

EMPLOYMENT AND LABOUR RELATIONS ACT, 2004

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THE UNITED REPUBLIC OF TANZANIA



No. 6 OF 2004

I ASSENT,
Benjamin W. Mkandawire
 President
 4th June, 2004.

An Act to make provisions for core labour rights, to establish basic employment standards, to provide a framework for collective bargaining, to provide for the prevention and settlement of disputes, and to provide for related matters.

[.....]

PART I

PRELIMINARY PROVISIONS

1.—(1) This Act may be cited as the Employment and Labour Relations Act, 2004 and shall come into operation on the date as the Minister may by notice published in the Gazette, appoint.

Short title
and com-
mence-
ment

(2) Notwithstanding the provisions of subsection (1), the Minister may appoint different dates for the commencement of different Parts of this.

2.—(1) This Act shall apply to all employees including those in the public service of the Government of Tanzania in Mainland Tanzania but shall not apply to members, whether temporary or permanent, in the service of:

Applica-
tion

- (i) the Tanzania Peoples Defence Forces;
- (ii) the Police Force;
- (iii) the Prisons Service; or
- (iv) the National Service.

(2) The Minister may, after consultation with the Council and the relevant Minister responsible for the service or services excluded under subsection (1) of this section, by notice published in the Gazette, determine the categories of employees employed in the said services who may be excluded services to whom this Act may apply.

(3) The provisions of sections 5, 6 and 7 shall apply to members of the forces and services referred to in subsection (1).

Objects

3. The principal objects of this Act shall be -

- (a) to promote economic development through economic efficiency, productivity and social justice;
- (b) to provide the legal framework for effective and fair employment relations and minimum standards regarding conditions of work;
- (c) to provide a framework for voluntary collective bargaining;
- (d) to regulate the resort to industrial action as a means to resolve disputes;
- (e) to provide a framework for the resolution of disputes by mediation, arbitration and adjudication;
- (f) to give effect to the provisions of the Constitution of the United Republic of Tanzania of 1977, in so far as they apply to employment and labour relations and conditions of work; and
- (g) generally to give effect to the core Conventions of the International Labour Organisation as well as other ratified conventions.

Interpre-
tation
Act No. 7
of 2004

4. In this Act, unless the context requires otherwise-

"arbitrator" means an arbitrator appointed under section 19 of the Labour Institutions Act, 2004;

"basic wage" means that part of an employee's remuneration paid in respect of work done during the hours ordinarily worked but does not include-

- (a) allowances, whether or not based on the employee's basic wage;
- (b) pay for overtime worked in terms of section 19(5);

- (c) additional pay for work on a Sunday or a public holiday; or
- (d) additional pay for night work as required under section 20(4);

"child" means a person under the age of 14 years; provided that for the employment in hazardous sectors, child means a person under the age of 18 years;

"collective agreement" means a written agreement concluded by a registered trade union and an employer or registered employers' association on any labour matter;

"Commission" means the Commission for Mediation and Arbitration established under section 12 of the Labour Institutions Act, 2004;

Act No. 7
of 2004

"cc complaint" means any dispute arising from the application, interpretation or implementation of-

- (a) an agreement or contract with an employee;
- (b) a collective agreement;
- (c) this Act or any other written law administered by the Minister;
- (d) Part VII of the Merchant Shipping Act, 2003;

Act No.
21 of
2003

"Council" means the Labour, Economic and Social Council established under section 3 of the Labour Institutions Act, 2004;

Act No. 7
of 2004

"dispute".

- (a) means any dispute concerning a labour matter between any employer or registered employers' association on the one hand, and any employee or registered trade union on the other hand; and
- (b) includes an alleged dispute;

"dispute of interest" means any dispute except a complaint;

"employee" means an individual who-

- (a) has entered into a contract of employment; or
- (b) has entered into any other contract under which-

- (i) the individual undertakes to work personally for the other party to the contract; and

(ii) the other party is not a client or customer of any profession, business, or undertaking carried on by the individual; or

(c) is deemed to be an employee by the Minister under section 98(3);

"employer" means any person, including the Government and an executive agency, who employs an employee;

"employer" association" means any number of employers associated together for the purpose, whether by itself or with other purposes, of regulating relations between employers and their employees or the trade unions representing those employees;

Act No. 7
of 2004

"Essential Services Committee" means the Essential Services Committee established under section 29 of the Labour Institutions Act, 2004;

"federation" means either an association of trade unions or an association of employers' associations;

Act No. 7
of 2004

"Labour Commissioner" means the Labour Commissioner appointed under section 43(1) of the Labour Institutions Act, 2004;

"Labour Court" means the Labour Division of the High Court established under section 50 of the Labour Institutions Act, 2004;

"Labour matter" means any matter relating to employment or labour relations;

"lockout" means a total or partial refusal by one or more employers to allow their employees to work, if that refusal is to compel them to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

Act No. 7
of 2004

"mediator" means a mediator appointed under section 19 of the Labour Institutions Act, 2004;

"Minister" means the Minister for the time being responsible for labour;

"operational requirements" means requirements based on the economic, technological, structural or similar needs of the employer;

"organization" means a trade union or an employers' association;

"protest action" means a total or partial stoppage of work by employees for the purpose of promoting or defending the socio-economic interests of workers but not for a purpose-

(a) referred to in the definition of strike; or

(b) a dispute in respect of which there is a legal remedy;

"registered organization" means a registered trade union or registered employers' association;

"Registrar" means the Registrar appointed under section 43(2) of the Labour Institutions Act, 2004;

Act No. 7
of 2004

"reinstatement" means that the contract of employment has revived with all its incidents and that the employee is entitled to all his rights during the period of absence from actual service;

"remuneration" means the total value of all payments, in money or in kind, made or owing to an employee arising from the employment of that employee;

"strike" means a total or partial stoppage of work by employees if the stoppage is to compel their employer, any other employer, or an employers' association to which the employer belongs, to accept, modify or abandon any demand that may form the subject matter of a dispute of interest;

"trade union" means any number of employees associated together for the purpose, whether by itself or with other purposes, of regulating relations between employees and their employers or the employers' associations to which the employers belong.

PART II

FUNDAMENTAL RIGHTS AND PROTECTIONS

Sub-Part A - Child Labour

5.-(1) No person shall employ a child under the age of fourteen years.

Prohibi-
tion of
child]
labour

(2) A child of fourteen years of age may only be employed to do light work, which is not likely to be harmful to the child's health and development; and does not prejudice the child's attendance at school, participation in vocational orientation or training programmes approved by the competent authority or the child's capacity to benefit from the instruction received.

(3) A child under eighteen years of age shall not be employed in a mine, factory or as crew on a ship or in any other worksite including non-formal settings and agriculture, where work conditions may be considered hazardous by the Minister. For the purpose of this subsection, "ship" includes a vessel of any description used for navigation.

(4) No person shall employ a child in employment-

- (a) that is inappropriate for a person of that age;
- (b) that places at risk the child's well-being, education, physical or mental health, or spiritual, moral or social development.

(5) Notwithstanding the provisions of subsection (3), any written law regulating the provisions of training may permit a child under the age of eighteen to work-

- (a) on board a training ship as part of the child's training;
- (b) in a factory or a mine if that work is part of the child's training.
- (c) in any other worksites on condition that the health, safety and morals of the child are fully protected and that the child has received or is receiving adequate specific instruction or vocational training in the relevant work or activity.

(6) The Minister shall make regulations-

- (a) to prohibit, or place conditions on the employment of children under eighteen years of age;
- (b) to determine the forms of work referred to in sub-section (4) of this Act and to make provision for the regular revision and updating of the list of hazardous forms of work.

(7) It is an offence for any person-

- (a) to employ a child in contravention of this section;
- (b) to procure a child for employment in contravention of this section.

(8) In any proceedings under this section, if the age of the child is in issue, the burden of proofing that it was reasonable to believe, after investigation, that the child was not underage for the purposes of this section shall lie on the person employing or procuring the child for employment.

Sub-Part B - Forced Labour

Prohibi-
tion of
forced
labour

6.-(1) Any person who procures, demands or imposes forced labour, commits an offence.

(2) For the purposes of this section, forced labour includes bonded labour or any work exacted from a person under the threat of a penalty and to which that person has not consented but does not include-

- (a) any work exacted under the National Defence Act, 1966 for work of a purely military character;
- (b) any work that forms part of the normal civic obligations of a citizen of the United Republic of Tanzania;
- (c) any work exacted from any person as a consequence of a conviction in a court of law, provided that the work is carried out under the supervision and control of a public authority and that the person is not hired to, or placed at, the disposal of private persons;
- (d) any work exacted in cases of an emergency or a circumstance that would endanger the existence or the well-being of the whole or part of the population;
- (e) minor communal services performed by the members of a community in the direct interest of that community after consultation with them or their direct representatives on the need for the services.

Act No. 24
of 1966

Sub-Part C: Discrimination

7.-(1) Every employer shall ensure that he promotes an equal opportunity in employment and strives to eliminate discrimination in any employment policy or practice.

Prohibi-
tion of
discrimi-
nation in
the work-
place

(2) An employer shall register, with the Labour Commissioner, a plan to promote equal opportunity and to eliminate discrimination in the work place.

(3) The Labour Commissioner may require an employer-

- (a) to develop a plan prescribed in subsection (2); and
- (b) to register the plan with the Commissioner.

(4) No employer shall discriminate, directly or indirectly, against an employee, in any employment policy or practice, on any of the following grounds:

- (a) colour;
- (b) nationality;
- (c) tribe or place of origin;
- (d) race;
- (e) national extraction;
- (f) social origin;
- (g) political opinion or religion;
- (h) sex;
- (i) gender;
- (j) pregnancy;
- (k) marital status or family responsibility;
- (l) disability;
- (m) HIV/Aids;
- (n) Age; or
- (o) station of life.

(5) Harassment of an employee shall be a form of discrimination and shall be prohibited on any one, or combination, of the grounds prescribed in subsection (4).

(6) It is not discrimination -

- (a) to take affirmative action measures consistent with the promotion of equality or the elimination of discrimination in the workplace;
- (b) to distinguish, exclude or prefer any person on the basis of an inherent requirement of a job; or
- (c) to employ citizens in accordance with the National Employment Promotion Services Act, 1999,

(7) Any person who contravenes the provisions of subsections (4) and (5), commits an offence.

(8) In any proceedings-

- (a) where the employee makes out a prima facie case of discrimination by the employer on any of the grounds prescribed in subsection (4), it shall be the duty of the employer to prove-

- (i) that the discrimination did not take place as alleged; or
 - (ii) that the discriminatory act or omission is not based on any of those grounds; or
- (b) employer shall prove a defence in terms of subsection (6) if the discrimination did take place on a ground stipulated in subsection (5);
- (c) the Labour Court or arbitrator, as the case may be, shall take into account any plan registered with the Labour Commissioner under this section.
- (9) For the purposes of this section-
- (a) "employer" includes an employment agency;
 - (b) "employee" includes an applicant for employment;
 - (c) an "employment policy or practice" includes any policy or practice relating to recruitment procedures, advertising and selection criteria, appointments and the appointment process, job classification and grading, remuneration, employment benefits and terms and conditions of employment, job assignments, the working environment and facilities, training and development, performance evaluation systems, promotion transfer, demotion, termination of employment and disciplinary measures.
- (10) For the avoidance of doubt every employer shall take positive steps to guarantee equal remuneration for men and women for work of equal value.

8.-(1) No trade union or employers' association shall discriminate, directly or indirectly, against any of the grounds prescribed in subsection (4) of section 7-

- (a) in its admission, representation or termination of membership;
- (b) in any employment policy or practice prescribed in sub-section (9) of section 7;
- (c) in any collective agreement.

Prohibition of discrimination in trade unions and employer associations

(2) Any person who contravenes the provisions of subsection (1), commits an offence.

Sub-Part D - Freedom Of Association

Emplo-
yee's right
to freedom
of asso-
ciation

9.-(1) Every employee shall have the right-

- (a) to form and join a trade union;
- (b) to participate in the lawful activities of the trade union.

(2) Notwithstanding the provisions of subsection (1)-

- (a) a magistrate may only form or join a trade union that restricts its membership to judicial officers;
- (b) a prosecutor may only form or join a trade union that restricts its membership to prosecutors or other court officials;
- (c) a senior management employee may not belong to a trade union that represents the non-senior management employees of the employer.

(3) No person shall discriminate against an employee on the grounds that the employee-

- (a) exercises or has exercised any right under this Act or any other written law administered by the Minister;
- (b) belongs to or has belonged to a trade union; or
- (c) participates or has participated in the lawful activities of a trade union.

(4) No person shall discriminate against an official of an office bearer of a trade union or federation for representing it or participating in its lawful activities.

(5) Any person who contravenes the provisions of subsections (3) and (4), commits an offence.

(6) For the purposes of this section -

- (a) "employee" includes an applicant for employment;
- (b) "senior management employee" means an employee who, by virtue of that employee's position-
 - (i) makes policy on behalf of the employer; and
 - (ii) is authorised to conclude collective agreements on behalf of the employer.

