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## LESOTHO

### LABOUR CODE ORDER, 1992

Order n°24 of 1992

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To make provision for the amendment, consolidation and codification of the laws relating to employment and matters incidental thereto.

Enacted by the Military Council.

## **PART I - PRELIMINARY**

### **1. Short title and commencement**

This Order may be cited as the Labour Code Order 1992, and shall come into operation on such day or days as may be appointed by the Minister by notice in the Gazette.

### **2. Scope of application**

(1) The Code shall apply to any employment in the private sector and to any employment by or under the Government, or by or under any public authority, save as provided in subsection (2). Unless otherwise specified in the Code, it shall also apply to apprentices.

(2) The Code shall not apply to

- (a) any person (other than a person employed in a civil capacity) who is a member of
  - (i) the Royal Lesotho Defence Force;
  - (ii) the Royal Lesotho Mounted -Police; or
  - (iii) any other disciplined force within the meaning of Chapter II of the Lesotho Independence Order of 1966;
- (b) such category or class of public officer, such public authority or employee thereof as the Minister may by order specify and to the extent therein specified.

(3) No exemption shall be made by the Minister under subsection (2) (b) which is incompatible with any international labour Convention which has entered into force for the Kingdom of Lesotho.

## **PART II - INTERPRETATION AND FUNDAMENTAL PRINCIPLES**

### **3. Terms defined**

In the Code, unless the context otherwise requires

"advance" includes any payment in money to any person upon the condition that he or she repays or makes good the same by his or her labour or out of the wages to be received by him or her under a contract;

"apparent age" means a person's age as determined in accordance with the provisions of section 236 of the Code;

"apprentice" means a person who has entered into an apprenticeship contract with another person for the purpose of acquiring a skill or learning a trade;

"attesting officer" means any labour officer or other public officer who has been duly appointed as such,



"authorized officer" includes a labour officer and any other Public officer to whom the Labour Commissioner has delegated any of his or her powers;

"Board" means the Wages Advisory Board established under section 48;

"branch of a trade union" means any number of the members of a registered trade union who have, in accordance with the constitution of the registered trade union, appointed their own management committee but who are under the control of the executive committee of such trade union and are bound under the constitution of such trade union to contribute to its general funds;

"Chief" has the meaning assigned to it in the Chieftainship Act 1968;

"child" means a person under the age of 15 years;

"the code" means the Labour Code Order, 1992;

"collective agreement" means an agreement entered into freely between an employer or a group of employers and a trade union representing any employees of that employer or group of employers;

"commercial undertaking" includes -

- (a) establishments and offices engaging wholly or mainly in the sale, purchase, trading, distribution, insurance, negotiation, loan or administration of goods or services of any kind;
- (b) establishments for the treatment or care of the aged, infirm, sick, destitute or mentally unfit;
- (c) hotels, restaurants, boarding houses, clubs, cafes and other refreshment houses;
- (d) places of amusement and casinos;
- (e) establishments for the instruction and care of children or young persons;
- (f) broadcasting, postal and other telecommunications offices;
- (g) mixed commercial and industrial establishments, unless they are deemed industrial establishments;

"continuously employed" means employed by the same employer, including the employer's heirs, transferees and successors in interest, for a period that has not been interrupted for more than four weeks in each year of such employment, during which four-week period there was no contract of employment in existence and no intention on the part of the employer to renew it once that period had elapsed. No break of employment due to illness certified by a registered medical practitioner, sick leave, weekly day of rest, maternity leave, public holiday, paid holiday or other leave granted by the employer shall be deemed to break the continuity of employment;

"contract" means unless otherwise stipulated in the Code a contract of employment;

"contract of employment" means a contract, whether oral or in writing, express or implied, by which an employee enters the service of an employer;

"contract of foreign service" means a contract made within Lesotho to be performed in whole or in part outside Lesotho.

However, a contract requiring the employee to undertake a journey from a place

outside Lesotho and to return to Lesotho shall, if the journey may reasonably be expected to be completed within two months of its start, not be deemed a contract of foreign service;

"Court" means, unless otherwise indicated, the Labour Court established under section 22 of the Code; if otherwise indicated, "court" means a subordinate court of the second or higher class under the Subordinate Courts Order 1988 (No. 9 of 1988);

"dependant" means any member of an employee's family, including an illegitimate child, who is wholly or partly legally dependent on the earnings of that employee for the provision of the ordinary necessities of life;

"domestic servant" includes any person employed in or about a private residence either wholly or partly in any of the following capacities - cook, house servant, waiter, butler, nurse, personal servant, bar attendant, footman, chauffeur, groom, gardener, launderer or watch keeper;

"employee" means any person who works in any capacity under a contract with an employer in either an urban or a rural setting, and includes any person working under or on behalf of a government department or other public authority;

"employees' organisation" means trade union, as defined below;

"employer" means any person or undertaking, corporation, company, public authority or body of persons who or which employs any person to work under a contract and includes:

- (a) any agent, representative, foreman or manager of such person, undertaking, corporation, company, public authority or body of persons who is placed in authority over the employee; and
- (b) in the case of:
  - (i) a person who has died, his or her executor;
  - (ii) a person who has become of unsound mind, his or her Curator Bonis;
  - (iii) a person who has become insolvent, the trustee of his or her insolvent estate;
  - (iv) a company in liquidation, the liquidator of the company;

"employers' organisation" means any combination, either temporary or permanent, established by employers for the principal purpose of representing and promoting their interests, and of regulating the relations between employers and employees, or between employers, whether such combination would or would not, if the Code had not been enacted, have been deemed to have been an unlawful combination by reason of its purposes being in restraint of trade;

"essential" services means the services defined in subsection (1) of section 232;

"executive committee" means the body, by whatever name called, to which the management of the affairs of a trade union or employers' organisation is entrusted; the executive committee includes the officers of that body as designated by the trade union or the employers' organisation;

"factory"

- (a) means any premises with machinery, on which, or within the precincts of which, persons are employed in the making, altering, repairing, cleaning, breaking up or adapting for sale of any article for the purpose of gain and over which the employer has the right of access or control; and
- (b) includes the following premises where persons are employed
  - (i) any laundry or kitchen carried on as ancillary to another business or as an incidental to the purposes of any public institution;
  - (ii) any premises in which the construction, reconstruction or repair of aircraft, vehicles, vessels or other plant for use for transport purposes is carried on as ancillary to a transport undertaking or commercial undertaking;
  - (iii) any premises in which printing by any process or bookbinding is carried on by way of trade or for purpose of gain or incidental to another business so carried on;
  - (iv) any premises in which articles are made or prepared as an incidental to the carrying of construction works not being premises in which such works are being carried on;
  - (v) any premises in which persons are employed in or in connection with the generating of electrical energy for supply;
  - (vi) any cold-storage room;
  - (vii) any premises used in connection with slaughtering of cattle, sheep, swine, goats, horses, asses or mules;
  - (viii) any premises where tobacco leaf is cured or otherwise made ready for manufacture or is manufactured into tobacco in any form;
  - (ix) any premises where agricultural products are processed;
  - (x) any limekiln where limestone is burnt to make lime;
  - (xi) any premises where bread, biscuits or confectionery are baked by way of trade for purposes of gain; and
  - (xii) any premises used for the storage of petroleum products: two or more factories may, with the approval in writing of the Labour Commissioner, be considered a single factory where the circumstances reasonably justify such a course; premises shall not be excluded from the definition of a factory by reason only that they are open-air premises;

"factory inspector" means a labour officer with special responsibility for the inspection of places of work;

"family" in relation to an employee means the wife or wives, husband and the dependent relatives of the employee, in relation to a recruited person, it means the wife or wives husband and the dependent relatives of the recruited person;

"federation" means any combination or association of two or more trade unions or employers' organisations which has a separate legal existence from the bodies of which it is comprised;

"forced labour" means any work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself or herself voluntarily, but does not include

- (a) any work or service exacted by virtue of any compulsory military service law for work of a purely military character;

- (b) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that such work or service is carried out under the supervision and control of a public authority, and that the said person is not hired to or placed at the disposal of any private individual, company, association or other such body;
- (c) any work or service exacted in case of emergency, that is to say in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic disease, invasion by animals or insect pests or plant diseases or pests, and in general any circumstances which would endanger the existence or well-being of the whole or part of the population;
- (d) minor communal services of a kind which are to be performed by the members of a community in the direct interests of such community and not for purposes of economic development, and which are civic obligations normally incumbent upon the members of such community. However, before any exaction of such minor communal services, consultation shall have been had with the inhabitants of the place, town or village concerned and their Chief, or other direct representatives, in regard to the need for such services;

"fortnight" means any period of 14 consecutive days;

"guardian" includes any person lawfully having charge of a child or young person who has no parents or whose parents are unknown and any person to whose care any child or young person has been committed, even temporarily, by a person having authority over him;

"hours of work" means the time during which an employee is at the disposal of the employer, exclusive of any intervals allowed for rest during which the employee is not at the disposal of the employer;

"industrial undertaking" means

- (a) any factory, as defined in the Code;
- (b) mines, reduction mills and other works for the winning, treatment or extraction of minerals from the earth, rivers or inland waters;
- (c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road tunnel, bridge, dam, viaduct, sewer, drain, well, telegraphic, telephonic or other telecommunications installation, electrical undertaking, gas work, water work or other work of construction, as well as the preparation for or laying the foundation for any such work or structure;
- (d) the transport of passengers or goods by air, road, rail or inland waterway including the handling of goods at docks, quays, wharves and warehouses;
- (e) any other type of undertaking which the Minister may by notice in the Government Gazette prescribe;

"intoxicating liquor" means any spirits (including methylated spirits) wine, ale, port, cider, perry, hop beer, Sesotho beer, or other fermented, distilled, spirituous or malt liquor of an intoxicating nature and every drink with which any such liquor shall have been mixed;

"judicial officer" means any officer appointed under section 5 of the Judicial Service Commission Act 1983 (No.7 of 1983);

"Labour Commissioner" means the Labour Commissioner whose office is established under section 12 of the Code and includes a person delegated by the Labour Commissioner in pursuance of the provisions of section 13 of the Code to the extent that the person is authorised to exercise any of the powers or perform any of the duties of the Labour Commissioner;

"labour officer" means the Labour Commissioner and any person whose office as a labour officer is established under sections 12 and 13 of the Code;

"lock-out" means an act of an employer done in contemplation or in furtherance of a trade dispute, with intent to

- (i) compel or induce employees to agree to terms of employment or comply with any demands made upon them by such or any other employer;
- (ii) cause loss or inconvenience to the employees employed by him or her or to any of them;
- (iii) incite, aid, abet, instigate or procure any other lock-out; or
- (iv) assist any other employer to compel or induce any employees to agree to terms of employment or comply with any demands made by him or her, and results in -
  - (a) closing his or her place of business or suspending or discontinuing his or her business or any branch thereof;
  - (b) discontinuing the employment of any employees, whether wholly or partially; or
  - (c) refusing or failing to engage employees for any work for which he or she usually employs workers;

"manual labour" means work which involves an employee, whether skilled or unskilled, in the use of hands in a substantial way;

"Minister" means the Minister of the Government for the time being responsible for the administration of the Code;

"month" means a period commencing on any date in a calendar month and expiring at the end of the day preceding the corresponding date in the succeeding calendar month;

"night" means the period of 12 hours from 6 p.m. to 6 a.m.

However, the Minister may, after consultation with the organisations of employers and employees representative of the interests concerned, prescribe by notice in the Government Gazette for the purposes of a particular provision of the Code either generally or for particular categories of industrial undertakings, some other specified period of 12 hours, which shall include the interval between 10 p.m. and 5 a.m.;

"Officer", when used with reference to a trade union or employers' organisation, includes any member of the executive committee thereof and any officer of a branch of a trade union, but does not include a trustee or an auditor;

"pay" means wages, as defined below;

"place of residence" means the place where a person normally resides with his or her family when not performing work under a contract of employment;

"public authority" includes a department of government or subdivision thereof, a local authority and a Chief;

"registered medical practitioner" means a person registered under the Medical, Dental and Pharmacy Order, 1970

"registered office" means the office of a trade union or employers' organisation which is registered under the provisions of section 194 of the Code;

"registered postal address" means the address of a trade union or employers' organisation which is registered under the provisions of section 194 of the Code;

"registered trade union or registered employers' organisation" means a trade union or employers' organisation registered respectively as such under the provisions of the Code;

"Registrar" means the person appointed under the provisions of subsection (1) of section 169 of the Code by name or by office to be or to act as Registrar of Trade Unions and Employers' Organisations, and includes any person appointed under subsection (3) of that section to be or to act as an assistant registrar;

"statutory maternity leave" means absence from work in accordance with the provisions of section 133;

"statutory minimum wage" means the wage determined in accordance with the provisions section 57;

"strike" means the act of any number of employees who are or have been in the employment of the same employer or of different employers, done in contemplation or furtherance of a trade dispute:

- (a) in discontinuing that employment whether wholly or partially;
- (b) in refusing or failing after any such discontinuance to resume or return to their employment;
- (c) in refusing or failing to accept engagement for any work in which they were or are usually employed; or
- (d) in reducing their normal output on their normal rate of work;

such act being due to any combination, agreement, common understanding or concerted action, whether express or implied, made or entered into by any employees with intent to:

- (i) compel or induce any such employer to agree to terms of employment or comply with any demands made by such or any other employees;
- (ii) cause loss or inconvenience to any such employer in the conduct of his or her business;
- (ii) incite, aid, abet, instigate, or procure any other strike; or
- (iv) assist workers in the employment of any other employer to compel or induce that employer to agree to terms of employment or comply with any demands made upon him by any employees;

"trade dispute" means any dispute or difference between employers or their organisations and employees or their organisations, or between employees and

employees, connected with the employment or non-employment, or the terms of the employment, or the conditions of labour, of any person;

"trade union" means any combination, either temporary or permanent, of ten or more employees or workers, the principal purposes of which are, under its constitution, the representation and promotion of employees' interests and the regulation of relations between employees and employers, or between employees, whether such combination would or would not, if the Code had not been enacted, have been deemed to have been an unlawful combination by reason of its purposes being in restraint of trade;

"trainee" means a person who is being trained by or for an employer, or for employment, under a training scheme in any trade or occupation;

"wages" means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money, fixed by law or by a mutual agreement made in accordance with the Code, and payable by virtue of a written or unwritten contract of employment to an employed person for work done or to be done or for service rendered or to be rendered;

"week" means any period of seven consecutive days;

"woman" means a female of the age of 18 years or upwards;

"worker" means "employee" as defined above;

"workers' organisation" means "trade union" as defined above;

"workers' representative" means any person representing the interests of employees pursuant to the Code, including but not limited to a person engaging in trade union activity;

"written law" means any proclamation, law, act, ordinance, order, or subsidiary legislation in force in Lesotho;

"young person" means a person of or over the age of 15 years but under the age of 18 years.

#### **4. Principles used in interpretation and administration of Code**

The following principles shall be used in the interpretation and administration of the Code:

- (a) the standards laid down in the Code are the minimum legally obligatory standards and are without prejudice to the right of workers individually and collectively through their trade unions to request, to bargain for and to contract for higher standards, which in turn then become the minimum standards legally applicable to those workers for the duration of the agreement;
- (b) no provision of the Code or of rules and regulations made thereunder shall be interpreted or applied in such a way as to derogate from the provisions of any international labour Convention which has entered into force for the Kingdom of Lesotho;
- (c) in case of ambiguity, provisions of the Code and of any rules and regulations made thereunder shall be interpreted in such a way as more closely conforms with

provisions of Conventions adopted by the Conference of the International Labour Organisation, and of Recommendations adopted by the Conference of the International Labour Organisation.

- (d) where, under the provisions of any other legislation, a person may have a remedy as provided for in that legislation, that remedy shall be in addition to and not in place of any remedy provided for by the Code.

However, in no case may there be double monetary recovery by the same person based on the same set of facts.

## **5. Non-discrimination**

(1) The application by any person of any distinction, exclusion or preference made on the basis of race, colour, sex, marital status, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, is incompatible with the provisions of the Code.

(2) Sexual harassment, as defined in Section 200 of the Code, shall be prohibited.

(3) Men and women shall receive equal remuneration for work of equal value.

(4) Any distinction, exclusion or preference in respect of a particular job based on the narrowly defined inherent requirements thereof shall not be deemed an act of unlawful discrimination.

(5) For the purposes of this section, the terms "employment" and "occupation" include access to vocational and other occupationally related training, access to employment and to particular occupations, retention of employment and any terms or conditions of employment.

## **6. Freedom of association**

Freedom of association shall be guaranteed for all workers, employers and their respective organisations in accordance with the provisions of the Code, in particular Parts XIII to XX.

## **7. Forced labour prohibited**

(1) Any person who exacts or imposes forced labour, as defined in the Code, or causes or permits forced labour to be exacted or imposed for his or her own benefit or for the benefit of any other private individual, association or other such body shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.

(2) Any Chief or public officer who puts any constraint upon the population under his or her charge, or upon any individual member of such population, to work for any private individual, company, association or other such body shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two thousand maloti or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.



## **8. Government contracts; fair terms**

(1) There shall be implied in every contract for the supply of goods or services to government departments in Lesotho a "fair terms and conditions" clause.

(2) The "fair terms and conditions" clause shall provide that the supplier of goods or services to any government department in Lesotho

- (a) undertakes to recognise and respect the freedom of the employees of the suppliers to belong to trade unions of their choice for the protection of their interests, and to refrain from belonging thereto; and
- (b) undertakes to ensure that the employees of the supplier enjoy terms and conditions of employment not less favourable than those enjoyed by employees employed on similar work by comparable employers in Lesotho.

(3) A complaint may be made to the Labour Court by an employer, an employee, a trade union or an employers organisation alleging breach of the provisions of subsection (2) (a) and (b) of this section. The Labour Court may order the supplier to comply with the relevant obligation and may order the supplier to pay to the employees concerned such sum or sums by way of compensation as seems just and equitable in all the circumstances.

## **PART III - ADMINISTRATION AND ADJUDICATION**

### **Division A. General**

## **9. Powers of Minister**

(1) The Minister shall be entitled to exercise any power authorised by the Code or any other written law.

(2) The Minister may appoint any of the persons or bodies whose appointment is provided for by the Code.

## **10. Summaries of Code**

(1) The Minister may cause summaries of the Code or any part thereof to be printed in the English and or Sesotho languages and shall make such summaries available to employers, workers and their respective representatives.

(2) The Labour Commissioner may, by notice in writing, require any employer to post and maintain in conspicuous places specified in such notice any such summaries of the Code as may be specified.

## **11. Liability of Government Officers**

No government officer may be held personally liable for anything done by him or her in good faith under the Code and in his or her official capacity.

## **Division B. Labour Commissioner, Labour Officers and Registrar of Trade Unions and Employers Organisations**

### **12. Appointment of officers.**

There shall be a Labour Commissioner and there may be such other officers as may be necessary for the purposes of the administration of the Code, whose offices shall be offices in the public service.

### **13. Delegation by Labour Commissioner.**

The Labour Commissioner may delegate in writing to any person the exercise of any of his or her powers and the performance of any of his or her duties, either in Lesotho as a whole or in any part of Lesotho, in relation to any matter or thing provided for by the Code.

### **14. Powers and duties of labour officers.**

(1) In addition to any other powers conferred by the Code, a labour officer may, for the purpose of ascertaining that the provisions of the Code and any other written law relating to labour, employment, industrial relations, working conditions or workers' compensation are being duly observed at all reasonable times, whether by day or night, and without previous notice

- (a) enter freely, inspect and examine any land, building, installation, premises, camp, aircraft, vessel or vehicle, or any place, structure or article whatsoever where or about which or in the vicinity of which any employee or recruited person is employed, housed or transported or where there is reason to believe that any employee or recruited person is employed, housed or transported;
- (b) enter, inspect and examine any hospital or dispensary, or any latrines or other sanitary arrangements used or intended to be used by employees or recruited persons in any place, premises or building, or inspect and examine any water supply available for the use of employees or recruited persons;
- (c) enter, inspect and examine kitchens and places in which food for the use of employees and recruited persons is stored, prepared or eaten and inspect and examine all such food and food stores;
- (d) take, for the purpose of analysis, samples of material and substances used or handled by employees, and of any food, water or drink provided for the consumption of employees or recruited persons. Such samples shall be taken in the presence of the employer or of his or her representative. Where feasible, samples shall be taken in duplicate and each sample shall thereafter be sealed and one of them shall be left with the employer;
- (e) carry out an examination, test or inquiry which he or she may consider necessary and in particular -
  - (i) question, alone or in the presence of witnesses, any employer or recruiter, any person acting on behalf of an employer or labour agent or any employee or recruited person on any matter concerning the application of the Code or any other written law relating to labour or employment and may question any other person from whom he or she considers useful information may be obtained;
  - (ii) require the attendance of any person for the purposes of (i) above at a specified place or office;

- (iii) require the production of any records, books, accounts, statistics or other documents relating to the employment of any recruited person and, if the labour officer considers such a course to be expedient, take certified copies of such records, books, accounts, statistics or other documents;
- (iv) enforce the posting of concise summaries of the Code and any other notices the posting of which is required by the Code or by any other written law relating to labour or employment;
- (v) make an order prohibiting the use of a place of work or the carrying out of activities, pursuant to the provisions of section 101 of the Code;
- (vi) make an order instructing that any defect relating to health, safety or welfare be remedied.

(2) In the exercise of the powers conferred by subsection (1), the following provisions shall be observed

(a) the labour officer or other officer shall not enter or inspect a private dwelling-house or any land or building privately occupied in connection therewith, or during the hours of darkness, and shall not without the consent of the occupier thereof enter such land or premises during the hours of daylight;

(b) no person shall be required to answer any question tending to self-incrimination;

(c) on the occasion of a visit or inspection, the labour officer or other officer shall notify the employer or his or her representative of his or her presence unless the officer has reasonable grounds for believing that such notification may be prejudicial to the performance of his or her duties.

(3) No labour officer or other officer exercising powers under this section shall

- (a) have any interest, direct or indirect, in any business or undertaking under his or her supervision;
- (b) reveal, whether during his or her employment in the public service or subsequently, any manufacturing or professional or commercial secret or working process which shall come to his or her knowledge in the course of his or her duties;
- (c) reveal to any person other than the Minister and the Labour Commissioner (or, for the purpose of instituting or carrying on the prosecution of any offence under the Code or any other written law relating to labour or employment, to the Director of Public Prosecutions or other legal officer of the Government) the identity of the complainant by whose complaint any contravention of the law has been brought to the officer's notice;
- (d) reveal to any employer the identity of an individual complainant consequence of whose complaint any inspection of a place of employment was made.

(4) Any labour officer and any other officer authorised to exercise powers under this section who contravenes any of the provisions of subsection (3) shall be guilty of an offence and shall be liable on conviction to a fine of six hundred maloti or to imprisonment for six months or both.

(5) Every labour officer or other officer authorised to exercise powers under this section shall be furnished by the Labour Commissioner with a certificate or identity card showing his or her appointment or authority so to act. The certificate shall be signed by

the Labour Commissioner, bear a photograph of the officer concerned and be signed by that officer. If so required by any person affected, the officer shall produce the certificate or identity card.

### **15. Settlement of disputes by labour officer**

(1) Whenever any question, difference or dispute arises as to the rights or liabilities of any party under a contract of employment, any party to the contract may report the matter to a labour officer who, without prejudice to his or her other powers, may take steps to effect a settlement between the parties. Nothing in this subsection shall entitle a labour officer to compound any offence.

(2) A labour officer to whom a matter is reported under the provisions of subsection (1) or under any other provision of the Code may, at the request of any party to the contract, refer the matter to the Labour Court, and in so doing may exercise any of the powers conferred on the labour officer under section 16.

### **16. Power of labour officer in relation to court proceedings**

For the purpose of enforcing or administering the provisions of the Code a labour officer may

(a) institute and carry on in his or her own name proceedings in respect of any contravention of, or any offence committed by any person against, any of the provisions of the Code;

(b) institute and carry on civil proceedings on behalf of any employee, or the employee's family or representative, against any employer in respect of any matter or thing or cause of action arising in connection with the employment of such employee or the termination of such employment.

### **17. Statistics, records and returns**

(1) In addition to other powers conferred under the provisions of the Code, the Labour Commissioner may, by notice in writing, require any employer to furnish in writing returns and statistics, whether periodically or otherwise, as to the number of employees employed by that employer in any particular employment, their rates of remuneration and the conditions generally affecting their employment or otherwise, with a view to ascertaining the social or civil condition of the wage-earning population of Lesotho.

(2) An employer shall, in respect of the employees he or she employs, keep such records, books, accounts and statistics as are required by the provisions of the Code and schedules thereto, and shall, whenever so required by a labour officer, produce such records, books, accounts and statistics for examination and making certified copies.

(3) The Labour Commissioner shall cause returns and statistics collected, in pursuance of the provisions of the Code to be compiled, analysed and tabulated and may, subject to the directions of the Minister and the provisions of the Code, cause statistics or abstracts thereof to be published with or without observation thereon and in such manner as the Labour commissioner may determine.

However except for the purpose of enforcement of the Code or with the previous consent of the employer furnishing the return or statistics, no individual return or part thereof shall be published or admitted in evidence in any other civil or criminal proceedings. Nor shall such return be disclosed to any person other than a person employed to carry out a duty under the Code, including the compilation, analysis and tabulation of returns and statistics under the provisions of this subsection.

Nothing in this subsection shall prevent or restrict the publication of any such statistics or abstracts without consent where the particulars relating to an undertaking or business within its sphere of activities do not permit identification of the costs of production in, the capital employed in or the profits arising from any such undertaking or business.

(4) Any person who -

- (a) is employed in the execution of a duty under the Code and who divulges or communicates to any person otherwise than in the ordinary course of such employment any information furnished in pursuance of the provisions of the Code; or
- (b) is in possession of any information which to his or her knowledge has been disclosed in contravention of any provision of the Code, and who publishes or communicates such information.

Shall be guilty of an offence and shall be liable on conviction thereof to a fine not exceeding six hundred maloti or to imprisonment for a period not exceeding six months or both.

(5) Any person who makes or causes to be made or knowingly allows to be made an entry in any records required to be kept by employers in terms of the Code which he or she knows to be false in a material respect or, for any purpose connected with this Part, produces or furnishes, or causes or knowingly allows to be produced or furnished, any wage sheet, record, list or information which he or she knows to be false in a material respect, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding six months or both.

## **18. Offence to delay or obstruct officer or furnish false information**

Any person who -

- (a) wilfully delays or obstructs any labour officer or other officer while such officer is exercising any power or performing any duty conferred or imposed by the code;
- (b) fails without lawful excuse to comply with any lawful direction, requirement or demand or to answer any question of such officer made or given in pursuance of any powers conferred upon him or her by the Code; or
- (c) conceals or prevents any person from appearing before or being examined by such officer, or attempts so to conceal or prevent any person; or
- (d) furnishes for the purpose of the Code or any regulations made thereunder any return of any information which he or she knows to be false in any material particular,

shall be guilty of an offence and liable to a fine not exceeding one thousand maloti or to imprisonment for a term not exceeding six months or both.

## **19. Registrar**

There shall be a Registrar of Trade Unions and Employer's Organisations, appointed to carry out functions in accordance with the provisions of Part XIII of the Code.

## **Division C. National Employment Service**

### **20. Establishment**

There shall be a National Employment Service. The Minister shall appoint a Director of the National Employment Service and such officers as are necessary, whose offices shall be offices in the public service.

### **21. Functions and powers**

(1) The functions of the Employment Service shall include

- (a) collecting information relating to vacancies for employment;
- (b) facilitating the placement of unemployed persons in employment;
- (c) in collaboration with the Department of Technical and Vocational Training established under the Technical and Vocational Training Act 1984, providing vocational guidance;
- (d) in collaboration with other appropriate bodies, providing employment-related training; and
- (e) collecting information and statistics regarding the labour market, including information on labour requirements and labour supply, to be forwarded to the Labour Commissioner.

(2) The Minister may, after consultation with the National Advisory Committee on Labour, by order:

- (a) prescribe the performance of other duties by the National Employment Service.
- (b) make provision for the compulsory registration by certain categories of employers of details of employment vacancies; and
- (c) make provision for the National Employment Service to make charges to employers for the services it provides to them; in no case may such charges be passed on to employees or candidates for employment.

(3) Particular emphasis shall be placed on the filling of vacancies for skilled and semi-skilled work.

(4) The National Employment Service shall act as the exclusive body for the placement of unemployed persons in employment at grades seven (7) or below of the public service. Each administrative authority in the public service shall immediately notify the National Employment Service of any vacancy at grade seven (7) or below and shall indicate the job description, qualifications required and conditions and remuneration offered. Within three weeks of receiving the vacancy announcement, the National

Employment Service shall provide the administrative authority in question with the particulars of candidates having the requisite qualifications. Only in cases in which the administrative authority finds these candidates to be unsuitable may that authority engage a person who has not been referred by the National Employment Service.

## **Division D. Labour Court**

### **22. Establishment of Labour Court and Registrar of Court**

(1) There is hereby established the Labour Court, hereinafter referred to as "the Court".

(2) There shall be a Registrar of the Court who shall be a person qualified in law and who shall be appointed by the Minister for the purpose of carrying out duties in relation to the decisions, awards, other records and docketing of the Court. The Minister may also appoint Deputy Registrars as are necessary.

(3) The Registrar and Deputy Registrars shall hold office in the public service.

### **23. Composition of Court**

(1) The Minister shall appoint as members of the Court -

- (a) a President;
- (b) such number of Deputy Presidents as the Minister may consider necessary; and
- (c) two or more ordinary members of the Court as the Minister determines, subject to the provisions of subsection (5) below.

(2) The President and such number of Deputy Presidents as may be prescribed shall be persons qualified in law with experience in labour relations.

(3) The President and Deputy Presidents shall hold office in the Public Service.

(4) The Deputy President shall, in performing his or her duties, have the same powers and authority as the President.

(5) The Court, when hearing any matter referred to it under the Code, shall be duly constituted if it consists of

- (a) the President or a Deputy President; and
- (b) such even number of ordinary members as the President may direct, half of whom being the representatives of employers and the other half the representatives of employees.

