SABAH CAP. 67
LABOUR ORDINANCE

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ARRANGEMENT OF SECTIONS

PART I - LABOUR DEPARTMENT

CHAPTER I - PRELIMINARY AND INTERPRETATION.

Section 1. Short title
Section 2. Interpretation
Section 2A. Minister may prohibit employment other than under contract of service.
Section 2B. General power to exempt or exclude.

CHAPTER II - OFFICERS

Section 3. Commissioner of Labour and other officers
Section 3A. Officers to be authorized by Director.
Section 4. Powers of inspection and inquiry.
Section 5. Inspection of documents
Section 6. Power of summons and institution of proceedings
Section 7. [Deleted]

CHAPTER IIA - COMPLAINTS AND INQUIRIES.

Section 7A. Director's power to inquire into complaints.
Section 7B. Limitation on power conferred by section 7A.
Section 7C. Additional powers of Director to inquire into complaints.
Section 7D. Claims for indemnity for termination of contract without notice.
Section 7E. Order of Director may be in writing.
Section 7F. Procedure in Director's inquiry.
Section 7G. Director's record of inquiry.
Section 7H. Joinder of several complaints in one complaint.
Section 7I. Prohibitory order by Director to third party.
Section 7J. No fees for summons; service of summons.
Section 7K. Enforcement of Director's order by Sessions Court.
Section 7L. Submission by Director to High Court on point of law.
Section 7M. Appeal against Director's order to High Court.
Section 7N. Employee's remedy when employer about to abscond.
Section 7O. Examination on summons by the Director.
Section 7P. Right of employee to appear before the Director.

CHAPTER III - [Deleted].

http://www.sabahlaw.com/Labour_Ordinance.htm
PART II - CONTRACTS OF SERVICE

CHAPTER IV - TERMS AND CONDITIONS.

Section 9. More favourable conditions of service under the Ordinance to prevail.

Section 9A. Validity of any term or condition of service which is more favourable.

Section 9B. Removal of doubt in respect of matters not provided for by or under this Ordinance.

Section 9C. Contracts of service not to restrict rights of employees to join, participate in or organize trade unions.

Section 10. Guaranteed week

Section 10A. Provision as to termination of contracts.

Section 11. Termination of contract of service by notice.

Section 12. Termination of contract without notice.

Section 13. Termination of contract for special reasons.

Section 13A. When contract is deemed to be broken by employer and employee.

Section 14. [Deleted]

Section 15. [Deleted]

Section 16. [Deleted]

CHAPTER V - [Deleted]

Section 17. [Deleted]

Section 18. Contracts to be in writing and to include provision for termination.

Section 19. [Deleted]

Section 20. [Deleted]

Section 21. [Deleted]

Section 22. [Deleted]

Section 23. [Deleted]

Section 24. [Deleted]

Section 25. [Deleted]

Section 26. [Deleted]

Section 27. [Deleted]

Section 28. [Deleted]

Section 29. [Deleted]

Section 30. [Deleted]

Section 31. [Deleted]

Section 32. [Deleted]

Section 33. [Deleted]

CHAPTER VI - APPRENTICESHIP CONTRACTS.

Section 34. Apprenticeship contracts excluded from sections 10, 10A, 11, 12, 13, 13A, and 18.

Section 35. [Deleted]

Section 36. [Deleted]

Section 37. [Deleted]

Section 38. [Deleted]
CHAPTER VII [Deleted].

CHAPTER VIII - [Deleted].

CHAPTER IX - [Deleted].

PART IV - PROVISIONS RELATING TO EMPLOYMENT

CHAPTER X - REGISTERS, RETURNS AND NOTICE BOARD.

Section 56. [Deleted].

Section 57. Duty to display notice board.

Section 58. Duty to keep registers.

Section 58A. Powers to make rules requiring information as to wages.

Section 59. Duty to submit returns.

Section 59A. Duty to give notice and other information.

Section 60. [Deleted].

Section 61. [Deleted].

Section 62. [Deleted].

Section 63. [Deleted].

Section 64. [Deleted].

Section 65. [Deleted].

Section 66. [Deleted].

Section 67. [Deleted].

Section 68. [Deleted].

Section 69. [Deleted].

CHAPTER XI - SPECIAL PROVISIONS RELATING TO THE EMPLOYMENT OF CHILDREN AND YOUNG PERSONS.
Section 70. [Deleted].

Section 71. Certificate of medical officer as to age.

Section 72. Employment in which children and young persons may be engaged.

Section 73. The Minister may prohibit any child or young person from engaging or being engaged in any employment.

Section 73A. Number of days of work.

Section 73B. Hours of work of children.

Section 73C. Hours of work of young person.

Section 73D. Employment connected with public entertainment.

Section 74. [Deleted].

Section 74A. Power to prescribe minimum wages after inquiry.

Section 74B. Contractual capacity.

CHAPTER XIA - EMPLOYMENT OF WOMEN

Section 75. Prohibition of night work.

Section 76. Emergencies.

Section 77. [Deleted].

Section 78. Prohibition of underground work.

Section 78A. Prohibition of employment.

Section 79. [Deleted].

Section 80. [Deleted].

Section 81. [Deleted].

Section 82. [Deleted].

CHAPTER XIB - MATERNITY PROTECTION

Section 83. Length of eligible period and entitlement to maternity allowance.

Section 84. [Deleted].

Section 85. Payment of maternity allowance.

Section 86. Payment of allowance to nominee on death of a female employee.

Section 87. Loss of maternity allowance for failure to notify employer.

Section 88. [Deleted].

Section 89. [Deleted].

Section 90. Payment of allowance to nominee.

Section 91. Notice of termination of employment.

Section 91A. Restriction on dismissal of female employee after eligible period.

Section 92. [Deleted].

Section 93. [Deleted].

Section 94. Conditions contrary to Chapter void.

Section 94A. Register of allowances paid.

Section 95. [Deleted].

CHAPTER XII - REPATRIATION

Section 96. Rights and obligations of worker and employer in respect of repatriation.

Section 97. Exemption from obligation to repatriate.
Section 98. Employer to provide transport.

Section 99. [Deleted].

CHAPTER XIII - Domestic service

Section 100. Domestic servants

CHAPTER XIV - CONTRACTS OF SERVICE

Section 101. [Deleted].

Section 102. Limitation on advances to employees.

Section 103. Holidays.

Section 104. Hours of work.

Section 104A. Shift work.

Section 104B. Rest day.

Section 104C. Work on rest day.

Section 104D. Annual leave.

Section 104E. Sick leave.

Section 104F. Termination, lay-off and retirement benefits.

Section 105. Task work.

Section 106. [Deleted].

Section 107. Period for which wages not payable.

Section 107A. Wage period.

Section 107B. Wages not due for absence from work through imprisonment or attendance in court.

Section 108. Payment of wages.

Section 109. Restriction on places at which wages may be paid.

Section 110. Wages to be paid in legal tender.

Section 110A. Payment of wages through bank.

Section 111. [Deleted].

Section 112. Conditions restricting place at which, manner in which, and person with whom wages paid to be spent illegal.

Section 113. Lawful deductions.

Section 114. Interest on advances forbidden

Section 115. Deductions for fines, etc.

Section 116. Remuneration other than wages.

Section 116A. Priority of wages over other debts.

Section 116B. Reference by the Court to Director.

Section 116C. Liability of principals and contractors for wages.

CHAPTER XIVA - EMPLOYMENT OF NON - RESIDENT EMPLOYEE.

Section 117. [Deleted.]

Section 118. Employment of non resident employee and priority for resident employee.

Section 118A. Duty to furnish information and returns.

Section 118B. Director may inquire into complaint.

Section 118C. Prohibition on termination of resident employee for non-resident employee.

Section 118D. Termination of employment by reason of redundancy.
Section 118E. Permanent resident exempted from this Chapter.

Section 119. [Deleted].

Section 120. [Deleted].

Section 121. [Deleted].

PART V - PROCEDURE, OFFENCES, PENALTIES, RULES, SAVINGS AND REPEAL.

CHAPTER XVI - GENERAL.

Section 122. [Deleted].

Section 123. [Deleted].

Section 123A. Prosecution.

Section 123B. Power of court imposing fine.

Section 123C. Effect of imprisonment.

Section 124. Right of audience.

Section 125. Public servants.

Section 125A. Protection of Director and officers.

Section 126. [Deleted].

Section 127. Saving clause as to civil jurisdiction of court.

Section 128. Onus of proof.

Section 129. Service of summons.

Section 129A. Incapacity of Director hearing inquiry.

Section 130. [Deleted].

CHAPTER XVIA - OFFENCES AND PENALTIES.

Section 130A. Under sections 3 to 6.

Section 130B. Offence in connection with inquiry or inspection.

Section 130C. Under Chapter IIA.

Section 130D. Under Chapter IV.

Section 130E. Under Chapter X.

Section 130F. Under Chapter XI.

Section 130G. Under Chapter XIA.

Section 130H. Under Chapter XIB.

Section 130I. Under Chapter XII.

Section 130J. Under Chapter XIV.

Section 130K. Penalties for failure or noncompliance in relation to rest days, overtime, holidays, annual leave and sick leave.

Section 130L. Under Chapter XIVA.

Section 130M. General penalty.

Section 130N. Power to compound offences.

CHAPTER XVIB - RULES.

Section 130O. Power to make rules.

Section 131. Existing Ordinances not affected.

Section 132. Saving and transitional of contracts, etc., entered into before this Ordinance.

SCHEDULE: [Subsection (2) of section 2]
Long Title
To amend and consolidate the law relating to labour [Ord. No. 18 of 1949].

Part I
Labour Department

CHAPTER I - PRELIMINARY AND INTERPRETATION

1 Short title
This ordinance may be cited as the Labour Ordinance.

2 Interpretation
(1) In this Ordinance, unless the context otherwise requires—

"adopted", in reference to any child, means—

(a) a child adopted, or whose adoption has been registered in accordance with the provisions of any written law relating to the adoption of children from time to time in force in Sabah; or

(b) where there is no such written law, a child whom the Director has certified as having been adopted in accordance with religion, custom or usage;

"agricultural undertaking" means any work in which any employee is employed under a contract of service for the purposes of agriculture, aquaculture, horticulture, silviculture or landscaping, fisheries, livestock husbandry, the rearing, hunting or capturing of wild animals, birds, insects, reptiles, amphibians or worms or the collection of the produce of plants or trees;

"apprenticeship contract" means a written contract entered into by a person with an employer who undertakes to employ the person and train or have him trained systematically for a trade for a specified period which shall not be less than two years in the course of which the apprentice is bound to work in the employer's service;

"approved amenity or approved service" means any amenity or service—

(a) approved by the Director under subsection (2) of section 116 on application made to him by an employer for its inclusion in a contract of service; or

(b) provided for in any award made by the Industrial Court or in any collective agreement;

"approved incentive payment scheme" means an incentive payment scheme approved by the Director upon an application made to him in writing by an employer under and for the purposes of the interpretation of ordinary rate of pay under this section;

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

"collective agreement" has the same meaning assigned thereto as in the Industrial Relations Act 1967; [Act 177]

"confinement" means parturition resulting after at least twenty-eight weeks of pregnancy in the issue of a child or children, whether alive or dead, and shall for the purposes of this Ordinance commence and end on the actual day of birth and where two or more children are born at one confinement shall commence and end on the day of the birth of the last-born of such children, and the word "confined" shall be construed accordingly;

"constructional work" includes the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, dredge, wireless, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork or other work of construction, as well as preparation for, or the laying of, the foundations of any such work or structure, and also any earthworks both in excavation and in filling;

"contract of service" means any agreement, whether oral or in writing and whether express or implied, whereby one person agrees to employ another as an employee and that other agrees to serve his employer as an employee and includes an apprenticeship contract;

"contractor" means any person who contracts with a principal to carry out the whole or any part of any work undertaken by the principal in the course of or for the purposes of the principal’s trade or business;

"day" means—

(a) a continuous period of twenty-four hours beginning at midnight; or

(b) for the purposes of Chapter XIV in respect of an employee engaged in shift work or in work where the normal hours of work extend beyond midnight, a continuous period of twenty-four hours beginning at any point of time;
"dependant" means—

(a) the husband;

(b) the wife or wives;

(c) a child, step-child or adopted child, who is unmarried and under the age of eighteen years;

(d) natural or legally adoptive parents,

of an employee;

"Director" means the Director of Labour appointed by virtue of subsection (1) of section 3;

"domestic servant" means a person employed in connection with the work of a private dwelling-house and not in connection with any trade, business, or profession carried on by the employer in such dwelling-house and includes a cook, house-servant, butler, child's nurse, valet, footman, gardener, washerwoman, watchman, groom and driver or cleaner of any vehicle licensed for private use;

"employee" means any person or class of persons—

(a) included in any category in the Schedule to the extent specified therein; or

(b) in respect of whom the Minister makes an order under subsection (7) of section 2A;

"employer" means any person who has entered into a contract of service to employ any other person as an employee and includes the agent, manager or factor of such first-mentioned person, and the word "employ", with its grammatical variations and cognate expressions, shall be construed accordingly;

"entertainment" includes any exhibition or performance;

"family" means the husband or the wife or wives of an employee, and his children, step children and adopted children who are unmarried and under the age of eighteen years;

"forestry undertaking" means—

(a) any work or occupation involved in the logging, transportation, processing, storage and utilization of timber or the manufacture of timber products;

(b) any work or activity relating to the taking of forest produce; or

(c) any work or occupation involved in forest plantation, reafforestation, silviculture and horticulture;

"guardian", in relation to a child or young person, includes any person who, in the opinion of the Court having cognizance of any case in relation to the child or young person or in which the child or young person is concerned, has for the time being the charge of or control over the child or young person;

"hourly rate of pay" means the ordinary rate of pay divided by the normal hours of work;

"Industrial Court" has the same meaning assigned thereto in the Industrial Relations Act 1967;

"industrial undertaking" means—

(a) mines, quarries and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, published or printed or bound, adapted for sale, broken up or demolished, packed or otherwise prepared for delivery or in which materials are transformed, or minerals treated including shipbuilding, and the generation, transformation and transmission of electricity and motive power of any kind;

(c) constructional work;

(d) transport of passengers or goods by road, rail, water or air including the handling of goods at docks, quays, wharves, warehouses, bulking installations, airports or airstrips;

(e) any industry, establishment or undertaking, or any other activity, service or work, which the Minister may by order declare to be an industrial undertaking;

"medical officer" means a registered medical practitioner who is employed in a medical capacity by the Federal Government or the Government of a State;

"Minister" means the Minister responsible for labour matters;

"non-resident employee" means any person who does not belong to Sabah as provided for in section 71 of the Immigration Act 1959/1963; [Act 155]

"normal hours of work" means the number of hours of work, not exceeding the limit prescribed in subsection (1) of section 104, as agreed between an employer and an employee in the contract of service to be the usual hours of work per day;
“ordinary rate of pay” means wages whether calculated by the month, the week, the day, the hour, or by piece rate, or otherwise, which an employee is entitled to receive under the terms of his contract of service for the normal hours of work for one day, but does not include any payment made under an approved incentive payment scheme or any payment for work done on a rest day or on any gazetted public holiday granted by the employer under the contract of service or any day substituted for the gazetted public holiday;

“overtime” means the number of hours of work carried out in excess of the normal hours of work per day, and includes, if any work is carried out after the spread over period of ten hours, the whole period beginning from the time that such spread over period ends up to the time that the employee ceases work for the day;

“part-time employee” means a person included in the Schedule whose average hours of work as agreed between him and his employer do not exceed seventy per centum of the normal hours of work of a full-time employee employed in a similar capacity in the same enterprise whose normal hours of work are calculated with reference to a day, a week, or any other period as may be specified by rules under Chapter XVIB;

“place of employment” means any place where work is carried on for an employer by an employee;

“principal” means any person who in the course of or for the purposes of his trade or business contracts with a contractor for the execution by or under the contractor of the whole or any part of any work undertaken by that person;

“recruit” means to procure, engage, hire or supply or undertake to procure, engage, hire or supply employees for the purpose of being employed by the recruiter or by any other person, where such employee does not spontaneously offer his services at the place of employment or at a public employment office or at an office conducted by an employers’ organisation and supervised by the Government;

“registered medical practitioner” means a medical practitioner registered under the Medical Act 1971; [Act 50.]

“repatriation” means, in the case of a non-resident employee, the return of an employee to his country or State of origin, and in the case of a resident employee recruited from Sabah, to a place he specifies to his employer at the time of recruitment.

“shift work” means work which by reason of its nature requires to be carried on continuously or continually, as the case may be, by two or more shifts;

“ship” includes any vessel of any nature, engaged in maritime navigation whether publicly or privately owned, but does not include a ship of war;

“subcontractor” means any person who contracts with a contractor for the execution by or under that person of the whole or any part of any work undertaken by the contractor for his principal, and includes any person who contracts with a subcontractor to carry out the whole or any part of any work undertaken by the subcontractor for a contractor;

“subcontractor for labour” means any person who contracts with a contractor or subcontractor to supply the labour required for the execution of the whole or any part of any work which a contractor or subcontractor has contracted to carry out for a principal or contractor, as the case may be;

“underground work” means any undertaking in which operations are conducted for the purpose of extracting any substance from below the surface of the earth, the ingress to and egress from which is by means of shafts, adits or natural caves;

“wage period” means the period in respect of which wages earned by an employee are payable;

“wages” means basic wages and all other payments in cash payable to an employee for work done in respect of his contract of service but does not include—

(a) the value of any house accommodation or the supply of any food, fuel, light or water or medical attendance, or of any approved amenity or approved service;

(b) any contribution paid by the employer on his own account to any pension fund, provident fund, superannuation scheme, retrenchment, termination, lay-off or retirement scheme, thrift scheme, or any other fund or scheme established for the benefit or welfare of the employee;

(c) any travelling allowance or the value of any travelling concession;

(d) any sum payable to the employee to defray special expenses entailed on him by the nature of his employment;

(e) any gratuity payable on discharge or retirement; or

(f) any annual bonus or any part of any annual bonus;

“week” means a continuous period of seven days;

“woman” means a female of the age of eighteen years or above;

“young person” means a person who has ceased to be a child but has not attained the age of eighteen years.

(2) For the purposes of Chapter XI, a person is deemed to be taking part in an entertainment when such person is employed in or connected with such entertainment whether as a performer, stagehand or musician.

(3) Where an employee is employed on—

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(a) a monthly rate of pay, the ordinary rate of pay per day shall be calculated according to the following formula:

\[
\text{monthly rate of pay} = \frac{\text{26}}{}.
\]

(b) a weekly rate of pay, the ordinary rate of pay per day shall be calculated according to the following formula:

\[
\text{weekly rate of pay} = \frac{\text{6}}{}.
\]

(c) a daily rate of pay or on piece rates, the ordinary rate of pay shall be calculated by dividing the total wages earned by such employee during the preceding wage period (excluding any payment made under an approved incentive payment scheme or for work done on any rest day, any gazetted public holiday granted by the employer under the contract of service or any day substituted for the gazetted public holiday) by the actual number of days the employee had worked during that wage period (excluding any rest day, any gazetted public holiday or any paid holiday substituted for the gazetted public holiday).

(4) For the purposes of payment of sick leave under section 104E, the calculation of the ordinary rate of pay of an employee employed on a daily rate of pay or on piece rate under paragraph (c) of subsection (3) shall take account only of the basic pay the employee receives or the rate per piece he is paid for work done in a day under the contract of service.

(5) An employer may adopt any method or formula other than the method or formula in subsection (3) for calculating the ordinary rate of pay of an employee; but the adoption of any other method or formula shall not result in a rate which is less than any of the rates calculated using the method or formula in that subsection.

(6) The Minister may by order amend the Schedule.

(7) The Minister may by order declare such provisions of this Ordinance and any other written law as may be specified in the order to be applicable to any person or class of persons employed, engaged or contracted with to carry out work in any occupation in any agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work, and upon the coming into force of any such order—

(a) any person or class of persons specified in the order shall be deemed to be an employee or employees;
(b) the person employing, engaging or contracting with every such person or class of persons shall be deemed to be an employer;
(c) the employer and the employee shall be deemed to have entered into a contract of service with one another;
(d) the place where such employee carries on work for his employer shall be deemed to be a place of employment; and
(e) the remuneration of such employee shall be deemed to be wages,

for the purposes of such specified provisions of this Ordinance and any other written law.

(8) The Minister may make rules in respect of the terms and conditions upon which the person or class of persons specified pursuant to subsection (7) may be employed.

(9) Notwithstanding the provisions of this Ordinance, the Minister may make rules—

(a) in respect of the terms and conditions of service of a part-time employee; and
(b) prescribing the manner in which the hours of work of an employee are to be computed for the purposes of determining whether that employee falls within the definition of a "part-time employee".

(10) The Minister may, from time to time, by notification published in the Gazette, declare any particular industry, establishment or undertaking, or any class, category or description of industries, establishments or undertakings or any particular activity, service or work, or any class, category or description of activities, services or works, to be an industrial undertaking for the purposes of this Ordinance.

[Subs. Act A1238:s.3]

Former ordinance reads:

For the purpose of this Ordinance save where the context otherwise requires—

*agreement* means an oral engagement to work entered into in accordance with the provisions of this Ordinance;

*apprentice* means any person of either sex who has contracted to serve an employer and to learn and be taught any business, trade, manufacture, undertaking, calling or employment in which workers are employed;

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

*confined* means the delivery of a child;

*contract* means a written engagement to work entered into in accordance with the provisions of this Ordinance;

*dependant* means the wife or wives of a worker and his children who are unmarried and under the age of sixteen years and any aged or incapacitated relative entirely dependent upon him and living with him;
*domestic servant* means any house, stable or garden servant or car driver employed in, or in connection with, the domestic services of any public or private dwelling-house, eating house, club, and others.

(note: text cannot see)

*employer* includes:

(a) the Government of the Federal and State Government;

(b) the Government of any Member of the Commonwealth in respect of any worker, whose agreement or contract of service was made in the colony; and

(c) any person or body of person corporate or incorporate and the legal personal representative of a deceased employer who or which enters into any agreement or contract with any worker and the duly authorised agent or manager of such person or body of persons,

and where any such person or government (hereinafter referred to as the principal) in the course of or for the purpose of his or its trade, business or operations enters into any agreement or contract with any other person (hereinafter referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal shall be held to be the employer;

*family* means the wife or wives of a worker and his children who are unmarried and under the age of fourteen years.

*Health Officer* means the Director of Medical Services and includes any officer to whom, by writing under his hand, he delegates the exercise or performance of all or any of the powers or duties conferred or imposed on the Health Officer by this Ordinance to the extent of the powers or duties so delegated.

*immigrant worker* means any worker whose passage to the Colony has been provided in consideration of a promise to perform work in the Colony;

*industrial undertaking* means—

(a) mines, quarries and other works for the extraction of minerals from the earth;

(b) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed, including shipbuilding, and the generation, transformation and transmission of electricity and motive power of any kind;

(c) construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork or other work of construction, as well as the preparation for or laying the foundation of any such work or structure;

(d) transport of passengers or goods by road or rail, or inland waterways, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

Provided that if, having regard to the nature of the work involved in any occupation which forms part of the industrial undertakings, the minister considers that such occupation should be excluded from the provisions of this Ordinance relating to industrial occupations, he may declare, by order, that employment in such occupation shall be deemed not to be employment in an industrial undertakings for the purpose of this Ordinance;

Provided further that any undertaking of which a part only is an industrial undertakings shall not for that reason alone be deemed to be an industrial undertakings.

