

CAYMAN ISLANDS



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**A BILL FOR A LAW TO REPEAL THE LABOUR LAW (2011
REVISION); TO PROVIDE FOR THE RE-ORGANIZING OF LABOUR
AND RELATED OPERATIONAL PROCEDURES IN THE ISLANDS;
AND FOR INCIDENTAL AND CONNECTED PURPOSES**

CONSULTATION DRAFT

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THE LABOUR RELATIONS BILL, 2015

MEMORANDUM OF OBJECTS AND REASONS

The Bill provides for the re-organizing of labour and related operational procedures in the Islands and the repeal of the Labour Law (2011 Revision) and the Employment Law, 2004 (Law 3 of 2004).

Part 1 contains preliminary provisions including the short title, commencement and interpretation clauses.

Clause 1 provides the short title and commencement.

Clause 2 contains the definitions.

Clause 3 provides that the legislation does not apply to the public service on the condition that the Public Service Management Law (2013) Revision does not prescribe standards that are less favourable than the standards required by the legislation.

Clause 4 provides that a copy of the legislation and, among other things, a notice of the physical address of the Director shall be made available in a place that can be accessed by all employees.

Clause 5 provides that the legislation does not prohibit an employer from providing conditions of service that are more advantageous to an employee than the minimum standards established by the legislation.

Clause 6 provides that it is an offence to offer employment on terms that are not in conformity with the legislation. A contract of employment that contravenes the legislation or establishes conditions of service that fall below the minimum standards set out in the legislation is void and of no effect.

Clause 7 states that an employer shall provide a statement of employment conditions within ten working days of entering into a contract of employment with an employee.

Clause 8 provides that where an employee is re-employed by the same employer within thirty days of termination, the employee shall not be regarded as a new employee and the employment shall be regarded as continuous with the earlier period of employment.

Clause 9 provides that a new employee may be employed on probationary terms for an initial period not exceeding six months. The probationary period may be extended by mutual agreement for a further term of six months provided that the agreement is signed by both parties. During the probationary period, an employee shall be given reasonable training in the duties of the position for which the employee was hired.

Clause 10 provides that employment for a fixed term shall terminate without further notice on the expiration of the term unless the term had been previously extended by agreement or the terms of the contract of employment state otherwise.

Clause 11 states that an employer must give advance notice in writing to an employee where there is an intention to terminate the employee's employment. Where the affected employee is within the probationary period, the notice period is at least twenty-four hours; and for all other employees the notice should be equal to the interval of time between the respective employee's pay days. Where an employer has given the due notice of termination of employment, the employer may terminate the employment prior to the effective date where the employee is paid a sum equivalent to the amount that the employer would have paid if the employee continued to work during the period of notice.

Clause 12 provides that an employee shall give notice to the employer of an intention to quit employment. The notice must be at least twenty-four hours during the probationary period. In all other cases according to the contract of employment or where the contract does not state the period the notice period must be equivalent to the interval between pay dates or thirty days, whichever is the lesser of the two periods. An employee who fails to give sufficient notice may be dismissed prior to the date that the employee intended to quit and forfeit all vacation leave accrued during the employment year.

Clause 13 provides for the giving of reasons to an employee where the employment is terminated by the employer after the probationary period has passed.

Part 2 of the Bill contains clauses 14 to 21 and deals with leave.

Clause 14 of the Bill provides states that Part 2 applies to every employee who is not a self-employed casual worker and who has completed the probationary period.

Clause 15 provides for the annual entitlement to vacation leave with pay. The minimum annual entitlement to earned vacation leave is two weeks for employees who have not completed more than four years of employment. For employees whose period of employment exceeds four years but have not completed ten years, the minimum entitlement is three weeks. Employees who exceed ten years of employment are entitled to a minimum of four weeks.

Clause 16 provides that part-time employees shall earn vacation leave in the ratio that their actual hours of employment bear to the standard work week.

Clause 17 sets out provisions relating to public holiday pay. Where an employee does not work on a public holiday but works on the scheduled work day before and after the public holiday the employee must be paid the basic wage that would have normally been paid for work performed on that day. Where the employee

works on a public holiday the employee must be paid double the normal rate of pay for hours worked on that day.

Clause 18 provides for sick leave. The clause, among other things, provides that an employee is entitled to sick leave on workdays during which the employee is ill or physically incapacitated.

Clause 19 sets out provisions regarding sick leave pay. An employee shall be paid for the first ten days of sick leave taken during any period of twelve consecutive months calculated in accordance with the date when employment commenced. The clause provides also that where an employee is injured in course of duties and the employer does not provide workmen's compensation or extended sick leave disability benefits the number of paid days of sick leave available to the injured employee shall be increased to a maximum of ten days for each calendar year as may be required in addition to the sick leave entitlement where the injury is not as a result of the employee's gross negligence or engagement in unsafe practices.

Clause 20 provides for maternity leave benefits. A female employee is entitled to fourteen calendar weeks of maternity leave in any twelve month period except where she has not completed twelve months of employment with her employer. The clause also provides for time away from work for ante care and for adoption leave where a child is adopted by a female employee.

Clause 21 provides for paternity leave benefits to a male employee who is the biological father of a child and who at the date of delivery will have been employed by the same employer for at least twenty-four months. The employee who is granted paternity leave is entitled to the first five working days with basic pay and for the next five working days with no pay. The clause also provides for adoption leave where a child is adopted by a male employee.

Part 3 of the Bill consists of clauses 22 to 35 and deals with remuneration and hours of work.

Clause 22 provides for establishing a National Minimum Basic Wage by way of order made by the Cabinet. The order may be varied, amended or revoked after consideration of recommendations made to the Minister by a Committee established under clause 23.

Clause 23 provides for setting up a Minimum Wage Advisory Committee which shall, among other things, consist of a minimum of nine members who shall be appointed by the Cabinet.

Clause 24 provides that where a National Minimum Basic Wage is set it is an offence for an employer to pay an employee at a basic wage less than the minimum wage prescribed.

Clause 25 sets out provisions regarding rest periods of employees. Among other things, the clause states that every employer shall allow employees to enjoy within every period of seven consecutive days a rest period comprising of at least twenty-four hours.

Clause 26 stipulates that the standard work week shall not exceed forty-five hours in any period of one hundred and sixty-eight hours. The standard work day shall not exceed nine hours.

Clause 27 states that any employer shall pay overtime pay for every hour of work in excess of the standard work day. However, parties to a contract of employment may arrange by agreement in writing or, where the period is less than one week, orally that the employee shall work -

- (a) more than the hours in the standard work week; or
- (b) more than the hours in the standard work day up to four hours on the condition that that the total number of hours for the week does not exceed the standard work week.

Clause 28 provides for the payment of overtime pay for non-managerial employees. The rate of payment shall be at least one and a half times an employee's basic hourly wage or non-cash compensation that is equal in value or in excess of the overtime pay due.

Clause 29 provides that where overtime pay includes a time-off equivalent for the extra hours worked by an employee, at least one half of the payment shall be in cash or non-cash compensation if the time-off in lieu is equal to or more than the standard work week.

Clause 30 provides that wages may be paid in cash or kind. The provision also defines the expression "payment in kind".

Clause 31 provides that an employer shall not make deductions from the wages payable to an employee except in accordance with the provisions in the clause. The clause sets out the bases on which an employer may deduct amounts from an employee's wages.

Clause 32 provides for the payment of wages on a regular periodic basis and that payment shall be made on ordinary working days and within ordinary working hours.

Clause 33 states that an employer who enters into an agreement contrary to the provisions regarding the forms of payment, deductions and the payment of wages commits an offence. In addition to the punishment for offence, an employee is entitled to recover the wages together with interest.

In accordance with the provisions at clause 34, every employer is required to keep an accurate work account in respect of each employee in such form as the

Director may be order prescribe and shall keep the work account for at least two years.

Clause 35 states that an employer must furnish to an employee at the time of any wage or gratuity payment a precise statement in writing showing how the payment was arrived at. The statement must show any deductions made and the nature of the deduction. Failure to furnish a statement of wages is an offence.

Part 4 is comprised of clauses 36 to 41 and deals with gratuities.

Clause 36 defines terms used in Part 4 of the legislation.

Clause 37, among other things, provides that the Cabinet may prescribe the minimum rate of gratuity that is to be shown in the accounts of customers in hotels, restaurants and other places of entertainment. Notwithstanding the minimum rate, Cabinet may exempt a specific business from it where the employer does not collect or receive gratuities in respect of services. The clause also provides that a person carrying on business in respect of which a minimum rate of gratuity has been prescribed shall show in all accounts rendered to customers a gratuity that is not less than the rate prescribed.

Clause 38 provides that the Cabinet may by regulations prescribe classes of employees who are entitled to be included in the distribution of gratuities by service employers.

Clause 39 provides that a service employer shall distribute all gratuities collected or received amongst the service employees twice per month on the day that service employee's wages are paid. An employer who contravenes this provision commits an offence and is liable on conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months. The service employer will also be required to distribute the gratuity amongst the service employees within a time period as the court may order.

Clause 40 stipulates that a service employer must keep a record in each month that services are provided to customers. The record must include the total amount of gratuities collected or received, each account rendered to a customer, the amount received by the employer, the name of each service employee who carried out duties during the period and the distribution of gratuities made to service employees. An employer who fails to keep such record or an employer who knows that the record is false or misleading is liable on conviction to a fine of twenty-five thousand dollars and to imprisonment for a period of twelve months.

Clause 41 provides that an offence is committed where a service employer fails to display a notice stating the rate of gratuity applicable to the services provided.

Part 5 provides for clauses 42 to 48 and deals with severance pay.

Clause 42 sets out the basis on which an employee is entitled to severance pay. Every employee who has exceeded one year in continuous employment with an employer or a predecessor-employer is entitled upon termination for reasons other than dismissal, to severance pay. In the event of bankruptcy or winding-up, liability for severance pay shall be paid in priority to all other debts.

Clause 43 provides that severance pay shall consist of two weeks' wages for each completed year of employment up to a maximum of twenty-four weeks' wages at the employees' highest basic wage except in cases of unfair dismissal. Where the redundancy is found to be a case of unfair dismissal, the employee shall be entitled to an award of four weeks' wages for each completed year of employment up to a maximum of forty-eight weeks' wages at the employee's highest basic wage. The severance pay in cases of unfair dismissal shall be in addition to any other award for unfair dismissal under this legislation.

Clause 44 provides that an employer shall pay severance pay to an employee entitled to severance pay in accordance with Part 5. Where the employee is in the construction or agricultural sector and termination is temporary, an employer is not required to pay severance pay to an employee except where the recall date is thirty days or more in the future or where no date of recall is given.

Clause 45 provides for severance pay where the employer's business is sold or there is a transfer in ownership. Where an employee is offered the same employment by the successor-employer there is no entitlement to severance pay and the tenure of employment for such an employee for subsequent severance pay purposes shall be from the original date of hiring by original predecessor-employer.

Clause 46 provides for the liability of predecessor and successor employers. Where an employee accepts employment with a successor-employer under clause 45 that successor-employer shall be responsible for the employee's severance pay computed on the basis of the tenure of employment by that employer and all predecessor-employers.

Clause 47 requires that every employer keeps an accurate record of the hiring date of every employee and the dates of all temporary terminations and re-employments. It also provides that an employer must make that record available to the employee for inspection upon request. An employer who contravenes the provisions of this clause commits an offence.

Clause 48 provides that in the event of any question regarding the date of hiring or whether severance pay is due then the employee or the employer or their respective representatives may seek resolution of the question by filing a complaint with the Director.

Part 6 provides for clauses 49 and 50 and deals with retirement and resignation allowances.

Clause 49 provides for retirement or resignation allowances. An employee, other than a person employed to do housework in a private residence, who has worked with an employer for one year or more and voluntarily retires or resigns from the employment and is not entitled to a pension under the National Pensions Law (2012 Revision) shall be paid a retirement or resignation allowance, as the case may be in addition to any other allowance or monies to which the employee is entitled. The allowance shall be equal to one week's wages at the employee's latest basic wage for each completed twelve month period of employment.

Clause 50 provides for the filing of a complaint with the Director to resolve any questions regarding the date of hiring or the amount of retirement/resignation allowance due to an employee.

Part 7 comprises clauses 51 to 61 and deals with unfair dismissal.

Clause 51 provides for the application of Part 7 to an employee who has been terminated during the probationary period on grounds other than for gross misconduct, employees who have completed the probationary period and where the employee is not employed on probationary terms, the employee has completed three months of continuous employment with the employer. The clause also provides that termination by an employer of an employee's employment shall be fair if it is in accordance with clauses 52 or 53.

Clause 52 provides that an employee is not unfairly dismissed if employment is terminated at the expiration of a single fixed term specified at the time of employment. Where there is less than thirty calendar days intervening between succeeding contracts, such contracts will be considered as continuous employment.

Clause 53 sets out that dismissal is not unfair where the reason for it is, among other things, misconduct, failure of the employee to perform duties in a satisfactory manner following a written warning, redundancy, employee is working under a work permit and a Caymanian or the spouse of a Caymanian or a permanent resident with the right to work has contracted to accept the position.

Clause 54 provides that "constructive dismissal" includes circumstances in which the employer does not expressly dismiss an employee but creates or allows circumstances in the workplace that would make it impracticable for a reasonable person to remain in employment with the employer.

Clause 55 provides that an employer may terminate employment where the employee has been found guilty of misconduct that is so serious that the employer cannot reasonably be expected to any other course than termination. Serious misconduct includes committing criminal offences in the course of employment and the use of drugs or alcohol during work hours.

Clause 56 provides that where an employee fails to perform duties in a satisfactory manner the employer may, where there is no improvement after giving the employee a written warning, terminate employment.

Clause 57 states that the events that may give rise to redundancy include modernization or automation of processes, discontinuance of all or part of a business, sale or transfer, reorganization of the business, reduction or contraction in the volume of work or sales and the impracticality of carrying on business due to an act of God or other circumstances beyond the control of the employer.

The clause also provides that every employer with five or more full-time employees shall, where any full-time employee is terminated on the basis of redundancy, business closure, down-sizing, cost containment or any other form of rationalization, provide a report to the Director on the termination and for every ensuing six-month period for a period up to twenty-four months after the termination or for such period of time as the Director may specify.

Clause 58 provides that an employee may file a complaint with the Director for a determination on whether he or she has been unfairly dismissed within ninety days of the date of dismissal.

Clause 59 provides that where a Labour Tribunal makes a determination of unfair dismissal it may order the payment by the employer of a sum of money to the dismissed person as compensation for the unfair dismissal. As an alternative to the award of money the Tribunal may award an order for reinstatement or an order for reengagement.

Clause 60 provides that an employee may make a disclosure in writing where the employee reasonably believes that an employer has failed to comply with the legislation. Where an employee makes a disclosure, an employer shall not subject an employee to victimization or threats of victimization on account of a disclosure. An employee who reasonably believes that he or she has been subject to victimization as a result of a disclosure may make a complaint to a Labour Tribunal.

Clause 61 provides that every contract of employment shall state the established age of retirement and such date shall not be earlier than sixty-five years except where industry standards require otherwise. Employers are also required to advise an individual employee of the date of retirement and the steps to be taken by the employee regarding receipt of pension and any other payments due upon retirement. It is an offence where an employer fails to state the established age of retirement.

Part 8 consists of clauses 62 to 75 and deals with health, safety and welfare at work.

Clause 62 provides for the extending of the definition of “workplace” in the legislation to any place that is not covered in that definition, by way of regulations, where the Cabinet considers this extension necessary or expedient.

Clause 63 provides that every employer, other than the employer of a household domestic, who operates a workplace shall within one month of commencement of operations file a written notice stating the particulars set out in the Schedule. The Director shall register the workplace where the Director determines that the workplace complies with the health, safety and welfare provisions in this Part or substantially complies with this Part and attaching such remedial terms as the Director thinks fit.

