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SCHEDULES

ACT NO. 3 OF 2024

Labour Act, 2024

An Act to consolidate all laws relating to labour and employment; make provision for ensuring compliance with fundamental principles and rights at work and other relevant international instruments; promote the use of best labour practices in the implementation of labour standards; address the labour relations dichotomy between the public sectors and labour relations system by extending coverage to the public sector and to repeal the Labour Code Order, 1992.

Enacted by the Parliament of Lesotho.

PART I - PRELIMINARY

Short title and Commencement

1. This Act may be cited as the Labour Act, 2024 and shall come into operation on the date of publication in the Gazette.

Purpose of the Act

2. The purpose of this Act is to provide a comprehensive framework for regulating the employment relations, promoting fair labour practices and ensuring the welfare and rights of both employers and workers.

Application

3. (1) This Act shall apply to any employment relationship in the private and public service.

(2) Notwithstanding subsection (1), this Act shall not apply to a person who is a member of the -

(a) Lesotho Defence Force;
(b) Lesotho Mounted Police Service;
(c) National Security Service; and
(d) Lesotho Correctional Services.

PART II - INTERPRETATION

Interpretation

4. In this Act, unless the context otherwise requires -

"Acquired Immune Deficiency Syndrome (AIDS)" means a condition characterised by a combination of signs and symptoms caused by HIV, contracted from another person and which attacks and weakens the body's immune system, making the afflicted person susceptible to other life-threatening infections;

"apprentice" means a person who is learning a trade from a skilled employer or professional, with the aim of gaining work knowledge and experience for an agreed fixed period or stipend;

"Board" means the Wages and Conditions of Employment Advisory Board established under section 19;

"bargaining council" means a bargaining council established, in terms of section 109;

"casual worker" means an employee who is engaged for a period not exceeding four weeks or employed on an occasional and intermittent basis;

"Chief" has the meaning assigned to it in the Chieftainship Act 1968[1];

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

"child labour'' means any work that deprives a child of his dignity and potential and is harmful to his physical, mental, social and moral development and as set out under section 10;

"collective agreement" means a written agreement entered into between a registered bargaining council, trade union and an employer or employers' organisation in respect of any matter of mutual interest and includes an agreement on recognition, agency shops and grievance, discipline and procedures for lodging disputes;

"commercial farming" means a plant or livestock production with the intention of selling the produce to make profit;

"Commissioner" means a public officer who is appointed as the Labour Commissioner;

"Committee" means the National Advisory Committee on Labour established under section 11;

"communicable diseases" means any disease which can be communicable directly or indirectly from one person to another person and as declared as such under the Public Health Act 1970[2];

"Constitution" means the Constitution of Lesotho of 1993;

"continuously employed" means where a person who is employed by the same employer, including the employer's heirs, transferees and successors in interest, for a period that has not been interrupted for more than four weeks in each year of such employment, during which four week period there was no contract of employment in existence and intention on the part of the employer to renew it once it has lapsed, and no break of employment due to illness certified by a registered medical practitioner, a sick leave, public holiday, paid holiday or other leave granted by the employer, shall be deemed to break the continuously of employment;

"contract" means a contract of employment, whether oral or written, express or implied, by which a worker enters the service of an employer;

"contract of foreign service" means a contract of service entered between a foreign employer and a worker, which is to be performed in whole or in part outside Lesotho;

"Court" means either the Labour Court or the Labour Appeal Court depending on the context;

"DDPR" means the Directorate of Dispute Prevention and Resolution established under section 34;

"dependant" means a member of a worker's family, including a child

born out of wedlock, who is wholly or partly legally dependent on the earnings of the worker for the provision of the ordinary necessities of life;

"Director" means the Director of the Directorate of Dispute Prevention and Resolution appointed in terms of section 37;

"direct testing" means any scientific analysis or laboratory procedure done on an individual to determine the presence of HIV infection or any other communicable disease;

"dispute of interest" means a trade dispute concerning a matter of mutual interest to workers, but does not include a dispute of right;

"dispute of right" means a dispute or an alleged infringement concerning the application and interpretation of any provision of the Labour Act or any other labour law, collective agreement or contract of employment;

"domestic work" means work performed in or for a household;

"domestic worker" means a person engaged in domestic work within an employment relationship;

"employment relationship" means a legal relationship between an employer and a worker where the worker performs a work or service under conditions agreed upon by the employer and worker, in return for remuneration;

"employer" means a person who employs or provides work to a worker and remunerates or undertakes to remunerate the worker for services rendered by the worker;

"employer's organisation" means an association of employers established for the purpose of representing and promoting the interests of the employers and registered under the Labour Act for such;

"essential services" means a service whose interruption would endanger the life, personal safety or health of the whole or part of the population of Lesotho;

"executive committee" means the body, to which the management of the affairs of a bargaining council, trade union or employers' organisation is entrusted and includes the officers of that body as designated by the bargaining council, trade union or the employer's organisation;

"factory" means any premises with machinery, on which or within the precincts of which, a person is employed in manufacturing processes;

"family" in relation to a worker, means a spouse, children and the dependent relatives of the worker and in relation to a recruited person, means the spouse, children and the dependent relatives of the recruited person;

"federation" means a combination or association of two or more registered trade unions or employer's organisations which has a separate legal existence from the bodies of which it is comprised of;

"forced labour" means any work or service provided for under section 9;

"gender-based violence and harassment in a workplace" means violence and harassment, including sexual harassment, directed at -

(a) workers, regardless of their contractual status;
(b) persons in training, on probation or attachment;
(c) applicants for work;
(d) managers and supervisors;
(e) customers and clients;
(f) suppliers or other third-party contractors

because of their sex, gender or gender identity or affecting persons of a particular sex, gender or gender identity disproportionately;

"guardian" means a person who in the opinion of the children's court having cognizance of any case in relation to a child or in which the child concerned, is for the time being in charge of and has control over child;

"HIV" means the Human Immunodeficiency Virus which causes AIDS;

"homeworker" means any person who carries out work on his premises

and not at the employer's workplace, for remuneration which results in a product specified by the employer;

"hours of work" means the time during which a worker is at the disposal of an employer, exclusive of any intervals allowed for rest during which the worker is not at the disposal of the employer;

"immediate family" means a worker's spouse, children, parents and parents in law who are his dependants and need the worker's support and care;

"independent contractor" means a person who supplies services to a client or customer as part of the person's business, undertaking or professional practice;

"indirect testing" means a method other than the testing of blood or other body fluids, through which an inference can be made as to the HIV and AIDS status of a person;

"IRC" means the Industrial Relations Council appointed as such under section 26;

"intoxicating liquor" means any liquor of an intoxicating nature and any drink within which any such liquor is mixed with;

''job applicant'' means a person seeking employment;

"judicial officer" means an officer appointed as such in terms of the Administration of the Judiciary Act 2011[3];

"labour inspector" means an officer appointed as such within the Ministry of Labour who performs the labour inspection functions and powers provided for under section 65;

"Labour market" means the supply of and demand for labour, in which employee provide the supply and employer's the demand. It includes the interactions between employers, employees and the government, as well as the dynamic of wages, working condition and other aspects of employment;

"lock-out" means an act of an employer done in contemplation or in furtherance of a trade dispute as provided for under section 208;

"migrant worker" means a worker engaged in a remunerated activity in a State of which the worker is not a national;

"manual labour" means work which involves a worker, whether skilled or unskilled, in the use of hands;

"Minister" means the Minister responsible for labour and employment;

"more advantageous benefit" means the employers contribution to a provident fund, pension fund or gratuity which an employer may put in place and which upon termination of the employment, is more lucrative than severance payment;

"misconduct" means an unacceptable behaviour by a member of a committee or board in the course of his duties and includes but not limited to misrepresenting issues discussed by the Committee or Board with third parties, divulging matters under discussion to the public and failure to disclose direct or indirect pecuniary interest in a proposal or matter discussed or to be considered by the Committee or Board;

"NACOLA" means the National Advisory Committee on Labour established under section 11;

"officer" when used with reference to a bargaining council, trade union or employers' organisation, includes a member of the executive committee and an officer of a trade union or branch, but does not include a trustee or an auditor of the trade union or branch;

"part-time worker" means a worker whose normal hours of work are less than those of a comparable full-time worker;

"payment in kind" means non- cash remuneration for work performed, which is received by a worker;

"place of residence" means the place where a person normally resides with his family when not performing work under a contract of employment;

"private employment agencies" means a person who engages in the bussness of procuring, recruiting, hiring, engaging, supplying or forwarding of persons to be employed within, wholly or partly outside Lesotho;

"public authority" includes a department of Government or subdivision, a local authority and a Chief;

"registered bargaining council" means a bargaining council registered as such under sections 74 and 75;

"registered medical practitioner" means a person registered as such under the Medical, Dental and Pharmacy Order, 1970[4];

"registered office" means an office of a bargaining council, trade union or employers' organisation which is registered as such under the provisions of section 90;

"registered postal address" means the address of a bargaining council, trade union or employers' organisation which is registered as such under the provisions of section 90;

"registered trade union" means a trade union registered as such under sections 74 and 75;

"registered employers' organisation" means an employers' organisation registered as such under sections 74 and 75;

"registrar" means the Registrar of Trade Unions, Employers' Organisations and Bargaining Councils appointed as such under section 73;

"representative organisation" means the most represented organisation of employers and workers enjoying the right of freedom of association;

"restitution" means compensation in full or in part for loss or damage which has been proven to be caused by one party who has been unjustly enriched;

"strike" means partial or complete concerted refusal to work, or the

retardation or obstruction of work, by a worker, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between an employer and the worker and every reference to work in this definition includes overtime work;

"systemic delays" means any protractions caused by a tribunal or court and includes non-availability of public utilities, human and financial resources, unreasonable delays of awards or judgements that may be prejudicial to the parties or protractions which may have not been contributed to by the parties to the dispute;

"trade dispute" means a disagreement which relates to terms and conditions of employment and non-employment among workers or between an employer and a worker;

"trade union" means a combination, either temporary or permanent, of ten or more workers, the purposes of which is, under its constitution, the representation and promotion of workers' interests;

"trainee" means a person who is being trained by or for an employer or for employment, under an existing training scheme in any trade or occupation;

"unfair labour practice" has a meaning of assigned to it under section 7;

"violence and harassment, including sexual harassment in a workplace" means a range of unacceptable behaviour, practice or threats provided for under section 7(2), directed at -

(a) workers, regardless of their contractual status;
(b) persons in training, on probation, internship or attachment;
(c) applicants for work;
(d) managers and supervisors;
(e) customers and clients; or
(f) suppliers or other third-party contractors;

whether as a single occurrence or repeated, that aims at, results in, or is likely to result in a physical, emotional, verbal, psychological, sexual or economic harm, that occurs in the course of, linked with or arising out

of work, both in the formal and informal economy, and whether in the private or public sector;

"wages" means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money, fixed by law or by a mutual agreement made in accordance with this Act, and payable by virtue of a written or unwritten contract of employment to an employed person for work done;

"worker" means a person who performs work in any capacity for an employer or at the employer's business or undertaking;

"workers' representative" means a person who represents the interests of workers pursuant to this Act, including but not limited to a person engaged in trade union activities;

"workplace" means a place where a worker carries out work for his employer and includes a home, office or place where work is carried out at a particular time;

"worst forms of child labour" means labour which involves a child who is under 18 years of age and is enslaved, separated from their families, exposed to hazardous working conditions and illnesses and is left to fend for himself on the streets by engaging in work that is harmful or hazardous to his health, safety or morals; and

"young person" means a person who is over the age of 15 years but under the age of 18 years.

Principles used in interpretation and administration of Act

5. The following principles shall be used in the interpretation and administration of this Act:

(a) a provision of this Act or of rules and regulations made under the Act, shall be interpreted or applied in a way which is not in contradiction to or in conflict with the provisions of the Constitution;

(b) the standards laid down in the Act are the minimum

labour standards and are, without prejudice to the rights of a worker, individually and collectively, through their trade unions, to request, bargain and contract for higher standards to -

(i) the worker for the duration of the agreement; or

(ii) an employer who voluntarily offers a worker at a better minimum standard legally;

(c) a provision of this Act or of rules and regulations made under this Act, shall be interpreted or applied in a way which is not in contradiction to or in conflict with the provisions of an International Labour Convention of which Lesotho is a party;

(d) in case of ambiguity, provisions of the Act and of any rules and regulations made under this Act, shall be interpreted in a way which closely conforms with the provisions of the Conventions adopted by the Conference and Recommendations adopted by the Conference of the International Labour Organisation and other international instruments; and

(e) where, under the provisions of any other legislation, a person has a remedy, the remedy shall be in addition to and not in place of a remedy provided for by this Act, however, in no case may there be double monetary recovery by the same person based on the same set of facts; and

(f) this Act shall, where there is a conflict or contradiction on matters relating to labour and employment, supersede the conflicting or contradicting law.

PART III - FUNDAMENTAL PRINCIPLES

Unfair discrimination

6. (1) A person who makes an application of any distinction, exclusion

or preference on the following basis, constitutes an act of unfair discrimination:

(a) race;

(b) colour;

(c) gender;

(d) disability;

(e) sexual orientation;

(f) pregnancy;

(g) marital status;

(h) HIV and AIDS status;

(i) religion;

(j) political affiliation or opinion;

(k) national extraction;

(l) social origin;

(m) age; or

(n) on any other ground which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation,

(2) A male and female worker is entitled to equal remuneration for work of equal value.

(3) No worker shall be discriminated against, based on the following types of employment:

(a) part-time contract;

(b) migrant workers;

(c) home workers; and

(d) domestic workers.

(4) Any distinction, exclusion or preference in respect of a particular job based on the narrowly defined inherent requirements of the job, shall not be regarded as an act of unlawful discrimination.

Unfair labour practice

7. (1) An unfair labour practice is any unfair act or omission by an employer towards a worker or any other person who needs protection in a workplace;

(2) Any act of violence and harassment, including sexual harassment and gender-based violence in the workplace, which results in physical, sexual, psychological or economic harm, including -

(a) intimidation;

(b) threats of such acts;

(c) coercion;

(d) sexual exploitation;

(e) bullying;

(f) stalking; or

(g) arbitrary deprivation of liberty,

whether occurring in public or in private sphere committed against any other person or on a prohibited ground, constitutes a misconduct and is prohibited.

(3) A misconduct committed under subsection (1), shall be treated as an unfair labour practice, if an employer fails to take appropriate steps, to the extent that it is reasonably practicable to do so, to prevent violence and harass-

ment in the workplace.

(4) An employer shall ensure that appropriate enforcement mechanisms and remedies to control and prevent violence and harassment in the workplace, are accessible.

Freedom of association and the effective recognition of the right to collective bargaining

8. (1) A worker and an employer shall, without any distinction, have a right of association and subject only to the rules of the organisation concerned, to establish and join organisations of their own choosing without the previous authorization of the Government.

(2) The right of association referred to in subsection (1) is guaranteed to a worker and an employer in all sectors of the economy, including the public sector and the informal economy.

Prohibition of forced labour

9. (1) A person is prohibited, for his own benefit or for the benefit of any other private individual, public authority, company, association or such other body, from performing, imposing or exacting forced labour, cause or permit forced labour to be exacted or imposed to a worker or any other person.

(2) For purposes of subsection (1) -

"forced labour" means labour which is exacted from a person under the threat of a penalty and for which the person has not offered himself voluntarily, but does not include -

(a) work or service exacted by virtue of any compulsory military service law for work of a purely military character;

(b) work or service exacted from a person as a consequence of a conviction in a court of law, provided that such work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals,

companies or associations;

(c) work or service exacted in case of emergency, in the event of war or of a calamity or threatened calamity, and

(d) minor communal services which are not for purposes of economic development and are -

(i) performed by members of a community in direct interest of such community; and

(ii) civic obligations normally incumbent on the members of such community.

(3) For purposes of subsection (2)(d), before any exaction of minor communal services, consultation shall have been had with the inhabitants of the place, town or village concerned and their Chief or other direct representatives regarding the need for such services.

(4) A person who contravenes the provision of subsection (1), commits an offence and is liable on conviction to a fine not exceeding Twenty Thousand Maloti or to imprisonment for a term not exceeding ten years or both.

Prohibition of Child Labour

10. (1) Child labour, including worst forms of child labour, is prohibited for children below the age of eighteen.

(2) Notwithstanding the provisions of this Act or any other law, a person who contravenes the provisions of subsection (1), commits an offence and is liable on conviction to a fine not exceeding Two Hundred Thousand Maloti or to imprisonment for a period not exceeding Ten years or to both.

(3) For purposes of this section,
"worst forms of child labour" for children below the age of eighteen are -

(a) all forms of slavery or practices similar to slavery, including the sale and trafficking of children, debt bondage and serfdom, forced or compulsory labour and forced or

compulsory recruitment of children for use in armed conflict;

(b) the use, procuring or offering of a child for prostitution for the production of pornography or for pornographic performances or any other unlawful use, the use, procuring or offering of a child for illicit activities and in particular, for the production and trafficking of drugs as defined in the relevant laws and international treaties;

(c) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or moral of a child;

(d) employment that is in breach of any provisions of this Act and relevant International Labour Conventions; and

(e) any other work which the Minister may, in consultation with the National Advisory Committee on Labour, consider to be a worst form of labour for children below eighteen.

PART IV - LABOUR INSTITUTIONS

CHAPTER I - National Advisory Committee on Labour

Establishment of National Advisory Committee on Labour

11. There is established a National Advisory Committee on Labour.

Composition of the Committee

12. (1) The Committee consists of an equal number of representatives of employers and workers, which shall not exceed twelve members from each constituency, and shall be appointed by the Minister.

(2) The Minister shall appoint the Chairperson of the Committee from a representative of government.

(3) The Minister shall appoint government representatives who shall not exceed six members.

(4) A member appointed to represent the employers and workers respectively, shall be nominated for appointment by a representative organisation of employers and workers respectively.

(5) The Minister may, as and when need arise, appoint experts on the subject matter before consideration, who shall deliberate on the matter but shall not vote.

(6) The Minister shall appoint two Deputy Chairpersons of the Committee, one of whom shall be chosen from the representatives of workers after consultation with a representative organisation of workers and one of whom shall be chosen from the representatives of the employers after consultation with a representative organisation of employers and who shall not be spokespersons of the organisation of workers or employers.

(7) The Labour Commissioner or his representative shall be the secretary of the Committee.

Functions of the Committee

13. (1) The functions of the Committee are to advise the Minister on -

(a) labour policy;

(b) any proposed legislation or matter affecting or relating to employment, industrial relations and working conditions;

(c) any matter referred to it under a provision of this Acts;

(d) the adoption and implementation in Lesotho of any relevant international labour standards including in particular, those contained in the Conventions and Recommendations of the International Labour Organisation;

(e) issues addressed by tripartite, regional or international conferences; and

(f) works compensation issues.

(2) The Committee shall -

(a) oversee issues on workers compensation; and

(b) consider and report on its own initiative as it sees fit or on the instruction of the Minister, any matter relating to issues on labour, employment, industrial relations or working conditions at work.

Tenure of office of a member of the Committee

14. A member of the Committee shall be appointed by the Minister, by notice published in a Gazette, for a period of four years from the date of appointment.

Removal of a member from the Committee

15. (1) A member of the Committee shall be removed from the Committee by the Minister on the recommendation of the nominating organisation of employers or workers -

(a) if he is no longer a member of the nominating representative organisation;

(b) if he is absent from three consecutive meetings of the Committee without leave from the Chairperson;

(c) for misconduct; or

(d) if a nominating organisation is no longer the most representative.

(2) A member of the Committee may at liberty to resign, and such resignation shall be deemed to have been a removal from the Committee by the Minister.

Meetings of the Committee

16. (1) A meeting of the Committee shall be held at least after every three months a year.

(2) The Chairperson or in his absence, the Deputy Chairperson shall-

(a) convene a meeting and preside; and

(b) on a request for a meeting signed by not less than one-third of the total number of members of the Committee convene a special meeting.

(3) The Minister may appoint any person who has expertise or knowledge on any issues discussed by the Committee to attend a meeting, but the person shall only deliberate on the issues and is not entitled to vote.

(4) The quorum at meetings of the Committee shall be one quarter of each constituency excluding the expert and the Chairperson.

Sitting allowance

17. A member of the Committee shall be paid such a sitting allowance as maybe approved by the Minister in consultation with the Minister responsible for finance.

Disclosure of confidentiality, interest and misrepresentation

18. (1) A member of the Committee or any other person present at or involved in any proceedings of the Committee is prohibited from disclosing any information or the contents of any document, which has been furnished to the Board, save for consulting the constituency represented in the Committee.

(2) If a member has direct or indirect pecuniary interest in a proposal or matter discussed or to be considered by the Committee, he shall, as soon as possible, after being aware of the proposal or matter, disclose the nature of the interest to the Committee.

(3) A member who makes a disclosure of interest in terms of sub-section (2) is automatically disqualified from participating in the deliberation as

or to the decisions of the proposal or matter.

(4) Failure by a member to comply with the provisions of subsections (1) and (2) constitutes misconduct.

CHAPTER II - Wages and Conditions of Employment Advisory Board

Establishment of the Wages and Conditions of Employment Advisory Board

19. There is established a Wages and Conditions of Employment Advisory Board which shall inquire into the wages and conditions of employment of any worker in a workplace as may be specified in the Act.

Composition of the Board

20. (1) The Board shall consist of the following members who shall be appointed by the Minister:

(a) not more than three persons who shall be known as in dependent members;

(b) three persons to represent employers;

(c) three persons to represent workers; and

(d) as and when necessary, an expert on the subject matter being discussed.

(2) The Minister shall appoint a Chairperson and a Deputy Chairperson from among members appointed under subsection (1)(a).

(3) The Minister shall, before appointing persons under subsection (1)(b) or (c), consult representative employers' organisations or trade unions to nominate their representatives and persons appointed under these sub-paragraphs shall be equal in number.

(4) The Minister may appoint such number of persons as he considers necessary to act as experts on the Board, being persons who in his opinion, have an expert knowledge of the matters with which the Boards inquiry is concerned with and deliberating on.

(5) The Minister may appoint as Secretary to the Board, the Labour Commissioner.

(6) The proceedings of the Board shall not be invalidated by reason of any vacancy or by defect in the appointment of a member.

(7) Subject to the provisions of the Act and regulations, the Board may determine its own procedure at its meeting.

(8) A member of the Board shall hold office for a period of four years.

(9) A member of the Board or other person present at or concerned in any proceedings of the Board is prohibited from disclosing any information or the contents of any document, which has been furnished to the Board to any unauthorised person except with the written consent of the Board.

(10) Failure by a member to comply with the provisions of subsection (10)) constitutes misconduct.