*mine* includes any undertaking whether public or private for the extraction of any substance from under the surface of the earth;

*native* means any person of a race or tribe indigenous to the Colonies of North Borneo, Sabah, or Sarawak or the State of Brunei;

*place of employment* means any place where work is carried on by or on behalf of any employer;

*recruit* with its grammatical variations and cognate expressions means to procure, engage, hire, or supply or undertake or attempt to procure, engage, hire or supply workers for the purpose of being employed by the recruiter or by any other person, where such worker does not spontaneously offer his services at the place of employment or at a public employment office or at an office conducted by an employers' organisation and supervised by the Government of the Federation;

*repatriation* means the return of a worker to his country of domicile or origin and includes the return to his home of a worker who has been brought to a place of employment by an employer from any other place within the Colony;

*shift worker* means a worker who is doing work which by reason of its nature requires to be carried on continuously by a succession.

*ship* includes any vessel or boat of any nature whatsoever, engaged in maritime navigation whether publicly or privately owned but does not include a ship of war;

*woman* means a female of the age of eighteen years or upwards;

*worker* means a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner or other person engaged in manual labour or in recruiting such or in supervising in person any in and throughout the performance of his work, who has entered into and works under an agreement or contract with an employer and includes an immigrant worker and any person other than clerical staff, employed in the operation or maintenance of mechanically propelled vehicles used for the transport of passengers or goods for hire or for commercial purposes, but does not include an apprentice or domestic servant;

*worker - recruiter* means a person who, being employed as a worker, is authorised in writing by his employer to recruit, but who does not receive any remuneration or other advantage for such recruiting;

*young person* means a person who has ceased to be a child but who is under the age of eighteen years.

**2A Minister may prohibit employment other than under contract of service**

(1) The Minister may by order prohibit the employment, engagement or contracting of any person or class of persons to carry out work in any occupation in any agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work other than under a contract of service entered into with the principal or owner of that agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work.

(2) Upon the coming into force of any such order, the person or class of persons employed, engaged, or contracted with to carry out the work shall be deemed to be an employee or employees and the principal or owner of the agricultural, forestry or industrial undertaking, constructional work, trade, business or place of work, shall be deemed to be the employer for the purposes of such provisions of this Ordinance and any other written law as may be specified in the order.

(3) Notwithstanding subsection (1), the Minister may by order approve the employment of any person or class of persons by such other person or class of persons (not being the principal or owner) as he may specify but subject to such conditions as he may deem fit to impose.

(4) Any person who contravenes any order made under this section commits an offence.
2B General power to exempt or exclude

The Minister may by order exempt or exclude, subject to such conditions as he may deem fit to impose, any person or class of persons from all or any of the provisions of this Ordinance.

CHAPTER II - OFFICERS

3 Commissioner of Labour and other officers

(1) The Minister may appoint an officer to be styled the Director of Labour, hereinafter referred to as the "Director".

(1A) The Minister may appoint, to such number as he considers necessary for carrying out the provisions of this Ordinance, officers of the following categories that is to say:

(a) Deputy Directors of Labour;
(b) Senior Assistant Directors of Labour;
(c) Assistant Directors of Labour; and
(d) Labour Officers and such other officers.

(1B) Subject to such limitations, if any, as may be prescribed by rules made under this Ordinance, any officer appointed under subsection (1A) shall perform all the duties imposed and may exercise all the powers conferred upon the Director by this Ordinance, and every duty so performed and power so exercised shall be deemed to have been duly performed and exercised for the purposes of this Ordinance.

(2) Any person affected by any decision or order, other than an order under Chapter IIA, given or made by an officer appointed under subsection (1A) may, if he is dissatisfied with such decision or order, within fourteen days of such decision or order being communicated to him, appeal in writing therefrom to the Director.

(3) If any employer is dissatisfied with any decision or order made or given by the Commissioner of Labour either original or by virtue of the preceding sub-section, he may appeal from such decision or order to the Minister within fourteen days of the date of such decision or order being communicated to him.

3A Officers to be authorized by Director

An officer appointed under subsection (1A) of section 3 shall not exercise any of the powers of the Director under this Ordinance unless he is in possession of an official identification signed by the Director authorizing him to exercise such powers, and any officer so authorized shall produce his official identification on demand to the owner or occupier of the place of employment and to the employer of any employees employed thereat.

4 Powers of inspection and inquiry

(1) The Director shall have power to enter without prior notice at all times any place of employment where employees are employed or where he has reasonable grounds for believing that employees are employed and to inspect any building occupied or used for any purpose connected with such employment and to make any inquiry which he considers necessary in relation to any matter within the provisions of this Ordinance.

(2) In the course of an inspection under subsection (1)—

(a) the Director may put questions concerning the employees to the employer or to any person who may be in charge of them, or to the employees themselves or any other person whom he believes to be acquainted with the facts and circumstances of any matter within the provisions of this Ordinance;

(b) the employer or such person, or any such employee, or any such other person shall be legally bound to answer such questions truly to the best of his ability;
(c) a statement made by a person under this section shall, whenever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any correction he may wish; and

(d) any statement made and recorded under this section shall be admissible as evidence in any proceedings in Court.

[Subs. Act A1238:s.7]

(3) If the Commissioner has reasonable ground for suspecting that any offence has been committed against an employee, and whenever any complaint of personal ill-usage or breach of any of the provisions of this Ordinance is made to the Commissioner, the Commissioner may forthwith remove, or cause to be removed, such employee from the place of employment where he is employed for further enquiry into the matter.

[Am.Act A1238:s.2,s.7]

(4) The Commissioner may by order in writing require any employer to take within such reasonable time as the Commissioner may determine such steps as he considers necessary with a view to remediing defects observed in plant, layout, working methods, supervision, medical or sanitary provision or other matters at any place of employment which he may have reasonable cause to believe constitute a threat to the health or safety of the employees.

[Am.Act A1238:s.2,s.7]

5 Inspection of documents

(1) The Commissioner may---

[Am.Act A1238:s.8]

(a) require the employer to produce before him all or any of the employees employed by him together with any contracts of service, books of account of wages, registers and other documents relating to the employees or their employment and to answer such questions in respect of the employees or their employment as he may think fit to ask;

[Subs. Act A1238:s.8]

(b) take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purposes;

[Am.Act A1238:s.8]

(c) copy or make extracts from the contracts of service, books of account of wages, registers and other documents relating to the employees or their employment;

(d) take possession of the contracts of service, books of account of wages, registers and other documents relating to the employees or their employment where, in his opinion---

(i) the inspection, copying or the making of extracts from the contracts of service, books of account of wages, registers or other documents cannot reasonably be undertaken without taking possession of them;

(ii) the contracts of service, books of account of wages, registers or other documents may be interfered with or destroyed unless he takes possession of them; or

(iii) the contracts of service, books of account of wages, registers or other documents may be needed as evidence in any legal proceedings under this Ordinance.

(2) Notwithstanding paragraph (a) of subsection (1), no employee shall be required to leave or to cease from performing any work on which he is engaged if his absence or cessation from such work would endanger life or property or seriously disrupt any operation being carried on by his employer.

[Ins. Act A1238:s.8]
(a) call for and examine all contracts, registers, books of account and other documents concerning any worker or relating to their employment; and
(b) take or remove for purposes of analysis samples of materials and substances used or handled, subject to the employer or his representative being notified of any samples or substances taken or removed for such purposes.

6 Power of summons and institution of proceedings

(1) Whenever the Commissioner has reasonable grounds for suspicion that any offence under this Ordinance or any rule made hereunder has been committed or is about to be committed or wishes to enquire into any matter concerning terms and conditions of employment or any other matter relating to employer and worker dealt with under the provisions of this Ordinance, or any rules made hereunder the Commissioner may summon any person whom he has reason to believe can give information respecting the subject-matter of the enquiry, and the person so summoned shall be legally bound to attend at the time and place specified in the summons and to answer truthfully all questions which the Commissioner may put to him.

[Am. Act A1238:s.9]

(1A) The Director may issue to the employer such order as may be necessary or expedient to resolve the matters dealt with under subsection (1).

[Ins. Act A1238:s.9]

(2) If the Commissioner is of opinion that an offence has been committed or that any complaint is well founded he may institute such criminal proceedings as he shall deem necessary in the circumstances.

[Am. Act A1238:s.9]

(3) A summons issued under this section shall be in such form as may be prescribed.

[Ins. Act A1238:s.9]

7A Director's power to inquire into complaints

(1) The Director may inquire into and decide any dispute between an employee and his employer in respect of wages or any other payment in cash due to such employee under—

(a) any term of the contract of service between such employee and his employer;
(b) any of the provisions of this Ordinance or any subsidiary legislation made thereunder; or
(c) the provisions of the Wages Councils Act 1947 [Act 195] or any order made thereunder,

and, in pursuance of such decision, may make an order in the prescribed form for the payment by the employer of such sum of money as he deems just without limitation of the amount of such sum of money.

(2) The powers of the Director under subsection (1) shall include the power to hear and decide, in accordance with the procedure laid down in this Chapter, any claim by—

(a) an employee against any person liable under section 116C;
(b) a subcontractor for labour against a contractor or subcontractor for any sum of money which the subcontractor for labour claims to be due to him in respect of any labour provided by him under his contract with the contractor or subcontractor; or
(c) an employer against his employee in respect of indemnity due to such employer under subsection (1) of section 12;

and to make such consequential orders as may be necessary to give effect to his decision.
(3) In addition to the powers conferred by subsections (1) and (2), the Director may inquire into and confirm or set aside any decision made by an employer to dismiss without notice, or downgrade or impose any other lesser punishment made by an employer under subsection (1) of section 13 and the Director may make such consequential orders as may be necessary to give effect to his decision:

Provided that if the decision of the employer under paragraph (a) of subsection (1) of section 13 is set aside, the consequential order made by the Director against such employer shall be confined to payment of indemnity in lieu of notice and other payments that the employee is entitled to as if no misconduct was committed by the employee:

Provided further that the Director shall not set aside any decision made by an employer when any other lesser punishment is imposed by an employer under paragraph (c) of subsection (1) of section 13 if such decision has not resulted in any loss in wages or other payments payable to the employee under his contract of service:

And provided further that the Director, shall not exercise the power conferred by this subsection unless the employee has made a complaint to him under the provisions of this Chapter within sixty days from the date on which the decision under section 13 is communicated to him either orally or in writing by his employer.

(4) An order made by the Director for the payment of money under this section shall carry interest at the rate of eight per centum per annum, or at such other rate not exceeding eight per centum per annum as the Director may direct, the interest to be calculated commencing on the thirty-first day from the date of the making of the order until the day the order is satisfied:

Provided that the Director, on an application by an employer made within thirty days from the date of the making of the order, if he is satisfied that special circumstances exist, may determine any other date from which the interest is to be calculated.

[Ins. Act A1238:s.11]

7B Limitation on power conferred by 7A

Notwithstanding section 7A, the Director shall not inquire into, hear, decide or make any order in respect of any claim, dispute or purported dispute which, in accordance with the Industrial Relations Act 1967—

(a) is pending in any inquiry or proceedings under that Act;

(b) has been decided upon by the Minister under subsection (3) of section 20 of that Act; or

(c) has been referred to, or is pending in any proceedings before, the Industrial Court.

[Ins. Act A1238:s.11]

7C Additional powers of Director to inquire into complaints

(1) Notwithstanding the provisions of this Ordinance, the powers of the Director under paragraph (a) of subsection (1) of section 7A shall extend to employees whose wages per month exceed two thousand five hundred ringgit but does not exceed five thousand ringgit.

(2) For the purposes of this section, the term "wages" means wages as defined in section 2 but does not include any payment by way of commission, subsistence allowance or overtime payment.

(3) Save for this Chapter and Chapter XVI which shall apply with the necessary modifications, the other provisions of this Ordinance shall not apply to the employees referred to in subsection (1).

[Ins. Act A1238:s.11]

7D Claims for indemnity for termination of contract without notice

(1) In the exercise of his powers under subsection (1) of section 7C, the Director may inquire into and decide any claim concerning any indemnity due to the employer or the employee where the contract of service is terminated by either party without notice, or if notice was given, without waiting for the expiry of that notice.

(2) The indemnity due to the employer or employee under subsection (1) shall be a sum equal to the amount of wages which would have accrued to the employee during the term of the notice or during the unexpired term of the notice.

[Ins. Act A1238:s.11]

7E Order of Director may be in writing

Notwithstanding subsection (1) of section 7A, an order of the Director made under subsection (1) of section 7C or subsection (1) of section 7D for the payment by or to the employer or employee of a sum of money as the Director deems just, without any limitation of amount, may be made in writing.

[Ins. Act A1238:s.11]

7F Procedure in Director’s inquiry

The procedure for disposing of questions arising under sections 7A, 7C and 7D shall be as follows:

(a) the person complaining shall present to the Director a written statement of his complaint and of the remedy which he seeks or he shall in person make a statement to the Director of his complaint and of the remedy which he seeks;
(b) the Director shall as soon as practicable thereafter examine the complainant on oath or affirmation and shall record the substance of the complainant’s statement in his case book;

(c) the Director may make such inquiry as he deems necessary to satisfy himself that the complaint discloses matters which in his opinion ought to be inquired into and may summon in the prescribed form the person complained against, or if it appears to him without any inquiry that the complaint discloses matters which ought to be inquired into he may forthwith summon the person complained against:

Provided that if the person complained against attends in person before the Director it shall not be necessary to serve a summons upon him;

(d) when issuing a summons to a person complained against, the Director shall give such person notice of the complaint made against him and the name of the complainant and shall inform him of the date, time and place at which he is required to attend and shall inform him that he may bring with him any witnesses he may wish to call on his behalf and that he may apply to the Director for summonses to such persons as appear to him to be necessary;

(e) when the Director issues a summons to a person complained against, he shall inform the complainant of the date, time and place mentioned therein and shall instruct the complainant to bring with him any witnesses he may wish to call on his behalf, and may on the request of the complainant and subject to any condition as he may deem fit to impose, issue summonses to such witnesses to appear on behalf of the complainant;

(f) when at any time before or during an inquiry, the Director has reason to believe that there are any persons whose financial interests are likely to be affected by such decision as he may give on completion of the inquiry or whom he has reason to believe have knowledge of the matters in issue or can give any evidence relevant thereto, he may summon any or all of such persons;

(g) the Director shall, at the time and place appointed, examine on oath or affirmation those persons summoned or otherwise present whose evidence he deems material to the matters in issue and shall then give his decision on the matters in issue;

(h) if the person complained against or any person whose financial interests the Director has reason to believe are likely to be affected and who has been duly summoned to attend at the time and place appointed in the summons fails so to attend, the Director may hear and decide the complaint in the absence of such person notwithstanding that the interests of such person may be prejudicially affected by his decision;

(i) in order to enable a court to enforce the decision of the Director, the Director shall embody his decision in an order in such form as may be prescribed.

[Ins. Act A1238:s.11]

7G Director’s record of inquiry

The Director shall keep a case book in which he shall record the evidence of persons summoned or otherwise present and his decision and order in each matter in issue before him and shall authenticate the same by attaching his signature thereto and the record in such case book shall be sufficient evidence of the giving of any decision;

and any person interested in such decision or order shall be entitled to a copy thereof free of charge and to a copy of the record upon payment of the prescribed fee.

[Ins. Act A1238:s.11]

7H Joinder of several complaints in one complaint

Where it appears to the Director in any proceedings under this Chapter that there are more employees than one having a common cause for complaint against the same employer or person liable, it shall not be necessary for each employee to make a separate complaint under this Chapter, but the Director may, if he thinks fit, permit one or more of them to make a complaint and to attend and act on behalf of and generally to represent the others, and the Director may proceed to a decision on the joint complaint or complaints of each and all such employees:

Provided that, where the Director is of the opinion that the interests of the employer or person liable are likely to be prejudiced by the non-attendance of any employee, he shall require the personal attendance of such employee.

[Ins. Act A1238:s.11]

7I Prohibitory order by Director to third party

(1) Whenever the Director shall have made an order under section 7A, 7C or 7D against any employer or any person liable for the payment of any sum of money to any employee or subcontractor for labour and the Director has reason to believe that there exists between such employer or person liable and any other person a contract, not necessarily a contract as defined in section 2, in the course of the performance of which the employee or subcontractor performed the work in respect of which the order was made, the Director may summon such other person and, if after enquiry he is satisfied that such a contract exists, may make an order in the prescribed form prohibiting him from paying to the employer or person liable and requiring him to pay to the Director any money (not exceeding the amount found due to such employee or subcontractor for labour) admitted by him to be owing to the employer or person liable in respect of such contract:

Provided that where such other person admits to the Director in writing that money is owing by him under such contract to the employer or person liable he need not be summoned to attend before the Director and the Director may make such order in his absence:

Provided further that where such other person is liable as a principal under subsection (1) of section 116C to pay any wages
due by the employer or person liable and where the money admitted by him to be owing to the employer or person liable is not sufficient to pay the whole of such wages, nothing in this subsection shall relieve him of his liability for the balance of such wages up to the amount for which he is liable under proviso (b) of subsection (1) of section 116C.

(2) The payment of any money in pursuance of an order under subsection (1) shall be a discharge and payment up to the amount so paid of money due to the employer or person liable under the contract.

[Ins. Act A1238: s.11]

7J No fees for summons; service of summons

(1) No fee shall be charged by the Director in respect of any summons issued by him under this Chapter.

(2) Any such summons may be served by a Sessions Court or a Magistrates’ Court on behalf of the Director or in such other manner, and by such person, as the Director may deem fit.

[Ins. Act A1238: s.11]

7K Enforcement of Director’s order by Sessions Court

Where any order has been made by the Director under this Chapter, and the same has not been complied with by the person to whom it is addressed, the Director may send a certified copy thereof to the Registrar of a Sessions Court, or to the Court of a First Class Magistrate, having jurisdiction in the place to which the order relates or in the place where the order was made, and the Registrar or Court, as the case may be, shall cause the copy to be recorded and thereupon the order shall for all purposes be enforceable as a judgment of the Sessions Court or of the Court of the First Class Magistrate, as the case may be, notwithstanding that the same may in respect of amount or value be in excess of the ordinary jurisdiction of the said Court:

Provided that no sale of immovable property shall for the purposes of such enforcement be ordered except by the High Court.

[Ins. Act A1238: s.11]

7L Submission by Director to High Court on point of law

(1) In any proceedings under this Chapter the Director may, if he thinks fit, submit any question of law for the decision of a Judge of the High Court and if he does so he shall decide the proceedings in conformity with such decision.

(2) An appeal shall lie to the Court of Appeal from any decision of a Judge under subsection (1).

[Ins. Act A1238: s.11]

7M Appeal against Director’s order to High Court

(1) If any person whose financial interests are affected is dissatisfied with the decision or order of the Director under section 7A, 7C, 7D or 7I, such person may appeal to the High Court.

(2) Subject to any rules made under section 4 of the Subordinate Courts Rules Act 1955, [Act 55] the procedure in an appeal to the High Court shall be the procedure in a civil appeal from a Sessions Court with such modifications as the circumstances may require.

7N Employee’s remedy when employer about to abscond

(1) If any employee complains to a Magistrate that he has reasonable grounds for believing that his employer, in order to evade payment of his wages, is about to abscond, the Magistrate may summon such employer and direct him to show cause why he should not be required to give security by bond to remain in the State until such wages are paid; and if, after hearing the evidence of such employer, the Magistrate decides that such bond shall be given, the Magistrate may order such employer to give security by bond in such sum as to the Magistrate seems reasonable, that he will not leave the State until the Magistrate is satisfied that all the just claims of such employee against him for wages have been paid or settled.

(2) If the employer fails to comply with the terms of such order to give security, he shall be detained in prison until arrangements have been made to the satisfaction of the Magistrate for settling the claims of such employee:

Provided that—

(a) such employer shall be released at any time by the committing Magistrate on security being furnished or on his paying either the whole or such part as to the Magistrate seems reasonable of all just claims of such employee against him for wages or on filing of a petition in bankruptcy by or against him; and

(b) in no case shall the period of such detention exceed three months.

(3) The bond to be given by an employer shall be a personal bond with one or more sureties, and the penalty for breach of the bond shall be fixed with due regard to the circumstances of the case and the means of the employer.

(4) If on or after a complaint by any employee under subsection (1) it appears to the Magistrate that there is good ground for believing that the employer complained against has absconded or is absconding or is about to abscond, the Magistrate may issue a warrant for the arrest of such employer and such employer shall be detained in custody pending the hearing of the complaint unless he finds good and sufficient security to the satisfaction of the Magistrate for his appearance to answer the complaint.

(5) For the purposes of this section, a certificate purporting to be signed by the Director and issued to the Magistrate to the
effect that wages claimed have been paid or settled shall be sufficient evidence of the payment or settlement thereof.

[Ins. Act A1238:s.11]

7O Examination on summons by the Director

Any person summoned by the Director under this Chapter shall be legally bound to attend at the time and place specified in the summons and to answer truthfully all questions which the Director may put to him.

[Ins. Act A1238:s.11]

7P Right of employee to appear before the Director

No employer shall prevent or attempt to prevent any employee from appearing before the Director in pursuance of this Chapter.

[Ins. Act A1238:s.11]

CHAPTER III - [Deleted]

8 [Deleted]

[Deleted by Act A1238:s.12]

[Former ordinance reads:]

Section II. Power to make rules

(1) The Minister -in-Council may make rules generally for carrying out the provisions of this Part.

(2) Such rules may provide for any matter which by this Part is to be, or may be, prescribed.

(3) Any such rule may provide a penalty for the breach or contravention thereof not exceeding a fine of two hundred dollars or in default thereof imprisonment for three months.

Part II

Contracts Of Service

CHAPTER IV - TERMS AND CONDITIONS

9 More favourable conditions of service under the Ordinance to prevail

Subject to section 9A, any term or condition of a contract of service or of an agreement, whether such contract of service was entered into before or after the coming into force of this Ordinance, which provides a term or condition of service which is less favourable to an employee than a term or condition of service prescribed by this Ordinance or any rules, order or other subsidiary legislation made thereunder shall be void and of no effect to that extent and the more favourable provisions of this Ordinance or any rules, order or other subsidiary legislation made thereunder shall be substituted therefor.

[Subs.by Act A1238:s.15]

[Former ordinance reads:]

Section II. Terms of agreement

An agreement may be entered into for any period not exceeding one month, or for any number of days' work not exceeding twenty six or for the performance by a worker of any specified piece of work capable of being completed within one month from the commencement of the work.

Provided that each party to an agreement for a period not exceeding one month shall on the termination of such agreement in the manner aforesaid be conclusively presumed to have entered into a fresh agreement upon the same terms and conditions as those of the agreement so terminated unless notice has been given previously by either party to such agreement in accordance with the provisions of section 11.

(2) In the absence of proof to the contrary every agreement shall be presumed to be for a period of one month.

9A Validity of any term or condition of service which is more favourable

Subject to any express prohibition under this Ordinance or any rules, order or other subsidiary legislation made thereunder, nothing in section 9 shall be construed as preventing an employer and an employee from agreeing to any term or condition of service under which an employee is employed, or shall render invalid any term or condition of service stipulated in any collective agreement or in any award of the Industrial Court, which is more favourable to the employee than the provisions of this Ordinance or any rules, order or other subsidiary legislation made thereunder.

[Ins. by Act A1238:s.16]

9B Removal of doubt in respect of matters not provided for by or under this Ordinance

For the removal of doubt, it is hereby declared that if no provision is made in respect of any matter under this Ordinance or any subsidiary legislation made thereunder, or if no rules, order or other subsidiary legislation has been made on any matter in respect of which rules, or an order or other subsidiary legislation may be made under this Ordinance, it shall not be construed as preventing such matter from being provided for in a contract of service, or from being negotiated upon between an employer and an employee.