Clause 64 provides that every operator of a workplace shall as far as practicable ensure that the health, safety and welfare of employees at the workplace are preserved.

Clause 65 provides that every employer shall provide workmen’s compensation insurance covering all employees or enter into a bond in an amount to be determined by the Director.

Clause 66 provides that the operator of a workplace shall ensure that, among other things, a workplace is clean, has adequate ventilation and light, sanitary drinking facilities with an adequate supply of drinking water, implements fire hazards rules and procedures, has adequate restrooms and waste disposal procedures for hazardous materials. The operator of a workplace is required also to ensure that machinery used is operated in a manner consistent with safety and that all buildings are well maintained.

Clause 67 provides that it is the duty of the operator of a workplace to ensure that, among things, employees are protected from noxious substances used or present in the workplace and that suitable safety gear is worn by employees when they are around machines or utilizing processes for which the safety gear is recommended.

Clause 68 provides that the operator of a workplace, including a person employing a household domestic, shall immediately notify the Director where there is an accident or injury involving an employee and also the occurrence of any occupational disease or illness in a workplace.

Clause 69 provides that employees must use all means and equipment provided by an employer. The wilful misuse or damage of equipment provided is an offence.

Clause 70 provides that where the Director is of the opinion than an employer is in breach of this Part, the Director may serve a remedial notice on that employer. A person served with a remedial notice may appeal to the Appeals Tribunal in accordance with the provisions set out in section 84.

Clause 71 provides that the operator of a workplace who, having been served with a remedial notice, fails to comply with its requirements commits an offence and is liable on summary conviction to a fine of one thousand dollars and a fine of one hundred dollars for each day that the offence continues.

Clause 72 provides that where there is a work related accident and there is a formal investigation or a coroner's inquest into the accident, criminal proceedings may be instituted up to two years after the date of the report or the conclusion of an inquest into the accident.

Clause 73 provides that the Director shall take such steps as may be necessary to ensure that there is compliance with this Part including investigating complaints, and carrying out routine inspections or carrying out investigations to determine compliance with this Part.

Clause 74 provides that where a workplace is on leased premises and the lease agreement prevents the carrying out of alterations that would make the workplace conform to any requirement under this Part, the Grand Court may, upon an application from either the owner of the premises or the operator of the workplace, order such adjustments to the lease agreement as will facilitate the making of alterations.

Clause 75 provides that the Cabinet may make regulations prescribing, among other things, the safety measures to be taken in respect of machinery, any process, activity or operation of any type, prohibiting the use of any substance, the confirmation of any certification that supports the competency of any person to operate forklifts, cranes or any other equipment used in construction or industrial workplaces. The Cabinet is also employer to make regulations prescribing arrangements for the licensing, training or certification by the Director of site safety supervisors, occupational health and safety trainers or temporary workers entering the Islands for the purpose of conducting training.

Part 9 provides for clauses 76 to 85 and deals with administration.

Clause 76 provides for the establishment of the Department of Labour and Pensions. The appointment of the Director, Deputy Director, labour inspectors and all other staff of the Department shall be in accordance with the terms and conditions of employment set out in the Public Service Management Law (2013 Revision).

Clause 77 sets out the responsibilities of the Director. The responsibilities include the promotion of good labour relations and productivity in the work place, ensuring occupational safety and health in the workplace, creating public awareness of good labour relations, the use of alternative means of dispute resolution to resolve conflict in the work place and co-operation with stakeholders and agencies of Government.

Clause 78 provides that the Director, the Deputy Director and labour inspectors shall have, when performing duties regarding the imposition of administrative penalties, the same powers as conferred on a constable under the Police Law (2014 Revision) and may enter any workplace without prior notice at any time during work hours, to carry out tests as may be necessary to ensure that this Law is being complied with and require the production of records required to be maintained by this Law.

Clause 79 provides for the establishment of Labour Tribunals for the purpose of hearing complaints from employers and employees. The members of a Labour Tribunal shall be selected from persons appointed by the Cabinet. The persons constituting a specific panel shall be appointed by the Cabinet to that panel and where the Tribunal consists of more than one person, the Cabinet shall designate the chairperson.

Clause 80 states that where any question arises on an issue related to, among other things, notice, vacation entitlement, unpaid wages, violation of leave benefits, unlawful deductions, improper administration of gratuities or constructive dismissal, the employee or employer may file a complaint with the Director. Where there are a number of complaints raising the same or similar issues the Director may consolidate the complaints into a single proceeding.

Clause 81 states that the Director shall notify the employer concerned within thirty days of receipt of a complaint and invite the submission of a response in writing from the employer within thirty days. Where a response is not received within thirty days, the Director may submit the complaint for hearing by a Labour Tribunal where the Director is of the opinion that the complaint has merit. Where a response is received within thirty days, the Director may make recommendations as to how the complaint shall be dealt with. Either party to a complaint may appeal the Director's decision regarding the complaint. A decision of the Tribunal shall be final and binding between the parties.

Clause 82 provides that in the event of any question regarding, among other things, the date of hiring, severance pay due, the giving of notice, vacation leave entitlement, unpaid wages, then the employee or the employer or their respective representatives may seek resolution of the question by filing a complaint to the Director.

Clause 82 provides that any person who refuses to comply with a decision of a Labour Tribunal commits an offence and is liable on summary conviction to a fine of five hundred dollars for each day that the offence continues in addition to any penalties that may be applicable under clause 89(2). Any award made by a Labour Tribunal may be registered in the Grand Court and, upon such registration, is enforceable as an order of the court. On the winding up of a business or the appointment of a receiver, the claims of an employee in relation to the payment of, among other things, vacation leave, wages, overtime,

performance merit pay or severance pay shall have priority over all other claims including the claims of the Crown.

Clause 83 provides for the establishment of an Appeals Tribunal for the purpose of hearing appeals against decisions of a Labour Tribunal.

Clause 84 provides for appeals from decisions of the Labour Tribunal. A person who is aggrieved by the specified decisions of a Labour Tribunal may within fourteen days of notification of the decision appeal to the Appeals Tribunal. Decisions of the Appeals Tribunal shall be final and binding on all parties except where an appeal is made on a point of law in accordance with clause 85.

Clause 85 provides that an appeal may be made to the Grand Court from a decision of an Appeals Tribunal on a point of law. An appeal shall not operate as a stay of any award, order or decision of a Labour or Appeals Tribunal unless the Grand Court so orders.

Part 10 consists of clauses 86 to 96 and deals with general penalties and miscellaneous provisions.

Clause 86 provides that no person shall discriminate with regards to a person's hire, promotion, dismissal, tenure, wages, hours or other conditions of employment by reason of, among other things, the person's sex, race, colour, language, religion or political opinion. Where preference is given to a Caymanian in relation to hiring, such preference shall not be regarded as discriminatory. It provides also that employer shall not victimize or discriminate against an employee where the employee has made a complaint in good faith regarding harassment, bullying, unethical behaviour, financial impropriety, among other areas of non-compliance with the legislation. An employee who reasonably believes that an employer has failed to comply with the legislation may make a disclosure to the Director. The clause also provides that the provision should not be construed as prohibiting the taking of any personnel action genuinely related to an employee's ability to discharge any duties in question.

Clause 87 provides that a person shall not hold a child in slavery, require a child to perform compulsory labour, recruit a child for armed conflict, procure a child for prostitution or pornography, procure a child for the trafficking of drugs or require a child to carry out work that by its nature is likely to harm the health, safety or morals of the child. A person who contravenes these provisions commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years or to both.

Clause 88 sets out the penalties for contravening specified provisions of the legislation.

Clause 89 provides for offences relating to the wilful making of a false entry in a register, making or signing a false declaration, and making use of a false entry or

declaration. The clause also provides for the offences of obstructing an inspector in the exercise of any power conferred by the legislation.

Clause 90 provides that the Cabinet may make regulations providing for an administrative penalty system.

Clause 91 provides that where an entry in a register or record is required to be made by this legislation by an employer or the operator of a workplace the entry shall be admissible against the employer or the operator in any proceedings as evidence of the facts stated in it.

Clause 92 provides for the service and sending of documents. Any notice or decision or other document required to be served under the legislation may be served by sending it by prepaid registered post to the last known address or by handing it to the person or by leaving it at the person's residence. A notice may be served on a company by handing it to an officer of the company or by leaving it at its registered office. A notice or decision or other document required to be served may be served by electronic mail where its delivery is in accordance with section 8 of the Electronic Transactions Law (2003 Revision).

Clause 93 provides for the making of regulations under the legislation. The Cabinet may make regulations prescribing all matters that are required by the legislation to be prescribed or that are necessary or convenient to be prescribed for giving effect to the purposes of the legislation. The Director may, by order approved by the Cabinet, prescribe the format of any notice, application, complaint, report or other document required by the legislation.

Clause 94 provides that the Cabinet may give to the Department of Labour or any statutory authority carrying out a function under the legislation, directions as to the carrying out of such function.

Clause 95 provides for additional functions for the Chief Officer under this Law. These functions include the provision of such services as may be prescribed by regulations for the purpose of finding employment for Caymanians or supplying employers with Caymanian employees.

Clause 96 provides for the repeal of the Labour Law (2011 Revision) and the Employment Law, 2004 (Law 3 of 2004).

Clause 97 sets out the savings and transitional provisions.

The Schedule provides the details of the notices required under clauses 63 and 68.

THE LABOUR RELATIONS BILL, 2015

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CAYMAN ISLANDS

A BILL FOR A LAW TO REPEAL THE LABOUR LAW (2011 REVISION); TO PROVIDE FOR THE RE-ORGANIZING OF LABOUR AND RELATED OPERATIONAL PROCEDURES IN THE ISLANDS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Labour Relations Law, 2015. Short title and commencement
(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.
2. In this Law - Interpretation
“ante natal care” is any care pertaining to or concerned with the health and well-being of a woman during pregnancy;
“Appeals Tribunal” means the tribunal established under section 83;
“basic wage” means the ordinary wage due to an employee under the employee’s contract of employment;
“Caymanian” has the meaning assigned in the Immigration Law (2014 Revision); (2014 Revision)
“Chief Officer” means the chief officer in the Ministry responsible for labour or the chief officer’s designate;

“child” means a person under the age of eighteen years;

“complaint” means a formal complaint made to the Director under this Law;

“conditions of service” or “conditions of employment” refers to the elements of hire and termination of employment, to the remuneration, hours of work, duties and the surrounding terms of employment and to all other factors related to the employment arrangement;

“continuous employment” shall be interpreted in accordance with subsection (2);

“contract of employment” means any agreement, understanding or arrangement whatever, whether written or oral, express or implied, whereby it is agreed between an employee and an employer that the employee will be employed under a contract of service;

“Court”, save where the context indicates otherwise, means the Summary Court;

“Department” means the Department of Labour and Pensions;

“Director” means the Director of Labour and Pensions;

“employee” means a person who is employed wholly or mainly in the Islands for remuneration under a contract of employment or a person who performs services wholly or mainly in the Islands for another person for remuneration on such terms and conditions that the relationship with that person more closely resembles that of an employee than that of an independent contractor, but, for the purposes of this Law, does not include a person who is -

- (a) a child still attending full-time education;
- (b) a self-employed casual worker;
- (c) a temporary employee, being a person who is employed for no more than three months in any year by the same employer;
- (d) a student, including a student undertaking full-time studies at a local or overseas post-secondary institution who is working only during holiday from school;
- (e) a voluntary worker, being a person who works on a voluntary basis for a charity or philanthropic organization; or
- (f) such other persons as may be prescribed by regulations;

“employees of managerial level” include persons who plan, organize, control, co-ordinate or direct the business of an employer or a part of such business;

“employees of professional level” include persons who perform professional functions in the fields of physical and natural sciences, engineering, law, medicine, religion, education, literature, art, entertainment or sport;

“employer” means any person who has entered into or stands ready to enter into a contract of employment with an employee, and includes any agent, representative or manager of such person who is placed in authority over an employee;

“established age of retirement” or “established retirement age” means the date that has been agreed between the employer and the employee, in a contract of employment, as the minimum age at which the employer may terminate the employee for the purposes of retirement, such minimum age being no earlier than sixty-five years except where professional or industry standards or requirements mandate an earlier age;

“gratuity” means any money or other thing of value collected or received from a customer or client by the employer or owner of any business which is in excess of the basic contractual liability of that customer and is, or is purported to be, collected or received in respect of the quality of service afforded to that customer and, without prejudice to the generality of the foregoing, includes any sum whether calculated on the basis of a fixed percentage or otherwise, levied on the amount charged to the customer of any hotel, condominium, restaurant, licensed premises or other place of entertainment, and expressed to be in respect of service;

“household domestic” means a person employed in a private home as a maid, a child care worker, care giver or gardener and who is working on a full-time or part-time basis and who is not an independent contractor or an employee of an independent contractor;

“inspector” means a labour inspector;

“labour officer” means a person appointed as a labour officer under section 76 and includes a labour inspector;

“maternity leave” means the period of leave, paid or unpaid, that a female employee is entitled to as a result of pregnancy and childbirth and may occur during the pregnancy, childbirth and the postnatal period;

“mental impairment” has the meaning assigned in the Mental Health Law, 2013;

Law 10 of 2013

“Minister” means the member of the Cabinet charged with responsibility for labour;

“National Minimum Basic Wage” means the current basic wage prescribed by the Cabinet under section 22;

“operator of a workplace” means one or more persons responsible for operating, managing or supervising a workplace, and includes any person with actual, apparent or ratified authority to act on behalf of that person and, as the purposes may require, includes the employer and owner of a business;

“overtime pay” has the meaning assigned to it by section 29;

“part-time employee” means an employee whose contract of employment requires the employee to work between fifteen and thirty hours per week;

“paternity leave” means the period of leave, paid or unpaid, that a male employee is entitled to as a result of the birth of his child;

“predecessor-employer” in relation to the employment of an individual as it affects the individual’s right to severance pay, means a person by whom that individual was employed, and who subsequently transferred the business in which that person was employed to a new owner in circumstances that the employment of the employed individual is continued by the new owner of the business;

“probation period” means a period of employment governed by section 9;

(2007 Revision)

“public holiday” means a day declared to be a Public General Holiday under the Public Holidays Law (2007 Revision);

“remedial notice” means a notice under section 70;

“Residency and Employment Rights Certificate” has the meaning assigned in the Immigration Law (2014 Revision);

“self-employed casual worker” means a person who is engaged on an irregular or intermittent basis, such engagement being on a short-term basis with a maximum of fifteen hours per week for a period of no more than ninety days of service with a single employer;

“severance pay” has the meaning assigned to it by section 42;

“sick leave” means leave taken under section 18;

“standard work week” has the meaning assigned to it by section 26(1);

“successor-employer” in relation to the employment of an individual as it affects the individual’s right to severance pay, means a person who takes over the business in which that individual is employed from a predecessor-employer of that individual and continues to employ the individual in the same employment;

“wage” means any money together with any other thing agreed to be paid or given by an employer to an employee as recompense, reward or remuneration for services rendered under a contract of employment but does not include tips or gratuities;

“work permit” has the meaning assigned in the Immigration Law (2014 Revision); and

“workplace” means any premises in which any employee is employed to work and, without prejudice to the generality of the foregoing, includes any shop, office, licensed premises or factory but does not include, in respect of a household domestic employed there, a private home.

Application

3. This Law does not apply to the public service on the condition that the Public Service Management Law (2013 Revision) does not prescribe standards or

permit conditions of service which are less favourable to the employee than those required by this Law.

4. (1) A copy of this Law, including any forms and any regulations made hereunder, and a notice of the Director's contact information, including the physical address of the Director's office, email address and telephone numbers, shall be made available in an area in the workplace that is accessible to all employees or on a portal accessible to all employees, such copy and notice being in a form that each can be conveniently accessed and utilized by all employees.

