

THE EMPLOYMENT ACT NO.11 OF 2005

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ACT NO.11 OF 2005

I ASSENT

**{AMANI ABEID KARUME}
PRESIDENT OF ZANZIBAR
AND
CHAIRMAN OF THE REVOLUTIONARY COUNCIL**

27th SEPTEMBER, 2005

**AN ACT TO REPEAL THE LABOUR ACT NO. 3 OF
1997 AND RE-ENACT THE EMPLOYMENT ACT,
ENTRECH CORE LABOUR RIGHTS, ESTABLISH BASIC
EMPLOYMENT STANDARDS AND TO PROVIDE FOR
OTHER MATTERS CONNECTED THEREWITH**

ENACTED by the House of Representatives of Zanzibar.

PART I PRELIMINARY PROVISIONS

1. This Act may be cited as the Employment Act, 2005 and shall come into operation on such date as the Minister may by notice in the Gazette appoint. Short title and commencement.

2.-(1) This Act applies to all employment in the private and public sector, save as provided in subsection (2) of the section. As well as exemption stipulated in various sections of this Act. Application.

(2) This Act shall not apply to -

- (a)** members of armed forces, police and state security;
- (b)** a member of the Special Department;

- (c) employees covered under the current legislation related to merchant shipping;
- (d) such category or class of public officers, public authority or employees exempted by the Minister under subsections (3) and (4) of this section.

(3) The Minister may, after consultation with the Board, and after taking due account of all Conventions and other international instruments ratified by Tanzania, by regulation exclude from the application of all or part of this Act limited categories of employed persons in respect of whom special problems of a substantial nature arise.

- (a) The Minister may, after consultation with the Board, by regulation exclude from the application of all or part of this Act categories of employed persons whose terms and conditions of employment are governed by special arrangements, provided those arrangements afford protection that is equivalent to, or better than the International Labour Standards or that part of the Act from which those categories are being excluded.
- (b) subject to any regulation made under section 2 (4) of this Act employees engaged in the public sector shall enjoy rights equal to those of employees in the private sector.
- (c) for the avoidance of any doubt, this Act applies to employees in the fishing industry who are not covered by the current legislation related to the merchant shipping.
- (d) the provisions of sections 6, 7, 8, 11, and 12 of this Act shall apply to all employees mentioned under subsection (2) of this section.

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

Interpretation
clause.

“Applicant” means any person who is not employed but seeks to be employed;

“Board” means the Labour Advisory Board;

“chamber of commerce” means the Zanzibar National Chamber of Commerce, Industries and Agriculture representing the business community;

“collective agreement” means an agreement entered into freely between an employer or group of employers and a trade union representing any employees of that employer or group of employers;

“contract of service” means any contract whether in writing or oral between the employer on the one part and the employee on the other part, whereby the employee agrees to work for the employer in return for remuneration;

“Commissioner” means the Labour Commissioner;

“citizen” means any person who is a citizen of Tanzania;

“child” means a person under the age of 17 years; Provided that for the purpose of employment in hazardous sectors child means a person under the age of 18 years;

“disease” includes injuries

“dismissal” means action taken by an employer to terminate a contract of service of an employee who commits a major disciplinary or criminal offence in accordance with this Act, or from an order of the Court;

“dependent relative” means a member of an employee’s family who resides with and substantially depends on that employee for his or her livelihood;

“disabled person” means a person who has a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

“domestic work “ means work in a family home but excludes the worst forms of child labour;

“employers’ association” means the association registered to represent the employers and to defend the rights and obligations of employers;

“employer” means any person or public authority who enters into a contract of service to employ any person or group of persons, a corporation or company and whether originated inside or outside the country, for the payment of wages;

“employee” means a person who has entered into or works under or seeks to work under or where the employment has ceased was working under a contract of service;

“factory” means any premises with machinery on which, or within the precincts of which persons are employed in the making, altering, repairing, cleaning, breaking up or adopting for sale of any article for the purpose of gain;

“fair procedure” means a pre-dismissal procedure on conduct, incapacity and operational requirement;

“fair reasons” means a justification for a dismissal on one of the three grounds of misconduct, incapacity and operational requirements;

“family” means a wife and husband and children by blood or otherwise;

“foreigner” means any person who is not a citizen of Tanzania;

“foreign employee” means an employee who is not a citizen of Tanzania;

“Gazette” means the official Gazette of the Revolutionary Government of Zanzibar;

“hazardous sector” includes all the worst forms of child labour provided for in section 7(2) of this Act;

“HIV testing “means taking a medical test to determine a person’s HIV status and includes written or verbal questions inquiring about previous HIV tests, questions related to the assessment of risk behaviour and any other indirect methods designed to ascertain an employee’s or job applicant’s HIV status;

“Labour Court” means the Division of the High Court of Zanzibar established under the Labour Relations Act, 2005;

“Labour Commission” means the government institution responsible for labour matters in the private and public sector and includes the Labour Office in Pemba, Regional Labour Offices and District Labour Offices;

“Labour Inspector” means any person with the right and obligations as more specifically described by the provisions of this Act;

“labour officer” means a person with the right and obligations as more specifically described by the provisions of this Act, and includes the Labour Commissioner, Deputy Labour Commissioner, Chief Labour Officer in Pemba, and Regional and District Labour Officers;

“medical board” means a board constituted under Medical Practitioner’s Act No. 12 of 1999;

“medical officer” means a medical practitioner who is qualified and registered as such under the Medical Practitioners’ Act No. 12 of 1999;

“minimum wage” means the standard wage proclaimed by the President on the advice of the Wages Advisory Board;

“Minister” means the Minister for the time being responsible for labour matters;

“night” means any time between seven o’clock in the evening and six o’clock the following morning;

“organization” means a trade union or an employers’ association;

“parties” means the parties to a contract of service;

“part time worker” means a worker who is engaged in part time work for a continuous period of not less than one month;

“person” includes a juristic person;

“President” means the President of Zanzibar and Chairman of the Revolutionary Council;

“principal” means a person for whom an act is done by an agent or who is represented by an agent;

“private sector” means economic, business or services sector whereby more than half of its assets and or management are owned by private individuals or body corporate;

“Public sector” means economic business or services sector whereby more than half of its assets and or management is owned by the government;

“redundancy” means that a position is no longer needed for operational reasons and, accordingly, the employee in that position is no longer needed in respect of that position;

“remuneration” means wages, benefits, allowances and any other payment arising out of employment whether in cash or in kind payable directly or indirectly by the employer to the employee;

“resign” means the termination of a contract of service by an employee before the expiry of the terms of a contract of service or before the attainment of retiring age;

“retirement” means the action taken by an employer to terminate a contract of service of his or her employee who has completed his or her term of service or who has attained the normal retirement age of sixty years;

“retrenchment” means dismissing a worker because of a redundancy;

“social partners” means the government, employers’ organization, and trade unions’ organization;

“specified areas” means areas which shall be specified by the Minister by regulation;

“Special Departments” means departments established under section 121 of the Zanzibar Constitution, 1984;

“termination of service” means the action taken by an employer to terminate a contract of service of his or her employee prior to the date mentioned in the contract completed or before the attainment of retirement age according to law, or by the wish of the employer or sickness;

“temporary service” means the period of service which may be stipulated or implied in any temporary contract of service which shall be between the period of six months and three years;

“trade union” means a workers’ organization, registered to represent the workers and to defend the rights and obligations of workers;

“tripartite” means the government, a trade union and an employers’ association;

“wages” means earnings, however designated or calculated, capable of being expressed in monetary terms fixed by law or by mutual agreement payable by virtue of a written or unwritten contract of service to an employed person for work done or to be done or for service rendered or to be rendered;

“woman” means any female person without considering her age;

“working place” means any place where work is performed by the employer and an employee;

“Workers Compensation Act” means the Workers’ Compensation Act, 1986 as amended from time to time;

“young person” means a person, other than a child, who is under the age of 21 years.

(2) The following principles shall be used in the interpretation and administration of this Act.

- (a) the standards laid down in the Act are the minimum legally obligatory standards and are without prejudice to the right of workers individually and collectively through their trade unions to request, to bargain for and to contract for higher standards, which in turn then become the minimum standards legally applicable to those workers for the duration of the agreement;

- (b) no provision of the Act or of rules and regulations made thereunder shall be interpreted or applied in such a way as to derogate from the provisions of any International Labour Convention which has entered into force for the United Republic of Tanzania;
- (c) in case of ambiguity, provisions of the Act and of any rules and regulations made thereunder shall be interpreted in such a way as more closely confirms with provisions of Conventions adopted by the Conference of the International Labour Organisation, and of Recommendations adopted by the Conference of the International Labour Organisation;
- (d) where, under the provisions of any other legislation, a person may have a remedy as provided for in that legislation, that remedy shall be in addition to and not in place of any remedy provided for by the Act. However, in no case may there be double monetary recovery by the same person based on the same set of facts.

4. This Act binds the Government except in so far as criminal liability is concerned.

The Act binds the government.

PART II

FUNDAMENTAL RIGHTS AND PROTECTION

5.-(1) Notwithstanding any law to the contrary, forced labour is prohibited.

Prohibition of forced labour.

(2) Any person who exacts or imposes forced labour or causes or permits forced labour to be exacted or imposed for his or her own benefit or for the benefit of any other private individual, association or any public or private body shall be guilty of an offence and shall on conviction be liable to a fine of not less than three million shillings or in default of such fine to imprisonment of not less than three years or to both such fine and imprisonment.

(3) For the purpose of this Act forced labour means any work or service which is exacted from any person under the menace of any penalty and to which that person has not consented or offered himself or herself voluntarily but does not include -

- (a) without prejudice to the provisions of section 8 (2) (a) of this Act, any work or service exacted by virtue of compulsory military service laws for work of a purely military character;
- (b) any work or service which forms part of the normal civic obligations of the citizens of Tanzania;
- (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations;
- (d) any work or service exacted in cases of emergency, such as in the event of war or of a calamity or threatened calamity, and in any circumstance that would endanger the existence or the well-being of the whole or part of the population.

Restriction
on employ-
ment of
children.

6.-(1) All child labour including the worst forms of child labour is prohibited.

(2) No person shall employ a child in any type of work except domestic work.

(3) In assigning domestic work to a child a parent or guardian shall ensure that a child has sufficient time to attend to matters pertaining to education and sufficient time to rest.

(4) Any person who employs a child or procures a child for employment contrary to the provisions of this section shall be guilty of an offence and shall be liable upon conviction to a fine of not less than five hundred thousand shillings or in default of fine to imprisonment for a term of not less than six months.

7.-(1) Notwithstanding any provision to the contrary in this Act or any other written law no person shall be allowed to engage or employ any child in any worst form of child labour.

Prohibition
of
the worst
forms
of child
labour.

(2) For the purpose of this section worst forms of child labour include-

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict.;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

(3) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine of not less than three million shillings or to imprisonment of not less than one year or to both such fine and imprisonment.

8.-(1) No person shall employ a young person who attends or is required to attend compulsory education.

Condition of
employment
of young
persons.

(2) Without prejudice to the provisions of sub-section (1) of this section a person may employ a young person under the following conditions -

- (a) a young person so employed shall not be assigned to heavy duties, duties involving chemicals or any other duty which may be injurious to the health and safety of a young person;
- (b) a young person requiring to be employed shall first undergo medical check up and that the medical officer shall certify that he or she is fit to be employed in that particular work according to his or her age;
- (c) the employer shall ensure that a young person so employed undergoes regular medical check up until he or she attains the age of twenty-one years.

(3) No person shall employ a young person in any industrial undertaking except where only members of a young person's family are employed or where a young person is assigned management or administrative duties or service that may not affect the health and safety of a young person.

(4) The employer of a young person shall keep record of medical check-ups on such young person and make them available to the labour officer or inspector when so required.

(5) Any person who employs a young person contrary to the provisions of this section shall be guilty of an offence and shall on conviction be liable to a fine of not less than four hundred thousand shillings or to imprisonment for a term of not less than three months.

Exemption from restriction of employment of children and young persons.

9. The provisions on restriction on employment of children and young persons shall not apply to students undergoing training in Government or other technical schools and vocational training centres registered in accordance with the provisions of the Education Act No.6 of 1982 and or the Vocational Training Act No. 17 of 1986.

Provided that a child shall not be eligible to undertake any training referred to in this section unless he or she has attained the minimum age of 14 years.

10.-(1) No employer may discriminate, directly or indirectly against an employee, in any employment policy or practice on any ground including race, gender, colour, religion, social origin or status, age, place of origin, national extraction, political opinion,

Prohibition
of discrimi-
nation.

marital status, pregnancy, disability, HIV/AIDS status real or perceived.

(2) Every employer shall take positive steps-

- (a) to promote equal opportunity in the workplace and to eliminate discrimination in employment policy or practice;
- (b) to guarantee equal remuneration for men and women for work of equal value.

(3) For the purpose of this Act discrimination includes - any distinction, exclusion or preference made on the basis of race, colour, gender, religion, political opinion, national extraction or social and place of origin, marital status, pregnancy, disability, and HIV/AIDS status which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

(4) It is not discrimination:

- (a) to take affirmative action measures consistent with the promotion of equality or elimination of discrimination in the workplace; or
- (b) to distinguish, exclude or prefer any person on the basis of the inherent requirements of a job.

(5) No employer may require an employee, or an applicant for employment, to undertake an HIV test in order to ascertain that employee's or applicant's HIV status.

(6) In any legal proceedings brought under this section it shall be a defence on part of the employer that the discrimination did take place on grounds mentioned in subsection (4) of this section.