(6) After consultation with representative trade unions the Minister shall nominate a number of persons not exceeding eight altogether having experience or knowledge of labour relations from an employee's point of view to constitute a panel known as the Labour Panel. After consulting representative organisations, the Minister shall nominate an equal number of persons having experience or knowledge of labour relations from a management point of view to constitute a panel known as the Management Panel.

Members of these Panels shall constitute the ordinary members of the Court. The Minister shall forward the names and addresses of the persons on each panel to the President of the Court, who may call upon two or another even number of such persons, that is to say half drawn from the Labour Panel and half drawn from the Management Panel, to sit as ordinary members of the Court in a hearing.

(7) The determination of any matter before the Court shall be according to the opinion of the majority of the members of the Court considering or hearing the matter.

(8) A person shall not sit or act as a member of the Court if he or she has any interest, direct or indirect, personal or pecuniary, in any matter before the Court.

(9) The ordinary members of the Court shall, while engaged in any sitting or work of the Court, receive, from public funds, such remuneration and allowances as may be prescribed by the Minister.

(10) The sittings of the Court shall usually be held in Maseru but may be held at such other place as the President of the Court may direct.

(11) The Court may sit in divisions as directed by the President of the Court. A division of the Court shall be presided over by the President or a Deputy President of the Court.

## **24. Jurisdiction of Court**

(1) The Court shall have the power, authority and civil jurisdiction

- (a) to inquire into and decide the relative rights and duties of employers, employees and their respective organisations in relation to any matter referred to the Court under the provisions of the Code and to award appropriate relief in case of infringement;
- (b) to impose at civil law, in the case of any infringement of the provisions of the Code, any fine provided for thereby;
- (c) to inquire into and make awards and decisions in trade disputes, when so requested by the Minister or the Commissioner of Labour;
- (d) to inquire into and make awards and decisions in any matters relating to industrial relations, other than trade disputes, which may be referred to it;
- (e) to interpret the terms of contracts of employment, wages orders and collective agreements;
- (f) to determine any dispute arising out of the terms of any contract of employment or the breach of any such terms and if so, to award appropriate relief;
- (g) to perform such acts and carry out such duties as may be prescribed under the Code or any other written law;
- (h) to determine whether an unfair labour practice has been committed and, if so, to award appropriate relief;
- (i) to determine whether an unfair dismissal has occurred and, if so, to award appropriate relief;
- (j) to rescind any contract of employment and make such consequential orders as may be just in the circumstances;
- (k) To assess the fair value of services rendered by an employee in any case in which such services are to be assessed in accordance with the provisions of the Code or in any case where the rate of wages or other benefits to which an



employee should be entitled were not agreed between the employer and employee or it is uncertain what was agreed;

- (l) to fix the amount of compensation for loss of or damage to the property of an employer where such loss has been occasioned by the wrongful act or omission of his or her employee;
- (m) To adjust and set off one against the other all claims on the part either of the employer or of the employee arising out of or incidental to such relation between them as the Court may find, whether such claims are liquidated or unliquidated or are for wages, damage to person or property or for any other cause, and to direct payment of the balance found due by one party to the other party;
- (n) to hear appeals from decisions of the Registrar of Trade Unions and Employers' Organisations;
- (o) to hear claims for payment of statutory minimum wage due to an employee;
- (p) to commit and punish for contempt any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him or her by the Court under the Code;
- (q) when brought to its attention by a party, to resolve any ambiguity in its own award or decision;
- (r) to determine whether an arbitrator exceeded his or her jurisdiction.

## **25. Exclusive civil Jurisdiction**

(1) The jurisdiction of the Labour Court shall be exclusive as regards any matter provided for under the Code, including but not limited to trade disputes. No ordinary or subordinate court shall exercise its civil jurisdiction in regard to any matter provided for under the Code.

(2) The Minister, the Labour Commissioner and any aggrieved party shall have the right to present a claim to the Court as provided under the Code. Except as provided by section 70 in respect of a claim for unfair dismissal, any claim under the Code shall be filed within three years of the occurrence which gives rise to the claim.

## **26. No effect on criminal jurisdiction**

(1) The jurisdiction vested in the Labour Court shall not limit the jurisdiction of any other court exercising criminal jurisdiction in connection with the prosecution of an offence under the Code.

(2) In criminal proceedings under the provisions of the Code, the court exercising criminal jurisdiction may order an employer to pay to an employee such wages as are found by such court to be due to him or her by the employer together with such sum by way of damage, costs or expenses as that court shall consider just and in accordance with the provisions of the Code.

## **27. Rules of the Court**

(1) The Chief Justice of the High Court, in consultation with the President of the Labour Court, may make rules for the purpose of regulating the procedure of the Court and, without prejudice to the generality of the foregoing, such rules may make provision

- (a) for reference of matters in certain cases to be made to the President;

- (b) for cases where the Court, as constituted to deal with any matter, consists of the President and two members and a vacancy then occurs.

(2) The Court shall not be bound by the rules of evidence in civil or criminal proceedings, and it shall be the chief function of the Court to do substantial justice between the parties before it.

(3) In drawing up the rules referred to in subsection (1), regard shall be had to the need for informality, low cost and expedition in proceedings before the Labour Court.

(4) The rules drawn up under subsection (1) above shall be published in the Government Gazette.

## **28. Representation of parties.**

(1) At any hearing before the Court, any party may appear in person or be represented

- (a) by an officer or an employee of a trade union or of an employers' organisation;
- (b) by a legal practitioner, but only when all parties, other than the Government, are represented by legal practitioners.

(2) Where the Government is a party to any proceedings before the Court, the Government may be represented by the Attorney General or by any other person appointed by the Attorney General for that purpose.

## **29. Power to summon witnesses, etc**

(1) The Court shall have the power to summon witnesses, to call for the production of, and grant inspection of, books, documents, records and other items, and to examine witnesses under oath.

The President of the Court is authorised to administer oaths for such purposes.

(2) A summons for the attendance of a witness, or the production of books, documents, records or other items shall be signed by the Registrar and shall be served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in the High court.

(3) Any person who is summoned to give evidence or to produce any book, document, record or other item or giving evidence before the Court shall be entitled to the same privileges and immunities as if that person were summoned to attend or were giving evidence in civil proceedings before the High court.

## **30. Power to obtain evidence**

(1) If any person who has been summoned under section 29, having reasonable notice of the time and place at which he or she is required to attend, fails to attend or fails to remain in attendance until duly excused by the Court from further attendance, the President of the Court may, upon being satisfied on oath or by the return of the person charged with the service of such summons that the summons was duly served upon such person and in case no sufficient reason for such failure seems to exist, sign and issue a warrant for the apprehension of such person.

Any police officer to whom such warrant is delivered shall thereupon apprehend such person, who shall be brought before the court to give evidence or to produce the book, document, record or other item. In addition, such person shall be liable to such fine, not exceeding four hundred maloti, as the President of the Court may determine.

(2) If any person who has been summoned under section 29 refuses to be sworn or affirmed as a witness, or, having been sworn or affirmed, refuses to answer fully and satisfactorily any question he or she is lawfully required to answer, or refuses or fails to produce any book, document, record or other item and does not excuse his or her refusal or failure to the satisfaction of the Court, the President of the Court may order that such person be detained in custody as if he or she were a prisoner awaiting trial. The person may be detained up to eight days unless he or she consents to do what is required of him or her. If such person, upon being brought before the Court at an adjourned hearing, again refuses or fails to do what is required of him or her, the President may again adjourn the proceedings and order that the person be detained for up to a like period, and so again from time to time until such person consents to do what is required of him or her.

### **31. Penalty for false testimony**

Any person who knowingly gives false testimony touching any matter which is material to any question then pending in any proceedings before the court or intended to be raised in such proceedings shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding three years. For the purpose of this section, it shall be immaterial whether such testimony is given on oath or under any other sanction authorised by law.

### **32. Penalty for contempt of court**

If any person wilfully insults the Court or any member thereof during any sitting of the court, or wilfully interrupts the proceedings of the Court, or otherwise wilfully disturbs the peace or order of such proceedings, the President may order that such person be removed and detained in custody until the rising of the Court, and every such person shall be liable, in addition to such removal and detention, to such fine, not exceeding one hundred maloti, as the President of the Court may determine.

### **33. Witness allowance**

A person summoned under section 29, other than a public officer or a person having an interest in the proceedings for which he or she is summoned, may on the order of the Court be paid, from public funds, such allowances as may be prescribed by the President.

### **34. Enforcement of payment**

Where the Court has given judgment against a party to pay any sum under a contract of employment or under the provisions of the Code and the party fails to make any such payment within the time specified in such judgement, the President of the Court may, on the application of a party or a labour officer acting on behalf of any person to whom such sums are due, summon such party to appear before the President of the Court to answer why payment has not been made.

If such party fails to satisfy the President of the Court that the failure to make payment was due to no fault on his or her part, the President of the Court may order the party's detention in prison until the payments mentioned in the order are made or for a period of six months, whichever be the shorter period. The person entitled to enforce the judgment shall not be responsible for the expenses of such detention.

### **35. Court to have regard to Government's price and income policy**

In reaching a decision or in making an award relating to wages and conditions of employment in instances where there is in force no legally enforceable contract of employment between the parties or collective agreement concluded between a trade union and an employer or employers' organisation, the Court shall have regard to any declared government policy on prices and incomes.

### **36. Wage claims by several employees**

(1) Notwithstanding the provisions of any other law, claims in respect of wages due to two or more employees of the same employer may be joined in one action if -

- (a) the President of the Court considers that such joinder will not impede a speedy resolution of the claims or be otherwise inconvenient to the parties;
- (b) the summons or other document originating the proceedings or a document annexed thereto contains sufficient particulars of the names of such employees, their addresses and the wages said to be due to each.

(2) If the amount recovered from the employer in such proceedings be less than the total amount of the claims which succeed, the amount recovered shall after deduction of any costs be divided proportionately amongst the employees whose claims succeeded.

### **37. Posting of bond**

When it appears to the President of the Court that an employer against whom proceedings have been instituted under the provisions of the Code is likely to abscond to avoid payment of wages or other sums owed to any of his or her employees, the President may order such employer to post a bond until the hearing of the proceedings or until earlier payment of such wages or sums has been made in full.

### **38. Awards, decisions final; notice**

(1) An award or decision of the Court on any matter referred to it for its decision or on any matter otherwise falling within its sole jurisdiction shall be final and binding upon the parties thereto and on any parties affected thereby, and such award or decision shall not be the subject of an appeal in any proceedings or court.

(2) The Registrar of the Labour Court shall cause every award and decision of the Court to be communicated to the parties concerned and to the Labour Commissioner and to be published as a notice in the Gazette.

## **Division E. National Advisory Bodies**

### **39. National Advisory Committee on Labour**

- (1) There shall be established a National Advisory Committee on Labour.
- (2) Within three months following the coming into force of the Code the Minister shall appoint the members of the National Advisory Committee on Labour.
- (3) Members appointed shall serve for a term of four years which may be renewed.

### **40. Composition of Committee**

- (1) The composition of the Committee shall be as follows:
  - (a) three representatives of Government, one of whom shall be the chairman, who are appointed by the Minister; and
  - (b) equal numbers of representatives of employers and employees appointed by the Minister after consultation with the representative organisations of employers and of employees.
- (2) The Minister shall appoint two Deputy chairmen, one of whom shall be chosen from the representatives of employees after consultation with representative organisations of employees, and one of whom shall be chosen from the representatives of the employers after consultation with representative organisations of employers.
- (3) The Labour Commissioner or his or her representative shall be the secretary of the Committee ex officio.

### **41. Removal of a member**

No member of the Committee shall be removed from membership during the period of office save for misconduct rendering him or her personally unfit to be a member of the Committee. Removal from the Committee may be made by the Minister, on his or her own, or on the recommendation of the Committee.

### **42. Powers of Committee**

- (1) The National Advisory Committee on Labour shall have the power and duty:
  - (a) to make provision for the conduct of meetings and the procedure to be followed by the Committee;
  - (b) to consider and advise upon any proposed legislation affecting labour, employment, industrial relations or working conditions;
  - (c) on its own initiative, to discuss any matter connected with labour, employment, industrial relations, working conditions or labour legislation as it sees fit, and to report to the Minister in writing upon such discussion;
  - (d) to advise the Minister on any matter connected with the employment of workers, industrial relations or organisations of employers or workers as is referred to it by the Minister;
  - (e) to consider and advise upon the adoption and implementation in the Kingdom of Lesotho of any relevant international labour standards, including in particular those contained in the Conventions and Recommendations of the International Labour Organisation;

- (f) to consider and advise upon issues addressed by tripartite regional or international conferences;
- (g) to advise on any matter concerning the operation of workers' compensation;
- (h) to consider such other matters as may be placed upon its agenda under the provisions of section 45.

(2) The Minister shall within six months of there being adopted by the International Labour Conference refer every Convention and Recommendation so adopted to the National Advisory Committee on Labour for its advice as to the desirability and practicability of the ratification of such Conventions or of the implementation of such Recommendations.

(3) The Minister shall, at an interval of no more than two years, consult the National Advisory Committee on Labour as to the need to adjust the level of fines and fees set forth in the Code.

### **43. Quorum**

A quorum for meetings of the Committee shall be:

- (a) the Chairman or Deputy Chairman of the Committee;
- (b) one-third of the members nominated to represent employers;
- (c) one-third of the members nominated to represent employees;
- (d) one representative of Government.

### **44. Meetings**

(1) The Chairman, or in his or her absence the Deputy Chairman, of the Committee shall summon a meeting of the Committee not less than once every year.

(2) Additional meetings of the committee shall be summoned by the Chairman, or in his or her absence a Deputy Chairman, on receipt of a request for a meeting signed by not less than one-third of the total number of members referred to in section 40, subsection (1) (b), above.

### **45. Additions to agenda**

(1) On receipt of a request signed by not less than one-third of the total number of members referred to in section 40, subsection (1) (b), above the Chairman, or in his or her absence the Deputy Chairman, shall place upon the agenda of the next meeting of the Committee any item for inclusion of the agenda contained in such requisition.

(2) A requisition referred to in subsection (1) above must be received 14 days prior to the relevant meeting of the Committee.

### **46. National Advisory Council for Occupational Safety, Health and Welfare**

(1) For the purpose of giving advice and assistance to the Minister and the National Advisory Committee on Labour in respect of matters affecting the safety, health and welfare of persons at work, or any other persons whose safety, health and welfare may be affected by work activities, the Minister shall appoint a National Advisory Council for Occupational Safety, Health and Welfare.

(2) The Council shall review and advise the Minister and the National Advisory Committee on Labour on the operation of any legislation or regulations relating to employees' health, safety and welfare at work.

(3) The Council shall consist of

- (a) a Chairman
- (b) four members representing Government;
- (c) four members representing employers;
- (d) four members representing employees; and
- (e) two members having wide experience in occupational safety, health and welfare.

(4) The Chairman and members of the Council shall be appointed by the Minister for such period and on such terms and conditions as the Minister may determine.

(5) Before appointing any member specified in subsection (3) (c) or (d), the Minister shall consult representative organisations of employers and employees.

(6) The appointment of every member of the Council shall be published in the Gazette.

(7) The Council shall regulate its proceedings in such manner as it thinks fit and shall meet at least once every six months.

## **PART IV - WAGE-FIXING MACHINERY**

### **47. Manner of fixing wages**

Wages and conditions of employment may be fixed by the terms of a contract of employment, a collective agreement, an arbitration award, an industry-wide order under section 54 or by a wages order issued by the Minister upon the recommendation of the Wages Advisory Board.

### **48. Establishment of Wages Advisory Board**

(1) The Minister shall, by order, establish a Wages Advisory Board which shall, upon being required to do so by the Minister, inquire into the wages and conditions of employment of any employees in such part of Lesotho as may be specified in the order. The Board shall advise the Minister and the National Advisory Committee on Labour on such other matters relating to wages and conditions of employment as the Minister may refer to it.

(2) The Minister shall summon the Board to meet not less than once a year.

(3) The rules set out in the First Schedule shall apply to the constitution, composition, officers and proceedings of the Board.

### **49. Commission Power Proclamation to apply**

For the purpose of any inquiry under the Code, the Board shall have the powers of a Commission under the Commission Powers Proclamation 1955 in relation to the

summoning of witnesses and the production of books and documents and as to contumacy of, and indemnity to, witness.

## **50. Functions of Wages Advisory Board**

(1) The Minister, if of the opinion that it is expedient to fix the minimum wages of any employees in any part of Lesotho or to prescribe conditions of employment of any such employees, may require the Board to inquire into the matter. The Board shall thereupon inquire into the matter and submit recommendations to the Minister as to the minimum wage which should be paid and the conditions of employment which should apply to all or any of the employees coming within its terms of reference.

(2) The Wages Advisory Board shall have the power to submit to the Minister wages order proposals (hereafter referred to as proposals) for fixing the minimum wage to be paid, and for prescribing the conditions of employment to be applied by the employers within the Board's jurisdiction to all or any of the employees in relation to whom the Board operates. In so doing the Board shall, subject to the provisions of subsections (3) and (4), make such investigations as it deems necessary.

(3) Before submitting any recommendations or proposals to the Minister under the provisions of subsection (1) or (2), the Board shall publish in the Government Gazette a notice of intention to submit recommendations or proposals, stating a place where copies may be obtained and the period, being not less than 30 days, within which written representations with respect to the recommendations or proposals may be sent to the Board.

(4) The Board shall consider any representations made to it in terms of subsection (3) and may make such further inquiries as it considers necessary and then submit the recommendations or proposals to the Minister, either with or without amendment, having regard to such representations.

(5) Where recommendations or proposals have been submitted to the Minister in accordance with subsection (4), the Minister may refer them back to the Board, and the Board shall thereupon consider them, having regard to any observations made by the Minister and, either with or without amendment, resubmit the recommendations or proposals to the Minister.

(6) The Board may of its own initiative make representations to the Minister concerning the wages and conditions of employment of all or any group of employees in Lesotho.

## **51. Wages orders**

(1) Where recommendations or proposals have been submitted or resubmitted, the Minister may, after informing the Board of the decision taken, prescribe the minimum wage to be paid and the conditions of employment to be applied to any employees. and shall cause the order (hereafter referred to as a wages order) to be published in the Government Gazette.

(2) The wages order shall specify an effective date subsequent to the date of the wages order. Where the date so specified does not correspond to the commencement of the period for which wages are paid the order shall, in respect of any employees affected, become operative from the commencement of the next such period following the date specified in the order.



(3) A wages order may make different provisions for different cases and may also contain provision for the amendment or revocation of previous wages orders.

## **52. Annual review of wages orders and policies**

In every calendar year it shall be the duty of the Wages Advisory Board to review the minimum standards of wages and conditions of employment established during previous years by wages orders and to consider whether any change in those minimum standards should be recommended to the Minister.

## **53. Display in workplace of wages orders**

Every employer to whom a wages order applies shall display a copy of such wages order in every work place in which employees to whom the wages order applies work.

## **54. Extension of agreements and arbitration awards**

Where the Minister is satisfied that an agreement or arbitration award, relating to wages and/or conditions of employment, has been made by parties representative respectively of the whole, or substantially the greater proportion of, the employers and the employees in any industry, the Minister may make an order regulating wages or conditions of employment in accordance with the terms of such agreement or award and cause such order to be published in the Government Gazette. From the date of such publication or such date as the industry-wide order may prescribe, the industry-wide order shall take effect in relation to all the employers and the employees in such industry as though it had been a wages order made as a result of an order made pursuant to sections 50 and 51.

## **55. Saving as to rights conferred by other laws**

No order made under this part shall have effect so as to prejudice or diminish any rights in relation to conditions of employment, holidays or remuneration conferred upon any employee by or under the Code, any other law, a collective agreement, an arbitration award or a contract of employment.

## **56. Benefits provided by the employer**

(1) Any reference in this Part to wages shall mean the amount obtained or to be obtained in cash by the employee from his or her employer, clear of all deductions except those made in accordance with the provisions in section 85 of the Code.

(2) Wages order proposals and wages orders may also contain provisions -

- (i) authorising specified lawful benefits or advantages to be provided by the employer (or by some other person under an arrangement with the employer in pursuance of the terms and conditions of any legal or contractual obligation imposed upon the employer), which may, within the limits set by subsection (2) of section 81 of the Code, be reckoned as payment of wages in lieu of payment in cash; and
- (ii) defining the value at which any such benefits or advantages are to be reckoned.

## **57. Statutory minimum wage**

Any wage fixed by a wages order is hereafter referred to as the statutory minimum wage.

## **58. Effect and enforcement of wages orders**

(1) If a contract between an employee to whom a wages order applies and his or her employer provides for the payment of a wage lower than the statutory minimum wage or does not provide for the conditions of employment prescribed in a wages order, it shall have effect as if the statutory minimum wage were substituted for that lower wage and as if the prescribed conditions of employment were inserted. However, where the employee is provided with accommodation, the applicable statutory minimum wage may be reduced by such amount as may be determined by the relevant wages order.

(2) If an employer fails to pay an employee to whom a wages order applies at least the statutory minimum wage or fails to provide such employee with the conditions of employment prescribed in the order, the employer shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three hundred maloti or to imprisonment for a period not exceeding three months for each such offence. Where the employer or any other person charged as the person to whose act or default the offence was due has been found guilty of an offence under this section for failure to pay at least the statutory minimum wage, the court shall order the employer to pay such sum as it finds to represent the difference between the amount which ought to have been paid to the employee by way of wages if the provisions of the wages order had been complied with and the amount actually paid.

(3) Where criminal proceedings are brought under this section in respect of an offence consisting of failure to pay at least the statutory minimum wage then, after notice so to do has been served with the summons, warrant or complaint.

(a) evidence may, once the employer or any other person has been found guilty of the offence, be given of any like contravention on the part of the offender in respect of any period during the 12 months immediately preceding the date of the offence; and

(b) on proof of the failure, the court shall order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid by such employer during the period to any employee by way of wages if the provisions of the Code had been complied with and the amount actually so paid.

(4) The power given by this section for the recovery of sums due from an employer to an employee shall be in addition to and not in derogation of any right to recover such sums by civil proceedings; however, no person shall be liable to pay twice in respect of the same cause of action.

(5) In this section, "court" means a court of subordinate jurisdiction.

## **59. Employers not to receive certain payments**

(1) Where an employee to whom a wages order applies is an apprentice or a learner, it shall not be lawful for his or her employer to receive directly or indirectly from him or her or on his or her behalf or account any payment other than a payment duly made in pursuance of a valid instrument of apprenticeship.

(2) Any employer acting in contravention of this section shall be guilty of an offence and shall be liable on conviction in respect of each offence to a fine not exceeding three hundred maloti or to imprisonment for a period not exceeding two months.

The court may, in addition to imposing a fine, order him or her to repay to the employee, or other person having made the payment, the sum improperly received.

## **60. Records and Notices**

(1) The employer of any employee to whom a wages order applies shall keep in Sesotho or English such records as are necessary to show whether or not the provisions of this Part are being complied with in respect of such employees. The records shall be retained by the employer for a period of at least five years after the date of the last entry therein.

(2) The Minister may prescribe such notices in Sesotho or English for the purpose of informing employees of any wages orders affecting them and of such other matters, if any, as the Minister may deem necessary.

(3) The employer of any such employees shall exhibit in conspicuous places such notices as may be prescribed under sub-section (2).

(4) Any employer who fails to comply with any of the requirements of this section shall be guilty of an offence and shall be liable on conviction to a fine not exceeding three hundred maloti or to imprisonment for a period not exceeding three months or to both.

## **PART V - CONTRACTS OF EMPLOYMENT; TERMINATION; DISMISSAL; SEVERANCE PAY**

### **61. Application**

(1) Unless otherwise provided by the Code, the provisions of this Part apply to all contracts of employment.

(2) The provisions of this Part shall not apply to an apprentice or a trainee who is subject to the Technical and Vocational Training Act 1984.

(3) No person shall employ any employee and no employee shall be employed under any contract except in accordance with the provisions of the Code. Any contract, whether entered into before or after the commencement of the Code, which contains any term or condition less favourable to the employee than any corresponding term or condition for which provision is made by the Code, shall be construed as though the corresponding term or condition of the Code were substituted for such less favourable term or condition of service in such contract. However, nothing in the Code shall operate so as to invalidate any term or condition of any such contract which is more favourable to the employee than the corresponding term or condition of the Code.

(4) Subject to the provisions of subsection (3), every contract of employment which is in force at the commencement of the Code and which would have been subject to the provisions of the Code had it been entered into after that date shall, in so far as it is

not inconsistent with those provisions, continue in force and be deemed to have been entered into in accordance with those provisions.

## **62. Types of contracts**

(1) A contract of employment may take the form of a contract without reference to limit of time, a contract for one period of fixed duration or a contract to perform some specific work or to undertake a specified journey.

(2) A contract without reference to limit of time is a contract which contains no termination date. It may be terminated by either party, subject to the provisions of the Code concerning dismissal and notice of termination.

(3) A contract for one period of fixed duration shall set forth its date of termination. Such a contract shall, subject to the provisions of section 66 concerning dismissal, automatically terminate on that date and no notice of termination shall be required of either party.

(4) A contract to perform some specific work or to undertake a specified journey shall terminate upon the completion of the work or journey. No notice of termination shall be required of either party, but an employer who terminates such a contract before its completion shall pay the employee all wages and other remuneration that would have been owing to the employee if he or she had continued to work until the completion of the contract.

## **63. Notice of termination**

(1) For contracts without reference to limit of time, either party may terminate the contract upon giving the following notice:

- (a) where the employee has been continuously employed for one year or more, one month's notice;
- (b) where the employee has been continuously employed for more than six months but less than one year, a fortnight's notice.
- (c) where the employee has been continuously employed for less than six months, one week's notice.

(2) Nothing in this section shall prevent

(a) the parties to a contract from agreeing on a longer period of notice of termination than is provided by this section;

(b) an employer waiving the right to receive notice on any occasion;

(c) an employee from accepting payment in lieu of notice in accordance with section 64;

(d) an employer from declining to give notice of termination where the stated reason for the dismissal is serious misconduct of such a nature that it would be unreasonable for the employer to continue to employ that employee during the notice period;

(e) either party from otherwise terminating the contract for lawful cause in accordance with the provisions of the Code.

## **64. Payment in lieu of notice**

(1) Without prejudice to section 67, the employer may pay an employee in lieu of providing notice of termination under section 63.

In such cases, the employee shall be paid a sum equal to all wages and other remuneration that would have been owing to the employee up to the expiration of any notice of termination which may have already been given or which might then have been given.

(2) Where the termination of employment under a contract without reference to limit of time has been at the initiative of the employee in circumstances in which notice was required, and the employer has not waived the right to notice, the employee may be ordered to pay the employer a sum equal to the basic wages to which the employee would have been entitled during the portion of the notice period that was not observed. This provision may not be invoked if the termination of employment occurred in the circumstances referred to in section 67 or 68 (c).

## **65. Form of notice: cancellation**

(1) Notice to terminate a contract may be either oral or written. The day on which the notice is given shall not be included in the period of notice.

(2) If upon any termination as provided under sections 63 and 64 the employer suffers the employee to remain, or the employee without the express dissent of the employer continues in employment after the day on which the contract is to terminate, such termination shall be deemed to be cancelled and the contract shall continue as if there had been no termination, unless the employer and employee have agreed otherwise.

## **66. Dismissal**

(1) An employee shall not be dismissed, whether adequate notice is given or not, unless there is a valid reason for termination of employment, which reason is

- (a) connected with the capacity of the employee to do the work the employee is employed to do (including but not limited to an employee's fraudulent misrepresentation of having specific skills required for a skilled post);
- (b) connected with the conduct of the employee at the workplace; or
- (c) based on the operational requirements of the undertaking, establishment or service.

(2) Any other dismissal will be unfair unless, having regard to all the circumstances, the employer can sustain the burden of proof to show that he or she acted reasonably in treating the reason for dismissal as sufficient grounds for terminating employment.

(3) The following shall not constitute valid reasons for termination of employment

- (a) trade union membership or participation in trade union activities outside working hours or, with the consent of the employer, within working hours;
- (b) seeking office as, or acting or having acted in the capacity of, a workers' representative;
- (c) the filing in good faith of a complaint or grievance, or the participation in a proceeding against an employer involving the alleged violation of the Code, other

- laws or regulations, or the terms of a collective agreement or award;
- (d) race, colour, sex, marital status, pregnancy, family responsibilities, religion, political opinion, national extraction or social origin;
- (e) absence from work in accordance with the provisions of the Code or as authorised by the employer.

(4) Where an employee is dismissed under subsection (1)(a) or (b) of this section, he or she shall be entitled to have an opportunity at the time of dismissal to defend himself or herself against the allegations made, unless, in light of the circumstances and reason for dismissal, the employer cannot reasonably be expected to provide this opportunity. The exercise or non-exercise of this right shall not act as any bar to an employee challenging the dismissal pursuant to the terms of a collective agreement or contract of employment, or under the provisions of the Code.

## **67. Evasion of employer's obligations**

If the Labour Court is satisfied that an employer dismissed an employee in order to avoid liability for providing the employee with any benefit provided for under the Code, such dismissal shall be deemed to be unfair.

## **68. Definition of "dismissal"**

For the purposes of section 66 "dismissal" shall include

- (a) termination of employment on the initiative of the employer;
- (b) the ending of any contract for a period of fixed duration or for the performance of a specific task or journey without such contract being renewed, but only in cases where the contract provided for the possibility of renewal; and
- (c) resignation by an employee in circumstances involving such unreasonable conduct by the employer as would entitle the employee to terminate the contract of employment without notice, by reason of the employer's breach of a term of the contract.

## **69. Written statements of reasons for dismissal**

(1) The employer shall provide a written statement of the reason for dismissal, as defined in section 68(a) and (b), to any employee who is dismissed. Such statement shall be given to the employee either before dismissal, at the time of dismissal or within four weeks of the dismissal having taken effect.

(2) Every such written statement shall be admissible in evidence in legal proceedings.

(3) In the absence of a reasonable excuse, an employer will not be permitted in legal proceedings to contradict the statement he or she has given to the employee in accordance with subsection (1).

(4) It shall be an offence punishable with a fine not exceeding three hundred maloti for an employer, in the absence of reasonable excuse, to fail to give an employee the written statement referred to in subsection (1) above.