10.-(1) Every employer shall have the right-

- (a) to form and join an employer's association;
- (b) to participate in the lawful activities of an employers' association,

Employer's right to freedom of association

(2) No person shall discriminate against an employer on the grounds that the employer-

- (a) exercises or has exercised a right under the Act;
- (b) belongs or has belonged to an employees Association;
- (c) participates or has participated in the lawful activities of an employers' association.

(3) No person shall discriminate against an official or office bearer of an employer's association or federation for representing it or participating in its lawful activities.

(4) Any person who contravenes the provisions of subsections (2) and (3), commits any offence.

11. Every organisation has the right to-

- (a) determine its own constitution;
- (b) plan and organise its administration and lawful activities;
- (c) join and form a federation;
- (d) participate in the lawful activities of a federation;
- (e) affiliate with, and participate in the affairs of any international workers' organisation or international employers' organisation

Rights of trade unions and employers' associations

or the International Labour Organisation, and to contribute to, or receive financial assistance from those organisations.

PART III

EMPLOYMENT STANDARDS

Sub-Part A - Preliminary

Applica-
tion of
this Part

12.-(1) Subject to the provisions of subsection (2), the provisions of Sub-Parts A to D and F shall not apply to seafarers whose terms and conditions of employment are regulated under the Merchant Shipping Act, 2003.

Act No.
21 of
2003

(2) Notwithstanding the provisions of subsection (1), the provisions of this Part apply to seafarers who work on fishing vessels and shall be to the extent that in the event there is any conflict between the provisions of this Act and the Merchant Shipping Act and its regulations, the provisions of this Act shall prevail.

Act No.
21 of
2003

(3) Where the provisions of any written law relating to vocational training regulates an employment standard stipulated in section 13(1) of this Act, the provisions of that other law shall apply.

Emple-
ment
Standards

11.-(1) A provisions of this Act on wage determination that stipulates a minimum term and condition of employment shall be an employment standard.

(2) An employment standard constitutes a term of a contract with an employee unless -

- (a) a term of the contract contains a term that is more favourable to the employee;
- (b) a provision of an agreement alters the employment standard to the extent permitted by the provisions of this Part;
- (c) a provision of any collective agreement, a written law regulating employment, wage determination or exemption granted under section 100 alters the employment standard.

Contracts
with
emply-
yees

14.-(1) A contract with an employee shall be of the following types-

- (a) a contract for an unspecified period of time;
- (b) a contract for a specified period of time for professionals and managerial cadre,
- (c) a contract for a specific task.

(2) A contract with an employee shall be in writing if the contract provides that the employee is to work outside the United Republic of Tanzania.

15.-(1) Subject to the provisions of subsection (2) of section 19, an employer shall supply an employee, when the employee commences employment, with the following particulars in writing, namely -

Written
statement
of parti-
culars

- (a) name, age, permanent address and sex of the employee;
- (b) place of recruitment;
- (c) job description;
- (d) date of commencement-
- (e) form and duration of the contract;
- (f) place of work;
- (g) hours of work;
- (h) remuneration, the method of its calculation, and details of any benefits or payments in kind, and
- (i) any other prescribed matter.

(2) If all the particulars referred to in subsection (1) are stated in a written contract and the employer has supplied the employee with that contract, then the employer may not furnish the written statement referred to in section 14.

(3) If an employee does not understand the written particulars, the employer shall ensure that they are explained to the employee in a manner that the employee understands.

(4) Where any matter stipulated in subsection (1) changes, the employer shall, in consultation with the employee, revise the written particulars to reflect the change and notify the employee of the change in writing.

(5) The employer shall keep the written particulars prescribed in subsection (1) for a period of five years after the termination of employment.

(6) If in any legal proceedings, an employer fails to produce a written contract or the written particulars prescribed in subsection (1), the burden of proving or disproving an alleged term of employment stipulated in subsection (1) shall be on the employer.

(7) The provisions of this section shall not apply to an employee who works less than 6 days in a month for an employer.

Informing
employees
of their
rights

16. Every employer shall display a statement in the prescribed form of the employee's rights under this Act in a conspicuous place.

Sub-Part B - Hours of work

Applica-
tion of
this Sub-
Part

17.-(1) The provisions of this Sub-Part shall not apply to employees who manage other employees on behalf of the employer and who report directly to a senior management employee specified in section 9(6)(b).

(2) The provisions of sections 19(1), 19(3) and 23(1), 24(1) and 25(1) shall not apply to work in an emergency which cannot be performed by employees during their ordinary hours of work.

Interpre-
tation

18. For the purposes of this Sub-Part-

- (a) "day" means a period of 24 hours measured from the time when the employee normally starts work, and "daily" has a corresponding meaning;
- (b) "overtime" means work over and above ordinary hours of work;
- (c) "week" means a period of seven days measured from the day the employee normally starts the working week and "weekly" has a corresponding meaning.

19.-(1) Subject to the provisions of this Sub-Part, an employer shall not require or permit an employee to work more than 12 hours in any day. Hours of
work

(2) Subject to this Sub-Part, the maximum number of ordinary days or hours that an employee may be permitted or required to work are-

- (a) six days in any week;
- (b) 45 hours in any week; and
- (c) nine hours in any day.

(3) Subject to this Sub-Part, an employer shall not require or permit an employee to work overtime-

- (a) except in accordance with an agreement; and
- (b) more than 50 overtime hours in any four week cycle.

(4) An agreement under subsection (3) may not require an employee to work more than the 12-hour limit contained in subsection (1).

(5) An employer shall pay an employee not less than one and one-half times the employee's basic wage for any overtime worked.

20.-(1) In this section, "night" means the hours after twenty hours and before six hours. Night
work

(2) It is prohibited for an employer to require or permit -

(a) pregnant employees to work at night -

- (i) two months before the expected date of confinement; or
- (ii) before that date if the employee produces a medical certificate that she is no longer fit to perform night work;

(b) mothers to work at night -

- (i) for a period of 2 months after the date of birth;
- (ii) before that date if the mother requests to work and produces a medical certificate that her and the baby's health shall not be endangered;

(iii) after that date if the mother produces a medical certificate that she is not yet fit to perform night work or that the baby's health does not permit the employee to work night shift;

(c) children under 18 years of age;

(d) an employee who is medically certified as unfit to do night work.

(3) An employer shall transfer any employee working night shift who becomes certified as unfit to do night work unless it is impracticable.

(4) An employer shall pay an employee at least 5% of that employee's basic wage for each hour worked at night and if the hours worked are overtime hours, the 5% shall be calculated on the employee's overtime rate.

(5) For the purposes of this section, a medical certificate means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Compre-
ssed
working
week

21.-(1) A written agreement shall require or permit an employee to work up to twelve hours in a day, inclusive of any meal interval, without receiving overtime pay.

(2) An agreement under subsection (1) shall not require or permit an employee to work-

(a) more than 5 days in a week;

(b) more than 45 hours in a week;

(c) more than 10 hours overtime in a week.

22.-(1) Notwithstanding the provisions of section 19, or 24, a collective agreement shall provide for the averaging of the ordinary and overtime hours of work over an agreed period.

(2) A collective agreement in subsection (1) shall not require or permit an employee to work more than an average of -

(a) 40 ordinary hours of work per week calculated over the agreed period;

(b) ten hours overtime per week calculated over the agreed period.

(3) A collective agreement prescribed in subsection (1) shall not permit averaging for a period longer than a year.

21.-(1) Subject to this Part, an employer shall give an employee who works continuously for more than five hours a break of at least 60 minutes.

Break in
working
day

(2) An employer may require an employee to work during a break only if the work cannot be left unattended or cannot be performed by another employee.

(3) An employer shall not be obliged to pay an employee for the period of a break unless the employee is required to work, or to be available for work, during the break.

24.-(1) An employer shall allow an employee-

(a) a daily rest period of at least 12 consecutive hours between ending and recommencing work;

(b) a weekly rest period of at least 24 hours between the last ordinary working day in the week and the first ordinary working day of the next week.

Daily and
weekly
rest
periods

(2) A daily rest period may be reduced to 8 hours if-

(a) there is a written agreement to that effect; and

(b) the ordinary working hours are interrupted by an interval of at least three hours; or

(c) the employee lives on the premises of the workplace.

(3) A weekly rest period may, by written agreement, provide for-

(a) a rest period of at least 60 consecutive hours every two weeks; or

(b) a reduced weekly rest period by 8 hours if the rest period in the following week is extended equivalently.

(4) An employee may only work during the weekly rest period referred to in subsection (1) if the employee has agreed to do so and provided that the employer shall pay the employee double the employee's hourly basic wage for each hour worked during the period.

Public
holidays
Cap. 93

25. If an employee works on a public holiday specified in the Public Holidays Ordinance, the employer shall pay the employee double the employee's basic wage for each hour worked on that day.

Sub-Part C- Remuneration

Calcula-
tion of
wage rates

26.-(1) The provisions of this section apply, when, for any purpose of this Act, it is necessary to determine the applicable hourly, daily, weekly or monthly rate of pay.

(2) The hourly, daily, weekly or monthly wage rates shall be determined in accordance with the Table provided for in the First Schedule.

(3) Where an employee is employed on a basis other than time worked, that employee shall be considered, for the purposes of this section, to be paid on a weekly basis and that employee's basic weekly wage shall be calculated on the amount earned -

(a) over the immediately proceeding 13 weeks, or

(b) if the employee has been in employment for less than 13 weeks, that period.

Payment
of renu-
meration

27.-(1) An employer shall pay to an employee any monetary remuneration to which the employee is entitled-

(a) during working hours at the place of work on the agreed pay day,

(b) in cash, unless the employee agrees otherwise, in which case the payment shall be made either by-

(i) cheque payable to the employee; or

(ii) direct deposit into an account designated by the employee in writing; and

(c) in a sealed envelope, if the payment is made in cash or by cheque.

(2) Each payment prescribed in subsection (1) shall be supported by a written statement of particulars in the prescribed form which-

(a) shall accompany the payment if the payment is in cash or by cheque; or

(b) shall be given to the employee in a sealed envelope if the payment is by direct deposit.

(3) Remuneration shall be due and payable at the end of contract period provided the employer may pay an advance before the due day on a mutually agreed day and, if such day is not agreed, at least once on completion of half the contract period. Such advance shall not be considered a loan and shall not attract interest.

(4) Notwithstanding the provisions of subsection (1), the Minister may by regulations provide for the partial payment of remuneration in the form of allowance in kind, but in no case alcoholic beverages or noxious drugs, in industries or occupations in which payment in the form of such allowance is customary or desirable, and any such allowance in kind shall be for the personal use of the employee and his or her family, and the value attributed to such allowance shall be fair and reasonable.

(5) Any employer who contravenes the provisions of this section, commits an offence.

28.-(1) An employer shall not make any deduction from an employee's remuneration unless-

(a) The deduction is required or permitted under a written law, collective agreement, wage determination, court order or arbitration award; or

Deducti-
ons and
other acts
concer-
ning
remunera-
tion

(b) subject to subsection (2), the employee in writing agrees to the deduction in respect of a debt.

(2) A deduction under subsection (1)(b) may be made to reimburse an employer for loss or damage only if-

- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
- (b) the employer has submitted to the employee, in writing, the cause, the amount and calculation of the debt;
- (c) the employer has given the employee a reasonable opportunity to challenge the cause, amount or calculation;
- (d) the total amount of the debt does not exceed the actual amount of the loss or damage;

(e) the total deductions from the employee's remuneration under this subsection do not exceed one quarter of the employee's remuneration in money.

(3) An agreement to make a deduction under subsection (1)(b) in respect of goods or services purchased by the employee shall specify the cause, amount and calculation of the debt.

(4) An employer who deducts an amount from an employee's remuneration under subsection (1) for payment to another person shall pay the amount to the person in accordance with any requirements specified in the agreement, law, determination, court order or arbitration award.

(5) An employer shall not require or permit an employee to-

- (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
- (b) acknowledge receipt of an amount greater than the remuneration actually received.

(6) Notwithstanding the provisions of any other law on bankruptcy or winding up of an employer's business, the claim of an employee or

those claiming on behalf of the employee of any remuneration to which the employee is entitled under this Act, shall be the claim that which have accrued in respect of the twenty six weeks immediately preceding the date on which the declaration of bankruptcy or winding-up is made.

(7) Any person who contravenes the provisions of this section, commits an offence.

Sub-Part D - Leave

29.-(1) Subject to the provisions subsection (2), an employee with less than six months service shall not be entitled to paid leave under the provisions of this Part.

Applica-
tion of this
Sub-Part

(2) Notwithstanding the provisions of subsection (1)-

- (a) an employee employed on a seasonal basis is entitled to paid leave under the provisions of this Part;
- (b) an employee, with less than six months service and who has worked more than once in a year for the same employer, shall be entitled to paid leave under the provisions of this Part if the total period worked for that employer exceeds six months in that year.