[Ins. by Act A1238:s.16]

9C Contracts of service not to restrict rights of employees to join, participate in or organize trade
unions

Nothing in any contract of service shall in any manner restrict the right of any employee who is a party to such contract—

(a) to join a registered trade union;

(b) to participate in the activities of a registered trade union, whether as an officer of such union or otherwise; or

(c) to associate with any other persons for the purpose of organizing a trade union in accordance with the Trade Unions Act 1959. [Act 262].

[Ins. by Act A1238:s.16]

10 Guaranteed week

(1) In the case of an employee employed on a contract of service and paid according to the number of days' work performed an employer shall provide work suitable to the capacity of such employee for not less than six days in every week with the exception of gazetted public holidays and Sundays (or such other rest day as may be substituted for a Sunday by agreement between the employer and the employee, entered into not less than three days before the rest is taken) and if he is unable or fails to provide such work on such number of days wherein the employee presents himself for work and is fit to work the employer shall nevertheless be bound to pay to the employee in respect of each of such days, wages, including cost of living allowance, if any, at not less than his ordinary rate of pay, or if the employee is on piece rates at not less than the average of his previous weeks' earnings or if he has not been working, at the average rate during the last full weeks' work by similar class of employee engaged on similar work..

[Am. by Act A1238:s.2, 17]

(2) A contract of service shall be deemed to be breached by an employer if he fails to provide work or pay wages in accordance with subsection (1).

[Ins. by Act A1238:s.17]

[Former ordinance reads:]

(1) In the case of a worker employed on an agreement for a period of a week or more and paid according to to the number of days' work performed an employer shall provide work suitable to the capacity of such worker for not less than six days in every week with the exception of prescribed holidays and Sundays (or such other rest day as may be substituted for a Sunday by agreement between the employer and the worker, entered into not less than three days before the rest is taken) and if he is unable or fails to provide such work on such number of days wherein the worker presents himself for work and is fit to work the employer shall nevertheless be bound to pay to the worker in respect of each of such days, wages, including cost of living allowance, if any, at not less than his usual rate of pay, or if the worker is on piece rates at not less than the average of his previous weeks' earnings or if he has not been working, at the average rate during the last full weeks' work by similar class of worker engaged on similar work.

10A Provision as to termination of contracts

(1) A contract of service for a specified period of time or for the performance of a specified piece of work shall, unless otherwise terminated in accordance with this Chapter, terminate when the period of time for which such contract was made has expired or when the piece of work specified in such contract has been completed.

(2) A contract of service for an unspecified period of time shall continue in force until terminated in accordance with this Chapter.

[Ins. by Act A1238:s.18]

11 Termination of contract of service by notice

[Am. by Act A1238:s.19]

(1) Either party to a contract of service may at any time give to the other party notice of his intention to terminate such contract of service;

[Subs. by Act A1238:s.19]

(2) The length of such notice shall be the same for both employer and employee and shall be determined by a provision made in writing for such notice in the terms of the contract of service, or, in the absence of such provision in writing, shall not be less than—

(a) four weeks' notice if the employee has been so employed for less than two years on the date on which the notice is given;

(b) six weeks' notice if he has been so employed for two years or more but less than five years on such date;

(c) eight weeks' notice if he has been so employed for five years or more on such date:

Provided that this Section shall not be taken to prevent either party from waiving his right to a notice under this subsection;

[Subs. by Act A1238:s.19]

(3) Notwithstanding anything contained in subsection (2), where the termination of service of the employee is attributable wholly or mainly to the fact that—

(a) the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed;
(b) the employer has ceased, or intends to cease, to carry on the business in the place at which the employee was contracted to work;

(c) requirements of that business for the employee to carry out work of a particular kind have ceased or diminished or are expected to cease or diminish;

(d) the requirements of that business for the employee to carry out work of a particular kind in the place at which he was contracted to work have ceased or diminished or are expected to cease or diminish;

(e) the employee has refused to accept his transfer to any other place of employment, unless his contract of service requires him to accept such transfer; or

(f) a change has occurred in the ownership of the business for the purpose of which an employee is employed or of a part of such business,

regardless of whether the change occurs by virtue of a sale or other disposition or by operation of law, the employee shall be entitled to, and the employer shall give to the employee, notice of termination of service, and the length of such notice shall be not less than that provided under paragraph (a), (b) or (c) of subsection (2), as the case may be, regardless of anything to the contrary contained in the contract of service.

(4) Such notice shall be written and may be given at any time, and the day on which the notice is given shall be included in the period of the notice.

[Ins. by Act A1238:s.19]

12 Termination of contract without notice

[Am. by Act A1238:s.20]

(1) Either party to a contract of service may terminate such contract of service without notice or, if notice has already been given in accordance with section 11, without waiting for the expiry of that notice, by paying to the other party an indemnity of a sum equal to the amount of wages which would have accrued to the employee during the term of such notice or during the unexpired term of such notice.

(2) Either party to a contract of service may terminate such contract of service without notice in the event of any wilful breach by the other party of a condition of the contract of service.

[Subs. by Act A1238:s.20]

13 Termination of contract for special reasons

[Am. by Act A1238:s.21]

(1) An employer may, on the grounds of misconduct inconsistent with the fulfilment of the express or implied conditions of his service, after due inquiry--

(a) dismiss without notice the employee;

(b) downgrade the employee; or

(c) impose any other lesser punishment as he deems just and fit, and where a punishment of suspension without wages is imposed, it shall not exceed a period of two weeks.

(2) For the purposes of an inquiry under subsection (1), the employer may suspend the employee from work for a period not exceeding two weeks but shall pay him not less than half his wages for such period:

Provided that if the inquiry does not disclose any misconduct on the part of the employee, the employer shall forthwith restore to the employee the full amount of wages so withheld.

(3) An employee may terminate his contract of service with his employer without notice where he or his dependants are immediately threatened by danger to the person by violence or disease such as such employee did not by his contract of service undertake to run.

[Subs. by Act A1238:s.21]
An employer shall not dismiss a worker employed by him without notice except in the following circumstances—

(a) where the worker is guilty of misconduct, whether in the course of his duties or not, inconsistent with the fulfilment of the express or implied conditions of his contract of service.

(b) for wilful disobedience, to lawful orders given by the employer;

(c) for lack of the skill which the worker expressly or implicitly warrants himself to possess;

(d) for habitual or substantial neglect of his duties;

(e) for absence from work without leave from the employer or absence without other reasonable excuse.

13A When contract is deemed to be broken by employer and employee

(1) An employer shall be deemed to have broken his contract of service with the employee if he fails to pay wages in accordance with this Ordinance.

(2) An employee shall be deemed to have broken his contract of service with the employer if he has been continuously absent from work for more than two consecutive working days without prior leave from his employer, unless he has reasonable excuse for such absence and has informed or attempted to inform his employer of such excuse prior to or at the earliest opportunity during such absence.

14 [Deleted]

[Deleted by Act A1238:s.23]

[Former ordinance reads:]

Section 14. Cancellation of agreement by Commissioner

An agreement may be cancelled by an order of the Commissioner if the worker is subject to ill-usage in person or property and the Commissioner may by such order award the worker reasonable compensation.

15 [Deleted]

[Deleted by Act A1238:s.23]

[Former ordinance reads:]

Section 15. Capacity to enter into an agreement

Notwithstanding anything contained in any written law any young person shall be capable of entering into an agreement.

16 [Deleted]

[Deleted by Act A1238:s.23]

[Former ordinance reads:]

(1) Every employer who fails to make payment in accordance with the provisions of section 10 or contravenes the provisions of section 13 shall be guilty of an offence and shall be liable, on conviction , to a fine of five hundred dollars or in default thereof to imprisonment for six months.

(2) A Court may in any proceedings under this section order the payment of such wages as are found due by an employer together with such sums or sums for damages, costs, and expenses as it shall deem it.

CHAPTER V - [Deleted]

17 [Deleted]

[Deleted by Act A1238:s.23]

[Former ordinance reads:]

Certain contracts excluded

This Chapter and any rules made thereunder do not apply to contracts of apprenticeship.

18 Contracts to be in writing and to include provision for termination

(1) A contract of service for a specified period of time exceeding one month or for the performance of a specified piece of work, where the time reasonably required for the completion of the work exceeds or may exceed one month, shall be in writing and shall be signed by both parties:

Provided that an employee unable to sign may indicate his consent by affixing thereto the impression of his thumb.

(2) In every written contract of service, a clause shall be included setting out the manner in which such contract may be terminated by either party in accordance with this Ordinance.

(3) Such written contract of service shall contain such particulars necessary to define the rights and obligations of the parties thereto as may be prescribed by rules made under this Ordinance.

[Subs.by Act A1238:s.26]
(b) is made for the performance of a specified piece of work for an employer, incapable of being completed within one month from the commencement of the work; or
(c) stipulates conditions of employment which differs materially from those customary in the district of employment for similar work;
the engagement shall be in writing and shall be signed by both parties:
Provided that a worker unable to sign may indicate his consent by affixing thereto the impression of his left thumb.
(2) If the omission to make in writing any contract, which is required by this section is due to the negligence or wilful act of the employer, the worker shall without prejudice to any right he may have to sue for damages for breach of contract be entitled to apply to the Commissioner for the cancellation of the contract.

19 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:] Contents of contract
and obligations of the parties thereto and shall in all cases include the following particulars—
(a) the name of the employer or group of employers and, where practicable, of the undertaking and the place of employment;
(b) the name of the worker, the place of engagement and the place of origin of the worker, and any other particulars necessary for his identification;
(c) where possible the names and addresses of the next of kin of the worker;
(d) the nature of the employment;
(e) the duration of the employment and the method of calculating this duration;
(f) the appropriate period of notice to be given by the party wishing to terminate the contract, due regard being had to the provisions of section 26 and to the fact that such provisions refer to an equitable settlement of monetary and other questions;
(g) the rates of wages and method of calculation thereof, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;
(h) the measures to be taken to provide for the welfare of the worker and any dependant who may accompany him under the terms of the contract;
(i) the conditions of repatriation; and
(j) any special conditions of the contract.

20 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:] Section 20. Attestation of contracts
(1) Every contract shall be presented for attestation to the Commissioner.
(2) Before attesting any such contract the Commissioner shall—
(a) ascertain that the worker has freely consented to the contract and that this consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and
(b) satisfy himself that—
(i) the contract is in due legal form;
(ii) the terms of the contract are in accordance with the requirements of this Ordinance;
(iii) the worker has fully understood the terms of the contract before signing it or otherwise indicating his assent;
(iv) the provisions relating to the medical examination set out in section 21 have been complied with; and
(v) the worker declares himself not bound by any previous engagement.
(3) The Commissioner may refuse to attest any contract in respect of which he is not satisfied in regard to any of the matters specified in sub-section (2), and any contract which the Commissioner has refused to attest shall have no further validity.
(4) A contract which has not been presented to the Commissioner for attestation shall only be enforceable as an agreement under the provisions of Chapter IV, but each of the parties shall be entitled to have it presented for attestation at any time prior to the expiry of the period for which it was made.
(5) If the omission to present the contract for attestation was due to the wilful act or the negligence of either party without prejudice to any right he may have to sue for damages for breach of contract be entitled to apply to the Commissioner for the cancellation of the contract.
(6) Four copies of every contract attested under the provisions of this Chapter shall be attested including the original. One copy shall be delivered to the employer, one to the worker or in the case of a gang to one of their number, one to the Assistant Commissioner in the district of employment and the original shall be retained by the Commissioner who shall keep a record of all such contracts.
(7) Notwithstanding the other provisions of this section, the Commissioner may, in his discretion, approve a standard form of a contract to be used by any particular person or firm and when such approved form of contract is used individual attestation by the Commissioner shall not be necessary, but the employer shall render to the Commissioner a quarterly return of all persons newly employed during each quarter under such approved form of contract together with a certificate that the terms and conditions thereof were read over to and understood by the worker before he signed such contract.

21 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:] Medical examination
(1) Every worker who enters into a contract shall be medically examined at the expense of the employer.
(2) As a general rule the worker shall be medically examined and a medical certificate issued before the attestation of the contract.
(3) Where it has not been possible for the worker to be medically examined before the attestation of the contract, the Commissioner when attesting the contract shall endorse it to that effect and the worker shall be examined at the earliest opportunity.
(4) The Commissioner may, by endorsement on the contract, exempt from the requirement of medical examination workers entering into contracts for—
(a) employment in agricultural undertakings not employing more than such number of workers as may be prescribed;
(b) employment in the vicinity of workers’ homes—
(i) in agricultural work;
(i) in non-agricultural work which the Commissioner is satisfied is not of a dangerous character or likely to be injurious to the health of the workers.

22 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:]
Section 22. Capacity to enter into a contract

(1) A person whose apparent age is less than sixteen years shall not be capable of entering into a contract.

(2) Notwithstanding anything contained in any written law a person whose apparent age exceeds sixteen years but is less than eighteen years shall be capable of entering into a contract for employment in an occupation approved by the Commissioner as not being injurious to the moral and physical development of non-adults.

23 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:]
Section 23. Limitation of contract with native

Except with the written permission of the Commissioner no contract of a duration exceeding one hundred and eighty successive calendar days shall be entered into by any employer with any native worker.

24 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:]
Section 24. Maximum duration of contracts

(1) Subject to the provisions of section 23—

(a) the maximum duration that may be stipulated or implied in any contract involving a journey within Sabah, Sarawak and the State of Brunei, from the place of recruitment to the place of employment, shall in no case exceed twelve months if the worker is not accompanied by his family; or

(b) the maximum duration which may be stipulated or implied in any contract involving a journey other than a journey referred to in the preceding sub-section from the place of recruitment to the place of employment shall in no case exceed two years if the worker is accompanied by his family or three years if the worker is accompanied by his family.

(2) The Commissioner may, after consultation with any employers' and workers' organisations representative of the interests concerned, exclude from the application of this section contracts entered into between employers and illiterate workers whose freedom of choice in employment is satisfactorily safeguarded; such exclusion may apply generally, or to the workers in any specified industry or undertaking or to special groups of workers.

25 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:]
Section 25. Transfer to other employment

(1) The transfer of any contract from one employer to another shall be subject to the consent of the worker and the endorsement of the transfer upon the contract by the Commissioner.

(2) Before endorsing the transfer upon the contract the Commissioner—

(a) shall ascertain that the worker has freely consented to the transfer and that his consent has not been obtained by coercion or undue influence or as a result of misrepresentation or mistake; and

(b) in any case in which by such transfer the worker—

(i) will change his form of employment from one which is the subject of an exemption made under the provisions of sub-section (4) of section 21; or

(ii) will be subject to such change in conditions as in the opinion of the Commissioner renders such a course advisable; may require the worker to be medically examined or reexamined as the case may be.

26 [Deleted]

[Deleted by Act A1238:s.27]

[Former ordinance reads:]
Section 26. General termination of contract

(1) A contract shall be terminated—

(a) by the expiry of the period for which it was made; or

(b) by the death of the employer or worker before the expiry of the term for which it was made.

(2) The termination of a contract by the death of the employer or worker shall be without prejudice to the legal claims of any person entitled thereto.

(3) If the employer is unable to fulfil a contract or if owing to sickness or accident the worker is unable to fullfill the contract, the contract may be terminated with the consent of the Commissioner subject to conditions safeguarding the right of the worker to wages earned, any deferred pay due to him, any compensation due to him in respect of accident or disease, and his right to repatriation;

(4) A contract may be terminated by agreement between the parties with the consent of the Commissioner subject to conditions safeguarding the worker from the loss of his right to repatriation unless the agreement for the termination of the contract otherwise provides and to the Commissioner being satisfied—

(a) that the worker has freely consented to the termination and that his consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

(b) that all monetary liabilities between the parties have been settled.

(5) A contract other than a contract to perform some specific work without reference to time, may be terminated by either party giving to the other, notice of such termination in accordance with the terms of the contract; the minimum requirements of which shall be—

(a) where the duration is for more than one month the period of notice shall be not less than fourteen days and may be given only after the expiry of the first month of employment; or

(b) where the duration is for one month or less the period of notice shall be not less than seven days:

Provided that except where the Commissioner in his discretion shall otherwise permit the period of notice stipulated in the contract shall not exceed one month.
A contract may be cancelled by an order of the Commissioner if the worker is subject to ill-usage in person or property or if in the pursuance of the provisions of this Ordinance the worker applies to the Commissioner so to do and in such an event the Commissioner may award the worker reasonable compensation.

27 [Deleted]

[Former ordinance reads:]
Section 27. Cancellation of contract by Commissioner
A contract may be cancelled by an order of the Commissioner if the worker is subject to ill-usage in person or property or if in the pursuance of the provisions of this Ordinance the worker applies to the Commissioner so to do and in such an event the Commissioner may award the worker reasonable compensation.

28 [Deleted]

[Former ordinance reads:]
Section 28. Duration of re-engagement contracts
(1) The maximum duration that may be stipulated in any re-engagement contract on the expiry of the period for which the original contract was made shall be three-quarters of that prescribed in section 24 but in no case exceeding one year.

(2) Where the duration to be stipulated in any re-engagement contract, together with the period already served under the expired contract, involves the separation of any worker from his family for more than the respective periods prescribed in section 24 the worker shall not begin the service stipulated in the re-engagement contract until he has had the opportunity to return to his place of engagement in accordance with the provision of sub-section (1) of section 96 at the employer's expenses;

Provided that the Commissioner may grant exemption from this provision whenever its application is impracticable or undesirable.

29 [Deleted]

[Former ordinance reads:]
Section 29. Provisions applicable to re-engagement contracts
Except as provided in section 28 all the provisions of the preceding sections of this Chapter shall apply to re-engagement contracts:

Provided that the Commissioner may in his discretion exempt such contracts from the provisions of section 20 relating to attestation and of section 21 relating to medical examination subject to such terms and conditions as may be prescribed.

30 [Deleted]

[Former ordinance reads:]
Section 30. Summary of Chapter to be brought to notice of workers
(1) The Commissioner shall, where necessary, cause concise summaries of this Chapter to be printed in English and in a language known to the workers and shall make such summaries available to the employer and workers concerned.

(2) Where necessary, the employer shall be required by the Commissioner to post such summaries in a language known to the workers in conspicuous places at the place of employment.

31 [Deleted]

[Former ordinance reads:]
Section 31. Contracts for service outside the Colony
Where a contract made in the Colony relates to employment in another territory (in this section referred to as the territory of employment)---

(a) the attestation of the contract required by section 20 shall take place before the Commissioner before the worker leaves the Colony;

(b) the measures required by sub-section (6) of section 20 shall be taken by the Commissioner in the Colony;

(c) the medical examination required by section 21 shall take place at the latest at the place of departure of the worker from the Colony;

(d) a person whose apparent age is less than either the minimum age prescribed in section 22 or the minimum age of capacity for entering into a contract allowed by the law of the territory of employment if such minimum age is higher than that prescribed in section 22 not be capable of entering into a contract;

(e) the contract shall contain a proviso that it is not transferable unless such transfer is endorsed on the contract by a public officer of the territory of employment;

(f) the duration stipulated in the contract shall not exceed either the maximum period prescribed in section 24 or the maximum period by the law of the territory of employment whichever is less;

(g) if the laws of the territory of employment are substantially the same as this Chapter the conditions under which the contract is subject to termination and any question of exemption from liability for repatriation shall be determined by the law of the territory of employment;

(h) if the laws of the territory of employment differ from the laws of the Colony in respect to repatriation the Commissioner may require such deposit or security from the employer as he deems necessary and such deposit or security may be used to defray the costs of repatriation at the discretion of the Commissioner;

(i) the Commissioner shall co-operate with the appropriate authority of the territory of employment to ensure the application of the provisions of sub-section (2) of section 98;

(j) the period of service stipulated in any re-engagement contract shall not exceed either the maximum period allowed by the provisions of section 29 or if the maximum period allowed by the law of the territory of employment is less, then such lesser period.

32 [Deleted]

[Former ordinance reads:]
32. Extra-territorial contracts for employment in the Colony
When a contract made in another territory (in this section referred to as the territory of origin) relates to employment in the Colony—

(a) if such territory of origin has enacted laws substantially the same as this Chapter and has complied with all the provisions of such laws prior to the worker leaving such territory of origin, then—

(i) the endorsement of a transfer on an contract shall be made by the Commissioner as provided in section 25;

(ii) the conditions under which the contract is subject to termination shall be determined by the provisions of this Ordinance;

(iii) if the employer fails to fulfil his obligations in respect of repatriation the said obligations may be discharged by the Commissioner as provided in section 96 and such expenses may be recovered from the employer as a debt due to the Government of the Federation;

(iv) the authority which may exempt the employer from liability for repatriation expenses and exercise any other powers conferred upon a competent authority in the territory of origin shall be the Commissioner;

(v) the Commissioner shall co-operate with the appropriate authority of the territory of origin to ensure the application of the provisions of sub-section (2) of section 98;

(vi) the duration stipulated in any re-engagement contract shall not exceed either the maximum period allowed by the provisions of section 28 or the maximum period allowed by the law of the territory of origin, whichever is less.

(b) If such territory has not enacted laws substantially the same as this Chapter or has not complied with any provisions of the law in respect of any contract then the whole of the provisions of this Chapter or such portion thereof as has not been complied with shall be complied with immediately upon the arrival of the worker in the Colony and thereafter the provisions of this Chapter shall be deemed to apply mutatis mutandis as if such contract had been entered into in the Colony.

33 [Deleted]

[Deleted by Act A1238:s.27]

Section 33. Penalties

Any employer who fails to comply with any order made by the Commissioner in pursuance of the provisions of this Chapter or who makes with a worker a contract contrary to the provisions of this Chapter shall be guilty of an offence and shall be liable, on conviction, to fine of five hundred dollars and to imprisonment for six months.

CHAPTER VI - APPRENTICESHIP CONTRACTS

34 Apprenticeship contracts excluded from sections 10, 10A, 11, 12, 13, 13A and 18

Sections 10, 10A, 11, 12, 13, 13A and 18 shall not apply to apprenticeship contracts which are in a form approved by and of which a copy has been filed with the Director.

[Subs.by Act A1238:s.29]

Section 34. Contracts of apprenticeship of young persons under 16

(1) The parent, or in the case of an orphan the guardian, of a young person under the age of sixteen years may, with the consent of such person, execute a written contract of apprenticeship, apprenticing such person to an employer to train him or have him trained systematically for a prescribed trade or employment for any term not exceeding five years.

(2) Whenever any young person under the age of sixteen years is without known parent or guardian, the Commissioner may authorise the apprenticeship of such young person and may appoint some fit and proper person to execute the written contract of apprenticeship and act generally as guardian of such young person.

35 [Deleted]

[Deleted by Act A1238:s.30]

Section 35. Contracts of apprenticeship of persons over 16

Any young person above the age of sixteen years or any person above the age of eighteen years not being under any contract of apprenticeship may apprentice himself for any term not exceeding five years to an employer in any prescribed trade or employment.

36 [Deleted]

[Deleted by Act A1238:s.30]

Section 36. Assignment

Every contract of apprenticeship may with the consent of the parties thereto be assigned.

37 [Deleted]

[Deleted by Act A1238:s.30]

Section 37. Attestation

Every contract of apprenticeship and every assignment thereof shall be in writing and no such contract shall be valid unless attested by and made with the approval of the Commissioner certified in writing under his hand on the contract of apprenticeship or assignment.

