

GAMBIA.

LABOUR ACT, 2007

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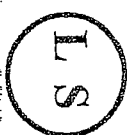
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THE GAMBIA

NO. 5 OF 2007

Assented to by The President,
this 17th day of October, 2007



YAHYA A. J. J. JAMMEH
President

AN ACT to provide for the administration of labour, the recruitment and hiring of labour, the protection of wages, and the registration of trade unions and employer organisations and for matters connected therewith.

[See section 1]

ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

- Short title and commencement
1. This Act may be cited as the Labour Act, 2007, and comes into force on such date as the Secretary of State shall, by Order published in the Gazette, appoint.

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Interpretation

2. (1) In this Act, unless the context otherwise requires -

"apprentice" means a person who has entered into a contract of employment for a period during which the employer undertakes, on pre-determined conditions, to provide methodical and complete vocational training to that person who in return undertakes to serve the employer as an employee for the duration of the contract;

"Authority" means the National Training Authority established under the National Training Authority Act, 2002;

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

"child" means any person under the age of eighteen years;

"Commissioner" means the Commissioner of Labour in the Department of Labour;

"contract of employment" means an agreement, oral or written, implied or explicit, between an employer and a person by which that person undertakes to make his or her services personally available to the employer in return for remuneration and in a manner that gives the employer control over the person's work and working environment;

"dock worker" includes transit shed labour and tally clerk;

"domestic service" means a service provided by a person engaged to work wholly or mainly in or around a dwelling house, connected with that dwelling house or personally to those residing in that dwelling house;

"employee" means-

(a) a person who offers his or her services under an oral or written contract of employment, whether express or implied;

(b) a person, including a tenant sharecropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he or she is in relation to that person-

(i) in a position of economic dependence, and

(ii) under an obligation to perform duties for that person more closely resembling the relationship of employee than that of an independent contractor; or

(c) where the context requires, a former employee;

"employer" means -

(a) a person, corporation, public authority, governing body of an unincorporated association, partnership, or any other institution or organisation whatsoever that employs an employee, and includes a heir, successor and an assignee of the employer; or

(b) where the context requires, a former employer;
 "enterprise" includes a body corporate, individual business, partnership and other group of persons doing business;

"industrial action" means a concerted withdrawal of labour or restriction on the availability or quantity of labour on the part of workers, or a lockout by which one or more employers deny work to workers;

"industrial undertaking" means -

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

"Joint Industrial Council" means a Joint Industrial Council established under section 110;

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

"management grade" means a level of employee who-

- (a) has a duty to supervise other employees or organize the work of other employees, or to participate in the administration of a business as distinct from directly participating in the production of goods; and

- (b) is designated by the employer as engaged in management;

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

"public service" means the entire body of employees directly employed by the Government in the service of the Government;

"recruiter" means a person who recruits employees for other persons;

"Registrar General" means the Registrar General appointed under the Companies Act;

"remuneration" means all things of monetary value received by an employee in exchange for his or her services;

"Secretary of State" means the Secretary of State responsible for labour;

"trade dispute" means any dispute between an employer and a worker or between an employer and a group of workers over any of the following matters -

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

"trade union" means an organisation registered as a trade union under this Act;

"Tribunal" means the Industrial Tribunal established by section 26; and

"worker" means a person who offers his or her services personally to another whether under a contract of employment or otherwise.

Application

3. (1) Subject to subsection (2), this Act applies to all employment by any employer.

(2) The Act does not apply to-

- (a) the Civil Service;
- (b) the Armed Forces, except those employed in a civil capacity;
- (c) the National Guard, Police Force, Security Service or the Prisons Service, except those employed in a civil capacity;
- (d) domestic service;
- (e) employment of a member of the employer's household living in the employer's house.

(3) The Secretary of State may extend the application of this Act to any class of persons excluded in this section by an Order published in the Gazette.

(4) Notwithstanding subsection (2), the Secretary of State may make regulations to set out the terms and conditions for the employment of persons in the domestic service.

PART II – ADMINISTRATION

Administration of
the Act

4. The Commissioner, acting under the authority of the Secretary of State, is responsible for the administration and application of this Act.

Authorization of officers by the Commissioner

5. (1) The Commissioner may authorize an officer of the Department of Labour to exercise any or all of his or her powers to enforce this Act, subject to such conditions as the Commissioner may set.
- (2) An authorization shall be in writing and may be revoked at any time by written notice.

- (3) The Commissioner shall notify the Secretary of State whenever he or she gives or revokes an authorization.

Certificate of authority

6. (1) The Commissioner shall furnish a certificate of authority to every officer authorized by him or her under section 5.

- (2) An officer shall-

- (a) when acting under an authority, produce his or her certificate of authority on the request of any person affected by the authority; and

- (b) surrender the certificate to the Commissioner if so requested.

- (3) The Commissioner shall, so far as is reasonably practicable, endorse on the certificate of authority the date of its revocation.

Impersonating an officer

7. A person who impersonates an officer of the Department of Labour or a person authorized by the Commissioner commits an offence and is liable on conviction to a fine of not less than twenty thousand dalasis or imprisonment for a term not exceeding one year, or to both the fine and imprisonment.

Powers of entry

8. (1) For the purpose of satisfying himself or herself that the provisions of this Act or any other law relating to the employment of persons, including the Industrial Injuries Act, are being complied with, the Commissioner or an officer authorized by him or her, or a Medical or Health Officer exercising his or her own authority-

- (a) may, subject to subsection (2)(a), enter-

- (i) a workplace freely and without prior notice at any hour of the day or night,

- (ii) during the day, any premises which he or she reasonably believes to be a workplace;

- (b) shall not enter the private home of an employer pursuant to paragraph (a), except with the consent of the employer or under the authority of a warrant issued by a proper judicial officer;

- (c) may, in general, carry out any examination, test or enquiry which he or she considers necessary in order to satisfy himself or herself that the provisions of this Act or any other law relating to the employment of persons, or the recruitment or housing of employed persons, are being strictly observed, and in particular, may-

- (i) interrogate, alone or in the presence of witnesses, the employer or employees on any matter concerning the application of this Act and any other law relating to the employment of persons,

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

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- (g) may be accompanied by a member of the police force if he or she has reasonable cause to apprehend any serious obstruction in the execution of his or her duty; and
 - (h) may take steps, with a view to remedying defects observed in plant lay-out, installation or working methods which he or she reasonably believes constitute a threat to the health or safety of employees.
- (2) A person exercising authority under subsection (1)(h), has the power to make an order requiring-
- (a) such alteration to the plant installation or layout, to be carried out according to a written order stating the date it takes effect and the corrective action required to terminate its effectiveness, as may be necessary to secure compliance with the legal provisions relating to health or safety of employees; or
 - (b) where there is imminent danger to the health or safety of the employees, the taking of measures, including plant closure with immediate executory force.
- (3) In this section, "employment of persons" includes the recruitment of persons for employment and the provision by the employer of housing and food for employees or persons being recruited for employment.

