MALAWI

EMPLOYMENT ACT 2000
No. 6 of 2000

MALAWI GOVERNMENT

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Act

No. 6 of 2000

I assent

BAKILI MULUZI

PRESIDENT

14th May, 2000

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An Act to establish, reinforce and regulate minimum standards of employment with the purpose of ensuring equity necessary for enhancing industrial peace, accelerated economic growth and social justice and for matters connected therewith and incidental thereto

ENACTED by the Parliament of Malawi as follows --

PART I -- PRELIMINARY

Citation and commencement

1. This Act may be cited as the Employment Act, 1999, and shall come into operation on such date as the Minister shall appoint by notice published in the *Gazette.*

Application

2.--(1) Subject to subsection (2), this Act applies to the private sector and the Government, including any public authority or enterprise.

(2) This Act does not apply to members of the armed forces, the prisons service or the police, except those employed in a civilian capacity.

Interpretation

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

"Commissioner" means the Labour Commissioner appointed pursuant to section 8;

"Court" means the Industrial Relations Court established under section 110 (2) of the Constitution;

"employee" means --

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

(b) any person, including a tenant share cropper, who performs work or services for another person for remuneration or reward on such terms and conditions that he is in relation to that person in a position of economic dependence on, and under an obligation to perform duties for, that person more closely resembling the relationship of employee than that of an independent contractor; or

(c) where appropriate, a former employee;

"employer" means--

(a) any person, body corporate, undertaking, public authority or body of persons who or which employs an employee and includes heirs,

successors and assignees of the employer, or

(b) where appropriate, a former employer;

"forced labour" means any work or service that is exacted from any person under the threat of any penalty and is not offered voluntarily, but does not include--

(a) any compulsory military service or work, of a purely military character;

(b) any work or service that forms part of the normal communal or civil obligations of citizens of Malawi;

(c) any work or service exacted from a person as a consequence of a conviction by any court:

Provided the person is not hired, by or placed al the disposal of a private individual, company or association and the work or service is carried out under the supervision and control of a public authority;

(d) any work or service exacted in emergency situations where the life or well being of the whole or part of the population is endangered, but only to the extent that the requiring of such labour is reasonably justifiable, in the circumstances; or

(e) minor communal services of a kind performed by members of the community in the direct interest of the community;

Provided that the members of the community have been consulted concerning the need for such services;

"industrial undertakings" mean--

(a) mines, quarries and other works for the extraction of minerals;

(b) undertakings in which articles are manufactured, altered, cleaned, ornamented, finished, adapted for sale, broken up or demolished, of in which materials are transformed, including undertakings engaged in food processing, agro-processing activities, ship building or in the generation, transformation or transmission of electricity or motive power of any kind; or

(c) undertakings engaged in building and civil engineering work, including constructional, repair, maintenance, alteration and demolition

work;

"labour officer" includes the Commissioner, Regional Labour Officer and District Labour Officer;

"remuneration" means the wage or salary and any additional benefits, allowances or emoluments whatsoever payable, directly or indirectly, whether in cash or in kind, by the employer to the employee and arising out of the employee's employment;

"wage" means all earnings, however designated or calculated. capable of being expressed in terms of money and fixed by mutual agreement or by law, which are payable by virtue of a written or unwritten contract of employment by an employer to an employee for work done or to be done or for service rendered or to be rendered.

PART II--FUNDAMENTAL PRINCIPLES

Prohibition against forced labour

4.--(1) No person shall be required to perform forced labour.

(2) Any person who exacts or imposes forced labour or causes or permits forced labour shall be guilty of an offence and liable to a fine of K 10,000 and to imprisonment for two years.

Anti-discrimination

5.--(1) No person shall discriminate against any employee or prospective employee on the grounds of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.

(2) Subsection (I) does not preclude any provision, programme or activity that has as its object the improvement of conditions of disadvantaged persons, including those who are disadvantaged on the grounds enumerated in subsection (1).

(3) Any person who contravenes this section shall be guilty of an offence and liable to a fine of K 10,000 and to imprisonment for two years.

Equal pay

6.--(1) Every employer shall pay employees equal remuneration for work of

equal value without distinction or discrimination of any kind, in particular, on basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities.

(2) Where a violation of subsection (1) is alleged, the employer shall bear the burden of proving that there was no violation.

Remedies for infringement of fundamental rights

7. Where a complaint alleging infringement of rights contained in this Part has been proved, the Court shall make such order as it deems necessary to ensure compliance with the provisions of this Part, including an order for reinstatement of an employee, the restoration to him of a benefit or advantage and an order for the payment of compensation.

PART III--ADMINISTRATION

The Labour Commissioner and labour officers

8.--(1) There shall be appointed in the public service an officer to be designated as the Labour Commissioner (in this Act otherwise referred to as the "Commissioner"), and other public officers subordinate to him, who shall be responsible for the effective administration and application of this Act.

(2) Without derogating from the generality of subsection (1), the Commissioner shall be responsible for--

(a) inspecting places of work as often and as thoroughly as is necessary;

(b) supplying relevant technical information and advice to employers, employees and other persons on labour matters;

(c) making proposals for the periodic review of this Act;

(d) the making of such reports as he shall consider appropriate or as the Minister may require; and

(e) any other matter that shall require admin is nation under this Act.

(3) The Commissioner may, in writing, authorize any public officer to exercise any or all of the powers of the Commissioner, subject to such conditions, including territorial restrictions, as the Commissioner may stipulate in the

authorization.