Availability of this Law

(2) The Director may direct that any of the documents referred to in subsection (1) shall be made available for inspection or posted in such parts of the workplace in addition to or in substitution for the area selected by the employer under subsection (1).

(3) Where the number of employees at a workplace numbers three or less, the Director may waive or vary the requirement under subsection (1) to post a copy of this Law and substitute in its place a requirement that the employer shall display a notice stating that a copy of this Law may be inspected at the office of the Director.

(2013 Revision)

(4) An employer shall ensure that at all times the documents referred to in subsection (1) are kept current and that steps are taken to prevent the defacing or removal of the documents.

(5) An employer who fails to keep the documents referred to in subsection (1) current commits an offence and is liable on summary conviction to a fine of five hundred dollars.

5. Nothing in this Law shall be construed as prohibiting an employer from establishing conditions of service more advantageous to any employee than those minimum employment standards established by this Law.

Establishment of conditions above minimum standards

6. (1) Subject to section 5, any employer who offers or provides employment under terms and conditions of employment which do not conform to this Law commits an offence and is liable on summary conviction to a fine of two thousand five hundred dollars or to a term of imprisonment of six months or to both.

Conformity with the Law

(2) Any provision in any contract of employment which contravenes this Law, or which establishes conditions of service which fall below the minimum employment standards established by this Law, shall be, to the extent of such contravention, void and of no effect.

7. (1) Every employer who enters into a contract of employment with an employee shall -

Statement of employment conditions

(a) within ten working days of entering into such contract; or

- (b) within seven working days of a written request from the employee on entering into the contract of employment,

furnish the employee with a written statement of the conditions of employment in accordance with subsection (2).

(2) The written statement referred to in subsection (1) shall state -

- (a) the job title, a brief statement of the general responsibilities and duties of the employee and of any special requirements or conditions of the job;
- (b) the regular hours of work, together with any particular terms or conditions relating to the hours of work;
- (c) the rate of remuneration or the method by which it may be calculated;
- (d) the intervals at which remuneration is to be paid;
- (e) in the case of employees whose pay is normally stated on some basis other than hourly, the hourly equivalent save that in the case of persons remunerated wholly or in part by commission the rate of commission shall be stated;
- (f) the period of employment, if other than indefinite;
- (g) the period of probation, if any;
- (h) the employee's holiday entitlement or the method by which it may be calculated;
- (i) the employee's entitlement to sick leave;
- (j) the length of notice which the employee is required to give and is entitled to receive regarding the termination of the contract of employment;
- (k) the established age of retirement from work;
- (l) the original date of employment and the dates of any promotions or re-designations; and
- (m) an outline of the employer's procedures for discipline, grievance, performance management, dispute resolution, induction and orientation and the employment preference for Caymanians,

and shall be signed by both parties and dated.

(3) Whenever, subsequent to the giving of a statement under subsection (1) or (2), any material change is made in any of the terms of employment set out in the statement, the employer shall forthwith furnish the employee with an amended statement embodying the change and this document shall be signed by both parties and dated.

(4) An employer who fails to provide the written statement of conditions of employment in accordance with this section commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

8. Any person who is re-employed by the same employer or, where the severance pay required under this Law has not been paid to the employee, by the successor-employer, within thirty days of the termination of employment, shall not be regarded as a new employee, but the employment shall be regarded as continuous with the earlier period of employment for the purposes of the calculation of the period of probation and of any benefits under this Law.

Re-employment within
thirty days of
termination

9. (1) A new employee may, if mutually agreed in writing between the employee and the employer, be employed on probationary terms for an initial period not exceeding six months in duration.

Probation period

(2) Immediately prior to or on the date of expiration of the initial probationary period, that period may be extended by mutual agreement for a term not exceeding a further six months, provided that such agreement shall be in writing and signed by both parties thereto.

(3) During the probationary period, an employee shall be given reasonable training in the duties of the position for which the employee was hired, and shall be kept informed of the progress of the employee.

(4) Upon confirmation of employment after a probationary period all earned benefits under this Law shall be deemed to have accrued from the commencement of the probationary period.

(5) An employee's employment may be terminated during the probationary period on the basis of gross misconduct or for good cause and the reason for such termination shall be given to the employee in writing.

(6) Where a probationary employee is terminated during the probationary period, except where the termination is for gross misconduct or for good cause, and the employer failed to provide -

- (a) reasonable training in the duties of the position for which the employee was hired; or
- (b) reasons for the termination,

the employee shall be considered as having been unfairly dismissed and may initiate proceedings in accordance with section 58.

10. Where the contract of employment is for a fixed term it shall terminate automatically and without further notice on the expiration of that term unless previously extended by prior agreement, or unless the terms of the contract specify otherwise.

Termination: fixed term
contract

11. (1) Subject to sections 10, 53, 55 and 56, an employer shall give advance notice in writing to the affected employee of an intention to terminate that person's employment as follows -

Termination by notice:
employer's notice

- (a) with respect to an employee within the probation period, at least twenty-four hours' notice; and
- (b) with respect to all other employees, notice at least equal to the interval of time between the employee's pay days,

on the condition that in no case need the period of notice exceed thirty days unless an employment contract calls for a longer notice period.

(2) After giving due advance notice to terminate employment, an employer may terminate the employment prior to the effective date of termination under the notice, provided that the employer pay the employee a sum equivalent to that which the employer would have paid if the employee had worked throughout the period.

(3) If the employer has not exercised the option provided in subsection (2), the employer may require the employee to render normal services until the effective date of termination under the notice, at the regular wage last being received by the employee.

(4) An employer, having given due advance notice to terminate employment and not having exercised the option provided in subsection (2), shall be discharged forthwith of any obligation to pay the involved employee's regular wage upon the employee voluntarily quitting employment prior to the effective date of termination under the notice.

(5) The provisions of this section are subject to the provisions of Part 7.

Termination by notice:
employee's notice

12. (1) Subject to section 10, an employee shall give notice to the employer of an intention to quit employment as follows -

- (a) during the probation period, at least twenty-four hours advance notice;
- (b) when a period of notice is required by the contract of employment, that period; and
- (c) in all other cases, notice equal to the interval of time between pay days or thirty days, whichever is the less.

(2) Any employee who fails to give sufficient advance notice under subsection (1) may, at the employer's option-

- (a) be dismissed prior to the date that the employee intended voluntarily to quit by the number of hours or days by which the employee's notice fell short of the required period of advance notice; and
- (b) forfeit all vacation leave accrued during the current employment year.

Statement upon
termination

13. (1) Where an employer has, subsequent to an employee's completion of six month's employment, terminated the employee's employment the employer shall provide a statement setting out -

- (a) the name and address of the employer;
- (b) the nature of the employer's business;
- (c) the length of the employee's period of continuous employment;
- (d) the capacity in which the employee was employed;
- (e) the wages and other remuneration payable at the date of termination of the contract; and
- (f) where the employee so requests, the reason for the termination,

within five days of termination of the employee and if the employee so requests the employer shall send a copy thereof to the Director.

(2) In all cases of termination of a contract of employment the employer shall, upon a request made by the employee concerned at any time within one year of the expiry of the period specified in the employer's notice, furnish within fourteen days of such request a statement specifying the dates of engagement and termination and the type of work on which the employee was employed.

(3) An employer who furnishes a statement under subsection (1) or (2) shall be bound by the contents thereof in any proceeding under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

(4) An employer who fails to furnish either a statement under subsection (1) or (2) shall be prohibited from introducing evidence as to any facts which might have been recited in the said statement in any proceedings under this Law concerning the fairness of the dismissal or the employer's liability for severance pay.

(5) An employer who fails to furnish either a statement under subsection (1) or (2) commits an offence and is liable on conviction to fine of two thousand five hundred dollars or imprisonment for a term of six months or to both.

(6) For the avoidance of doubt -

- (a) the duty to furnish a statement pursuant to subsection (1) or (2) is discharged on the first occasion an employer furnishes such a statement; and
- (b) the periods of time referred to in this section shall exclude any periods of time where a national emergency is declared.

(7) In determining an employee's period of continuous employment the following shall apply -

- (a) the period of continuous employment shall begin with the first day on which the employee commences work for the employer, including any probationary period, and shall continue up to the date of termination;
- (b) it shall be presumed, unless the contrary is shown, that the employment of an employee is continuous; and
- (c) an employee's period of continuous employment shall be deemed to continue during any period of absence from work due to -
 - (i) the employee taking leave, whether annual leave, maternity leave, sick leave or any other leave in accordance with this Law or the employee's contract of employment, provided that the established limits are not exceeded;
 - (ii) suspension from work for purposes of discipline or an investigation with or without pay, in accordance with this Law;
 - (iii) the termination of the employment contract, where the employee is reinstated or re-engaged under this Law or a contract of employment within a period of six months of the termination;
 - (iv) the inability of the employee to work on account of an occupational disease or accident resulting from that employment; or
 - (v) an agreement between the employee and the employer.

PART 2 - Leave

Application of leave provisions

14. This Part applies to every employee who is not a self-employed casual worker and who has completed the probation period or any lawful extension thereof.

Vacation leave

15. (1) Subject to section 16, every employee to whom this Part applies shall be entitled to, and the employer shall give the employee, earned vacation leave with pay for the number of working days that is necessary if taken in an unbroken period to give the employee at least the period of earned leave in each twelve month period of employment which is specified in respect of each such period in subsection (3).

(2) Every employer shall agree in writing that the entitlement of earned vacation leave shall accrue proportionately to the employee at the end of each month during each twelve-month period of employment.

(3) The minimum entitlement of earned leave referred to in subsection (1) is set out in column 2 depending on the respective period of employment in column 1 -

Period of employment	Minimum annual entitlement to earned leave in respect of each twelve month period of employment
Not exceeding 4 completed years	2 weeks
Exceeding 4 years but not exceeding 10 completed years	3 weeks
Exceeding 10 completed years	4 weeks,

and the minimum annual entitlement of earned leave shall be in such proportions and at such time as the employer and employee shall agree.

(4) The Cabinet may, by regulations, prescribe that employers in such industries or businesses as may be specified in the regulations, being industries or businesses which have seasonal employment requirements, shall -

- (a) apportion leave in accordance with the time worked by their employees during each year; and
- (b) require their employees to take their leave during such periods in each year as may be specified in the regulations as being the agreed leave periods for the employer's industry or business.

(5) Earned vacation leave shall be above and beyond and shall not include any public holiday leave as provided for by section 17, any sick leave as provided for by section 18 or any daily or weekly non-work periods as provided for by section 25.

(6) The dates for the taking of earned vacation leave shall be fixed by agreement between employer and employee.

(7) By mutual agreement the employer may advance vacation leave not yet earned.

(8) The earned vacation leave specified in subsection (1) is not a cumulative entitlement and shall be taken annually in an unbroken time period, unless the employer and employee agree otherwise.

(9) An employer shall not compel an employee to forego the taking of earned vacation leave even though the employer pays or offers to pay in lieu thereof and in addition to the employee's normal wage, the wage the employee would have received had the employee taken the leave.

(10) Any person whose employment is terminated for any reason shall, subject to section 12(2)(a), thereupon receive, in respect of every day of earned vacation leave due at the time of such termination, a sum of cash equal to the remuneration for each such day.

(11) Upon an employee's completion of the probationary period, payment of such a sum in respect of earned vacation leave shall be granted on a pro rata basis where the employment is terminated notwithstanding that the employee has not completed the twelve-month period to which it relates.

(12) Where the remuneration under subsection (11) would normally include anything other than money then the amount due on termination shall include the cash equivalent of such thing, calculated in accordance with section 30(3)(c).

(13) The rate of pay for each day of earned vacation leave shall not be less than the basic daily wage of the employee concerned at the commencement of the vacation leave.

(14) Every employee to whom this Part applies shall, in addition to any entitlement to earned vacation leave, be entitled (during each twelve month period of employment) to a maximum of five days' compassionate leave on the occurrence of a death or serious illness in the employee's immediate family provided reasonable evidence of such serious illness or death is provided to the employer; and for the purposes of this entitlement the employee's immediate family means the spouse, parents and children of the employee.

(15) In subsection (14), "serious illness" includes any period of a person's admittance to hospital as an in-patient, recuperation from such hospitalisation or any period of overseas travel related to such hospitalisation or recuperation.

(16) For the purposes of this section, "week" means the period of time that constitutes the employee's normal working week as set out in the contract of employment and shall be no more than the standard work week.

Part-time employees

16. Part-time employees shall earn vacation leave in the ratio that their actual hours of employment bear to the standard work week.

Public holiday pay

17. (1) If an employee does not work on a public holiday the employee shall be paid the basic wage that would have been normally received for work performed on that day had it not been a public holiday, provided the employee has worked the scheduled work day immediately before and the scheduled work day immediately after the said public holiday.

(2) Subject to subsection (3), if an employee does work on a public holiday the employee shall be paid at double the normal rate of pay for the hours actually worked that day, and where the employee works less than the full day the employee shall, in addition, be paid at the normal rate for any hours by which the time actually worked falls short of the normal working day.

(3) For the avoidance of doubt, the provisions of subsections (1) and (2) are not cumulative so that where an employee does work on a public holiday it is not necessary to add the entitlement under subsection (2) to the basic wage referred to in subsection (1).

(4) An employee may, by mutual agreement between the employee and the employer, take time off in lieu of a public holiday in which case the employee shall not be paid double the normal rate of pay for working on any such holiday.

(5) In the case of employees of professional or managerial level and above, the parties to a contract of employment may agree that subsections (1) and (2) shall not apply, in which case the employee shall not be paid double the normal rate of pay for working on a public holiday.

(6) Notwithstanding section 14, an employee serving a probation period under section 9 is entitled to payment for public holidays.

18. (1) Subject to this section, each employee is entitled to sick leave on workdays, or parts thereof, during which the employee is ill or otherwise physically incapacitated for work.

Sick leave

(2) Sick leave shall be taken only in connection with actual illness or other physical incapacitation for work, evidence of which, in the form of a doctor's certificate or other satisfactory means, shall be furnished by the involved employee at any time upon request of the employer made under subsection (5) and in any event in respect of the third and any subsequent consecutive days of such leave.

(3) A doctor's certificate, furnished by an employee, that provides evidence that the employee was ill or otherwise physically incapacitated from working for the employer on a particular day shall be satisfactory evidence of that illness or incapacity for the purpose of the entitlement of the employee to sick leave pay under this Part.

(4) Subsection (3) shall not require an employer to accept a doctor's certificate as evidence of an employee's sickness or incapacity where there are reasonable grounds for the employer to suspect that the certificate has been procured in furtherance of, or as part of, a course of absenteeism.

(5) An employer may require an employee to provide a medical certificate in respect of any purported sick leave, no matter how short, where the employer is of the opinion that it forms part of a pattern of absenteeism.

(6) In the event that the employer considers that the extent of sick leave taken renders the employee unfit to continue in employment and terminates the employment therefor, the fairness of the termination shall be determined under Part 7.

(7) Every employee who is ill or otherwise physically incapacitated so as to justify absence from work under subsection (1) shall notify the employer of that fact as soon as reasonably practicable.

Sick leave pay

19. (1) For the first ten days of sick leave taken during any period of twelve consecutive months, calculated from the date of commencement of employment and any anniversary date thereof, an employee shall be paid the basic wage which the employee would have received had the employee worked on those days.

(2) Where an employee is injured and the injury arises in the course of the employment, if the employer has failed to provide workmen's compensation or extended sick leave disability benefits the number of paid days of sick leave available to the injured employee shall be increased to a maximum of ten days for each calendar year of employment as may be required, in addition to the annual or pro-rated sick leave entitlement of the employee where the injury is not as a result of the exceptions set out in section 3 of the Workmen's Compensation Law (1996 Revision).