38 [Deleted]

[Deleted by Act A1238:s.30]

Section 38. Duties of attesting officer

Before attesting any contract of apprenticeship the Commissioner shall satisfy himself that—

(a) the employer is a fit and proper person and able and having facilities sufficient to instruct the apprentice in the trade or employment;

(b) that the apprentice has consented to such contract and that his consent has not been obtained by coercion, undue influence or as the result of misrepresentation or mistake;

(c) that the apprentice has been medically examined and certified by a registered medical practitioner to be physically and mentally fit to be employed and trained in the trade or
employment specified in such contract;

(d) that the parties to such contract have fully understood the terms of the contract before signing it or otherwise indicating assent;

(e) that provision has been made in such contract as to how any remuneration in cash or otherwise due to the apprentice shall be determined and as to the scale of increase in remuneration during the course of the apprenticeship;

(f) that provision has been made in such contract for payment of such remuneration to the apprentice during illness and during holidays;

(g) that in any case where the apprentice is unable by reason of his apprenticeship to return to his home at the conclusion of each day, such contract contains adequate provision to ensure that the apprentice is supplied with food, clothing, accommodation and medical attention, to a standard not less than required for a worker by this Ordinance or any rule made thereunder;

(h) that the terms of such contract are in accordance with any rules made under the provisions of this Part.

39 [Deleted]

[Deleted by Act A1238:s.30]

[Former section reads:]

Section 39. Certificate of service on discharge

(1) Whenever for any reason including the completion of his contract of apprenticeship an apprentice ceases to be employed by an employer it shall be the duty of the employer to supply the apprentice with a statement in the prescribed form setting forth the service of the apprentice.

(2) The employer shall forward a copy of such statement to the Commissioner, who shall endorse a note thereof on every copy of the contract of apprenticeship submitted to him for that purpose by any of the parties to such contract.

40 [Deleted]

[Deleted by Act A1238:s.30]

[Former section reads:]

Section 40. Retention of apprentices after expiry of contract

If any person with whom an apprentice has been placed retains such apprentice in his service after the stipulated period of service has expired without any agreement between the parties for the payment of wages, the apprentice shall be entitled to recover from the person so retaining him wages at the ordinary current rate payable for service similar to that performed by such apprentice.

41 [Deleted]

[Deleted by Act A1238:s.30]

[Former section reads:]

Section 41. Suspension and discharge

(1) In any case where an apprentice so misconducts himself or proves himself to be so incapable that if he were an employee other than an apprentice it would be reasonable for his employer to discharge him, the employer may suspend him and apply forthwith to the Commissioner for leave to discharge him.

(2) The Commissioner shall enquire into the circumstances and where such leave is granted the employer shall be entitled to discharge the apprentice as from the date on which he was suspended and as from such date the contract of apprenticeship shall be deemed to be cancelled.

(3) Where such leave is refused the Commissioner may make such order as he thinks fit with respect to payment of wages to the apprentice in respect of the period of his suspension.

(4) If the employer, notwithstanding that leave to discharge the apprentice has been refused by the Commissioner, discharge the apprentice, such discharge shall for all purposes be conclusive proof of a breach by the employer of the contract of apprenticeship.

(5) Where an employer, without proceeding in accordance with the foregoing provisions of this section, discharges or purports to discharge an apprentice or, having suspended him, does not within three days thereafter make application as aforesaid for leave to discharge him, the apprentice within seven days after such discharge or within ten days after such suspension, as the case may be, may apply to the Commissioner for relief from such discharge or suspension and thereupon the provisions of this section shall apply in like manner as if the employer had proceeded in accordance with subsection (1).

(6) The Commissioner may fix an amount that shall be payable to the apprentice as damages for breach of the contract of apprenticeship in the event of the employer discharging him contrary to the provisions of this section. Such amount shall be in addition to the amount of wages payable in respect of the period of suspension.

(7) Any person aggrieved by any decision or order of the Commissioner under this section may appeal against such decision or order to a magistrate of the first class who may hear and determine such appeal either in open Court or in Chambers as he may think fit and may make such orders as to costs as he may think fit.

42 [Deleted]

[Deleted by Act A1238:s.30]

[Former section reads:]

Section 42. Penalties

Any employer who fails to comply with any order made by the Commissioner in pursuance of the provisions of this Chapter or makes a contract of apprenticeship contrary to the provisions of this Chapter shall be guilty of an offence and shall be liable, on conviction, to a fine of five hundred dollars or in default thereof to imprisonment for six months.

CHAPTER VII - [Deleted]

43 [Deleted]

[Deleted by Act A1238:s.30]

[Former section reads:]

Section 43. Power to make rules

(1) The Minister may make rules generally for carrying out the provisions of this Part.

(2) Such rules may---

(a) provide for any matters which by this Part is to be or may be prescribed;

(b) prescribe the form of contracts of apprenticeship and the terms and the conditions upon which such contracts may be lawfully entered into, and the duties and obligations of apprentices and their employers;

(c) provide for the registration of contracts of apprenticeship;
(d) stipulate the number of apprentice who may be apprenticed during a specified period in any specified trade or employment;

(e) stipulate the conditions governing the entry of young persons under the age of sixteen years into apprenticeship;

(f) prescribe the mutual rights and obligations of employer and apprentice;

(g) provide for the supervision to be established over apprenticeship, particularly with a view to ensuring that the regulations governing apprenticeship are observed, that the training is satisfactory and that there is reasonable uniformity in the conditions of apprenticeship;

(h) provide for the holding of examinations of apprentices on the expiry of the period of the apprenticeship and where necessary in the course of apprenticeship, for determining the methods of organising such examinations and for the issue of certificates based on the results thereof;

(i) prescribe the fees to be paid and by whom payable for attestations, endorsements or registrations effected or any other acts required to be done in pursuance of the provisions of this Part or of any rules made thereunder.

(3) Any such rule may provide a penalty for the breach or contravention thereof not exceeding a fine of two hundred dollars or in default thereof imprisonment for three months.

CHAPTER VIII - [Deleted]

CHAPTER IX - [Deleted]

44 [Deleted]

[Deleted by Act A1238:s.31]

Section 44. Exemptions

The Minister may, except in respect of recruiting by professional recruiters, exempt from the provisions of this Part---

(a) the recruiting of workers by or on behalf of employers who do not employ more than such number of workers as shall from time to time be fixed by such notification;

(b) the recruiting of workers within a specified area or a specified distance from the place of employment; or

(c) the recruiting of personal or domestic servants.

45 [Deleted]

[Deleted by Act A1238:s.31]

Section 45. Public officers, chiefs, etc.

(1) Public officers shall not recruit for private undertakings either directly or indirectly except when the recruited workers are to be employed on works of public utility for the execution of which private undertakings are acting as contractors for a public authority.

(2) Chiefs and other native authorities shall not---

(a) act as recruiters;

(b) exercise pressure upon possible recruits;

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

46 [Deleted]

[Deleted by Act A1238:s.31]

Section 46. Persons who recruit to be licensed

(1) Subject to the provisions of sub-section (6), no person shall recruit workers unless he is licensed in that behalf under the provisions of this Part or unless he has obtained a license to recruit issued by a territory under laws substantially the same as this Part and has produced such license to the Commissioner who may, on being satisfied in accordance with the provisions of the next succeeding subsection, countersign the same and such license shall thereupon be deemed to be a license issued under the provisions of this Part.

(2) Every person desirous of obtaining a license under this section shall apply to the Commissioner who may in his discretion issue a license---

(a) if he is satisfied that the applicant is a fit and proper person to be granted a license; and

(b) if any security prescribed has been furnished; and

(c) if he is satisfied that adequate provision has been made for safeguarding the health and welfare of the workers to be recruited; and

(d) if he is satisfied that the person is proposing to recruit for a public department or authority or for a specified employer or association of employers.

(3) A license shall be subject to such conditions as may be endorsed thereon, and shall not be transferable.

(4) No license shall be issued for a period exceeding one year, but if the Commissioner is satisfied that the conditions on which it was granted have been complied with he may renew such license for such period not exceeding one year as he may think fit.

(5) The Commissioner may cancel any license in any case where the licensee has been convicted of an offence under this Part or the rules made thereunder or has not complied with the conditions under which it was granted or is guilty of conduct which in the opinion of the Commissioner renders him no longer a fit and proper person to hold a license; and the Commissioner may suspend any license pending the decision of the Court or the making of any enquiry which he shall consider necessary.

(6) The Minister may be rules made hereunder and subject to such conditions as he may therein prescribe exempt worker-recruiters from the provisions of this section.

47 [Deleted]

[Deleted by Act A1238:s.31]

Section 47. Non-adults not to be recruited

Persons under the age of sixteen years shall not be recruited:

Provided that young persons under that age may be recruited with the consent of their parents or guardians for employment upon light work in an occupation approved by the Commissioner.

48 [Deleted]
Family not deemed recruited

The recruiting of the head of a family shall not be deemed to involve the recruiting of any member of his family.

49 [Deleted]

[Former section reads:]

Section 49. Examination of workers

(1) Every recruited worker shall---
(a) be brought before the Commissioner or officer in charge of an administrative district;
(b) be medically examined at the expense of the recruiter or employer,
as nearly as may be convenient to the place of recruitment and in accordance with rules made under this Part.

(2) The Commissioner or officer before whom any recruited worker is brought shall satisfy himself that the provisions of this Part and the rules made thereunder have been observed and that the worker has not been subject to illegal pressure or recruited by misrepresentation or mistake.

50 [Deleted]

[Former section reads:]

Section 50. Expenses of worker or burial of worker during journey

(1) The expenses of the journey of recruited workers and their dependants to the place of employment, including all expenses incurred for their protection during the journey, shall be borne and transport and necessaries for the journey shall be provided by the recruiter (not being a worker-recruiter) or employer to a standard and on conditions in accordance with rules made under this Part.

(2) In the event of the death of any recruited worker or of any dependant occurring during any journey to the place of employment from the place of recruitment the recruiter shall provide decent interment and pay the reasonable expenses of burial.

51 [Deleted]

[Former section reads:]

Section 51. Return of workers.

A recruited worker who ---
(a) becomes incapacitated by sickness or accident during the journey to his place of employment;
(b) is found on medical examination to be unfit for employment;
(c) is not engaged after being recruited for a reason for which he is not responsible; or
(d) is found by the Commissioner or officer in charge of an administrative district to have been recruited by illegal pressure or by misrepresentation or mistake;
and the dependants of such recruited worker, and any dependant of a recruited worker who dies during the journey to the place of employment, shall be returned to their place of origin, or place of engagement if the latter be nearer to the place of employment and the laws of the place of engagement permit, at the expense of the recruiting or employer in accordance with rules made under this Part.

52 [Deleted]

[Former section reads:]

Section 52. Worker-recruiters.

The provisions of this Part and the rules made thereunder shall, unless otherwise expressly provided, apply to worker-recruiters as if they were licensees:
Provided that worker-recruiters shall recruit only in such areas as may be specified by the Commissioner and shall not make advances of wages to recruited workers.

53 [Deleted]

[Former section reads:]

Section 53. Extra-territorial recruiting

(1) Any person acting or proposing to act as a recruiter in a territory of origin outside the Colony for the purpose of recruiting workers for employment in the Colony shall before leaving the Colony to do so first obtain a licence under this Part, and thereafter, if such territory provides in the laws provisions substantially the same as this Part, shall also obtain such licence as may be required under such laws and shall comply with all laws of such territory relating to recruiting and shall in any event, whether required by such laws or not, fulfill all the obligations of this Part of this Ordinance as if the same were written into the laws of such territory and its provisions, where possible, shall be observed both prior to the departure of the worker from the territory of recruitment as well as upon arrival in the Colony.

(2) Any agreement or contract of employment entered into with a worker arising from a contravention of the provisions of the last preceding subsection may be declared void by the Commissioner and thereupon any such worker and his family may be repatriated by the Commissioner and all costs of such repatriation shall be recovered from any security or borne by the offending recruiter or employer and may be recovered as a debt due to the Government.

54 [Deleted]

[Former section reads:]

Section 54. Penalties.
Any person who recruits or attempts to recruit any person contrary to the provisions of this Chapter or contravenes or fails to comply with any of the provisions of this Chapter or any special conditions to which his licence is subject, shall be guilty of an offence and shall be liable on conviction to a fine of five hundred dollars and to imprisonment for six months.

CHAPTER IX - [Deleted]

[Deleted by Act A1238:s.31]

Former section reads:

Section 55. Power to make rules.

(1) The Minister may make rules for the purpose of giving effect to the provisions of this Part or to any of the provisions of the Recruiting of Indigenous Workers Convention, 1936, and may by rule provide for ---

(a) the manner and form in which application shall be made for licences, the particulars to be furnished upon every such application, the conditions under which any licence may be issued, the form of licences, the fees payable therefor, and particulars to be set forth therein;

(b) the security to be furnished by applicants for licences;

(c) the records to be kept by licensees;

(d) the remuneration to be paid to the agents of licensees;

(e) the prohibition of recruiting within any specified area;

(f) the supervision of worker-recruiters;

(g) the documents to be given to the recruited workers by licensees;

(h) the conditions under which recruited workers may be accompanied by dependants;

(i) the provision of necessaries and transport for recruited workers and dependants from the place of recruitment to the place of employment and the conditions applicable to the journey;

(j) the amounts of wages which may be paid in advance to recruited workers and the conditions under which advances of wages may be made;

(k) the fees to be paid and by whom payable for any licences issued, attestations, endorsements or registrations effected or any other acts required to be done in pursuance of the provisions of this Ordinance;

(l) the establishment of a Fund or other method to make provision for securing the payment of any expenses of recruitment or transport of workers upon such terms and conditions and subject to such control as he deems necessary and for providing that any such Fund may be administered in conjunction with any Fund established under paragraph (c) of subsection (2) of section 121;

(m) anything which by this Part is to be prescribed, or as to which rules are to be made.

(2) Any such rule may provide a penalty for the breach or contravention thereof not exceeding a fine of five hundred dollars or in default thereof imprisonment for six months.

Part IV

Provisions Relating to Employment

CHAPTER X - REGISTERS, RETURNS AND NOTICE BOARD

[Deleted by Act A1238:s.34]

Former section reads:

Section 56. Application.

(1) This Chapter and any rule made thereunder shall apply only to the places of employment in respect of which a declaration is made in accordance with subsection (2).

(2) The Minister may declare that the provisions of this Chapter or of such sections thereof as may be specified in such declaration shall apply to any place of employment either generally or specifically and be complied with by the employer of the workers thereon or therein.

57 Duty to display notice board

The owner of any—

(a) estate of twenty hectares or more;

(b) mine;

(c) factory;

(d) trade, business or manufacturing activity carried on in any premises,

on or in which not less than five employees are employed shall, if such estate, mine, factory or premises are outside the limits of a City, Municipality, Town Council, Town Board or other local authority, cause to be erected where practicable in a conspicuous place at or adjacent to the place where the access road to such estate, mine, factory or premises joins the main road or a railway or river, as the case may be, a notice board on which shall be set out in the national language the name of such estate, mine, factory, trade, business or manufacturing activity and the address of its registered or other office.

[Subs.by Act A1238:s.35]

Former section reads:

Section 57. Name to be painted on notice board and displayed.

Every employer shall cause to be erected and exhibited in a conspicuous place at the place of employment a notice board on which shall be painted, in English characters easily legible, the name of the place of employment and the name and address of the person responsible for its management and, if the employer is a company, the situation of the registered office of the company.
58 Duty to keep registers

(1) Every employer shall prepare and keep one or more registers containing such information regarding each employee employed by him as may be prescribed by rules made under this Ordinance.

(2) Every such register shall be preserved for such period that every particular recorded therein shall be available for inspection for not less than six years after the recording thereof.

(3) Notwithstanding subsections (1) and (2), the Director, on a written application by an employer, may permit the employer to keep the information required under subsection (1) in any other manner as may be approved by the Director subject to such conditions as he may deem fit to impose.

[Subs.by Act A1238:s.36]

[Former section reads:

Section 58. Register of workers.
Every employer shall keep a register of all workers in his employment in the prescribed form.

58A Power to make rules requiring information as to wages

The Minister may, by rules made under this Ordinance, provide that every employer or any specified class or classes of employers shall make available, in such form and at such intervals as may be prescribed, to every employee employed by him or them or to such class or classes of employees as may be specified such particulars as may be specified relating to the wages of such employees or any of them.

[Ins.by Act A1238:s.37]

59 Duty to submit returns

(1) The Director may by notification in the Gazette or by notice in writing require every employer or such class or classes of employers as may be specified, and every owner or occupier of land upon which employees are employed or such class or classes of owners or occupiers as may be specified, to forward to the Director at such times as he may direct a return or returns, in such form or forms as he may prescribe, giving such particulars relating to the employees of the employers, or to the employees employed on the land, as may be prescribed.

(2) Notwithstanding the provisions of this Ordinance, the powers of the Director under subsection (1) extend to every employee employed under a contract of service irrespective of the monthly wages of the employee.

[Subs.by Act A1238:s.38]

[Former section reads:

Section 59. Returns to be made by employer.

(1) Every employer shall furnish to the Commissioner a return or returns which shall be complete and accurate in all particulars in such form or forms and at such time or time as the Commissioner may require.

(2) Copies of such forms shall be supplied to employers free of charge on application to the Commissioner.

59A Duty to give notice and other information

(1) Any person or employer who proposes—

(a) to operate any agricultural, forestry or industrial undertaking or any establishment where any commerce, trade, profession or business of any description is carried on;

(b) to take over or commence business in such undertaking or establishment; or

(c) to change the name or the location of such undertaking or establishment,

in which any employee is employed or is likely to be employed shall, within ninety days of such commencing of operation, taking over or commencing of business, or changing of the name or the location of the undertaking or establishment, as the case may be, give notice in writing of such proposal to the nearest office of the Director having administrative jurisdiction for the area in which that undertaking or establishment is located and furnish such office of the Director with—

(aa) the registered name, address and nature of business of;

(ab) the name of the manager or person in charge of; and

(ac) a statement of the categories and total number of employees employed in,

that undertaking or establishment.

(2) For the purposes of this section, the expressions "commencing of operation" and "commencing of business" each means the date on which the undertaking or establishment is registered under any written law, or the date on which the first employee is employed in furtherance of the undertaking or commerce, trade, profession or business in such establishment, whichever is earlier.

(3) Where any undertaking or establishment as is referred to in subsection (1) is already in operation or has commenced business, such notice shall be given within ninety days of the coming into force of this section.
Section 60. Housing, water supply and sanitation.

(1) Every employer shall provide and maintain ---

(a) sufficient and hygienic house accommodation;

(b) a sufficient supply of wholesome water; and

(c) sufficient and proper sanitary arrangements for every worker who resides on the place of employment and for such other employees who reside on the place of employment. Such house accommodation, water supply and sanitary arrangements shall conform to such requirements and standards of health and hygiene as may be prescribed.

(2) No employer shall house any worker or other person in a building the state of which or the surroundings of which are, in the opinion of the Commissioner or Health Officer, such as to endanger the health of such worker or other person and should it appear to the Commissioner or Health Officer that the accommodation provided is likely, by reason of its site, construction, size, or otherwise, to endanger the health of any worker or of any person, the Commissioner may serve the employer with an order in writing requiring him to remove, alter, enlarge or reconstruct such accommodation within a reasonable time to be stated in such order, and such order may also, if necessary, declare that no worker or other person shall be permitted to occupy any building the subject of such order pending removal, alteration, enlargement or reconstruction.

(3) Should it appear to the Commissioner that accommodation ought to be provided for non-resident workers owing to their having no adequate or suitable housing of their own or by reason of the distance of their houses from the place of employment he may forbid the employment of such workers until such accommodation has been provided.

Section 61. Surroundings of housing to be kept clean.

A space of not less than one hundred feet round any housing area shall be kept clear of jungle and secondary growth and the employer shall cause such space to be kept in a clean and sanitary condition and all refuse and excreta in or near the housing to be collected and buried or burned and shall detail a sufficient number of workers daily to carry out these duties.

Section 62. Regular inspection of housing.

(1) Every employer shall cause all housing to be visited and inspected not less than twice a week by some responsible person who shall report to the employer if the housing is not kept clean or any refuse or excreta is allowed to accumulate in the neighbourhood of the housing and the employer shall make such arrangements as may be necessary for the cleaning of the housing and surroundings and for the removal of any refuse or excreta which may have accumulated.

(2) In any case where the Commissioner or Health Officer considers that the visits, inspections or other duties prescribed by subsection (1) are not satisfactorily carried out he may notify the employer accordingly, specifying the matters in respect whereof he is not satisfied, and the employer shall thereupon make such further or other arrangements, whether by substituting a different person to perform the said duties or otherwise, as the Commissioner or Health Officer may require.

Section 63. Separate house accommodation to be provided for each race.

On every place of employment upon which the workers employed and residing are not all of one race the employer shall, if the Commissioner so directs, provide separate house accommodation for the workers of each race.

Section 64. Allotments.

(1) Every employer shall set aside land suitable for allotments for the use of resident workers who have worked and resided on such place of employment for not less than six consecutive months and who have dependants.

(2) The area of the land so set aside shall ordinarily be not less than one-sixteenth of an area for each such worker and such area shall be cleared and made available for cultivation at the expense of the employer:

Provided that if the employer shall satisfy the Commissioner that any worker has failed to make proper use of the area so set aside the employer shall be relieved of his duty as aforesaid in respect of such worker.

(3) The Commissioner may for good and sufficient reason by writing under his hand exempt any employer from compliance with this section on such terms and conditions and for such period as to him may seem fit.

Section 65. Medical care and treatment.

(1) At every place of employment the employer shall provide for all workers such medical attention and treatment with medicines and good quality, first-aid equipment and appliances for the transportation of sick or injured workers as may be prescribed.
CHAPTER XI - SPECIAL PROVISIONS RELATING TO THE EMPLOYMENT OF CHILDREN AND YOUNG PERSONS

70 [Deleted]

[Deleted by Act A1238:s.40]

[Former section reads:]

Section 66. Burial of deceased worker or dependant.

The employer shall provide decent interment for any worker resident on a place of employment and for any dependant dying during the employment of such worker unless a relative or friend undertakes such duty.

67 [Deleted]

[Deleted by Act A1238:s.40]

[Former section reads:]

Hospital maintained by employers.

(1) The Commissioner may at any time having regard to the situation of any place of employment and the number of workers employed and resident thereon, by order in writing, require any employer to construct within a reasonable time to be stated in such order, and thereafter to maintain at his own expense, a hospital on or in the immediate neighbourhood of any place of employment upon which workers are employed by him with accommodation for such number of patients as may be stated in such order, or if there is already a hospital maintained by such employer to enlarge or add to such hospital so as to provide accommodation for a further number of patients as stated in the order; and may further require him to employ a duly qualified medical practitioner to reside at and have charge of such hospital or any hospital maintained by such employer and to provide such medical practitioner with fit and proper house accommodation to the satisfaction of the Commissioner.

(2) If two or more such places of employment are so situated that required accommodation for patients from such places of employment can be instead of ordering each employer to construct and maintain a separate hospital, order all the employers concerned to construct within a reasonable time to be stated in such order, and thereafter to maintain, at their own expense one hospital hereinafter called a "group hospital" for all such places of employment with accommodation for such number of patients as may be stated in the order or if there is already a hospital erected and maintained jointly by two or more employers (whether constructed in pursuance of the provisions of this section or not) may order them to enlarge and add to such hospital so as to provide accommodation for such further number of patients in their employment as may be stated in the order; and may further require such employers to employ a registered medical practitioner to take charge of such group hospital and joint hospital and to provide such medical practitioner with fit and proper house accommodation to the satisfaction of the Commissioner.

(3) Every employer referred to in the preceding subsection shall be responsible for the due maintenance of the group or joint hospital as the case may be and for the provision of the staff, equipment, diet and medicines and for the observance of any rules made under this Part for the inspection and management of the hospital and the furnishing of any returns required as if the hospital were provided and maintained solely by him.