Functions of the Wages and Conditions of Employment Advisory Board

21. (1) The functions of the Board are to -

(a) advise the Minister and the Committee on matters relating to wages and conditions of employment;

(b) recommend proposals for conditions and minimum wages applicable to a worker in a designated sector or employment;

(c) submit recommendations to the Minister within its terms of reference, as to the minimum wage which should be paid and the conditions of employment which should apply to a worker or any group of workers;

(d) submit to the Minister, wages order proposals for fixing the minimum wage to be paid and for determining the conditions of employment to be applied by the employers within the Board's jurisdiction to a worker or any

group of workers in relation to whom the Board operates;

(e) subject to the provisions of paragraphs (c) and (d), make such investigations as it considers necessary;

(f) notify relevant stakeholders of a place where copies may be obtained, stating the period, being not less than thirty days, within which written representations with respect to the recommendations or proposals may be sent to the Board, and the Chairperson of the Board shall cause the notice to be published in the Gazette;

(g) consider recommendations or representations made to it in terms of paragraph (f), and may make such further inquiries or proposals, either with or without amendments, for conditions of employment and minimum wages applicable to a worker to the Minister, having had regard to the representations made by the public; and

(h) consider recommendations or proposals which have been submitted to the Minister in accordance with paragraph (g), and the Minister may refer the recommendations back to the Board, having regard to any observations made by the Minister and, either with or without amendments, resubmit the recommendations or proposals to the Minister.

(2) The Minister's final decision shall reflect the representation proposals of the members of the Board.

(3) In the event that the Board declares that it is unable to advise the Minister, the Minister shall fix the minimum wages.

Removal of a member of the Board

22. A member of the Board shall be removed from membership by the Minister if he:

(a) has resigned;

(b) is no longer a member of the nominating representative organisation;

(c) is absent from three consecutive meetings of the Board without leave from the chairperson; or

(d) is found guilty of a for misconduct.

Sitting allowance

23. A member of the Board shall receive such a sitting allowance as may be determined and approved by the Minister, in consultation with the Minister responsible for finance.

Disclosure of interest, confidentiality and misrepresentation

24. (1) A member of the Board or any other person present at or involved in any proceedings of the Board, is prohibited from disclosing any information or the contents of any document which are furnished to the Board, except for consulting the constituency represented in the Board.

(2) If a member has direct or indirect pecuniary interest in a proposal or matter deliberated or to be considered by the Board, he shall, as soon as possible, after the member is aware of the proposal or matter, disclose the nature of the interest to the Board.

(3) A member who has made a disclosure of interest in terms of subsection (2) is automatically disqualified from participating in any relevant deliberation or to the decision of the proposal or matter.

Meeting of the Board

25. (1) The Board shall meet at least after every three months in a year.

(2) The Chairperson or in his absence, the Deputy Chairperson shall-convene a meeting and preside; and

on a request for a meeting signed by not less than one third of the total number of members of Board, convene a special meeting.

(3) The Minister may appoint any person who has expertise or knowledge on any issues discussed by the Board, to attend a meeting, but the person shall only deliberate on the issues and is not entitled to vote.

(4) The quorum at meetings of the Board shall be two members representing employers and two members representing workers.

CHAPTER III - Industrial Relations Council

Establishment of Industrial Relations Council

26. There is established, an Industrial Relations Council which shall be the governing body of the DDPR.

Composition of the IRC

27. (1) The IRC shall consist of the following members who shall be appointed by the Minister:

(a) four members who represent the Ministry responsible for labour and employment, who shall be the Principal Secretary, Labour Commissioner, Director legal officer and Registrar or their representatives;

(b) three members who represent employers and are nominated by the employer's representative organisation; and

(c) three members who represent workers and are nominated by the workers representative organisation.

(2) The Minister shall appoint a Chairperson and Deputy Chairperson, from the most representative of employers and workers organisation.

(3) The Director shall be the secretary of the IRC and shall attend the IRC's meetings but is not entitled to vote.

(4) The Minister shall publish the names of the appointed members by notice in the Gazette.

Functions of the IRC

28. The functions of the IRC are to -

(a) determine the qualifications and terms and conditions of employment of the Director and an arbitrator of the DDPR;

(b) appoint the Director of the DDPR;

(c) appoint an arbitrator, whether full- or part-time;

(d) develop a code of conduct for conciliators and arbitrators;

(e) to make rules for conciliation and arbitration proceedings conducted by the DDPR; and

(f) approve the budget of the DDPR.

Tenure of membership of IRC

29. A member of IRC shall be appointed for membership for a period of four years from the date of his appointment.

Meetings of the Council

30. (1) A meeting of the IRC shall be held at least quarterly in a year.

(2) The Chairperson or in his absence, the Deputy Chairperson shall-convene a meeting and preside; and

on a request for a meeting signed by not less than one-third of the total number of members of the IRC, convene a special meeting.

(3) The IRC shall determine its own procedure for meetings.

(4) The members of the IRC shall seek to obtain consensus on an issue before the IRC and if a consensus cannot be reached, the IRC may make a decision by a majority vote.

(5) The Chairperson may invite any person who has expertise or knowledge on any issues discussed by the IRC to attend a meeting, but the person shall only deliberate on the issues and is not entitled to vote.

(6) The quorum at the meetings of the Council shall be two members representing government, two employers and two workers.

Sitting allowance

31. Members of the IRC shall receive such a sitting allowance as may be determined and approved by the Minister, in consultation with the Minister responsible for finance.

Termination of membership of the IRC

32. A member of the IRC shall be terminated from membership if he;
has resigned;

(a) is no longer a member of the nominating organisation;

(b) is absent from three consecutive meetings of the IRC without leave from the Chairperson; or

(c) has been found guilty of a misconduct.

Audit Reports

33. The IRC shall, at the end of each financial year and within a period of six months, submit audited financial reports to the Minister in accordance with the financial laws of Lesotho and the Minister shall table the report to Parliament.

CHAPTER IV - Directorate of Dispute Prevention and Resolution

Establishment of Directorate of Dispute Prevention and Resolution

34. (1) There is established a Directorate of Dispute Prevention and Resolution referred to as the DDPR.

(2) The DDPR shall be -

(a) a juristic person;

(b) independent from the direction or control of any other person or authority, including Government, any political party, trade union and employer or employer's organisation in exercise of the functions vested in it under section 36;

Composition of the DDPR

35. (1) The DDPR shall comprise of -

(a) the Director;

(b) conciliators and arbitrators who shall be appointed by the Director with the approval of IRC; and

(c) other support staff who shall be appointed by the Director with the approval of the IRC.

(2) The IRC shall, in consultation with the Minister, determine the terms and conditions of employment of a person appointed under subsection (1).

Functions of the DDPR

36. The functions of the DDPR shall be to -

(a) resolve labour disputes and unfair labour disputes through conciliation or arbitration;

(b) advise the Government, employers, employers' organisations, workers and trade unions, on the prevention and resolution of disputes;

(c) compile and publish -

(i) information relating to its activities;

(ii) statistics on dispute prevention and resolution;

(iii) significant arbitration awards; and

(iv) award costs in frivolous cases; and

(vi) accredit bargaining council arbitrators.

The Director of DDPR

37. (1) There shall be a Director of the DDPR, who is the head and chief accounting officer for the DDPR.

(2) The Direcor -

(a) is responsible for the day-to-day management and functioning of the DDPR;

(b) may in writing, delegate any of the functions conferred on him by this Act to an arbitrator, except the functions referred to in subsection (1);

(c) an arbitrator or other officers of the DDPR shall not -

(i) be held liable for a loss suffered by any person as a result of an act performed or omitted in good faith in the performance of its functions; and

(ii) disclose to any person information, knowledge or document that he or one of the officers acquired on a confidential basis or without prejudice in the performance of his functions;

(d) shall -

(i) appoint the staff, other than the arbitrators, of the DDPR with the approval of the IRC;

(ii) govern and ensure the proper management of the finances, accounts, investments, property and all affairs, whatsoever, of the DDPR; and

(iii) prepare and submit budget estimates to the Minister for approval and tabling in Parliament.

An arbitrator of the DDPR

38. (1) There shall be an arbitrator of the DDPR who shall be appointed by the Director in consultation with the IRC.

(2) The Director may, where necessary, appoint a person as an arbitrator, on an ad hoc basis.

Functions and powers of an arbitrator

39. (1) The functions of an arbitrator are to -

(a) conciliate a dispute allocated to him;

(b) arbitrate a dispute allocated to him;

(c) prevent or resolve a dispute, if the Director considers that a dispute may arise; and

(d) award costs in frivolous cases.

(2) An arbitrator shall have the power to turn a settlement agreement from conciliation into an arbitration award.

Arbitration awards

40. (1) An arbitrator may make an arbitration award in terms of this Act, including but not limited to an award that -

(a) gives effect to a -

(i) collective agreement;

(ii) provision and the principles of this Act;

(b) includes, or is in the form of, a declaratory order; and

(c) includes -

(i) reinstatement;

(ii) re-employment of a worker;

(iii) compensation or damages; or costs.

(2) An arbitrator may not include an order for costs in an award, unless a party, or person who represented the party in the arbitration proceedings, acted in a frivolous or vexatious manner -

(a) by proceeding with or defending the dispute in the proeedings; or

(b) in its conduct, in the proceedings.

(3) An arbitrator shall, within thirty days of the conclusion of the arbitration proceedings -

(a) issue and sign an award.

(b) serve a copy of the award to each party to the dispute or the person who represented the party in the arbitration proceedings; and

(c) file the original of the award.

(4) The Director may, on good cause shown, extend the period within which an award must be completed and served on parties.

(5) An award issued by the arbitrator shall be final and binding and shall be enforceable as if it was an order of the Labour Court.

(6) An arbitrator who has issued an award on the application of any affected party, may vary or rescind an award -

(a) erroneously sought or made in the absence of any party affected by that award;

(b) in which there is an ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or

(c) granted as a result of a mistake common to the parties to the proceedings.

Review of arbitration awards

41. (1) Notwithstanding section 40(5), an award issued by an arbitrator shall be reviewable by the Labour Court under the following conditions:

(a) on application by a party to the proceedings;

(b) when considering an application for the enforcement of the award; or

(c) if the court of its own motion apprehends a reviewable irregularity in the award.

(d) when there is a misconduct committed by the arbitrator.

(2) A party to a dispute shall make an application to the Labour Court to review an arbitration award within 30 days of the award being served on the party.

(3) Notwithstanding subsection (2), if the grounds for the review arise from information not apparent from the arbitration award, the review shall be brought within thirty days from when the party became aware of such information or ought to reasonably have been aware of such information.

(4) An award may be set aside on one or more of the following grounds:

(a) that the decision has not been made by a person empowered to do so by this Act;

(b) that the arbitration has not been conducted by a lawfully appointed arbitrator or a lawfully constituted authority; or

(c) that the arbitrator -

(i) exceeded his powers; or

(ii) exercised his powers unreasonably or improperly

(5) In any review proceedings, the Labour Court, or in the case of proceedings initiated by a party in terms of subsection (1)(a) that party, shall write to the Director requesting that the full record of the proceedings be transferred to the Labour Court.

(6) The applicant in any review proceedings shall file with the Labour Court and serve on every other party to the proceedings, within such period as may be prescribed or as the Labour Court may direct, a transcribed record of the proceedings which are the subject of the review.

(7) The Director shall, provide the applicant with an the electronic record of the proceedings, within such period as may be prescribed or as the Labour Court may direct.

(8) If no electronic record is available, the notes kept by the arbitrator shall constitute the record and the Director shall transfer the notes in both the original draft and the typed version to the Labour Court, within such period as may be prescribed or as the Labour Court may direct.

Settlement of disputes of interest

42. (1) A party to a dispute of interest may, in writing, refer that dispute to the DDPR.

(2) A party who refers the dispute in terms of subsection (1) shall satisfy the Director that a copy of the referral has been served on all the other parties to the dispute.

(3) The Director shall appoint a conciliator who will have the responsibility for conciliating the dispute.

(4) The conciliator shall attempt to resolve the dispute through conciliation within thirty days of the referral.

(5) Notwithstanding subsection (4), the parties may agree to a longer period than thirty days and such an agreement shall be reduced in writing.

(6) If a dispute is resolved -

(a) the conciliator shall issue a report; and

(b) the settlement shall be reduced in writing and signed by the parties to the dispute.

(7) If the dispute remains unresolved after the thirty-day period -

(a) the conciliator shall issue a report that the dispute is unresolved; and

(b) the dispute shall be referred to arbitration, if the parties to the dispute -

(i) consent, in writing, to do so; and

(ii) are engaged in an essential service as defined in section 214 and 215.

(8) Subject to subsection (8), the conciliator shall issue the report referred to in subsection (6) (a) as soon as the thirty-day period expires, unless authorised, in writing, and such authorisation is communicated, in writing, to the parties.

(9) If the other party to the dispute fails to attend the meeting referred to in subsection (7), the conciliator may issue the report immediately.

Disputes of right

43. (1) The Labour Court has the exclusive jurisdiction to resolve the following disputes:

(a) subject to subsection (2), an application on interpretation of any provision of this Act or any other labour law;

(b) an unfair dismissal, if the reason for the dismissal is -

(i) related to industrial actions, including but not limited to a strike, lockout, picketing and go-slow; or

(ii) related to the operational requirements of the employee;

(c) to hear and determine all reviews -

(i) from arbitration awards issued in terms of this Act; and

(ii) of any administrative action taken in the performance of any function in terms of this Act or any other labour law; and

(d) cases arising from or related to workplace injuries, accidents, illnesses, diseases and deaths.

(2) Notwithstanding sub-section (1), the following disputes of right shall be resolved by arbitration -

(a) a dispute referred by agreement;

(b) a dispute concerning the application or interpretation of -

(i) a collective agreement;

(ii) a contract of employment, including an alleged breach of the contract;

(iii) a wages notice contemplated in section 166;

(c) an unfair dismissal for any reason other than a reason referred to in subsection (1)(b); and

(d) a dispute concerning the underpayment and non payment of any monies due under the provisions of this Act.

(3) Notwithstanding the provision of this section, the Director may refer a dispute contemplated in subsection (2) to the Labour Court for determination, if the Director is of the opinion that the dispute may also concern matters that fall within the jurisdiction of the Court.

(4) A dispute concerning the underpayment or non-payment of any monies or benefits due under the provisions of this Act or in terms of any contract or collective agreement, may be referred -

(a) to the Court, if a worker refers a dispute concerning a dismissal contemplated under subsection 1(b);

(b) to the DDPR in accordance with section 44, if a worker refers a dispute concerning an unfair dismissal contemplated under subsection 2(c).

(5) Subject to subsection (5), no matter contemplated by sub-section (1) may be referred to the Labour Court unless it has already been referred to the DDPR for conciliation in terms of section 44.

(6) Nothing in this section prevents a party to a dispute making an application to the Labour Court in terms of section 44 for -

(a) an urgent relief; or

(b) an urgent interim relief pending the determination of the dispute in terms of this section

Settlement of disputes of right

44 (1) A party to a dispute of right may, in writing, refer the dispute to the DDPR -

(a) if the dispute concerns an unfair dismissal, within three months of the date of dismissal;

(b) in respect of all other disputes, within three years of the dispute arising.

(2) Notwithstanding subsection (1), an arbitrator may, on applica-

tion, condone a late referral on good cause shown.

(3) A party who refers the dispute shall satisfy the arbitrator that a copy of the referral has been served on all the other parties to the dispute.

(4) If the dispute is one that should be resolved by arbitration, the Director shall appoint an arbitrator to attempt to resolve the dispute by conciliation, failing which a different arbitrator shall resolve the dispute by arbitration.

(5) If the dispute is one of right, such a dispute shall be resolved by adjudication in the Labour Court, and the Director shall appoint a conciliator to attempt to resolve the dispute by conciliation before the matter is referred to the Labour Court.

(6) If the dispute is resolved -

(a) the conciliator or arbitrator shall issue a report; and

(b) the settlement shall be reduced to writing and signed by the parties to the dispute.

(7) If a dispute contemplated in subsection (4) remains unresolved after the arbitrator has attempted to conciliate it, the arbitrator shall resolve the dispute by arbitration.

(8) If a party to a dispute contemplated in subsection (4) fails to attend the conciliation or hearing of arbitration, the arbitrator may -

(a) postpone the hearing;

(b) dismiss the referral; or

(c) grant an award by default.

(9) If a dispute contemplated in subsection (5) remains unresolved after thirty days from the date of the referral -

(a) the conciliator shall issue a report that the dispute remains unresolved; and

(b) any party to the dispute may make an application to the Labour Court.

(10) The conciliator shall, in the report contemplated in subsection (9)(a), record any failure to attend a meeting convened by the conciliator to resolve the dispute.

(11) In determining any order of costs contemplated in section 50(2)(g), the Labour Court shall take into account any failure to attend a conciliation meeting referred to in the report contemplated in subsection (10).

Urgent proceedings

45. (1) A party to a dispute that has been referred in terms of section 43, may apply to the Labour Court for urgent relief, including interim relief pending the resolution of a dispute by arbitration.

(2) Notwithstanding the provisions of this Part, if the Labour Court grants an urgent interim relief in terms of subsection (1), the Court shall give such directions on how conciliation shall be conducted, if applicable, the arbitration of the dispute as may be appropriate.

Funds of the DDPR

46. The funding of the Directorate shall be from monies appropriated by Parliament from the Consolidated Fund.

CHAPTER V - The Labour Court

Establishment of the Labour Court

47. (1) There is continued in existence, the Labour Court.

(2) The Labour Court shall be a court of law and equity.

Composition of the Court

48. (1) The Judicial Service Commission shall appoint as members of the Labour Court -

(a) the President;

(b) a minimum of three Deputy Presidents, the Judicial Service Commission may consider necessary; and

(c) the Registrar.

(2) The President and a Deputy President appointed in terms of subsection (1), shall be a person who is qualified in law.

(3) A Deputy President shall, in performing his duties, in the absence of the President, have the same powers and authority as the President.

The Registrar of the Labour Court

49. (1) There shall be -

(a) a Registrar of the Labour Court, who shall be a person qualified in law and who shall be appointed by the Judicial Service Commission for purposes of carrying out duties in relation to the decisions, awards, other records and docketing of the Labour Court; and

(b) such number of Deputy Registrars, as the Judicial Service Commission may determine and appoint

Jurisdiction and powers of the Labour Court

50. (1) Subject to the Constitution and section 51, the Labour Court has jurisdiction in respect of matters which are to be determined by the Court in terms of labour laws or the provisions of this Act.

(2) The Labour Court shall have the power to -

(a) inquire into and decide the relative rights and duties of workers and their respective organisations in relation to any matter referred to the Court under the provisions of the Act and to award appropriate relief in case of infringement;

(b) impose any fine at civil law, in the case of any infringement of the provisions of the Act;

(c) inquire into and make awards and decisions in any matters relating to industrial relations, other than trade disputes which may be referred to it;

(d) rescind any contract of employment and make such consequential orders as may be just in the circumstances;

(e) asses the fair value of services rendered by a worker in a case which the services are to be assessed in accordance with the provisions of the Act or in a case where the rate of wages or other benefits to which a worker should be entitled were not agreed between an employer and the worker;

(f) fix the amount of compensation for loss of or damage to property of an employer where the loss has been occasioned by the wrongful act or omission of the employer's worker;

(g) make any appropriate order including an order of costs; commit and punish for contempt, any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him by the Court under the Act;

(h) commit and punish for contempt, any person who disobeys or unlawfully refuses to carry out or to be bound by an order made against him by the Court under the Act;

(i) resolve any ambiguity in the law brought to its attention by any interested party;

(j) review any administrative action taken in the performance of any function in terms of this Act or any other labour law.

(k) rescind any decision made in the absence of a party to a litigation; and

(l) perform such other acts and carry out such other duties as may be prescribed under this Act or any other law.

(3) The sittings of the Labour Court shall be held in Maseru but may be held at such other place as the President of the Court may direct.

(4) The Labour Court shall take into account any code of conduct or guideline which is relevant to a matter being considered in the proceedings and which is published by the Minister in accordance with this Act.

Exclusive civil jurisdiction

51. (1) The jurisdiction of the Labour Court is exclusive, and no court shall exercise its civil jurisdiction in respect of any matter provided for under this Act -

(a) subject to the Constitution and section 60; and

(b) notwithstanding section 6 of the High Court Act, 1973[5].

(2) The Labour Court may, upon application by a party to a labour dispute, who has reasonable grounds to believe that the other party to the dispute intends to abscond, attach property of the person or employer so suspected.

No effect on criminal jurisdiction

52. (1) The jurisdiction vested in the Labour Court shall not limit the jurisdiction of any other court exercising criminal jurisdiction in connection with the prosecution of an offence under this Act.

(2) In criminal proceedings under the provisions of this Act, the court exercising criminal jurisdiction may order an employer to pay to a worker such wages as are found by such court to be due to him by the employer, together with costs or expenses as that court considers just and in accordance with the provisions of this Act.

Rules of the Labour Court

53. (1) The Chief Justice, in consultation with the President of the Labour Court, may make rules for the purpose of regulating the procedure of the Court and, without prejudice to the generality of the foregoing, the rules may make provision for reference of matters in certain cases to be made to the President.

(2) The Court is not bound by the rules of evidence in civil or criminal proceedings, and it shall be the function of the Court to do substantial justice between the parties before it.

(3) In drawing up the rules referred to in subsection (1), the Chief Justice, in consultation with the President of the Labour Court shall take into consideration the need for informality, low cost and expedition in proceedings before the Labour Court.

(4) The rules drawn up under subsection (1) above shall be published in the Government Gazette.

Representation of parties

54. (1) A party at a hearing before the Court, may appear in person or be represented by -

(a) an officer of a trade union or of an employers' organisation; or

(b) a legal practitioner.

(2) Where the Government is a party to any proceedings before the Court, the Government may be represented by the Attorney-General or any other person authorised by the Attorney-General for the purpose.

Power to summon witnesses

55. (1) The Court shall have the power to -

(a) summon witnesses;

(b) call for the production of, and grant inspection of books, documents, records and other items; and

(c) examine witnesses under oath,

and the President or Deputy President of the Labour Court shall administer oath, for such purposes.

(2) A summons for the attendance of a witness or the production of books, documents, records or other items shall be signed by the Registrar and shall be served in the same manner as if it were a subpoena for the attendance of a witness at a civil trial in the High Court.

(3) Any person who is summoned to give evidence or to produce any book, document, record or other item or giving evidence before the Court shall be entitled to the same privileges and immunities as if that person were summoned to attend or were giving evidence in civil proceedings before the High Court.

Power to obtain evidence

56. (1) If a person who is summoned in terms of section 55, having reasonable notice of the time and place at which he is required to attend, fails to attend, or fails to remain in attendance until duly excused by the Court from further attendance, the President of the Court may sign and issue a warrant for the apprehension of such a person, upon being satisfied on oath or by the return of the person charged with the service of such summons that the summons was duly served upon the person and in case no sufficient reason for failure to attend or remain in attendance seems to exist.

(2) If any person who has been summoned under section 55 -

(a) refuses to be sworn or affirmed as a witness;

(b) having been sworn or affirmed, refuses to answer fully and satisfactorily any question he is lawfully required to answer; or

(c) refuses or fails to produce any book, document, record or other item and does not justify his refusal or failure to the satisfaction of the Court, the President of the Court may order that the person be detained in custody as if he were a prisoner awaiting trial and the person may be detained for a period to be determined by the President, unless he consents to do what is required of him.

(3) If the person, upon being brought before the Court at an adjourned hearing, again refuses or fails to do what is required of him, the President may again adjourn the proceedings and order that the person be detained for up

to a similar period from time to time, until the person consents to do what is required of him.

Enforcement of payment

57. (1) Where the Court has given judgement against a party to pay a sum under a contract of employment or under the provisions of the Act and the party fails to make a payment within the time specified in the judgement, the President of the Court may, on the application of a party or any person acting on behalf of the person to whom the sums are due, summon the party who failed to make the payment, to appear before the President of the Court to answer why payment has not been effected.