(3) Where it is alleged that an employee's actions amounted to gross negligence on the employee's part or that an employee engaged in unsafe practices, those actions shall be confirmed in the accident report as being considered as gross negligence or unsafe practices within the context of the workplace by a certified site safety supervisor and the labour officer and the accident report shall be accompanied by the report of a medical doctor who is registered as a practitioner in accordance with the Health Practice Law (2005 Revision).

(4) The report in subsection (3) shall be submitted to the Director.

(5) An application for an increase in the number of paid sick days available to an employee under subsection (2) shall be supported by a medical certificate.

Maternity and adoption
leave

20. (1) Every female employee shall be entitled to fourteen calendar weeks maternity leave in any twelve month period in addition to time away from work to attend ante natal care appointments except that where the employee has not completed twelve months of employment with her employer, her maternity leave shall be calculated on a pro rata basis for the time that she has worked.

(2) An employee entitled to maternity leave under subsection (1) shall be entitled to receive and her employer shall pay -

- (a) in respect of any entitlement to maternity leave for a period not exceeding four calendar weeks, the basic wage that the employee would have received had she worked on those days; and
- (b) in respect of any period of entitlement to four calendar weeks maternity leave next following the first period of four calendar weeks, one half of the amount of the basic wage she would have received had she worked on those days; and
- (c) the remaining six calendar weeks at no pay.

(3) At any time during the period of maternity leave the employer may require, and the employee shall thereupon furnish, a doctor's certificate to demonstrate that the leave is being taken on account of maternity.

(4) Subject to subsection (3), maternity leave may be taken in whatever proportions before and after actual childbirth that the employee wishes, except that at least six weeks shall be taken immediately after giving birth, provided that an employee shall not work where a doctor certifies that it would, by reason of pregnancy, be deleterious to the health of the employee for her to work, and an employer may, at any time during pregnancy, require an employee to be examined by a doctor with a view to determining whether it would be deleterious to her health to continue work.

(5) An employee who is pregnant and who has, on the advice of a medical doctor made an appointment to receive ante natal care, is entitled to take time off during her working hours to attend the required appointment.

(6) An employee is not entitled to take time off under this section unless, where her employer so requests, she produces -

- (a) a certificate from a registered medical doctor confirming that she is pregnant; and
- (b) the appointment card or similar document confirming the appointment.

(7) An employee who has completed at least one year of continuous employment is entitled to be paid at her normal hourly wage for time taken off for ante natal care.

(8) An employee who is utilising the ante natal care benefit shall take such steps as to ensure, having regard to all the circumstances of the employment concerned, that time taken to attend to ante natal care is taken at such reasonable times as are agreed between the employer and the employee.

(9) A female employee who adopts a child under three years of age shall be entitled to adoption leave of nine calendar weeks and to receive from her employer the basic wage that the employee would have received had she worked on the days of her entitlement to adoption leave for a period not exceeding fifteen working days of that entitlement.

(10) Adoption leave may be granted to any female employee once in any thirty-six calendar month period.

21. (1) A male employee who is the biological father of a child and who at the expected date of delivery will have been employed by the same employer for at least twenty-four months or who last went on paternity leave on account of a birth that took place at least twenty-four months before that date and while working with the same employer is entitled to two weeks paternity leave.

Paternity and adoption
leave

(2) Where the male employee has not completed the relevant period of twenty-four months referred to in subsection (1), but has served for at least six months, he is entitled to leave and pay that shall be calculated on a pro rata basis in relation to the period of leave stated in subsection (1).

(3) An employee who is granted paternity leave is entitled to receive and the employer shall pay -

- (a) for the first five working days, the basic pay; and
- (b) for the next five working days, no pay.

(4) A male employee may request to take paternity leave in such a way that it covers periods before and after actual childbirth and the employer may grant such request.

(5) A male employee who has worked for the same employer for twenty-four months without taking paternity leave or who last received paternity leave (whether on account of adoption or the giving of birth by a female partner) at least thirty-six months previously while working with the same employer and adopts a child is entitled to paid adoption leave of one calendar week.

(6) For the purposes of this section a male employee adopts a child when he assumes the care of the child with a view to the formal adoption of the child by him.

(7) Where a male employee has not completed the twenty-four month period of employment referred to in subsection (1), but has served for at least six months, he is entitled to adoption leave and pay that shall be calculated on a pro rata basis in relation to the period of one week therein referred to.

(8) A male employee may request that adoption leave be granted in such a way that it covers periods before and after he assumes care of the child.

PART 3 - Remuneration and Hours of Work

National Minimum
Basic Wage

22. (1) Subject to subsection (2), the Cabinet may, by Order, prescribe a National Minimum Basic Wage.

(2) An Order under subsection (1) may only be made, varied, amended or revoked after consideration of recommendations made to the Minister by a Minimum Wage Advisory Committee established under section 23.

(3) A National Minimum Basic Wage prescribed under subsection (1) shall not apply to the payment of wages to children required by any law to attend school.

Minimum Wage
Advisory Committee

23. (1) The Cabinet may establish a Minimum Wage Advisory Committee to investigate and enquire into all matters related to the appropriate level of a

National Minimum Basic Wage, and to make recommendations as to the minimum rates of wages which should be payable.

(2) The Cabinet may make rules governing the procedure of any such Committee but, subject to any such rules and to subsections (3) to (9), the Committee shall have power to regulate its own proceedings.

(3) The Committee shall consist of a minimum of nine members who shall be appointed by the Cabinet, and who shall reflect an equal number of employers, employees and independent persons representing such related interests as the Cabinet may see fit.

(4) The Cabinet shall designate one member of the Committee as the chairperson thereof.

(5) The quorum of the Committee shall be five members, including the chairperson.

(6) All questions arising at any meeting of the Committee shall be determined by a majority of votes of all members, including the chairperson, who are present, and subject to sub-section (5), no such determination of the Committee shall be invalid by reason of any vacancy or absence among the members.

(7) The Committee may, at any time it deems it expedient to do so, call in the aid of one or more assessors, specially qualified in the opinion of the Committee in the matter under investigation.

(8) The Committee shall have power to take evidence from witnesses, to require the production of relevant documents and to take evidence on oath.

(9) The Committee shall make such interim reports of its investigations and recommendations as the Minister may require, and shall, as soon as possible after the conclusion of its investigations and deliberations, make a final report including recommendations, to the Minister.

24. (1) Where a National Minimum Basic Wage has been fixed under section 22 it shall be an offence for an employer to employ or to pay any employee at a basic wage less than the minimum wage prescribed by the Order.

Penalty for not paying minimum wage

(2) Subsection (1) shall not apply to the payment of wages to children to whom section 22(3) applies.

(3) Where an employer has been convicted of an offence under subsection (1) then, if notice of an intention so to do had been served upon the employer with the summons or warrant, evidence may be given before sentence of any failure on the part of the employer to pay wages at the minimum rate to the employee concerned during the two years immediately preceding the date on which the information was laid.

(4) On proof or admission of the employer's failure under subsection (3), the Court upon sentencing the employer may order the employer to pay to the employee, in addition to any fine or other penalty, such sum as in the opinion of the Court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus interest at the rate of ten per cent per annum from the date any wage was due until it is paid.

(5) An order made under subsection (4) may be enforced in the same manner as if it were a fine.

(6) In calculating the wage paid to an employee for the purposes of the application of this section, gratuities shall be disregarded.

Rest period

25. (1) Every employer shall permit each employee to enjoy, within every period of seven consecutive days, a period of rest comprising at least twenty-four consecutive hours.

(2) Every employer in a specified industry or business shall permit each of the hourly-paid employees during each period of work -

- (a) of three to five hours, a minimum of a fifteen minute break;
- (b) of more than five hours, a minimum of two breaks of fifteen minutes each; and
- (c) of more than five hours, and in addition to any entitlement to breaks under paragraph (a) or (b), a meal break of thirty minutes,

and the employee shall be paid for the period of each fifteen minute break (but not for the period of any meal break) the wage the employee would, but for the break, have otherwise been entitled to receive.

(3) For the purposes of subsection (2) the specified industries and businesses are -

- (a) construction;
- (b) manufacturing;
- (c) heavy equipment operators;
- (d) hospitality; and
- (e) gardening or landscaping.

(4) Any employer who does not comply with any requirement imposed by subsection (1) or (2) commits an offence.

(5) Any employee not entitled to the breaks specified in subsection (2) is nevertheless entitled to reasonable rest and meal breaks.

(6) All rest and meal breaks required by subsection (2), and all other rest and meal breaks to which an employee is entitled under subsection (5), shall,

having regard to all the circumstances of the employment concerned, be taken at such reasonable times as are agreed between the employer and the employee.

26. (1) The standard work week shall not exceed forty-five hours in any period of one hundred and sixty-eight hours and the standard work day shall not exceed nine hours.

Standard work week

(2) The Cabinet may, by Order, revise this standard for any industry or enterprise specified in the Order.

27. (1) An employer shall pay overtime pay to an employee for every hour of work in excess of the standard work week or a standard work day.

Occasions for overtime pay

(2) Notwithstanding subsection (1), the parties to a contract of employment may arrange, either generally by an agreement in writing or specifically in relation to any period of less than one week by an oral agreement, that the employee shall work -

- (a) more than the hours provided for by the standard work week; or
- (b) more than the hours provided for by the standard work day up to four hours on the condition that the total number of hours for the week does not exceed the standard work week,

and a Labour Tribunal or the Director approves of the agreement.

(3) The employee under subsection (2) shall receive either -

- (a) time-off equivalent to the extra hours in lieu of overtime pay; or
- (b) non-cash compensation that is equal in value to or in excess of the of the overtime pay due.

(4) Notwithstanding subsection (1), in the case of employees of professional or managerial level and above, the parties to a contract of employment may agree that no overtime should be paid, in which case the obligation to pay overtime to that employee in accordance with subsection (1) shall not apply.

(5) Any employer who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand five hundred dollars or to imprisonment for a term of six months, or to both.

(6) In addition to any fine imposed for an offence under subsection (5) the Court may, before or upon sentencing the employer, order the employer to pay to the employee any overtime pay due for any period in respect of which an offence was committed.

(7) Any sum ordered to be paid under subsection (6) may be enforced as a fine.

Overtime pay

28. Overtime pay for non-managerial employees shall consist of at least one and one-half times an employee's basic hourly wage per hour or such other non-cash compensation that is equal in value to or in excess of the overtime pay due unless the employer and an employee come to an agreement regarding compensation in accordance with section 27(3)(a).

Time-off in lieu

29. Where overtime pay under section 28 includes a time-off equivalent for the extra hours worked by an employee and the time-off in lieu of overtime pay is equal to or more than the standard work week, at least one half of the payment shall be in cash or other non-cash compensation as may be approved by the Tribunal, Director or the Director's designate, as the case may be.

Form of wages

30. (1) The remuneration payable under a contract of employment may be paid in money or paid in kind and shall be accompanied by a statement of wages in accordance with section 35.

(2) The money wages of an employee shall be paid in legal tender, provided however that the payment of wages by cheque, by direct deposit or by postal order shall be permitted if it is with the express consent of the employee, which consent may be withdrawn on one calendar month's notice, provided that such consent may not be unreasonably withheld or withdrawn.

(3) For the purposes of this Law, "payment in kind" means payment by the provision of food, dwelling place or such other allowances and privileges as may be agreed in the contract of employment on the condition that -

- (a) at least fifty per cent of the total remuneration is paid in money;
- (b) payment in kind does not include any noxious drugs or intoxicating liquor; and
- (c) any payment in kind shall be fairly evaluated by a labour officer on the basis of its cost to the employer.

Deductions

31. (1) An employer shall not make any deductions from the wages payable to an employee under any contract of employment except in accordance with subsections (2) to (4).

(2) Without prejudice to subsection (1) and notwithstanding subsection (3)(e), an employer shall not make any deduction from the wages payable to an employee or require or receive any payment from an employee, or allow any other person to deduct, or require or receive any payment from an employee, in respect of -

- (a) the cost of anything done or required to be done by the employer under this Law or any regulations made hereunder;
- (b) obtaining or retaining employment with the employer;
- (c) any fine imposed by the employer;

- (d) bad or negligent work, other than a shortfall in cash collected by an employee on behalf of an employer or in a cash float provided to the employee by the employer; or
- (e) any injury to the materials or property of the employer, save when the injury is occasioned by the wilful misconduct of the employee.

(3) There may be deducted -

- (a) any deduction imposed by any Law;
- (b) any money advanced by the employer (whether paid to the employee or to some other person at the employee's request) in anticipation of the regular payment of the employee's wages, provided the amount deducted accords with the agreement made between employer and employee at the time of the advance, and provided that no interest, discount or similar charge may be imposed on such advance;
- (c) the actual or reasonable estimated cost to the employer of any materials, tools and implements which, although not obliged to provide, the employer has supplied to the workman at the latter's request;
- (d) any payment into any welfare, insurance or other similar fund which an employee has authorised to be deducted;
- (e) subject to subsections (2) and (4), any sum of money the deduction of which an employee has expressly authorised in writing; and
- (f) any wages deducted by virtue of the suspension of an employee where the employee has been given a written warning under section 55(2) or 56(1) and the employee has been guilty of further misconduct or has continued to perform duties unsatisfactorily.

(4) The total which may be deducted in any period shall not exceed one-third of the gross money wage of the employee for that pay period, provided that this shall not apply to interest on and repayments of negotiated loans nor to the recovery of money advanced as contemplated in subsection (3)(b) provided that the deduction accords with the agreement made at the time of the advance.

32. (1) Wages shall be paid on a regular periodic basis, and no period in respect of which wages earned by an employee are payable shall exceed one month.

Periods and time of
wage payments

(2) The payment of wages shall be made on ordinary working days only and within ordinary working hours.

Offences and
employee's rights in
respect of wages

33. (1) Any employer who -
- (a) enters into any agreement or contract or gives any remuneration for employment contrary to section 30, 31 or 32; or
 - (b) makes any deduction from the wages of any employee or receives any payment from any employee contrary to the said sections,

commits an offence and is liable on summary conviction to a fine of two thousand five hundred dollars or to imprisonment for a term of six months, or to both.

(2) In addition to the offence under subsection (1), an employee shall be entitled to recover by action in the appropriate Court so much of the wages, exclusive of sums lawfully deducted, as shall not have been actually paid to the employee together with interest thereon at the rate of ten per cent per annum.

Work accounts

34. (1) Every employer shall keep an accurate work account in respect of each employee, which shall record time worked (by pay periods), leave taken (by type), deductions and the basic and other wages paid for each pay period, such work account being in the form as the Director may by order prescribe.

(2) In the case of an employee paid on a piece-work basis the work account shall show the work done instead of the time worked.

(3) An employer to whom subsection (1) applies shall preserve each work account, with respect to each entry therein, for at least two years.

(4) Upon demand by any employee, an employer required to maintain a work account under subsection (1) in respect of that employee shall make it available to the said employee for inspection.

(5) Any employer who contravenes this section commits an offence and is liable on summary conviction to a fine of two thousand five hundred dollars or to imprisonment for a term of six months, or to both.

Statement of wages

35. (1) An employer shall, in respect of any given wage or gratuity payment, at the time of the payment, furnish that employee forthwith with a precise statement in writing showing how the said payment was made up.

(2) Without prejudice to the generality of subsection (1), whenever an employer makes any deduction from an employee's wages, a statement furnished under subsection (1) shall include the amount deducted and the nature of the deduction.

(3) Any employer who fails to furnish a statement under subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand five hundred dollars or to imprisonment for a term of six months, or both.

