1.

Background

The development of labour and industrial relations in Guyana can be traced to the emergence of trade unionism, and some significant events in the early twentieth century, beginning with workers' discontent over difficult working conditions on the waterfront. This led to agitation and industrial action and culminated in a strike in December 1905 for better terms and conditions of employment. The actions by workers on the waterfront posed a major challenge to the merchant class. This was followed by the organization and formation of the British Guiana Labour Union (BGLU) in 1919 (now the Guyana Labour Union) led by Hubert Nathaniel Critchlow, and then by the enactment of the Trade Unions Ordinance (the Trade Union Act) in 1921. In 1922, the Ordinance facilitated the registration of the first trade union, the BGLU, one of the first trade unions organized in the British colonial empire.[1]

The early twentieth-century labour environment was punctuated by industrial dissatisfaction, disputes, discontent and protests over terms and conditions of work on the waterfront, in the commercial sector, mainly in the capital city, Georgetown, and in the rural areas, mainly among sugar workers. Urban and rural workers found solidarity and a common cause against the labour exploitation by the merchants and the sugar planters. The workers' protest actions and confrontation with the merchant class and the plantocracy pitted them against the colonial state police. These confrontations resulted in fatal casualties of workers at

[1]Ashton Chase: A History of Trade Unionism in Guyana, 1900-1961

Ruimveldt during a protest march in 1924 to the city from the East Bank Demerara, and again in 1939 at the Leonora sugar estate, and at the Enmore sugar estate in 1948.[2]

There were several factors influencing the development and conduct of industrial relations, These included:

- the emergence in 1937 and subsequent recognition of the Manpower Citizens Association (MPCA) by the sugar planters for collective bargaining purposes;
- the formation of other trade unions in the 1930's;
- the establishment of the National Trade Union Council in 1941;
- the lack of workers' support for the MPCA and the consequent emergence of the rival Guiana Industrial Workers Union (GIWU) in the sugar belt; and
- the organization of sugar planters and later the national employers' organization.[3]

Plantation life in Guyana and other Caribbean states provoked unrest and upheavals on a wide scale in the 1930's throughout the British West Indies. This led to the appointment of a Royal Commission under Lord Moyne in 1938 to investigate and report on the labour and social conditions in the British West Indian colonies. The Commission reported that the conditions were difficult for workers who were virtually unprotected. Among the Commission's recommendations was for the enactment of labour laws. The Labour Ordinance (Labour Act) in Guyana was consequently enacted in 1942 and provided for the establishment of the Labour Department under a Commissioner of Labour (now Chief Labour Officer) *"for the regulation of the relationship between employers and employees and for the settlement of differences between them"*. This was against a background of ongoing industrial conflicts and manifest adversarialism, which continued and still persist into the twenty-first century.

These developments contributed to the foundation and framework established for the conduct of industrial relations. The Labour

[2] ibid

[3] ibid.

Department and the social partners, the representatives of the trade unions and employers and their organizations, constitute essentially the tripartite pillars of the industrial relations system. At the national level, trade unions are organized under the Guyana Trades Union Congress (GTUC), and the employers under the Consultative Association of Guyanese Industry Ltd. (CAGI). The Labour Department is required to provide effective labour administration services to workers, trade unions, employers and their organizations. This is done through the Chief Labour Officer and staff of the Department in their technical, advisory, inspectorate, and conciliation functions.

The Chief Labour Officer has, among his duties, direct responsibility for national labour policy, industrial relations, conciliation/ mediation, labour standards, labour legislation, tripartism, and general co-ordination of labour administration services within the Department and other Agencies. Since 2002, the Chief Labour Officer has also been given supervisory responsibility for other labour administration units or divisions: the occupational safety and health division, the central recruitment and manpower agency, the labour market information system (statistical unit) and the Board of Industrial Training. These additional responsibilities are in line with ILO's recommendation for more effective coordination of labour administration services. [4]

The social partners – representatives of trade unions and employers' organizations – have been involved over the years in tripartite and other consultative meetings, as well as attending, along with the Government, the annual International Labour Conference in Geneva. They have also participated in the numerous events – seminars, conferences, symposia and meetings organized or sponsored by the ILO Sub-regional Office for the Caribbean. They are well-informed of ILO's standards and their tripartite obligations in the labour and social fields. In keeping with ILO Conventions ratified, they have a stake and responsibility for the way labour administration services are resourced and delivered, and for the observance in law and practice of international labour standards.

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[4] Kieran Mulvey: A review of the Labour Administration System in the Co-operative Republic of Guyana, 1997.

Given the continuing adversarial nature and practice of industrial relations by the parties, the compelling challenge and responsibility of the Department of Labour (and the relevant government agencies), the social partners and civil society, are to transform the industrial relations climate from an adversarial model to a consensus-based model through sustained social dialogue, tripartism, and partnerships which can lead to national social accord.

2.

Overview of the national labour legislative framework

The system of industrial relations in Guyana is informed and influenced by international labour standards as well as the regional labour policy of CARICOM and functions within the national legislative framework. The national Constitution of Guyana, the labour laws, and ILO Conventions, ratified by Guyana as treaty and international law, provide the legal basis, foundation and framework for the conduct of labour relations by the Government, its agencies, and the social partners represented by trade unions and employers and their organizations. Together, these instruments constitute the Labour Code of Guyana as follows.

1. The Constitution – Chapter 1:01 of the Laws of Guyana

The *general principles of Part 1, Chapter Two* of the Constitution are:

- to entitle *trade unions* to participate in the management and decision-making processes of the state, and particularly in the national, economic, social and cultural sectors of national life;
- to recognize the labour of the people as the source of social wealth;
- to guarantee the right to work, including by socialist Labour laws, and by sustained efforts of trade unions with others to develop the economy;
- to acknowledge the rights of every citizen to rest, recreation, and leisure;
- to provide the right to equality of opportunity and treatment in all aspects of employment, education, social and political life; and
- to impose a duty on the state to protect the just rights and interests of

citizens (workers) resident abroad.

The foregoing principles are only enforceable in the courts upon the enactment of appropriate legislation.

Also of particular relevance in the Constitution is the reference to the individual's fundamental rights and freedoms:

Part 1, Chapter III of the Constitution on Fundamental Rights:

"Fundamental Rights and Freedoms of the individual entitle every citizen **basic rights without distinction and discrimination including the right, regardless of his/her race, origin, political opinions, colour, creed or sex subject to the rights and freedoms of others and the public interest to freedom of conscience, of expression, assembly, and association."**
(Articles 40, 145, 146, 147)

Part 2, Title 1 of the Constitution provides specific rules for the protection of fundamental rights and freedoms of the individuals including:

- from slavery and forced Labour: *"no person shall be held in slavery or servitude. No person shall be required to perform forced labour."* (Article 140)
- the protection of freedom of assembly and association - the right of all citizens and residents to assemble and associate freely or to form or belong to trade unions or associations of their own choosing to protect their interests. (Article 147)

2. Labour Legislation

The main body of labour legislation which is summarized on pages 39-67 are:

- **The Trade Unions Act, Chapter 98:03 (No. 17 of 1921)** which provides for the registration and regulation of trade unions, their rights, protection, obligations, the registration of rules, changes in rules, amalgamation, the rendering of financial accountability, audit of accounts, and the report of the Registrar to the National Assembly.

- **Public Utility Undertakings and Public Health Services Arbitration Act**, Chapter 54:01 (No. 44 of 1956). The Act provides for the establishment of an Arbitration Tribunal to determine trade disputes in public utility undertakings and the listed essential services. The Act also prohibits strikes and lockouts, and provides for a trade dispute procedure, and for the establishment and functioning of the arbitration tribunal.

- **Labour Act, Chapter 98:01:** (No. 2 of 1942) **provides for the establishment of the Department of Labour, for the regulation of the relationship between employers and employees, the appointment of the Chief Labour Officer and staff, the statutory responsibility of the Chief Labour Officer and the Permanent Secretary. The Act also provides for conciliation in industrial disputes, defines the powers of the Minister to** ***intervene in trade disputes*****, and** ***to establish advisory committees, procedures for the regulation of wages and hours of work, rights and obligations of employees, and the status and enforceability of collective agreements.***

- **Trade Union Recognition Act Chapter 98:07** (No. 33 of 1997) provides the procedures for *determining appropriate bargaining units and for certifying trade unions as recognized majority unions for collective bargaining purposes* by a seven-member trade union *recognition and certification board*, a corporate body. The Act also defines the composition of the board, their appointment by the Minister, the secretariat of the Board, the duties of the board, procedures for hearing, and determining compulsory recognition, and the *duty to treat and bargain in good faith* by employers and trade unions.

- **Termination of Employment and Severance Pay Act , Chapter 99:08** (No. 19 of 1997) caters for the conditions governing termination of employment, and the grant of redundancy or severance payments to employees for reasons connected with redundancy. The Act defines unfair dismissals and the process of termination, including termination on the grounds of redundancy, and the formula for severance allowance.

- **Prevention of Discrimination Act, Chapter 99:09** (No. 26 of 1997) provides for the elimination of discrimination in employment, training, recruitment, and membership of professional bodies. The Act also provides for the promotion of *equal remuneration for work of equal value*. It further prohibits discrimination, defines unlawful discrimination, and protects against discrimination in employment, and protection against discrimination in other areas.

- **Occupational Safety and Health Act, Chapter 99:10** (No. 32 of 1977) provides for the registration and regulation of industrial establishments, and for occupational safety and health of persons at work. The Act also provides for the establishment and functions of a national advisory council, and an Authority on Occupational Safety and Health (OSH), and defines the power and authority of an *inspector of labour, medical inspector, OSH commissioner* and their appointments.

  The Act further provides for the participation of non-governmental agencies through *safety and health representatives and joint work place and health committees* with defined functions and powers. The duties of the employer, supervisors, workers, occupiers, owners, and directors are clearly set out in the Act.

  In relation to hazardous chemicals, physical and biological agents, the Act requires their identification and hazardous nature with appropriate inventories, and regulates their use, storage, instruction and training. Notification of accidents and occupational diseases, inquest in case of death by accident or occupational disease are further requirements of this Act.

- **National Insurance and Social Security, Chapter 36:01 Act No. 15 of 1969.** This Act provides for a system of national insurance and social security for old age, invalidity, survivors, sickness, maternity, and funeral benefits. The Act also complements compensation under the Workmen's Compensation law for injury or accidental death arising out of or in the course of employment or disease, due to the nature of employment. The Act further establishes a National Insurance Fund.

