

THE EMPLOYMENT ACT, 1980

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*An Act to consolidate the law in relation to employment and to introduce new provisions  
designed to improve the status of employees in Swaziland.*

*Date of commencement 1st November 1981.*

PART I — PRELIMINARY

*Short title and commencement.*

1. (1) This Act may be cited as the Employment Act, 1980.  
(2) This Act shall come into operation on such date as the Minister may appoint by notice in the Gazette and the Minister may appoint different dates for the coming into operation of different Parts or different provisions of the Act.

*Interpretation.*

2. For the purposes of this Act —  
“appointed day” means such day as the Minister may appoint, by order published in the Gazette, for the coming into force of this Act or any Part or provision thereof;

“approved form” means a form, register or record approved by the Labour Commissioner for the purposes of this Act;

“attesting officer” means an administrative officer or Inspector or an officer designated by the Minister in writing;

“business” includes any trade, undertaking or establishment;

“calendar year” means the period commencing on the first day of January and ending on the following thirty first day of December;

“casual employee” means any employee the terms of whose engagement provides for his payment at the end of each day and who is not engaged for a longer period than twenty four hours at a time;

“chief” has the meaning ascribed thereto by the Swazi Administration Act, 1950;

“Chief Medical Officer” means the person appointed in the Public Service to be the Chief Medical Officer;

“child” means a person under age of fifteen years;

“collective agreement” means an agreement in writing covering terms and conditions of employment and procedures for the settlement of disputes and grievances, concluded by a joint industrial council, or by a works council; or by an employer, a group of employers, or an employers’ association on the one hand and an industry union or staff association on the other hand;

“competent person” means a person possessing qualifications or experience or both necessary for some purpose under this Act;

“confinement” means labour resulting in the issue of a living child, or labour after twenty-eight weeks of pregnancy resulting in the issue of a child, living or dead;

“continuous employment” means a period of unbroken service with the same employer, including a period of unbroken service as a casual employee with the same employer; and for the purposes of this definition the following shall not constitute a break in service —

- (a) absence from work due to sickness, injury or maternity certified by a medical practitioner;
- (b) absence from work due to a trade dispute where the employee resumes his employment on the next working day following the settlement of the dispute;
- (c) absence from work due to a temporary cessation of work in the undertaking;
- (d) absence from work on leave or for any other cause approved by the employer;

and “continuously employed” shall be construed accordingly;

“contract” means in respect of Part XIII a public contract;

“contract of employment” means a contract of service, apprenticeship or traineeship whether it is express or implied and, if it is express, whether it is oral or in writing;

“contractor” means —

- (a) in respect of this Act in general, an employer working under a contract for services;
- (b) in relation to a principal a person who has contracted directly with such principal to perform any work for him;
- (c) in respect of Part XIII a contractor within the general meaning assigned to the work who has entered into a public contract;

and the term “sub-contractor” shall be construed accordingly;

“court” means a Magistrates Court;

“dispute” includes a grievance or a trade dispute and means any dispute over —

- (a) the entitlement of any person or group of persons to any benefit under an existing collective agreement, or works council agreement;
- (b) the existence or non-existence of a collective agreement or works council agreement;
- (c) the dismissal, employment, suspension from employment, re-employment or re-instatement of any person or group of persons;
- (d) the recognition or non-recognition of an organisation seeking to represent employees in the determination of their terms and conditions of employment;
- (e) the application or the interpretation of any law relating to employment; or
- (f) the terms and conditions of employment of any employee or the physical conditions under which such employee may be required to work;

“domestic employee” includes any person employed for wages in or about a private dwelling house by the owner or occupier of such house;

“employee” means any person to whom wages are paid or are payable under a contract of employment;

“employer” means any person or undertaking, contractor, corporation, company, public authority or body of persons who or which has entered into a contract of employment with an employee and includes —

- (a) any agent, representative, foreman or manager of such person, undertaking, corporation, public authority or body of persons who is placed in authority over that employee; and
- (b) in the case of any such person —
  - (i) who has died, his executor;
  - (ii) who has become of unsound mind, his Curator Bonis;



- (iii) who has become an insolvent, the trustee of his insolvent estate;
- (iv) which is a company in liquidation, the liquidator of the company;

“foreign contract of employment” means a contract of employment made under the provisions of Part VIII;

“immediate family” means, in relation to a person such person’s father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half brother, half sister, wife, husband, common-law wife or common-law husband;

“Industrial Court” means an industrial court established by law;

“industrial undertaking” means —

- (a) mines, quarries and other works for the extraction of minerals from the earth;
- (b) undertakings in which articles are manufactured, altered, cleaned repaired, ornamented, finished, adapted for sale, broken up or demolished or in which materials are transformed, including undertakings engaged in ship building or in the generation, transformation or transmission of electricity or motive power of any kind;
- (c) undertakings engaged in building and civil engineering work, including constructional repair maintenance, alteration and demolition work;
- (d) undertakings engaged in the transport of passengers or goods, including the handling of goods at docks, quays, wharves, warehouse or airports;

“Inspector” means any person appointed or deemed to have been appointed as Deputy Labour Commissioner, Senior Labour Officer, Labour Officer, Factories Inspector or Labour Inspector in the public service and includes any other person to whom the Labour Commissioner has delegated in writing, the powers of an Inspector

“Labour Commissioner” means the person appointed in the Public Service to be the Labour Commissioner and includes any person authorised in writing by the Labour Commissioner to act on his behalf;

“legal tender” has the meanings ascribed thereto by the Currency Order 1974;

“liquor” has the meaning assigned to “liquor” in the law relating to liquor licensing’

“maternity leave” means leave granted to an employee arising from, or in contemplating of, her confinement;

“medical practitioner” has the meaning ascribed thereto by the Medical and Dental Practitioners Act, 1970;

“midwife” has the meaning ascribed thereto by the Nurses and Midwives Act, 1965;

“Minister” means the Minister for the time being responsible for Labour;

“mine” includes any undertaking, whether public or private, for the winning, treatment or extraction of minerals from the earth, sea, rivers or inland waters;

“mineral” has the meaning ascribed thereto by the Mining Act, 1958;

“month” a period commencing on any day in a calendar month and expiring on the day preceding the corresponding date in the succeeding calendar month;

“night” means the period commencing at 9.00p.m. on one day and ending at 7.00a.m. on the following day;

“notice” means in respect of the termination of employment, notice of termination of employment;

“organisation” has the same meaning as in the Industrial Relations Act;

“outworker” means a person to whom materials or articles are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired or adapted for sale in his own home or on other premises not under the control or management of the person who gave out the materials or articles;

“paid public holiday” means a public holiday on which an employee is entitled to a holiday on full pay in pursuance of a Wages Regulation Order or a collective agreement covering his terms and conditions of employment;

“pay day” means the day or date fixed by the employer as the day on which he shall pay his employee wages due to him;

“parent” in relation to a child or young person includes a guardian and every person who has the actual custody of the child or young person;

“piece work” means any work the payment for which is calculated by the amount of work performed, irrespective of the time occupied in its performance;

“place of employment” means any place at or in which an employee works and the term “workplace” shall be construed accordingly;

“prescribed” means prescribed by the Minister by Order in the Gazette;

“public authority” means the Government or a local authority or the Ngwenyama in Council;

“public officer” includes any officer of a public authority;

“public contract” means a contract involving the expenditure of funds by the Government or by any statutory body, whether corporate or unincorporate, for

- (a) the construction, alteration, repair, or demolition of public works;
- (b) the manufacture, assembly, handling or shipment of materials, supplies or equipment;

- (c) the performance or supply of services; or
- (d) the supply of goods;

“recruit” means the undertaking of any operation with the object of obtaining or supplying the labour of employees who do not spontaneously offer their services at the place of employment, or at an employment exchange, or at an office conducted by an employers’ organisation established for the purpose of receiving applications for employment;

“redundant employee” means an employee whose contract of employment has been terminated —

- (a) because the employer has ceased, or intends to cease to carry on the business or activity in which the employee was employed; or
- (b) because the employer has ceased or intends to cease to carry on business in or at the place in which the employee was employed; or
- (c) because of any of the following reasons connected with the operation of the business —
  - (i) modernization, mechanisation, or any other change in the method of production which reduces the number of employees necessary;
  - (ii) the closure of any part or department of the business;
  - (iii) marketing or financial difficulties;
  - (iv) alteration in products or production methods necessitating different skills on the part of employees;
- (v) lack of orders or shortage of materials;
  - (vi) scarcity of means of production;
  - (vii) contraction in the volume of business;
- (d) because of a natural disaster if the termination is wholly or mainly attributable to the destruction of, or damage caused to, the employers place of business by fire, hurricane, earthquake or other act of God, whether or not similar to any of the foregoing causes;

“redundancy and redundancies” shall be construed in the context of “redundant employee”;

“seasonal contract” means a contract of service, the period of which cannot be pre-determined, entered into for a particular season, or for work to be performed on or in connection with a special project;

“severance allowance” means the allowance to which an employee is entitled under section 34;

“temporary cessation of work” means a situation in which a business or part of a business has temporarily ceased or diminished, but where the employer/employee relationship subsists and where it is the intention of the employer to resume normal working as soon as possible;

“undertaking” means any industrial undertaking and any of the following establishments, businesses or undertakings whether public or private, which is wholly or mainly engaged in —

- (a) the sale, purchase, distribution, insurance, negotiation, loan or administration of goods of any kind;
- (b) the provision of an administrative service in which the persons employed are mainly engaged in clerical work;
- (c) the production, printing or publication of a newspaper;
- (d) the treatment or care of children, or aged, destitute, infirm, mentally unfit or sick persons;
- (e) the operation of a boarding house, café, club, hotel, restaurant or any other place for refreshment or public entertainment;
- (f) the operation of any broadcasting, postal or telecommunication service or the production of cinematographic films;
- (g) any other service similar to the foregoing;

but does not include —

- (i) any undertaking in which only members of the employer’s immediate family are employed;
- (ii) domestic employment in or about a private dwelling house;
- (iii) any undertaking or part thereof declared by the Minister in writing to be an agricultural undertaking;

“wages” means remuneration or earnings including allowances, however designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by an employer to an employee for work done or to be done under a contract of employment or for services rendered or to be rendered under such contract;

“week” means any period of seven consecutive days;

“wife” means a person married according to Swazi law or other law or custom recognised within Swaziland, and if under such law or custom more marriages than one validly exist at the relevant time, then the person first married under such law or custom;

“woman” means a female of the apparent age of eighteen years or upwards;

“work” means any work or labour, whether skilled or unskilled, carried out by an employee for an employer for wages;

“young person” means a person who has attained the age of fifteen years but is under the age of eighteen years;

#### *Contracting out.*

3. Except as expressly provided by this Act any arrangement by any person to contract out of its provisions shall be null and void.

*Status of collective agreements.*

4. Nothing in this Act shall be construed as making a collective agreement binding on any party unless the collective agreement —

- (a) specifically and expressly so provides;
- (b) is signed by the parties thereto; and
- (c) has been registered with the Industrial Court.

*Act binds Government.*

5. Subject to section 6, the provisions of this Act shall apply to employment with, by, or under the Government, other than to employment in the Royal Swaziland Police Force, the Umbutfo Swaziland Defence Force and the Swaziland Prison service.

*Minister may exempt.*

6. (1) The Minister may, by order published in the Gazette exempt any person or public authority or class or persons or public authorities from the operation of all or any of the provisions of this Act or any regulation, order or direction made thereunder.

(2) No exemption shall be made by the Minister under this section which is incompatible with any International Labour Convention for the time being in force for Swaziland.

## PART II — ADMINISTRATION

*Enforcement and Administration.*

7. The Labour Commissioner shall be responsible to the Minister for the application, enforcement and administration of this Act and for such other matters relating to employment as the Minister may direct.

*Powers and duties of Labour Commissioner.*

8. In addition to any other powers or duties given to him under this Act or any other law, the Labour Commissioner shall —

- (a) have all the powers of an Inspector under the Act;
- (b) receive, investigate and, where requested, conciliate on any question, dispute, complaint or grievance arising out of an employer/employee relationship, whether or not it specifically falls to be dealt with under this Act;
- (c) provide information and advice to employers and employees on the application of this Act or any other law relating to employment;
- (d) prepare such reports and statistics on employment as may be required by the Minister;
- (e) advise the Government on labour matters generally and industrial relations in particular;
- (f) carry out such other duties as may be required of him by the Minister.

*Powers and duties of Inspectors.*

9. (1) In addition to any other powers or duties given to or imposed on Inspectors by this Act or any other law, an Inspector shall —

- (a) make periodic inspections of places of employment as directed by the Labour Commissioner;
- (b) ensure that all laws relating to conditions of employment and the protection of employees in their occupations are being fully applied; where necessary providing information and advice as to the means of complying with such laws, including a time limit by which such compliance shall be effective;
- (c) bring to the notice of the Labour Commissioner any difficulty or abuse relating to employment which is not covered by existing laws;
- (d) make studies and collect data relating to employment as may be required by the Labour Commissioner.