- (4) The statement in subsection (1) shall contain the following particulars-
- (a) the period of time or the work for which the wages are being paid;
 - (b) the rate of pay to which the employee is entitled and the number of hours worked where the number of hours worked varies from week to week;
 - (c) the gross amount of wages to which the employee is entitled;
 - (d) the amount and purpose of any deduction made from the gross amount under paragraph (c);
 - (e) any bonus, gratuity, living allowance or other payment to which the employee is entitled; and
 - (f) the net amount of money being paid to the employee.

PART 4 - GRATUITIES

36. In this Part -

Definitions in this Part

“service employee” means an employee of a service employer who is within a class or description of employees prescribed by regulations made for the purpose of section 38(1) and who works in the Islands; and

“service employer” means an employer carrying on the business of a hotel, condominium, restaurant, licensed premises or other place of entertainment where the employer collects or receives gratuities in respect of services provided by the business.

37. (1) The Cabinet may, by regulations, prescribe the minimum rate of gratuity that is to be shown or included in accounts rendered to customers of hotels, condominiums, restaurants, licensed premises or other places of entertainment but the Cabinet may, in writing, upon application of a specific business, exempt any specific business from the regulations made under this subsection where the employer does not collect or receive gratuities in respect of services provided by a business mentioned in this subsection.

Minimum gratuity may be prescribed

(2) Different minimum rates of gratuity may be prescribed for different types of businesses or different activities within a type of business.

(3) A person carrying on a business or an activity of a business in respect of which a minimum rate of gratuity has been prescribed in accordance with subsection (1) shall show or include in all accounts rendered to customers of the business a gratuity at a rate not less than that prescribed.

(4) A person who contravenes subsection (3) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(5) The prescription of a minimum rate of gratuity in respect of a business or an activity carried on by a business, or the inclusion of a gratuity in an account

rendered by a business does not imply a contractual obligation on the part of a customer of that business to pay any gratuity shown or included in an account rendered on behalf of the business.

(6) Notwithstanding subsection (3), it is not an offence under that subsection for a business to state that a gratuity shown or included in an account rendered on behalf of the business is shown or included at the minimum rate recommended by the Government and that payment of the gratuity is discretionary.

Employees entitled to gratuities may be prescribed

38. (1) The Cabinet may, by regulations, prescribe classes of employees who are entitled to be included in the distribution of gratuities by a service employer.

(2) Classes of employees may be prescribed for the purpose of subsection (1) by -

- (a) the description of their position;
- (b) the type of work they undertake;
- (c) the level of their remuneration; or
- (d) the terms of their employment,

or by any combination of these matters.

All gratuities to be distributed

39. (1) A service employer shall distribute all gratuities collected or received amongst the service employees twice monthly on the day that service employees' wages or salaries are paid -

- (a) in accordance with a scheme approved by and registered with the Director; or
- (b) where no such scheme is registered, in accordance with a formula prescribed by the Cabinet by regulations.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months, and the service employer shall be required to distribute the gratuity in respect of which the employer was convicted amongst the service employees within such period as the Court may order.

(3) A service employee is entitled to participate in the distribution of all gratuities collected or received by the employer in respect of the premises at which the employee is employed for services provided after the date the employee became a service employee at those premises.

(4) A person who ceases to be a service employee is entitled to participate in the distribution of all gratuities collected or received by the employer or former employer in respect of the premises at which the employee was employed for services provided before the date the person ceased to be a service employee at those premises.

40. (1) A service employer shall keep a record of -
- (a) the total amount of gratuities collected or received by the employer in each month that services are provided to customers;
 - (b) each account rendered to a customer of the employer showing -
 - (i) the service provided;
 - (ii) the amount charged for the service;
 - (iii) the amount of gratuity shown or included; and
 - (iv) the date on which, or the period during which, the service was provided;
 - (c) the amount received or collected by the employer in respect of each account rendered by the employer showing-
 - (i) the amount received by the employer in respect of the service;
 - (ii) any amount collected or received by way of gratuity; and
 - (iii) the date on which the amount referred to in subparagraph (i) was collected or received;
 - (d) any gratuities collected or received by the employer otherwise than as referred to in paragraph (c)(ii);
 - (e) the name of each service employee of the employer who carried out any duties for the employer during any period when the employer was providing services to customers; and
 - (f) each distribution of gratuities made to service employees showing-
 - (i) the period in respect of which the distribution was made;
 - (ii) the date of the distribution; and
 - (iii) the amount paid to each service employee,

Service employer to
keep records

and a person who fails to do so commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months.

(2) For the purpose of subsection (1)(c)(ii), any amount paid under subsection (1)(c)(i) that exceeds the amount charged under subsection (1)(b)(ii) is to be regarded as a gratuity.

(3) Any service employer who keeps a record for the purpose of subsection (1) that the said service employer knows or ought reasonably to know is false or misleading commits an offence and is liable on summary conviction to a fine of twenty-five thousand dollars and to imprisonment for twelve months.

(4) Any service employer who fails to provide to the Director, in a format approved for the purpose by the Director and within six weeks of the end of a month, details of the gratuities received by the service employer during that month and the manner in which those gratuities were distributed, commits an

offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(5) Where a service employer provides details of gratuities to the Director in accordance with subsection (4) but fails -

- (a) at the same time, to make available on request a copy of the details to the service employees referred to in the details; and
- (b) to make these details available for at least two weeks,

commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(6) Any service employer who, when requested to do so by the Director, fails to -

- (a) produce to the Director for inspection the record kept by the employer for the purpose of subsection (1); and
- (b) provide to the Director a copy or print out of the information stored in the record,

commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(7) Any person required to keep a record for the purpose of subsection (1) who fails to retain any record made for the purpose of that subsection for at least three years commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for six months.

(8) In this section, "record" means any means by which information may be stored and retrieved.

Notice of rate or amount of gratuity to be displayed

41. (1) Any service employer who fails to display, in a place where it may be easily seen by a customer of the employer, a notice stating the rate of gratuity applicable to services provided by the employer commits an offence and is liable on summary conviction to a fine of ten thousand dollars.

(2) It is sufficient compliance with subsection (1) if the rate of gratuity is shown on a menu or other document that would normally be read by customers of the employer.

PART 5 - SEVERANCE PAY

Right to severance pay generally

42. (1) Every employee whose term of continuous employment with an employer and any predecessor-employer has in aggregate exceeded one year is entitled to receive severance pay, in addition to any other payments which may be due to that employee, upon termination of employment by the employer for any

reason, other than a dismissal which is within sections 53(1)(a), (b), (c) or (d), such payment in money calculated in accordance with this Part.

(2) In the case of the bankruptcy or winding up of an employer any liability for severance pay shall be paid in priority to all other debts, secured or unsecured, and shall be paid in full unless the property available is insufficient to meet them.

(3) Severance pay shall be payable to an employee for the full period of the employment, including any period of employment prior to the 1st March, 1988, if that employment is terminated on or after the 1st March, 1988.

43. (1) Subject to subsection (2), severance pay shall consist of two weeks' wages for each completed year of employment up to a maximum of twenty-four weeks' wages and on a pro rata basis for each partly completed year at the employee's highest basic wage with the employer or predecessor employer except in the case of unfair dismissal.

Computation of
severance pay

(2) In a case of unfair dismissal, an employee shall be entitled to an award of four weeks' wages for each completed year of employment up to a maximum of forty-eight weeks' wages and on a pro rata basis for each partly completed year at the employee's highest basic wage with the employer or predecessor employer in addition to any award for unfair dismissal under section 59.

(3) In the case of part-time employees their entitlement to severance pay shall be calculated on the basis of the ratio that their actual hours of employment bear to the standard work week.

44. (1) Subject to subsections (2), simultaneously upon the termination of the employment of any employee entitled to severance pay, the employer shall pay to that employee severance pay calculated in accordance with this Part.

Severance pay, when
payable: temporary
termination

(2) Where an employee is in the construction or agricultural sector and if the termination is stated to be temporary, no severance pay need be paid to the employee at the time of such temporary termination except -

- (a) where the date of recall, if one is given at the time of termination, is thirty days or more in the future, severance pay shall be payable on the date of termination; or
- (b) where no date of recall is given at the time of termination, severance pay shall be payable thirty days from the termination if the employee shall not then have been recalled; in which case, interest at ten per cent per annum on the amount of severance pay due shall be payable for the interval between the original termination date and the date of actual payment.

(3) Where payment of severance pay has been made, with interest where due under subsection (2)(b), and the employee is subsequently recalled to the

former or substantially equivalent employment or is again hired by the same employer, the employee shall be considered to be newly hired and the term of employment, for subsequent severance pay purposes, shall be considered to have commenced on the date of the recall or rehire.

(4) For the purposes of this section the expression -

- (a) “employees in the construction sector” means workers performing traditional work specific to construction, including concrete and forms, masonry, structural or architectural steel installation, installation of windows or doors, roofing, wall rendering or interior finishing or woodworking; and
- (b) “employees in the agricultural sector” means -
 - (i) workers performing traditional or mechanized agricultural labour on -
 - (A) farms;
 - (B) plantations;
 - (C) hydroponic or greenhouse facilities; or
 - (D) established fruit, vegetable or floral commercial operations; or
 - (ii) workers caring for livestock.

Severance pay where employer's business transferred

45. (1) Where an employee's employment is terminated upon the sale, transfer in ownership or other disposition of the business in which the employee is employed -

- (a) where without any break in service the employee is offered the same employment by a successor-employer in that same business, or part of business, the employee is not entitled to severance pay by reason of that termination; and
- (b) where the employee accepts such employment with the successor-employer the tenure of employment, for subsequent severance pay purposes, shall date from the original hiring by the first of a series of predecessor-employers.

(2) Acceptance of severance payment by an employee terminates the period of continuous employment.

(3) For the avoidance of doubt, where a business is sold, transferred or otherwise disposed of, the period of employment with the former employer shall be deemed to constitute a single period of continuous employment with the successor-employer where the employment was not terminated and severance pay was not paid pursuant to this Law.

Liability of predecessor and successor-employers

46. (1) Where an employee accepts employment with a successor-employer under section 45(1)(b) then, in the event of a subsequent termination of that employment by that successor-employer, the successor-employer shall be

responsible for the payment of the employee's severance pay computed on the basis of the full tenure of employment by that employer and all predecessor-employers.

(2) Where an employee's employment is temporarily terminated with a date of recall given less than six months in the future or with no date of recall given, and if within six months thereafter the employer transfers the business to another, then (using the standards set out in section 44) if severance pay subsequently becomes due without the employee having been recalled, the transferring employer and the person to whom the business was transferred shall be jointly and severally liable for the payment of the severance pay plus interest.

47. (1) Every employer shall maintain an accurate record of the hiring date of each of the employees, together with the dates of all temporary terminations and re-employments, and for the purposes of this section the said hiring date shall be that on which the employee was first hired, either by the employer or by a predecessor-employer.

Record of hiring dates

(2) Upon the request of any employee, the employer shall make that employee's record of hiring available to the employee for inspection.

(3) A person who fails to comply with subsection (1) or (2) commits an offence and shall be liable on summary conviction to a fine of two thousand five hundred dollars or to imprisonment for a term of six months, or to both.

(4) Where, on the 1st March, 1988, there was no present record of an employee's hiring by virtue of the fact that the requirement of subsection (1) was not in effect upon the relevant dates, the employer and the employee shall determine the hiring date by agreement, and in default of agreement the question of the employee's hiring dates shall be determined under section 48.

48. Where a question arises as to the date of hiring or as to whether or in what amount severance pay is due to an employee then the employee, or the employer, or their respective representatives, may seek a resolution of the question by filing a complaint in accordance with the procedure set out in section 80.

Determination of disputes

PART 6 - RETIREMENT/RESIGNATION ALLOWANCE

49. (1) An employee other than a person specified in section 25(2)(b) of the National Pensions Law (2012 Revision) and who -

Retirement/resignation allowance (2012 Revision)

- (a) has worked with the employer for a period of one year or more;
- (b) voluntarily retires or resigns from such employment; and
- (c) is not entitled to a pension under the National Pensions Law (2012 Revision),

shall be paid by the employer in addition to any other allowance or monies to which the employee is otherwise entitled a retirement/resignation allowance equal

to one week's wages, at the employee's latest basic wage, for each completed twelve month period of employment with the employer.

(2) In the case of a part-time employee, the entitlement to a retirement/resignation allowance shall be calculated on the basis of the ratio that the actual hours of employment bear to the standard work week.

(3) For the purposes of this section, "normal retirement" shall have the same meaning as in the National Pensions Law (2012 Revision).

Determination of
disputes-
retirement/resignation
allowances

50. (1) Where a question arises as to the date of hiring or as to whether or in what amount the retirement/resignation allowance is due to an employee, then the employee, the employer, or their respective representatives, may seek a resolution of the question by filing a complaint in writing as to retirement/resignation allowance with the Director.

(2) Where the question involves a group of employees under similar circumstances they may file a joint complaint.

(3) Where there is filed at or about the same time a number of complaints raising the same or substantially similar issues, the Director may direct that they be consolidated into a single proceeding.

PART 7 - UNFAIR DISMISSAL

Unfair dismissal: general

51. (1) This Part applies to an employee -

- (a) whose employment was on probationary terms and who has been terminated during the probationary period, except where the termination is for gross misconduct or for good cause;
- (b) who has completed the probationary period; or
- (c) in the case of an employee not employed on probationary terms, completed three months of continuous employment with the employer.

(2) Any termination by an employer of an employee's employment shall be fair if it is in accordance with section 52 or 53.

Termination after fixed
term of employment

52. (1) For the purposes of this Part, an employee is not unfairly dismissed if the employment is terminated at the expiration of a fixed term specified at the time of employment.

(2) A fixed term contract shall set out the date on which the contract commences and expires.

(3) Any sequence of contracts entered into with less than thirty calendar days intervening shall be considered as continuous employment for the period employed with the employer or the successor-employer and not a fixed term contract.

53. (1) Subject to subsections (2) and (3), a dismissal shall not be unfair if the reason assigned by the employer for it is -

Dismissal for good cause

- (a) misconduct of the employee within section 55(1);
- (b) that it is under section 55(3), namely misconduct following the receipt of a written warning;
- (c) that it is under section 56(2), namely failure of the employee to perform duties in a satisfactory manner following the receipt of a written warning;
- (d) that the employee was redundant;
- (e) that the employee, being the holder of a work permit is terminated in accordance with this Law on the basis of the conditions set out in the employee's contract of employment and-
 - (i) a Caymanian;
 - (ii) a person married to a Caymanian and in possession of a Residency and Employment Rights Certificate, or
 - (iii) a Permanent Resident with the right to work and meeting the immigration or work permit application requirements under the Immigration Law (2014 Revision),
has applied for and has been awarded the position formerly held by the employee and has entered into a contract to accept the position;
- (f) that the employee could not continue to work in the position the employee held without contravention (on the employee's or on the employer's part) of a requirement of this or any other Law; or
- (g) some other substantial reason of a kind which would entitle a reasonable employer to dismiss an employee holding the position which the employee held,

(2014 Revision)

and under the circumstances the employer acted reasonably.

(2) Where the reason for the dismissal of an employee was that the employee was made redundant but it is shown that the circumstances constituting the redundancy applied equally to one or more other employees in the same job or position within the business, department or work unit who were employed to perform work of the same general nature where the qualifications and the experience, of the individuals are similar but the Caymanian was dismissed and -

- (a) the employee who was not dismissed is not Caymanian or a Permanent Resident within the meaning of the Immigration Law (2014 Revision) nor the holder of a work permit; and
- (b) the redundant employee was selected for dismissal in contravention of a customary arrangement or agreed procedure relating to redundancy and there were no special reasons

justifying a departure from that arrangement or procedure in the employee's case,

then, for the purposes of this Part, the dismissal shall be regarded as unfair in accordance with this Law and is contrary to the interests and requirements of the community.