(5) Where an employer has given no written statement in accordance with subsection (1), or if the material details of the statement are incorrect, the Court may -

- (a) declare the reasons for the dismissal; and
- (b) award, in addition to other possible relief, two weeks' wages to the employee.

## **70. Time limit**

(1) A claim for unfair dismissal must be presented to the Labour Court within six months of the termination of the contract of employment of the employee concerned.

(2) The Labour Court may allow presentation of a claim outside the period prescribed in subsection (1) above if satisfied that the interests of justice so demand.

## **71. Excluded categories**

(1) Subject to subsection (2), the following categories of employees shall not have the right to bring a claim for unfair dismissal.

- (a) employees who have been employed for a probationary period, as provided under section 75;
- (b) employees over the normal age of retirement for the type of employment involved.

(2) An employee in a category covered by subsection (1) shall none the less be entitled to bring a claim for unfair dismissal alleging that the dismissal was for any of the reasons specified in subsection (3) of section 66 or section 68 (c) above.

## **72. Exemptions**

The Minister may by order, published in the Government Gazette, exempt from the provisions of the Code relating to unfair dismissal any group of employees provided the Minister is satisfied, following consultations with representative workers' and employers' organisations, that there is available to such group, whether under statute or not, a remedy for dismissal analogous to a claim for unfair dismissal.

## **73. Remedies**

(1) If the Labour Court holds the dismissal to be unfair, it shall, if the employee so wishes, order the reinstatement of the employee in his or her job without loss of remuneration, seniority or other entitlements or benefits which the employee would have received had there been no dismissal. The Court shall not make such an order if it considers reinstatement of the employee to be impracticable in light of the circumstances.

(2) If the Court decides that it is impracticable in light of the circumstances for the employer to reinstate the employee in employment, or if the employee does not wish reinstatement, the Court shall fix an amount of compensation to be awarded to the employee in lieu of reinstatement. The amount of compensation awarded by the Labour Court shall be such amount as the court considers just and equitable in all circumstances of the case. In assessing the amount of compensation to be paid, account shall also be taken of whether there has been any breach of contract by either party and whether the employee has failed to take such steps as may be reasonable to mitigate his or her losses.

## **74. Charges; costs**

(1) No court charges may be imposed in proceedings for unfair dismissal.

(2) No costs shall be awarded in favour of either party in proceedings for unfair dismissal unless the Court decides that the party against whom it awards costs has behaved in a wholly unreasonable manner.

## **75. Probation**

An employee may initially be employed for a probationary period not exceeding four months. At any time during the continuance of the probationary period or immediately at its end, the employee may be dismissed with one week's notice.

The probationary period may be extended beyond a period of four months only with the leave in writing of the Labour Commissioner.

## **76. Accrued rights of parties on termination**

(1) The termination of any contract under the provisions of this Part shall be without prejudice to any accrued rights or liabilities of either party under the said contract at the date of termination.

(2) In the case of the death of an employee, his or her accrued rights and liabilities, except the duty to perform services or work, under a contract shall devolve upon his or her heirs or dependants.

## **77. Certificate of Service**

(1) On termination of a contract the employer shall, if so requested by an employee whom he or she has continuously employed for more than one month, furnish the employee with a certificate which identifies the parties and shows only the period of service and the nature of the employment.

(2) Any employer who refuses or otherwise fails to comply with the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine of two hundred maloti or to imprisonment for a period of one month.

## **78. Distribution of assets of deceased employee**

After the death of an employee, the employer shall, as soon as practicable, pay or deliver to the Labour Commissioner, for distribution in accordance with law, all wages and other remuneration due to and all property belonging to the deceased employee which is in the employer's possession.

## **79. Severance payments**

(1) An employee who has completed more than one year of continuous service with the same employer shall be entitled to receive, upon termination of his or her services, a severance payment equivalent to two weeks' wages for each completed year of continuous service with the employer.

(2) An employee who has been fairly dismissed for misconduct shall not be entitled to a severance payment.



(3) In no case, regardless of an employee's length of service, may the amount of severance pay payable to an employee exceed a sum which may be prescribed by the Minister from time to time after consultation with the Wages Advisory Board.

(4) For the purpose of subsection (1) the two weeks' wages referred to shall be wages at the rate payable at the time the services are terminated.

(5) Where the termination of employment has been at the initiative of the employee, the employer may either make the severance payment immediately or may hold it in trust for a maximum period of 12 months. When the employer has held the severance payment in trust, the employer shall, immediately upon expiry of the period for which it has been held, pay the employee the sum of the severance payment plus interest at the fair market rate prevailing in the period in question. The placement of any severance pay in trust shall be subject to the provisions of section 89 regarding security from the employer.

(6) The right to severance pay in accordance with this section shall apply as from the date of entry into force of this part of the Code. Rights to severance pay accrued under the Wages and Conditions of Employment Order 1978 shall be enforceable under the terms of that Order, notwithstanding its repeal.

## **80. Penalty**

An employer who fails to make a severance payment in accordance with section 79 shall be guilty of an offence and shall be liable on conviction to a fine of six hundred maloti or imprisonment for six months or both.

## **PART VI - PROTECTION OF WAGES**

### **81. How wages to be paid**

(1) The wages of every employee shall be made payable in legal tender only, and any agreement whereby the whole or any part of the wages of an employee are made payable in any other manner shall be void. However, nothing in the Code shall render illegal an agreement or contract with an employee to provide the employee, as partial remuneration for his or her services in addition to money wages, with food, a dwelling place and/or such other allowances or privileges as may be customary in the trade or occupation concerned. The Minister may make regulations whereby, in specified classes of employment or in particular cases, contracts may provide for the partial payment of wages in the form of allowances in kind.

(2) The following conditions shall apply to the partial payment of remuneration in any form other than money wages

- (a) under no circumstances shall an employer give to an employee any noxious drug or any intoxicating liquor by way of remuneration or wages;
- (b) any allowances in kind shall be appropriate for the personal use and benefit of the employee and his or her family;
- (c) the value attributed to any allowance or privilege shall be fair and reasonable in accordance with prevailing prices and in any case shall not exceed the cost to the employer of supplying the same;

- (d) where the employee is provided with accommodation, the statutory minimum wage applicable to that employee may be reduced by such amount as may be determined by the relevant wages order; and
- (e) an employee may at any time (by a fortnight's notice in writing to take effect from the next date for the payment of wages after the expiry of such notice) renounce his or her right to any such allowances or privileges and require the same to be replaced by a sum of money equivalent to the value thereof.

(3) No employer shall impose any restriction on an employee as to the place in which, or the manner in which, or the person with whom, any wages paid to the employee are to be expended, and any such terms in a contract shall be unenforceable.

(4) Except where otherwise expressly permitted by the provisions of the Code, the entire amount of wages earned by, or payable to, any employee shall be paid

- (a) directly to the employee in legal tender; or
- (b) with the employee's consent or at his or her request, and subject to such limitations as the Minister may by regulations prescribe
  - (i) into a bank account maintained by the employee; or
  - (ii) to the employee by cheque, postal order or money expressed in legal tender; and no account shall be taken of any payment made in any other manner.

(5) Every employee shall be entitled to recover so much of his or her wages, exclusive of sums lawfully deducted in accordance with the provisions of the Code, as shall not actually have been paid to the employee in accordance with the provisions of subsection (4). The process for compelling the attendance of the defendant or of any necessary witnesses shall be instituted as though the applicant were deemed to be a pauper under the terms of Order No.V of the Subordinate Courts Rules, as incorporated by the Subordinate Courts Order 1988.

## **82. Place of wage payment**

(1) The payment of wages, when made in cash, shall be made on working days and, subject to the provisions of subsection (2), at or near the workplace, unless some other arrangement known to the employee concerned has been approved by a labour officer.

(2) Payment of wages shall not be made in places of amusement or places used for the sale of intoxicating liquor or the retail sale of goods, except in the case of persons employed therein.

## **83. Wages when due and how apportionable**

(1) All wages shall be deemed to accrue from day to day and shall be apportionable accordingly.

(2) Wages shall be paid regularly when due and payable, as follows:

- (a) in the case of a contract for a period of less than one month, wages shall be paid on the last day of each week;
- (b) in the case of a contract for a period exceeding one month, wages shall be paid at intervals not exceeding one month. However, where a person is employed

under a contract of foreign service which provides for the voluntary deferment of a portion of his or her remuneration, the wages shall be paid in accordance with the contract and any laws in force in respect of the deferment of pay;

- (c) in the case of a contract at piece-work rates, wages shall be paid at the expiration of each day's work; however,
- (i) an employer may, at the written request of an employee, accumulate such wages and make payment on pay-days at intervals not exceeding one month; and
- (ii) such part of the wages as consists of overtime pay or allowances additional to basic pay may be paid on the immediately subsequent pay-day;
- (d) in the case of a contract under which a specific task is to be performed, or a journey is to be undertaken, without reference to time, the wages shall be payable on the completion of the task. However, if the task or journey could not reasonably be expected to be completed within five weeks, the employer shall none the less pay the employee a reasonable sum, according to the amount of work done, at intervals not exceeding one month.

#### **84. Payment of wages when contract terminated**

(1) In every case in which employment has been terminated for a reason other than dismissal, all wages, including overtime pay and allowances additional to basic pay, shall be due on the last day of employment and shall be payable not later than the following working day. If the employer none the less requires the employee to attend on a day other than the last day of employment for the purpose of being paid such wages, the employer shall pay to the employee any travelling expenses or subsistence reasonably incurred for this purpose.

(2) In every case in which employment has been terminated by dismissal of the employee, all wages, including overtime pay and allowances additional to basic pay, due to the employee, up to and including the date of the occurrence which occasioned the dismissal, shall be paid on the day of dismissal.

#### **85. Deductions from wages**

(1) Subject to the limitations prescribed by the Code and sections 45 and 46 of the Subordinate Courts Order 1988, an employer may make the deductions from wages authorised by this section; no other deductions shall be permitted.

(2) In accordance with obligations imposed by any written law or with the written consent of the employee, deductions may be made from the wages of such employee for the purposes of

- (a) payment by the employer on the employee's behalf of
  - (i) amounts due from the employee in respect of any tax or rate imposed by law;
  - (ii) contributions due from the employee to any provident, medical or pension fund or any other fund or scheme approved by the Minister;
  - (iii) any amounts which a court has ordered or the employee has requested the employer to remit directly to the spouse or other dependent relative of the employee;
  - (iv) such amounts as are provided for as trade union dues or contributions under the provisions of any collective agreement or arbitration award

between a trade union and the employer or an organisation of employers of which the employer is a member; and

- o (v) amounts for any other purposes which the Minister may, following consultations with employers' organisations and workers' organisations, authorise by regulations; the amounts so deducted shall be duly paid to the person empowered to collect such tax or rate, the person entrusted with the management of such fund or scheme, or other authorised payee.

(3) Any employer may take fair and reasonable deductions from the wages of an employee in respect of but not exceeding the amount of loss or damage caused by the deliberate default or gross neglect of such employee to any tools, material or other property of the employer. No such deduction in respect of any one occurrence shall, without the prior approval of the Labour Commissioner, exceed an amount equal to one-third of the employee's wages for a period of one month. Such amount may be deducted in instalments so as to allow the employee to have sufficient means to maintain himself or herself and his or her dependants.

(4) An employer may make deductions from the wages of an employee proportionate to periods of unauthorised absence. Such deductions shall not exceed the amount of the loss suffered by the employer in consequence of the employee's absence as well as the cost to the employer in providing a replacement for the absent employee.

(5) Where an employer makes a loan paid in cash or by cheque to an employee in an amount exceeding half the employee's wage for one month, a memorandum of the transaction shall be made and signed by or on behalf of the employer and employee, providing for the repayment of the loan by instalments. In such cases, the employer may, subject to any regulation issued under the provisions of subsection (7), deduct from the wages due to the employee such instalments at such times as are agreed in the memorandum. Nothing in this subsection shall be construed as permitting the recovery of loans which would be irrecoverable under any other law.

(6) No employer shall make any deduction from the wages of any employee by way of discount, interest, handling fee or any other similar charge on account of any advance of wages made to such employee in anticipation of the regular period of payment of such wages.

(7) The Minister may by regulation prescribe the maximum amount of any loan or advance of wages which may be made to an employee, the maximum amount of any instalment which may be recovered for repayment of the loan and the method of repayment.

(8) In respect of any sum due by the employee, the total amount of the deductions which may be made at any one time from any wages payable to an employee shall not exceed one half of such wages or such other amount, as the Labour Commissioner may approve in advance in writing, which will leave the employee sufficient means to maintain himself or herself and his or her dependants.

## **86. Offences relating to wages**

It shall be prohibited for any person to

- (a) employ or continue in his or her employment, any employee without intending to pay, or without having reasonable grounds for believing that he or she can pay, the wages of such employee as they become payable;
- (b) without reasonable excuse, fail on demand to pay in accordance with the provisions of this Part any wages due to an employee;
- (c) make any deduction from wages with a view to ensuring a direct or indirect payment to an employer or any intermediary for the purpose of obtaining or retaining employment;
- (d) make any other deduction from wages not authorised under section 85 or 87.

### **87. Certain wages not to be assigned or attached**

(1) Assignment of an employee's wages shall be void except to the extent permitted by written law, and in particular the Subordinate Court Order 1988.

(2) No wages may be attached except by legal proceedings in a court. In any proceedings to attach the wages of an employee, the court in which such proceedings are taken shall exempt such part of the wages as it deems necessary for the maintenance of the employee and his or her dependants.

### **88. Authority of employer to open shop**

(1) Nothing in this Part shall prevent an employer who is otherwise lawfully entitled to do so from establishing a shop for the sale, at fair and reasonable prices, of provisions or goods generally to his or her employees, but no employee shall be compelled by any contract, agreement or order, written or oral, to purchase provisions or goods at such shop.

(2) It shall be prohibited for any person to compel or seek to compel any employee by any contract, agreement or order, written or oral, to purchase provisions or goods at any shop established for the sale of provisions or goods to employees.

### **89. Security from employer**

(1) Subject to any directions of the Minister, the Labour Commissioner may require any employer with whom an employee has deposited any sums of money for safekeeping either

- (a) to place such sums of money so deposited in a separate banking account approved by the Labour Commissioner and to be utilised for the sole purpose of refunding at the request of the employees concerned the amounts so deposited; or
- (b) to furnish security for the due refund of such sums so deposited to the employees concerned by means of
  - (i) a deposit by way of security of such sums and in such manner as the Labour Commissioner may direct; or
  - (ii) a bond entered into by the employer with or without securities for the due refund of any sums so deposited.

(2) The Minister may by regulation prescribe the amount of security to be furnished, the form of bond to be entered into and any other particulars the Minister may consider necessary to give effect to the provisions of subsection (1).

## **90. Priority of wages**

Notwithstanding the provisions of any other law in force in Lesotho, whenever any attachment has been issued against the property of any employer in execution of a judgement, the proceeds realised in pursuance of such execution shall not be paid by any court to the plaintiff until a debt owed by such employer in respect of any employee's wages has been satisfied to the extent of a sum not exceeding four months' wages of such employee. However, nothing in this section contained shall be deemed to prevent an employee from recovering any balance due on such judgement by ordinary process of law. Further, nothing in this section contained shall be construed as adversely affecting any preference conferred by a registered mortgage bond.

## **91. Other duties of employers**

(1) Every employer who enters into a contract with an employee shall inform him or her at the time of the contract or as soon as practicable thereafter, whether the employee is to be paid by the month or the week, as provided in section 83, or by the piece or by the task. The employer shall likewise inform the employee of the rate he or she is to be paid. If such rate may be liable to change under the contract, the employer shall, at the time of each payment of wages, inform the employee of his or her rate of wages for the preceding wage period.

(2) Employers are required to keep employees informed of their wage rates by providing the particulars set forth in the Fourth Schedule of the Code. The Minister may by regulation or order prescribe further particulars in this respect.

## **PART VII - HEALTH, SAFETY AND WELFARE AT WORK**

### **92. Application**

This Part shall apply to all places of employment or apprenticeship except for such mines as are covered by the Mine Safety Act 1981. However to the extent that any activity involving mining, tunnelling or excavating is not covered by a specific provision of the Mine Safety Act 1981 or regulations made under that Act, the provisions of this Part of the Code (including the Sixth and Seventh Schedules) shall apply.

### **93. Duties of employers**

(1) Every employer shall, so far as is reasonably practicable, ensure the safety, health and welfare at work of all of his or her employees.

(2) Without prejudice to the generality of an employer's duty under subsection (1), the matters to which that duty extends shall include in particular

- (a) the provision and maintenance of a working environment for his or her employees that is, so far as is reasonably practicable, clean, safe, without risks to health and adequate as regards sanitary facilities and arrangements for their welfare at work;
- (b) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health;

- (c) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (d) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the safety and health at work of his or her employees;
- (e) the maintenance of any place of work under the employer's control, including the means of access to and egress from it, in a condition that is safe and without risks to health, so far as is reasonably practicable;
- (f) the provision of conditions which comply with the standards set forth in the Sixth Schedule to this Code, where such standards are applicable.

(3) Every employer shall conduct his or her undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his or her employment who may be affected thereby are not exposed to risks to their safety or health.

(4) Every employer shall consult representatives of his or her employees who sit on the safety and health committee as provided by section 98, with a view to the making and maintenance of arrangements which will effectively promote measures to ensure the safety and health at work of the employees, and in checking the effectiveness of such measures.

(5) Every employer shall at his or her own expense furnish and maintain at the place of employment equipment and facilities for the rendering of first aid to his or her employees according to such scale as the Minister may by regulation require for employers of the particular class or of the particular industry to which the employer belongs.

(6) No employer shall levy or permit to be levied on any of his or her employees any charge in respect of anything done or provided in pursuance of this Part.

#### **94. Duties of employees**

Every employee shall, while at work

- (a) take reasonable care for the safety and health of himself or herself and of other persons who may be affected by his or her acts or omissions at work;
- (b) co-operate with his or her employer in the discharge of any duty or requirement placed upon the employer under the Code;
- (c) wear any protective equipment or clothing provided by the employer in pursuance of this Part at all times when there is a risk of bodily injury against which the equipment or clothing affords protection;
- (d) report forthwith to his or her employer the loss, destruction or other defect in the protective equipment or clothing; and
- (e) not smoke at the place of work, except at specific areas demarcated for that purpose.

#### **95. Duties of designers, manufactures, importers, etc**

(1) Every person who designs, manufactures, imports or supplies any article for use at work shall

(a) ensure, so far as is reasonably practicable, that the article is so designed and constructed as to be safe and without risks to health when used in a reasonable manner; and

(b) take such steps as are necessary to provide adequate information in connection with its use at work (being the use for which it was designed and has been tested) and about any conditions necessary to ensure that, when put to that use, it will be safe and without risks to health.

(2) Every person who erects or installs any article or moveable or immovable structure for use at work in any premises where it is to be used by persons at work shall ensure, so far as is reasonably practicable, that nothing about the way in which it is effected or installed makes it unsafe or a risk to health when properly used.

(3) Every person who manufactures, imports or supplies any substance for use at work shall take such steps as are necessary to secure that persons supplied by that person with the substance are provided with adequate information about :

- (a) any risks to health or safety to which the inherent properties of the substance may give rise;
- (b) the results of any relevant tests which have been carried out on or in connection with the substance; and
- (c) any conditions necessary to ensure that the substance will be safe and without risks to health when it is being used, handled, processed, stored or transported by a person at work.

## **96. Keeping of documents**

(1) Every employer shall keep at the place of work or at a place conveniently accessible to a labour officer and to members of the Health and Safety Committee appointed in accordance with section 98, the following documents

- (a) every certificate issued in respect of the place of work by the Labour Commissioner under this Part;
- (b) the particulars of every accident, dangerous occurrence or industrial disease occurring at the place of work of which notice is required to be sent to the Labour Commissioner under this Part;
- (c) all reports, registers and particulars required under this Part.

(2) Such documents shall be well preserved and made available for inspection by a labour officer for at least five years after the date thereof.

## **97. Safety and Health Officers**

(1) Every employer of more than 100 persons at any place of work shall appoint a registered safety and health officer for the purpose of exercising general supervision regarding compliance with the provisions of this Part and generally to promote the safe conduct of the work.

(2) Notwithstanding subsection (1), where the Labour Commissioner is satisfied that by reason of the dangerous nature of the plant, process or substances used by an employer of fewer than 100 persons it is expedient to do so. the Commissioner may



direct in writing that the said employer shall appoint a registered safety and health officer.

(3)

- (a) The employer shall allocate or allow sufficient time and adequate resources to the registered safety and health officer to achieve the purpose set out in subsection (1).
- (b) the registered safety and health officer shall, as and when required or at least once every two months, carry out an inspection of the place of work and the processes, and record the findings in a register which shall be provided by the employer for that purpose.

(4) A registered safety and health officer who carries out such duties for

- (a) the whole of his or her working time shall not act in such capacity for more than four separate places of work; or
- (b) part of his or her working time shall not, without the written permission of the Labour Commissioner, act in such capacity for more than one place of work.

(5) The Minister may make regulations, setting forth the necessary qualifications of safety and health officers, and the Labour Commissioner shall maintain a register of such officers.

## **98. Safety and health committees**

(1) Every employer of more than 15 persons at any place of work shall establish a safety and health committee in compliance with the provisions of subsection (3) for the purpose of promoting co-operation between the employer and the employees in achieving and maintaining safe and healthy working conditions, and shall appoint a senior member of the management staff to be responsible for safety, health and welfare at the place of work, if the employer is unable to perform such duties personally.

(2) Notwithstanding subsection (1), where the Labour Commissioner is satisfied that by reason of the dangerous nature of the plant, process or substances used by an employer of fewer than 15 persons at any place of work it is expedient to do so, the Commissioner may direct in writing that the said employer shall establish a safety and health committee.

(3) The employer shall provide the committee with such facilities and assistance as are reasonably required for the purpose of carrying out its functions, including the inspection of the work premises and machinery.

(4) Every safety and health committee shall

- (a) consist of an equal number of members, not less than two on each side, representing the employer and the employees, provided that the representatives of the employees shall be chosen by the employees or designated by a trade union;
- (b) be chaired by the employer or by a senior member of the management staff appointed in compliance with subsection (1); and

- (c) be held during working hours at least once every three months or at any earlier time at the request of any representative of the employer or the employees on that committee, where the circumstances so justify.

(5) No employee shall lose any pay on account of time spent on functions of a health and safety committee.

## **99. Prohibition orders**

(1) Where, in the opinion of the Labour Commissioner, any place of work or any activities carried on therein or which are about to be carried on therein involve a risk of serious bodily injury, the Labour Commissioner may make an order prohibiting the use of the place of work or the carrying out of the activities until the risk is removed, and serve such order on the employer or his or her representative or the person in control of the place of work or activities.

(2)

- (a) An order made under subsection (1) shall take immediate effect where the Labour Commissioner is of the stated opinion that the risk of serious bodily injury is or, as the case may be, will be imminent, and shall have effect at the end of a period specified in the order in any other case.
- (b) Where an order made under subsection (1) which is not to take immediate effect has been served -
  - (i) the order may be withdrawn by the Labour Commissioner at any time before the end of the period specified therein; or
  - (ii) the period so specified may be extended by the Labour Commissioner at any time when an appeal against the order is not pending.

## **100. Regulations**

(1) The Minister, after consultation with the National Advisory Council for Occupational Safety, Health and Welfare, may make such regulations as he or she thinks fit for the purposes of this Part and any such regulations may provide for the issue of permits and the taking of fees.

(2) Where it appears to the Minister

- (a) that in any place of work
  - (i) cases of illness have occurred which he or she has reason to believe may be due to the nature of a process or other conditions of work;
  - (ii) by reason of changes in any process or in the substances used in any process, or by reason of the introduction of any new process or new substance for use in a process, there may be risk of bodily injury to persons employed in that process; or
  - (iii) young persons are or are about to be employed in work which may cause bodily injury; or
- (b) that there may be risk of bodily injury to persons employed in any place of work
  - (i) from any substance or material or plant brought to the place of work to be used or handled therein; or
  - (ii) from any change in the conditions of work or other conditions in the place of work;

the Minister may make regulations requiring such reasonable arrangements to be made for the medical supervision, including first-aid treatment and medical treatment of a preventative character and medical examinations of the persons, or any class of persons, employed in that place of work or class or description of places of work as may be specified in the regulations.

### **101. Notification of industrial accidents and dangerous occurrences**

(1) Where any employee, as a result of an accident arising out of or in connection with his or her work, dies or suffers any of the injuries or conditions specified in Section 14 or in the second schedule to the Workmen's Compensation Act 1977, the employer shall -

- (a) notify the Labour Commissioner as soon as practicable, and
- (b) within three days send a report to the Labour Commissioner in the form set out in the Second Schedule to the Workmen's Compensation Regulations 1980 or any amendment thereof.

(2) The Commissioner may by notice in the Gazette specify an occurrence to be a dangerous occurrence.

(3) Where a dangerous occurrence occurs at or in connection with a workplace, the employer shall notify the Labour Commissioner as soon as practicable.

(4) The employer shall keep a record of all notifications of accidents and dangerous occurrences required to be reported under this section.

### **102. Notification of industrial diseases**

(1) Where a medical practitioner suspects or finds that any person is suffering from any industrial disease specified in the First Schedule to the Workmen's Compensation Act 1977, or any amendment thereof, he or she shall notify the employer of that person.

(2) Following receipt of a notification under subsection (1), the employer shall within three days notify the Labour Commissioner in writing of the industrial disease which has or is suspected to have occurred together with the name, address and place of work of the person concerned, and shall keep a record of such notification.

### **103. Training and supervision of persons working at dangerous machines**

(1) No person shall work at any machine whose operation may pose a risk of injury, unless he or she has been fully instructed as to the dangers arising in connection with the machine and the precautions to be observed, and

- (a) has received sufficient training in work at the machine; or
- (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine.

(2) No person shall be required to clean any part of any machine where the cleaning thereof would expose him or her to risk of injury from any moving part of the machine.

### **104. Fire prevention; fire-fighting**

(1) In every building in which employees work there shall be provided and maintained, so as to be readily accessible, means of extinguishing fire, which shall be adequate and suitable having regard to the circumstances of the premises and any process or processes in use.

(2) In every place of work, a sufficient number of employees shall be trained in the proper use of the means of extinguishing fire specified in subsection (1).

(3) The safety provisions in case of fire set out in the Sixth Schedule of the Code shall be respected in every place of work.

### **105. Prohibited and toxic substances**

(1) No substance prohibited under regulations made by the Minister shall be handled, stored or used in any place of work.

(2)

- (a) Every employee who may during the course of his or her work inhale, ingest or otherwise absorb any substance specified in the Sixth Schedule to the Code shall be medically examined free of charge at intervals of not more than six months or at such intervals as the Labour Commissioner may direct in writing.
- (b) A register shall be kept at each place of work in which shall be entered the name, address, date of birth, date of employment, date and result of examination of every person examined in pursuance of paragraph (a) as well as any action taken.

(3) Every employee who may during the course of his or her work handle or use any toxic substance shall be fully instructed as to the risks associated with the toxic substance and the necessary precautionary measures to be observed for protection against such risks.

(4) Where in any room any poisonous substance which may contaminate food or drink is stored, handled or used, no employee shall be permitted to partake of food or drink in that room, and no food or drink shall be kept in or conveyed through that room at any time.

### **106. Removal of dust or fumes**

(1) In every place of work in which, in connection with any process carried on, there is given off dust, fume or other impurity of such a character and to such extent as to be likely to be injurious or seriously offensive to the employees, or any substantial quantity of dust of any kind, all reasonably practicable measures shall be taken to protect such persons against inhalation or ingestion of the dust, fume or other impurity and to prevent its accumulating in any workroom, and in particular where the nature of the process makes it practicable, exhaust appliances and other devices shall be provided and maintained, as near as possible to the point of origin of the dust, fume or other impurity, so as to prevent its entering the air of any workroom.

(2) The Minister may by regulations specify the maximum permissible limits of exposure to substance hazardous to health which may be present in the atmosphere of any place of work.

## **107. Reduction of noise and vibration**

Where in any place of work persons are employed in any process involving exposure to noise or vibration which may constitute a danger to their health, effective means shall, so far as is reasonably practicable, be provided for the reduction of such noise or vibration within the place of work, as specified in regulations.

## **108. Lifting of weights**

(1) No employer shall require an employee to lift, carry or move any load so heavy or of such characteristics as to be likely to cause bodily injury.

(2) Every employer shall provide sufficient training in the safe techniques or methods of manual lifting and handling to any employee who is required in the normal course of his or her work regularly to lift, carry or move loads exceeding 50 kilograms for a male employee and 25 kilograms for a female employee.

## **109. Personal protective equipment and clothing**

(1) Where any process carried out at a place of work or where the nature of the worker's employment, or any substance used therein is likely to cause a person bodily injury, or impairment of health and these occurrences cannot be prevented by other means, he or she shall be provided with such suitable and appropriate personal protective equipment, protective clothing and accessories (including, where appropriate, caps, gloves, leggings, eye and ear protection, footwear and protective ointment) as will protect him or her from risk of harm or injury.

(2) Such personal protective equipment, protective clothing, and accessories shall be provided at no charge to the employee and shall be maintained and renewed by the employer as necessary. The employer may none the less require the employee, at the latter's own expense, to wash (but not to dry-clean) protective clothing that does not carry a residue of a hazardous substance.

(3) The Labour Commissioner may in writing specify the protective equipment or protective clothing which shall be provided for the purposes of subsections (1) and (2).

## **110. Water Supply**

(1) Every employer shall ensure that there is available at the place of employment an adequate supply of potable drinking water for the use of the employees.

(2) Wherever, in the opinion of a medical officer, the supply of potable drinking water is inadequate, or not reasonably protected or accessible for use, a labour officer may cause to be served on the employer an order in writing requiring the employer to remedy the defect within such reasonable time as may be specified in such order.

(3) Any person who fails to comply with the provisions of this section or with an order served under subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine of three hundred maloti or to imprisonment for three months or both.

(4) In this section "place of employment" means the place at which an employee carries out his or her duty each day.

## **111. Registration of factories**

(1) No person shall operate a factory unless it is registered pursuant to the provisions of the Code.

(2) The Labour Commissioner shall keep a register of factories in which he or she shall cause to be entered such particulars as the Labour Commissioner may consider, subject to any directions of the Minister, necessary or desirable.

