

# LABOUR and EMPLOYMENT

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**THE LABOUR AND EMPLOYMENT ACT 1972**

1972

No. 12

AN ACT to consolidate, extend and amend the law relating to labour matters, to make better provisions as to conditions of employment, including wage protection, contracts of service, holidays and leave, hours of work and overtime, safety and industrial health, conciliation procedure and related matters.

*(8 December 1972)*

**PART I**  
**PRELIMINARY**

1. **Short title** - This Act may be cited as the Labour and Employment Act 1972.

2. **Interpretation** - In this Act, unless inconsistent with the context:

"Award" means an award made under this Act.

"Commissioner" means the Commissioner of Labour appointed under this Act and includes any person delegated by him to exercise any of the powers exercisable by him under this Act.

"Contract of service" means any agreement, whether oral or in writing, expressed or implied, whereby one person agrees to employ another as a worker and that other agrees to serve his employer as a worker, and includes an apprenticeship contract.

"Court" means the Supreme Court of Western Samoa.

"Day" means a period of 24 hours beginning at midnight.

"Department" means the Labour Department continued under this Act.

"Employer" means any person employing a worker or workers, and includes the manager or agent of an employer.

"Industrial dispute" means any dispute arising between one or more employers and workers in relation to industrial or labour matters.

**"Industrial grievance"** means any matter related to his work or employment which is considered by an individual worker to be a legitimate ground of complaint.

**"Industrial or labour matter"** means any matter affecting or relating to work done or to be done by employees or the privileges, rights and duties of employers or employees.

**"Industry"** means:

- (a) Any business, trade, manufacture, undertaking, or calling of employers; or
- (b) Any calling, service, employment, handicraft, or occupation of workers;

**"Minister"** means the Minister of Labour.

**"Overtime"** means the number of hours worked in excess of the limits specified in section 28 of this Act.

**"Person"** includes a corporation, and a body of persons, whether incorporated or not.

**"Place of employment"** means any place where work is carried out by a worker for or on behalf of an employer

**"Public Holiday"** means any public holiday defined in or declared under the Shops Ordinance 1961 or any other law from time to time in force in that behalf.

**"Rate of pay"** means the total amount of money including allowances to which a worker is entitled under his contract of service, either for working for a period of time, that is for one hour, one day of 8 hours, one week, one month or for such other periods as may be stated or implied in his contract of service, or for each completed piece of task work, but does not include:

- (a) Additional payments by way of overtime payments;
- (b) Additional payments by way of bonus payments;
- (c) Travelling, food, or house allowance;

**"Wages"**, unless otherwise specified, means all remuneration including allowances payable to a worker in respect of work done under his contract of service, but does not include:

- (a) The value of any house accommodation, supply of light, water, medical attendance, or other amenity;
- (b) Any contribution paid by the employer on his own account to any pension fund or provident fund;
- (c) Any travelling allowance or the value of any travelling concession;

(d) Any sum paid to the worker to defray special expenses entailed on him by the nature of his employment; or

(e) Any gratuity payable on discharge or retirement:

"**Week**" means a continuous period of 7 days.

"**Worker**" means any person who has entered into or works under a contract with an employer, whether the contract be for manual labour, clerical work or otherwise and whether it be a contract of service or apprenticeship or a contract personally to execute work but does not include any managerial personnel.

**3. Application of Act, and existing legislation - (1)** The provisions of this Act shall not apply to "service of Western Samoa", as that expression is defined in Article 111 of the Constitution, or to service rendered to a **matai** under the **aiga** system, or to any service or class of service which may be excepted therefrom by order of the Minister published in the **Western Samoa Gazette** and the **Savali**.

(2) The provisions of this Act shall apply only where such provisions are not repugnant to or conflicting with the provisions of the Shops Ordinance 1961 or any other enactment or other written law for the time being in force.

(3) Nothing in this Act shall be construed as relieving any person who enters into a contract of service either as employer or worker from any duty or liability imposed upon him by the provisions of the Shops Ordinance 1961 or any other enactment or other written law for the time being in force.

## **PART II** **ADMINISTRATION**

**4. Minister of Labour** - There shall be a Minister of Labour for Western Samoa whose functions shall be to control and direct the policy of the Department, who may exercise such powers as are reasonably necessary and for the effective performance of the functions of the Department.