- **Other Acts**
  The regulation of hours of work, wages and other conditions of work, duties and obligations relating to employers and employees are covered by the following legislation:
  - Licensed Premises Act, Chapter 82 (No.22 of 1944)
  - Shops (Consolidation) Act, Chapter 91:04 (No. 33 of 1958)
  - Wages Council Act, Chapter 98:04 (No. 51 of 1956) for the establishment of wages councils
  - Employment Exchange Act, Chapter 98:05 (No. 21 of 1944) for the establishment of employment exchanges
  - The Recruitment of Workers Act, Chapter 98:06 (No. 9 of 1943) to regulate the recruiting of workers
  - Employment of Young Persons and Children Act, Chapter 99:01 (No. 14 of 1933/No. 9 of 1999)
  - Holidays with Pay Act, Chapter 99:02, (No. 6 of 1995) to provide for the grant and regulation of annual holidays with pay for all categories of workers
  - Labour (Conditions of Employment of certain workers) Act, Chapter 99:03 (No. 18 of 1978) to regulate the conditions of employment of certain workers
  - Housing of Labour Workers on Sugar Estates Act, Chapter 99:04 (No. 19 of 1951) to make special provisions for the housing of labour workers on sugar estates
  - Accidental Deaths and Workmen's Injuries (Compensation) Act, Chapter 99:05 (No. 21 of 1916) to make certain provision for accidental death and personal injury. This is in addition to any benefits obtained under the National Insurance and Social Security Act or any entitlements from any other service.
  - Bakeries (Hours of Work) Act – Chapter 99:07 (No. 4 of 1946) to regulate the working hours in bakeries.
  - Household Service Workers (Hours of Work) Act (No. 17 of 1980) to regulate the working hours of household service workers.

3. International Labour Conventions Ratified

As of July 2003, the following 41 conventions, ratified by Guyana, are in force. Guyana has international treaty obligations to bring its laws and practice (where this has not already been done) in line with all these Conventions and to honour the obligations of membership under the constitution of the ILO

i. Fundamental Principles and Rights at Work

a. **Freedom of Association:**

- **Convention No. 87: Freedom of Association and Protection of right to organize, 1948** provides for workers' and employers' right, freely exercised to form and join organizations of their own choosing to further and defend their interests. Such organizations have the right to write their own constitutions and rules, elect their representatives or executives, administer and manage their own programme of activities without restriction and interference by public authorities in the lawful exercise of these rights.

- **Convention No. 98 – Right to organize and collective bargaining, 1949 c**alls for adequate protection for unions exercising their right to organize, and the promotion of voluntary collective bargaining to regulate terms and conditions of employment. This convention does not deal with the position of civil servants; they are given these same rights under Convention No. 151.

- **Convention No. 151 – Labour Relations (Public Service) 1978** provides for the protection of public employees' right to organize and collective bargaining, procedures for dispute settlement through negotiations, conciliation, mediation, and arbitration. (This Convention confers similar rights flowing from Convention No. 98).

- **Convention No. 135 – Workers' representatives, 1971** provides for the protection of workers' representatives at the workplace, and the provision of reasonable facilities to enable lawful trade union activities without impairing the efficient operation of the enterprise.

- **Convention No. 141 – Rural Workers' Organization, 1975** provides for freedom of association for rural agricultural workers – the right to form and join organizations of their choice with all the protection and entitlements flowing from Convention No. 87.

- **Convention No. 11 – Right of Association (Agriculture) 1921** provides for securing the same rights of association and combination as to industrial workers, and to remove any statutory restriction on such rights for workers engaged in agriculture.

b. Prohibition of Forced Labour

- **Convention No. 29 – Forced Labour 1930**: calls for the suppression of the use of all forms of *forced or compulsory labour* except for five categories of work under certain conditions and guarantees – *compulsory military service, certain civic obligations, prison labour, work in case of emergency, and minor communal services.*

- **Convention No. 105 – Abolition of forced labour, 1957**: calls for the prohibition of the recourse to forced or compulsory labour in any form in the following defined cases:
  - *as a means of political coercion or education;*
  - *mobilizing labour for purposes of economic development;*
  - *as a means of labour discipline;*
  - *as punishment for participating in strikes; and*
  - *as a means of racial, social, national, or religious discrimination.*

c. Combating Child Labour

- **Convention No. 138 – Minimum Age, 1973:** The Convention calls:
  - for the *abolition of child labour* and emphasizes that school is for children, not work; (normally any child under 15 years of age)
  - for the minimum age for employment to be not less than the age of completion of compulsory education (normally notunder 15 years);
  - on states to pursue a national policy designed to abolish child labour;
  - on states to progressively raise the minimum age for employment consistent with the full physical and mental development of young persons;
  - on states to ensure that the minimum age shall not be less than 18 years for any type of work which is likely to jeopardize the health, safety, or morals (or 16 years under certain conditions of protection of health, safety or morals, with adequate and specific instructions or vocational training) of young persons, the representative social partners having been consulted.

- **Convention No. 182 – The Worst Forms of Child Labour, 1999**: The Convention is applicable to all persons under 18 years of age, and requires ratifying states to take effective and immediate measures to prohibit and eliminate as a matter of urgency the worst forms of child labour defined as:
  - All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.
  - The use, in procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances.
  - The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs.
  - Work which, by its nature or the circumstances in which it is

carried out, is likely to harm the health, safety or morals of children.(Article 3).

The Convention further calls for:
- international cooperation among states in eliminating the worst forms of child labour;
- effective measures to implement and enforce the provisions of the Convention;
- the recognition of the importance of education in eliminating child labour; and
- special measures to identify and reach out to *children at risk*, and to take account of the *special situation of girls*.

ii. Decent Employment and Income

a. Equality of Opportunity and Treatment

- **Convention No. 100 – Equal Remuneration, 1951**: This Convention:
  - requires the application of the principle of **equal remuneration** for women and men for **work of equal value**.
  - defines equal remuneration for work of equal value as *remuneration established without discrimination based on sex*, and which requires objective appraisal of jobs on the basis of the work to be performed, as one of the means of giving effect to this Convention with the co-operation of employers' and workers' organizations.

- **Convention 111 – Discrimination (Employment and Occupation), 1958:** The Convention:
  - requires the promotion of *equality of opportunity and treatment in relation to employment and occupation* and calls on states to declare and pursue a national policy designed to eliminate all forms of discrimination;
  - defines discrimination as *any distinction, exclusion or preference based on race, colour, sex, religion, political opinion, national extraction or social origin affecting equality of opportunity or*

treatment in employment and occupation; and
- covers access to vocational training, employment, and terms and conditions of employment.

b. **Employment and Human Resources**

- **Convention No. 2 – Unemployment 1919:** The Convention requires member States to:
  - communicate to the ILO statistical and other information concerning unemployment;
  - report on measures taken or contemplated to combat unemployment;
  - establish a system of free public employment agencies;
  - coordinate the operations of any private and public agencies on a national scale;
  - establish systems of insurance against unemployment; and
  - make arrangements for reciprocal benefits with other countries for insured persons.

- **Convention No. 142 - Human Resource Development, 1975**. The Convention requires ratifying states to:
  - develop non-discriminatory policies and programmes of vocational guidance, and vocational training linked to employment;
  - adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training particularly through public employment services; and
  - take into account the educational and training systems to be developed (as outlined in *Human Resource Development Recommendation 1975, No. 150*).

- **Convention No. 140 – Paid Educational Leave, 1974**: The Convention:
  - requires ratifying states to formulate and apply a policy designed to promote the granting of paid educational leave for a specified period during working hours, with adequate

financial entitlement;
- specifies the main objectives as the *acquisition, improvement and adaptation of occupational and functional skills*;
- underscores that paid educational leave shall not be denied to employees on the grounds of race, colour, sex, religion, political opinion, national extraction or social origin; and
- provides for the period of paid educational leave to be assimilated in continuous employment without break in service for social benefits.

- **Convention No. 50 – Recruiting of Indigenous Workers, 1936:** This Convention provides for the regulation of the recruitment of indigenous workers in keeping with the provision of this Convention.

- **Convention No. 64 – Contracts of Employment (Indigenous Workers), 1939:** This Convention regulates the elements of a *contract of employment by which a worker enters the service of an employer as a manual worker for remuneration in cash or any other form.*

- **Convention No. 65 – Penal Sanctions (Indigenous Workers), 1939:** This Convention requires ratifying states to, progressively and as soon as possible, abolish all penal sanctions for any breach of contract.

- **Convention No. 86 – Contracts of Employment (Indigenous Workers), 1947:** This Convention regulates the maximum period of service, which may be stipulated or implied in any contract for employment, whether written, or oral.

- **Convention No. 97 – Migration for Employment (Revised), 1949:** The Convention requires member States to provide to the ILO Office, on request, information on:
  - national policies, laws and regulations relating to *emigration*

and immigration; and

- migration for employment and conditions of work and livelihood of migrants.

The Convention also calls on member States to maintain adequate and free service to assist migrants for employment,and in particular, to provide them with accurate information. States are also to take steps against misleading propaganda relating to emigration and immigration, co-operate with other states where appropriate, provide medical services, social security, fair treatment, and protect their basic human rights without discrimination.

iii. Social Protection

a. Social Security

- **Convention No. 12 – Workmen's Compensation in Agriculture, 1921:** This Convention requires states to extend to all agricultural wage earners by law, compensation for personal injuries by accident arising out of, or in the course of their employment.

- **Convention No. 19 – Equality of Treatment for Foreign and National Workers (Accident Compensation), 1925:** The Convention requires ratifying member States, on a reciprocal basis, to grant to foreign nationals who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.

  This equality of treatment is granted to foreign workers and their dependants without any condition as to resident.

- **Convention No. 42 – Workmen's Compensation (Occupational Disease, Revised), 1934:** Ratifying states are to provide for compensation of workers incapacitated by occupational diseases, or in case of death from such diseases, to their dependants in keeping with national legislation.

b. Occupational Safety and Health

- **Convention No. 45 – Underground Work in Mines of all kinds (Women), 1935:** This Convention states that no female, whatever her age, shall be employed in *underground work in any mine*, whether public or private, for the extraction of any substance from under the surface of the earth. National laws or regulation may exempt from this prohibition:

- females holding managerial positions who do not perform manual work;
- females employed in health and welfare services;
- females who, in the course of their studies, spend a period of training in the underground parts of the mines; and
- females who may occasionally have to enter the mines for the purpose of non-manual work.

- **Convention No. 115 – Radiation protection, 1960:** This Convention provides for the protection of workers against *ionizing radiations*. It prohibits workers under the age of 16 to engage in work involving ionizing radiations, and any worker who may be exposed to ionizing radiation contrary to expert medical advice.

  The Convention also calls for effective protection for all other workers, and for every effort to be made to reduce to the lowest practicable level of exposure to ionizing radiations. The Convention further sets out various measures to be taken by the state, including the fixing of the maximum permissible doses of radiation and the amounts of radioactive substances that can be taken into the body.

- **Convention No. 136 – Benzene, 1971:** The Convention provides for the protection against the hazards of poisoning arising from *benzene* (the aromatic hydrocarbon benzene C6 H6). The Convention refers to all activities involving the exposure of workers to benzene and to products whose benzene content exceeds one percent by volume. Other provisions include the prohibition of pregnant women, nursing mothers and young persons under 18

years of age to be employed in work processes involving exposure to benzene or products containing benzene.

- **Convention No. 139 – Occupational Cancer, 1974:** This Convention provides for the prevention of occupational cancer, and obligates ratifying states to determine periodically the *carcinogenic substances and agents* to which occupational exposure shall be prohibited or regulated. It also provides for protective and supervisory measures, inspections, information, medical examinations, tests and investigations as essential requirements.

c. Conditions of Work

- **Convention No. 26 – Minimum Wage Fixing Machinery, 1928:** This Convention requires ratifying states to create or maintain machinery for the fixing of minimum rates of wages for workers in certain trades or parts of trades in which no arrangements exist for effective regulation of wages by collective agreement or otherwise and where wages are exceptionally low.