Notification of presence of officer on visit

9. An officer shall, when on an inspection visit, notify the employer or the employer's representative of his or her presence, unless the officer considers that such notification may be prejudicial to the performance of his or her duties.

Grant of facilities on visit

10. An employer shall —

(a) grant an employee every opportunity and necessary facilities for communicating freely with an officer; and

(b) when so requested, afford every reasonable assistance to an officer.

Prohibition of victimization

11. An employer shall not victimize an employee for anything done by the employee in pursuance of the provisions of this Part.

Prohibition against divulging information

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

(2) An officer shall treat as absolutely confidential the source of any complaint bringing to his or her notice a contravention of this Act and shall not reveal to the employer or the employer's representative that inspection was made in consequence of a complaint that a breach of this Act appeared to have been committed.

Prohibition against conflict of interest

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

Assistance to small enterprises

14. An officer shall, in exercise of his or her powers—

(a) take into account the size, capitalization and degree of formality of the operation of an enterprise under his or her supervision; and

(b) make all efforts to assist smaller and informal enterprises in understanding and complying with this Act and any other law relating to the employment of persons.

Other powers of the Commissioner, and role in conciliation

15. (1) The Commissioner may —

(a) where a person is sick or the conditions of his or her employment, or recruitment centres are not conducive to the rapid recovery of the person's health, require the employer or recruiter, at the earliest opportunity and at his or her own expense, to send the person to the place of his or her engagement or to hospital, as the case may require;

(b) prohibit the further engagement of a worker at any place of employment where the conditions in the place do not comply with the requirements of this Act or regulations made under it.

(2) Whenever any question, difference or dispute concerning the employment relationship arises between an employee and an employer, either party may report the matter to the Commissioner who shall take such steps as seem to him or her to be expedient to encourage settlement between the parties.

(3) Whenever the Commissioner acts under subsection (2), the employee shall be asked whether he or she is a member of a trade union and if so, an appropriate official of the trade union shall be informed in writing of the matter.

Reporting to the Industrial Injuries Commissioner

16. A breach of the Industrial Injuries Act revealed by the exercise of authority under this Act shall be reported to the Industrial Injuries Commissioner.

Obstruction of officers

17. A person who -

- (a) delays or obstructs an officer;
 - (b) fails to comply with any reasonable request or inquiry made by an officer; or
 - (c) conceals or otherwise prevents or attempts to conceal or otherwise prevent a person from appearing before or being examined by an officer,
- exercising a function under this Act, commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for a term not exceeding three years, or to both the fine and imprisonment.

Statistics

18. (1) An employer of more than five persons shall supply in writing to the Commissioner on or before a date fixed by the Commissioner, such information as he or she may request concerning the employment of persons by the employer.

(2) This section does not apply to an employer who is exempted by written notification of the Secretary of State to the Commissioner.

Commissioner to furnish information to The Gambia Bureau of Statistics

19. The Commissioner shall furnish all information supplied under section 18 to The Gambia Bureau of Statistics in a form specified by that Bureau and, on request, to any other agency of the Government authorized to receive it.

Assistance in civil proceedings

20. The Commissioner may, if employee consents assist in the preparation and presentation of any civil claim by the employee under any provision of this Act.

Action by the Commissioner on contravention of this Act

21. Where the Commissioner considers that a contravention of this Act has occurred, he or she may take such steps as may be necessary to enforce this Act, including making the facts known to the police or any other appropriate public authority or otherwise bringing the person concerned before an appropriate court.

PART III - LABOUR ADVISORY BOARD

Labour Advisory Board

22. There is hereby established a board to be known as the Labour Advisory Board (in this Part referred to as "the Board")

Composition of the Board

23. (1) The Board shall consist of eight members comprising-

- (a) equal numbers of representatives of employers and employees; and
- (b) such public officers and other persons as the Secretary of State may, from time to time, by Notice published in the Gazette, appoint.

(2) A member of the Board shall be appointed for a term of three years from the date of appointment and is eligible for reappointment when that term expires.

(3) The Secretary of State may remove a member of the Board only for misconduct rendering him or her personally unfit to be a member.

(4) The Board may make provisions for the conduct of its meetings and the procedure to be followed at those meetings.

Powers of the Board

24. (1) The Board shall advise the Secretary of State on any matter-

- (a) concerning legislation on labour or industrial relations;
- (b) which the Secretary of State or Commissioner is required by this Act to consult the Board;
- (c) connected with the subjects specified in paragraph (b);
- (d) connected with the employment of workers, industrial relations or organisations of employers or workers;
- (e) concerning the operation of the Industrial Injuries Compensation Scheme, and advise the Industrial Injuries Commissioner;
- (f) connected with the operation of the Factories Act, and any other provision made concerning the safety of employees, and also advise the appropriate Secretary of State;

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(g) in any way connected with international labour standards of the International Labour Organisation, including their setting, ratification, implementation, reporting requirement, or denunciation; and

(h) connected with the employment of persons in The Gambia.

(2) The Board shall review the classification of grades of employment and the wage levels established for trade tested employees, and submit its recommendations to the Secretary of State and the chairperson of the appropriate Joint Industrial Council.

Advice of the Board

25. (1) The Board's advice shall be in writing, and shall be given, where requested, to the person requesting it, or shall otherwise be made known as the Board deems appropriate.

(2) Where any advice is given in the name of the Board, any one or more members may submit in writing to the recipient of the advice an alternative advice on any aspect of the same matter in the name of that member or those members.

PART IV - THE INDUSTRIAL TRIBUNAL

26. (1) There shall be an Industrial Tribunal in the City of Banjul and in such other Local Government Areas as the Chief Justice may determine.

(2) The Tribunal has the jurisdiction conferred on it by this Act and any other law.

