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Employment Act 1977 (Ch 219)

CHAPTER 219

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CHAPTER 219 THE EMPLOYMENT ACT.

Commencement: 1 July, 1977.

An Act to regulate employment and for other matters connected

therewith.
PART I—PRELIMINARY.

1. Interpretation.

In this Act, unless the context otherwise requires—

“apprentice” means a person serving under a contract of apprenticeship made in accordance with the

Industrial Training Act;

“authorised officer” means the commissioner and any other person appointed by the Minister under section 2;

“commissioner” means the labour commissioner and includes the deputy labour commissioner and the assistant labour commissioner;

“confinement”, in relation to maternity leave, means childbirth;

“contract of service” means any contract whether oral or in writing, whether expressed or implied, to employ or to serve as an employee for any period of time, and includes any contract of apprenticeship;

“court” means the High Court or a magistrate’s court;

“domestic servant” means any person employed in or about a private residence, or lodging house, or hotel, either wholly or partly, as cook, house servant, waiter, butler, nurse, valet, barman, footman, chauffeur, washerman, gardener, groom or watchman;

(h) “employee” means any person employed for wages and includes an apprentice and a domestic servant;

(i) “employer” means any person, company, firm, or corporation, that has entered into a contract of service to employ any other person, and the agent, foreman, manager or factor of that employer, and where a person has entered into a contract of service with the Government, or with any officer on behalf of the Government, the Government officer under whom that person is working shall be deemed to be his or her employer; (j) “family” has the same meaning as assigned to “dependent relative” in the Succession Act; (k) “hours of work” means the time during which an employee is at

the disposal of the employer, exclusive of any intervals allowed for rest and meals; (l) “industrial undertaking” includes—

(i) mines, factories, reduction mills and other works for the winning, treatment or extraction of minerals from the earth, sea, rivers or inland waters;

(ii) industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed including shipbuilding, and the generation, transformation and transmission of electricity or motive power of any kind;

(iii) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, deck, pier, canal, inland waterway, road, tunnel bridge, dam, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gas work, water work or other work of construction as well as the preparation for, or laying the foundations of, any such work or structure;

(iv) the transport of passengers or goods by air, road, rail or inland waterway, including the handling of goods at docks, quays, wharves, warehouses or airports but excluding transport by hand;

(v) any other type of undertaking other than an undertaking in which only members of the family of the owner or proprietor are employed, which may be prescribed;

(m) “manual work” means work other than work of a clerical nature;

(n) “medical practitioner” means any government medical officer or

any registered medical practitioner; (o) “mine” includes any place, excavation, or working on which, in

which or by which any operation in connection with mining is carried on and any dwellings, outhouses, kitchens, stores and locations or other places used for the housing of employees or occupied by employees in connection with such mining operations; (p) "Minister" means the Minister responsible for labour;

(q) "month" means a calendar month or the period commencing on any date after the first day of a calendar month and expiring on the day preceding the corresponding date of the succeeding calendar month;

(r) "parties" means the employer and employee under any contract of service;

(s) "personnel officer" means a person employed by an employer to supervise the welfare of his or her employees;

(t) "piece work" means any work the pay for which is estimated by the amount performed irrespective of the time occupied in its performance;

(u) "prescribed" means prescribed by regulations made under this Act;

(v) "recruiting" includes all operations undertaken by any person, company, firm or corporation with the object of obtaining or supplying the labour of persons who do not spontaneously and voluntarily offer their services at the place of employment or at a public employment office or at any office conducted by an employers organisation and supervised by public authority; but except when undertaken by persons engaged in professional recruiting, it shall not include the following classes of recruiting operations—

(i) operations undertaken by or on behalf of employers who do not employ more than a limited number of employees prescribed by the labour commissioner; (ii) operations undertaken within a radius prescribed by the

commissioner from the place of employment; (iii) operations for the engagement of personal and domestic servants and nonmanual workers;

(w) "wages" means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money, which are payable to an employee under a contract of service, and includes any bonus and any cost-of-living allowance paid to an employee by an employer;

(x) "young person", for the purposes of sections 55 and 56, means a person under the age of eighteen years.

2. Appointment of authorised officers.

(1) Subject to the provisions of any written law relating to the appointment of persons in the public service, the Minister may appoint the labour commissioner and such other qualified officers as may be necessary for the purpose of this Act to be authorised officers.

(2) The commissioner may, with the consent of the Minister in writing, delegate to any person the duties assigned to him or her either in respect of the country as a whole or in any part of the country in relation to any matter or thing provided for by this Act.

3.

Returns, etc.

In addition to any other powers conferred upon him or her under this Act, the commissioner may, with the consent of the Minister, by notice in writing, require any employer to furnish, in writing, returns and statistics, relating to such matters and in such manner, as may be prescribed.

4.

Powers of authorised officers.

