picketing

Where one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer in furtherance of a trade dispute, have a right to assemble –

- (a) at or near their own place of employment; or
- (b) if the persons are officials of the registered trade union, at or near the place of employment of employees whom they represent,

if they so assemble for the purpose of peacefully persuading a person to work or abstain from working or to communicate information.

174. Secondary action

- (1) An employee who is subject to disciplinary action by his or her employer shall not take industrial action against the employer, unless his or her employer is a party to a trade dispute, deemed to be a party to a trade dispute as specified in subsection (2).
- (2) For the purpose of subsection (1), the following employers are deemed to be a party to a trade dispute an employer who is -
 - (a) controlled by the same company, person or group of persons, one of which is a party to the trade dispute in furtherance of which the industrial action in question is taken; and
 - (b) supplying goods or services, or at any time, during the trade dispute against the employer who is party to a trade dispute, in furtherance of which the action in question is taken, has supplied to the employer who is party to the dispute, goods or services in place of goods or services, the supply of which has been adversely affected by the industrial action taken directly against the employer who is partly to the dispute.
- (3) An industrial action, or incitement or inducement to undertake industrial action, in breach of subsection (1), is deemed unlawful and may be prohibited by order of the High Court on the application of an employer affected by the action.
- (4) The immunity granted by any provision of this part does not apply to improper industrial action under this section or section 175.

175. Political actions and actions in breach of procedure

- (1) The following industrial actions are deemed improper industrial actions and may be prohibited by order of the High Court, on the application of an employer affected by the action –

- (a) subject to the provisions of subsection (2), action of which fourteen days' notice has not been given in writing to the Commissioner; or
 - (b) which is in breach of a collectively active procedure for the settlement of trade dispute application to the trade dispute in question and which provides expressly or impliedly in accordance with this Act that the procedure shall be exhausted before industrial action is taken; or
 - (c) which is primarily in pursuit of a political object, where a trade dispute is either not part of the purpose of the action or only an insignificant part of that purpose.
- (2) Where the taking of industrial action is likely to affect the continuation of a service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Commissioner shall be given twenty-eight days' notice of the action.

176. Emergency provision

- (1) Where, in the opinion of the President of the Republic of The Gambia, the existence of an industrial action threatens the continuation of a service, the interruption of which would endanger the life, personal safety or health of the whole or part of the population, he or she may-
- (a) issue a committee of inquiry to report to him or her, the facts of the dispute within one week of its appointment; or
 - (b) order a return to work and immediately appoint a Board of Arbitration in accordance with subsection (3).
- (2) The report of the committee of inquiry shall be published in the *Gazette* within seven days of its submission to the President.
- (3) If the dispute has not been settled within seven days of the publication of the report, the President shall immediately appoint a Board of Arbitration whose award shall -
- (a) be made within seven days of its appointment;
 - (b) be published in the *Gazette* within three days of its making;
 - (c) be final and binding on the parties; and

- (d) where appropriate to individual terms and conditions of employment, be deemed to be incorporated as terms and conditions of employment of the employees to whom it applies.
- (4) An industrial action in furtherance of the same trade dispute as gave rise to the action referred to in subsection (1), taken after the issuance of the Committee of inquiry and before the award of the Board of Arbitration, is –
 - (a) deemed an unlawful industrial action; and
 - (b) prohibited without further order of any Court and may be penalised as if it were a contempt of the High Court, but this prohibition does not apply if the Committee of inquiry or the Board of Arbitration fails to report within the specified time or the report of either body is not published in the *Gazette* within the time specified.
- (5) A Judge of the High Court nominated by the Chief Justice shall be the Chairperson of the Committee of inquiry and an independent person who has experience of industry or of trade union or of industrial relations, nominated by the Chief Justice, shall be the Chairperson of the Board of Arbitration.
- (6) The committee of inquiry and the Board of Arbitration shall have, in addition to the chairperson, a member nominated by the Chief Justice after consultation with the-
 - (a) trade union not party to the dispute in question; and
 - (b) organisation of employers not party to the dispute in question.
- (7) A party to the industrial action may appeal to the High Court on the ground that the industrial action does not fall within subsection (1), and if there is an appeal, none of the provision of this section shall apply until the decision of the High Court is announced.

PART XIX – MISCELLANEOUS

177. Discrimination in employment

- (1) It shall be the duty of the Minister, labour officers and the tribunal to promote –
 - (a) equality of opportunity in employment in order to eliminate discrimination in employment; and
 - (b) guarantee equal opportunity and treatment for a person who is a migrant employee or a member of the family of the migrant employee, lawfully within The Gambia.
- (2) An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice.
- (3) An employer shall not discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee –
 - (a) on grounds of race, colour, creed, gender, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy or mental status; or
 - (b) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.
- (4) It is not discrimination to –
 - (a) take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
 - (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job;
 - (c) employ a citizen in accordance with the national employment policy; or
 - (d) restrict access to limited categories of employment where it is necessary in the interest of State security.
- (5) An employer shall pay his or her employee equal remuneration for work of equal value.