(4) In the performance of his duties under this Act, the Commissioner shall be subject to--

(a) the general and special directions of the Minister; and

(b) for avoidance of doubt, the provisions of the Public Service Act No. 19 of 1994

(5) This Act shall be enforced by labour officers, acting subject to the direction of the Commissioner and, for that purpose, labour officers shall have the powers set out in section 9.

Powers of labour officers

9.--(1) A labour officer--

(a) may, subject to paragraph (c), enter any workplace freely and without prior notice at any hour of the day or night;

(b) may, subject to paragraph (c), enter by day any premises which he reasonably believes to be a workplace;

(c) shall not enter the private home of an employer pursuant to paragraphs *(a)* and *(b)* except with the consent of the employer or under the authority of a warrant issued by a magistrate;

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

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

(ii) require the production of any records, books, registers or other documents, the keeping of which is prescribed by this Act or any other law relating to the employment of persons or conditions of work, in order to ensure that this Act and any other law relating to the employment of persons is being respected, and to copy such documents, or lake extracts therefrom;

(iii) enforce the posting of any notices required by this Act or

any other law relating to the employment of persons; and

(iv) take or remove, for purposes of analysis, samples of materials and substances used or handled, subject to the employer or the employer's representative being notified of any samples or substances taken or removed for this purpose;

(e) may require from employers and employees information as to the remuneration, hours and conditions of work;

(f) may inspect any record of accidents or occupational disease kept by the employer pursuant to the provisions of the Occupational Safety, Health and Welfare Act or any other law and require from an employer information as to the causes and circumstances relating to any accident or occupational disease that may have occurred, on the employer's premises or in the course of employment; No. 21 of 1997

(g) may be accompanied by a member of the police force if he has reasonable cause to apprehend any serious obstruction in the execution of his duty; and

(h) may take steps with a view to remedying defects observed in plant layout, installation or working methods which he reasonably believes constitute a threat to the health or safety of employees.

(2) In order to enable a labour officer to take steps under subsection (1) *(h),* a labour officer shall have powers to make orders requiring--

(a) such alteration to the plant installation or layout, to be carried out within a specified time limit, as may be necessary to secure compliance with the legal provisions relating 10 health or safety of employees; or

(b) in the event of imminent danger to the health or safety of the employees, measures with immediate executory force.

Labour officer to notify employer of his presence

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

Free access and assistance to a labour officer

11. An employer shall--

(a) grant an employee every opportunity and necessary facilities for

communicating freely with a labour officer, and

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

12. No employer shall inflict a disadvantage on an employee for anything done by the employee in pursuance of the provisions of this Part.

Prohibition against victimization

13.--(I) No labour officer snail, white in office or subsequently, reveal any manufacturing or commercial secret or working process which comes to his knowledge in the course of his duties.

Prohibition against revealing secret information

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

14. A labour officer shall not have any interest, direct or indirect, in the undertakings under his supervision.

Prohibition against conflict of interest

15. In exercise of his powers, a labour officer shall take into account the size, capitalization and degree of formality of the operation of undertakings under his supervision and shall make all efforts to assist smaller and informal enterprises in understanding and complying with this Act and any other law relating to the employment of persons.

Assistance to small enterprises

16.--(1) A labour officer shall within thirty days of conducting an inspection submit to the Regional Labour Officer a report in respect thereof.

Reports

(2) In addition to reports referred to in subsection (1), a labour officer shall, on such intervals as may be determined by the Commissioner but which intervals shall not be less than once a year, submit periodic reports to the Regional Labour Officer.

(3) The Regional Labour Officer shall every three months transmit to the

Commissioner the reports submitted to him pursuant to subsections (1) and (2).

(4) The reports referred to in subsections (1) and (2) shall be drawn up in such manner and deal with such subjects as may be determined by the Commissioner.

Annual general report

17.--(1) The Commissioner shall publish an annual general report on the work of the inspection service.

(2) The annual report shall be published within a reasonable time after the end of the year to which it relates and, in any case, within twelve months after the end of the year.

(3) The annual general report shall be circulated to all registered employee's organizations and employer's organizations.

Content of the annual general report

18. The annual general report referred to in section 17 shall deal with all subjects under the control of the Commissioner including--

(a) laws and regulations relevant to the work of the inspection service;

(b) staff of the labour inspection service;

(c) statistics of workplaces liable to inspection and the number of workers employed therein;

(d) statistics of inspection visits;

(e) statistics of violations and penalties imposed in respect of the violations;

(f) statistics of industrial accidents; and

(g) statistics of occupational diseases.

Identity card

19. Every -labour officer shall be furnished by the Secretary responsible for labour matters with an identity card and shall, if so required in the course of exercising his duties under this Act, produce the card.

20. Any person who--

Obstruction, etc., of labour officers

(a) wilfully obstructs a labour officer in the exercise of any of the powers conferred upon him by this Act;

(b) fails to comply with any lawful requirement or order of a labour officer given or made under this Act;

(c) prevents or attempts to prevent any employee from being examined under section 9(1)*(d)*; or

(d) fails to produce any book, register or other document upon being so required under section 9(1)*(d)*,

shall be guilty of an offence.

PART IV--EMPLOYMENT OF YOUNG PERSONS

21.--(1) Subject to subsection (2). no person under the age of fourteen shall be employed or work in any public or private agricultural, industrial or non-industrial undertaking or any branch thereof.

Prohibition against child labour

(2) Subsection (1) shall not apply to work done in homes, vocational technical schools or other training institutions;

Provided that work done in a vocational technical school or other training institution is--

(a) approved and supervised by a public authority; or

(b) an integral part of the educational or vocational training programme for which the school or institution is responsible.