(2) If such a party fails to satisfy the President of the Court that the failure to make payment was due to no fault on his part, the President of the Court shall -

(a) order the judgment debtor to make payment in instalments not exceeding six months; or

(b) issue a writ of attachment of property to the value of the payment to be made by order of the Court.

Posting of bond

58. A worker or a representative of the worker may, where there is a reasonable apprehension that an employer is likely to abscond in order to avoid payment of wages due to his worker, approach the Labour Court to request the employer to pay reasonable security.

CHAPTER VI - The Labour Appeal Court

Establishment of the Labour Appeal Court

59. (1) There is continued in existence, the Labour Appeal Court.

(2) The Labour Appeal Court is the court of appeal in respect of all judgements and orders made by the Labour Court.

(3) The Labour Appeal Court may act as a court of first instance.

Composition of the Labour Appeal Court

60. (1) The Labour Appeal Court shall consist of -

(a) permanent judges, appointed by the King on the recommendation of the Judicial Service Commission; and

(b) such other judges that may act from time to time.

(2) There shall be a Labour Registrar of the Labour Appeal Court.

Jurisdiction of the Labour Appeal Court

61. (1) The Labour Appeal Court has exclusive jurisdiction to hear and determine all -

(a) appeals against the final judgements and the final orders of the Labour Court; and

(b) reviews from judgements of the Labour Court.

(2) Notwithstanding the provisions of any other law, the Labour Appeal Court may hear an appeal or review from a decision of any subordinate court concerning non-compliance with this Act or any other law.

(3) Notwithstanding the provisions of subsection (1), a judge of the Labour Appeal Court, may direct that a matter before the Labour Court or referred to the DDPR for arbitration, be heard by the Labour Appeal Court sitting as a court of first instance.

Rules for the Labour Appeal Court

62. The Chief Justice may, by notice published in the Gazette, make rules for the purpose of regulating the procedures of the Labour Appeal Court.

CHAPTER VII - General Administration, compliance with labour standards, and recruitment and placement of workers

Functions of the office of the Labour Commissioner

63. The office of the Labour Commissioner shall be responsible for the general administration of the conditions of work provided for in this Act.

Powers of the Labour Commissioner

64. (1) The powers of the Labour Commissioner are, without limitation to the generality of section 63, to -

(a) coordinate and oversee the general compliance of this Act;

(b) refer the interpretation of the provision of this Act to the Labour Court; and

(c) state a case for decision by the Labour Court, if a question of law arises in the performance of his functions or at the request of a party in a matter.

(2) A case stated by the Labour Commissioner, in terms of subsection (1) (d), shall be served on -

(a) an organisation of employers and workers represented in the National Advisory Committee on Labour; and

(b) a party, if the case for a decision by the Labour Court is made by the Labour Commissioner at the request of another party.

(3) The Labour Court shall, in its discretion, allow a party with an interest in a case stated for its decision in terms of sub-section (1)(d) to make representation to the Court.

Labour Inspection, its powers and functions

65. (1) The powers and functions labour inspection shall be exercised

by a labour inspector within the office of the Labour Commissioner and shall be to -

(a) ensure compliance of labour standards in the workplace;

(b) enter, inspect and examine freely without prior notice, any land, building, private dwelling, installation, premise, camp, aircraft, vessel, vehicle, place or structure, which a worker or a recruited person is employed, housed, transported or where there is a reason to believe that the worker or recruited person is employed, housed or transported.

Performance and exercise of the functions of the labour inspector

66. (1) A labour inspector shall, in the exercise of powers conferred on him under section 65 -

(a) notify an employer or his representative of his presence on the premises, place, private dwelling or privately occupied building unless the inspector has reasonable grounds to believe that such notification may be prejudicial to the performance of his duties;

(b) disclose any interest, direct or indirect, in any business or undertaking under his supervision and where the interest exists, refrain from exercising his functions in this regard;

(c) ensure that a person who is asked questions, does not answer the question in a manner which is likely to incriminate him; and

(d) be prohibited from revealing the identity of a complainant who has made a complaint in contravention to this Act.

(e) produce an identity card upon entering the premises.

(2) A labour inspector who -

(a) when performing a duty under a provision of this Act, divulges or discloses confidential information to another person except the ordinary course of employment,

(b) is in possession of information which to his knowledge has been disclosed in contravention to the provisions of this Act and publishes or communicates such information; or

(c) is dishonest, fraudulent, communicates false information to another person, abuses his power or is involved in bribery,

commits a misconduct and is liable for a disciplinary action in accordance with the law applicable to the discipline of the public officers.

Factors for a labour inspector to consider when performing functions

67. A labour inspector shall in the performance of his functions, ensure that -

(a) workers' rights are respected in the workplace;

(b) enterprises adopt adequate work practices and environment control measures, which do not put a worker's life under safety and health risks;

(c) employers and workers are fully informed and guided on how to comply with legal requirements;

(d) legal provisions relating to conditions of work and protection of workers in the workplace are implemented;

(e) information and advice to employers and workers concerning effective means of compliance with the law is provided; and

(f) a competent authority is notified of defects or abuses not provided for in this Act.

Delay, obstruction or provision of false information

68. A person who -

(a) wilfully delays or obstructs a labour inspector or his representative to exercise a power to perform a function conferred or imposed by this Act;

(b) fails, without lawful excuse to -

(i) comply with a lawful direction, requirement, demand; or

(ii) answer a question of a labour inspector asked or given in pursuance of a power conferred on him by this Act;

(c) conceals information or prevents a person from appearing before or being interviewed by an authorised officer or attempts to conceal information or prevent any person from appearing before or being interviewed by the authorised officer; or

(d) provides, for the purpose of any of the provisions of this Act, information which he knows to be false, commits an offence and is liable on conviction to a fine not exceeding Two Thousand Maloti or to imprisonment for a period not exceeding one year or both.

Compliance orders

69. (1) Notwithstanding any other provision in this Act, a labour inspector may, where he is satisfied that an employer has failed to comply with a provision of this Act relating to minimum wages claims and other conditions of work, issue a compliance order.

(2) If a person fails to comply with the compliance order issued in terms of subsection (1), the labour inspector may make an application to the Labour Court for confirmation of the compliance order.

(3) The Labour Court may, after considering representations made by the labour inspector and the respondent, confirm, vary or set aside the compliance order.

(4) If the Labour Court confirms a compliance order directing an employer to pay an amount of money due to a worker, the Labour Court may, in addition, direct the employer to pay interest.

(5) The Labour Court may, where it confirms an order made by it in terms of subsection (3), direct an employer to pay costs of proceedings if the employer acted in a frivolous or vexatious manner in failing to comply with the compliance order.

(6) A compliance order made in terms of subsection (3) has a status of a final order and may be appealed to in terms of section 61(1)(a).

(7) A compliance order made by the Labour Court which requires payment of a sum of money may be enforced in terms of section 57.

Labour Market Information

70. (1) The Director Labour Market Information shall perform the following Labour Market Information functions:

(a) collect, compile and provide information and statistics regarding the labour market, including information on labour requirements and labour supply;

(b) carry out research to assess the impact of labour policy on different stakeholders;

(c) provide the basis for monitoring and reporting on employment and labour policies;

(d) serve as a mechanism to exchange information or coordinate different institutions that produce and utilize labour market information;

(e) register employment establishment's profiles; and

(f) collect and register information relating to job vacancies and other work opportunities.

(2) In order to ascertain social or civil conditions of the wage-earning population, the Director, Labour Market Information may by notice in writing, require an employer to furnish, returns and statistics, whether periodically or otherwise, of the -

(a) number of workers employed by the employer in any employment;

(b) rates of remuneration for the workers, in accordance with the Data Protection Act, 2012[6]; and

(c) general conditions which affect the workers' employment.

(3) An employer shall -

(a) keep records, books, accounts and statistics of his workers in accordance with the provisions of this Act, and

(b) when required by a labour inspector, to produce records, books, accounts and statistics of his workers, for examination and making certified copies.

(4) An employer shall register his establishments' profile and declare his vacancies with the Director, Labour Market Information.

(5) The Director, Labour Market Information -

(a) shall cause returns and statistics collected in accordance with the provisions of this Act to be compiled, analysed and tabulated; and

(b) may, subject to the directions of the Minister and the provisions of this Act, cause statistics or abstracts of the statistics to be published with or without observation and in a manner as the labour inspector may determine.

(6) Except for purposes of enforcement, an individual return, part of the return, or the previous consent of an employer furnishing the return or statistic, shall not be -

(a) published or admitted in evidence in civil or criminal proceedings; or

(b) disclosed to a person other than a worker who carries out a duty under this Act, including compilation, analysis and tabulation of returns and statistics under subsection (2).

(7) Nothing contained in subsection (2) shall prevent or restrict the publication of a statistic or abstract without the consent of the Director, Labour Market Information where particulars relating to an undertaking or business within its sphere of activities, do not permit identification of the costs of production in the capital employed in or the profits arising from any such undertaking or business.

(8) A person who -

(a) causes to be made or knowingly allows to be made, an entry in a record required to be kept by an employer in terms of this Act, which he knows to be false; or

(b) produces, furnishes, causes or knowingly allows to be produced or furnished, any wage sheet, record, list or information which he knows is false, commits an offence and is liable, on conviction, to a fine not exceeding Twenty Thousand or imprisonment for a period not exceeding Ten years or both.

National Employment Services

71. National employment services functions shall be performed by the Director National Employment Service.

Functions of the National Employment Services

72. The functions of the national employment services are to -

(a) promote effective recruitment and placement of workers and shall be exercised by the Director Public National Employment Services within the Ministry of Labour and Employment;

(b) issue work permits to non-nationals; and

(c) register private employment agencies.

CHAPTER VIII - Regulation and registration of trade unions, employers' organisations and bargaining councils

Registrar of trade unions, employers' organisations, and bargaining Councils

73. There shall be a Registrar of trade unions, employer's organisations, and bargaining councils are to -

(a) register or deregister a trade union, employers' organisation, or a bargaining council;

(b) submit to the NACOLA, an annual report on all matters transacted by the Registrar under this Act;

(c) conduct a membership verification exercise of trade unions, employers' organisations, and a bargaining council;

(d) register federation of trade unions, employers' organisation and a bargaining council;

(e) inspect the books of accounts of a trade union, an employers' organisation or a bargaining council at any reasonable time where reasonable suspicion of fraud exists, or by a person authorised by the Registrar;

(f) funds permitting, facilitate training and capacity for workers and employers' organisations; and

(g) perform any other function or duty imposed on him or

exercise any power conferred on him, in accordance with the provisions of this Act.

Registration of a trade union, an employers' organisation and a bargaining council

74. (1) A trade union, an employers' organisation and a bargaining council shall not be recognised as such, unless it is registered with the Registrar within three months of its coming into existence.

(2) The Registrar shall dissolve each trade union, an employers' organisation, and a bargaining council, if the trade union, employers' organisation and bargaining council is not registered within three months of its coming into existence.

(3) The Registrar may grant an extension of the periods specified in subsections (1) and (2) and for a further period or periods not exceeding six months.

Application for registration of a trade union, an employers' organisation and bargaining council

75. (1) A member of an executive committee of a trade union, employers' organisation or bargaining council who wishes to register the trade union or employer's organisation, shall submit an application for registration to the Registrar in accordance with a form provided for under the Second Schedule.

(2) An application submitted in terms of sub-section (1) shall be signed by at least -

(a) ten members, if the body is a trade union;

(b) three members, if the body is an employer's organisation; and

(c) two members, one of whom is a representative of a trade union and employer's organisation, if the body is a bargaining council.

(3) The Registrar shall, within thirty days of receiving the applica-

tion for registration of a trade union, an employer's organisation or bargaining council, make a decision on the application and notify the applicant of his decision.

(4) The Registrar may call for further information from the applicant for purposes of ensuring that the application, complies with the provisions of this Act.

(5) The Registrar may require a person applying for registration to alter a name stated in the application, if the name is -

(i) identical to another existing trade union, employers' organisation or bargaining council; or

(ii) in the opinion of the Registrar, likely to deceive or mislead the public or members of a trade union, employers' organisation or bargaining council.

(6) Where the circumstances of subsection (5) exist, the Registrar shall refuse to register the trade union, employers' organisation or bargaining council until an alteration has been made.

(7) The Registrar may request information from members of the executive committee or an officer of the trade union or employers' organisation for purposes of ensuring that the provisions of this Act are complied with.

(8) An officer of a trade union, employers' organisation or bargaining council who fails to comply with a request made by the Registrar under the provisions of subsection (4) commits an offence and is liable on conviction, to a fine not exceeding Five Hundred Maloti or to imprisonment for a period not exceeding three months or both.

(9) The Registrar shall, subject to the provisions of section 74 and if satisfied that the provisions of subsections (1) and (2) have been complied with, register a trade union, employer's organisation or bargaining council in the prescribed manner and shall issue the trade union, employers organisation or bargaining council with a certificate of registration.

(10) The registration of a trade union or employers' organisation shall be effective from the date of entry in the Register.

Refusal of registration

76. (1) The Registrar may, in writing, refuse to register a trade union, an employer's organisation or a bargaining council, if he is satisfied that -

(a) the trade union, employers' organisation or bargaining council has not complied with the provisions of the Act;

(b) one of the objectives or the Constitution of the trade union, employers' organisation or bargaining council, is unlawful or conflicts with the provisions of this Act;

(c) the principal objectives of the trade union, an employers' organisation or bargaining council seeking registration are not in accordance with those set-out in the definition of a trade union, an employers' organisation or a bargaining council; or

(d) the trade union, employers' organisation or bargaining council is a branch of a registered trade union, an employers' organisation or bargaining council.

(2) The Registrar shall notify the applicant, in writing, of the grounds of such refusal, where he refuses to register the trade union, an employer's organisation or a bargaining council, in terms of subsection (1).

(3) A member of a trade union, an employers' organisation or a bargaining council, whose application for registration is refused in terms of subsection (1), may, within one month of the refusal, appeal against the refusal to the Labour Court.

Register

77. (1) The Registrar shall keep and maintain a register of a trade union, an employer's organisation and a bargaining council and also in accordance with the provisions of the Third Schedule.

(2) The register referred to in sub-section (1) shall contain -

(a) prescribed particulars and all relevant information relating to the registration of the trade union, employer's organisation and bargaining council;

(b) any effected alteration or change in the information relating to the registration of the trade union, employer's organisation or bargaining council; and

(c) any other entry as may be considered necessary by the Registrar of any provision of this Act to be contained in the register.

(3) A copy of an entry in the register, certified by the Registrar, shall be proof of the facts specified in the register as on the date of the certified copy.

Notice of affiliation or establishment of a branch

78. (1) A chairperson of a registered trade union or employers' organisation -

(a) which, after the commencement of this Act is affiliated to any other trade union or employers' organisation shall, within three months of the affiliation, give the Registrar notice, in writing, indicating the names of the affiliated bodies and the effective date of the affiliation;

(b) in which a branch has been established after the commencement of the Act shall, within three months of the establishment of the branch, give the Registrar notice, in writing, indicating the name of the trade union or employers' organisation and the date on which the branch was established; and

(c) which fails to comply with any of the requirements of this section commits an offence and is liable on conviction to a fine not exceeding Five Hundred Maloti or to imprisonment for a period not exceeding three months.

Amalgamation

79. (1) Two or more registered trade unions or employers' organisations may become amalgamated as one trade union or employers' organisation, with or without dissolution or division of the funds of either or any of them, upon a ballot being taken in each trade union or employer's organisation in the manner provided in its respective rules.

Notice of amalgamation

80. (1) The secretary and at least six members of a registered trade union or employers' organisation which is a party to any amalgamation effected after the coming into force of this Act shall, within one month of the amalgamation, provide the Registrar with notice, in writing, signed by the secretary and the six members of the registered trade union or employer's organisation, in the form prescribed under the Second Schedule and containing such particulars as prescribed.

(2) If the Registrar is satisfied that the provisions of this Act in respect of amalgamation have been complied with and that the trade union or employers' organisation formed is entitled to be registered under this Act, he shall register the trade union or employer's organisation in the prescribed manner and the amalgamation shall have effect from the date of registration.

Federations

81. (1) Two or more registered trade unions or employers' organisations may form or join a federation of trade unions or employers' organisations, as applicable, upon a ballot being taken in each trade union or employers' organisation in the manner provided in its respective rules.

(2) A trade union, employers' organisation or federation shall have the right to affiliate with international organisations of workers or employers, as applicable.

(3) The secretary of each registered trade union or employers' organisation which becomes party to a federation after the coming into force of this Act shall, within one month of joining the federation, provide the Registrar with a notice of the federation, in writing, and signed in the form prescribed under the Second Schedule.

(4) A federation formed or joined in terms of subsection (1) shall enjoy the same protection as is afforded to a registered trade union and employers' organisation under this Act.

Effect of amalgamation or federation

82. An amalgamation or federation of two or more registered trade union or employer's organisation shall not prejudice any right of either or any of those of a trade union or employer's organisation or any right of a creditor of either or any of them.

Change of name

83. (1) A registered trade union or employers' organisation may, in accordance with the provisions of section 84(3), change its name.

Notice of change of name

84. (1) The secretary and at least six members of a trade union, shall provide the Registrar with a written notice signed by the secretary and the six members of the trade union of every change of name effected after the commencement of this Act and the notice shall be given within one month of the change of name.

(2) If the proposed name is identical to that by which any other existing trade union has been registered or in the opinion of the Registrar, so nearly resembles such a name as to be likely to deceive the public or the members of either trade union, or in his opinion is itself misleading, the Registrar shall refuse to register the change of name.

(3) Subject to subsection (2), the Registrar shall, upon being satisfied that the provisions of this Act in respect of the change of name have been complied with, register and publicise the change of name in the prescribed manner, and the change of name shall have effect from its date of registration.

Effect of change of name

85. (1) A change in the name of a trade union or an employers' organisation shall not -

(a) affect any right or obligation of the trade union or employers' organisation;

(b) render defective any legal proceeding by or against the trade union or employers' organisation,

and any legal proceeding which might have been continued or commenced by or against it under its former name may be continued or commenced by or against it under its new name.

Notification of dissolution

86. (1) If a trade union or an employers' organisation is dissolved, at least six members and the secretary of the trade union or employers' organisation shall, within fourteen days of the dissolution, send a signed notice, in writing, indicating the manner and the date of the dissolution to the Registrar.

(2) The registrar shall upon receiving a dissolution notice in terms of subsection (1) register the dissolution upon being satisfied that it has been effected in accordance with the rules of the trade union or employers' organisation and the dissolution shall have effect from the date of registration of the notice.

Membership rights of minors

87. (1) A person above the age of 15 years but under the age of 21 years, may be a member of a registered trade union or an employers' organisation, unless the rules of the trade union or employers' organisation provides to the contrary.

(2) A person referred to in subsection (1) shall enjoy all the rights of a member and may execute all instruments and make all payments necessary to be made under the rules, but he may not be a member of the executive committee or a trustee until he attains the age of 21years.

Officers

88. (1) No person shall hold the post of secretary or treasurer of a trade union, an employers' organisation or bargaining council, who in the opinion of the Registrar, has not attained a standard of literacy, sufficiently high for the effective performance of his duties.

(2) No person shall be an officer of a trade union, an employer's organisation or bargaining council if, within five years or less of his appointment to the post, he has been convicted of a crime involving fraud or dishonesty.

Notification of officers

89. (1) A notice giving the names of all officers of a trade union or employer's organisation and their titles shall be sent to the Registrar within fourteen days of their appointment and a true copy of the notice shall be prominently exhibited at conspicuous place in the registered office of the respective trade union, or employer's organisation or branch.

(2) Notice of all changes in names of the officers provided for under subsection (1) shall, within fourteen days of the change, be sent to the Registrar by the secretary of the trade union or employer's organisation and the Registrar shall correct the registrar accordingly.

Registered office and postal address

90. (1) A trade union or employer's organisation shall have a registered office in Lesotho and registered postal or physical address, electronic or other means of communication to which all communications and notices may be addressed and, if a trade union or an employer's organisation has more than one office, the registered office, shall be the principal office of the trade union or employer's organisation.

(2) Notice of the location of the registered office and registered postal address, and of any change shall be given to the Registrar and shall be registered.

(3) An officer of a registered trade union or employer's organisation who -

(a) operates without having a registered office and registered postal address, or without giving notice of the location of its registered office as required; or

(b) operates at a place to which its registered office may have been removed, without having given notice of the change in the location to the Register; or

(c) fails to give notice of any change of its registered postal address,

commits an offence and is liable on conviction to a fine not exceeding Two Thousand Maloti for every day during which it so operates or to imprisonment for a period not exceeding one year.

Rules

91. (1) The rules of a trade union or an employers' organisation shall provide for all the matters specified in the Second Schedule.

(2) A copy of a new rule or an alteration made in the rules of a trade union or employer's organisation shall be sent to the Register within seven days of the making of the rule or alteration and shall be registered by the Registrar.

(3) An alteration of the rules of a trade union or employer's organisation shall take effect from the date of registration by the Register unless some later date is specified in the rules.

(4) A copy of the rules of a trade union or employer's organisation shall be delivered to any person on demand, upon payment of a sum not exceeding One Thousand Maloti or for a period not exceeding six months.

Books to be kept

92. The officers of a registered trade union, employers' organisation or federation of trade unions or employers' organisations, shall cause to be kept books of accounts sufficient to exhibit and explain the transactions and financial position of the union or organisation, including a book or books containing entries made from day to day in sufficient detail of all cash paid out or received.

Treasurer to render accounts

93. (1) A treasurer of a registered trade union or employers' organisation and any other officer of the trade union or employers' organisation who is responsible for the accounts of the trade union or employers' organisation or for the collection, disbursement, custody or control of the funds or moneys, shall -

(a) upon resigning or vacating his office;

(b) at least once a year at the resolution of the members of the trade union or employers' organisation; and

(c) in terms of the rules, where the Registrar reasonably suspects fraud, render the following to the trade union, employers' organisation, its members or the Registrar, as the case may be -

(i) a just and true account of all moneys received and paid by the treasurer and any other officer of the trade union or employers' association during the period which has elapsed since the date of assuming office or, if he has previously rendered an account, since the last date on which he rendered an account, and

(ii) the balance remaining in his hands at the time of rendering such account and of all bonds, securities or other property of the trade union or employers' organisation entrusted to his custody or under his control.

(2) The form of account to be rendered under subsection (1) shall be as may be determined by the Registrar.

(3) A registered trade union or employers' organisation shall cause the accounts to be audited by a fit and proper person, who is registered by the Lesotho Institute of Accountants (LIA).

(4) The audit of the annual accounts as at the 31st day of December, shall be completed before the 31st day of March in the following year.

(5) The Registrar shall approve or disapprove the appointment of an auditor provided for under subsection (3) within seven days of the submission of an application for approval of the auditor.

Annual returns

94. (1) The secretary of a registered trade union, employers' organisation or federation of trade union or employers' organisation and bargaining coun-

cil, shall furnish to the Registrar on or before the 31st day of March, an annual return provided for in the Third Schedule and audited in the prescribed manner, showing -

(a) all receipts and expenditure during the period of twelve months ending on the 31st day of December of the preceding year;

(b) the assets and liabilities of the trade union, employers' organisation or federation as at the 31st day of December of the preceding year;

(c) a statement showing the number of members of the trade union or employers' organisation as at the 31st day of December of the preceding year; and

(d) the statement of their contribution which shall be accompanied by a copy of the auditor's report and shall be prepared in such form and shall comprise of such particulars as provided for in the Second Schedule.