- **Convention No. 131 – Minimum Wage Fixing Machinery, 1970:** This Convention provides for the protection against excessively low wages, and requires ratifying states to establish a system of minimum wages covering all wage earners whose terms of employment make coverage appropriate for them.

- **Convention No. 95 – Protection of Wages, 1949:** This Convention provides for full and prompt payment of wages in a manner which provides protection against abuse. It requires payment of wages in money to be paid only in legal tender (payment by cheque is authorized under certain conditions).

- **Convention No. 94 – Labour Clauses (Public Contracts), 1948:** This Convention requires minimum labour standards in the execution of public contracts involving expenditure of public funds awarded by central government authorities to contractors for the

carrying out of any public work.

This Convention also provides for measures to ensure fair and reasonable conditions of health, safety, and welfare for workers, for a system of labour inspections, sanctions for breaches, and for measures to ensure that workers receive wages to which they are entitled.

These conditions are also applicable to sub-contractors.

- **Convention No. 172 – Working Conditions (Hotels and Restaurants), 1991:** This Convention applies to workers employed within hotels, restaurants and similar establishments providing food, beverages or both, and provides for basic conditions of work. Ratifying states agree to:
  - adopt and apply, in a manner appropriate to national law, conditions and practice, a policy designed to improve the working conditions of workers in this sector; and
  - ensure that the workers concerned are not excluded from any minimum national standards including social security benefits for workers in general.

- **Convention No. 149 – Nursing Personnel, 1977:** This Convention concerns employment and conditions of work and life of all categories of nursing personnel providing nursing care and nursing services wherever they work. Ratifying states are required to:
  - adopt and apply, within a national context, a policy concerning nursing services and nursing personnel, to promote the quantity and quality of nursing care necessary for the highest possible level of health for the population; and
  - provide appropriate education and training, employment, working conditions, career prospects and remuneration that are likely to attract and retain nursing personnel in line with the conditions set out in this Convention.

- **Convention No. 175 – Part-Time Work, 1975**: This Convention requires ratifying states to ensure that part-time workers secure the

same protection as accorded to comparable full-time workers in respect of:

- the right to organize, the right to collective bargaining, and the right to serve as workers' representatives;
- occupational safety and health (OSH);
- non-discrimination in employment and occupation; and
- fair proportionate basic wage; enrollment for statutory social security, and other basic terms and conditions comparable to full-time workers.

- **Convention No. 108 – Seafarers Identity Documents, 1958:** This Convention provides for reciprocal or international recognition of *seafarers' national identity cards* to every seafarer engaged in any capacity on board vessels registered in a territory for which the Convention is in force and ordinarily engaged in maritime navigation. It alsoprovides for ratifying states to issue the seafarer identity document with such details and form as outlined in this Convention.

- **Convention No. 137 – Dockwork, 1973:** This Convention concerns the social repercussions of new methods of cargo handling in docks, and calls for a national policy to encourage permanent employment, assured minimum periods of employment, and for registered dock workers to be given priority in the engagement for dock work.

- **Convention No. 166 – Repatriation of Seafarers (Revised), 1987:** Applicable to every sea-going ship, the Convention details the conditions and circumstances of applicable repatriation entitlements to seafarers.

iv. Tripartism and Social Dialogue [5]

a. Labour Administration and Social Policy

- **Convention No. 150 – Labour Administration,** 1978: This Convention calls for an effective system of labour administration whose functions and responsibilities are properly co-ordinated with the participation of workers and employers and their organizations.

  The functions and responsibilities cover the following areas:
  - national labour policy and labour standards;
  - industrial and labour relations including social dialogue and tripartism;
  - labour and OSH inspections;
  - employment, manpower planning, and employment services;
  - research, labour statistics, and HRD; and
  - regional and international affairs.

- **Convention No. 81 – Labour Inspection**, 1947; and **Convention No. 129 – Labour Inspection (Agriculture), 1969:** These Conventions together provide for a system of regular labour and safety inspections of commercial, industrial and agricultural workplaces and undertakings. The inspections are intended to secure the enforcement of legal provisions relating to conditions of work and the protection of employees.

  These Conventions also deal with:
  - the organization, structure, and functioning of inspection services;
  - the responsibility of the central authority; and
  - the functions of labour inspectors, for effective inspection services in industrial, commercial, and agricultural undertakings.

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[5]In 1994, Guyana established a National Tripartite Committee comprising of 18 members, six each representing Governmnet, the Trade Unions Congress and the National Employers' Organization under the chair of the Ministry of Labour.

- **Convention No. 144 – Tripartite Consultation (International Labour Standards), 1976:** This Convention calls for effective and meaningful consultation among the representatives of government, employers and trade unions on international labour standards and related matters. Specifically, under this Convention, tripartite consultations are required on:
  - items on the agenda for the annual International Labour Conference;
  - consideration and submission of ILO conventions and recommendations to the competent authority with appropriate recommendations;
  - re-examination of conventions, and recommendations for appropriate action;
  - reports on ratified conventions, and other reports to the ILO; and
  - proposals, if any, for denunciation of ratified conventions.

4. Regional and Other International Instruments on Labour Matters

a. CARICOM Labour Policies

As a member of the Caribbean Community (CARICOM), Guyana is committed and obligated to observe the labour policies of CARICOM as set out in its ***Charter of Civil Society,*** and its ***Declaration of Labour and Industrial Relations Principles***, 1999.

Article XIX of the *Charter of Civil Society* provides for the right and protection of every worker to:

- freely belong to and participate in trade union activities;
- negotiate and bargain collectively;
- be treated fairly at the work place, and to enjoy a safe, hygienic and healthy working environment;
- reasonable remuneration, working conditions, and social security; and
- utilize/establish machinery for the effective conduct of labour relations.

CARICOM Declaration of Labour and Industrial Relations Principles outlines the general labour and industrial relations policy to which the CARICOM states aspire. The Declaration was informed by ILO Labour standards (Conventions and Recommendations) and re-enforced the standards relating to:

- *freedom of association, collective bargaining, non-discrimination in employment and occupation, employment policy, labour administration, industrial dispute settlement, consultation, and tripartism.*

b. *The Universal Declaration of Human Rights, 1948* of the United Nations

Article 23 states that:

1. *Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.*
2. *Everyone, without any discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and join trade unions for the protection of his interests.*

3.

Collective Bargaining and Dispute Settlement

Current Representation Procedures and Dispute Resolution Machinery

In the field of industrial relations, effective means of settlement of labour disputes are determined by the established machinery through consultation, negotiations, and with third party assistance in the collective bargaining process and statutory regulations. When an employer recognizes a trade union as the sole bargaining agent of the workers in any enterprise or industry, the parties usually sign and accede to a **collective agreement for recognition and the avoidance and settlement of disputes**. Embodied in that **recognition agreement is the process for collective bargaining** and **a grievance or representation procedure**, which sets out the various stages through which a grievance or dispute can be processed.

Generally, the procedures include the internal stages for dispute resolution at the enterprise or organization level with specified time frames (may be stages i-iii), failure at the last internal stage is followed by *conciliation/mediation* (stage iv), and then *arbitration* (stage v), if there is still an impasse. In other cases, statutory requirements under the Labour Act and the Public Utility Undertakings and Public Health Services Arbitration Act provide for adjudication by means of **arbitration by an industrial tribunal** for final and binding resolution.

Dispute Resolution in the Civil Service

Procedures for dispute resolution in the civil service are outlined in a Memorandum of Agreement between the Guyana Public Service Union and the Public Service Ministry for the avoidance and settlement of disputes in the civil service, as follows:

"Clause 3: Representation Procedure"

When any question relating to conditions of service, (excluding matters, which fall under the purview of the Public Service Commission), which may give rise to a dispute is raised by or on behalf of any member of the union, the following procedure shall be observed:

Stage I A member, individually or accompanied by not more than one, or in the case of group representation not more than two members of the Branch Grievance Committee, may approach the Supervisor/Sectional Head in the first instance with a view to avoiding a dispute or settling a matter in dispute. The Supervisor/Sectional Head shall endeavour to do all he possibly can to effect a satisfactory settlement within two (2) days.

Stage II Failing a settlement at Stage I, the member and/or his Branch Grievance Committee may approach the Head of the Personnel Unit of the particular Ministry/Department for a settlement. The Head of the Personnel Unit shall endeavour to meet the member and/or his Branch Grievance Committee as early as possible, but within two (2) working days in an effort to effect a settlement.

Stage III Failing a settlement at Stage II, the Branch Secretary and/or the General Secretary of the Union may request in writing a meeting with the Permanent Secretary/Departmental Head who shall endeavour to hold such a meeting as soon as possible, but within five (5) working days in an effort to bring about a satisfactory settlement of the matter.

Stage IV Failing a settlement at Stage III, the Grievance Committee of the Union may then refer the matter to the Permanent Secretary of the Public Service Ministry in writing. The Permanent Secretary, Public Service Ministry shall endeavour to meet the Grievance Committee of the Union as soon as possible, but within two weeks, for the purpose of discussing the matter or matters in dispute, and shall endeavour to effect a satisfactory settlement with all despatch.

Stage V Failing a settlement at Stage IV, the matter may be referred by either side within fourteen (14) working days to the Ministry of Labour for conciliation.

Stage VI Failing settlement at Stage V, the matter may be referred by either side within fourteen (14) days to Arbitration. The Arbitration Panel shall consist of one member nominated by the Public Service Ministry, one member nominated by the Union and a Chairman agreed upon by the Public Service Ministry and Union. In the event of the parties failing to reach agreement, the Chairman shall be nominated by the Minister of Labour. Any award by the Tribunal shall be final and binding."

This agreement between the union and the government also provides for other existing statutory machinery for arbitration or other legal machinery which may be established by the National Assembly as set out in the words of the Agreement: "*none of the above clause shall be interpreted to preclude the right of either the Ministry or the Union to make use of any existing or future national or other industrial machinery that may be legally established from time to time*". (Clause 7)

This Agreement further affirms the established principles and norms in the practice of industrial and labour relations during the stages of negotiations set out above *"that there shall be no lock-out by the Ministry concerned nor any strike, stoppage of work whether of a partial or a general character by the Union, refusal to work, slow down or retarding of production*

on the part of the Union, nor shall there be reduction of the normal level of output by any members of the Union".

Registration and enforceability of Collective Agreements

All signed collective agreements are to be presented to the Chief Labour Officer within three months of signing in accordance with the *Labour Act* which makes every such agreement legally enforceable unless the agreement states that the whole agreement or any part of it is not intended to be legally binding (Part VIIA).

Conciliation/Mediation – Consensus-based Process

Conciliation/mediation in industrial disputes, whether it is a **dispute of interest** or a **dispute of rights**, is an **essential process in the field of industrial relations.** The conciliation process seeks to encourage disputing parties to discuss their differences with a view to assisting them **to develop their own proposed solution, as an extension of negotiations.** The outcome is essentially the agreement of the two parties with the assistance of the conciliator.