(3) Where the reason for the dismissal of an employee is that the employee has attained the established retirement age but it is shown that -

- (a) employees in the same workplace were not made aware of an established retirement age;
- (b) the employee in question is willing and capable of continuing to work; or
- (c) the advancement of another Caymanian employee is not being hampered,

then, for the purposes of this Part, the dismissal shall be regarded as unfair.

(4) The question whether an employer has acted reasonably for the purposes of this Part shall be determined in accordance with equity and the substantial merits of the case having regard to all the circumstances.

(5) For the purposes of this section "the requirements of the community" shall have the same meaning as in section 44(4) of the Immigration Law (2014 Revision).

2014 Revision

Constructive dismissal

54. For the purposes of this Part, "constructive dismissal" includes circumstances in which the employer does not expressly dismiss an employee but creates or allows the creation or continuation of circumstances in the workplace that would make it impracticable for a reasonable person to remain in employment.

Termination for misconduct

55. (1) An employer may terminate forthwith the employment of an employee where the employee has been guilty of misconduct in or in relation to the employment so serious that the employer cannot reasonably be expected to take any course other than termination, such misconduct includes, but is not limited to situations in which the employee has-

- (a) behaved in such a manner as clearly to demonstrate that the employment relationship cannot reasonably be expected to continue;
- (b) committed a criminal offence in the course of employment;
- (c) behaved in such a manner that the conduct has a detrimental impact on the performance, reputation or conduct of the employer or employees;

- (d) is under the influence of a controlled drug (other than one lawfully prescribed by a health practitioner) or alcohol during the hours of employment;
- (e) carried out, without authorization, extensive personal use of the electronic communication system in the workplace during working hours and contrary to electronic communication policies in place;
- (f) made false representations; or
- (g) carried out reckless or unsafe practices or behaviour after being trained or warned regarding reckless or unsafe practices or behaviour.

(2) Where an employee acts in such a way that such acts amount to misconduct in or in relation to employment that is not sufficiently serious to justify the employer terminating the employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and appropriate instructions on how to improve conduct and state the action the employer intends to take in the event of any further misconduct.

(3) Where a written warning is given to an employee, the employee is required to sign the warning as an acknowledgement of receipt of the warning however the employee's signature on the warning does not constitute an admission of any allegations that may be contained in the warning.

(4) Where an employee refuses to sign the written warning, the employer shall make a note of this on the warning and have the notation witnessed by an independent third party.

(5) Where an employee has been given a written warning under subsection (2), if the employee, within twelve months following the receipt of the written warning, commits misconduct of any kind in relation to the employment, the employer may terminate the employment of the employee, or take such other action as may have been specified in the written warning, without further notice.

(6) For the avoidance of doubt, misconduct includes, but is not limited to, absenteeism.

56. (1) Where an employee is no longer performing duties in a satisfactory manner, the employer may give the employee a written warning which shall describe in what manner the performance is unsatisfactory and appropriate instructions on how to improve performance and state the action the employer intends to take in the event of continuance.

Termination for failure to perform duties in satisfactory manner

(2) Where an employee has been given a written warning under subsection (1), if the employee does not, during the period of ninety days following the

receipt of the written warning, commence performing duties in a satisfactory manner, the employer may terminate the employment on the day immediately following the ninety day period, or take such other action as may have been specified in the written warning without further notice.

(3) Where a written warning is given to an employee, the employee is required to sign the warning as an acknowledgement of receipt of the warning however the employee's signature on the warning does not constitute an admission of any allegations that may be contained in the warning.

(4) Where an employee refuses to sign the written warning, the employer shall make a note of this on the warning and have the notation witnessed by an independent third party.

(5) Where an employee is given a written warning and appropriate instructions on how to improve performance under subsection (1), the employer may carry out an evaluation forty-five days after these instructions are given and the employer shall advise the employee on any determinations that are made regarding performance of duties.

Redundancy and
termination monitoring

57. (1) Every employer with five or more full-time employees shall, where any full-time employee in continuous employment for six or more months is terminated on the basis of -

- (a) redundancy;
- (b) business closure;
- (c) down-sizing;
- (d) cost containment; or
- (e) any other form of rationalization,

provide a report to the Director in the prescribed form on the occurrence of the termination and for every ensuing six-month period up to twenty-four months after the specified termination or for such period of time as the Director may specify.

(2) The events which may give rise to redundancy are -

- (a) the modernization, mechanization or automation of all or part of the employer's processes;
- (b) the discontinuance of all or part of a business;
- (c) the sale or transfer or other disposal of the business;
- (d) the reorganization of the business;
- (e) the reduction in business which has been made necessary by economic conditions, contraction in the volume of work or sales, reduced demand or surplus inventory; or
- (f) the impossibility or impracticality of carrying on the business at the usual rate or at all due to -
 - (i) scarcity or unavailability of materials;

- (ii) mechanical malfunction or break down;
- (iii) act of God; or
- (iv) other circumstances outside of the control of the employer.

(3) The Cabinet may make regulations prescribing the information to be included in the report under subsection (1) and the agencies with whom the report may be shared.

(4) An employer who contravenes subsection (1), in addition to any penalties under section 82(2), shall be liable to a fine of five hundred dollars for each day that the employer fails to provide the report to the Director.

(5) For the purposes of this Law, “redundancy” means a situation in which, by virtue of the events referred to in subsection (2), tasks which a person was last employed to perform no longer exist or are not expected to exist in the twelve month period following the notice of redundancy and the employee is terminated.

58. (1) Where any questions arise as to whether an employee has been unfairly dismissed, the employee may seek a resolution of the question by filing a complaint of unfair dismissal with the Director.

Initiation of proceedings
for unfair dismissal

(2) A complaint under subsection (1) shall be filed within ninety days of the date of dismissal.

(3) Where the complaint involves a group of employees under similar circumstances they may file a joint complaint.

(4) Where there is filed at or about the same time a number of complaints raising the same or substantially similar issues, the Director may direct that they be consolidated into a single proceeding.

59. (1) Where, upon a complaint of unfair dismissal, a Labour Tribunal has determined that the dismissal was unfair it may order the payment by the employer to the person dismissed of a sum of money by way of compensation for unfair dismissal.

Remedies for unfair
dismissal

(2) In making the order for compensation under subsection (1), a Labour Tribunal shall have regard to -

- (a) the length of continuous employment of the person dismissed immediately preceding the dismissal;
- (b) the likelihood of the person dismissed finding other comparable employment;
- (c) the length of time unemployed after the unfair dismissal;
- (d) stress and hardship;
- (e) loss of earnings as a result of the unfair dismissal and the loss of continuing employment;

- (f) reputational damage;
- (g) the salary of the person dismissed immediately preceding the dismissal;
- (h) the period up to the likely retirement age of the person dismissed and any entitlement to a pension which the person may then have;
- (i) the degree of unfairness of the dismissal;
- (j) evidence of attempts by the employee to secure employment and any challenges being encountered by the employee in securing employment; and
- (k) such other matters as may be prescribed.

(3) The amount of an award of compensation under subsection (1) shall be no less than four weeks wages for each year of full-time or equivalent employment and the number of weeks shall be pro-rated for each partly completed year.

(4) In the case of any action before any Court in respect of a dismissal for which an award has been made under subsection (1), the Court shall, in making any award of damages, take into account and deduct from the award of damages any sum awarded by a Labour Tribunal under subsection (1).

(5) Where a Tribunal upholds an employee's complaint of unfair dismissal, it may, as an alternative to an order for compensation, award one of the following remedies -

- (a) an order for reinstatement whereby the employee is treated in all respects as if the dismissal had not taken place; or
- (b) an order for re-engagement whereby the employee is to be engaged in work comparable to that in which the employee was engaged prior to dismissal or other reasonably suitable work, from the date and the terms as shall be specified in the order or as may be agreed by the parties.

(6) In making a determination regarding the appropriate remedy, the Tribunal shall first consider the practicability of making an order of reinstatement or re-engagement, taking into account the wishes of the parties and the circumstances in which the dismissal took place, including the employee's contribution, if any, to causing or contributing to the events leading to dismissal.

(7) Where the Tribunal determines that an employee engaged in misconduct, notwithstanding the unlawful nature of the dismissal, it may include a disciplinary penalty as a term for the order for reinstatement or re-engagement.

Victimization

60. (1) Where an employee reasonably believes that an employer has failed to comply with this Law, the employee may in writing make a disclosure of information to the Director or a labour officer.

(2) An employer shall not subject or threaten to subject an employee to any victimization on account of a disclosure made under subsection (1).

(3) An employee shall not be considered to be subject to victimization where the employer has the right under any Law in force in the Islands to take the action complained of or the action is demonstrably unrelated to the disclosure made.

(4) An employee who reasonably believes that there has been victimization as a result of the employee's disclosure under subsection (1), may make a complaint to a Labour Tribunal.

(5) The Labour Tribunal shall, in making a determination that victimization has taken place, be satisfied on a balance of probabilities that victimization of the employee has taken place.

(6) In this section "victimization" includes -

- (a) harassment;
- (b) bullying;
- (c) discrimination in accordance with section 86;
- (d) denial of promotion without cause;
- (e) demotion without cause;
- (f) dismissal or suspension without cause;
- (g) redundancy without cause;
- (h) intimidation;
- (i) being made subject to discrimination by the employer or by an employee of the employer;
- (j) re-assignment of work assignments, career opportunities or other actions that may reasonably be regarded as promoting constructive dismissal; or
- (k) threatening with any matter referred to in paragraphs (a) to (j).

61. (1) Every contract of employment shall state the established age of retirement. Established age of retirement

(2) Every employer shall take steps to advise employees of this established age of retirement by way of staff manuals, newsletters and other media where applicable.

(3) Twelve months prior to an employee's established age of retirement, the employer shall advise the employee of the date of retirement and the steps to be taken by the employee regarding receipt of pension or any payments due upon retirement.

(4) The Cabinet may make regulations prescribing arrangements to be made for Caymanian employees on attainment of the established age of retirement within an organization.

- (5) An employer who fails to -
- (a) state the established age of retirement in a contract of employment;
 - (b) take steps to advise employees of the established age of retirement; or
 - (c) advise employees twelve months prior to the established age of retirement of the date of retirement and the steps to be taken regarding the receipt of pension and any payments due on retirement,

commits an offence and is liable on summary conviction to a fine of five thousand dollars.

PART 8 - HEALTH, SAFETY AND WELFARE

Application of this Part to workplaces

62. (1) This Part applies to workplaces.

(2) Whenever it appears necessary or expedient the Cabinet may by regulations extend the definition of “workplace” contained in section 2 to any place that is not covered in that definition so that this Part may apply to such place.

(3) Unless otherwise expressly stated, this Part shall be in addition to, and not in substitution for or diminution of, any other Law.

Registration of workplaces

63. (1) Every employer, other than one who employs a household domestic, who commences to operate a workplace shall, within one month of commencement, file with the Director a written notice stating the particulars described in Part A of the Schedule.

Schedule

(2) Upon receipt of the notice, the Director may, if of the view that the workplace -

- (a) fully complies with this Part or any regulations made pursuant thereto, register the workplace;
- (b) substantially complies with this Law or any regulations made pursuant thereto, register the workplace subject to such remedial terms and conditions as the Director thinks fit; or
- (c) refuse to register the workplace and, where the Director does so, shall state the changes the employer needs to effect for the workplace to be registered.

(3) Whenever there is a material change in any of the particulars appearing in any notice filed under subsection (1), the employer or the operator of the workplace shall, within one month of the change taking place, file with the Director a written notice indicating the change.

General duty of operator of workplace

64. Every operator of a workplace shall, as far as is reasonably practicable, ensure that the health, safety and welfare of employees at, around, or in relation to, the workplace are preserved and promoted.

65. Every employer shall provide, for the benefit of each employee, protection from on-the-job accidents, injuries, and work-related illnesses or diseases, in the form of a workmen's compensation insurance policy covering all employees or, in the alternative, the employer may become bonded against the possibility of employee injuries or accidents in an amount determined by the Director.

Workmen's
compensation insurance

66. (1) To safeguard and reasonably protect the health, safety and welfare of employees and others performing any duties therein, the operator of any workplace shall ensure that, in addition to the matters prescribed in subsection (2), the workplace -

Health, safety and
welfare generally

- (a) is clean;
- (b) is not overcrowded;
- (c) has reasonable temperatures, if the operation is indoors;
- (d) has adequate ventilation and lighting;
- (e) has adequate drainage and plumbing;
- (f) has adequate electrical infrastructure;
- (g) has sanitary drinking facilities with an adequate supply of drinking water;
- (h) implements hurricane rules and procedures as may be promulgated from time to time;
- (i) implements fire hazard rules and procedures as may be promulgated from time to time;
- (j) has, in the event of emergencies, adequate means and avenues of escape;
- (k) has adequate and well-maintained facilities for employees to sit, when appropriate, during their workday;
- (l) has adequate and well-maintained on-site first-aid equipment;
- (m) has adequate restrooms;
- (n) has appropriate waste disposal procedures and storage facilities for hazardous materials;
- (o) has reasonable access to a source of food or has a canteen; and
- (p) has such other facilities as are reasonably necessary for the health, safety and welfare of employees in that line of business.

(2) In addition to the matters prescribed in subsection (1), the operator of a workplace shall ensure that -

- (a) machinery used in the workplace is operated and maintained in a manner consistent with safety and in compliance with the standards and guidelines recommended by the manufacturer; and

- (b) all buildings and parts thereof are of proper construction and are well-maintained.

Additional duties of operator of workplace

67. It is the duty of an operator of a workplace to ensure that -

- (a) employees are protected from poisonous, noxious or toxic substances used or present in the workplace, including the prevention of consumption of food or drink in areas where such substances are used or are present, and the provision of emergency wash-down facilities;
- (b) suitable safety gear is required to be worn and is in fact worn when employees are using or are around machines or processes in relation to which the use of such gear is recommended;
- (c) suitable goggles or other protective gear is worn when there is a risk of eye injury;
- (d) suitable protective equipment is worn when a reasonable risk of bodily injury exists from any process or equipment used;
- (e) where employees are involved in a process involving injurious or offensive substances or to conditions exposing them to wet or cold conditions, suitable protective gear and clothing are provided, worn and maintained;
- (f) where a process involves exposure to heat or steam, facilities to protect workers appropriately are provided and maintained; and
- (g) misuse of equipment or space within the workplace is prohibited by warning signs.

Notification of accidents, injuries and diseases

68. (1) The operator of a workplace, including a person employing a household domestic, shall, forthwith notify the Director of the occurrence of an accident or injury, not being an accident or injury that is minor in nature, occurring to an employee, and also of any occupational disease or illness that occurs to an employee.

Schedule

(2) The notification shall contain the particulars set out in Part B of the Schedule.

(3) The notification may be shared with such other agencies involved in the investigation of the accident or the treatment or rehabilitation of the victim as may be necessary.

Duties of employees

69. (1) Employees in a workplace shall, in order to protect their health, safety and welfare, utilize all means, appliances, conveniences and equipment provided by the employer under this Law and as may be recommended by the manufacturer of the equipment used.

(2) Employees shall follow all procedures that are prescribed by regulations, recommended by manufacturers or customary in that line of business

with respect to the use of any particular substance or material used in the workplace.

- (3) An employee shall not -
- (a) wilfully or negligently interfere with, misuse or damage any means, appliance, convenience or equipment provided by the employer under this Law;
 - (b) wilfully or negligently ignore or disregard any rule regarding the safe use of equipment or space designated by the employer;
 - (c) wilfully or negligently ignore or disregard a recommendation of the manufacturer for the safe use of any equipment used in the workplace; or
 - (d) wilfully or negligently do or fail to do anything that is likely to endanger the said employee or other employees.

(4) An employer or a labour officer may file a complaint with the Director against an employee who fails to utilize the means, appliances, conveniences and equipment provided by the employer under this Law or fails to utilise them as may be recommended by the manufacturer.

(5) An employee who contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred dollars.

