BURKINA FASO

UNITY-PROGRESS-JUSTICE

NATIONAL ASSEMBLY

IVth REPUBLIC

FOURTH LEGISLATURE

CE DOCUMENT
APPARTIENT A

DOC. NORMES

LAW No.028-2008/AN

RELATED TO THE LABOUR ACT IN BURKINA FASO

THE NATIONAL ASSEMBLY

Considering the Constitution;

Considering resolution n° 001-2007/AN of June 4, 2007

Related to the validation of the mandate of the Members of Parliament;

Decided on its session of May 13, 2008

And adopted the Act, the terms of which are the following:

MK/HO

BURKINA FASO

Unity-Progress-Justice

DECREE No.2008 ___331/PRES
Promulgating law no.28-2008/AN
Of May 13, 2008 related to the
Labour Act in Burkina Faso

THE PRESIDENT OF FASO,
PRESIDENT OF THE COUNCIL OF MINISTERS,

Considering the Constitution;

Considering letter no. 2008-037/AN/PRES/SG/DGSL/DSC of May 29, 2008 of The Speaker of the National Assembly transmitting for promulgation law no.028-2008 of May 8, 2008

related to the Labour Act in Burkina Faso,

DECIDES

ARTICLE 1: Is promulgated law no.028-2008 of May 8, 2008 related to the Labour Act in Burkina Faso.

ARTICLE 2: This decree will be published in the Official Newspaper of the Faso.

Issued in Ouagadougou on June 19, 2008

Blaise COMPAORE
President of Burkina Faso

TITLE I: GENERAL PROVISIONS

Article 1:

This Act applies to employees and employers carrying out their professional activity in Burkina Faso.

Article 2:

Is considered an employee (a worker), under this Act, anyone who commits himself/herself to carry out his/her professional activity for a remuneration, under the direction and authority of another person, physical or business, public or private called employer.

To determine the quality of the employee, neither the employer's nor the employee's legal status is taken into account.

Article 3:

The civil servants, magistrates, militaries and employees of the local governments, as well as any employee ruled by a specific act are not subject to the provisions of this Act.

Article 4 :

Job and professional discrimination are prohibited.

By discrimination, it is meant:

1) Any distinction, exclusion or preference based mainly on the race, colour, sex, religion, political opinion, disability, pregnancy, national ancestry or social origin, the effect of which is to destroy or alter the equal opportunity or treatment regarding job or profession ;

2) Any other distinction, exclusion or preference the effect of which is to destroy or alter the equal opportunity or treatment regarding job or profession.

Article 5:

Slave labour or compulsory labour is prohibited.

"Slave" or « compulsory » labour refers to any work or service assigned to someone under a menace of a sanction of any kind, and for which he/she has not agreed to do of his/her own free will.

No one can resort to such labour under no circumstances, mainly as:

1) Coercion or political education measure, or sanction towards people who have expressed their political opinions;

2) Mobilization and use of workforce method to political ends;

3) Work discipline measure;

4) Social, racial, national or religious discrimination measure;

5) Sanction for taking part in strikes.

Article 6:

Is not considered as slave or compulsory labour under this Act:

1) Any work or service assigned to a person in pursuance of the national laws on the military service requiring to carry out military work;

2) Any work or service resulting from the citizens' normal civic obligations;

3) Any work or service assigned to a person resulting from a legal sentence, under the condition that this work is executed under the surveillance and control of public authorities, and that the person is neither conceded nor made available to private persons, companies or private businesses, except to public utility associations ;

4) Any work or service assigned to a person in case of circumstances jeopardizing or with the risk to jeopardize lives or the normal existence conditions of the whole community or a group of it, and in case of act of God.

The work or services mentioned in items 1 to 4 above can be assigned to valid adults only, neither below eighteen years of age nor above forty-five.

TITLE II: EMPLOYMENT, PROFESSIONAL TRAINING AND VOCATIONAL GUIDANCE RECRUITMENT AND TEMPORARY JOB

CHAPTER I: JOB, PROFESSIONAL TRAINING AND GUIDANCE

Section 1: Professional training and vocational guidance

Article 7 :

A national council for jobs and professional training is put in place, and is in charge of job and professional training issues.

A decree taken by Cabinet meeting defines its composition, organization, assignments and operation.

Article 8 :

Professional training includes all the activities aiming at ensuring the acquisition of knowledge, qualifications and aptitudes which are necessary to practice a profession or hold a specific position.

When the employee benefits from training or professional improvement training supported by the employer, it can be agreed that the employee will remain with that employer for a given time with regard the training or improvement training costs.

A decree taken by Cabinet meeting defines the conditions for professional training.

Article 9:

Vocational guidance consists to inform and guide the job applicants, in particular the young people, on the range of the professions and to help each one to choose a way in conformity with his/her aptitudes through counselling and individual and collective consultations.

A decree taken by the Cabinet meeting specifies the details of the implementation of the vocational guidance.

Section 2: Contract of training course

Article 10:

It is established a contract of training course in order to encourage the promotion of employment and professional training.

Article 11:

The contract of training course is a convention by which, a Master of training course commits himself to give or commit someone to give to a person called trainee, a practical professional training.

The contract of training course aims at providing the trainee with experience and professional skills to facilitate his/her access to an employment and his/her insertion in the professional life.

Article 12:

The contract of training course is concluded imperatively before admission of the trainee in the company. It is testified in writing in the official language under condition of nullity.

The contract of training course is free from all excise taxes and of recording.

The other requirements on form and content, the obligations of the parties and the effects of the contract of training course are statutorily determined by the minister of labour after opinion of the advisory labour commission.

Section 3: Contract of apprenticeship

Article 13:

The contract of apprenticeship is the contract by which a person, called Master, commits himself to give or to assign someone to give a methodical and complete professional training to another person called apprentice. It is established by taking account of the uses and habits in the profession.

The apprentice must in return conform to the instructions which he/she receives and carry out the activities which are entrusted to him/her within the framework of this apprenticeship.

The contract of apprenticeship must be testified in writing, under condition of nullity. It is free from all excise taxes and of recording.

It is written in the official language and if possible in the language of the apprentice.

Article 14 :

The minister in charge of labour, after opinion of the advisory labour commission, determines statutorily:

1) the conditions related to the form, the content, the obligations of the parties, and the effects of the contract of apprenticeship;

2) the types of companies in which a percentage of apprentices is fixed as regard the number of employees.

Article 15 :

The apprentice whose training period is completed takes an examination with an approved organization which issues a vocational training certificate in the event of success.

The minister in charge of labour, after opinion of the advisory labour commission, determines statutorily:

1) the body responsible for the organization of the examination and conditions of approval;

2) the evaluation conditions of the end of training.

Article 16:

The recruiting of apprentices, students or trainees bound by an apprenticeship contract from the schools and professional training centres is subject to payment of damages by the new employer to the apprentice's master, notwithstanding the penal sanctions defined in title IX of this Act.

However, the new employer is exempted from payment of the damages if he gives evidence of his good faith.

Article 17:

Any new apprenticeship contract approved without full execution or legal termination of the obligations of the previous contract is null and void.

CHAPTER II: PLACEMENT, TEMPORARY WORK ACTIVITY

Article 18:

Placement activity is the fact, for any person, natural or moral, to serve as intermediary to find an employment for a worker or a worker for an employer.

The placement activity can be public or private. In the latter, the operator can benefit from it.

The fact for any natural or moral person to carry out activities dealing with job seeking, such as the supply of information without having the purpose of matching an offer to specific demands, is also considered as a private placement activity.

Article 19:

The temporary work contractor is any person, natural or moral, whose main activity is making available to users, workers according to a given qualification.