(2) An Inspector may —

- (a) enter, examine and inspect at any reasonable time whether by day or night, with or without previous notice —
  - (i) any premises or place in which he has cause to believe any employee or recruit may be employed or housed or which he believes to be liable to inspection;
  - (ii) any hospital or dispensary, or any latrines or other sanitary arrangements used, or intended to be used by employees;
  - (iii) kitchens and places in which food for the use of employees is stored, prepared or eaten and inspect and take samples of such food;
- (b) require an employer to provide any information requested by him as to the wages, hours of work or other conditions of employment of persons employed by that employer;
- (c) carry out any examination, test or enquiry which he considers to be necessary in order to satisfy himself that all legal provisions relating to employment are being complied with and, in particular, may —
  - (i) question, alone or in the presence of witnesses, any employer or employee on any matter concerning the application of any law relating to employment in so far as it affects them, or apply for information to any other person whose evidence he may consider necessary;
  - (ii) require the production of any books, registers or other documents required to be kept by this Act or any other law relating to employment and may copy or make extracts from such books, registers or other documents and, if he considers such a course necessary or expedient, remove such book, register or other document;
  - (iii) direct the posting of notices required by this Act or any other law relating to employment;
  - (iv) take or remove for purposes of analysis, samples of materials or substances used or handled by employees in the course of their employ-

ment, subject to the employer or his representative being notified of the removal of samples or substances taken or removed for analysis;

(3) An Inspector may, when carrying out any inspection under the provisions of this section, take with him any other competent person, including a police officer, to enable him to carry out his duties under this Act.

(4) An Inspector shall on the occasion of an inspection notify the employer or his representative of his presence, unless he considers that such notification may be prejudicial to the performance of his duties.

(5) An Inspector shall, at the time of carrying out an inspection, identify himself to employees and an employer shall, where so requested by the Inspector or by his employees, provide facilities for such employees to communicate freely with the Inspector.

(6) Where an Inspector removes a book, register or other document in pursuance of paragraph (c)(ii) of sub-section (2) he shall give a receipt therefor to the employer or his representative.

#### *Certificates of appointment..*

10. Every Inspector shall be given a certificate of appointment in the prescribed form and, when visiting any premises in the execution of his duty shall, if so required by an employer or his representative, produce the certificate as proof of his identity.

#### *Duties and obligations of Inspectors..*

11. (1) An Inspector shall not have any direct or indirect financial or similar interest in any undertaking liable to inspection by him.

(2) An Inspector shall not, either during or after his employment in the public service, reveal any industrial or commercial secret or any manufacturing or management process which may come to his knowledge in the course of his duties.

(3) Except where the informant or complainant gives permission to the contrary for the purposes of investigation or prosecution, an Inspector shall treat as confidential the source of any information or complaint concerning a breach of the provisions of this Act or any other law, even where such information or complaint is the reason for an inspection, visit or enquiry.

#### *Annual reports to be published..*

12. (1) The Labour Commissioner shall prepare and publish an annual report on the work and activities of the Labour Department and such report shall be submitted to the Minister within a reasonable time after the end of the year to which it relates and in any case within twelve months of the end of that year.

(2) Without prejudice to any other requirements which may be imposed by the Minister, the annual report shall deal with the following matters —

- (a) laws and regulations relevant to the work of the Labour Department;
- (b) staff of the Labour Department;
- (c) statistics of workplaces liable to inspection and the number of persons employed therein;

- (d) statistics of inspection visits;
- (e) statistics of offences against this Act or any other law relating to employment and penalties imposed;
- (f) statistics of industrial accidents;
- (g) statistics of occupational diseases.

*Supply of information.*

13. (1) For the purposes of compiling the report required by section 12 the Labour Commissioner may require employers in writing, to supply information to him specifying the form and manner in which the information shall be supplied and the time within which such information is to be submitted.

(2) Information supplied to the Labour Commissioner under this section shall not be published except —

- (a) as part of the general statistical information contained in the annual report compiled under the provisions of section 12;
- (b) with the previous written consent of the person who supplied the information; or
- (c) for the purposes of a prosecution under this Act or any other law relating to employment.

(3) In any report, summary of statistics or other publication prepared from information supplied by employers under this section the particulars contained therein shall not be disclosed or arranged in such manner as would enable the particulars to be identified as relating to any individual person or business.

*Delegation of powers.*

14. (1) The Labour Commissioner may, with the consent of the Minister, delegate in writing to any competent person the exercise of any of his powers and the performance of any of his duties in relation to any matter or thing provided for by this Act.

(2) The Labour Commissioner may exercise a power or perform a duty notwithstanding that he has delegated the exercise or performance thereof to some other person and may cancel or suspend any such delegation.

*Offences under this Part.*

15. (1) Except as provided for in this Act, no person shall disclose, publish, communicate or otherwise make use of any information supplied by an employer under this Part and any person who knowingly acts in contravention of this subsection shall be guilty of an offence and shall be liable on conviction to a fine of two hundred and fifty Emalangeni or to imprisonment for three months.

(2) Any person who wilfully acts in contravention of subsections (2) or (3) of section 11 is guilty of an offence and shall be liable on conviction therefor to a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both. (Amended A.5/1997.)

(3) Any person who —



- (a) wilfully obstructs, hinders or delays an Inspector in the exercise of any of the powers conferred on him by this Act;
- (b) without reasonable cause, fails to comply with any lawful direction given or made by an Inspector under this Act;
- (c) fails to produce any book, register or other document which he is required to produce under this Act;
- (d) conceals, or attempts to conceal, any employee who is required to appear before or be examined by an Inspector or who otherwise prevents, or attempts to prevent any such employee from so appearing or being examined;
- (e) wilfully or without lawful cause refuses or neglects to supply within the specified time, information required by the Labour Commissioner under section 13;
- (f) wilfully supplies or causes to be supplied to the Labour Commissioner or an Inspector any false information;
- (g) refuses to answer any question lawfully put by the Labour Commissioner or an Inspector for the purposes of this Act;
- (h) hinders or obstructs the Labour Commissioner or Inspector in the exercise of any of the powers conferred on him by law;

shall be guilty of an offence and shall be liable on conviction to a fine of two hundred and fifty Emalangi or no imprisonment for three months.

*Persons not required to supply incriminating information.*

16. Notwithstanding any provision of this Act relating to the questioning of any person or to supply of information, no person shall be required to answer any question or supply any information tending to incriminate him.

*Instituting of proceedings.*

17. The Labour Commissioner or an Inspector may institute proceedings in the name of the Labour Commissioner against any person for any contravention of, or offence committed under this Act and may appear in and conduct any such proceedings.

### PART III — LABOUR ADVISORY BOARD

*Establishment of Labour Advisory Board.*

18. (1) There is hereby established a Labour Advisory Board (hereinafter referred to as "the Board).

(2) The Board shall consist of the following persons:

- (a) a Chairman who shall be the Labour Commissioner;
- (b) a Deputy Chairman who shall be the Deputy Labour Commissioner;
- (c) not more than six members representative of the interests of employees to be appointed by the Minister after consultation with organisations of employees;
- (d) not more than six members representative of the interests of employers to be appointed by the Minister after consultation with organisations of employers.

(3) There shall be a Secretary to the Board who shall be appointed by the Labour Commissioner.

(4) The members of the Board shall be appointed by the Minister for such period, not exceeding three years, and on such terms and conditions as he may determine and a member of the Board whose term of office expires shall be eligible for re-appointment.

(5) The Minister may terminate the appointment of a member on account of —

- (a) the member's physical or mental incapacity;
- (b) the member's absence from three consecutive meetings of the Board;
- (c) a recommendation by a majority of the Board's members representing the interests of employees that one of their number should be replaced;
- (d) a recommendation by a majority of the Board's members representing the interests of employers that one of their number should be replaced.

(6) A member of the Board may at any time resign his membership by giving one month's notice in writing to the Minister.

(7) Where the Minister terminates the appointment of a member of the Board in terms of subsection (5), or a member resigns, the Minister shall appoint a replacement in accordance with subsections (2) and (4).

(8) The appointment of every member of the Board shall be published in the Gazette.

#### *Duties of the Board.*

19. The Board shall consider and advise the Minister upon any matter affecting employment and labour referred to the Board by the Minister and without prejudice to the generality of this requirement, such matters shall include —

- (a) proposals for any new legislation to employment;
- (b) amendments to this Act or any other law relating to employment;
- (c) proposed action in regard to —
  - (i) agenda items or texts to be discussed by the International Labour Conference;
  - (ii) the submission of International Labour Conventions or Recommendations to the Government;
  - (iii) recommendations and unratified International Labour Conventions;
  - (iv) questions arising out of reports submitted under Article 22 of the Constitution of the International Labour Organisation;
  - (v) the denunciation of ratified International Labour Conventions.

#### *Quorum and meetings of the Board.*

20. (1) A quorum for the Board shall be —

- (a) the Chairman or Deputy Chairman of the Board;
- (b) two of the members representing employees' interests;
- (c) two of the members representing employers' interests.

(2) The Board shall have the power to co-opt other persons as members for any particular purpose approved by the Minister, such persons shall have all the rights and privileges accorded to appointed members of the Board for the period of their co-option.

(3) Subject to this section, the Board shall regulate its own procedure.

#### PART IV — CONTRACTS OF EMPLOYMENT

##### *Application.*

21. (1) This Part of the Act shall apply in respect of every contract of employment made within Swaziland and to be performed wholly within Swaziland.

(2) Any person, of or above the age of fifteen years, may enter into a contract of employment other than a foreign contract of employment.

##### *Written particulars to be provided.*

22. (1) Every employer shall, subject to the provisions of subsection (2) —

(a) within two calendar months of the appointed day, give each employee in his employment a completed copy of the form at the Second Schedule;

(b) give each employee taken into his employment after the appointed day, a completed copy of the form at the Second Schedule within six weeks of the beginning of that employment.

(2) Nothing in this section shall apply in respect of a domestic employee or an employee —

(a) who normally works or is expected to work less than twenty-one hours per week;

(b) who has contracted to work for his employer for a fixed period of six weeks or less and is not re-engaged at the end of that period;

(c) who is a member of the employer's immediate family;

(d) whose terms of service are governed by a collective agreement, a copy of which has been lodged with the Labour Commissioner and a further copy of which is held readily available by the employer for perusal by the employer at his place of employment.

##### *Employer and employee to sign form.*

23. (1) The signatures of both the employer and the employee duly witnessed, shall be affixed to the copy of the form at the Second Schedule given to the employee under the terms of section 22.

(2) Where an employee refuses to sign the form, the employer shall so inform the Labour Commissioner in writing, whereupon the Labour Commissioner shall arrange for an Inspector to interview the employee and explain the document and the requirements of this section to him.

(3) If the Inspector is satisfied that the details set out in the form are correct, he shall require both the employer and the employee to sign the employee's copy of the form and witness their signature thereto.

(4) Where for any reason the employee continues to refuse to sign the form, the Inspector shall endorse the form to that effect, thereafter handing it to the employee and certifying in writing to the employer that he has done so.

*Minister may vary form.*

24. The Minister may, after consultation with the Labour Advisory Board, amend the form in the Second Schedule.

*Form not to be deemed written contract.*

25. In any proceedings arising out of the provisions of this Act, a copy of the form in the Second Schedule signed by both the employer and the employee, shall be accepted as *prima facie* evidence of the matters contained therein at the time it was signed, but nothing in this Act shall deem the form to be a written contract of employment.

*Changes in terms of employment.*

26. (1) Where the terms of employment specified in the copy of the form in the Second Schedule given to the employee under section 22 are changed, the employer shall notify the employee in writing specifying the changes which are being made and subject to the following subsections, the changed terms set out in the notification shall be deemed to be effective and to be part of the terms of service of that employee.

(2) Where, in the employee's opinion, the changes notified to him under subsection (1) would result in less favourable terms and conditions of employment than those previously enjoyed by him, the employee may, within fourteen days of such notification, request his employer, in writing, (sending a copy of the request to the Labour Commissioner), to submit to the Labour Commissioner a copy of the form given to him, under Section 22, together with the notification provided under subsection (1) and the employer shall comply with the request within three days of it being received by him.

(3) On receipt of the copy of the documents sent to him under subsection (2), the Labour Commissioner shall examine the changes in the terms of employment contained in the notification. Where, in his opinion, the changes would result in less favourable terms and conditions of employment than those enjoyed by the employee in question prior to the changes set out in the notification, the Labour Commissioner shall, within fourteen days of the receipt of the notification, inform the employer in writing of this opinion and the notification given to the employee under subsection (1) shall be void and of no effect.

(4) Any person dissatisfied with any decision made by the Labour Commissioner under subsection (3) may apply in writing for a review to the Labour Commissioner, who using the powers accorded to him under Part II, shall endeavour to settle the matter. Where he is unable to do so within fourteen days of the receipt of the application being made to him he shall refer the matter to the Industrial Court which may make an order.

*Contracts not to conflict with law.*

27. No contract of employment shall provide for any employee any less favourable condition than is required by any law. Any condition in a contract of employment which does not conform with this Act or any other law shall be null and void and the contract shall be

interpreted as if for that condition there were substituted the appropriate condition required by law.

*Existing contracts to continue in force.*

28. All contracts of employment valid and in force at the commencement of this Act shall continue to be in force after such commencement, and to the extent that they are not in conflict with this Act shall be deemed to be made thereunder and the parties thereto shall be subject to and entitled to the benefits of the provisions of this Act.

*No discrimination on grounds of sex etc..*

29. No employer shall, in any contract of employment between himself and an employee discriminate against any person or between employees on grounds of race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status.