68 [Deleted]

[Deleted by Act A1238:s.40]

[Former section reads:]

Section 68. Approval of place of employment and prohibition of employments of workers where arrangements are inadequate.

(1) Every person intending ---

(a) to employ resident workers at a place of employment where workers have not hitherto been employed or have not been employed within the preceding twelve months ; or

(b) to increase the number of workers already employed on a place of employment so that the existing arrangements will be inadequate and insufficient for such increase shall give notice in writing of such intention to the Commissioner.

(2) If the Commissioner at any time has reason to believe that the arrangements made for the residence and employment of workers on any place of employment where it is intended that workers shall live or be employed or where workers are living or employed are from any cause inadequate for the residence and employment of such workers or of additional workers or that the health or conditions of workers living or employed on any place of employment is from any cause unsatisfactory, he may by order served on the employer prohibit the residence or employment, or both, of workers or of additional workers on such place and it shall thereupon be unlawful for any person to employ or permit to reside on such place any workers or dependants, or any workers or dependants other than those who were residing or employed thereon before the issue of such order, as the case may be.

(3) The Commissioner may, upon being satisfied that adequate arrangements have been made for the residence and employment of the workers or of additional workers on such place of employment or that the health and condition of the workers living or employed thereon have become satisfactory, rescind the order made under subsection (2), and thereupon it shall be lawful for the employer to employ workers or additional workers as the case may be on such place of employment.

69 [Deleted]

[Deleted by Act A1238:s.40]

[Former section reads:]

Section 69. Penalties.

Every employer who --

(a) contravenes or fails to comply with any of the provisions of sections 57, 58, 59 or 64 shall be guilty of an offence and shall be liable, on conviction, to a fine of two hundred dollars or in default thereof to imprisonment for three months.

(b) contravenes or fails to comply of the provisions of sections 60, 61, 62, 63, 65, 66, 67 or 68 shall be guilty of an offence and shall be liable, on conviction, to a fine of five hundred dollars and to imprisonment for six months.

(c) contravenes or fails to comply with any order or requirements of the Commissioner or the Health Officer made under this Chapter shall be guilty of an offence and shall be liable, on conviction, to a fine of two hundred dollars or to imprisonment for three months.
Section 71. Certificate of medical officer as to age

Where, in any proceeding under this Ordinance, a person is alleged to be a child or young person, the Court may accept a certificate of a medical officer to the effect that, in his opinion, such person is or is not a child or young person.

Section 72. Employment in which children and young persons may be engaged

(1) No child or young person shall be, or be required or permitted to be, engaged in any employment other than those specified in this section.

(2) A child may be engaged in any of the following employment:

(a) employment involving light work suitable to his capacity in any undertaking carried on by his family;

(b) employment in any public entertainment, in accordance with the terms and conditions of a licence granted in that behalf under this Chapter;

(c) employment requiring him to perform work approved or sponsored by the Federal Government or the Government of any State and carried on in any school, training institution or training vessel; and

(d) employment as an apprentice under a written apprenticeship contract.

(3) A young person may be engaged in any of the following employment:

(a) any employment mentioned in subsection (2); and in relation to paragraph (a) of that subsection, any employment suitable to his capacity (whether or not the undertaking is carried on by his family);

(b) employment as a domestic servant;

(c) employment in any office, shop (including hotels, bars, restaurants and stalls), godown, factory, workshop, store, boarding house, theatre, cinema, club or association;

(d) employment in an industrial undertaking suitable to his capacity; and

(e) employment on any vessel under the personal charge of his parent or guardian:

Provided that no female young Person may be engaged in any employment in hotels, bars, restaurants, boarding houses or clubs unless such establishments are under the management or control of her parent or guardian:

Provided further that a female young person may be engaged in any employment in a club not managed by her parent or guardian with the approval of the Director.

(4) The Minister may, if he is satisfied that any employment (not mentioned in subsection (2) or (3)) is not dangerous to life, limb, health or morals, by order declare such employment to be an employment in which a child or young person may be, or permitted to be, engaged; and the Minister may in such order impose such conditions as he deems fit and he may at any time revoke or vary the order or may withdraw or alter such conditions.

(5) No child or young person shall be, or be required or permitted to be, engaged in any employment contrary to the provisions of the Factories and Machinery Act 1967 [Act 139] or the Electricity Supply Act 1990 [Act 447] or in any employment requiring him to work underground.

Section 73. The Minister may prohibit any child or young person from engaging or being engaged in any employment

Notwithstanding section 72, the Minister may, in any particular case, by order prohibit any child or young person from engaging or
from being engaged in any of the employments mentioned in that section if he is satisfied that having regard to the circumstances such employment would be detrimental to the interests of the child or young person, as the case may be.

[Subs. by Act A1238:s.45]

Former section reads:

Section 73. Power to prohibit employment of children in other specified ways.
The Minister may prohibit the employment of any child or prescribe the terms and conditions subject to which children may be employed in any specified trade or undertaking or in any specified occupation which forms part of any specified trade or undertaking.

73A Number of days of work

No child or young person engaged in any employment shall in any period of seven consecutive days be required or permitted to work for more than six days.

[Ins.by Act A1238:s.46]

73B Hours of work of children

(1) No child engaged in any employment shall be required or permitted—

(a) to work between the hours of 8 o'clock in the evening and 7 o'clock in the morning;

(b) to work for more than three consecutive hours without a period of rest of at least thirty minutes;

(c) to work for more than six hours in a day or, if the child is attending school, for a period which together with the time he spends attending school, exceeds seven hours; or

(d) to commence work on any day without having had a period of not less than fourteen consecutive hours free from work.

(2) Paragraph (a) of subsection (1) shall not apply to any child engaged in employment in any public entertainment.

Hours of work of children.

[Ins.by Act A1238:s.46]

73C Hours of work of young person

(1) No young person engaged in any employment shall be required or permitted—

(a) to work between the hours of 8 o'clock in the evening and 6 o'clock in the morning;

(b) to work for more than four consecutive hours without a period of rest of at least thirty minutes;

(c) to work for more than seven hours in any one day or, if the young person is attending school, for a period which together with the time he spends attending school, exceeds eight hours:

Provided that if the young person is an apprentice under paragraph (d) of subsection (2) of section 72, the period of work in any one day shall not exceed eight hours; or

(d) to commence work on any day without having had a period of not less than twelve consecutive hours free from work.

(2) Paragraph (a) of subsection (1) shall not apply to any young person engaged in employment in an agricultural undertaking or any employment in a public entertainment or on any vessel under paragraph (e) of subsection (3) of section 72.

[Ins.by Act A1238:s.46]

73D Employment connected with public entertainment

(1) No child or young person shall take part or be required or permitted to take part in any public entertainment unless there has been issued by the Director or by such other officer as may be authorized in writing in that behalf by the Director to the person employing such child or young person a licence in that behalf; and the Director may, in addition to such conditions or restrictions as may be prescribed from time to time under Chapter XVIB impose in respect of such licence (whether at the time the licence is issued or thereafter from time to time) such conditions as he deems fit.

(2) No licence under subsection (1) shall be granted by the Director to any person where he is of the opinion that the employment is dangerous to the life, limb, health or morals of the child or young person.

(3) The Director may cancel any licence issued under this section on any ground for which he could refuse to issue a licence or on breach of any condition thereof, and such cancellation shall take effect forthwith until and unless set aside on appeal.

(4) Any child or young person or the parent or guardian of such child or young person or any other person aggrieved by the decision of the Director may within fourteen days of the making of that decision appeal to the Minister, and the decision of the Minister shall be final.
(5) In the event of an appeal, the child or young person or the parent or guardian of such child or young person shall be entitled to be supplied by the Director the reasons in writing for the cancellation of or refusal to issue a licence or for the imposition of conditions on a licence.

74 [Deleted]

[Deleted by Act A1238:s.47]

[Former section reads:]

Section 74. Night work of young persons in industry.

(1) Young persons shall not be employed or work during the night in any industrial undertaking except as hereinafter provided.

(2) Night for the purpose of this section means a period of at least twelve consecutive hours —

(a) in the case of young persons under the age of sixteen years this period shall include the interval between ten o'clock in the evening and six o'clock in the morning;

(b) in the case of young persons who have attained the age of sixteen years this period shall include an interval to be prescribed of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning. Different intervals may be prescribed for different areas, industrial undertakings or branches of industrial undertakings;

Provided that before an interval beginning after eleven o'clock in the evening is prescribed the employers' and workers' organisations concerned, if any, shall be consulted.

(3) For the purposes of apprenticeship or vocational training the Commissioner may authorise under such conditions as he may impose the employment during the night of young persons who have attained the age of sixteen years.

(4) Every employer shall grant to young persons employed during the night by virtue of the preceding subsection, a rest period of at least thirteen consecutive hours between two working periods.

(5) The provisions of this section shall not apply to employment during the night of young persons who have attained the age of sixteen years, in an emergency which could not have been controlled or foreseen, which is not of a periodical character and which interferes with the normal working of the industrial undertaking.

74A Power to prescribe minimum wages after inquiry

(1) If representation is made to the Minister that the wages of children or young persons in any class of work in any area are not reasonable, having regard to the nature of the work and conditions of employment obtaining in such class of work, the Minister may, if he considers it expedient, direct an inquiry.

(2) For the purpose of such inquiry, the Minister shall appoint a Board consisting of an independent member who shall be chairman and an equal number of representatives of employers and employees.

(3) The Board shall, after holding the inquiry, report to the Minister its findings and recommendations; and the Minister may, after considering the report of the Board, make an order prescribing the minimum rates of wages to be paid to children or young persons or to both, employed in the class of work in the area.

(4) Upon publication of such order, it shall not be lawful for any employer to pay any child or young person to whom the order applies, wages below the minimum rates specified in the order.

74B Contractual capacity

Notwithstanding anything to the contrary contained in the Contracts Act 1950 [Act 136] or the provisions of any other written law, any child or young person shall be competent to enter into a contract of service under this Ordinance otherwise than as an employer, and may sue as plaintiff without his next friend or defend any action without a guardian ad litem:

Provided that no damages and no indemnity under section 12 of this Ordinance shall be recoverable from a child or young person for a breach of any contract of service.

CHAPTER XIA – EMPLOYMENT OF WOMEN

75 Prohibition of night work

(1) Except in accordance with rules made under this Ordinance or any exemption granted under the proviso to this subsection, no employer shall require any female employee to work in any agricultural, forestry or industrial undertaking between the hours of ten o'clock in the evening and five o'clock in the morning nor commence work for the day without having had a period of eleven consecutive hours free from such work:

Provided that the Director may, on application made to him in any particular case, exempt in writing any female employee or class of female employees from any restriction in this subsection, subject to any conditions he may impose.

(2) Any person—

(a) who is affected by any decision made or condition imposed under the proviso to subsection (1); and

(b) who is dissatisfied with such decision or condition,

may within thirty days of such decision or condition being communicated to him appeal in writing to the Minister.

(3) In deciding any appeal made to him under subsection (2), the Minister may make such decision or order, including the alteration or removal of any condition imposed or the imposition of any further condition, as appears just and such decision or order shall be final.
Section 75. Female not to be employed at night in industry.

(1) No female shall be employed during the night in any industrial undertaking.

(2) Night for the purpose of this section means a period of at least eleven consecutive hours including an interval to be prescribed of at least seven consecutive hours falling between ten o'clock in the evening and seven o'clock in the morning. Different intervals may be prescribed for different areas, industrial undertakings or branches of industrial undertakings.

Provided that before an interval beginning after eleven o'clock in the evening is prescribed the employers’ and workers’ organisations concerned, if any, shall be consulted.

(3) The provisions of this section shall not apply —

(a) in an emergency which could not have been controlled or foreseen, which is not of a periodical character and which interferes with the normal working of the industrial undertaking;

(b) where the work is connected with raw materials or materials in course of treatment which are subject to rapid deterioration and work during the night is necessary to preserve such materials from certain loss;

(c) to a woman holding a responsible position of a managerial or technical character; and

(d) to a woman employed in health and welfare services who is not ordinarily engaged in manual work.

76 Emergencies

In any serious emergency when the public interest demands it the Minister may by order suspend the operation of section 75 in so far as they affect women.

77 [Deleted]

[Deleted by Act A1238:s.52]

Section 77. Register of young persons employed in industrial undertakings.

Where young persons or children are employed in any industrial undertaking, a register of the young persons or children so employed, containing particulars of their ages and of the dates on which they enter or leave the service of their employer, shall be kept by such employer and shall at all times be open to inspection by the Commissioner.

78 Prohibition of underground work

No female employee shall be employed in any underground work.

Section 78. Restriction on employment of females and young persons underground.

(1) No young person under the age of sixteen years shall be employed on underground work in any mine.

(2) No female shall be employed on underground work in any mine except in the following circumstances —

(a) a woman holding a position of management who does not perform manual work;

(b) a woman engaged in health or welfare services;

(c) a woman who in the course of her studies spends a period of training in the underground parts of a mine; or

(d) a woman who may for any other reason have to enter the underground parts of a mine for the purpose of non-manual occupation.

78A Prohibition of employment

Notwithstanding the provisions of this Chapter, the Minister may by order prohibit or permit the employment of female employees in such circumstances or under such conditions as may be described in such order.

79 [Deleted]

[Deleted by Act A1238:s.55]

Section 79. Restriction on employment of children in ships.

No child shall be employed in any ship except a ship approved by the Commissioner as a school or training ship.

80 [Deleted]
Section 80. Restriction on employment of young persons in ships.

No young person shall be employed on work as a trimmer or stoker in any ship unless prior written approval for such employment has been given by the Commissioner.

81 [Deleted]

Section 81. Register of young persons employed in ships.

Every master of a ship shall, if young persons are employed therein, keep a register of such persons containing particulars of their ages and of the dates on which they become or cease to be members of the crew and the register so kept shall be open to inspection by the Commissioner.

82 [Deleted]

Section 82. Medical certificate.

(1) The employment of any child or young person on any ship shall be conditional on the production of a medical certificate attesting fitness for such work signed by a registered medical practitioner approved by the Health Officer.

(2) The continued employment at sea of any such child or young person shall be subject to the repetition of such medical examination at intervals of not more than one year and the production, after each such examination, of a further medical certificate attesting fitness for such work.

Should a medical certificate expire in the course of a voyage it shall remain in force until the end of the said voyage.

CHAPTER XIB - MATERNITY PROTECTION

83 Length of eligible period and entitlement to maternity allowance

(1) Every female employee shall be entitled to maternity leave for a period of not less than sixty consecutive days (also referred to in this Chapter as the "eligible period") in respect of each confinement and, subject to this Chapter, she shall be entitled to receive from her employer a maternity allowance to be calculated or prescribed as provided in subsection (2) in respect of the eligible period.

(2) Where a female employee is entitled to maternity leave under subsection (1) but is not entitled to receive maternity allowance from her employer for the eligible period under subsection (5), or because she has not fulfilled the conditions set out in subsection (6), she may, with the consent of the employer, commence work at any time during the eligible period if she has been certified fit to resume work by a registered medical practitioner.

(3) Subject to section 87, maternity leave shall not commence earlier than a period of thirty days immediately preceding the confinement of a female employee or later than the day immediately following her confinement:

Provided that where a medical officer or the registered medical practitioner appointed by the employer certifies that the female employee as a result of her advanced state of pregnancy is unable to perform her duties satisfactorily, the employee may be required to commence her maternity leave at any time during a period of fourteen days preceding the date of her confinement as determined in advance by the medical officer or the registered medical practitioner appointed by the employer.

(4) Where a female employee abstains from work to commence her maternity leave on a date earlier than the period of thirty days immediately preceding her confinement, such abstention shall not be treated as maternity leave and she shall not be entitled to any maternity allowance in respect of the days during which she abstains from work in excess of the period of thirty days immediately preceding her confinement.

(5) Notwithstanding subsection (1), a female employee shall not be entitled to any maternity allowance if at the time of her confinement she has five or more surviving children.

(6) A female employee shall be entitled to receive maternity allowance for the eligible period from her employer if—

(a) she has been employed by the employer at any time in the four months immediately before her confinement; and

(b) she has been employed by the employer for a period of, or periods amounting in the aggregate to, not less than ninety days during the nine months immediately before her confinement.

(7) A female employee who is eligible for maternity allowance under this section shall be entitled to receive from the employer for each day of the eligible period a maternity allowance at her ordinary rate of pay for one day, or at the rate prescribed by the Minister under Chapter XVIB, whichever is the greater.

(8) A female employee employed on a monthly rate of pay shall be deemed to have received her maternity allowance if she continues to receive her monthly wages during her abstention from work during the eligible period without abatement in respect of the abstention.

(9) Where a female employee claims maternity allowance under this section from more than one employer, she shall not be entitled to receive a maternity allowance of an amount exceeding in the aggregate the amount which she would be entitled to
receive if her claim was made against one employer only.

(10) Where there are more employers than one from whom the female employee would be entitled to claim maternity allowance in accordance with this section the employer who pays the maternity allowance shall be entitled to recover from such other employer, as a civil debt, a contribution which shall bear the same proportion to the amount of the maternity allowance paid to the female employee as the number of days on which she worked for such other employer during the period of nine months immediately preceding her confinement bears to the total number of days on which she worked during that period:

Provided that if the female employee has failed to comply with subsection (1) or (2) of section 87, the employer who pays the maternity allowance shall not thereby be prevented from recovering contribution calculated in accordance with the subsection.

(11) For the purposes of this section, "children" means all natural children, irrespective of age.

[Subs.by Act A1238:s.57]

Section 83. Maternity benefits.

(1) Every female worker shall be entitled to abstain from work during terms of four weeks each before and after confinement and in respect of such terms, hereinafter jointly referred to as "benefit period", to be calculated in accordance with the provisions of the succeeding sub- sections of this section.

(2) A female worker who has worked for the employer from whom she claims maternity benefit on not less than one hundred and eighty days within the period of one year immediately preceding the notice required under section 87 shall be paid maternity benefit during the benefit period at such rate as may be prescribed.

(3) A female worker who has worked for the employer from whom she claims such maternity benefit on not less than ninety days within the period of six calendar months immediately preceding the date of the notice required under section 87 shall be paid maternity benefit during the benefit period at such rate as may be prescribed.

(4) Notwithstanding anything contained in the preceding sub-sections of this section, if a female worker works in any employment after she has been permitted by her employer to absent herself under the provisions of section 88, she shall forfeit her claim to the payment of maternity benefit to which she is entitled.

84 [Deleted]

[Deleted by Act A1238:s.58]

Section 84. Payments to include rest days and holidays.

Subject to the provisions of sub-section (4) of section 83, payments made under sub-sections (2) and (3) of section 83 shall be made for every day of the benefit period including Sundays or other agreed rest days and prescribed holidays.

85 Payment of maternity allowance

The maternity allowance referred to in section 83 and accruing in each wage period under the contract of service of the female employee shall be paid in the same manner as if such allowance were wages earned during such wage period as provided in section 108.

[Subs.by Act A1238:s.59]

Section 85. Payment of maternity benefit.

The amount of the maternity benefit shall payable in two instalments; the first for the period up to and including the day of confinement to be paid within seven days after the birth of the child; and the second for the period after confinement to be paid within seven days after the end of that period; and shall not be payable in advance.

86 Payment of allowance to nominee on death of a female employee

If a female employee, after giving notice to her employer that she expects to be confined, commences her maternity leave and dies from any cause during the eligible period, her employer or any employer who would have been, but for the death of the female employee, liable to pay any maternity allowance shall pay to the person nominated by her under section 90 or, if there is no such person, to her legal personal representative, an allowance at the rate calculated or prescribed as provided in subsection (7) of section 83 from the day she commenced her maternity leave to the day immediately preceding her death.

[Subs.by Act A1238:s.60]

Section 86. Death during benefit.

If a female worker dies during the benefit period the maternity benefit shall be payable only for the days up to and including the day of her death.

87 Loss of maternity allowance for failure to notify employer

(1) A female employee who is about to leave her employer and who knows or has reason to believe that she will be confined within four months from the date upon which she leaves shall before leaving her employment notify her employer of her pregnancy and if she fails so to do, she shall not be entitled to receive any maternity allowance from such employer.

(2) A female employee shall within a period of sixty days immediately preceding her expected confinement notify her employer of it and the date from which she intends to commence her maternity leave and if she commences such leave without so notifying her employer, the payment of maternity allowance to her may be suspended, notwithstanding section 85, until such notice is given to her employer.
(3) Any female employee whose employer provides free medical treatment for his employees and who, when she is pregnant, persistently refuses or fails to submit to such medical treatment offered free by her employer as a registered medical practitioner certifies to be necessary or desirable in connection with her pregnancy, expected confinement or confinement shall, if she would otherwise be entitled to receive any maternity allowance, forfeit such allowance to the extent of seven days.

(4) The want of or any defect or inaccuracy in any notice required to be given in accordance with this section shall not be a bar to the maintenance of any claim to maternity allowance unless the employer is proved to have been prejudiced by the want, defect or inaccuracy of such notice.

(5) The failure to give any such notice within the period specified in this section shall not prejudice the right of a female employee to receive any maternity allowance if it is found that the failure was occasioned by mistake or other reasonable cause:

Provided that any dispute as to whether such failure was occasioned by mistake or other reasonable cause shall be referred under section 7A to the Director for his decision.

(6) Notice to an employer or, if there is more than one employer, to one of such employers, may be given either in writing or orally or to the foreman or other person under whose supervision the female employee was employed or to any person designated for the purpose by the employer.

[Subs.by Act A1238:s.61]

88 [Deleted]

[Deleted by Act A1238:s.62]

89 [Deleted]

[Deleted by Act A1238:s.62]

90 Payment of allowance to nominee

A female employee may nominate some other person to whom the maternity allowance may be paid on her behalf and any payment of the maternity allowance made to the person so nominated shall, for the purposes of this Ordinance, be deemed to be a payment to the female employee herself.

[Subs.by Act A1238:s.63]

91 Notice of termination of employment

When a female employee absents herself from work in accordance with the provisions of this Chapter her employer shall not give her notice of termination of employment during such absence or so that the notice will expire during such absence.

[Am.by Act A1238:s.2]

91A Restriction on dismissal of female employee after eligible period

(1) Where a female employee remains absent from her work after the expiration of the eligible period as a result of illness certified by a registered medical practitioner to arise out of her pregnancy and confinement and to render her unfit for her work, it shall be an offence, until her absence exceeds a period of ninety days after the expiration of the eligible period, for her employer to terminate her services or give her notice of termination of service.
(2) Subject to subsection (1), where a female employee is dismissed from her employment with wages in lieu of notice at any

time during the period of four months immediately preceding her confinement, she shall, in computing the period of her

employment for the purposes of this Chapter, be deemed to have been employed as if she had been given due notice instead

of wages in lieu thereof.

[Subs by Act A1238 s.64]

92 [Deleted]

[Deleted by Act A1238 s.65]

[Former section reads:]

Section 92. Benefit unaffected by notice of termination in specified circumstances.

(1) No notice of termination of employment given without sufficient cause by an employer to a female worker within a period of three months before her confinement shall have the
effect of depriving her of any maternity benefit which but for such notice she would have been eligible to receive under this Chapter.

(2) If any question arises as to whether any notice of termination of employment given under sub-section (1) was or was not given for sufficient cause it shall be referred to the

Commissioner for decision.

93 [Deleted]

[Deleted by Act A1238 s.65]

[Former section reads:]

Section 93. Claim from one employer only.

Nothing contained in section 83 shall be construed as entitling any female worker to claim maternity benefit from more than one employer in respect of the same confinement.