**5. Labour Department** - There is hereby continued the Department of the Government of Western Samoa known as the Labour

Department, which, under the control of the Minister, shall be charged with the administration of this Act and any regulations to be made thereunder, together with such other functions as may from time to time be lawfully conferred on it.

6. **Functions of Department** - The general functions of the Department shall be to advise workers and employers on all industrial matters, to take such measures as may be appropriate under the Act to ensure safe and healthy working conditions, to encourage good relationship between employers and workers, and to ensure the proper fulfillment by employers, workers, and other persons of obligations placed upon them by awards and industrial agreements and by the Acts and regulations administered by the Department.

7. **Duties of Department** - The general duties of the Department shall be:

- (a) To provide the services of an employment exchange for the purpose of indicating to workers seeking employment where there may be suitable employment opportunities, assisting employers to obtain manpower, and advising persons who require occupational readjustment or training with a view to enabling them to continue or resume employment;
- (b) To visit all places of work for the purpose of inspecting installations, motors, machinery, plants, boilers, and any other equipment working under pressure by the use of steam, electricity, or liquid fuels; to examine for purposes of industrial health and safety all dangerous materials, liquids, and machinery and to advise alterations or indicate such measures as may be necessary to secure industrial health and safety, to release certificates for approved pressure equipment, and to do all such things as may be conducive to improve industrial health and safety as provided by this Act or the regulations issuing therefrom;
- (c) To make inspections of conditions of work and to take any other necessary action for the purpose of ensuring that there is fulfillment of the obligations placed upon any employer, worker,

or other person under any award or industrial agreement, or under any of the Acts and regulations administered by the Department;

- (d) To maintain such registers of shops, offices, factories, and places of work generally as may be deemed necessary for the fulfillment of the Department's functions;
- (e) To collect and publish information relating to employment and unemployment, and wages, and such other matters relevant to the functions of the Department as the Minister may from time to time require;
- (f) To make surveys and forecasts of the classes of employment from time to time required or available or likely to be required or available, and to do all things deemed necessary or expedient for the purpose of placing suitable and qualified persons in such employment on a voluntary basis;
- (g) Generally to do all things deemed necessary or expedient for the purpose of promoting and maintaining full employment, whether by facilitating the better location or availability of employment in relation to the labour available or otherwise howsoever.

**8. Commissioner of Labour and other officers - (1)**

There shall from time to time be appointed an officer of the Public Service to be called the Commissioner of Labour who shall be the administrative head of the Department.

(2) The Public Service Commission of Western Samoa may from time to time appoint such other officers and employees of the Department whether as Inspectors or otherwise as may be necessary.

(3) The person holding office at the commencement of this Act as Commissioner of Labour shall be deemed to have been appointed to that office under this Act.

(4) All other persons who at the commencement of this Act are officers or employees of the Department and have been so appointed by

the Public Service Commission of Western Samoa shall be deemed to have been so appointed under this Act.

(5) All officers and other employees of the Department shall act under the direction of the Commissioner in the exercise and performance of the powers, duties, and functions conferred or imposed upon them by any enactment of which the Department or the Commissioner is charged with the administration by this Act or any other enactment.

9. **Delegation of powers by Minister - (1)** The Minister may from time to time, by writing under his hand, either generally or particularly, delegate to the Commissioner all or any of the powers which are conferred on him as Minister of Labour by this Act or any other enactment.

(2) Subject to any general or special direction given or conditions attached by the Minister, the Commissioner may exercise any powers delegated to him as aforesaid in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

10. **Powers of Commissioner - (1)** It shall be lawful for the Commissioner, or any officer authorised in writing by the Commissioner, in the exercise of his duties under this Act:

- (a) To enter and inspect at all reasonable times any place of employment and carry out any examination, test, or inquiry which he may consider necessary in order to satisfy himself that the provisions of this Act are being strictly observed;
- (b) To require the production of wages sheets, books, registers, or other documents connected with the employment, and to copy such documents or make extracts from them;
- (c) To interview any employer or any person employed in the undertaking, either alone or otherwise as he may think fit, and to require such person to give him any information in his possession relating to the employment of persons in the

undertaking;