Industrial Tribunal

Composition of the Tribunal

27. (1) The Tribunal shall be presided over by a First Class Magistrate as the Chairperson and a panel of members appointed by the Chief Justice, on the recommendation of the Secretary of State.

(2) The Secretary of State shall, in making a recommendation under subsection (1), consult with organisations of employers, trade unions, and the management of public corporations.

(3) The members of the Tribunal shall be -

(a) persons with experience of management, or as trade union officials or otherwise representing workers in industrial relations;

(b) appointed for a term of three years from the date of appointment and are eligible for reappointment when that term expires; and

(c) paid such sitting allowances approved by the Chief Justice as reasonable for any day on which they act in respect of the work of the Tribunal.

28. (1) Officers of the Magistrate's Court appointed under section 24 of the Courts Act shall be the officers of the Tribunal.

(2) The officers of the Tribunal -

(a) may exercise such powers and perform such duties, in so far as they are applicable to the business of the Tribunal, as those exercised or performed by them in the Magistrate's Court; and

Officers of the
Tribunal
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(b) shall be subject to the same liabilities and penalties and have the same protections as attach by virtue of the Courts Act to a person exercising or performing similar powers or duties under that Act.

(3) The Commissioner may, in addition to the officers of the Tribunal specified in this section, authorize any public officer to assist in conciliation under this Act.

Jurisdiction of Tribunal

29. (1) Subject to the provisions of subsection (2), the Tribunal has jurisdiction in respect of all individual claims arising under any contract of employment.

(2) The Tribunal has jurisdiction in any matter specified in subsection (1) against any person in The Gambia at the time the claim is brought whether or not the cause of action arose in The Gambia and whether or not any person by or against whom the complaint is brought, is ordinarily resident in The Gambia.

(3) The Tribunal has exclusive original jurisdiction in any matter specified in subsection (1).

30. (1) The Tribunal may exercise all the powers of a First Class Magistrate in respect of all proceedings before it, but has unlimited jurisdiction to make pecuniary awards.

(2) The Tribunal may, in proceedings before it -

(a) adjust and set off one against the other, all claims of the parties arising out of or incidental to the employment relation between them, whether under provisions of this Act or otherwise;

Set-off and
adjustment of
claims

Cancellation of contract of employment

- (b) may direct the payment by one party to the other of any sum it finds due.

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

Business to be conducted according to Rules

First Schedule

32. (1) The Tribunal shall receive claims, conduct its proceedings, make awards and orders, and otherwise conduct its business in accordance with the Industrial Tribunal Rules set out in the First Schedule.

(2) The Secretary of State may, from time to time, amend the Rules set out in the First Schedule.

PART V - LABOUR-ONLY SUBCONTRACTING

Labour-only subcontracting

33. (1) A person who operates as a labour-only subcontractor without a certificate of exemption issued under section 36 commits an offence in respect of each employee engaged by him or her.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding five hundred dalasis for each day of each offence or imprisonment for a period not exceeding two years, or to both the fine and imprisonment and to deportation from The Gambia if he or she is not a citizen of The Gambia.

Arrangements to use non-exempted labour-only subcontractor

34. (1) A person who enters into a contract or arrangement for labour-only services with a labour-only subcontractor who does not hold a certificate of exemption issued under section 36-

- (a) is deemed for all purposes to be the employer of a worker whose services he or she obtains under the contract or arrangement; and

- (b) commits an offence in respect of each person whose services he or she obtains.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding fifty thousand dalasis for each offence.

Application for exemption

35. A person seeking an exemption to operate as a labour-only subcontractor shall apply in writing to the Commissioner specifying -

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

Certificate of exemption

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

- (a) the circumstances which led to the desire of the client or contractor to secure labour by way of a labour-only subcontractor are wholly exceptional; and

(b) without resort to the labour-only subcontracting, Gambian workers will lose or fail to secure employment.

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

- (a) the labour-only subcontractor will only supply labour to the persons, not exceeding five in number, specified in the certificate;
- (b) the terms and conditions of employment are not less favourable than those that might reasonably be expected by the workers in employment in that part of The Gambia;
- (c) the person to whom the certificate is issued makes appropriate contributions to all statutory social security, industrial injuries, national insurance, training and insurance funds appropriate to the workers;
- (d) the person to whom the certificate is issued makes a return to the Commissioner not less than once in every three months showing -
 - (i) the charge he or she makes to each client or contractor;
 - (ii) the numbers and classes of workers supplied to each client or contractor; and
 - (iii) the wages paid to each class of workers in each case during

the whole of the period since the previous return.; and

(e) the person to whom the certificate is issued deposits an approved banker's certificate of credit-worthiness.

(3) The Commissioner may charge such fee as is approved by the Secretary of State for the issue of a certificate of exemption and the filing of the required returns.

(4) A certificate of exemption issued by the Commissioner shall-

- (a) have affixed to it a photograph of the exempted person; and
- (b) state the name and address of the exempted person; and
- (c) state the date of commencement and of expiry of the certificate.

(5) A certificate of exemption remains in force for not more than three years, but may be renewed on proof of satisfaction of the conditions laid down in this section.

(6) A labour-only subcontractor operating under a certificate of exemption issued under this section is deemed for all purposes to be the employer of the workers engaged by him or her.

PART VI – MAINTENANCE AND DEVELOPMENT OF HUMAN RESOURCES

37. (1) An employer shall ensure that -

Obligation to ensure competence

- (a) newly engaged or transferred employees are either able to undertake their job adequately and safely or are provided with appropriate training to enable them to do so; and
- (b) where new work methods are introduced to an existing job, adequate training is provided as would enable an employee of reasonable ability, in the performance of the job before the introduction, to continue to perform his or her work adequately and safely under the changed circumstances.

(2) Where an employee might reasonably be considered to have qualified to receive a trade certificate as a result of training provided consistent with this section, he or she is deemed to have applied to be examined for the trade certificate and the employer shall notify the examining authority of the application.

(3) Nothing in this section precludes an employer from terminating an employee otherwise than in conformity with this Act.

Remuneration during periods of training

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

Quality of training

39. (1) The National Training Authority may at any time inspect any training facility provided or used by an employer and make recommendations as to the conduct and quality of training provided at the facility.

(2) An employee undergoing training, or a trade union acting on his or her behalf, may, at any time, before, during or within one month of, the conclusion of a training, complain to the Authority that the conduct, nature or quality of the training will not, does not or did not provide the skills needed to enable the employee to do his or her job.