(1) For the purpose of satisfying himself or herself that the provisions of this Act and of any regulations made under this Act are being duly observed, an authorised officer may at any reasonable time—

enter, inspect or examine any land, building, camp, wharf, vessel, vehicle, or any place, structure or article whatsoever where or about which, as the case may be, any employee is housed or employed or where there is reason to believe that any employee is housed or employed;

enter, inspect or examine any hospital, dispensary or any latrines or other sanitary arrangements used or intended to be used by employees in any place or building or any water supply available for the use of employees, and inquire or ascertain whether in any hospital, dispensary or place of employment suitable medicines and remedies are provided for the use or care of employees;

inspect or examine any food, kitchen or place in which food for the use of employees is stored, prepared or eaten;

take or remove for purposes of analysis samples of any material or substance used or handled in connection with any employment;

require any employer to produce any of his or her employees or any document or record relating to the employment of any employee and examine, copy or make extracts from that document or record;

interrogate alone or in the presence of witnesses, any employer

or any employee on any matter concerning the application of this Act or apply for information to any other person whose evidence the authorised officer may consider necessary; or (g) require any employer to display any notice as provided by law.

Every authorised officer shall carry with him or her, whenever he or she is visiting any place for the purposes of any inspection under this Act, his or her identification card which shall be in a prescribed form, and he or she shall present it for inspection to the employer or his or her representative if requested to do so.

Where an authorised officer intends to visit any premises or place where employees are employed or are to be employed, he or she shall first notify the employer or his or her representative of his or her intention to do so unless the authorised officer has reasonable grounds for believing that the notification may be prejudicial to the proper performance of his or her duties.

Any person who—

directly or indirectly hinders or obstructs an authorised officer in the discharge of any duty under this Act;

without reasonable cause fails to furnish any information or records or facilities which may be required of him or her by an authorised officer;

wilfully gives any false information; or

wilfully neglects or refuses to comply with any demand made in conformity with this Act, commits an offence and is liable on conviction to a fine not exceeding two thousand shillings or

imprisonment for a term not exceeding six months.

5. Officer committed to secrecy.

Subject to such exceptions as may be prescribed, an authorised officer—

shall not have any direct or indirect interest in any undertaking under his or her supervision and shall on his or her appointment as such disclose all firms, companies and undertakings in which he or she has any interest;

shall not reveal, even after leaving office, any manufacturing or commercial secrets or working processes which may come to his or her knowledge in the course of his or her duties; and

shall treat as absolutely confidential the source of any complaint bringing to his or her notice a breach of any legal provisions by

any employer or employee and shall give no intimation to the employer or his or her representative that a visit or inspection was made in consequence of the receipt of such a complaint.

6. Application of the Act.

The Minister may by statutory order limit or extend the application of all or any of the provisions of this Act to any class of employees.

This Act shall not apply to members of the Uganda Peoples' Defence Forces, members of the Uganda Police Force or to members of the Uganda Prisons Service.

Sections 4, 9 to 15, 18 to 24, and 62 to 64 shall not apply to any Government service or undertaking or to any public officer or any other person employed by the Government in a civil capacity.

Nothing in this Act shall be construed as preventing the imposition of any restriction or condition regarding the employment or promotion in employment of a person who is not a citizen of Uganda.

7. Recruiting.

No person may engage in recruiting unless he or she is in possession of a valid recruiting permit issued by the commissioner, or is a recruiter's agent duly approved by an authorised officer.

A recruiting permit shall be subject to such conditions as may be specified by the commissioner, and a recruiter's agent approved under subsection (1) shall be subject to such conditions as may be imposed by the authorised officer.

8. Recruiting of head of family not to include recruiting of members of that family.

The recruiting of the head of a family shall not be deemed to include the recruiting of any member of his or her family.

PART II—CONTRACTS OF SERVICE.

9. Contracts of service.

No person may employ another, or be employed, under any contract of service except in accordance with this Act.

Any contract of service which is valid and in force on the coming into force of this Act shall continue to be in force to the extent that it is not in conflict with this Act, and shall be deemed to be made under this Act, and subject to it.

10. Employment cards.

Where an employee is employed under a contract of service, not being a contract subject to section 11, the employer shall issue to the employee an employment card which shall be in such form and contain such information as may be prescribed.

Without prejudice to subsection (1), the Minister may, by statutory order, direct that a class of employees to be specified in the order shall be issued with employment cards.

11. Contract to be in writing.

A contract of service for six months or more, or for a number of working days totalling six months or more, shall be made in writing.

Parties to a contract of service may also agree that the contract be made in writing notwithstanding that it is of less than six months' duration or that it is for a period of working days less than six months, so, however, that the contract shall be effective only if the consent of the employee has been signified by his or her signing the contract or affixing the impression of his or her thumb or finger to the contract.

Where a contract is required or agreed to be in writing and the failure to comply with that requirement or agreement is due to the wilful act or omission of the employer, he or she commits an offence.