(2) A member of a trade union or employers' organisation to which this section applies is entitled to receive, free of charge, a copy of the general statement referred to in subsection (1) and the secretary of a trade union or employer's organisation shall deliver a copy of the statement to a member who makes an application.

(3) The secretary of a trade union or employer's organisation to which this section applies, who fails to comply with any of the requirements of this section, commits an offence and is liable, on conviction, to a fine not exceeding Two Hundred Maloti or to imprisonment for a period not exceeding six months or both.

(4) A person who wilfully and knowingly makes or orders, or causes or procures to be made, a false entry in or omission from a general statement, copy or list delivered to the Registrar under subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding One Thousand Maloti or to imprisonment for a period not exceeding six months or both.

Inspection of accounts and documents

95. The books of accounts of a trade union, an employer's organisation or bargaining council and a list of the officers of the trade union, employer's organisation or bargaining council shall be open for inspection by -

(a) an officer or member of a trade union, employer's organisation at such times as may be provided for in the rules; or

(b) the Registrar or a person authorised in that behalf, in writing, by the Registrar at any reasonable time where suspicion of fraud exists.

Obstructing inspection by Registrar

96. A person who opposes, obstructs or impedes the Registrar or any person authorised under section 95 in carrying out an inspection, commits an offence and is liable, on conviction, to a fine not exceeding One Thousand Maloti or to imprisonment for a period not exceeding six months or both.

Power to call for detailed account

97. In addition to any other provision of this Act relating to the rendering of accounts, the Registrar may, when a reasonable suspicion of fraud exists, call upon the treasurer, the committee of management or any other officer or officers of a trade union or employers' organisation, to render detailed written accounts of the funds of the trade union, employer's organisation or any branch of the trade union or employer's organisation in respect of specified period.

Penalty for failing to supply accounts

98. A treasurer of trade union or an employers' organisation who fails to comply with a request made by the Registrar under the provisions of section 105 commits an offence and is liable, on conviction, to a fine not exceeding One Thousand Maloti or to imprisonment for a period not exceeding six months or both.

Unauthorised or unlawful expenditure

99. (1) The Labour Court may grant an interdict restraining an unauthorised or unlawful expenditure of the funds of a trade union or an employers' organisation on the application by -

(a) one or more persons having a legal interest in the relief sought;

(b) the Registrar; or

(c) the Attorney-General.

(2) In granting an interdict applied for in terms of subsection (1), the Labour Court may, in the case of a dissolution of a trade union or an employer's organisation, or upon the cancellation of its registration, order that its funds be paid over to the Registrar of the Labour Court for disposal in accordance with rules of the trade union or employer's organisation.

Penalty for misuse of money or property

100. (1) Where the Registrar, a member of a trade union or an employers' organisation concerned or any other relevant person, satisfies the Labour Court that a person has -

(a) in his possession or control, property of a member, or the trade union or an employers' organisation, which is not held in accordance with the rules of the trade union or employers' organisation;

(b) unlawfully expended or withheld a trade union or an employers' organisation's money; or

(c) unlawfully expended money received on behalf of the member,

the Court shall, if it considers the circumstances of the case so require, order the person to deliver all such property to a trustee of the trade union or an employers' organisation and to pay to them the money so unlawfully expended or withheld.

(2) A person who is bound by an order made under subsection (1), who fails to comply with the terms and the directions of the order within a time to be specified in the order, commits an offence and is liable, on conviction, to a fine not exceeding Two Thousand Maloti or to imprisonment for a period not exceeding one year or both.

Rights, immunities and privileges pending registration

101. No trade union, employer's organisation or bargaining council shall enjoy any of the rights, immunities or privileges of a registered trade union or employers' organisation unless -

(a) the trade union or employer's organisation is in the process of being established; or

(b) an application for registration is made to the Registrar.

Immunity from civil suit in certain cases

102. No suit or other legal proceeding shall be maintainable in any civil court against a trade union or an employer's organisation or an officer or a member of the trade union or employer's organisation in respect of an act done in contemplation or in furtherance of a trade dispute to which a member of the trade union or employer's organisation induces another person to break a contract, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he will.

Liability in delict

103. (1) A suit against a trade union or an employer's organisation or against any member or officer of the trade union or employer's organisation and all other members of the trade union or employer's organisation in respect of any delict alleged to have been committed by or on behalf of the trade union or employer's organisation in contemplation or in furtherance a trade dispute, shall not be entertained by any court.

(2) Nothing in this section shall affect the liability of a trade union or employer's organisation or any member or officer of the trade union or employers' organisation to be sued or any member or officer sued, concerning the

property or rights of a trade union or employers' organisation in respect of any other delict committed by or on behalf of the trade union or registered employers' organisation.

Liability and rights in contract

104. (1) A trade union or employer's organisation shall be liable on or have enforceable rights to a contract entered into by it or by an agent acting on its behalf, unless the contract is void or unenforceable at law.

(2) However, nothing in this Act shall enable a court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for a breach of any of the following agreements -

(a) an agreement between members of a trade union or an employer's organisation which concerns the conditions on which a member for the time being shall or shall not sell their goods, transact business, employ or be employed;

(b) any agreement for the application of the funds of a trade union or an employer's organisation to -

(i) provide benefits to a member of a trade union or employer's organisation, other than a benefit under a contributory provident or benevolent fund, or pensions scheme or another similar scheme; or

(ii) furnish contributions to an employer or a worker who is not a member of a trade union or an employer's organisation, in consideration of the employer or worker acting in conformity with the rules or resolutions or the trade union or employer's organisation; or

(c) any bond to secure the performance of any of the abovementioned agreements.

(3) Nothing in this section renders the agreements referred to in sub-

section (2) unlawful.

Objects in restraint of trade not unlawful

105. The objects of a trade union or an employer's organisation shall not, by reason that they are in restraint of trade -

(a) be deemed to be unlawful so as to render a member of the trade union or employer's organisation liable to criminal prosecution for conspiracy or otherwise; or

(b) be unlawful so as to render void or voidable, any agreement or trust.

No effect on certain agreements

106. Nothing in this Act shall affect an agreement -

(a) between partners in their own business; or

(b) in consideration of the sale of the goodwill of a business or of instructions in a profession, trade or handicraft.

Proceedings by and against a trade union or an employers' organisation

107. (1) A registered trade union or employers' organisation may sue, be sued or be prosecuted under its registered name.

(2) Registered trade union or employers' organisation may be sued or prosecuted under the name by which it has been operating or is generally known.

(3) A trade union or an employers' organisation whose registration has been cancelled may sue, be sued or be prosecuted under the name by which it was registered.

(4) Execution for any money recovered from a trade union or employer's organisation in civil proceedings may be issued against any property belonging to or held in trust for it, other than the provident, benevolent or pension fund of a registered trade union or employer's organisation.

Service of legal process

108. A summons, notice or other document required to be served on a trade union or employer's organisation in civil or criminal proceedings, provided that the service is otherwise in compliance with the requirements of any relevant law shall be deemed to be duly served, if it is -

(a) delivered at the registered office of the trade union or employer's organisation;

(b) posted by certified mail to its registered office or registered postal address; and

(c) served personally on the president, the treasurer, the secretary or any officer of the trade union or organisation.

Establishment of Bargaining Councils

109. (1) One or more registered trade unions and one or more registered employers' organisations may establish a bargaining council for a sector by -

(a) adopting a constitution that meets the requirements of section 111; and

(b) obtaining registration of the bargaining council in the same manner as registration of a trade union or employers organisation provided for under section 74.

(2) Notwithstanding subsection (1), the Minister may, in consultation with NACOLA, recommend to a sector to establish a bargaining council.

(3) The Government may be a party to any bargaining council established in terms of subsection (1), if it is an employer in the related sector, in respect of which the bargaining council is established.

(4) If the Government is a party to a bargaining council in terms of subsection (2), any reference to a registered employers' organisation includes a reference to the Government as a party.

(5) A bargaining council may be established for more than one related sector.

Powers and functions of a bargaining council

110. (1) The powers and functions of a bargaining council are to -

(a) develop, negotiate and conclude a collective agreement;

(b) enforce a collective agreement;

(c) prevent and resolve labour disputes, and where the dispute remains unresolved, the council shall appoint an arbitrator who shall be accredited by the DDPR;

(d) establish and administer a fund to be used for resolving disputes;

(e) promote and establish training and education schemes;

(f) establish and administer benefit schemes for the benefit of one or more of the parties to the bargaining council or their members;

(g) provide industrial support services within a sector;

(h) determine by collective agreement, matters which may not be an issue in dispute for purposes of a strike or a lock-out at the workplace; and

(i) develop proposals for submission to the Committee or any other appropriate forum on policy and legislation that may affect the sector.

Constitution of bargaining council

111. (1) The Constitution of every bargaining council shall provide for the -

(a) appointment of representatives of the parties to the bargaining council, of whom half shall be appointed by a trade union which is a party to the bargaining council and the other half by an employers' organisations which

is a party to the bargaining council, and the appointment of alternates to the representatives;

(b) circumstances and manner in which the representatives shall vacate their seats and the procedure for replacing them;

(c) rules for the convening and conducting of meetings of the representatives, including the quorum required for and the minutes to be kept of those meetings;

(d) manner in which a decision is made;

(e) appointment or election of an office-bearer and official, their functions and the circumstances and manner in which they may be removed from office;

(f) establishment and functioning of committees;

(g) determination through arbitration by the arbitrators accredited by the DDPR of any dispute arising between the parties to the bargaining council about the interpretation or application of the bargaining council's constitution;

(h) procedure to be followed, if a dispute arises between the parties to the bargaining council;

(i) procedure to be followed if a dispute arises between a registered trade union that is a party to the bargaining council, or its members or both, are a registered employers' organisation which is a party to the bargaining council;

(j) procedure for exemption from a collective agreement;

(k) banking and investment of funds;

(l) purposes for which its funds may be used;

(m) delegation of its powers and functions; and

(n) procedure for;

(i) changing the constitution; and

(ii) procedure for its dissolution.

PART V - COLLECTIVE BARGAINING

Recognised and representative trade unions

112. (1) For the purposes of this section -

(a) "a recognised trade union" means a registered trade union which is recognised by an employer's organisation as a collective bargaining partner;

(b) "a representative trade union" means a registered trade union which represents the majority of the workers in the employ of an employer; and

(c) "the majority of workers in the employ of an employer" means over 50% of those workers.

(2) An employer shall bargain collectively in good faith with a representative trade union.

(3) In any collective bargaining relationship -

(a) a recognised trade union shall bargain in good faith with any employer or employer's organisation; and

(b) an employer or employer's organisation shall bargain in good faith with the recognised trade union.

(4) A breach of a provision of this section shall be an unfair labour practice.

Resolution of disputes on representativity

113. (1) The DDPR shall determine any dispute referred to it which seeks to verify whether a registered trade union is most representative.

(2) In order to make the determination under subsection (1), an arbitrator may -

(a) make any necessary inquiries;

(b) if appropriate, conduct a ballot of the members; and

(c) consider any other relevant information.

Reasonable facilities for conferring

114. (1) An employer shall allow an officer of a trade union whose members include some of his workers, reasonable facilities for conferring with the employer and his workers on matters affecting the employer and those members.

(2) A person who fails to give such reasonable facilities commits an unfair labour practice.

(3) The granting of such facilities shall not impair the efficient operation of the undertaking concerned.

Deduction of trade union dues

115. (1) An employer shall -

(a) not deduct from a worker's remuneration, any fee due to a trade union that is not registered under this Act; and

(b) only deduct a fee due to a registered trade union from a workers' wages, if -

(i) the trade union represents more than 35% of the employer's workers; and

(ii) a worker has authorised the deduction in writing or a provision in a collective agreement has authorised the deduction.

(2) An employer shall stop deducting a fee due to a registered trade union within one month of being notified, in writing, by a worker concerned that they have withdrawn the authorisation referred to in subsection (2)(b).

(3) An employer who has deducted fees in terms of this section -

(a) may retain as a collection fee an amount not exceeding five percent of the total amount deducted; and

(b) shall pay the remaining money deducted to the trade union within fifteen days of the end of the month in which the deductions were made, together with a statement reflecting the names of the worker, the amounts deducted and the date of the deduction.

Trade union access to the premises of the employer

116. (1) An employer shall not unreasonably refuse a representative or official of a trade union that represents its workers, access to the employer's premises -

(a) during working hours, to meet with representatives of the employer; and

(b) outside of working hours -

(i) to recruit members;

(ii) to hold a meeting of members; or

(iii) to perform any trade union functions in terms of a collective agreement, the trade union's constitution or this Act.

(2) An employer may require proof that an individual claiming to be an authorised officer or official of a trade union for the purposes of subsection

(1) is in fact duly authorised to represent the union.

(3) The exercise of the rights conferred under subsection (1) are subject to -

(a) a trade union giving reasonable notice; or

(b) any other condition which is reasonable, taking into account the effective performance of the employer's operations and any security considerations.

Workplace union representative

117. (1) The members of a registered trade union are entitled to elect from among themselves a workplace union representative.

(2) An employer and a trade union shall undertake to conclude an agreement concerning the number of union representatives and the constituencies that they will represent.

(3) If an agreement cannot be reached, a dispute may be referred to the DDPR in terms of section 42.

(4) An employer shall provide a facility which is reasonably necessary for the purposes of conducting an election contemplated in subsection (1).

Interference by employers in trade union affairs

118. (1) An employer or a worker commits an unfair labour practice, if the -

(a) employer -

(i) takes part in the formation of a worker's trade union or with the intention of influencing the trade union; or

(ii) contributes, in money or money's worth to that trade union; or

(b) worker -

(i) takes part in the formation of an employer's union with the intention of influencing the union; or

(ii) contributes, in money or money's worth to that trade union.

No interference by trade union official or other person

119. (1) No officer of a trade union or other person shall -

(a) attempt without the consent of an employer, to persuade or induce a worker to become a member or officer of a trade union; and

(b) without the consent of the employer, confer with a worker on trade union matters.

(2) While the worker is on the premises of the employer during normal working hours.

(3) A person who contravenes this section commits an unfair labour practice.

Improper conduct by employer or trade union official or offices

120. (1) It is an unfair labour practice for an -

(a) employer or any person acting on behalf of the employer, to offer a financial or other material inducement or otherwise seek to improperly induce an official or officer of a trade union to do or omit to do any act on behalf of the union or its members;

(b) a worker or any person acting on behalf of the worker, to offer a financial or other material inducement or otherwise seek to improperly induce an official or officer of the employer or employer's union, to do or omit to do any act on behalf of the employer or members of the employer's union;

(c) official or officer of a trade union, to accept any financial or other material inducement from an employer or any person acting on behalf of an employer, that was given with the intention of inducing the official or officer to do or omit to do any act on behalf of the trade union or its members; and

(d) employer or any person acting on behalf of an employer, to accept any financial or other material inducement from an official or officer of a trade union, that was given with the intention of inducing the official or officer to do or omit to do any act on behalf of the employer or his officials or officers.

(2) Where the DDPR determines that a person has committed an unfair labour practice in terms of subsection (1), an arbitrator shall award compensation.

(3) The amount for compensation awarded by the arbitrator under subsection (3), shall be such amount as the arbitrator considers just and equitable in all circumstances of the case.

Collective agreements

121. A collective agreement shall -

(a) be reduced in writing and duly signed for and on behalf of the parties to the agreement by a trade union and an employer's organisation;

(b) contain a date on which the agreement enters into force and an expiry date of the agreement;

(c) take precedence over individual contracts of employment and minimum wages, except for those stipulations that are more favourable to workers; and

(d) be deposited with the office of the Registrar.

Legal effect and registration of a collective agreement

122. (1) A collective agreement binds -

(a) the parties to the collective agreement;

(b) each party to the collective agreement and the members of every other party to the collective agreement, in so far as the provisions are applicable between them; and

(c) a member of a registered trade union and an employer who is a member of a registered employer's organisation which is a party to the collective agreement if the collective agreement regulates the terms and conditions of employment.

Binding nature of collective agreement concluded in bargaining council

123. (1) A collective agreement concluded in a bargaining council binds -

(a) the parties to the bargaining council who are also parties to the collective agreement;

(b) each party to the collective agreement and the members of every other party to the collective agreement in so far as the provisions of the agreement apply to the relationship between the party and the members of the other party; and

(c) a member of a registered trade union which is a party to the collective agreement and an employer who is a member of a registered employers' organisation which is a party, if the collective agreement regulates -

(i) terms and conditions of employment; or

(ii) the conduct of employers in relation to their workers; or

(iii) the conduct of the workers in relation to their employers.

Extension of collective agreement concluded in a bargaining council

124. (1) A member of a bargaining council may ask the Minister, in writing, to extend a collective agreement concluded in a bargaining council to any non-parties to the collective agreement which is within its registered scope and is identified in the request, if at a meeting of the bargaining council -

(a) one or more registered trade unions whose members constitute the majority of the members of the trade union which is a party to the bargaining council vote in favour of the extension; and

(b) one or more registered employers' organisations, whose members employ the majority of the workers employed by the members of the employers' organisations which is a party to the bargaining council, vote in favour of the extension.

(2) Within sixty days of receiving the request, the Minister shall, extend a collective agreement as requested, by publishing a notice in the Gazette, declaring that, from a specified date and for a specified period, the collective agreement will be binding on the non-parties specified in the notice.

(3) A collective agreement may not be extended in terms of subsection (2), unless the Minister is satisfied that the -

(a) decision by the bargaining council to request the extension of the collective agreement complies with the provisions of subsection (1);

(b) majority of all workers who, upon extension of the collective agreement, fall within the scope of the agreement, are members of a trade union which is a party to the bargaining council;

(c) members of an employers' organisation which is a party to the bargaining council shall, upon the extension of the

collective agreement, be found to employ the majority of all the workers who fall within the scope of the collective agreement;

(d) non-parties specified in the request, fall within the bargaining council's registered scope;

(e) provision is made in the collective agreement for an independent body to hear and decide, as soon as possible, any appeal brought against -

(i) the bargaining council's refusal of a non-party's application for exemption from the provisions of the collective agreement;

(ii) the withdrawal of such an exemption by the bargaining council;

(f) collective agreement contains criteria that must be applied by -

(i) an independent body when it considers an appeal;

(ii) the criteria which promotes the primary objects of this Act; and

(g) terms of the collective agreement do not discriminate against non-parties.

(4) Notwithstanding subsection (3)(b) and (c), the Minister may extend a collective agreement in terms of subsection (2), if -

(a) the parties to the bargaining council are sufficiently representative within the registered scope of the bargaining council; and

(b) the Minister is satisfied that failure to extend the agree ment may undermine collective bargaining at sectoral level or in the public service as a whole.

(5) After a notice has been published in terms of subsection (2), the Minister, at the request of the bargaining council, may publish a further notice in the Government Gazette -

(a) extending the period specified in the earlier notice by a further period determined by the Minister;

(b) if the period specified in the earlier notice has expired, declaring a new date from which and a further period during which, the provisions of the earlier notice will be effective; or

(c) the provisions of subsections (3) and (4), read with the changes required by the context, apply in respect of the publication of any notice in terms of this subsection.

(6) The Minister, at the request of the bargaining council, shall publish a notice in the Gazette cancelling all or part of any notice published in terms of subsection (2) or (5) from a date specified in the notice.

(7) Whenever a collective agreement in respect of which a notice has been published in terms of subsection (2) or (5) is amended, amplified or replaced by a new collective agreement, the Minister, at the request of the bargaining council, shall publish the amendment, amplification or replacement in the Gazette.

(8) If the parties to a collective agreement that has been extended in terms of this section terminate the agreement, they shall notify the Minister in writing.

PART VI - THE EMPLOYMENT RELATIONSHIP AND TERMINATION

Employment relationship

125. (1) An employment relationship is determined by existence of the following non-exhaustive indicators, that is, work which:

(a) is carried out according to the instructions and under the control of another party;

(b) involves the integration of the worker in the organisation of the enterprise;

(c) is performed solely or mainly for the benefit of another person, juristic or otherwise;

(d) is carried out personally by the worker;

(e) is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work;

(f) is of particular duration and has a certain continuity;

(g) requires a worker's availability;

(h) involves the provision of tools, materials and machinery by the party requesting the work;

(i) depends on the period of remuneration a worker paid;

(j) remuneration may constitute the workers sole source of income;

(k) is paid partly in kind such as food, lodging, transport or any other similar non-monetary offer;

(l) recognises rest entitlements such as weekly rest and annual holidays;

(m) travelling undertaken by a worker in order to carry out the work, is paid by the party requesting the work; or

(n) has absence of financial risk for the worker.

Liability in case of a worker employed by sub-contractor

126. (1) Where a principal sub-contracts with a sub-contractor in the course or for purposes of trade or business, for execution by the sub-contractor of the whole or any part of a work undertaken by the principal, and the sub-con-

tractor is not traceable -

(a) the principal shall pay any monies or compensation under the provisions of this Act which he would have been liable to pay if the worker was directly or immediately employed by him; and

(b) where the principal has paid a worker in terms of paragraph (a), the principal is entitled to indemnity from the sub-contractor of all the monies or compensation he has paid to the worker in accordance with this section.

(2) The principal shall give notice to a sub-contractor who is entitled to intervene in any application made against the principal, where a claim or application for any monies or compensation is made under the provisions of this section against him.

(3) Where a subcontractor is engaged by the principal, he shall -

(a) register his business; and

(b) have an operating office in Lesotho.

Types of contract of employment

127. (1) A contract of employment may take the form of a contract -

(a) without reference to limit of time;

(b) for a period of fixed duration; or

(c) to perform some specific work or to undertake a specified journey.

(2) A worker contracted on part-time basis shall not work less than 5 hours in a day, and not work less than 40 hours in a week or less than 160 hours in a month.

(3) A contract without reference to limit of time is a contract which contains no termination date and may be terminated by either party, subject to

the provisions of this Act concerning dismissal and notice of termination.

(4) A contract for one period of fixed duration shall set forth its date of termination and shall, subject to the provisions of section 148 concerning dismissal, automatically terminate on that date and no notice of termination shall be required of either party.

(5) Notwithstandimg sub-clause (4), where a contract provides for a renewal, an employer shall provide notice of termination or renewal.

(6) A contract to perform some specific work or to undertake a specified journey shall terminate upon the completion of the work or journey and no notice of termination shall be required of either party, but an employer who terminates such a contract before its completion shall pay the worker all wages and other remuneration that would have been owing to the worker if he had continued to work until the completion of the contract.

Probation

128. (1) A worker may initially be employed for a probationary period not exceeding four months.

(2) At any time during the continuance of the probationary period or immediately at its end, a worker may be dismissed with one week's notice.

(3) The probationary period may be extended beyond a period of four months only with the leave in writing to the Labour Commissioner.

(4) Nothing in this section shall prevent the parties to a contract from agreeing on a period of probation of up to one year in respect of persons holding management or professional positions or employed in a professional capacity.

Transfer of business

129. (1) In this section -

(a) "business" includes the whole or a part of any business, trade, undertaking or service; and

(b) "transfer" means the transfer of a business by the old

employer to another new employer as a going concern.