(3) Where a complaint is made under subsection (2), the Authority shall conduct an inquiry and shall, if it finds the complaint wholly or partially well-founded, give such recommendations as are necessary to ensure that adequate training is provided for the employee.

(4) An employer or training facility that fails to comply with the recommendations of the Authority under subsection (3) shall, on a finding by the Tribunal, be ordered to pay to the Tribunal a sum equivalent to five times the wages which the employee would be entitled to receive during the whole period of training.

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

Apprenticeship and training

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

(2) Without prejudice to subsection (1)-

- (a) an employer of less than an aggregate of ten persons at all its establishments, or
- (b) any other employer,

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

(3) An employer shall engage and supply employees of suitable ability to satisfy his or her obligation under subsection (1).

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

(5) The Secretary of State may, by Order published in the *Gazette*, exempt an employer from the provisions of subsection (1).

(6) An apprenticeship commenced by reason of this section shall not be terminated because—

(a) the number of those employed by his or her employer falls below that required to impose an obligation to institute a course of apprenticeship; or

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

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

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

(b) section 84, the apprentice has been dismissed.

Terms of
apprenticeship

Cap. 56:04

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

(a) arrange to transfer the apprenticeship to another suitable employer; or

(b) if the apprentice reasonably refuses the transfer or no transfer is offered, pay to the Authority compensation of such amount as may be prescribed by the Secretary of State for each uncompleted year or part of an uncompleted year of the apprenticeship.

(3) Section 40 (6) applies to the continuation of an apprenticeship by the Authority under subsection (2).

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

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

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

Application for
trade testing

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

Trade and job classification

43. (1) The Labour Advisory Board shall, from time to time, revise the recognized trade and job classifications and the job descriptions applicable to them in respect of a Joint Industrial Council.

(2) The Labour Advisory Board shall not revise trade and job classifications in any collective agreement made between one or more trade unions and one or more employers or organizations of employers.

Employment service and registry of job seekers

44. (1) The Commissioner shall establish and maintain an employment service designed to bring together persons offering and seeking employment, including, at the minimum, maintaining a register in Banjul of persons seeking employment.

(2) The Commissioner shall take such measures as he or she deems fit to promote the use of the employment service including –

- (a) maintaining the Banjul register in a way that makes it an effective tool for matching employers with job seekers;
- (b) encouraging employers to notify the employment service of vacancies in their establishments;

(c) encouraging job seekers to register their availability for work;

(d) consulting with trade unions, employers' organisations, and the Labour Advisory Board on how to make the employment service effective; and

(e) establishing services designed to attract users of the employment service in Banjul and throughout The Gambia.

PART VII – EMPLOYMENT OF CHILDREN

Prohibition of child labour No. 5 of 2005

45. (1) Subject to subsection (2) and the Children's Act, 2005, no person shall engage a child in any public or private agricultural, industrial or non-industrial under-taking or in any of their branches.

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

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

Hazardous work No. 5 of 2005

46. (1) Subject to the Children's Act, 2005, no person shall engage a child in any occupation or activity that is likely to be –

- (a) harmful to the health, safety, education, morals or development of the child; or

- (b) prejudicial to his or her attendance at school or any other vocational or training programme.

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

Registry of
employed
children

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

Offences against
this Part
No. 5 of 2005

48. Subject to the Children's Act, 2005, a person who contravenes a provision of this Part commits an offence and is liable on conviction to a fine of one hundred thousand dalasis or imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

PART VIII – CONTRACTS OF EMPLOYMENT

Types of
contracts

49. (1) Unless otherwise provided by this Act, this Part applies to all types of contracts of employment.

(2) A contract of employment shall be in any one of the following forms --

- (a) a contract for an unspecified period of time;
- (b) a contract for a specified period of time; or
- (c) a contract for a specific task.

Nullity of
provisions
prohibiting trade
union
membership

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

- (a) prohibiting an employee from becoming or remaining a member of a trade union or any other organisation representing workers; or

- (b) purporting to subject the employee to any penalty, loss of benefit or detriment by reason of membership of the trade union or organisation,

is null and void.

Probationary
period

51. (1) In a contract of employment for a skilled worker, the parties may agree on the duration of the probationary period, but that period shall not exceed twelve months.

(2) During a probationary period, either party may terminate a contract of employment at any time without notice and without regard for the requirement set out in section 83. (1).

(3) In this section, "skilled worker" means an employee in an enterprise who through acquisition, programmed or otherwise, of knowledge, attitude and behaviour, has special ability to do something.

Particulars of
employment

52. (1) Every employer shall give to his or her employee a written statement of particulars of employment.

(2) The statement referred to in subsection (1) shall be given, in the case of an employee-

- (a) in employment at the commencement of this Act, within three months of the commencement of this Act; and
 - (b) employed after the commencement of this Act, within one month of his or her reporting for work.
- (3) The statement referred to in subsections (1) and (2) shall include the following particulars -
- (a) the names and addresses of the employee and of the employer;
 - (b) the job category, title or description of the work;
 - (c) the date of commencement of the contract;
 - (d) any provision for the termination of the contract, other than those provided by this Act;
 - (e) the rate of remuneration and the method of calculating remuneration;
 - (f) the intervals at which remuneration is paid;
 - (g) normal hours of work;
 - (h) any provisions for sickness or holidays, and payment during those periods, and pension rights, other than those provided by this Act; and
 - (i) any disciplinary rule applicable to the employee.
- (4) For the purposes of this section, "employer" means a person, body corporate, an undertaking or a body of persons that has in his or her employment at least five employees.

Contract of employment in writing

53. (1) An employee shall receive a contract of employment in writing-

- (a) where the contract is for a specified period of six months, or the equivalent in work-days of six months, or more;
- (b) where the contract is with an employee other than a citizen of The Gambia and provides for employment ordinarily in The Gambia; or
- (c) in any other case where the Commissioner so directs.

(2) A contract which is not in writing as required under subsection (1) is enforceable by the employee but not by the employer, but where the omission to make the contract in writing is due to the willful act of the employee, the contract is enforceable by either party.

Termination of contracts

54. (1) A contract of employment for an unspecified period of time may be terminated by either party subject to sections 55 and 83.

(2) A contract of employment for a specified period of time terminates automatically on the date specified for its termination and, unless it is expressly or tacitly renewed or prolonged, no notice is required for its termination.