22.--(1) No person between the age of fourteen and eighteen years shall work or be employed in any occupation or activity that is likely to be--

Hazardous work

(a) harmful to the health, safely, education, morals or development of such a person; or

(b) prejudicial to his attendance at school or any other vocational or

training programme.

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

Register of young persons

23. Every employer shall keep a register of any person the age of eighteen years employed by or working for him.

Offences against this Part

24. Any person who contravenes any provision of this Part shall be guilty of an offence and liable to a fine of K20.000 and to imprisonment for five years.

PART V--CONTRACTS

Types of contracts

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

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

(a) a contract for an unspecified period of time;

(b) a contract for a specified period of time; or

(c) a contract for a specific task.

Probationary period

26.--(1) In a contract of employment in respect of a ski lied worker, the parties may agree on the duration of the probationary period:

Provided that the period shall not, in any event, exceed twelve months.

(2) During a probationary period, a control of employment may be terminated at any time by either party without notice.

(3) For purposes of this section, "skilled worker" means an employee in an undertaking who has special ability to do something which ability is gained through acquisition, programmed or otherwise, of knowledge, attitude and behaviour.

Particulars of employment

27.--(1) Every employer shall give to each employee a written statement of particulars of employment.

(2) The statement referred to in subsection (1) shall be given--

(a) with respect to an employee in employment at the commencement of this Act. within three months of the commencement of this Act, to each employee who is employed by the employer; and

(b) with respect to an employee employed after the commencement of this Act, within one month of his reporting for work.

(3) The written statement referred to in subsections (1) and (2) shall include the following particulars--

(a) the names of the employee and of the employer;

(b) the date of commencement of the contract;

(c) the rate of remuneration and the method of calculating remuneration;

(d) the intervals at which remuneration is paid;

(e) the nature of the work to be performed;

(f) normal hours of work;

(g) any provision for the termination of the contract other than those provided by this Act;

(h) any disciplinary rule applicable to the employee.

(4) For the purposes of this section. "employer" means any person, body corporate, undertaking or body of persons who or which has in his employment at least five employees.

Termination of contracts

28.--(l) Subject to sections 29 and 57, a contract of employment for an unspecified period of time may be terminated by either party.

(2) A contract of employment for a specified period of time shall automatically terminate on the date specified for its termination and, unless it is expressly or

tacitly renewed or prolonged, no notice shall be required for its termination;

(3) Where the purpose or effect of a contract of employment that is purported to be for a specified period of time or a specific task is the filling on a lasting basis of a post connected with the normal and permanent activity of an undertaking, it shall be deemed to be a contract of employment for an unspecified period of time.

(4) A contract of employment to perform a specific task shall terminate on the completion of the task and no notice of termination shall be required of either party:

Provided that in cases of ambiguity, where an employee is regularly and repeatedly employed and paid wages on the basis of completion of a quantity of work which can be completed in less than 24 hours, the contract of employment shall be deemed to be of an unspecified period of time.

Notice of termination of contracts

29.--(1) A contract of employment for an unspecified period of time may be terminated by either party upon giving the other party the following minimum period of notice in writing--

(a) where the contract is to pay wages at a monthly rate, one month's notice;

(b) where the contract is to pay wages at a fortnightly rate--

(i) one fortnight's notice where the employee has been employed for less than five years; and

(ii) one month's notice where the employee has been continuously employed for at least five years.

(c) where the contract is to pay wages at a weekly rate--

(i) one week's notice where the employee has been employed for less than two years;

(ii) one fortnight's notice where the employee has been continuously employed for a period of not less than two years but not exceeding five years; and

(iii) one month's notice where the employee has been continuously employed for at least five years;

(d) where the contract is to pay wages at a daily or hourly rate--

(i) one day's notice where the employee has been employed for less than six months;

(ii) one week's notice where the employee has been continuously employed for a period of not less than six months but not exceeding two years;

(iii) one fortnight's notice where the employee has been continuously employed for a period of not less than two years but less than five years; and

(iv) one month's notice where the employee has been continuously employed for a period of at least five years;

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

(3) The minimum period of notice in respect of a contract of employment for a specified period of time shall be fourteen calendar days.

Payment in lieu of notice

30.--(1) Section 29 shall not be taken to prevent either party from waiving his right to notice on any occasion or from accepting payment in lieu of notice.

(2) In lieu of providing notice of termination, the employer shall pay the employee a sum equal to the remuneration that would have been received and confer on the employee all other benefits due to the employee up to the expiration of the required period of notice.

(3) Where the employee terminates the contract without notice in circumstance in which notice was required, and the employer has not waived the right to notice, the employee shall be required to pay the employer in lieu of notice a sum equal to the remuneration that would otherwise have been due to the employee up to the expiration of the required period of notice:

Provided that the employee shall be entitled to be paid remuneration and to receive such other benefits which may have accrued at the date of termination.

Certificate of termination

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

indicating--

(a) the name and address of the employer;

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

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

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

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

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

(2) The certificate referred to in subsection (1) shall not contain any evaluation of the employee's work unless the evaluation is requested by the employee.

Transfer of contract

32.--(1) Except as provided in subsection (2), no contract of employment shall be transferred from one employer to another without the consent of the employee.

(2) Where an undertaking or a part thereof is sold, transferred or otherwise disposed of, the contract of employment of an employee in employment at the date of the disposition shall automatically be transferred to the transferee and all the rights and obligations between the employee and the transferor at the date of the disposition shall continue to apply as if they had been rights and obligations between the employee and the transferee and anything done before the disposition by or in relation to the transferor in respect of the employee shall be deemed to have been done by or in relation to the transferee.