(7) For the purposes of this Part -

- (a) "employment" includes access to vocational training, access to employment and to particular occupations and terms and conditions of employment;
- (b) "employer" includes an employment agent;
- (c) "employee" includes an applicant for employment;
- (d) an employment policy or practice is any policy or practice relating to:
 - (i) recruitment procedures, advertising and selection criteria and process;
 - (ii) appointments and the appointment process;
 - (iii) job classification and grading;
 - (iv) remuneration, employment benefits and terms of employment;
 - (v) job assignments;
 - (vi) the working environment and facilities;
 - (vii) training and development;

- (viii) performance evaluation systems;
- (ix) promotion;
- (x) transfer;
- (xi) demotion;
- (xii) disciplinary measures; and
- (xiii) termination of employment.

(8) If an employee is discriminated in any way described in the above subsection by the employer or employer's representative, the employee shall be entitled to lodge a complaint with the labour officer who shall have the power to make all of the orders he or she could have made if the complaint was a complaint about unjustified disciplinary penalty or unjustified dismissal.

11.-(1) Any form of sexual harassment of an employee by the employer, his or her representative or any other person is prohibited.

Prohibition
of sexual
harassment
in employ-
ment.

(2) An employee is sexually harassed in that employee's employment if that employee's employer, or a representative of that employer -

- (a) directly or indirectly makes a request of that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains –
 - (i) an implied or express promise of preferential treatment in employment; or
 - (ii) an implied or express threat of detrimental treatment in employment; or
 - (iii) an implied or express threat about the present or future employment status of the employee; or

- (b) uses unreasonable language whether written or spoken of a sexual nature; or
- (c) uses unreasonable visual material of a sexual nature; or
- (d) shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

(3) If an employee is sexually harassed in any way described in the above subsection by the employer or employer's representative, the employee shall be entitled to lodge a complaint with the labour officer who shall have the power to make all of the orders he or she could have made if the complaint was a complaint about unjustified disciplinary penalty or unjustified dismissal.

(4) For the purposes of this section, an employer's representative is a person who is employed by that employer who either has authority over the employee alleging sexual harassment or is in a position of authority over other employees in the workplace of the employee alleging sexual harassment.

(5) All employers who employ more than 25 employees are required to have in place measures to prevent sexual harassment occurring at the workplace.

(6) Employers employing more than 25 employees shall be required, among others, to carry out the following:

- (a) prepare a policy statement on sexual harassment which should also explain the procedure which should be followed by employees who are victims of sexual harassment;

- (b) develop clear procedures for dealing with reported case of sexual harassment;
- (c) specify a person with whom employees may lodge their grievances.

(7) The Minister may in consultation with the Board make regulation to prevent sexual harassment occurring at the work place.

12. The fundamental rights as to freedom of association and effective recognition of the right to collective bargaining shall be as provided for in the Labour Relations Act, 2005.

Freedom
of Associ-
ation and
Collective
Bargaining.

PART III

ADMINISTRATION AND JURISDICTION

13.-(1) There shall be a Labour Commission which shall administer the provisions of this Act as it shall apply to all matters in the private and public sector.

Labour
Commission.

(2) The Labour Commission shall comprise the following -

- (a) the Commissioner who shall have the responsibility of the implementation of the affairs of the Commission;
- (b) the Chief Labour Officer, Pemba who shall coordinate all the Commission's work in Pemba;
- (c) the Regional Labour Officers who shall coordinate all the Commission's work in the regions;
- (d) the District Labour Officers who shall coordinate all the Commission's work in the districts;
- (e) labour officers, Labour Inspectors and other persons who shall be appointed to work under the officers specified under this Act.

Administra-
tion.

14. For the purposes of this Act, the Commissioner shall be responsible for the administration of this Act acting under the authority of the Minister.

Appointment
of officers.

15.-(1) The appointment of the Commissioner shall be made by the President from amongst persons who are holders of first degree or diploma in any relevant discipline coupled with an experience of not less than five years in labour matters.

(2) The Minister shall appoint a Chief Labour Officer, labour officers and Labour Inspectors for the purpose of the better implementation of this Act.

Powers and
functions of
the Commis-
sioner.

16.-(1) The Commissioner shall have the following powers and functions-

- (a) be the chief executive who shall ensure the implementation of this Act;
- (b) may, among other things, give directions to the labour officers and Labour Inspectors for the better implementation of this Act;
- (c) ensure that copies of this Act and other labour laws are available in the workplace;
- (d) post the labour officers and Labour Inspectors in regions and districts as he or she may deem necessary;
- (e) prepare inspection reports and forward them to the employers' and secretaries of the employees trade union branches in the workplace;
- (f) prepare annual reports on labour matters and may require any employer to produce, in writing or in any other manner, labour data, and any documents or records whether periodical or for any interval or

otherwise as he or she may deem necessary, relating to the employee salary scale, conditions of service and other matters concerned with the employment of such employee.

- (g) collect and compile statistics relating to wages, hours of work or any other conditions of employment as may be required by this Act or any other written law;
- (h) may summon any employer or any person who he or she believes will provide adequate information relating to the relationship between the employer or any other person for any of the following reasons –
 - (i) when he or she believes that there is a breach of the law or contract of service;
 - (ii) when he or she wants to inquire into any labour dispute or any other thing relating to the employer and the employee;
- (i) implement any other conditions of employment as may be required by this Act or any other written law.

(2) The Commissioner may on the advice of the safety and health inspector close any workplace if there is present or imminent danger to health and safety of workers.

(3) An employer aggrieved by the decision of the Commissioner may appeal to the Industrial Court.

(4) The Commissioner in the exercise of his or her functions and powers under this Act may in writing delegate such functions and powers to any properly appointed officer of the Commission.

17.-(1) A labour officer shall be empowered to engage in labour inspection which shall include –

Functions of
labour
officer.

- (a) securing the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in work;
- (b) the supply of technical information and advice to employers, employees and their organisations concerning the most effective means of complying with the legal provisions;
- (c) bringing to the notice of the Minister defects or abuses not specifically covered by existing legal provisions.

(2) A labour officer shall be empowered -

- (a) to enter at all reasonable time during working hours at a work place for purposes of inspection;
- (b) to enter by day any premises which he or she may have reasonable cause to believe to be liable to inspection; and
- (c) to carry out any examination, test or inquiry which he or she may consider necessary in order to satisfy himself or herself that the legal provisions are being strictly observed, and in particular –
 - (i) to question, alone or in the presence of witnesses, the employer or the staff of an undertaking, on any matters concerning the application of this Act or other legal provisions made under this Act;
 - (ii) to require the production of any books, registers or other documents the keeping of which is prescribed by law in order to ascertain whether they are in conformity with the legal provisions, and to copy such documents or make extracts from them;

- (iii) to enforce the posting of any notice required by law; and
- (iv) to take or remove for purpose of analysis, samples of materials and substance used or handled, subject to the employer or his or her representative being notified of any samples or substances taken or removed for such purposes.

(3) A labour officer may, where he or she believes that there is a present or imminent danger to the safety or health of workers in a work place, in consultation with a safety and health inspector recommend to the Commissioner the closure of that workplace or suspension of the work process at such work place.

18.-(1) The functions of a Labour Inspector shall be -

Functions
of a
Labour
Inspector.

- (a) to secure the enforcement of the legal provisions relating to conditions of work and the protection of workers while engaged in their work, such as, provisions relating to hours of work, wages, safety, health and welfare, the employment of children and young persons, and other connected matters, in so far as such provisions are enforceable by Labour Inspectors;
- (b) to supply technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions;
- (c) to bring to the notice of the competent authority defects or abuses not specially covered by existing legal provisions;
- (d) to make labour inspections and to ensure that the labour laws are properly observed and to insist and defend the good relations in the workplace;

- (e) to follow up claims of employees or employers in the workplace;
- (f) to give directions to employers and employees on the better implementation of labour laws;
- (g) to ensure that foreign employees who are working in the country possess valid work permits;
- (h) to do any other act or thing under this Act as directed by the Commissioner or labour officer.

(2) Any further duties which may be entrusted to Labour Inspectors, shall not be such as to interfere with the effective discharge of their primary duties or to prejudice in any way the authority and impartiality which are necessary to inspectors in their relations with employers and workers.

Powers of
labour offi-
cers
and Labour
Inspectors.

19. Labour officers and inspectors shall have the following powers -

- (a) at all reasonable times during working hours of the day or night, to enter, inspect, examine and enquire into anything relating to labour affairs at any workplace or used by the employees to work, residence, rest or any other reason if that place is used by employees for the purpose of work or it is in the vicinity of work;
- (b) at any reasonable time during working hours require any employer to produce any document or records relating to the employment of employees together with any information relating to their employment and record of their payment and contribution relating to them.

Confidenti-
ality.

20.-(1) A labour officer or inspector shall in the exercise of his or her functions observe strict confidentiality and shall not divulge

any information obtained in the course of his or her work in terms of this Act except if the information is disclosed in compliance with the provisions of any law:

- (a) to enable a person to perform a function or exercise a power in terms of an employment law;
- (b) for the purposes of the proper administration of this Act;
- (c) for the purposes of the administration of justice.

(2) Subsection (1) of this section does not prevent the disclosure of any information concerning an employer's compliance or non-compliance with the provisions of any employment law.

(3) The record of any medical examination performed in terms of this Act must be kept confidential and may be made available only

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- (a) in accordance with the ethics of medical practice;
- (b) if required by law or court order; or
- (c) if the employee has in writing consented to the release of such information.

(4) Any person who is employed in the execution of a duty under the Act who divulges, publishes or communicates to any person otherwise than in the ordinary course of such employment any information obtained in the course of his or her work shall be guilty of an offence and shall on conviction be liable to a fine of not less than two hundred thousand shillings or to imprisonment of not less than three months.

21.-(1) A labour officer to whom a complaint has been made under this Act shall have the power to –

Labour officer's power to investigate and dispose of complaints.

- (a) investigate the complaint and any defence put forward to such a complaint and to settle or attempt to settle any complaint made by way of conciliation or such procedure as he or she thinks appropriate and acceptable to the parties to the complaint and involve any trade union present at the workplace of the complainant; and
- (b) on reasonable notice being given, require the attendance of any person as a witness or require the production of any document relating to the complaint; and
- (c) hold hearings in order to establish whether a complaint is or is not well founded in accordance with the provisions made under this Act or any other law applicable and the labour officer shall, while conducting the hearing, employ the most suitable means he or she considers best able to clarify the issues between the parties; and
- (d) presume the complaint settled if the complainant fails to appear within a specified period ; or
- (e) adjourn the hearing to another date; and
- (f) when exercising the powers in paragraph (a), the labour officer shall state the reasons for his or her decision on a complaint.

(2) The labour officer shall endeavour to reconcile or mediate between the parties within 21 days from the date of receiving the complaint.

(3) Where the labour officer fails to reconcile or mediate between the parties he or she shall refer the matter to the Commissioner or the Chief Labour Officer, in the case of Pemba, who shall append his or her comments before he or she refers the matter to the Industrial Court.

22.-(1) The Commissioner, a labour officer or Labour Inspector with the consent of the Director of Public Prosecutions shall have the power to institute criminal proceedings before any court of competent jurisdiction in respect of any failure to comply with lawful directives given under or any contravention of any provision of this Act or any other applicable labour laws.

Power to
institute
criminal pro-
ceedings.

Provided that prior to the institution of any criminal case under this section the Commissioner, labour officer or Labour Inspector as the case may be, shall issue a compliance order to any person who fails to comply with this Act or any other labour laws.

(2) A compliance order must set out -

- (a) the name of the employer, and the location of every workplace, to which it applies;
- (b) any provision of this Act or any labour laws that the employer has not complied with, and details of the conduct constituting non-compliance;
- (c) any amount that the employer is required to pay an employee;
- (d) any written undertaking by the employer under the Act and any failure by the employer to comply with the written undertaking;
- (e) any steps that the employer is required to take including, if necessary, the cessation of the contravention in question and the period within which those steps must be taken; and
- (f) the maximum fine that may be imposed upon the employer for failure to comply with a provision of this Act or any applicable labour laws.

(3) The Commissioner, labour officer or Labour Inspector as the case may be, must serve a copy of the compliance order on the employer named in it and each employee affected by it.

(4) The employer must display a copy of the compliance order at a conspicuous place accessible to the affected employees at each workplace named in it.

(5) Any person who does not comply with the compliance order within the time period stated in the order may be prosecuted in accordance with the provisions of sub section (1) of this section.

PART IV

ESTABLISHMENT OF THE LABOUR ADVISORY BOARD

Establish-
ment
of Labour
Advisory
Board.

23.-(1) There shall be established a tripartite body to be known as the Labour Advisory Board.

(2) The Board shall consist of nine members who shall be appointed equally from amongst public officers and representatives of employers and employees as follows:

- (a) three representatives of Government, one of whom shall be the chairperson, the Commissioner and one appointee of the Minister;
- (b) an equal number of representatives of employers and employees appointed by the Minister after consultation with the representative organizations of employers and employees;
- (c) the Minister shall appoint two deputy chairpersons, one of whom shall be chosen from amongst the representatives of employees after consultation with a representative organization of employees, and one of whom shall be chosen from amongst the representatives of the employers after consultation with the representative organization of employers.

(3) The Minister in appointing members of the Board shall ensure gender equity and the representation of the disabled in the Board.

(4) The Board shall meet at its ordinary meeting four times a year and may conduct extra ordinary meetings as the Chairperson may deem necessary.

(5) The Chairperson of the Board shall be appointed by the Minister and shall be a person well-versed in labour matters and of high moral calibre.

(6) For the purposes of this section, “representatives of employers and employees” means persons who have been designated as eligible for appointment to the Board by the most representative federation of employers and the most representative federation of trade unions.

(7) The Commissioner shall be the secretary to the Board.

24.-(1) The quorum of the Board’s meeting shall be more than Quorum. half of the members present provided that at least one member from each of the social partners is present.