- (d) To enforce the displaying of any notices which may be required under the provisions of this Act or the regulations;
- (e) To take or remove samples of materials or substances used or handled at any place of employment, for purposes of analysis;
- (f) Generally to take such steps as he shall consider necessary to remedy defects observed in any premises, plant, machinery, equipment, or system of work which he considers constitute a danger to the industrial safety or health of any worker, and for such purpose, by notice under his hand, to prohibit the use of any premises, plant, machinery, or equipment which constitute an imminent safety hazard to such workers;
- (g) To inquire into and endeavour to resolve any complaints or any grievance between a worker and his employer arising out of any term of the contract of service or out of the provisions of this Act.

(2) Except for the purposes of this Act and the exercise of his functions under this Act, neither the Commissioner nor any other officer of the Department shall disclose to any person any information which he acquires in the exercise of those functions.

**11. Delegation of powers by Commissioner - (1)** The Commissioner may from time to time, by writing under his hand, either generally or particularly delegate to such officer or officers or employees of the Department as he thinks fit all or any of the powers exercisable by him under this Act or any other enactment:

**PROVIDED THAT** the Commissioner shall not delegate any power delegated to him by the Minister without the consent of the Minister, or any power delegated to him by the Public Service Commission of Western Samoa without the consent of the Commission.

(2) Subject to any general or special directions given or conditions attached by the Commissioner, the officer or employee to



whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

**PART III**  
**WAGES PROTECTION**

**12. Wage periods** - Every employer shall fix periods, which for the purposes of this Act shall be called "wage periods", in respect of which wages shall be payable:

**PROVIDED THAT** no wage period shall exceed one month.

**13. Time and place of payment of wages** - (1) Wages earned by a worker under a contract of service shall be paid to him before the expiration of the 7th day after the last day of the wage period in respect of which the wages are payable.

(2) All wages properly due to a worker on completion or termination of his contract of service or dismissal shall be paid to him forthwith and in no case later than 7 days after the date of such completion or termination.

(3) Unless otherwise expressly consented to by him, all wages payable to a worker shall be paid to him on a working day at his place of employment.

**14. Mode of payment of wages** - (1) Except as hereinafter provided, the entire amount of wages payable to any worker shall be paid to the worker in Western Samoa currency when due.

(2) Any worker shall be entitled to recover by action in Court any amount paid otherwise than in money.

(3) Notwithstanding anything in subsection (1) of this section, at the written request or consent of a worker, the wages payable to him or any part thereof may be paid by money order, by cheque, or by lodgement at a bank to the credit of an account standing in the name of the worker.

**15. Authorised deductions - (1)** The following deductions only may be made from the wages of a worker:

- (a) Deductions for periods of absence from work, calculated in proportion to the period for which he was required to work by the terms of his employment;
- (b) Deductions for damage to or loss of goods expressly entrusted to a worker for custody, or for loss of money for which a worker is required to account, where such damage or loss is directly attributable to his neglect or default;
- (c) Deductions for the actual cost of meals supplied by the employer at the request of the worker;
- (d) Deductions for house accommodation supplied by the employer;
- (e) Deductions for such amenities and services supplied by the employer as the Commissioner may authorise;
- (f) Deductions for recovery of advances or for adjustment of overpayments of wages;
- (g) Deductions of income tax payable by the worker;
- (h) Deductions on contributions payable by an employer on behalf of a worker under and in accordance with any provident fund legislation;
- (i) Deductions for any other lawful purpose with the consent in writing or at the written request of the worker, and as previously notified to the Commissioner;
- (j) Deductions made pursuant to any attachment order made by a Court or authority having competent jurisdiction in that behalf;
- (k) Deductions lawfully permitted under any enactment, regulations or rules for the time being in force.

(2) For the purposes of paragraph (e) of subsection (1) of this section the word "services" does not include the supply of tools and raw materials required for and during the process of employment.

(3) No deduction under paragraph (b) of subsection (1) of this section shall exceed the amount of the damage or loss caused to the employer by the neglect or default of the worker and except with permission of the Commissioner it shall not exceed one-quarter of one month's wages or \$7 whichever is the less, and shall not be made until the worker has been given an opportunity of showing cause against the deduction.