The Department of Labour in Guyana, as in many other countries, is the principal third party dealing with individual and collective labour disputes, and provides a free, voluntary conciliation service under the authority of the Labour Act, enacted to regulate the relationship between employers and employees and the settlement of disputes between them. Section 4 of this Act empowers the Minister to take any expedient steps to promote a settlement. Conciliation/mediation has been one of the principal means used to resolve industrial disputes with the Chief Labour Officer being the chief conciliation officer. The Department of Labour or the Conciliation service, by virtue of the very nature of the service provided, **embodies the concept of non-political conciliation/ mediation,** and must maintain a **role of non-partisan conciliation/ mediation** if it is to enjoy the confidence of the social partners. It must function with **credibility, impartiality, high professional standards and integrity** to command the respect of social partners and state agencies.

From the ILO's perspective, *conciliation and mediation are regarded as equivalent terms referring essentially to the same kind of third party intervention to promote voluntary settlement of disputes.* Technically, **conciliation** is limited to encouraging employers and unions to develop their own proposed solutions through rational discussion of their differences. **Mediation,** on the other hand is a stronger form of third party intervention in which the **mediator can offer to the parties, proposals for settlement of any industrial dispute.** In practice, however, the technical distinction is blurred, or disappears as **both words are used interchangeably** to express the same process of third-party intervention.[6]

The **use** of the conciliation service of the Department of Labour is required by a **collective labour agreement**, or at the **intervention of the Chief Labour Officer or exceptionally by the Minister,** given the fact that the Department is the sole agency which provides this service, free to employers and unions. This is usually the required procedure before resorting to adjudication through arbitration or some other means for final settlement.

Conciliation and Collective Bargaining

The ILO's guide on conciliation states that *the practice of conciliation in industrial disputes has developed mainly in connection with disputes arising from the failure of collective bargaining, i.e. the negotiations between the parties with a view to the conclusion of a collective agreement.* In this context, *Conciliation is described as an extension of collective bargaining with third-party assistance*, or simply as *"assisted collective bargaining".*[7]

The ILO, in its **Conciliation/Mediation Training Manual, 1996,** defines c*onciliation as ideally a **voluntary** process in which the services of an **acceptable and independent third-party** is used to **help** the parties to arrive at a mutual solution.*

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[6] In some countries, the two words - Conciliation and Mediation - denotes different forms of intervention for voluntary settlement in which mediation is the stronger form of third-party intervention than pure conciliation.

[7] ILO Conciliation in Industrial Disputes: A practical guide - 1988 -6th impression

The *conciliation/mediation* process is used widely in CARICOM countries on account of its *voluntary nature, its attempts at compromise, the win/win outcomes, and because the process addresses both conflict and dispute.* It is essentially a *consensus-based process, which includes negotiations, conciliation/mediation,* and *joint problem solving,* a process in which the parties agree on the outcome. They have control of the outcome with the assistance of the conciliator or mediator. It is their judgement, and not the judgement of an adjudicator or judge.

The Conciliator

The *conciliator* is not an *arbitrator* and a conciliator cannot substitute his/her judgement for that of the parties. The conciliator cannot impose a settlement; it is for the parties to agree to a solution under the guidance and skill of the conciliator who must maintain a strictly impartial and neutral attitude towards the two parties. The conciliation function requires full independence of judgement, and a conciliator should not be swayed by external pressures. [8]

The conciliator must endeavor to bring about an agreement. However, if it is not possible to obtain agreement, the conciliator should persuade the parties to agree to submit the dispute to **binding arbitration** or to another procedure for dispute settlement in keeping with their collective agreement or law or practice in **the process of conflict management**.

Arbitration

Arbitration is another type of third party intervention. It is the stage which, in the context of the usual *grievance or representation procedure*, is expected ***to follow closely upon an impasse or failure at conciliation to resolve a dispute.*** However, arbitration need not wait the failure of the conciliation process in situations where a dispute can have a severe social and economic impact, or where a prolonged dispute in a major industry or service could severely affect community life or where

[8]ILO Conciliation in Industrial Disputes: a practical guide - 1988 - 6th impression.

the on-going operation of an industry is necessary to sustain the national economy or when the continuance of the dispute is likely to be gravely injurious to the national interest. In such a case, the Minister is empowered to refer the dispute to a compulsory machinery such as arbitration by and/or industrial tribunal as a means of resolving the disputes. The Minister of Labour is so empowered under Section 4 of the *Labour Act*, and under Section 3 of the *Public Utility Undertakings and Public Health Services Arbitration Act*.

Arbitration by an industrial tribunal, like **conciliation,** involves third party intervention in the collective bargaining process. In conciliation, however, the conciliator is expected to use his powers of persuasion in order to enable the parties to narrow the areas of difference between them with a view of reaching an acceptable solution. However, in **arbitration and industrial tribunal proceedings**, **the arbitration tribunal is required to decide the issue on the merits of a case presented by the parties and makes an award**. Such an **award** is final and binding on the parties involved in the dispute, in keeping with the terms of reference for the tribunal, and the parties are expected to give effect to the award in the tradition of industrial relations practice.

In collective labour agreements, there is provision for **voluntary arbitration, either by mutual consent or at the request of one party**, while legislation provides for voluntary arbitration or for the establishment and operation of **industrial tribunals, or compulsory arbitration in the essential services or in situations where the national interest is at stake**. This is the usual representation procedure outlined in collective labour agreements both in the private and public sectors.

While the terms and conditions for civil servants can be processed under the Recognition and Procedure Agreement referred to on pages 25-26, *matters falling under the purview of the Public Service Commission are subject to adjudication by the Public Service Appellate Tribunal*. Such matters relate to *appointments, transfers, promotions and discipline including dismissal* of officers, appointed by the Public Service Commission.

4.

Labour Institutions, Offices and Powers of Authorities

a. Offices, Institutions and Bodies established by Legislation

The following offices, institutions and bodies are established under the various Acts:

- Under the Labour Act:
  - The Labour Department;
  - The Office of the Chief Labour Officer;
  - The Advisory Committee for trade disputes;
  - The Tripartite Advisory Committee on Minimum Wages.

- Under the Trade Unions Act:
  - The Registrar of trade unions.

- Under the Public Utility Undertakings and Public Health Services Arbitration Act:
  - The Arbitration Tribunal for industrial disputes and the secretary and other staff.

- Under the Trade Union Recognition Act:
  - Recognition and Certification Board.

- Under the Occupational Safety and Health Act:
  - National Advisory Council on OSH;

- OSH Authority (where no such authority is established, this authority is the chief occupational and safety officer);
- Medical Inspectors;
- OSH Commissioner;
- Safety and Health Representatives; and
- Joint workplace safety and health committee.

b. Statutory Powers and Responsibilities of the Minister of Labour

- Under the Constitution of Guyana, the Minister *exercises general direction and control* over the Departments under his/her responsibility.

- Under the Trade Unions Act, the Minister is empowered to make rules respecting registration under this Act.

- Under the Labour Act, the Minister is empowered to:
  - designate officers of the Department of Labour with specified powers;
  - intervene in trade disputes and take such expedient steps or measures to promote a settlement;
  - refer a trade dispute to arbitration with the consent of both parties, or either of them, or **without** their consent for settlement by an Arbitration Tribunal appointed by the Minister;
  - appoint Advisory Committees for trade disputes;
  - appoint tripartite advisory committees for minimum wages; [9]
  - determine the terms of reference for these committees;
  - make regulations prescribing the number of hours which may be worked in any week or day in any occupation; with general powers to make regulations;
  - prescribe the form in which information and returns concerning the collective agreements should be furnished to the Chief Labour Officer;

[9]Orders for Minimum Wages for Mechanical Transport Employees, employees in Drug Stores, Dry Goods Stores, Hardware Stores, Shirt and Garment Workers, Cinema employees, Watchmen and Petrol-filling Station employees.

- empower the Permanent Secretary to approve of the form or the manner in which any paylists or statistics of earnings should be kept by employers;
- prescribe relevant forms for the purposes of this Act; and
- make rules of procedure for the functioning of advisory committees.

- Under the Public Utility Undertakings and Public Health Services Arbitration Act:
  - the Minister may intervene in any trade dispute and appoint the stipulated Arbitration Tribunal for the settlement of trade disputes in the listed essential services and utilities; and
  - the Minister determines the terms of reference for the tribunal.

- Under the Trade Union Recognition Act: The Minister:
  - appoints the *recognition and certification board* and its secretary;
  - makes regulations generally for carrying out the provisions of the Act, and in particular for the conduct of surveys and polls and prescription required under this Act.[10]

- Under the Prevention of Discrimination Act, the Minister is empowered to make regulations to give effect to the purposes of this Act and for enforcing its provisions.

- Under the OSH Act, the Minister is empowered to:
  - appoint members of the Advisory Council on OSH;
  - appoint or designate the OSH Authority;
  - make regulations for labour inspections;
  - designate medical inspectors;
  - appoint an OSH Commissioner;
  - require an employer to facilitate the selection by workers of one or more safety and health representatives;

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[10] Trade Union Recognition Act 1997 (Commencement) Order 1998
Trade Union (Certification of Recognition) Regulations 1999
Trade Union (Certification of Recognition) Regulations 2000

- require an employer to establish and maintain one or more joint workplace safety and health committees;
- determine, directly or through the Commissioner, appeals of employers against any order made by an inspector under this Act;
- fix an amount that shall be levied by the National Insurance Board against employers of workers in industrial establishments to defray expenses of the administration of this Act.
- direct formal investigation of accidents and cases of occupational disease; and
- make regulations as specified in the Act subject to negative resolutions of the National Assembly.

- Under the Wages Council Act, the Minister is empowered to:
  - establish wages councils by order (wages council order) for vulnerable groups of workers, if it is expedient that such a council be established;
  - appoint a Commission of Enquiry to advise whether a wage should be established in keeping with this Act;
  - make wages council order and wage regulations in keeping with the procedures set out in the Act; [11]
  - designate officers for the purposes of this Act;
  - make regulations for prescribing anything required or authorized to be prescribed; and
  - appoint the secretary and other officers, chairman, deputy chairman, assessors of wages councils and of commissions of enquiry as required by this Act.

- Under the Employment Exchanges Act, the Minister:
  - may establish and maintain employment exchanges; and
  - may make regulations for the management of employment exchanges and related matters.

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[11] Order for wages regulation for Printing Trade Workers; Timber Grant Workers and Sawmill Workers

- Under the Recruiting of Workers Act, the Minister is empowered to make regulations for the purpose to give effect to this Act as prescribed.

- Under the Labour (Conditions of Employment of certain Workers) Act, the Minister may make orders periodically, prescribing the rates of pay for workers, subject to negative resolution of the National Assembly. The order may vary, amend or alter minimum rates of wages as set out in the first schedule of the Act.

- The Minister is also empowered to prescribe the items to be contained in First Aid boxes in hotels, restaurants and other establishments covered by this Act.

- Under the Bakeries (Hours of Work) Act, the Minister may make regulations modifying the restriction imposed on working hours in bakeries.