(2) If a transfer of a business takes place, unless otherwise agreed -

(a) the new employer is automatically substituted in the place of the old employer in respect of all contracts of employment in existence immediately before the date of transfer;

(b) all the rights and obligations between the old employer and a worker at the time of transfer continue in force as if they had been rights and obligations between the new employer and the worker;

(c) anything done before the transfer by or in relation to the old employer, including the dismissal of a worker or the commission of an unfair labour practice or act of unfair discrimination, is considered to have been done by or in relation to the new employer; and

(d) the transfer does not interrupt a workers' continuity of employment and the workers' contract of employment continues with the new employer as if continuation of work is with the old employer.

(3) A new employer complies with subsection (2), if he employs a transferred worker on such terms and conditions that are on the whole, not less favourable to the worker, than those on which they were employed under by the old employer.

(4) The provisions of subsection (3) do not apply to a worker, if any of their conditions of employment are determined by a collective agreement.

(5) The provisions of subsection (2) do not prevent a worker from being transferred to a pension provident retirement or similar fund, other than the fund to which the worker belonged to, prior to the transfer if such a scheme does not leave the worker worse of.

Notice of termination

130. (1) In a contract without reference to limit of time, either party may terminate the contract upon giving the following notice where the worker has been continuously employed for -

(a) one year or more, one month's notice;

(b) more than six months but less than one year, a fortnight's notice; or

(c) less than six months, one week's notice.

(2) Nothing in this section shall prevent -

(a) the parties to a contract from agreeing on a longer period of notice of termination than is provided by this section;

(b) an employer waiving the right to receive a notice on any occasion;

(c) a worker from accepting payment *in lieu* of a notice in accordance with section 131;

(d) an employer from declining to give a notice of termination where the stated reason for the dismissal is a serious misconduct of such a nature that it would be unreasonable for the employer to continue to employ that worker during the notice period;

(e) an employer from setting a retirement age which would be applicable to all workers, which shall be sixty years minimum; or

(f) either party from otherwise terminating the contract for lawful cause in accordance with the provisions of this Act.

Payment *in lieu* of notice

131. (1) An employer may pay a worker *in lieu* of providing notice of termination under section 130.

(2) In such cases, the worker shall be paid a sum equal to the minimum notice period provided for in the act or the notice period agreed to by the employer and worker, including all wages due to the worker.

(3) Where the termination of employment under a contract without reference to limit of time is at the initiative of a worker in circumstances in which notice was required and the employer has not waived the right to notice, the worker may be ordered to pay the employer a sum equal to the basic wages to which the worker would have been entitled during the portion of the notice period that was not observed.

(4) The provision of subsection (3) may not be invoked, if the termination of employment occurred in the circumstances referred to in section 130 (c).

Form of notice and cancellation of a contract

132. (1) Notice to terminate a contract by the parties to the contract shall be in writing and the day on which the notice is given shall not be included in the period of notice.

Accrued rights of parties on termination

133. (1) The termination of any contract under the provisions of this Part shall be without prejudice to any accrued rights or liabilities of either party under the said contract at the date of termination.

(2) In the case of the death of a worker, his accrued rights and liabilities, except the duty to perform a service or work under a contract, shall devolve upon his dependants.

Certificate of Service

134. (1) An employer shall, on termination of a contract, if so requested by a worker whom he has continuously employed for more than one month, fur-

nish the worker with a certificate of service which identifies the parties and shows the period of service and the nature of the employment.

(2) Any employer who refuses or otherwise fails to comply with the provisions of subsection (1) commits an unfair labour practice.

Distribution of assets of a deceased worker

135. (1) After the death of a worker, an employer shall, as soon as practicable, pay or deliver to the Labour Commissioner for distribution in accordance with the provisions of this Act, all wages and other remuneration due to and all property belonging to the deceased worker which is in the employer's possession.

(2) Subsection (1) does not apply where an estate of a deceased worker involves a minor child.

(3) Where an estate of a deceased worker involves a minor child, it shall be dealt with in accordance with the Children Protection and Welfare Act, 2011 and the Administration of Estates Proclamation, 1935[7].

Severance payment

136. (1) A worker who has completed more than one year of continuous service with the same employer shall be entitled to receive, upon termination of his services, a severance payment equivalent to two week's wages for each completed year of continuous service with the employer.

(2) A worker who has been fairly dismissed for misconduct, is not entitled to a severance payment.

(3) For purposes of subsection (1), the two week's wage referred to, shall be wages at the rate payable at the time the services are terminated.

(4) The right to severance pay in accordance with this section shall apply as from the date of entry into force of this Part.

(5) Where an employer operates some other separation benefit scheme which provides a more advantageous benefit for a worker than those that are contained in subsection (1), the employer shall choose to pay a more

advantageous separation benefit than severance pay.

(6) A worker is not entitled to claim both severance and other separation benefit, unless the employer is willing to pay both.

Penalty for non-payment of severance payment

137. (1) An employer who fails to make a severance payment in accordance with section 136 commits an offence and is liable, on conviction, to a fine not exceeding Five Thousand Maloti or imprisonment for a period not exceeding thirty months.

Dismissal

138. (1) For the purposes of this section "dismissal" shall include -

(a) termination of employment at the initiative of the employer;

(b) the ending of any contract for a period of fixed duration or for the performance of a specific task or journey without such contract being renewed, but only in cases where the employee reasonably expected the employer to renew the contract on the same or similar terms and employer did not renew it or offered to renew it on less favorable terms; and

(c) resignation by a worker in circumstances involving such unreasonable conduct by the employer rendering continued employment of the worker intolerable or by reason of the employer's breach of a term of the contract, which entitles the worker to terminate the contract of employment without notice.

Reasons for dismissal

139. (1) A worker shall not be dismissed, unless there is one of the following valid reasons for termination of his employment whether adequate notice is given or not, if the dismissal is based on the -

(a) capacity of the worker to perform the work that the worker is employed for;

(b) conduct of the worker; or

(c) operational requirements of the undertaking, establishment or service.

(2) Any other dismissal will be unfair unless, having regard to all the circumstances, the employer can sustain the burden of proof to show that he acted reasonably in treating the reason for dismissal as sufficient grounds for terminating employment.

(3) Where a worker is dismissed under subsection (1), the worker is entitled to have an opportunity at the time of dismissal to defend himself or herself against the allegations made, unless in light of the circumstances and reason for dismissal, the employer cannot reasonably be expected to provide this opportunity.

(4) The exercise or non-exercise of the right provided for in subsection (3), shall not act as any bar to a worker challenging the dismissal pursuant to the terms of a collective agreement or contract of employment, or under the provisions of this Act.

Automatically unfair dismissal

140. (1) A dismissal of a worker for any of the following reasons is automatically unfair -

(a) trade union membership or participation in trade union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing in good faith of a complaint or grievance, or the participation in a proceeding against an employer involving the alleged violation of this Act, other laws or regulations, or the terms of a collective agreement or award;

(d) race, colour, sex, marital status, pregnancy, religion, political opinion, national extraction or social origin, HIV/AIDS status or any other discriminatory category;

(e) participation in a protected strike; and

(f) refusing to carry out work under conditions that are likely to put his life in danger or harm him.

(2) Subsection (1)(e) does not preclude an employer from dismissing an employee in accordance with the provisions of this Act for a valid reason -

(a) related to the employee's conduct during a strike; and

(b) based on the employer's operational requirements.

Written statements of reasons for dismissal

141. (1) The employer shall provide a written statement of the reason for dismissal to a worker who is dismissed, as defined in section 139 (1)(a) and (b).

(2) Such statement shall be given to the worker either at the time of dismissal or within two weeks of the dismissal having taken effect.

(3) A written statement and records of a disciplinary proceedings shall be admissible in evidence in legal proceedings.

(4) An employer who fails to comply with the provisions of subsection (1) commits an offence and is liable on conviction to a fine not exceeding One Thousand Maloti or imprisonment for a period not exceeding six months.

(5) Where an employer has given no written statement in accordance with subsection (1), or if the material details of the statement are incorrect, the Labour Court or Arbitrator may -

(a) declare the reasons for the dismissal; and

(b) award, in addition to other possible relief, two weeks' wages to the worker.

Excluded categories to a claim of unfair dismissal

142. (1) Subject to subsection (2), the following categories of workers shall not have the right to bring a claim for unfair dismissal, a worker:

(a) who is employed for a probationary period as provided for under section 128;

(b) engaged on a casual and part time basis; and

(c) who resigns to avoid a disciplinary hearing.

(2) A worker in a category covered by subsection (1) shall none the less be entitled to bring a claim for unfair dismissal alleging that the dismissal was for any of the reasons specified in section 139 (1)(c) or 141(1).

Exemptions

143. (1) The Minister may, by notice published in the Gazette, exempt from the provisions of this Act relating to unfair dismissal, any group of workers if the Minister is satisfied that there is available to such a group, whether under statute or not, a remedy for dismissal analogous to a claim for unfair dismissal, following consultations with representative worker's and employer's organisations.

Remedies

144. (1) If the Labour Court or Arbitrator holds the dismissal to be unfair, it shall, if a worker so wishes, order the reinstatement of the worker in his job without loss of remuneration, seniority or other entitlements or benefits which the worker would have received had there been no dismissal.

(2) The Labour Court or Arbitrator shall not make an order to reinstate a worker if it considers reinstatement of the worker to be impracticable in light of the circumstances.

(3) If the Labour Court or Arbitrator decides that it is impracticable in light of the circumstances for the employer to reinstate a worker in employment, or if a worker does not wish reinstatement, the Labour Court or Arbitrator shall fix an amount of compensation to be awarded to the worker *in lieu* of reinstatement.

(4) The amount of compensation awarded by the Labour Court or Arbitrator shall be an amount the Labour Court or Arbitrator considers just and equitable in all circumstances of the case.

(5) In assessing the amount of compensation to be paid, the Labour Court or Arbitrator shall take into account -

(a) whether there has been any breach of contract by either party;

(b) whether the worker has failed to take such steps as may be reasonable to mitigate his losses;

(c) the length of service of the worker;

(d) whether the worker is employable;

(e) the workers' employment record;

(f) the position the worker held during his employment;

(g) loss of remuneration; and

(h) the procedural and substantive fairness.

(6) The Labour Court and DDPR shall, in awarding the remedies provided for under this section, consider circumstances surrounding the case if it appears that there are systemic delays.

PART VII - RECRUITMENT, LOCAL AND FOREIGN CONTRACTS

Private employment agencies

145. This part shall apply to the recruiting, procuring, hiring, engaging, supplying and forwarding of persons who are to be employed wholly within or partly outside Lesotho.

No engagement in recruiting without licence

146. (1) Subject to the provisions of this Part, no person shall engage in or carry on the business of a private employment agency, unless he is the holder of a valid private employment agency licence.

(2) A person who engages in or carries on the business of a private employment agencies contrary to the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding Three Hundred Thousand Maloti or imprisonment for a period not exceeding Fifteen years or both.

Private employment agencies, licences and conditions

147. (1) A person who wishes to make an application for a private employment agency's licence to engage in or carry on business as a private employment agency, shall submit an application to the Director, National Employment Service.

Cancellation of an employment licence

148. (1) The Director, National Employment Service may cancel or suspend an employment licence under the following conditions:

(a) where an expatriate fails to pay restitution for victims on harm caused by the negligence of the recruiter;

(b) if the holder of the employment license provided false information when making an application for employment and such act is discovered after the license is issued;

(c) if a director of a recruitment agency or any person who heads it is prohibited from operating a business for a certain period; or

(d) if a director of a recruiting agency or any person who heads it changes the physical address and names of the company without informing the Director, National Employment Services.

Period, fee and transfer of licence

149 (1) A private employment agency licence shall be valid, unless previously cancelled or suspended, for such period not exceeding twelve months from the date of issue as may be specified, and the Minister may prescribe a fee to be paid for such a licence.

(2) The Minister may prescribe different fees for different licences under subsection (1).

(3) A private employment agency licence is not transferable, but the Minister may make regulations to provide for the holder of a power of attorney given lawfully by a licensed private employment agency to engage in recruiting or in operations as a private employment agency.

Records to be kept by private employment agencies

150. (1) A private employment agency shall keep records, books, accounts and statistics from which every recruiting operation can be verified, and every person recruited or forwarded to a place of employment outside Lesotho can be identified.

(2) The Minister may by regulation prescribe the records, books, accounts and statistics which a private employment agency is required to keep and the returns which they are required to render.

(3) The Director, National Employment Services may, by notice, in writing, and whenever he considers it practicable and necessary, require a private employment agency to issue to each recruited person, a document, in writing, containing particulars of the recruited person's -

(a) identity;

(b) prospective conditions of employment; and

(c) any other relevant particulars as the notice may require.

Renewals of licences, cancellations and appeals

151. (1) A private employment agency licence issued under this Part may be renewed at the discretion of the Director, National Employment Service upon being satisfied that the conditions have been satisfactorily observed and the same provisions shall apply to the renewal of a licence as they apply to its issuance.

(2) Where, after due inquiry, the Director, National Employment Service is satisfied that the holder of a private employment agency licence issued under this Part has been guilty of conduct which manifests unfitness to engage or assist in operations as a private employment agency, has been convicted of an offence against the provisions of this Act or has failed to comply with the conditions of the private employment agency licence, may for reasons to be stated in writing and communicated to the holder, cancel or suspend the licence or permit.

(3) An applicant for a private employment agency licence under this Part who is aggrieved by a decision of the Director, National Employment Service to refuse to issue or renew the private employment agency licence subject to any condition, or to cancel or suspend the same, may appeal to the Labour Court within thirty days from the date on which the decision complained of was communicated to the applicant, and the Labour Court may uphold, rescind or vary the decision.

Offer to induce person to proceed abroad under informal contract

152. (1) Any person who -

(a) employs or engages or knowingly assists in the employment or engagement of any person with the intention that, when so employed or engaged, the person shall proceed outside the limits of Lesotho; or

(b) induces or attempts to induce a worker to proceed outside the limits of Lesotho for the purposes of employment; shall, unless he has, under this Act, duly entered into a contract of foreign service with such person or worker, as the case may be,

commits an offence and is liable, on conviction, to a fine not exceeding Ten

Thousand Maloti or to imprisonment for a period not exceeding five years or both.

(2) Subsection (1) shall not apply to cases where the employee is required to perform a journey to or from any place outside Lesotho, if such journey may reasonably be expected to be completed within two months of its commencement.

Public officer, chief or headman not to recruit

153. (1) A person employed in the public service, a chief or headman is prohibited to -

(a) engage in recruiting; or

(b) bring pressure to bear upon any person with a view to his recruitment; or

(c) receive from any source, remuneration of any kind or other inducement for engaging in recruiting.

(2) Any person who -

(a) contravenes the provisions of subsection (1); or

(b) offers any remuneration or other inducement for engaging or recruiting to any person employed in the public service, chief or headman, or any person employed by the chief or headman,

commits an offence and is liable, on conviction, to a fine not exceeding One Thousand Maloti or to imprisonment for a period not exceeding six months or both.

Recruiting of head of family

154. (1) The recruiting of the head of a family shall not be deemed to include the recruiting of any member of the family.

(2) A recruited person shall not without his consent be separated

from his wife or husband and his minor children who have been authorised to accompany him to and remain with him at the place of employment.

(3) An authorisation to accompany a recruited person shall, in default of agreement to the contrary before the departure of the recruited person from the place of recruiting, be deemed to authorise the husband or wife and the minor children of such person to remain with that person for the full duration of his term of service.

Age at recruitment

155. (1) No person under the age of eighteen years shall be recruited for employment wholly or in part outside Lesotho.

(2) Any person who wilfully or without reasonable cause recruits or procures the recruitment of any person contrary to the provisions of this section commits an offence and is liable, on conviction to a fine not exceeding Twenty Thousand Maloti or to imprisonment for a period not exceeding ten years or both.

Repatriation

156. (1) Any recruited person who -

(a) becomes incapacitated by illness or accident during the journey to the place of employment; or

(b) is found on medical examination to be unfit for employment; or

(c) is not engaged after recruiting for a reason for which he or she is not responsible; or

(d) is found by an attesting officer to have been recruited by misrepresentation, fraud, illegal pressure or mistake, shall be returned by the employer to his place of residence.

(2) A recruited person who is returned to the place of recruitment under this section, shall be entitled to be paid by the employer or private em-

ployment agency, such an amount as the Minister may by regulation prescribe, for the time during which he been at the disposal of that employer or private employment agency.

(3) A worker who is brought to the place of employment by the employer or by a person acting on behalf of such employer shall be repatriated, at the expense of the employer, to the worker's place of engagement in the following circumstances:

(a) on the expiry of the period of service provided for in the contract;

(b) on the termination of the contract -

(i) by reason of the workers' inability to comply with the provisions of the contract due to accident, illness, physical or mental incapacity revealed by a medical examination;

(ii) for compassionate reasons approved by the employer; or

(iii) by reason of the employer's inability to comply with the terms of contract;

(c) where an employer and a worker have agreed that it is in their mutual interest to terminate the contract, but this shall not apply where the contract is being terminated solely at the request of the worker, except for compassionate reasons under subsection (1)(c); or

(d) rescission of contract by a court

(4) A worker who is repatriated under the provisions of this section shall be provided with -

(a) suitable transport;

(b) subsistence expenses or rations during the journey; and

(c) subsistence expenses or rations during the period, if any, between the date of termination of the contract and the date of the start of the journey.

(5) An employer shall not be liable to provide subsistence expenses or rations in respect of any period during which the journey has been delayed by the employee's own choice.

(6) When a dependent relative of a worker is brought to the place of employment by an employer and the worker is being repatriated at the expense of the employer, or the worker has died, the provisions of subsections (1) and (2) shall, *mutatis mutandis*, apply to the dependent relative.

(7) An employer who or a private employment agency which fails to comply with any provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding Ten Thousand Maloti or for a period not exceeding five years imprisonment or both.

Family of recruited persons

157. (1) Where the family members of a recruited person have been authorised by the employer who did the recruiting to accompany the person to the place of employment, the employer shall take all necessary measures of safeguarding the family member's health and welfare during the journey.

Termination of contracts of foreign service on illness

158. (1) A contract of foreign service may be terminated before its expiration if -

(a) for any reason a worker is unable to fulfil the conditions of the contract;

(b) for reasons of an illness or accident which incapacitates the worker for more than thirty days, the worker is unable to fulfil the conditions of the contract.

(2) Where the contract is being terminated under subsection (1), the employer shall immediately report the circumstances to the nearest labour representative and to the attesting officer of the area in which the contract was at-

tested in Lesotho and shall certify, in such report, that all rights of a worker and where applicable those of his dependent relatives under the contract, including the payment of wages, worker's compensation benefits, if any, and all repatriation expenses have been fulfilled.

(3) Where the report required by subsection (2) has not been made within two weeks of a worker returning to Lesotho, an attesting officer may issue a written request to the agent of the employer who signed the contract in Lesotho on behalf of the employer, requiring the agent to provide the report within four weeks of the request being made and failure on the part of the agent to comply with such request shall constitute an offence.

(4) A contract of foreign service shall not be terminated on the death of an employer, but shall continue to have effect until the expiration of the period after which it would have terminated and due notice of termination been given on the day on which the employer died and during such period a worker and where applicable, his dependent relatives, shall be entitled to all benefits provided for in the contract but the worker shall be bound, if so required, to perform the services provided for in the contract for the person legally representing the deceased employer in his capacity as an employer.

Transfer and extension of contracts

159. (1) Where an employer and a worker mutually agree that the contract between them should be varied by the substitution of a new employer to be named in the contract, a labour representative or an attesting officer may authorise the variation by substituting the name, address and description of the new employer for the original employer and endorsing both the employer's and worker's copy of the contract.

(2) Where an employer and a worker mutually agree that the contract between them should be extended beyond the expiry date of the contract, a labour representative or an attesting officer may authorise such extension by endorsing both the employer's and worker's copy of the contract, but -

(a) the period of the extension shall not exceed six months; and

(b) the Director National Employment Service may permit a longer period of extension where he considers it in the

interests of the worker concerned to do so.

(3) Before taking any action permitted under subsection (1) or subsection (2), the labour representative or an attesting officer or shall -

(a) satisfy himself that a worker fully understands the nature of the transaction and that his consent is freely, made and not as a result of coercion, undue influence, misrepresentation, fraud or mistake;

(b) in any case where the labour representing or an attesting officer considers that a medical examination is necessary before the transaction is entered into, he may request a worker to be given the medical examination.

(4) Where an attesting officer has endorsed a contract between an employer and a worker in the manner provided for in this section, he shall notify the attesting officer in Lesotho who originally attested the contract of the action the former has taken.

(5) The Minister may, by regulations, prescribe the fees and charges to be paid by employers for endorsement of contracts as provided for in this section.

Minister may require guarantee to cover deferred pay

160. Where a contract of foreign service provides for the voluntary deferral of a portion of a worker's wages, the Minister may, by regulation, require that the employer entering into the contract to provide, in such form as may be prescribed, a guarantee covering the remittance of the wages to a bank in Lesotho.

Employment of persons who are not citizens of Lesotho

161. (1) No employer shall employ any person in Lesotho who is not a citizen of Lesotho, and no such person shall accept employment in Lesotho, unless that person is in possession of a valid work permit issued by the Director, National Employment Service.

(2) No person who is not a citizen of Lesotho may work as a partner in Lesotho, unless that person is in possession of a valid work permit issued by

the Director, National Employment Service.

(3) An employer who employs any person and any person who accepts employment in contravention of subsection (1) or (2) commits an offence and is liable, on conviction, to a fine not exceeding Five Thousand Maloti or a period of imprisonment not exceeding six months or both.

(4) For purposes of this section, a person who is not a citizen of Lesotho, but who is engaged in Lesotho to provide temporary services shall not be considered to be employed or to have accepted employment

Application for work permit

162. (1) A person who wishes to make an application for the issue work permit, including an application for the renewal of such permit, shall make the application to the Director, National Employment Service.

(2) The application shall be made to the specific type of a certificate as defined in the regulations, and as set out in the Fourth Schedule.

(3) Where a person has made an application under subsection (1), a prospective employer of the person shall submit the application to the Director, National Employment Service as set out in the Fourth Schedule.

(4) A work permit and any extension of it shall be in the forms set out in the Fourth Schedule.

Conditions for work permit

163. (1) The Minister may, in consultation with the NACOLA, issue regulations which set the conditions under which a work permit may be issued.

(2) The Director, National Employment Service shall before he grants a non-citizen of Lesotho with a work permit, certify that within the labour market database there is no citizen of Lesotho who qualifies for the available employment.

(3) The Minister shall, on the advice of the NACOLA, specify by regulations, the types of work permits, and the duration of validity of each type.

(4) The Director, National Employment Service has the power to renew or cancel a work permit.

(5) The forms to be used and fees to be paid in relation to this section shall be as specified in the Fourth Schedule.

Production of certificates

164. (1) An employer of foreign labour shall within, four days of being requested to do so by the Director, National Employment Service, produce evidence to the satisfaction of the Director, National Employment Service that every non- citizen of Lesotho is employed by that employer, is in possession of a valid work permit.

(2) An employer or a non- citizen of Lesotho, who fails to comply with the provisions of subsections (1) and (2), commits an offence and is liable on conviction to a fine not exceeding Two Thousand Maloti or imprisonment for a period not exceeding six months.