*Offences under this Part.*

30. Any employer who —

- (a) fails or refuses to provide an employee with a completed copy of the form in the Second Schedule as required by section 22;
- (b) fails or refuses to notify the employee in writing of changes in his conditions of employment as required by section 26;
- (c) fails or refuses to submit to the Labour Commissioner any document as required by section 26; or
- (d) discriminates against any person contrary to section 29,

shall be guilty of an offence and liable on conviction to a fine of not exceeding three thousand Emalangenis or imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART V — TERMINATION OF CONTRACTS OF EMPLOYMENT

*Application.*

31. This Part of the Act shall apply to every contract of employment made within Swaziland and to be performed wholly within Swaziland.

*Probationary period.*

32. (1) During any period of probationary employment as stipulated either in the form to be given to an employee under section 22, or in a collective agreement governing his terms and conditions of employment, either party may terminate the contract of employment between them without notice.

(2) No probationary period shall, except in the case of employees engaged on supervisory, technical or confidential work, extend beyond three months.

(3) In the case of employees engaged on supervisory technical or confidential work, the probation period shall be fixed, in writing, between the employer and employee at the time of engagement.

*Periods of notice by employer and employee.*

33. (1) Subject to section 32, the minimum notice of termination of employment an employer may give an employee who has completed his probationary period of employment, and who has been continuously employed by that employer for more than one month shall be —

- (a) if the period of continuous employment is less than three months, one week;
- (b) if the period of continuous employment is between three months and twelve months, two days for each completed month of continuous employment up to and including the twelfth month;
- (c) if the period of continuous employment is more than twelve months, one month and an additional four days for each completed year of continuous employment after the first year of such employment.

(Amended A.4/1985.)

(2) Notwithstanding any other provision of this section, where an employee has completed his probationary period of employment and is employed on a contract of employment which provides for him to be paid his wages at monthly or fortnightly intervals, the minimum period of notice of termination of employment to be given to that employee shall not be less than one month or a fortnight as the case may be.

(3) The minimum period of notice to be given by an employee who has been continuously employed by the same employer for a period of three months or more shall be one week, or such longer period as may be specified in the form at the Second Schedule to be given to the employee under section 22 or in a collective agreement covering the terms and conditions of employment of the employee. (Amended A.4/1985.)

(4) The period of notice to be given under subsection (2) or (3) shall begin on the working day following that on which it is served by either party.

(5) Nothing in this section shall prevent either party terminating a contract of employment by paying to the other party, in lieu of notice, an amount equal to the basic wages which would have been earned by the employee during the period of notice.

(6) During the period of notice served by an employer on an employee under this section, the employee shall be entitled, without reduction in his wages, to be absent from his work for the purpose of seeking other employment for twelve hours each week, the timing of which shall be agreed between the employee and the employer and which, in pursuance of such agreement, may be taken in one or more complete days during the period of notice.

(7) Nothing in this section shall prejudice the right of the employer to dismiss an employee summarily for just cause and any employee who is dismissed for just cause shall be paid the wages due to him up to and including the date of such dismissal.

(8) An employee shall not be dismissed without notice unless the reasons for his dismissal are such as to warrant the immediate cessation of the employer/employee relationship and where the employer cannot be expected to take any other course.

*Payment of all benefits before selling business.*

33bis. (1) An employer shall not —

- (a) sell his business to another person; or
- (b) allow a take over of the business by another person,

unless he first pays all the benefits accruing and or due for payment to the employees at the time of such sale or take over.

(2) Notwithstanding subsection (1) if the person who is buying the business or taking it over, makes a written guarantee which is understood by and acceptable to each employee that all benefits accruing at the termination of his previous employment shall be paid by him within 30 days and by mutual agreement agreed in writing and approved by the Commissioner of Labour, subsection (1) shall not apply.

(3) An employer who fails to comply with subsection (1) shall, upon conviction, be liable to a fine not exceeding six thousand Emalangeni or to imprisonment not exceeding two years or both.

(Added A.5/1997.)

*Severance allowance.*

34. (1) Subject to subsections (2), and (3) if the services of an employee are terminated by his employer other than under paragraphs (a) to (j) of section 36 the employee shall be paid, as part of the benefits accruing under his contract of service, a severance allowance amounting to ten working days' wages for each completed year in excess of one year that he has been continuously employed by that employer. (Amended A.11/1981; A.4/1985.)

(2) In calculating the amount of the severance allowance to which the employee is entitled under subsection (1) any employment by him with the employer concerned prior to the 1st day of January, 1968 shall be disregarded.

(3) If any employer operates or participates in, and makes any contribution to, any gratuity, pension or provident fund (other than the Swaziland National Provident Fund established by the Swaziland National Provident Fund Order, 1974) which is operated for the benefit of his employees, the employer on termination of employment of an employee, shall be entitled to repayment from the gratuity, pension or provident fund equal to the employer's total contribution to that gratuity, pension or provident fund in respect of the employee to whom a severance allowance is to be paid under this section.

(4) The amount of the repayment under subsection (3) shall not exceed the total amount of the severance allowance paid by the employer under subsection (1).

(5) For the purpose of this section, the term "wages" shall mean the wages payable to the employee at the time his services were terminated.

(6) (Repealed A.11/1981.)

*Employee's services not to be unfairly terminated.*

35. (1) This section shall not apply to —

- (a) an employee who has not completed the period or probationary employment provided for in section 32;
- (b) an employee whose contract of employment requires him to work less than twenty-one hours each week;
- (c) an employee who is a member of the immediate family of the employer;
- (d) an employee engaged for a fixed term and whose term of engagement has expired.

- (2) No employer shall terminate the services of an employee unfairly.
- (3) The termination of an employee's services shall be deemed to be unfair if it takes place for any one or more of the following reasons —
- (a) the employee's membership of an organisation or participation in an organisation's activities outside working hours or, with the consent of the employer, within working hours;
  - (b) because the employee is seeking office as, or is acting or has acted in the capacity of an employee's representative;
  - (c) the filing in good faith of a complaint or the participation in a proceeding against an employer involving alleged violation of any law or the breach of the terms and conditions of employment under which the employee is employed;
  - (d) the race, colour, religion, marital status, sex, national origin, tribal or clan extraction, political affiliation or social status of the employee;
  - (e) where the employee is certified by a medical practitioner as being incapable of carrying out his normal duties because of a medical condition brought about by work he has carried out for his present employer except where the employer proves that he has no suitable alternative employment to offer that employee;
  - (f) because of the employee's absence from duty due to sickness certified by a medical practitioner for a period not exceeding six months, or to accident or injury arising out of his employment, except where the employer proves that, in all the circumstances of the case, it was necessary for him permanently to replace the employee at the time his services are terminated.

*Fair reasons for the termination of an employee's services.*

36. It shall be fair for an employer to terminate the services of an employee for any of the following reasons —

- (a) because the conduct or work performance of the employee has, after written warning, been such that the employer cannot reasonably be expected to continue to employ him;
- (b) because the employee is guilty of a dishonest act, violence, threats or ill treatment towards his employer, or towards any member of the employer's family or any other employee of the undertaking in which he is employed;
- (c) because the employee wilfully causes damage to the buildings, machinery, tools, raw materials or other objects connected with the undertaking in which he is employed;
- (d) because the employee, either by imprudence or carelessness, endangers the safety of the undertaking or any person employed or resident therein;
- (e) because the employee has wilfully revealed manufacturing secrets or matters of a confidential nature to another person which is, or is likely to be, detrimental to his employer;
- (f) because the employee has absented himself from work for more than a total of three working days in any period of thirty days without either the



permission of the employer or a certificate signed by a medical practitioner certifying that he was unfit for work on those occasions;

- (g) because the employee refuses either to adopt safety measures or follow the instructions of his employer in regard to the prevention of accidents or disease;
- (h) because the employee has been committed to prison and thus prevented from fulfilling his obligations under his contract of employment;
- (i) because the employer is unable to continue in employment without contravening this Act or any other law;
- (j) because the employee is redundant; (Renumbered A.4/1985.)
- (k) because the employee has attained the age which in the undertaking in which he was employed is the normal retiring age for employees holding the position that he held;
- (l) for any other reason which entails for the employer or the undertaking similar detrimental consequences to those set out in this section. (Renumbered A.4/1985.)

*Termination of services due to employer's conduct.*

37. When the conduct of an employer towards an employee is proved by that employee to have been such that the employee can no longer reasonably be expected to continue in his employment and accordingly leaves his employment, whether with or without notice, then the services of the employee shall be deemed to have been unfairly terminated by his employer.

*Certificate of employment.*

38. Any employee whose services are terminated shall be entitled to receive on request, at the time of such termination, a certificate from his employer specifying the dates of his engagement and termination and the nature of the work on which he has been employed.

*Suspension of employee.*

39. (1) An employer may suspend an employee from his or her employment without pay where the employee is —

- (a) remanded in custody; or
- (b) has or is suspected of having committed an act which, if proven, would justify dismissal or disciplinary action.

(2) If the employee is suspended under subsection (1)(b), the suspension without pay shall not exceed a period of one month.

(3) If the employer finds that the employee did not commit the act referred to in subsection (1)(b), the suspension shall be lifted and the employer shall pay to the employee an amount equal to the remuneration he would have been paid during the suspension.

(4) Where the employee is suspended because he was remanded in custody, and is subsequently acquitted of the charge and any other related charges for which he was placed in custody, the suspension shall be lifted, and subject to subsection (5), the employer shall not be obliged to pay any wages to the employee for the period the employee was in custody.

(5) Where an employee is remanded in custody as a result of a complaint laid by his employer in relation to his employment naming him as an accused is subsequently acquitted of that charge or any other related charges, the employer shall pay to the employee an amount equal to the remuneration he would have been paid during the period of suspension.

(Replaced A.5/1997.)

*Employer to give notice of redundancies.*

40. (1) For the purposes of this section the term “employee” shall be deemed not to include any employee —

- (a) engaged on a seasonal contract;
- (b) engaged on a fixed contract of six weeks or less and which does not provide for re-engagement at the end of that period;
- (c) who is a casual employee.

(2) Where an employer contemplates terminating the contracts of employment of five or more of his employees for reasons of redundancy, he shall give not less than one month’s notice thereof in writing to the Labour Commissioner and to the organisation (if any) with which he is a party to a collective agreement and such notice shall include the following information —

- (a) the number of employees likely to become redundant;
- (b) the occupations and remuneration of the employees affected;
- (c) the reasons for the redundancies; and
- (d) the date when the redundancies are likely to take effect.
- (e) the latest financial statements and audited accounts of the undertaking; (Added A.5/1997.)
- (f) what other opinions have been looked into to avert or minimize the redundancy. (Added A.5/1997.)

*Remedies against unfair termination of services.*

41. (1) Where an employee alleges that his services have been unfairly terminated, or that the conduct of his employer towards him has been such that he can no longer be expected to continue in his employment, the employee may file a complaint with the Labour Commissioner, whereupon the Labour Commissioner, using the powers accorded to him in Part II shall seek to settle the complaint by such means as may appear to be suitable to the circumstances of the case.

(2) Where the Labour Commissioner succeeds in achieving a settlement of the complaint, the terms of the settlement shall be recorded in writing, signed by the employer and by the employee and witnessed by the Labour Commissioner: one copy of the settlement shall be given to the employer, one copy shall be given to the employee and the original shall be retained by the Labour Commissioner.

(3) If the Labour Commissioner is unable to achieve a settlement of the complaint within twenty-one days of it being filed with him, the complaint shall be treated as an unresolved dispute and the Labour Commissioner shall forthwith submit a full report thereon

to the Industrial Court which will then proceed to deal with the matter in accordance with the Industrial Relations Act.

*Burden of proof.*

42. (1) In the presentation of any complaint under this Part the employee shall be required to prove that at the time his service were terminated that he was an employee to whom section 35 applied.

(2) The services of an employee shall not be considered as having been fairly terminated unless the employer proves —

- (a) that the reason for the termination was one permitted by section 36; and
- (b) that, taking into account all the circumstances of the case, it was reasonable to terminate the service of the employee.

*Repatriation of employees.*

43. (1) Where an employee has been brought to the place of employment by the employer, or by a person acting on his behalf, and the employee's contract of employment is terminated by the employer for any cause, the employer shall be liable for the expenses of repatriating the employee by reasonable means to the place from which he was brought.

(2) The expenses of repatriation shall include —

- (a) the cost of travelling and subsistence expenses for the journey;
- (b) subsistence expenses during the period, if any, between the date of the termination of the contract and the date of repatriation.

*Offences under this Part.*

44. Any employer who —

- (a) except where section 33(8) applies, fails or refuses to give an employee whose services are being terminated the minimum period of notice required by section 33;
- (b) fails or refuses to allow an employee whose services are being terminated to be absent from work for the purpose of seeking other employment as required by section 33(6);
- (c) terminates the contracts of employment of five or more of his employees for reasons of redundancy without giving prior notice thereof as required by section 40; or
- (d) fails to pay the expenses of repatriating an employee as required by section 43;
- (e) fails to pay severance allowance as required by section 34; (Added A.4/1985.)

shall be guilty of an offence and liable on conviction therefor to a fine of not exceeding three thousand Emalangeni or imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART VI — PROTECTION OF WAGES

*Agreement of Co-operation.*

45. Nothing in this Part shall be held to apply to any body of persons working on an agreement of co-operation.

*Wages to be paid in legal tender.*

46. (1) Subject to subsection (2) and to section 48 all wages due to an employee under his contract of employment shall be paid to him in legal tender and not otherwise and if any such contract contains a provision whereby the whole or any part of such wages is made payable in any other manner, that provision shall be illegal.