(3) Subsection (2) shall not absolve any person of liability to be prosecuted for, convicted of and sentenced for any offence committed prior to the sale, transfer or disposition of the undertaking referred to in subsection (2).

Death of employer

33. If the employer's personal or legal position formed the basis of a contract of employment, the death of the employer shall cause the contract of employment to terminate one month from the date of the employer's death, unless it is otherwise terminated in accordance with section 57 (1) within that period.

Insolvency of employer

34.--(1) The insolvency or winding-up of the employer's business shall cause the contract of employment of any employee to terminate one month from the date of insolvency or winding-up, unless it is otherwise terminated in accordance with section 57(1) within that period.

(2) This section shall not apply where, notwithstanding the insolvency or winding-up, the undertaking continues to operate or has been transferred.

(3) On the insolvency or winding-up of an employer's business, the claim of an employee or those claiming on his behalf to wages and other payments to which he is entitled under this Act or any contract shall have priority over all other creditors, including the State and the social security system, for the following amounts--

(a) wages, overtime pay, commissions and other forms of remuneration relating to work performed during the twelve weeks preceding the date of the declaration of insolvency or winding-up;

(b) holiday pay due as a result of work performed during the two years preceding the date of the declaration of insolvency or winding-up;

(c) amounts due in respect of other types of paid absence accrued during the three months preceding the date of the declaration of insolvency or winding-up; and

(d) severance pay, compensation for unfair dismissal and other payments due to employees upon termination of their employment.

Severance allowance

35.--(1) On termination of contract, by mutual agreement with the employer or unilaterally by the employer, an employee shall be entitled to be paid by the employer, at the time of termination, a severance allowance to be calculated in accordance with the First Schedule.

(2) The Minister may, in consultation with organizations of employers and organizations of employees; by notice published in the *Gazette*, amend the First Schedule.

(3) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

(4) For the purposes of subsection (1), termination includes termination by reason of the insolvency or death of the employer, but does not include--

(a) termination of a contract of employment for a specified period of time where termination occurs at the expiration of the specified period; or

(b) a contract of employment for a specified task where the termination occurs at the completion of the task.

(5) The payment of a severance allowance under subsection (1) shall not affect the employee's entitlement, if any, to payment in lieu of notice under section 30 or to a compensatory or special award under section 63.

(6) Subsection (1) shall not apply where the employee--

(a) is serving a probationary period as provided for in section 26;

(b) is fairly dismissed for a reason related to his conduct;

(c) unreasonably refused to accept an offer of re-employment by the employer at the same place of work under no less favourable terms than he was employed immediately prior to the termination;

(d) is employed by a partnership and his employment ceases on the dissolution of the partnership and he enters into employment with one or more of the partners immediately after such dissolution or unreasonably refuses to accept an offer of employment by any such partner under no less favourable terms than he was employed immediately prior to the dissolution;

(e) is employed by a personal employer who dies, and the employee enters into the employment of the personal representative, widow, widower or any heir of the deceased employer immediately after such death or he unreasonably refuses to accept an offer of employment by such person on no less favourable terms than he was employed immediately prior to the death.

(7) Where the contract of employment is terminated by reason of the death of the employee, the severance allowance shall be paid to the surviving spouse of the deceased employee or, in the absence of such a spouse, to such other dependent relative as the labour officer may decide.

(8) A complaint that a severance allowance has not been paid may be presented to a District Labour Officer within three months of its being due and if the District Labour Officer fails to settle the matter within one month of its

presentation, it may be referred to the Court, in accordance with section 64 (2) or 64 (3), which, if the complaint has been proved, shall order payment of the amount due.

PART VI -- HOURS OF WORK, WEEKLY REST AND LEAVE

Normal working hours, weekly rest, etc.

36.--(1) An employee's normal working hours shall be set out in the employment contract:

Provided that no employer shall require or permit any employee, other than a guard or any other category of employee exempted from this Part pursuant to section 38, to work for more than forty-eight hours during any week, excluding overtime.

(2) Subject to subsection (3), no employer shall require or permit a guard to work for more than forty-eight hours in a week, excluding overtime.

(3) An employer may require a guard to work for more than forty-eight hours where circumstances so demand:

Provided that any hours worked in excess of forty-eight hours shall be treated as overtime and paid at the rate of fifty per cent of the guard's basic pay.

(4) No employer shall require or permit an employee to work for more than six consecutive days without a period of rest, comprising at least twenty-four consecutive hours, which shall be taken on a customary day of rest or a day agreed upon between the parties:

Provided that the weekly rest period shall, whenever possible, be granted simultaneously to all employees concerned in each undertaking.

(5) Subsection (4) shall not apply to undertakings in which only members of the employer's family who do not earn wages work nor to persons in commercial or retail undertakings holding high management positions.

Maximum daily working hours

37. No employer shall require or permit--

(a) a guard or shift worker to work for more than eight hours on any day;

(b) any employee, other than a guard or shift worker--

(i) who normally works not more than five days during a week, to work for more than twelve hours on any day; or

(ii) who normally works six days during a week, to work for more than eight hours on any day.

Exemption

38.--(1) The Minister may, by Order published in the *Gazette*, grant temporary exemption from any or all provisions of this Part--

(a) in case of accident, actual or imminent, *force majeure* or the need for urgent work to premises or equipment, but only in so far as may be necessary to avoid serious interference with the ordinary working of the undertaking;

(b) in the event of abnormal pressure of work due to special circumstances, in so far as the employer cannot ordinarily be expected to resort to other measures; and

(c) in order to prevent loss of perishable goods.