Wage fixing and Conditions of work

165. (1) Wages may be fixed and conditions of work determined by the terms of a contract of employment, a collective agreement, an arbitration award or by a notice published by the Minister in the Gazette, upon the recommendation of the Wages and Conditions of Employment Advisory Board.

(2) A recommendation made or given by the Wages and Conditions of Employment Advisory Board in terms of subsection (1) shall be binding.

Wages notices

166. (1) The Minister shall, where recommendations or proposals have been submitted or resubmitted to him by the Wages and Conditions of Employment Advisory Board, publish, by notice in the Gazette, the minimum wages to be paid and the conditions of employment to be applied to any workers.

(2) The wages notice published in terms of subsection (1) shall specify an effective date subsequent to the date of the wages notice.

(3) Where the date so specified does not correspond to the com-

mencement of the period for which wages are paid, the notice shall, in respect of any workers affected, become operative from the commencement of the next such period following the date specified in the notice.

Statutory minimum wage

167. (1) A wage fixed in terms of section 165 (1) and published in a wages notice is referred to as the statutory minimum wage.

Factors to consider for recommendations or proposals by the Wages and Conditions of work Advisory Board

168. (1) The Wages and Conditions of Work Advisory Board shall take into consideration the following factor's when preparing any recommendation or proposal for submission to the Minister -

(a) the affordability of the proposal;

(b) the likely impact -

(i) of any proposed condition of employment on current employment or the creation of employment;

(ii) on small, medium or micro-enterprises; and on the establishment of new enterprises;

(c) the cost of living;

(d) the alleviation of poverty;

(e) the minimum subsistence level;

(f) any collective agreements providing for remuneration and term and conditions of employment in the sector;

(g) any application of ILO Conventions or Recommendations;

(h) levels of productivity;

(i) social security benefits; and

(j) any other relevant factor.

Review of wages notice and policies

169. The Wages, and Conditions of Work Advisory Board shall review the minimum wages and conditions of work established by wages notice and to consider whether any change in those minimum wages should be recommended to the Minister.

Display in workplace of wages notice

170. An employer to whom a wages notice applies shall display a copy of such wages notice at conspicuous place in a workplace in which a worker to whom the wages notice applies.

Saving as to rights conferred by other laws

171. No notice made under this part shall have effect so as to prejudice or diminish any rights in relation to conditions of work, holidays or remuneration conferred upon a worker by or under this Act, any other law, a collective agreement, an arbitration award or a contract of employment.

Benefits provided by the employer

172. (1) Any reference in this Part to wages shall mean the amount obtained or to be obtained in cash by a worker from his employer, clear of all deductions, except those made in accordance with the provisions in section 180 of this Act.

(2) Wages proposals and notice may also contain a provision -

(a) authorising a specified lawful benefit or advantage to be provided by an employer or some other person under an arrangement with the employer in pursuance of the terms and conditions of any legal or contractual obligation imposed upon the employer, which may be reckoned as

payment of wages in *lieu* of payment in cash;

(b) defining the value at which any such benefit or advantage is to be reckoned; and

(c) relating to legal tender.

Effect and enforcement of wages orders

173. (1) If a contract between a worker to whom a wages notice applies and his employer provides for the payment of a wage lower than the statutory minimum wage or does not provide for the conditions of employment prescribed in a wages notice, it shall have effect as if the statutory minimum wage is substituted for a lower wage and as if the prescribed conditions of employment is inserted, but where the worker is provided with accommodation, the applicable statutory minimum wage may be reduced by an amount as may be determined by the relevant wages order.

(2) If an employer fails to pay a worker to whom a wages notice applies or fails to provide the worker with the conditions of employment prescribed in the notice, the employer commits an offence and is liable, on conviction, to a fine not exceeding Three Thousand Maloti or a period not exceeding one year six months or both, for each such offence.

(3) Where the employer or any other person charged as the person to whose act or default the offence was due has been found guilty of an offence, the court shall order the employer to pay such sum as it finds to represent the difference between the amount which ought to have been paid to the worker by the amount actually paid.

(4) Where a criminal proceeding is brought under this section in respect of an offence consisting of failure to pay the statutory minimum wage and, after notice of such failure has been served by way of summons, warrant or complaint -

(a) on proof of the failure, the court shall order the employer to pay such sum as is found by the court to represent the difference between the amount which ought to have been paid by the employer during the period to the worker by way of wages if the provisions of this Act are complied

with and the amount actually so paid;

(b) the court may order an employer to pay any interest and damages incurred by the worker during the delay or failure of payment of the wages.

(5) The power given by this section for the recovery of sums due from an employer to a worker shall be in addition to and not in derogation of any right to recover such by civil proceedings, and no person shall be liable to pay twice in respect of the same cause of action.

(6) In this section, "court" means a court of subordinate jurisdiction.

Employers not to receive certain payments

174. (1) Where a worker to whom the wages order applies has been exposed to training at the initiative of the employer, it shall be unlawful for his employer to charge the worker for such training.

(2) An employer who has unlawfully received payment from the worker as a result of a training the employer exposed the worker to, such an employer shall be obliged to reimburse the worker for such payment.

(3) Where the employer refuses to reimburse the worker, such refusal shall amount to unfair labour practice.

Records and Notices

175. (1) An employer to whom a wages order applies, shall keep in Sesotho or English such records as are necessary, to show whether he has complied with the provisions of this Part.

(2) The records shall be retained by the employer for a period of at least five years after the date of the last entry.

(3) The Minister may prescribe a notice in Sesotho or English for the purpose of informing a worker of any wages orders affecting the worker and of such other matters, if any, as the Minister may consider necessary.

Payment of wages

176. (1) The wages of a worker shall be paid in legal tender and any agreement where the whole or any part of the wages of a worker is paid in any other manner shall be void.

(2) Notwithstanding the provisions of this Act, an agreement or contract with an employer to provide a worker, as partial remuneration for his services in addition to wages, with food, a dwelling place or such other allowances or privileges as may be customary in the trade or occupation concerned, shall be considered to be legal and not in contravention to the provisions of this Act.

(3) The Minister may make regulations in specified classes of work or in particular cases or contracts which may provide for the partial payment of wages in the form of allowances in kind.

(4) The following conditions shall apply to the partial payment of remuneration in any form other than money wages:

(a) under no circumstances shall an employer give to a worker any noxious drug or any intoxicating liquor by way of remuneration or wages;

(b) any allowances in kind shall be appropriate for the personal use and benefit of a worker and his family;

(c) the value attributed to an allowance or privilege, shall be fair and reasonable in accordance with prevailing prices and in any case, shall not exceed the cost to the employer of supplying the same;

(d) where a worker is provided with accommodation, the statutory minimum wages applicable to the worker, may be reduced by such amount as may be determined by the relevant wages order; and

(e) either party may, at any time by a two months' notice in writing to the other party if they wish to vary the arrangement of payment of wages in legal tender and in kind, and if either party is aggrieved by the proposal, such party may refer the dispute to the DDPR.

(5) An employer is prohibited to impose any restriction on a worker as to the place at which, or the manner in which, or the person with whom, any wages paid to the worker are to expend and any such terms in a contract, shall be unenforceable.

(6) Except where otherwise expressly permitted by the provisions of this Act, the entire amount of wages earned by or payable to a worker, shall be paid -

(a) directly to the worker in legal tender; or

(b) with the worker's consent or at his request in electronic funds transfer, telebanking or any other form of electronic payment.

(7) A worker is entitled to recover a portion of his wages, exclusive of sums lawfully deducted in accordance with the provisions of this Act, as shall not actually have been paid to the worker, in accordance with the provisions of subsection (4).

Place of wage payment

177. (1) An employer shall pay wages to a worker, when made in cash, at or near the workplace or any other place that may be agreed upon by the concerned parties which is not prohibited under this Act.

(2) An employer is prohibited to pay wages to a worker in a place of amusement or a place used for the sale of intoxicating liquor or the retail sale of goods, except in the case of a worker who is employed in such a place.

Wages when due and how apportionable

178. (1) All wages shall be deemed to accrue from day to day and shall be apportionable accordingly.

(2) An employer shall pay wages when due and payable, and in accordance with the following manner, in the case of a contract:

(a) for a period of less than one month, wages shall be paid on the last day of each week;

(b) for a period exceeding one month, wages shall be paid at intervals not exceeding one month;

(c) at piece-work rates, wages shall be paid at expiration of each day's work, however -

(i) an employer may, at the written request of a worker, accumulate the wages and make payment on pay-days at intervals not exceeding one month; and

(ii) such part of the wages as consists of overtime pay or allowances additional to basic pay may be paid on the immediately subsequent pay-day;

(d) under which a specific task is to be performed, without reference to time, wages shall be payable on the completion of the task not reasonably expected to be comleted within five weeks, the employer shall none the less pay a worker, a reasonable sum, according to the amount of work done, at intervals not exceeding one month.

(3) Notwithstanding subsection (2)(b), where a person is employed under a contract of foreign service, which provides for the voluntary deferment of a portion of his remuneration, the wages shall be paid in accordance with the contract and any laws in force in respect of the deferment of pay.

Payment of wages when contract terminated

179. (1) Where employment is terminated for a reason other than dismissal, all wages, including overtime pay and allowances additional to basic pay, shall be due on the last day of employment and shall be payable not later than the following working day.

(2) If an employer requires a worker to attend on a day other than the last day of employment for the purpose of being paid such wages, the employer shall pay to a worker any travelling expenses or subsistence reasonably incurred for this purpose.

(3) Where employment is terminated by dismissal of a worker, all

wages, including overtime pay and allowances additional to basic pay, due to the worker, up to and including the date of the occurrence which occasioned the dismissal, shall be paid on the day of dismissal.

Deductions from wages

180. (1) Subject to the limitations prescribed by this Act, an employer may make the deductions from wages authorised by this section and no other deductions shall be permitted.

(2) In accordance with obligations imposed by any written law or with the written consent of a worker, deductions may be made from the wages of the worker for the purposes of payment by the employer on a worker's behalf of -

(a) amounts due from the worker in respect of any tax or rate imposed by law;

(b) contributions due from the worker to any provident, medical or pension fund or any other fund or scheme;

(c) any amounts which a court has ordered, or the worker has requested the employer to remit directly to the spouse or other dependent relative of the worker; and

(d) amount for any other purpose which the Minister may, following consultations with employers' organisations and trade union, authorise by regulations and the amounts so deducted shall be duly paid to the person empowered to collect such tax or rate, the person entrusted with the management of such fund or scheme, or other authorised payee.

(3) Any employer may take fair and reasonable deductions from the wages of a worker in respect of but not exceeding the amount of loss or damage caused by the deliberate default or gross neglect of the worker, to any tools, material or other property of the employer and the deduction made by the employer in respect of any one occurrence shall, without the prior approval of the Labour Commissioner, not exceed an amount equal to one-third of the worker's wages for a period of one month.

(4) An amount deducted in terms of subsection (3), may be deducted in instalments so as to allow the worker to have sufficient means to maintain himself and his dependants.

(5) An employer may make deductions from the wages of a worker proportionate to periods of unauthorised absence and such deductions shall not exceed the amount of the loss suffered by the employer in consequence of the worker's absence as well as the cost to the employment in providing a replacement for the absent worker.

(6) Where an employer makes a loan paid to a worker, in an amount exceeding half the worker's wage for one month, a memorandum of the transaction shall be made and signed by or on behalf of the employer and worker for the repayment of the loan by instalments, and the employer may, subject to any regulation issued under the provisions of subsection (7), deduct from the wages due to the worker, instalments at the periods agreed upon by the employer and worker in the memorandum and nothing in this subsection shall be construed as permitting the recovery of loans which would be irrecoverable under any other law.

(7) An employer is prohibited to make any deduction from the wages of a worker, by way of discount, interest, handling fee or any other similar charge on account of any advance of wages made to the worker, in anticipation of the regular period of payment of such wages.

Offences relating to wages

181. (1) No person shall -

(a) employ or continue in his employment, a worker without intending to pay or without having reasonable grounds for believing that he can pay, the wages of the worker as they become payable;

(b) without reasonable excuse, fail to pay any wages due to a worker in accordance with the provisions of this Part;

(c) make a deduction from wages of a worker with a view to ensuring a direct or indirect payment to an employer or any intermediary for the purpose of obtaining or re-

taining employment; or

(d) make any other deduction from wages not authorised under section 180.

(2) A person who fails to comply with the provisions of subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding Twenty Thousand Maloti or imprisonment for a period not exceeding ten years.

Circumstances under which an employer can open shop

182. (1) Nothing in this Part shall prevent an employer who is otherwise lawfully entitled to do so from establishing a shop for the sale, at fair and reasonable prices, of provisions or goods generally to his workers, and no worker shall be compelled by any contract, agreement or order, written or oral, to purchase the provisions or goods at such shop.

(2) No person shall compel or seek to compel a worker by any contract, agreement or order, written or oral, to purchase provisions or goods at any shop established for the sale of provisions or goods to workers.

Priority of wages

183. Notwithstanding the provisions of any other law in force in Lesotho, whenever any attachment has been issued against the property of any employer in execution of a judgement, the proceeds realised in pursuance of such execution shall not be paid by any court to the plaintiff until a debt owed by the employer in respect of a worker's wages has been satisfied to the extent of a sum not exceeding four months' wages of the worker, and nothing in this section contained shall be deemed to prevent the worker from recovering any balance due on such judgement by ordinary process of law and also, nothing in this section contained is construed as adversely affecting any preference conferred by a registered mortgage bond.

Other duties of employers

184. (1) An employer who enters into a contract with a worker, shall inform the worker at the time of entering into such a contract or as soon as practicable, whether the worker is to be paid by the month or the week, as provided in section 187, or by the piece or by the task, and the rate he is to be paid.

(2) If such rate may be liable to change under the contract, the employer shall, at the time of each payment of wages, inform the worker of his rate of wages for the preceding wage period.

(3) An employer is required to keep a worker informed of their wage rates by providing the particulars provided for in the Third Schedule.

(4) The Minister may, by regulations, prescribe further particulars in this respect.

Public holidays

185. (1) If a public holiday falls on a day which would otherwise have been a working day for a worker, the worker is entitled to a day off with pay on that day.

(2) If a worker works on a public holiday, he is entitled either to be paid double the normal wage rate for an ordinary working day for having worked on the public holiday, or by agreement with his employer, he is entitled to be paid the normal daily wage rate for having worked on the public holiday and, in addition, be entitled to take an ordinary working day off with pay at the normal wage rate for that, *in lieu* of the public holiday.

Ordinary hours of work and overtime

186. (1) Except as otherwise provided in the Act, the normal hours of work for a worker shall be not more than 45 hours per week, calculated as follows, for a worker who ordinarily works:

(a) a five-day week, nine hours of work on any day; and

(b) ordinarily works a six-day week, eight hours of work on five days and five hours of work on one day.

(2) An employer is prohibited to require a worker to work continuously for more than five hours without being given a rest period from work of not less than one hour during which time the worker shall not be required or permitted to perform any work, provided that -

(a) a driver of a motor vehicle, whose sole duty during the

rest period is to be or to remain in charge of the vehicle or its load, shall not be deemed to be working during such rest period; or

(b) a period of work interrupted by rest periods of less than one hour shall be deemed to be continuous.

(3) Notwithstanding the provisions of this section, where the continuous nature of the work so requires, an employer may request or permit a worker to work not more than twelve hours in a day where the additional hours shall be overtime and in respect of the additional hours, the employer shall pay the worker for such overtime at a rate not less than one and one quarter times the worker's normal wage rate.

(4) A person who requests or permits a worker to work -

(a) for more than five hours continuously without a break contrary to the provisions of subsection (2); or

(b) hours of overtime or fails to pay the overtime rates to a worker in contravention of the provisions of subsection (3),

commits an offence and is liable, on conviction, to a fine not exceeding Two Thousand Maloti or to imprisonment for a period not exceeding six months or to both.

(5) Notwithstanding subsection (1) and where the nature of the work so requires, ordinary hours of work may be appropriated monthly and shall be 195 hours in a month with a provision for overtime and the total hours worked in a month including overtime shall not exceed 260.

(6) An employer shall be permitted to average the hours to a worker provided under subsection (1), if an employer -

(a) does not permit a worker to work in excess of 195 hours per month as ordinary hours and every hour in excess of the 195 hours shall be overtime in accordance with subsection (3);

(b) provides a worker with a minimum daily rest period of 12 consecutive hours per 24-hour period, or a worker is granted a rest period from work of not less than one hour after working for five consecutive hours, during which time, he shall not be required or permitted to perform any work; or

(c) provided with a schedule of their shifts in advance.

(7) A collective agreement shall not contravene the provisions of this section.

(8) Except as otherwise provided in this Act, a worker shall be allowed a weekly rest period of at least twenty-four continuous hours.

(9) Notwithstanding the provisions of this section, if the circumstances of a particular employment so require, an employer may, after consultation with a worker or his representative, at not less than three days' notice, grant a different period of at least twenty-four continuous hours in that week as the period of weekly rest for the worker concerned.

(10) Whenever a worker is required to work on the worker's day of weekly rest or on a public holiday, an employer shall pay the worker for the work at double the worker's wage rate for an ordinary workday.

(11) Subsections (1) and (2) shall not apply to sectors provided in the Fifth Schedule.

Calculation of wages

187. (1) A normal hourly rate of wages for a worker, other than a watchman shall be calculated as follows, where a worker is employed on a:

(a) monthly contract, the worker's monthly wages shall be divided by 195 hours;

(b) weekly contract, the worker's weekly wages shall be divided by 45 hours; and

(c) a daily contract, that worker's daily wages shall be di-

vided by the worker's daily normal hours of work.

(2) A normal hourly rate of wages for a watchman and security guard shall be calculated as follows, where a watchman and security guard is employed on a:

(a) monthly contract, the watchman and security guard's monthly wages shall be divided by 260 hours;

(b) weekly contract, the watchman and security guard's weekly wages shall be divided by 60 hours; or

(c) a daily contract, the watchman and security guard's daily wages shall be divided by the worker's daily normal hours of work.

Paid holidays

188. (1) A worker is entitled to one working day's annual leave on full pay in respect of each month of continuous employment with the same employer and the worker shall be entitled in each year to a minimum of twelve working day's annual leave on full pay, to be taken at such times as may be agreed between the employer and the worker.

(2) Where, under the terms of a contract of employment or a collective agreement, a worker is entitled to more than the statutory minimum number of days of holiday in any year as provided for in subsection (1), the worker may carry over such additional holiday, not exceeding 18 days in all from one calendar year to the next.

(3) Public holidays, weekly rest days and days of absence from work due to an illness or accident certified by a medical officer shall not be counted as holidays on full pay.

(4) A worker whose employment has terminated after at least three months of continuous work with the same employer shall be entitled to be paid one day's full pay in respect of each completed month of employment for which the worker has earned but not taken a holiday with full pay.

(5) Any agreement by a worker where he purports to relinquish his

right to the statutory minimum working days of holiday with full pay as provided for in this Act is null and void.

(6) When a worker wishes to receive a cash payment *in lieu* to taking no more than six days of statutory annual leave, a worker and an employer may so agree and in such a case, the payment shall be made in accordance with the provisions of this section at the end of the calendar year that the holiday is due.

(7) In the absence of an agreement with the worker, it shall constitute an unfair labour practice by an employer not to allow a worker to enjoy the number of days of holiday with pay in a particular year to which the worker is entitled in excess of the statutory minimum number of day's including any additional days of holiday entitlement carried over from the previous year.

(8) For the purposes of this Part, "full pay" means the normal remuneration paid to a worker, including any cost-of-living allowance and the cash equivalent of any benefits in kind for which the employee may be eligible under the contract of employment, but does not include any bonus payments which he may from time to time have received.

Educational leave

189. (1) A worker is, with the consent of an employer, entitled to a reasonable amount of time off work with pay, during normal working hours, for the purpose of receiving education or training.

(2) For purposes of this section, "Education or training" includes academic, professional and vocational training education designed to improve the general educational level of worker.

Sick leave

190. (1) If a worker is absent from work owing to sickness during the first six months of continuous employment with the same employer, he may not be paid any wages.

(2) After six month's continuous employment with the same employer, a worker is entitled, as a minimum, to sick leave on full pay for up to twelve days in the second six month's continuous employment with the same

employer.

(3) After twelve month's continuous employment with the same employer, a worker is entitled to sick leave on full pay for up to twelve days and after wards, a sick leave on half pay for up to twenty- four days in each period of twelve month's continuous employment.

(4) An entitlement of sick leave may not be carried forward from one year to another.

(5) A worker is not entitled to paid sick leave under this section, unless he produces to the employer a certificate of incapacity signed by a certified medical practitioner or by a person in charge of a dispensary or medical centre acting on behalf of a certified medical practitioner, and in the case of sick leave extending beyond six working days, the employer may require the worker to be examined by another certified medical practitioner, with the expenses of the examination and any travel expenses to be borne by the employer.

(6) A worker is not entitled to sick leave under this section where his incapacity for work has been deliberately self-inflicted.

(7) The number of sick leave days shall include the first day of consulting a doctor or hospitalisation.

Maternity leave, paternity leave, family responsibility leave, and absence from work in connection with confinement

191. (1) A pregnant worker shall give notice of her anticipated confinement by delivering to her employer together with a written certificate signed by a registered medical practitioner certifying that the female worker's confinement will probably take place within seven weeks from the date of the certificate.

(2) On receipt of notice under subsection (1), an employer shall immediately permit a female worker in question to absent herself from work until her confinement, and thereafter the employer shall not permit or require her to return to work until the expiry of seven weeks immediately after her confinement.

(3) Within seven days immediately after her confinement, a female worker shall deliver to her employer a written certificate signed by a registered

medical practitioner certifying the date of confinement.

(4) Notwithstanding subsection (2), where a female worker delivers to her employer a written certificate signed by a registered medical practitioner certifying the employer's opinion that the worker is suffering from an illness arising out of her confinement and is consequently unfit to return to work, the employer shall not permit or require her to return to work until the expiry of eight weeks immediately after her confinement.

(5) The leave before the anticipated date of confinement shall be extended by any period elapsing between the anticipated date of confinement and the actual confinement and the period of statutory maternity leave to be taken after confinement shall not be reduced on that account.

(6) Any absence from work in pursuance of subsection (2) or (4) shall be deemed, for the purposes of this Act, not to interrupt the continuity of employment of the female worker concerned.

(7) A worker is entitled to three weeks maternity leave upon birth of a still born.

(8) A worker is entitled to fourteen days paternity leave upon the birth of their child.

(9) Where parents have adopted a child, they are entitled to a bonding leave of fourteen days from the day the adopted child arrives at the family home.

(10) A person is entitled to a bereavement leave of five days for an immediate family member.

(11) Where a child is hospitalized with proof by a registered medical practitioner, a parent of the hospitalized child is entitled to responsibility leave if so advised by the medical doctor.

(12) When a child is discharged from hospital, a registered medical practitioner shall advise on the sick leave to be granted to the parent.

(13) Nothing in this law shall be deemed to impose any lability on an employer to pay wages to a female worker in respect of her period of absence

from work but, nothing shall prevent an employer from making any payment on account of wages in respect of such period, if -

(a) the employer so wishes;

(b) the terms of the contract otherwise require; or

(c) according to a collective bargaining agreement.