(2) Notwithstanding subsection (1) the wages of an employee under his contract of employment may with the consent of that employee, be paid to him by cheque drawn on a bank, or by postal order or money order.

*Wages when due.*

47. (1) The times when wages shall be deemed to be due from an employer to an employee shall be as follows —

- (a) in the case of an employee employed daily, weekly, fortnightly or monthly, at the expiry of the day, week, fortnight or month, as the case may be;
- (b) in the case of an employee employed for a period in excess of one month, at intervals not exceeding one month;
- (c) in the case of an employee under a daily contract where, by agreement or custom, wages are not paid daily but are paid at intervals not exceeding one month, in accordance with such agreement or custom;
- (d) in the case of an employee whose wages are calculated on the basis of piece work, at intervals of not more than one month, an amount which relates to the proportion of the piece work he has completed either during the time from which he commenced employment, or from the date on which he was last paid wages, as the case may be.

(2) Where a contract of the kind mentioned in paragraph (c) of subsection (1) is terminated and no new contract is entered into or presumed to be entered into prior to the time at which wages are due under this section, wages shall be due at the time the contract is terminated.

*Remuneration other than wages.*

48. An employer may, in pursuance of a written agreement with an employee, pay to that employee, in addition to monetary wages, allowances in kind which shall —

- (a) be of personal benefit to the employee and his family;
- (b) be of a fair and reasonable value appropriate to the monetary value placed on the allowance by the employer;
- (c) not be in the form of noxious drugs or intoxicating liquor.

*Wages not to be paid on certain premises.*

49. No employer shall pay wages to an employee at or within any retail shop or place for the sale of any liquor, or any office or place belonging thereto, except where the employer is the resident owner or occupier of such retail shop, office or place and he pays wages to an employee employed by him in such retail shop, office or place.

*Times and places of payment.*

50. (1) Wages shall be paid at or near the work place during working hours.

(2) An employer may, upon written authorisation by an employee, pay the wages due to that employee, or such part thereof as is so authorised to be paid, to the person named in the authorisation.

(3) The days on which wages are to be paid to employees shall be fixed in advance by the employer and notified to the employee at the beginning of the contract of employment.

(4) Where in pursuance of his contract of employment, an employee is entitled, in addition to the wages payable to him, to a share of the profits of the undertaking in which he is employed, a settlement of accounts relating to such share shall be made between the employer and the employee at least once a year.

*Sale of goods or services by employer to employees.*

51. (1) An employer otherwise lawfully entitled to do so may sell goods or services to his employees, but no contractual provision requiring an employee to buy any goods or services from his employer or any other person shall be valid, and no employer shall compel or attempt to compel an employee or any dependant of an employee to buy any goods or services from the employer or (except for goods or services bought on behalf of the employer) from any other person.

(2) Where, for any reason, an employer sells goods or services to an employee, the employer shall not sell such goods or services to the employee at prices above those at which they are generally available elsewhere in Swaziland.

*Special provision for service charges.*

52. (1) In any undertaking wherein a percentage is added to the customer's bill in the form of a service charge, such service charge shall be distributed to the employees in the undertaking in a manner to be agreed between the employer and the employees or in accordance with the provisions of a collective agreement to which the employees are a party.

(2) The employer shall, as and when required by the Labour Commissioner, produce evidence as to the total amount of the service charges levied during any given period and the manner and form in which that amount was distributed to employees.

*Agreements as to place and manner of spending wages illegal.*

53. No employer shall include in any contract of employment between himself and an employee any condition, restriction or requirement as to the manner in which, or the person with whom, and wages paid to the employee are to be expended and any such condition, restriction or requirement shall be illegal.

*Priority of wages.*

54. (1) Every employee shall be entitled to recover in a Magistrates Court any wages, exclusive of any sums lawfully deducted therefrom, as have not been actually paid to him in accordance with this Act.

(2) Notwithstanding any other law for the time being in force in Swaziland, whenever any attachment has been issued against the property of any employer in execution of any judgment against him, the proceeds realised in pursuance of such execution shall not be paid by any court to the plaintiff until any judgment obtained against such employer in respect of any employees' wages has been satisfied to the extent of a sum not exceeding four months wages of that employee.

*Interest on advances prohibited.*

55. No employer shall make any deduction by way of discount, interest or similar charge on account of any advance of wages made to an employee in anticipation of the regular period of payment of such wages.

*Authorised deductions from wages.*

56. (1) An employer may deduct from the wages due to an employee —

- (a) any amount due by the employee in respect of any tax or rate which the employer is required to deduct from the wages of an employee under any law;
- (b) any amount due by the employer in respect of a contribution to the Swaziland National Provident Fund;
- (c) the actual or estimated cost to the employer of any materials, clothing (other than protective clothing required to be supplied by the employer under any law or under the provisions of a collective agreement), tools and implements supplied by him to the employee at the latter's written request and which are to be used by the employee in his occupation;
- (d) any money advanced to the employee by the employer, whether paid directly to the employee or to another person at the employee's written request, in anticipation of the regular period of payment of his wages;
- (e) any amount paid to the employee in error as wages in excess of the amount due to him.

(2) Any employer may, with the written authority of an employee, deduct from the wages payable to that employee, such amount as is stipulated in the authority as being the amount due from the employee as his membership fee or contribution to an organisation of which the employee is a member.

(3) An employee may assign a part of the wages due to him under his contract of employment.

(4) The total amount which may be —

- (a) deducted from the wages of an employee under paragraphs (c) and (e) of subsection (1) or under subsection (2);
- (b) assigned by an employee under subsection (3);
- (c) attached under any law,

shall not in any pay period, exceed one third of the wages due to the employee in respect of that pay period.

*Further restrictions on deductions.*

57. (1) No employer shall make any deduction from the wages due to an employee, or make any agreement or arrangement for any payment to him by the employee for, or in respect of alleged bad or negligent work by the employee.

(2) An employer may, with the written consent of an employee, make deductions from the wages due to the employee in respect of the loss or damage to any tools, materials or other property belonging to the employer and issued to the employee where such loss or damage has been caused by the default or neglect of the employee concerned.

(3) The amount of any deductions made under subsection (2) shall be fair and reasonable and shall not, in any case, exceed the actual cost to the employer of the loss or damage in question.

(4) The amount of any deductions made under this section together with those permitted under section 56(4) shall not exceed one half of the employee's wages for any period in which the deductions are made.

*Deduction for obtaining employment prohibited.*

58. No deduction shall be made from the wages due to any employee either in the form of retention by the employer or for payment to a third party for the purpose of obtaining or retaining employment.

*Illegal advances to be irrecoverable.*

59. All advances made otherwise than in accordance with this Act shall be unlawful and irrecoverable in any court whether by way of counter claim, set off or otherwise.

*Saving as to judgment debts.*

60. During the period of his contract of employment, an employee receiving an advance of wages shall not, by reason only of such advance, be deemed to have or to have had means and ability to pay any sum due from him under any judgment of a court.

*Employers to issue details of wage payments.*

61. (1) Every employer shall, at the time of paying wages to an employee, (other than a domestic employee) provide that employee with the following written details (hereinafter referred to as a wage slip) in respect of the wage period to which the wages relate —

- (a) the name of the employee and his occupation;
- (b) the wage rate of the employee;
- (c) the period to which the wage relates;
- (d) the number of hours paid for at ordinary time;
- (e) the number of hours paid for at overtime rate;
- (f) the nature and amount of any bonuses or allowances paid;
- (g) the gross wages earned by the employee;
- (h) the amounts and reasons for any deductions made from the gross wages;
- (i) the amount of the net wage paid to the employee.

(2) The acceptance of wages or a wage slip by an employee without protest or reservation, shall not prejudice his right to recover all or any part of wages due to him.

(3) Where in pursuance of his contract of employment an employee is entitled to a commission or share of the profits of the undertaking in which he is employed, the employee shall, at the time such commission or share is paid to him, be provided with full details as to the method of calculation of the commission and the total amount of profit of the undertaking in respect of the period to which the payment relates.

*Security for the payment of wages.*

62. (1) Whenever the Labour Commissioner is, in pursuance of a report under Part VII of this Act or otherwise, of the opinion that an employer has begun or is about to begin operating in Swaziland, the Labour Commissioner shall scrutinise the report or reports, if any, filed by the employer and shall make such other enquiries as he may deem necessary to ascertain whether it is desirable to require the employer to deposit a security for the payment of wages to his employees.

(2) If, as a result of the scrutiny or enquiries made by him under subsection (1), the Labour Commissioner considers it necessary for an employer to deposit a security for the payment of wages to his employees, the Labour Commissioner may, in writing, order the employer to deposit with him such sum of money or other form of security as may be acceptable to him up to a maximum of, or equivalent to one month's wages for all persons employed by the employer in Swaziland.

(3) An employer against whom an order is made by the Labour Commissioner under subsection (2) shall comply immediately with such order within three working days after the order is made, or within such longer period as the order may allow.

(4) In the event of non-compliance by an employer with an order made against him under subsection (2) the employer shall cease forthwith to employ any employees other than those employed primarily in a managerial capacity, and shall pay to each such terminated employee an amount equal to the amount the employer would be required to pay to that employee in lieu of notice if the employee were being terminated for redundancy.

(5) An employer aggrieved by an order made against him by the Labour Commissioner under this section may apply to the Industrial Court for the rescission of the said order, and the Court may upon such application order such rescission if the Court is satisfied that the Labour Commissioner did not have reasonable grounds for making the order.

(6) The making of an application to the Industrial Court under subsection (5) shall not postpone the employer's obligation under subsection (3) to comply with the order, but shall postpone, until the Court has made its decision upon the application, any obligation which the employer would otherwise incur under subsection (4).

*Exclusions.*

63. The Minister may, after consultation with the Labour Advisory Board, by order published in the Gazette, exclude from any or all of the provisions of this Part, any employee or category of employee who —

(a) is not employed in manual labour; or

(b) is a domestic employee

and whose circumstances and conditions of employment are such that the application of such provisions to them is inappropriate.



*Offences and Penalties.*

64. An employer who —

- (a) fails to pay wages to an employee when those wages are due or payable;
- (b) pays wages to an employee in a form, manner or place which is contrary to the provisions of this Part;
- (c) makes any deduction from the wages of an employee or receives any payment from an employee contrary to the provisions of this Part;
- (d) fails to provide an employee with the details of wages due to him as required by section 61;
- (e) pays an employee's wages, in whole or in part, in the form of liquor or noxious drugs;
- (f) fails to distribute a service charge as required by section 52; or
- (g) fails to comply with an order made by the Labour Commissioner under section 62 (3),

shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding two thousand five hundred Emalangeni or imprisonment not exceeding three years or both and for a second or subsequent conviction to a fine not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART VII — REGISTRATION OF EMPLOYERS

*Interpretation.*

65. For the purposes of this Part, the expression —

“employee” shall not include a domestic employee;

“Fund” means the Swaziland National Provident Fund established by the Swaziland National Provident Fund Order 1974.

*Delivery of Documents from the Fund.*

66. (1) The Chief Executive Officer of the Swaziland National Provident Fund shall, on the date this Part comes into effect, deliver to the Labour Commissioner a true copy of every document of registration received from a contributing employer to the Fund, and shall thereafter deliver forthwith to the Labour Commissioner a true copy of every document or registration as a contribution employer to the Fund received by the Chief Executive Officer.

(2) The Chief Executive Officer of the Fund shall, on the date this Part comes into effect, deliver to the Labour Commissioner a true copy of the most recent monthly return in respect of employees which has then been received by the Chief Executive Officer from each employer who is, on the said date, registered as a contributing employer to the Fund and shall thereafter deliver forthwith to the Labour Commissioner a true copy of each monthly return in respect of employees that is received by the Chief Executive Officer.

*Non-contribution employers to deliver documents.*

67. Any person who employs five or more employees who has not registered as a contributing employer to the fund or whose registration as a contributing employer to the Fund has been terminated for any reason, or who for any reason is not required to register himself as a contributing employer to the Fund, shall within ten days after the coming into effect of this Part, or within ten days after beginning to employ five or more employees, deliver to the Labour Commissioner a document containing every particular which is required to be included in an application for registration as a contributing employer to the Fund.

*Labour Commissioner to maintain registry.*

68. The Labour Commissioner shall keep each document received by him under section 66 or section 67 in a registry of employers maintained in such manner as to facilitate the administration and enforcement of every Act, Order or other statutory instrument with respect to which the Industrial Court, the Labour Commissioner or any inspector has any administrative or enforcement function.

## PART VIII — FOREIGN CONTRACTS OF EMPLOYMENT

*Application of Part.*

69. This Part of the Act shall apply in respect of every foreign contract of employment that is to say, a contract of employment made within Swaziland and to be performed substantially outside Swaziland.

*Particulars in foreign contracts and requirements as to attestation.*

70. (1) Every foreign contract of employment shall be signed by the parties thereto, shall be attested by an attesting officer and shall consist of —

- (a) the original of the contract, which shall be given to the employer;
- (b) three copies of the contract which shall be distributed as follows —
  - (i) one copy to the employee;
  - (ii) one copy to the labour agent (if any);
  - (iii) one copy to be retained by the attesting officer.