Article 20:

The public services in charge of employment, training and vocational guidance can receive job offers and applications and ensure the placement tests on request of the employers, workers and job applicants.

Article 21:

The government institutions, the companies with public participation and the projects financed on public funds are held to announce the job vacancies and organize recruitment tests.

Article 22:

The collective recruitment of workers for their employment abroad is prohibited, except prior approval of the minister in charge of labour after opinion of the

ministers in charge of employment, the foreign affairs and the territorial administration.

Article 23:

The opening of firms or private placement firms and temporary work companies is free, subject to compliance with the legal and statutory provisions.

Article 24 :

The activities defined in article 18 above can be carried out only by natural or moral persons who had duly obtained an approval delivered by the minister in charge of labour after opinion of the minister in charge of employment.

Article 25 :

Any natural or moral person who wishes to open an office or a private placement firm or a temporary work company must meet the statutory conditions defined by the ministers in charge of labour and employment, after opinion of the advisory labour commission.

Article 26 :

The offices or private placement firms and the temporary work companies should not subject the workers to any discrimination such as defined in article 4 above.

Article 27 :

The offices or private placement firms and the temporary work companies should not charge the job applicants, directly or indirectly, entirely or partly, any fees, or other expenses.

Exemptions to the provisions of subparagraph 1 above can be granted for some categories of workers and services specifically identified by the minister in charge of labour, after opinion of the advisory labour commission.

Article 28 :

In the event of strike or lockout started in the respect of the collective labour disputes settlement procedure defined by this Act, the final placement operations relating to the companies concerned with this suspension of work are immediately stopped.

TITLE III : PROFESSIONAL RELATIONS

CHAPTER I: GENERAL PROVISIONS

Section 1 : General Principles

Article 29 :

The labour contract is any agreement in writing or verbal by which a person called employee commits himself/herself to devote his/her professional activity for a remuneration under the direction and authority of another person, natural or moral, public or private called employer.

The labour contract is concluded freely and is testified in the forms agreed by the contracting parties subject to the provisions of articles 55,56 and 57 of this Act.

Evidence of the existence of the labour contract can be brought by all means.

Article 30 :

The written labour contract is free from all excise taxes and of recording, subject to the provisions of article 58 below.

Article 31:

The worker can engage his services only for a period of time or for a limited time to the execution of an activity or a given company.

Article 32

The minister in charge of labour, exceptionally and for economic or social reasons, and particularly for health or public health interests, can statutorily, after opinion of the advisory labour commission, limit or prohibit recruiting in some given zones.

Article 33:

Any labour contract concluded to be carried out in Burkina Faso is subject to the provisions of this law, whatever the place of the conclusion of the contract and the residence of one or the other party.

It is the same of any labour contract concluded to be carried out under an other legislation and the partial execution of which in Burkina Faso exceeds three months.

Article 34 :

Any collective recruiting of workers by a single contract or a team contract is prohibited.

When a group of employers engages a worker, a leader of the employers must be explicitly identified in the labour contract.

Section 2: Obligations of the parties to the contract

Article 35:

The employee devotes the whole of his/her professional activity to the company, except contrary convention.

However, he/she keeps the freedom to exert outside his/her working time, any gainful employment in professional matter not likely to compete with the company directly or to impact the good execution of the agreed services.
He/she must in particular:

1) provide the work for which he/she was engaged, to carry it out himself/herself and carefully;

2) obey his/her hierarchy;

3) respect the discipline of the company and comply with the work schedules and health and security instructions.

Article 36:

The employer must:

1) provide the work at the work place agreed upon. He/she cannot require work other than the one defined in the contract;

2) pay the wages, allowances and national insurance contributions due under the terms of the statutory, conventional and contractual regulations;

3) conform with the standard hygiene and safety requirements defined by the regulations in force;

4) treat the employee with dignity;

5) see to the maintenance of the moralities and the observation of public decency;

6) prohibit any form of physical or moral violence or any other abuse, including sexual harassment;

7) communicate any act of recruiting specifying the date, the wages and the professional qualification of the employee to the labour inspection of his district.

Article 37:

Sexual harassment in the labour framework is prohibited.

Sexual harassment between colleagues, suppliers or customers encountered in the labour framework is also prohibited.

Sexual harassment consists in obtaining from others by order, word, intimidation, act, gesture, threat or force, favours of sexual nature.

Article 38:

The employer must prohibit any discrimination of any nature as regards access to employment, work conditions, professional training, job protection or dismissal, particularly as regard the serologic statute of the HIV infection, real or apparent.

Article 39:

Any labour contract provision prohibiting the worker from carrying out any activity with the expiry of the contract is abusive, null and void in the event the breach of contract is caused by the worker or results from a heavy fault of the supervisor.

Any provision on the duration or geographical range which is not justified or essential for the safeguard of the employer's interests constitutes an abusive obstacle to the free exercise of the worker's professional activity.

Article 40:

The disabled people, not able to work under the normal work conditions, benefit from adapted employment or, where necessary, protected workrooms.

The conditions under which the employers are held to reserve some jobs to the handicapped people are defined by decree taken in Cabinet meeting, after opinion of the advisory labour commission.

CHAPTER II: PROBATION-BASED LABOUR CONTRACT

Article 41:

There is engagement after probation when the employer and the worker, in order to conclude a final, verbal or written labour contract, decide as a preliminary step to appreciate, mainly for the former, the quality of the services of the worker and his output and for the latter, the work, living, remuneration, hygiene and safety conditions as well as the social climate in the company.

The probation-based contract must be testified in writing, failing this, it is defined as a permanent labour contract.

The probation-based contract can be included in the body of a final contract.

Article 42 :

The probation-based contract cannot be concluded for a period longer than the period which is necessary to test the engaged personnel, considering the technique and habits of the profession.

The probation period is of:

1) eight days for the workers whose wages are fixed per hour or the day ;

2) one month for the employees other than the executives, supervisors, technicians and similar staff;

3) three months for the executives, supervisors, technicians and similar staff.

Engagement after probation can be renewed only once and for the same duration.

The worker receives at least the minimum wage of the professional category corresponding to the employment occupied for the probation period.

Article 43 :

Extending the services after expiry of the probation-based contract, without any written renewal, is equivalent to a permanent labour contract, starting on the date of the beginning of the test.

Article 44 :

Engagement after probation can stopped any time, without notice nor allowance, on the will of one or the other party, except with specific provisions expressly defined in the contract.

Article 45 :

The provisions of articles 60 to 68, 70 to 74,78,93,96 and 98 to 103 below do not apply to the engagement after probation contracts which can be terminated without notice and without the possibility of one or the other party to claim any allowance, except contrary convention.

Article 46 :

The forms and modalities of the development of the work and engagement with probation contract are defined statutorily by the minister in charge of labour, after opinion of the advisory labour commission.

CHAPTER III: PART-TIME LABOUR CONTRACT

Article 47 :

The part-time labour contract is the labour contract the execution time of which is shorter than the lawful weekly duration.

Part-time work is remunerated in proportion to the indeed accomplished working time.

Article 48 :

The part-time labour contract can be of limited duration. Then, it is concluded, carried out and terminated under the same conditions as the fixed-term labour contract.

It can be of unlimited duration. In this case, it is concluded, carried out and terminated under the same conditions as those fixed for the permanent labour contract.

CHAPTER IV: FIXED-TERM LABOUR CONTRACT

Article 49 :

The fixed-term labour contract is the contract the terms of which are specified in advance by the will of both parties.

The following are considered as fixed-term labour contracts:

1) a labour contract concluded for the execution of a determined infrastructure, the realization of an enterprise the duration of which cannot be assessed beforehand with precision;

2) a labour contract the terms of which are subject to the occurrence of a future and sure event the date of which is not known exactly.