Nursing hours

192. (1) Where a female worker wishes to nurse her infant or otherwise feed the infant herself, an employer shall permit the female worker to nurse the infant for up to one hour in a day during the hours of work for six months immediately after her return to work pursuant to the provisions of this Part, following her confinement and the employer shall pay the worker the wages entitled to, in respect of each such daily period as if it were an ordinary working time.

(2) The arrangements for taking time off for nursing as provided for in subsection (1) shall be agreed upon by the employer and the worker.

(3) An employer who contravenes subsection (1) commits an unfair labour practice.

Offences

193. (1) Any employer who -

(a) contravenes the provisions of section 191 commits an offence and is liable, on conviction, to a fine not exceeding One Thousand Maloti or imprisonment for a period not exceeding six months or both; or

(b) knowingly permits or requires any female worker to perform any work during her period of statutory maternity leave commits an offence and is liable, on conviction, to a fine not exceeding One Thousand Maloti or imprisonment for a period not exceeding six months or both.

Maternity leave and notice of termination

194. (1) Any dismissal of a worker that takes effect during her statutory maternity leave shall automatically be an unfair dismissal.

(2) Where a female worker is absent from work in pursuance of section 191 (3) or (4) or remains absent from work for a longer period as a result of an illness which a registered medical practitioner has certified, in writing, to arise in his opinion out of the female worker's pregnancy or confinement and to render her unfit to return to work, no employer shall, during the period of her absence from work in pursuance section 191 (3) or (4), give notice to dismiss her or terminate her contract of employment.

(3) Any employer who contravenes subsection (1) or (2), commits an offence and is liable on conviction, to a fine not exceeding Five Thousand Maloti or to imprisonment for a period not exceeding six months.

Minimum age for employment

195. (1) A child or young person shall only be employed in a private undertaking if -

(a) he child is over fifteen years of age; and

(b) employment does not interfere with the child's schooling.

(2) The provisions of subsection (1) shall not apply to light work done by children between the ages of thirteen and fifteen in schools or similar institutions where the work has been approved by the Department of Education.

(3) Notwithstanding subsection (1), the Minister may make regulations setting out the conditions under which children may be employed in artistic performances.

(4) If a candidate for employment presents himself as a child or young person, he shall submit to an employer as proof of age -

(a) a national birth certificate if he is under 18 years of age;

(b) or an identity card if he is above 18 years of age an employer.

(5) Any person who employs a child contrary to the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding Twenty Thousand Maloti or to imprisonment for a period not exceeding Ten years or both.

(6) A person is deemed to have employed a child or a young person, if they employ a child or a young person to work or require or permit a child or young person to work in any workplace or establishment under their control, including work as a domestic worker, or for any business that they conduct, irrespective of whether the child or young person is working in terms of a contract of employment or otherwise.

(7) For the purposes of this section -

"light work" means work which is not likely to be harmful to the health or development of the child and does not affect the child's attendance at school or the capacity of the child to benefit from school.

General restrictions on employment of children and young persons

196. (1) No person shall employ a child or young person on any work which is injurious to health or morals, dangerous or otherwise unsuitable, or on any work which the Minister, by notification in the Gazette, has declared, to be of a kind which is injurious to the health or morals of a child or young person.

(2) No persons shall, continue to employ a child or young person after receiving notice either orally, or in writing, from the parent or guardian of the child or young person that he is employing the child or young person against the wishes of the parent or guardian.

(3) Where, under the provision of subsection (1) or (2), it becomes necessary to discontinue the employment of any child or young person, such discontinuance shall be without prejudice to the right of the child or young person to be paid such wages as he may have earned up to the time of such discontinuance.

(4) No person under the age of fifteen years shall be required or per-

mitted to work for more than 4 consecutive hours without a break of at least 1 hour, or for more than 8 hours in any one day.

(5) No person under the age of fifteen years shall be employed under conditions preventing him or her from returning each night to the place of residence of his parent or guardian, and this provision shall not apply to domestic servants.

(6) Any person who employs a child or young person in contravention of any of the provisions of this section commits an offence and is liable on conviction, to fine not exceeding Twenty Thousand Maloti or to imprisonment for a period not exceeding 10 years or both.

Restriction on employment of children and young persons on night work

197. (1) No child or young person shall be employed at night in any undertaking or workplace but, this prohibition shall not apply in respect of male young person who has attained the age of fifteen years and who performs work during the night in the case of an emergency that could not have been controlled or foreseen, and which interferes with the normal working of the undertaking.

(2) A person who employs a child or young person in contravention of subsection (1) commits an offence and is liable, on conviction, to a fine of Twenty Thousand Maloti or to imprisonment for period not exceeding 10 years or both.

Restrictions on employment of children and young persons in mines and quarries

198. (1) No child or young person shall be employed in a mine, quarry or opencast, except a young male person who has attained the age of fifteen and is employed otherwise than underground in terms of an apprenticeship agreement approved by the Labour Commissioner and in respect of whom a medical officer has certified that he is fit for the work.

(2) A person who employs a child or young person in contravention of this section commits an offence and is liable, on conviction, to a fine not exceeding Ten Thousand Maloti or imprisonment for a period not exceeding ten years or both.

Employers of young persons to keep register

199. (1) An employer who employs a young person shall keep a register and shall include in the register particulars of the young person's age, the dates of commencement and termination of employment and such other particulars as the Minister may by regulation prescribe and the employer shall produce the register for inspection whenever so required by a labour officer.

(2) Any person who fails to comply with this section commits an offence and is liable, on conviction, to a fine not exceeding Five Hundred Maloti or to imprisonment for a period not exceeding three months or both.

Offences by Parent or guardian of a young person

200. (1) A parent or guardian of a young person who permits such young person to be employed in contravention of this Part commits an offence and is liable, on conviction, to a fine not exceeding Five Hundred Maloti or to imprisonment for a period not exceeding three months or both.

Hazardous employment

201. (1) For purposes of this section,

"hazardous work" means any work in which circumstances it is carried out under or are reasonably foreseeable that the young person will be exposed to physical, psychological and sexual environment and it includes the following non-exhaustive list as work:

(a) underground, quarrying, underwater at dangerous heights or in confined spaces;

(b) with dangerous machinery, equipment or tools which involves the manual handling or transportation of heavy loads;

(c) of long hours or during the night or where a young person is unreasonably confined to the premises of the employer;

(d) in mineral extraction or similar operations;

(e) commercial sexual exploitation;

(f) herding at the cattle post;

(g) in bars, shebeens, places of adult entertainment;

(h) in which there is a reasonably foreseeable risk of exposure to blood-borne and airborne pathogens; and

(i) involving exposure to ionizing radiation.

Worst forms of child labour

202. (1) For the purpose of this section -

"worst forms of labour for children or young persons" are -

(a) 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;

(b) the use, procuring or offering of a child or young person for prostitution, for the production of pornography or for pornographic performances;

(c) the use, procuring or offering of a child or young person for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

(d) 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;

(e) employment that is in breach of any provision of this Act; and

(f) any other work which the Minister, after consulting the Program Advisory Committee on Child Labour and the Committee, deems to be a worst form of labour for chil-

dren or young persons.

(2) No Person shall require or permit a child or young person to be engaged in worst forms of child labour.

(3) No person may require or permit a child or young person to be engaged for the person's benefit in one of the following activities if the work is performed by the child as part of an organized business activity conducted by that person:

(a) begging;

(b) scavenging or collecting waste from garbage or waste dumps; or

(c) use, recruit, procure or offer a child or young person for commission of an illicit activity.

(4) Notwithstanding the provisions of this Act or any other law, any person who requires or permits a child or young person to be employed or to work in any work that constitutes worst forms of labour for children or young persons, commits an offence and is liable on conviction, to a fine not exceeding Ten Thousand Maloti or to imprisonment for a period not exceeding five years or both.

Restrictions on night work

203. (1) A person shall not be employed at night, unless he is fit for the work she is engaged for and has undergone a health assessment at the expense of the employer.

(2) The conditions provided for in this section shall be without prejudice to the restrictions on the employment of children and young persons.

(3) A person who is employed to work at night, shall be granted reduced working time without loss of earning or shall receive extra pay for performing night work which shall not be less than one and one quarter rate or an amount that may be determined by a collective agreement or in its absence, by the Minister after consultation with representative organisations of employers and workers.

Provision of transport

204. (1) An employer shall provide transport to a worker whose work requires him to work or to return home from work during the hours of -

(a) 7:00 pm in the evening to 5am in the morning during autumn and winter months; and

(b) 8:00 pm in the evening to 6 am in the morning during spring and summer months.

Where an employer does not have a vehicle appropriate to transport a worker, he may arrange for transport for the convenience of the worker and pay for it.

Discrimination against union members and officials

205. (1) Every person has the right to -

(a) participate in forming a trade union;

(b) join a trade union; and

(c) participate in its lawful activities.

(2) Any breach of the provisions of subsections (1) and (2) is an unfair labour practice.

(3) A person who seeks, by intimidation, threats, dismissal or imposition of a penalty, giving or offering to give a wage increase or any other means, to induce an employee to refrain from becoming or to refrain from continuing to be a member, officer or trustee of a trade union commits an unfair labour practice.

(4) A person who communicates to another, details of the names of a worker as being unsuitable for employment on grounds of the latter's trade union membership or activities commits an unfair labour practice.

Violence and sexual harassment

206. (1) A person who offers employment or threatens dismissal or

threatens the imposition of any other penalty against another person in the course of employment as a means of violence or obtaining sexual favours or harasses workers sexually, commits an unfair labour practice.

When a strike is lawful

207. (1) A strike is lawful and protected if it concerns a dispute of interest, if -

(a) he dispute of interest has been referred to the DDPR in terms of section 42;

(b) the dispute remains unresolved;

(c) the time periods contemplated in section 42 have expired;

(d) a notice of intention to commence a strike has been served on the other party to the dispute and on the DDPR; and

(e) at least seven days from the date of that notice is expired.

(2) The notice referred to in subsection (1)(d) may be served before the expiry of the time periods contemplated in section 42.

(3) A strike is unlawful and not protected, if -

(a) it is not in accordance with the provisions of subsection (1);

(b) the parties to the dispute have consented to having the dispute resolved by binding arbitration;

(c) it is in breach of the provisions of section 215(4).

(4) Subsection (3) does not preclude an employer from dismissing a worker in accordance with the provisions of this Act for a valid reason -

(a) related to the worker's conduct during a strike;

(b) based on the employer's operational requirements as contemplated in section 129(1)(c).

When lockout is lawful and protected

208. (1) A lockout is lawful, if it concerns a dispute of interest, if -

(a) the dispute of interest has been referred to the DDPR in terms of section 42;

(b) the dispute remains unresolved;

(c) the time periods contemplated in section 42 have expired;

(d) a notice of intention to initiate a lockout has been served on the other party to the dispute and on the DDPR; and

(e) at least seven days from the date of the notice contemplated under paragraph (d) has expired.

(2) The notice referred to in subsection (1)(d) may be served before the expiry of the time periods contemplated in section 42.

(3) A lockout is unlawful and not protected if-

(a) it is not in accordance with the provisions of subsection (1);

(b) the parties to the dispute have consented to having the dispute resolved by binding arbitration; or

(c) it is in breach of the provisions of section 215(4).

Powers of Labour Court in connection with strike or lock-out not in compliance with this Act

209. (1) No person may -

(a) take part in a strike or lock-out or in any conduct; or

(b) instigate or incite others to take part in or otherwise act;

in furtherance of a strike or lock-out that does not comply with sections 207 and 208.

(3) The Labour Court may make an order forbidding any person from taking or continuing any conduct in breach of subsection (1).

Offences in connection with strikes and lockouts declared unlawful

210. (1) A person who declares an unlawful strike, instigates or incites others to take part in or otherwise acts in furtherance of a strike or lock-out that is stipulated to be unlawful by sections 207and 208 or 211(4) commits a dismissible misconduct.

(2) The Labour Court may make an order forbidding the continuance of a strike or lock- out that is stipulated to be unlawful, or that has been declared by the Court to be unlawful, and failure to comply with such an order may be punished as if it were contempt of the Labour Court.

Strike or lock -out in compliance with this Act

211. (1) A person does not commit a breach of contract or a delict by taking part in -

(a) a protected strike or lock-out;

(b) any conduct in contemplation or furtherance of a protected strike or lock-out.

(2) Notwithstanding subsection (1), an employer is not obliged to remunerate a worker for services that a worker does not render during a strike or lockout.

(3) Notwithstanding subsection (2), if the worker's remuneration includes payment in kind in the form of accommodation, the provision of food and other basic amenities of life, an employer, at the request of the worker, shall not discontinue payment in kind during the strike or lock-out and after the end of the strike or lock-out, the employer may recover the monetary value of the payment in kind made at the request of the worker.

(4) An employer shall not take into employment any person for the purpose of performing the work of a worker who is locked out, unless the lock-out is in response to a strike.

(5) Civil legal proceedings may not be instituted against any person for -

(a) participation in a protected strike or lock-out; or

(b) any conduct in contemplation or furtherance of a protected strike or lock-out.

Peaceful picketing and prevention of intimidation

212. (1) Subject to sections 207 and 208, it shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation, in contemplation or furtherance of a labour dispute, to be present at or near a place where a person works or carries on business or happens to be if they are present merely for the purpose of peacefully obtaining or communicating information, or of persuading any person to work or abstain from working.

(2) It is unlawful for one or more persons whether acting on their own behalf or on behalf of a trade union or of an individual employer or an amalgamation, even when they may be acting in contemplation or furtherance of a labour dispute, to be present at or near a place where a person works or carries on business or happens to be for the purpose of obtaining or communicating information or of persuading or inducing any person to work or to abstain from working, if they act in such manner as to be likely to -

(a) intimidate any reasonable person in that place;

(b) obstruct the progress or entrance to that place; or

(c) lead the person to a disturbance of peace.

(3) It is unlawful for one or more persons acting on their own behalf or on behalf of a trade union or of an individual employer or amalgamation, in contemplation or furtherance of a trade dispute, to be present in a menacing or threatening manner at or near a house or place where a person resides for the

purpose of obtaining or communicating information, or of persuading or inducing any person to work or abstain from working.

(4) Any person who acts in contravention of subsections (2) and (3) commits a dismissible misconduct.

Intimidation

213. A person who, with a view to compelling another person to abstain from doing or to do an act which that other person has a legal right to do or abstain from doing, wrongfully and without legal authority -

(a) uses violence to or intimidates that other person or his spouse or children, or destruction to his property;

(b) persistently follows that other person about from place to place;

(c) hides any tools, clothes or other property owned or used by another person or deprives him of or hinders him to use the tools, clothes or other property owned or used by another person;

(d) watches or besets the house or other place where another person resides, or the approach to that house or place; or

(e) follows another person in a disorderly manner in or t hrough any street or road,

commits an offence and is liable on conviction to a fine not exceeding Five Thousand Maloti or to imprisonment for a term not exceeding three years or both.

Threat to Essential services

214. (1) For the purpose of this section -

"essential ervice" means a service, the interruption of which endangers the life, personal safety, security or health of the whole or any part of the population.

Where in the opinion of the Minister, the existence of an action in pursuance of

a labour dispute threatens the continuance of any essential service, he may call upon the Director to investigate and to report upon the facts of such dispute within ten days.

(3) The report of the Director shall be made public within one week of its submission to the Minister.

(4) The dispute has not been settled within one week of the report of the Director being made public, the Minister shall immediately apply to the Labour Court for a ruling on the dispute and the Labour Court shall, within thirty days of the filing of the application by the Minister and its award, issue its ruling which shall -

(a) be made public,

(b) be final and binding upon the parties; and

(c) where appropriate to an individual's terms and conditions of employment, the award, be deemed to be incorporated in the contracts of employment of a worker to whom it applies.

(5) Any action in pursuance of a strike or lockout in pursuance of a labour dispute that threatens the continuance of an essential services and persists after the dispute has been referred by the Minister to the Director or the Labour Court, shall be unprotected, unless the Director or the Labour Court has failed to act within the time-limits specified.

Determination of essential service and maintenance service

215. (1) The Labour Court may designate the whole or part of a service as an essential service or a maintenance of an essential service upon an application by the Minister to the Labour Court.

(2) A collective agreement may provide for -

(a) disputes related to an essential service;

(b) resolving disputes of interest in essential service.

(3) The whole or part of any service may be declared as an essential service in a collective agreement.

PART VIII - MISCELLANEOUS, REPEAL AND AMENDMENTS

Posting of abstracts or notices

216. (1) An abstract, a notice or document required by this Act to be posted at a conspicuous place in a place of work, shall be posted in such characters and in such position as to be conveniently read and understood by a worker.

(2) A person who pulls down, destructs or defaces any abstract, notice or document posted in pursuance of this Act commits an offence and is liable, on conviction, to a fine not exceeding One Hundred Maloti or to imprisonment for period not exceeding two weeks or both.

Codes of conduct for good practice and guidelines

217. (1) The Minister may, by notice published in the Gazette and after consulting with the NACOLA -

(a) prepare and issue a Code of Conduct for Good Practice, for the purpose of providing practical guidance in respect of this Act and regulations made under the Act; and

(b) amend or revoke the Code of Conduct for Good Practice in the same manner.

(2) A Code of Conduct for Good Practice prepared and issued in terms of subsection (1), may consist of a standard, rule, guideline, specification or provision relating to purposes and objectives of this Act.

(3) Where a person fails to comply with a provision of the Code of Conduct for Good Practice, commits a breach which amounts to a disciplinary offence and evidence of the breach shall be admissible in Court, and the failure shall be taken into account to any proceeding against him under this Act.

(4) A Code of Conduct for Good Practice, prepared and issued in

terms of subsection (1) shall, in any court proceedings be admissible in evidence and any provision of the Code Of Conduct Of Good Practice relevant to a question arising in the proceedings, shall be taken into account in determining the question.

Regulations and power to amend Schedules

218. (1) The Minister may, in consultation with the Committee, make regulations generally for the purpose of giving effect to the principles and provisions of this Act and in respect -

(a) of the matters required or stated to be prescribed; or

(b) which regulations are required or authorised to be made.

(2) The Minister may, and in consultation with the Committee, review the fines and fees provided by this Act and adjust them as he may consider necessary.

(3) The Minister may, in consultation with the Committee, amend the Schedules to this Act.

Repeal

219. The Labour Code Order, 1992 is repealed.

Savings

220. (1) Notwithstanding the repeal made in section 219, a directive, notice or other legislative instrument or document made or issued under any authority of the Labour Code Order, 1992 or its regulations, except in so far as the former are inconsistent with the provisions of this Act, shall remain in force until such time as they shall have expired or have been revoked, replaced or cancelled under the provisions of this Act.

(2) An institute, body or individual established, elected or appointed under the Labour Code Order, 1992 continues to be established, elected or appointed as such under and for purposes of this Act as if established, elected or appointed under this Act on the same terms and conditions, except as otherwise provided under this Act.

Conflict of laws

221. (1) Where any rule, regulation or law in relation to labour and employment issues, which was applied prior to the coming into force of this Act conflicts with the application of its provisions, that rule, regulation or law shall not be applied in any case arising under this Act.

(2) Where the laws of Lesotho and the laws of another State are to be applied in regard to the rights or entitlements of a worker, his survivors or heirs, a court shall be bound to apply the laws of Lesotho.

SCHEDULES

FIRST SCHEDULE
MATTERS FOR WHICH PROVISION MUST BE MADE IN THE RULES OF A TRADE UNION OR EMPLOYER'S ORGANISATION

(Section 91)

The rules of a trade union or employer's organisation shall make provision for the following matters;

(a) the name of the trade union or employers' organisation;

(b) the principal purposes for which the trade union or employers' organisation is to be established;

(c) all other purposes ancillary to the principal purposes which may be pursued by the trade union or employers' organisation;

(d) the purposes for which the funds of the trade union or employers' organisation shall be applicable;

(e) the rates of contribution and the conditions under which any member of the trade union or employers' organisation may become entitled to any benefits assured thereby;

(f) the fines or forfeitures which may be imposed on any member of the trade union or the employers' organisation;

(g) the appointment or election and removal of a general committee of management and of trustees, treasurers and other officers of the trade union or employers' organisation, and for the re-election of these officers at intervals of not more than three years;

(h) the fixing of a quorum for committee and all other meetings;

(i) the taking of decisions by secret ballot in respect of -

(i) election of officers;
(ii) amendment of rules;
(iii) strikes or lock-outs;

(iv) federation or affiliation;
(v) amalgamation or dissolution; and
(vi) the procedure to be followed in taking the secret ballot;

(j) the keeping of full and accurate accounts by the treasurer;

(k) the keeping in a separate fund of all moneys received or paid by the trade union or employers' organisation in respect of any contributory provident fund or pension scheme;

(l) the investment of the funds or their deposit in a bank and for audit of accounts at intervals not greater than one year;

(m) the inspection of the books and list of names of members of the union or employers' organisation by any person having a legal interest in the funds of the trade union or of the employers' organisation;

(n) the manner of the dissolution of the trade union or employers' organisation and the disposal of the funds thereof available at the time of such dissolution; and

(o) qualifications for the exercise of voting rights and the right of any member to a reasonable opportunity to vote.

SECOND SCHEDULE

TRADE UNIONS AND EMPLOYERS' ORGANISATIONS' REGISTRATION REQUIREMENTS

(Sections 74-111)

1. (1) The expressions used in this Schedule shall, unless the context otherwise requires, have the meanings respectively assigned to them in section 4.

(2) References to forms are to the forms appended to and to be deemed part of this Schedule.

2. (1) Every register, certificate, order, application and notice under this Act shall be kept, issued, made or given in accordance with the appropriate form in English or Sesotho, and shall comprise the particulars specified.

(2) The number of copies to be submitted of any such application or notice, if more than one, shall be stated in the form of such application or notice.

(3) Any authority or person having power to issue any certificate under the Code shall, on it being proved to his satisfaction that such certificate has been lost or destroyed and on payment of the prescribed fee, issue a duplicate of the certificate to the person entitled to the certificate.

3. The particulars to be recorded in the register of trade unions and employers' organisations shall be those specified in Form A.

4. (1) The manner of registering shall be by entering in the register the name of the trade union or employers' organisation, the location and postal address of its registered office, the titles and names of its officers, and the date of the registration.

(2) The manner of registering a change of name shall be by deleting the name under which such a trade union or an employers' organisation has been registered in the register and by substituting the new name.

5 . (1) The register and any documents in connection with the register shall be open for inspection by the public during the hours during which the office of the Registrar is open to the public.

(2) Copies of or extracts from the register or documents in the custody of the Registrar may be obtained by any person by giving reasonable notice and upon payment of the prescribed fees.

6. Every application for the registration shall be made in the form set out in Form A and shall be accompanied by two printed or typed copies of the rules of the trade union or employers' organisation signed as specified in that form.

7. The certificate of registration issued by the Registrar shall be in the form as set out in Form E.

8. A notice in English and Sesotho giving -

(a) the reasons for any proposed amalgamation or federation;

(b) the proposed conditions under which such amalgamation or federation will take place; and

(c) the time and place at which the ballot will be held,

shall be posted in the registered office of the trade union or employers' organisation and in their every branch offices at least two weeks before a ballot relating to amalgamation or federation is held and shall remain so posted until the ballot has been concluded.