(2) The particulars to be contained in the contract shall include —

- (a) The name of the employer or group of employers, and, if practicable, the name of the undertaking and the place of employment;
- (b) the name of the employee, his place of origin, address and all particulars necessary for his identification;
- (c) the nature of the employment;
- (d) the duration of the employment and method of calculation thereof;
- (e) the rate of wages and the method of calculating such wages;
- (f) the manner and intervals of payment of wages;
- (g) the advances, if any, given to the employee and the manner of repayment thereof;

- (h) the conditions of repatriation;
- (i) provision for the payment of not less than half wages to the employee during any period which a qualified medical practitioner certifies that the employee is unable, for reasons of sickness, to carry out the employment set out in the contract;
- (j) any special conditions of the contract.

(3) A foreign contract of employment shall not be attested unless the attesting officer is satisfied —

- (a) that the contract is in proper legal form;
- (b) the terms of the contract comply with this Act and that such terms have been fully understood by the employee before he signs the contract or otherwise indicates his assent thereto;
- (c) that the employee has been certified medically fit to perform his duties under the contract.

(4) Notwithstanding any other law, the fee for the attestation of each foreign contract of employment, including the copies thereof, shall be ten Emalangeni or such other amount as may be prescribed.

(5) The fee specified in subsection (4) shall be paid to the attesting officer, by the employer and shall not, in any circumstances, be recoverable from an employee.

(6) On receipt of the fee specified in subsection (4) the attesting officer shall —

- (a) affix to the copy of the contract to be retained by the attesting officer under the provisions of subsection (1) a “face value” receipt of the amount of the fee;
- (b) cancel such receipt.

(7) The maximum period of employment which may be stipulated in a foreign contract of employment shall be one year, except that the Minister, after considering the circumstances of a particular case and where he is of the opinion that it would be in the interest of the employee so to do, may waive this restriction and permit a contract of longer duration.

(8) In any case where the Minister exercises his authority under subsection (7), the foreign contract of employment in question shall stipulate that the employee will be permitted, at the employers expense, to return to Swaziland after each period of twelve months employment, for a period of not less than two weeks paid leave, excluding travel time, between the place of employment and the employee’s home in Swaziland.

*Medical Examination of employees.*

71. An employer who brings a person before an attesting officer for attestation in accordance with section 70 shall produce to the attesting officer a certificate, signed by a medical practitioner, to the effect that the practitioner has examined such person and found him to be in a sound state of health and physically capable of performing the employment referred to in the contract.

*Termination of contract.*

72. (1) A foreign contract of employment shall be terminated by the expiry of the term for which it was made, or by the death of the employee before the expiry of the term for which it was made, or by the mutual consent, in writing of the employer and the employee, or by the giving of two week's notice by either party, or where, because of sickness or accident, the employee is unable to fulfil the conditions of the contract.

(2) Where a foreign contract of employment is terminated by the death of an employee any benefits or other payments owing out of the foreign contract of employment or the death of the employee shall be assigned to his estate.

(3) When a foreign contract of employment is terminated for any cause other than the death of an employee, the employer shall provide the employee with a written statement —

- (a) certifying that the employee has been paid all wages due to him up to and including the date of termination;
- (b) showing the amounts of any wages due to the employee which have been deferred during the period of the contract;
- (c) setting out the arrangements for the payment of any compensation which may be due to the employee as a result of any accident or disease suffered by the employee during the course of his employment.

(4) When a foreign contract of employment is terminated because of the death of the employee, a statement containing the particulars referred to in subsection (3) shall be provided for the estate of the deceased employee.

(5) In every case when a foreign contract is terminated because of the sickness or death of the employee, or because of an accident to the employee suffered during the course of his employment, a statement containing the particulars referred to in subsection (3) shall be sent to the Labour Commissioner and, where applicable, to the labour agent who signed the foreign contract of employment on behalf of the employer.

(6) Where the statement required by subsection (5) has not been provided for the Labour Commissioner within four weeks of the termination of the contract and the employee concerned has been recruited by a labour agent, the Labour Commissioner may order the labour agent to provide the statement forthwith.

*Transport and welfare employees.*

73. The employer or the labour agent, as may be applicable, shall at his own expense provide an employee with transport to his place of employment and for his repatriation, and shall take all necessary steps to ensure that —

- (a) the vehicles used to transport the employees are suitable for such purpose and that they are in good sanitary condition and not overcrowded;
- (b) if it is necessary to break the journey for the night, suitable accommodation is provided for the employees;
- (c) employees are provided with everything necessary for their welfare, including drinking water.

*Repatriation of employees.*

74. (1) The employer, or the labour agent, as may be applicable, shall at his expense repatriate a recruited employee who —

- (a) becomes incapacitated, by sickness or accident, during the journey to the place of employment;
- (b) is found, on medical examination, to be unfit for employment;
- (c) is not engaged after recruitment;
- (d) is found to have been recruited by misrepresentation or mistake.

(2) An employee who was brought to the place of employment by the employer or a labour agent shall have the right, in the following circumstances to be repatriated, at the expense of the employer or the labour agent as the case may be, to the place of origin or engagement of the employee, whichever is the nearer to the place of employment —

- (a) on the expiry of the period of employment stipulated in the contract;
- (b) of the termination of the contract by reason of the inability of the employer to fulfil the contract;
- (c) of the termination of the contract by agreement between the parties.

(3) The expenses of repatriation shall include subsistence expenses during the journey, and if applicable, for the period between the date of expiry of the contract and the date of repatriation, except in the case where the repatriation of the employee is delayed by the choice of the employee himself.

(4) In any case where the member of the immediate family of an employee has been authorised to accompany him to the place of employment, the provisions of this section and section 73 shall, *mutatis mutandis*, apply to such member.

*Printing of summaries in the English and siSwati languages.*

75. The Labour Commissioner shall, where he considers it necessary, cause concise summaries of this Part of the Act to be printed in the English and siSwati languages and may —

- (a) make these summaries available to employers and employees affected thereby; and
- (b) direct any employer or labour agent to post and keep posted in his premises, such summaries in a place where they can be easily read by persons who are being engaged on a foreign contract of employment.

*Age of employees entering into contracts.*

76. No person shall enter into a foreign contract of employment with another person under the age of eighteen years nor employ any person under such age on a foreign contract of employment.

*Regulations.*

77. Without prejudice to the power of the Minister to make regulations under any other provision of this Act, the Minister may make regulations —

- (a) prescribing the security to be provided by an employer in respect of money deposited by an employee with him for safe keeping;
- (b) approving financial institutions in which money deposited by an employee with his employer may be placed.

*Offences and Penalties.*

78. Any person who —

- (a) being a labour agent fails to provide for the Labour Commissioner the statement required to be provided by section 72(6);
- (b) being a labour agent or an employer, contravenes any of the provisions of section 73;
- (c) being a labour agent or an employer, contravenes the provisions of section 74; or
- (d) having been directed by the Labour Commissioner under the provisions of section 75 to post and keep posted a summary of this Part of the Act, fails to comply with such direction,

shall be guilty of an offence and liable on conviction to a fine of not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART IX — RECRUITING

*Application.*

79. This Part applies to the recruiting of persons for employment on foreign contract of employment.

*Restriction on recruitment.*

80. (1) No public officer shall, either directly or indirectly, recruit any person for employment.

(2) No chief shall —

- (a) perform the functions of a labour or recruiting assistant;
- (b) exercise any pressure upon any person to enter into a foreign contract of employment;
- (c) receive from any source any remuneration or inducement for assistance in recruiting.

(3) No person shall recruit another person under the age of eighteen years.

*Licensing of labour agents.*

81. (1) No person shall perform the functions of a labour agent in Swaziland unless he is the holder of a labour agent's licence issued in the approved form by the Labour Commissioner.

(2) The following provisions shall apply to labour agent's licences —

(a) no licence will be valid for a longer period than twelve months and in any event will expire on the thirty first day of December in the year in which the licence was issued; and

(b) licences will not be transferable between one person and another.

(3) The fees payable for a labour agent's licence shall be —

(a) for a licence granted for a period of up to one month and permitting the recruitment or engagement of up to twenty five persons during that period E25.00

(b) for a licence granted for a period exceeding one month E200.00

(c) for a temporary licence granted to a person acting instead of and during the temporary absence from Swaziland of the labour agent to whom a licence has been issued under paragraph (b) above — for each month or part thereof of such absence. E25.00

(4) The Minister may, after consultation with the Labour Advisory Board, amend the fees set out in subsection (3).

*Conditions of labour agent's licences.*

82. (1) A labour agent's licence shall be issued subject to such conditions as the Labour Commissioner may impose, including —

(a) the geographical limits which recruiting may be carried on;

(b) the number of persons to be recruited; or

(c) any other conditions which may appear on the face of the licence.

(2) No labour agent shall carry out the functions of a labour agent other than in the manner authorised by the licence, nor, except as provided by subsection (3) shall he exercise any rights granted by the licence within any urban area, or otherwise than with the consent of the owner thereof, upon any private property.

(3) Notwithstanding the provisions of subsection (2) a labour agent may, at his place or residence or business inside an urban area recruit persons who present themselves for recruitment at such place of residence or business.

(4) Any person who contravenes the conditions of a labour agent's licence issued to him or who contravenes any provision of this section shall in addition to any other penalty imposed for the offence, forfeit his labour agent's licence.

*Recruiting assistants.*

83. (1) Every labour agent who wishes to employ any person as a recruiting assistant shall make application to the Labour Commissioner in the approved form.

(2) Where the Labour Commissioner approves an application made to him under subsection (1), he shall issue a permit to the person named in the application and no labour agent shall employ a recruiting assistant unless such assistant has been issued with, and is in possession of a valid recruiting assistant's permit.

(3) The following provisions shall apply to recruiting assistant's permits —

(a) no permit will be valid for a longer period than twelve months and in any event will expire on the thirty first day of December in the year in which the

permit was issued, or the date on which the licence issued to the labour agent employing the recruiting assistant expires, whichever date occurs first;

(b) a permit shall not be transferable;

(c) a permit shall only be valid so long as the licence held by the labour agent employing the recruiting assistant remains in force.

(4) The fees payable for a recruiting assistant's permit shall be paid at the time the permit is issued and shall be —

(a) for a permit granted for a period of up to one month E25.00

(b) for a permit granted for a period in excess of one month E35.00

(5) The Labour Commissioner may, at any time, cancel a permit issued under subsection (2) if —

(a) in his opinion the recruiting assistant conducts himself in such a way that it is undesirable that he continues to be employed as a recruiting assistant;

(b) the recruiting assistant is convicted of an offence under this Act;

(c) in his opinion, it is undesirable that the recruiting assistant should continue to be employed in that capacity.

(6) When a labour agent ceases to employ a recruiting assistant or where the Labour Commissioner, under subsection (4) cancels a permit issued to a recruiting assistant, the labour agent shall cause the permit issued to the recruiting assistant to be delivered forthwith, by hand or by registered post, to the Labour Commissioner.

(7) The Labour Commissioner may refuse to issue or renew a recruiting assistant's permit.

(8) The Minister may, after consultation with the Labour Advisory Board, amend the fees set out in subsection (4).

#### *Unauthorised recruiting assistants.*

84. A person who is not in possession of a valid permit as required by section 83 shall not canvas or recruit on behalf of a labour agent.

#### *Liability for acts of recruiting assistants.*

85. (1) A labour agent shall be responsible for any act done or representation made by a recruiting assistant within the scope of his employment and shall himself be liable to the penalties, if any, prescribed for such act or representation as if he himself had committed such an act or made such a representation.

(2) Upon the conviction of a labour agent under subsection (1) the permit issued to the recruiting assistant shall become void and shall be delivered forthwith, by hand or by registered post, to the Labour Commissioner.

#### *Application for labour agent's licence.*

86. (1) An application for a labour agent's licence, or for the renewal of such licence shall be in the approved form and shall be accompanied by a written statement signed by each employer for whom the labour agent proposes to recruit employees giving the following particulars:



- (a) the name and address of the employer;
- (b) the nature of the proposed employment;
- (c) the rate of wages at which employees are to be engaged;
- (d) a summary of the terms and conditions of employment to be offered to employees; and
- (e) such further information as the Labour Commissioner may require.

(2) Before issuing or renewing a labour agent's licence, the Labour Commissioner shall satisfy himself that the applicant for a licence is a fit and proper person to carry out the functions of a labour agent and, in addition may —

- (a) require the applicant to furnish, and maintain, as a guarantee for the proper conduct of the applicant, such financial or other security as the Labour Commissioner may deem fit; and
- (b) require the applicant to furnish security in Swaziland for the payment of wages which may become due to persons to be recruited by the labour agent during the course of their contracts of employment.

(3) The Labour Commissioner may, in his sole discretion, refuse to issue or to renew a labour agent's licence.

*Revocation or suspension of labour agent's licence.*

87. (1) The Labour Commissioner may revoke or suspend a labour agent's licence if he is satisfied that the person holding the licence —

- (a) has failed, when required, to furnish such security as is specified in the preceding section;
- (b) has conducted himself in such a way, that it is undesirable that he should continue to hold a labour agent's licence.