- Under the Shops (Consolidation) and the Licensed Premises Acts, the Minister is empowered to vary the prescribed opening and closing hours of shops and premises.

- Under the Household Service Workers (Hours of Work) Act, the Minister may make regulations for carrying out the purposes of this Act.

c. Statutory Powers and Responsibilities of the Permanent Secretary

Under the Constitution of Guyana and subject to the general direction and control of the subject Minister, the Permanent Secretary supervises the relevant departments under the Ministry. The Permanent Secretary is also the chief accounting officer who manages the funds voted by the National Assembly for ministerial departments, and answerable for public

expenditure to the Pubic Accounts Committee of the National Assembly.[12]

- Under the Labour Act, the Permanent Secretary:
  - may institute any prosecution for breaches of this Act; and
  - may appoint any officer of the Department of Labour to appear as a prosecutor on behalf of the Permanent Secretary.

- Under the OSH Act, the Permanent Secretary:
  - may institute or cause to be instituted prosecution for the purpose of enforcing any provision of this Act or the regulations, and any inspector may appear as prosecutor on behalf of the Permanent Secretary.
  - Under the Household Services Workers (Hours of Work) Act, the Permanent Secretary may institute or cause to be instituted any prosecution for the purpose of enforcing the provisions of this Act. Any officer of the Department of Labour may appear as prosecutor for and on behalf of the Permanent Secretary.

d. Statutory Powers and Responsibilities of the Chief Labour Officer (CLO)

- Under the Labour Act:
  - The general powers of labour officials and those delegated by the Minister in particular, conciliation in industrial disputes.

- Under the Termination of Employment and Severance Pay Act, the CLO is empowered to:
  - investigate the circumstances giving rise to contemplated redundancy action;
  - institute or cause to be instituted any prosecution for the purpose of enforcing this Act, and any officer of the Department of Labour may appear as prosecutor for and on behalf of the CLO;

[12] While the Minister is primarily concerned with policy, the Permanent Secretary, the technical and other staff under the Permanent Secretary provide advice and assistance in policy determination and formulation, and faithfully implement the policy decisions of the government of the day in a professional and impartial manner.

- determine whether any disciplinary action is unreasonable in which case the stipulated remedies apply.

- Under the Shops (Consolidation) Act, the CLO is empowered to enforce the provisions of this Act relating to shop assistants, their wages and hours of work. The CLO can institute proceedings to enforce the relevant provisions of this Act, and can authorize any officer of the Department of Labour to prosecute the matter on behalf of the CLO.

- Under the Employment Exchange Act, the CLO is charged with the control and general superintendence of all employment exchanges.

- Under the Employment of Women, Young Persons and Children Act, the CLO is empowered to institute proceedings for breaches of this Act as stipulated.

- Under the Holidays with Pay Act, the CLO may institute or cause to be instituted any prosecution for the purposes of enforcing this Act by himself/herself or by any officer of the Department of Labour.

e. Statutory Powers and Responsibilities of the Authority or Chief Occupational Safety and Health (OSH) Officer (where no such Authority is established).

- Under the OSH Act, the Authority/Chief OSH Officer:
  - is required to register initially and annually all industrial establishments and any subsequent change of particulars;
  - is empowered like every inspector with adequate relevant authority to carry out all the purposes of this Act as specified including the issuing of orders in relation to:
    - safety of buildings, ways, machinery and plant;
    - the protection against hazardous chemicals, physical agents and

biological agents;
  - protection against the dangers and risks of new chemicals or biological agents and hazardous materials;
- is required to receive and register all notices of occupational diseases;
- is required to be present at a coroner's inquest in case of death by accident or occupational disease; and
- is empowered to require industrial establishments to submit such returns required for the purpose of this Act.

5.

Legislative Summaries

1. Trade Unions Act: Chapter 98:03 – No. 17 of 1921

Trade Unions

Trade Unions are prohibited from carrying out business unless it is *registered* (Sections 11-12) with the Registrar of Trade Unions in accordance with this Act. A trade union, not registered in accordance with this Act, shall be dissolved within three months of its formation, or be dissolved if the Registrar of Trade Unions refuses to register it for failure to meet the requirements of this Act (Section 24).

Any seven or more members of a trade union may, by subscribing their names to the rules of the union, register the union with the Registrar of Trade Unions.

Protection of Trade Unions

In furtherance of a trade dispute within the context of this Act, trade unions are protected from criminal prosecution for conspiracy or otherwise. The purpose of any trade union shall not be unlawful so as to invalidate any agreement (Section 5).

The Act protects trade unions against action of *tort* and breach of contract or agreement or trust in pursuance of a trade dispute (Sections 7 and 8).

Property and Trustees

The Act provides for the property of the unions to be vested in trustees, (trustees cannot hold office in the same union), for legal actions by or against trustees, and limitation of responsibility of trustees (Section 16-21).

Financial Accountability

The Act also requires every treasurer or other officers to render to the trustees, the members of the union at a duly constituted meeting of the union, a just and true account of monies received and paid, funds remaining and all bonds and securities of the union. The trustees are required to submit to the Auditor General for audit within fourteen days of the receipt of the account from the treasurer (Section 22).

The Act further stipulates the requirements and conditions in relation to the registration of union rules, the registered office of the unions, withdrawal or cancellation of certificate of registration, change of union's name, amalgamation of unions, registration of change of name and amalgamation, and dissolution of the union (Sections 25-33).

Annual Return and Registrar's Reports

Section 35 of the Act imposes an obligation on every registered trade union to present to the Registrar a general statement of receipts, funds, effects, and expenditure *before the 1st May in every year*. The general statement must show fully the assets and liabilities of the preceding year and must be prepared together with such information and in the manner stipulated in this Act.

The Registrar is required to lay before the National Assembly annual reports with respect to matters transacted by the Registrar in keeping with the requirements of the Trade Unions Act. (Section 36)

2. The Labour Act – Chapter 98:01

The *Labour Act* was enacted in 1942 to provide for the establishment of the Department of Labour, for the regulation of the relationship between employers and employees and the settlement of differences between them.

Appointment of Labour Personnel (Part 1, Section 3)

- The Act provides for the appointment of a Chief Labour Officer, a Deputy Chief Labour Officer, an Assistant Chief Labour Officer, Senior Labour Officers, Labour Officers, and other staff.

- The Deputy Chief Labour Officer and the Assistant Chief Labour Officer assist the Chief Labour Officer in the performance of his her duties.
- In the absence of the Chief Labour Officer, the Deputy Chief Labour Officer or, in his/her absence, the Assistant Chief Labour Officer exercises all the powers and may perform all the duties of the Chief Labour Officer.

Powers of the Minister (Part II, Section 4)

The Minister is empowered in *any trade dispute* or *where a difference exists or is apprehended* between any employer and employees, to exercise all or any of the following powers:

- to inquire into the causes or circumstances of the difference;
- to take any expedient steps to promote a settlement of the difference;
- with the consent *of both parties, or of either of them, or without their consent*, to refer the matter for settlement by arbitration by a Tribunal consisting of one or more persons *appointed by the Minister*. Where the Minister refers the dispute to arbitration without the consent of either party, the Minister shall notify the parties that the continuance of the dispute is likely to be *gravely injurious to the national interest;*
- upon appointment of such a Tribunal, *the Minister furnishes the Tribunal with its terms of reference* containing a statement of the causes and circumstances of the difference between the parties into which the Tribunal is required to inquire;
- the Tribunal is required to make its award as soon as possible and accordingly notify the Minister and the concerned parties; and
- the Minister may request an interim award from the Tribunal with respect to any matter referred to it.

The award is binding on the parties to whom it relates.
The Minister may make *regulations* for the conduct of such arbitration proceedings (Section 5).

Advisory Committee for Trade Dispute (Section 6)

- Where any trade dispute exists or is apprehended, the Minister is empowered to refer any matters connected with, or relevant to such a dispute to an *Advisory Committee* appointed by the Minister. This Committee inquires into the matters referred to it and presents a report to the Minister with such recommendations, as the Committee may deem expedient.
- The Advisory Committee consists of a Chairman and such number of other members as the Minister considers appropriate.

Powers of the Minister to make Regulations

This Act empowers the Minister through *tripartite advisory committees* to:

- regulate the wages paid in any occupation through minimum wages - Part III;
- prescribe the number of hours, which may normally be worked by an employee in any week, or on any day in any occupation – Part VII (Section 28).

Collective Agreements – Part VIIA

- *Every Collective Agreement* which does not contain a provision which (however expressed) states that the agreement or part of it *is intended not to be legally enforceable, shall be conclusively presumed* to be intended by the parties to it to be a legally enforceable contract.
- A copy of every collective labour agreement signed by the parties shall be presented to the Chief Labour Officer not later than three months after signing.

General Powers of Labour Officials (Section 30)

Any designated officer of the Labour Department is empowered and authorized where labour is employed in any premises:

- to enter, inspect and examine such premises at all reasonable times whether by day or night, and to obtain from any employer information on employees, their wages, hours and working conditions of employees;

- to take a member of the police force if there is likely to be any serious obstruction in the execution of his/her duties;
- to carry out any test, examination or enquiry necessary;
- to interview alone or in the presence of witnesses, the employer or the staff;
- to require, with written notice, the production of any books, registers or other documents required to be kept by any law;
- to enforce the posting of notices required by law;
- to take or remove for purposes of analysis samples of materials and substances used or handled;
- to require from employers returns giving information as to wages, hours and conditions of work of employees; and
- to inspect the register of accidents and to obtain and require from an employer information as to the causes and circumstances relating to any accident.

A designated officer, on an inspection visit, notifies the employer or employer representative of his/her presence, unless such notification may be prejudicial to the performance of the officer's duties.

Powers of Labour Officials (Section 38)

The *Permanent Secretary* may institute or cause to be *instituted any prosecution* for the purpose of enforcing any of the provisions of this Act and *any officer of the Department of Labour may appear as prosecutor* for or on behalf of the Permanent Secretary.

3. The Public Utility Undertakings and Public Health Services Arbitration Act (Chapter 54:01)

This Act provides for an *Arbitration Tribunal* for the settlement of disputes in public utility undertakings, and in certain other services.

Limitation of Industrial Action

The Public Utility Undertakings and Public Health Services Arbitration Act prohibits strikes and lockouts in such undertakings and services unless, certain procedures are followed in *trade disputes* in the following services

and utilities as listed in the schedule to the Act:-

- all transport services of the Transport and Harbours Department;
- waterfront services undertaken in the shipping in the port of Georgetown;
- municipal services undertaken by the Georgetown City Council and the New Amsterdam Town Council;
- all services of the Georgetown Sewerage and Water Commissioners;
- the electricity supply services of the Guyana Electricity Corporation;
- all undertakings in connection with pumping installations used for drainage purposes;
- all services in connection with the public hospitals owned and operated by the Government;
- the electricity, water and fire-fighting services at Timehri Field, owned and operated by the Government;
- the cable and wireless services of Cable and Wireless (W.I.) Ltd.;
- the Government's telegraphic, telephonic and wireless services;
- the telecommunication services of the Guyana Telecommunication Corporation; and
- the services provided by the Guyana Airways Corporation.