12. Contents of contract.

Every contract required to be in writing shall contain all such particulars as may be necessary to define the rights and obligations of the parties to it and, without prejudice to the generality of the foregoing, shall in all cases include—

the name of the employer, and where practicable, of the undertaking and of the place of employment;

the name of the employee, the place of engagement and, where practicable, the place of origin of the employee and any other particulars necessary for his or her identification;

the nature of the employment;

the duration of the employment and the method of calculating this duration;

the rate of wages and method of calculating the wages, the manner and periodicity of payment of wages, the advances of wages, if any, and the manner of repayment of any such advances;

the conditions of repatriation in the case of an expatriate employee; and

such other matters as may be prescribed.

13. Security in foreign and domestic contracts of service.

When the employer in a foreign contract of service does not reside or carry on business within Uganda, and in any other case where the magistrate or authorised officer attesting the contract, whether a foreign contract or not, considers it desirable, the employer or his or her agent shall give security by depositing with the Bank of Uganda a sum of money equivalent to one month's salary or wages with one or more sureties, resident in Uganda, to be approved of by the magistrate or authorised officer

attesting the contract for the due performance of the contract in such sums as the magistrate or the authorised officer may consider reasonable.

In the case of a contract for service in Uganda where the employer resides in Uganda, the amount of security referred to in subsection (1) shall not exceed one hundred shillings for each person employed.

A security entered into for the purposes of this section shall be enforceable by any authorised officer according to its purport without any assignment, and shall be binding as a deed without being sealed.

(4) Any money recovered under any security shall be applied by an authorised officer in or towards satisfaction of the claims of any employee covered by it and where the security covers more than one employee, the proceeds shall be distributed in such proportions as the authorised officer shall think just, and any balance remaining after satisfaction of the claims shall be paid to the employer.

14. Contracts to be attested.

(1) The following contracts shall, subject to section 13, not be enforceable unless they have been approved or attested in accordance with this Act—

(a) (b)

a foreign contract;

a contract entered into by a recruiter and a prospective employee

requiring the employee to move from one part of the country to

another for such period of time as may be prescribed; and

(c)

a contract with any employee who is unable to read or understand

the language in which the contract is written.

(2) The approval or attestation shall be by a magistrate or an authorised officer in triplicate and shall be in such form and subject to such conditions as the Minister may, from time to time, prescribe, and distributed as follows: the original copy of the contract shall be given to the employer, one of the other copies given to the employee and the other retained by the magistrate or authorised officer.

(3) Before approving or attesting any contract, the magistrate or authorised officer shall—

(a) ascertain that the employee has freely consented to the contract, and that his or her consent has not been obtained by coercion, undue influence or as the result of misrepresentation or mistake; and

(b) satisfy himself or herself that—

(i) (ii)

(iii)

the contract is in proper legal form;

the terms of the contract are in accordance with the

requirements of this Act;

the employee has duly understood the terms of the contract before signing, or otherwise indicating his or her assent to

it; and
(iv)

the employee declares himself or herself not bound by any previous engagement.

(4) Any copy of an attested contract shall be received in evidence without further proof in all courts.

15. Unattested contracts.

An authorised officer may refuse to attest any contract in respect of which he or she is not satisfied in regard to any of the matters specified in section 14, and any contract which an authorised officer has refused to attest shall have no further validity.

A contract which has not been presented for attestation shall not be enforceable except during the period of one month from the making of the contract, but the employer may present it for attestation at any time prior to the expiry of the period of one month.

If the omission to present the contract for attestation was due to the wilful act or the negligence of the employer, that employer commits an offence.

16. Medical examination.

An employee who wishes to enter into a contract of service for any of the employments specified in the Schedule to this Act shall first be examined by a medical practitioner at the expense of the employer and, where practicable, a certificate showing the results of the examination shall be issued before the attestation of the contract.

Where it has not been possible for the employee to be medically examined before the attestation of the contract, the magistrate or authorised officer shall endorse the contract to that effect, and the employee shall be examined within two weeks thereafter.

Any employee who has been rejected after an examination under this section as physically unfit for the work contemplated by the proposed contract shall be returned to the place of engagement at the expense of the employer or of the employer's agent who engaged him or her should the employee wish to return.

The Minister may, by statutory order, amend the Schedule to this Act.

17. Employer to provide work.

An employer shall, unless the employee has broken his or her contract of service or the contract is frustrated, provide his or her employee with work in accordance with the contract, during the period for which the contract is binding, on a number of days equal to the number of working days expressly or impliedly provided for in the contract.

Where an employer fails to provide work in accordance with a contract of work, he or she shall pay to the employee, in respect of every day on which he or she shall so fail, wages at the same rate as if the employee had performed a day's work.

18. Change of employer.

A change of employer shall, notwithstanding anything to the contrary in any contract, be deemed to have taken place whenever a person other than the original employer acquires the whole or greater part of the property of the undertaking and continues substantially the same operations.