(2) A person whose licence is revoked or suspended under subsection (1) may, within seven days of being notified in writing of such action, appeal in writing to the Minister against the revocation or suspension as the case may be; where such appeal is lodged the revocation or suspension shall be stayed until the Minister has made his decision, which shall be final, on the appeal.

(3) Where the licence of a labour agent has been revoked in accordance with this section, the labour agent shall forthwith deliver to the Labour Commissioner by hand, or by registered post, the labour agent's licence issued to him together with all current recruiting assistants' permits issued to recruiting assistants employed by him.

*Production of licences and permits.*

88. The Labour Commissioner, an Inspector, an administrative officer or police officer, may at any time demand the production, by a person exercising the functions of a labour agent or a recruiting assistant, of the licence or permit of such person.

*Court may order payments to be made from security.*

89. Where —

- (a) a person who has been recruited by a labour agent sues the labour agent for any cause connected with a contract of employment and the Court awards him a sum of money whether in satisfaction of a debt or for wages or damages or costs; or
- (b) a labour agent fails to pay a fine imposed on him under the provisions of this Act;

the court may, in its discretion, order that the security furnished in pursuance of section 86(2) or such portion thereof as may be sufficient, shall be applied toward the payment of the sum of money or the fine as the case may be.

*Forms, documents and records to be kept by labour agents.*

90. Every labour agent shall maintain the following forms, documents and records in respect of all persons recruited and/or forwarded by him for employment on foreign contracts of employment —

- (a) copies of all foreign contracts of employment attested under the provisions of section 70 which shall be filed *seriatim*;
- (b) a record of every person, who during the currency of a foreign contract of employment dies or suffers any injury resulting in permanent incapacity, (including incapacity resulting from cardio respiratory diseases), such record shall contain the following particulars —
  - (i) name and home address of the employee;
  - (ii) name and address of employer;
  - (iii) in the case of a deceased person, the date and cause of death and the name and address of any dependants, and in the case of an injured person, the date of the injury and the degree of incapacity;
  - (iv) the amount of any compensation, wages, deferred pay or other money due to any person mentioned in sub-paragraph (iii);
  - (v) the date and method of settlement of all claims relating to wages, deferred pay, workmen's compensation or other payments due to any person or the dependants of any person mentioned in sub-paragraphs (ii) and (iii).

*False representation.*

91. No person shall induce any other person to engage himself for employment by either a representation as to terms and conditions which he knows to be false, or a promise as to terms and conditions of employment which he knows himself to be unable to fulfil or has no intention of fulfilling.

*Advances .*

92. (1) No person who engages in recruiting under this Part shall make an advance of wages in excess of the sum or value of twenty Emalangeni in the case of a person being engaged on a foreign contract of employment.

(2) A person shall be deemed to engage in recruiting if he enters into a foreign contract of employment with an employee.

(3) No person other than a labour agent or an employer shall make an advance to an employee and no labour agent or employer shall authorise a recruiting assistant to make an advance to an employee.

*Fixing of maximum recruitment and grouping of recruited employees.*

93. (1) In order to safeguard the population concerned against any untoward consequences of the withdrawal of adult males and where the circumstance make the adoption of such policy practicable necessary, the Minister may, by order published in the Gazette, determine the maximum number of persons who may be recruited in a district or other area.

(2) The Minister may make it a condition of permitting recruiting that the recruited employees are grouped at the place of their employment in accordance with their ethnic origin.

*Offences and Penalties.*

94. Any person who —

- (a) being a public officer or a chief contravenes the provisions of section 80;
- (b) recruits a person under the age of eighteen years;
- (c) performs the function of a labour agent in Swaziland in contravention of section 81(1);
- (d) contravenes the conditions of a labour agent's licence issued to him;
- (e) being a labour agent employs a recruiting assistant in contravention of section 83(2);
- (f) being a labour agent fails to comply with the requirements of section 83(6);
- (g) canvasses or recruits in contravention of section 84;
- (h) being a labour agent fails to comply with the provisions of section 87(3);
- (i) being a labour agent or recruiting assistant fails to produce a licence or permit as required by section 88;
- (j) being a labour agent, fails to maintain the forms, documents and records required to be maintained under section 90;
- (k) contravenes the provisions of section 91; or
- (l) makes an advance of wages to an employee in contravention of section 92,

shall be guilty of an offence and liable on conviction therefor to a fine of not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART X — SPECIAL PROVISIONS COVERING THE EMPLOYMENT OF WOMEN,  
YOUNG PERSONS, CHILDREN AND DOMESTIC EMPLOYEES

*Interpretation and Application.*

95. (1) For the purposes of this Part, the expression —

“equal pay” means the rate of wages actually and legally payable to an employee in which there is no differentiation between male employees and female employees based on the sex of the employees;

“equal work” means work performed for one employer by male and female employees alike in which —

- (a) the duties, responsibilities or services to be performed are similar or substantially similar in kind, quality or amount;
- (b) the conditions under which such work is to be performed are similar or substantially similar;
- (c) similar, or substantially similar, qualifications, degrees of skill, effort and responsibility are required; and
- (d) the differences (if any) between the duties of male and female employees are not of practical importance in relation to terms and conditions of employment, or do not occur frequently.

(2) Sections 102 to 105 inclusive shall not apply to outworkers.

*Equal pay for equal work.*

96. (1) With effect from a date to be appointed by the Minister by notice in the Gazette, no employer shall, by failing to pay equal pay for equal work, discriminate between male and female employees employed by him.

(2) No treatment accorded to females as provided by this or any other Act in connection with the birth or expected birth of a child or in connection with terms or conditions of employment related to retirement, marriage or death, shall be deemed to be in contravention of subsection (1).

(3) Any provision of any contract of employment or collective agreement which contravenes subsection (1) shall be null and void and the provisions of subsection (1) shall be deemed to apply.

(4) No employer shall reduce the salary or wages of an employee in order to comply with subsection (1).

(5) In any prosecution of a person for a contravention of subsection (1) it shall lie on that person to prove that he has paid equal pay for equal work in accordance with its provisions.

*Employment of children.*

97. (1) No person shall employ any child in any industrial undertaking other than —

- (a) an industrial undertaking in which only members of his immediate family are employed;
- (b) a technical school under the supervision of a teacher or person authorised by the Minister responsible for Education;
- (c) an industrial undertaking which is not being conducted for commercial profit and where the work is essentially of an educative character approved as such by the Labour Commissioner in writing.

(2) No person shall employ any child in any undertaking —

- (a) during school hours;
- (b) between the hours of 6.00 p.m. of one day and 7.00 a.m. of the following day;
- (c) for more than six hours in any one day;
- (d) for more than 33 hours in one week;
- (e) for more than four hours continuously, without an interval of at least one hour for a meal or rest.

(3) In this section “schoolhours” means the school hours prescribed in accordance with the Education Act, 1964.

*Employment of young persons.*

98. (1) No person shall employ a young person in any undertaking other than an agricultural undertaking between the hours of 6.00 p.m. on one day and 7.00 a.m. on the following day except for the purposes of apprenticeship or vocational training approved by the Minister in writing after consultation with the Labour Advisory Board.

(2) Where the Minister approves the employment of a young person pursuant to subsection (1), that young person shall be granted a period of rest of at least 13 consecutive hours between any two periods of such employment.

(3) No person shall employ a child or young person in —

- (a) premises or any part thereof which are wholly or mainly used for the sale of intoxicating drinks for consumption on the premises;
- (b) work which is likely to cause injury to his morals or conduct;
- (c) work underground;
- (d) dangerous or unhealthy work;
- (e) such other employment as the Minister may prescribe.

*Minister may grant exemptions.*

99. (1) Notwithstanding sections 97 and 98 a child or young person may be employed during the prohibited hours in the interest of art, science or education, or any form of public entertainment or for the purposes of making cinematographic films, under and in accordance with the conditions of a licence granted by the Minister who may at any time, at his absolute discretion, revoke, vary or suspend the conditions of the licence.

(2) No licence shall be granted by the Minister under this section when, because of the nature of the entertainment, or the circumstances in which it is carried on, or the nature of the cinematographic film or the conditions under which it is made, participation in the entertainment or in the making of the film may be dangerous to the life, health or morals of the child or young person.

(3) Every licence shall contain the following conditions —

- (a) that the period of employment shall not continue after midnight;
- (b) that the child or young person shall be allowed a rest period of at least 14 consecutive hours; and
- (c) safeguards to protect the health and morals of the child or young person and to avoid interfering with his education.

*Medical examination of young persons.*

100. (1) An employer shall ensure that every young person employed by him in an industrial undertaking shall be medically examined by a medical practitioner at the time of first being taken into employment and at intervals of twelve months thereafter until reaching the age of eighteen years.

(2) No person shall employ a young person certified by a medical practitioner as being unfit for employment in an industrial undertaking in that undertaking.

(3) Any young person, who, being employed in an industrial undertaking and who, subsequent to his being employed therein is found by a medical practitioner to be unfit to continue in that employment, shall thereupon be discharged by his employer and shall be paid all benefits to which he is entitled by virtue of his contract of employment, including wages in lieu of any notice he would have received under the provisions of Part V.

(4) Medical examinations required by this section shall not involve the young person, or his parents, in any expense.

*Employment of females.*

101. (1) No employer shall employ any female in any industrial undertaking between the hours of 10.00 p.m. of one day of 6.00 a.m. of the following day unless he obtains a certificate from the Labour Commissioner authorising him to do so.

(2) No employer shall employ any female underground in any mine.

(3) The Labour Commissioner shall, before issuing a certificate under subsection (1) satisfy himself that —

(a) where female employees are required either to start or finish work between 10.00 p.m. and 6.00 a.m., adequate means are available for the transport of employees to their places of work before starting work and to their homes within a reasonable time after work, as the case may be;

(b) the employer has provided, at the place of employment, adequate rest room facilities and facilities for eating meals;

(c) employees are given adequate opportunities for rest and meal breaks between periods of employment.

(4) The provisions of subsection (1) shall not apply —

(a) in cases of emergencies which could not be controlled or foreseen, or which are not of a recurring character and which interfere with the normal working of the undertaking;

(b) in cases where the work has to do with raw materials, or materials in the course of treatment which are subject to rapid deterioration and when night work is necessary to preserve the materials from certain loss;

(c) to persons holding responsible positions of a managerial or technical nature;

(d) to undertakings in which only members of the employer's immediate family are employed.

*Maternity leave.*

102. (1) Every female employee, whether married or unmarried, who has been in the continuous employment of her employer for twelve months or more shall be entitled to maternity leave with at least two weeks full pay upon delivering to her employer —

- (a) a certificate issued by a medical practitioner or a midwife setting forth the expected date of her confinement;
- (b) a certificate issued by a medical practitioner or a midwife setting forth the actual date of her confinement; or
- (c) such other evidence in support of the entitlement to maternity leave as is reasonable, having regard to all the circumstances of the case.

(Amended A.5/1997.)

(2) Notwithstanding subsection (1), a female employee entitled to maternity leave by virtue of subsection (1), shall be so entitled as least once after the lapse of a period of 24 months from the last maternity leave. (Added A.5/1997.)

*Duration of maternity leave.*

103. (1) Subject to subsection (2), maternity leave shall not be less than twelve weeks, so arranged that the employee is allowed —

- (a) such period as she desires not exceeding six weeks, before the date of confinement;
- (b) a period of not less than six weeks from the date of the confinement.

(2) Except where it is a written condition of her employment that maternity leave shall not be less than twelve weeks, an employee may, entirely at her own option, agree to a period of maternity leave of less than twelve weeks.

(3) Where confinement takes place without an employee having been granted her entitlement of maternity leave, or where the period of such leave taken before her confinement amounts to less than six weeks, the period of maternity leave after confinement shall, if the employee so desires, be extended so that the total period of such leave amounts to not less than twelve weeks.

(4) Where an employee has been granted maternity leave and the date of confinement is a later date than that stated in the certificate or other evidence delivered to the employer under section 102 as being the date on which confinement was expected, her maternity leave shall be extended to include the period that elapsed between those dates.

(5) Every female employee shall be entitled to a one hour nursing break with pay per day three months after maternity leave. (Added A.5/1997.)

*Additional leave.*

104. An employee who suffers any illness arising out of her confinement, shall be granted, in addition to the maternity leave to which she is entitled under section 103, such additional leave, not exceeding six weeks, as a medical practitioner may recommend.

*Protection of employment.*

105. (1) Subject to subsection (2), an employer shall not —

- (a) terminate the services of, or give notice of such termination to an employee at any time between the date of her delivery to him of a certificate or other evidence of her entitlement to maternity leave under section 102 and the date of the expiration of her maternity leave or additional leave granted under section 104;
- (b) give notice of termination of services to an employee so that it would expire during her maternity leave or the additional leave granted under section 104 or terminate her services during such leave;
- (c) terminate the services of an employee or require an employee to resign on the grounds that she is pregnant;
- (d) require an employee to resign during any of the times referred to in paragraphs (a) en (b).

(2) Subsection (1) shall not apply to an employee whose services are terminated for any of the reasons set out in section 36.

*Protection of seniority.*

106. Where an employee resumes employment after being granted maternity leave or additional leave under section 104 she shall be entitled to continue in her former work or equivalent work without loss of seniority and she shall not, by reason only of the fact that she went on maternity leave, be paid lower wages or employed on less advantageous terms and conditions than those which applied to her employment before she went on leave.