(4) No deduction under paragraph (d) of subsection (1) of this section shall be made from the wages of a worker unless the house accommodation, amenity, or service has been accepted by him as a term of employment and in such an instance, the deduction shall not exceed an amount equivalent to the value of the house accommodation, amenity, or service supplied and, in case of a deduction under the said paragraph (e), shall be subject to such conditions as the Commissioner may impose.

(5) The total amount of all deductions other than deductions for absence from duty made by an employer in any one wage period shall not exceed 35 percent of the wages payable to any worker in respect of such period.

**16. Advances to worker -** (1) No employer shall without the previous written permission of the Commissioner make to a worker an advance of wages not already earned in excess of an amount equivalent to the wages earned by the worker during the preceding month, or, if he had not been employed for that period, to the wages he is likely to earn during one month.

(2) No worker shall be held liable for the amount of any advance made to him by his employer in contravention of the provisions of subsection (1) of this section.

(3) The recovery of any advance of money made to a worker shall begin from such a period as may have been agreed between worker

and employer.

(4) The recovery shall be made in respect of any advance for expenses of travelling to the employer's place of business.

(5) Advances may be recovered in instalments by deduction from wages spread over not more than 12 months and no instalments shall exceed more than one-quarter of the wages due for the wage period in respect of which the deduction is made.

(6) No interest, discount, or other premium shall be chargeable on any advance of wages.

17. **Remuneration other than wages** - Nothing in this Act shall render illegal a contract of service with a worker for giving him food, quarter, or other allowances or privileges in addition to money wages as a remuneration for his services:

**PROVIDED THAT** such food, quarters, or other lawful allowances or privileges in addition to money wages are adequate for the personal use and benefit of the worker; and

**PROVIDED FURTHER THAT** the value attributed to such allowances is fair and reasonable.

18. **Employer not to stipulate mode of spending wages** - It shall be unlawful for any employer to impose any requirement on any worker as to the place or manner in which or the person with whom the worker shall expend any wages received by him.

19. **Minimum wages** - (1) The Head of State, acting by and with the advice of Cabinet, may from time to time by Order prescribe the minimum wages to be paid in any industry.

(2) For the purposes of subsection (1) of this section the Minister may from time to time appoint an advisory committee on minimum wages, the duties of which shall be to review comprehensively any industry and report to him on any matter pertaining to minimum wages, standards of living, and margins for skill

and to this purpose the committee shall also consult with the employers and worker concerned as it may consider it advisable.

**PART IV**  
**CONTRACT OF SERVICE**

**20. Illegal terms of a contract of service** - Any term of a contract of service which contravenes the provisions of this Act shall be deemed to be unlawful and shall have no effect:

**PROVIDED THAT** any contract of service valid and in force on the date of commencement of this Act, shall continue to be in force after such date and, subject to any express provision therein contained, the provisions of this Act shall apply thereto.

**21. Termination of contract - (1)** A contract of service for a specific work or for a specific period of time shall, unless otherwise terminated in accordance with the provisions of this Part, terminate when the work specified in such contract is completed or the period of time for which such contract was made has expired, as the case may be.

**(2)** A contract of service for an unspecified period of time shall be a continuous contract until terminated by either party in accordance with the provisions of this Part.

**(3)** Either party to a contract of service may at any time give the other party notice of his intention to terminate such contract.

**(4)** The length of such notice shall be the same for both employer and worker and shall be determined by any provision in that behalf in the contract or in the absence of such provision shall be equal to the length of the wage period fixed pursuant to this Act:

**PROVIDED THAT** in the event of a worker having given not less than 5 years' continuous service with an employer, notwithstanding the length of any wage period so fixed the length of notice shall be 2 months.

**(5)** Either party to a contract of service may terminate such contract without notice, or, if notice has already been given in

accordance with subsection (3) of this section, without waiting for the expiry of that notice, by paying to the other party a sum equal to the amount of wages which would have accrued to the worker had the contract been duly terminated on notice given in accordance with subsection (3) of this section.

(6) Either party to a contract of service may terminate such contract without notice in the event of any wilful breach by the other and in such case no payment in lieu of notice shall be required, but without exonerating for payment of any sum due for work actually performed.