(2) Notwithstanding the provisions of subsection (1) of this section where the Board fails to meet because the quorum of the Board’s meeting was not reached the Board shall postpone that meeting hold such meeting at a subsequent date even if the representation from one of the social partners is not present.

25. The tenure of office for the members of the Board shall be Tenure of office. three years provided that a member may be eligible for reappointment.

26. The Labour Commission shall be the secretariat of the Board Secretariat. for the purposes of organization, preparation of agenda and keeping of records of Board meetings.

Regulations
by Minister.

27.-(1) The Minister in consultation with the Board may make regulations for the better carrying out the duties of the Board.

(2) Subject to the provisions of this Part the Board may regulate its own proceedings.

Functions of
the Board.

28.-(1) The Board shall have the following functions :

- (a) to advise the Minister on all labour matters concerning the obligations of Zanzibar under the International Labour Organisation, including the making of responses to comments or questionnaires and proposed text of international labour standards, the taking of action necessary to comply with the obligations of membership of the International Labour Organisation, and any proposed denunciation of ratified Conventions;
- (b) to consider and advise upon any proposed legislation affecting labour, employment, industrial relations or working conditions;
- (c) on its own initiative, to discuss any matter connected with labour, employment, industrial relations, working conditions or labour legislation as it sees fit, and to report to the Minister in writing upon such discussion;
- (d) to advise the Minister on any matter connected with the employment of workers, industrial relations or organisations of employers or workers as is referred to it by the Minister;
- (e) to consider and advise upon issues addressed by tripartite regional or international conferences;
- (f) to advise on any matter concerning the operation of workers' compensation;

- (g) to advise the Minister on labour matters and such other matters affecting employment;
- (h) to advise the Minister on all matters concerning the operation of the employment service and the development of the employment service policy;
- (i) to advise the Minister on the formulation and development of policies designed to promote the granting of educational leave to workers for the purpose of -
 - (i) training;
 - (ii) trade union, social and civic education matters; and
 - (iii) the formulation and development of a national policy on vocational rehabilitation and the employment of persons with disabilities.
- (j) to do any other functions directed under any regulation.

PART V

EMPLOYMENT PROCEDURES AND FOREIGN EMPLOYMENT

29.-(1) There shall be established private employment Agents who shall be representatives of employers in the private sector in recruitment of employees.

Prohibition
of recruit-
ment
without
licence.

(2) Subject to the provisions of this Part, no person shall act or engage in or carry on the business of a private employment agent unless the person is in possession of a valid licence.

(3) Any person who acts as a private employment agent or engages in or carries on the business of a private employment agent contrary to the provisions of subsection (2) of this section shall be

guilty of an offence and shall on conviction be liable to a fine of not less than five hundred thousand shillings or in default of fine to imprisonment for a term of not less than three months.

(4) For the purposes of this Part “private employment agent” means any natural or legal person, independent of the public authorities, who provides one or more of the following labour market services for gain:

- (a) services for matching offers of and applications for employment, without the private employment agent becoming a party to the employment relationship which may arise from there;
- (b) services consisting of employing workers with a view to making them available to a third party, who may be a natural or legal person that assigns their task and supervises the execution of such tasks.

(5) Notwithstanding the provisions of this section, the employment or recruitment in the public sector shall be done in accordance with the procedures laid down by the Civil Service Commission Act, 1986 or in accordance with other relevant laws.

(6) The public sector shall not be binded by the provisions mentioned under subsection (1) to (4) of this section.

(7) The government may set its own procedure of recruitment of employees.

Application
for licences.

30.-(1) Every application for a licence to act as a private employment agent or engage in or carry on business as a private employment agent hereinafter referred to as an employment agent’s licence shall be made to the Commissioner.

(2) On payment of the prescribed fees the employment agent’s licence shall be issued by the Commissioner in accordance with the regulations made under this Act.

(3) Before issuing any such licence the Commissioner shall -

- (a) satisfy himself or herself that the applicant is in a position to fulfil the obligations under this Act;
- (b) require the applicant to furnish such security as the Commissioner deems necessary for the applicant's proper conduct as a private employment agent;
- (c) satisfy himself or herself that adequate provision has been or will be made by the principal for

safeguarding the health and welfare of the persons to be recruited.

(4) The Commissioner may refuse to issue shall be issued subject to the provisions of this Act, including any regulations made by the Minister thereunder and such conditions as the Commissioner may, in accordance with any directions of the Minister, specify therein.

(5) Every employment agent's licence shall be issued subject to the provisions of this Act, including any regulations made by the Minister thereunder, and such conditions as the Commissioner may, in accordance with any directions of the Minister, specify therein.

31. Any person aggrieved by the decision of the Commissioner Appeal. under this Part may appeal to the Minister within thirty days from the date of such refusal.

32. The Minister may in consultation with the Board regulate and Regulations. prescribe for -

- (a) application forms;
- (b) types of licence;

- (c) period of licence;
- (d) fee or different fees for different categories of licences;
- (e) grounds for cancellation or suspension of licences;
- (f) employment procedures and the relationship between an employer and agent;
- (g) records, accounts and statistics which employment agents shall be required to keep;
- (h) appeal;
- (i) any other matter in relation to regulatory frame work for private employment agents.

Non transferability of licence.

33.-(1) An employment agent's licence issued under this Act shall not be transferable.

(2) Notwithstanding the provisions of this section nothing shall affect any holder of a valid power of attorney given by a licensed private employment agent lawfully to engage in recruiting or in operations as a private employment labour agent.

Observance of rules of natural justice.

34. Notwithstanding any regulation made under this Part, no suspension or revocation of an employment agent's licence shall be made without observing the rules of natural justice.

Labour Commission is not a private employment agent.

35. For the avoidance of doubt the Labour Commission shall not act or engage as a private employment agent.

Employment of foreigners.

36.-(1) No employer shall be permitted to employ a foreigner except in the following cases –

- (a) where no Tanzanian with the required qualification is available for the post;
- (b) where the vacant position is a management position for which the employer is allowed to employ a person of his or her choice under the provisions of the Zanzibar Investment Promotion and Protection Act 2004.

(2) There shall be a work permit for foreign employees which shall be issued by the Commissioner.

(3) A work permit shall, except for persons exempted under the provisions of this Act, be issued upon payment of fees prescribed by the Minister by notice in the Gazette.

(4) Every foreign employee shall at every material time hold only one work permit for one place of employment.

(5) The employer shall report to the Commissioner on expiry or termination of every contract of service with a foreigner within fourteen days from the date of such expiry or termination, as the case may be.

(6) For the purposes of employment under this Act any foreigner married to a Zanzibari and who is ordinarily resident in Zanzibar shall not be treated as a foreigner provided that the marriage shall have subsisted for at least three years.

(7) Where the marriage dissolves the right given to a foreigner by subsection (6) of this Act shall be forfeited.

37.-(1) There shall be a long term work permit which shall be valid for between six to twelve months. Long term
work permit.

(2) A long term work permit may be renewed by the Commissioner for not more than one year at a time upon application being made by the employer and the employee and upon being satisfied that it is necessary to do so; but in any case a total period for a foreign employee to work in Zanzibar shall not exceed four years, except for investors and employees in the management and

expatriate positions in terms of the Zanzibar Investment Promotion and Protection Act, 2004.

(3) Notwithstanding the foregoing provisions the Minister may order a work permit to be issued for an additional period not exceeding two years.

(4) A long term work permit shall be issued to foreign investors and employees in management or expatriate positions whose engagements shall be proved to require a long term work permit and such other persons as may be prescribed in regulations.

Short term
work permit.

38.-(1) There shall be short-term work permits which shall be valid for less than six months.

(2) Short-term work permits shall be issued to foreign investors who applied for such permits and other foreigners engaged in short-term employment and such other categories of foreigners prescribed in regulations.

(3) Short-term work permits shall not be renewable except for foreign investors.

Exemptions
from pay-
ment of work
permit fees.

39.-(1) Individual investors whose investments are approved under the provisions of the Zanzibar Investment Promotion and Protection Act 2004 shall be exempted from payment of work permit fees.

(2) The Minister may exempt from payment of work permit fees any foreign employee exempted under this Act.

Power of the
Commission-
er to refuse
issuing of
work permit.

40.-(1) The Commissioner may refuse to issue a work permit to any foreigner in the following circumstances -

- (a) where the applicant purports to be a foreign investor but fails to prove that he or she is such an investor;

- (b) where the applicant is a mere employee and the Commissioner is satisfied that such position may be filled by a citizen;
- (c) where it is proved that the applicant is employed by another establishment without the Commissioner being informed of the termination or expiry of his or her previous contract of service;
- (d) where the Commissioner is satisfied that the applicant's qualifications are not compatible with the position for which the permit is applied for;
- (e) where the Commissioner is of the opinion that the establishment seeking to employ such a foreigner is incapable of paying his or her wages and other remuneration;
- (f) in such other circumstances that the Commissioner has every reason to believe that grant of work-permit to the applicant is prejudicial to public interest.

(2) The Commissioner shall inform the applicant in writing of such refusal and the grounds for the same and he or she will give an opportunity to the applicant before such refusal is given to show cause why the work permit should be granted.

(3) The applicant may, within thirty days of receiving a notice of refusal, appeal to the Minister against such decision.

41.-(1) The Commissioner shall at any time have the power to suspend or cancel a work permit issued to any foreign employee in the event of any or all of the following –

Power of the Commissioner to cancel work permit.

- (a) where the holder of a work permit has shifted from the establishment in respect of which the permit was issued and proceeded to another establishment without prior approval of the Commissioner;

- (b) where the employment contract is terminated or expires before the expiry of the work permit;
- (c) where it is found that the applicant obtained the work permit through fraudulent means.

(2) The Commissioner shall observe the rules of natural justice before he or she exercises his or her power under this section.

Offences.

42.-(1) Any foreigner who works or is employed without a valid work permit is guilty of an offence and shall upon conviction be liable to a fine of not less than five hundred thousand shillings or in default to imprisonment for a term of not less than three months.

(2) Any employer who employs or permits any foreigner without a valid work permit to work in his or her establishment is guilty of an offence and shall upon conviction be liable to a fine of not less than five hundred thousand shillings or in default to imprisonment for a term of not less than three months.

(3) Any foreigner found to use a work permit in another establishment different from the establishment in respect of which the work permit was issued without special permission of the Commissioner is guilty of an offence and shall upon conviction be liable to a fine of not less than eight hundred thousand shillings or in default to imprisonment for a term of not less than three months.

(4) Any employer who fails to report to the Commissioner on termination or expiry of any contract of employment as provided for in section 36(5) of this Act is guilty of an offence and shall on conviction be liable to a fine of not less than five hundred thousand shillings or in default to imprisonment for a term of not less than three months.

PART VI CONTRACTS OF SERVICE

43. No person shall be employed under any contract of service except in accordance with the provisions of this Act.

Prohibition
of em-
ployment
contrary to
this Act.

44. There shall be the following types of contract of service -

Contracts of
service.

- (a) a permanent contract which shall be terminated when the employee attains the normal retirement age of sixty years. Provided that voluntary retirement may be considered on the attainment of fifty five years of age;
- (b) a temporary contract :
 - (i) the period of service which may be stipulated or implied in any temporary contract of service which shall be between the period of six months and three years;
 - (ii) the Minister in consultation with the Board shall, by regulation specify special categories of service and employees who in his or her opinion should be allowed to work under the terms of temporary contract of service.
- (c) a part-time contract of service where the Minister shall in consultation with the Board have power to make regulations governing the working procedure of part time services :
- (d) a daily-paid contract :
 - (i) a daily-paid contract of service shall be terminated soon after the expiration of a working day or one month from the date of employment as

the nature of the service or need of the employer may determine;

- (ii) an employer may enter into any type of written contract with the daily-paid employee who has worked with the said employer for a continuous term of six months if the employer still needs the services of the employee.

Oral
contracts.

45.-(1) The period of employment in any contract not required to be in writing shall in no case exceed six months provided that the parties may enter into any form of written contract of service when the maximum period of employment for an oral contract expires if the employer still requires the services of the employee.

(2) It is an offence to employ any person as a daily paid worker in any employment of a permanent nature.

(3) The Minister may in consultation with the Board make regulations specifying categories of daily paid employees.

Attestation
of contract.

46.-(1) Every written contract of service entered into between an employer and an employee shall be attested to by a labour officer.

Provided that the absence of attestation shall not prejudice the accrued rights of an employee under the contract.

(2) A labour officer shall not attest to a written contract of service unless he or she is satisfied that:

- (a) an employee has understood and agreed to all the terms and conditions of the contract;
- (b) the terms and conditions of the contract are not in any way inconsistent with the provisions of this Act;
- (c) an employer is capable of performing his or her obligations under the contract and abiding by the provisions of this Act;

- (d) the medical examination report certifies that the person so examined is fit and capable of doing the job he or she is employed to do.

(3) A labour officer may if he or she is not satisfied by any of the requirements referred to in subsection (2) of this section withhold his or her approval and shall furnish reasons thereto.

(4) Any person aggrieved by the decision of a labour officer may appeal to the Commissioner.

(5) An employer shall pay the prescribed fees for every contract which has been attested to by a labour officer.

(6) The fees referred to under subsection (5) of this section shall be rescribed by the Minister by regulations made under this Act.

47.-(1) Any employee who enters into a written contract of service shall, in accordance with the procedure prescribed by the ministry responsible for health, undergo a medical examination at his or her own expense. Medical Examination.

(2) The labour officer shall not attest to any contract of service if the employee fails to produce a medical examination report stating that he or she is fit and capable of being employed in the service so required.

48.-(1) Every employer or private employment agent shall keep employment records and submit a return of those records to the Commissioner. Employer to keep records.