(3) Every person who, at the coming into force of this section, occupies a factory shall, within three months after such coming into force, apply for the registration of such factory by sending to the Labour Commissioner an application containing the information indicated in the form set out in the Seventh Schedule.

(4) Before any person occupies or uses as a factory any premises which were not so occupied or used as such at the coming into force of this section, he or she shall, not less than sixty days before the intended operation of the factory, submit an application for the registration of the factory, together with a layout plan of the factory and any other particulars as the Labour Commissioner may require. The application shall provide the information indicated in the form set out in the Seventh Schedule.

(5) Any person who wishes to renew a certificate of registration of a factory shall apply to the Labour commissioner for the renewal not later than thirty days (30) before the expiry of the certificate, by providing the information indicated in the form set out in the Seventh Schedule.

(6) On receipt of an application under subsection (3), (4) or (5), the Labour Commissioner shall, after making such inquiries as he or she thinks fit

- (a) register the factory and issue a certificate of registration to the applicant or renew the certificate of registration, as the case may be, on payment of the prescribed fee and subject to such conditions as the Labour Commissioner thinks fit to impose; or
- (b) refuse to register the factory or to renew the certificate of registration and specify in writing the ground of refusal.

(7) Where an application for renewal of a certificate of registration is received outside the time-limit specified in subsection (4), a surcharge of fifty per cent of the prescribed fee shall be payable.

(8) A certificate of registration issued or renewed under subsection (5) shall be valid for a period not exceeding twelve months.

(9) The employer shall cause the last-issued certificate of registration to be at all times exhibited in a conspicuous place in the factory in respect of which such certificate is issued.

(10) Any person who occupies or uses any premises as an unregistered factory shall commit an offence.

## **112. Cancellation of registration**

(1) Where the Labour Commissioner is satisfied that a registered factory has ceased to operate or a certificate of registration has been obtained by fraud or misrepresentation, he or she may cancel the registration of the factory.

(2) Where the Labour Commissioner is satisfied that there has been a contravention of any condition subject to which a certificate of registration has been issued in respect of any factory, he or she may, by giving to the employer not less than thirty (30) days' notice in writing to comply with the condition, cancel the certificate where the condition is not complied with.

### **113. Appeal from decision**

(1) Any person aggrieved by the decision of the Labour Commissioner under the provisions of Section 111 subsection (6) may, within thirty (30) days from the date of such decision, appeal in writing to the Minister stating the grounds of the appeal. The Minister, on hearing the appeal, may in his or her discretion confirm, vary or reverse the decision of the Labour Commissioner. The decision of the Minister shall be final; however, the Minister may appoint a Factories Appeal Committee of not less than three persons (one of whom shall be designated as chairman) and may delegate to such Committee his or her powers to hear any such appeal.

(2) The Minister may make rules which shall be published in the Government Gazette for regulating the procedure for appeals under this section; in the absence of any such rules, any Committee which the Minister may appoint under subsection (1) shall regulate its own procedure.

### **114. Removal of nuisance in or near a factory**

(1) If in any factory or upon premises near a factory there exists a nuisance or defect of sanitation which in the opinion of a medical officer is likely to render the factory unsanitary or to affect injuriously the health of persons employed therein, the Labour Commissioner may by notice in writing served on the person responsible for such nuisance or defect, or the owner or occupier of such factory or premises, require such person effectually and within such period as the notice may specify to abate the nuisance or remedy the defect.

(2) Any person aggrieved by the terms of any notice served on him or her under the provisions of subsection (1) may, within seven (7) days of the service of such notice, appeal in writing to the Minister. The Minister may in his or her discretion confirm, rescind or vary the terms of such notice, including the period specified for compliance with the terms thereof.

(3) Any person who fails to comply in all respects with the terms of a notice served on him or her under the provisions of subsection (1) and as may be varied by the Minister under the provisions of subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding six hundred maloti or to imprisonment for a period not exceeding six months or both.

### **115. Employer-provided housing**

(1) The Minister may, by order published in the Government Gazette, designate remote geographical areas in which an employer shall be required to provide adequate housing

and sanitary arrangements for his or her employees and members of their families living with them.

(2) Every employer who employs any employees in an area shall

- (a) provide adequate housing for such of his or her employees who are employed at such a distance from their houses or normal places of residence that it would be impracticable for them to return thereto at the end of the day's work or to obtain suitable alternative accommodation; and
- (b) provide, at the place where such employees and members of their families living with them are housed
  - (i) an adequate and easily accessible supply of wholesome, potable water;
  - (ii) adequate sanitary arrangements;
  - (iii) medical aid; and
  - (iv) daily rations of sound and wholesome food, of such description and on such scale as the Minister may by regulation prescribe.

(4) No regulations in respect of housing and sanitary arrangements to be provided under paragraphs (a) or (b) (ii) of this subsection shall impose upon an employer any greater obligation than would be required under any written law relating to housing and sanitary arrangements in any town area.

(5) The obligations laid down under this section shall be without prejudice to those laid down in respect of facilities for employees at their place of work.

## **116. Penalties**

(1) Any employer who fails to comply with any provision of this Part or of any regulation made under the provisions of this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding six hundred maloti or to imprisonment for a period not exceeding six months or both.

(2) Any person who wilfully or recklessly damages, interferes with or misuses anything provided in the interests of safety, health or welfare in pursuance of the Code shall commit an offence.

## **PART VIII - WEEKLY REST, HOURS OF WORK, HOLIDAY WITH PAY, EDUCATIONAL LEAVE, SICK LEAVE**

### **117. Weekly rest and public holidays**

(1) Except as otherwise provided by the Code, every employee shall be allowed a weekly rest period of at least 24 continuous hours which shall whenever practicable include Sunday as the day of rest. If the circumstances of a particular employment so require, however, the employer may, after consultation with the employee or his or her representative, at not less than three days' notice, grant a different period of at least 24 continuous hours in that week as the period of weekly rest for the employee concerned.

(2) Whenever an employee is required to work on his or her day of weekly rest or on a public holiday, the employer shall pay him or her for such work at double the



employee's wage rate for an ordinary work day. This shall be without prejudice to an employee's entitlement to payment at a higher rate for work performed on that day of rest or public holiday under the terms of a collective agreement applicable to the employee.

(3) Any employer who fails to grant to an employee a day of weekly rest, or to pay wage rates in accordance with the provisions of subsection (2), shall be guilty of an offence and shall be liable on conviction to a fine of four hundred maloti or to imprisonment for three months, or both.

### **118. Ordinary hours of work and overtime**

(1) Except as otherwise provided in the Code, the normal hours of work for any employee shall be not more than 45 hours per week, calculated as follows:

(a) for an employee who ordinarily works a five-day week, nine hours of work on any day;

(b) for an employee who ordinarily works a six-day week, eight hours of work on five days and five hours of work on one day.

(2) No employee shall be required to work continuously for more than five hours without being given a rest period from work of not less than one hour during which time he or she shall not be required or permitted to perform any work. Provided that -

- (a) a driver of a motor vehicle, whose sole duty during the rest period is to be or to remain in charge of the vehicle and its load (if any), shall not be deemed to be working during such rest period; and
- (b) a period of work interrupted by rest periods of less than one hour shall be deemed to be continuous.

(3) Notwithstanding the provisions of this section, where the continuous nature of the work so requires, an employer may request or permit an employee to work overtime in addition to the normal hours provided for in this section, for up to 11 additional hours during any one week. In respect of the additional hours, the employer shall pay the employee for such overtime at a rate not less than one and one quarter times his or her normal wage rate. This payment shall be without prejudice to an employee's entitlement under subsection (2) of section 117.

(4) Any person who

- (a) requests or permits an employee to work for more than five hours continuously without a break contrary to the provisions of subsection (2); or
- (b) requests or permits an employee to work hours of overtime in contravention of the provisions of subsection (3); or
- (c) fails to pay overtime rates to an employee in contravention of the provisions of subsection (3), shall be guilty of an offence and liable on conviction to a fine not exceeding six hundred maloti or to imprisonment for a period not exceeding six months or to both.

### **119. Exemptions**

(1) The provisions of sections 117 and 118 shall not apply to

- (a) undertakings in which only members of the employer's family, up to a total of five including the employer, are employed;
- (b) persons holding positions of management or employed in a confidential capacity.

(2) The limitations on ordinary working hours and hours of overtime prescribed in section 118 shall not apply

- (a) when it is necessary to perform urgent work to remedy any breakdown of machinery and plant; or
- (b) in a case of emergency to avoid or lessen danger to life or serious damage to property; or
- (c) in a case of force majeure, in so far as necessary to avoid serious interference with the ordinary working of the undertaking.

(3) The Minister may, after consultation with employers' organisations and employees' organisations, make regulations prescribing exemptions, either total or partial, from the provisions of sections 117 and 118 for specified types of work. The regulations shall stipulate the conditions which attach to such exemptions, including the maximum number of hours of normal time and of overtime which employees may work in pursuance of such exemptions. In making such regulations, the Minister shall take into account the provisions of international labour Conventions concerning hours of work which are in force for Lesotho.

(4) The Labour Commissioner may, after consultation with employers' organisations and employees' organisations give written permission of temporary exemptions from sections 117 and 118 for specified types of work. Such exemptions shall specify the period of exemption (which in no case shall extend for a period longer than one month) together with all other conditions attached thereto. Temporary exemptions under this section may be given only in order to

- (a) prevent the loss of perishable goods;
- (b) allow for special work such as stocktaking, the preparation of balance sheets, settlement days, liquidations and the balancing and closing of accounts;
- (c) enable undertakings to deal with cases of abnormal pressure of work due to special circumstances in which the employer cannot reasonably be expected to resort to other measures.

(5) No employer shall require an employee who is pregnant, as certified by a medical practitioner, or nursing her child during the six month period immediately following her return to work after statutory maternity leave to work overtime.

## **120. Paid holidays**

(1) An employee shall be entitled to one working day's holiday on full pay in respect of each month of continuous employment with the same employer. An employee shall be entitled in each year to a minimum of 12 working days' holiday on full pay, to be taken at such times as may be agreed between the employer and the employee.

(2) The employee shall take at least six working days' holiday in a continuous period during the calendar year the holiday is due.

(3) Where, under the terms of a contract of employment or a collective agreement, an employee is entitled to more than the statutory minimum number of days of holiday in any year as provided for in subsection (1), the employee may carry over such additional holiday, not exceeding 18 days in all from one calendar year to the next.

(4) Public holidays, weekly rest days and days of absence from work due to an illness or accident certified by a medical officer shall not be counted as holidays on full pay.

(5) Any employee whose employment has terminated after at least three months of continuous work with the same employer shall be entitled to be paid one day's full pay in respect of each completed month of employment for which the employee has earned but not taken a holiday with full pay.

(6) Any agreement by an employee whereby he or she purports to relinquish his or her right to the statutory minimum working days of holiday with full pay as provided for in the Code shall be null and void. When an employee wishes to receive a cash payment in lieu to taking no more than six days of statutory annual leave, the employee and employer may so agree; in such a case the payment shall be made, in accordance with the provisions of this section, at the end of the calendar year the holiday is due. In the absence of an agreement with the employee, it shall be an offence for the employer not to allow the employee to enjoy the number of days of holiday with pay in a particular year to which the employee is entitled in excess of the statutory minimum number of days' including any additional days of holiday entitlement carried over from the previous year.

(7) For the purposes of this Part -

- (a) "continuous employment" has the meaning set forth in section 3 of the Code;
- (b) "full pay" means the normal remuneration paid to an employee, including any cost-of-living allowance and the cash equivalent of any benefits in kind for which the employee may be eligible under the contract of employment, but does not include any bonus payments which he or she may from time to time have received.

## **121. Public holidays**

(1) Every employee shall be entitled to a day off with pay on every public holiday declared in accordance with the provisions of the Public Holidays Act 1967.

(2) If an employee works on a public holiday, he or she shall be entitled either to be paid double the normal wage rate for an ordinary working day for having worked on the public holiday, or by agreement with his or her employer, he or she shall be entitled to be paid the normal daily wage rate for having worked on the public holiday and, in addition, be entitled to take an ordinary working day off with pay at the normal wage rate for that, in lieu of the public holiday.

## **122. Educational leave.**

(1) Every employee shall, with the consent of the employer, be entitled to a reasonable amount of time off work with pay, during normal working hours, for the purpose of receiving education or training.

(2) The amount of pay to be paid by the employer should correspond to the amount that normally would have been earned during the period of time off.

(3) "Education or training" shall include vocational training, education designed to improve the general educational level of the employee, and training in labour relations or occupational health and safety.

### **123. Sick leave**

(1) During the first six months of continuous employment with the same employer any absence owing to sickness may be unpaid.

(2) After six months' continuous employment with the same employer an employee shall be entitled, as a minimum, to sick leave on full pay for up to 12 days in the second six months' continuous employment with the same employer.

(3) After 12 months' continuous employment with the same employer an employee shall be entitled to sick leave on full pay for up to 12 days and thereafter to sick leave on half pay for up to 24 days in each period of 12 months' continuous employment.

(4) Entitlements of sick leave may not be carried forward from one year to another.

(5) An employee shall not be entitled to paid sick leave under this section unless he or she produces to the employer a certificate of incapacity signed by a registered medical practitioner or by a person in charge of a dispensary or medical aid centre acting on behalf of a registered medical practitioner. In the case of sick leave extending beyond six working days, the employer may require the employee to be examined by another registered medical practitioner, with the expenses of the examination and any travel expenses to be borne by the employer.

(6) An employee shall not be entitled to sick leave under this section where his or her incapacity for work has been deliberately self-inflicted.

## **PART IX - EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN**

### **124. Minimum age for employment**

(1) No child shall be employed or work in any commercial or industrial undertaking other than a private undertaking in which only members of the child's own family, up to five in total number, are employed.

(2) The provisions of subsection (1) shall not apply to light work done by children between the ages of 13 and 15 in technical schools or similar institutions where the work has been approved by the Department of Education.

(3) If a candidate for employment states his or her age as 21 years or under, he or she shall present proof of age to the employer.

(4) Any person who employs a child contrary to the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine of three hundred maloti or to imprisonment for three months or both.

## **125. General restrictions on employment of children and young persons**

(1) No person shall employ a child or young person on any work which is injurious to health or morals, dangerous or otherwise unsuitable, or on any work which the Minister, by notification in the Gazette, or the Labour Commissioner, acting in accordance with any directions of the Minister, has declared, by notice in writing, to be of a kind which is injurious to the health or morals of a child or young person.

(2) No persons shall, after receiving notice either orally or in writing from the parent or guardian that he or she is employing a child or young person against the wishes of such parent or guardian, continue to employ such child or young person.

(3) Where, under the provision of subsection (1) or (2), it becomes necessary to discontinue the employment of any child or young person, such discontinuance shall be without prejudice to the right of the child or young person to be paid such wages as he or she may have earned up to the time of such discontinuance.

(4) No person under the age of 16 years shall be required or permitted to work for more than four consecutive hours without a break of at least one hour, or for more than eight hours in any one day.

(5) No person under the age of 16 years shall be employed under conditions preventing him or her from returning each night to the place of residence of his or her parent or guardian. This provision shall not apply to domestic servants.

(6) Any person who employs a child or young person in contravention of any of the provisions of this section shall be guilty of an offence and shall be liable on conviction therefor to a fine of six hundred maloti or to imprisonment for six months or both.

## **126. Restriction on employment of children and young persons on night work**

(1) No child or young person shall be employed at night in any commercial or industrial undertaking or in any branch thereof. However, this prohibition shall not apply in respect of male young persons who have attained the age of 16 years and who perform work during the night in the case of an emergency that could not have been controlled or foreseen, and which interferes with the normal working of the undertaking. In addition, the Labour Commissioner may, for the purposes of apprenticeship or training in such industries or occupations which need to be carried on continuously (as the Minister may by regulation prescribe), authorise the employment during the night of male young persons who have attained the age of 16 years, provided that they are granted a rest period of at least 13 consecutive hours between two periods of work.

(2) Any person who employs a child or young person in contravention of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of six hundred maloti or to imprisonment for six months or both.

## **127. Restrictions on employment of children and young persons in mines and quarries**

(1) No child or young person shall be employed in any mine or in any quarry or opencast working except a young male person over the age of 16 who is employed otherwise than underground in terms of an apprenticeship agreement approved by the

Labour Commissioner and in respect of whom a medical officer has certified that he is fit for such work.

(2) Any person who employs a child or young person in contravention of any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine of six hundred maloti or to imprisonment for six months or both.

### **128. Employers of children and young persons to keep register**

(1) Every employer in an industrial undertaking shall keep a register of all children and young persons employed and working therein and shall include in such register particulars of their ages or apparent ages, the dates of commencement and termination of employment and such other particulars as the Minister may by regulation prescribe. The employer shall produce the register for inspection whenever so required by a labour officer.

(2) Any person who fails to comply with any provision of this section shall be guilty of an offence and shall be liable on conviction to a fine of three hundred maloti or to imprisonment for three months or both.

### **129. Offences by Parent or guardian**

Any parent or guardian of a child or young person who permits such child or young person to be employed in contravention of this Part shall be guilty of an offence and shall be liable on conviction to a fine of three hundred maloti or to imprisonment for three months or both.

### **130. Restrictions on night work**

(1) Employment of any person at night, as defined in section 3 of the Code, shall be subject to the following conditions:

- (a) No worker shall be required to take up an assignment as a night worker unless he or she is fit therefor. To determine his or her fitness for night work, a worker may request a health assessment without charge. Any medical findings which concern a worker shall not be transmitted to others without his or her consent and shall not be used to his or her detriment. Safeguards shall be established for night workers recognised, for reasons of health, as unfit for this type of work for a given period.
- (b) Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work for a period of at least three months before the expected date of childbirth and at least three months after childbirth. These provisions shall not have the effect of reducing the protection and benefits connected with maternity leave.
- (c) Night workers shall be granted reduced working time without loss of earnings or shall receive extra pay for performing night work, in an amount determined by collective agreement or, in its absence, by the Minister after consultation with representative organisations of employers and employees.

(2) The conditions set forth in this section shall be without prejudice to the restrictions on the employment of children and young persons.

### **131. Provision of transport**

(1) Every employee whose work is such as to require him or her to come to work or to return home from work during the hours of 8 p.m. to 5 a.m. shall be provided by his or her employer with transport to the nearest practicable place to his or her home, within a 10 kilometre radius of the employee's place of employment.

(2) Where the employer does not have a vehicle appropriate for the transport of employees, he or she may arrange for such transport and may charge the employees the fair market rate for the trip.

### **132. Restriction on the employment of women in mines**

(1) No woman shall be employed on underground work in any mine except with the written approval of the Labour Commissioner in such circumstances as the Minister may by regulation prescribe in accordance with the Underground Work (Women) Convention, 1935 (No. 45), of the International Labour Organisation, as follows:

- (a) women holding managerial positions who do not perform manual work;
- (b) women employed in health and welfare service;
- (c) women who, in the course of their studies, spend a period of training in the underground parts of a mine; and
- (d) any other women who may occasionally have to enter the underground part of a mine for the purpose of a non-manual occupation.

(2) Any person who employs a woman in contravention of the provisions of subsection (1) shall be guilty of an offence.

### **133. Absence from work in connection with confinement**

(1) A pregnant female employee shall give notice of her anticipated confinement by delivering to her employer a written certificate signed by a medical officer or a registered nurse or midwife certifying that the employee's confinement will probably take place within six weeks from the date of the certificate.

(2) On receipt of notice under subsection (1), the employer shall immediately permit the female employee in question to absent herself from work until her confinement, and thereafter the employer shall not permit or require her to return to work until the expiry of six weeks immediately after her confinement. This period of absence shall be known as statutory maternity.

(3) Within 21 days immediately after her confinement, a female employee shall deliver to her employer a written certificate signed by a medical officer or a registered nurse and midwife certifying the date of confinement.

(4) Notwithstanding subsection (2), where a female employee delivers to her employer a written certificate signed by a medical officer or a registered nurse or midwife certifying his or her opinion that the employee is suffering from an illness arising out of her confinement and is consequently unfit to return to work, the employer shall not permit or require her to return to work until the expiry of eight weeks immediately after her confinement.

(5) The leave before the anticipated date of confinement shall be extended by any period elapsing between the anticipated date of confinement and the actual

confinement; the period of statutory maternity leave to be taken after confinement shall not be reduced on that account.

(6) Any absence from work in pursuance of subsection (2) or (4) shall be deemed, for the purposes of the Code, not to interrupt the continuity of employment of the female employee concerned.

### **134. No obligation on Employer to pay Wages**

Nothing in this law shall be deemed to impose any liability on an employer to pay wages to a female employee in respect of the period of her absence from work but nothing shall prevent an employer from making any payment on account of wages in respect of such period if the employer so wishes or the terms of the contract otherwise require.

### **135. Offence**

Any employer who:

- (a) contravenes the provisions of section 133 shall be guilty of an offence and liable to a fine of three hundred maloti; or
- (b) knowingly permits or requires any female employee to perform any work during her period of statutory maternity leave shall be guilty of an offence and liable to a fine of three hundred maloti or to three months' imprisonment or both.

### **136. Maternity leave and notice of termination**

(1) Any dismissal of any employee that takes effect during her statutory maternity leave shall automatically be an unfair dismissal.

(2) Where a female employee is absent from work in pursuance of subsection (2) or (4) of section 133, or remains absent from work for a longer period as a result of an illness which a medical officer or a registered nurse or midwife has certified in writing to arise in his or her opinion out of the employee's pregnancy or confinement and to render her unfit to return to work, no employer shall, during the period of her absence from work in pursuance of subsection (2) or (4) of section 133, give notice to dismiss her or terminate her contract of employment.

(3) Any employer who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine of four hundred maloti.

### **137. Female employee to be permitted to nurse child**

(1) where a female employee wishes to suckle her infant or otherwise feed the infant herself, the employer shall permit her to do so for up to one hour in a day during the hours of work for six months immediately after her return to work, pursuant to the provisions of this Part, following her confinement; the employer shall pay the employee her basic pay in respect of each such daily period as if it were ordinary working time.

(2) The arrangements for taking time off for nursing as provided in subsection (1) shall be agreed upon by the employer and the employee in question.



(3) Any employer who contravenes subsection (1) shall be guilty of an offence and liable to a fine of four hundred maloti.

## **PART X - LABOUR AGENTS**

### **138. Labour agents**

(1) This Part shall apply to the recruiting, procuring, hiring, engaging, supplying and forwarding of persons who are to be employed wholly or partly outside Lesotho.

(2) For the purposes of this Part:

"labour agent" means a person who engages in the business of procuring, recruiting, hiring, engaging, supplying or forwarding of persons to be employed wholly or partly outside Lesotho.

### **139. No engagement in recruiting without licence**

(1) Subject to the provisions of this Part no person shall engage in or carry on the business of a labour agent unless he or she is the holder of a valid licence.

(2) Any person who engages in or carries on the business of a labour agent contrary to the provisions of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand maloti or imprisonment for a period not exceeding one year or both.

### **140. Labour agent's licence and conditions**

(1) Every application for a licence to engage in or carry on business as a labour agent (hereinafter called a "labour agent's licence" shall be made to the Labour Commissioner.

(2) A labour agent's licence shall be issued by the Labour Commissioner in accordance with any regulations prescribed by the Minister. Before issuing any such licence the Labour Commissioner shall

- (a) satisfy himself that the applicant is a fit and proper person to hold a licence and is in a position to fulfil the obligations thereunder;
- (b) require the applicant to furnish such security as the Labour Commissioner deems necessary for the applicant's proper conduct as a labour agent;
- (c) require the applicant, if an employer, to furnish such security as the Labour Commissioner deems necessary for the payment of wages and other obligations which may become due;
- (d) satisfy himself or herself that adequate provision has been or will be made for safeguarding the health and welfare of the persons to be recruited; and
- (e) have regard to the provisions of the relevant Conventions and Recommendations on migrant workers of the International Labour Organisation and, in particular, take into account the possible untoward effect of the withdrawal of the persons proposed for recruitment upon the population of Lesotho and their health, welfare, morality and development in relation to recruitment for employment wholly or partly outside Lesotho.

(3) Every labour agent's licence shall be issued subject to the provisions of the Code, including any regulations made by the Minister thereunder, and such conditions as the Labour Commissioner may, in accordance with any directions of the Minister, specify therein. In addition, the Labour Commissioner may, in order to safeguard the population of any area against any untoward consequences of the withdrawal of the persons proposed for recruitment from such area, or for any other good and sufficient reason, specify in the licences conditions as to all or any of the following matters:

- (a) the restriction of the number of persons who may be recruited in any area;
- (b) the closing of any area to recruiting;
- (c) the employment of persons in a particular area only within a specified area;
- (d) the amount of the advance of wages which may be paid to an employee or recruited person and the conditions under which such an advance may be made or recovered.

(4) Any holder of a labour agent's licence who fails to comply with any condition of the licence shall be guilty of an offence and shall be liable on conviction to a fine of two thousand maloti or to imprisonment for one year or both. In addition, the Labour Commissioner may cancel or suspend the licence forthwith.

#### **141. Period of licence; fee; transfer**

(1) A labour agent's licence shall be valid, unless previously cancelled or suspended, for such period not exceeding 12 months from the date of issue thereof as may be specified therein. The Minister may prescribe the fee to be paid for such a licence and may prescribe different fees for different licences.

(2) A labour agent's licence shall not be transferable but the Minister may make regulations to provide for the holder of a power of attorney given by a licensed labour agent lawfully to engage in recruiting or in operations as a labour agent.

#### **142. Minister may prohibit recruiting**

(1) The Minister may, by notice in the Government Gazette, prohibit recruiting in any district or other area of Lesotho either indefinitely or for such period as may be specified in the notice.

(2) Any person who engages or assists in recruiting in such district or area shall be guilty of an offence and shall be liable on conviction to a fine of two thousand maloti or to imprisonment for one year or both.

#### **143. Records to be kept by labour agents**

(1) Every labour agent shall keep records, books, accounts and statistics from which every recruiting operation can be verified and every person recruited or forwarded to a place of employment outside Lesotho can be identified.

(2) The Minister may by regulation prescribe the records, books, accounts and statistics which labour agents are required to keep and the returns which they are required to render.

(3) Every labour agent shall, whenever so required by an attesting officer, produce for examination and removal such records, books, accounts and statistics relating to

recruiting operations and the forwarding of persons to places of employment outside Lesotho. The attesting officer shall issue to the labour agent a receipt in respect of all records, books, accounts and statistics removed.

(4) The Labour Commissioner may, by notice in writing whenever he or she considers it practicable and necessary require a labour agent to issue to each recruited person, a document in writing containing such particulars of the recruited person's identity, prospective conditions of employment and other particulars as the notice may require.

(5) Any labour agent who:

- (a) fails to keep such records, accounts and statistics or to render such returns as required by this section; or
- (b) fails to comply with any requirement of an attesting officer under subsection (3); or
- (c) fails to comply with any requirement of the Labour Commissioner under subsection (4); or
- (d) wilfully makes any entry or furnishes any information which is false in any material particular, shall be guilty of an offence and shall be liable on conviction to a fine of one thousand maloti or to imprisonment for six months or both.

#### **144. Renewals of licences; cancellations and appeals**

(1) A licence issued under this Part may be renewed at the discretion of the Labour Commissioner upon being satisfied that the conditions attached thereto have been satisfactorily observed. The same provisions shall apply to the renewal of any licence as apply to the issue thereof.

(2) Where, after due inquiry, the Labour Commissioner is satisfied that the holder of a licence issued under this Part has been guilty of conduct which manifests unfitness to engage or assist in operations as a labour agent, or has been convicted of an offence against the provisions of the Code or any regulations made thereunder, or has failed to comply with the conditions of the licence, the Labour Commissioner may, for reasons to be stated in writing and communicated to the holder, cancel or suspend the licence or permit.

(3) Any applicant for a licence under this Part who is aggrieved by any decision of the Labour Commissioner to refuse to issue or renew such licence or to issue such licence subject to any condition, or to cancel or suspend the same, may appeal to the Minister in writing (delivered not later than 30 days from the date on which the decision complained of was communicated to the applicant), and the Minister may uphold, rescind or vary the decision.

#### **145. Offer to induce person to proceed abroad under informal contract**

Any person who:

(a) employs or engages or knowingly assists in the employment or engagement of any person with the intention that, when so employed or engaged, such person shall proceed outside the limits of Lesotho; or

(b) induces or attempts to induce any employee to proceed outside the limits of Lesotho for the purposes of employment; shall, unless he or she has, under the Code,

duly entered into a contract of foreign service with such person or employee, as the case may be, be guilty of an offence and liable to a fine of one thousand maloti or to imprisonment for a period not exceeding six months or both: Provided that this section shall not apply to cases where the employee is required to perform a journey to or from any place outside Lesotho, if such journey may reasonably be expected to be completed within two months of its start.

#### **146. Chief, etc., not to recruit**

(1) No chief, headman or person employed in the public service or by any chief or headman shall:

(a) engage in recruiting; or

(b) bring pressure to bear upon any person with a view to his or her recruitment; or

(c) receive from any source whatsoever any remuneration or other inducement for engaging in recruiting.

(2) Any person who:

- (a) contravenes the provisions of subsection (1); or
- (b) offers any remuneration or other inducement for engaging or recruiting to any chief or headman, or any person employed by any chief or headman;

shall be guilty of an offence and shall be liable on conviction to a fine of one thousand maloti or to imprisonment for six months or both.

#### **147. Recruiting of head of family**

(1) The recruiting of the head of a family shall not be deemed to include the recruiting of any member of the family.

(2) A recruited person shall not without his or her consent be separated from his wife or husband and his or her minor children who have been authorized to accompany him or her to, and remain with him or her at the place of employment.

(3) An authorization to accompany a recruited person shall, in default of agreement to the contrary before the departure of the recruited person from the place of recruiting, be deemed to authorise the husband or wife and the minor children of such person to remain with that person for the full duration of his or her term of service.

#### **148. Age at recruitment**

(1) No person under the age of eighteen (18) years shall be recruited for employment wholly or in part outside Lesotho.

(2) Any person who wilfully or without reasonable cause recruits or procures the recruitment of any person contrary to the provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine of two thousand maloti or to imprisonment for one year or both.