(6) The Cabinet shall make regulations for the imposition of administrative penalties for employees who violate this section and other matters relating to the violation of provisions under this section.

70. (1) Subject to subsection (9), where the Director is of the opinion that an employer is in breach of this Part or of any regulations made hereunder, the Director may serve upon that workplace a remedial notice.

Remedial notices

(2) A remedial notice shall state the provision of this Part which has been breached, the action to be taken to address the breach and the time-frame within which remedial action shall be taken.

(3) The right of appeal prescribed in section 84 (1) (c) applies to a person served with a remedial notice.

(4) Except as provided in subsection (6), section 84(3) applies in relation to the effect of an appeal.

(5) Where a remedial notice is upheld in whole or in part, the Court shall make such order as it thinks fit including, but not limited to, fixing a further time for compliance with the notice or such part of it as still stands.

(6) Where the Director, after consultation with the Director of Environmental Health, which fact shall be stated in the notice, is of the opinion that there is imminent danger to the health or safety of employees, the notice shall

not automatically be stayed, as stated in section 84(3), by the filing of an appeal, but the Court, once seised of the matter, may make such interim order as it thinks fit.

(7) Any person intending to appeal against the issuance of a notice under subsection (6) may within fourteen days of the issuance of the notice apply to the Court for a stay of the effect of that notice, pending hearing of the appeal, and the Court may grant such a stay upon any terms as it sees fit, including the requirement that any appeal be brought within a specified time.

(8) Without limiting the general power conferred in subsection (1), a remedial notice may require -

- (a) the immediate or later cessation of any activity, operation or process;
- (b) the immediate or later vacation of any premises;
- (c) the alteration of any plant or premises; or
- (d) the introduction of such temporary measures as may be necessary or expedient pending the institution or completion of permanent measures.

(9) Except where there is an emergency or the health and safety of the public is at risk, the Director shall obtain the written consent of the Minister before serving a remedial notice that requires the closure of a workplace.

Failure to comply with remedial notice

71. An operator of a workplace, manager, employer or any other person who is served with a remedial notice and fails to comply with the requirements thereof or within such time as a Court may order commits an offence and is liable on summary conviction to a fine of one thousand dollars and to a further fine of one hundred dollars for each day on which the non-compliance continues after service of the notice.

Inquests into, and prosecutions, for accidents

72. (1) Notwithstanding any other Law to the contrary, where, with respect to any accident in a workplace, a report is made by an authority appointed to hold a formal investigation under any Law, or a coroner's inquest is held, and it appears from the findings of such investigation or inquest that this Part was not complied with at or before the time of the accident, summary proceedings against any person liable to be proceeded against in respect of such non-compliance may be commenced at any time up to two years after the report or the conclusion of the inquest, as the case may be.

(2) A copy of every report with respect to and in consequence of any accident in a workplace which is made by an authority appointed to hold a formal investigation under any Law, shall be sent by that authority to the Director.

Responsibility for enforcement

73. The Director shall take such steps as may be necessary to ensure that there is compliance with this Part, including investigating complaints, reports or observations of violations, and, on a regular basis, carrying out routine

inspections or carrying out investigations of employers' compliance with its provisions and taking all necessary measures to enforce compliance with this Law.

74. In any premises the whole or any part of which has been let or is being used as a workplace -

Power of Grand Court to modify agreements and apportion expenses

- (a) where an agreement between the owner and the operator of the workplace prevents one or other from making alterations in the premises which are necessary to conform to any requirement or standard imposed by or under this Part, the Grand Court, upon the application of either party in an action joining the other, may, after a hearing, issue an order setting aside or modifying the agreement to permit the making of the necessary alterations; and
- (b) where alterations in the premises are necessary to conform to any requirement or standard imposed by this Part, the Grand Court, upon the application of the owner or the operator of the workplace in an action joining the other, may, after a hearing, issue an order apportioning the expenses of any such alterations.

75. The Cabinet may make regulations -

Regulations relating to workplaces

- (a) prescribing the standards to be achieved in respect of any obligations or duties contained in this Part and the methods of achieving them;
- (b) prescribing special conditions, safeguards or procedures to be applied to any particular substance or material;
- (c) prescribing safety measures to be taken in respect of machinery, either generally or of any specified type, including but not limited to the fencing of such machinery or any parts thereof;
- (d) prescribing safety measures to be taken in respect of any process, activity or operation of any type;
- (e) prohibiting the use of any substance;
- (f) prescribing the confirmation by the Department of any certification supporting the competency of a person to operate forklifts, pallet jacks, main lifts, cranes, heavy equipment or any other equipment used in construction workplaces or industrial workplaces; and
- (g) prescribing arrangements for the licensing, training or certification by the Director or the Department of site safety supervisors, occupational health and safety trainers or temporary workers entering the Islands for the purpose of conducting training.

PART 9 - ADMINISTRATION

Appointment of Director, Deputy Director and labour officers	<p>76. (1) There is established the Department of Labour and Pensions, comprising the Director of Labour and Pensions, the Deputy Director and such labour officers and other staff as may be necessary for the due administration and enforcement of this Law.</p> <p>(2) The Director, Deputy Director, labour officers and all other staff of the Department shall be employed by the Government and their appointment and terms and conditions of employment are subject to the Public Service Management Law (2013 Revision) and any regulations made thereunder.</p> <p>(3) The expenses of establishing the Department of Labour and Pensions and all expenses arising out of or incidental to the performance of its functions shall be borne out of the general revenue of the Islands.</p>
2013 Revision	
Duties of Director	<p>77. (1) The Director shall be responsible for -</p> <ul style="list-style-type: none">(a) promoting good labour relations, tranquillity in the workplace and productivity;(b) promoting the use of best practices in the workplace, including providing guidance on contracts, templates, forms and accident reporting;(c) ensuring occupational safety and health in the workplace;(d) creating public awareness of good labour relations;(e) using mediation and alternative means of dispute resolution as a means of resolving conflict in the workplace;(f) co-operating with stakeholders and other departments and agencies of Government; and(g) developing standard operating procedures for the Department, <p>and generally ensuring that there is observance of this Law.</p> <p>(2) The Director shall be charged with securing the proper observance of this Law and securing this shall be without regard to whether a complaint has been filed or not.</p>
Powers of Director, Deputy Director and labour officers	<p>78. (1) The Director, Deputy Director and any labour officer shall have, when performing duties regarding the imposition of administrative penalties under this Law the same powers, privileges and immunities as are conferred on a constable by the Police Law (2014 Revision) and may -</p> <ul style="list-style-type: none">(a) enter any workplace without previous notice at any time during the working hours of that particular workplace;(b) carry out any examination, test or inquiry which may be considered necessary to be satisfied that this Law is being observed;(c) question, alone or in the presence of witnesses, any employer or employee on any matters concerning the application of this Law; and
(2014 Revision)	

- (d) require the production of any records or documents required to be maintained by this Law and copy or make abstracts of any such records or documents.

(2) The Director, Deputy Director or any labour officer or labour inspector may institute criminal proceedings for any offence under this Law, and may appear before the Court to conduct the prosecution in respect of any such offence.

(3) Notwithstanding section 78 of the Criminal Proceedings Code (2014 Revision), summary proceedings under this Law may be commenced -

- (a) where an employee files a complaint in writing with the Director, up to two years from the date on which the complaint is filed;
- (b) where the Director initiates an investigation, up to two years from the date on which evidence to justify proceedings came to the knowledge of the Director.

79. (1) There are established Labour Tribunals for the purpose of hearing complaints under this Law from employers and employees. Labour Tribunals

(2) The members of a Labour Tribunal shall be selected from a panel of persons appointed by the Cabinet.

(3) The person or persons constituting a Labour Tribunal shall be appointed by the Cabinet and where the Labour Tribunal consists of more than one person, the Cabinet shall designate one person as the chairperson and another as the deputy chairperson.

(4) Members of panels appointed under this section shall hold and vacate office under the terms of the instruments under which they are appointed, but may resign office by notice in writing to the Cabinet; and any such member who ceases to hold office shall be eligible for re-appointment.

(5) A member of the panel who is a member of a Labour Tribunal when membership of the panel ceases in accordance with the terms of the instrument appointing the member, shall remain a member of the Labour Tribunal until all of the complaints before the Labour Tribunal at that time have been dealt with by the Tribunal.

(6) The Cabinet may, by regulations, provide for the constitution, procedure, staffing and expenses of the Labour Tribunals.

80. (1) Where a question arises as to -

Complaints

- (a) the date of hiring;
- (b) whether severance pay is due;
- (c) the amount of severance pay due to an employee;
- (d) any matter concerned with the giving or receiving notice;
- (e) vacation entitlement;

- (f) unpaid wages;
- (g) violation of leave benefits;
- (h) unlawful deductions;
- (i) failure to comply with the provisions dealing with overtime pay;
- (j) the absence or the violation of contractual terms;
- (k) discrimination;
- (l) redundancy or retirement that amounts to unfair dismissal;
- (m) breaches of the occupational safety and health provisions by employers;
- (n) unlawful or improper administration of gratuities by an employer; or
- (o) constructive dismissal,

then the employee, or the employer, or their respective representatives, may seek a resolution of the question by filing a complaint in writing with the Director.

(2) A complaint under subsection (1) shall be filed with the Director within ninety days of the event -

- (a) constituting constructive dismissal in subsection (1)(o); or
- (b) giving rise to any of the matters referred to otherwise in subsection (1).

(3) Where the question involves a group of employees under similar circumstances they may file a joint complaint.

(4) Where there is filed at or about the same time a number of complaints raising the same or substantially similar issues, the Director may direct that they be consolidated into a single proceeding.

Procedure on complaint
to Director

81. (1) The Director shall, within thirty days of receipt of a complaint, notify the employer concerned and give the employer a copy of the complaint and any documents filed in support of it and shall invite the employer to submit a response to the complaint in writing within thirty days of receipt of the Director's notification.

(2) Where the employer does not respond within thirty days to the Director's invitation in subsection (1), the Director shall, where the Director is of the opinion that the complaint has merit, submit the complaint for hearing by the Labour Tribunal.

(3) Where the employer responds within thirty days, the Director shall consider the complaint and any representations from the employer, make a report to the parties to the dispute or their authorized representatives and where requested by the employee, the Director shall provide a copy of the representations submitted to the Director by the employer.

(4) The report referred to in subsection (3) may -

- (a) recommend that the complaint shall be dealt with by way of a hearing by the Labour Tribunal;
- (b) recommend that the complaint be submitted by the Director or the Director's designate, for resolution by means of conciliation or other alternative dispute resolution means other than by way of a hearing by a Labour Tribunal; or
- (c) state that the matter is closed on the basis that -
 - (i) there are no further unresolved matters, compensation or benefits to be gained by either party through a Labour Tribunal; or
 - (ii) the complaint is frivolous or vexatious.

(5) The Director shall inform the parties in writing of the recommendations or decision under subsection (4).

(6) Notwithstanding the Director's decision under subsection (4)(c), either party may appeal the decision in writing within twenty-one days of receipt of it.

(7) Where a party to a complaint under subsection (4)(c) wishes for a complaint to be submitted for hearing by a Labour Tribunal, notwithstanding the Director's determination that the matter should be closed, the Director shall submit the matter to a Labour Tribunal for hearing.

(8) The party requesting a hearing under subsection (7) shall pay a filing fee of twenty-five dollars which shall be payable into the general revenue.

(9) For the purposes of subsection (4)(b), the Director may engage the services of certified alternative dispute resolution professionals.

(10) Within thirty days of receiving a report from the Director that recommends a hearing of the complaint, the Labour Tribunal shall fix a date for the hearing of the complaint such hearing to be held within ninety days of its receipt of the report.

(11) The Director shall notify the parties to the complaint of the date of the hearing and their invitation to attend along with counsel or other representative by way of registered mail, electronic mail, facsimile or by any other appropriate means.

(12) Where either party or both parties fail to attend the hearing, a Labour Tribunal shall nevertheless hear from any party in attendance and examine the documentary evidence before it, and shall proceed to consider the case on the basis of the complaint, the hearing of the party in attendance and any written representations made by the party or parties failing to attend.

(13) A Labour Tribunal shall give a reasoned decision in writing within thirty days of the conclusion of the hearing and a copy of its decision shall be delivered to all parties invited to attend under subsection (11).

(14) The decision of a Labour Tribunal on a complaint shall, subject to section 85, be final and binding between the parties.

(15) The Director shall, within ninety days of the receipt of a response from the employer under subsection (1), take steps to ensure that a complaint, is either-

- (a) resolved;
- (b) rejected as being vexatious;
- (c) without merit; or
- (d) referred to a Labour Tribunal,

except where the complaint is withdrawn by the person submitting it.

Enforcement of award of
Labour Tribunal

82. (1) Any person who refuses to comply with a decision of a Labour Tribunal commits an offence and is liable on summary conviction to a fine of five hundred dollars for each day that the offence continues in addition to any penalties that may be applicable under section 89(2).

(2) An award made by a Labour Tribunal may be registered in the Grand Court and is, upon registration, enforceable as an order of that court.

(3) Notwithstanding the provisions of this Law or any other Law, on the winding up of an employer's business or the appointment of a receiver, the claims of an employee in relation to the -

- (a) payment for vacation leave accrued but not taken;
- (b) payment for wages, overtime, commissions, gratuities, bonus or performance merit pay or other contractual or statutory benefits; and
- (c) severance pay calculated in accordance with Part 5,

shall have priority over all other claims, including claims of the Crown.

(4) Any determination or order made by a Tribunal shall be binding on the employer or any person succeeding the employer, whether by virtue of a sale or other disposition or by operation of law, on the ownership or control of the business and the employee to whom the determination or order relates.

(5) The Grand Court Rules Committee may make rules providing for the enforcement of orders under this section.

Establishment of
Appeals Tribunal

83. (1) There is established an Appeals Tribunal, whose quorum shall be three, consisting of a chairperson and eight other members for the purpose of hearing appeals against decisions of a Labour Tribunal under section 84.

(2) The members of the Appeals Tribunal are appointed by the Cabinet and hold office for one year, but may be re-appointed from time to time for such further one year periods as the Cabinet may consider appropriate.

(3) The Cabinet may appoint two of the eight other members of the Appeals Tribunal to be Deputy Chairmen, either of whom is authorized to perform all the functions of the chairperson in relation to the hearing of appeals.

(4) The Cabinet may, by regulations, provide for the constitution, procedure, staffing and expenses of the Appeals Tribunal.

84. (1) Any person aggrieved by -

Appeals from decision
of Labour Tribunal

- (a) any decision of a Labour Tribunal upon a complaint where the award exceeds five hundred dollars;
- (b) any decision of a Labour Tribunal upon a complaint where the award is less than five hundred dollars where the employee's claim is that the award should have exceeded five hundred dollars;
- (c) the service of a remedial notice;
- (d) any decision of a Labour Tribunal that a dismissal was fair; or
- (e) any decision of a Labour Tribunal that no award should be made,

may, within fourteen days of notification of the decision or service of the notice, appeal to the Appeals Tribunal.

(2) An appeal under subsection (1) is brought by giving notice in writing to the chairperson of the Appeals Tribunal.

(3) The giving of a notice of appeal pursuant to subsection (2) operates as a stay upon any award made by a Labour Tribunal.

(4) The notice of appeal under subsection (2) shall also be served upon a Labour Tribunal and in the case of an appeal from a decision of a Labour Tribunal upon a complaint, upon all persons who were invited to appear before a Labour Tribunal under section 81(11).

(5) Upon receipt of a notice the chairperson of the Appeals Tribunal shall fix a date for the hearing of the appeal, being not less than one month nor more than three months from the date of the receipt of the notice of appeal, and shall give notice of that date forthwith to the appellant and to all parties who were entitled to receive the notice of appeal pursuant to subsection (4).