Article 50 :

The seasonal labour contract is a fixed-term labour contract through which the worker engages his services for the period of a crop year, a commercial, industrial or handicraft year the end of which is independent from the will of the parties.

Notwithstanding the provisions of article 93 subparagraph 18, the seasonal contract ends with the end of the campaign for which it was concluded. Resuming the activities, the employer depending on his needs gives the job priority to the workers available after the dead season.

The seasonal labour contract which continues after the campaign changes into an open-ended contract.

Article 51:

The seasonal worker is entitled to an end of contract allowance, calculated on the same bases as the dismissal indemnity, when it reaches the duration of presence necessary to its attribution following successive recruiting in the same company.

Article 52:

The fixed-term labour contract is renewable without limitation except for case of abuse which is left to the appreciation of the relevant court.

Article 53:

The provisions of article 52 above apply to:

1) workers engaged per hour or per day for an occupation of short duration not exceeding one day;

2) workers engaged in complement of workforce to carry out work related to additional activities of the company;

3) workers engaged for a provisional replacement of other workers of the company in legal suspension of labour contract as defined by article 93 below;

4) seasonal workers;

5) workers engaged by the companies concerned with the branches of industry in which it is common not to resort to unlimited duration labour contract.

   The list of these branches of industry is fixed statutorily by the minister in charge for labour after opinion of the advisory labour commission.

Article 54:

Except when its terms are vague, the fixed-term labour contract cannot be concluded for a duration longer than two years for the domestic workers and than three years for the non domestic workers.

The fixed-term labour contract wrongly renewed is transformed into a permanent contract, except in the cases defined in article 53 above.

Article 55:

The fixed-term labour contract must be noted in writing. Failing this, it becomes a permanent labour contract.

Article 56:

The domestic workers' labour contract requiring their settlement out of the national territory as well as the non domestic workers' contracts must be notified to and recorded by the labour administration of the area.

Article 57:

The notification and request for visa is the responsibility of the employer. It must be subjected at the latest thirty days after the enforcement of the labour contract.

The visa is granted if the relevant authority seized for this purpose did not make known its decision within fifteen days after the reception of the request for visa.

Omission or refusal of the labour contract visa for non domestic workers renders the contract null.

If the employer omits to request for the visa, the worker has the right to notify the nullity of the labour contract and claim for damages. Repatriation of the worker is the responsibility of the employer.

Not submitting the labour contract by the employer for the visa formality exposes the employer to the sanctions envisaged by this Act.

Article 58:

The labour contract visa for non domestic workers is subjected to the payment of fees, notwithstanding the provisions of article 30 above.

The amount and the modes of payment of these fees are determined by joint decree of the ministers in charge of labour and finance.

Article 59:

The fixed-term labour contract cannot in any case be concluded:

1) to definitively replace a worker whose contract is suspended because of collective labour disputes;

2) to carry out particularly dangerous activities, except with express authorization by the labour inspector responsible for the zone where these activities must carried out.

Article 60:

A fixed-term labour contract can be terminated before its terms in the event of agreement of the parties noted in writing, act of God or heavy fault. In the event of dispute, the relevant court will appreciate.

The non-compliance of one of the parties with the provisions envisaged in the preceding subparagraph can bring the other party to claim for corresponding damages and interest.

Article 61:

The completion of the term of a fixed-term labour contract gives right to the worker to benefit from an end of term allowance calculated on the same bases as the dismissal indemnity as defined in the collective labour agreements.

CHAPTER V: PERMANENT LABOUR CONTRACT

Article 62:

The permanent labour contract is a labour contract concluded without specifying the terms of the contract.

It is not subjected to the visa, except for the cases envisaged by article 56 above.

Article 63 :

The permanent labour contract for domestic workers, which requires for its execution a resettlement of the workers out of the national territory, and that of the non domestic workers, are necessarily subjected to the visa of the relevant services of the ministry in charge of labour, notwithstanding the provisions of article 62 above.

Article 64 :

The permanent labour contract can always cease by the will of one of the parties, under reserve of the relating dismissal provisions for economic reason, the union delegates, the union representatives and of any other protected worker.

Article 65 :

Termination of the permanent labour contract is subordinated to a written notice by the party which takes the initiative of the termination.

This notice which is not subordinated to any suspensive or resolutive condition comes into force from the delivery date of the notification.

The reason for the termination must be clearly stated in the notification.

Article 66:

The term of the notice deadline is of:

1) eight days for the workers whose wages are fixed per hour or the day;
2) one month for the employees other than the executives, supervisors, technicians and similar staff;
3) three months for the executives, supervisors, technicians and similar staff.

Article 67:

Throughout the notice, the employer and the worker are held to comply with all the reciprocal obligations which they are entitled to.

The party with regard to which these obligations are not respected is exempted to observe the remaining term of the notice, without payment of the damages and interest it considers useful to claim with the relevant court.

The worker benefits throughout the term of the notice from two business days per week in order to look for another job with full wages.

However, in the event of dismissal and when the worker laid off is in the obligation to immediately take a new job, he can, after having informed the employer, leave the company before the expiry of the notice period without having of this fact to pay a compensation allowance.

Article 68 :

Any breach of the permanent labour contract without advance notice or without complying with the term of the notice subjects the party which took the initiative of it, to pay a compensation allowance to the other party, subject to the provisions of article 67 above.

The amount of this allowance corresponds to the remuneration and advantages of any nature which the worker would have benefited from during the notice, which was not actually respected.

Article 69 :

The breach of the permanent labour contract can occur without notice in the event of heavy fault subject to the appreciation of the relevant court with regard to the gravity of the fault.

Article 70:

The employer must provide the proof of the legitimacy of the reasons put forward to justify the breach, in front of the relevant court, in case of dispute on the reason for the dismissal.

Any abusive layoff brings about the rehabilitation of the worker and in the event of opposition or refusal to rehabilitate, the payment of damages.

Any abusive resignation entitles to damages.

Article 71:

Under this Act, dismissal carried out without legitimate reason is abusive.

Particularly, dismissals carried out in the following cases are abusive:

1) when the reason put forward is inaccurate;

2) when the dismissal is justified by the worker's opinions, his trade-union activity, membership or not of a trade union, serologic statute with real or supposed HIV;

3) when the dismissal is justified by pregnancy of the worker or birth of her child;

4) when the dismissal is justified by the fact that the worker solicits, exerts or exerted a workers' representation mandate;

5) when the dismissal is justified by the lodging of a complaint by the worker or any recourse against the employer and/or the administrative authorities;

6) when the dismissal is based on discrimination as defined in article 4 and/or justified by the worker's marital status and family responsibilities.

Article 72 :

Under this Act, the breach of contract which occurred without observation of the procedure is irregular, mainly:

1) when the dismissal was not notified in writing or when the reason does not appear in the letter of dismissal;

2) when the worker's resignation was not notified in writing.

Article 73 :

In the event of dismissal considered to be abusive or of irregular breach of labour contract, the party which estimates that its rights have been infringed can seize the labour court to request compensation for damage.

The relevant court notes the abuse by an investigation into the causes and circumstances of the breach of contract.

The sentence given for this purpose must expressly mention the alleged reason put forward by the party which broke the labour contract.

Article 74 :

The amount of the damages is fixed by taking into account in general all the elements which can justify the existence of the damage caused and determine its extent, particularly:

1) when the responsibility is incumbent on the worker, and the damage undergone by the employer because of the non execution of the contract, within the maximum of six months of wages;

2) when the responsibility is incumbent on the employer, of the uses, the nature of the engaged services, the seniority of the services, the age of the worker and the acquired rights.

In all the cases, the amount of the allocated damages cannot exceed eighteen months of wages.

These damages merge, neither with the allowance for non-observance of notice, nor with the dismissal indemnity.