A change of employer shall not affect any existing contract of service, but in the case of any contract of service for a fixed term or other contract of service not capable of termination by a notice of one month or less, the employer or the employee shall be entitled, at any time within one month of being notified of the change of employer, to give one month's notice to terminate the contract.

Upon a change of employer, the original employer and the new employer shall be jointly liable for all contractual or other obligations originating before the date on which the change took effect; except that the new employer shall not be liable where, in the opinion of the commissioner, adequate provision has been made by which the original employer undertakes to continue to discharge the outstanding obligations notwithstanding the change of employer.

Except in the case of a change of employer as defined in this section, a contract of service shall not be capable of transfer.

19. Expiration of contract while on voyage.

Where the contract period in any contract of service expires, or where an employer or an employee seeks to terminate any contract of service of indefinite duration while the employee is engaged in any voyage or journey, the employer may, for the purpose of completing that voyage or journey, prolong the contract period by a period of time sufficient to enable the voyage or journey to be completed.

20. Payments on expiration of contract.

Where service is terminated under section 21 or 25, the employer shall pay to the employee wages and other remuneration due to the employee under the contract of service—

in respect of expiration under section 21, up to, and including, the date of expiration of the contract or, as the case may be, death;

in respect of termination under section 25, up to, and including, the date of expiration of the notice required under that section, subject to section 26, or, as the case may be, including such sums as may be due to the employee under section 25(3).

21. Termination of contract.

(1) Subject to subsection (2), a contract shall be terminated—

by the expiry of the term for which it is made; or

by the death of the employee before the expiry of the term for which it is made.

(2) The termination of a contract by the death of the employee shall be without prejudice to the legal claims of his or her heirs or personal representatives.

22. Termination due to failure to fulfill contract.

Where an employer is unable to fulfill the contract, or if, owing to sickness or accident, an employee is unable to fulfill the contract, the contract may be terminated with the consent of an authorised officer subject to conditions safeguarding the right of the employee to any wages earned, any deposited wages due to him or her, any compensation due to him or her in respect of accident or disease and his or her right to repatriation.

23. Termination by agreement.

(1) A contract may be terminated by agreement between the parties subject to conditions safeguarding the employee from the loss of his or her right to repatriation and other benefits due to him or her under the contract, and in the event of any dispute regarding those conditions, the dispute may be referred by either party to an authorised officer.

(2) Upon reference of any dispute under subsection (1), an authorised officer shall satisfy himself or herself—

that the employee has freely consented to the agreement and that his or her consent has not been obtained by coercion or undue influence or as the result of misrepresentation or mistake; and

that all monetary liabilities between the parties have been settled.

(3) A contract may be terminated on the application of either party to a court.

24. Probationary contracts.

A contract for a probationary period of service may be terminated by either party by giving to the other party seven days' notice or by payment of seven days' wages in lieu of the notice.

A probationary period of service shall not exceed a period of six months in the first instance but may, with the agreement of the employee, be extended for a further period of not more than six months.

An employee shall not be employed for a probationary period of service on more than one occasion by the same employer, unless he or she is engaged for work of a different nature.

25. Termination notice.

Subject to any agreement providing for a period of notice of longer duration, any contract of service of indefinite duration, not being a contract falling within sections 12 and 14, may be terminated by notice as provided in this section.

The minimum period of notice to be given by an employer or an employee shall be—

one week if the service has lasted less than twelve months;

fifteen days if the service has lasted at least twelve months but less than three years;

one month if the service has lasted at least three years but less than five years;

two months if the service has lasted at least five years but less than ten years;

three months if the service has lasted at least ten years.

(3) Notwithstanding subsection (2), an employer or an employee may, in lieu of the notice, pay to the other party a sum of money equivalent to wages of the days of the relevant notice.

26. Form of notice.

A notice to terminate a contract of service shall be in writing and may be given at any time, but the day on which the notice is given shall not be included in the period of notice.

If upon any termination as provided in section 22 or 23 the employer permits the employee to remain, or the employee without express dissent of the employer continues in employment after the day on which the contract should terminate, the termination shall be deemed to be cancelled, and the contract shall continue as if there has been no termination, unless it has been agreed otherwise between the employer and employee.

No notice of termination shall be required in the case of—

a contract of service specifically expressed to be for one period of fixed duration and not renewable; or

a contract under which a specific task or work is to be executed or services are to be rendered during a specific journey for an agreed remuneration.

Nothing in section 22 or 23 shall preclude either party from summarily terminating a contract of service for any lawful cause.

The termination of any contract under section 22 or 23 shall be without prejudice to any accrued rights or liabilities of either party under the contract.