(3) A contract of employment to perform a specific task terminates on the completion of the task and no notice of termination is required of either party.

(4) A contract is deemed to be for an unspecified period of time, if-

- (a) an employee is regularly and repeatedly employed and paid wages on the basis of completion of a quantity of work which can be completed in less than twenty-four hours; or
- (b) the purpose or effect of a contract of employment, that is purported to be for a specified period of time or a specific task, is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking.

Notice of termination of contracts for an unspecified period of time

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

- (a) the contract is to pay wages at a monthly rate, one month's notice;
- (b) the contract is to pay wages at a fortnightly rate and the employee has been—
 - (i) employed for less than six years, one fortnight's notice, and
 - (ii) continuously employed for at least six years, one month's notice;
- (c) the contract is to pay wages at a weekly rate and the employee has been—
 - (i) employed for less than two years, one week's notice,
 - (ii) continuously employed for a period of not less than two years but not exceeding six years, one fortnight's notice, and

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

- (iii) continuously employed for a period of not less than two years but less than six years, one fortnight's notice; and
- (e) where the employee has been continuously employed for a period of at least six years, two months' notice.

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

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

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

Additional agreed notice

56. (1) Nothing in this Act prevents the parties to a contract of employment for an unspecified period of time from agreeing to terms of notice of termination more beneficial to either party than those required by section 55.

(2) An agreement to any lesser period of notice than those required by section 55 is null and void.

Notice in case of redundancy

57. An employee whose contract of employment is terminated by the employer for reasons set out in section 93 (1) is, notwithstanding the employers' compliance with the requirements of that section, entitled to six months' notice.

Payment in lieu of notice

58. (1) Section 55 does not prevent either party from waiving his or her right to notice on any occasion or from accepting payment in lieu of notice.

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

(a) pay the employee a sum equal to the remuneration that would have been received; and

(b) confer on the employee all other benefits due to the employee,

up to the expiration of the required period of notice.

(3) If an employee terminates a contract of employment without notice in a case where notice is required, and the employer has not waived the right to notice, the employee-

Certificate of termination

(a) shall pay to the employer, in lieu of notice, a sum equal to the remuneration that would otherwise have been due to the employee up to the expiration of the required period of notice;

(b) is entitled to be paid remuneration and to receive other benefits which may have accrued at the date of termination.

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

(a) the name and address of the employer;

(b) the nature of the employer's business;

(c) the length of the employee's continuous employment with the employer;

(d) the capacity in which the employee was employed prior to the termination;

(e) the wages and other remuneration payable at the date of termination of the contract; and

(f) where the employee so requests, the reason for the termination of his or her employment.

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

60. (1) Except as provided in subsection (2), a contract of employment shall not be transferred from one employer to another without the consent of the employee.

Transfer of contract

(2) The contracts of employment of all employees in employment at the date of the transfer of an enterprise or part of an enterprise shall, except in the case of a transfer by a Receiver on the insolvency of an enterprise, automatically be transferred to the transferee.

(3) All the rights and obligations between the employees and the transferor at the date of the transfer shall continue to apply as if they were rights and obligations between the employees and the transferee.

(4) A thing done before the transfer, by or in relation to the transferor in respect of the employees, shall be deemed to have been done by or in relation to the transferee.

(5) The provisions of subsections (2), (3) and (4) do not absolve a person of the liability to be prosecuted for, convicted of and sentenced for any offence committed before the transfer of the undertaking.

(6) A transfer of a contract of employment is subject to the provisions of this Act on labour only subcontracting, as if the transfer involved a new employment.

(7) When the consent of the employee is required under subsection (1), the Commissioner may take any reasonable measures to satisfy himself or herself that the employee freely consents to the transfer.

(8) In this section, "transfer" includes sale and any disposition of an enterprise or part of an enterprise.

Death of employer

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

(a) is otherwise terminated in accordance with section 83 within that period; or

(b) expressly provides otherwise.

Death of employee

62. The death of an employee terminates a contract of employment, but the next-of-kin of the deceased employee is entitled to claim from the employer-

(a) any remuneration or other benefits due to the employee at the date of his or her death; and

(b) any property of the employee in the possession of the employer,

if the claim is made not later than six months from the date of the employee's death.

Imprisonment of employee

63. Where an employee's appointment is terminated because of his or her imprisonment, the termination constitutes a dismissal of the employee and the fact of imprisonment is not to be regarded as a frustration or other automatic ending of the contract.

Change of place of employment

64. (1) Subject to subsection (2), unless expressly provided in the contract of employment, an employee is not bound to continue in employment if the employer removes the employee's place of employment more than forty kilometres from its previous location.

Departure from
The Gambia

(2) An employee is deemed to have consented to employment at a new location if he or she continues in employment at that location for a period of four weeks without protest.

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

Termination of
contract due to
change of place
of employment

66. (1) Where section 64 or 65 applies and the employee is unwilling to change his or her place of employment or accompany the employer out of The Gambia, the contract is deemed terminated by reason of the unwillingness.

(2) Where a contract is deemed terminated under subsection (1), the employee is entitled to a sum equal to the remuneration due to the employee under the contract as if he or she had worked normally under the contract until the earliest date at which, but for the removal, it would have been terminable.

Winding-up of
employer

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

(2) The compulsory winding-up of an employer's business –

- (a) operates to terminate any contract of employment with that employer; but
- (b) does not prevent renewal of that contract by the Receiver or any other person carrying on the business.

(3) On the insolvency or winding-up of an employer's business, the claim of an employee or those claiming on his or her behalf to wages and other payments to which he or she is entitled under this Act or any contract has priority over all other creditors, other than any claim for taxes levied by the State, for the following –

- (a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the six months preceding the date of the declaration of insolvency or winding-up;
 - (b) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;
 - (c) amounts due in respect of other types of paid absence accrued during the six months preceding the date of the declaration of insolvency or winding-up; and
 - (d) severance pay, compensation for unfair dismissal and other payments due to employees on the termination of their employment.
- (4) The provisions of subsection (3) apply also where the business of an employer or a part of it is sold or transferred on application of a person holding a mortgage charge, lien or decree.

(5) The proceeds of a sale or an attachment under subsection (4) shall not be distributed until the person responsible for the distribution has taken reasonable steps to determine the remuneration and other benefits due -

- (a) to each employee of the business;
- (b) by order of the Tribunal to each employee; and
- (c) in respect of any contributions to social security or other social benefit funds, required by the laws of The Gambia.

