

SOMALIA 1

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PART I. GENERAL PROVISIONS

1. Interpretation. (1) In this Code, unless the context otherwise requires -

"Commission" means the Central Labour Commission established under article 113 of the Code;

"Director" means the Director of the Labour Department in the Ministry;

"employer" means a physical or juridical person who uses, directs and remunerates the services of a worker, whether continuously or not, and includes the State;

"labour dispute" means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment or with the terms of the employment or with the conditions of labour of any workers;

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

"Ministry" means the Ministry responsible for labour affairs;

"Secretary" means the Secretary of State charged with responsibility for labour affairs;

"subcontractor" means a person who, himself recruiting the necessary workers, enters into a written agreement with a contractor to carry out specified work or to furnish specified services for an agreed price;

"undertaking" means any place or premises where workers are employed;

"worker" means a person who undertakes in return for remuneration to perform manual or non-manual work for an employer under a special or general, oral or written agreement, or by way of apprenticeship or probation.

(2) All references in the Code to -

(a) the employers' associations, their federations and confederations;

(b) the regional labour inspectors and inspectorates, shall be omitted.¹

(3) Except as otherwise provided, all references in the Code to the "Minister" shall be construed as references to the "Secretary".

2. Application of the Code. (1) The provisions of this Code or regulations made hereunder shall apply to all employers and workers including those employed in the public service or public institutions in so far as any of their terms and conditions of service are not governed by any other law.

(2) The provisions of this Code or regulations made hereunder shall not apply to the armed forces, police forces and para-military forces of the State.

3. Right to follow any occupation. (1) Every person has the right to follow any occupation he chooses and has the right to equality of opportunity and treatment in respect of employment and occupation without discrimination on the basis of language, race, colour, sex, religion, political opinion, national extraction or social origin and has the duty to afford such equality to other persons.

(2) Every person has the duty, in following his or her occupation, to contribute to the material and moral progress of the Nation.

4. Legal protection of labour. The State shall protect labour in all its forms and applications, whether organisational or executive, intellectual, technical or manual. It shall also promote such conditions as permit the effective exercise of the rights, and discharge of the duties, proclaimed in article 3.

5. Recognition of worker's role in the development of the national economy. The State shall recognise the important role of the workers in the development of the national economy by encouraging and ensuring their participation in the planning and management of production.

6. Freedom of labour. Forced or compulsory labour is forbidden in any form:

Provided that the term "forced or compulsory labour" shall not apply to -

¹ Editor's note: The preamble to the Law refers to the necessity "to bring the existing Labour Code ["Legislative Series", 1969 - Som. 1] in line with the socialistic principles adopted by the State". The allusion here, as in paragraph (3), is therefore to that version of the Code.

(a) any work or service required by law in respect of service including the organisation for national defence or in case of national calamity;

(b) any work or service required of a prisoner in pursuance of a sentence passed by a competent court.

7. Workers' rights not subject to renunciation. Subject to the provisions of this Code, the rights conferred on workers shall not be subject to renunciation, composition or limitation by agreement. Any agreement to the contrary shall be null and void:

Provided that any benefits already granted by employers of their own accord or by agreement and which are more advantageous for the workers shall take precedence over those prescribed by this Code.

8. Law applicable to labour disputes. Disputes to which no provision of this Code or of any contract of employment is applicable shall be decided according to the principles of equity, general principles of labour legislation, the Conventions or Recommendations of the International Labour Organisation ratified by the Republic, the principles of the ordinary law which are not contrary to those of labour legislation, legal doctrine, case law and local custom or usage:

Provided that where there is doubt as to the interpretation or application of any provision concerning labour matters, the interpretation or application which is more favourable to the workers shall be adopted.

PART II. TRADE UNIONS AND THEIR FEDERATIONS

Chapter I. Trade Unions

9. Organisation and purposes. (1) The organisation of labour unions shall be free.

(2) A trade union shall have as its purpose to study, protect and regulate the relations between workers and employers and between workers and workers so as to safeguard the rights of the workers.

10. Establishment. (1) Persons engaged in the same occupation, trade or industry, or related occupations, trades or industries may establish a trade union.

(2) Every person is free to join a trade union within the framework of his occupation.

(3) A trade union shall be established by a notarial act. It shall have a minimum of 50 members.

(4) Night work shall be remunerated by an increase of not less than 25 per cent of the normal remuneration, except in the case of work done on regularly recurring shifts.

89. Power of the Secretary. Notwithstanding the provisions of the last preceding article, the Secretary may, by decree -

1. reduce the length of the night period in places where special climatic conditions so warrant;
2. authorise and prescribe conditions for the employment of women on night work during seasons and in cases when such work is concerned with raw materials which are being processed and are likely to deteriorate rapidly, if such action is necessary to save the materials from loss;
3. authorise, in particularly serious circumstances, the employment of young persons who have attained the age of 16 years on night work if the public interest so warrants.