27. Right to repatriation.

(1) Any employee who is a party to a contract and who has been brought to the place of employment by the employer or by any person acting on behalf of the employer shall have the right to be repatriated at the expense of the employer to the place of his or her engagement in the following cases—

on the expiry of the period of service stipulated in the contract;

on the termination of the contract by reason of the inability of the employer to fulfill the contract;

on the termination of the contract by reason of the inability of the employee to fulfill the contract owing to sickness or accident;

on the termination of the contract by agreement between the parties, unless the agreement otherwise provides; or

on the termination of the contract by order of a court under the provisions of this Act on the application of either of the parties, unless the court otherwise decides.

Where the family of the employee has been brought to the place of employment by the employer or by any person acting on behalf of the employer, the family shall be repatriated at the expense of the employer whenever the employee is repatriated or in the event of his or her death.

The expenses of repatriation shall include—

travelling and subsistence expenses or rations during the journey; and

subsistence expenses or rations during the period, if any, between the date of termination of the contract and the date of repatriation.

The employer shall not be liable for subsistence expenses or rations in respect of any period during which the repatriation of the employee has been delayed by the employee's own choice.

Where the employer fails to fulfill his or her obligations in respect of repatriation, the obligations shall be

discharged by or under the directions of the commissioner, and any sums so expended may be recovered from the employer by civil suit.

28. Exemption from repatriation.

An authorised officer may exempt an employer from liability for repatriation expenses in the following cases—

(a) when such officer is satisfied—

(i) that the employee, by a declaration in writing or otherwise, has signified that he or she does not wish to exercise his or

her right to repatriation; (ii) that the employee has been settled at his or her request or

with his or her consent at or near the place of employment;

or (iii) that the employee, by his or her own choice, has failed to

exercise his or her right to repatriation before the expiry of

six months from the date of termination of the contract; or (b) when the contract has been terminated by order of a court as a result of a fault of the employee.

29. Employer to provide transport.

An employer shall, subject to section 27 and where no appropriate public transport services are available, provide transport for an employee who is being repatriated.

Where an employer provides transport for any employee under this section, he or she shall, subject to an authorised officer's directions, ensure that—

the vehicle or vessel used for transporting an employee is suitable for the transport, is in good sanitary condition and is not overcrowded;

where it is necessary to break the journey for the night, suitable accommodation is provided for the employee; and

in the case of long journeys, all necessary arrangements are made for medical assistance and for the welfare of the employee.

(3) Where employees have to make a long journey in a group, the employer shall make sure that they are conveyed by a person who is fit to assume responsibility for their welfare during the journey.

PART III—PROTECTION OF WAGES.

30. Wages to be in local currency.

(1) Cash wages of an employee shall be payable in the currency which is legal tender, and any agreement by which the whole or any part of the wages of an employee shall be made payable in any other currency shall be void; except that subject to the Exchange Control Act, part of the wages of an expatriate employee may be paid in foreign currency in accordance with the terms of his or her contract.

(2) An employee's wages may be paid by cheque or into his or her bank account with his or her written consent.

31. Other form of wages.

Nothing in this Act shall render illegal any agreement or contract with an employee for giving him or her, as a remuneration for his or her services, in addition to money wages, food, a dwelling place or such other allowances or privileges as may be customary in the trade or occupation concerned; except that—

only such allowances or privileges may be given under this section as are appropriate for the personal use and benefit of the employee and his or her family; and

the value attributable to the allowances or privileges shall not exceed the cost to the employer of providing them.

32. Deductions.

Except where otherwise expressly permitted by this Act or any other written law, or by any collective agreement, or by an award made by the industrial court or any other court or by an arbitration tribunal, no employer may make any deduction from an employee's wages, or make any agreement or contract with any employee for such deduction to be made, or for any payment to the employer by any employee.

33. Authorised deductions.

(1) An employer may, with the consent of the employee, make deductions from the wages of the employee for—

any registered trade union of which the employee is a member; or

any provident fund, pension fund or scheme which has been approved by the commissioner.

Where an employer makes a deduction under this section, he or she shall, on behalf of the employee, pay the amount so deducted to the treasurer of the trade union concerned or to the person entrusted with the management of the fund or scheme, as the case may be.

An employer may deduct—

any amount due by him or her for any purpose authorised in writing by the commissioner; or

an amount payable by the employee by way of tax, and shall, on behalf of the employee, pay the amount so deducted to the appropriate revenue authority.

(4) An employer may deduct any installment due in respect of any advance of wages made by the employer to the employee; except that the total amount of an advance shall, beforehand, have been paid by the employer to the employee in cash, and a memorandum of the transaction made and signed by or on behalf of both the employer and the employee providing for the repayment of the advance by one or more installments.

34. Paying wages to another person.

Except as otherwise provided under this Act or any other law, no person may receive the wages due to any employee on behalf of the employee without the written permission of the employee to whom the wages are due or of an authorised officer.

35. Freedom to spend wages anywhere.

No employer may impose in any contract of service any agreement, or order any condition, as to the place where, or the manner in which, or the person with whom, any wages paid to an employee shall be expended.