- (6) An employer who contravenes a provision under this section commits an offence and is liable on conviction to a fine not less than ten thousand dalasis.
- (7) In any proceedings where a contravention of this section is alleged, the employer shall bear the burden of proving that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this section.
- (8) For the purpose of this section –
 - (a) an “**employment policy or practice**” includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion, transfer, demotion, termination of employment on disciplinary measures;
 - (b) “**prospective employee**” includes an applicant for employment;
 - (c) “**employer**” includes an employment agency; and
 - (d) “**mental status**” means

178. Discrimination on the basis of HIV/AIDS and other noncommunicable diseases

- (1) An employer shall not discriminate any other person in employment, including in hiring, remuneration, promotion and termination, based on the actual, perceived or suspected HIV/AIDS or other noncommunicable diseases of a person.
- (2) A complaint of discrimination on the basis of HIV/AIDS or other noncommunicable diseases may be made to the Commissioner, and shall in any case, be within the Jurisdiction of the Tribunal.
- (3) An employer who discriminates on the basis of the HIV/AIDs or other non-communicable diseases of a person commits an offence and is liable on conviction to a fine of not less than twenty-five thousand dalasis, in addition to all other remedy available to the person or persons involved.

179. Sexual Harassment

- (1) An employee is sexually harassed if his or her employer or a representative of that employer or a co-employee –
 - (a) directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express –
 - (i) promise of preferential treatment in employment;
 - (ii) threat of detrimental treatment in employment; or
 - (iii) threat about the present or future employment status of the employee;
 - (b) uses language whether written or spoken of a sexual nature;
 - (c) uses visual material of a sexual nature; or
 - (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to a behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.
- (2) An employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment.
- (3) The policy statement required under subsection (2) may contain any term the employer considers appropriate for the purposes of this section and shall contain –
 - (a) the definition of sexual harassment as specified in subsection (1);
 - (b) a statement –
 - (i) that every employee is entitled to employment that is free of sexual harassment;
 - (ii) that the employer shall take steps to ensure that no employee is subjected to sexual harassment;

- (iii) that the employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer's direction, who subjects any employee to sexual harassment;
 - (iv) explaining how complaints of sexual harassment may be brought to the attention of the employer; and
 - (v) that the employer will not disclose the name of a complainant or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation thereto.
- (4) An employer shall bring to the attention of each person under the employer's direction the policy statement required under subsection (2) by posting it on a display in a prominent position at a workplace.

180. Enforceability of illegal contracts

A provision of a contract of employment or a right or an obligation granted or imposed by this Act or any other rule of law shall not be enforceable on grounds of public policy, if the –

- (a) person seeking to enforce the contract did not know the illegality when the contract was made; and
- (b) Tribunal is satisfied that the absence of that knowledge is not due to that person's wilful neglect or default.

181. Continuity of employment

- (1) The following provisions apply wherever continuity of employment is to be ascertained for the purpose of any provision of this Act or any other law –
- (a) a period of continuous employment begins from and includes the first day of which an employee begins to work for an employer and continues to the date of termination of employment;

- (b) where an employee is engaged in a seasonal occupation and is employed in two successive seasons but is not employed the same employer during an intervening period, the employee is deemed to have been continuously employed for the aggregate of all the time he or she has actually been working for the same employer in successive seasons;
 - (c) periods of employment with the same employer, not failing within subsection (b) where the employment has been temporarily interrupted by weather, the suspension of a project, a period of maternity leave or for any other reason, are deemed to be periods of continuous employment for the aggregate of all the time covered by those periods of employment;
 - (d) consecutive periods of employment with two or more successive employers, where a successor has taken over the business of the former either as receiver or liquidator, personal representative or heir, or on transfer of the whole or part of the business, or otherwise, is deemed a single period of continuous employment with the successor.
- (2) The payment of a retainer during the period of interruption of employment is not, of itself, regarded as implying either the contract continues during that period or has been terminated at the commencement of that period.

182. Display of explanatory notices

- (1) An employer or a class of employers may be required by order of the Commissioner and at the employer's expense, to display in a prominent position at any workplace, a notice explaining any provision, or part, or the whole of this Act, in such terms and languages as the Commissioner may deem fit.
- (2) The Commissioner may cause to be printed and sold, at a reasonable price, a model copy of any notice required to be displayed under subsection (1).

183. Regulations

The Minister may make Regulations for the better carrying into effect of the provisions of this Act.

184. Repeal and saving

- (1) The Labour Act of 2007 is repealed.
[Cap. 56:01]
- (2) Notwithstanding subsection (1), all regulations, orders, awards made or given under the repealed Act shall be deemed to have been made or given under this Act and shall remain effective in so far as they do not contravene this Act.