94 Conditions contrary to Chapter void

Any condition in a contract of service whereby a female employee relinquishes or is deemed to relinquish any right under this Chapter

shall be void and of no effect and the right conferred under this Chapter shall be deemed to be substituted for such condition.

[Subs by Act A1238 s.66]

94A Register of allowances paid

Every employer shall keep a register, in a form to be prescribed by the Minister by rules made under this Ordinance, of all payments

made to female employees under this Chapter and of such other matters incidental thereto as may be prescribed by such rules.

[Ins by Act A1238 s.67]

95 [Deleted]

[Deleted by Act A1238 s.68]

[Former section reads:]

Section 95. Penalties.

Any employer who contravenes or fails to comply with any of the provisions of this Chapter shall be guilty of an offence and shall be liable, on conviction, to a fine of five hundred
dollars or in default thereof to imprisonment for six months.

CHAPTER XII - REPATRIATION

96 Rights and obligations of employee and employer in respect of repatriation

(1) Every employee who is a party to an agreement or contract under this Ordinance shall have the right to be repatriated at

the expense of the employer in the following cases ---

[Am by Act A1238 s.2, 69]

(a) on the termination of the agreement of contract by expiry of the period for which it was made ;

(b) on the termination of the agreement of contract by reason of the inability of the employer to fulfil the

agreement or contract.

(c) on the termination of the agreement or contract by reason of inability of the employee fulfill the agreement or

contract owing to sickness or accident ;

(d) on the termination of the agreement or contract by notice or otherwise.

[Am by Act A1238 s.2, 69]
(e) upon cancellation by the Director or expiry of the Licence To Employ Non-Resident Employee;

(f) on the termination of the agreement or contract by agreement between the parties;

(2) Every non-resident employee who is ordered to leave the Colony in accordance with this Ordinance or any rules made under this Ordinance or any provisions of any written law for the time being in force relating to immigration and shall be repatriated at the expense of the employer to his country or State of origin.

(3) Where any dependant of the employee has been brought to the place of employment by the employer of by any person acting on behalf of the employer such dependant shall be repatriated at the expense of the employer whenever the employee is repatriated or in the event of his death.

(4) The expense of repatriation shall include ---

(a) travelling and subsistence, expense during the journey; and

(b) subsistence expense during the period, if any, between the date of termination of the contract of service or the cancellation or expiry of the Licence To Employ Non-Resident Employee and the date of repatriation; and

(c) provision of decent interment and the payment of the reasonable expense of burial in the event of death of an employee occurring during the course of, or pending repatriation.

(5) The employer shall not be liable for subsistence expenses in respect of any period during which the repatriation of the employee has been delayed ---

(a) by the employee's own choice; or

(b) for reasons of force majeure when the employer has been able during the said period to use the services of the employee at the rate of wages stipulated in the expired contract.

(6) If the employer fails to fulfil his obligation in respect of repatriation the said obligation shall be discharged by or under directions of the Commissioner and any sum so expended may be recovered from the employer or employers from the security furnished to the Director or by civil suit as a debt due to the Government of the Federation.

97 Exemption from obligation to repatriate

The Commissioner may exempt the employer from liability for repatriation expense in the following cases ---

(a) when the Director is satisfied that the resident employee by a declaration before the Director has signified that he does not wish to exercise his right to repatriation;
(i) that the resident employee by a declaration before the Commissioner has signified that he does not wish to exercise his right to repatriation; and

(ii) [Deleted by Act A1238:s.70]

(b) when the Commissioner is satisfied that the resident employee by his own choice has failed to exercise his right of repatriation before the expiry of six months from the date of termination of the agreement of contract;

(c) when the liability of the employer has been provided for under any of the provisions of any Fund established under Chapter XVIB;

(d) [Deleted by Act A1238:s.70]

98 Employer to provide transport

The employer shall take all necessary measures to ensure the provision of a proper and safe mode of transport and, when it is necessary to break the journey for the night, a suitable accommodation and, in the course of the journey, suitable arrangements for medical assistance and for the welfare of the employees who are being repatriated.

99 [Deleted]

[Deleted by Act A1238:s.72]

[Former section reads:]

Any employer who fails to comply with any direction given him by the Commissioner in pursuance of the provisions of section 98 shall be guilty of an offence and shall be liable, on conviction, to a fine of two hundred dollars or in default thereof to imprisonment for three months.

CHAPTER XIII - Domestic service

100 Domestic servants

The Minister may make rules applying all or any of the provisions of this Ordinance to all domestic servants or to any group, class or number of domestic servants and make rules to provide generally for the engagement, repatriation and working conditions of domestic servants.

CHAPTER XIV - CONTRACTS OF SERVICE

101 [Deleted]

[Deleted by Act A1238:s.74]
Section 101. Worker not liable for default of another.

No worker shall be bound in or by virtue of any agreement or contract under this Ordinance to answer for the debt, default or miscarriage of another person.

102 Limitation on advances to employees

(1) No employer shall during any one month make to an employee an advance or advances of wages not already earned by such employee which exceeds the aggregate the amount of wages which the employee earned in the preceding month from his employment with such employer, or if he has not been so long in the employment of such employer, the amount which he is likely to earn in such employment during one month, unless such advance is made to the employee—

(a) to enable him to purchase a house or to build or improve a house;

(b) to enable him to purchase land;

(c) to enable him to purchase livestock;

(d) to enable him to purchase a motorcar, a motorcycle or a bicycle;

(e) to enable him to purchase shares of the employer’s business offered for sale by the employer;

(f) for any other purpose—

(i) in respect of which an application in writing is made by the employer to the Director;

(ii) which is, in the opinion of the Director, beneficial to the employee; and

(iii) which is approved in writing by the Director, provided that in granting such approval, the Director may make such modifications or impose such conditions as he may deem proper;

(g) for such other purpose as the Minister may, from time to time, by notification in the Gazette, specify either generally in respect of all employees, or only in respect of any particular employee, or any class, category or description of employees.

(2) No employee shall be held to be liable for the amount of any advance made to him by his employer which exceeds the amount authorised under subsection (1).

(3) No non-resident employee shall be held to be liable for the amount of any moneys expended on his behalf prior to his arrival in the Colony in consideration of his engagement to work within the Colony, other than an advance of wages as may be approved by the Director.

(4) Any advance of wages may be recovered in instalments by deduction from wages in such manner as may be approved by the Director.

103 Holidays

(1) Every employee shall be entitled to a paid holiday at his ordinary rate of pay on the following days in any one calendar year:

(a) on fourteen gazetted public holidays as specified under the Holidays Ordinance (Sabah),[Cap. 56] four of which shall be—

(i) the National Day;

(ii) the Birthday of the Yang di-Pertuan Agong;

(iii) the Birthday of the Yang di-Pertua Negeri of Sabah; and

(iv) the Workers’ Day;
Provided that the other ten public holidays referred to in this paragraph be fixed with regard to the religion and customs of the employees;

(b) on any day in addition to the gazetted public holidays referred to in paragraph (a) declared as a public holiday by the Government of the State:

Provided that if any of the public holidays referred to in paragraphs (a) and (b) falls on a rest day, the working day following the rest day shall be a paid holiday in substitution of that public holiday.

(2) The employer shall exhibit conspicuously at the place of employment before the commencement of each calendar year a notice specifying the remaining ten gazetted public holidays in respect of which his employees shall be entitled to paid holidays under paragraph (a) of subsection (1):

Provided that by agreement between the employer and an employee any other day or days may be substituted for one or more of the remaining ten gazetted public holidays provided for in paragraph (a) of subsection (1):

And provided further that the employer may grant the employee any other day as a paid public holiday in substitution for any of the public holidays referred to in paragraph (b) of subsection (1).

(3) Where any of the public holidays or any other day substituted therefor as provided in subsection (1) or (2) falls within the period during which an employee is on sick leave or annual leave to which the employee is entitled under this Ordinance, or falls during the period of temporary disablement under the Workmen’s Compensation Act 1952,[ Act 273] or under the Employees’ Social Security Act 1969,[Act 4] the employer shall grant another day as a paid holiday in substitution for such public holiday or the day substituted therefore.

(4) Any employee who absents himself from work on the working day immediately preceding or immediately succeeding a public holiday or two or more consecutive public holidays or any day or days substituted therefor under this section without the prior consent of his employer, shall not be entitled to any holiday pay for such holiday or consecutive holidays unless he has a reasonable excuse for such absence.

(5) An employee on a monthly rate of pay shall be deemed to have received his holiday pay if he receives from his employer his monthly wages, without abatement (other than as provided under subsection (4)) in respect of the holiday, for the month in which the holiday falls.

(6) Notwithstanding subsections (1), (2) and (3), any employee may be required by his employer to work on any paid holiday to which he is entitled under those subsections, and in such event he shall, in addition to the holiday pay he is entitled to for that day—

(a) in the case of an employee employed on a monthly, weekly, daily, hourly, or other similar rate of pay, be paid two days’ wages at the ordinary rate of pay; or

(b) in the case of an employee employed on piece rates, be paid twice the ordinary rate per piece, regardless that the period of work done on that day is less than the normal hours of work.

(7) For any overtime work carried out by an employee referred to in paragraph (a) of subsection (6) in excess of the normal hours of work on a paid public holiday, the employee shall be paid at a rate which is not less than three times his hourly rate of pay.

(8) For any overtime work carried out by an employee referred to in paragraph (b) of subsection (6) in excess of the normal hours of work on any paid holiday, the employee shall be paid not less than three times the ordinary rate per piece.

(9) An employee who works on a holiday shall be entitled to a travelling allowance for that day if payable to him under the terms of his contract of service with his employer but such employee shall not be entitled under this subsection to receive an increased rate of any housing allowance or food allowance.

(10) For the purposes of this section if any such holiday falls on a half working day, the ordinary rate of pay payable shall be that of a full working day.

[Subs.by Act A1238:s.76]

Section 103: Prescribed holidays.

Holidays not exceeding the number of public holidays under the Holidays Ordinance,[Cap 56] excluding Sundays, may be prescribed for workers. Such holidays may be fixed having regard to the religion and customs of workers.

104 Hours of work

(1) Except as provided in this section, an employee shall not be required under his contract of service to work—

(a) more than five consecutive hours without a period of leisure of not less than thirty minutes duration;

(b) more than eight hours in one day;

(c) in excess of a spread over period of ten hours in one day;

(d) more than forty-eight hours in one week:

Provided that—
(aa) for the purpose of paragraph (a), any break of less than thirty minutes in the five consecutive hours shall not break the continuity of that five consecutive hours;

(ab) an employee who is engaged in work which must be carried on continuously and which requires his continual attendance may be required to work for eight consecutive hours inclusive of a period or periods of not less than forty-five minutes in the aggregate during which he shall have the opportunity to have a meal; and

(ac) where, by agreement under the contract of service between the employee and the employer, the number of hours of work on one or more days of the week is less than eight, the limit of eight hours may be exceeded on the remaining days of the week, but so that no employee shall be required to work for more than nine hours in one day or forty-eight hours in one week.

(2) The Director may, on the written application of an employer, grant permission to the employer to enter into a contract of service with any one or more of his employees, or with any class, category or description of his employees, requiring the employee or employees, or the class, category or description of employees, as the case may be, to work in excess of the limit of hours prescribed under paragraphs (a), (b), (c) and (d) of subsection (1) but subject to such conditions, if any, as the Director may deem proper to impose, if he is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which renders it necessary or expedient to grant such permission; and the Director may at any time revoke the approval given under this subsection if he has reason to believe that it is expedient to do so.

(3) Any person who is dissatisfied with any decision of the Director under subsection (2) may, within thirty days of such decision being communicated to him, appeal in writing to the Minister.

(4) On an appeal made to him under subsection (3), the Minister may make such decision or order as appears just, and such decision or order shall be final.

(5) An employee may be required by his employer to exceed the limit of hours prescribed in subsection (1) and to work on a rest day in the case of—

(a) any accident, actual or threatened, in or with respect to his place of work;
(b) any work, the performance of which is essential to the life of the community;
(c) work essential for the defence or security of Malaysia;
(d) urgent work to be done to machinery or plant;
(e) any interruption of work which was impossible to foresee; or
(f) work to be performed by employees in any industrial undertaking essential to the economy of Malaysia or any essential service as defined in the Industrial Relations Act 1967.

Provided that the Director shall have the power to enquire into and decide whether or not the employer is justified in calling upon the employee to work in the circumstances specified in paragraphs (a) to (f).

(6) For any overtime work carried out in excess of the normal hours of work, the employee shall be paid at a rate which is not less than one and a half times his hourly rate of pay irrespective of the basis on which his rate of pay is fixed.

(7) No employer shall require or permit an employee to work overtime exceeding such limit as may be prescribed by the Minister from time to time by rules made under this Ordinance and the rules so made may provide different limits for different classes, categories or descriptions of employees, and such rules may also provide for such classes, categories or description of employees, as may be specified, to be excluded from their application:

Provided that any work carried out on a rest day, or any of the gazetted public holidays referred to in subsection (1) of section 103, or on any paid holiday substituted therefor under subsection 103, shall not be construed as overtime work for the purposes of this subsection:

And provided further that the Director may, on application made to him in writing by an employer or by an employee or a group of employees, permit any particular employee, or any group, class, category or description of employees in any particular industry, undertaking or establishment to work overtime in excess of the limit of hours so prescribed, subject to such conditions, if any,

as he may deem proper to impose.

(8) Any person who is dissatisfied with any decision of the Director made under subsection (7) may, within thirty days of such decision being communicated to him, appeal in writing to the Minister.

(9) In deciding any appeal made to him under subsection (8), the Minister may make such decision or order as appears just and such decision or order shall be final.

(10) The Minister may make rules for the purpose of calculating the payment due for overtime to an employee employed on piece rates.

(11) Except in the circumstances described in paragraphs (a), (b), (c), (d) and (e) of subsection (5), no employer shall require any employee under any circumstances to work for more than twelve hours in any one day.
(12) This section shall not apply to employees engaged in work which by its nature involves long hours of inactive or stand-by employment.

(13) For the purposes of this Chapter, "hours of work" means the time during which an employee is at the disposal of the employer and is not free to dispose of his own time and movements.

Section 104. Days and hours of work.

Subject to any provisions to the contrary contained in his contract —

(a) no worker other than a shift worker shall be required on any prescribed holiday or on more than six days in one week or for more than six consecutive hours without a break or for more than eight hours a day of actual work;

Provided that any worker may be required to work on a prescribed holiday or for more than eight hours in any day, or for more than six consecutive hours in the case of accident, actual or threatened, or in case of urgent work to be done to machinery, or in case of an interruption of work which was impossible to foresee and which is not of a recurring character, but only in so far as may be necessary to avoid serious interference with the ordinary working of the undertaking concerned;

(b) if any worker works for and at the request of his employer on a prescribed holiday or on a Sunday (or other agreed rest day substituted for a Sunday by agreement between the employer and the worker entered into not less than three days before such rest day is taken) or for more than eight hours in any day he shall be paid wages for such extra work at the following rates —

(i) on prescribed holidays — at rate of not less than double his ordinary rate of pay — but in such case wages shall not be payable under the provisions of section 103;

(ii) on Sundays or other rest days — at rate of not less than one and a half times his ordinary rate of pay;

(iii) for overtime in excess of eight hours in any one day for workers other than those paid on piece work or shift work at a rate of not less than one and a half times his ordinary rate of pay;

(c) a shift worker may be required by his employer to work for any number of hours not exceeding fifty-six in any one week and not exceeding twelve in any one day;

Provided that where a shift worker is required to work for more than forty-eight hours in any one week, the average number of hours for which he may be required to work in that week and the next preceding and next succeeding week shall not exceed forty-eight;

(d) in computing hours of work for the purposes of this section, account shall be taken only of the time from the mustering of workers before the commencement of work until they are signed off after the completion of work or, where the workers are not so mustered or signed off, of the time during which a worker is at the disposal of his employer and is not free to dispose of his own time; and

(e) for the purposes of this section

104A Shift work

(1) Notwithstanding paragraphs (b), (c) and (d) of subsection (1) of section 104, but subject to paragraph (a) of subsection (1) of that section, an employee who is engaged under his contract of service in shift work may be required by his employer to work more than eight hours in any one day or more than forty-eight hours in any one week but the average number of hours worked over any period of three weeks, or over any period exceeding three weeks as may be approved by the Director, shall not exceed forty-eight hours per week.

(2) The approval of the Director in subsection (1) may be granted if the Director is satisfied that there are special circumstances pertaining to the business or undertaking of the employer which render it necessary or expedient for him to grant the permission subject to such conditions as he may deem fit to impose.

(3) The Director may revoke the approval given under subsection (2) at any time if he has reason to believe that it is expedient so to do.

(4) Except in the circumstances described in paragraphs (a), (b), (c), (d) and (e) of subsection (5) of section 104, no employer shall require any employee who is engaged under his contract of service in shift work to work for more than twelve hours in any one day.

104B Rest day

(1) Every employee shall be allowed in each week a rest day of one whole day as may be determined from time to time by the employer, and where an employee is allowed more than one rest day in a week, the last of such rest days shall be the rest day for the purposes of this Chapter:

Provided that this subsection shall not apply during the period in which the employee is on maternity leave as provided under section 83, or on sick leave as provided under section 104E, or during the period of temporary disablement under the Workmen's Compensation Act 1952, or under the Employees' Social Security Act 1969.

(2) Notwithstanding subsection (1) and the interpretation of the expression "day" in section 2, in the case of an employee engaged in shift work any continuous period of not less than thirty hours shall constitute a rest day.

(3) Notwithstanding subsection (1), the Director, on a written application by an employer and subject to any conditions he may deem fit to impose, may permit the employer to grant the rest day for each week on any day of the month in which the rest days fall and the day so granted shall be deemed to be the employee’s rest day for the purposes of this section.

(4) The employer shall prepare a roster before the commencement of the month in which the rest days fall informing the employee of the days appointed to be his rest days therein, and where the same day in each week has been appointed as the rest day for all employees in the place of employment, the employer may, in lieu of preparing a roster, display a notice at a conspicuous place in the place of employment informing the employees of the fixed rest day so appointed.

(5) Every such roster and every particular recorded therein shall be preserved and shall be made available for inspection for a period not exceeding six years from the last day of the month in respect of which the roster was prepared or cause to be prepared.

http://www.sabahlaw.com/Labour_Ordinance.htm
104C Work on rest day

(1) Except as provided in subsection (5) of section 104, no employee shall be compelled to work on a rest day unless he is engaged in work which by reason of its nature requires to be carried on continuously or continually by two or more shifts:

Provided that in the event of any dispute the Director shall have power to decide whether or not an employee is engaged in work which by reason of its nature requires to be carried on continuously by two or more shifts.

(2) An employee employed on a daily, hourly or other similar rate of pay who works on a rest day shall be paid for any period of work—

(a) which does not exceed half his normal hours of work, one day's wages at the ordinary rate of pay; or

(b) which is more than half but does not exceed his normal hours of work, two days' wages at the ordinary rate of pay.

(3) An employee employed on a monthly rate of pay who works on a rest day shall be paid for any period of work—

(a) which does not exceed half his normal hours of work, wages equivalent to half the ordinary rate of pay for work done on that day; or

(b) which is more than half but which does not exceed his normal hours of work, one day's wages at the ordinary rate of pay for work done on that day.

(4) For any work carried out in excess of the normal hours of work on a rest day by an employee mentioned in subsection (2) or

(3) he shall be paid at a rate which is not less than two times his hourly rate of pay.

(5) An employee employed on piece rates who works on a rest day shall be paid twice his ordinary rate per piece.

[Ins.by Act A1238:s.78]

104D Annual leave

(1) An employee shall be entitled to paid annual leave of—

(a) eight days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of less than two years;

(b) twelve days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of two years or more but less than five years; and

(c) sixteen days for every twelve months of continuous service with the same employer if he has been employed by that employer for a period of five years or more,

and if he has not completed twelve months of continuous service with the same employer during the year in which his contract of service terminates, his entitlement to paid annual leave shall be in direct proportion to the number of completed months of service:

Provided that any fraction of a day of annual leave so calculated which is less than one-half of a day shall be disregarded, and where the fraction of a day is one-half or more it shall be deemed to be one day:

And provided further that where an employee absents himself from work without the permission of his employer and without reasonable excuse for more than ten per centum of the working days during the twelve months of continuous service in respect of which his entitlement to such leave accrues he shall not be entitled to such leave.

(2) The paid annual leave to which an employee is entitled under subsection (1) shall be in addition to rest days and paid holidays.

(3) Where an employee who is on paid annual leave becomes entitled to sick leave or maternity leave while on such annual leave, the employee shall be granted the sick leave or maternity leave, as the case may be, and the annual leave shall be deemed to have not been taken in respect of the days for which sick leave or maternity leave is so granted.

(4) The employer shall grant and the employee shall take such leave not later than twelve months after the end of every twelve months of continuous service and any employee who fails to take such leave at the end of such period shall thereupon cease to be entitled thereto:

Provided that an employee shall be entitled to payment in lieu of such annual leave if, at the request of his employer, he agrees in writing not to avail himself of any or all of his annual leave entitlement.

(5) Notwithstanding subsection (4), upon the termination of an employee’s contract of service, the employee shall be entitled to take before such termination takes place the paid annual leave due to be taken in the year in which the termination takes place in respect of the twelve months of service preceding the year in which the termination takes place, and, in addition, the leave accrued in respect of the completed months of service during the year in which the termination takes place.

(6) The employer shall pay the employee his ordinary rate of pay for every day of paid annual leave, and an employee on a monthly rate of pay shall be deemed to have received the annual leave pay if he receives his monthly wages, without abatement in respect of such annual leave, for the month in which he takes such annual leave.

(7) If the contract of service has been terminated by either party before an employee has taken the paid annual leave to which he is entitled under this section, the employer shall pay the employee his ordinary rate of pay in respect of every day of such
leave:

Provided that this subsection shall not apply where an employee is dismissed under paragraph (a) of subsection (1) of section 13.

(8) Where an employee is granted leave of absence without pay by his employer during any period of twelve months and the period of absence exceeds in the aggregate thirty days, that period of leave of absence shall be disregarded for the purpose of computing his length of service with the employer under this section.

(9) The Minister may, by notification in the Gazette, fix the periods when and prescribe the manner in which annual leave shall be granted to employees in different types of employment or in different classes of industries.

[Ins.by Act A1238:s.78]

104E Sick leave

(1) An employee shall after examination at the expense of the employer—

(a) by a registered medical practitioner duly appointed by the employer; or

(b) if no such registered medical practitioner is appointed or, if having regard to the nature or circumstances of the illness, the services of the registered medical practitioner so appointed are not obtainable within a reasonable time or distance, by any other registered medical practitioner or by a medical officer,

be entitled to paid sick leave—

(aa) where no hospitalization is necessary—

(i) of fourteen days in the aggregate in each calendar year if the employee has been employed for less than two years;

(ii) of eighteen days in the aggregate in each calendar year if the employee has been employed for two years or more but less than five years;

(iii) of twenty-two days in the aggregate in each calendar year if the employee has been employed for five years or more; or

(ab) of sixty days in the aggregate in each calendar year if hospitalisation is necessary, as may be certified by such registered medical practitioner or medical officer:

Provided that the total number of days of paid sick leave in a calendar year which an employee is entitled to under this section shall be sixty days in the aggregate:

And provided further that if an employee is certified by such registered medical practitioner or medical officer to be ill enough to need to be hospitalised but is not hospitalised for any reason the employee shall be deemed to be hospitalised for the purposes of this section.

(2) An employee shall also be entitled to paid sick leave under paragraphs (aa) and (ab) of subsection (1) after examination by a dental surgeon as defined in the Dental Act 1971 [Act 51:]

Provided that the entitlement for such sick leave shall be inclusive of the number of days provided for under paragraphs (aa) and (ab) of subsection (1).