(6) All persons entitled to receive the notice of appeal pursuant to subsection (4) shall be entitled to appear at and be heard upon the hearing of the appeal, or upon any adjourned hearing.

(7) The Cabinet may prescribe the procedure to be followed at the hearing of an appeal under this section, but in default of such prescription the procedure shall be at the discretion of the chairperson of the Appeals Tribunal.

(8) Within twenty-eight days from the conclusion of the hearing of the appeal the Appeals Tribunal shall reach a decision upon the appeal and shall deliver a notification of that decision, together with written reasons therefor, to every party who appeared at the hearing of the appeal.

(9) The decision of the Appeals Tribunal upon an appeal shall, subject to section 85, be final and binding upon all parties.

(10) Decisions of a Labour Tribunal and of the Appeals Tribunal under this Law may be made public at the discretion of the respective body and a member of a Labour Tribunal or the Appeals Tribunal shall not be liable for any act done or ordered to be done in good faith in the discharge of the functions under this Law, unless it is proved that the member of the Tribunal acted maliciously and without reasonable cause.

Appeals to Grand Court

85. (1) An appeal may be made to the Grand Court from a decision of the Appeals Tribunal upon a point of law only.

(2) An appeal pursuant to subsection (1) shall not operate as a stay of any award, order or decision of a Labour Tribunal or the Appeals Tribunal, or of the effect of any notice, unless the Grand Court so orders.

(3) An application for a stay shall be made by ex parte application.

PART 10 - GENERAL PENALTIES AND MISCELLANEOUS

Discrimination because of race, etc.

86. (1) No person (whether an employer or an employee) shall discriminate with respect to any person's hire, promotion, dismissal, tenure, wages, hours or other conditions of employment, by reason of sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, age, mental impairment or physical disability (provided that ability to perform the job is not impaired), pregnancy or any reason connected with pregnancy, property, birth or other status, except that where preference is given to a Caymanian in relation to hiring, such preference shall not be regarded as discriminatory.

(2) Where a Caymanian has qualifications in excess of the qualifications required by an employer this shall not make that that person ineligible for hire.

(3) An employer shall not directly or indirectly engage in, condone or permit the occurrence of sexual or other kinds of harassment of an employee at the workplace or in the course of carrying out duties.

(4) An employer shall not victimize or discriminate against an employee or otherwise cause an employee to suffer any retaliation or retribution where the employee, in good faith, honestly and reasonably makes a complaint in person or by electronic means, initiates a grievance on any matter, or alerts the Director or any other regulatory authority in respect of, but not limited to, cases of sexual or

other kinds of harassment, bullying, unethical behaviour, financial impropriety, unsafe working conditions or any other area of non-compliance with this Law.

(5) Where an employee reasonably believes that an employer has failed to comply with this Law, the employee may make a disclosure of information in writing to the Director.

(6) An employer shall not subject or threaten to subject an employee to any victimization on account of a disclosure made under subsection (5).

(7) An employee shall not be considered to be subject to victimization where the employer has the right under any Law in force in the Islands to take the action complained of or the action is demonstrably unrelated to the disclosure made.

(8) An employee who reasonably believes that there has been victimization as a result of a disclosure made by the employee under subsection (5) may make a complaint in accordance with section 80 of this Law.

(9) In this section “victimization” includes the matters set out in section 60(6).

(10) Subsection (1) shall not be construed as prohibiting the taking of any personnel action genuinely related to an employee’s ability to discharge the duties of the employment in question.

(11) A person who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of five thousand dollars or to imprisonment for twelve months, or to both.

87. (1) A person shall not -

Child labour

- (a) hold a child in slavery, servitude or debt bondage;
- (b) require a child to perform forced or compulsory labour;
- (c) subject a child to forced or compulsory recruitment for use in armed conflict;
- (d) use, procure or offer a child for prostitution, for the production of pornography or for pornographic performances;
- (e) use, procure or offer a child for production or trafficking of drugs or for activities which involve the unlawful carrying of, or use of, firearms or other weapons; or
- (f) subject to subsection (2), require a child to perform any other work prescribed which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of the child.

(2) In determining the types of work under subsection (1)(f) for the purposes of making Regulations in accordance with section 93(1), the Cabinet

shall consult with organizations representing employers and organizations representing workers and shall have regard to -

- (a) work which exposes children to physical or psychological or sexual abuse;
- (b) work underground, underwater, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads; and
- (d) work under difficult conditions such as work for long hours during the night or work where the child is confined to the premises of the employer.

(3) Notwithstanding subsections (1)(f) and (2) and section 93, the Cabinet may make Regulations to authorize -

- (a) the employment of, or work by a child of age fourteen years or older who is not attending full-time education; and
- (b) the engagement for work of a child who is attending full-time education,

where the health and morals of the child are fully protected and the child has received adequate specific instruction or vocational training relevant to the employment or work or relevant to the engagement for work, as the case may be.

(4) For the avoidance of doubt, nothing in this Law shall prevent -

- (a) a child of fourteen years or older who has completed his or her education from being employed; or
- (b) an employer engaging a child for casual or intermittent work.

(5) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of five years, or to both.

(6) In this section -

“debt bondage” means an arrangement whereby a person is forced to pay off a loan with direct labour in place of currency, over an agreed or indefinite period;

“engagement for work” means the engaging or informal hiring of a child on a casual or intermittent basis to carry out work for which the child is paid however-

- (a) the relationship of employer and employee is not created;
- (b) the engagement or hiring is not an employment contract; and
- (c) the restrictions of the self-employed casual worker are not in place;

“firearms” means firearms as defined in the Firearms Law (2008 Revision); and

“servitude” means the state of being a slave or completely subject to a person who is perceived as more powerful.

88. (1) A person who commits an offence under this Law or any regulations made hereunder for which no other penalty is provided is liable on summary conviction for a first offence to a fine of two thousand five hundred dollars and to imprisonment for six months, and in the case of a second or subsequent offence to a fine of five thousand dollars and to imprisonment for twelve months. Penalties

(2) Except for the continuing offences described in subsection (3), where this Law creates a continuing offence for which no other penalty is provided, then in addition to the penalty under subsection (1), a person who commits such an offence is liable to a further fine of one hundred dollars for every day or part of a day during which the offence has continued.

(3) An employer, an operator of a workplace, a developer or property owner, general contractor, subcontractor, employer, technical specialist or equipment operator who contravenes the provisions of this Law relating to the occupational safety and health of employees commits an offence and, where the penalty is not specifically provided for, is liable on summary conviction to a fine of five hundred dollars for each day that the contravention continues without abatement.

(4) Where an employer has been convicted of an offence, except an offence under section 24, the commission of which results in -

- (a) wages due to the employee not being paid to the employee; or
- (b) benefits or perquisites due to the employee not being paid or provided,

where notice of an intention so to do had been served upon the employer with the summons or warrant, evidence may be given before sentence of any failure on the part of the employer to pay the wages or benefits or provide the perquisite to the employee concerned during the two years immediately preceding the date on which the information was laid and, on proof or admission of the failure, the Court upon sentencing the employer may order the employer to pay to the employee, in addition to any fine or other penalty, such sum as in the opinion of the Court represents the difference between the amount which should have been paid during those years and that which was actually paid, plus interest at the rate of ten per cent per annum from the date that the wage was due until it is paid.

(5) An order made under subsection (4) may be enforced in the same manner as if it were a fine.

(6) In calculating the wage paid to an employee for the purposes of the application of this section, gratuities shall be disregarded.

89. (1) A person who -

Specific offences

- (a) wilfully makes a false entry in any register, notice, certificate or document required by, under or for the purposes of this Law or any regulations made hereunder to be kept, served or sent;
- (b) wilfully makes or signs a false declaration required by, under or for the purposes of this Law or any regulation or order hereunder; or
- (c) knowingly makes use of any such false entry or declaration as aforesaid,

commits an offence and is liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

- (2) A person who -
 - (a) obstructs or delays the Director, Deputy Director a labour officer or a labour inspector in the due exercise of any power conferred on the Director, Deputy Director, a labour officer or an inspector under this Law;
 - (b) refuses to answer or falsely answers, any inquiry authorized by or under this Law;
 - (c) fails to produce any register, book, document or other record that the person is required by or under this Law to produce; or
 - (d) prevents, or attempts to prevent, any person from appearing before or being examined by the Director, the Deputy Director, a labour officer or a labour inspector,

commits an offence and is liable on summary conviction to a fine of two thousand five hundred dollars and to imprisonment for six months, and, in the case of a second or subsequent conviction within two years from the last conviction for a previous offence, to a fine of five thousand dollars and to imprisonment for twelve months.

Administrative penalties

90. (1) The Cabinet may make regulations providing for an administrative penalty system and for all matters that are necessary or convenient to be prescribed for giving effect to the administrative penalty system.

(2) The penalty system in subsection (1) shall empower the Director where the specified offences are committed under this Law to stay or compound any proceeding for that offence; subject to such conditions as the Director may think fit and the said conditions may include, but are not limited to, the payment of a levy, being not less than twice and not more than five times the amount of any fees that would have been payable had the provisions of this Law been observed and in the event that no fees are payable under this Law, the Director may impose a fine of up to such amount as may be prescribed.

Special provisions as to evidence

91. Where an entry in a register or record is required to be made by this Law by or on behalf of an employer or the operator of a workplace, any such entry shall

be admissible against the employer or the operator of a workplace in any proceedings as evidence of the facts stated in it.

92. (1) Any notice, complaint, decision or other document required or authorized to be served under this Law may be served on any person by sending it by prepaid registered post to the last known address, or -

Service and sending of documents

(2003 Revision)

- (a) on any individual by handing it to the person, or by leaving it at the person's residence;
- (b) on any firm by handing it to any partner thereof, or by leaving it at the principal place of business of such firm;
- (c) on any limited company by handing it to an officer of the company, or by leaving it at its registered office; and
- (d) on the operator of a workplace (even where it is a limited company) in any such manner as set out in paragraphs (a), (b) or (c).

(2) A notice, complaint, decision or other document under subsection (1) may be served by electronic mail where its delivery is in accordance with section 8 of the Electronic Transactions Law (2003 Revision).

(2003 Revision)

(3) Any such document intended to be served upon the operator of the workplace may be addressed to "the operator" at the proper address of the workplace without further name or description.

(4) Subsections (1) and (3) shall apply (with the necessary modifications) to the sending of any documents required or authorized to be sent under this Law.

93. (1) The Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law, and without prejudice to the generality of the foregoing, for the varying of any time periods established or required by this Law.

General regulation making powers

(2) The Director may by order approved by the Cabinet and published in the Gazette, prescribe the format of any notice, application, complaint, report, warning, form or other document required by this Law.

(3) Regulations made under this Law may provide for such transitional or consequential provisions as appear to the Cabinet to be necessary or expedient for giving effect to this Law.

94. The Cabinet may give to the Department or any statutory authority carrying out a function under this Law such general directions as to the policy to be followed as to the execution of such function and where any such policy directions are given, that Department or authority shall give effect to them.

Directions

Additional functions of
Chief Officer

95. In addition to any other functions conferred on the Chief Officer by or under this or any other Law, the Chief Officer shall -

- (a) provide such services as may be prescribed by regulations for the purpose of finding Caymanians employment with employers or supplying employers with Caymanians for employment by them; and
- (b) encourage appropriate training of Caymanians employed or intending to be employed in any employment by -
 - (i) providing or facilitating the provision of courses for the training of Caymanians;
 - (ii) providing information about courses and qualifications in relation to any employment;
 - (iii) assisting Caymanians in finding facilities for being trained in any employment; and
 - (iv) providing such other advice or assistance as may be prescribed.

Repeal
(2011 Revision)
(Law 3 of 2004)

96. The Labour Law (2011 Revision) and the Employment Law, 2004 (Law 3 of 2004) are repealed.

Savings and transitional
provisions

97. (1) Every complaint, decision, appeal or other matter before the Director, the Tribunal or the Appeals Tribunal pursuant to the Labour Law (2011 Revision) in this section referred to as “the repealed Law”, that has not been wholly dealt with when this Law comes into force shall be handled in the manner that the complaint would have handled under the repealed Law until the matter is wholly dealt with.

(2) Regulations made under the repealed Law, not being inconsistent with this Law, shall remain in force until replaced by Regulations made under this Law.

(2011 Revision)

(3) All appointments and things lawfully made or done under the Labour Law (2011 Revision) shall continue in force and shall be deemed to have been made or done under this Law.

(4) Every civil matter and proceeding commenced in any court under the repealed Law and pending or in progress immediately before this Law comes into force may be continued, completed and enforced under this Law.

(5) All proceedings in respect of offences committed in contravention of the repealed Law may be commenced or continued as if this Law had not come into force.

(6) Where any period of time specified in the repealed Law is current at the coming into force of this Law, and there is a corresponding provision in this

Law, this Law shall have effect as if that corresponding provision had been in force when that period began to run.

SCHEDULE

(Sections 63 and 68)

NOTICES

Part A

The Notice for Registration of Workplace shall contain the following particulars -

- (a) the name and address of the workplace, telephone numbers and the name of the employer of the workplace and the operator of the workplace and detailed contact information;
- (b) the trade and business licence number;
- (c) the registered company name or trade and business licensing name where different from above.
- (d) description of the type of work, business or economic activity carried on at the workplace and the machines required in the operation of the workplace, their nature and function;
- (e) details on the number of shifts, if any, and the time periods for each shift;
- (f) the number of employees and the maximum number of employees who will be at the workplace at the same time, the status under the Immigration Law (2014 Revision);
- (g) the name of the pension plan set up by or adopted by the employer and approved and registered by the Director of Labour and Pensions for the benefit of the employees of the workplace;
- (h) the name of the health insurance plan or policy provided by the employer for the benefit of the employees;
- (i) details on the workmen's compensation policies and the providers or any bond entered into regarding the liability for employee injuries, accidents or occupational disease and the amount of that bond;
- (j) conflict resolution processes in the workplace and the person responsible for them;
- (k) copies of any employee policies handbook or procedures manual; and
- (l) signature of employer, signature of the witness to employer's signing and the date of signing.

Part B

The Notice of Accident or Disease shall provide the following information -

- (a) the name and date of birth of the employee who was injured or affected by an occupational disease;
- (b) the time, date and place of the accident;
- (c) the exact location of the employee at the time of the accident, including the proximity to any equipment and the prevailing weather conditions;
- (d) the date when occupational disease was first noticed or diagnosed;
- (e) the vehicle, machine, tool or material involved in the accident or disease;
- (f) details of -
 - (i) the injury or accident, the parts of the body affected; or
 - (ii) the occupational disease including when it was first noticed and diagnosed;
- (g) details of any first aid or treatment administered to the employee;
- (h) where no first aid or treatment was administered the reasons for non-administration, including whether the employee refused treatment and, if so, the grounds on which treatment was refused;
- (i) details on the place or places where the employee was treated and the persons who administered treatment;
- (j) details on the treatment administered;
- (k) details on the mode of transport utilized to convey the employee to the place of treatment;
- (l) the statements of witnesses and employees who were working in close proximity, the respective names, addresses, telephone numbers, e-mail addresses and such other contact information as may be available;
- (m) details on protective equipment in use at the time of the accident or protective equipment used by employee with occupational disease;
- (n) detailed description on how the accident occurred;
- (o) details on any notification made to the Police, including the date and time and the police station notified;
- (p) details on any notification made to the employee's carrier for workmen's compensation, including the name of the carrier and contact information and the date and time of the notification;

- (q) causes of the accident;
- (r) details on date and time of notification of Director of Labour; and
- (s) signature of employer, signature of the witness to employer's signing, contact information for the employer and the witness to the employer's signature and the date of signing.

Passed by the Legislative Assembly the day of , 2015.

Speaker.

Clerk of the Legislative Assembly.

CONSULTATION DRAFT