Chapter III. Work of Women,
Children and Young Persons

90. Prohibited work. (1) The Secretary may, by decree, prescribe the types of work prohibited for women, expectant and nursing mothers, children and young persons.

(2) For the purpose of this Chapter, the term "children" means persons of either sex who have not attained the age of 15 years and the term "young persons" means those who have attained the age of 15 years but have not attained the age of 18 years.

(3) Where the age is uncertain, medical opinion shall be obtained.

(4) The Secretary may, by decree, prescribe the types of work that are dangerous or unhealthy or that demand considerable strength or concentration, thus necessitating changes in the minimum age fixed for children and young persons in this Chapter. The maximum weights to be carried, pulled or pushed by children, young persons and women shall be prescribed in the same manner.

91. Expectant and nursing mothers. (1) No woman worker shall be discharged during a period of pregnancy, as duly confirmed by a medical certificate, until the end of the period of leave mentioned in the next succeeding paragraph or until the child is 1 year old:

Provided that this rule shall not apply in the following cases:

- (a) the cessation of the activity of the undertaking in which the woman worker is employed;
- (b) the completion of the work for which the woman worker was engaged or the termination of the employment relationship on the expiry of the stipulated term.

(2) A woman worker shall be entitled, on presentation of a medical certificate indicating the expected date of her confinement, to 14 weeks' maternity leave with half pay, of which at least six weeks shall be taken after her confinement, provided that she has been employed by the employer for at least six months without any interruption on her part except for properly certified illness,

(3) If the confinement takes place after the expected date, the prenatal leave shall be extended until the actual date of the confinement; the six-week period of leave after the confinement shall not be reduced.

92. Nursing breaks. A woman worker who is nursing her own child shall be entitled, for a maximum of a year after the date of birth of the child, to two daily breaks of one hour each. The breaks shall be counted as working hours and remunerated accordingly.

93. Unlawful to employ children. (1) It shall be unlawful to employ children under the age of 15 years: Provided that this restriction as to age shall not apply to -

- (a) pupils attending public and state-supervised trade schools or non-profit-making training workshops;
- (b) members of the employer's family and his relatives if they are living with him and are supported by him and are employed on work under his orders in an undertaking in which no other persons are employed.

(2) Notwithstanding the provisions of the preceding paragraph, the Secretary may authorise the employment of children of not less than 12 years of age, on condition that the work is compatible with the proper protection, health and moral welfare of such children and in cases where it is necessitated by special business or local conditions and by the special technical requirements of the work, or is essential to the learning of the trade.

94. Minimum age for certain types of work. (1) The minimum age for employment on a vessel as a trimmer or stoker or on underground work in quarries or mines shall be 18 years:

Provided that the minimum age for any other employment on a vessel (including a fishing vessel) shall be 15 years.

(2) Young persons under the age of 16 years shall not be employed in work done on flying scaffolds or portable ladders in connection with the construction, demolition, maintenance or repair of buildings.

95. Medical examination. (1) Children and young persons shall not be employed unless the employer has arranged for their medical examination to ascertain whether they are fit to undertake all or any of the duties on which they are to be employed. Thereafter the employer shall arrange for a medical examination once a year for children and young persons until they reach the age of 18 years.

(2) Officials of the health services shall carry out such medical examination and issue the appropriate certificates.

(3) Where a person is found to be medically unfit to continue his job, his contract of employment shall be automatically dissolved.

Chapter IV. Weekly Rest, Public Holidays and Annual Leave

96. Weekly rest. (1) Every worker shall be entitled to one day's rest each week, which should normally fall on Friday. Subject to the exceptions mentioned in paragraph (5) of this article, it shall consist of at least 24 consecutive hours each week.

(2) As far as possible, the weekly rest shall be granted simultaneously to all workers employed in an undertaking.

(3) Workers shall also be entitled to a rest day on public holidays recognised as such by the State.

(4) A worker shall be entitled to full remuneration on all national holidays mentioned in letters (a) and (b) of the proviso to paragraph (2) of article 86 of this Code.

(5) The Secretary may specify the occupations in which the rest day may be granted in rotation or replaced by other traditional holidays or granted in respect of periods longer than a week.

97. Annual leave. (1) Workers shall be entitled to 15 days' leave with pay for every year of continuous service. On the termination of his service after a year of continuous service a worker shall be entitled also to proportionate leave consisting of as many twelfths as there have been months or fractions of months above a fortnight of actual service.