(3) An employee who absents himself on sick leave—

(a) which is not certified by a registered medical practitioner or a medical officer or a dental surgeon as provided under subsections (1) and (2); or

(b) which is certified by such registered medical practitioner or medical officer or dental surgeon but without informing or attempting to inform his employer of such sick leave within forty-eight hours of the commencement thereof,

shall be deemed to absent himself from work without the permission of his employer and without reasonable excuse for the days on which he is so absent from work.

(4) The employer shall pay the employee his ordinary rate of pay for every day of such sick leave, and an employee on a monthly rate of pay shall be deemed to have received his sick leave pay if he receives from his employer his monthly wages, without abatement in respect of the days on which he was on sick leave, for the month during which he was on such sick leave.

(5) No employee shall be entitled to paid sick leave for the period during which the employee is entitled to maternity allowance under section 83 or for any period during which he is receiving any compensation for temporary disablement under the Workmen's Compensation Act 1952, or any periodical payments for temporary disablement under the Employees' Social Security Act 1969.

[Ins.by Act A1238:s.78]
104 Termination, lay-off and retirement benefits

(1) The Minister may by rules made under this Ordinance provide for the entitlement of employees to, and for the payment by employers of—

(a) termination benefits;
(b) lay-off benefits; or
(c) retirement benefits.

(2) Without prejudice to the generality of subsection (1), rules made by virtue of subsection (1) may provide—

(a) for the definition of the expressions "termination benefits", "lay-off benefits", or "retirement benefits", as the case may be, and for the circumstances in which the same shall be payable;
(b) for the application thereof to employees who were in employment under a contract of service immediately before the commencement of such rules and who continue in such employment after such commencement;
(c) for the application thereof to all employees generally or to any particular class, category or description of employees;
(d) for the exclusion from the application thereof of any particular employee or employees or any class, category or description of employees; and
(e) for the payment of different rates or amounts of termination benefits, lay-off benefits or retirement benefits, as the case may be, to different classes, categories or descriptions of employees.

105 Task work

(1) Nothing in this Chapter contained shall prevent any employer from agreeing with any employee in his employment that the wages of such employee shall be paid at an agreed rate in accordance with the task, that is, the specific amount of work to be performed, and not by the day or by the piece.

(2) Nothing in this Chapter contained shall prevent any employer from agreeing with any worker in his employment that the wages of such worker shall be paid at an agreed rate in accordance with the amount of work done and not by the day.

106 Period for which wages payable

Unless the agreement or contract otherwise stipulates, and subject to the provisions of section 104, wages shall only be payable for days actually worked, for paid holidays, for days other than Sundays or other rest days on which through no fault of the employee no work is provided by the employer and for time spent in attending before any Court if such Court certifies that his attendance was necessary for the ends of public justice.
107A Wage period

(1) A contract of service shall specify a wage period not exceeding one month.

(2) If in the contract of service no wage period is specified, the wage period shall, for the purposes of the contract of service, be deemed to be one month.

[Ins.by Act A1238:s.82]

107B Wages not due for absence from work through imprisonment or attendance in court

Wages shall not become payable to or recoverable by any employee from his employer for or on account of the term of any sentence of imprisonment undergone by him or for any period spent by him in custody or for or on account of any period spent by him in going to or returning from prison or other place of custody or for or on account of any period spent by him in attending before or returning from a court otherwise than as a witness on his employer's behalf.

[Ins.by Act A1238:s.82]

108 Payment of wages

(1) The wages of an employee shall be paid not later than seven days after the expiration of the wage period in respect of which they are due.

[Am.by Act A1238:s.2, 83]

(2) All wages due to an employee whose agreement or contract is terminated by expiry of the period for which it was made shall be paid to him on the day on which such agreement or contract terminates:

[Am.by Act A1238:s.2, 83]

Provided that if the Director is satisfied that payment within such time is not reasonably practicable, he may, on the application of the employer, extend the time of payment by such number of days as he thinks fit.

[Ins.by Act A1238:s.83]

(3) All wages due to an employee whose agreement or contract is terminated by his employer shall be paid to him on the day on which such agreement or contract is terminated or, if this is not possible, on the first day, not being a rest day or gazetted holiday, after the day on which such agreement or contract is terminated.

[Am.by Act A1238:s.2, 83]

(4) All wages due to an employee who terminates his agreement or contract with his employer after he has given due notice to such employer as required under sections 11 shall be paid to him on the day on which such agreement or contract is terminated.

[Am.by Act A1238:s.2, 83]

(5) If an employee terminates his agreement or contract without giving notice to his employer as required by section 11 or by the terms of any contract or if the required notice having been given the employee terminates his agreement or contract without waiting for the expiry of the seventh day after the day on which he terminates his agreement or contract:

[Am.by Act A1238:s.2, 83]

Provided that the employer may, subject to any order made by a Court or the Commissioner to the contrary, deduct from the wages due to the employee such sum as the employee is liable to pay in lieu of notice according to the provisions of section 12 or the terms of his contract if any.

[Am.by Act A1238:s.2]

[Former section reads:]

(1) The wages of a worker payable monthly shall be paid not later than ten days after the expiration of the period in respect of which they are due.

(2) All wages due to a worker whose agreement or contract is terminated by expiry of the period for which it was made shall be paid to him on the day on which such agreement or contract terminates.

(3) All wages due to a worker whose agreement or contract is terminated by his employer shall be paid to him on the day on which such agreement or contract is terminated or, if this is not possible, on the first day, not being a rest day or prescribed holiday, after the day on which such agreement or contract is terminated.

(4) All wages due to a worker who terminates his agreement or contract with his employer after he has given due notice to such employer as required under sections 11 or 26 shall be paid to him on the day on which such agreement or contract is terminated.

(5) If a worker terminates his agreement or contract without giving notice to his employer as required by section 11 or by the terms of any contract or if the required notice having been given the worker terminates his agreement or contract without waiting for the expiry of the tenth day after the day on which he terminates his agreement or contract:

Provided that the employer may, subject to any order made by a Court or the Commissioner to the contrary, deduct from the wages due to the worker such sum as the worker is liable to pay in lieu of notice according to the provisions of section 12 or the terms of his contract if any.

109 Restriction on places at which wages may be paid
No employer shall pay wages to employees in taverns or other similar establishments or in places of amusement or in shops or stores for the retail sale of merchandise except in the case of employees employed in such establishments, places, shops or stores.

[Subs.by Act A1238:s.84]

Former section reads:
Section 109. Payment through overseer or in stores or taverns prohibited.
No wages shall be paid to any worker ——
(a) through the agency of any overseer ; or
(b) at or within any shop, store or place of amusement, except in the case of persons employed therein ; or
except with the prior approval of the Commissioner.

110 Wages to be paid in legal tender

(1) Except where otherwise expressly permitted by this Ordinance the entire amount of the wages earned by, or payable to, any employee in respect of any work done by him shall be actually paid to him in legal tender and every payment of, or on account of, any such wages made in any other form shall be illegal, null and void.

[Am.by Act A1238:s.2, 85]

(2) Every employee shall be entitled to recover in the courts or before the Director acting under section 7A so much of his wages, exclusive of sums lawfully deducted under section 113, as shall not have been actually paid to him in legal tender or paid to him by any of the ways under section 110A.

[Ins.by Act A1238:s.85]

(3) Where payment of wages is made in cash it shall be made on working days only and at or near the workplace.

[Ins.by Act A1238:s.85]

Former section reads:
Except where otherwise expressly prescribed the entire amount of the wages earned by, or payable to, any worker in respect of any work done by him shall be actually paid to him in legal tender and every payment of, or on account of, any such wages made in any other form shall be illegal, null and void.

110A Payment of wages through bank

(1) Nothing in section 110 shall operate so as to render unlawful or invalid any payment of wages by the employer to the employee with the employee's written consent in any of the following ways:

(a) payment into an account at a bank or a finance company licensed under the Banking and Financial Institutions Act 1989 [Act 372] in any part of Sabah being an account in the name of the employee or an account in the name of the employee jointly with one or more other person, not being his employer;

(b) payment by cheque made payable to or to the order of the employee.

(2) The consent of the employee under this section may be withdrawn by him at any time by notice in writing given to the employer; and such notice shall take effect at but not before the end of the period of four weeks beginning with the day on which the notice is given.

(3) The consent of the employee to the mode of payment of wages under subsection (1) shall not be unreasonably withheld or, if granted, shall not be unreasonably withdrawn by the employee notwithstanding subsection (2).

(4) Any dispute as to whether an employee has unreasonably withheld or withdrawn his consent to the mode of payment of his wages under subsection (1) shall be referred to the Director whose decision on the matter shall be final.

[Ins.by Act A1238:s.86]

111 [Deleted]

[Deleted by Act A1238:s.87]

Former section reads:
Section 111. Agreements and contracts to pay wages otherwise than in legal tender, illegal.
In all agreements and contracts for the employment of any worker or for the performance by any worker of any work, the wages of such worker shall be made payable in legal tender and not otherwise and if in any agreement or contract the whole or any part of such wages shall be made payable in any other manner such agreement or contract shall be illegal, null and void.

112 Conditions restricting place at which, manner in which, and person with whom wages paid to be spent illegal

[Am.by Act A1238:s.83]

No employer shall impose any condition in any contract of service as to the place at which, or the manner in which, or the person with whom, any wages paid to the employee are to be expended and any such condition in a contract of service shall be void and of no effect.

[Am.by Act A1238:s.2, 88]
No employer shall impose in any agreement or contract for the employment of any worker any terms as to the place at which, or the manner in which, or the person with whom, any wages paid to the worker are to be expended and every agreement or contract between an employer and a worker containing such terms shall be illegal, null and void.

113 Lawful deductions

(1) No deductions shall be made by an employer from the wages of an employee otherwise than in accordance with the provisions of this Ordinance.

(2) It shall be lawful for an employer to make the following deductions:

(a) deductions to the extent of any overpayment of wages made during the immediately preceding three months from the month in which deductions are to be made, by the employer to the employee by the employer’s mistake;

(b) deductions for the indemnity due to the employer by the employee under subsection (1) of section 12;

(c) deductions for the recovery of advances of wages made under section 102 provided no interest is charged on the advances; and

(d) deductions authorized by any other written law.

(3) The following deductions shall only be made at the request in writing of the employee:

(a) deductions in respect of the payments to a registered trade union or co-operative thrift and loan society of any sum of money due to the trade union or society by the employee on account of entrance fees, subscriptions, instalments and interest on loans or other dues; and

(b) deductions in respect of the payments for any shares of the employer’s business offered for sale by the employer and purchased by the employee.

(4) The following deductions shall not be made except at the request in writing of the employee and with the prior permission in writing of the Director:

(a) deductions in respect of payments into any superannuation scheme, provident fund, employer’s welfare scheme or insurance scheme established for the benefit of the employee;

(b) deductions in respect of repayments of advances of wages made to an employee under section 102 where interest is levied on the advances and deductions in respect of the payments of the interest so levied;

(c) deductions in respect of payments to a third party on behalf of the employee;

(d) deductions in respect of payments for the purchase by the employer of any goods of the employer’s business offered for sale by the employer; and

(e) deductions in respect of the rental for accommodation and the cost of services, food and meals provided by the employer to the employee at the employee’s request or under the terms of the employee’s contract of service.

(5) The Director shall not permit any deduction for payment under paragraph (e) of subsection (4) unless he is satisfied that the provision of the accommodation, services, food or meals is for the benefit of the employee.

(6) Where an employee obtains foodstuffs, provisions or other goods on credit from a shop the business of which is carried on by a co-operative society registered under the Co-operative Societies Act 1993, it shall be lawful for his employer, at the request in writing of the employee and with the agreement of the manager of the co-operative shop to make deductions from the wages of the employee of an amount not exceeding the amount of the credit and to pay the amount so deducted to the manager in satisfaction of the employee’s debt.

(7) Notwithstanding subsections (2), (3), (4) and (6) the Director, on an application by an employer or a specified class or classes of employers, may permit any deduction for a specified purpose from the wages of an employee or a specified class or classes of employees subject to such conditions as he may deem fit to impose.

(8) The total of any amounts deducted under this section from the wages of an employee in respect of any one month shall not exceed fifty per centum of the wages earned by that employee in that month.

(9) The limitation in subsection (8) shall not apply to—

(a) deductions from the indemnity payable by an employer to an employee under subsection (1) of section 12;

(b) deductions from the final payment of the wages of an employee for any amount due to the employer and remaining unpaid by the employee on the termination of the employee’s contract of service; and
(c) deductions for the repayment of a housing loan which, subject to the prior permission in writing of the Director, may exceed the fifty per centum limit by an additional amount of not more than twenty-five per centum of the wages earned.

[Subs. by Act A1238:s.89]

Section 113. Deductions and worker’s right to recover wages.

(1) No deductions shall be made by an employer from the wages of a worker otherwise than in accordance with the provisions of this Ordinance or of any other written law.

(2) The following deductions may be made from the wages of a worker -

(a) deductions made at the request in writing of the worker in respect of the payment to any superannuation scheme or provident fund or thrift scheme lawfully established for the benefit of the worker and approved by the Commissioner;

(b) deductions made at the request in writing of the worker for the purpose of remittance by the employer to a specified member of the family of the worker;

(c) deductions of any overpayment made during the immediately preceding three months by the employer to the worker by the employer’s mistake; and

(d) deductions for the recovery of advances made in accordance with the provisions of section 102(4)

(3) the total of any deductions made under this section from the wages of a worker in respect of any one month shall not exceed fifty percent of the wages earned by the worker during that period.

(4) every worker shall be entitled to recover in the court of the colony so much of his wages exclusive of sums lawfully deducted in accordance with the provisions of this Ordinance or any rule made thereunder as shall not have been actually paid to him in legal tender.

114 Interest on advances forbidden

No employer shall—

(a) make any deduction; or

(b) receive any payment,

from any employee by way of discount, interest or any similar charge on account of any advance or advances of wages made to an employee in anticipation of the regular date for the payment of wages, where such advance or advances do not exceed in the aggregate one month’s wages.

[Subs. by Act A1238:s.90]

No employer shall make any deduction by way of discount, interest or any similar charge on account of any advance of wages made to any worker.

115 Deductions for fines, etc

Except where otherwise expressly permitted by the provisions of this Ordinance or any rule made hereunder no employer shall make any deduction or make any agreement or contract with an employee for any deduction from wages to be paid by the employer to the employee or for any payment to the employer by the employee for or in respect of any fine, or of bad or negligent work or of injury to the materials or other property of the employer.

[Am.by Act A1238:s.91]

Except where otherwise expressly permitted by the provisions of this Ordinance no employer shall make any deduction or make any agreement or contract with a worker for any deduction from wages to be paid by the employer to the worker or for any payment to the employer by the worker for or in respect of any fine, or of bad or negligent work or of injury to the materials or other property of the employer.

116 Remuneration other than wages

(1) Nothing in this Chapter shall render illegal a contract of service with an employee under which the employer agrees to provide the employee with house accommodation, food, fuel, light, water, medical attendance, or any approved amenity or approved service in addition to wages but no employer shall provide any employee with any intoxicating liquor as part of the terms of a contract of service.

(2) The Director may, on application made to him in writing by an employer, approve in writing any amenity or service as an approved amenity or approved service, and in granting such approval the Director may make such modifications or impose such conditions as he may deem proper.

(3) Any person who is dissatisfied with any decision of the Director under subsection (2) may, within thirty days of such decision being communicated to him, appeal in writing to the Minister.

(4) On any appeal made to him under subsection (3), the Minister may make such decision or order as appears just, and such decision or order shall be final.

[Subs. by Act A1238:s.92]

Nothing in this Chapter or in rule made thereunder shall render illegal an agreement or contract with a worker for giving to him food, a dwelling place or other allowances or privileges in addition to money wages as a remuneration for his services but so that no employer shall give to a worker any intoxicating liquor by way of such remuneration.

116A Priority of wages over other debts

(1) Where by order of a court made upon the application of any person holding a mortgage, charge, lien or decree (in this
section referred to as “the secured creditor”) or in the exercise of rights under a debenture the property of any person (in this
section referred to as “the person liable”) liable under any of the provisions of this Ordinance to pay the wages due to any
employee or to pay money due to any subcontractor for labour is sold, or any money due to the person liable is attached or
garnished, the Court or the receiver or manager shall not authorize payment of the proceeds of the sale, or of the money so
attached or garnished, to the secured creditor or the debenture holder until the Court or the receiver or manager has
ascertained and caused to be paid, out of such proceeds or money, the wages of such employee, or the money due to any
subcontractor for labour under a contract between him and the person liable, which the person liable was liable to pay at the
date of such sale, attachment or garnishment:

Provided that this section shall only apply to the sale of a place of employment on which—

(a) any employee to whom wages are due as aforesaid;

(b) any employee to whom wages are due by such subcontractor for labour as aforesaid;

(c) any subcontractor for labour to whom money is owed on account of the subcontract by the subcontractor for
labour as aforesaid,

was employed or worked at the time when such wages were earned or such money accrued due, and to the proceeds of the
sale of any products of such place of employment and of any movable property therein used in connection with such
employment and to any money due to the person liable on account of work performed by such employee or subcontractor for
labour or derived from the sale of the products of such work:

Provided further that—

(a) where the person liable is an employer, the total amount of the wages of any employee to which priority over
the claim of a secured creditor is given by this section shall not exceed the amount due by the employer to the
employee as wages for any four consecutive months’ work;

(b) where the person liable is a principal and where the wages are claimed from such principal under section
116C, the total amount of the wages of any employee to which priority over the claim of a secured creditor is
given by this section shall not exceed the amount due by the principal to the contractor at the date of the sale,
attachment or garnishment unless the contractor is also a subcontractor for labour;

(c) where the person liable is a contractor or subcontractor who owes money to a subcontractor for labour, the
total amount due to such subcontractor for labour to which priority over the claim of a secured creditor is given
by this section shall not exceed the amount due by such subcontractor for labour to his employees (including any
further subcontractors for labour under such first-mentioned subcontractor for labour) for any four consecutive
months’ work.

(2) In this section, except for the second proviso to subsection (1), “wages” includes termination and lay-off benefits, annual
leave pay, sick leave pay, public holiday pay and maternity allowance.

[Ins.by Act A1238:s.93]

116B Reference by the Court to Director

(1) For the purposes of ascertaining the amount due to any employee or subcontractor for labour under section 116A, the
court or the receiver or manager may refer the question to the Director with a request that he hold an inquiry into the matter
and forward his findings to the court or the receiver or manager, and the Director shall comply with any such request.

(2) For the purpose of any inquiry under subsection (1), the Director shall have all the powers conferred upon him by
paragraph (f) of section 7F and section 7O shall have effect as if the inquiry were being held under section 7A.

[Ins.by Act A1238:s.93]

116C Liability of principals and contractors for wages

(1) Where a principal in the course of or for the purposes of his trade or business, contracts with a contractor for the
execution by or under the contractor of the whole or any part of any work undertaken by the principal, and any wages are due
to any employee by the contractor or any subcontractor under the contractor for work done in the course of the performance
of the contract, the principal and the contractor and any such subcontractor (not being the employer) shall be jointly and
severally liable with the employer to pay such wages as if that employee had been immediately employed by the principal and
by the contractor and any such subcontractor:

Provided that—

(a) in the case of a contract for constructional work, the principal shall not be liable for the payment of wages
under this subsection unless he is also a constructional contractor or a housing developer;

(b) the principal, and the contractor and any subcontractor (not being the employer), shall not be liable to any
employee under this subsection for more than the wages due to him for any three consecutive months; and

(c) the employee shall have instituted proceedings against the principal for the recovery of his wages or made a
complaint to the Director under Chapter IIA within ninety days from the date on which such wages became due
for payment by his employer in accordance with the provisions for the payment of wages contained in Part IV.

(2) Any person, other than the employer, who has paid wages under this section to the employee of any employer may
institute civil proceedings against such employer for the recovery of the amount of wages so paid.
CHAPTER XIVA - EMPLOYMENT OF NON-RESIDENT EMPLOYEE

117 [Deleted]

[Former section reads:]
Section 117. Employer's shop.

(1) Nothing in this Chapter or in any rule made thereunder shall prevent an employer with the approval in writing of the Commissioner, which may at any time be revoked, from establishing a shop for the sale of rice and provisions generally to his workers at prices to be approved by the Commissioner and marked or exhibited in such manner as he may require but such employer shall not compel any worker to purchase rice or such provisions at such shop.

(2) No employer shall trade with any worker or establish or keep a shop on any place of employment otherwise than in accordance with the preceding subsection.

(3) No person employed on any place of employment as an assistant or overseer shall traffic with any worker employed under or together with him nor shall such person be either directly or indirectly financially concerned in the management of any shop wheresoever it be situated which is used or maintained for the purpose of supplying commodities of any kind whatsoever to those employed under or together with such person.

118 Employment of non-resident employee and priority for resident employee

(1) No person shall employ any non-resident employee unless he has obtained from the Director a Licence to Employ Non-Resident Employee.

(2) The power of the Director to issue a Licence to Employ Non-Resident Employee shall be subject to the laws on immigration applicable to Sabah and such Licence shall be in such form and subject to such conditions as may be prescribed.

[Subs. by Act A1238:s.96]

[Former section reads:]
Section 118. Employment of immigrant workers.

No person shall knowingly employ any immigrant worker unless he has obtained a licence from the Commissioner to do so in such form and subject to such condition as may be prescribed and unless such worker has been brought before the Commissioner for the purpose of subsection (2) of section 49.

118A Duty to furnish information and returns

(1) An employer who employs a non-resident employee shall, within fourteen days of the employment, furnish the nearest office of the Director with the particulars of the non-resident employee in such manner as may be determined by the Director.

(2) An employer or any specified class or classes of employers, whenever required to do so by the Director, shall furnish returns of particulars relating to the employment of a non-resident employee in such manner and at such intervals as the Director may direct.

[Ins. by Act A1238:s.97]

118B Director may inquire into complaint

The Director may inquire into any complaint from a resident employee that he is being discriminated against in relation to a non-resident employee, or from a nonresident employee that he is being discriminated against in relation to a resident employee, by his employer in respect of the terms and conditions of his employment; and the Director may issue to the employer such directives as may be necessary or expedient to resolve the matter.

[Ins. by Act A1238:s.97]

118C Prohibition on termination of resident employee for non-resident employee

No employer shall terminate the contract of service of a resident employee for the purpose of employing a non-resident employee.

[Ins. by Act A1238:s.97]

118D Termination of employment by reason of redundancy

Where an employer is required to reduce his workforce by reason of redundancy necessitating the retrenchment of any number of employees, the employer shall not terminate the services of a resident employee unless he has first terminated the services of all non-resident employees employed by him in a capacity similar to that of the resident employee.

[Ins. by Act A1238:s.97]

118E Permanent resident exempted from this Chapter

For the purposes of this Chapter, the term "non-resident employee" shall not include a non-resident employee who is a permanent resident of Sabah.

[Ins. by Act A1238:s.97]

119 [Deleted]
Exemption of employer if not actual offender.

(1) When an employer is charged with an offence against this Chapter or any rule made thereunder he shall be entitled upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge and if, after the commission of the offence has been proved, the employer shall prove to the satisfaction of the court that he has used due diligence to enforce the provisions of this Chapter and that the said other person has committed the offence in question without his knowledge, consent or connivance, the said other person shall be liable to be summarily convicted of such offence and in such case the employer shall be exempt from any penalty.

(2) When it appears to the Commissioner at the time of discovering an offence that the employer has used due diligence to comply with the provisions of this Chapter or any rule made thereunder and that the person who committed the offence did so without the knowledge, consent or connivance of the employer, then the Commissioner may proceed against that person in the first instance without first proceeding against the employer.