(2) The Commissioner may require any employer to furnish copies, returns and statistics, whether periodical or otherwise of the employment contracts, number of employee, rates of remuneration and any other conditions of service affecting such employment.

(3) The Commissioner shall from time to time prescribe the form of employment records and particulars to be kept by the employer or private employment agent and how the returns of such records shall be submitted.

(4) Subject to the provisions of subsection (6) of this section an employer shall furnish an employee, when the employee commences employment, with a copy of the employment contract.

(5) If an employee does not understand the terms of the employment contract, the employer shall ensure that they are explained to the employee in a manner that the employee understands.

(6) If in any legal proceedings, an employer fails to produce a copy of an employment contract, the employer bears the burden of proving or disproving the alleged terms of employment.

Transfer of
contract.

49.-(1) No written contract of service shall be transferred from one employer to another without the consent of the employee and an endorsement by a labour officer.

(2) The labour officer, before endorsing the transfer shall ascertain that the employee has freely consented to the transfer and that his or her consent has not been obtained by coercion or undue influence or as a result of misrepresentation or mistake.

(3) Where an employee consents to the transfer of his or her contract of service it shall be transferred to the transferee and all rights and obligations between the employee and the transferee shall continue to apply as if they had been rights between the employee and the transferor.

(4) Where the employee refuses to be transferred such refusal shall be deemed to have terminated the contract and the employer shall pay the employee all his or her benefits which he or she is entitled to receive under the contract.

(5) No contract of service shall be transferred from one employer to another unless the trade or business is also transferred in whole or in part.

(6) When a trade or business is transferred following a dispute or any other event which resulted into the employer leaving the country without making payment to his or her employees in respect of their contractual benefits and or any other accrued remunerations, the transferee shall be bound to pay all employees who have refused to be transferred their contractual benefits and, consequently, shall be responsible for all contractual benefits of all employees who gave their consent to the transfer.

50.-(1) No trade or business shall be transferred from one employer to another until the expiration of one month after notice in writing has been delivered to or left at the office of the Commissioner stating – Notice of transfer of trade or business.

- (a) the full names of the employers;
- (b) the names of the enterprises involved;
- (c) the full addresses of the employers;
- (d) a copy of an agreement of transfer of business or trade.

(2) Upon receiving such notice the Commissioner shall direct a labour officer to supervise the payment of the employees' contractual benefits and gratuities under the contract.

51.-(1) When a government's trade or business is transferred to a private enterprise by way of lease or sale all employees thereof shall be entitled to receive their contractual benefits from the government. Transfer of government project or business to private enterprise.

(2) When the transferee employs persons in his or her trade or business he or she shall give first priority to the employees who were in the governments' business or trade which has been transferred to such transferee.

Termination
of a written
contract.

52.-(1)A written contract of service shall be terminated in the following instances -

- (a) expiry of the terms of the contract :
 - (i) where the employee attains the normal retirement age;
 - (ii) where the contract of service, being a contract for a fixed term or part-time, ends with the expiry of the specified term.
- (b) in case the employee dies before attaining the normal retirement age or before the expiry of the specified terms of the contract;
- (c) in case of the employer's death; provided business ceases on such death;
- (d) where it is certified by a medical board that the employee is incapable and unfit for employment;
- (e) where the employee is dismissed from work following, or as a consequence of, grossly unreasonable conduct on the part of the employee towards the employer or due to incompetency;
- (f) where the employee refuses to be transferred from one employer to another;
- (g) where the enterprise ceases to operate for a period exceeding three months;
- (h) where the employer or company is bankrupt or winding-up and the enterprise ceases to operate for a period of one month from the date of the occurrence of the employer's bankruptcy or winding-up.

(2) Where the employer terminates an employee on grounds of incompetence as in paragraph (e) of subsection (1) of this section he or she shall give reason(s) for such termination.

53.-(1) The following procedure shall be applicable in terminating an employee on a permanent contract of service who attains the normal retirement age.

Procedure and grounds for termination due to retirement..

- (a) the employer shall furnish three months' notice to the said employee of an impending intention to retire him or three months' salary in lieu of notice;
- (b) the employer shall furnish three months' notice to the Commissioner or social security pension fund to which the employee is a subscriber;
- (c) the employer shall upon retiring the said employee pay all terminal benefits due under this Act except gratuity and pension which shall be dealt with under and by the relevant social security or pension fund authority;
- (d) the employer shall contact the nearest labour officer and the relevant trade union branch office in carrying out the retirement exercise.

(2) An employee contracted under permanent terms of service may be terminated before retirement under any of the following circumstances -

- (a) where the employee contracts a disease or sustains injury as a result of which a medical board certifies that the employee cannot continue with employment;
- (b) where the establishment ceases its operations due to the winding up of its business;
- (c) where the employer declares redundancy and is so authorised under this Act.

(3) Where upon retirement the employer still requires the services of the retired worker, the employer shall employ him or her under a fixed term of service in accordance with the provisions of this Act.

Notice of
termination.

54.-(1) A contract of service shall not be terminated by the employer or employee unless notice has been given except:

- (a) where the contract of service is terminated summarily in accordance with the provisions of section 111 of this Act; or
- (b) where the reason for termination is that the fixed term or part time contract has come to an end.

(2) The notice referred to in this section shall be in writing, and shall be in a form and language that the employee to whom it relates can reasonably be expected to understand.

(3) The notice required to be given by an employer or employee under this section shall be -

- (a) not less than two weeks, where the employee has been employed for a period of more than six months but less than one year;
- (b) not less than one month, where the employee has been employed for a period of more than twelve months but less than five years;
- (c) not less than three months where the employee has been employed for a period of five years and more.

(4) An employee who terminates service in accordance with subsection (1) of this section shall not be entitled to gratuity but shall be entitled to such proportion of the contributions to the pension or social security fund.

(5) The employer shall furnish information and records relating to the contributions of the said employee to the pension or social security fund.

55.-(1) When an employer conducts an inquiry which he or she has reason to believe may reveal a cause for dismissal of an employee, the employer may suspend that employee on half pay. Suspension pending inquiry.

(2) Any suspension under this section shall not exceed three months or the duration of the inquiry, whichever is the shorter.

(3) If the enquiry conducted by the employer in accordance with subsection (1) of this section proves that the employee has committed an offence, the employer may dismiss the employees.

(4) If the enquiry conducted under subsection 91) of this section proves that an employer did not commit an offence, the employer shall restate the employee and pay all the payments deferred during his/her suspension, or shall terminate the employee from employment and pay all payments deferred during suspension plus other entitled terminal benefits.

56.-(1) Any citizen who intends to seek employment outside Tanzania shall register with the office of the Commissioner in accordance with the provisions of this Act. Employment outside Tanzania.

(2) Any employer who intends to employ a citizen in any employment which is outside Tanzania shall communicate with the Commissioner for the issuance of the list of names so registered in accordance with subsection (1) of this section.

(3) A contract of service for any employment which is performed outside Tanzania shall be in accordance with the law of that particular country.

(4) A contract of service for any employment to be performed outside Tanzania shall have the following particulars :-

- (a) the full name of the employer and the employee who is intended to be employed;
- (b) the nature of the work the employee is engaged in abroad;
- (c) the specific period of employment;
- (d) the wages and allowances which the employee is entitled to receive;
- (e) the employee's accommodation and other benefits;
- (f) the employee's normal hours of work per day and or week;
- (g) provision relating to the employee's medical care;
- (h) provision relating to the termination of contract and terminal benefits;
- (i) the number of days of annual leave to which the employee is entitled and his or her entitlement to pay during such leave.
- (j) the employer shall be responsible for all the employee's travelling expenses from Zanzibar to the country the employee is supposed to work and vice versa.

(6) The employee shall undergo a medical examination in Zanzibar at the expense of the employee himself or herself save that the employer may require that the employee be further medically examined by a qualified medical practitioner abroad, provided that in such a case the employer shall be responsible for any fees payable in connection with the said medical examination;

Provided further that should the employee be found unfit, he or she shall be sent back to Zanzibar at the expense of the employer.

(7) A contract of service entered into between the employer and an employee shall be presented to the labour officer for attestation before departure from Zanzibar.

(8) The employer shall in writing, guarantee to the Commissioner the safety of his or her employee(s) while abroad.

(9) A certified copy of a contract of service entered into between the employer and the employee(s) shall before the employee(s)' departure from Zanzibar, and after attestation by a labour officer be deposited with the Commissioner.

57.-(1) A contract of service in any employment with a foreigner who is to be employed in Zanzibar shall – Contract with a foreigner.

- (a) be in writing;
- (b) be attested to by a labour officer in accordance with the provisions of this Act;
- (c) specify :
 - (i) the full names of the employer and employee;
 - (ii) the full address of the employee and the name of the country the employee is coming from;
 - (iii) the nationality of the employee;
 - (iv) the qualification and title of the employee and the nature of the work he or she is engaged to do;
 - (v) the duration of the contract which shall not be inconsistent with the provisions of this Act;
 - (vi) the probation period if necessary;

- (vii) the place where the employee's duties are to be performed;
- (viii) the wages and allowances the employee is entitled to receive;
- (ix) the name of the enterprise or company the employee is engaged to work for;
- (x) the liability when the employee dies in service of his or her employer;
- (xi) the retirement benefits which shall not be less than the amount provided for under this Act, to which the employee is entitled to receive;
- (xii) police clearance certificate.
- (xiii) any other requirement which shall be specified in the regulations;

(2) An application for a contract of employment with a foreigner under this Act shall be made while the foreigner is outside Zanzibar.

Termination
of contract
with a for-
eigner.

58. A contract of service with a foreigner may, *mutatis mutandis* be terminated in the instances provided for in section 52 of this Act.

Migrant
workers.

59.-(1) No person shall organise an illicit or clandestine movement of migrants for employment either in departing from, passing through or arriving in Tanzania, or give assistance to such organisation where it exists.

(2) No person shall employ a person whom he or she knows to be unlawfully present in Tanzania.

(3) A person who acts in contravention of this section commits an offence under this Act.

60.-(1) Any employee in a permanent contract of service required to be in writing shall be on a probationary period of six months from the date he or she was so employed. Probationary period.

Provided that a probationary period may be extended for a further period of not more than six months.

(2) Any employee who is on temporary service not to be in writing shall be on probationary period of three months from the date he or she was so employed.

(3) If the probationary period expires without a confirmation letter by the employer, the employee shall be deemed to have been confirmed.

(4) Either party to a probationary contract of service may terminate the contract by giving the other party 14 days' notice or payment of 14 days wages in lieu of such notice.

(5) The following shall not constitute good cause for terminating a contract of service of an employee during a probation period:-

- (a) pregnancy or breast feeding;
- (b) absence from work due to employee's sickness;

61. Subject to the provisions of this Act a contract with a foreigner may be renewed on such terms and conditions agreed between the parties. Renewal of employment contract with a foreigner.

PART VII EMPLOYMENT STANDARDS AND RIGHTS

62.-(1) In all establishments the normal working hours shall not exceed eight hours per day or forty two hours per week. Length of working day and week.

(2) Despite subsection (1) of this section a collective agreement may permit the hours of work be averaged over a period of up to four months provided that any employer may not require or permit an employee who is bound by a collective agreement under this section to work more than the average of forty five ordinary hours of work in a week or ten hours in any one day over the agreed period.

(3) A collective agreement in terms of subsection (2) of this section shall lapse after twelve months.

(4) Notwithstanding the provisions of subsection (1) of this section when persons are employed in shifts it shall be permissible to employ persons in excess of eight hours in any one day and forty two hours in any one week provided that the average of that period shall not exceed forty eight hours in any one week.

(5) In any establishment where the normal working hours are at least eight hours or more per day, a one hour break shall be granted each day to the employees provided that this provision shall not apply to employees in particular services to be specified by regulations.

(6) An employer shall grant an unpaid one hour break to his or her employees referred to in subsection (4) of this section.

Overtime
work.

63.-(1) Subject to the provisions of this Act an employer may not require or permit an employee to work overtime:

- (a) except in accordance with an agreement; or
- (b) more than ten hours overtime a week.

(2) An agreement in terms of subsection (1) may not require or permit an employee to work more than twelve hours on any day.

(3) A collective agreement may increase the maximum permitted overtime to fifteen hours per week.

(4) Despite subsection (1)(a) of this section the overtime of an employee may be averaged over a period of up to four months in terms of a collective agreement.

(5) An employer may not require or permit an employee who is bound by a collective agreement in terms of subsection (4) of this section to work more than an average of five hours overtime in a week over the agreed period.

(6) A collective agreement in terms of subsection (4) of this section shall lapse after twelve months.

(7) The limit of hours of work prescribed in section 62 may be exceeded in case of accident, actual or threatened, or in case of urgent work to maintain machinery or plant, or in case of force majeure, but only so far as may be necessary to avoid serious interference with the ordinary working of the employer.

(8) Where overtime hours are worked the employee shall be entitled to overtime pay in the following manner -

- (a) in respect of weekdays, the employee shall be paid not less than double the rate payable per hour for work on a working day ($\text{monthly salary} \times \text{overtime hours} \times \frac{2}{30}$ divide by 8);
- (b) in respect of holidays and public holidays, the employee shall be paid not less than double and half the rate payable per hour for work on a day that is not public holiday provided that such payment shall be for eight hours ($\text{monthly salary} \times \text{overtime hours} \times \frac{2.5}{30}$ divide by 8);
- (c) in respect of any overtime hours worked in excess of eight hours referred to in sub-section (3)(1), of this section the employee shall be paid not less than three times the rate payable per hour for work on working day.

Regulation of
working time
and overtime
rate.

64. The Minister may in consultation with the Board by regulation make provisions for:

- (a) payment of overtime rates in particular occupations;
- (b) working hours for domestic servants and security guards;
- (c) excluding persons holding high managerial positions from the operation of section 62 and 63;
- (d) the maximum number of working hours and rest days in respect of employment in particular occupations provided that such maximum number shall not exceed the limitation established by sub-section (1) and (2) of section 63 of this Act.