(7) An employer may without notice or payment in lieu of notice dismiss a worker employed by him on the grounds of misconduct, provided that instead of dismissing the worker an employer may:

- (a) Instantly down-grade the worker; or
- (b) Instantly suspend him from work without pay for a period not exceeding 3 days.

**22. Contract of service for wage periods longer than one month** - No contract of service for a specified wage period of time longer than one month or for a specified piece of work the time for the completion of which exceeds or may exceed one month shall be made without the prior approval in writing of the Commissioner, who may require such terms as he thinks fit to be included in such a contract of service:

**PROVIDED THAT** the Minister may, by notification in the Western Samoa Gazette and the Savali, except contracts of service with certain classes of workers from the provisions of this section.

**23. Written contract of service - (1)** There shall be available at the Department a pro-forma contract according to the First Schedule to this Act exemplifying the manner in which a written contract of service may be drafted.

(2) Every written contract of service shall be either in the Samoan Language or the English language, at the opinion of the

employee.

**PART V**  
**HOLIDAYS, LEAVE, HOURS OF**  
**WORK AND OVERTIME**

**24. Work on Sunday - (1)** No worker shall be compelled to work on any Sunday or a day observed according to the religious beliefs of such worker as a day of obligatory abstinence from work, or other agreed day of rest unless he is engaged in work which by very reason of its nature requires to be carried on continuously as a succession of shifts.

(2) Any worker who works for and at the request of his employer on a Sunday or other agreed day of rest shall be paid for such work not less than double his ordinary rate of pay, unless such worker and such employer shall have agreed that a whole day within 3 days immediately before or after such Sunday or other agreed day of rest shall be substituted therefor.

**25. Public holidays - (1)** Every worker shall be entitled to a paid holiday at his ordinary rate of wages on any public holiday which falls during the time that he is employed:

**PROVIDED THAT** by agreement between the employer and the worker any other day may be substituted for such public holiday.

(2) Notwithstanding the provisions of subsection (1) of this section any worker who at the request of his employer works on any public holiday shall be entitled to double the ordinary rate of wages for such day's work.

**26. Annual leave - (1)** Every worker shall be entitled after 12 months of continuous service with the same employer and after the coming into force of this Act, to not less than 10 working days' paid leave for every 12 months continuous service and such leave shall be in addition to the holidays to which such worker is entitled under the provisions of section 25 hereof.

(2) The employer shall pay to the worker his ordinary rate of wages for every day of such leave, including any part of remuneration which is paid in kind and is not provided while the worker is on leave.

(3) Any worker who fails to take such leave within a period of one year from the end of the year in respect of which the leave entitlement did arise shall forfeit such leave entitlement.

(4) A worker who had completed a period of service of 6 months or over and whose employment is terminated, shall be entitled to leave with pay proportionate to the length of service for which he has not received such leave or to compensation in lieu thereof, as he may choose.

**27. Sick leave -** (1) Any worker who has served an employer for a period of not less than 12 months after the coming into force of this Act shall be entitled to paid sick leave being not less in the aggregate than 10 working days in each year, subject to production of a medical certificate issued by a duly qualified medical practitioner certifying that the illness of the worker necessitates his absence from work.

(2) The medical certificate shall be handed or forwarded to the employer not later than 3 days after the inception of the illness.

(3) While he continues in the same employment a worker may carry forward unused sick leave entitlement from year to year.

(4) The employer shall pay to the worker his usual rate of pay for every day of such worker's absence on sick leave.

**28. Hours of work -** Subject to the provisions of this Act, no worker shall be required to work:

- (a) For more than 40 hours (excluding meal times) in any one week;  
or
- (b) For more than 8 hours (excluding meal times) on any one day;  
or



- (c) For more than 4 and one-quarter hours continuously without an interval of one hour for a meal:

**PROVIDED THAT** the said period of 4 and one-quarter hours may be extended to not more than 5 hours in cases where the employer allows a rest interval of not less than 10 minutes in every working period of not more than 3 hours:

**PROVIDED THAT:**

- (d) A worker who is engaged in work which must be carried on continuously may be required to work for 8 consecutive hours inclusive of a period of not less than 45 minutes in the aggregate during which he shall have an opportunity to have a meal; and
- (e) Where, by agreement under the contract of service between the worker and the employer, the number of hours of work on one or more days of the week is less than 8, the limit of 8 hours may be exceeded on the remaining days of the week, but so that no worker shall be required to work for more than 9 hours in one day or 40 hours in one week.