(2) Where temporary exemption is granted under subsection (1), the employees concerned shall be granted compensatory rest of a total duration of at least equivalent to that provided for in section 36 (4), and the hours worked beyond the maximum daily normal working hours shall be compensated as overtime, in conformity with section 39.

Overtime

39.--(1) Overtime shall be subject to the limitations set out in sections 36(4) and 37.

(2) There shall be three classes of overtime known respectively as--

(a) ordinary overtime, which shall be time worked on a working day in excess of the hours normally worked by the employee in the undertaking concerned;

(b) day off overtime, which shall be time worked by an employee on a day on which he would otherwise be off duty; and

(c) holiday overtime, which shall be time worked on a public holiday.

(3) An employee shall for each hour of ordinary overtime be paid at the hourly rate of not less than one and one-half his wage for one hour.

(4) An employee shall for each hour of day-off overtime be paid at the hourly rate of not less than twice his wage for one hour.

(5) An employee shall for each hour of holiday overtime be paid at a rate of not less than twice the normal hourly rate.

Payment for working on public holiday

40.--(1) An employee, if not required to work on a public holiday, shall be entitled to leave of absence with full pay on the holiday:

Provided that--

(a) an employee who absents himself without reasonable cause on the working day preceding the public holiday shall not be paid for the public holiday;

(b) where more than one public holiday is observed on successive days then, in order to qualify for payment in respect of the public holidays, an employee shall not have been absent without reasonable cause for the equivalent number of working days immediately preceding the public holidays; and

(c) an employee who, having been required to work on a public holiday, fails so to do without reasonable cause shall not be entitled to payment in respect of the public holiday.

(2) Each hour worked on a public holiday shall be paid for at the hourly rate of wages in addition to the day's pay required to be given under subsection (1):

Provided that--

(a) when the hours worked on the public holiday exceeds the number of hours normally worked, the additional hours shall be paid for at twice the hourly rate; and

(b) where pay for a public holiday is not payable due to the absence of the employee from work on the day or days preceding the public holiday or holidays and the employer requires the employee to work on the public holiday or holidays, then the employee shall nevertheless be paid for all hours worked on the public holiday or holidays at twice the normal hourly rate.

Continuous employment

41.--(1) For the purpose of this Act, "continuous employment" shall begin from and include the first day of which an employee begins to work for an employer and shall continue up to and including the date of termination of employment.

(2) It shall be presumed, unless the contrary is shown, that the employment of an employee with an employer is continuous whether or not the employee remains in the same job.

(3) An employee's continuous employment shall not be treated as interrupted if the employee is absent from work for a period less than six months--

(a) due to taking annual, maternity, sick or any other leave in accordance with this Act, any other enactment or agreement;

(b) due to his suspension, with or without pay, in accordance with the provisions of this Act, any other enactment or agreement;

(c) due to the termination of his employment prior to being reinstated or re-engaged in accordance with section 63 or under any agreement;

(d) due to having been temporarily laid-off by the employer;

(e) due to action in pursuance of a strike in which he participated;

(f) due to a lockout; or

(g) with the leave of his employer.

(4) Any period of time elapsing in the circumstances referred to in subsection (3) shall count for the purposes of calculating the continuous period of employment.

(5) Any period during which an employee is absent from work because of his participation in a strike shall not interrupt the continuity, but shall not count for the purposes of calculating the length of continuous employment.

Successor employer

42. Where an undertaking or a part of it is sold, leased, transferred or otherwise disposed of, the periods of employment of an employee with the two successive employers shall be deemed to constitute a single period of continuous employment with the successor employer.

43. Where an employer is engaged in an undertaking in which it is customary to employ some employees only at certain seasons of the year and an employee is employed for successive seasons, the employee shall be deemed to have been continuously employed for the aggregate of all the time he has actually performed work for the same employer for continuous seasons. Seasonal employment

44.--(1) Every employee, except where otherwise provided for in this Act, shall be entitled to a period of annual leave with pay of not less than-- Annual leave

(a) eighteen working days if he works six days a week; and

(b) fifteen working days if he works five days a week,

and the leave shall be taken within six months of the entitlement to the leave falling due:

Provided that the leave may be deferred and accumulated by mutual agreement.

(2) Where an employee's length of service in any one year, including the period prior to the completion of the first year of continuous service, is less than the length of service required for the full entitlement set out in subsection (1), the employee shall be entitled to a period of annual leave with pay proportionate to his length of service during that year.

(3) Where an employee is employed on a less than full-time basis, any day on which the employee works shall, in the computation of periods of employment, be counted as one working day.

45.--(1) The leave referred to in section 44-- Date of leave

(a) shall be granted by the employer, in consultation with the employee, as from a date determined by the employer, but not later than six months after the end of the year in respect of which the leave entitlement arose;

(b) shall not be concurrent with any period of--

(i) sick leave granted pursuant to section 46;

(ii) maternity leave granted pursuant to section 47; or

(iii) notice of termination of contract of employment.

(c) shall be extended by one working day with full pay for each public holiday which falls within the employee's period of leave and which falls on a day which otherwise would have been an ordinary working day for the employee.

(2) Upon termination of an employee's employment, the employer shall pay him the remuneration in respect of any leave which accrued to the employee but was not granted before the date of termination of employment.

(3) The amount to be paid to an employee under this section shall be calculated at the rate of at least the wage which the employee was receiving immediately prior to the date upon which his leave commenced or his employment terminated, as the case may be.

Sick leave

46.--(1) An employee shall be entitled, after completing twelve months' continuous service, to at least four weeks sick leave on full pay and eight weeks sick leave on half pay during each year.

(2) During sick leave, an employee shall be paid the normal rate of wages.