30.-(1) For the purpose of this Sub-Part-

- (a) "day" includes any rest period prescribed in section 24;
- (b) "leave cycle" means -
 - (i) in respect of annual leave, a period of 12 months consecutive employment with an employer following-
 - (aa) subject to subsection (2), an employee's commencement of employment; or
 - (bb) the completion of the last 12 months leave cycle.;
 - (ii) in respect of all other forms of leave conferred under this Sub-Part, a period of 36 months' consecutive

Interpre-
tation in
this Sub-
Part

(aa) subject to subsection (2), an employee's commencement of employment; or

(bb) the completion of the last 36 months leave cycle;

(c) "paid leave" means any leave paid under this Part and calculated on an employee's basic wage.

(2) Notwithstanding the provisions of subsection (1)(b)(i)(aa) and (ii)(aa), an employer and employee may agree to a standard leave cycle provided that an employee's entitlement to paid leave under this Sub-Part is not prejudiced.

Annual
leave

31.-(1) An employer shall grant an employee at least 28 consecutive days' leave in respect of each leave cycle, and such leave shall be inclusive of any public holiday that may fall within the period of leave.

(2) The number of days referred to in subsection (1) may be reduced by the number of days during the leave cycle which, at the request of the employee, the employer granted that employee paid occasional leave.

(3) An employer may determine when the annual leave is to be taken provided that it is taken no later than -

(a) six months after the end of the leave cycle; or

(b) twelve months after the end of the leave cycle if -

(i) the employee has consented; and

(ii) the extension is justified by the operational requirements of the employer.

(4) An employer shall pay an employee the remuneration the employee would have been paid had the employee worked during the period of leave before the commencement of the leave.

(5) An employer shall not require or permit an employee to take annual leave in place of any leave to which the employee is entitled under this Part.

(6) An employer shall not require or permit an employee to work for the employer during any period of annual leave.

(7) Subject to the provisions of subsection (8), an employer shall not pay an employee an amount of money in substitution for the annual leave to which that employee is entitled, whether or not the employee agrees to such payment.

(8) An employer shall pay an employee a *pro rata* amount for annual leave accrued-

- (a) subject to the provisions of subsection (9), at the termination of employment; or
- (b) at the expiry of each season in respect of an employee employed on a seasonal basis.

(9) An employee is not entitled to be paid any *pro rata* amount for accrued annual leave if the employee has not taken the leave within the periods and circumstances prescribed in subsection (3).

O 0) The *pro rata* amount of annual leave referred to in subsection (8) shall be calculated at the rate of one day's basic wage for every 13 days the employee worked or was entitled to work.

32.-1) An employee shall be entitled to sick leave for at least 126 days in any leave cycle.

Sick leave

(2) The sick leave referred to in subsection (1) shall be calculated as follows-

- (a) the first 63 days shall be paid full wages;
- (b) the second 63 days shall be paid half wages.

(3) Notwithstanding the provisions of subsection (2), an employer shall not be required to pay an employee for sick leave if-

- (a) the employee fails to produce a medical certificate; or
- (b) the employee is entitled to paid sick leave under any law, fund or collective agreement.

(4) For the purposes of this section, 'medical certificate' in means a certificate issued by a registered medical practitioner or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

Maternity
leave

33.-(1) An employee shall give notice to the employer of her intention to take maternity leave at least 3 months before the expected date of birth and such notice shall be supported by a medical certificate.

(2) An employee may commence maternity leave-

(a) at any time from four weeks before the expected date of confinement;

(b) on an earlier date if a medical practitioner certifies that it is necessary for the employee's health or that of her unborn child.

(3) No employee shall work within six weeks of the birth of her child, unless a medical practitioner certifies that she is fit to do so.

(4) Subject to the provisions of subsections (2) and (3), the employee may resume employment on the same terms and conditions of employment at the end of her maternity leave.

(5) No employer shall require or permit a pregnant employee or an employee who is nursing a child to perform work that is hazardous to her health or the health of her child.

(6) Subject to the provisions of subsections (7) and (8), an employee shall be entitled, within any leave cycle, to at least-

(a) 84 days' paid maternity leave; or

(b) 100 days paid maternity leave if the employee gives birth to more than one child at the same time.

(7) Notwithstanding the provisions subsection (6)(a), an employee is entitled to an additional 84 days paid maternity leave within the leave cycle if the child dies within a year of birth.

(8) An employer is only obliged to grant paid leave for 4 terms of maternity leave to an employee in terms of this section.

(9) Where an employee performs work that is hazardous to her health or that of her child, her employer shall offer her suitable alternative employment, if practicable, on terms and conditions that are no less favourable than her terms and conditions.

(10) Where an employee is breast-feeding a child, the employer shall allow the employee to feed the child during working hours up to a maximum of two hours per day.

(11) For the purposes of this section, "medical certificate" means a certificate issued by a registered medical practitioner, including a midwife, or any other medical practitioner accepted by the employer, which acceptance may not be unreasonably withheld.

34.-(1) During any leave cycle, an employee shall be entitled to-

- (a) at least 3 days paid paternity leave if-
 - (i) the leave is taken within 7 days of the birth of a child;
and
 - (ii) the employee is the father of the child;
- (b) at least 4 days paid leave for any of the following reasons-
 - (i) the sickness or death of the employee's child;
 - (ii) the death of the employee's spouse, parent, grandparent, grandchild or sibling.

Paternity
and other
forms of
leave

(2) Before paying an employee for leave under this section, an employer may require reasonable proof of the event prescribed in subsection (1).

(3) For the purpose of clarity-

- (a) the 3 days referred to in subsection (1)(a) are the total number of days to which the employee is entitled irrespective of how many of the employee's children are born within the leave cycle;
- (b) the 4 days referred to in subsection (1)(b) are the total number of days to which the employee is entitled irrespective of how many of the events prescribed in that paragraph occur within the leave cycle, but the employee may take more

days as may be authorised by the employer for the event and other subsequent events within the same leave cycle provided that such extra days will be without pay.

Sub-Part E- Unfair termination of employment

Applica-
tion of
this Sub-
Part

35. The provisions of this Sub-Part shall not apply to an employee with less than 6 months' employment with the same employer, whether under one or more contracts.

Interpre-
tation

36. For purposes of this Sub-Part-

(a) "termination of employment" includes-

- (i) a lawful termination of employment under the common law;
- (ii) a termination by an employer because the employer made continued employment intolerable for the employee; and
- (iii) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;
- (iv) a failure to allow an employee to resume work after taking maternity leave granted under this Act or any agreed maternity leave;
- (v) a failure to re-employ an employee if the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them;

(b) "terminate employment" has a meaning corresponding to 'termination of employment'.

Unfair ter-
mination

37.-(1) It shall be unlawful for an employer to terminate the employment of an employee unfairly.

(2) A termination of employment by an employer is unfair if the employer fails to prove-

- (a) that the reason for the termination is valid;
- (b) that the reason is a fair reason-

- (i) related to the employee's conduct, capacity or compatibility; or
 - (11) based on the operational requirements of the employer, and
 - (c) that the employment was terminated in accordance with a fair procedure.
- (3) It shall not be a fair reason to terminate the employment of an employee-
- (a) for the reason that-
 - (i) discloses information that the employee is entitled or required to disclose to another person under this Act or any other law;
 - (ii) fails or refuses to do anything that an employer may not lawfully permit or require the employee to do;
 - (iii) exercises any right conferred by agreement, this Act or any other law;
 - (iv) belongs, or belonged, to any trade union; or
 - (v) participates in the lawful activities of a trade union, including a lawful strike;
 - (b) for reasons-
 - (i) related to pregnancy;
 - (ii) related to disability, and
 - (iii) that constitute discrimination under this Act.
- (4) In deciding whether a termination by an employer is fair, an employer, arbitrator or Labour Court shall take into account any Code of Good Practice published under section 99.
- (5) No disciplinary action in form of penalty, termination or dismissal shall lie upon an employee who has been charged with a criminal offence which is substantially the same until final determination by the Court and any appeal thereto.

38.-(1) In any termination for operational requirements (retrenchment), the employer shall comply with the following principles, that is to say, be shall -

- (a) give notice of any intention to retrench as soon as it is contemplated;

Termination based on operational requirements

- (b) disclose all relevant information on the intended retrenchment for the purpose of proper consultation;
- (c) consult prior to retrenchment or redundancy on-
 - (i) the reasons for the intended retrenchment;
 - (ii) any measures to avoid or minimise the intended retrenchment;
 - (iii) the method of selection of the employees to be retrenched;
 - (iv) the timing of the retrenchments; and
 - (v) severance pay in respect of the retrenchments,
- (d) shall give the notice, make the disclosure and consult, in terms of this subsection, with-
 - (i) any trade union recognised in terms of section 67;
 - (ii) any registered trade union with members in the workplace not represented by a recognised trade union;
 - (iii) any employees not represented by a recognised or registered trade union.

(2) Where in the consultations held in terms of sub-section(1) no agreement is reached between the parties, the matter shall be referred to mediation under Part VIII of this Act.

(3) Where, in any retrenchment, the reason for the termination is the refusal of an employee to accept new terms and conditions of employment, the employer shall satisfy the Labour Court that the recourse to a lock out to effect the change to terms and conditions was not appropriate in the circumstances.

Proof in
unfair ter-
mination
procce-
dings

Remedies
for unfair
termina-
tion

39. In any proceedings concerning unfair termination of an employee by an employer, the employer shall prove that the termination is fair.

40.-(1) If an arbitrator or Labour Court finds a termination is unfair, the arbitrator or Court may order the employer-

- (a) to reinstate the employee from the date the employee was terminated without loss of remuneration during the period that the employee was absent from work due to the unfair termination; or
- (b) to re-engage the employee on any terms that the arbitrator or Court may decide; or
- (c) to pay compensation to the employee of not less than twelve months' remuneration.

(2) An order for compensation made under this section shall be in addition to, and not a substitute for, any other amount to which the employee may be entitled in terms of any law or agreement.

(3) Where an order of reinstatement or re-engagement is made by an arbitrator or court and the employer decides not to reinstate or re-engage the employee, the employer shall pay compensation of twelve months wages in addition to wages due and other benefits from the date of unfair termination to the date of final payment.

Sub-Part F Other incidents of Termination*

41.-(1) If a contract of employment can be terminated on notice, the period of notice shall not be less than-

Notice of
termina-
tion

- (a) seven days, if notice is given in the first month of employment; and
- (b) after that-
 - (i) 4 days, if the employee is employed on a daily or weekly basis; or
 - (ii) 28 days, if the employee is employed on a monthly basis.

(2) An agreement may provide for a notice period that is longer than that required in subsection (1) provided that, the agreed notice period is of equal duration for both the employer and the employee.

(3) Notice of termination shall be in writing, stating -

- (i) the reasons for termination; and
- (ii) the date on which the notice is given.

(4) Notice of termination shall not be given -

- (a) during any period of leave taken under this Act; or
- (b) to run concurrently with any such period of leave.

(5) Instead of giving an employee notice of termination, an employer may pay the employee the remuneration that the employee would have received if the employee had worked during the notice period.

(6) Where an employee refuses to work during the notice period, an employer may deduct, from any money due to that employee on termination, the amount that would have been due to the employee if that employee had worked during the notice period.

(7) Nothing in this section shall affect the right of-

- (a) an employee to dispute the lawfulness or fairness of a termination of employment under this Act or any other law;
- (b) an employer or an employee to terminate employment without notice for any cause recognised by law.

Severance
pay

42.-(1) For the purposes of this section, "severance pay" means an amount at least equal to 7 days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

(2) An employer shall pay severance pay on termination of employment if-

- (a) the employee has completed 12 months continuous service with an employer; and
- (b) subject to the provisions of subsection (3), the employer terminates the employment.

(3) The provisions of subsection (2) shall not apply-

- (a) to a fair termination on grounds of misconduct;

- (b) to an employee who is terminated on grounds of capacity compatibility or operational requirements of the employer but who unreasonably refuses to accept alternative employment with that employer or any other employer.

(4) The payment of severance pay under this section shall not affect an employee's right to any other amount payable under this or any other written law.

43.-(1) Where an employee's contract of employment is terminated at a place other than where the employee was recruited, the employer shall either-

Transport
to place of
recruit-
ment

- (a) transport of the employee and his personal effects to the place of recruitment,
- (b) pay for the transportation of the employee to the place of recruitment, or
- (c) pay the employee an allowance for transportation to the place of recruitment in accordance with subsection (2) and daily subsistence expenses during the period, if any, between the date of termination of the contract and the date of transporting the employee and his family to the place of recruitment.

(2) An allowance prescribed under subsection (1)(c) shall be equal to at least a bus fare to the bus station nearest to the place of recruitment.

(3) For the purposes of this section, "recruit" means the solicitation of any employee for employment by the employer or the employer's agent.

44.-(1) On termination of employment, an employer shall pay an employee-

Payment
on termi-
nation and
certificates
of employ-
ment

- (a) any remuneration for work done before the termination;
- (b) any annual leave pay due to an employee under section 31 for leave that the employee has not taken;
- (c) any annual leave pay accrued during any incomplete leave cycle determined in accordance with section 31 (1);

- (d) any notice pay due under section 41(5); and
- (c) any severance pay due under section 42;
- (f) any transport allowance that may be due under section 43.

(2) On termination, the employer shall issue to an employee a prescribed certificate of service.