#### **149. Recruited persons to be brought before nearest attesting officer**

(1) Every recruited person shall be brought by the recruiter as soon as reasonably possible before an attesting officer who, wherever practicable, shall be the attesting officer nearest the place of recruitment. The officer before whom the recruited person is brought shall satisfy himself or herself that the provisions of the Code relating to recruitment have been complied with and in particular that the recruited person has not been subjected to illegal pressure or recruited by misrepresentation, fraud or mistake.

(2) Any person who recruits or assists to recruit any person by illegal pressure, misrepresentation or fraud shall be guilty of an offence.

(3) Any person who fails to bring a recruited person before an attesting officer contrary to the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of six hundred maloti or to imprisonment for three months or both.

### **150. Transport for recruited persons**

(1) Every employer shall at his or her own expense provide every person recruited with transport to the place of employment in accordance with the provisions of section 160 of the Code.

(2) The expenses of the journey of every recruited person to the place of employment, including all expenses for his or her welfare during the journey, shall be borne by the employer.

### **151. Repatriation**

(1) Any recruited person who:

- (a) becomes incapacitated by illness or accident during the journey to the place of employment; or
- (b) is found on medical examination to be unfit for employment; or
- (c) is not engaged after recruiting for a reason for which he or she is not responsible; or
- (d) is found by an attesting officer to have been recruited by misrepresentation, fraud, illegal pressure or mistake,

shall be returned by the employer to the place of recruitment subject to and in accordance with the provisions of sections 153 (2) (f) and 159 relating to repatriation.

(2) A recruited person who is returned to the place of recruitment under this section shall be entitled to be paid by the employer or labour agent, as the case may be, for the time during which he or she has been at the disposal of that employer or labour agent such amount as the Minister may by regulation prescribe.

### **152. Family of recruited persons**

(1) Where the family members of a recruited person have been authorised by the employer who did the recruiting accompany such person to the place of employment, such employer shall take all necessary measures of safeguarding their health and welfare during the journey

(2) In respect of any such family members:

- (a) the provisions of sections 147 and 149 shall apply
- (b) in the event of the recruited person being repatriated under section 151, his or her family members shall be repatriated in like manner;
- (c) in the event of the death of the recruited person during the journey to the place of employment or any time before the employment has commenced, his or her family shall be returned by the employ to the place of recruitment in accordances with the provisions of sections 153 (2) (f) and 159 of the Code.

## **PART XI - CONTRACTS OF FOREIGN SERVICE**

### **153. Application and particulars to be contained in contracts of foreign service**

(1) This Part shall apply in respect of every contract of foreign service other than contracts of foreign service entered into with, by or on behalf of the Government.

(2) A contract of foreign service shall contain all particulars as may be necessary to define the rights and obligations of the parties thereto. In all cases a contract of foreign service shall at least include:

- (a) the name and address of the employer or group of employers and, where practicable, of the undertaking and the place of employment;
- (b) the name of the employee, his or her address in Lesotho and all other particulars necessary for his or her identification;
- (c) the nature of the employment;
- (d) the duration of the employment and the method of calculating this duration;
- (e) the rate of wages and other remuneration and methods of calculation thereof, the manner and periodicity of payment of wages and other remuneration, advances of wages, if any and the manner and periodicity of repayment of any such advances;
- (f) the right to repatriation at the employer's expense on termination of the contract;
- (g) where applicable, a provision relating to the voluntary deferment of wages, including a provision that the employer shall provide the employee with the first written statement of the deferred wages not later than sixty two days after the start of the contract and that thereafter the employer shall provide the employee with such statement at intervals of not less than six weeks until the completion of the contract;
- (h) any special conditions of the contract;
- (i) such other matters as the Minister may by regulation prescribe.

### **154. Foreign contracts to be written, attested and registered**

(1) An employer who is party to a contract of foreign service, or any person acting on the employer's behalf, shall be responsible for causing the contract to be drawn up in writing in quadruplicate and presented to an attesting officer for attestation and registration.

(2) All contracts of foreign service shall be presented to the attesting officer in quadruplicate and shall be signed by the employee and by the employer or the employer's authorised agent in the presence of the attesting officer.

(3) Before attesting the signature of any employee to a contract, the attesting officer shall satisfy himself or herself that:

- (a) the employee has fully understood and freely consented to the contract and that this consent has not been obtained by coercion or undue influence or as a result of misrepresentation or mistake;
- (b) the contract is in due legal form and contains such particulars as may be prescribed by or under subsection (2) of section 153 and that its terms are not in conflict with the Code or any other law in force in Lesotho;
- (c) the relevant provisions of section 157 of the Code relating to medical examinations have been complied with;
- (d) the contract contains provisions entitling either party to terminate the contract on giving due notice which, in the opinion of the attesting officer, is reasonable in length and not contrary to the interests of the employee;
- (e) the contract contains satisfactory provision for the payment of a portion of the wages together with other benefits (including benefits for the employee's dependent relatives) provided for in the contract during any period when the employee becomes temporarily incapacitated by reason of illness certified by a medical practitioner or by accident not occasioned by his or her own misconduct. An officer who is not so satisfied shall refuse to attest or register the contract.

(4) A contract of foreign service which an attesting officer has refused to attest shall be null and void. An attesting officer who refuses to attest a contract shall endorse the contract to that effect and note thereon the date of, and reason for, such refusal.

(5) Any person aggrieved by the refusal of an attesting officer to attest a contract of foreign service may, within 14 days of being notified of such refusal, appeal to the Labour Court against the action of the attesting officer. The decision of the Labour Court in regard to such appeal shall be final.

### **155. Registration of contract**

(1) When the parties to a contract of foreign service have signed it and the contract has been attested, the contract shall be registered by the attesting officer; thereafter one copy shall be given to the employee, two copies shall be given to the employer and the original of the contract shall be retained by the attesting officer.

(2) A copy of a registered contract which is certified by the officer-in-charge of the office at which it is registered shall be prima facie evidence of the terms, signature and registration of the original contract.

(3) The Minister may by regulation prescribe the fees to be paid by the employer for the attestation of contracts of foreign service and may prescribe different fees in relation to the duration of such contracts.

### **156. Minimum age**

No person under the age of 18 years may enter into a contract of foreign service. Where any question arises as to the age of any person wishing to enter into such a contract, the provisions of section 236 shall apply.

### **157. Medical examination**

(1) Every employee who enters into a contract of foreign service shall be medically examined before the contract is attested. Such examination shall take place at the place of recruitment or attestation as the case may be.

(2) Every person who is required under the provisions of the Code to be medically examined shall appear for examination by a registered medical practitioner at the time and place notified by the employer or labour agent as the case may be. Such medical examination shall have relation to the fitness of the employee or recruit to undertake the work he or she has contracted or been recruited to do. The report of such medical examination shall be sent by the medical practitioner to the employer or labour agent who shall thereupon present the report to the attesting officer concerned; the employee or recruit shall be informed of the results of the medical examination.

(3) It shall be the duty of every employer and labour, agent to ensure that any employee or recruited person engaged or recruited who has to be medically examined in accordance with the provisions of the Code is so examined. Except as regards notification provided by subsection (3), the results of the medical examination shall remain confidential.

### **158. Acclimatization and immunisation of recruited persons**

(1) All reasonable measures shall be taken by the employer or labour agent for the acclimatization and adaptation of recruited persons and for their immunisation and protection against disease.

(2) The Minister may make regulations to prescribe the measures which an employer or labour agent shall take under subsection (1).

### **159. Repatriation**

(1) Any employee who has been brought to the place of employment by the employer or by a person acting on behalf of such employer shall be repatriated, at the expense of the employer, to the employee's place of engagement in the following circumstances:

- (a) on the expiry of the period of service provided for in the contract;
- (b) on the termination of the contract by reason of the employee's inability to comply with the provisions of the contract due to accident or illness or physical or mental incapacity revealed by a medical examination;
- (c) on the termination of the contract for compassionate reasons approved by the employer;
- (d) where the employer and employee have agreed that it is in their mutual interest to terminate the contract; however, this shall not apply where the contract is being terminated solely at the request of the employee, except for compassionate reasons under subsection (1)(c) above;
- (e) on the termination of the contract by reason of the employer's inability to comply with the terms of the contract;
- (f) rescission of the contract by a court.

(2) Employees who are being repatriated under the provisions of subsection (1) or under the provisions of section 151 shall be provided with:

- (a) suitable transport in accordance with the provisions of section 150;



- (b) subsistence expenses or rations during the journey;
- (c) subsistence expenses or rations during the period, if any, between the date of termination of the contract and the date of the start of the journey.

However, the employer shall not be liable to provide subsistence expenses or rations in respect of any period during which the journey has been delayed by the employee's own choice.

(3) When dependent relatives of an employee have been brought to the place of employment by the employer and the employee is being repatriated at the expense of the employer, or the employee has died, the provisions of subsections (1) and (2) shall, *mutatis mutandis*, apply to such dependent relatives.

(4) An employer or labour agent who fails to comply with any provisions of this section shall be guilty of an offence and shall be liable on conviction to a fine of one thousand maloti or six months imprisonment or both.

### **160. Liability of employer and labour agent regarding provisions of transport, etc**

(1) The form of transport provided by an employer or labour agent under the provisions of section 150 or section 151 shall be public transport or a vehicle or aircraft belonging to or hired by the employer or labour agent. The employer or recruiter shall take all reasonable steps to ensure that:

- (a) the transport is not overcrowded and is in good sanitary condition;
- (b) suitable accommodation is provided when it is necessary to break the journey for the night; and
- (c) in the case of a long journey, all reasonable arrangements are made for medical assistance to, and the welfare of, the employee or recruited person.

(2) Any employer or labour agent who transports an employee or recruited person contrary to any of the provisions of this section shall be guilty of an offence and be liable on conviction to a fine not exceeding six hundred maloti or imprisonment for a period not exceeding three months or both.

(3) If an employer or labour agent fails to comply with any of the requirements of this section, an attesting officer may make such arrangements as the officer considers necessary to obtain compliance therewith. The reasonable expenses incurred as a result of any such arrangements, including an administration charge, in an amount fixed by the Labour Commissioner, in respect of each employee or recruited person affected, shall be a debt owed to the Government by the employer or labour agent. In any suit to collect the debt, a certificate signed by the attesting officer shall be conclusive evidence of the amount of the expenses and administrative charges so incurred. The penalty provided for in this subsection shall be in addition to and not in substitution for any penalty which may be imposed under subsection (2) of this section.

### **161. Termination of contracts of foreign service on illness, etc.**

(1) A contract of foreign service may be terminated before its expiration if:

- (a) for any reason the employee is unable to fulfil the conditions of the contract;

- (b) for reasons of an illness or accident which incapacitates the employee for more than 30 days, the employee is unable to fulfil the conditions of the contract.

(2) Where the contract is being terminated under subsection (1), the employer shall immediately report the circumstances thereof to the nearest labour representative and to the attesting officer of the area in which the contract was attested in Lesotho and shall certify in such report that all rights of the employee (and where applicable those of his or her dependent relatives) under the contract, including the payment of wages, workers' compensation benefits (if any) and all repatriation expenses have been fulfilled.

(3) Where the report required by subsection (2) has not been made within two weeks of the employee returning to Lesotho, an attesting officer may issue a written request to the agent of the employer who signed the contract in Lesotho on behalf of the employer, requiring the agent to provide the report within four weeks of the request being made. Failure on the part of the agent to comply with such request shall constitute an offence.

(4) A contract of foreign service shall not be terminated on the death of the employer but shall continue to have effect until the expiration of the period after which it would have terminated had due notice of termination been given on the day on which the employer died. During such period the employee ( and where applicable his or her dependent relatives) shall be entitled to all benefits provided for in the contract but the employee shall be bound, if so required, to perform the services provided for in the contract for the person legally representing the deceased employer in his or her capacity as an employer.

## **162. Maximum period of contracts of foreign service**

The period of service, excluding any extension thereof permitted under subsection (2) of section 163, shall be one year. However, the Minister may, by notice in the Government Gazette and after consultation with employers= and employees' organisations which are representative of the interests concerned, exempt from the provisions of this section contracts entered into by defined classes of employees whose interests would be better served by contracts of a longer duration.

## **163. Transfer and extension of contracts**

(1) Where an employer and an employee mutually agree that the contract between them should be varied by the substitution of a new employer for the employer named in the contract, a labour representative or an attesting officer may authorise such variation by substituting the name, address and description of the new employer for the original employer and endorsing both the employer's and employee's copy of the contract to that effect.

(2) Where an employer and an employee mutually agree that the contract between them should be extended beyond the expiry date of the contract, a labour representative or an attesting officer may authorise such extension by endorsing both the employer's and employee's copy of the contract to that effect. However:

- (a) the period of the extension shall not exceed six months;

- (b) the Labour Commissioner may permit a longer period of extension where he or she considers it in the interests of the employee concerned to do so.

(3) Before taking any action permitted by subsection (1) or subsection (2) of this section, the attesting officer or a labour representative shall:

- (a) satisfy himself or herself that the employee fully understands the nature of the transaction and that his or her consent thereto has been freely made and not as a result of coercion, undue influence, misrepresentation, fraud or mistake;
- (b) in any case where the officer or representative considers that a medical examination is necessary before the transaction is entered into, require that the employee be given such medical examination.

(4) Where an attesting officer or labour representative has endorsed a contract between an employer and employee in the manner provided for in this section, he or she shall notify the attesting officer in Lesotho who originally attested the contract of the action the former has taken.

(5) The Minister may, by regulation, prescribe the fees and charges to be paid by employers for endorsement of contracts as provided for in this section. In the absence of such regulations the fees and charges for the attestation of contracts payable under subsection (3) of section 155 shall apply.

#### **164. Minister may require guarantee to cover deferred pay**

Where any contract of foreign service provides for the voluntary deferral of a portion of the employee's wages, the Minister may, by regulation, require that the employer entering into such a contract shall provide, in such form as may be prescribed, a guarantee covering the remittance of such wages to a bank in Lesotho for purposes of ensuring payment of the employee.

## **PART XII - EMPLOYMENT OF NON-NATIONALS**

### **165. Employment of persons who are not citizens of Lesotho**

(1) No employer shall employ any person in Lesotho who is not a citizen of Lesotho and no such person shall accept employment in Lesotho unless that person is in possession of a valid certificate of employment (work permit) issued by the Labour Commissioner.

(2) No person who is not a citizen of Lesotho may work as a partner in Lesotho unless that person is in possession of a valid certificate of employment (work permit) issued by the Labour Commissioner.

(3) Any employer who employs any person and any person who accepts employment in contravention of subsection (1) or (2) of this section shall be guilty of an offence and liable on conviction to a fine of one thousand maloti or six months' imprisonment or both.

(4) An application for a certificate of employment (work permit) shall be made in accordance with the provisions of the Fifth Schedule.

## **166. Conditions for certificate**

(1) The Minister may, in consultation with the Labour Commissioner, the Director of the National Employment Service, the Commissioner for Commerce and Industry and the Chief Passport Officer, issue regulations setting forth further conditions under which a certificate of employment (work permit) may be issued.

(2) Before the Labour Commissioner may grant a non-citizen of Lesotho a certificate of employment (work permit), the National Employment Service must certify that no citizen of Lesotho is at that time qualified and available for the employment in question.

(3) A certificate of employment (work permit) issued in terms of this section shall be valid for a period not exceeding twenty four months from the date of issue and any such certificate may be cancelled or extended at the discretion of the Labour Commissioner.

(4) The forms to be used and fees to be paid in relation to this section are specified in the Fifth Schedule.

## **167. Production of certificates**

(1) Every employer of foreign labour shall within four days of being requested to do so by the Labour Commissioner produce evidence to the satisfaction of the Labour Commissioner that every non-citizen of Lesotho employed by that employer is in possession of a valid certificate of employment (work permit.)

(2) Every non-citizen of Lesotho who is performing work that might otherwise be performed by an employee who is a citizen of Lesotho shall within four days of being requested to do so by the Labour Commissioner produce and show to the Labour Commissioner a valid certificate of employment (work permit.)

(3) Failure to comply with the provisions of subsection (1) or (2) shall constitute an offence.

## **PART XIII - TRADE UNION ORGANISATIONS AND EMPLOYERS' ORGANISATIONS: ESTABLISHMENT AND REGISTRATION**

### **168. Freedom of association**

(1) Workers and employers, without any distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without the previous authorization of the Government.

(2) The right of association referred to in subsection (1) is guaranteed to workers and employers in all sectors of the economy, including agriculture. All persons engaged in agriculture, in whatever manner, shall enjoy the same rights of association and combination as workers in other sectors.

### **169. Appointment of Registrar and assistants**

- (1) The Minister shall appoint a Registrar of Trade Unions and Employers' Organisations who shall be responsible for the due performance of the duties and functions assigned pursuant to this Part of the Code, including the prescribing of forms.
- (2) The Registrar of Trade Unions shall annually submit to the Minister a report on all matters transacted by the Registrar under the Code during each calendar year.
- (3) The Minister may appoint one or more assistant registrars of trade unions and such other officers as may from time to time be required for the purposes of this Part.

## **170. Register**

- (1) The Registrar shall keep and maintain a register of trade unions and employers' organisations in which shall be contained the prescribed particulars relating to them and any alteration or change which may from time to time be effected in the name, rules, officers, registered postal address or location of the registered office thereof, and all such other matters as may be required to be contained therein under the Code, Schedules thereto or any regulation made thereunder.
- (2) A copy of any entry in the Register certified under the hand of the Registrar shall, until the contrary be shown, be proof of the facts specified therein, as on the date of the certified copy.

## **171. Registration required**

- (1) Every trade union and employers' organisation which is in existence but not registered as a trade union or employers' organisation before the date of commencement of the Code shall, within three months of that date, either apply to be registered or be deemed dissolved.
- (2) Every trade union and employers' organisation which is in existence and is registered as a trade union or employers' organisation immediately before the date of the commencement of the Code shall within six months of that date either apply to be registered under the Code or be deemed dissolved.
- (3) Every trade union or employers' organisation which comes into existence after the date of commencement of the Code shall, within three months of its coming into existence, either apply to be registered or be deemed dissolved. While a trade union or employers' organisation is in the process of being initially established, it shall have legal personality under subsection (2) of section 222 and its members shall enjoy freedom of association in accordance with sections 168 and 216.
- (4) The Registrar may grant an extension of the periods specified in subsections (1), (2) and (3) of this section for any further period or periods not exceeding nine months in the aggregate.

## **172. Application for registration**

Every application for registration as a trade union or employers' organisation shall be made to the Registrar in the form prescribed under the Third Schedule and shall be accompanied by the prescribed particulars. The application shall be signed by at least ten members of the body applying for registration, any of which members may be officers of the body applying for registration.

### **173. Registration**

(1) The Registrar shall take a decision on an application for registration within 30 days of having received it and shall forthwith notify the applicants of the decision. Subject only to the provisions of section 174 and 175 of the Code, the Registrar shall register the trade union or employers' organisation in the prescribed manner as a registered trade union or a registered employers' organisation. Registration shall be effective as from the date of the entry in the Register.

(2) Upon registration, the Registrar shall forthwith issue to the trade union or employers' organisation, a certificate of registration which, unless proved to have been cancelled or withdrawn, shall be conclusive evidence for all purposes that the trade union or employers' organisation has been duly registered under the Code.

(3) The Registrar may call for further information for the purpose of being satisfied that any application for registration made by a trade union or employers' organisation complies with the provisions of the Code.

### **174. Power of Registrar to require alteration of name**

If the name under which a trade union or employers' organisation is proposed to be registered is identical to that by which any other existing body has been registered or, in the opinion of the Registrar, so nearly resembles such name as to be likely to deceive or mislead the public or the members of either body, or in the Registrar's opinion is itself misleading, the Registrar shall require the persons applying for registration to alter the name stated on the application, and shall refuse to register the trade union or employers' organisation until such alteration has been made.

### **175. Refusal of registration**

(1) The Registrar may refuse to register any trade union, employers' organisation or amalgamation only if he or she is satisfied that

- (a) it has not complied with the provisions of the Code or any regulations made thereunder; or
- (b) any of its objects or its constitution is unlawful or conflicts with the provisions of the Code; or
- (c) the principal objects of the combination seeking registration are not in accordance with those set out in the definition of "trade union" or "employers' organisation" contained in section 3 of the Code; or
- (d) it is a branch of a trade union or employers' organisation other than a registered trade union or registered employers' organisation.

(2) When the Registrar refuses to register a trade union, employers' organisation or amalgamation, he or she shall notify the applicants in writing of the grounds of such refusal. The trade union or employers' organisation concerned may appeal against such refusal to the Labour Court.

### **176. Notice of affiliation or establishment of a branch**

(1) Every registered trade union or registered employers' organisation which has, after the commencement of the Code, become affiliated to any other trade union or employers' organisation shall, within three months of the affiliation, give the Registrar

notice in writing, indicating the names of the affiliated bodies and the effective date of the affiliation.

(2) Every registered trade union or registered employers' organisation in which a branch has been established after the commencement of the Code shall, within three months of the establishment of the branch, give the Registrar notice thereof in writing, indicating the name of the trade union or employers' organisation and the date on which the branch was established.

(3) A registered trade union or registered employers' organisation which fails to comply with any of the requirements of this section shall have committed an offence and be liable to a fine not exceeding two hundred maloti.

### **177. Amalgamation**

Two or more registered trade unions or registered employers' organisations may become amalgamated as one trade union or employers' organisation, with or without dissolution or division of the funds of either or any of them, upon a ballot being taken in each trade union or employers' organisation in the manner provided in its respective rules.

### **178. Notice of amalgamation**

(1) The secretary and at least six members of each registered trade union or registered employers' organisation which is a party to any amalgamation effected after the coming into force of the Code shall, within one month of the amalgamation, provide the Registrar with notice in writing, signed by them, in the form prescribed under the Third Schedule and containing such particulars as have been prescribed.

(2) If the Registrar is satisfied that the provisions of the Code in respect of amalgamation have been complied with and that the trade union or employers' organisation formed thereby would be entitled to be registered under the Code, he or she shall register the trade union or employers' organisation in the prescribed manner and the amalgamation shall have effect from the date of registration.

### **179. Federations**

(1) Two or more registered trade unions or registered employers' organisations may form or join a federation of trade unions or a federation of employers' organisations, as applicable, upon a ballot being taken in each trade union or employers' organisation in the manner provided in its respective rules.

(2) Any trade union, employers' organisation or federation shall have the right to affiliate with international organisations of workers or employers, as applicable.

(3) The secretary of each registered trade union or registered employers' organisation which becomes party to a federation after the coming into force of the Code shall, within one month of joining the federation, provide the Registrar with notice of the federation, in writing and signed, in the form prescribed under the Third Schedule. Such federations shall enjoy the same protection as is afforded to registered trade unions and registered employers' organisations under the Code.

### **180. Effect of amalgamation or federation.**

An amalgamation or federation of two or more registered trade unions or employers' organisations shall not prejudice any right of either or any of those trade unions or employers' organisations or any right of a creditor of either or any of them.

### **181. Change of name**

A registered trade union or employers' organisation may, in accordance with the provisions of subsection (3) of section 182 of the Code, change its name.

### **182. Notice of change of name**

(1) The secretary and at least six members of the trade union shall provide the Registrar with written notice, signed by them, of every change of name effected after the commencement of the Code. The notice shall be given within one month of the change of name.

(2) If the proposed name is identical to that by which any other existing trade union has been registered or, in the opinion of the Registrar, so nearly resembles such a name as to be likely to deceive the public or the members of either trade union, or in his or her opinion is itself misleading, the Registrar shall refuse to register the change of name.

(3) Save as provided in subsection (2) of this section, the Registrar shall, upon being satisfied that the provisions of the Code in respect of the change of name have been complied with, register the change of name in the prescribed manner, and the change of name shall have effect from its date of registration.

### **183. Effect of change of name**

A change in the name of a trade union or employers' organisation shall not affect any right or obligation of that trade union or employers' organisation. Nor shall it render defective any legal proceeding by or against that trade union or employers' organisation, and any legal proceeding which might have been continued or commenced by or against it under its former name may be continued or commenced by or against it under its new name.

### **184. Appeal against refusal of registration**

A person aggrieved by the refusal of the Registrar to register either a change of name of a registered trade union or employers' organisation, or the trade union or employers' organisation formed by the amalgamation of two or more registered trade unions or registered employers' organisation, may appeal against that refusal to the Labour Court.

### **185. Cancellation of registration**

(1) Action to cancel the registration and the certificate of registration of a registered trade union or registered employers' organisation may be taken by the Registrar:

- (a) at the request of the trade union or employers' organisation upon its voluntary dissolution, to be verified in such manner as the Registrar may require; or
- (b) if the Registrar is satisfied that the trade union or the employers' organisation has ceased to exist.



(2) The registration and the certificate of registration of a registered trade union or registered employers' organisation may be cancelled by the Labour Court upon the application by the Registrar if the Court is satisfied that:

- (a) any of the principal objects of the trade union or the employers' organisation is unlawful; or
- (b) the constitution of the trade union or employers' organisation is unlawful; or
- (c) the trade union or employers' organisation is being used for any unlawful purpose; or
- (d) the trade union or employers' organisation has, wilfully and after notice from the Registrar, contravened any provision of the Code, or allowed any rule to continue in force which is inconsistent with any provision of the Code, or has rescinded any rule on any matter for which provision is required by section 195 of the Code; or
- (e) the funds of the trade union or employers' organisation have been or are being expended in an unlawful manner or on an unlawful object; or
- (f) the accounts of the trade union or employers' organisation are not being kept in accordance with the provisions of the Code; or
- (g) the trade union or employers' organisation was at the time of its registration, or has subsequently become, a branch of a trade union or employers' organisation other than a registered trade union or a registered employers' organisation.

(3) In any case falling within subsection (2) of this section, the Registrar shall, before applying to the Labour Court, give the registered trade union or registered employers' organisation at least two months' previous notice in writing of the proposed application for cancellation of registration, specifying the grounds on which the cancellation is proposed.

(4) A trade union or employers' organisation served with a notice under subsection (3) may, at any time within a period of two months after such service, apply for a hearing before the Court to show cause against the proposed cancellation of its registration. The Court shall determine whether or not to uphold the proposed cancellation of registration.

(5) An order made by the Court under this section cancelling the registration of any trade union or employers' organisation shall specify briefly the grounds for the cancellation of the registration, and the order shall forthwith be served on the trade union or employers' organisation affected thereby.

## **186. Consequences of cancellation of registration**

(1) If the registration of any trade union or employers' organisation is cancelled under the provisions of section 185 of the Code:

- (a) the registered trade union or registered employers' organisation and its officers and members shall cease to enjoy the rights, immunities and privileges of a registered trade union, but without prejudice to any liabilities incurred or to be incurred by the trade union or employers' organisation which may be enforced against it and/or its assets;
- (b) the trade union or employers' organisation shall be dissolved and its property and funds shall be disposed of in accordance with the rules of the union or organisation;

- (c) the trade union or employers' organisation shall deliver to the Registrar its certificate of registration for purposes of cancellation;
- (d) no person shall, except for the purpose, of defending or bringing legal proceedings or dissolving the union or organisation and disposing of its property or funds in accordance with its rules, take any part in its management or organisation, or act or purport to act on behalf of the union or organisation or as an officer of the union or organisation.

(2) If any trade union or employers' organisation which has had its registration cancelled is subsequently not dissolved, or if its certificate of registration is not delivered to the Registrar within three months after the date of cancellation or the date of the dismissal of an appeal against such cancellation, or within such extended time as the Registrar may in any particular case allow, then the trade union or employers' organisation, any officer thereof, and any person acting as an officer thereof shall be guilty of an offence and shall be liable to a fine not exceeding two hundred maloti.

### **187. Notification of dissolution**

When a trade union or employers' organisation is dissolved, at least six members and the secretary of the trade union or employers' organisation shall, within fourteen days of the dissolution, send a signed notice in writing, indicating the manner and the date of the dissolution, to the Registrar, who shall register the dissolution upon being satisfied that it has been effected in accordance with the rules of the trade union or employers' organisation. The dissolution shall have effect from the date of registration of the notice.

### **188. Notification in Gazette by Registrar**

(1) The Registrar shall notify the following facts in the Gazette:

- (a) the fact that a trade union or employers' organisation has been registered or that registration has been refused;
- (b) the fact that the registration of a trade union or employers' organisation has been cancelled;
- (c) the fact that a change of name of, or an amalgamation affecting, a registered trade union or registered employers' organisation has been registered;
- (d) the fact that a registered trade union or registered employers' organisation has been dissolved.

(2) The act notified in the Government Gazette shall have effect as from the date it was noted in the register maintained by the Registrar.

## **PART XIV - RULES OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS: MEMBERSHIP, OFFICERS**

### **189. Membership rights of minors**

(1) A person under the apparent age of 21 years but above the apparent age of 15 years may be a member of a registered trade union or a registered employers' organisation unless the rules thereof provide to the contrary.

(2) A person referred to in sub-section (1) shall enjoy all the rights of a member and may execute all instruments and make all payments necessary to be made under the rules, but he or she may not be a member of the executive committee or a trustee until attaining the apparent age of 21 years.

### **190. Officers**

(1) No person shall hold the post of secretary or treasurer of a trade union or an employers' organisation who, in the opinion of the Registrar, has not attained a standard of literacy sufficiently high for the effective performance of his or her duties.

(2) No person shall be an officer of a trade union or an employers' organisation if, within five years or less of his or her appointment to the post, he or she has been convicted of a crime involving fraud or dishonesty.

### **191. Request by Registrar**

(1) For the purpose of being satisfied that the provisions of section 190 are being complied with, the Registrar may call for information from the executive committee or any officer of a trade union or an employers' organisation.

(2) An officer of a trade union or employers' organisation who fails to comply with a pertinent request made by the Registrar under the provisions of subsection (1) of this section shall be liable to a fine not exceeding three hundred maloti.

### **192. Trustees**

(1) The rules of a trade union or an employers' organisation shall provide for the appointment or election of trustees and for the filling of any vacancy in the office of a trustee so that, as far as may be, there shall always be at least three trustees.

(2) No officer of a trade union or employers' organisation may be a trustee thereof.

(3) No person who has been convicted of a crime involving fraud or dishonesty shall be a trustee or an auditor of a trade union or an employers' organisation.