Article 75 :

The action in payment of the dismissal indemnity, of the allowance of end of contract and the damages is prescribed by five years after the breach of the employment relationships.

Article 76 :

If the dismissal of a worker is legitimate as for the content, but occurs without conforming with the procedure planned, mainly with the written notification of the breach or of the statement of its reason, the court grants to the worker a compensation which cannot be higher than three months of wages.

If the resignation of the worker were not notified in writing, the court grants to the employer a compensation equal to one month of wages.

For the calculation of the damages, the wages concerned are calculated on the basis of the average monthly total wages perceived during the last six months or the average monthly total wages perceived since the entry in the company, if the worker has less than six months of seniority.

Article 77 :

If one of the parties wishes to put an end to the labour contract before the worker's departure on leave, notification must be made with to other party, fifteen days before the leaving date.

in the event of non-observance of this obligation, the compensation allowance of the notice is raised eight days with regard to the workers paid per hour, the day or the week and one month for the workers paid the month.

It is the same if the breach of the labour contract occurs during the leave of the worker.

Article 78 :

When a worker breaks his labour contract wrongly and offers his services to a new employer, this one is jointly responsible for the damage caused to the previous employer in the following cases:

1) if it is shown that the new employer intervened in the hiring of the worker;

2) if he engaged a worker whom he knows already bound by a labour contract;

3) If he continued to occupy the worker after having learned that the latter is still bound by a labour contract to another employer.

In the third case, the responsibility for the new employer is released if at the time when he was informed, the labour contract wrongly broken by the worker expires by:

- the end of the term of a permanent labour contract;
- the expiry of the notice or if a fifteen-day deadline were run out since the breach of the permanent contract.

CHAPTER VI: PIECE-WORKING

Article 79:

The piece-worker/jobber is a natural or moral person who recruits manpower to carry out an activity or provide a service against the payment of a lump sum within the framework of the fulfilment of a written contract called piece-labour contract concluded with a contractor.

The piece- labour contract is deposited on the initiative of the contractor at the labour inspectorate of the district and the social security institution.

Article 80 :

When work is carried out in workrooms, stores or on building sites belonging to the contractor, the contractor will replace the piece-worker, in the event of the piece-worker's insolvency, with regard to his obligations with to the workers up to the amount of the piece-labour contract.

The worker whose rights have been infringed can, in this case, bring an action against the contractor.

Article 81 :

The piece-worker is held to indicate his qualities, the name, first names and addresses of the contractor, by way of apparent affixed poster in each of the workrooms, stores or building sites used.

It must post, under the same conditions, the pay dates of the wages to his workers for the period of work.

Article 82 :

The contractor must post and up-date the list of the piece-workers who he concluded a contract with in his offices.

The piece-worker must communicate to the contractor the payday memo for the period of work.

Article 83 :

The unskilled worker who does not comply with the legislative, statutory or conventional measures can see himself prohibiting the exercise of his profession:

1) temporarily, by decision of the minister in charge of labour;
2) definitely, by court decision, on submission of the case to the court by the minister in charge of labour.

Article 84 :

The suspension or prohibition decisions are subject to appeal in the relevant courts.

The modes of enforcement of articles 79 to 83 are statutorily defined by the minister in charge of labour, upon advice of the advisory labour commission.

Chapter VII: Modification of the labour contract

Article 85:

The employer cannot impose a change that is not planned in the initial labour contract of the employee.

Any proposition of substantial change to the labour contract must be written and approved by the employee. In case of refusal from his/her part, the contract is considered as broken due to the employer.

Article 86:

When an employee temporarily complies with the requirement of his/her employer, by necessity of work or to avoid unemployment, a job of lower category than the one he/she is appointed for, his/her salary and his/her prior appointment must be maintained during the corresponding period that cannot exceed six months.

Article 87:

When an employer, for reasons due to the economic situation resulting from the reorganization of the enterprise, requests the employee to definitely accept a job

that comes under a lower category than the one he/she is appointed for, the employee has the right not to accept this appointment.

If the employee refuses, the contract is considered as broken due to the employer. If the employee agrees, he/she is paid according to the conditions corresponding to his/her new job.

Article 88:

The fact that a worker assures a job including a superior ranking temporarily or acting does not give automatically the right to financial advantages or other pertaining to the so called job.

The acting position is notified to the employee in writing, with indication of the duration that cannot exceed:

1) one month for unqualified workers and employees;
2) three months for executives, control agents, technicians and assimilated;

except in case of sickness, accident which happened to the holder of the job, or replacement of the latter for a holiday or training period.

After this deadline and except in the above-mentioned cases, the employer must definitely settle the situation of the employee in question, which means to either replace him/her in the category corresponding to the new occupied job until now, or bring him/her back to his/her former position.

Article 89:

In case of sickness, accident, holiday or training of the holder of the position, the acting employee receives:

- After one month for the unskilled workers and employees;
- After three months for the executives, control agents, technicians and assimilated;

An allowance equals to the difference between his/her salary and the minimum salary of the category of the new job occupied by him/her in addition to the allowances attached to the position.

Article 90:

The female pregnant salaried employee, transferred to another post for health reasons, keeps her previous salary during all her transfer period.

Article 91:

If a modification happens within the legal situation of the employer, notably by succession, taking back under a new term, sale, merging, transformation of funds,

putting into company, all the current labour contracts on the day of modification remain between the new employer and the company staff.

Termination of these contracts can only occur in the forms and conditions defined in this title as if the change in the legal situation of the employer did not occur.

Article 92:

The new employee has to respect the obligations that fall to the former employer regarding the employees, whose labour contracts remain, starting from the date of the modification of the legal situation of this one.

However, the new employer is not submitted to this obligation when it happens within the framework of a legal regulation procedure or the liquidation of the employer's property.

Chapter VIII: Suspension of the Labour contract

Article 93:

The labour contract is suspended in the event of:

1. The closing of the business in relation to the departure of the employer for military service or for a compulsory period of military training;
2. The military service of the employee and the compulsory periods of military training to which he/she is forced.
3. The absence of the employee because of sickness or non professional accident testified by a medical certificate, within a time limit of one year: This deadline may be extended till the replacement of the employee;
4. The period of unavailability of the employee resulting from a work accident or a professional disease;
5. The holiday period of a salaried employee beneficiary of the provisions of articles 144 and 145 that follow;
6. The unpaid holiday of a salaried employee beneficiary of the provisions of article 160 that follows;
7. Strike or lock out set off according to the settlement procedure of collective work conflicts;
8. The absence of the employee, authorised by the employer regarding the regulation, collective conventions or individual agreements;

9. The period of secondment;
10. The period of warning;
11. The paid holiday eventually increased with travel time and the waiting and departure time of the employee;
12. The exercise of a political or trade union mandate by the employee and when the unpaid authorization of absence cannot be granted to him/her;
13. The detention of the employee for political reasons;
14. The detention of the employee who has not made any professional mistake and within the limit of six months;
15. The detention of the employee, for legal survey and instruction because of an alleged professional mistake and this, within the limit of six months;
16. Act of God and within the limit of five months, renewable only once.

The act of God is defined as an unexpected, irresistible and unavoidable event preventing one or the other party in the labour contract to implement its obligations.

The employer can terminate the labour contracts with payment of the legal rights if the act of God persists at the expiration of the renewal of the suspension.

17. The absence of the employee in order to assist his/her sick spouse within the limit of three months;
18. The dead season for the part-time employees;
19. The period of total technical unemployment.

Only the periods of labour contract suspension targeted in points 1, 6, 12, 13, 14, 15, 16, 17 and 18 above are not considered as service time for determining the seniority of the employee in the company.
To determine the right to paid holidays, the periods targeted at points 1, 6, 11, 12, 13, 14, 15, 16, 17 and 18 above are excluded.