PART IV

TRADE UNIONS, EMPLOYERS ASSOCIATIONS AND FEDERATIONS

Obligation
to register

45.-(1) A trade union or employers' association shall register itself under this Part within 6 months of its establishment.

(2) A federation may register if it meets the requirements for registration of a federation in terms of section 46(3).

(3) It is an offence for a trade union or employer's association to operate as a union or association -

- (a) after 6 months has expired of its establishment if it has not applied for registration under this Part; or
- (b) unless it is registered under this Part.

Require-
ments for
registra-
tion

46.-(1) The requirements for registration as a trade union are:

- (a) it is a bona fide trade union;
- (b) it is an association not for gain;
- (c) it is independent of any employer or employer's association;
- (d) it has been established at a meeting of at least 20 employees;
- (e) it has adopted a constitution and rules that comply with provisions of section 47;
- (f) it has adopted a name that does not resemble the name of another union so as to mislead or create confusion; and
- (g) it has an address in the United Republic of Tanzania.

(2) The requirements for registration as an employers' association are:

- (a) it is a bona fide employees association;
 - (b) it is an association not for gain;
 - (c) it has been established at a meeting of at least four employers;
 - (d) it has adopted a constitution and rules that comply with provisions of section 47;
 - (e) it has adopted a name that does not resemble the name of another employer association so as to mislead or create confusion; and
 - (f) it has an address in the United Republic of Tanzania.
- (3) The requirements for registration as a federation are:
- (a) it is a bona fide federation;
 - (b) it is a federation not for gain;
 - (c) it has been established at a meeting of at least five registered organisations of the same kind;
 - (d) it has adopted a constitution and rules that comply with section 47.
 - (e) it has adopted a name that does not resemble the name of another organisation or federation so as to mislead or create confusion;
 - (f) it comprises registered organisations only; and
 - (g) it has an address in the United Republic of Tanzania.

47.-(1) The constitution and rules of a trade union, employers' association or federation shall -

- (a) state that it is an organization not for gain;
- (b) prescribe the qualifications for membership and the grounds and procedure for termination of membership;
- (c) prescribe the membership fee or any method of determining the fee;
- (d) prescribe rules for the convening and conduct of meetings, including the quorum required, and the minutes to be kept of, those meetings;

Constitutional requirements

- (e) establish the manner in which decisions are made;
- (f) establish the office of secretary and define its functions;
- (g) provide for office bearers, officials and define their respective functions;
- (h) prescribe a procedure for the nomination and election of office bearers;
- (i) prescribe a procedure for the appointment or nomination or election of officials-
- (j) establish the circumstances and manner in which office bearers, officials and trade union representatives may be removed from office;
- (k) establish the circumstances and manner in which a ballot shall be conducted;
- (l) provide for the conduct of a ballot of the members in respect of whom-
 - (i) in the case of a trade union, the union may call upon to strike;
 - (ii) in the case of an employers' association, the association may call upon to lock out;
 - (iii) in the case of a federation of trade unions, the federation may call upon to engage in protest action;
- (m) provide for banking and investing of money;
- (n) establish the purposes for which its money may be used;
- (o) provide for acquiring and controlling of property;
- (p) prescribe a procedure for the amendment of the constitution and rules;
- (q) prescribe a procedure for affiliation, or amalgamation-
 - (i) in the case of trade unions, with other registered unions;
 - (ii) in the case of employer associations, with other registered associations;
 - (iii) in the case of federations, with other federations;
- (r) prescribe a procedure for affiliation to an international workers' association or an international employers' association;

- (s) prescribe a procedure to dissolve the organisation or federation;
- (t) any other prescribed matter.

(2) A constitution or rules of a registered organisation shall not -

- (a) conflict with -
 - (i) the basic rights and duties set out in Part III of the Constitution of the United Republic of Tanzania, 1977;
 - (ii) the provisions of this law or any other written law; or
- (b) evade any obligation imposed by any law.

48.-(1) Any organisation or federation may apply for registration, by submitting to the Registrar-

Process of registration

- (a) a prescribed form that has been properly completed and signed by the secretary of the organisation or federation;
- (b) a certified copy of the attendance register and minutes of its establishment meeting prescribed in section 46(1)(d), (2)(c) or (3)(c) , and
- (c) a certified copy of its constitution and rules.

(2) Notwithstanding the provisions of subsection (1), the Registrar may require further information in support of the application.

(3) Where the Registrar is satisfied that the organisation. or federation has complied with the requirements of sections 46 and 47, he shall register the organisation or federation.

(4) Where the Registrar is not satisfied that the organisation or federation complies with the requirements of sections 46 and 47, he-

- (a) may give the applicant an opportunity to rectify its application within a stipulated period;
- (b) may refuse the application and send the applicant a written notice of the decision and the reasons.

(5) After registering an organisation or federation, the Registrar shall-

- (a) enter the name of the organisation or federation in the appropriate register;
- (b) issue a certificate of registration to the organisation or federation.

Effect of
registra-
tion

49.-(1) On registration, an organisation or federation shall be a body corporate-

- (a) with perpetual succession and a common seal;
- (b) with the capacity, in its own name, to-
 - (i) sue and be sued;
 - (ii) contract; and
 - (iii) hold, purchase or otherwise acquire and dispose of movable or immovable property.

(2) A registered organisation or federation shall not be an association in restraint of trade.

(3) The fact that a person is a member of a registered organisation or federation shall not make that person liable for any of the obligations or liabilities of the union or organisation.

(4) A member, office bearer, official of a registered organisation or federation shall not be personally liable for any loss suffered by any person as a result of an act performed or omitted in good faith while performing their functions for or on behalf of the organisation or federation.

(5) A duly issued certificate of registration is sufficient proof that a registered organisation or federation is a body corporate.

(6) For the purposes of this section, "office bearer" in relation to a trade union includes a trade union representative prescribed in section 62.

Change of
name or
constitu-
tion

50.-(1) Any change of name or change to the constitution and rules of a registered organisation or federation shall have effect only when the Registrar approves the change under this section.

(2) A registered Organisation or federation may apply for the approval of a change of name or to its constitution and rules by submitting to the Registrar-

- (a) the prescribed form duly completed and signed by the secretary;
- (b) a copy of the resolution containing the wording of the change and
- (c) a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.

(3) Notwithstanding the provisions of subsection (2), the Registrar may require further information in support of the application.

(4) The Registrar shall -

- (a) consider the application and any further information supplied by the applicant; and
- (b) if satisfied that the change to the constitution and rules complies with the requirements prescribed in sections 46 and 47, approve the change by issuing the prescribed certificate approving the change; or
- (c) if satisfied that the change of name does not resemble the name of another union so as to mislead or create confusion, approve the change by issuing a new certificate of registration reflecting the new name.

(5) Where the Registrar refuses to approve a change, he shall give written notice of that decision and the reasons for the refusal.

51.-(1) Every registered Organisation and federation shall, to the standards of generally accepted accounting practice, principles and procedures-

Accounts
and audits

- (a) keep books and records of its income, expenditure, assets and liabilities;
- (b) for each financial year ending on 31 December, prepare financial statements in the prescribed form;

- (c) arrange an annual audit of its books and records of accounts and its financial statements by a registered auditor;
- (d) by 31 March of the following year, submit the financial statements and auditor's report to-
 - (i) a meeting of members or their representatives as provided for in the constitution of the organisation or federation; and
 - (ii) the Registrar.

(2) Every registered organisation and federation shall make its financial statements and auditor's report available to members for inspection at its offices.

Duties of
a regis-
tered
organisa-
tions and
federal-
tions

52.-(1) In addition to the records required by section 51, every registered organisation or federation shall keep for five years-

- (a) a list of its members in the prescribed form;
- (b) the minutes of its meetings;
- (c) the ballot papers.

(2) Every registered organisation or federation shall provide to the Registrar-

- (a) by 31 March of the following year, an annual statement certified by the secretary showing the total number of members as of 31 December of the previous year;
- (b) within 30 days of a request from the Registrar, a written explanation of anything relating to the statement of membership, the auditor's report or the financial statements:

Provided that, the Registrar shall not inquire into the financial affairs of any organisation unless there are serious grounds for believing that the organisation has infringed the law or that the funds of the organisation have been embezzled or otherwise misused;

- (c) within 30 days of any appointment or election of its national office bearers, the names and work addresses of those office bearers;
- (d) 30 days before a new address for service of documents will take effect, notice of that change of address.

51.-(1) Where a federation or registered Organisation fails to comply with its constitution, the Registrar or member of the federation or registered Organisation may apply to the Labour Court for any appropriate order including-

Non-compliance with constitution

- (a) setting aside any decision, agreement or election;
- (b) requiring the Organisation or federation or any official thereof to-
 - (i) comply with the constitution;
 - (ii) take steps to rectify the failure to comply;
- (c) restraining any person from any action not in compliance with the constitution.

(2) Before the Labour Court hears an application prescribed in subsection (1), it shall satisfy itself that-

- (a) the Organisations or federation's internal procedures have been exhausted; or
- (b) it is in the best interests of the Organisation or federation that the application be heard notwithstanding that any internal procedures have not been exhausted.

54.-(1) Any registered-

- (a) trade union may resolve to amalgamate with one or more registered trade unions; and
- (b) employer's association may resolve to amalgamate with one or more registered employer's associations;
- (c) federation may resolve to amalgamate with one or more federations to form a confederation.

Amalgamation of registered organisations and federations

(2) The amalgamating organisations or federations may apply to the Registrar for registration of the amalgamated organisation or federation and the provisions of section 48, relating to registration process shall *mutatis mutandis* apply in relation to the application.

(3) After the Registrar has registered the amalgamated organisation or federation, he shall cancel the registration of each of the amalgamating organisations or federations by removing their names from the appropriate register.

(4) The registration of an amalgamated organisation or federation shall become effective from the date the Registrar enters its name in the appropriate register.

(5) Where the Registrar has registered an amalgamated organisation or federation-

- (a) all the assets, rights, obligations and liabilities of the amalgamating organisations or federations shall devolve upon and vest in the amalgamated organisation or federation; and
- (b) the amalgamated organisation or federation shall succeed the amalgamating organisations or federations in respect of-
 - (i) any right that the amalgamating organisations or federations enjoyed;
 - (ii) any fund established under this Act or any other law;
 - (iii) any collective agreement or other agreement; and
 - (iv) any written authorisation by a member for the periodic deduction of levies or subscriptions due to the amalgamating organisations.

Cancellation of registration

55.-(1) The Registrar may apply to the Labour Court for an order to cancel the registration of a registered organisation or federation if that organisation or federation fails to comply with-

- (a) the requirements for registration; or
- (b) the provisions of this Part.

(2) Where the Labour Court may make any appropriate order including-

- (a) cancelling the registration of an organisation or federation;
- (b) giving the organisation or federation an opportunity to remedy any failure to comply.

(3) Where the registration of an organisation or federation is cancelled-

- (a) all the rights enjoyed by it under this Act shall cease;
and
- (b) the organisation or federation shall be dissolved in accordance with the provisions of section 56.

56.-(1) The Registrar may apply to the Labour Court for the dissolution of any organisation that contravenes the provisions of section 45.

Dissolu-
tion of
trade
union or
emplo-
yer,s asso-
ciation

(2) An organisation or federation may apply to the Labour Court for its dissolution.

(3) Where the Labour Court makes an order for cancelling the registration of an organisation or federation under section 55(2), it may in addition make an order dissolving the organisation or federation.

(4) In accordance with the laws relating to bankruptcy, any interested person may apply to the Labour Court for dissolution of a registered organisation or federation on any ground of bankruptcy.

(5) The laws of bankruptcy, shall apply to an application prescribed in subsection (3) and any reference to a court in those laws shall be interpreted as referring to the Labour Court.

(6) In granting an order of dissolution under this section, the Labour Court may-

- (a) appoint any suitable person as a liquidator on any appropriate conditions;
- (b) decide where any residue of assets shall vest if the constitution and rules fail to do so.

Appeals
from deci-
sions of
Registrar

57. Any person aggrieved by a decision of the Registrar made under this Part may appeal to the Labour Court, against that decision.

Publica-
tion in the
Gazette

58.-(1) The Registrar shall publish a notice in the *Gazette* stating the following facts, that-

- (a) an organisation or federation has been registered;
- (b) the registration of any organisation or federation has been cancelled;
- (c) a change of a name or amalgamation affecting any registered organisation or federation has been registered;
- (d) an registered organisation or federation has been dissolved.

(2) Where the notice referred to in subsection (1) deals with registration of an organisation or federation, it shall contain a statement to the effect that, any person may view the constitution of that organisation or federation at the Registrar's office.

PART V

ORGANISATIONAL RIGHTS

59. For the purposes of this Part-

"authorised representative" means an office bearer or official of a trade union or any other person authorised to represent the trade union;
"employer's premises" includes any premises under the control of the employer where work is done or the employees are accommodated;
"labour laws" includes this Act and any other law relating to labour matters;
"registered trade union" includes two or more trade unions acting jointly;
"representative trade union" means a registered trade union that is the most representative trade union.