(3) An employer shall not be bound to grant sick leave unless the employee produces a certificate from a registered medical practitioner stating the nature of the employee's incapacity.

Maternity leave

47.--(1) A female employee shall be entitled, within every three years, to at least eight weeks maternity leave on full pay.

(2) During the period when an employee is on maternity leave, her normal benefits and entitlements, including her contractual rights and accumulation of seniority, shall continue uninterrupted and her period of employment shall not be considered to have been interrupted, reduced or broken.

(3) In the event of illness, certified by a registered medical practitioner, arising out of pregnancy or confinement, affecting the employee or her child, the employer shall grant the employee additional leave as the employer may deem fit.

Right to retum

48.--(1) Upon the expiration of her maternity leave, an employee shall have the right to return to the same job with the same benefits and entitlements as immediately before her absence, unless--

(a) the job has ceased to exist because of the economic, technological or organizational requirements of the undertaking; or

(b) she is incapable of continuing to perform the job.

(2) In either of the circumstances mentioned in subsection (1), the employer shall take reasonable steps to find the employee a suitable alternative job within the undertaking.

(3) If no suitable alternative job can be found in accordance with subsection (2), or if the employee unreasonably refuses the offer of a suitable alternative job, the employer shall be entitled to terminate her employment with notice, subject to the requirements of section 28 and to providing a severance allowance under section 35.

Termination related to pregnancy

49.--(1) An employer who terminates the employment of an employee because the employee is pregnant or for any reason connected with her pregnancy shall be guilty of an offence and the burden of proving that the employment was not terminated because of pregnancy shall be on the employer.

(2) An employer who is convicted of an offence under subsection (1) shall be liable to a fine of K20,000 and imprisonment for five years.

(3) In addition to imposing a penalty under subsection (2), the Court may order--

(a) the employer to reinstate the employee, who shall be treated in all respects as if her employment had not been terminated; and

(b) an award of compensation as specified in section 63 (1) (*c*).

(3) Where reinstatement is ordered pursuant to subsection (3) *(a),* the employer shall be liable to pay wages to the employee for the period prior to such reinstatement.

(4) An employer who is ordered under subsection (2) to reinstate an employee and refuses to do so shall be guilty of an offence and liable to a fine of K500 for each day during which the offence continues.

PART VII--WAGES

Payment of wages

50.--(1) The wages payable to an employee shall be paid in accordance with the terms of the employment contract:

Provided that they shall be paid--

(a) not less often than once a week or fortnight in the case of an employee whose wages are--

(i) fixed by the hour, day or week; or

(ii) calculated solely on a piece-work or task-work basis; or

(b) not less than once a month in the case of an employee whose wages are fixed on a monthly or yearly basis.

(2) Subject to the proviso to section 28 (4), where the contract of employment is for a specific task, wages may be paid upon the completion of the task or, if the employer and the employee so agree, weekly, fortnightly or monthly, in which case the contract shall not be considered to be one for a specific task.

(3) The wages payable to an employee--

(a) shall be paid to the employee or to a person specified by him in writing;

(b) shall be paid in legal tender; and

(c) may, with the consent of the employee, be paid by cheque in the sum of the wages payable.

(4) Subject to subsection 5, partial payment of wages in the form of allowances in kind may be made in undertakings or occupations where allowances are customary and--

(a) the allowances are appropriate for the personal use and benefit of the employee and the employee's family; and

(b) the value attributed to the allowance is fair and reasonable.

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

Pay Statement and record keeping

51.--(1) Every employee in the public or private agricultural, industrial or commercial undertaking or any branch thereof shall receive with each payment of wages an accurate itemized statement from the employer in writing in a form which sets out--

(a) the employee's gross wages due at the end of the pay period;

(b) the amount of every deduction from his wages during the pay period and the purpose for which each deduction was made; and

(c) the employee's net wages payable at the end of the pay period.

(2) Every employer in the public or private agricultural, industrial or commercial undertaking or any branch thereof shall keep an accurate written record showing--

(i) wages and remuneration paid to each employee during the previous three years; and

(ii) the gross amount payable to each employee, deductions made therefrom and reasons for the deductions.

(3) An employee shall have the right to complain to the District Labour Officer where an employer fails to provide an accurate pay statement or keep accurate records, as required by this section.

Prohibition relating to payment of remuneration

52.--(1) No employer shall--

(a) pay wages in the form of promissory notes, vouchers or coupons;

(b) require or permit an employee to pay or repay to him any remuneration payable or paid to the employee in accordance with this Act;

(c) require or permit a direct or indirect payment from the employee or deduction from the employee's wages for the purpose of obtaining or retaining employment;

(d) do any act or permit any act to be done as a direct or indirect result of which an employee is deprived of the benefit or of any portion of the benefit of any remuneration so payable or paid;

(e) require or permit an employee to give a receipt for or otherwise to represent that he received more than he actually received by way of remuneration;

(f) pay an employee by requiring the employee to make use of any store which is established--

(i) in connexion with the undertaking of the employer; or

(ii) for the sale of commodities to his employees;

(g) require or permit wages to be paid in any place of amusement or where alcoholic liquor or noxious drugs are sold, shop or store for the retail sale of merchandize, except in the case of persons employed therein;

(h) limit in any manner the freedom of the employee to dispose of his wages.