### **193. Notification of officers, trustees, etc**

(1) A notice giving the names of all officers and trustees and their titles shall be sent to the Registrar within fourteen days of their appointment and a true copy of the notice shall be prominently exhibited in the registered office of the respective trade union, or employers' organisation or branch thereof.

(2) Notice of all changes of officers and trustees shall, within fourteen days of the change, be sent to the Registrar by the trade union or employers' organisation, and the Registrar shall thereupon correct the register accordingly.

### **194. Registered office and postal address**

(1) Every trade union or employers' organisation shall have a registered office in Lesotho and a registered postal address to which all communications and notices may be addressed, and if a trade union or employers' organisation has more than one office

the registered office shall be the principal office of the trade union or employers' organisation.

(2) Notice of the location of the registered office and registered postal address, and of any change therein shall be given to the Registrar and shall be so registered.

(3) If a registered trade union or a registered employers' organisation:

- (a) operates without having a registered office and registered postal address, or without giving notice of the location of its registered office as required; or
- (b) operates at a place to which its registered office may have been removed, without having given notice of the change in the location thereof to the Registrar; or
- (c) fails to give notice of any change of its registered postal address, the trade union or employers' organisation and every officer thereof shall be guilty of an offence and liable to a fine not exceeding one hundred maloti for every day during which it so operates.

## **195. Rules**

(1) The rules of every trade union or employers' organisation shall provide for all the matters specified in the Second Schedule to the Code, and shall not be altered or amended so as to cease to contain provision in respect of all those matters.

(2) A copy of every new rule and of every alteration made in the rules of a trade union or employers' organisation shall be sent to the Registrar within seven days of the making of that rule or alteration, and shall be registered by the Registrar.

(3) Every alteration of the rules of a trade union or employers' organisation shall take effect from the date of registration thereof by the Registrar unless some later date is specified in the rules.

(4) A copy of the rules of a trade union or employers' organisation shall be delivered to any person on demand, upon payment of a sum not exceeding three maloti.

## **PART XV - UNFAIR LABOUR PRACTICES**

### **196. Discrimination against union members and officials**

(1) Any person who discriminates, as respects the employment or conditions of employment which he or she offers to another person, because that person is a member, officer or trustee of a trade union shall commit an unfair labour practice.

(2) Any person who seeks, by intimidation, threats, dismissal, imposition of a penalty, giving or offering to give a wage increase, or any other means, to induce an employee to refrain from becoming or to refrain from continuing to be a member, officer or trustee of a trade union shall commit an unfair labour practice.

(3) Any person who communicates to another details of the names of a worker as being unsuitable for employment on grounds of the latter's trade union membership or activities shall commit an unfair labour practice.

### **197. Interference by employers in trade union affairs**

Any employer who takes part in the formation of an employees trade union or, with the intention of influencing a trade union, makes any contribution, in money or money's worth, to that trade union shall commit an unfair labour practice.

### **198. Reasonable facilities for conferring**

(1) The employer shall allow any officer of a trade union whose members include some of his or her employees reasonable facilities for conferring with the employer and/or his or her employees on matters affecting the employer and those members. Any person who fails to give such reasonable facilities shall commit an unfair labour practice.

(2) The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

### **199. No interference by trade union official or other person**

(1) No officer of a trade union or other person shall attempt without the consent of the employer to persuade or induce an employee to become a member or officer of a trade union while the employee is on the premises of the employer during normal working hours.

(2) No officer of a trade union or other person shall, without the consent of the employer, confer with an employee on trade union matters while the employee is on the premises of the employer during normal working hours.

(3) A person contravening this section shall commit an unfair labour practice.

(4) For the purpose of this section "normal working hours" means any period during which a worker, in accordance with his or her contract, is required to be at work. It does not include rest periods or meal breaks, whether or not the employee remains on the employer's premises.

### **200. Sexual harassment**

Any person who offers employment or who threatens dismissal or who threatens the imposition of any other penalty against another person in the course of employment as a means of obtaining sexual favours or who harasses workers sexually shall commit an unfair labour practice.

### **201. Determination of unfair labour practices**

The Labour Court shall have jurisdiction to inquire and determine, in cases brought before it in accordance with its rules of procedure and the Code, whether a person has engaged in any unfair labour practice as defined in the Code, and to make such orders as are provided for by the Code.

### **202. Power of Court to make orders**

(1) Where the Court finds that a person has engaged in an unfair labour practice it may, if it thinks fit, make an order forbidding that person to engage in any such

activities, as they may specify in the order as being a continuance or repetition of the unfair labour practice.

(2) Where the Court finds that a person has engaged in an unfair labour practice under section 196 of the Code which involves the termination of employment of an employee or the alteration of his or her employment or of conditions of employment, the Court may, if it thinks fit, make an order requiring the employer

- (a) to take such steps as may be specified in the order to restore the position of the employee; and
- (b) to pay to the employee such sum as the Court considers just and equitable in all the circumstances.

(3) Where the Court finds that a person has engaged in an unfair labour practice under section 197 of the Code by making a contribution to a trade union, the court may, if it thinks fit, order the trade union to refund the contribution.

## **PART XVI - PROPERTY, FUNDS AND ACCOUNTS OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS**

### **203. Property to vest in trustees**

All movable property and interests in immovable property whatsoever belonging to a trade union or employers' organisation shall be vested in the trustees for the time being of the trade union or employers' organisation for the use and benefit of the trade union or employers' organisation and the members thereof, and shall be under the control of the trustees. Upon the death or removal of any of the trustees the property and interests shall vest in the succeeding trustees under the same trust without any conveyance or assignment. In all actions, suits or prosecutions before a court touching or concerning that property, it shall be stated to be the property of the person or persons for the time being holding the office of trustee in their proper names as trustees of the trade union or employers' organisation without further description.

### **204. Duties of trustees**

The trustees shall deal with property held by them for or on behalf of a trade union or employers' organisation in the manner ordered by the executive committee. No disposal of property shall be made unless the trustees are satisfied that the executive committee has acted lawfully and in accordance with the rules of the trade union or employers' organisation.

### **205. Power to hold rights to use and occupation of land**

A trade union or employers' organisation, or federation of trade unions or employers' organisations, may purchase or lease, in the names of its trustees, rights to the occupation and use of land according to the law of Lesotho and may deal with the same according to the law of Lesotho. No purchaser, assignee, mortgagee or tenant shall be bound to inquire whether the trustees have any authority for any such dealing, and the receipt of the trustees shall be a discharge for the money arising therefrom.

### **206. Books to be kept**

The officers of every registered trade union or registered employers' organisation, or federation of trade unions or employers' organisation, shall cause to be kept books of accounts sufficient to exhibit and explain the transactions and financial position of the union or organisation, including a book or books containing entries made from day to day in sufficient detail of all cash paid out or received.

## **207. Treasurer to render accounts**

(1) Every treasurer of a registered trade union or registered employers' organisation and every other officer thereof who is responsible for the accounts of the union or organisation or for the collection, disbursement, custody or control of the funds or moneys thereof, shall, upon resigning or vacating his or her office, and at least once a year as at the 31st day of December and at any other times when required to do so by a resolution of the members of the union or organisation, by the rules thereof or by the Registrar, where the Registrar reasonably suspects fraud, render the following to the union or organisation and its members or the Registrar, as the case may be;

- (a) a just and true account of all moneys received and paid by that officer during the period which has elapsed since the date of assuming office or, if he or she has previously rendered an account, since the last date on which he or she rendered an account, and
- (b) the balance remaining in his or her hands at the time of rendering such account and of all bonds, securities or other property of the trade union or employers' organisation entrusted to his or her custody or under his or her control.

(2) The form of account to be rendered under subsection (1) of this section shall be as prescribed by the Registrar.

(3) A registered trade union or registered employers' organisation shall cause the account to be audited by some fit and proper person approved by the Registrar. The audit of the annual accounts as at the 31st day of December shall be completed before the 31st day of March in the following year. The Registrar shall approve or disapprove the appointment within seven days of the submission of an application for approval of the auditor.

## **208. Annual returns**

(1) The secretary of every registered trade union or registered employers' organisation, or federation of trade unions or employers' organisation, shall furnish to the Registrar on or before the 31st day of March, an annual return, as prescribed by the Third Schedule and audited in the prescribed manner, showing all receipts and expenditure during the period of twelve months ending on the 31st day of December of the preceding year, the assets and liabilities of the trade union, employers' organisation or federation as at that date, and a statement showing the number of members of such trade union or employers' organisation as at that date and the state of their contributions. The statement shall be accompanied by a copy of the auditor's report and shall be prepared in such form and shall comprise such particulars as prescribed in the Third Schedule.

(2) Every member of a trade union or employers' organisation to which this section applies shall be entitled to receive free of charge a copy of the general statement

referred to in subsection (1) of this section. The secretary of each such trade union or employers' organisation shall deliver a copy of such statement to every member who makes application therefor.

(3) The secretary of a trade union or employers' organisation to which this section applies who fails to comply with any of the requirements of this section shall be liable to a fine not exceeding two hundred maloti.

(4) Every person who wilfully and knowingly makes or orders, or causes or procures to be made, a false entry in or omission from a general statement, copy or list delivered to the Registrar under subsection (1) of this section shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand maloti or to imprisonment for a period not exceeding one year.

### **209. Inspection of accounts and documents**

The account books of a trade union or employers' organisation and a list of the members thereof shall be open to inspection as follows:

(a) by any officer or member of the trade union or employers' organisation at such times as may be provided for in the rules thereof, and

(b) by the Registrar or by a person authorised in that behalf in writing by the Registrar, at any reasonable time, when reasonable suspicion of fraud exists.

### **210. Obstructing inspection by Registrar**

Any person who opposes, obstructs or impedes the Registrar (or any person authorised under section 209 of the Code) in carrying out an inspection under the provisions of that section shall be liable to a fine not exceeding six hundred maloti or to imprisonment for a term not exceeding six months, or both such fine and imprisonment.

### **211. Power to call for detailed accounts**

In addition to any other provisions of the Code relating to the rendering of accounts, the Registrar may, when a reasonable suspicion of fraud exists, call upon the treasurer, the committee of management or other proper officer or officers of a trade union or employers' organisation to render detailed written accounts of the funds of the trade union, employers' organisation or any branch thereof in respect of a specified period.

### **212. Penalty for failing to supply accounts**

A trade union or employers' organisation which fails to comply with a request made by the Registrar under the provisions of the preceding section shall have committed an offence and be liable to a fine not exceeding six hundred maloti.

### **213. Unauthorised or unlawful expenditure**

An interdict restraining unauthorised or unlawful expenditure of the funds of a trade union or employers' organisation may be granted by the Labour Court on the application of one or more persons having a sufficient legal interest in the relief sought, or of the Registrar, or of the Attorney-General. In granting an interdict, the Labour



Court may, in the case of the dissolution of a trade union or employers' organisation, or upon the cancellation of its registration, order that its funds be paid over to the Registrar of the Labour Court for disposal in accordance with rules of that trade union or employers' organisation.

#### **214. Penalty for misuse of money or property**

(1) Where it is shown to the satisfaction of the Labour Court by the Registrar or a member of the trade union or employers' organisation concerned or any other person that a person has in his or her possession or control property of the union or organisation which is not held in accordance with the rules thereof, or has unlawfully expended or withheld its money, the Court shall, if it considers the circumstances of the case so require, order that person to deliver all such property to the trustees of the union or organisation and to pay to them the money so unlawfully expended or withheld.

(2) A person bound by an order made under subsection (1) of this section who fails to comply with the terms thereof and the directions therein within a time to be specified in the order shall be guilty of an offence and liable on conviction to a penalty of a fine not exceeding two hundred maloti or in the alternative to imprisonment for a period not exceeding one month or to both such fine and imprisonment.

#### **215. Nomination of person to whom moneys payable on death of member**

A member of a trade union or employers' organisation who is over the apparent age of 15 years may nominate a person to whom moneys payable on the death of that member shall be paid at his or her death. The member shall make the nomination in writing and deliver, or send it to the principal office of a trade union or employers' organisation. The person nominated shall not be an officer or servant of the trade union or "employers' organisation (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator). The member may from time to time revoke or vary such nomination in writing similarly delivered or sent. On receiving satisfactory proof of death of the member, the trade union or employers' organisation shall pay the person nominated any benefits due under its rules to the member.

### **PART XVII - RIGHTS AND LIABILITIES OF TRADE UNIONS AND EMPLOYERS' ORGANISATIONS**

#### **216. Rights, immunities and privileges pending registration**

Subject to the provisions of section 171, no trade union or employers= organisation shall enjoy any of the rights, immunities or privileges of a registered trade union or a registered employers= organisation under the Code unless the union or organisation is in the process of being initially established or unless an application for registration has been made to the Registrar.

#### **217. Immunity from civil suit in certain cases**

No suit or other legal proceeding shall be maintainable in any civil court against any trade union or employers= organisation or any officer or member thereof in respect of

any act done in contemplation or in furtherance of a trade dispute to which a member of a trade union or employers' organisation is a party on the grounds only that such act induces some other person to break a contract, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his or her capital or of his or her labour as he or she will.

### **218. Liability in delict**

(1) A suit against a trade union or employers' organisation or against any member or officer thereof on behalf of themselves and all other members of such a trade union or employers' organisation in respect of any delict alleged to have been committed by or on behalf of such trade union or employers' organisation in contemplation or in furtherance of a trade dispute shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of a trade union or employers' organisation or any member or officer thereof to be sued in any court touching or concerning the property or rights of a trade union or employers' organisation in respect of any other delict committed by or on behalf of a trade union or registered employers' organisation.

### **219. Liability and rights in contract**

(1) Every trade union or employers' organisation shall be liable on or have enforceable rights as to any contract entered into by it or by an agent acting on its behalf, unless the contract is void or unenforceable at law.

(2) However, nothing in the Code shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for any breach of any of the following agreements, namely

- (a) any agreement between members of a trade union or employers' organisation as such concerning the conditions on which any members for the time being shall or shall not sell their goods, transact business, employ or be employed;
- (b) any agreement for the application of the funds of a trade union or employers' organisation
  - (i) to provide benefits to members, other than a benefit under a contributory provident or benevolent fund, or pensions scheme or other similar scheme; or
  - (ii) to furnish contributions to any employer or employee not a member of such trade union or employers' organisation, in consideration of such employer or employee acting in conformity with the rules or resolutions of such trade union or employers' organisation;
- (c) any bond to secure the performance of any of the above mentioned agreements:  
 Provided that nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

### **220. Objects in restraint of trade not unlawful**

The objects of a trade union or employers' organisation shall not, by reason only that they are in restraint of trade

- (a) be deemed to be unlawful so as to render any member of such trade union or employers' organisation liable to criminal prosecution for conspiracy or otherwise; or
- (b) be unlawful so as to render void or voidable any agreement or trust.

## **221. No effect on certain agreements**

Nothing in the Code shall affect

- (a) any agreement between partners as to their own business;
- (b) any agreement in consideration of the sale of the goodwill of a business or of instructions in any profession, trade or handicraft.

## **222. Proceedings by and against trade unions or employers' organisations**

(1) A registered trade union or employers' organisation may sue, be sued or be prosecuted under its registered name.

(2) An unregistered trade union or employers' organisation may sue, be sued or prosecuted under the name by which it has been operating or is generally known.

(3) A trade union or employers' organisation whose registration has been cancelled may sue, be sued or be prosecuted under the name by which it was registered.

(4) Execution for any money recovered from a trade union or employers' organisation in civil proceedings may issue against any property belonging to or held in trust for it, other than the provident, benevolent or pension fund of a registered trade union or employers' organisation.

## **223. Service of legal process**

Every summons, notice or other document required to be served on a trade union in civil or criminal proceedings shall be deemed to be duly served if it is delivered at the registered office of the trade union or employers' organisation, or posted by certified mail to its registered office or registered postal address, or if it is served personally on the president, the treasurer, the secretary or any officer of the trade union or organisation, provided that the service is otherwise in compliance with the requirements of any relevant law.

## **224. Inapplicability of certain laws**

The Companies Act 1967 and the Societies Act 1966 shall not apply to trade unions or employers' organisations.

# **PART XVIII - SETTLEMENT OF TRADE DISPUTES**

## **225. Settlement of trade disputes**

(1) Where there is a trade dispute and the Labour Commissioner is of the opinion that suitable means for settling the dispute already exist by virtue of the provisions of any

agreement reached between the parties, he or she may refer the dispute for settlement in accordance with those provisions.

(2) Where the Labour Commissioner does not refer the dispute for settlement under subsection (1), or where upon such reference there has been a failure to reach a settlement, the Labour Commissioner shall immediately:

- (a) inquire into the causes and circumstances of the dispute; and
- (b) take such steps as seem expedient to promote a settlement of the dispute.

## **226. Unsettled disputes: conciliation**

(1) where, within fourteen days of a party bringing a trade dispute to the attention of the Labour Commissioner, the dispute has not been settled as provided under subsection (1) or (2) of section 225, the Labour Commissioner shall immediately either

- (a) appoint a conciliator, who may be a labour officer, to endeavour further to arrive at a settlement; or
- (b) refer the dispute to arbitration under section 227.

(2) Where the Labour Commissioner has appointed a conciliator under subsection (1) (a) and a settlement has not been reached on all matters in the dispute within seven days of that appointment, the conciliator shall report that fact to the Labour Commissioner, who shall immediately refer the matters still in dispute to arbitration under section 227.

## **227. Reference to arbitration**

(1) Where a dispute is referred to arbitration under section 226(1)(b) or (2), the Labour Commissioner shall serve the parties with a notice

- (a) stating the issues which in his or her opinion are in dispute between the parties; and
- (b) asking the parties whether they consent to those issues being referred to and determined by arbitration.

(2) Where all parties give their consent, the Labour Commissioner shall within fourteen days refer the issues specified for determination by notice to an arbitration tribunal. Consent to arbitration may not be unreasonably withheld.

(3) The arbitration shall be handled by an arbitrator appointed by the Minister, who may be assisted by one or more assessors nominated by the one party, and an equal number of assessors nominated by the other party, all of whom should be appointed by the Minister.

(4) The Minister may refer to the Labour Court the issue whether consent to arbitration is being unreasonably withheld by any party. If the Court determines that consent was unreasonably withheld by any party, that party will be deemed to have given its consent. Withholding of consent to arbitration of disputes arising over the application or interpretation of existing provisions of law, or of a collective agreement in force, or a contract of employment during its term may be deemed to be unreasonable. Withholding of consent to arbitration of dispute arising in the course of negotiating or seeking to negotiate new terms or conditions of employment, otherwise than when

strikes or lock-outs over such questions are prohibited by the terms of a collective agreement then in force, may not be deemed to be unreasonable.

(5) The arbitrator or arbitration tribunal shall issue an award within fourteen days of having heard parties to the dispute.

(6) Where assessors assist the arbitrator under subsection (3) of this section, the arbitrator shall act alone in making the award.

(7) An arbitrator appointed under the provisions of subsection (3) of this section may

- (a) examine the economic position of the undertaking in which the dispute exists and any account books and other documents likely to provide the arbitrator with material for the investigation of the dispute;
- (b) summon any person to appear before the arbitration tribunal in order to be examined thereon or require that person to produce any documents in his or her possession.

(8) All expenses connected with the arbitration, other than attorney fees, shall be provided out of public funds. The arbitrator shall have regard for the need for informality, low cost and expedition in the arbitration. The provisions of the Code regarding representation of the parties (section 28) shall apply mutatis mutandis.

(9) The arbitration award shall be final and binding; a party claiming in good faith that the arbitrator exceeded his or her jurisdiction may none the less apply to the Labour Court for a judgment on that point only. If the Labour Court rules that the arbitrator did not exceed his or her jurisdiction, the arbitration award shall have retroactive effect as from the date it was made by the arbitrator. If the Labour Court rules that the arbitrator exceeded his or her jurisdiction, the dispute shall again be referred to arbitration under section 227. Where it is appropriate for the terms of the award to be enforced as individual terms and conditions of employment, they shall be deemed to be incorporated in the contracts of the workers and employers concerned.

## **228. Vacancy in arbitration tribunal**

(1) Whenever the arbitration tribunal consists of an arbitrator assisted by assessors and any vacancy occurs in the number of assessors, the tribunal may at the discretion of the arbitrator either act notwithstanding the vacancy, or consent to another assessor being nominated and appointed to fill the vacancy.

(2) No act, proceeding, determination or award of an arbitration tribunal appointed under section 227 shall be called in question or invalidated by reason of any such vacancy so long as the required consent has first been obtained.

## **• PART XIX - STRIKES, LOCK-OUTS AND ESSENTIAL SERVICES**

### **229. Notice of strikes and lock-outs**

(1) Where the Labour Commissioner has served a notice on the parties referring a trade dispute to arbitration, any party may either consent to arbitration or serve on the

Labour Commissioner and on the other party or parties a notice refusing consent to arbitration, in accordance with sub-section (2).

(2) A notice refusing consent to arbitration may also contain statement of intention to declare a strike or, as the case may be, a lock-out in furtherance of the dispute. In no case may a strike or lock-out be initiated fewer than seven days after this notice has been served on the other party or parties and on the Labour Commissioner.

(3) Where the time-limits for the settlement of disputes prescribed in sections 225, 226 or 227 have been exceeded, a party to a labour dispute may declare a strike or, as the case may be, a lock-out in furtherance of the dispute. In such a case, the seven-day notice required under subsection (2) shall be deemed to have been given.

### **230. When strike or lock-out lawful**

A strike or lock-out carried out in accordance with the provisions of section 229 shall be lawful. Any other strike or lock-out shall be unlawful.

### **231. Offences in connection with strikes and lock-outs declared unlawful**

A person who declares, instigates or incites others to take part in or otherwise acts in furtherance of a strike or lock-out that is stipulated to be unlawful by sections 230 or 232 (5) shall be liable to a fine of one thousand maloti. The Labour Court may make an order forbidding the continuance of such action and failure to comply with such an order may be punished as if it were contempt of the High Court. However, no person shall be deemed to have committed an offence under this section by reason of merely having ceased to work or having refused to accept employment.

### **232. Threat to essential services**

(1) For the purpose of this section of the Code the term "essential service" is confined to undertakings that provide a service whose interruption would endanger the life, personal safety or health of all or any part of the population of Lesotho.

(2) Where in the opinion of the Minister the existence of action in pursuance of a trade dispute threatens the continuance of any essential service he or she may call upon the Commissioner of Labour to investigate and to report upon the facts of such dispute within ten days.

(3) The report of the Labour Commissioner shall be made public within one week of its submission to the Minister.

(4) If the dispute has not been settled within one week of the report of the Labour Commissioner being made public, the Minister shall immediately apply to the Labour Court for a ruling on the dispute. The Court shall issue its ruling within 30 days of the filing of the application by the Minister. Its award, which shall be made public, shall be final and binding upon the parties. Where appropriate to individual terms and conditions of employment, the award shall be deemed to be incorporated in the contracts of employment of the employees to whom it applies.

(5) Any action in pursuance of a trade dispute that threatens the continuance of essential services and persists after the dispute has been referred by the Minister to the Labour Commissioner or the Labour Court shall be unlawful. This shall not apply if

the Commissioner of Labour or the Labour Court has failed to act within the time-limits specified.

## **PART XX - PICKETING, INTIMIDATION AND OTHER MATTERS RELATING TO TRADE DISPUTES**

### **233. Peaceful picketing and prevention of intimidation**

(1) Subject to section 230, it shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation thereof, in contemplation or furtherance of a trade dispute, to be present at or near a place where a person works or carries on business or happens to be if they are present merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working.

(2) It shall be unlawful for one or more persons (whether acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation thereof, even when they may be acting in contemplation or furtherance of a trade dispute) to be present at or near a place where a person works or carries on business or happens to be for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working if they act in such manner as to be likely to intimidate any reasonable person in that place, or to obstruct the approach thereto or egress therefrom, or to lead to a breach of the peace.

(3) It shall be unlawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation thereof, in contemplation or furtherance of a trade dispute, to be present, in a menacing or threatening manner at or near a house or place where a person resides for the purpose of obtaining or communicating information, or of persuading or inducing any person to work or abstain from working.

(4) Any person who acts in contravention of subsection (2) or (3) of this section shall be guilty of an offence and liable to a fine not exceeding two hundred maloti or to imprisonment for a period not exceeding one month.

### **234. Intimidation**

(1) Every person who, with a view to compelling another person to abstain from doing or to do an act which that other person has a legal right to do or abstain from doing, wrongfully and without legal authority

- (a) uses violence to or intimidates that other person or his or her spouse or children, or injures his or her property; or
- (b) persistently follows that other person about from place to place; or
- (c) hides any tools, clothes or other property owned or used by that other person or deprives him or her of or hinders him or her in the use thereof; or
- (d) watches or besets the house or other place where that person resides, or the approach to that house or place; or
- (e) follows that other person in a disorderly manner in or through any street or road; shall be guilty of an offence and liable to a fine not exceeding two hundred

maloti or to imprisonment for a term not exceeding one month.

(2) Being present at or near any house or place of residence in such large numbers or in such manner as is by subsection (2) of section 233 of the Code declared to be unlawful shall be deemed to be a watching and besetting of that house or place of residence within the meaning of this section.

### **235. Conspiracy in trade disputes**

(1) Subject to section 230, an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute shall not be punishable as a conspiracy if the act, committed by one person, would not be punishable as a crime.

(2) Subject to section 230, an act done in pursuance of an agreement or combination by two or more persons shall, if done in contemplation or furtherance of a trade dispute, not be actionable unless the act, if done without such agreement or combination, would be actionable.

(3) Nothing in this section shall exempt from punishment any person guilty of a conspiracy for which a punishment is provided by law.

(4) Nothing in this section shall affect the law relating to riot, breach of the peace or sedition, or any offence against the Government as established by law.

(5) A crime, for the purposes of this section, means an offence for the commission of which the offender is liable, under a law other than the Code, to be imprisoned, either absolutely or at the discretion of the Court, as an alternative for some other punishment.

## **PART XXI - MISCELLANEOUS, REPEAL AND AMENDMENTS**

### **236. Determination of age**

Whenever any question arises as to the age of an employee and no sufficient evidence is available as to his or her age, a medical officer may estimate his or her apparent age by his or her appearance or from any information which is available, and the age so estimated shall, for the purposes of the Code, be deemed to be his or her true age.

### **237. Posting of abstracts or notices**

(1) Every abstract, notice or document required by the Code to be posted in any place of work shall be posted in such characters and in such position as to be conveniently read and understood by the employees.

(2) Any person who pulls down, injures or defaces any abstract, notice or document posted in pursuance of the Code shall commit an offence.

### **238. Courts which may try criminal offenses**

All, criminal offenses under the Code may be tried by a Subordinate Court of the first class, notwithstanding anything confined in the Subordinate Courts Order 1988.



### **239. General penalty**

Any person convicted of an offence against a provision of the Code for which offence no specific penalty has been provided shall be liable to a fine of six hundred maloti or to imprisonment for three months or both.

### **240. Regulations**

(1) The Minister may, after consultation wherever appropriate with employers' and employees' organisations representative of the interests concerned, make regulations for the purpose of giving effect to the provisions of the Code.

(2) The Minister shall, in consultation with the National Advisory Committee on Labour, at intervals of no more than two years, review the fines and fees provided by the Code and adjust them if deemed necessary.

### **241. Repeal of laws**

(1) The following Acts and Regulations and Orders are hereby repealed in their entirety: the Trade Unions and Trade Disputes Law 1964 (No. 11 of 1964), the Employment Act 1967 (No.22 of 1967), the Trade Unions and Trade Disputes (Amendment) Act 1974 (No.5 of 1974), the Essential Services Arbitration Act 1975 (No.34 of 1975), the Employment (Amendment) Act 1977 (No. 14 of 1977), the Regulation of Wages and Conditions of Employment Act 1969 (No.35 of 1969), the Employment Act (Procedure) Rules 1970 (L.N, 27 of 1970), the Employment Act No.22 of 1967: Application to Public Officers (Government Notice 88 of 1967), the Trade Union and Trade Disputes (Amendment) Regulation 1984 (L.N. 94 of 1984) and the Trade Unions and Trade Disputes Regulations 1964. The Wages and Conditions of Employment Order 1978 (L.N. 5 of 1978) is hereby repealed subject to the provisions of subsection (6) of section 79 of the Code regarding accrued severance pay.

(2) Notwithstanding the repeals so specified, any order not specified in subsection (1), direction, notice or other instrument or document made or issued under the authority of any of the aforesaid Acts or Regulations, except in so far as the former are inconsistent with the provisions of the Code, shall remain in force until such time as they shall have expired or have been revoked, replaced or cancelled under the provisions of the Code.

### **242. Conflict of law rules**

(1) Where any rule of law which was applied prior to the entry into force of the Code conflicts with the application of its provisions, that rule shall not be applied in any case arising under the Code.

(2) In any case where both the laws of Lesotho and the laws of another State could be applied in regard to the rights or entitlements of employees, their survivors or heirs, a court shall be bound to apply the laws of Lesotho.

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## **SCHEDULES**

### **FIRST SCHEDULE. WAGES ADVISORY BOARD**

## (Sections 47-52 of the Code)

## 1. The Wages Advisory Board shall consist of

- (a) not more than three persons appointed by the Minister who shall be known as independent members;
- (b) such number of persons as the Minister deems necessary to represent employers;
- (c) such number of persons as the Minister deems necessary to represent employees.

2. Of the persons appointed under subparagraph (a) of paragraph 1, one shall be designated by the Minister to be a chairman, and a second may be designated by the Minister to be deputy chairman who will fill the chair in the absence of the chairman.

3. Before appointing persons under subparagraph (b) or subparagraph (c) of paragraph 1, the Minister shall consult, as the case may be, representative employers' organisations or trade unions, and the persons appointed under those subparagraphs shall be equal in number.

4.

- (a) The Minister may appoint such number of persons as he or she deems necessary to act as assessors on the Board, being persons who, in his or her opinion, have an expert knowledge of the matters with which the Board's inquiry is concerned.
- (b) An assessor shall not vote or otherwise be a part to any report or recommendation of the Board.

5. The Minister may appoint to the Board a secretary and such other officers as he or she considers necessary.

6. The proceedings of the Board shall not be invalidated by reason of any vacancy thereon or by defect in the appointment of a member.