Article 94:

Technical unemployment refers to interruption of the activity of a company because of an insurmountable event. It may be total or partial.

The putting into technical unemployment is related to the consultation with the staff representatives.

Article 95:

Concerning article 93 point 1 above, the employer is obliged to pay the employee, within the normal limit of the notice, a compensation which is equal to the amount of his/her salary during the period of the absence.

If the contract is a short-term one, the limit of the warning to be taken into consideration is the one fixed within the conditions provided for the long-term contracts.
In this case, the suspension cannot result in the extension of the term of the contract initially provided.

Article 96:

Under article 93 point 3 above, the compensation of the employee during his/her absence is established as follows, regarding his/her seniority in the company:

1) Less than a year of seniority

- Complete salary during one month,
- Half salary during the three following months.

2) From one to five years of seniority

- Complete salary during one month,
- Half salary during the three following months.

3) From six to ten years of seniority,

- Full salary during three months,
- Half salary the three following months.

4) From eleven to fifteen years of seniority

- Full salary during three months,
- Half salary the three following months.

5) Over fifteen years of seniority

- Complete salary during four months,
- Half salary the four following months.

The total amount of the compensation provided to the paragraph below represents the maximum of the sums that the employee may claim during the calendar year, whatever the number and the duration of his/her absence for non professional sicknesses or accidents are during this year.

Chapter IX: Interruption of Work Relations

Article 97:

The causes of the interruption of work relations are:

1) Interruption on both parties' agreement;
2) Interruption of the activities of the company;
3) Legal cancellation and legal resolution of the labour contract;
4) End of the short-term contract;
5) Resignation;
6) Dismissal;
7) Retirement;
8) Permanent and total incapacity of work such as defined in the regulations;
9) Death

Article 98:

Redundancy is dismissal undertaken by the employer for one or several reasons not related to the employer himself and resulting from elimination, work transformation or substantial modification of the labour contract following economic difficulties, technological changes or internal changes.

Article 99:

The employer who plans redundancy for more than one salaried employee must refer to the staff representatives and seek with them, any solutions to maintain some positions. These solutions might be: the reduction of work hours, work in rotation, part-time work, technical unemployment, staff reorganization, bonuses rearrangement, compensations and advantages of all kinds, and even reduction of salaries.

The employer must give the right information and the documents necessary to the unfolding of the internal negotiations the duration of which must not exceed eight days to the staff representatives.

After the internal negotiations, if they have come to an agreement, an agreement protocol precising the measures approved and the duration of their validity is signed by the parties and transmitted to the labour inspector for information.

Article 100:

In case an employee refuses in writing, to accept the measures defined in the previous article, he/she is dismissed with payment of his/her legal rights.

Article 101:

If the negotiations prescribed in article 99 above fail, or if despite the measures considered, some dismissals are necessary, the employer makes a list of the employees who are to be dismissed, as well as the retained criteria and communicates them in writing to the staff representatives. They have eight full days maximum to respond.

Article 102:

The communication of the employer and the answer of the staff representatives are transmitted without any delay by the employer to the labour inspector for any action that he/she judges useful to take within a period of eight days, starting from the date of reception; passed this deadline and except contrary agreement between the parties, the employer is not obliged to suspend the enforcement of the decision of dismissal.

Redundancy made in violation of the provisions of article 99 and the following, or for false reasons is abusive and gives a right to damages.

In case of protest against the reason for dismissal, the charge of the proof falls to the employee.

Article 103:

The staff representatives and the representatives of the trade unions can only be dismissed if their job is suppressed and after prior authorization of their appointed labour inspector.

Article 104:

In case of dismissal for redundancy, the parties may ask for the support of the public services within the framework of the development of social follow-up, reinsertion or retraining plans for the dismissed employees.

If the company's situation improves, the dismissed employees might be hired if their qualifications permit them to meet the requirements of the announced positions.

Article 105:

The procedure for redundancy is moved away in case of mutual agreement on volunteer departure freely and equally negotiated between the parties. The employer gives the signed protocol to their assigned labour inspector for his/her information.

Article 106:

At the end date of any labour contract, the employer must issue for the employee a work certificate showing exclusively his/her hiring date, the end date of the contract,

the nature and dates of the positions successively held, failing this the employer exposes himself to damages and constraints.

The work certificate is free from any excise and registration duties.

Chapter X: Labour Collective Convention and Institutions' Agreements

Article 107:

The labour collective convention is an agreement related to the work conditions. It is concluded between the representatives of one or several trade unions or professional groups of workers on the one hand and one, or several workers trade union organizations or any other groups of workers or one or many individual employees on the other hand.

The convention may include clauses which are more favourable to the employees than those of laws and rules in force. It cannot depart from the provisions related to law and order defined by these laws and regulations.

The labour collective conventions determine their field of application. This one may be national or local.

Article 108:

The representatives of the trade unions or any other professional groups targeted by the above article 107 can conclude a convention in the name of the organization which they represent, in accordance with the statutory stipulations of this organization, a special deliberation of this organization or special mandates that are individually given to them by all the members.

If not, to be valid the labour collective convention must be signed by a special deliberation of the concerned group or professional groups.

Article 109:

The duration of the labour collective convention is decided on agreement of the parties.

At the expiry of a collective convention for a short-term work, it continues to be effective until a new convention is concluded.

Article 110:

The labour collective convention must plan the clauses of its renewal, of its revision or its denunciation.

Article 111:

Any labour professional trade union or any employer who is not part of the labour collective convention may join it after.

The parties that contract or join a labour collective convention may freely withdraw in return for a notice.

Article 112:

The labour collective convention must be in writing, failing this it is null and void.

Based on the opinion of the consultative board of labour, a decree is taken in Cabinet meeting to determine the conditions of registration, publication and translation of the labour collective conventions, as well as the membership conditions or the withdrawals planned in the previous article.

The labour collective conventions are applicable from the day that follows the deposit in accordance with the provisions of the regulation act above-mentioned, except otherwise stated.

Article 113:

All the people who have signed or who are members of the signatory organizations are submitted to the obligations of the labour collective convention.

The member organizations are also bound to the labour collective convention, as well as all those who, ultimately, become members of these organizations.

When the employer is bound by the clauses of the labour collective convention, the provisions of this convention are essential to the relations issued by the individual contracts, except with more favourable provisions for workers.

Section 2: Conclusion of the collective convention

Article 114:

The minister in charge of labour, on his initiative or on request of one of the employers' trade unions or representatives of workers of the sector of activities, convenes a mixed commission in order to conclude a labour collective convention.

This mixed commission includes, in equal number, representatives of the most represented concerned sector of activities and the representatives of the organizations of workers who are the most represented or, failing these, the employers.

Article 115:

Enclosed conventions may be concluded for each of the main professional categories or in case of a common convention with several branches of activity, each of the branches.

Article 116:

The labour collective convention defined by the present section, include provisions related to:

1) The free exercise of trade union right and the liberty of the opinion of workers;
2) The applicable salaries for each professional category;
3) The principle of non discrimination defined in article 4 of the present law;
4) The execution and the rate of day-time or night-time overtime work during work days, Sundays and holidays;
5) The probation period and the period for the notice;
6) The staff representatives;
7) The revision, modification and denunciation procedure of all or part of the labour collective convention;
8) The principle of equal payment between male and female manpower for an employment of equal value;
9) The paid holidays;
10) The travelling allowances;
11) The expatriate allowances if necessary;
12) Travelling class and weight of the luggage in case of the worker and his/her family's travelling;
13) The seniority allowances or promotion by grade;
14) The technical unemployment allowance;
15) The continuing training.