(2) No employer shall deduct from an employee's wages any amount, except--

(a) the employee's contribution to a compulsory social security scheme;

(b) an amount to be deducted in accordance with law or a court order:

Provided that such deduction shall not be more than one-half of the employee's wages for the period in respect of which the wages are being paid;

(c) an amount authorized by the employee in writing which is not greater in aggregate to an amount equal to one-half of the wages of the employee and which--

(i) is due to the employee in respect of housing furnished by the employer to the employee, goods sold by the employer to the employee or any loan or advance on his wages granted by the employer to the employee;

(ii) the employer has paid or has undertaken to pay in connexion with any loan granted to such employee in order to acquire a dwelling or in connexion with the hiring of a dwelling or other accommodation; or

(iii) the employee owes to a vacation, sick, medical, insurance, savings, provident or pension fund;

(iv) is deducted in accordance with section 36 of the Labour Relations Act. No. 16 of 1996

Payment of remuneration on termination

53.--(1) Subject to subsection (2), wages and other remuneration due to an employee on me termination or completion of his contract of employment shall be paid within seven days after its termination or completion.

(2) Pension benefits due to an employee shall be paid within six weeks of the termination or completion of the contract of employment.

Setting of minimum wages

54.--(1) The Minister, if he is of the opinion that it is expedient to fix the minimum wages of any group of wage earners, shall consult with organizations of workers and employers relevant to the group of wage earners as to the appropriate level of minimum wage to be prescribed.

(2) The Minister may, after the consultations referred to in subsection (1), publish in the *Gazette* a wages order prescribing the minimum wages to be paid to the group of wage earners to which such wages order applies.

(3) In prescribing minimum wages, the Minister shall, as far as possible, consider--

(a) the needs of workers and their families, the general level of wages, the cost of living, social security benefits and the relative living standards of other social groups; and

(b) economic factors, including the requirements of economic development, levels of productivity and any effect the wage might have on employment.

(4) The Minister shall, in consultation with representative organizations of workers and employers, reconsider the levels of minimum wages at least once every three years.

(5) The Minister shall consult with representative organizations of workers and employers at any time he is of the opinion that the procedure for setting wages set out in this section should in any way be modified.

No abatement of minimum wages

55.--(1) Minimum wages set under section 54 shall not be subject to abatement:

Provided that collective agreements may provide for wages which exceed the minimum wages.

(2) Any employer who pays wages in contravention of subsection (1) shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for ten years.

PART VIII--DISCIPLINE AND DISMISSAL

Disciplinary action

56.--(1) An employer shall be entitled to take disciplinary action, other than dismissal, when it is reasonable to do so considering all the circumstances.

(2) For the purposes of this Part a "disciplinary action" includes--

(a) a written warning;

(b) suspension; and

(c) demotion.

(3) Subject to subsection (4), no employer shall impose a fine or other monetary penalty on an employee:

Provided that the employer may not pay wages to the employee for the period he has been absent from work without permission of the employer and without reasonable excuse.

(4) An employer may deduct an amount of money from an employee's wages as restitution for property damaged by the employee.

(5) In deciding whether the employer has acted reasonably, regard shall be had to the nature of the violation, the employee's duties, the penalty imposed by the employer, the procedure followed by the employer, the nature of any damage incurred and the previous conduct and the circumstances of the employee.

(6) A complaint that disciplinary action is unreasonable may be made to a labour officer for conciliation under section 64(1).

(7) Where the labour officer fails to settle the matter within one month, the District Labour Officer may institute a prosecution under section 64(2).

(8) The right of an employee to make a complaint under this section shall be

without prejudice to any right the employee may enjoy under a collective agreement.

Justification for dismissal

57.--(1) The employment of an employee shall not be terminated by an employer unless there is a valid reason for such termination connected with the capacity or conduct of the employee or based on the operational requirements of the undertaking.

(2) The employment of an employee shall not be terminated for reasons connected with his capacity or conduct before the employee is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide the opportunity.

(3) The following reasons do not constitute valid reasons for dismissal or for the imposition of disciplinary action--

(a) an employee's race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, marital or other status or family responsibilities.

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(b) an employee's exercise of any of the rights specified in Part II of the Labour Relations Act;

(c) an employee's temporary absence from work because of sickness or injury;

(d) an employee's exercise or proposed exercise of the right to remove himself from a work situation which he reasonably believes presents an imminent or serious danger to life or health;

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(e) an employee's participation or proposed participation in industrial action which takes place in conformity with the provisions of Part V of the Labour Relations Act;

(f) an employee's refusal to do any work normally done by an employee who is engaged in industrial action; or

(g) the filing of a complaint or the participation in proceedings against an employer involving alleged violations of laws, regulations or collective agreements.

Unfair dismissal

58. A dismissal is unfair if it is not in conformity with section 57 or is a constructive dismissal pursuant to section 60.

Summary dismissal

59.--(1) An employer is entitled to dismiss summarily an employee on the following grounds--

(a) where an employee is guilty of serious misconduct inconsistent with the fulfilment of the expressed or implied conditions of his contract of employment such that it would be unreasonable to require the employer to continue the employment relationship;

(b) habitual or substantial neglect of his duties;

(c) lack of skill that the employee expressly or by implication holds himself to possess;

(d) wilful disobedience to lawful orders given by the employer; or

(e) absence from work without permission of the employer and without reasonable excuse.

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

Constructive dismissal

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

Proof of reason for dismissal

61.--(1) In any claim or complaint arising out of the dismissal of an employee, it shall be for the employer to provide the reason for dismissal and if the employer fails to do so, there shall be a conclusive presumption that the dismissal was unfair.

(2) In addition to proving that an employee was dismissed for reasons stated in section 57 (1), an employer shall be required to show that in all circumstances of the case he acted with justice and equity in dismissing the employee.

(3) In the circumstances mentioned in section 60, it shall be for the employee to provide the reason which made the continuation of the employment relationship unreasonable.