*No obligation to pay for maternity leave.*

107. Except as provided in section 102, nothing in this part shall be construed as requiring any employer to pay an employee for any time spent on maternity leave. (Replaced A.5/1997.)

*Special provisions for domestic employees.*

108. (1) No person shall employ a domestic employee —

- (a) for more than eight hours actual work in any one day;
- (b) for more than 48 hours actual work spread over six days in any one week;
- (c) continuously for a longer period than 4½ hours actual work without a break of at least one hour which shall not be included in the computation of actual hours worked by that employee.

(2) A domestic employee shall be granted, in each week, a period of rest of not less than one day to be taken at such time as may be mutually agreed between the employer and the domestic employee.

(3) Notwithstanding the provisions of subsections (1) and (2), a domestic employee may consent to perform overtime in excess of the hours set out therein in which case he shall be paid for such overtime at not less than one and one-half times his normal rate of wages.

(4) For the purposes of this section “actual work” shall be deemed to be the time during which the domestic employee is at the disposal of his employer, provided that in the case of a domestic employee whose time is at the disposal of the employer during the whole or any part of the daytime and who, by the terms of the contract of employment between them, is required to be on the premises of the employer during the night, such period of time



during the night shall not be deemed to be hours of actual work, unless the parties agree that the whole or any part thereof shall be hours of actual work.

*Offences and Penalties.*

109. (1) Any person who employs a child or a young person in contravention of any of the provisions of this Part shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both.

(2) Any person who contravenes section 102 or section 104 shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both.

(Amended A.5/1997.)

PART XI — EMPLOYMENT SERVICES

*Interpretation.*

110. For the purposes of this Part the expression —

“employment exchange” means any office or place established by the Labour Commissioner for the following purposes —

- (a) the maintenance of a register or registers of persons seeking employment and of employers seeking to engage workers in Swaziland;
- (b) to direct persons seeking employment to vacancies for which, by their training, skill and previous experience they may be suited;
- (c) to collect and provide information to workseekers regarding employment opportunities, and to prospective employers regarding workseekers;
- (d) to help devise special employment placement plans for persons who are physically handicapped, or who have been declared redundant and who require vocational retraining.

“private employment agency” means the business (whether or not it is carried on for profit or whether or not it is carried on in conjunction with any other business) of providing services or information for the purpose of finding persons employment in Swaziland with employers in Swaziland or of supplying employers with persons for employment by them.

*Evidence of skill and experience and particulars of employment vacancies.*

111. (1) Any person seeking employment through an employment exchange may be requested to produce such documents and evidence of skill and experience together with other particulars as may reasonably be required by the officer in charge of the exchange.

(2) Any person wishing to engage another person through the employment exchange shall supply to the officer in charge of the exchange full details of the conditions of employment offered, together with any other particulars which may reasonably be required.

*Private employment agencies to be authorised.*

112. (1) With effect from the appointed day, no person shall carry on a private employment agency unless he has received the written authority of the Labour Commissioner so to do.

(2) Any person wishing to carry on a private employment agency shall make written application to the Labour Commissioner who may, on receipt of such application authorise the applicant to operate a private employment agency for such period and subject to such terms and conditions as the Labour Commissioner may consider desirable.

(3) The Labour Commissioner may refuse to grant an authority to operate a private employment agency, and may suspend or cancel any authority issued under this section.

(4) Any person who, having applied for authority to operate a private employment agency, is —

- (a) refused such authority by the Labour Commissioner; or
- (b) is aggrieved by the conditions attached to such authority; or
- (c) is aggrieved by the cancellation or suspension of such authority,

may appeal to the Minister whose decision thereon shall be final.

*Power to inspect etc..*

113. An Inspector may, in addition to any other powers conferred on him by this Act —

- (a) enter any premises used or to be used for, or in connection with the carrying on of a private employment agency, or any premises which he has reasonable cause to believe are used for, or in connection with, the carrying on of a private employment agency;
- (b) inspect those premises and any records or other documents kept in pursuance of this Act;
- (c) require any person on those premises to furnish him with such information as he may reasonably require for the purposes of ascertaining whether the provisions of this Act or any authority granted under section 91(2) are being complied with.

*Records and registers.*

114. Every person who holds a licence to operate a private employment agency shall keep or cause to be kept such registers and records, and shall submit to the Labour Commissioner such returns as may be prescribed.

*Restriction on charges.*

115. No person carrying on a private employment agency shall charge to prospective employers fees or expenses in excess of those contained in a scale of fees and expenses approved in writing by the Labour Commissioner.

*Exemptions.*

116. Nothing in this Part shall apply to —

- (a) any service provided without charge by an organisation of employers or any organisation of employees for its members;
- (b) any business carried on by a licensed labour agent for the purpose of engaging persons for employment on foreign contracts of employment;
- (c) any business carried on, or any services provided by such persons or classes of persons as may be prescribed.

*Regulations.*

117. Without prejudice to the power of the Minister to make regulations under any other provision of this Act, the Minister may make regulations for any of the following purposes —

- (a) regulating the conduct of employment exchanges;
- (b) regulating the conduct of, and the provision of services by private employment agencies in respect of persons seeking employment;
- (c) prescribing the forms and records to be used or kept by employment exchanges;
- (d) prescribing the registers and records to be kept and the form of returns to be submitted by private employment agencies.

*Offences and Penalties.*

118. Any person who —

- (a) knowingly makes any false statement or false representation to an officer of an employment exchange;
- (b) carries on, after the appointed date, the business of a private employment agency without the written authority of the Labour Commissioner;
- (c) carries on the business of a private employment agency and fails to keep or cause to be kept such registers and records or fails to submit such returns as may be required;
- (d) demands or directly or indirectly receives from any person any fee or charge, however described, for finding him employment,

shall be guilty of an offence and liable on conviction to a fine not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART XII — ANNUAL HOLIDAYS AND SICK LEAVE

*Application.*

119. This Part shall not apply to —

- (i) an outworker;
- (ii) a member of the employer's immediate family who works exclusively on the employer's behalf and who lives in the employer's house.

*Employer to give paid annual holidays.*

120. (1) Notwithstanding any other law for the time being in force every employer shall give every employee in his employment paid holidays in accordance with this Part.

(2) Nothing in this Part shall prevent any employer giving to an employee paid annual holidays in excess of those required to be given by this Part.

*Entitlement to paid annual holidays.*

121. (1) After each twelve months of employment with an employer, an employee shall be given not less than two weeks holiday and shall be paid in respect of such holiday the wages he would have been paid for the time (other than overtime) he would normally have worked during that period.

(2) An employee shall not be entitled to the paid annual holiday in respect of any twelve months during which he attended work if he has been absent from work for more than thirty-six normal working days during that period, except where such absence has been due to sickness certified by a medical practitioner, maternity leave to which the employee is entitled or for any other reason approved by his employer.

*Paid holiday to be given within a certain period.*

122. (1) Except as provided in subsection (4) every employee shall be given the paid holiday provided for in this Act not later than six months after the completion of the twelve months in which the holiday has been earned.

(2) Where an employee is entitled to a paid annual holiday under this Part the employer shall permit the employee to take the annual holiday in one unbroken period, or at the request of the employee, in two or more periods, one of which must be a continuous period of not less than one week.

(3) When an employer elects to close a section or sections of his establishment for a fixed period in any year, all or part of the paid annual holiday may, by agreement between the parties, be taken before the completion of the twelve months in respect of which the paid annual holiday may be due.

(4) An employer may agree in writing with all or any of his employees that one week of the annual holiday in each twelve months may be deferred and accumulated over a period not exceeding four years.

(5) An employee shall be entitled to a total of one month compassionate leave annually but nothing in this section shall be construed as requiring an employer to pay an employee for any time spent on such leave. (Added A.5/1997.)

(6) This section shall apply only upon the death of an employee's immediate family. (Added A.5/1997.)

*Payment for annual holiday when employment is terminated..*

123. (1) Where the employment of an employee is terminated after a period exceeding three months but not amounting to one year from the date of its commencement, or after a period of employment following the completion of a year in respect of which the paid annual holiday has been taken, the employer shall, on or before the date of such termination, pay to

the employee a sum equal to not less than one day's wages for each completed month of such period.

(2) When an employee has completed one year's continuous service with an employer and the employment is subsequently terminated, the employer shall, if the employee has not taken the paid annual holiday due to him in respect of that year's employment on or before the date of such termination, pay to the employee the wages due to him in respect of such paid annual holiday, together with a sum equal to not less than one day's wages due to him in respect of each completed month of employment following the completion of the last year in respect of which he has earned a paid annual holiday.

(3) When an employer gives notice of termination of employment of the employee, payment to the employee of all or any part of the wages on account of the paid annual holiday to which he is entitled shall be deemed not to be payment of all or any part of his wages in respect of the period for which he is, under this Act, or by custom or agreement, or under his contract of service, entitled to continue in the employment after the giving of the notice.

*Continuity of employment.*

124. For the purpose of this Part, employment shall be deemed to continue so long as the employee continues to be employed in the undertaking and shall be deemed not to be discontinued by the termination of any contract of employment entered into by the employee, if within a period of seven days of such termination such employee is re-engaged in the same undertaking.

*Wages in respect of annual holiday.*

125. (1) Wages in respect of the paid annual holiday shall be paid in advance not later than the last working day preceding such holiday.

(2) Any payments made to an employee in respect of an annual holiday under this Part shall be in addition to and not in substitution for any other payment or consideration to which the employee is entitled under his contract of employment and this Act and no employer shall require any employee to take his annual holiday during the period of notice of termination of employment by the employer.

*Public holidays occurring during annual holiday.*

126. Where during any annual holiday or part thereof being taken by an employee, any paid public holiday occurs, the period of the annual holiday shall be increased by one day in respect of that public holiday and wages payable to the employee in respect of the annual holiday shall include one day's wages for each such public holiday.

*Record of annual holiday.*

127. (1) Every employer shall at all times keep a record showing in the case of each of his employees —

- (a) the name of the employee;
- (b) the dates of the commencement and termination of his employment;
- (c) the dates on which the paid annual holiday is taken;

(d) the amount paid to the employee in respect of the paid annual holiday to which he is entitled.

(2) The record of paid annual holidays may be incorporated in the wages record required to be kept under section 151.

*Agreement contrary to Act null and void.*

128. Any agreement by an employee to forego his entitlement to the paid holiday provided for by this Act, even in return for compensation, shall be null and void.

*Payment during sickness.*

129. (1) After three months continuous employment with the same employer, an employee shall be eligible, in each year of employment with that employer, for a maximum of fourteen days sick leave on full pay and a maximum of fourteen days sick leave on half pay.

(2) Payment for sick leave shall be made by the employer at the employee's basic rate of wages, except that where the employee is employed on a wage other than a fixed wage he shall be paid, in respect of each day's sick leave on full pay the same amount, and in respect of each day's sick leave on half pay, half such amount, as equals the average amount of wages he received in respect of each day's employment during the week in which he was last employed before the week during which his sick leave commenced.

*Sickness to be certified by medical practitioner.*

130. (1) Payment in respect of sick leave shall be subject to the employee producing a certificate of incapacity covering the period of sick leave claimed signed by a medical practitioner and no employee shall be entitled to paid sick leave unless this section has been complied with.

(2) Nothing in subsection (1) shall be deemed to prevent an employer granting paid sick leave in excess of that provided for in section 129, or from granting paid sick leave to an employee who satisfies him, other than by the production of a medical certificate, that he was, for reasons of sickness, unable to carry out his normal duties on any day.

*Offences and Penalties.*

131. Any employer who —

- (a) fails to grant an employee an annual holiday as required by this Part or who fails to pay an employee the wages to which he is entitled under section 121;
- (b) fails to pay an employee whose services are being terminated the amount to which is entitled under section 123; or
- (c) fails to pay to an employee any amount to which he is entitled in respect of paid sick leave under section 129;

shall be guilty of an offence and shall be liable on conviction to a fine of not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

*Power to order payments on conviction.*

132. Where a prosecution for an offence under this Part has been instituted, a court may, in addition to any fine or sentence it may impose, order an employer convicted of such an offence to pay to the employee any payments due to him under this Part.

#### PART XIII — LABOUR CLAUSES (PUBLIC CONTRACT)

*Provisions etc. deemed to be included in public contract.*

133. Every public contract shall be deemed to include and to incorporate the provisions contained in this Part to all intents and purposes as if the same were expressly set out as conditions or covenants therein to be observed and performed on the part of either or both of the parties to the contract.

*Wages to be paid and conditions of employment to be observed.*

134. A contractor shall pay rates of wages and observe hours and conditions of employment (hereinafter referred to as established rates and conditions) not less favourable than those established by collective agreement covering a substantial proportion of employees and employers in the trade or industry concerned in the contract.

*Labour Commissioner to prepare schedule of wages etc..*

135. In the absence of any established rates and conditions as defined in section 134, the Labour Commissioner shall, after consultation with representatives of employers and representatives of employees in the trade or industry concerned, prepare a schedule of wages and conditions of employment to be observed in the execution of the contract, having regard to —

- (a) established rates and conditions of employment of persons employed in a similar capacity and in similar circumstances to those persons who are likely to be employed on the contract; or
- (b) in the absence of such established rates and conditions, to fair standards of rates and conditions commonly recognised in respect of persons employed in a similar capacity and in similar general circumstances to those persons who are likely to be employed on the contract.