**29. Overtime for extra work - (1)** If on any day a worker works for and at the request of his employer more than 8 hours in one day or, in the case specified in paragraph (e) of section 28 hereof, more than 9 hours, he shall be paid for such extra work at the rate of not less than one-and-a-half times his rate of pay irrespective of the basis on which his rate of pay is fixed.

**(2)** If in any one week a worker works for and at the request of his employer for more than 40 hours in one week, he shall be paid for such extra work at a rate of not less than one-and-a-half times his rate of pay irrespective of the basis on which his rate of pay is fixed, provided always that he has not been paid for such extra work under subsection (1) of this section.

**(3)** For the purposes of calculating the payment due for extra work undertaken by a worker on a monthly rate of pay, such worker's hourly rate of pay shall be assessed by calculating the amount of such

worker's yearly remuneration without overtime, and by dividing that amount by 8 times the number of ordinary working days during that year.

**30. Shift work - (1)** Notwithstanding the provisions of section 28 hereof, a worker who is engaged under his contract of service in regular shift work may be required by his employer to work more than 6 consecutive hours, more than 8 hours in any one day and more than 40 hours in any one week; but the average number of hours worked over a period of 3 weeks shall not exceed 40 hours per week.

**(2)** No worker who is engaged under his contract of service in regular shift work shall under any circumstances work for more than 12 hours in any one day.

**(3)** The provisions of section 29 of this Act shall not apply to any worker who is engaged under his contract of service in regular shift work, but any such worker who works for and at the request of his employer more than the average of 40 hours per week over any period of 3 weeks shall be paid for such extra work in accordance with subsection (2) of that section.

**31. Piece work -** Nothing contained in this Part shall prevent any employer from agreeing with any worker that the wages of such worker shall be paid at an agreed rate in accordance with the amount of work done and not by the day.

## PART VI WORKING CONDITIONS, SAFETY, AND HEALTH

**32. Employment of children - (1)** It shall be unlawful to employ any child under the age of 15 years of age in any place of employment except in safe and light work suited to his capacity, and subject to such conditions as may be imposed by the Commissioner.

**(2)** No such child shall be employed on dangerous machinery or in any occupation or in any place under working conditions injurious or likely to be injurious to the physical or moral health of such child.

(3) No such child shall be employed as a worker upon any vessel unless such vessel is under the personal charge of the parent or guardian of the child.

**33. Employment of women - (1)** Except with the consent of the Commissioner, no woman shall be employed in any place of employment between the hours of 12 midnight and 6 o'clock in the following morning, provided that this prohibition shall not extend to the nursing, medical, police postal, telephone, telegraphic, and other essential Government services.

(2) No woman shall be employed in manual work unsuited to her physical capacity.

**34. Safety provisions - (1)** In every place of employment efficient devices or appliances shall be provided and maintained by which the power can promptly be cut off from any electrically powered transmission or other machinery in that place.

(2) All live electrical wiring, equipment, and apparatus shall be properly insulated so as to afford adequate protection from electric shock.

(3) All dangerous parts of any machinery shall be securely fenced off or otherwise provided with efficient guards, and the safeguard shall not be removed whilst the machine to which it relates, is in use except for the purpose of making immediate repairs in which case the safeguard shall be replaced as soon as the repairs are effected.

(4) In every place of employment where 20 or more workers are employed, the employer shall provide and maintain such first aid equipment as shall be directed by the Commissioner.

**35. Procedure in case of accident - (1)** In every case where an accident occurs in a place of employment which causes death or serious bodily injury to any person employed therein, the employer shall forthwith, and not in any event later than 48 hours after the occurrence of the accident, give telephone or written notice to the Commissioner specifying the nature of the accident, the name and residence of the

person killed or injured, his age, and the place (if any) to which he has been removed.

(2) For the purpose of the last preceding subsection the expression "serious bodily injury" means an injury which is likely to incapacitate the sufferer from work for at least 14 days.