PART IX – TERMS AND CONDITIONS OF EMPLOYMENT

Minimum conditions

68. (1) The provisions of this Part are minimum requirements and nothing in this Act is to prevent parties to a contract of employment from agreeing to terms and conditions of employment more beneficial than those provided under this Part.

(2) A provision of a contract of employment which purports to provide terms and conditions less beneficial than those provided under this Part, shall, unless expressly provided in this Act to the contrary, be null and void and the appropriate provision of this Act shall be substituted for that provision.

(3) An employer who enters into a contract of employment knowing that it contains terms that are null and void by reason of subsection (2) is liable, in an action before the Industrial Tribunal, to pay the employee concerned, in addition

to any damages for breach of the relevant provisions of this Part, further compensation of such amount as may be prescribed.

Work or wages during a contract

69. (1) During the duration of a contract of employment, an employer shall provide the employee concerned -

- (a) work in accordance with the contract for all days expressly or implicitly designated as working days under the contract; or
- (b) wages for the work at the same rate as if the employee had performed a day's work,

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

(2) The provisions of subsection (1) do not apply-

- (a) if on a working day the employer offers suitable alternative employment which the employee unreasonably refuses or fails to undertake; or
- (b) to a public authority in respect of those it employs on a casual or semi-casual basis.

Medical examination

70. (1) A person entering into employment to which this section applies shall, at the expense of the employer, be examined by a medical officer not more than one month before the commencement of employment, and the employer shall keep a written report of the examination.

(2) This section applies to –

- (a) employment by The Gambia Ports Authority as a permanent or semi-casual employee;
 - (b) employment in a groundnut oil processing plant;
 - (c) employment as a driver of a motor vehicle;
 - (d) employment in an occupation involving the preparation or handling of food for human consumption;
 - (e) employment in a hotel or catering service;
 - (f) employment as a fisherfolk or in a fish-processing plant;
 - (g) employment which may reasonably be anticipated to continue for six months or more on a major project financed in whole or in part by the Government of a country, other than The Gambia, or by any international organisation; and
 - (h) any other employment specified by the Secretary of State by Order published in the Gazette.
- (3) If it is not reasonably practicable to comply with the requirement in subsection (1), the medical examination shall take place as soon as is reasonably practicable after the commencement of the employment.

Maternity benefit
71. (1) This section applies to every female employee –

- (a) with two years continuous service with the same employer; or
- (b) whose period of service with the same employer has been interrupted by one or more periods, none of which exceeds seven months and who has in aggregate not less than eighteen months service with the same employer.

(2) An employee to which this section applies is entitled to maternity leave with pay at her normal rate for not less than the six weeks immediately preceding the expected date of confinement and for not less than the six weeks following that date.

(3) An employee to which this section applies who takes a period of maternity leave and wishes to return to her former employment shall, within six weeks following the actual date of confinement, give notice to her employer of her wish to return.

(4) An employee returning from maternity leave shall be placed in the same job with the same benefits and entitlements as immediately before her maternity leave began, within four weeks of giving notice to her employer of her wish to return to her employment.

72. (1) An employer who engages an employee in an activity specified in the Second Schedule shall supply the employee, free of charge, the safety equipment or safety device specified in that Schedule.

Safety equipment
Second
Schedule

(2) A safety equipment or safety device supplied by an employer shall be of such nature and quality as to provide the employee adequate protection, so far as is reasonably practicable, from the risk occasioned by the activity in which he or she is engaged.

(3) The Secretary of State may, after consultation with the Secretary of State responsible for health and the Labour Advisory Board, by Order published in the *Gazette*, amend, extend or revoke any of the provisions of the Second Schedule.

Second
Schedule

(4) An employee to whom an employer has supplied safety equipment or safety device shall use the equipment so far as reasonably practicable.

(5) A person who wilfully-

(a) destroys or damages a safety equipment or safety device; or

(b) obstructs the proper operation or use of the equipment or safety device,

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

Entitlement to
annual leave and
public holiday

73. (1) An employee is entitled to accumulate days of annual leave provided for by Joint Industrial Council agreement, collective agreement, or otherwise by his or her contract of employment.

(2) Wherever a period of annual leave entitlement is specified by reference to a period of more than one month, the appropriate proportion of the entitlement is deemed to accrue for each month of employment.

(3) An employer shall, in consultation with the employee, determine and grant the date for the taking of annual leave.

(4) An amount of annual leave entitlement accumulated but not used at the time an employment is terminated shall be paid to the employee, calculated according to subsection (6).

(5) An employee is entitled to his or her regular remuneration for each day of public holiday, and his or her period of annual leave shall be extended by one working day with full pay for each day of public holiday that falls within the period of leave and would have been an ordinary working day for the employee.

(6) Payment for each day of annual leave and for each day of public holiday is due to an employee at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for his or her usual work on that day, excluding bonus but including overtime payment.

Sick leave
entitlement

74. (1) An employee is entitled to accumulate days of paid sick leave provided for by Joint Industrial Council Agreement, collective agreement, or otherwise by his or her contract of employment up to a maximum of the entitlement attainable by any twelve months of employment.

(2) An employer may use paid sick leave days in respect of any day of normal work on which an employee is unable to perform his or her usual work because of bodily or mental illness, disease or injury.

(3) The payment for any day of paid sick leave shall be at a rate not less than that which the employee would normally be entitled to receive under his or her contract of employment for normal work on that day, including both overtime and bonus pay.

Enforceable retiring age

75. A contract of employment that fixes retirement at an age after the attainment by an employee of his or her sixtieth birthday is valid and enforceable, and termination in accordance with that provision does not amount to unjustified dismissal under section 83.

PART X – PROTECTION OF WAGES

Payment of wages

76. (1) The wages payable to an employee shall be paid in accordance with the terms of the contract of employment and may only be changed by agreement of both parties, provided they are paid-

- (a) at least as frequently as once fortnightly, in the case of an employee whose wages are –
 - (i) fixed by the hour, day or week, or
 - (ii) calculated solely on a piece-work or task-work basis; or
- (b) at least once a month in the case of an employee whose wages are fixed on a monthly or yearly basis; and

(c) ordinarily on the employee's normal work day and at the employee's normal place of work, unless specially agreed between the employee and employer.