7. The Minister may make regulations as to the meetings and procedure of the Board including regulations as to the quorum and the method of voting, but subject to the provisions of the Code and to any regulations so made a board may determine its own procedure and the conduct of its business.

8. Without prejudice to his eligibility for reappointment, a member of the Board shall hold office for a period of four years or such other term as may be specified by the Minister at the time of the member's appointment, and the conditions subject to which the member is to hold office shall be such as the Minister may prescribe.

9. There shall be paid out of public funds in that behalf to the members of the Board appointed under sub-paragraph (1)(a) such rates of remuneration and to any member and assessor such rates of travelling and other allowances (including compensation for loss of working time) as may be approved by the Minister.

10.

- (a) No member of the Board or other person present at or concerned in any proceedings of the Board shall disclose any information, or the contents of any document, which has been furnished to the board, except with the written consent of the person who furnished the information or the document and of the Board.
- (b) Any person who contravenes the provisions of subparagraph (a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding four hundred maloti or to imprisonment for a period not exceeding two months or to both such fine and imprisonment.

## **SECOND SCHEDULE. MATTERS FOR WHICH PROVISION MUST BE MADE IN THE RULES OF A TRADE UNION OR EMPLOYERS' ORGANISATION**

(Section 195 of the Code)

The rules of a trade union or employers' organisation shall make provision for the following matters:

1. The name of the trade union or employers' organisation.
2.
  - (a) The principal purposes for which the trade union or employers' organisation is to be established;
  - (b) all other purposes ancillary to the principal purposes which may be pursued by the trade union or employers' organisation;
  - (c) the purposes for which the funds of the trade union or employers' organisation shall be applicable;
  - (d) the rates of contribution and the conditions under which any member of the trade union or employers' organisation may become entitled to any benefits assured thereby;
  - (e) the fines or forfeitures which may be imposed on any member of the trade union or the employers' organisation.
3. The manner of making, altering, amending and rescinding rules.
4. The appointment or election and removal of a general committee of management and of trustees, treasurers and other officers of the trade union or employers' organisation, and for the re-election of these officers at intervals of not more than three years.
5. The fixing of a quorum for committee and all other meetings.
6. The taking of decisions by secret ballot in respect of:
  - (i) election of officers;
  - (ii) amendment of rules;
  - (iii) strikes or lock-outs;
  - (iv) federation or affiliation;
  - (v) amalgamation or dissolution;

and the procedure to be followed in taking the secret ballot.

7. The keeping of full and accurate accounts by the treasurer.

8. The keeping in a separate fund of all moneys received or paid by the trade union or employers' organisation in respect of any contributory provident fund or pension scheme.
9. The investment of the funds or their deposit in a bank and for audit of accounts at intervals not greater than one year.
10. The inspection of the books and list of names of members of the union or employers' organisation by any person having a legal interest in the funds of the trade union or of the employers' organisation.
11. The manner of the dissolution of the trade union or employers' organisation and the disposal of the funds thereof available at the time of such dissolution.
12. Qualifications for the exercise of voting rights and the right of any member to a reasonable opportunity to vote.

### **THIRD SCHEDULE. TRADE UNIONS AND EMPLOYERS' ORGANISATIONS' REGISTRATION REQUIREMENTS**

(Sections 169-188 of the Code)

1. The expressions used in this Schedule shall, unless the context otherwise requires, have the meanings respectively assigned to them in section 3 of the Code; references to forms are to the forms appended to and to be deemed part of this Schedule.
2. (1) Every register, certificate, order, application and notice under the Code shall be kept, issued, made or given in accordance with the appropriate form in English or Sesotho, and shall comprise the particulars specified.  
(2) The number of copies to be submitted of any such application or notice, if more than one, shall be stated in the form of such application or notice.  
(3) Any authority or person having power to issue any certificate under the Code shall, on it being proved to his or her satisfaction that such certificate has been lost or destroyed and on payment of the prescribed fee, issue a duplicate of the certificate to the person entitled thereto.
3. The particulars to be recorded in the register of trade unions and employers' organisations shall be those specified in Form A.
4. (1) The manner of registering shall be by entering in the register the name of the trade union or employers' organisation, the location and postal address of its registered office, the titles and names of its officers, and the date of the registration.  
(2) The manner of registering a change of name shall be by deleting the name under which such trade union or employers' organisation has been registered in the register and by substituting therefor the new name.
5. (1) The register and any documents in connection therewith shall be open to inspection by the public during the hours during which the office of the Registrar is open to the public.

(2) Copies of or extracts from the register or documents in the custody of the Registrar may be obtained by any person giving reasonable notice and upon payment of the prescribed fees.

6. Every application for the registration shall be made in the form set out in Form A and shall be accompanied by two printed or typed copies of the rules of the trade union or employers' organisation signed as specified in that form.

7. The certificate of registration issued by the Registrar shall be in the form as set out in Form E.

8. A notice in English and Sesotho giving

- (a) the reasons for any proposed amalgamation or federation;
- (b) the proposed conditions under which such amalgamation or federation will take place; and
- (c) the time and place at which the ballot will be held;

shall be posted in the registered office of the trade union or employers' organisation and in every branch office thereof at least two weeks before a ballot relating to amalgamation or federation is held and shall remain so posted until the ballot has been concluded.

9. Notice of amalgamation or federation shall be sent to the Registrar in pursuance of subsection (1) of section 178 or sub-section (3) of section 179 of the Code which notice shall be in the form set out in Form B or C, as appropriate.

10. In the event of disagreement as regards the application of the provisions relating to amalgamation or federation or the procedure for taking a ballot, the matter may be referred to the Registrar who may, if he or she thinks fit, nominate an assistant Registrar to conduct a new ballot.

11. Whenever a registered trade union or registered employers' organisation shall change its rules, notice of such change shall be sent to the Registrar.

12. The annual return referred to in subsection (1) of section 208 of the Code shall be in the form of and comprise the particulars specified in Form D and shall be audited in the manner shown in the form of a balance sheet contained in that form.

13. (1) Every registered trade union and every registered employers' organisation shall keep a register of its members in which shall be entered

- (a) the name, address and occupation of each member;
- (b) the date on which each member was admitted to membership;
- (c) the payments made by each member in respect of entrance fee, subscriptions or any other matter, and the dates of such payments; and
- (d) the date on which any member ceases to be a member.

(2) On the making by a member of a trade union or employers' organisation of any payment in respect of which an entry in the register of members is required to be made under subparagraph (1) of this paragraph, a written receipt shall be given by an officer of the trade union or employers' organisation to such member.

(3) If any registered trade union or employers' organisation fails to keep a register of its members in accordance with subparagraph (1), or if the provisions of subparagraph (2) of this paragraph are not complied with, the trade union or employers' organisation and every officer or person acting or purporting to act as an officer thereof shall be guilty of an offence and shall be liable on conviction to a fine not exceeding two hundred maloti: Provided that no such officer or person shall be guilty of an offence under this paragraph if he or she proves to the Court that any contravention of the provision of this Schedule was occasioned without the knowledge or connivance of such officer or person, and was not facilitated by any neglect on the part of such officer or person.

4. The fees set out in the Tariff of Fees appended to and to be deemed part of this Schedule shall be payable to the Registrar in respect of the several matters specified therein.

**FORM A. APPLICATION FOR REGISTRATION OF A TRADE UNION OR EMPLOYERS' ORGANISATION**

(Sections 172, 193, 194 and 195 of the Code)

To: The Registrar of Trade Unions and Employers' Organisations

1. We, the several persons whose names are given below, hereby make application for the registration under the Code, of a Trade Union/Employers' Organisation (circle as appropriate) to be known as:-

-----  
---  
-----

2. (i) The location of the registered office is at:

-----  
-----

(ii) The registered postal address is:-

-----

(iii) The aforesaid Trade Union/Employers' Organisation (circle appropriate) was established on the \_\_\_\_\_

day of \_\_\_\_\_ 19\_ .

(iv) The purposes of the Trade Union/Employers' Organisation (circle as appropriate) are:

-----  
-----

(v) We enclose herewith:-

- (a) Two copies of the Rules of the Trade Union/Employers' Organisation.
- (b) Statement I showing the names, occupations and addresses of the members making this application.
- (c) Statement II showing the titles, names, ages, addresses and occupations of the officers and trustees of the Trade Union/Employers' Organisation.

3. We have been duly authorised by the Trade Union/Employers' Organisation to make this application on its behalf by a general meeting held at

-----

on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Dated this \_\_\_\_ day of 19\_\_

- |          |           |
|----------|-----------|
| 1. _____ | 6. _____  |
| 2. _____ | 7. _____  |
| 3. _____ | 8. _____  |
| 4. _____ | 9. _____  |
| 5. _____ | 10. _____ |

Note - This application must be signed by at least ten members of the body applying for registration.

**Statement I. NAMES OF PERSONS MAKING APPLICATION FOR THE REGISTRATION OF A TRADE UNION OR EMPLOYERS' ORGANISATION**

NAME	OCCUPATION	ADDRESS
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

\_\_\_\_\_ **SECRETARY**

**Statement II. NAME OF OFFICERS OF THE TRADE UNION OR EMPLOYERS' ORGANISATION**

Title of Office held in the Trade Union or Employers' Organisation	Name	Age	Address	Occupation

\_\_\_\_\_ **(Secretary)**

**FORM B: NOTICE OF AMALGAMATION**

(Section 178 of the Code)

(A) \_\_\_\_\_ Registered No. \_\_\_\_\_

(B) \_\_\_\_\_ Registered No. \_\_\_\_\_

To: The Registrar of Trade Unions and Employers' Organisations

Notice is hereby given that the above mentioned Trade Unions/Employers' Organisations (circle as appropriate) have resolved to become amalgamated together as one body, a ballot having been taken in the case of each or every of the said Trade Unions/Employers' Organisation (circle as appropriate), in accordance with its respective rules.

And that the following are the terms of the amalgamation:

\_\_\_\_\_  
\_\_\_\_\_

And that it is intended that the Trade Union/Employers' Organisation shall henceforth be called the

\_\_\_\_\_

Accompanying this notice is a copy of the rules intended to be henceforth adopted by the amalgamated Trade Union/Employers' Organisation (which are the rules of the

\_\_\_\_\_ Trade Union/ Employers' Organisation



- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

\_\_\_\_\_  
Secretary of (A)

\_\_\_\_\_  
Secretary of (B)

Name and address to which registered copy is to be sent \_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Note:- This notice must be signed by the Secretary and at least six members of each Trade Union or Employers' Organisation. It shall be made within one month of the amalgamation (section 178 of the Code).

**FORM C. NOTICE OF FEDERATION OF TRADE UNIONS OR EMPLOYERS' ORGANISATIONS**

(Section 179 of the Code)

(A) \_\_\_\_\_

Registered No. \_\_\_\_\_

(B) \_\_\_\_\_

Registered No. \_\_\_\_\_

To: The Registrar of Trade Unions and Employers' Organisations

Notice is hereby given that the above mentioned Trade Unions/Employers' Organisations (circle as appropriate) have resolved to form a federation, a ballot having been taken in the case of each or every of the said Trade Unions/Employers' Organisations (circle as appropriate), in accordance with its respective rules.

And that the following are the terms of the federation:

\_\_\_\_\_  
\_\_\_\_\_

And that it is intended that the Federation shall be called the

\_\_\_\_\_  
\_\_\_\_\_

And that the purposes of the Federation are as follows:

---



---



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- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_
- 4. \_\_\_\_\_
- 5. \_\_\_\_\_
- 6. \_\_\_\_\_

Secretary of (A)

Secretary of (B)

Name and address to which registered copy is to be sent

\_\_\_\_\_

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Note

- (1) This notice must be signed by the Secretary and at least six members of each Trade Union or Employers' Organisation.
- (2) If more than two Trade Unions or Employers' Organisations have resolved to form a federation a second (or third) form should be filled in and attached to this form.
- (3) This notice shall be made within one month of the establishment of the Federation (section 179 of the Code).

**FORM D. ANNUAL RETURN OF A TRADE UNION OR EMPLOYERS' ORGANISATION**

(Section 208 of the Code)

**I. ANNUAL RETURN - GENERAL INFORMATION**

Annual Return of the (name of the Trade Union/Employers' Organisation (circle as appropriate)) \_\_\_\_\_

made up to the 31st December 19\_ .

Registered No. \_\_\_\_\_

Please state -

- 1. The address of the registered office and its postal address..... \_\_\_\_\_

- 2. Are there any branches, if so, how many? .....
- 3. Does this return include the income and expenditure funds and effects of all the branches .....
- 4. If this return does NOT include the income and expenditure of some of the branches state the names of the branches which are not included .....
- 5. In what industry are the members of the Trade Union/Employers' Organisation chiefly engaged? .....
- 6. (a) Number of members at the beginning of the year .....
- (b) Total number of members at the end of the year .....
- (c) Are all the members mentioned in (b) fully paid up? If not, state how many are fully paid up.....

**II. PARTICULARS OF THE OFFICERS AND TRUSTEES OF THE**

(name of the Trade Union/Employers' Organisation (circle as appropriate))

as at 31st December, 19\_\_

Title of Office	Name	Address

**III. SUMMARY OF THE ACCOUNTS OF THE (name of the Trade Union/Employers' Organisation (circle as appropriate))**

as at 31st December. 19\_\_

## INCOME AND EXPENDITURE ACCOUNT

Income	Expenditure
(1) Members' contributions including those of Branch members	(1) Benefits and grants paid to members
(2) Other income (not from members)	(2) Working expenses:
(a) Dividends and interest received	(a) Head Office
(b) Miscellaneous	(b) Branches
(3) Balance brought forward from previous year	(3) Other expenditure (specify)
(4) Excess of expenditure over income (if any)	(4) Balance of general funds at the end of the year
_____	_____
_____	_____

## IV. BALANCE SHEET OF THE (name of the Trade Union/Employers' Organisation (circle as appropriate))

\_\_\_\_\_ as at 31st December, 19\_\_

LIABILITIES		ASSETS	
(1) Amount of any separate funds maintained, as follows	ML	(1) Cash at bank	ML
(a) ..... Fund		(2) Cash in hand	
(b) ..... Fund		(3) Cash with Branches	
(2) Total amount of general funds as shown in point (4) under expenditures in the Income and Expenditure Account form appearing directly above.		(4) Value of investments (if any)	
3) Loans received (specify)		(5) Value of interest in use of lands and buildings	
(4) Other liabilities		(6) Value of furniture and fittings	
_____		(7) Other assets	
_____		(8) Deficiency in general fund (if liabilities exceed assets) as shown in point (4) under expenditures in the Income and Expenditure Account form appearing directly above	

--	--	--	--

Signature of Treasurer \_\_\_\_\_ Address \_\_\_\_\_

Signature of Secretary \_\_\_\_\_ Address \_\_\_\_\_

Signature of Trustee \_\_\_\_\_ Address \_\_\_\_\_

The undersigned, having had access to all the books and accounts of the Trade Union or Employers' Organisation (including any branches), and having examined the foregoing Annual Return and verified the same with the accounts and vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Signature of Auditor \_\_\_\_\_ Address \_\_\_\_\_

Calling or profession \_\_\_\_\_ Date of completion of audit \_\_\_\_\_

Dated \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

II. TARIFF OF FEES

M L

The following fees shall be payable to the Registrar of Trade Unions and Employers' Organisations.

On application for registration .. . . . . .

On issue by the Registrar of any Certificate of registration .. . . . . .  
.. ..

On registration of change of name .. . . . . .

For a copy of a certificate of registration or for authentication not otherwise provided .  
.. . . . .

For a copy of or an extract from any document in the custody of the Registrar: .... per folio of 72 words .. .

**FOURTH SCHEDULE. RECORDS, FORMS. ETC., TO BE KEPT OR USED BY EMPLOYERS**

(Sections 60, 77, 83, 91,140,141,143,154 of the Code)

1. Register of employers and record of wages

(1) Every employer who employs more than one employee shall maintain, in English or Sesotho in ink or typescript, a register of employees in which the following particulars are entered:

Names of employees and home addresses  
 Tax Number or other identification (if any)  
 General description of employment or job classification  
 Nature of contract  
 Wage rate  
 Date of commencement of employment  
 Holiday entitlement  
 Date of termination of employment  
 Reason for termination  
 Next of kin and address

(2) Every employer who employs more than one employee shall prepare a record of wages in respect of each wage period and shall enter therein the following particulars in respect of each employee

Name  
 Employment number or other identification (if any)  
 Ordinary wages earned during the pay period  
 The amounts of overtime, allowances, bonuses and other payments due in respect of the pay period under appropriate headings  
 Total wages due for the pay period  
 Deductions to be made from wages in respect of the pay period under appropriate headings  
 Total of deductions for the pay period  
 Net wages payable.

## 2. Certificate of service

The certificate of service required to be furnished by an employer in terms of section 77 of the Code shall be substantially in Form A of this Schedule.

## 3. Deferment of wages

(1) With the voluntary consent of the employees and the concurrence of the attesting officer, a contract may make provision for the deferment of the wages due to the employee, within the limits set by the Code.

(2) The amount of any wages deferred under the terms of a contract shall be paid to the employee on completion of the contract, or in the case of a contract of foreign service not later than as soon as is reasonably practicable after the return of the employee to Lesotho.

## 4. Attestation and registration

(1) Fees for the attestation of contracts shall be:

- (a) in respect of a contract of employment for a period not exceeding six months in agriculture (other than sheep shearers) the sum of five (5) Maloti;

- (b) in respect of a contract of employment as a sheep-shearer the sum of one (M10) Maloti
- (c) in respect of a contract for other employment the sum of one M10 Maloti; and
- (d) for each copy of a contract which is presented to the attesting officer the sum of 5 lisente;

(2)

- (a) Attestation fees shall be payable by revenue stamps which shall be affixed to the original copy of a contract before presentation to the Attesting Officer for attestation and such fees shall not be recoverable from any employee by any Labour Agent or Employer and the stamps shall be cancelled and punched by the Attesting Officer at the time of the attestation.
- (b) The use of franking machines instead of stamps, or such other method of payment as may be approved by the Principal Secretary of the Ministry of Finance in accordance with section 6 (3) of the Stamp Duties Order 1972, is permissible.

## 5. Labour agent's licence

(1) Every application for a labour agent's licence, including an application for the renewal of such a licence, shall be made in duplicate, and lodged with the Labour Commissioner.

(2) The application shall be substantially in Form B of the Schedule to these regulations and shall contain particulars noted therein.

In addition the applicant shall declare that the particulars furnished are correct.

## 6. Licence fees

The fees payable in respect of a labour agent's licence shall be

- (a) in the case of a licence
  - (i) granted for a period not exceeding one month; and
  - (ii) for the recruitment or engagement of persons not exceeding fifty during that period, and
  - (iii) for employment in agriculture only, the sum of M..... and
- (b) in the case of any other licence the sum of M..... provided that in the case of licences issued for the first of July in any year the fee shall be .....

## 7. Form and period of validity of licence

(1) Every labour agent's licence shall be for a period not exceeding one year, and shall expire on the 31st day of December of the year in which it was granted.

(2) The licence shall be as set out in Form C of the Schedule to the Regulations.

### FORM A. Certificate of Service

#### Section 77 (1) of the Code

\_\_\_\_\_ hereby certify that  
 (employee) \_\_\_\_\_ was  
 by (name of employer) \_\_\_\_\_  
 (description of employment) \_\_\_\_\_  
 \_\_\_\_\_ 19 \_ to \_\_\_\_\_ 19\_  
 (of service)  
 Signed \_\_\_\_\_  
 Designation \_\_\_\_\_

## FORM B. Application for Labour Agents' Licence

(In Duplicate)

### Section 140 of the Code

1. Name and address in full (Block Letters) \_\_\_\_\_
2. Name and address of applicant's employer or style of his or her business if not the same as above \_\_\_\_\_
3. District of operations for which labour agent's licence is required  
\_\_\_\_\_
4. Estimated number of employees to be recruited or engaged by month/year  
\_\_\_\_\_
5. Nature of employment for which employees are to be recruited or engaged
6. Previous experience as a labour agent: \_\_\_\_\_  
 (a) in Lesotho \_\_\_\_\_  
 (b) elsewhere \_\_\_\_\_
7. Name and address of two persons resident in Lesotho from whom references may be sought if required:
  - (1) \_\_\_\_\_
  - (2) \_\_\_\_\_
8. Form of security to be furnished for:
  - (a) proper conduct as a labour agent \_\_\_\_\_
  - (b) payment of wages due and other obligations as a labour agent \_\_\_\_\_



9. Arrangements proposed for safeguarding the health and welfare of persons to be recruited or engaged \_\_\_\_\_

10. List of employers outside Lesotho for whom it is proposed to recruit or engage employees under the licence applied for:

- 1. \_\_\_\_\_
- 2. \_\_\_\_\_
- 3. \_\_\_\_\_

I solemnly declare that the particulars set forth in this application are correct and true to the best of my knowledge.

Date: \_\_\_\_\_

Signature of applicant

The person making this statement acknowledges that he/she knows and understands the contents of this declaration.

Sworn or/affirmed before me at \_\_\_\_\_

on this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

\_\_\_\_\_  
Commissioner of Oaths

FORM C. Labour Agents Licence

(Section 141 of the Code)

**NOT TRANSFERABLE**

Fee: M ... for one year  
M ... 5 for six months or less  
M ... for one month and not  
more than 50 employees

Mr./Miss/Mrs. \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ having paid the sum of Maloti ..... is hereby licensed to engage in recruiting and/or to carry on the business of a labour agent in the \_\_\_\_\_ from the period from \_\_\_\_\_ 19\_ to \_\_\_\_\_ 19\_ (inclusive) subject to the conditions specified below.

Conditions of Licence

1. This licence may be cancelled or suspended at any time in accordance with the provisions of the Code and on cancellation or suspension must be surrendered to the Labour Commissioner forthwith.
2. This licence is valid only for the recruitment or engagement of persons in the area specified and for employment by the employer/employers specified on the back of the licence.
3. Other conditions (if any).

\_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_ LABOUR COMMISSIONER

## **FIFTH SCHEDULE. CERTIFICATES OF EMPLOYMENT**

(Sections 165 to 167 of the Code)

### 1. Application for a certificate of employment

1. Every application for the grant of a certificate of employment, including an application for the renewal of such a certificate, shall be made in duplicate, and lodged with the Labour Commissioner together with two recent passport photographs of the applicant.
2. The application shall be in the form set out in Form A.
3. Every application shall be accompanied by a recommendation to the Minister and shall be made in duplicate and lodged with the Labour Commissioner by the prospective employer.
4. The recommendation shall be in the form set out in Form B.
5. A certificate of employment and any extension thereof shall be in the form set out in Form C.

### 2. Fees payable

1. The fee payable for a certificate of employment shall be M..... .
2. The fee payable for each renewal of a certificate of employment shall be M.....
3. If the Minister is satisfied that a certificate of employment has been lost, destroyed or defaced a duplicate certificate of employment will be issued to the person entitled thereto upon payment of M.....

## FORM A. Application for Certificate of Employment

1. Name and address in full (block letters) \_\_\_\_\_

2. Passport No. \_\_\_\_\_ Permit No. \_\_\_\_\_

3. Date of Birth \_\_\_\_\_ Age Sex \_\_\_\_\_

Place of Birth \_\_\_\_\_ Citizen of \_\_\_\_\_

4. Father's name \_\_\_\_\_ Place of Birth \_\_\_\_\_

5. Married, single, widower or widow \_\_\_\_\_

6. Name and nationality of husband/wife \_\_\_\_\_

7. Number of children \_\_\_\_\_

8. Schools attended, with date of entry and leaving and examination passed.

<b>Name of School</b>	<b>Date of Entry</b>	<b>Date of Leaving</b>	<b>Examination passed</b>
a.			
b.			
c.			
d.			
e.			
f.			

9. University (or other post-Secondary Institution)

<b>Name of Institution</b>	<b>Date of Entry</b>	<b>Date of Leaving</b>	<b>Qualifications obtained</b>
a.			
b.			
c.			
d.			
e.			
f.			

10. Any other recognised qualifications possessed.

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11. Details of present and previous employment. This record should contain a record of each position held and cover the whole period after completing school, or training up to the present. For each position held, indicate:

- 1. Name and address of employer
- 2. Capacity in which employed

- 3. Nature of duties including any special responsibilities
- 4. Date of beginning and ending of employment
- 5. Salary
- 6. Reasons for leaving (where applicable)
- 7. Period of notice you would need to give your present employer.

12. Personal references. Give names, addresses and occupations of two responsible persons to whom you are well known, either in private life or in business. Do not send testimonials from these persons. Indicate the period each person is known to you.

Date \_\_\_\_\_ Signature \_\_\_\_\_

### FORM B. Recommendation to the Minister to issue Employment Certificate

(To be completed in duplicate by prospective employer)

1. Name and address of the prospective employer in full (block letters)

\_\_\_\_\_  
 \_\_\_\_\_

2. Style of business \_\_\_\_\_

3.

- (a) Name of employee recommended \_\_\_\_\_
- (b) Passport No. \_\_\_\_\_
- (c) Nationality \_\_\_\_\_

4. Nature of employment to be engaged on \_\_\_\_\_

5. Period to be engaged from \_\_\_\_\_ to \_\_\_\_\_

6. Reasons for recommendation \_\_\_\_\_

7. With this recommendation goes my consent to the person named in paragraph 3 above taking up the employment specified, subject to all laws and regulations normally applicable in Lesotho.

Date \_\_\_\_\_ Signature \_\_\_\_\_

### FORM C. Certificate of Employment

The holder of this certificate of employment,

Mr/Mrs/Miss/Ms \_\_\_\_\_

Passport No. \_\_\_\_\_ is permitted to work for \_\_\_\_\_

at \_\_\_\_\_ as \_\_\_\_\_

This authority is valid for the period \_\_\_\_\_ to \_\_\_\_\_

His or her employment in Lesotho is subject to all laws and regulations normally applicable in Lesotho.

In case the holder leaves this employment such fact shall forthwith be reported by the employer to the Labour Commissioner. This certificate shall at all times be in the possession of the holder for production when necessary.

Photograph  
of  
Holder

No. \_\_\_\_\_

Given at Maseru this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Minister of Employment and Social Welfare

Extension of period of validity

This certificate of employment is extended to be valid for the period

\_\_\_\_\_ to \_\_\_\_\_

Extension granted at Maseru this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_

Minister of Employment and Social Welfare

## **SIXTH SCHEDULE. HEALTH, SAFETY AND WELFARE**

(Section 92 to 116 of the Code)

### **1. Safe means of access and safe place of employment**

(1) There shall, so far as is reasonably practicable, be provided and maintained safe means of access to every place at which any person has at any time to work.

(2) Every place of employment shall, so far as is reasonably practicable, be made and kept safe and healthful for any person working there.

### **2. Safe means of access**

(1) Where any person is to work at a place from which he or she will be liable to fall a distance of more than two metres, then unless the place is one which affords secure foothold and, where necessary, secure handhold, means shall be provided so far as is reasonably practicable, by fencing or otherwise, for ensuring his or her safety.

(2) All floors, steps, stairs, passages and gangways shall be of sound construction and properly maintained and shall be kept free from any obstruction and from any

substance likely to cause persons to slip.

(3) For every staircase in a building, a substantial handrail shall be provided and maintained which, if the staircase has an open side, shall be on that side, and if the staircase has two open sides shall be on both sides.

(4) Any open side of a staircase shall also be fenced by the provision and maintenance of a lower rail or other effective means.

(5) All openings in floors shall be effectively fenced except in so far as the nature of the work renders such fencing impracticable.

(6) Every opening in a wall used for raising or lowering goods or materials, whether by mechanical power or otherwise, shall be effectively fenced and shall be provided with a secure handhold on each side of the opening, and the fencing shall be properly maintained and shall, except when the raising or lowering of goods or materials is being carried on at the opening, be kept in position.

### **3. Structure of building**

(1) When an employee has to work in, or in the course of his or her work pass through, any part of a building, such part of the building shall be of sound construction and kept in a good state of repair.

(2) Every building used as a place of work shall be so designed as to protect employees from the weather, have a watertight roof, and be free from any significant amount of dampness as is liable to affect the safety of the building or the health of the employees.

(3) Where any process is carried on which renders the floor of a building liable to be wet to such an extent that the wetness is capable of being removed by drainage, effective means shall be provided and maintained for draining off the wetness.

### **4. Cleanliness**

(1) Every place of work shall be kept in a clean state and free from effluvia arising from any drain, sanitary convenience or other nuisance.

(2) Without prejudice to the generality of subsection (1)

- (a) accumulation of dirt, refuse or trade waste shall be removed daily by a suitable method from the floor and benches of workrooms and from the staircase and passages;
- (b) the floor of every workroom shall be cleaned at least once every week by an effective and suitable method; and
- (c) all inside walls and partitions and all ceilings or tops of rooms, and all walls, sides and tops of passages and staircases shall be kept clean, and unless they have a smooth impervious surface they shall be properly painted or otherwise kept properly decorated.

### **5. Storage**

(1) All goods, articles and substances shall be stored or stacked:

- (a) in such manner as will ensure their stability and prevent any fall or collapse;
- (b) in such manner as not to interfere with the adequate distribution of natural or artificial light, the proper operation of machines or other equipment, the unobstructed use of passageways or traffic lanes, and the efficient functioning of sprinkler systems and the use of other fire extinguishing equipment;
- (c) on firm foundations not liable to settle and in such manner as not to overload any floor.

(2) No goods, articles or substances shall be stored or stacked against a wall or partition unless the wall or partition is of sufficient strength to withstand any pressure caused thereby.

## **6. Safety provisions in case of fire**

(1) Every building shall be provided with such means of escape in case of fire for the employees as may reasonably be required in the circumstances of each case.

(2) Without prejudice to the generality of subsection (1), there shall be provided at least two separate means of escape in different directions in case of fire from each floor of every such building. Spiral staircases shall not be deemed to meet the requirements of this section.

(3) All means of escape as aforesaid shall be properly maintained and kept free from obstruction.

(4) All doors affording means of exit from a building for the employees shall, except in the case of sliding doors, be constructed to open outwards.

(5) In every building effective steps shall be taken to ensure that all employees are familiar with the means of escape and with the procedure to be followed in case of fire.