36. When wages are due.

The wages shall be deemed to be due from an employer to an employee—

in the case of an employee employed daily, weekly, fortnightly, or monthly, on the expiration of the day, week, fortnight or month, as the case may be;

in the case of an employee employed at a daily rate of wages to whom, by agreement or custom, wages are not paid daily, but at intervals not exceeding one month, in accordance with such agreement or custom;

in the case of an employee employed for a period exceeding one year, at intervals not exceeding one month; or

in case of termination of a contract of service, at the time of the termination.

37. Attachment of property, priority of employee's claims.

Notwithstanding any law to the contrary, where any attachment has been issued against the property of an employer in execution of any decree or award of compensation against him or her, the court shall not pay the proceeds realised from the property to any person obtaining the decree or award until any decree or award within the knowledge of court, obtained by an employee against the employer, to an extent not exceeding four months' wages, has been paid.

Nothing in this section shall be deemed to prevent an employee from recovering any balance due on a decree or award, in his or her favour after satisfaction under this section, by ordinary process of law.

38. Inability to pay.

When on production of a sworn statement or an affidavit it is found to the satisfaction of the commissioner that an employer is unable to pay the wages of any employee in his or her employment, the commissioner may order the employer to cease immediately employing any employee and to furnish a statement showing the total amount of wages owing by him or her to that employee; and upon the making of any such order, the contract of service of any employee referred to by the order shall be deemed to be terminated, without prejudice to any rights of either party accrued under it.

PART IV—HOURS OF WORK, REST AND HOLIDAYS.

39. Hours of work.

The normal weekly hours of work of any employee shall not exceed forty-eight hours.

The normal daily hours of work of any employee shall not exceed nine hours in industrial undertakings and ten hours in any other employment.

An employee whose hours of work exceed six hours a day shall be given by his or her employer one break or more during the day totalling at least thirty minutes, arranged so that the employee does not work continuously for more than five hours.

Hours of work and breaks shall be so arranged as not to require an employee's presence at the work place for more than twelve hours a day.

(5) The provisions of this section shall, subject to section 6, not apply to employees who are holding positions of supervision or management or who are employed in a confidential capacity.

40. Normal hours not to apply in time of emergency.

The limits on hours of work laid down in section 39 shall not apply where it is necessary to remedy any breakdown of machinery or plant or as a matter of emergency to avoid or lessen danger to life or serious damage to property.

The onus of proving the necessity to extend hours of work as laid down in this section shall be on the employer in any particular case.

41. Weekly hours may be exceeded.

The limits on weekly hours of work laid down in section 39 may be exceeded where the nature of the employment requires the hours of work to be regulated by reference to a period longer than a week, provided that average hours of work in any period of three weeks shall not exceed forty-eight hours a week.

42. Weekly rest.

An employer shall give his or her employee a weekly rest of at least twenty-four continuous hours which shall, wherever practicable, include Sundays.

The Minister may, by statutory order, grant to any employer total or partial exemption from the provisions of subsection (1), subject to such conditions as may be prescribed in the order.

43. Holidays.

An employer shall grant his or her employee holidays with full pay at the rate of at least one-and-a-half working days for every completed month of actual service.

For the purposes of this section, actual service shall be deemed to include—

days of weekly rest;

public holidays; and

days of absence from work due to sickness not exceeding thirty days per year, but shall not include days of holidays with full pay.

Public holidays and days of absence from work due to sickness shall not be included in holidays with full pay.

In this section, the expression “full pay” means the normal remuneration and includes the cash equivalent to remuneration in kind and any cost of living allowance, and, in the case of an employee engaged on piece work, the normal remuneration received in the thirteen weeks preceding the holidays but does not include payments in respect of bonus.

44. When holidays may be taken.

Subject to this section, holidays with full pay may be taken at such time as may be agreed between the employer and the employee.

At least six days of the days of holidays with full pay in a calendar year shall be consecutive working days.

There may be deferment of holidays with full pay from one calendar year to another year up to two years, and no such deferment may be allowed beyond two calendar years.

In the case of employees in agricultural undertakings, not more than twelve days of accumulated holidays with full pay may be carried forward from one calendar year to another.

45. No agreement to forego holidays.

Any agreement by an employee to relinquish his or her right to holidays with pay provided for in this Act or to forego the holidays shall be void.

An employee whose service is terminated otherwise than by dismissal on account of his or her misconduct shall receive, in respect of every day of holiday with pay due to him or her at the time of the

termination, the remuneration provided for in section 43. PART V—EMPLOYMENT OF WOMEN.

46. Underground work for women.

Subject to subsection (2), no woman may be employed in underground work whether in any mine or otherwise.

Subsection (1) shall not apply to—

a woman holding a position of management and who does not perform manual work;

a woman employed in health or welfare services;

a woman who, in the course of her studies, spends a period of training in underground parts of a mine or other operations;

a woman who may occasionally have to enter the underground parts of a mine or other operations for the purposes of nonmanual work; or

a woman working in an undertaking where only members of the same family are employed.