(2) Subject to the proviso to subsection (1), where the contract of employment is for a specific task, wages may be paid on the completion of the task or, if the employer and the employee so agree, weekly, fortnightly or monthly, in which case the contract will not be considered to be one for a specific task.

(3) The remuneration payable to an employee-

- (a) shall be paid to the employee or to a person specified by him or her in writing;
 - (b) shall be paid in legal tender; and
 - (c) may, with the consent of the employee, be paid by cheque in the sum of the wages payable, or by direct payment to an account with a bank operating in The Gambia.
- (4) Subject to subsection (5), partial payment of wages in the form of allowances-in-kind may be made in enterprises or occupations where allowances are customary and –
- (a) the allowances are appropriate for the personal use and benefit of the employee and the employee's family; and
 - (b) the value attributed to an allowance is fair and reasonable.

(5) The payment of wages in the form of liquor or noxious drugs is not permitted under any circumstance.

Pay statement
and deductions

77. (1) Every employee shall receive, with each payment of wages, an accurate itemized statement from the employer in writing in a form which sets out-

- (a) the employee's gross wages due at the end of the pay period;
- (b) the amount of every deduction from the employee's wages during the pay period and the purpose for which each deduction was made; and
- (c) the employee's net wages payable at the end of the pay period.

(2) The following deductions may be agreed in a contract of employment -

- (a) deduction of a reasonable charge for food, drink, lodging or clothing supplied by the employer to the employee, provided that no compulsion, by means of any contract or otherwise, has been imposed on the employee to purchase or otherwise incur the charges that are the basis for the deduction;
- (b) deduction representing reasonable rent or other reasonable charge for accommodation provided by the employer for the employee or the employee's family;
- (c) deduction of an amount for recovery of any advance made to the employee or in order to adjust a previous over-payment of wages;

(d) deduction of the amount of any tax, contribution to a statutory social security, superannuation, industrial injury or national insurance scheme, or any other charges imposed by any law of The Gambia;

(e) deduction of any contribution to a pension fund, superannuation scheme or friendly society organised by the employer, if the employee has given written consent to the deduction in advance and the entire deduction is applied for the benefit of the employee;

(f) deduction of any dues to a trade union of which the employee is a member, if the employee has given written consent to the deduction and the amount of the deduction is remitted directly to the trade union or its authorized official, subject only to retention by the employer of a reasonable charge, if any, for the cost of making and remitting the deduction; and

(g) deduction of reasonable compensation for damage to, or loss of, goods or monies expressly entrusted to the employee by his or her employer for safe custody and for which the employee is required to account if the loss or damage is directly attributable to the neglect or fault of the employee and the employee is employed on such work as may reasonably be expected to impose the responsibility.

(3) The total of all deductions made in any one-wage period shall not exceed one-third of all remuneration due in that wage period.

(4) For the avoidance of doubt, a reduction in remuneration usually paid or expected that occurs on account of-

- (a) the disciplinary suspension from work of an employee; or
- (b) the failure of an employee to report for work on a normal work day,

does not constitute a deduction for the purposes of this section if the amount not paid does not exceed the proportion of the wages payable for the period of absence or one twenty-sixth part of the wages payable for one month in respect of each day of the absence.

Attachment of wages

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

Payment on termination

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

Nullity of provisions imposing conditions contrary to this Part

80. (1) A practice or provision of a contract of employment which imposes conditions contrary to the requirements of this Part is null and void.

(2) An employer who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years or to both the fine and imprisonment.

Recovery of prohibited payment

81. (1) An employee is entitled to recover by action in the Tribunal any amount paid or not paid in contravention of any provision of this Part.

(2) An employee who induced the payment or non-payment under subsection (1) may only recover such amount as exceeds the benefit to him or her derived from the contravention.

(3) In addition to an award under subsection (1), the Tribunal may, if an employee makes an application concerning a contravention within two years of the contravention, order the employer to give the Commissioner at intervals of not less than once a month, for a period not exceeding two years, such information as shall, in the opinion of the Tribunal, show the absence of any further contravention of this Part.

PART XI – DISCIPLINE, DISMISSAL AND REDUNDANCY

Justification for disciplinary action

82 (1) In this Part, a "disciplinary action" includes-

- (a) a written warning;
- (b) suspension; and
- (c) demotion.

(2) An employer is entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances of the case.

(3) Subject to subsection (4), an employer shall not impose a fine or other monetary penalty on an employee, and is not obliged to pay wages to an employee for the period the employee is absent from work without permission of the employer or without reasonable excuse.

(4) An employer may deduct an amount of money from an employee's wages to cover the costs of any property damaged by the employee.

(5) In deciding whether the employer has acted reasonably, the Tribunal or Court shall take into account the nature of the violation, the employee's duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

Justification for
termination or
taking disciplinary
action

83. (1) An employer shall not terminate an employee's appointment or take disciplinary action against an employee unless there is a valid reason for the termination or action connected with the capacity or conduct of the employee or based on the operational requirements of the enterprise.

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

- (a) an employee's pregnancy or having taken maternity leave, race, colour, sex, religion, political opinion, national extraction, ethnic or social origin;

(b) an employee's absence from work for a period of less than two weeks because of sickness or injury;

(c) an employee's actual, perceived or suspected HIV/AIDS status;

(d) an employee's removing or attempting to remove himself or herself from a work situation which he or she reasonably believes presents an imminent or serious danger to life or health;

(e) an employee's exercise of a right to freely associate, including -

(i) membership in a trade union,

(ii) refusal, or indication of an intention to refuse, to join a trade union,

(iii) participation or proposed participation in a legal industrial action,

(v) refusal to do any work normally done by an employee who is engaged in industrial action;

(f) an employee's refusal, except in circumstances of national emergency or grave emergency to his or her employer, to work for more than the number of hours permitted by any law, collective agreement, or established work rule;

(g) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of any laws, regulation or collective agreement; or

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

Unfair dismissal

84. A dismissal is unfair if it is not in conformity with section 83 or is a constructive dismissal under section 86.

Summary dismissal

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

- (a) if an employee is guilty of serious misconduct, inconsistent with the fulfilment of the expressed or implied conditions of his or her contract of employment which makes it unreasonable to expect the employer to continue the employment relationship;
- (b) habitual or substantial neglect, through absence or otherwise, of his or her duties;
- (c) lack of a skill that the employee expressly or by implication holds himself or herself to possess; or
- (d) misrepresentation on which the contract of employment was based.