*Contractor to certify wages and conditions.*

136. Before being awarded a public contract the contractor shall certify in writing, that the wages and hours and conditions of work of persons to be employed by him on the contract are not less favourable than the established rates and conditions as defined in section 134, or those contained in the schedule prepared by the Labour Commissioner in accordance with section 135, as the case may be.

*Industrial Court to decide questions on wages etc..*

137. (1) In the event of any question arising as to whether or not the wages to be paid or the hours or other conditions of employment to be observed in the fulfilment of any contract awarded or to be awarded to any contractor are less favourable than the established rates and conditions as defined in section 134 or those contained in the schedule prepared by the Labour

Commissioner in accordance with section 135, the question shall, if not otherwise disposed of, be referred by the Labour Commissioner to the Industrial Court which shall decide the matter.

(2) In arriving at its decision on any question referred to it under subsection (1), the Industrial Court shall have regard to any established rates and conditions, or to any agreement, custom, practice or award that may be brought to its notice relating to the wages, hours or conditions of work or persons employed in a similar capacity and in a similar trade or industry to that of the person to whom the matter relates.

(3) The decision of the Industrial Court shall be final.

*Provisions applicable to sub-contracts.*

138. (1) Any sub-contractor to whom a contract has been sublet shall comply with all the conditions of the main contract and the main contractor shall be responsible for the observance of all contract conditions on the part of such sub-contractor.

(2) No portion of the work to be performed on a contract shall be done at the home of any employee except in so far as such work is so performed by practice or custom.

*Contractor to file certificates.*

139. A contractor shall not be entitled to payment of any money which would otherwise be payable under the terms of the contract unless he has filed, together with his claim for payment, a certificate —

(a) stating whether any wages due to employees are in arrears;

(b) stating that all the employment conditions of the contract are being complied with.

*Contractor to supply information.*

140. A contractor shall provide the Labour Commissioner with such information as the Labour Commissioner may require to satisfy him that the conditions of this Part have been complied with.

*Labour Commissioner may arrange for employees to be paid.*

141. Where the Labour Commissioner is satisfied that a contractor has defaulted in the payment of wages due to any employee employed on a contract, he may, failing payment of such wages by the contractor, arrange for the payment of the wages to the employee out of any sum payable to the contractor under the contract and the amount so paid shall be deemed to be a payment to the contractor.

*Contractor to display notices containing conditions of work.*

142. Every contractor shall keep displayed in a conspicuous place in his establishment and work places for the information of the employees employed therein a notice containing the conditions of their work and so printed that it may easily be read by all employees.



*Failure to comply with this Part.*

143. Where a contractor fails to comply with any of the requirements of this Part, the Government may, upon the recommendations of the Labour Commissioner, withdraw its approval of such contractor as an approved contractor for such period and on such conditions as the Government may determine.

#### PART XIV — FORCED LABOUR

*Interpretation.*

144. (1) In this Part unless the context otherwise requires —

“forced labour” means all work or service which is exacted from any person under the threat of any penalty and for which the said person has not offered himself voluntarily, but does not include —

- (a) any work or service exacted by virtue of any compulsory military service law for work of a military character;
- (b) any work or service exacted from any person as a consequence of a conviction in a court of law;
- (c) any work or service exacted in case of emergency, that is to say, in the event of war or a calamity or threatened calamity such as fire, flood, famine, earthquake, epidemic, or epizootic disease, invasion by animals or insect pests or plant diseases or pests and in general any circumstances which might endanger the existence or well-being of the whole or part of the population;
- (d) communal services of a kind which are to be performed by the members of a community in the direct interests of the community and not being for purposes of financial gain.

(2) No work or service specified in paragraphs (a) (b) (c) or (d) of sub-section (1) shall be imposed as a means of —

- (i) political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system;
- (ii) mobilizing and using, labour for purposes of economic development;
- (iii) labour discipline or as a punishment for having participated in strikes; or
- (iv) racial, social, national or religious discrimination.

(3) Any work or service carried out under the supervision or control of a public authority as required by paragraphs (a) and (b) of subsection (1) shall not be carried out on behalf of, or for the benefit of any private person.

(4) Before communal services of the kind mentioned in paragraph (d) of subsection (1) are exacted, the persons concerned or their representatives shall be consulted with regard to the need for those services.

*Exaction of forced labour prohibited.*

145. Any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed contrary to this Part shall be guilty of an offence and liable to a fine of five hundred Emalangeni or to imprisonment for six months.

*Concessions not to include forced labour.*

146. No concession granted to any person shall involve any form of forced labour for the production or collection of products which such private person utilizes or in which he trades.

*Penalty for official coercion.*

147. Any person who, acting in his official capacity, puts any coercion upon the population under his charge, or upon any individual members of such population to work for any private individual, company or association shall be guilty of an offence and liable to a fine of not exceeding three thousand Emalangeni or to imprisonment not exceeding one year or both. (Amended A.5/1997.)

PART XV — MISCELLANEOUS

*Application.*

148. The provisions of sections 149, 150 and 151 shall not apply to the employment of a domestic employee by any employer.

*General health measures.*

149. (1) Every employer shall ensure that every workroom in which persons are employed by him is kept in a clean and sanitary condition and that in each workroom —

- (a) each employee is provided with not less than 400 cubic feet of air space and not less than 35 square feet of floor space;
- (b) there is adequate ventilation and circulation of fresh air;
- (c) there is adequate and suitable lighting and that windows and fanlights are kept clean and free from obstruction.

(2) Every employer shall ensure that —

- (a) there is an adequate supply of wholesome drinking water for his employees at their place of work;
- (b) sufficient and suitable sanitary conveniences are available for his employees at or near their place of work and that —
  - (i) the conveniences are adequately lit and ventilated;
  - (ii) the conveniences are kept in a clean condition; and
  - (iii) where applicable, and where more than six persons are employed, separate conveniences are provided for male and female employees.

(3) Every employer shall, where a substantial proportion of the work being carried out by his employees can be carried out sitting, provide suitable seating for such employees.

*First aid equipment and medical aid.*

150. (1) Notwithstanding any provision of any other Act relating to the availability or supply of first aid equipment at places of employment, every employer shall provide at each place of employment —

- (a) adequate first aid facilities for the treatment of accidents;
- (b) one or more suitably stocked first aid boxes in charge of a responsible person which shall be readily available during working hours.

(2) The locality of every first aid box and the name of the person in charge of it shall be prominently displayed.

(3) Every employer shall at his own expense provide for his employees and members of their families living with them on his property essential first aid facilities in accordance with such scales as may be prescribed.

(4) If an employer has reasonable cause for believing that any of his employees or any of their dependants living on the employer's property is suffering from any serious hurt or ailment he shall take all reasonable measures to obtain skilled medical aid for such person without undue delay and if required to do so by the Labour Commissioner, District Commissioner or any labour officer or medical officer, or in case of danger to life or serious illness, he shall transport the said person as soon as reasonably practicable to the nearest hospital where such skilled medical attention is available.

(5) An employer shall not be liable for any medical or hospital fees charged for any treatment provided for the dependants of any employee under subsection (4) unless he specifically assumes liability therefor or unless such liability is part of the conditions under which the employee is employed. (Amended A.11/1981.)

*Records and registers.*

151. (1) Every employer shall keep the following records and registers of all persons employed by him —

- (a) a wages register, containing in respect of each employee all the particulars required to be given to an employee under section 61;
- (b) a record of each employee who is employed by him containing his name, address date of birth, the date on which he entered employment and, where applicable, left employment, the dates, where applicable, on which the employee was granted annual leave, sick leave, maternity leave and on which the employee was issued with a written warning;
- (c) a register of all young persons and children containing all the details required by paragraphs (a) and (b) and, in addition, in the case of young persons employed in an industrial undertaking, the date and results of the medical examinations, supported by a medical certificate, carried out under the provisions of section 100.

(2) Records and registers kept by employers under the provisions of this section shall —

- (a) be written in ink or in typescript or in a mixture or such writing and typescript; and

- (b) be kept by the employer for a period of three years from the date of the last entry therein.

*Housing.*

152. Where an employer is employed in circumstances where it is impracticable, for reasons of distance, for him to return to his home or normal place of residence at the end of his day's work, his employer shall cause such employee to be housed in such manner as may be prescribed.

*Feeding of employees.*

153. (1) With effect from such date as the Minister may appoint by notice in the Gazette, any employer, who, by virtue of section 98 of the Employment Act, 1962, repealed by this Act, was required to supply food to his employees, shall cease to have such an obligation, but shall in lieu thereof, add to the basic wage of his employees such amount equivalent to the value of the food previously supplied, as the Minister may prescribe in the said notice.

(2) For the avoidance of doubt and notwithstanding of the Employment Act, 1962, any obligation imposed on an employer by section 98 of that Act shall continue in force until the date to be appointed by the Minister under subsection (1).

(3) Nothing in this section shall be deemed to preclude an employer from supplying rations to any employee in pursuance of an agreement made under section 48.

*Notices.*

154. Every employer who is a party to a collective agreement covering the terms and conditions of service of any of his employees, shall, by the fixing of a notice where it can be seen and read by such employees, indicate the existence of such agreement, the parties signatory to it, the dates of its commencement and expiry and the place where a copy of the agreement can be examined.

*Offences and penalties.*

155. (1) Any employer who, after being informed by notice in writing by an Inspector that he is contravening a provision of section 149 or section 150 and who fails to rectify that contravention within the time prescribed by the Inspector in that written notice, shall be guilty of an offence, and liable on conviction therefor to a fine of two hundred and fifty Emalangeni or imprisonment for three months.

(2) Any employer who fails to keep any register or record in the manner required by section 151 shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred and fifty Emalangeni or imprisonment for three months.

*Criminal liability of officers of body corporate.*

156. (1) Where there is reasonable cause to believe that an offence under this Act has been committed by a body corporate, criminal proceedings may be instituted against any person who at the time of the commission of the offence was a director, manager, secretary or other office bearer of such body who was purporting to act in any such capacity.

(2) Without prejudice to any other defence, where criminal proceedings are instituted against a person referred to in subsection (1) in respect of an offence committed by a body corporate, it shall be a defence if such person proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to his functions in that capacity and to all the circumstances relating to the commission of the offence.

*Regulations.*

157. The Minister may make regulations for prescribing anything which is required to be prescribed or for any purpose for the better carrying out of this Act.

*Repeal.*

158. The following laws are repealed —  
The Employment Act, 1962.  
The Labour Advisory Board Act, 1966.  
The Employees Wages Protection Order, 1973.  
The Registration of Employers Order, 1975.

FIRST SCHEDULE

Section 10.

CERTIFICATE OF APPOINTMENT OF INSPECTOR

1. FRONT OF CERTIFICATE OF APPOINTMENT

<p>SWAZILAND CREST</p> <p>CERTIFICATE OF APPOINTMENT ISSUED UNDER SECTION 10 OF THE EMPLOYMENT ACT, 1980</p> <p>This is to certify that..... whose photograph appears hereon, has been appointed an Inspector for all the purposes of the Employment Act, 1980</p>	
<p>Photograph</p>	<p>..... Labour Commissioner</p> <p>..... Date</p> <p>.....</p>

Signature of Inspector

2. BACK OF CERTIFICATE

1. Under the Employment Act, 1980 an Inspector is required to produce this certificate when asked to do so by an employer or his representative.
2. The Acts sets out the powers and duties of an Inspector. These entitle him to —
  - Enter and inspect at any reasonable time, with or without notice, any premises which he believes to be liable to inspection.
  - Require an employer to provide him with information relative to wages, hours of work, etc. of his employees.
  - Carry out examinations, tests, or enquiries relating to employment legislation.
  - Interrogate employers and employees concerning any employment law applying to them and require the production of books, registers etc., relating to employment.
  - Enforce the posting of notices required by employment legislation.
  - Take or remove for purposes of analysis substances or materials used or handled by employees.

SECOND SCHEDULE

Section 22.

WRITTEN PARTICULARS OF EMPLOYMENT FORM

1. NAME OF EMPLOYER.....
2. NAME OF EMPLOYEE.....
3. DATE EMPLOYMENT BEGAN.....
4. WAGE AND METHOD OF CALCULATION.....
5. INTERVALS AT WHICH WAGES ARE PAID.....
6. NORMAL HOURS OF WORK.....
7. SHORT DESCRIPTION OF EMPLOYEE'S WORK.....  
.....  
.....
8. PROBATION PERIOD.....
9. ANNUAL HOLIDAY ENTITLEMENT.....
10. PAID PUBLIC HOLIDAYS.....
11. PAYMENT DURING SICKNESS.....

- 12. MATERNITY LEAVE (if employee female) .....
- 13. NOTICE EMPLOYEE ENTITLED TO RECEIVE .....
- .....
- 14. NOTICE EMPLOYEE REQUIRED TO GIVE .....
- .....
- 15. PENSION SCHEME (if any, other than National Provident Fund Scheme).....
- 16. ANY OTHER MATTER EITHER PARTY WISHES TO INCLUDE .....
- .....
- .....

NOTES — (a) An Industry Union is recognised by this undertaking. Any employee is free to join it. The address of the Industry Union is.....

(b) The grievance procedure in this undertaking requires that a grievance should be first referred to .....

(c) When any heading is inapplicable enter NIL

Signed.....Employer  
 .....Employee  
 ..... Witness  
 .....Date

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