Access to
emplo-
yer's
premises

60.-(1) Any authorised representative of a registered trade union shall be entitled to enter the employer's premises in order to-

- (a) recruit members;
- (b) communicate with members;
- (c) meet members in dealings with the employer;
- (d) hold meetings of employees on the premises;
- (e) vote in any ballot under the union constitution.

(2) A registered trade union may establish a field branch at any workplace where ten or more of its members are employed.

(3) The employer shall provide a union recognised in terms of section 67 reasonable and necessary facilities to conduct its activities at the workplace.

(4) The rights under this section shall be subject to any conditions as to time and place that are reasonable and necessary to safeguard life or property or to prevent undue disruption of work.

61.-(1) An employer shall deduct dues of a registered trade union from an employee's wages if that employee has authorised the employer to do so in the prescribed form.

Deducti-
on of trade
union dues

(2) The employer shall remit the deductions to the trade union within seven days after the end of the month in which the deductions are made.

(3) Where the employer fails to remit the union dues within the time specified in subsection (2), without reasonable grounds, the employer shall be liable to pay the union the equivalent of five percent of the total amount due for each day the dues remain un-remitted.

(4) An employee may revoke an authorisation by giving one month's written notice to the employer and the trade union.

(5) Where an employee revokes any authorization under subsection (3), the employer shall cease to make any deductions after the expiry of the notice.

(6) With each monthly remittance, the employer shall give a registered trade union-

- (a) a list in the prescribed form of the names of the members in respect of whom deductions are required to be made;
- (b) a copy of any notice of revocation under subsection (3).

Trade
union rep-
resenta-
tion

62.-(1) A registered trade union shall be entitled to-

- (a) one trade union representative for one to nine members;
- (b) three representatives for ten to twenty members;
- (c) ten representatives for twenty one to one hundred members;
- (d) fifteen representatives work places with more than one hundred members.

(2) In workplace with more than one hundred members, at least five of the trade union representatives shall represent women employees, if any who are employed and belong to the union.

(3) The constitution of a registered trade union shall govern the election, terms of office and removal from office of a trade union representative.

(4) Trade union representatives shall perform the following functions-

- (a) to represent members in grievance and disciplinary hearings;
- (b) to make representations on behalf of members in respect of rules; health and safety and welfare;
- (c) to consult on productivity in the workplace;
- (d) to represent the trade union in enquiries and investigations conducted by inspectors in terms of any labour laws;
- (e) to monitor employer compliance with labour laws;
- (f) to perform trade union functions under the union's constitution;
- (g) to further good relations;
- (h) to perform any function or role agreed to by the employer.

(5) Trade union representatives shall be entitled to reasonable paid time off to perform any of the functions referred to in subsection (4).

(6) The employer shall disclose to the trade union representatives any information relevant to the performance of their functions.

(7) The provisions of section 70 relating to disclosure of relevant information shall *mutatis mutandis apply* to any disclosure prescribed in subsection (6).

(8) The rights under this section are subject to any reasonable conditions to ensure the orderly exercise of the rights and that work is not unduly interrupted.

63. The employer shall grant reasonable paid leave to-

(a) trade union representatives referred to in section 62 to attend training courses relevant to their functions;

(b) office bearers of-

(i) a registered trade union, to perform the functions of their officer;

(ii) a registered federation, to which the representative union belongs, to perform the functions of their office.

Leave for
trade
union
activities

64.-(1) Any registered trade union may notify an employer in the prescribed form that it seeks to exercise a right conferred under this Part

(2) Within 30 days of the receipt of a notice under subsection (1), the employer shall meet with the trade union to conclude a collective agreement granting the right and regulating the manner in which the right is to be exercised.

(3) Where there is no agreement or the employer fails to meet with the trade union within 30 days, the union may refer the dispute to the Commission for mediation.

Procedure
for exer-
cising
organisa-
tional
right

(4) Where the mediation fails to resolve the dispute, the trade union may refer the dispute to the Labour Court which shall make appropriate orders.

(5) Any dispute over the interpretation or application of an order made under this section shall be referred to the Labour Court for decision.

Termination of organisational rights

65.-(1) Where a trade union materially breaches the terms and conditions for the exercise of organisational rights, the employer-

- (a) may refer the issue to the Commission for mediation;
- (b) if the mediation fails to resolve the issue, may apply to the Labour Court to-
 - (i) terminate any of the organisational rights granted to the trade union under a collective agreement; or
 - (ii) withdraw an order made under section 64.

(2) A Labour Court making a decision under this section may make any appropriate order including-

- (a) requiring the union to take measures to ensure compliance with the conditions for the exercise of a right;
- (b) suspending the exercise of a right for a period of time;
- (c) terminating the organisational rights contained in a collective agreement or order made under section 64.

PART VI

COLLECTIVE BARGAINING

Interpretation

66. For the purposes of this Part -

- (a) a "bargaining unit" -
 - (i) means any unit of employees in respect of which a registered trade union is recognised, or is entitled to be recognised, as the exclusive bargaining agent in terms of this Part;

- (ii) includes a unit of employees employed by more than one employer;
- (b) a "recognised trade union" means a trade union recognised by a collective agreement or in respect of an order made by the Labour Court under the provisions of section 67;
- (c) a "registered trade union" includes two or more registered trade unions acting jointly.

67.-(1) A registered trade union that represents the majority of the employees in an appropriate bargaining unit shall be entitled to be recognised as the exclusive bargaining agent of the employees in that unit.

Recogni-
tion as
exclusive
bargaining
agent of
employees

(2) An employer or employers' association may not recognise a trade union as an exclusive bargaining agent unless the trade union is registered and represents the majority of the employees in the bargaining unit.

(3) A registered trade union may notify the employer or employers' association in the prescribed form that it shall seek recognition as the exclusive bargaining agent within an appropriate bargaining unit.

(4) Within thirty days of the notice prescribed in subsection (3), an employer shall meet to conclude a collective agreement recognising the trade union.

(5) Where there is no agreement or the employer fails to meet with the trade union within the thirty days, the union may refer the dispute to the Commission for mediation. The period of thirty days may be extended by agreement.

(6) If the mediation fails to resolve the dispute, the trade union or the employer may refer the dispute to the Labour Court for decision.

(7) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(8) In determining the appropriateness of a bargaining unit, the Labour Court shall -

(a) consider the following:

- (i) the wishes of the parties;
- (ii) the bargaining history of the parties;
- (iii) the extent of union organisation among the employees of the employer or employers;
- (iv) the employee similarity of interest;
- (v) the organisational structure of the employer or employers;
- (vi) the different functions and processes of the employer or employers and the degree of integration;
- (vii) the geographic location of the employer or the employers;

(b) promote orderly and effective collective bargaining with a minimum of fragmentation of an employer's organisational structure.

(9) Any dispute over the interpretation or application of a n order made under this section shall -

(a) be referred to the Commission for mediation; and

(b) if the mediation fails to resolve the dispute, be referred to the Labour Court for a decision.

(10) Nothing in this section precludes registered trade unions, employers, and registered employers' associations from establishing their own collective bargaining arrangements by collective agreement.

Duty to
bargain in
good faith

68.(1) An employer or employers' association shall bargain in good faith with a recognised trade union.

(2) A recognised trade union shall bargain in good faith with the employer or employers' association that has recognised it or is required to recognise it under the provisions of section 67.

69.-(1) Where a recognised trade union ceases to represent the majority of the employees in the bargaining unit, the employer shall,

- (a) give the trade union notice to acquire a majority within three months;
- (b) withdraw exclusive recognition, if it fails to acquire that majority at the expiry of the three months.

(2) Where a recognised union has ceased to represent the majority in the bargaining unit, any other trade union may request for new elections in order to demonstrate that the union has become the most representative;

Provided that, no application for the withdrawal of recognition of a union can be made within six months of the union being recognised as the exclusive collective bargaining agent.

(3) If a party to a collective agreement prescribed in section 67(10), or a party subject to a recognition order, materially breaches the agreement or order, the other party may apply to Labour Court to have recognition withdrawn by -

- (a) terminating the recognition agreement;
- (b) rescinding the recognition order.

(4) The Labour Court may decide any dispute over the representativeness of the trade union by arranging any appropriate person to conduct a ballot of the affected employees.

(5) The Labour Court may make any appropriate order including-

- (a) giving the trade union an opportunity to become representative;
- (b) altering the bargaining unit;
- (c) suspending recognition for a period of time;
- (d) withdrawing recognition.

70.-(1) An employer that has recognised a trade union under this Part shall allow the union to engage effectively in collective bargaining.

With-
drawal of
recogni-
tion

Obligation
to disclose
relevant
informa-

-
- (2) An employer shall not be obliged to disclose information that-
- (a) is legally privileged;
 - (b) the employer cannot disclose without contravening a law or an order of court;
 - (c) is confidential and, if disclosed, may cause substantial harm to an employee or the employer;
 - (d) is private personal information relating to an employee without that employee's consent.
- (3) A trade union that receives confidential or private personal information under this section -
- (a) shall not disclose the information to any person other than its members and advisors;
 - (b) shall take reasonable measures to ensure that the information disclosed is kept confidential.
- (4) If there is a dispute over disclosure of information, any party to the dispute may refer the dispute to the Commission for mediation.
- (5) If the mediation fails, any party may refer the dispute to the Labour Court for decision.
- (6) In making any decision, the Labour Court may -
- (a) hold the proceedings in camera;
 - (b) take into account any previous breaches of confidentiality by the trade union or its members;
 - (c) order an employer to disclose any confidential information if, on balance, the effect of the non-disclosure may seriously impede the union's ability -
 - (i) to bargain effectively;
 - (ii) to represent employees effectively;
 - (d) order the disclosure of information on terms designed to limit any harm that may be caused by disclosure;

(c) order the trade union to pay damages for any breach of confidentiality;

(f) suspend or withdraw the right to disclosure.

71.-(1) Collective agreements shall be in writing and signed by the parties.

Binding
nature of
collective
agree-
ments

(2) A collective agreement shall be binding on the last signature unless the agreement states otherwise.

(3) A collective agreement shall be binding on

(a) the parties to the agreement;

(b) any members of the parties to the agreement;

(c) any employees who are not members of a trade union party to the agreement if the trade union is recognised as the exclusive bargaining agent of those employees under section 67.

(4) A collective agreement shall continue to be binding on employers or employees who were party to the agreement at the time of its commencement and includes resigned members from that trade union or employer association.

(5) A collective agreement becomes binding on employers and employees who become members of the parties to the agreement after its commencement.

(6) Unless a collective agreement provides otherwise, any party to an agreement may terminate the agreement on reasonable notice.

(7) The parties to a collective agreement shall be required to lodge a copy of the agreement with the Labour Commissioner.

72.-(1) An agreement that compels an employee to become a member of a trade union is not enforceable.

Agency
Shop
agree-
ments

(2) A recognised trade union and employer may conclude a collective agreement providing for an agency shop.

- (3) The requirements for a binding agency shop agreement are:
- (a) the agreement applies to employees in the bargaining unit only;
 - (b) employees who are not members of the trade union are not compelled to become members;
 - (c) any agency fee deducted from the remuneration of an employee, who is not a member, is equivalent to, or less than, the union dues deducted by the employer from the remuneration of a member;
 - (d) the amount deducted from both members and non-members shall be paid into a separate account administered by the trade union;
 - (e) the monies in that account may only be used to advance or defend the socio-economic interests of the employees in that workplace and shall not be used to pay -
 - (i) an affiliation fee to a political party; or
 - (ii) any contributions to a political party of person standing for political office.
- (4) Notwithstanding the provisions of any law or contract, an employer may deduct an agency fee under an agency shop agreement that complies with the provisions of this section from an employee's wages without the consent of that employee.
- (5) A trade union party to an agency shop agreement shall -
- (a) appoint a registered auditor to audit the account prescribed in subsection (3) (d) annually;
 - (b) submit the auditor's report to the Labour Commissioner and to the Registrar within thirty days of the date of the report; and
 - (c) permit any interested person to inspect the report at the union's offices during office hours.

(6) A report by an auditor appointed by a trade union under this section shall include an opinion on whether the provisions of this section have been complied with.

(7) An agency shop agreement shall be -

- (a) suspended for so long as the trade union is not representative;
- (b) terminated once recognition is withdrawn under section 69.

(8) If an agency shop agreement is suspended or terminated, the provisions of this Section shall continue to apply in respect of any money remaining in the account prescribed in subsection (3)(d).

(9) For the purposes of this section, "agency shop" means a union security arrangement in terms of which employees in a bargaining unit, who are not members of the recognised trade union, are required to pay an agency fee to the trade union.

71.-(1) A recognised trade union and an employer or an employers' association may conclude a collective agreement establishing a forum for workers participation in a workplace.

Workers'
participa-
tion agree-
ment

(2) If a registered trade union, employer or employers' association wishes to establish a forum for workers' participation in any workplace, the union, employer or association may request the assistance of the Commission to facilitate discussions between the union, employer or association.

(3) The Commission shall facilitate any discussions concerning the establishment of a forum for workers participation in any workplace taking into account any code of good practice published by the Council on workers participation.