Trade Dispute Procedure (Section 3)

Trade disputes in any of the above services are to be reported to the Minister by any of the relevant employers' organization, employer or trade union on behalf of workers who are parties to the dispute. The dispute may also be reported to the Minister by any other organization not directly involved in negotiations in which the dispute exist or was apprehended.

The Minister may:

- if satisfied that *there is suitable machinery of negotiation or arbitration* for the settlement of the dispute, and that such machinery has not been exhausted, refer the matter for settlement to that machinery, or *refer the dispute to the Tribunal,* if not settled within ten days of such reference to such suitable machinery;

- take such steps as are expedient to promote the settlement of the dispute or *may refer the matter for settlement by the Tribunal within one month* from the date on which the matter was first reported to him/her by any other organization not directly involved in the negotiations.

Arbitration Tribunal (Section 4-11)

- The Tribunal established under this Act is *the Public Utility and Public Health Services Arbitration Tribunal* (the Tribunal) consisting of the following *persons appointed by the Minister*:
  - three appointed members, one of whom shall be appointed as the Chairman;
  - two other members, one of whom shall be chosen to represent *employers* and the other to represent *employees*;
  - *panels of persons* chosen to represent employers and employees respectively shall be constituted by the Minister after consultations with the relevant representative organizations. Members chosen to represent employers and employees at any sitting of the Tribunal shall be selected from these panels by the Minister;
  - members of the Tribunal hold office for two years and may be re-appointed;
  - the Secretary of the Tribunal is a public officer appointed by the Minister;
  - the employer and employee representatives and one other member constitute a quorum at any sitting of the Tribunal;
  - where the members of the Tribunal are evenly divided in respect of their decision, the *matter shall be disposed of as the Chairman or other member presiding shall determine*.

- The Tribunal may regulate its own proceedings.

Prohibition of Lockouts and Strikes (Section 12)

Strikes and lockouts are prohibited in connection *with any trade dispute in the essential services unless:*

- the dispute has been reported by a person or an organization not directly involved in the negotiation in which the dispute exists;

- one month has elapsed since the date of the report; and
- the dispute has not during that time been referred by the Minister for settlement by the Tribunal.

Terms of Reference and Award (Section 13-14)

- The Minister determines the *terms of reference* for the Tribunal, and the Tribunal enquires into the matters referred to it and reports to the Minister.
- The Tribunal makes its awards and furnishes its advice as the case may be to the Minister without delay and where practicable within *twenty one days* from the date of reference.
- Any *agreement, decision, or award* made under this Act shall be *binding* on employers and workers, and shall be an *implied term of the contract* between the employer and workers as applicable (Section 7).
- Expenses of the Tribunal are met by the State as authorized and approved by the Minister of Finance.

4. Trade Union Recognition – Act No. 33 of 1997

This Act was enacted to provide for the improvement and promotion of industrial relations by the establishment of *procedures for the certifying of trade unions as recognized majority unions.*

Recognition and Certification Board (Sections 4 – 8)

- The Act establishes a *Trade Union Recognition and Certification Board* as a corporate body consisting of *seven members* as follows:
  - a Chairman, appointed after consultation with the most representative organizations of trade unions and employers respectively.
  - three members appointed by the Minister on the nomination of the most representative trade union organization;
  - three members appointed by the Minister on the nomination of the most representative employer organization.
  - in the same manner as members are appointed, other than the Chairman, the Minister appoints alternate members.

- The Minister can revoke the appointments of any of the nominees of either the trade unions or employers' organizations on their respective nomination of other persons to replace such nominees.
- The Minister is empowered to revoke the appointment of the Chairman if the Chairman indulges in any action that is inimical to the function of the Board, or if absent without the permission of the Board from three consecutive meetings.
- The Secretary of the Board is a public officer appointed by the Minister.
- The Act places a duty on the Minister to provide the Board with adequate resources to enable the Board to discharge its functions.

Meetings of the Board (Section 9)

- The Board may meet as necessary or as expedient. The *quorum* required for Board meetings is the *Chairman and three other members,* including one representative each of the nominees of trade unions and employers.
- In the event that two consecutive meetings fail to attract the requisite quorum, having been summoned *within ninety-six hours* for the next meeting*, any four members* shall constitute a quorum.

Certification of Recognition – Part III (Section 18)

- A trade union is required to apply in writing to the Board to be certified as the *recognized majority union*. The union is also required, in its application, to describe the proposed bargaining unit.
- The Board is required to determine the application within *two months* of the date of its receipt by the Board.

The Bargaining Unit (Section 19)

The Board is empowered to determine *the appropriate bargaining unit*, taking into consideration, the following factors relating to the proposed bargaining unit:

- The *community of interest* among the workers;
- The *nature and scope* of their duties;
- The *organizational structure of the employers' undertaking, and the views of the concerned trade union and employer;*

- *Historical development of collective bargaining* in the enterprise;
- Any other matters which the Board considers to be *relevant to the conduct of good industrial relations.*

Determination of a Recognized Majority Union (Sections 20 & 21)

- Where only one union applies to be certified as the *recognized majority union,* the Board may determine the application on the basis of a *membership survey* to ascertain the extent of support, which the union enjoys.
- The Board shall certify the union as the recognized majority union for the relevant bargaining unit if the survey results indicate that at least *forty percent* of those workers support the union.
- Where *two or more trade unions* have applied in relation to the same bargaining unit, the Board shall refer the applications to the attention of the most representative trade union organization for a resolution within *twenty-eight days.*
- Failing a resolution by the most representative trade union organization, the Board shall carry out a *secret poll* among the employees in the bargaining unit *and shall certify as the recognized majority union for the bargaining unit, the claimant union which is shown by the poll to have the greatest support among the workers*.
- No union, however, shall be certified if *fewer than forty percent* of the employees take part in the poll.
- Where a *certified union* is being challenged and the challenging union satisfies the Board, by means of a survey that the support of the challenging union is not less than forty percent, the Board shall conduct a poll, but *the Certificate of Recognition* of the challenged union shall not be cancelled where the challenging union fails to obtain a majority of at least forty percent amongst the workers in the bargaining unit.

Certificate of Recognition (Section 22)

- The Board shall issue a *Certificate of Recognition under its seal* to the trade union and the employer in every case in which it certifies a trade union as the *recognized majority* union.
- The Board shall issue a *Certificate of Recognition* to existing recognized unions at the establishment of the Board (1 May 1999) unless there is

a pending challenge for recognition by another union, in which case, a poll shall determine the issue (Section 32).

Compulsory Recognition and Duty to Treat (Section 23)

- Where the Board certifies a trade union as the recognized majority union, the *employer shall recognize the union, and the union and the employer are obligated to bargain in good faith and enter into negotiations* with each other for the purpose of collective bargaining;
- Failure or refusal on the part of either the trade union or the employer to comply with any of the above requirements (Section 23) constitutes an offence and liable on summary conviction to payment of fines.

Effect of Certification (Sections 27-28)

Where a trade union is certified as the recognized majority union:-

- such a trade union replaces any other trade union that was previously recognized, and has *exclusive authority* to enter into collective bargaining on behalf of employees in the relevant bargaining unit;
- the certificate of the previously recognized union is revoked in respect of such employees;
- such a trade union becomes a party where a collective agreement is in force in substitution for the displaced/derecognized trade union;
- such a trade union may submit to the employer proposals of the revision of, or a new collective bargaining agreement.

Frequency of Application for Certification (Section 29)

No application for certification of recognition is entertained or proceeded with by the Board where:-

- there is a recognized majority union for the same bargaining unit described in the application.
- the application is made earlier than two years after the recognized majority union obtained certification, unless the Board approves otherwise; a trade union may appeal to the Minister if dissatisfied with this decision of the Board.
- a trade union fails to gain recognition or where its certificate of recognition was cancelled, it must wait at least *twelve months* before re-applying.

Challenge for Continued Certification (Section 31)

Should at least *forty per cent* of employees in a bargaining unit for which a union is certified so request, the Board shall conduct a poll to determine whether the union continues to be so certified.

5. The Termination of Employment and Severance Pay Act, No.19 of 1997 Termination of Employment

Under Part III (Sec. 7) of the *Termination of Employment and Severance Pay Act*, a contract of employment *without term limit* may at any time be terminated:-

- by mutual consent of the parties;
- on any ground of redundancy which relates to operational requirements (Section12);
- by either party:
  - for good and sufficient cause; or
  - by notice to the other party.

Unfair Dismissal (Section 8)

- The following reasons are *not valid or constitute good or sufficient cause* for dismissal or for disciplinary action against an employee:-
  - race, sex, religion, colour, ethnic origin, national extraction, social origin, political opinion, family responsibility or marital status;
  - pregnancy or reason connected with pregnancy or medically certified illness;
  - absence due to compulsory military service or any other civic obligations in accordance with any law;
  - participation in lawful or legitimate industrial action;
  - refusal to do any work normally done by an employee engaged in lawful or legitimate industrial action; and
  - complaint or participation in legal proceedings against an employer.
- A dismissal or disciplinary action is *unfair* if it is based on any of the above listed grounds or if the employer fails to give *written warning* or *suspension without pay* for misconduct that is not serious to warrant dismissal (Sections 11 and 18).

- It also constitutes unfair dismissal if an employer under Sections 11 or 18 of this Act:-
  - fails to give *written warnings* for any misconduct that is not serious so as to attract dismissal, but may terminate the employment for the same or similar offence or misconduct in the following six months;
  - terminates the employment of an employee for *unsatisfactory performance* unless the employer has given the employee instructions as to how the employee should perform his/her duties and a written warning to follow the employer's instructions and the employee continues to perform unsatisfactorily;
  - dismisses an employee when it is reasonable for the employer to take other *disciplinary actions* instead, including in *order of severity* regard being had to the nature of the violation, employees' duties, nature of any damage, previous conduct and circumstances of the employee:-
    - a written warning;
    - suspension without pay.
- A complaint that *disciplinary action is unreasonable* may be made to the *Chief Labour Officer for determination* (Section 18).
- An employee has the *right to seek redress* from the *High Court* for *unfair dismissal or unfair disciplinary* action (Section 19).

Summary Dismissal (Section 10)

An employer is entitled to *dismiss an employee without notice or payment of any severance or redundancy allowance or terminal benefit for a serious misconduct* which relates to the employment relations and has a detrimental effect on the employer's business.

Termination on Grounds of Redundancy (Section 12)

- An employer may terminate the employment of employees as part of the *reduction of the workforce* on the grounds of *operational requirements* including:-
  - modernization, automation or mechanization;
  - closure, sale or other disposition of part or whole of the business or

re-organization for efficiency;
- impossibility or impracticability to continue business on account of shortage of materials, mechanical breakdown, *force majeure* or natural disaster;
- reduced operations on account of difficult economic and market conditions.

- The *employer is required*, before terminating employment for redundancy reasons*, to inform and consult the recognized trade union, the employees or their representatives and the Chief Labour Officer* as soon as possible, but not later than one month from the date of the existence of the circumstances giving rise to contemplated redundancy action. In informing these persons, the employer is required to provide all the relevant details, the reasons, circumstances, the affected workers and *follow the procedures and time lines* set by this Section.