(6) While any employee is within a building, any door which affords a means of exit for such an employee from the building or from any enclosure in which the building is situated shall not be locked or fastened in such manner that it cannot be easily and immediately opened from the inside.

(7) Every window, door or other exit affording means of escape in case of fire or giving access thereto, other than the means of exit in ordinary use, shall be distinctively and conspicuously marked by a notice printed in red letters of an adequate size in languages understood by the employees.

(8) The contents of any room shall be so arranged or disposed that there is a free passageway for all employees in that room to a means of escape in case of fire.

(9) In every building in which more than 50 persons are employed or in which highly flammable materials are stored, handled or used, there shall be provided and maintained effective devices for giving warning in case of fire, which shall be clearly audible throughout the building and capable of being operated without exposing any person to undue risks. Such devices shall be tested by a competent person at least once a month to ensure their continued operation.

## **7. Lighting**

(1) Effective provision shall be made for securing and maintaining sufficient and suitable lighting, whether natural or artificial, in every part of a place of work in which persons are working or passing.

(2) All glazed windows and skylights used for the lighting of workrooms shall, so far as is practicable, be kept clean on both the inner and outer surfaces and free from obstruction, but this subsection shall not affect the whitewashing or shading of windows and skylights for the purpose of mitigating heat or glare.

## **8. Sanitary conveniences**

(1) In any building where work is carried out, sufficient and suitable sanitary conveniences for the employees shall be provided, maintained and kept clean at all times. Effective provision shall be made for lighting the conveniences and, where persons of both sexes are or are intended to be employed, except in the case of buildings where the only employees are members of the same family, such conveniences shall afford proper separate accommodation for persons of each sex, the approaches shall be separate and the conveniences for each sex shall be indicated by a suitable notice.

(2) Every sanitary convenience shall be sufficiently ventilated and shall not communicate with any workroom, rest room or mess room except through the open or through an intervening ventilated space.

(3) Every sanitary convenience, other than a urinal, shall be under cover, have a proper door and fastenings and be so partitioned off as to secure privacy.

(4) Every urinal shall be so placed or so screened as not to be visible from other parts of the building where persons work or pass.

(5) The sanitary conveniences shall be so arranged as to be conveniently accessible to the employees at all times while they are at the place of work.

(6) Without prejudice to the generality of subsection (1)

- (a) at least one sanitary convenience shall be provided for every 25 females;
- (b) at least one sanitary convenience (not being a convenience suitable only as a urinal) shall be provided for every 25 males;
- (c) where the number of males employed in a building exceeds 100 and enough urinal accommodation is also provided, it shall be sufficient if there is one sanitary convenience for every 25 males up to 100 and one for every 40 males above 100.

(7) For the purposes of this section, any number of persons less than 25 or 40 shall be reckoned as 25 or 40 as the case may be.

## **9. Supply of drinking water**

(1) Where the supply of drinking water is not a supply of running water, it shall be contained in suitable vessels and shall be renewed at least daily, and all practicable steps shall be taken to preserve the water and vessels from contamination at any time.

(2) All containers or vessels containing harmful liquids which may be confused with drinking water or other beverages shall be clearly marked to indicate their contents or



marked with an approved warning sign.

## **10. Washing facilities**

There shall be provided and maintained for the use of the employees adequate and suitable facilities for washing which shall include a supply of clean water, soap, clean towels or other suitable means of cleaning and drying, and the facilities shall be conveniently accessible and shall be kept in a clean and orderly condition.

## **11. Accommodation for clothing**

(1) There shall be provided and maintained for the use of the employees adequate and suitable accommodation for clothing not worn during working hours.

(2) Where the number of employees and the nature of the work so require, the Labour Commissioner may direct in writing that proper changing rooms, separate for each sex, be provided.

## **12. Seats**

(1) Where employees have in the course of their employment reasonable opportunity for sitting without detriment to their work, there shall be provided and maintained for their use suitable seats to enable them to take advantage of those opportunities.

(2) Where a substantial proportion of any work can properly be done sitting, there shall be provided and maintained for each employee doing that work a seat of a design, construction and dimensions suitable for him or her and for the work, together with a back-rest if practicable, and a foot-rest on which he or she can readily and comfortably support his or her feet if he or she cannot do so without a foot-rest.

## **13. Facilities for the taking of meals**

(1) Subject to subsection (2), every employer shall provide and maintain adequate facilities for the taking of meals, due regard being paid to the number of employees remaining on the premises during meal intervals, and the facilities shall be away from the habitual work position and shall include tables and chairs or benches with back-rests.

(2) Every employer of more than 25 employees shall provide and maintain a mess room furnished with tables and chairs or benches with back-rests, sufficient for the number of employees remaining on the premises during meal intervals.

Section 14 to 16 (missing)

## **17. Dangerous substances (including pesticides)**

(1) Every vessel which contains any toxic, corrosive or flammable substance shall have clearly marked on it the name and nature of the substance, and the precautions to be observed in the storage, handling or use of such substance shall either be marked on the vessel or be clearly displayed or otherwise made known to the employees.

(2) All practicable steps shall be taken by covering, fencing or other means to prevent an employee from falling into any fixed vessel, sump or pit, the edge of which is less

than one metre above the adjoining ground or platform and which contains a substance likely to be prejudicial to his or her safety or injurious to his or her health.

(3) Every flammable, corrosive, toxic or otherwise dangerous substance shall be stored in such position and in such a manner as not to cause danger to the employees or to other persons who may be affected thereby

(4) The Labour Commissioner may by order in writing exempt from the requirements of this section any class or description of vessel, sump or pit where he or she is satisfied that the requirements are unnecessary or inappropriate.

(5) For purposes of this Schedule, "toxic substances" include: alphanaphthylamine (other than alpha-naphthylamine containing, as a by-product of a chemical reaction, more than 1 per cent of beta-naphthylamine), orthotolidine, dianisidine, dichlorobenzidine ( and the salts of any of the above), acrylonitrile, arsenic and its compounds, asbestos, auramine, benzene, beryllium dust or fume, cadmium and compounds, carbon disulphide, carbon tetrachloride, chloroform, chromic acid, lead when used in the process of manufacture of electric accumulators, the breaking up or sorting of dried plates from electric accumulators, or any other processes where lead may be present in such quantity and under such conditions as may be harmful to health, magenta, mercury and compounds, methyl bromide, 4,4-methylene bis-(2-chloroaniline), nickel and compounds, paradichlorobenzene, platinum salts, sodium or potassium chromate, sodium or potassium dichromate, and vinylchloride monomer.

## **18. Precautions with regard to explosive or flammable dust, gas, vapour or substance**

(1) Where, in connection with any process giving rise to dust, gas or vapour, there may escape dust, gas or vapour of such a character and to such an extent as to be liable to explode on ignition, all practicable steps shall be taken to prevent such an explosion by enclosure of the plant used in the process, and by removal or prevention of accumulation of the dust, gas or vapour that may escape in spite of the enclosure, and by exclusion or effective enclosure of possible source of ignition.

(2) Where there is stored or there is present in any plant any dust, gas or vapour of such a character and to such an extent as to be liable to explode on ignition, all practicable steps shall be taken to restrict the spread and effects of such an explosion by the provision, in connection with the plant, of chokes, baffles and vents or other equally effective appliances or measures, unless the plant is so constructed as to withstand the pressure likely to be produced by any such explosion.

(3) Where any part of a plant contains any explosive or flammable gas or vapour under pressure greater than atmospheric pressure, that part shall not be opened, except in accordance with the following provisions

- (a) before the fastening of any joint of any pipe connected with the part of the plant or the fastening of the cover of any opening into the part is loosened, any flow of the gas or vapour into the part or into such pipe shall be effectively stopped by a stop-valve or otherwise;
- (b) before any such fastening is removed, all practicable steps shall be taken to reduce the pressure of the gas or vapour in the pipe or part of the plant to atmospheric pressure, and where any such fastening has been loosened or

removed, no explosive or flammable gas or vapour shall be allowed to enter the pipe or part of the plant until the fastening has been secured or securely replaced, as the case may be.

(4) No plant, tank or vessel which contains or has contained any explosive or flammable substance shall be subjected to

- (a) any welding, brazing or soldering operation;
- (b) any cutting operation which involves the application of heat; or
- (c) any operation involving the application of heat for the purpose of taking apart or removing the plant, tank or vessel or any part of it, until all practicable steps have been taken to remove the substance and any fumes arising from it, or to render them non-explosive or non-flammable, and where any plant, tank or vessel has been subjected to any such operation, no explosive or flammable substance shall be allowed to enter the plant, tank or vessel until the metal has cooled sufficiently to prevent any risk of igniting the substance.

(5) No plant, tank or vessel which contains or has contained a substance which when heated may give rise to a toxic gas, fume or vapour shall be so heated unless all practicable steps have been taken to remove such substance.

## **19. Dangerous fumes and lack of oxygen**

(1) The provisions of subsections (2) to (7) of this provision shall have effect where work has to be done inside any vessel, tank, pit or similar confined space in which dangerous fumes are liable to be present to such an extent as to involve risk of persons being overcome thereby.

(2) The confined space shall, unless there is other adequate means of egress, be provided with a manhole, which may be rectangular, oval or circular in shape, and shall be not less than 450 millimetres long and 400 millimetres wide or (if circular) not less than 450 millimetres in diameter, or in the case of tank wagons and other mobile plant, not less than 400 millimetres long and 350 millimetres wide or (if circular) not less than 400 millimetres in diameter.

(3) Subject to subsection (4), no person shall enter or remain in, and no person shall require, instruct or direct any person to enter or remain in, the confined space for any purpose unless the person entering or remaining in the confined space is wearing a suitable breathing apparatus (which shall not include a respirator) and has been authorised to enter by a competent person, and, where practicable, is wearing a belt with a rope securely attached and a person keeping watch outside and capable of pulling him or her out is holding the free end of the rope.

(4) Where the confined space has been certified by a competent person as being, for a specified period, safe for entry without breathing apparatus and the period so specified has not expired, subsection (3) shall not apply, but no person shall enter or remain in the space unless he or she has been warned when that period will expire.

(5) A confined space shall not be certified under clause (4) unless

- (a) effective steps have been taken to prevent any ingress of dangerous fumes;

- (b) any sludge or other deposit liable to give off dangerous fumes has been removed and the space contains no other material liable to give off dangerous fumes in significant quantities; and
- (c) the space has been adequately ventilated and tested for dangerous fumes and has a supply of air adequate for breathing.

(6) There shall be provided and kept readily available a sufficient supply of suitable breathing apparatus, belts and ropes, and of suitable reviving apparatus and oxygen, and the apparatus, belts and ropes shall be properly maintained and shall be thoroughly examined at least once every three months by a competent person who shall make a report on every such examination, which shall be kept available for inspection.

(7) A sufficient number of employees shall be trained and given practice in the use of the apparatus specified in clause (6) and in a method of restoring breathing.

(8) No person shall enter or remain in any confined space in which the proportion of oxygen in the air is liable to have been substantially reduced unless

- (a) he or she is wearing a suitable breathing apparatus; or
- (b) the space has been and remains adequately ventilated and a responsible person has tested and certified it as safe for entry without breathing apparatus.

## **20. Corrosive substances**

Where corrosive substances are used and there is danger of an employee being splashed thereby, there shall be provided for use in case of emergency

- (a) adequate and readily accessible means for drenching with water or any other appropriate substance such an employee; and
- (b) sufficient and suitable means of flushing the eyes, conveniently situated and marked, the location of which is made known to such employees.

## **21. Dangerous machinery**

(1) Every dangerous part of every machinery shall be securely fenced unless it is in such position or of such construction as to be as safe to every employee or person working on the premises as it would be if securely fenced.

(2) Where any dangerous part of any machinery cannot by reason of the nature of the operation be secured by means of a fixed guard, the requirements of subsection (1) shall be deemed to have been complied with if a device is provided which automatically prevents the operator from coming into contact with that part.

(3) Any material being worked upon in or at a machine shall be securely fenced unless it is in such a position as to be as safe to every employee or person at the place of work as it would be if securely fenced.

(4) Without prejudice to the generality of subsection (1), the provisions of this section shall apply to any part of the machinery which is dangerous

- (a) by reason of the ejection of any part of the machinery or the material being worked upon; or

- (b) by reason of its proximity to any fixed part of the structure or any fixed object.

(5) Without prejudice to the generality of subsection (4)(b), no transversing part of any machine and no material carried thereon shall be allowed to approach within a distance of 500 millimetres of such fixed part of the structure or fixed object.

(6) Sufficiently clear and unobstructed space shall be provided and maintained at every machine while it is in motion or use to enable the work to be carried on safely.

## **22. Provisions as to unfenced machinery**

(1) In determining whether any part of machinery is in such a position or of such construction as to be as safe to every employee or person at the place of work as it would be if securely fenced

(a) No account shall be taken of any person carrying out, while that part of the machinery is in motion, an examination thereof or any lubrication or adjustment shown by the examination to be immediately necessary, if the examination, lubrication or adjustment can only be carried out while that part of the machinery is in motion; and

(b) in the case of any part of transmission machinery used in any process with respect to which the Labour Commissioner has declared, by certificate in writing, that he or she is satisfied that, owing to the continuous nature of such process, the stopping of that part would seriously interfere with the carrying on of the process, no account shall be taken of any person carrying out in the place of work, by such methods and in such circumstances and subject to such conditions as may be specified in the certificate, any such lubrication or any mounting or shifting of belts.

(2) The provisions of this section shall apply only where the examination, lubrication or other operation is carried out by persons who have attained the age of 18, and such other conditions as may be specified by the Labour Commissioner are complied with.

(3) All fencing and other safeguards shall be of substantial construction and constantly maintained and kept in position while the parts required to be fenced or safeguarded are in motion or in use, except when any such parts are necessarily exposed for examination and for any lubrication or adjustment shown by such examination to be immediately necessary.

## **23. Protection of eyes in certain processes**

(1) In the case of any process which involves a special risk of injury to the eyes from particles or fragments thrown off in the course of the process, an eye protector or shield as appropriate shall be provided to protect the eyes of the employees engaged in the process.

(2) Where, in any place of work, electric arc welding is carried on in such a manner as to involve risk of employees (other than those engaged in the welding process) being exposed to the electric arc flames, effective provision shall be made, by screening or otherwise, to prevent such exposure.

(3) Every eye protector or shield provided under subsection (1) shall be suitable both for the work for which it is intended to be used and for the person using it and shall be for the personal and exclusive use of the person using it

## **24. Chains, ropes and lifting tackle**

- (1) This provision shall apply to every chain, rope or lifting tackle used for the purpose of raising, lowering or suspending persons, goods or materials.
- (2) No chain, rope or lifting tackle shall be used unless it is of good construction, sound material, adequate strength and free from patent defect.
- (3) No chain, rope other than fibre rope and fibre rope slings or lifting tackle shall be taken into use for the first time in any place of work unless it has been tested and examined by a competent person and a certificate of such test and examination, specifying the safe working load and signed by the competent person, is obtained and kept available for inspection.
- (4) Every chain, rope or lifting tackle in use shall be thoroughly examined by a competent person at least once every 12 months.
- (5) No chain, rope or lifting tackle shall be used for raising, lowering or suspending any load exceeding the safe working load, except by a competent person for testing purposes.
- (6) Every chain, rope or lifting tackle shall bear a distinguishing mark or number sufficient to identify it.
- (7) A register containing a record of the prescribed inspections shall be kept by the employer in respect of all such chains, ropes or lifting tackle, except fibre rope slings.

## **25. Cranes and other lifting machines**

- (1) All parts and working gear, whether fixed or movable, including the anchoring and fixing appliances, of every lifting machine shall
  - (a) be of good construction, sound material, adequate strength and free from patent defect, and shall be properly maintained; and
  - (b) be thoroughly examined by a competent person at least once every 12 months and a record of the examination shall be kept for inspection.
- (2) Every lifting machine shall be plainly marked with its safe working load or loads and a distinctive number or other means of identification, except that in the case of a jib crane so constructed that the safe working load may be varied by the raising or lowering of the jib, there shall be attached thereto so as to be clearly visible to the driver table indicating the safe working loads at corresponding inclinations of the jib or corresponding radii of the load or alternatively an automatic indicator of safe working loads.
- (3) No lifting machine shall, except for the purpose of a test, be loaded beyond its safe working load as specified in subsection (2).
- (4) All parts and working gear, whether fixed or movable, including the anchoring and fixing appliances, of every lifting machine shall be inspected at least once every week by the operator, if competent for the purpose, or other competent person and a report of the result of every such inspection, signed by the person carrying out the inspection,

shall be made forthwith in a register provided by the employer and kept available for inspection.

(5) No person under 18 years of age shall be employed to operate any lifting machine driven by mechanical power or to give signal to the operator of any such machine.

(6) A lifting machine shall not be operated except by a person trained and competent to operate that machine but it shall be permissible for such machine to be operated by a person who is under the direct supervision of a competent person for the purpose of training or instruction.

(7) Every crane and winch shall be provided with a readily accessible and efficient brake or other safety device which will prevent the fall of the load when suspended and by which the load can be effectively controlled while being lowered and every hand winch shall be fitted with an efficient pawl capable of sustaining the safe working load.

(8) All rails on which a travelling crane moves and every track on which the carriage of any other lifting machine moves shall be of proper size and adequate strength and have an even running surface, and any such rail or track shall properly laid, adequately supported or suspended and properly maintained.

(9) Where any person is employed or working on or near the wheel track of an overhead travelling crane in any place where he or she would be liable to be struck by the crane, effective measures shall be taken by warning the operator of the crane or otherwise to ensure that the crane does not approach within 6 metres of that place.

(10) Where any person is employed or working otherwise than specified in subsection (9) but in a place above floor level where he or she would be liable to be struck by an overhead travelling crane, or by any load carried by such a crane, effective measures shall be taken to warn him or her of the approach of the crane, unless his or her work is so connected with or dependent on the movements of the crane as to make a warning unnecessary.

## **26.Hoists and lifts**

(1) Every hoist or lift shall be of good mechanical construction, sound material and adequate strength, and shall be properly maintained.

(2) Every hoist or lift shall be thoroughly examined by a competent person at least once every six months and a record of the examination shall be kept for inspection.

(3) Every hoist way or liftway shall be efficiently protected by a substantial enclosure fitted with gates so as to prevent, when the gates are shut, any person falling down the way or coming into contact with any moving part of the hoist or lift.

(4) Any such gate shall be fitted with efficient interlocking or other device so as to secure that the gate cannot be opened except when the cage or platform is at the landing and that the cage or platform cannot be moved away from the landing until the gate is closed.

(5) Every hoist or lift and every enclosure shall be so constructed as to prevent any part of any person or any goods carried in the hoist or lift being trapped between any

part of the hoist or lift and any fixed structure or between the counterbalance weight and any other moving part of the hoist or lift.

(6) There shall be marked conspicuously on every hoist or lift the maximum working load which it can safely carry and no load greater than that load shall be carried on any hoist or lift.

(7) The following additional requirements shall apply to hoists or lifts used for carrying persons, whether together with goods or otherwise

- (a) efficient automatic devices shall be provided and maintained to prevent the cage or platform from over-running;
- (b) every cage shall, on each side from which access is afforded to a landing, be fitted with a gate, and in connection with any such gate efficient devices shall be provided to secure that, when persons or goods are in the cage, the cage cannot be raised, or lowered unless the gate is closed and will come to rest when the gate is opened;
- (c) the maximum number of persons or amount of load that can safely be carried shall be marked conspicuously;
- (d) where the platform or cage is suspended by rope or chain, there shall be at least two ropes or chains separately connected with the platform or cage, each rope or chain and its attachments being capable of carrying the whole weight of the platform or cage and its maximum working load, and efficient devices shall be provided and maintained which will support the platform or cage with its maximum working load in the event of a breakage or failure of the ropes or chains or any of their attachments.

## **27. Refrigeration plants**

(1) Every refrigeration plant capable of being entered by an employee shall

- (a) have all control valves situated outside the cold-storage room; and
- (b) have all doors of every cold-storage room capable of being opened easily and quickly from the inside and outside.

(2) Every refrigeration plant which has a positive displacement compressor shall be provided with

- (a) an automatic pressure-relief device for that compressor; and
- (b) a suitable pressure gauge to indicate the discharge pressure from such plant.

(3) Every user of a refrigeration plant specified in subsection (1) shall cause a registered machinery inspector to examine, test and certify at least once every 12 months the entire plant together with all its components and auxiliary parts.

(4) The employer shall send a report of the result of every such examination to the Labour Commissioner within 28 days of the completion of the examination.

## **28. Abrasive wheels**

(1) Every abrasive wheel shall be

- (a) suitable for the work for which it is used and be properly mounted;



- (b) provided with a guard
  - (i) of such design and construction as to contain, so far as is reasonably practicable, every part of the abrasive wheel in the event of any fracture of the wheel;
  - (ii) which encloses the whole of the abrasive wheel except such part thereof as is necessarily exposed for the purpose of any work being done at the abrasive wheel and maintained in position whenever the abrasive wheel is in motion;
  - (iii) which is secured against accidental displacement; and
- (c)
  - (i) marked with its maximum permissible speed in revolutions per minute where its diameter is more than 50 millimetres; and
  - (ii) not operated at a speed in excess of its maximum permissible speed; and
- (d) provided where necessary with suitable protection flanges of sufficient diameter.

(2) Where at any abrasive wheel there is a rest for supporting a workpiece, the rest shall at all times while the wheel is in motion be

- (a) properly secured;
- (b) adjusted so as to be as close as practicable to the exposed part of the abrasive wheel; and
- (c) of substantial construction and properly maintained.

(3) No person shall mount an abrasive wheel unless he is competent to carry out such work.

(4) In this section "abrasive wheel" means, cylinder, disc or cone made of any material which

- (a) contains abrasive particles held together by mineral, metallic or organic bond whether natural or artificial; and
- (b) is power-driven and intended for use in any grinding or cutting operation.

## **29. Electrical installations**

All electrical apparatus and conductors, including machines, equipment and fittings, shall be sufficient in size and power for the work for which they are used, and shall be so constructed, installed, protected, worked and maintained as to prevent danger so far as is reasonably practicable.

## **30. Steam boilers - maintenance, examination and use**

(1) Every steam boiler and all its fittings and attachments shall be properly maintained.

(2) No steam boiler shall be operated except by or under the constant control or supervision of a competent person.

(3) No person shall enter or be in any steam boiler which is one of a range of two or more steam boilers unless

- (a) all inlets through which steam or hot water might otherwise enter the boiler from any other part of the range are disconnected from that part; or
- (b) all valves or taps controlling such entry are closed and securely locked, and, where the boiler has a blow-off pipe in common with one or more other boilers or delivering into a common blow-off vessel or sump, the blow-off valve or tap on each such boiler is so constructed that it can only be opened by a key which cannot be removed until the valve or tap is closed and is the only key in use for that set of blow-off valves or taps.

(4) No work shall be permitted in any boiler-furnace or boiler-flue until it has been sufficiently cooled by ventilation or otherwise to make work safe for any person who is required to work therein.

(5) Every steam boiler and all its fittings and attachments shall be thoroughly examined by a competent person at least once every 12 months and a record of the examination shall be kept for inspection.

(6) An examination under subsection (5) shall consist, in the first place, of an examination of the boiler when it is cold and the interior and the exterior have been suitably prepared and, secondly, except in the case of an economiser or superheater, of an examination when it is under normal steam pressure; the examination under steam pressure shall be made as soon as possible after the examination of the boiler when cold, and the registered boiler inspector shall ensure that the safety valve is so adjusted as to prevent the boiler being worked at a pressure greater than the maximum permissible working pressure.

### **31. Gas plants**

(1) All gas plants, which shall include any plant, apparatus or machine used for the manufacture or storage of gas, and any pipes or appliances used in carrying such gas to the place where it is to be used, shall be of good construction, sound material, adequate strength and free from patent defect, and shall be properly maintained.

(2) No gas filling shall be allowed except under the direct supervision of a competent person.

(3) No gas cylinder for corrosive gases shall be filled unless it has been examined or tested by a competent person at least once every two years and no gas cylinder for other gases shall be filled unless it has been examined or tested by a competent person at least once every five years and the result of such examination or test shall be kept available for inspection.

(4) In this section "gas" includes any gaseous substance whether in its gaseous or liquid state.

### **32. Ionising radiation**

(1) Effective measures shall be taken, so far as is practicable, to restrict the extent to which employees may be exposed to ionising radiations in the course of their employment.

(2) No employee shall expose himself or herself to ionising radiations to a greater extent than is necessary for the purposes of the work being performed.

(3) All sources of ionising radiations shall, where practicable, be adequately shielded.

(4) Every employee liable to be exposed to ionising radiations shall be provided with appropriate instructions concerning the hazards involved and the precautions to be observed.

(5) The employer shall do all that is practicable to prevent the inhalation or ingestion by an employee of any radioactive substance and to prevent the contamination of the body or of the clothing of an employee by any radioactive substance.

(6) Every employee exposed to ionising radiations shall be medically examined free of charge at intervals of not more than six months or at such intervals as the Labour Commissioner may direct in writing.

### **33. Non-ionising radiations**

(1) Where in any place of work persons are employed in any process involving exposure to ultra-violet, infra-red and any other non-ionising radiations which may constitute a danger to their health, effective means shall, so far as is reasonably practicable, be provided for the reduction of such non-ionising radiations within the place of work.

(2) Any employee liable to be exposed to non-ionising radiations shall be provided with appropriate instructions concerning the hazards involved and the precautions to be observed.

### **34. Excavations, shafts, earthworks, underground works and tunnels**

(1) Adequate precautions shall be taken in any excavation, shaft, earthworks, underground works or tunnel

- (a) by suitable shoring or otherwise to guard against danger to workers from a fall or dislodgement of earth, rock or other material;
- (b) to guard against dangers arising from the fall of persons, materials or objects or the inrush of water into the excavation, shaft, earthworks, underground works or tunnel;
- (c) to secure adequate ventilation at every workplace so as to maintain an atmosphere fit for respiration and to limit any fumes, gases, vapours, dust or other impurities to levels which are not dangerous or injurious to health and are within limits laid down by regulations;
- (d) to enable the workers to reach safety in the event of fire, or an inrush of water or material;
- (e) to avoid risk to workers arising from possible underground dangers such as the circulation of fluids or the presence of pockets of gas, by undertaking appropriate investigations to locate them.

### **35. Transport, earth-moving and materials-handling equipment**

(1) All vehicles and earth-moving or materials-handling equipment shall

- (a) be of good design and construction taking into account as far as possible ergonomic principles;
- (b) be maintained in good working order;

- (c) be properly used;
- (d) be operated by workers who have received appropriate training.

(2) On all construction sites on which vehicles, earth- moving or materials-handling equipment are used

- (a) safe and suitable access ways shall be provided for them; and
- (b) traffic shall be so organised and controlled as to secure their safe operation.

### **36. Structural frames, formworks, cofferdams caissons**

(1) The erection of structural frames and components, formworks, falsework and shoring shall be carried out only under the supervision of a competent person.

(2) Adequate precautions shall be taken to guard against danger to workers arising from any temporary state of weakness or instability of a structure.

(3) Formworks, falsework and shoring shall be so designed, constructed and maintained that it will safely support all loads that may be imposed on it.

(4) Every cofferdam and caisson shall be

- (a) of good construction and suitable and sound material and of adequate strength;
- (b) provided with adequate means for workers to reach safety in the event of an inrush of water or material.

(5) The construction, positioning, modification or dismantling of a cofferdam or caisson shall take place only under the immediate supervision of a competent person. Every cofferdam and caisson shall be inspected by a competent person at prescribed intervals.

## **SEVENTH SCHEDULE. FACTORY REGISTRATION APPLICATION FOR THE REGISTRATION OF A FACTORY**

(Sections 111 to 113 of the Code)

### I. APPLICATION FORM

I..... on behalf of.....

..... hereby apply for

registration/renewal of certificate of registration to operate a factory as from  
..... and particularised as hereunder:

1. (a) Name of employer .....

(b) Address of employer..... Tel No. ....

(c) Registered office or principal place of business of company, society or corporate body .....

2. Address of the factory .....
3. Nature of the process or manufacture carried on or intended to be carried on at the factory .....
4. Number of employees:
  - Male ..... Female .....
  - Young persons (male) ..... (female) .....
  - Total .....
5. State number and particulars of welfare facilities:
  - (a) Sanitary conveniences for male employees .....  
female employees .....
  - (b) Washing facilities .....
  - (c) Messroom or facilities for the taking of meals ...
  - (d) Accommodation for clothing or changing rooms ....
6. (a) Total power used or generated by machinery installed in the factory.  
(b) Responsible person in general charge of all machinery:
  - (i) Name .....
  - (ii) Address .....
  - (iii) Qualifications .....
7. This paragraph applies to every employer of more than 100 persons or as directed by the Labour Commissioner:
  - (a) (i) Name of person responsible for safety, health and welfare at the place of work .....
  - (ii) Position held .....
  - (b) (i) Name of registered safety and health officer
  - (ii) Private address .....
8. List any machinery or equipment which are used or intended to be used in the factory:
  - Number in use
  - (a) Steam Boiler .....
  - (b) Steam Receiver .....

- (c) Air Receiver .....
- (d) Hoist and lift .....
- (e) Crane and other lifting machine .....
- (f) Woodworking machine .....
- (g) Refrigeration plant .....
- (h) Other machines .....

9. State whether toxic or flammable substances are used, manufactured or likely to be formed in the course of any process .....

If you give the names and quantities of these substances

.....  
.....

10. State whether the factory building is new .....

Signature of applicant: .....

Name: .....

Status: .....

Date: .....

## II. FORM FOR APPROVAL OR DENIAL OF APPLICATION

For official use only

The application for the registration of a factory is -

\*(a) Approved with/\*without conditions for period .....

to .....

\*(b) Not approved.

Date: .....

For the Labour Commissioner

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\*Delete whichever is not applicable.

Note: Disapproval of an application may be appealed to the Minister under section 113 of the Code.

### III. FEES

Registration Fee: .....

Surcharge (50%): .....

CCCCCCCCCCCCCCCCCCCC

Total:

CCCCCCCCCCCCCCCCCCCC

File No: .....

Certificate No: .....

Date of issue: .....

Date of expiry: .....

Receipt No: .....

Signature of Issuing Officer

Date: .....

For Labour Commissioner

Date: .....



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