47. Maternity leave.

Where a woman is pregnant, her employer shall permit her to leave her work if she produces a medical certificate given by a qualified medical practitioner stating that her confinement will probably take place within four weeks.

No woman may be allowed to work during the four weeks following her confinement.

This section shall not apply to a woman working in an undertaking in which only members of the same family are employed.

48. No dismissal during maternity leave.

Where a woman is absent from her work in accordance with section 47 or remains absent from her work for a longer period as a result of illness, certified by a qualified medical practitioner, arising out of pregnancy or confinement and rendering her unfit for work, she shall be given one month's paid leave and where necessary up to two months' unpaid leave before the

employer gives her notice of dismissal.

49. Women may work underground.

Notwithstanding section 46, the Minister may, on request of an employer and when the public interest so requires, permit any woman to work underground in any mine or other operations on such conditions as the Minister may determine.

PART VI—EMPLOYMENT OF YOUNG PERSONS.

50. No contract with persons under the age of eighteen years.

A person under the apparent age of eighteen years shall not be employed otherwise than as provided in this Act.

51. Employment of children.

No person may employ a person of or under the apparent age of twelve years except on such light work as the Minister may, from time to time, by statutory order, prescribe.

52. Employment of children in underground work.

No person may employ a person under the apparent age of sixteen years underground at any time except under an apprenticeship training.

53. Night duty in industry.

A person of or under the apparent age of sixteen years shall not be employed to work during the night in any industrial undertaking or in any branch of an industrial undertaking, except in the following circumstances—

where the commissioner, for purposes of apprenticeship or vocational training in prescribed industries or occupations which are required to be carried on continuously, authorises the employment during the night of any such person, so, however, that the person shall be granted a rest period of at least thirteen consecutive hours between two working periods;

in cases of emergency which could not have been controlled or foreseen, which are not of a periodical character, and which interfere with the normal working of the undertaking.

54. Meaning of “night”.

For the purposes of section 53, the term “night” means a period of twelve consecutive hours, including—

in the case of persons under the age of sixteen years, the interval between ten o'clock in the evening and six o'clock in the morning; and

in the case of persons who have attained the age of sixteen years, the interval between eleven o'clock in the evening and five o'clock in the morning.

55. Unsuitable employment.

No young person may be employed in any employment which is injurious to health, dangerous or otherwise unsuitable.

No person may, after being notified in writing by the commissioner that the kind of work upon which a

young person is employed is injurious to his or her health, dangerous or otherwise unsuitable, continue so to employ him or her.

Notification under this section may relate to a particular case or may be made generally.

Where any employment is discontinued under subsection (2), the discontinuance shall be without prejudice to the right of the young person to be paid such wages as he or she may have earned up to the date of the discontinuance under the terms of the contract of service.

56. Register of young persons employed.

An employer who employs any young person in any industrial undertaking or on any vessel propelled by mechanical power shall keep a special register, of the young person so employed by him or her, containing particulars of his or her age, or apparent age, the date of commencement and termination of his or her employment, the conditions and nature of his or her employment and such other particulars as may be prescribed.

57. Proof of age.

Where in any proceedings under this Act with respect to the employment of a person alleged to be below the relevant age specified in this Act, it appears to the court that the person is apparently below that age, it shall be the duty of the defendant to prove that the person is not below that age.

PART VII—CARE OF EMPLOYEES.

58. Illness of employee.

Where an employee is engaged for a period not exceeding one month, he or she shall not be entitled to pay for any days during which he or she was absent from duty owing to illness.

Where an employee on a written contract of service, due to sickness, or accident, due to no fault of his or hers, becomes temporarily incapacitated, he or she shall, unless otherwise provided by the contract of service, be entitled to receive his or her wages for the first month of the incapacity and every other benefit whether for himself or herself or his or her family stipulated in the contract of service.

If at the expiration of the second month the incapacity of the employee still continues, the employer shall be entitled to terminate the contract of service upon performance by him or her of all stipulations, if any, mentioned in the contract up to and inclusive of the day on which he or she shall declare the contract of service to be terminated.

59. Illness of employee caused by misconduct.

Where any employee is incapacitated for duty by reason of any illness caused by his or her own wilful neglect or default, he or she shall not be entitled to any pay during the period of the incapacity.

60. Death of employee.

(1) If an employee dies, his or her employer shall give immediate notice of the death to the commissioner together with a medical certificate of the cause of death, or, if such certificate is not procurable, with a written report of the circumstances in which the employee died.

The employer shall notify the commissioner of the amount of all wages due to the deceased employee and shall hand over all such wages due and the property at the place of work of the deceased employee to the next of kin or any other person authorised by the commissioner.

If an employee is killed or incapacitated by injury from work for a period exceeding fourteen days during the course of his or her employment, the employer shall forthwith send to the labour officer of the area a

report in quadruplicate of the circumstances in which the death or injury occurred.