10. Notice of amalgamation or federation shall be sent to the Registrar in pursuance of section 87(1) or 88(3), which notice shall be in the form set out in Form B or C, as appropriate.

11. In the event of disagreement as regards the application of the provisions relating to amalgamation or federation or the procedure for taking a ballot, the matter may be referred to the Registrar who may, if he thinks fit, nominate an assistant Registrar to conduct a new ballot.

12. Whenever a registered trade union or registered employers' organisation changes its rules, notice of such change shall be sent to the Registrar.

13. The annual return referred to in section 105(1) shall be in the form of and comprise the particulars specified in Form D and shall be audited in the

manner shown in the form of a balance sheet contained in that form.

14. (1) Every registered trade union and every registered employers' organisation shall keep a register of its members in which shall be entered -

(a) the name, address and occupation of each member;

(b) the date on which each member was admitted to membership;

(c) the payments made by each member in respect of entrance fees, subscriptions or other matters, and the dates of such payments; and

(d) the date on which any member ceases to be a member.

(2) On the making by a member of a trade union or employers' organisation of any payment in respect of which an entry in the register of members is required to be made under subparagraph (1) of this paragraph, a written receipt shall be given by an officer of the trade union or employers' organisation to such member.

(3) If any registered trade union or employers' organisation fails to keep a register of its members in accordance with subparagraph (1), or if the provisions of subparagraph (2) of this paragraph are not complied with, the trade union or employers' organisation and every officer or person acting or purporting to act as an officer commits of an offence and is liable, on conviction, to a fine not exceeding two hundred maloti but, no such officer or person shall be guilty of an offence under this paragraph if he proves to the Court that any contravention of the provision of this Schedule was occasioned without the knowledge or connivance of such officer or person, and was not facilitated by any neglect on the part of such officer or person.

(4) The fees set out in the Tariff of Fees appended to and shall deemed part of this Schedule and shall be payable to the Registrar in respect of the several matters specified in the tariff of fees.

FORM A
APPLICATION FOR REGISTRATION OF A TRADE UNION OR EMPLOYERS' ORGANISATION

(Sections 75)

To: The Registrar of Trade Unions and Employers' Organisations

1. We, the several persons whose names are given below, hereby make application for the registration under this Act, of a Trade Union/Employers' Organisation (circle as appropriate) to be known as:-

.....

.....

2. (i) The location of the registered office is at:

.....

.....

(ii) The registered postal address is:-

.....

.....

(iii) The aforesaid Trade Union/Employers' Organisation (circle appropriate) was established on the ..... day of 19.....

(iv) The purposes of the Trade Union/Employers' Organisation (circle as appropriate) are: .....

.....

(v) We enclose herewith:-

(a) Two copies of the Rules of the Trade Union/Employers' Organisation.

(b) Statement I showing the names, occupations and addresses of the members making this application.

(c) Statement II showing the titles, names, ages, addresses and occupations of the officers and trustees of the Trade Union/Employers' Organisation.

3. We have been duly authorised by the Trade Union/Employers' Organisation to make this application on its behalf by a general meeting held at..... on the ..... day of 19.....

DATED THIS DAY OF 19....

1.	.....	6.	.....
2.	.....	7.	.....
3.	.....	8.	.....
4.	.....	9.	.....
5.	.....	10.	.....

Note - This application must be signed by at least ten members of the body applying for registration.

Statement I. NAMES OF PERSONS MAKING APPLICATION FOR THE REGISTRATION OF A TRADE UNION OR EMPLOYERS' ORGANISATION

NAME	OCCUPATION	ADDRESS
1	.....	.....
2.	.....	.....
3.	.....	.....
4.	.....	.....
5.	.....	.....
6.	.....	.....
7.	.....	.....
8.	.....	.....
9.	.....	.....
10.	.....	.....

SECRETARY
(NAME AND SIGNATURE)

Statement II. NAME OF OFFICERS OF THE TRADE UNION OR EMPLOYERS' ORGANISATION

Title of office held in the Trade Union or Employer's organisation	NAME	AGE	ADDRESS	OCCUPATION
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....
	.....	.....	.....	.....

SECRETARY
(NAME AND SIGNATURE)

FORM B:
NOTICE OF AMALGAMATION

(Section 80)

(A) _____ Registered No. _____
(B) _____ Registered No. _____

To: The Registrar of Trade Unions and Employers' Organisations

Notice is hereby given that the above mentioned Trade Unions/Employers' Organisations (circle as appropriate) have resolved to become amalgamated together as one body, a ballot having been taken in the case of each or every of the said Trade Unions/Employers' Organisation (circle as appropriate), in accordance with its respective rules.

And that the following are the terms of the amalgamation:
_____
_____
And that it is intended that the Trade Union/Employers' Organisation shall henceforth be called the_____

Accompanying this notice is a copy of the rules intended to be henceforth adopted by the amalgamated Trade Union/Employers' Organisation (which are the rules of the_____Trade Union/ Employers'

Organisation

1.	1. .....
2.	2. .....
3.	3. .....
4.	4. .....
5.	5. .....
SECRETARY OF (A) **(NAME AND SIGNATURE)**	**SECRETARY OF (A)** **(NAME AND SIGNATURE)**

Name and address to which registered copy is to be sent

.....

.....

Dated this _____ day of _____ 19__

Note:- This notice must be signed by the Secretary and at least six members of each Trade Union or Employers' Organisation. It shall be made within one month of the amalgamation (section 90).

FORM C
NOTICE OF FEDERATION OF TRADE UNIONS OR EMPLOYERS' ORGANISATIONS

(Section 81)

(A) _____
Registered No. _____
(B) _____
Registered No._____

To: The Registrar of Trade Unions and Employers' Organisations

Notice is hereby given that the above mentioned Trade Unions/Employers' Organisations (circle as appropriate) have resolved to form a federation, a ballot having been taken in the case of each or every of the said Trade Unions/Employers' Organisations (circle as appropriate), in accordance with its respective rules.

And that the following are the terms of the federation:
_____
_____
And that it is intended that the Federation shall be called the:
_____
_____
And that the purposes of the Federation are as follows:
_____
_____

1.	.....	1.	.....
2.	.....	2.	.....
3.	.....	3.	.....
4.	.....	4.	.....
5.	.....	5.	.....
6.	.....	6.	.....
SECRETARY OF (A)		**SECRETARY OF (B)**	
(NAME AND SIGNATURE)		**(NAME AND SIGNATURE)**	

Name and address to which registered copy is to be sent
_____
_____
Dated this _____ day of _____ 19 __

Note

(1) This notice must be signed by the Secretary and at least six members of each Trade Union or Employers' Organisation.

(2) If more than two Trade Unions or Employers' Organisations have resolved to form a federation a second (or third) form should be filled in and attached to this form.

(3) This notice shall be made within one month of the establishment of the Federation.

FORM D
ANNUAL RETURN OF A TRADE UNION OR EMPLOYERS' ORGANISATION

(Section 94)

I. ANNUAL RETURN - GENERAL INFORMATION
Annual Return of the (name of the Trade Union/Employers' Organisation (circle as appropriate)) _____
made up to the 31st December 19_ .
Registered No. _____
Please state -

1. The address of the registered office and its postal address.....

2. Are there any branches, if so, how many? .....

3. Does this return include the income and expenditure funds and effects of all the branches? .....

4. If this return does not include the income and expenditure of some of the branches state the names of the branches which are not included .....

5. In what industry are the members of the Trade Union/Employers' Organisation chiefly engaged? .....

6. (a) Number of members at the beginning of the year .....

(b) Total number of members at the end of the year .....

(c) Are all the members mentioned in (b) fully paid up? If not, state how many are fully paid up.....

II. PARTICULARS OF THE OFFICERS AND TRUSTEES OF THE
(name of the Trade Union/Employers' Organisation (circle as appropriate))
_____
as at 31st December, 19__

Title of Office	**Name**	**Address**
.....	.....	.....
.....	.....	.....
.....	.....	.....

III. SUMMARY OF THE ACCOUNTS OF THE (name of the Trade Union/Employers' Organisation (circle as appropriate))

as at 31st December. 19__

INCOME AND EXPENDITURE ACCOUNT

Income	**Expenditure**
(1) Members' contributions including those of Branch members	(1) Benefits and grants paid to members
(2) Other income (not from members	(2) Working expenses:
(a) Dividends and interest received	(a) Head Office
(b) Miscellaneous	(b) Branches

(3) Balance brought forward from previous year

(4) Excess of expenditure over income (if any)

.....

.....

(3) Other expenditure (specify)

(4) Balance of general funds at the end of the year

.....

.....

IV. BALANCE SHEET OF THE (name of the Trade Union/Employers' Organisation (circle as appropriate))

as at 31st December, 19__

Liabilities

(1) Amount of any separate funds maintained, as follows

(a) ..... funds
(b) ..... funds

(2) Total amount of general funds as shown in point (4) under expenditures in the Income and Expenditure Account form appearing directly above.

(3) Loans received (specify)

(4) Other liabilities
.....
.....

Assets

(1) Cash at bank ML

(2) Cash in hand

(3) Cash with Branches

(4) Value of investments (if any)

(5) Value of interest in use of lands and buildings

(6) Value of furniture and fittings

(7) Other assets

(8) Deficiency in general fund (if liabilities exceed assets) as shown

in point (4) under expenditures in the Income and Expenditure Account from appearing directly above.

Name and Signature of Treasurer _____ Address _____

Name and Signature of Secretary _____ Address _____

Name and Signature of Trustee _____ Address _____

The undersigned, having bad access to all the books and accounts of the Trade Union or Employers' Organisation (including any branches), and having examined the foregoing Annual Return and verified the same with the accounts and vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Name and Signature of Auditor _____ Address _____

Calling or profession _____

Date of completion of audit _____

Dated _____ day of _____ 19__

II. TARIFF OF FEES

The following fees shall be payable to the Registrar of Trade Unions and Employers' Organisations.

On application for registration ……..…….. M 2,000.00

On issue by the Registrar of any Certificate of registration …….. M500.00

On registration of change of name ……..... M 1,000.00

For a copy of a certificate of registration or for authentication not otherwise provided ..... M 1,500.00

For a copy of or an extract from any document in the custody of the

Registrar: per folio of 72 words …….. M500.00

THIRD SCHEDULE
RECORDS, FORMS. ETC., TO BE KEPT OR USED BY EMPLOYERS
(Sections 134,145,149,150,156,175,178 and 184)

Register of employers and record of wages

1. (1) Every employer who employs more than one employee shall maintain, in English or Sesotho in ink or typescript, a register of workers in which the following particulars are entered:

(a) name of worker;
(b) home addresses;
(c) tax Number or other identification (if any);
(d) general description of employment, nature of work or job classification;
(e) nature of contract;
(f) wage rate;
(g) date of commencement of employment;
(h) date of termination of employment;
(i) reason for termination;
(j) holiday entitlement; and
k) next of kin and address.

(2) Every employer who employs more than one worker shall prepare a record of wages in respect of each wage period and shall enter, in the register, the following particulars in respect of each worker:

(a) name;
(b) employment number or other identification (if any);
(c) ordinary wages earned during the pay period;
(d) the amounts of overtime, allowances, bonuses and other payments due in respect of the pay period under appropriate headings;
(e) total wages due for the pay period;
(f) deductions to be made from wages in respect of the pay period under appropriate headings;
(g) total of deductions for the pay period; and

(h) net wages payable.

Certificate of service

2. The certificate of service required to be furnished by an employer in terms of section 135, shall be substantially in Form A of this Schedule.

Deferment of wages

3. (1) With the voluntary consent of the employees and the concurrence of the attesting officer, a contract may make provision for the deferment of the wages due to the employee, within the limits set by the Code.

(2) The amount of any wages deferred under the terms of a contract shall be paid to the employee on completion of the contract, or in the case of a contract of foreign service not later than as soon as is reasonably practicable after the return of the employee to Lesotho.

Attestation and registration

4. (1) Fees for the attestation of contracts shall be:

(a) in respect of a contract of employment for a period not exceeding six months in agriculture (other than sheep shearers) the sum of Twenty (M20) Maloti;

(b) in respect of a contract of employment as a sheepshearer the sum of Twenty (M20) Maloti;

(c) in respect of a contract for other employment the sum of Fifty (M50) Maloti; and

(d) for each copy of a contract which is presented to the attesting officer the sum of Twenty (M20)Maloti;

(2) Attestation fees shall be payable by revenue stamps which shall be affixed to the original copy of a contract before presentation to the Attesting Officer for attestation and such fees shall not be recoverable from any employee by any private employment agent or Employer and the stamps shall be cancelled and punched by the Attesting Officer at the time of the attestation.

(3) The use of franking machines instead of stamps, or such other method of payment as may be approved by the Principal Secretary of the Ministry of Finance in accordance with section 6 (3) of the Stamp Duties Order 1972, is permissible.

Private employment agent's licence

5. (1) Every application for a private employment agent licence, including an application for the renewal of such a licence, shall be made in duplicate, and lodged with the Labour Commissioner.

(2) The application shall be substantially in Form B of the Schedule to these regulations and shall contain particulars noted therein.

(3) In addition the applicant shall declare that the particulars furnished are correct.

Licence fees

6. The fees payable in respect of a private employment agency licence shall be, in the case of a licence granted -

(a) per license per annum, the sum of Two Thousand Maloti (M2,000.00); and

(b) for a period of six months, the sum of One thousand Maloti (M1,000.00)

Form and period of validity of licence

7. (1) Every private employment agent's licence shall be for a period not exceeding one year, and shall expire on the 31st day of December of the year in which it was granted.

(2) The licence shall be as set out in Form C of the Schedule to the Regulations.

FORM A
Certificate of Service

(Section 134)

certify that
(employee) was
by (name of employer)
(description of employment)

_____ 19 _ to _____ 19_
(of service)

Signed _

Designation

FORM B
Application for Private Employment Agency Licence
(In Duplicate)

(Section 145)

1. Name and address in full (Block Letters)
2. Name and address of applicant's employer or style of his or her business if not the same as above
3. District of operations for which a private employment agent's licence is required
4. Estimated number of employees to be recruited or engaged by month/year
5. Nature of employment for which employees are to be recruited or engaged

6. Previous experience as a private employment agent:

   (a) in Lesotho
   (b) elsewhere

7. Name and address of two persons resident in Lesotho from whom refernces may be sought if required:

1. .....
2. .....

8. Form of security to be furnished for:
   (a) proper conduct as a private employment agent

   (b) payment of wages due and other obligations as a private employment agent

9. Arrangements proposed for safeguarding the health and welfare of persons to be recruited or engaged

10. List of employers outside Lesotho for whom it is proposed to recruit or engage employees under the licence applied for:

    1. .....
    2. .....
    3. .....

I solemnly declare that the particulars set forth in this application are correct and true to the best of my knowledge.

Date: _____
Signature of applicant _____

The person making this statement acknowledges that he/she knows and understands the contents of this declaration.
Sworn or/affirmed before me at _____
on this_____day of_____19_
_____
Director National Employment Service

FORM C.
PRIVATE EMPLOYMENT AGENCY LICENCE

(Section 145)

NOT TRANSFERABLE
Fee: M ... for one year
M ... 5 for six months or less
M ... for one month and not
more than 50 employees
Mr./Miss/Mrs. _____ of _____
_____having paid the sum of Maloti ..... is hereby licensed to engage in recruiting and/or to carry on the business of a private employment agent in the ____from the period from _____ 19_ to _____ 19_ (inclusive) subject to the conditions specified below.

Conditions of Licence

1. This licence may be cancelled or suspended at any time in accordance with the provisions of the Code and on cancellation or suspension must be surrendered to the Labour Commissioner forthwith.

2. This licence is valid only for the recruitment or engagement of persons in the area specified and for employment by the employer/employers specified on the back of the licence.

3. Other conditions (if any).

Date: _
(Name and Signature)

DIRECTOR, NATIONAL EMPLOYMENT SERVICES
FOURTH SCHEDULE
WORK PERMIT

(Sections 161 to 164)

Application for a work permit

1. (1) Every application for the grant of a certificate of employment, including an application for the renewal of such a certificate, shall be made in duplicate, and lodged with the Director, National Employment Service together with two recent passport photographs of the applicant.

(2) The application shall be in the form set out in Form A.

(3) A certificate of employment and any extension thereof, shall be in the form set out in Form B.

Fees payable

2. (1) An application fee for -

(a) a new application, shall be the sum of One Thousand maloti (M1,000.00); and

(b) renewal for certificate of employment, shall be the sum of One Thousand Maloti (M1,000.00) and it is non-refundable.

(2) The fees payable for a certificate of employment shall be as follows -

(a) six months and below, the sum of - M2,000.00

(b) above six months but below two years, the sum of - M2.500.00; and

(c) two years, the sum of - M3,000.00

Certificate of registration as a safety officer, the sum of - M1,000.00
Registration of a factory - M2,000.00

FORM A
APPLICATION FOR WORK PERMIT

1. Name and address in full (block letters) _____
2. Passport No. _____ Permit No. _____
3. Date of Birth _____ Age Sex _____
4. Place of Birth _____ Citizen of _____
5. Father's name _____ Place of Birth _____
6. Married, single, widower or widow _____
7. Name and nationality of husband/wife _____
8. Number of children _____
9. Schools attended, with date of entry and leaving and examination passed.

Name of School	Date of Entry	Date of Leaving	Examination Passed
(a)	.....	.....	.....
(b)	.....	.....	.....
(c)	.....	.....	.....
(d)	.....	.....	.....
(e)	.....	.....	.....
(f)	.....	.....	.....

10. University (or other post-Secondary Institution)

Name of Institution	Date of Entry	Date of Leaving	Qualification obtained
(a)	.....	.....	.....
(b)	.....	.....	.....

11. Any other recognised qualifications possessed.
_____
_____
12. Details of present and previous employment. This record should contain a record of each position held and cover the whole period after completing school, or training up to the present. For each position held, indicate:

1. Name and address of employer
2. Capacity in which employed
3. Nature of duties including any special responsibilities
4. Date of beginning and ending of employment
5. Salary
6. Reasons for leaving (where applicable)
7. Period of notice you would need 10 give your present employer.

12. Personal references. Give names, addresses and occupations of two responsible persons to whom you are well known, either in private life or in business.

Do not send testimonials from these persons. Indicate the period each person is known to you.
Date _____ Signature _____

FORM B
FORMAT OF WORK PERMIT

The holder of this certificate of employment work permit,
Mr/Mrs/Miss/Ms
Passport No. _____ is permitted to work for _____
at_____ as _____
This authority is valid for the period _____ to _____
His or her employment in Lesotho is subject to all laws and regulations normally applicable in Lesotho.

In case the holder leaves this employment such fact shall forthwith be reported by the employer to the Director National Employment Services. This certificate shall at all times be in the possession of the holder for production when necessary.
Photograph
of

Holder
No. _____
Given at Maseru this _____ day of _____ 19_
Minister of Public Service, Labour and Employment
Extension of period of validity
This work permit is extended to be valid for the period
_____to _____
Extension granted at Maseru this _____ day of_____ 19_

Director, National Employment Service

FIFTH SCHEDULE

(Section 186)

Security sector

1. (1) The normal hours of work for a watchman shall not be more than 60 hours per week, divided into 12 hours per day 5 days.

(2) An employer shall allow a watchman a weekly rest period of at least 48 continuous hours.

(3) An employer may request or permit a watchman to work for not more than ten hours a week in addition to the twelve normal working hours.

(4) Where an employer has requested or permit a watchman to work for more than the normal hours of work, the employer shall pay the watchman for the hours worked at the rate not less than one and one quarter times that watchman's normal wage rate.

Mining sector

2. This applies to the holders of mineral rights for diamonds, and their contractors and subcontractors, as far as the work of the contractors and subcontractors pertains to the diamond mining industry, relating to weekly rest, and ordinary hours of work and overtime. It also applies to all types of work other than those mentioned above but are carried out in this sector.

Hours of work and rest periods

3. (1) A worker may work for up to a maximum of 12 hours in any given day.

(2) A worker shall be allowed at least two 35-minute rest periods during any given 12-hour shift.

(3) A worker may be allowed to work for up to a maximum of 14 days continuously until his or her rest days away from work ("rest days"):

(a) Where a worker has worked for 13 to 14 days continuously, he or she shall be entitled to at least 7 continuous rest days prior to his or her subsequent shift;

(b) Where a worker has worked for 10 to 12 days continuously, he or she shall be entitled to at least 6 continuous rest days prior to his or her subsequent shift.

(c) Where a worker has worked for 8 to 9 days continuously, he or she shall be entitled to at least 5 continuous rest days prior to his or her subsequent shift.

(d) Where a worker has worked for 7 days continuously, he or she shall be entitled to 4 continuous rest days prior to his or her subsequent shift.

(4) A worker may be recalled from his or her rest days for purposes of attending to work exigencies only and shall be compensated for such overtime at double his or her hourly rate.

(5) Failure to comply with the provisions of subsections (1) to (4) shall constitute an offence and on conviction shall be liable to a fine of not less than M10 000.00.

Arrangements for exchange of shifts

4. Employers shall, in consultation with workers, establish a shift exchange system that promotes worker's acclimatization.

Wage structure

5. (1) An average total of 246 hours shall be paid monthly.

(2) The first 195 hours during any month shall be paid at a normal rate.

(3) The subsequent 48 hours shall be paid at a rate not less than one and a quarter the normal rate.

(4) The 3 hours beyond 195 and 48 hours shall be paid at a rate of not less than twice the normal rate.

(5) A monthly night shift allowance of 10% basic salary shall be paid to every worker that works night shift.

(6) Where workers have agreed to work shifts in a shift cycle in line with these Act, at an agreed salary, prior to this Act then the wage structure set out in this Act will be incorporated without requiring an increase in the salaries paid to such worker.

NOTE

1. Act No. 22 of 1968
2. Act No. 12 of 1970
3. Act No. 16 of 2011
4. Act No. 13 of 1970
5. Act No. 5 of 2012
6. Act No. 19 of 1935
7. Act No. 5 of 1972

GOVERNMENT NOTICE NO. 3 OF 2024

The Parliament of Lesotho

Statement of Objects and Reasons of the Labour Act, 2024

(Circulated by the Authority of the Honourable Tšeliso Mokhosi, Minister responsible for labour and employment

The purpose of the Labour Act is to provide a comprehensive framework for regulating the employment relations, promoting fair labour practices and ensuring the welfare and rights of both employers and workers.

The Act addresses issues such as working conditions, wages and dispute resolution mechanisms within the labour market.

The Act further aligns national laws with international standards. The Act addresses the labour relations dichotomy by extending its coverage to public and informal sector, with the exclusion of the security agencies.

The Act introduces greater flexibility to accommodate global trends and to facilitate economic growth by introducing averaging of hours of work per month. This flexibility will enable employers to deal with work pressure when it occurs. It also introduces bargaining councils.

The Act further extends the jurisdiction of Directorate of Dispute Prevention and Resolution (DDPR) to disputes of unfair labour practices. It empowers the Labour Court to make arbitral awards and settlement agreements into orders of court for purposes of enforcement. This will assist the Labour Court in the reduction of the backlog.

Finally, the Act extends martenity to a worker who has a stillborn. It also introduces the following leaves, paternity leave, family responsibility leave, bonding leave where a worker has adopted a child and compassionate leave where a worker has lost an immediate family member.

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