Restriction
on
number of
work
days.

65.-(1) An employee shall not be required to work for his or her employer for more than six consecutive days without a day's rest.

(2) The employer shall give his or her employees a day's rest which for the purposes of this section shall mean a period of rest comprising at least twenty four consecutive hours.

(3) An employee may work during a rest day provided the employer pays the employee double the employee's hourly basic wage for each hour worked during the period.

(4) The Commissioner shall require an employer-

- (a) to keep a register for the purpose of recording his or her employee's resting days and shall produce it to the labour officer or inspector if required.
- (b) to post notices of employees' resting days in conspicuous places at the employer's work place.

66.-(1) Any employer who engages or employs any person to do night work shall pay that employee an extra five per centum (5%) pay of the daily wage of such employee or time off as may be agreed between the employer and employee. Extra pay for night work

(2) If the hours worked are overtime hours, the five per centum (5%) shall be calculated at the employee's overtime rate.

(3) For the purposes of this section night means the time from 10.00 p.m. to 6.00 a.m.

67.-(1) Subject to the provisions of this section –

Annual leave
and public
holidays.

- (a) every employee shall, once in every calendar year, be entitled to a holiday with full pay at the expense of his or her employer at the rate of seven days in respect of each period of a continuous four months' service, to be taken at such time during such calendar year as may be agreed between the parties; and
- (b) an employee shall be entitled to a day's holiday with full pay on every public holiday during his or her employment or, where he or she works for his or her employer on a public holiday, to a day's holiday with full pay at the expense of the employer on some other day of work.

(2) Where an employee who works on a public holiday receives, in respect of such work, pay at not less than double the rate payable for work on a day that is not a public holiday, such employee shall not be entitled to a day's holiday with full pay in lieu of the public holiday.

(3) Subject to the provisions of sub-section (2) of this section, any agreement to relinquish the right to the minimum annual holiday as prescribed in this section, or to forgo such a holiday, for compensation or otherwise, shall be null and void.

(4) An employer and employee may agree on the division of an employee's annual paid leave into two parts provided that the part of at least two uninterrupted working weeks' leave shall be granted not later than one year, and the remainder taken not later than eighteen months from the end of the year in respect of which the holiday entitlement has arisen.

(5) This section shall only apply to employees who have performed continuous service for their employer for a minimum period of six months;

(6) An employee shall be entitled to receive, upon termination of employment, a holiday with pay proportionate to the length of service for which he or she has not received such a holiday, or compensation in lieu thereof.

(7) For the avoidance of doubt part-time workers are entitled to annual leave on proportionate basis as may be prescribed by regulations made by the Minister under this Act.

(8) An employee who is on his or her annual leave is entitled to travel to any place of his or her choice provided that he or she gives the address to his or her employer of the place where he or she intends to travel to.

(9) The Minister shall by order published in the Gazette specify the days which shall be considered as public holidays for the purposes of this section;

Temporary
emergency
leave.

68. Notwithstanding the provisions of section 67 of this Act, every employee shall be entitled to a temporary emergency leave with full pay in the following instances :

- (a) in case of the death of a father, mother, son, or daughter for a period of three days;
- (b) in case of the death of a spouse for a period of three days;

- (c) in case of the death of a sister, brother or half sister or half brother, for a period of one day;
- (d) in case of the death of a father or mother-in-law for a period of one day.

69.-(1) If a medical board certifies that an employee is sick or has suffered an accident or has contracted a disease arising out of and in the course of employment or otherwise and is therefore incapable of work, the medical board shall grant such employee sick leave.

(2) Any employee who has contracted a disease not arising out of and in the course of employment, shall be entitled to sick leave as follows –

- (a) temporary leave on full pay for a period not exceeding two months;
- (b) if the medical board certifies that the employee is still incapable of work, after the expiration of the first two months, the employer shall grant the employee another sick leave for a period not exceeding three months other than the first two months on half pay;
- (c) if the leave referred to in sub-section (2)(b) expires and the medical board certifies that the sick employee is still incapable of work, the employer may terminate the contract of service on medical grounds.

(3) If a medical board certifies that an employee has contracted a disease or sustained personal injury arising out of and in the course of employment the employer shall grant such employee sick leave as follows –

- (a) sick leave on full pay for a period not exceeding six months;

- (b) if upon expiry of six months the medical board certifies that a sick employee is incapable of work, the employer shall grant such employee another sick leave for a period not exceeding three months on half pay;
- (c) if the leave referred to in paragraph (b) of this section expires and the medical board certifies that the sick employee is still incapable of work, the employer may terminate the contract of service on medical grounds.

(4) Where an employee has become too ill to perform his or her current work due to HIV/AIDS, an employer shall be obliged to follow the provisions of this Act regarding termination for incapacity before terminating the services of the employee and such employee shall be eligible to the benefits provided under this Act and the existing social security scheme.

(5) An employer and a trade union may by a collective agreement agree on additional privileges relating to sick leave other than those provided by this Act.

(6) For the purpose of this section any employee who has been in the service of an employer for a period of six months of continuous service is entitled to sick leave.

Maternity
leave.

70.-(1) A pregnant employee shall upon delivery be entitled to a three months' paid maternity leave which shall be exclusive of the annual paid leave prescribed under section 67 of this Act.

(2) In the event an employee delivers multiple births the leave period shall be increased to one hundred days.

(3) Maternity leave shall commence at least four weeks before the date of delivery unless a medical officer advises otherwise.

(4) Subject to the provisions of subsection 72 (1) (a) an employee shall be entitled to maternity leave as provided under sub-

section (1) of this section after every three years; but in the event of miscarriage or death of an infant baby during maternity leave, the said leave may be terminated after six weeks from the date of delivery or miscarriage.

(5) In the event an employee, whose maternity leave is terminated by reason of death of an infant baby, falls pregnant before completing three years from the date of her first confinement the employee shall be entitled to leave as provided in subsection (1) of this section.

(6) An employee shall not resume employment before the expiry of six weeks from the date of her confinement unless a medical officer certifies otherwise.

(7) No employee shall be dismissed or terminated from service on grounds of or pertaining to pregnancy or childbirth.

(8) An employee who delivers shall be guaranteed to return to work within 8 weeks from the date of her confinement.

(9) An employee shall, if she is nursing her child, be allowed paid time off work, not exceeding one hour a day during working hours, for this purpose.

(10) An employee shall be guaranteed the right of absence from work without loss of pay when she attends pre-natal and post-natal medical clinics.

71.-(1) Subject to the provisions of subsection (10) of this section an employer may grant a permanent employee leave without pay for a period not exceeding three months on any one of the following grounds - Leave without Pay.

- (a) in case an employee gives birth before the completion of one year of service;

- (b) when an employer is duly served with reliable information that the employee's son, daughter, father, mother or dependant is sick and the employee wants to take care of the sick;
- (c) when an employee wants to accompany a spouse who is travelling out of Unguja or Pemba on leave;
- (d) without prejudice to the provisions of section 68 of this Act, when an employee wants to attend a funeral or mourning ceremony of a relative out of Unguja or Pemba;
- (e) without prejudice to the provisions of section 68(b) of this Act an employer shall grant leave without pay to an employee who has applied for such leave following the death of her husband;
- (f) An employer and a trade union may by collective bargaining agree to add new grounds of leave without pay.

(2) When an enterprise ceases to operate or operates below capacity following shortage of raw materials, low season in respect of hotels, or any other reason thereof the employer, on application to the Commissioner, may grant one or more of the permanent employees leave without pay for a period not exceeding six months.

(3) Upon being satisfied that retaining the employees may affect the income of the employees or the employer or endanger the safety of the employees, the Commissioner may approve the leave application without pay referred to in subsection (2) of this section.

(4) The Commissioner shall have the power to refuse approval of such leave if he or she is not satisfied of any of the reasons referred to in sub-section (2) of this section.

(5) The employer may appeal to the Minister against the decision of the Commissioner made under sub-section (4) of this section.

(6) The employer shall in writing give notice to the employees of the pending leave without pay, the duration of the leave and the reasons thereof.

(7) The period under which an employee was on leave without pay shall not be calculated when computing the employees contractual terminal benefits.

(8) The Minister may in consultation with the Board make regulations prescribing the procedure in granting leave without pay in accordance with subsection (2) of this section.

(9) Where harm or damage results from force majeure, the employer shall do the following -

- (a) grant the employees concerned leave without pay for a period not exceeding one month;
- (b) not later than two weeks from the date such event occurred, the employer shall give notice in writing to the Commissioner and the trade union branch leadership stating the nature of the event, the way he or she is trying to solve it and the proposed period of the intended leave without pay to be granted to the employees.

(10) Notwithstanding any provisions of this section the Minister may make regulations prescribing for leave without pay for employees in the public sector.

72.-(1) When leave without pay granted in accordance with sub-sections (2) and (6) of section 72 expires the employer shall –

Steps to be taken by employer when leave without pay expires.

- (a) reinstate the employees concerned; or
- (b) terminate the contracts of service in accordance with the provisions of this Act.

(2) No employer shall be entitled to exercise powers conferred on him or her under subsection (1) of this section unless notice in writing stating his or her intention thereof has been submitted to the Commissioner one month before the expiry of such leave without pay.

(3) Commissioner shall, after receiving the report in accordance with sub-section (2) of this section, determine and decide on whether the employer to resistance the workers or terminate their contracts and pay their entitled terminal benefits in accordance with this Act.

(4) If the employer fails to implement the provision of subsection (2) of this section, Commissioner may forward the case to court.

Negotiation
for transport
and accom-
modation
facilities.

73.-(1) An employer and employee may agree in the course of negotiating a contract of service on the following facilities -

- (a) transport;
- (b) accommodation and or housing.

(2) Nothing in this section shall be construed as prohibiting an employer and a trade union from making a collective agreement which provides for transport and accommodation or housing.

(3) Where an employee is housed by the employer, the employee shall not be required to vacate the premises upon termination of a contract of service until he or she has been paid his or her terminal benefits.

74. The Minister may in consultation with the Board specify the occupations in which meal allowances may be provided by an employer.

Minister to specify occupation eligible for meal allowance.

75. Every employer shall, at his or her own expense provide for his or her employee's medical facilities in the following instances -

Provision of medicine and medical treatment.

- (a) if personal injury arises out of and in the course of employment, the employer shall be responsible for all expenses of medical attendance on such employee until such employee recovers; and
- (b) the employee shall in addition be entitled to such compensation as provided for by the Workers' Compensation Act.

76.-(1) An employer shall once in every three years provide his or her employee and his or her family of two children below the age of eighteen years the sum of money equivalent to transport fare for the return tickets by a direct route to the place where the employee was recruited.

Employee's traveling expenses.

(2) An employer shall provide such service by using reliable means of transport for the safety of the employee and his or her family.

77.-(1) In the case of an employee in a contract of service dying during the period of employment and a medical board certifies in writing that the death was occasioned by reasons arising out of and in the course of the deceased's employment, the employer shall -

Obligations of the employer in case of death of an employee.

- (a) be responsible for burial expenses of the deceased employee as may be provided by regulations to be prescribed by the Minister in consultation with the Board and
- (b) compensate the deceased's heirs in accordance with the provisions of the Workers' Compensation Act; and

- (c) pay to the deceased's heirs any other contractual benefits accruing to the deceased employee in accordance with the provisions of this Act.

(2) In the case of an employee in a contract required to be in writing dying during the period of employment but the deceased death is not occasioned by any reason arising out of and in the course of, employment, the employer shall -

- (a) be responsible for not less than one third of the deceased burial expenses; and
- (b) pay to the deceased's heirs any other contractual benefits accruing to the deceaseds employee in accordance with the provisions of this Act.

(3) Subject to the provisions of sub-sections (1) and (2) of this section, an employer and a trade union may by a collective agreement agree on any other benefits to be paid to dependants of a deceased employee.

Travelling
allowance.

78.-(1) An employee who is required by his or her employer to travel within Zanzibar, Tanzania mainland and outside Tanzania shall so travel at the expense of the employer.

(2) The expenses referred to in sub-section (1) of this section shall include fare for the return journey, meals and accommodation expenses.

(3) Rates of expenses referred to in subsections (1) and (2) of this section shall be a matter for agreement between the employer and employees or in a collective agreement. Provided that any agreed rates shall not be below the rates prescribed under this section.

(4) An employer shall provide his or her employee who is travelling abroad on duty with :

- (a) subsistence allowance, and
- (b) outfit allowance once in every three years.

(5) The Minister in consultation with the Board may prescribe the rate of travelling allowances for employees in the public and private sectors.

79.-(1) Where a contract of service is terminated an employee shall be entitled to receive from the employer a certificate of service with the following particulars of employment- Certificate of service.

- (a) the names and addresses of the employer and employee;
- (b) the length of the employee's period of continuous employment with the employer;
- (c) the capacity in which the employee was employed prior to termination;
- (d) employee's working capacity;
- (e) the effective date of contract of service;
- (f) the reason or reasons for the termination of the employee's employment.

(2) The certificate of service issued under sub-section (1) of this section shall be written in English or Kiswahili and shall be signed and sealed by the employer.

80.-(1) Every employee who is a party to a contract of service required to be in writing and who has been brought to the place of employment by the employer from outside Unguja or Pemba shall have the right to be repatriated at the expense of the employer to his or her place of first appointment in the following cases - Repatriation.

- (a) on the expiry of the period of service stipulated in the contract;
- (b) on the termination of the contract by the employer before the expiry of the period of service stipulated in the contract;
- (c) on the termination of the contract by reason of inability of the employee to fulfil the contract owing to sickness or accident;
- (d) on the termination of the contract by any reason stipulated in this Act save the termination of the contract by the employee for reasons other than those stipulated in this Act .