Article 117:

The labour collective convention may also include, without restrictive listing:

1) regularity and output allowance;
2) basket allowance for workers who should have their lunch on their work place.
3) allowances for professional expenses and assimilated;
4) transport allowances;
5) allowances for painful, dangerous, dirty and messy tasks;
6) the general conditions for output or commission payment;
7) the hiring and dismissal conditions of the employees, without undermining the employees' free choice of the trade union in these provisions;
8) the specific work conditions for women in some companies concerned by the labour collective convention;
9) the specific work conditions for teenagers in some companies concerned by the labour collective convention;

10) specific work conditions are: work in rotation, work during the weekly holiday and the holidays;
11) When necessary, the organization and functioning of the apprenticeship, training period and vocational training within the framework of the considered activity branch;
12) When necessary, the conditions guarantee establishment modalities defined in chapter IV of title IV;
13) the temporary hiring of some categories of staff and their payment conditions;
14) The organization, management and financing of social and medico-social services;
15) The procedures of conciliation related to the settlement of the collective labour conflicts.

The optional provisions known as useful in the collective convention may be made compulsory in accordance with the regulations.

Section 3: Extension procedure of the collective convention

Article 118:

The labour collective convention may be extended to one or several sectors of activity determined at the national or local level according to the procedure defined in the following provisions.

Article 119:

If a labour collective convention concerning a branch of activities determined has been concluded at local or national level, the labour collective conventions concluded at a lower level adapt this convention or some of its provisions to their specific work conditions.

They may plan new provisions and clauses that are more favourable to the employees.

Article 120:

On the request of one of the most representative trade union organizations or on the initiative of the minister in charge of labour, the provisions of labour collective conventions corresponding to the conditions determined by the present section may be made compulsory.

This obligation is extended to all employers and employees operating in the professional and territorial field of the convention in accordance with the regulations, upon advice of the consultative labour commission.

This extension of the effects and sanctions of the labour collective convention covers the period and the conditions planned by this convention.

Article 121:

The minister in charge of labour can statutorily conclude, after a motivated opinion of the consultative labour commission, the extension of the provisions that are in contradiction with the legislative or statutory regulations in force.

In addition, the minister can, in the same conditions, take out of the collective convention the clauses which do not correspond to the situation of one or some branches of activity in the field concerned, without changing its spirit.

Article 122:

The statutory act provided under article 121 above stops producing effects when the collective convention is denounced or renewed.

The minister in charge of labour can, upon advice of the consultative labour commission, on request of one of the signatory parties or on his/her initiative, refer the statutory act in order to put an end to the extension of the collective convention or some of its arrangements.

This measure is taken when the convention or the provisions do not correspond any more to the situation of one of some branches of activity in the territorial field taken into consideration.

Article 123:

A statutory act of the minister in charge of labour can, failing or expecting the establishment of a collective convention, regulate the work conditions for a determined profession, after notice of the consultative labour commission.

This act may be taken for a given profession or, if need be, for a group of professions for which work conditions are comparable. It may repeal collective conventions concluded previously to the present law the arrangements of which are contrary to the law and have stayed in force while expecting the establishment of new conventions.

Article 124:

Any extension statutory act or withdrawal of extension must be preceded by dialogue with the professional organizations and any interested employees who must make their observations known within a deadline of thirty days.

The clauses of this dialogue are determined statutorily by the minister in charge of labour upon advice of the consultative labour commission.

Section 4: Collective institutions' agreements

Article 125:

The collective institutions' agreements are collective conventions concluded between an employer and a group of employers on the one hand, and professional organizations of workers on the other hand.

They may concern one or several institutions and professional organizations of workers present in one or several units.

The collective institutions' agreements aim at adapting the national or local collective conventions to the specific conditions of one or several institutions concerned.

They can plan new provisions and more favourable clauses for the employees.

In the absence of local or national labour conventions, the collective institutions' agreements can only deal with the salary rates and fringe benefits, except exemptions granted by the minister in charge of labour.

The provisions of articles 109 to 113 above apply to agreements provided in the present article.

Article 126:

The institution is a production unity including employees working under the authority of one or several representatives of the same employer.

Section 5: Labour collective convention within the services, enterprises and public institutions.

Article 127:

The enterprise is an individual or collective economic unit with a legal personality the purpose of which is to produce goods or services. The enterprise may include one or several units.

Article 128:

When the staff of the services, enterprises and public institutions is not submitted to legislative or specific regulations, collective conventions may be concluded in accordance with the provisions of the present chapter.

The statutes of the staff of the services, enterprises and public institutions are defined by the labour services before their enforcement.

Article 129:

When a collective convention is statutorily submitted to extension under article 120 above, it is applicable to services, enterprises and public institutions referred to in the present section which, due to their nature and their activity, are placed in its application field, in the absence of contrary provisions.

Section 6: Execution of labour collective convention and institutions' agreements

Article 130:

Associations of employees or employers bound by a labour collective convention or one of the agreements under article 125 above are responsible for its good execution.

Article 131:

Associations bound by a collective convention or by one of the agreements under article 125 above can resort to court, in case of violation of their obligations defined in the collective convention or the agreement by one or the other party.

Article 132:

People who are bound by the collective convention or by one of the collective institutions' agreement provided under article 125 above can claim damages from the other people or associations also bound by the convention or the agreement who infringe their commitments.

Article 133:

Associations who are bound by the collective convention or by one of the collective agreements provided under article 125 above can exercise all actions allowed in this convention or this agreement in favour of one of their members.

They do not have to justify of any term of office of the concerned person, provided that the latter has been informed and has not disagreed. The concerned person can always intervene at the body engaged by the group.

Chapter XI: Regulations

Article 134:

The regulations are established by the manager of the company and submitted to the visa of the responsible labour inspector.

The regulations must only include the arrangements related to the technical work organization, to the discipline and to the instructions related to labour security and health.

Any other clauses that would appear, notably those related to remuneration, are null and void, under reserve of the provisions of article 193 below.

Article 135:

The manager of the company must inform the staff delegates and the labour inspection about the regulations before their enforcement.

Article 136:

The minister in charge of labour, upon advice of the consultative labour commission decides statutorily on the dissemination, submission and posting modalities of the regulations, as well as the number of employees above which the enterprise is required to develop regulations.

Title IV: General labour conditions

Chapter I: Duration of work

Section I: Legal duration

Article 137:

The legal work duration assigned to employees or unskilled workers, male or female, of any age, working temporarily, by task or by piece is forty hours the week in all public or private institutions.

In the farms, the work hours are two thousand and four hundred hours the year, the weekly duration being determined statutorily by the minister in charge of labour, upon advice of the consultative labour commission.

Article 138:

The hours of work done beyond the legal weekly duration are considered extra hours and entitle the employee with a salary increase.

The execution modalities and overtime rates for day or night assignments during weekdays, Sundays and holidays are determined by the collective conventions, and failing this statutorily by the minister in charge of labour upon advice of the consultative labour commission.

Nevertheless, exemptions may be granted statutorily by the minister in charge of labour upon advice of the consultative labour commission.

Article 139:

Statutory acts taken by the minister in charge of labour upon advice of the consultative labour commission determine the application arrangements of the legal duration of work for each branch of activity and professional category, if need be.

They also determine the maximum duration for overtime work which can be done in case of urgent or exceptional work and seasonal work.

Section 2: Night time work and shift work

Article 140:

The hours during which the work is considered as night time work are decided statutorily.

Article 141:

Shift work is the organisation system through which an employee does his/her daily work in one go.

The continuity of the job and the organizational system are determined statutorily by the minister in charge of labour, upon advice of the consultative labour commission.

Section 3: Women labour

Article 142:

The female employee cannot be assigned activities likely to undermine her capacity of reproduction or, in case of pregnancy, her health or that of her child.