Termination Notice (Section 15)

Where a contract of employment is being terminated for reasons of redundancy or by notice to the other party in keeping with Section 7:

- Two weeks' notice is required where the employee *has less than one year's service*; and *one month* for one year or more.
- An employee is also required to give corresponding notice to the employer where the employee terminates his employment contract.
- The parties can agree to longer periods of termination notice.
- An employer can waive the right to receive such notice.

Payment in lieu of Notice (Section 16)

In lieu of giving the required notice, the employer or employee is required to pay to the other party *a sum equal to the remuneration and benefits accrued* for the relevant period of notice.

Certificate of Termination (Section 17)

The employer is required to provide an employee with a Certificate of Termination upon his/her request.

Severance Pay – Part IV (Section 21)

- *On termination by reason of redundancy or by reason of severance*

of employment, an employee with one year or more years of continuous employment *with an employer, is entitled to be paid a* severance or redundancy allowance *equivalent to:*
  - *One week's* wages for the *first five* years service;
  - *Two weeks'* wages for the *sixth to the tenth* year; and
  - *Three weeks'* wages in excess of ten years subject to *a maximum of fifty-two weeks.*
- Severance or redundancy allowance is *not applicable* where the employee:
  - *unreasonably refuses* to accept another job offer by the employer at no less favourable conditions than those enjoyed prior to termination.

Prosecution by Chief Labour Officer (Section 22)

The *Chief Labour Officer* may institute or cause to be instituted any prosecution for the purpose of enforcing this Act. Any Officer of the Department of Labour may appear *as prosecutor* for and on behalf of the Chief Labour Officer.

6. Prevention of Discrimination Act No. 26 of 1997

Protection Against Unlawful Discrimination

Under Part II (Section 4) the Act prohibits discrimination on the grounds of: *race, sex, religion, colour, ethnic origin, indigenous population, national extraction, social origin, economic status, political opinion, disability, family responsibilities, pregnancy, marital status, or age* except for the purpose of retirement and restriction on work and employment of minors.

The Act also prohibits discrimination against a person by distinction, exclusion or preference, the intent of which is to deny equality of opportunity or treatment in any employment or occupation.

Protection Against Discrimination in Employment – Part III (Section5)

It is unlawful for any employer or his/her agent to discriminate in relation to recruitment, selection, or employment on any grounds, except

where genuine occupational qualifications exist, in keeping with the Act including discrimination:

- in advertisement of the job;
- in determining who should be offered employment;
- in terms and conditions offered;
- the creation, classification or abolition of jobs;
- by retrenching or dismissing the employee;
- in conditions or work or occupational safety and health measures; or
- by denying access, or limiting opportunities for advancement, promotion, transfer or training connected with employment .

Sexual harassment against an employee by an employer, managerial employee or a co-worker constitutes unlawful discrimination in line with Section 4 of this Act (Section 8).

Promotion of Equal Remuneration – Part IV and V

Employers are obligated to pay equal remuneration to men and women for work of equal value as defined in this Act (Section 9).

Professional Partnership and Trade Organizations

Discrimination is unlawful against anyone in a partnership firm, a trade union, an organization of employers or employees on any grounds set out in Section 4 above. This relates to who should be offered a position as partners, members, or denying, limiting access to benefits, facilities, and services or treating them unfairly or expelling them contrary to the provisions of this Act (Sections 10-11).

It is also unlawful for an education authority or body or association, employment agencies to discriminate against anyone on any grounds contrary to Section 4 of this Act (Sections 12-14).

Protection Against Discrimination in Other Areas – Part VI

It is unlawful for a person who provides goods and services to discriminate against anyone contrary to Section 4 of this Act. Discrimination by subterfuge, by advertised publishing or in application forms is unlawful (Sections 15-18).

General Exceptions Part VII

In keeping with the provisions of this part, charities and religious bodies (Sections 19 and 20) are exempted by virtue of the nature of the organizations.

It is unlawful under the Act to pressure, induce or attempt to induce anyone to discriminate, or for anyone to commit an act of victimization as defined by the Act on pain of penalty of a fine (Sections 21 and 22).

The Act further provides for the burden of proof, general penalty, supplemental remedies, and powers of the Minister to make regulations (Sections 23-27).

7. Occupational Safety and Health Act No. 32 of 1997

The Occupational Safety and Health (OSH) Act provides for the registration and regulation of industrial establishments and came into force on 15th September 1999 by order No. 15 of 1999 of the Minister. The Act applies to every industrial establishment (Section 3) and self-employed persons and persons engaged in homework (Section 5).

Registration of Industrial Establishments – Part II

The Act requires:

- every industrial establishment and person engaged in home work to be registered with the Authority which shall keep a register of industrial establishments (Section 6);
- every industrial establishment to be registered with the specified particulars within thirty days by application to the Authority in the prescribed form renewable annually (Section 7);
- all changes in particulars must also be registered within thirty days (Section 8); and
- the Authority to correct or amend and keep up-to-date the register (Section 9).

Administration – Part III (a) Government Advisory Council on OSH

The Act establishes the *Advisory Council on Occupational Safety and Health* (Advisory Council), consisting of not fewer than 12 or more than

24 members appointed by the Minister for such term as the Minister determines –

- members of the Advisory Council represents management, labour, technical or professional bodies or persons with knowledge of occupational safety, welfare and health.
- the Minister designates the chairman and vice-chairman from among the appointed members of the Advisory Council, and fills vacancies that occur.

The Advisory Council

The Advisory Council makes its own rules subject to the approval of the Minister. The functions of the Advisory Council are:-

- to advise the Minister on matters relating to OSH or arising out of the operations of the Act;
- to advise the Minister on the formulation of a national policy on OSH;
- to make recommendations to the Minister relating to the programme of work of the Authority in OSH including enforcement and the implementation of a national policy on OSH;
- to promote public awareness of OSH; and
- *to present an annual report of its work to the Minister by the 1st June each year.*

The Advisory committee may establish committees to assist it in its functions under the chair of one of the members of the Advisory Council (Sections 10 and 11).

OSH Authority

- The Act establishes the *OSH Authority* comprising of such officers as may be designated by the Minister by notice published in the Gazette;
- *where no such authority is established, the Chief OSH Officer shall be the Authority;*
- all industrial establishments and all machinery shall be inspected by the Authority, or by an inspector on the directions of the Authority;
- the Minister may make regulations for the inspections of industrial establishments and machinery;

- the Minister designates the inspectors (Section 12); and
- every inspector shall be furnished with a prescribed certificate of appointment (Section 14).

Power of the Authority and of an Inspector

The Authority and every inspector have powers including:

- to enter, inspect and examine industrial establishments or places believed to be industrial establishments at any hour by day or night;
- to enter, inspect and examine any place that is believed to be storage for explosives or highly flammable materials;
- to enter ships or vessels in any dock or harbour, any wharf, quay or stelling and make such inspection and examination as he/she may deem fit;
- to require the production, of registers, certificates, and to inspect, examine and copy any of them, or remove them to make copies or extracts;
- to make such examination, inquiry, or test necessary on any aspect of the establishment, equipment, machine, device, article, material, chemical, physical agent or biological agent, and require any test to be conducted or taken by qualified persons at the expense of the employer;
- to be assisted by persons with special expertise or professional knowledge;
- to require information, and to interview relevant persons alone or in the presence of others and to require such persons providing or from whom information has been obtained *to sign a declaration of truth*, provided that no person shall be required under this paragraph to answer any question, or to give any incriminating evidence (Section 13);
- to require a certificate of fitness of any young person (Section 17).

Medical Inspector – Appointment, Powers and Duties

In keeping with this Act:-

- the Minister may, by notice published in the Gazette, designate a sufficient number of registered medical practitioners to be *medical inspectors* for any of the purposes of this Act;
- where there is no medical inspector for an establishment, the

Government medical officer for the relevant district shall be the medical inspector;

- the medical inspector has powers to inspect the general register and to investigate and report on any case of death, injury or any case of occupational disease.
- the medical inspector under this section has all the powers of an inspector; and
- the Minister may direct that regulations be made regarding the functions and duties of the medical inspector (Sections 15 and 16).

Periodic Reports

Every medical inspector is required to make an *annual report in the prescribed form to the Authority* as to the examination made or other duties performed under this Act (Section 19).

Technical Examiners

The Minister may appoint suitably qualified *technical persons* to examine equipment, drawings, plans or specifications of any work place (Section 20).

OSH Commissioner

The Minister may appoint an *OSH Commissioner* to carry out the duties and to *exercise the power of an arbitration tribunal* in relation to procedural matters as directed by the Minister in keeping with this Act (Section 21).

(b) Non- Governmental – Safety and Health Representatives

At construction sites with fewer than 20 and more than 5 employees, the employer is required to have workers select at least one *safety and health representative* from among non-managerial employees:

Where there are trade unions representing workers, the selection of a safety and health representative may be delegated by a majority of the workers to the trade union(s).

The employer and workers are required to provide the safety and health representative with relevant information to enable the representative to carry out inspections of the work place.

The safety and health representative has the power:-

- to identify sources of danger or hazard to workers and to make recommendations to the employer, the workers, and the trade union(s) representing the workers;
- to obtain pertinent information and conduct appropriate tests for the purpose of OSH;
- to be consulted, and be present at testing and ensuring that valid testing procedures are used; and
- to obtain information from the employer concerning the identification of potential hazard of materials, processes or equipment in his or other similar work places or other industries (Section 22).

Joint Workplace Safety and Health Committee

The Act requires a *joint workplace safety and health committee of four to six persons* at workplaces with twenty and more workers with the power to:

- identity situations that may be a source of danger or hazard to workers;
- make recommendations to the employer and the workers for the improvement of the health and welfare of workers;
- recommend the establishment, maintenance and monitoring of programmes, measures, and procedures on safety for workers;
- identify potential or existing hazards of materials, processes, or equipment at the work place or at similar or other industries of which the employer has knowledge; and
- obtain relevant technical information, conducting or taking tests, and to be consulted, and be present at testing to ensure that valid procedures are used to produce valid results.

Where a dispute arises, the dispute shall be decided by the Commissioner after consulting the employer and the workers or trade union(s) representing workers in keeping with this Section of the Act (Section 23). The Act provides for *a workers trades committee* selected by the workers or the trade union:

- at construction sites with fewer than fifty workers, and which is

expected to last less than three months;
- to represent workers in each of the trades at the workplace; and
- to inform the Committee at the workplace of the safety and health concerns of the workers employed in the trades of the workplace of the safety and health concerns of the workers employed in the trades of the workplace (Section 24).

Consultation on Industrial Hygiene Testing

The employer is obligated to provide information to a *designated safety and health representative of the committee* on proposed testing strategies for investigating industrial hygiene at the workplace.

(c) Provision Applicable to Inspectors

Representative during Inspections

On an inspection visit by an inspector under the power conferred by Section 13 of this Act, employers shall afford and facilitate a committee member representing workers or a safety and health representative or a trade union selected worker, the opportunity to accompany the inspector during his/her physical inspection of a workplace or any part of the workplace (Section 27).