Complaints of unfair dismissal

62.--(1) Within three months of the date of dismissal, an employee shall have the right to complain to the District Labour Officer that he has been unfairly dismissed, irrespective of whether notice has been given or not.

(2) The right of an employee to make a complaint under this section shall be without prejudice to any right that he may enjoy under a collective agreement.

(3) Where the District Labour Officer fails to settle the matter within one month, the matter may be referred to the Court in accordance with section 64(2) or 64(3).

Remedies for unfair dismissal

63.--(1) If the Court finds that an employee's complaint of unfair dismissal is well founded, it shall award the employee one or more of the following remedies--

(a) an order for reinstatement whereby the employee is to be treated in all respects as if he had not been dismissed;

(b) an order for re-engagement whereby the employee is to be engaged in work comparable to that in which he was engaged prior to his dismissal or other reasonably suitable work from such date and on such terms of employment as may be specified in the order or agreed by the parties; and

(c) an award of compensation as specified in subsection (4).

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

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

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

(5) The amount to be awarded under subsection (4) shall not be less than--

(a) one week's pay for each year of service for an employee who has served for not more than five years;

(b) two week's pay for each year of service for an employee who has served for more than five years but not more than ten years;

(c) three week's pay for each year of service for an employee who has served for more than ten years but not more than fifteen years; and

(d) one month's pay for each year of service for an employee who has served for more than fifteen years,

and an additional amount may be awarded where dismissal was based on any of the reasons set out in section 57 (3).

(6) Where the Court has made an award of reinstatement or re-engagement and the award is not complied with by the employer, the employee shall be entitled to a special award of an amount equivalent to twelve weeks' wages, in addition to a compensatory award under subsections (4) and (5).

PART IX--MISCELLANEOUS PROVISIONS

Disputes and complaints

64.--(1) Any person having a question, difference or dispute as to the rights or liabilities of any person, employer or employee under this Act or a contract of employment may bring the matter to the attention of a labour officer who shall attempt to resolve the matter.

(2) Any person alleging a violation of a provision of this Act may file a complaint with the District Labour Officer who may institute or cause to be instituted a prosecution in order to enforce the provisions of this Act.

(3) Notwithstanding the provisions of subsections (1) and (2), any person alleging a violation of a provision of this Act may, where not otherwise specified, present his complaint to the Court for relief and where a time limit has been set for the presentation of a complaint by a complainant and the District Labour Officer chooses not to institute a prosecution, the limit shall be further extended for one month.

(4) No provision of this Act shall be interpreted so as to prevent a trade union or an employer's organization from representing a person having a question, difference or dispute under subsection (1) or alleging a violation of a provision

of this Act under subsection (2) and this section shall be read as authorizing such representation.

Handling of complaints

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65. Complaints made under subsections (2) and (3) of section 64 shall be handled by the Court in accordance with provisions of the Labour Relations Act and any rules governing Court procedure and remedies:

Provided that the Court shall have jurisdiction to impose all penalties and remedies specifically provided for in this Act.

Offences and penalties

66.--(1) Any person who contravenes a provision of this Act for which no offence is specifically provided shall be guilty of an offence and liable to a fine of K5,000 and to imprisonment for one year.

(2) Any person who is guilty of an offence under this Act for which no penalty is specifically provided shall be liable to a fine of K5,000 and to imprisonment for one year.

Regulations

67. The Minister may, in consultation with organizations of employers and employees, make regulations for carrying the purpose and provision of this Act into effect and prescribing all matters which are necessary or convenient to be prescribed for the better carrying out of the provisions of this Act.

Repeals and savings

68.--(1) The written laws specified in the Second Schedule are repealed.

(2) Any subsidiary legislation made under the Acts repealed by subsection (1), in force immediately before the commencement of this Act --

(a) shall remain in force unless in conflict with this Act and shall be deemed to be subsidiary legislation under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional

69.--(1) Every contract of employment entered into prior to the coming into force of this Act shall, notwithstanding that its terms are not in conformity with this Act, continue to have effect until the expiry of three months from coming

into force of this Act.

(2) An employer who is a party to a contract of employment 'to which subsection (1) applies shall be responsible for causing the contract to comply with this Act.

(3) After the expiration of three months from the coming into force of this Act, an employer who is a party to a contract of employment to which subsection (1) applies shall not have any rights thereunder until subsection (2) is complied with.

(4) An employee who is a party to a contract of employment to which subsection (1) applies shall, in case of failure by the employer to comply with subsection (2), be entitled to a fair value of any service rendered by him to the employer as a labour officer may, on the matter coming to his notice, assess and certify in writing the amount to which the employee is entitled to under this subsection:

Provided that the Court may vary and set aside the certificate of the labour officer and itself assess the fair value of the services rendered by the employee.

FIRST SCHEDULE (s. 35 (1))

Length of Service	*Severance Allowance Payable*
Not less than one year but not exceeding ten years	two week's wages for each completed year of continuous service
Not less than ten years	four week's wages for each completed year of continuous service

SECOND SCHEDULE (s. 68 (1))

1. The Regulation of Minimum Wages and Conditions of Employment Act [Cap. 55:01]

2. The Employment Act [Cap. 55:02]

3. The Employment of Women, Young Persons and Children Act [Cap. 55:04]

4. The Labour Legislation (Miscellaneous Provisions) Act [Cap. 56:01]

5. The African Emigration and Immigrant Workers Act [Cap. 56:02]

Passed in Parliament this twenty-ninth day of March, two thousand.

R. L. GONDWE

Clerk of Parliament

International Labour Organization
NATLEX database
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