The nature of these activities is determined by a decree taken in Cabinet meeting upon advice of the national technical consultative labour committee in charge of labour health and security.

Article 143:

A female employee who usually occupies a work position acknowledged by a relevant authority as dangerous for health has the right, when she is pregnant, to be moved without salary reduction to another position that is not prejudicial to her state.

This right is also granted, in individual cases, to any women who provides a medical certificate showing that a change in the nature of her work is necessary in the interest of her health and that of her child.

Article 144:

Any pregnant woman, whose state has officially been noticed, has the right to suspend her work based on medical prescription without this interruption of work be considered as a cause of breach of contract.

Article 145:

The pregnant woman benefits from a maternity leave of fourteen weeks of which eight weeks earlier and later four weeks before the presumed date of delivery, whether the child was born alive or not.

A woman cannot benefits from a maternity leave of more than ten weeks from the effective date of delivery, except in case of premature delivery.

The maternity leave may be extended to three weeks in case of sickness officially noticed and resulting from the pregnancy or delivery.

Article 146:

During these fourteen weeks, the pregnant woman has the right to benefit from delivery costs and medical health care in a public health centre or a health centre approved by the government, supported by the social security institution.

She also benefits from her salary submitted to the social security contributions which she was receiving during the suspension of the contract, the portion of the salary not submitted to the contributions being supported by the employer.

She keeps the right to the allocations in nature.

Article 147:

The employer cannot dismiss a woman on maternity leave. He can neither, even with her agreement, employ her within the six weeks that follow her delivery.

Any convention contrary to that is null and void.

Article 148:

The mother has the right to breaks for breastfeeding over a period of fourteen months, starting from the date she resumes work.

The total duration of theses breaks cannot exceed one and-a-half hours the day.

The breaks for breastfeeding are remunerated and counted in the work duration.

Section 4: Child and teenager labour

Article 149:

Children and teenagers cannot be assigned activities liable to undermine their development and their capacity of reproduction.

The nature of activities prohibited to children and teenagers as well as the categories of activity prohibited to people aged under eighteen are determined by decree taken in Cabinet meeting upon advice of the national technical consultative committee in charge of labour security and health.

Article 150:

Under the provisions of this law:

1. the term child refers to any person aged less than eighteen years;
2. The term teenager refers to any person aged eighteen to twenty.

Article 151:

The duration of night rest for children must be at least of twelve consecutive hours per day.

The child night work children is prohibited.

An exemption may be made to this prohibition for people aged more than sixteen in the case of act of God.

Article 152:

The minimum age of access to any type of employment or work must not be less than sixteen.

Nevertheless, an exemption can be made to this minimum age when it is about small activities.

A statutory decision of the ministry in charge of labour defines the conditions and execution modalities of these activities upon advice of the national technical consultative committee in charge of labour security and health.

Article 153:

The worst forms of child labour are prohibited. This provision is of public law.

Under the present law, the worst forms of child labour include mainly:

1. Any forms of slavery or similar practices, such as the selling and exchange of children, slavery for servitude due to contracted debts, as well as forced or compulsory work, including forced or compulsory recruitment of children in order to use them in armed conflicts;

2. The use, recruitment or offer of a child for prostitution means, pornographic production or pornographic spectacles;

3. The use, recruitment or offer of a child for illegal activities, mainly for drug production and trafficking, such as defined by the international conventions;

4. Activities which, by their nature or the conditions in which they are carried out, are likely to undermine the health, security or morality of the child.

5. The list of these activities is determined by a decree taken in Cabinet meeting after consultation of the workers' and employers' organizations which are the most representative by professional branch and upon advice of the national technical consultative committee in charge of labour security and health.

Article 154:

The child and the teenager cannot be assigned activities that are recognized to be beyond their force.
Failing that, the labour contract is terminated with payment of the legal rights.

The labour inspector can require examination of the teenagers by a certified physician, in order to check if the work they are assigned is not beyond their force. This requisition is legal if requested by the teenager, his/her parents and guardians.

CHAPTER II: THE EMPLOYEE'S REST

Section 1: WEEKLY REST

Article 155:

The weekly rest is compulsory. It is twenty-four hours minimum per week and takes place in principle on Sunday except derogation statutorily granted by the minister in charge of labor.

Section 2: Leave

Article 156:

The employee has a right to a paid leave chargeable to the employer, at the rate of two calendar days and per month of effective service, except more favorable provisions of collective convention or individual contract.

The employees aged less than eighteen years have a right to a leave of thirty calendar days without pay if they apply for it, whatever the duration of their services.

This leave comes in addition to the paid leave acquired because of the work accomplished at the time of their departure.

For the calculation of the duration of the leave acquired, the absences for industrial injuries or professional illnesses, the periods of rest for pregnant women as provided in article 145 above, in the limit of one year, the absences for illnesses dully noted by a certified physician are not deducted.

Article 157:

The duration of the leave provided in article 156 above is increased at the rate of two workdays after twenty years of continuous services or not in the same enterprise, of four days after twenty five years and six days after thirty years.

Article 158:

The salaried women or apprentices aged less than twenty-two years have a right to two additional days off for every dependent child.

The increase of leave leads to an increase of the paid leave allowance.

The services done, without any corresponding leave for the same employer, whatever the employment place, are also deducted, on the basis as indicated above.

Article 159:

Exceptional permissions that have been granted to the employee on the occasion of domestic events directly related to his/ her family are not deducted from the duration of the paid leave in the yearly limit of ten workdays.

Article 160:

For his/her child's care, any employee can get from his/her employer a non-paid leave of six months, renewable once.

The employer should grant it to him/her provided that the concerned person fills his application for vacation at least one month before the outgoing date.

In case of serious illness of the child, the period provided in paragraph 1 above can be extended to one year, renewable once.

In these conditions, the deposit delay of the application provided in paragraph 2 above doesn't apply.

Article 161:

To facilitate the employees' representation in the statutory assemblies of their union organizations or the regional or international union organizations to which they are affiliated, permissions are granted to them on presentation of a written and nominative invitation by the concerned organization, one week at least before the planned meeting.

These absences are paid in the limit of twenty workdays the year and are not deducted from the paid leave.

Article 162:

Permissions without pay are granted to the employee, in the limit of fifteen workdays non deductible from the paid holiday, in order to allow him/ her to:

1) follow an official training related to improvement, cultural or sport education ;

2) represent an association recognized as being a public utility one, to participate or to attend to its activities ;

3) represent Burkina Faso in an international sports or cultural competition.

The suspensions of contracts resulting from the paid leave and the application of points 1 to 3 above cannot exceed three times in the same civil year.

Permissions are granted on request of the competent ministry or the entitled institution.

Article 163:

Special leaves, other than those provided in articles 160 to 162 above, granted in addition to the legal holidays, can be deducted from the paid leave if they are not subject to a compensation or recuperation of the days thus granted.

Article 164:

The minister in charged of labour, after advice from the consultative labour commission determines statutorily the relative terms of the paid leaves system notably with regard to the planning of the leave, the calculation of the leave allowance and the enjoyment of the leave.

Article 165:

The enjoyment right of a leave is acquired after a minimal period of a twelve months effective service.

However, the collective convention or the individual contract, bestowing a leave of a duration superior to the one provided in the article 156, can foresee a longer duration of effective service giving right to a leave without this duration being superior to three years.
In this case, a minimum leave of six calendar days deductible must be granted to the employee every year.

Article 166:

A compensatory indemnity of the leave must be granted to the employee in case of breach or expiration of the contract before this one acquires right to the leave.

This indemnity is calculated on the basis of the vested rights, in accordance with article 156 above or with the provision of the joint agreement or the individual contract.