This section shall not apply in any case of death or injury the circumstances of which are such as to render applicable the provisions of any other law in force relating to a report of the death or injury or compensation for the death or injury.

In this section, "labour officer of the area" has the same meaning as "labour officer" in section 1 of the Workers Compensation Act.

61. Vacancies to be notified.

Every person employing more than twenty employees shall notify the labour officer of the area of any vacancy whenever it occurs in his or her employment.

The commissioner may require any employer to furnish him or her with particulars, on a prescribed form, relating to the number of persons he or she employs, their nationality, the rates of pay or any other information which the commissioner may from time to time require.

PART VIII—MISCELLANEOUS.

62. Appointment of personnel officer.

Every employer employing at one location employees to the number of three hundred or over shall, if so required by the commissioner, appoint a full-time personnel officer; and if the number of employees exceeds seven hundred and fifty, the commissioner may require one or more assistant personnel officers to be appointed.

63. Offences and penalties.

Any employer who, without reasonable cause, fails on demand to pay the wages of an employee when the wages are due commits an offence and is liable on conviction to a fine not exceeding five hundred shillings or to imprisonment for a term not exceeding three months; and in addition, the court shall order the employer to pay the employee's wages which are overdue.

Any person who contravenes sections 30, 32, 35, 47, 51, 53, 56 and 57 commits an offence and is liable on conviction to a fine not exceeding one thousand and five hundred shillings or to imprisonment for a term not exceeding three months.

Any person who, without reasonable excuse, fails to comply with section 42 or any directions given under it by an authorised officer commits an offence and on conviction is liable to a fine not exceeding five hundred shillings or imprisonment for a term of one month or both.

Any person who commits an offence under this Act or contravenes any provision of this Act for which no special penalty is provided is liable on conviction to a fine not exceeding one thousand shillings or imprisonment for a term not exceeding two months.

64. Fine may be paid to the complainant.

When a magistrate imposes any fine or enforces payment of any sum secured by a recognisance or bond, he or she may direct that the fine or sum when recovered, or such part of it as he or she thinks fit, shall be applied to compensate any employer or employee for any wrong or damage sustained by him or her by reason of the act or thing in respect of which the fine was imposed.

65. Costs of witnesses, etc.

In any court proceedings instituted by an employee under this Act, the process of the court for compelling the attendance of the defendant and of all necessary witnesses shall be effected at the

public charge and without any fees of court and, except for any extraordinary reasons, costs may not be awarded against the employee on the ground of frivolity or vexatiousness of his or her action.

66. Regulations.

The Minister may make regulations—

regulating recruitment in any district, area or place;

prescribing the conditions whether generally or specifically upon which recruiting permits may be granted;

prescribing the fees to be paid for recruiting permits and in respect of persons recruited;

providing for the proper protection of recruits;

regulating the employment of women, or any category of women, in certain employments;

providing for health, safety and conditions of employment of women in certain employments;

providing for the records to be kept and returns to be made by employers regarding their employees;

(h) regulating the employment of young persons during the night; (i) prescribing conditions upon which young persons may be

engaged or employed; (j) providing for the care of young persons by employers; (k) granting permanent or temporary exemptions from the provisions

of section 39(1) and (2), and fixing the number of hours the

employees concerned may work in any day and year; (l) providing for the rate of remuneration in respect of any time

worked in excess of the normal daily or weekly working hours; (m) requiring employers to display notices in places of work

containing particulars as to the hours of work and arrangements

for weekly rest; (n) requiring employers to keep records of time worked; (o) regulating and prescribing the housing condition, and the care

and medical attention of employees generally; (p) prescribing the forms of contract and other forms for the purposes

of this Act; (q) prescribing anything required to be prescribed under this Act; and (r) generally for better carrying into effect the provisions of this Act.

Schedule.

s. 16.

Employment for which medical examination is required.

Mining, quarrying and ore processing
Taxidermy and hide processing

Wood preservation
Metal pickling and galvanising
Soldering and electroplating
Textile dyeing and bleaching
Pesticide work, e.g. fumigation, spraying, etc
Tar and bitumen surfacing
Tyre manufacturing and retreading
Viscos rayon manufacturing
Welding and smelting
Motor vehicle mechanics
Fire extinguishing
Clothes dry cleaning
Dry and acid battery manufacturing
Fertiliser manufacturing
Safety match processing
Acid manufacturing
Paints and ceramics manufacturing
Work involving ionising radiation
Asbestos manufacturing
Cotton fibre processing
Building cement manufacturing
Sewage works
Oil extraction
Industrial works involving combustion of carbonaceous materials
Foundry work

History: Decree 4/1975; S.I. 32/1977.

Cross References

Exchange Control Act, Cap. 171. Industrial Training Act, Cap. 130. Succession Act, Cap. 162. Workers Compensation Act, Cap. 225.