(2) Where the family of the employee has been brought to the place of employment by the employer, the family shall be repatriated at the expense of the employer whenever the employee is repatriated or in the event of his or her death.

(3) The expenses of repatriation referred to in sub-sections (1) and (2) of this section shall include -

- (a) travel, meals and subsistence expenses during the journey;
- (b) meals and accommodation expenses for a period not exceeding two weeks between the date of expiry and the date of repatriation.

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

Exemption from obligation to repatriate.

81.-(1) The Commissioner may exempt the employer from obligation for repatriation expenses in the following cases—

- (a) when he or she is satisfied that :
 - (i) the employee, by a declaration in writing has signed that he or she does not wish to exercise the right to repatriation;
 - (ii) the employee has been settled at his or her request or with his or her consent at or near the place of employment.
- (b) when the Commissioner is satisfied that the employee by his or her own choice has failed to exercise the right to repatriation before the expiry of three months from the date of expiry or termination of the contract.

82.-(1) The employer shall at his or her own expense provide uniforms, special protective clothes and other protective gear to employees as it shall be specified in regulations.

Employer to provide uniform and protective gear.

(2) The clothes and protective gear under this section shall be the property of the employer.

83.-(1) An employer who fails to provide an employee with such clothes or equipment referred to in sub-section (1) of section 82 of this Act shall be guilty of an offence and shall be liable upon conviction to a fine of not less than two hundred thousand shillings or in default of such fine to an imprisonment of not less than three months.

Offences and penalties.

(2) An employer who fails to provide a labour officer or inspector with registers referred to in sub-section (4) of section 65 of this Act shall be guilty of an offence and shall be liable upon conviction to a fine of not less than four hundred thousand shillings or in default of such fine to an imprisonment of not less than three months.

(3) An employer who contravenes the provisions of section 70 of this Act, shall be guilty of an offence and shall be liable upon conviction to a fine of not less than one hundred thousand shillings

or in default of such fine to an imprisonment of not less than three months.

(4) An employer who fails to repatriate an employee in accordance with the provisions of section 80 of this Act, shall be guilty of an offence and shall be liable upon conviction to a fine of not less than seven hundred thousand shillings or in default of such fine to an imprisonment of not less than six months.

PART VIII

CONDITIONS OF EMPLOYMENT FOR SPECIAL CATEGORIES OF EMPLOYMENT

Protection of
pregnant and
nursing em-
ployees.

84.(1) Where a medical officer certifies that for the safety and health of a pregnant or nursing employee the employee should be exempted from night work or overtime duties the employer shall be bound by such certification.

(2) Where an employer complies with the provisions of subsection 1 of this section and if the condition of work of such employee cannot be adopted in her current post the employer shall transfer the employee to another post without loss of pay.

(3) When a female employee is employed or assigned to carry or lift heavy loads the employer shall ensure that the weight carried or lifted by a female employee shall not exceed half of the weight carried or lifted by a male employee.

(4) It is prohibited to employ or assign a female employee to work in any area using poisonous chemicals which may affect her fertility or pregnancy and a female employee shall not be exposed to benzene and ionizing radiations.

Engagement
of female
employees
at night.

85.-(1) It shall be unlawful to employ, engage or assign any female employee at night in any industrial undertaking except night duty permitted under section 86 of this Act.

(2) Notwithstanding the provisions of sub-section (1) of this section a female employee may be employed in an industrial undertaking not being a mine at night in the following circumstances: in cases which the work has to do with raw materials or materials in the course of treatment which are subject to rapid deterioration when such night work is necessary to preserve the said materials from certain loss to the employer and when the Minister directs that public interest demands that the work be done.

86. The following categories of female employees may be employed, engaged in or assigned night work -

Exemption of female employees from night work.

- (a) a female employee holding a responsible leadership position;
- (b) a female employee holding a management position;
- (c) a female employee in health or other welfare service which does not ordinarily involve manual work and is not dangerous to the health and safety of such employee;
- (d) a female employee employed in a factory or industry in which only dependant or members of the same family are employed.
- (e) where the nature of employment so requires.

87.-(1) An employer who employs a female employee shall, in addition to the conditions prescribed under sections 84 and 85, 86, 87, of this Act observe the following requirements –

Additional conditions for female employees.

- (a) ensure that there is adequate safety at the workplace where a female employee is assigned;
- (b) ensure that a pregnant employee is not assigned to heavy duties and working hours are arranged such that the said employee is not put on duty at night;

- (c) the employer shall not terminate an employee who is on maternity leave on grounds that by being on the said maternity leave the said employee was absent from duty.

(2) An employer may assign a female employee to any of the duties prohibited under section 85 of this Act upon being approved by a safety and health officer that the said duty is not dangerous to the safety and health of the said female employee.

Equal rights of employment for the disabled.

88.-(1) Subject to the provisions of this Act persons with any kind of disability shall have equal right to be employed in any type of work depending on their standards of education, skill and ability and shall be employed on the same terms and enjoy the same rights and privileges under the contract of service.

(2) No employer shall deny a disabled person employment on grounds of his or her disability.

(3) No employer shall dismiss a disabled person from employment before the expiry of a contract of service on grounds of disability.

(4) An employer shall provide reasonable office accommodation and flexible working schedule to an employee with disability.

(5) An employer shall provide an alternative job for a disabled employee if the employee is no longer fit or capable to carry out the former job without loss of remuneration.

Regulations for special categories.

89. The Minister in consultation with the Board may make regulations to provide for -

- (a) the conditions and procedure for the employment of disabled persons;
- (b) the declaration of other categories of employees as special;

- (c) the restriction on employment of children, young persons , pregnant women and any other person certified by a medical officer to be unfit to do night work;
- (d) the declaration of any other hazardous or hardship areas for purposes of non-employment of female employees;
- (e) the determination of the list of the hazardous forms of work referred to in section 9 (2) (a);
- (f) the prevention of sexual harassment in work places where there are less than 25 employees.

90. Any employer who contravenes any of the provisions of sections 85,86, and 88 shall be guilty of an offence and shall on conviction be liable to a fine of not less than four hundred thousand shillings or in default of such fine to imprisonment of not less than three months.

PART IX

WAGE FIXING MACHINERY AND WAGES PROTECTION

91. Wages may be fixed by the terms of :

Manner of
fixing wages.

- (a) a contract of service;
- (b) a collective agreement;
- (c) a wages order by the President upon the recommendations of the Wages Advisory Board.

92. There is hereby established an advisory board to be known as the Wages Advisory Board.

Establish-
ment of
Wages
Advisory
Board.

Composition
of
the Wages
Advisory
Board.

93.-(1) The Wages Advisory Board shall consist of –

- (a) the Principal Secretary in the Ministry responsible for labour matters – who shall be the Chairperson;
- (b) the Principal Secretary in the Ministry responsible for finance;
- (c) the Commissioner;
- (d) the Director of Civil Service;
- (e) two members each from employers’ and employees’ organization ;
- (f) a representative from the association of the informal sector;
- (g) a representative from the Zanzibar Chamber of Commerce;
- (h) three independent experts appointed by the Minister on the advice of the Board.

(2) The Minister shall appoint the non ex-official members of the Board mentioned in paragraph (e), (f), (g) and (h) of subsection (1) of this section.

(3) The Minister in appointing non ex-official members of the Wages Advisory Board under subsection (2) of this section shall ensure gender equity in the Wages Advisory Board.

Functions of
The Wages
Advisory
Board.

94.-(1) The Wages Advisory Board shall advise the Minister on wages and other matters relating to wages payment and reduction of wages in the public and private sector.

(2) Without prejudice to the generality of the provisions of subsection (1) of this section the Wages Advisory Board may advise the Minister on the following -

- (a) minimum wages;
- (b) proposals for fixing minimum wages;

(3) The Wages Advisory Board may on its own initiative make recommendations to the President concerning wages of all or any group of employees in Zanzibar.

(4) The Wages Advisory Board in the exercise of its functions shall take into consideration, among others, the following factors -

- (a) ability to pay the wages;
- (b) cost of living;
- (c) impact on employment, poverty reduction and operation of small business.

95.-(1) The Wages Advisory Board shall meet at least once in every calendar year.

Meetings of the Wages Advisory Board.

(2) The Wages Advisory Board shall regulate its own procedure; Provided that the quorum at any of its meetings shall not be less than half of its members.

(3) The Labour Commission shall provide the secretariat to the Wages Advisory Board

96. The President proclaim the minimum wages for the public and private sector.

Proclamation of minimum wages.

97.-(1) The Minister may, after the proclamation of the minimum wages by the President, by order published in the Gazette provide for

Minimum Wages.

the payment of the minimum wages or rates of minimum wages by employers in respect of the public or private sector, as the case may be ; Provided that an employer is not prohibited from paying his or her employee or employees wages above the minimum wages or rates of minimum wages.

(2) The following procedure shall be observed in preparing the minimum wages and rates of such wages -

- (a) the Commissioner shall prepare or cause to be prepared a proposal for minimum wages and rates of such wages for the public or private sector, as the case may be, when he or she deems appropriate and when required by the social partners or the Wages Advisory Board to do so ;
- (b) the Commissioner shall submit such proposals to the Wages Advisory Board established under section 92 of this Act and a copy of the proposal shall be sent to the Minister;
- (c) the Wages Advisory Board shall consider such proposals referred to it and shall proceed to decide whether or not to accept or amend it as it deems appropriate;
- (d) upon being approved by the Wages Advisory Board, the Commissioner shall submit the draft proposal to the Minister and the proposed amendments as the case may be.

(3) Employees shall be entitled to receive the minimum wages from the date specified in the Order of the Minister published in the Gazette pursuant to the provisions of subsection (1) of this section.

98.-(1) The wages of every employee shall be made payable in legal tender and any agreement to the contrary shall be null and void.

(2) Notwithstanding anything in this section, the Minister may, after consultation with the Board, by regulation provide for the partial payment of wages in the form of allowance in kind but in no case alcoholic beverages or noxious drugs in industries or occupations in which payment in the form of such allowance is customary or desirable, and any such allowance in kind shall be for the personal use of the employee and his or her family, and the value attributed to such allowance shall be fair and reasonable.

(3) Wages shall be paid to an employee in person and in the event of death of such employee the legal representative shall be paid the wages and other terminal benefits.

(4) No employee shall be obliged to make use of any shops established by the employer for the use of his or her employees or services operated in connection with the undertaking.

99.-(1) Any employer who is not incorporated or resident in Tanzania may be required by any labour officer to pay a bond assessed at the equivalent of one months' wages for all employees employed, or to be employed, by that employer.

Payment of bond by employer not incorporated in Tanzania.

(2) Any bond paid by any employer shall be held by the ministry responsible for labour on behalf of that employer in a separate interest bearing account and shall not be used for any purpose other than paying wages and other entitlements to that employer's employees in the event of default by that employer.

100.-(1) The payment of wages, when made in cash or cheque, shall be made –

Time of payment of wages.

(a) during working hours on working days; and

(b) at working premises.

(2) The payment of wages may, with the consent in writing of the employee, be made by direct deposit into an account designated by the employee.

(3) Each payment under the provisions of this section shall be supported by a salary slip with particulars in the prescribed form which shall -

- (a) state the amount and the manner in which that amount was calculated;
- (b) indicate every deduction, the purpose of the deduction and net wages paid.

(4) Every employer shall provide the employee with work in accordance with the contract during the period for which the contract is binding.

(5) If the employer fails to provide work he or she shall pay to that employee in respect of every day on which the employer shall so fail, wages at the same rate as if the employee had performed that day's work.

(6) No employee shall be entitled to receive wages in respect of any period when he or she is absent from work without authorization or good cause.

Place of
payment.

101.-(1) The payment of wages in legal tender shall take place at the place of the employee's work or, if he or she works at more than one location, the premises of his or her employer from which he or she works or from which his or her work is administered.

(2) No payment of wages shall take place in premises licensed for the sale of alcoholic beverages or in places of amusement, except in the case of employees whose workplace is in such premises.

(3) No employer shall impose in any contract of service any agreement, or condition, as to the place where, or the manner in which, or the person with whom, any wages paid to an employee shall be expended and such agreement or condition which contravenes this section shall be null and void.

(4) In the absence of a prior written agreement to the contrary -

- (a) an employee engaged to work for one day at a time shall be paid his or her wages at the end of that day;
- (b) an employee paid by the hour, day or week shall be paid his or her wages at the end of that hour, day or week;
- (c) an employee paid fortnightly or monthly shall be paid at the end of each fortnight or month, as the case may be; and
- (d) an employee engaged to be paid by piecework done or by results shall be paid at intervals of not more than a fortnight.

(5) On the termination of his or her employment in whatever manner an employee shall, within seven days from the date on which the employment terminates be paid his or her wages and any other remuneration and accrued benefits to which her or she is entitled.

102. Except where it is expressly provided by law, no person may receive the wages due to any employee on behalf of such employee without the written permission of the employee to whom such wages are due. Payment of wages to another.

103.-(1) An employer may not make any deduction from an employee's remuneration unless – Exceptions for deduction from remuneration..

- (a) the deduction is required or permitted for the purposes of payment by the employer on the employee's behalf:
 - (i) amounts due from the employee in respect of any tax or rate imposed by law;

- (ii) contributions due from the employee to any provident, medical or pension fund or any other fund or scheme approved by the Minister;
 - (iii) any amounts which a court has ordered or the employee has requested the employer to remit directly to the spouse or other dependent relative of the employee;
 - (iv) such amounts as are provided for as trade union dues or contributions under the provision of any agreement or arbitration award between a trade union and the employer or an organisation of employers of which the employer is a member.
- (b) subject to subsection (2) of this section, the employee in writing agrees to the deduction in respect of a debt specified in the agreement.