Article 167:

The employee hired at the hour or the day for a short period not exceeding one day, gets his/her allowance of leave at the same time as the salary acquired, latest at the end of the day, as a compensatory indemnity of his/her paid leave.

Article 168:

The compensatory indemnity of the daily employee's paid leave is equal to a twelfth of the remuneration acquired by the employee during the day.
It must appear inevitably in the pay slip as a distinct mention of the salary.

Article 169:

The employee is free to spend his/her vacation in the country of his/her choice.

Article 170:

The employer must give to the employee, before his/her departure on leave and for the whole duration of the leave, an allowance that is at least equal to the average of the wages and the various elements of remuneration defined in article 191, which the employee benefited from during the twelve months that preceded the date of the departure on leave.

Article 171:

The collective convention or the individual contract can exclude the indemnity provided in article 185 below from the remuneration taken into account for the calculation of the leave allowance.

For the employees benefiting from this indemnity, the duration of the leave is increased with the traveling time.

In the absence of contrary convention, the traveling time cannot be longer than the time necessary to the employee to go on leave to his/her usual residence and to come back in case of need.

Section 3: Travels and transportation

Article 172:

The employer supports the transportation fees of the employee, his/her spouse and dependent children who usually live with him/ her as well as the transport costs of their luggage. :

1) from the place of usual residence to the work place ;

2) from the work place to the usual residence in the following cases :

    - expiration of the fixed-term contract ;

    - termination of the contract, when the employee acquired right to the leave in the conditions provided in article 156 above ;

    - breach of contract because of the employer or following a big mistake of this one ;

    - breach of contract because of absolute necessity ;

    - breach of the probation contract imputable to the employer ;

3) from the work place to the usual residence and vice-versa, in case of normal leave.

The return to the work place occurs only if the contract has not expired before the end of the leave and if to this date the employee is able to resume his/her service.

However, the labour contract or the joint agreement can provide a minimal duration of the employee's stay below which, the families' transportation is not chargeable to the employer.
This duration does not exceed twelve months.

Article 173:

When a contract is terminated due to reasons other that those provided in article 172 or due to the employee's heavy mistake, the return transportation costs chargeable to the enterprise are proportional to the employee's period of service.

Article 174:

The travel class and luggage weight are the same for all the employees.

However, the family's charges are taken into account in the calculation of the luggage weight.

Article 175:

The ways and means of transportation are chosen by the employer, except if the parties decide otherwise.

The employee who uses a more expensive means of transportation than those regularly chosen or approved by the employer is supported by the enterprise only up to the expenses allocated to the means regularly chosen. If he/ she uses a more economic way or means of transportation, he/ she can only claim the reimbursement of the expenses incurred.

The travel time is not included in the maximum duration of the contract as provided in article 54 above of this act.

Article 176:

In the absence of a contrary convention, the employee who uses a less fast way or means of transportation than those regularly chosen by the employer cannot claim any longer travel time than those planned in the normal ways and means.

If he/ she uses a faster way or means of transportation, he/ she continues to benefit, in addition to the leave duration itself, from the time that should have been necessary with the use of the way and means chosen by the employer.

Article 177:

The employee who has stopped his/ her service can require from his/ her former employer, to put at his/ her disposal the transportation tickets he/ she is entitled to, within two years starting from the work cessation at the aforesaid employer's.
The latter gives the employer an attestation establishing the exact detailed account of the employer's rights concerning transportation on the day of the contract breach.

Articles 178:

The employee who stops work and is waiting for the transportation means designated by his/her employer to return to his/her usual residence has the right to compensation.

This indemnity corresponds to the salary and all advantages that he/ she would have received if he/ she had continued to work until his/her embarking.

Article 179:

The employee whose contract is signed or whose leave is expiring, but remains available to the employer in the waiting for the transportation means that will allow him/ her to leave his/her usual residence to join his/her work place, receives from the employer, during this period, an indemnity calculated on the basis of the leave allowance.

Article 180:

In case of death of the expatriate or the transferred employee, or of one his/her family member whose travel was supported by the employer, the repatriation of the deceased body to the usual residence is supported by the employer.

Section 4: Legal holidays

Article 181:

Legal holidays are those provided by the Law.

CHAPTER III: SALARIES

Section 1: Salary fixing

Article 182:

With equal conditions of work, professional qualification and output, the salary is equal for all workers whatever their origin, their gender, their age and their statute.

For lack of collective convention or in the silence of these, the salary is fixed by common consent between the employer and the employee.

The determination of the wages and the fixing of the remuneration rates must respect the principle of remuneration equity between the masculine and the feminine manpower for a work of equal value.

Article 183:

The employee displaced from his usual residence for the execution of a labour contract who cannot, by his/her own means, obtain a decent lodging for him/ her and his/her family has the right to a lodging from the employer.

The terms and conditions of grant and the reimbursement are statutorily fixed by the minister charged in charge of labor, upon advice of the consultative commission of labor.

The statutory text also fixes the reimbursement terms of this benefit to the employer and the conditions to which the lodging must be submitted, notably concerning labour security and health.

Article 184:

In case the employee is not able, by his/her own means, to get for him and his/her family, a regular supply for basic food products, the employer is to provide them to him in the conditions set statutorily by the minister in charge of labour, after advice from the consultative labour commission.

The statutory text also fixes the reimbursement terms of this benefit to the employer.

Article 185:

The labour collective convention or, failing this, the individual labour contract, can provide an indemnity destined to compensate the employee for the additional expenses and risks linked to his/her stay at the work place:

1) when the climatic conditions of the region of the work place are different from those of the employee's usual residence ;

2) if for the latter this causes particular charges, because of his/her being far from the place of his/her usual residence.

Article 186:

An indemnity is granted to the employee if he/she is compelled by professional obligation to an occasional and temporary displacement out of his/her usual place of employment.

The applicable indemnity is fixed by the collective convention or, failing this, the individual labour contract.

Article 187:

Decrees taken by Cabinet meeting, upon advice of the consultative labour commission, determine:

1) the inter-professional minimum wages guaranteed according notably, to the general wage level in the country and the cost of living and considering the economic factors ;

2) the composition, assignments and functioning of a national commission for the guaranteed inter-professional minimum wages ;

3) the cases in which other provisions than those aimed at in articles 183 and 184 must be conceded, their assignment terms and the rates of reimbursement rates;

4) possibly the assignment terms of benefits in kind, notably for farm lands.

In the absence of collective convention or in their silence, a decree taken in government meeting also fixes:

1) the professional categories and the corresponding minimum wages ;

2) the seniority and output premiums eventually.

Article 188:

The remuneration for a task work or to the piece must be calculated so that it gives to the employee, a salary at least equal to the one the employee is paid by the time doing similar work.

Article 189:

No salary is due in case of the employee's absence, except the cases provided by the regulation and except agreement between the parties.

Article 190:

An equal representation joint commission (Employers' Association / National unions) in charge of salary negotiations and working conditions in the private sector has been created.

The composition, organization and functioning of this joint commission are provided by a statutory act taken by the ministers in charge of labor and the private sector upon advice of the consultative labour commission.

Article 191:

When the remuneration for the services are constituted, in full or in part, by commissions, bonuses and various benefits or representative indemnities of these benefits, insofar as these don't constitute a reimbursement of expenses, it's taken into account for the calculation of the remuneration during the leave period, the indemnity of notice, the damages.

The amount to take in consideration therefore is the monthly average, calculated on the last twelve months of activity, the elements defined in the previous paragraph.

Article 192:

The salary must be paid in the legal currency in Burkina Faso. All contrary stipulation is null and void.

The payment of all or part of the salary in alcohol or in alcoholic drinks is strictly prohibited.

The payment of all or part the salary in kind is also prohibited, subject to provisions of articles 183, 184 and 187 above.