(2) In subsection (1), "summarily dismiss" means terminate the contract of employment of the employee without notice or with less notice than that to which the employee is entitled by any statutory provision or contractual term.

Constructive dismissal

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

Resignation

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

Suspension pending dismissal or prosecution

88. (1) Where an employer has reason to believe that grounds exist for dismissing an employee, the employer may suspend the employee without pay during a period of investigation, but not exceeding two weeks.

(2) Where an employer has taken action in accordance with section 89, the employee concerned may be suspended without pay until he or she is dismissed or the employer resolves not to dismiss him or her, or for three days, whichever is less.

(3) Where an employee is suspended without pay under subsection (1) or (2), but is not consequently dismissed, the employer shall pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.

(4) Notwithstanding subsections (1), (2) and (3), where the conduct of an employee is the subject of an inquiry by the police force of The Gambia, or any other country, an employer may, if he or she considers it necessary in the interests of the

undertaking, suspend that employee without pay during all or any part of the time covered by the inquiry, subject to subsection (5).

(5) Where an employee is suspended under subsection (4) but is not consequently prosecuted to conviction in a court of law, the employer shall reinstate the employee in his or her original employment and pay the employee the whole of the remuneration to which he or she would have been entitled had he or she not been suspended.

Notification and hearing before dismissal

89. (1) Before deciding to dismiss an employee, the employer shall—

- (a) explain to the employee the reason for which the employer is considering dismissing that employee; and
- (b) hear and consider any representations made in defence of the employee.

(2) The employer shall give the explanation pursuant to subsection (1) in the presence of the employee and one other person, if any, whether or not a representative of a trade union, whom the employee may choose to accompany him or her.

(3) Before proceeding to comply with subsection (1), the employer shall, if the employee chooses not to be accompanied by another person, explain to the employee the advantage of being so accompanied.

(4) Proof that an employer failed to satisfy an obligation under subsections (1) and (2) raises a rebuttable presumption that the employer did not act with justice and equity in dismissing the employee.

Proof of reason for dismissal

90. (1) There is a conclusive presumption that the dismissal of an employee is unfair if, in a claim or complaint arising out of the dismissal, the employer fails to provide the reason for dismissal.

(2) In addition to proving that an employee was dismissed for reasons stated in section 83(1), an employer is required to show that in all circumstances of the case he or she acted with justice and equity in dismissing the employee.

(3) Failure by the employer to deliver to the employee at the time of dismissal a written statement of the reason for the dismissal raises a rebuttable presumption that the reason for dismissal was wrong or that the employer did not act with justice and equity in dismissing the employee, whichever may be applicable in the context of the case.

(4) In the circumstances mentioned in section 86, the employee shall provide the reason which made the continuation of the employment relationship unreasonable.

Complaints of unfair dismissal

91. (1) An employee may, within six months of the date of dismissal, complain, orally or in writing, to the Commissioner or to an official of a trade union of which he or she is a member, that he or she has been unfairly dismissed, irrespective of whether notice has been given or not.

(2) Where a complaint is made to an official of a trade union, the official shall—

- (a) collect such information as the Commissioner shall, by regulations, direct; and

(b) communicate the complaint and the accompanying information to the Commissioner within one week of its receipt.

(3) Where an official fails to communicate the complaint to the Commissioner within twenty-seven weeks of the dismissal, the Commissioner may, on behalf of the employee, and notwithstanding any other provision of law, commence proceedings in a civil court for negligence against the trade union and the official concerned.

(4) The right of an employee to make a complaint under this section is without prejudice to any right that he or she may enjoy under a collective agreement.

(5) Where the Commissioner fails to settle the matter within one month of receipt of a complaint made to him or her, the employee or trade union may bring a claim before the Tribunal in accordance with the Rules set out in the First Schedule of this Act.

First Schedule

Remedies for unfair dismissal

92. (1) If the Tribunal finds that an employee's complaint of unfair dismissal is not well founded, it shall dismiss the complaint.

(2) If the Tribunal finds that a complaint is well founded, it shall uphold the complaint and –

(a) order reinstatement or re-engagement, of the employee with such compensation, if any, as the Tribunal considers just and equitable; or

(b) award such compensation as the Tribunal considers just and equitable.

(3) The Tribunal shall, in deciding which remedy to award, first consider the possibility of making an award of reinstatement or re-engagement, taking into account, in particular, the wishes of the employee and the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal.

(4) Where the Tribunal finds that the employee caused or contributed to the dismissal to any extent, it may include a disciplinary penalty as a term of the order for reinstatement or re-engagement.

(5) An award of compensation shall be such amount as the Tribunal considers just and equitable in the circumstances, having regard to the loss sustained by the employee in consequence of the dismissal in so far as the loss is attributable to action taken by the employer and the extent, if any, to which the employee caused or contributed to the dismissal as well as –

(a) the reasonable expectation of the employee as to the period of time his or her employment with that employer might have continued but for the dismissal;

(b) the opportunities available to the employee for securing other suitable employment;

(c) the value of contractual benefits to which the employee might reasonably have expected to become entitled if he or she continued to be employed by the employer and, in particular, to such benefits as might have accrued with increased seniority;

- (d) the value of statutory rights including pension rights of which dismissal has deprived the employee or frustrated the reasonable expectation of the employee that those rights would accrue; and
- (e) the value of an accrued benefit to which the employee was entitled before his or her dismissal and of which he or she has been deprived as a result of his or her dismissal.

Redundancy and re-organisation 93. (1) A dismissal wholly or mainly for -

- (a) economic, organisational, climatic or technical reasons, including mechanization or automation; or
- (b) the reason that the employer propose to move the place of employment more than forty kilometres and the employee is either not offered employment at the new place or declines the offer in accordance with section 64,

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

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

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

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

- (i) an explanation of the circumstances giving rise to the need to dismiss,
 - (ii) an explanation for the rejection of any alternative course of action which the employer has considered, provided that, where appropriate, the employer has considered the possibility of re-deploying or of re-training the employees concerned,
 - (iii) a statement of any reasonable probability that a specified number of employees in specified categories may be re-employed by him or her within the twelve months following the dismissal, and
 - (iv) any other matter which the Commissioner may direct to be so communicated, either in a particular case or generally;
- (c) in all cases where a selection is made for dismissal among a group of employees of the same class-
- (i) make that selection in accordance with an agreement between the employer and a trade union representing the members of that class, or