74. Unless the parties to a collective agreement agree otherwise -

- (a) a dispute concerning the application, interpretation or implementation of a collective agreement shall be referred to the Commission for mediation; and
- (b) if the mediation fails, any party may refer the dispute to the Labour Court for a decision.

Disputes
concer-
ning
collective
agree-
ments

PART VII
STRIKES AND LOCKOUTS

Right to
strike and
to lockout

75. Subject to the Provisions contained in this Part -

- (a) every employee has the right to strike in respect of a dispute of interest; and
- (b) every employer has the right to lockout in respect of a dispute of interest.

Restrictions on the
right to
strike or
lockout

76.-(1) No person shall take part in a strike or a lock out or in any way conduct himself in a manner contemplating or in furtherance of a strike or lockout if-

- (a) subject to the provisions of subsection (2), that person is engaged in an essential service referred to in section 77;
- (b) that person is engaged in a minimum service prescribed in section 79;
- (c) that person is bound by an agreement that requires the issue in dispute to be referred to arbitration;
- (d) that person is bound by a collective agreement or arbitration award that regulates the issue in dispute;
- (e) that person is bound by a wage determination that regulates the issue in dispute during the first year of that determination;
- (f) that person is a magistrate, a prosecutor or other court personnel;
- (g) the issue in dispute is a complaint;
- (h) the procedures prescribed in sections 80, 81 and 82 have not been followed,

(2) Notwithstanding the provisions of subsection (1) (a), a person engaged in an essential service may strike or lockout if -

- (a) there is a collective agreement providing for minimum services during a strike or lockout; and
- (b) that agreement has been approved under section 77 by the Essential Services Committee.

(3) The following conduct associated with strikes and lockouts is prohibited:

- (a) picketing -
 - (i) in support of a strike; or
 - (ii) in opposition to a lawful lockout;
- (b) use of replacement labour in a lockout or a lawful strike;
- (c) locking employers in the premises;
- (d) preventing employers from entering the premises.

(4) For the purposes of this section, "replacement labour" means taking into employment any person to continue or maintain production during a strike or a lockout. It does not include the deployment of an employee to do the work of an employee on strike or subject to a lockout provided that the deployment is with the consent of that employee.

77.-(1) For the purposes of this section, "service" includes any part of a service.

Essential
services

(2) The following services are essential services:

- (a) water and sanitation;
- (b) electricity;
- (c) health services and associated laboratory services;
- (d) fire-fighting services;
- (e) air traffic control and civil aviation telecommunications;
- (f) any transport services required for the provision of these services.

(3) In addition to the services designated in subsection (2), the Essential Services Committee may designate a service as essential if the interruption of that service endangers the personal safety or health of the population or any part of it.

(4) Before the Essential Services Committee designates an essential service under subsection (3), it shall -

- (a) give notice in the prescribed manner of the investigation inviting interested parties to make representations;
- (b) conduct an investigation in the prescribed manner;
- (c) make any written representations available for inspection;
- (d) hold a public hearing at which the interested parties may make oral representations; and
- (e) consider those representations.

(5) If the Essential Services Committee designates a service as an essential service, it shall publish a notice to that effect in the *Gazette*.

(6) The Essential Services Committee may vary or cancel a designation made under this section in accordance with the procedure set out in subsections (4) and (5) *mutatis mutandis*.

(7) Any party to a dispute as to whether or not a service is an essential service or an employer or an employee is engaged in an essential service shall refer the dispute to the Essential Services Committee for determination.

(8) The party who refers the dispute to the Essential Services Committee shall satisfy the Committee that a copy of the dispute has been served on all the other parties to the dispute.

(9) The Essential Services Committee shall determine the dispute as soon as possible.

Disputes
of interest
in essen-
tial
services

78.-(1) Unless a collective agreement provides otherwise-

- (a) any party to a dispute of interest in an essential service may refer the dispute to the Commission for mediation;
- (b) if the mediation fails, any party to the dispute may refer the dispute to arbitration by the Commission.

(2) The provisions of subsection (1) shall apply if -

- (a) the parties are bound by a collective agreement providing for minimum services during a strike or lockout; and

- (b) the Essential Services Committee has approved that agreement in terms of section 79(2).

79.-(1) The parties to a collective agreement may agree to the provision of minimum services during a strike or a lockout.

Minimum services
(during a strike or lockout)

(2) Any party to a collective agreement that provides for minimum services during a strike or lockout in an essential service may apply in the prescribed manner to the Essential Services Committee for approval of that agreement.

(3) An employer may apply in the prescribed manner to the Essential Services Committee for the designation of a minimum service if -

- (a) a minimum service is necessary to prevent damage to property, machinery or plant during a strike or lawful lockout; and
- (b) there is no collective agreement providing for minimum services during a strike or lockout.

80.-(1) Subject to the provisions of this section, employees may engage in a lawful strike if -

Procedure for engaging in a lawful-strike

- (a) the dispute is a dispute of interest;
- (b) the dispute has been referred in the prescribed form to the Commission for mediation;
- (c) the dispute remains unresolved at the end of period of mediation provided under section 86(4) read with subsections (1) and (2) of section 87.
- (d) the strike is called by a trade union, a ballot has been conducted under the union's constitution and a majority of those who voted were in favour of the strike; and
- (e) after the applicable period referred to in paragraph (c), they or their trade union have given forty eight hours notice to their employer of their intention to strike.

(2) If the dispute relates to the unilateral alteration of terms and conditions of employment, the employees and the trade union, may require the employer in the referral of the dispute under subsection (1)-

- (a) not to implement any proposed change to terms and conditions; or
- (b) if the employer has implemented the change, to restore the terms and conditions of employment that applied before the change.

(3) If the employer does not comply with the requirement referred to in subsection (2) within forty eight hours of service of the referral on the employer, the employees and trade union may strike without complying with paragraphs (c) to (e) of subsection (1).

(4) Nothing in this section prevents a trade union and an employer or employers' association from agreeing to their own strike procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsections (1) to (3) shall not apply.

Procedure
For enga-
ging in a
secondary
strike

81.-(1) "Secondary strike" means a strike that is -

- (a) in support of a lawful strike (the "primary strike") by other employees against their employer (the "primary employer"); or
- (b) in opposition to a lockout (the "primary lockout") imposed by another employer (the "primary employer") against its employees.

(2) A trade union may only call a secondary strike if -

- (a) fourteen days notice of the commencement of the secondary strike has been given to the secondary employer;
- (b) there is a relationship between the secondary and primary employer that may permit the exercise of pressure;
- (c) the secondary strike is proportional taking into account-
 - (i) the effect of the strike on the secondary employer;
 - (ii) the possible effect that the strike may have on resolving the dispute giving rise to the primary strike or primary lockout.

(3) Employees engaged in the following services are prohibited from engaging in a secondary strike:

- (a) the essential services referred to in section 77 in respect of which there is no approved collective agreement as prescribed in section 79(2); or
- (b) agreed or determined minimum services as prescribed in section 79.

(4) Nothing in this section shall prevent a trade union and an employer or an employers' association from agreeing to their own requirements and procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsections (1) and (2) shall not apply.

82.-(1) Subject to the provisions of subsection (2), an employer may engage in a lawful lockout if -

- (a) the dispute is a dispute of interest;
- (b) the dispute has been referred in the prescribed form to the Commission for mediation;
- (c) the dispute remains unresolved at the end of the period of mediation prescribed in sections 86 and 87;
- (d) after the applicable period referred to in paragraph (c) the employer or employers' association has given forty eight hours notice to the employees or their trade union of their intention to lockout.

Procedure for engaging in a lawful lockout

(2) Nothing in this section shall prevent a trade union and an employer or an employers' association from agreeing to their own procedure in a collective agreement, in which case the provisions of that agreement shall apply and the provisions of subsection (1) shall not apply.

83.-(1) Notwithstanding the provisions of any law, including the common law, a lawful strike or lawful lockout shall not be -

- (a) a breach of contract;
- (b) a tort;
- (c) a criminal offence.

Nature of protection of a lawful-strike or lockout

(2) An employer shall not terminate the employment of an employee for -

- (a) participating in a lawful strike; or
- (b) not acceding to an employer's demand in a lockout.

(3) No civil or criminal proceedings shall be instituted against any person for participating in a lawful strike or lawful lockout.

(4) Notwithstanding the provisions of subsection (1), an employer shall not be obliged to remunerate an employee for services that the employee does not render during a lawful strike or lawful lockout, however -

- (a) the employer shall continue to make its contribution and the employee's contributions to any funds that the employee is required to belong to by law or under the contract of employment during the strike or lockout;
- (b) if the employer provides accommodation, the provision of food or other basic amenities of life, the employer shall continue to provide that accommodation, food or amenities during the strike or lockout;
- (c) after the end of the strike or lockout, the employer may-
 - (i) deduct any of the employee's contributions referred to in paragraph (a) from the employee's remuneration;
 - (ii) deduct the agreed monetary value of the accommodation, food or amenities from the employee's remuneration with the consent of the employee.

(5) Where an employee does not consent to the deduction prescribed in subsection (4)(c)(ii), the employer may refer the dispute to mediation.

(6) Where the dispute referred to in subsection (5) is not resolved, the employer may refer it to the Labour Court for a decision.

(7) Nothing in subsection (4) shall prevent a trade union or employer or employers association from concluding a collective agreement that regulates the matters dealt with in that subsection differently.

84.--(I) Where a strike or lockout is not in compliance with this Act, or a trade union or employer or employers' association engages in prohibited conduct, the Labour Court shall have exclusive jurisdiction-

Strikes
and lock-
outs not in
com-
pliance
with this
Part

- (a) to issue an injunction to restrain any person from-
 - (i) participating in an unlawful strike or lockout;
 - (ii) engaging in any prohibited conduct;

- (b) to order the payment of just and equitable compensation for any loss attributable to the strike, lockout or conduct, having regard to -
 - (i) the degree of fault;
 - (ii) the cause of the strike, lockout or conduct;
 - (iii) any prior history of non-compliance;
 - (iv) the ability to pay;
 - (v) the extent of the harm;
 - (vi) the interests of collective bargaining;
 - (vii) the duration of the strike, lockout or conduct.

(2) The Labour Court may not issue an injunction unless forty eight hours notice of the application has been given to the respondent.

(3) Notwithstanding the provisions of subsection (2), the Court may grant a shorter period on good cause and only if the respondent is given a reasonable opportunity to be heard.

(4) Other than in exceptional circumstances, the Labour Court may not make an order of compensation that may cause a trade union, employer or employer's association to become bankrupt.

85,41) Subject to the provisions of subsection (2), an employee may take part in protest action if -

Protest
action

- (a) the protest action has been called by a registered trade union or registered federation of trade unions;
- (b) the union or federation has served a notice on the Council stating-

-
- (i) the reasons for the protest action; and
 - (ii) the duration and form of the protest action;
- (c) thirty days has elapsed from the date the notice was served; and
- (d) the union or federation has given at least fourteen days notice of the commencement of the protest action.
- (2) Employees engaged in the following services are prohibited from engaging in protest action:
- (a) the essential services referred to in section 77 in respect of which there is no approved collective agreement as prescribed in section 79(2); or
 - (b) agreed or determined minimum services as prescribed in section 79.
- (3) The Council shall convene a meeting within thirty days of the notice to -
- (a) to resolve the matter giving rise to the protest action; and
 - (b) if unable to resolve the matter, secure an agreement with the trade unions or federation of trade unions calling for the protest action on the duration and form of the protest action in order to minimise the harm that may be caused by the protest action.
- (4) In order to achieve the objects prescribed in subsection (3), the Council may -
- (a) establish a tripartite committee to perform its functions under subsection (3) ,
 - (b) appoint a mediator after consultation with the Commission to mediate;
 - (c) apply to the Labour Court for a declaratory order prescribed in subsection (5).
- (5) Any person who is likely to be, or has been, affected by the protest action may apply to the Labour Court for -

- (a) an order restraining any person from taking part in protest action or in any conduct in contemplation or furtherance of an action that does not comply with the provisions of subsections (1) and (2);
- (b) a declaratory order on the proportionality of any proposed action taking into account -
 - (i) the nature and the duration of the protest action;
 - (ii) the importance of the reasons for the protest action; and
 - (iii) the steps taken by the union or the federation to minimise the harm caused by the protest action.

(6) Subject to the provisions of subsection (7), any person who takes part in protest action that complies with this section enjoys the protections conferred on lawful strikes in terms of section 83.

(7) The protections conferred by subsection (6) on persons engaged in lawful protest action shall not apply to persons who do not comply with any declaratory order issued under paragraph (b) of subsection (5).

PART VIII

DISPUTE RESOLUTION

Sub-Part A - Mediation

86.-(1) Disputes referred to the Commission shall be in the prescribed form.

(2) The party who refers the dispute under subsection (1), shall satisfy the Commission that a copy of the referral has been served on the other parties to the dispute.

(3) On receipt of the referral made under subsection (1) the Commission shall -

- (a) appoint a mediator to mediate the dispute;
- (b) decide the time, date and place of the mediation hearing;

Referral
of disputes
for
mediation
under this
Act

(c) advise the parties to the dispute of the details stipulated in paragraphs (a) and (b).