(2) A deduction in terms of subsection (1)(b) of this section may be made to reimburse an employer for loss or damage only if -

- (a) the loss or damage occurred in the course of employment and was due to the fault of the employee;
- (b) the employer followed a fair procedure and has given the employee a reasonable opportunity to challenge the amount of the debt or indicate the reason for the deduction;
- (c) the total amount of the debt does not exceed the actual amount of the loss or damage;
- (d) the total deductions from the employee's remuneration in terms of this subsection do not exceed one quarter of the employee's remuneration in money.

(3) An agreement to make a deduction in terms of subsection (1) (b) of this section in respect of goods or services purchased by the

employee shall specify the nature and the quantity of the goods or services.

(4) An employer who deducts an amount from an employee's remuneration in terms of subsection (1) of this section for payment to another person shall pay the amount to the person in accordance with any requirements specified in the agreement, law, court order or arbitration award.

(5) An employer may not require or permit an employee to –

- (a) repay any remuneration except for overpayments previously made by the employer resulting from an error in calculating the employee's remuneration; or
- (b) acknowledge receipt of an amount greater than the remuneration actually received.

(6) Without prejudice to any other liability for a breach of the provisions of this Part, an employer who acts in contravention of the provisions of this Part shall be liable to repay any remuneration wrongfully withheld or wrongfully deducted from the employee.

104.(1) For the avoidance of doubt -

Clarification.

- (a) no wages shall be paid during imprisonment of an employee; Provided that such employee is not acquitted on appeal;
- (b) wages shall be paid to an employee if he or she is absent from work on good cause.

(2) For the purposes of this section good cause includes:

- (i) attending court proceedings in which he or she is a party or witness to such proceedings;
- (ii) preventing employee from reaching work premises;

- (iii) occurrence of death of a member of the employee's family or dependent relative.

Preferential
claims.

105. Notwithstanding the provisions of any other law to the contrary, on the bankruptcy or winding-up of an employer's business, the claim of an employee or those claiming on his or her behalf wages and other payments to which he or she is entitled under this Act, shall have priority over all other claims which have accrued in respect of the twenty-six weeks immediately preceding the date on which the declaration of bankruptcy or winding-up is made.

Offence.

106.-(1) Subject to the provisions of this Part no employer shall deduct the wages of an employee.

(2) Any employer who deducts the wages of an employee contrary to the provisions of this Part commits an offence and shall on conviction be liable to a fine of not less than four hundred thousand shillings or in default of such fine to an imprisonment of not less than three months.

(3) Any employer who fails to pay the wages of an employee commits an offence and shall on conviction be liable to a fine of not less than four hundred thousand shillings and in addition to such fine he or she shall be liable to pay the wages of that employee.

(4) An employer who pays the wages below the rates prescribed by the Minister, shall be guilty of an offence and shall be liable upon conviction to a fine of not less than four hundred thousand shillings or to an imprisonment of not less than three months.

PART X

DISCIPLINARY MEASURES, PENALTIES AND TERMINATION

Disciplinary
penalties.

107.-(1) An employer may be entitled to impose a disciplinary penalty on any employee for misconduct, negligence or failure to carry out his or her duties under a contract of service.

(2) The penalties provided under this Part shall be imposed in accordance with the provisions of the Schedule to this Act.

(3) An employer shall be entitled to impose a disciplinary penalty only when it is reasonable for him or her to do so in the particular circumstances, and the question of what is reasonable shall be decided by considering -

- (a) the nature of the neglect, failure or alleged failure on the part of the employee, the penalty imposed by the employer before and the previous conduct of the employee;
- (b) the contents of the disciplinary measures as set out in the Schedule to this Act.

(4) No disciplinary penalty shall be imposed on account of an employee's participation or proposed participation in the activities of a trade union outside working hours or, with the consent of the employer, within working hours, or in the organisation or proposed organisation of a strike or other industrial action that is lawful.

(5) In workplaces where there are a number of levels of supervisory and managerial positions, disciplinary rules shall make clear which level of management is authorised to initiate and implement any particular disciplinary action.

(6) For purposes connected with an employee's employment, an infringement of disciplinary rules shall be disregarded after the expiry of :

- (a) six months for offences involving verbal warning;
- (b) nine months for offences involving written warning;
- (c) twelve months for offences involving final written warning.

(7) Where an employee commits at least three different offences carrying a penalty other than verbal warning within a period of nine months the breaches shall have a cumulative effect which may entitle the employer to dismiss the employee from employment.

(8) The period prescribed under this section shall begin to run from the date of imposition of the penalty.

Disciplinary
rules.

108.-(1) Every employer is required to make disciplinary rules which shall govern the conditions of employment at the workplace, which may differ from one place to another depending on the size and the nature of that place of employment.

(2) The said rules shall be written in simple language which all employees, their associations or representatives may easily understand.

(3) The rules shall not show any kind of discrimination and shall apply to all employees without regard to race, tribe, nationality, colour, gender, marital status, social and place of origin, national extraction, religious or political inclination and HIV/AIDS status.

(4) An employer is required to produce copies of the rules and make them available to employees and their organizations at the workplace.

(5) The disciplinary rules shall specify the following matters -

- (a) the categories of employee concerned;
- (b) the circumstances in which the rules shall apply;
- (c) the contents of the rules, which shall be in a simple and clear language which can be easily understood;
- (d) the penalties which may be imposed in case of contravention of any such rules.

109.-(1) An employer may suspend an employee who has breached any of the disciplinary rules without pay for a period not exceeding two weeks. Suspension.

(2) Where the employer decides to impose suspension as a disciplinary penalty the employer shall be required to follow the disciplinary procedure specified in section 110.

(3) An employer is required where there is a union branch to consult the trade union branch leadership at the workplace within seven days from the date of suspension.

110.-(1) An employee who contravenes any disciplinary rule, may be given oral warning, by the employer and in subsequent breaches the employee may be dealt with, in accordance with the procedures set out in the Schedule to this Act. Procedure for imposing penalties.

(2) An employee who commits a disciplinary offence or is suspected to commit a disciplinary offence other than an offence punishable by verbal warning shall be notified in writing of the offence and the disciplinary penalty which the employer intends to take against the employee.

(3) An employee shall be given not less than three days to defend himself or herself before the employer depending on the gravity of the offence.

(4) If within the prescribed period of three days, the employee fails to give an explanation or gives an explanation which is not satisfactory to the employer, the employer may proceed to impose a disciplinary penalty in accordance with the Schedule to this Act.

(5) The employer shall be required to inform the trade union at the work place of the alleged disciplinary offence or offences and the disciplinary action taken against the employee.

(6) If an employee is not satisfied with the disciplinary penalty imposed on him or her by the employer, the employee may, within a period of fourteen days from the date of imposition of such penalty, make a written complaint to a labour officer.

(7) Upon receipt of the complaint made by the employee, the labour officer shall investigate such complaint and shall communicate with the employer and the employee concerned and the trade union at the workplace.

(8) The labour officer shall endeavour to reconcile or mediate between the parties within 21 days from the date of receiving the complaint.

(9) Where the labour officer fails to reconcile or mediate between the parties he or she shall refer the matter to the Commissioner or the Chief Labour Officer, in case of Pemba, for reconciliation.

(10) If the Commissioner fails to reconcile he or she shall forward the case to the court with his comments appended.

Dismissal.

111.-(1) Subject to the provisions of this Act, a dismissal may arise in the following circumstances -

- (a) where a contract of service is terminated by the employer without notice, or with less notice than that to which the employee is entitled by any statutory provision or contractual term; such dismissal shall be termed “summary dismissal”
- (b) where a contract of service is terminated by an employee, with or without notice, or the employee fails to attend work or fails to return to work after the completion of leave without notice or permission of an employer.

(2) For the avoidance of doubt nothing in this Act affects the right of an employer to terminate a contract of employment without notice for any cause recognized by law; provided that the employee may challenge such summary dismissal for breach of the provisions of sections 112 and 113 of this Act.

(3) An employee who is found guilty of gross misconduct or of a serious criminal offence before the expiry of the term fixed in a

contract of service may be dismissed and shall, upon such dismissal, not be entitled to any terminal benefits except such proportion of his or her contribution to a pension or social security fund.

112.-(1) Any employee shall not be dismissed, whether adequate notice is given or not unless there is a valid reason for termination of employment, which reason is - Valid reasons for termination.

- (a) connected with the capacity of the employee to do the work the employee is employed to do;
- (b) connected with the conduct of the employee at the workplace; or
- (c) based on the operational requirements of the undertaking, establishment or services.

(2) An employer who dismisses an employee is required to notify the employee in writing of the dismissal, the reasons for dismissal, and the date on which that action shall take effect.

113. An employee who commits or is suspected to have committed a criminal offence related to employment shall be dealt with in the following manner - Procedure in dealing with offences related to employment.

- (a) at the time the criminal proceedings commence in court, the employer may give the employee leave without pay until the date of judgement;
- (b) where the employee is convicted and sentenced for a term of less than six months' imprisonment, the employer may give the employee leave without pay for the whole period of his or her imprisonment or shall dismiss the employee and pay the terminal benefits in accordance with the provisions of this Act;
- (c) where the employee is convicted and sentenced for a term of more than six months' imprisonment, the

employer shall dismiss the employee and pay terminal benefits in accordance with the provisions of this Act.

Stealing
within the
working
place.

114.-(1) An employee who is suspected to have stolen the property of the employer or his or her co-employee or a customer, shall be dealt with in the following manner –

- (a) the employer may suspend the employee from employment in accordance with the provisions of section 55 of this Act;
- (b) the employer shall inform the trade union of the suspension within seven days from the date of the suspension.

(2) On completion of the inquiry the employer may initiate disciplinary proceedings against the employee in accordance with the provisions of section 111 and the Schedule to the Act.

(3) The employer where he or she deems necessary, may initiate criminal proceedings against the employee in which case the disciplinary proceedings initiated under subsection (2) of this section shall be suspended pending the determination of the criminal case.

(4) If the employer decides to initiate criminal proceedings in accordance with the provisions of subsection (3) of this section the employer may suspend the employee on half pay pending the determination of the criminal case.

(5) Where the court convicts the employee the employer shall have the right to dismiss the employee and the employee shall not be entitled to any terminal benefits except such proportion of his or her contribution to a pension or social security fund.

(6) Where an employee is acquitted by the court the employer shall be bound to reinstate the employee and pay him or her the balance of the wages.

(7) Where an employer is satisfied that an employee has committed the alleged offence under subsection (1) of this section the employer may proceed to take disciplinary action under the provision of section 111.

115. An employee who commits a criminal offence other than theft at a workplace shall be liable to be dealt with and to the penalties as set out in the Schedule to this Act.

Criminal offences other than theft committed at workplace.

116. An employer who intends to take any disciplinary action against an employee who is an officer of a trade union shall prior to the taking of such action consult the trade union at the workplace and a labour officer.

Disciplinary action against leaders of trade union at the workplace.

117. For the purposes of this Part termination of employment includes -

Termination defined.

- (a) a lawful termination of employment;
- (b) a failure to renew a fixed term contract on the same or similar terms if there was a reasonable expectation of renewal;
- (c) a failure to allow an employee to resume work after taking maternity leave in terms of this Act or collective agreement;
- (d) a failure to re-employ an employee if the employer has terminated the employment of a number of employees for the same or similar reasons and has offered to re-employ one or more of them;
- (e) a termination by an employee because the employer made continued employment intolerable for the employee;
- (f) mutual termination by employee or employer.

Criteria and
ground for
unfair
termination.

118.-(1) An employer may not terminate the employment of an employee unfairly.

(2) A termination shall be unfair for the purposes of this Part where:

- (a) the termination is for one of the grounds specified in subsection (3) of this section;
- (b) it is established that in all the circumstances of the case the employer did not act in accordance with justice and equity in terminating the employee from service.

(3) It is not a fair ground to terminate the employment of an employee on any of the following:

- (a) an employee is seeking office, acting or having acted in the capacity of a workers' representative;
- (b) an employee's action of filing a suit, petition or proceedings against the employer for reasonable allegations that such employer has contravened labour laws;
- (c) ethnic, colour, religion, gender, marriage, family responsibility, pregnancy, political opinion, political affiliation, national extraction, social and place of origin; disability or HIV/AIDS status,
- (d) absence from duty by reason of maternity leave;
- (e) fails or refuses to do anything that employer may not lawfully permit or require an employee to do;
- (f) temporary absence from work because of illness;
- (g) discloses information that the employee is entitled or required to disclose to another person under this Act or any other law;

- (h) exercises any right conferred by a collective agreement or otherwise, under this Act or any other law;
- (i) participates in lawful activities of a trade union including a lawful strike.
- (j) affiliation of the employee to a lawful trade union, society or public affairs.

(4) For the purposes of this section temporary absence from work on grounds of illness must be certified by a medical officer.

119.-(1) Where the Industrial Court decides that an employee's complaint of unfair termination under the Act is well founded, the Court shall, subject to subsections (2) and (3) of this section grant the employee any of the following remedies -

Remedies for
unfair
termination.

- (a) an order for reinstatement whereby the employee is to be treated by the employer in all respects as if the employee had never been terminated; or
- (b) an order for re-engagement whereby the employee is to be engaged in work comparable to that on which he or she was employed prior to the termination, or other reasonably suitable work, at a no less favourable wage rate;
- (c) an award or awards of compensation;
- (d) reverse the suspension imposed in accordance with the provisions of section 109 and order payment of the two weeks' salaries; or
- (e) order cancellation of the written and final written warning imposed by the employer in accordance with section 108 of this Act.