(3) As soon as practicable after receiving notice of an accident to which this section applies the Commissioner shall make full inquiry into the nature and cause of the accident and the nature and extent of the injuries.

**36. Industrial health requirements - (1)** Every place of employment shall be kept in a clean and tidy state and free from any nuisance and from any smell or leakage from any drain or sanitary convenience.

(2) Sufficient and suitable washing and sanitary facilities shall be provided separately for male and female workers.

(3) An adequate supply of fresh drinking water shall be maintained in every place of employment.

## PART VII CONCILIATION AND ARBITRATION

**37. Conciliation Committee - (1)** Upon proof of the existence of an industrial dispute, the Minister may if he thinks fit, and shall if the parties to the dispute jointly request him to do so, appoint a conciliation committee consisting of one person nominated by the workers and one person nominated by the employers, with a Chairman to be appointed by the Minister.

(2) It shall be the duty of the Conciliation Committee to endeavour to bring about a voluntary settlement of the dispute, and to this end the Committee shall carefully inquire into the dispute and all matters affecting the merits and the right settlement of the dispute.

(3) If a voluntary settlement is brought about by the Conciliation Committee, the terms of settlement shall be embodied in an agreement, and shall be registered by the Commissioner.

(4) If no voluntary settlement is brought about by the Commissioner, the terms of settlement shall be embodied in an agreement, and shall be registered by the Commissioner.

**38 Commissioner may conciliate – (1)** The Commissioner shall have power to conciliate in whatever manner he shall think fit or advisable, when requested to do so by either party to an industrial dispute, or by either party in the case of an industrial grievance between an employer and one or more workers, or by both parties jointly, or in any case where he considers it expedient in the interest of good industrial relations that he should endeavour by conciliation to bring about a settlement between the parties.

(2) If a voluntary settlement is brought about by the Commissioner, the terms of settlement shall be embodied in an agreement, and shall be registered by the Commissioner.

**39. Jurisdiction and powers of Supreme Court - (1)** If conciliation procedure under section 37 of this Act has been unsuccessful in bringing about the settlement of an industrial dispute the Minister may refer the industrial dispute to a Judge of the Supreme Court, sitting with 2 Assessors, one to be appointed by the employers and one by the workers, who shall have jurisdiction to settle and determine the matters in issue.

(2) The Court may dismiss any matter before it which it thinks frivolous, trivial, or vexatious.

(3) The Court shall in all matters before it have full and exclusive jurisdiction to determine the same, and to make such order, not inconsistent with this or any other Act, as in equity and good conscience it thinks fit.

(4) The procedure of the Court shall be such as the Court may determine. In particular, proceedings before the Court may be conducted

in an informal manner, and no advocate of any party thereto shall be a practising barrister or solicitor.

(5) If it appears to the Court that there are employers or workers in the same class of industry or in any industry related to the industry in respect of which a dispute has been referred to the Court, it may permit such persons to appear and make representations to the Court in connection with such dispute.

(6) If during the hearing of any dispute before the Court, either party or both parties jointly shall request that an interpretation be placed upon any particular provision of this Act, the matter shall be referred to the Attorney-General whose opinion thereon shall be final and binding on the parties.

(7) The decision of a majority of the Judge and Assessors, shall be the decision of the Court, shall be final and conclusive, and shall not be challenged on matters of fact in any other Court.

(8) The decision of the Court in every case shall be sealed with the seal of the Supreme Court and a copy thereof shall be registered by the Commissioner.

(9) The decision shall specify in clear terms:

- (a) Each party on whom the decision is binding;
- (b) The industry or employment to which the decision applies;
- (c) The locality to which the decision relates;
- (d) The currency of the decision;
- (e) Any other relevant matter which ought to be included in the decision, not being inconsistent with this Act or with any other enactment.

(10) Every employer and employee who commits any breach of a decision of the Supreme Court made under this section shall be guilty

of an offence against this Act.

**PART VIII**  
**MISCELLANEOUS**

40. **Civil proceedings** - Nothing in this Act shall operate to prevent any employer or worker from enforcing their respective civil rights and remedies for any breach or non-performance of a contract of service by way of civil proceedings.