(4) Subject to the provisions of section 87, the mediator shall resolve the dispute within thirty days of the referral or any longer period to which the parties agree in writing.

(5) The mediator shall decide the manner in which the mediation shall be conducted and if necessary may require further meetings within the period referred to in subsection (4).

(6) In any mediation, a party to a dispute may be represented by -

(a) a member or an official of that party's trade union or employers' association; or

(b) an advocate.

(7) Where the mediator fails to resolve a dispute within the period prescribed in subsection (4), a party to the dispute may -

(a) if the dispute is a dispute of interest, give notice of its intention to commence a strike or a lockout in accordance with sections 80 or 82;

(b) if the dispute is a complaint -

(i) refer the complaint to arbitration; or

(ii) refer the complaint to the Labour Court.

(8) Notwithstanding the failure to resolve a dispute within the period stipulated in subsection (4), the mediator shall remain seized with the dispute until the dispute is settled and may convene meetings between the parties to the dispute in order to settle the dispute at any time before or during any strike, lockout, arbitration or adjudication.

Consequences of not attending a mediation-hearing

87.-(1) Where the employees or a trade union refer a dispute of interest to the Commission under section 86, the mediator may-

(a) extend the period stipulated under section 86(4) by a further thirty days if the employees or union fail to attend the hearing arranged by the Commission;

- (b) shorten the period stipulated in section 86(4) if the employer or employers' association party to the dispute fail to attend the hearing.
- (2) Where an employer or an employers' association refers a dispute of interest to the Commission under section 86, the mediator may-
- (a) extend the period stipulated under section 86(4) by a further thirty days if the employer's or employer association fails to attend the hearing arranged by the Commission;
- (b) shorten the period stipulated in section 86(4) if the employees or trade union party to the dispute fail to attend the hearing.
- (3) In respect of a complaint referred under this Act, the mediator may -
- (a) dismiss the complaint if the party who referred the complaint fails to attend a mediation hearing;
- (b) decide the complaint if the other party to the complaint fails to attend a mediation hearing.
- (4) The decision made under this section may be enforced in the Labour Court as a decree of a court of competent jurisdiction.
- (5) The Commission may reverse a decision made under this section if -
- (a) application is made in the prescribed manner; and
- (b) the Commission is satisfied that there are good grounds for failing to attend the hearing.

Sub-Part B: Arbitration

88.-(1) For the purposes of this section, a dispute means-

- (a) a dispute of interest if the parties to the dispute are engaged in an essential service;

Resolving
disputes
by com-
pulsory
arbitration

(b) a complaint over -

- (i) the fairness or lawfulness of an employee's termination of employment;
- (ii) any other contravention of this Act or any other labour law or breach of contract in which the amount claimed is below the pecuniary jurisdiction of the High Court;
- (iii) any dispute referred to arbitration by the Labour Court under section 94(3)(a)(ii).

(2) If the parties fail to resolve a dispute referred to mediation under section 86, the Commission shall -

- (a) appoint an arbitrator to decide the dispute;
- (b) determine the time, date and place of the arbitration hearing; and
- (c) advise the parties to the dispute of the details stipulated in paragraphs (a) or (b).

(3) Nothing in subsection (2) shall prevent the Commission from -

- (a) appointing an arbitrator before the dispute has been mediated;
- (b) determining the time, date and place of the arbitration hearing, which date may coincide with the date of the mediation hearing;
- (c) advising the parties to the dispute of the details stipulated in paragraphs (a) and (b).

(4) The arbitrator -

- (a) may conduct the arbitration in a manner that the arbitrator considers appropriate in order to determine the dispute fairly and quickly;
- (b) shall deal with the substantial merits of the dispute with the minimum of legal formalities.

(5) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question witnesses, and present arguments.

(6) If the parties to the dispute consent, the arbitrator may suspend proceedings and resolve the dispute through mediation.

(7) In any arbitration hearing, a party to a dispute may be represented by -

- (a) member or official of that party's trade union or employers' association; or
- (b) an advocate.

(8) An arbitrator may make any appropriate award but may not make an order for costs unless a party or a person representing a party acted in a frivolous or vexatious manner.

(9) Within thirty days of the conclusion of the arbitration proceedings, the arbitrator shall issue an award with reasons signed by the arbitrator.

89.-(1) An arbitration award made under this Act shall be binding on the parties to the dispute.

Effect of
an arbitra-
tion award

(2) An arbitration award made under this Act may be served and executed in the Labour Court as if it were a decree of a court of law.

90. An arbitrator who has made an award under section 88(8) may, on application or on his own motion, correct in the award any clerical mistake or error arising from any accidental slip or omission.

Correction
of arbitra-
tion award

91.-(1) Any party to an arbitration award made under section 88(8) who alleges a defect in any arbitration proceedings under the auspices of the Commission may apply to the Labour Court for a decision to set aside the arbitration award -

Revision
of arbitra-
tion award

- (a) within six weeks of the date that the award was served on the applicant unless the alleged defect involves improper procurement;
- (b) if the alleged defect involves improper procurement, within six weeks of the date that the applicant discovers that fact.

(2) The Labour Court may set aside an arbitration award made under this Act on grounds that -

- (a) there was a misconduct on the part of the arbitrator;
- (b) the award was improperly procured,

(3) The Labour Court may stay the enforcement of the award pending its decision.

(4) Where the award is set aside, the Labour Court may -

- (a) determine the dispute in the manner it considers appropriate;
- (b) make any order it considers appropriate about the procedures to be followed to determine the dispute.

Applica-
tion of
Arbitra-
tion
Ordinance
Cap. 15

92. The Arbitration Ordinance, does not apply to an arbitration conducted by the Commission.

Voluntary
arbitration

91.(1) Nothing in this Act prevents agreement to submit a dispute to arbitration.

Cap. 15

(2) The provisions of the Arbitration Ordinance, shall apply to any agreed submission of a dispute to arbitration provided that -

- (a) notwithstanding the provisions of section 3 of the Ordinance, any dispute may be submitted to arbitration;
- (b) any reference to the High Court in the Ordinance shall be interpreted as referring to the Labour Court.

Sub-Part C.: Adjudication

Jurisdic-
tion of
the Labour
Court

94.(1) Subject to the Constitution of the United Republic of Tanzania, 1977, the Labour Court shall have exclusive jurisdiction over the application, interpretation and implementation of the provisions of this Act and to decide -

- (a) appeals from the decisions of the Registrar made under Part IV;
- (b) reviews and revisions of -
 - (i) arbitrator's awards made under this Part;

-
- (ii) decisions of the Essential Services Committee made under Part VII;
 - (c) reviews of decisions, codes, guidelines or regulations made by the Minister under this Act;
 - (d) complaints, other than those that are to be decided by arbitration under the provisions of this Act;
 - (e) any dispute reserved for decision by the Labour Court under this Act; and
 - (f) applications including -
 - (i) a declaratory order in respect of any provision of this Act; or
 - (ii) an injunction.
- (2) The Labour Court may refuse to hear a complaint if -
- (a) the complaint has not been referred to mediation by the Commission under section 86; or
 - (b) the provisions of that section have not been complied with; and
 - (c) the application is not urgent.
- (3) Where a party refers a dispute to the Labour Court, the Court may -
- (a) if it is a dispute that is required to be referred to the Labour Court in terms of this Act -
 - (i) decide the dispute; or
 - (ii) refer the dispute to the Commission to be decided by arbitration;
 - (b) if it is a complaint that is required to be referred to arbitration-
 - (i) refer the complaint to the Commission for it to be dealt with under section 88;
 - (ii) decide the complaint provided that it may make an appropriate order as to costs;

Sub-Part D - Dispute Procedure In Collective Agreements

Dispute
resolution
procedures
in collec-
tive a-
gree-
ments

95.-(1) Nothing in this Part shall prevent a trade union on the one hand and an employer or employers' association on the other hand from concluding a collective agreement providing for the resolution of disputes not within the provisions of this Part.

(2) A collective agreement may depart from the provisions of this Part provided that the disputes are mediated or arbitrated in an independent, neutral, expedited and professional manner.

(3) A person bound by a collective agreement prescribed in this section may not refer a dispute to the Commission under the provisions of this Part.

(4) On application, the Labour Court, may set aside a provision of a collective agreement that does not comply with subsection (2).

PART IX

GENERAL, PROVISIONS

Records
to be kept
by
employers
and
employees

96.-(1) Every employer and employee shall keep a record of the following information:

- (a) the written particulars prescribed in section 15 and any changes to those particulars;
- (b) any remuneration paid to the employee.

(2) Every employer shall retain the record of an employee prescribed in subsection (1) for a period of five years after the termination of that employee.

(3) An employer shall keep a record of the prescribed details of any -strike, lockout or protest action involving its employees.

(4) The Labour Commissioner, in the prescribed manner, may require information based on the records referred to in this section from an employer.

(5) An employer shall submit to the Labour Commissioner any information required in terms of subsection (4).

(6) Subject to the provisions of section 101, the Labour Commissioner may-

- (a) compile, analyse and tabulate statistics collected from the information submitted under this section;
- (b) and upon the Minister's direction publish those statistics.

97.-(1) A document required to be served on a registered organisation or federation in any civil or criminal proceedings shall be deemed to be duly served if it is-

Service of documents

- (a) delivered to the registered office of the organisation or federation;
- (b) delivered by registered post to its postal address; or
- (c) served personally on an officer of the organisation or federation.

(2) For the purposes of this section, a "document" includes any notice, referral, submission, application or other document required to be served under this Act.

98.-(1) The Minister may, in consultation with the Council, make regulations and prescribe forms for the purpose of carrying out or giving effect to the principles and provisions of this Act.

Regulations

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters-

- (a) all matters stated or required in this Act to be prescribed;
- (b) the prohibition or regulation of employment of children under the age of eighteen years;
- (c) the registration of plans for eliminating discrimination in the workplace;
- (d) the form and manner in which written particulars of employment are to be given to an employee;

- (e) regulating the payment of wages including payment of any money due to a deceased employee to the heirs or estate of that employee;
- (f) the form and content of information and documentation to be supplied by the employer to its employees;
- (g) regulating the procedure of registration of organisations and federations, the registers to be kept and the certificate of registration;
- (h) the authorisation of access by trade union officials to employer premises for the purpose of recruiting, meeting and representing members;
- (i) the deduction of trade union dues including authorisation and remittance of money to the registered trade union;
- (j) the procedure for the recognition of registered trade unions;
- (k) the lodgement of collective agreements with the Labour Commissioner;
- (l) the procedure for investigations by the Essential Services Committee into essential services and minimum services;
- (m) the books, records, accounts and other documents to be kept under this Act;
- (n) the information to be furnished by an employer to the Labour Commissioner;
- (o) the returns to be rendered by the employer to the Labour Commissioner;
- (p) the fees to be charged for registration or any other service or matter prescribed or permitted by this Act; and
- (q) occupational safety and health standards and the working environment secured by an appropriate system of inspection;
- (r) generally for all matters incidental to or connected with the matters or subjects specifically mentioned in this Act.

(3) The Minister, after consultation with the Council, may, by notice in the *Gazette*, deem any category of persons to be employees for the purposes of this section, any provisions of this Act or any other written law in respect of which the Minister is responsible.

99.-(1) The Minister, after consulting the Council, may-

- (a) issue codes of good practice;
- (b) issue guidelines for the proper administration of this Act;
- (c) change or replace any code or guideline.

Guidelines
and codes-
of good
practice

(2) Any code of good practice or guideline or any change to, or replacement of, a code or guideline shall be published in the *Gazette*.

(3) Any person, interpreting or applying this Act shall take into account any code of good practice or guideline published under this section, and where that person departs from the code or guideline, he shall justify the grounds for departure.

100.-(1) The Minister may exempt any employer or class of employers from any employment standard contained in sections 19, 20, 23 to 25, 27, 31 to 34, 41, 42 and 43.

Exemp-
tions

(2) Before the Minister grants an exemption under this section -

- (a) the employer or employers' organisation shall satisfy the Minister that they have consulted with the employees affected by the exemption or their registered trade union;
- (b) he shall notify the affected employers and employees or their registered organisations of any proposed exemption and request representations to be submitted within a reasonable period;
- (c) he shall take into account any representations made by the employees or their registered trade union;
- (d) he shall strike a fair balance between the interests of the employers and their employees, taking into account any applicable International Labour Organisation Convention or recommendation.

(3) An exemption granted under subsection (1) shall -

- (a) be in the prescribed form signed by the Minister, and the form shall include a statement of the employers, or category of employers affected by the exemption;

- (b) include any conditions under which the exemption is granted;
- (c) state the period of the exemption, which may be made retrospective to a date not earlier than the date of the application for exemption; and
- (d) if the exemption is granted to a class of employers, be published in the *Gazette*.

(4) An exemption granted under this section may be amended or withdrawn by the Minister.

(5) If the exemption is published in the *Gazette* under subsection (3)(d), the Minister may amend or withdraw the exemption only by notice in the *Gazette* from a date stated in that notice.