120 [Deleted]

Penalties.

Any employer who ---

(a) fails to pay wages in accordance with the provisions of this Chapter; or

(b) gives any remuneration for services contrary to the provisions of this Chapter, or makes any deduction from the wages of any worker or receives any payment from any worker contrary to the provisions of this Chapter; or

(c) trades with his workers or keeps a shop otherwise than in accordance with the provisions of this Chapter; or

(d) knowingly employs any immigrant worker unless he has obtained a licence from the Commissioner to do so.

and any person employed on a place of employment who contravenes the provisions of sub-section (3) of section 117 shall be guilty of an offence and shall be liable, on conviction, to a fine of five hundred dollars or in default thereof imprisonment for six months.

Section 121. Power to make rules.

(1) The Minister may make rules generally for carrying out the provisions of this Part.

(2) Such rules may ---

(a) provide for any matter which by this Part is to be or may be prescribed;

(b) prescribed in respect of places of employment to which Chapter X has been applied ---

(i) the form and siting of latrines and the arrangements to be made for disposal of night soil;

(ii) the steps to be taken for the control of malaria, including the administration of prophylactics;

(iii) the steps to be taken for the protection and adequacy of the water supply; and

(iv) the requirements for inspection and management of hospitals;

(c) provide for the establishment of a Fund or other method of securing the discharge of any liabilities and the expenses of repatriation of workers upon such terms and conditions and subject to such control as he deems necessary and for the administration of such a Fund in conjunction with any Fund established under the provisions of paragraph (1) of section 55;

(d) prescribe the fees to be paid and by whom payable for any licences issued, attestations, endorsements or registrations effected or any other acts required to be done in pursuance of the provisions of this Ordinance.

(3) Any such rule may provide a penalty for the breach or contravention thereof not exceeding a fine of two hundred dollars or in default thereof imprisonment for three months.

PART V
PROCEDURE, OFFENCES, PENALTIES, RULES, SAVINGS AND REPEAL.

CHAPTER XVI - GENERAL

122 [Deleted]

123 [Deleted]

123A Prosecution

No prosecution shall be instituted for an offence under this Ordinance or any rules made under this Ordinance without the consent in writing of the Public Prosecutor.
123B Power of court imposing fine

When under this Ordinance any court imposes a fine or enforces the payment of any sum secured by bond, the court may, if it thinks fit, direct that the whole or any part of such fine or sum when recovered be paid to the party complaining.

123C Effect of imprisonment

From and after the determination of any imprisonment suffered under this Ordinance for non-payment of the amount of any fine, together with the costs assessed and directed to be paid by any order of court, the amount so ordered shall be deemed to be liquidated and discharged, and the order shall be annulled.

124 Right of audience

The Director, or any officer authorized in writing by the Director, shall have the right to appear and be heard before a Magistrates’ Court or a Sessions Court in any civil proceedings under or arising out of this Ordinance, or any rules made under this Ordinance; and such right shall include the right to appear and represent an employee in any such proceedings.

125 Public servants

For the purpose of this Ordinance and of the Penal Code, [Cap 96] the Commissioner and all officers duly appointed or authorised under this Ordinance shall be deemed to be public servants.

125A Protection of Director and officers

No suit shall lie against the Director and all officers duly appointed or authorized under this Ordinance for anything done or omitted to be done by him in good faith without negligence and in the intended exercise of any power conferred or performance of any duty imposed by this Ordinance.

126 [Deleted]

[Deleted by Act A1238:s.101]

127 Saving clause as to civil jurisdiction of court

Nothing in this Ordinance shall be construed as preventing any employer or employee from enforcing his civil rights and remedies for any breach or non-performance of a contract of service by any suit in court in any case in which proceedings have not been instituted before the Director under section 7A or, if instituted, have been withdrawn.

128 Onus of proof

(1) In all proceedings under this Ordinance the onus of proving that he is not the employer or the person whose duty it is under this Ordinance or under any rule made hereunder to do or abstain from doing anything shall be on the person who alleges that he is not the employer or other person as the case may be.

(2) A certificate purporting to be under the hand of the Commissioner stating that any return required under section 59 has not been forwarded or is incorrect shall be sufficient prima facie evidence of the truth of the facts stated in such certificate.
(1) In all proceedings under this Ordinance the onus of proving that he is not the employer or the person whose duty it is under this Ordinance to do or abstain from doing anything shall be on the person who alleges that he is not the employer or other person as the case may be.

129 Service of summons

(1) A summons issued by the Commissioner in accordance with section 6 and Chapter II A may be served on any person by delivering or tendering to him a copy thereof signed by the Commissioner:

[Am. Act A1238:s.108]

Provided that ---

(a) if the person to be summoned has an agent authorised to accept service of the summons on his behalf, service on such agent shall be sufficient;

(b) if the person to be summoned cannot be found and has no agent authorised to accept service of the summons on his behalf, service on any adult male member (not being a domestic servant) of the family of the person to be summoned who is residing with him shall be sufficient.

[Am. Act A1238:s.108]

(2) When such summons as aforesaid is addressed to a corporation it may be served ---

(a) by leaving a copy thereof, signed by the Commissioner, at the registered office, if any, of the corporation; or

(b) by sending such copy by post in a letter addressed to the corporation at its principal office, whether such office be situated within Malaysia or elsewhere; or

[Am. Act A1238:s.108]

(c) by delivering such copy to any director, secretary or other principal officer of the corporation.

(2A) When such summons is addressed to a firm, it may be served—

(a) by leaving a copy thereof, signed by the Director, at the principal place at which the partnership business is carried on;

(b) by sending such copy by registered post in a letter addressed to the firm at its principal office, whether such office be situated within Malaysia or elsewhere; or

(c) by delivering such copy to any one or more of the partners in such firm or to any person having, at the time of service, the control or management of the partnership business at the principal place at which the partnership business is carried on within Malaysia.

[Ins. Act A1238:s.108]

(3) When the serving officer delivers or tenders a copy of the summons to the person to be summoned or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

(4) If ---

(a) such person refuses or is unable to sign the acknowledgment; or

(b) the serving officer cannot find the person to be summoned and there is no agent empowered to accept service of the summons on his behalf nor any other person on whom the service can be made;

the service officer shall affix a copy of the summons on the outer door of the house which the person to be summoned ordinarily resides and then return the original to the Commissioner with a return endorsed thereon or annexed thereto stating that he has so affixed the copy and the circumstances under which he did so.

[Am. Act A1238:s.108]

(5) The service officer shall, in all cases in which the summons has been served under sub-section (3), endorse or annex, or cause to be endorsed or annexed, on or to the original summons a return stating the time when and the manner in which the summons was served.

(6) When a summons is returned under sub-section (4), the Commissioner shall, it the return under the sub-section has not been verified by the affidavit of the serving officer, and may if it has been so verified, examine the serving officer on affirmation touching his proceedings and may make such further enquiry in the matter as he thinks fit and shall either declare that the summons has been duly served or order such service as he thinks fit.

(7) When the Commissioner is satisfied that there is reason to believe that the person to be summoned is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served in the ordinary way, the Commissioner may order the summons to be served by affixing a copy thereof in some conspicuous place or near the office of the Commissioner and also upon some conspicuous part of the house, if any, in which the person to be summoned is known to have last resided, or in such other manner as the Commissioner thinks fit or may order the substitution of service of notice by advertisement in the Gazette and in such local newspaper or newspapers as the Director may think fit.;
(8) The service substituted by order of the Commissioner shall be as effectual as if it had been made personally on the person to be summoned.

(9) Whenever service is substituted by order of the Commissioner, the Commissioner shall fix such time for the appearance of the person to be summoned as the case may require.

(10) Any order or notice in writing made or issued by the Commissioner in the exercise of powers conferred by this Ordinance may be served as if the same were a summons, and the provisions of this section, other than sub-section (9), shall apply to the service of any such order or notice.

129A Incapacity of Director hearing inquiry

Where the Director has, for the purpose of inquiring into any matter under this Ordinance, taken down any evidence or made any memorandum and is prevented by death, transfer or other cause from concluding such inquiry, any successor to such Director or other officer may deal with such evidence or memorandum as if he had taken it down or made it and proceed with the inquiry from the stage at which such Director left it.

CHAPTER XVIA - OFFENCES AND PENALTIES

130 [Deleted]

[Deleted by Act A1238:s.110]

Section 130. Application of fines.

When under this Ordinance any court impose a fine the court may, if it thinks fit, direct that the whole or any part of such fine or sum when recovered be paid to the aggrieved party.

130A Under sections 3 to 6

Any person who—

(a) refuses the Director exercising his powers under this Ordinance, access to any premises or any part thereof;

(b) assaults, obstructs, hinders or delays the Director in effecting any entrance into any premises or any part thereof which he is entitled to effect;

(c) furnishes the Director as true, information which he knows or has reason to believe to be false; or

(d) fails to produce, or conceals or attempts to conceal any document which he may be required to produce under this Ordinance or hinders or obstructs the Director in effecting possession of the documents,
commits an offence and shall on conviction be liable to a fine of ten thousand ringgit and in the case of a continuing offence, to a fine of one hundred ringgit for each day during which such offence is continued after conviction.

[Ins. Act A1238:s.111]

130B Offence in connection with inquiry or inspection

In any inquiry, investigation, entry or inspection made by the Director, or by any officer lawfully exercising the powers of the Director under this Ordinance, any person committing with respect to such inquiry, investigation, entry or inspection any offence described in Chapter X of the Penal Code shall on conviction be punished as prescribed in such Chapter.

Offence in connection with inquiry or inspection.

[Ins. Act A1238:s.111]

130C Under Chapter IIA

If—

(a) any person fails to comply with an order or decision of the Director made under subsection (1) of section 7A, subsection (1) of section 7C or subsection (1) of section 7D; or

(b) any employer prevents or attempts to prevent any employee from appearing before the Director under Chapter IIA,

he commits an offence and shall on conviction be liable, to a fine not exceeding ten thousand ringgit and in the case of a continuing offence, to a fine not exceeding one hundred ringgit for each day during which such offence is continued after conviction.

[Ins. Act A1238:s.111]

130D Under Chapter IV

Every employer who—

(a) fails to make payment in accordance with the provisions of section 10 or contravenes the provisions of section 13; or

(b) fails to comply with the provisions of Chapter IV (other than sections 10 and 13);

commits an offence, and shall on conviction be liable on conviction to a fine not exceeding ten thousand ringgit

[Ins. Act A1238:s.111]

130E Under Chapter X

An employer who—

(a) being an owner of any estate, mine or factory to which section 57 applies, fails to comply with the requirements of that section;

(b) fails to keep a register required under section 58 or 94A, or to preserve the register for a period of not less than six years;

(c) destroys, alters or mutilates the register referred to in paragraph (a), or causes or permits the register to be destroyed, altered or mutilated;

(d) fails to comply with any rules made under section 58A;

(e) fails, without reasonable cause (proof of which shall lie on him), to forward to the Director such returns as are prescribed under section 59 or forwards any of the returns knowing that it contains any false particulars; or

(f) fails to give notice under section 59A or gives such notice containing any false particulars,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

130F Under Chapter XI

(1) Any person contravening any of the provisions of Chapter XI or of any rule or order made thereunder or who being the parent or guardian of a child or young person knowingly acquiesces in any such contravention in respect of such child or young person, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(2) On the conviction of any person for an offence under subsection (1) the Director shall, if the person convicted is the holder of a licence under any written law in force on entertainment, inform the licensing authority concerned of the particulars of such conviction and the licensing authority may take such action as it considers appropriate.

[Ins. Act A1238:s.111]

130G Under Chapter XIA
An employer of a female employee commits an offence if the female employee is employed contrary to sections 75, 78 or 78A and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

130H Under Chapter XIB

Any employer who—

(a) fails to grant maternity leave to a female employee employed by him and entitled thereto under Chapter XIB;

(b) fails to pay the maternity allowance to a female employee employed by him and entitled thereto under Chapter XIB or to her nominee, or to her personal legal representative;

(c) fails to pay maternity allowance in the manner prescribed in section 85;

(d) dismisses a female employee from her employment during the period in which she is entitled to maternity leave; or

(e) contravenes the provisions of section 91A or 94A, commits an offence and shall be liable on conviction, to a fine not exceeding ten thousand ringgit and shall also—

(aa) in the event of a conviction for an offence under paragraph (a), be ordered by the court before which he is convicted to pay to the female employee concerned the maternity allowance to which she may be entitled under Chapter XIA in respect of every day on which the female employee had worked during the eligible period referred to in paragraph (b) of subsection (1) of section 83, the payment so ordered being in addition to the wages payable to her, and the amount of maternity allowance so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court; and

(ab) in the event of a conviction for an offence under paragraph (b), be ordered by the court before which he is convicted to pay to the female employee concerned the maternity allowance to which she is entitled, and the amount of maternity allowance so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

[Ins. Act A1238:s.111]

130I Under Chapter XII

Any employer who contravenes or fails to comply with the provisions of sections 96 and 98 commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

130J Under Chapter XIV

Any employer who—

(a) makes to any employee any advance of wages in excess of that permitted under section 102;

(b) contravenes any of the provisions of section 104B;

(c) fails to pay the wages or indemnity due to any employee within the time prescribed in section 108;

(d) pays wages, imposes any condition in a contract of service or makes any deduction or receives any payment in contravention of section 109, 110, 110A, 112 or 114;

(e) makes deductions from the wages of an employee other than such deductions as are authorized by section 113;

(f) gives any remuneration for services or receives any payment from an employer contrary to the provisions of this Ordinance;

(g) fails to comply with any order of the Director;

(h) provides any employee as part of the terms of his contract of service with any amenity or service or any intoxicating liquor in contravention of section 116; or

(i) requires any employee to work on any occasion or under any circumstances which it is unlawful for him to require such employee to work,

commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

130K Penalties for failure or noncompliance in relation to rest days, overtime, holidays, annual leave and sick leave

(1) Any employer who fails to pay to any of his employees wages for work done by his employee on a rest day or pays wages less than the rate provided under section 104C, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the wages due for work done on every rest day at the rate provided under section 104C, and the amount of such wages shall be recoverable as if it were a fine imposed by such court.
(2) Any employer who fails to pay to any of his employees any overtime wages as provided under this Ordinance or any subsidiary legislation made thereunder, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the overtime wages due, and the amount of overtime wages so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(3) Any employer who fails to pay to any of his employees wages as provided under section 103, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the wages due for any work done on any such holiday at the rate provided under section 103, and the amount of wages so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(4) Any employer who fails to grant to any of his employees annual leave or any part thereof as provided under section 104D, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the ordinary rate of pay in respect of every day of such leave not so granted, the payment so ordered being in addition to the wages payable to the employee for the work done on any such day, and the amount so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

(5) Any employer who fails to grant sick leave, or fails to pay sick leave pay, to any of his employees, as provided under section 104E, commits an offence, and shall also, on conviction, be ordered by the court before which he is convicted to pay to the employee concerned the sick leave pay for every day of such sick leave at the rate provided under section 104E, and the amount so ordered by the court to be paid shall be recoverable as if it were a fine imposed by such court.

130L Under Chapter XIVA

An employer who fails to comply with Chapter XIVA, or any person who forges, alters or tampers with a Licence To Employ Non-Resident Employee or any person in possession of a forged, altered or tampered Licence To Employ Non-Resident Employee, commits an offence and shall be liable on conviction to a fine not exceeding ten thousand ringgit or to imprisonment for six months or to both.

130M General penalty

Any person who commits any offence under this Ordinance or any rule, order or other subsidiary legislation made thereunder, in respect of which no penalty is provided, shall be liable, on conviction, to a fine not exceeding ten thousand ringgit.

130N Power to compound offences

(1) The Director, Deputy Directors of Labour or Senior Assistant Directors of Labour appointed under paragraph (a) or (b) of subsection (1A) of section 3 may, compound any offence committed by a person which is punishable under this Ordinance or any rule made under this Ordinance.

(2) The Director, a Deputy Director of Labour or a Senior Assistant Director of Labour may, in a case where he deems it fit and proper so to do, compound an offence by making a written offer to the person who has committed the offence to compound the offence on payment to the Director, Deputy Director of Labour or Senior Assistant Director of Labour as the case may be, within such time as may be specified in the offer, of such sum of money, as may be specified in the offer, which shall not exceed fifty per centum of the amount of the maximum fine (including the daily fine, if any, in the case of a continuing offence) to which the person would have been liable if he had been convicted of the offence.

(3) An offer under subsection (2) may be made at any time after the offence has been committed, but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or within such extended period as the Director, Deputy Director of Labour or Senior Assistant Director of Labour may grant, prosecution for the offence may be instituted at any time thereafter against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2)—

(a) no prosecution shall thereafter be instituted in respect of the offence against the person to whom the offer to compound was made; and

(b) any book, register or document seized in connection with the offence shall be released immediately.

(5) Any moneys paid to the Director, Deputy Directors of Labour or Senior Assistant Directors of Labour pursuant to subsection (2), shall be paid into and form part of the Federal Consolidated Fund.

CHAPTER XVIB - RULES

130O Power to make rules

(1) The Minister may from time to time, after consultation with the State Authority, make such rules as may be necessary or expedient for giving full effect to the provisions of this Ordinance, or for the further, better or more convenient implementation of the provisions of this Ordinance.

(2) Without prejudice to the generality of the foregoing, the Minister may make rules—
(a) limiting the powers of officers appointed under subsection (1A) of section 3;
(b) prescribing the conditions under which female employees may work at night;
(c) prescribing the rate of the maternity allowance to which female employees shall be entitled during the eligible period;
(d) prescribing the maximum period during which notice of dismissal given by her employer to a female employee who is absent from her work as a result of illness certified by a registered medical practitioner to arise out of her pregnancy or confinement shall not expire;
(e) prescribing the times which employees shall be entitled to take off from work for meals and which they shall be entitled or required to take off for rest;
(f) prescribing the form of any register, summons or order required to be kept, issued or made under this Ordinance;
(g) prescribing the procedure for sending summonses, warrants and orders issued or made under this Ordinance in Sabah for service or execution in the Republic of Singapore and Brunei, and making provisions for the service or execution in Sabah of summonses, warrants and orders issued or made in the Republic of Singapore and Brunei;
(h) prescribing fees to be paid for filing of claims under section 7A and for copies of notes of evidence recorded under Chapter IIA;
(i) prescribing the contents of a written contract required under subsection (3) of section 18;
(j) to provide for the application of all or any of the provisions of the Ordinance to all domestic servants and to provide generally for the engagement, repatriation and working conditions of domestic servants;
(k) to provide for the entitlement of employees and the payment by employers of termination, lay-off and retirement benefits;
(l) to prescribe the conditions for the employment of part-time employees, including the manner in which the hours of work of such employees are to be computed for the purposes of determining whether such employee falls within the definition of a part-time employee;
(m) to regulate the employment of children and young persons and may specify—
   (i) the form of licence to be issued under section 73D and the conditions and restrictions to be attached to such licence;
   (ii) the time which children and young persons employed shall be entitled to take off from work for meals or rest periods; and
   (iii) the procedure to be followed by any Board appointed under subsection (2) of section 74A;
(n) to regulate the manner and form in which applications shall be made for a Licence To Employ Non-Resident Employee under this Ordinance and may—
   (i) specify the particulars to be furnished upon every such application;
   (ii) specify the conditions under which any licence may be issued;
   (iii) prescribe the form of licence;
   (iv) prescribe the fees payable thefor and the particulars to be set forth therein;
   (v) determine the security to be furnished by applicant for licence;
   (vi) require records to be kept by licensee; and
   (vii) prescribe the maximum duration for the employment of non-resident employee;
(o) provide for the establishment of a Fund or Board or other method of recovering the discharge of any liabilities and the expenses of recruitment and repatriation of employees upon such terms and conditions and subject to such control as he deems necessary; and
(p) to prescribe for the calculation of overtime for piece rated employees under subsection (10) of section 104.

(3) Any such rule may provide a penalty for the breach or contravention thereof a fine not exceeding ten thousand ringgit.

[Ins. Act A1238:s.111]

131 Existing Ordinances not affected

Nothing in this Ordinance shall operate to relieve any employer of any duty or liability imposed upon him by the provisions of any other written law for the time being in force or to limit any powers given to any Federal or State Government officer by any such Ordinance.

[Am. Act A1238:s.112]
132 Saving and transitional of contracts, etc, entered into before this Ordinance

Any contract of service lawfully entered into between any employer and any employee and any licence issued under section 118 valid and in force before the date of coming into force of this Ordinance shall, if it is still legally binding upon the parties, continue to be in force after such date and, subject to the express provisions contained in such contract or licence, the parties thereto shall be subject and entitled to the benefit of the provisions of this Ordinance within six months from the date of coming into operation of this section.

[Subs. Act A1238:s.113]

Former section reads:

Section 132. Saving of contracts, etc., entered into before this Ordinance.

All agreements and contracts entered into between any employer and any worker, valid and in force on the date of the commencement of this Ordinance, shall continue to be in force after such date and, subject to the express provisions contained in any such agreement or contract, the parties thereto shall be subject to and entitled to the benefit of the provisions of this Ordinance.

SCHEDULE

[Subsection (2) of section 2]

Employee Provision of the Ordinance not applicable

1. Any person, irrespective of his occupation, who has entered into a contract of service with an employer under which such person's wages do not exceed two thousand five hundred ringgit a month.

2. Any person who, irrespective of the amount of wages he earns in a month, has entered into a contract of service with an employer in pursuance of which—

(a) he is engaged in manual labour including such labour as an artisan or apprentice:

Provided that where a person is employed by one employer partly in manual labour and partly in some other capacity, such person shall not be deemed to be performing manual labour unless the time during which he is required to perform manual labour in any one wage period exceeds one-half of the total time during which he is required to work in such wage period;

(b) he is engaged in the operation or maintenance of any mechanically propelled vehicle operated for the transport of passengers or goods or for reward or for commercial purposes;

(c) he supervises or oversees other employees engaged in manual labour employed by the same employer and throughout the performance of their work;

(d) he is engaged in recruiting employees;

(e) he is engaged in any capacity in any vessel registered in Malaysia and who:

(i) is not an officer certificated Definition of "ordinary rate of pay" in section 2, sections 103, 104, 104A, 104B, 104C, 104D, 104E and subsection (2) of section 105.
under the Merchant Shipping Acts of the United Kingdom as amended from time to time;

(ii) is not the holder of a local certificate as defined in Part VII of the Merchant Shipping Ordinance 1952; or

(iii) has not entered into an agreement under Part III of the Merchant Shipping Ordinance 1952; or

(f) he is engaged as a domestic servant.

3. For the purpose of this Schedule, "wages" means wages as defined in section 2, but shall not include any payment by way of commission, subsistence allowance and overtime payment.

[Ins. Act A1238: s.114]


LIST OF AMENDMENTS

<table>
<thead>
<tr>
<th>Amending law</th>
<th>Short title</th>
<th>In force from</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ordinance 2/1955</td>
<td>Labour Ordinance of Sabah</td>
<td></td>
</tr>
<tr>
<td>Ordinance pkLI</td>
<td>Correngendum</td>
<td></td>
</tr>
<tr>
<td>Ordinance 15/1957</td>
<td>Labour Ordinance of Sabah</td>
<td></td>
</tr>
<tr>
<td>LN 199/65</td>
<td>Labour Ordinance of Sabah (Amendment)</td>
<td></td>
</tr>
<tr>
<td>Act A1238</td>
<td>Labour Ordinance of Sabah (Amendment) Act 2005</td>
<td>1 October 2005</td>
</tr>
</tbody>
</table>