(2) The Court shall, in deciding which remedy to grant, first consider the possibility of making a reinstatement or re-engagement order taking into account the following -

- (a) the wishes of the employee;
- (b) the circumstances in which the dismissal took place, including the extent, if any, to which the employee caused or contributed to the dismissal; and
- (c) the practicability of making a reinstatement or re-engagement order.

(3) An award of compensation made in terms of this section is in addition to any other amount to which the employee may be entitled in terms of any law or agreement.

Award of
compensa-
tion

120. The compensation awarded to an employee whose dismissal is found to be unfair either because the employer did not prove that the reason for dismissal was a fair reason relating to the employee's conduct or capacity or the employer's operational requirements or the employer did not allow a fair procedure, or both, must be just and equitable in all the circumstances, but may not be less than the equivalent of six months' remuneration calculated at the employee's rate of remuneration on the date of dismissal.

Redundancy
or
operational
requirement.

121.-(1) An employer shall not terminate a contract of service of an employee on grounds of redundancy or operational requirements without complying with the provisions of this Act.

(2) An employer may be allowed to declare redundancy upon proof of the following -

- (a) that the number of employees in the establishment is in excess to the extent of causing inefficiency;

- (b) that he or she intends to cancel some of the positions for reasons provided under paragraph (a) of this subsection;
- (c) that the performance of the employee subject to redundancy is inadequate and that his or her skill does not fit the technology introduced in the establishment;
- (d) that consultation has been made with the relevant trade union.

(3) Where the employer intends to declare redundancy the following procedure shall be followed :

- (a) the employer shall discuss the matter with the relevant trade union leadership at branch level, regional level or national level within three months concerning his intention of redundancy, on which the following grounds will be determined :
 - (i) reasons on the intention of redundancy;
 - (ii) any possible action which can be taken to avoid redundancy;
 - (iii) the manner and criteria to be used in selection of employees to be reduced;
 - (iv) time of redundancy;
 - (v) kind of entitlements of benefits to be paid to workers as a result of redundancy.
- (b) the employer shall within one month from the date of the agreement submit to the Commissioner the report of their discussion, the agreement signed by representatives of both parties, together with the

suggestions of the implementation of the redundancy exercise.

(4) Upon receiving such report the Commissioner shall within one month consider the report and give his or her decision and inform the two parties about such decision.

(5) The employer or the Trade Union may within one month upon receiving the decision of the Commisisoner, appeal to the court if he or she is not satisfied with such decision.

(6) An employee who is terminated on grounds of redundancy shall be entitled to the following benefits :

- (a) three months notice or three months salary in lieu of the said notice; and
- (b) severance pay; and
- (c) gratuity in accordance with the provisions of the law relating to gratuity; and
- (d) all the arrears, over-time allowances, leave benefits and all other dues and claims that may be outstanding against the employer.

(7) For the purposes of this section severance pay means an amount calculated at a rate of seven days' basic wage for each completed year of continuous service with that employer up to a maximum of ten years.

(8) The parties may by a collective agreement provide for payment of severance allowance over and above the sum provided for in subsection (7) of this section.

PART XI

MISCELLANEOUS PROVISIONS

122. Unless otherwise provided in this Act, all correspondence relating to the execution of this Act shall be made in writing.

Correspondence to be in writing.

123. Any employer or person who commits any offence or contravenes any provision under this Act for which no specific penalty is provided under any part of this Act, shall be liable upon conviction to a fine of not less than four hundred thousand shillings or in default of such fine to imprisonment for a term of not less than three months.

General offence and penalty.

124. The Minister may from time to time and in consultation with the Board review the fines provided under this Act.

Minister may review fines.

125. The Minister shall within three months from the date of assent constitute the boards under this Act

Minister to constitute Board.

126.-(1) The Minister shall in consultation with the Board make regulations for the better carrying out the provisions of this Act.

Regulations.

127.-(1) The following Acts and Sections are hereby repealed -

Repeal and savings of enactments.

(a) the Labour Act, No. 3 of 1997;

(b) the Security of Employment Act, No. 14 of 1988;

(c) section 17(3) of the Civil Service Commission Act, No. 14 of 1986.

(2) All the rules and directions, made under the repealed laws which are in force on the effective date shall be deemed to be directions given or as the case may be, rules made under this Act by the relevant authority, and shall remain in force until revoked by regulations made under this Act.

(3) Any proceeding pending immediately before the commencement of this Act relating to any labour complaint shall be dealt with in accordance with the provisions of the repealed law.

(4) All contracts of service and in force at the commencement of this Act shall continue to be in force after its commencement and shall be deemed to have been made under the provisions of this Act.

(5) All acts lawfully done under the provisions of the repealed law shall be deemed to have been done under the provisions of this Act.

SCHEDULE

**OFFENCES AND DISCIPLINARY MEASURES
AGAINST EMPLOYEES
(Under Part X)**

Category	Nature of Offence	1st Offence	2nd Offence	3rd Offence	4th Offence
Absenteeism & Timekeeping	1. Late for work or Leaving work early without good reason.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	2. Unwarranted absence from place of work without good reason.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	3. Desertion – away from work for more than 5 days.	Dismissal.			
	4. Fraudulent timekeeping including clocking in of another's employee's clock card and vice versa.	Dismissal on day 7.			
	5. Extended breaks, late arrivals or early departures (without permission).	Verbal warning.	Written warning.	Final Written warning	Dismissal.
Confidentiality of information.	6. Disclosing of confidential information where it is proved that the disclosure was intentional.	Suspension or Dismissal or Summary Dismissal.			
Dishonesty.	7. Theft of any nature.	Suspension or Dismissal or Summary Dismissal.			
	8. Dishonesty of any nature.	Suspension or Dismissal or Summary Dismissal.			
	9. Fraud	Suspension or Dismissal or Summary Dismissal.			

Category	Nature of Offence	1 st Offence	2 nd Offence	3 rd Offence	4 th Offence
	10. Lying or misrepresentation on CV or application form or failure to disclose previous involvement in disciplinary or criminal proceedings relating to theft, dishonesty or fraud.	Suspension or Dismissal or Summary Dismissal.			
	11. Failure to advise the company of knowledge of fraud.	Suspension or Dismissal or Summary Dismissal.			
	12. Deliberate falsification of or altering of any documents.	Suspension or Dismissal or Summary			
	13. Claiming wages not due or signing for or accepting wage for which you are not entitled.	Suspension or Dismissal or Summary Dismissal.			
Disrespect or insolence.	14. Insolence or using insulting or abusive language.	Written warning.	Final Written warning.	Dismissal.	
	15. Extreme profanity, verbal abuse or signs and immoral or indecent conduct whilst on duty.	Final Written warning.	Dismissal.		
Emergency and Safety Procedure.	16. Injury to others through poor work or negligence	Written warning.	Final Written warning.	Dismissal.	
	17. Proven personal negligence resulting in inability to work.	Written warning.	Final Written warning.	Dismissal.	
	18. Proven contravention of any rule prescribed for discipline or health (creating or contributing unsanitary / poor housing conditions).	Written warning.	Final Written warning.	Dismissal.	
	19. Carelessness, willfully or failure to observe security and safety rules.	Written warning.	Final Written warning.	Dismissal.	
	20. Sleeping on duty	Written warning.	Final Written warning.	Dismissal.	

Category	Nature of Offence	1 st Offence	2 nd Offence	3 rd Offence	4 th Offence
Firearms and offensive weapons.	21. Using or being in possession of firearms or offence weapons, where it has been confirmed that authorization has not been obtained (Offensive weapons may constitute any normal work tool used in a threatening manner)- Minor - serious.	Final Written warning Dismissal or Summary Dismissal.	Dismissal or Summary Dismissal.		
Insubordination.	22. Refusing or failing to carry out instruction where it was proved that it is lawful and legitimate.	Written warning	Final Written warning	Dismissal or Summary Dismissal.	
	23. Gross insubordination.	Suspension or Dismissal			
	24. Neglecting to perform any assigned task.	Written warning.	Final Written warning.	Dismissal or Summary Dismissal.	
	25. Refusing to work overtime where the instruction is lawful and the conditions / contract of Employment have been adhered to.	Written warning.	Final Written warning.	Dismissal.	
	26. Disrespect, insolence and disrespect to any manager, supervisor, customer or supplier (whether actively or passively).	Verbal warning.	Written warning.	Final Written warning	Dismissal.
Intoxicants.	27. Under the influence of alcohol or drugs at work (where such drugs have not been prescribed by a medical practitioner) or unauthorized possession of alcohol or drugs on company premises.	Final Written warning	Dismissal.		
	28. Smelling of alcohol.	Verbal warning.	Written warning.	Final Written warning	Dismissal.

Category	Nature of Offence	1 st Offence	2 nd Offence	3 rd Offence	4 th Offence
Riotous Behaviour	29. Actual physical assault other than self-defense.	Dismissal or Summary Dismissal.			
	30. Minor physical or verbal assault.	Final Written warning.	Dismissal.		
	31. Intimidation, subversion, active, unlawful agitation, incitement to violence, general creation or furtherance of employee unrest.	Dismissal or Summary Dismissal.			
	32. Adopting a threatening attitude.	Final Written warning.	Dismissal.		
	33. Injury to others through negligence or horseplay.	Final Written warning.	Dismissal.		
	34. Committing unsanitary acts.	Final Written warning.	Dismissal.		
Behaviour towards customers or suppliers and general unacceptable behaviour.	35. Unacceptable behaviour which includes discourtesy, rudeness, uncooperativeness, disrespect, unfriendliness, whether on or beyond company premises.	Written warning.	Final Written warning.	Dismissal.	
	36. Breach of employee's duty of good faith and gross damage to the company-client relationship and image.	Dismissal.			
	37. Unacceptable behaviour that reflects discredit on the company, whether on or off company premises and which shall also include interracial abuse, insolence, insulting behaviour, disrespect, horse-play.	Written warning.	Final Written warning.	Dismissal.	

Category	Nature of Offence	1 st Offence	2 nd Offence	3 rd Offence	4 th Offence
	38. Bringing or attempting to bring the name of the company into disrepute.	Suspension or Dismissal.			
	39. Withholding important information from superiors.	Suspension or Dismissal.			
	40. Sexual harassment.	Final Written warning.	Dismissal.		
	41. Victimization or any form of harassment including but not limited to racial harassment..	Final Written warning.	Dismissal.		
	42. Being convicted of a serious criminal offence.	Dismissal.			
	43. Failure to check references.	Verbal warning.	Written warning.	Final Written warning	
	44. Unauthorised use of company property (other than motor vehicles).	Verbal warning.	Written warning.	Final Written warning	
	45. Participation in unprocedural industrial action or gross refusal to work.	Dismissal or Summary Dismissal.			
Unacceptable performance.	46. Confirmed poor quality and/or quantity of work.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	47. Improper use of tools and failure to report damage to product or company property.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	48. Failure to keep equipment or workplace in proper order.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	49. Willful damage to company property.	Suspension or Dismissal.			
	50. Damage to company property through negligence.	Final Written warning.	Dismissal.		
	51. Failing to report an accident or damage to company property.	Final Written warning.	Dismissal.		
	52. Wastage of material.	Verbal warning.	Written warning.	Final Written warning	Dismissal.

Category	Nature of Offence	1 st Offence	2 nd Offence	3 rd Offence	4 th Offence
	53. Poor maintenance of vehicle or machine for which employee is responsible.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	54. Gross incompetence.	Dismissal or Suspension.			
	55. Causing loss or damage to the company through disregarding of company rules, procedures or authority levels.	Dismissal or Suspension.			
	56. Exceeding authority level in relation to company/client mandates.	Dismissal or Suspension.			
General	57. Proven non-compliance with company rules and regulations: Unauthorised admittance to premises and/or work areas.	Final Written warning.	Dismissal or Suspension.		
	58. Withholding information regarding change of address / personal details.	Verbal warning	Written warning.	Final Written warning	Dismissal.
	59. Performing or undertaking unauthorised external work which conflicts with and/or is likely to conflict with or negatively influence the individual's duty to the company.	Require that work is stopped / issue final written warning.	Dismissal.		
	60. Refusing to allow one's person/locker/possessions or vehicle to be searched.	Final Written warning.	Dismissal.		
	61. Elaborate non-compliance with statutory Acts and Regulations.	Verbal warning.	Written warning.	Final Written warning	Dismissal.
	62. Unauthorised trading on company premises.	Final Written warning.	Dismissal.		
	63. Deliberate contravention of the company rule and Regulations regarding vehicles/equipment including negligent driving of company vehicle.	Written warning.	Final Written warning.	Dismissal.	

Category	Nature of Offence	1 st Offence	2 nd Offence	3 rd Offence	4 th Offence
	64. Using alcohol/mind-altering substances while on stand-by shift.	Final Written warning.	Dismissal		
	65. Use of software in a company owned PC which has not been cleared for viruses by IS internal department.	Final Written Warning	Dismissal or Suspension.		
	66. Pirating computer software / for use on company computer.	Final Written warning.	Dismissal or Suspension		
	67. Unauthorised using of another employee's personal password or failure to ensure the secrecy of one's password.	Final Written warning.	Dismissal or Suspension		
	68. Tampering with company software systems without authorisation.	Final Written warning.	Dismissal or Suspension		
	69. Any acts of discrimination and breach of the company employment equity, Aids and other discrimination or equity related policies	Dismissal or Suspension			
	70. Receiving gifts from suppliers, customers or business associates in breach of the company procedure.	Dismissal or Suspension			
	71. Unauthorised use of company property or funds for unauthorized private purposes.	Dismissal or Suspension			
	72. Abuse of company benefits.	Dismissal or Suspension			
Other offences.	73. Any other reason recognized in law as being sufficient grounds for dismissal.	Dismissal or Suspension			

PASSED in the House of Representatives on the 15th day of April, 2005.

(KHAMIS JUMA CHANDE)
Clerk of the House of Representatives
Zanzibar