(6) Any person who is aggrieved by the grant, amendment or withdrawal of an exemption or its terms or period, may apply for the review of the decision in the Labour Court.

Confidentiality

101.-(1) Subject to the provisions of subsection (2), it is an offence for any person to disclose any information relating to the financial or business affairs of another person if that information was acquired in the performance of any function or the exercise of any power under this Act.

(2) Subsection (1) does not apply if the information is disclosed in compliance with this Act -

- (a) to enable a person to perform a function or exercise a power under this Act;
- (b) in accordance with any written law;
- (c) for the purpose of the proper administration of this Act;
- (d) for the purposes of the administration of justice.

Penalties

102.-(1) A District Court and a Resident Magistrate's Court have jurisdiction to impose a penalty for an offence under this Act.

(2) Any person convicted of any of the offences referred to in sections 5 and 6, may be sentenced to -

- (a) a fine not exceeding five million shillings;
- (b) imprisonment for a term of one year;
- (c) both to such fine and imprisonment.

(3) Any person convicted of any of the offences referred to in sections 7, 8 and 9 may be sentenced to a fine not exceeding five million shillings.

(4) Any person convicted of any of the offences referred to in sections 27, 28, 45(3) and 101 shall be sentenced to a fine not exceeding one million shillings.

(5) Any person aggrieved by the decision of a court under this section may appeal to the High Court.

101.-(1) The laws specified in the Second Schedule are repealed subject to the savings and transitional provisions set out in the Third Schedule.

(2) Each of the laws specified in the Second Schedule are amended to the extent specified in that Schedule.

(3) The Third Schedule governs the transition from the administration of the laws repealed under paragraph (1) to the administration of the matters in this Act.

Repeal
and
amend-
ment of
laws and
savings
provisions

—
FIRST SCHEDULE
—

(Made under section 26 (1))

Table for calculation of comparable wage rates

For the purpose of this Table -

"ordinary hours" do not include overtime hours;

"ordinary days" mean the days the employee ordinarily works in a week excluding any day falling within the weekly rest period stipulated in section 24;

"rate" is based on the employee's basic wage.

Table - Calculation of comparable wage rates

| Basis of payment | To calculate hourly rates | To calculate daily rates | To calculate weekly rates | To calculate monthly rates |
|------------------------------------------------|-------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| Employees whose basic wage is set by the hour | | Multiply the hourly rate by the number of ordinary hours of work web day, | Multiply the hourly rate by the number of ordinary hours of work each week. | Calculate the weekly rate, then Multiply 'the calculated weekly rate by 4,333. |
| Employees whose basic wage is set by the day | Divide the daily rate by the number of ordinary hours of work each day | | Multiply the daily rate by the number of ordinary days of work each week. | Calculate the weekly' rate, then Multiply the calculated weekly rate by 4,333 |
| Employees whose basic wage is set by the week | Divide the weekly rate (or calculated weekly rate) by the number of ordinary hours of work each week. | Divide the weekly rate (or calculated weekly rate) by the number of ordinary days of work each week | | Multiply the weekly rate (or calculated weekly rate) by 4,333. |
| Employees whose basic wage is set by the month | Divide the monthly rate by (4,333 times the number of hours ordinarily worked each week). | Divide the monthly rate by 4,333 times the number of days ordinarily worked each week. | Divide the monthly rate by 4,333, | |

—
SECOND SCHEDULE
—

(Made under section 1 03 (1))

Section

| Citation of law | Extent of repeal |
|----------------------------------------------------------------------|------------------|
| Employment Ordinance (Cap. 366) | The whole |
| Regulation of Wages and Terms of Employment Ordinance (Cap 300) | The Whole |
| Wages and Salaries (General Revision) Act, 1974 (Act No. 22 of 1974) | The whole |
| Trade Union Act, 1998 (Act No. 10 of 1998) | The whole |
| Security of Employment Act (Cap. 574) | The whole |
| Severance Allowances Act (Cap. 487) | The whole |
| Industrial Court of Tanzania Act, 1967 (Act No. 41 of 1967) | The whole |

—
THIRD SCHEDULE
—

(Made. under section (103) (2), (3))

Savings and Transitional provisions

- 1. In this Schedule, unless the context requires otherwise -**
- | | |
|--------------------------------------------------------------------------------------------------|---------------------|
| "employers organisation" means an employer's organisation registered under the Trade Unions Act; | Interpreta- tion |
| "federation" means a federation registered under the Trade Unions Act; | Act No. 10 |
| "repealed laws" means the laws repealed under section 103(1) and listed in the Third Schedule; | of 1998 |
| "trade union" means a trade union registered under the Trade Unions Act; | |
| "Trade Unions Act" means the Trade Unions Act, 1998. | |
- 2.-(1)** A trade union, employer's organisation or federation registered under the repealed laws Existing immediately before the commencement of this Act, shall be deemed to be registered under this Act.
- (2) As soon as practicable after the commencement of this Act, the Registrar shall -
- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| (a) enter the names and details of the trade unions, employers' organisations and federations into the appropriate registers prescribed under section 48(5)(a) of this Act; | unions emplo- yer's organisa- |
| (b) issue a certificate in terms of section 48(5)(b) of this Act to the trade unions, employers' organisations and federations referred to in paragraph (a). | tions and federations |
- (3) If any provision of the constitution of a trade union, employers' organisation or federation does not comply with the requirements of sections 46 and 47 of this Act, the trade union, employers organisation or federation shall rectify its constitution and submit the rectifications to the Registrar within 6 months of the commencement of this Act.
- (4) The provisions of section 50, shall apply *mutatis mutandis* in respect of a rectification under subparagraph (3).
- (5) If a trade union, employers' organisation or federation fails to comply with sub-paragraph (3) or fails to make the requisite changes, the Registrar shall apply to the Labour Court to cancel the registration of the trade union, employers' organisation or federation because of its failure to comply with the provisions of this paragraph read together with sections 46 and 47 of this Act.
- (6) Section 55, shall apply *mutatis mutandis* in respect of an application brought under sub-paragraph (5).
- 3.-(1)** Any pending application for registration, alteration of name or constitution in terms of the repealed laws shall be dealt with as if the application had been made under this Act.
- | | |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------|
| (2) When dealing with an application referred to in sub-paragraph (1), the Registrar may- | Pending applica- tions for regist- ration |
| (a) condone any technical non-compliance with this Act; | |
| (b) require the applicant to amend its application in order to comply with this Act. | |

Organisa-
tional
rights and
recogni-
tion

4.-(1) For the purposes of this paragraph -

(a) organisational rights' means any of the following rights:

- (i) the right to trade union representation in the workplace including the right to a committee or a field branch;
- (ii) the right to facilities for trade union representatives in the workplace;
- (iii) the right to disclosure of information;
- (iv) the right to deduction of trade union dues and levies;
- (v) the right of access to the employer premises for the purposes of recruitment of members, meeting with members and representing members;

(b) "recognition" means any agreement or practice in terms of which a trade union is recognised under the repealed laws for the purposes of negotiating terms and conditions of employment,

(2) A trade union shall retain any organisational rights conferred by-

- (a) any of the repealed laws for a period of three years;
- (b) any collective agreement in force at the commencement of this Act until the agreement's expiry, except that, if the agreement expires within two years of the commencement of this Act, the agreement shall be extended for a further year as if the repealed laws had not been repealed.

(3) Any dispute referred to a labour officer under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.

(4) Where a trade union is recognised at the commencement of this Act, the employer shall continue to recognise the trade union for a period of three years unless another trade union is recognised as the exclusive bargaining agent under section 67.

(5) Any dispute over any organisational rights or recognition conferred under the repealed laws shall be decided by the Labour Court as if the repealed laws had not been repealed.

Negotiated
or volun-
tary agree-
ments

5.-(1) Any negotiated or voluntary agreement concluded before the commencement of this Act, whether or not the agreement has been registered by the Industrial Court under the repealed laws, shall be binding until its expiry provided that -

- (a) if the agreement is due to expire after a year from the commencement of this Act, the agreement expires at the end of the year;
- (b) subject to paragraph 4(2)(b), any renewal of any such agreement shall be done in terms of this Act.

(2) Any dispute arising from the application, interpretation or implementation of an agreement stipulated in sub-paragraph (1) shall be decided by the Labour Court as if the repealed laws had not been repealed.

The Emp-
loyment
Ordinance
366

6. Notwithstanding the repeal of the Employment Ordinance, the provisions of sections 100 and 102 relating to "provision of medicine and medical treatment" and "burial of deceased employees and dependants" shall continue to apply until they are repealed by another law."

| | |
|---------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Industrial Court awards | <p>7.-(1) Subject to sub-paragraph (3), any trade dispute stipulated in the repealed laws that arose before the commencement of this Act shall be dealt with as if those laws had not been repealed.</p> <p>(2) Subject to sub-paragraph (3), any trade dispute referred to the Industrial Court under section 4 of the Industrial Court of Tanzania Act or referred to the Court as a trade enquiry under section 8 of that Act before the commencement of this Act shall be dealt with as if those laws had not been repealed.</p> <p>(3) Notwithstanding sub-paragraphs (1) and (2), a strike or a lockout that commences after the commencement of this Act shall be dealt with in terms of this Act.</p> <p>(4) Any revision or interpretation of an award made by the Industrial Court shall be done as if the repealed laws had not been repealed.</p> <p>(5) Any award made by the Industrial Court under the repealed laws shall remain in force until the expiry of the award.</p> |
| References to conciliation boards | <p>8.-(1) Any reference concerning a summary dismissal or disciplinary penalty that takes place before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> <p>(2) Any reference concerning a summary dismissal or disciplinary penalty referred to a conciliation board under the repealed laws shall be dealt with as if the repealed laws had not been repealed.</p> |
| Disputes referred to labour officers | <p>9. Any dispute contemplated in the repealed laws arising before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> |
| References to the Minister | <p>10. Any reference to the Minister stipulated under the repealed laws shall be dealt with as if the repealed laws had not been repealed.</p> |
| Matters before the ordinary courts | <p>11.-(1) Any offence committed under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> <p>(2) Any claim arising under the repealed laws before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> <p>(3) Any suit or other civil proceedings commenced before the commencement of this Act shall be dealt with as if the repealed laws had not been repealed.</p> |
| Minister may authorise Commission to perform functions of conciliation board and Industrial Court | <p>12.-(1) The Minister may, after consultation with the Commission, authorize the Commission by notice in the Gazette to perform the functions of conciliation boards or the industrial court in terms of paragraph 7 or 8-</p> <p style="padding-left: 20px;">(a) in respect of the whole or any specified part of Mainland Tanzania;</p> <p style="padding-left: 20px;">(b) with effect from a date specified in the <i>Gazette</i>.</p> <p>(2) The authorisation of the Commission under sub-paragraph (1) shall not affect the competence of a conciliation board or the industrial court in terms of paragraph 7 or 8 to decide or finalise any matter that is partly heard at the date specified in the <i>Gazette</i>.</p> |

13. Disputes not finalised in terms of the repealed laws within 3 years of the commencement of this Act shall automatically fall within the jurisdiction of the Commission. The Commission shall have the power to arbitrate or refer the dispute to the Labour Court for decision. In determining the dispute under the provisions of this paragraph the substantive law at the time the dispute arose shall apply.

Disputes not finalised within 3 years

14.—(1) Notwithstanding the repeal of the Regulation of Wages and Terms of Employment Ordinance -

Minimum wages
Cap. 300

- (a) the Minister may, within 3 years of the commencement of this Act-
- (i) establish a minimum wage board under section 4 of the Ordinance; and
 - (ii) make, with the approval of the President, a wages regulation order under section 10 fixing a basic minimum wage.
- (b) the relevant provisions of the Ordinance shall apply to a board established and an order made in terms of paragraph (a).

(2) Subject to subsection (3), a Wages Regulation Order published under the Regulation of Wages and Terms of Employment Ordinance, shall remain in force after the commencement of this Act.

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(3) If a wage determination is published under the Labour Institutions Act, 2003 any applicable wages regulations order stipulated in sub-paragraph (1) shall cease to apply to the employers and employees subject to the determination.

15. Any subsidiary legislation made under the repealed laws shall remain in force until they are -

Subsidiary legislation

- (a) repealed by the Minister; or
- (b) replaced by subsidiary legislation made under this Act.

16. Notwithstanding the provisions of section 19, the hours of work of domestic workers and security workers shall be a maximum of -

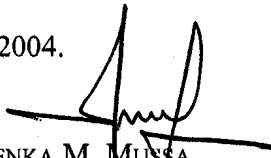
Hours of work of domestic and security workers

- (a) 54 ordinary hours for the first year after the commencement of this Act;
- (b) 51 ordinary hours for the second year after the commencement of this Act;
- (c) 48 ordinary hours for the third year after the commencement of this Act; and
- (d) 45 hours thereafter.

17. Each employer shall submit the written particulars contemplated in section 15 of this Act and applicable to an employee in employment at the commencement of this Act within a year of the commencement of this Act.

Written particulars

Passed in the National Assembly on the 14th April, 2004.


KIPENKA M. MUSSA,
Clerk of the National Assembly