41. **Offences and penalties** - (1) Any employer who enters into a contract of service contrary to any of the provisions of this Act shall be guilty of an offence, and on conviction shall be liable to a fine not exceeding \$500.

(2) Any person who assaults or wilfully hinders or obstructs any officer of the Labour Department in the exercise of his lawful functions under this Act shall be guilty of an offence, and on conviction shall be liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$200 or to both such imprisonment and fine.

(3) Any person who fails to comply with any of the other provisions of this Act shall be guilty of an offence and on conviction shall be liable to a fine not exceeding \$200.

42. **Regulations** - (1) The Head of State, acting by and with the advice and consent of Cabinet, may from time to time make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by subsection (1) of this section it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a) Prescribing the keeping by employers of records concerning persons employed in their undertakings, and the form and contents of such records;

- (b) Prescribing what is unhealthy, dangerous, or onerous work, and minimum ages of entry into employment in such work;
- (c) Providing for the manner of appointment of members to the Conciliation Committee and the Court;
- (d) Prescribing fees or for the waiving of fees in cases submitted to the Court, under the Act;
- (e) Generally for the protection, health, and safety of women and young persons;
- (f) Providing for the fixing of the maximum number of hours (exclusive of overtime) to be worked in any day or week by any employee in any specified class of occupation or employment;
- (g) Obtaining any information or particulars that may be required for the effective performance of the functions of the Department under this Act;
- (h) Prescribing fines not exceeding \$100 for offences against any regulations made under this Act;
- (i) Further defining the functions of the Department.

**43. Repeal and Savings - (1)** The enactments specified in the Second Schedule to this Act are hereby repealed.

**(2)** It is hereby declared that the repeal of any provision by this Act shall not affect any document made or anything whatsoever done under the provision so repealed and every such document or thing, so far as it is subsisting or in force at the time of the repeal shall continue and have effect and may be completed notwithstanding the repeal of the provision under which it was commenced.



SCHEDULES

FIRST SCHEDULE  
PRO-FORMA WRITTEN CONTRACT OF SERVICE

Each contract shall be signed in triplicate as follows:

One copy to remain with the employer, one copy (the original) given to the employee and one copy to be forwarded to the Commissioner of Labour.

1. Name and address of employer .....
2. Name and address of employee ..... Occupation .....
3. Parties to the contract - This contract of service is entered into by..... hereinafter called the employer AND..... hereinafter called the employee.
4. Location of place of work.....
5. Duration of contract - This contract shall take effects as from the date of its signature by the parties thereof and shall terminated on.....
6. Length of notice of termination of contract.
7. Wages or salary - The said employee shall be paid \$..... per (hour, day, week or moth) wage period.
8. If piece work - The said employee shall be paid \$..... per (so many pieces - details)/
9. Increments - The following increments shall be paid each 12 months from the date of this contract and throughout its performance.
10. Hours of work - the employee shall work for the following hours:
11. Shift work: .....
12. Holidays with pay - The employee shall be entitled to the following paid holidays.

13. Overtime - Should the employee be requested to work overtime, he shall be paid for such overtime at \$..... for each hour of work.
14. Annual leave - The employee shall be entitled to 10 days' paid annual leave in accordance with the provisions of section 26 of the Labour and Employment Act 1972, to be taken on such days as shall be mutually agreed.
15. Sick leave - After 12 months' service the employee shall be entitled to 10 days' sick leave in each year on production of a medical certificate by a medical practitioner.
16. Duties of employee - Under the terms of this contract the duties of the employee shall be as follows:
17. (Any other matter):
18. Remarks:

Signed:.....

Employer

Employee

on.....

on.....

Witnessed by.....of (address)..... on..... at ..... Copy No.....

**NOTE** - All conditions of work shall be in accordance with the provisions of any written law in operation at the time of the signing of the contract. Headings which are not applicable may be omitted.

**SECOND SCHEDULE  
ENACTMENTS REPEALED**

**Section 43**

- 1950 - No.10: The Contracts of Employment (Indigenous Workers) Ordinance.
- 1951 - No.4: The Recruiting of Workers (Prohibition) Ordinance.
- 1960 - No.16: The Labour Ordinance.

**The Labour and Employment Act 1972  
is administered in the Department of Labour**