An inspector:
- may in writing direct a safety representative or a member designated from the joint workplace safety and health committee, to inspect the physical condition of the workplace;
- without a warrant or court order, may seize any article or document if the inspector believes that this Act or regulation has been contravened and that the article or document will afford evidence of the contravention;
- in the event of a contravention of this Act or the regulations, may order the owner, employer, or person in charge to comply with the law immediately or within a specified period (Section 30);
- may order that the workplace, where the contravention exists, be cleared of workers and isolated by barricades, fencing or other means, to prevent access by a worker until the danger or hazard to the safety or health is removed (Section 30 (6) (c)).

No Entry to Barricaded Area

No owner, employer or supervisor shall require or permit a worker to enter the workplace except for the purpose of doing work that is necessary or required to remove the danger of a hazard and only where the worker is protected from the danger or hazard (Section 31).

Notice of Compliance

Upon full compliance with the inspectors' order, the employer within three days shall submit a *notice of compliance to the Authority* in keeping with the requirements of this Section (Section 32).

If an order of the inspector under Section 30 (6) is contravened, the Authority may apply to the high court to restrain such contravention (Section 33.).

Appeal from the Order of an Inspector

- an appeal against the order of an inspector may, within seven days, be made to the Minister; and
- the Minister determines the appeal or directs that the Commissioner determine the appeal on his/her behalf in keeping with the requirements of this Section (Section 34).

No person shall hinder, obstruct, molest or interfere with an inspector in the exercise of a power or performance of a duty under this Act or regulation (Section 35).

Any information, materials statement, report or result of any examination, test or enquiry acquired, furnished, obtained, made or received under the powers conferred under this Act or regulation are absolutely confidential and can only be used for the purpose of this Act and regulations (Section 36).

The Authority may, upon request, furnish to the owner copies of reports or orders of an inspector made under this Act in respect of the workplace as to its compliance in terms of duties of employers set out in Section 52 (1) (Section 37).

Immunity

- No legal action or other proceedings for damages or prohibition

shall be instituted against persons for the execution or performance in good faith of their duties or powers such persons being:

- an inspector, a medical inspector, a technical examiner or an adviser for the Authority;
- a safety and health representative or committee member;
- a worker selected by a trade union or trade unions or workers to represent them; and
- the Commissioner (Section 38).

Levy for Administrative Expenses

- The Minister may fix an amount that shall be levied by the *National Insurance Board* established under the National Insurance and Social Security Act against employers of workers in industrial establishments;
- the amounts are to defray expenses for the administration of this Act; and
- The National Insurance Board shall collect the levy imposed under this section and pay the amounts to the Authority (Section 39).

Safety and Health – Part IV

If the Authority considers that any building or part of a building, or any part of the ways, machinery or plant in an industrial establishment is in such a condition as to be likely to cause risk of bodily injury to, or to endanger the safety of persons employed in *construction*, the Authority may require the occupier to:

- furnish such drawings, specifications and other particulars to determine whether use can be made of such facilities without risk;
- carry out the necessary tests and to inform the Authority of the results of such tests, or;
- take the measures specified by the Authority to remove the risk and danger; or the Authority may serve the occupier a written notice prohibiting the use of such facilities until all the corrective measures are taken to the satisfaction of the Authority to remove such imminent risk and danger (Section 40).
- prohibit the employment of children (Section 41);
- provide for specific safety measures in the construction and sale of new machinery (Section 42); and

- provide for adequate sanitary and other arrangements including ventilation, lighting, drinking water, facilities for taking meals, separate male and female changing rooms and washroom facilities (Section 43).

The Act further outlines the *duties of employers, supervisors, workers and other persons*, in particular:

- the *duties of an employer* at a construction site to ensure that the safety and health of workers are protected in keeping with the prescribed procedures and to carry out business/works in full compliance with the Act and Regulations (Sections 45, 46 and 47);
- the *supervisor is required* to ensure that a worker use all the required protective devices, gears, equipment, and clothing, and to advise the workers of any potential or actual dangers to safety and health, and to provide written guidelines to workers, and to take precautions for the protection of the workers (Section 48);
- a *worker is required* to comply fully with the provisions of this Act and the regulations, to wear or use safety equipment and protective devices and clothing required by the employer, to report to the employer or supervisor any exposure to risk or danger or any contravention of the Act or the regulations, and to take care of the personal protective gears (Section 49).

Duties of Occupiers

The *duty of every occupier* is to ensure that part IV and other provisions of this Act and regulations which impose duties on him/her, are complied with, and to protect the safety and health of the public (Sections 50-51).

Duties of Owners, Suppliers and Directors

The duties of owners of industrial establishments that are not construction sites, and of owners of construction sites, *duties of suppliers, and of directors* are detailed in Sections 52, 53, 54 and 55. In particular, every director, manager, secretary, or other officers of a corporate body are required to take reasonable care to ensure the corporate body complies

with:
- this Act and the regulations;
- orders and requirements of an inspector, a medical inspector, a technical examiner, the Commissioner, and the Authority; and
- orders of the Minister.

Refusal to Work

Subject to the stipulation of the section, a worker may refuse to work if he/she has reasonable justification to believe that:
- any equipment, machine, device or article the worker is to use or operate poses an imminent and serious danger to the life of himself/herself or any other worker; or
- the physical condition of the workplace presents an imminent and serious danger to life or health (Section 56).

A worker shall not be disciplined in any way or dismissed by an employer for acting in compliance of this Act or the regulations (Section 58).

Hazardous Chemicals, Physical Agents, and Biological Agents – PartVI
Orders of the Authority

Should, in the opinion of the Authority, chemical, physical agents or biological agents in their use or intended use, are likely to endanger the health of any worker, the Authority shall, in keeping with this part, order the use, intended use, presence or manner of use be:
- prohibited;
- limited or restricted in such a manner as the Authority specifies; or
- impose time limits for compliance as specified by the Authority (Section 59).

New Chemical and Biological Agents

The Authority is empowered to regulate the manufacture, distribution or supply of new chemicals or biological agents as specified in Section 60.

Inventory of Hazardous materials

Employers are required:

- to make and maintain a detailed inventory as specified of hazardous chemicals, and all hazardous physical agents in the workplace (Section 61);
- to ensure that all hazardous chemicals are properly identified by appropriate labels, and the maintenance of up-to-date chemical safety data sheets (Section 62);
- to make available the inventory and chemical safety data sheets in keeping with this Section to:
  - the workers;
  - the committee or safety and health representative;
  - the medical inspector;
  - the fire department; and
  - the Authority (Section 63).

Assessment for Hazardous Chemicals and Physical Agents

- As prescribed, an employer shall assess all chemicals and biological agents produced in the workplace for use therein to determine if they are hazardous (Section 64);
- Distributors or suppliers of physical agents, and manufacturers, producers or designers of articles for use in a workplace that causes, emits or produces a hazardous physical agent shall ensure that such information, as prescribed, is readily available with respect to hazardous physical agents and the proper use or operation of the article (Section 65).

Instruction and Training

Employers are required to ensure that workers exposed, or likely to be exposed to a hazardous physical agent, receive and participate in such instructions and training as may be prescribed (Section 66).

Confidentiality

- An employer may file a claim with the Minister seeking an exemption from disclosing information required under this part in an inventory, label or chemical data sheet, or the name of a toxicological study, and

to prepare a chemical safety data sheet on the grounds of confidential business information harmful to the business, so long as safety and health are not compromised.
- The Minister makes a determination or directs the Commissioner to make a determination on his/her behalf.

Notification of Accidents and Occupational Diseases

The Act requires employers to notify the Authority and the committee, the safety and health representative or the trade union, if any, of all accidents arising out of or in the course of employment of any worker resulting in loss of life or disability of a worker (Section 69).

Notification of Occupational Diseases

A qualified medical practitioner is required to notify the Authority of any patient whom he/she believes to be suffering from an occupational disease contracted in the course of employment (Section 70).

Inquest in case of Death

Where a *Coroner* holds an inquest on the body of a person whose death may have been caused by accident or a disease of which notice is required by this Act, the Coroner shall only conduct such inquest in the presence of the Authority or his/her representative (Section 71).

The Act further empowers the Minister:
- to direct formal investigation of accidents and cases of occupational diseases; and
- to make regulations as specified in this section, subject to negative resolution of the National Assembly as specified in Section 75 – Part VIII.

Part IX of the Act on offences, penalties, and procedures, deals with:
- liability of employers, owners, directors and others;
- special provisions as to evidence ;
- offences;
- special rules as to making complaints for offences; and
- power of the Court to impose penalty and to order remedial action to correct the contravention of this law (Sections 77-81).

Authority to Require Returns

This Act empowers the Authority to require of occupiers, or managers of industrial establishments to submit such returns, occasional or periodical, for the purpose of this Act (Section 85).

Enforcement by Sanitary Authority

Regulations made under this Act relating to *cleanliness, ventilation, overcrowding, lighting, drinking water, washing facilities, and sanitary conveniences* shall be enforced by a local district *Sanitary Authority* (Section 87).

Guyana has been a member of the International Labour Organization since 1966, and has ratified the following ILO Conventions:

C2 Unemployment Convention, 1919
C11 Right of Association (Agriculture) Convention, 1921
C12 Workmen's Compensation (Agriculture) Convention, 1921
C19 Equality of Treatment (Accident Compensation) Convention, 1925
C26 Minimum Wage-Fixing Machinery Convention, 1928
C29 Forced Labour Convention, 1930
C42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934
C45 Underground Work (Women) Convention, 19
C50 Recruiting of Indigenous Workers Convention, 1936
C64 Contracts of Employment (Indigenous Workers) Convention, 1939
C65 Penal Sanctions (Indigenous Workers) Convention, 1939
C81 Labour Inspection Convention, 1947
C86 Contracts
C87 Freedom of Association and Protection of the Right to Organise Convention, 1948
C94 Labour Clauses (Public Contracts) Convention, 1949
C95 Protection of Wages Convention, 1949
C97 Migration for Employment Convention (Revised), 1949
C98 Right to Organise and Collective Bargaining Convention, 1949
C100 Equal Remuneration Convention, 1951
C105 Abolition of Forced Labour Convention, 1957
C108 Seafarers' Identity Documents Convention, 1958
C111 Discrimination (Employment and Occupation) Convention, 1958
C115 Radiation Protection Convention, 1960
C129 Labour Inspection (Agriculture) Convention, 1969
C131 Minimum Wage Fixing Convention, 1970
C135 Workers' Representatives Convention, 1971
C136 Benzene Convention, 1971
C137 Dock Work Convention, 1973
C138 Minimum Age Convention, 1973
C139 Occupational Cancer Convention, 1974
C140 Paid Educational Leave Convention, 1974
C141 Rural Workers' Organisations Convention, 1975
C142 Human Resources Development Convention, 1975
C144 Tripartite Consultation (International Labour Standards) Convention, 1976
C149 Nursing Personnel Convention, 1977
C150 Labour Administration Convention, 1978
C151 Labour Relations (Public Service) Convention, 1978
C166 Repatriation of Seafarers Convention (Revised), 1987
C172 Working Conditions (Hotels and Restaurants) Convention, 1991
C175 Part-Time Work Convention, 1994
C182 Worst Forms of Child Labour Convention, 1999