



FEDERAL REPUBLIC OF SOMALIA  
MINISTRY OF LABOUR AND SOCIAL  
AFFAIRS (MOLSA)

---

# FEDERAL REPUBLIC OF SOMALIA DRAFT LABOUR CODE (Version 3)

---

**Prepared By:**

**Okech-Owiti  
January 2018**

---

## Arrangement of Sections

PART I: GENERAL PROVISIONS AND PRINCIPLES	4
Chapter 1: Commencement, Interpretation and Application	4

Chapter 2: General Principles	12
PART II: LABOUR ADMINISTRATION, SUPERVISION AND INSPECTION	18
Chapter 3: Ministerial Administration	18
Chapter 4: Federal Labour Commission	27
PART III: ESTABLISHMENT AND REGULATION OF WORK-PLACES	30
Chapter 5: Administration and Enforcement	30
Chapter 6: Establishment and Registration	33
Chapter 7: Conditions in Workplaces	35
PART IV: EMPLOYMENT	43
Chapter 8: Ordinary Contracts of Service	43
Chapter 9: Contract of Apprenticeship	45
Chapter 10: Sub-contracts	47
Chapter 11: Terms and Conditions	48
Chapter 12: Determination and Protection of Remuneration	52
Chapter 13: Employment Records	59
Chapter 14: Social Security and Social Protection	60
Chapter 15: Foreign Contracts of Employment	61
Chapter 16: Employment Management	62
Chapter 17: Termination of Employment	66
PART V: SPECIAL PROTECTION	76
Chapter 18: Night Work	76
Chapter 19: Children	76
Chapter 20: Women	79
Chapter 21: Persons with Disability	80
PART VI: OCCUPATIONAL ACCIDENTS, INJURY AND DISEASE	83
Chapter 22: Administration	83
Chapter 23: Employer's, Employee's and the Director's Duties in Respect of Occupational Accidents, Injury and Diseases	83
Chapter 24: Compensation, Offences and Specific Laws and Regulations	87
PART VII: COLLECTIVE LABOUR RELATIONS	90
Chapter 25: Freedom of Association	90
Chapter 26: Establishment and Registration of Trade Unions and Employers' Organisations	95

Chapter 27: Membership and Management	104
Chapter 28: Funds and Other Property, Accounts and Returns	106
Chapter 29: Recognition of Trade Unions	111
Chapter 30: Collective Agreements	113
PART VIII: DISPUTE RESOLUTION	118
Chapter 31: Federal Alternative Dispute Resolution Commission	118
Chapter 32: Committee of Inquiry	120
Chapter 33: Labour Court	121
Chapter 34: Settlement of Labour Disputes	124
PART IX: MISCELLANEOUS	128
Chapter 35: Penalties	128
Chapter 36: Regulations and Repeal	128

## **PART I: GENERAL PROVISIONS AND PRINCIPLES**

### **Chapter 1: Commencement, Interpretation and Application**

#### **1. Commencement**

This Code comes into operation once it is published in the Official Gazette.

#### **2. Interpretation**

In this Code, unless the context requires otherwise:

‘air pollution’ means contamination of air by substances which are harmful to health or are otherwise dangerous;

‘authorised officer’ means any officer given authority to carry out any act or to provide any service under this Code as, or on behalf of, the Federal Labour Commissioner, the Director of Employment, or the Director of Occupational Safety and Health;

‘casual employee’ means a person the terms of whose engagement provide for his or her payment at the end of each day and who is engaged for a period of twenty four hours or less at a time;

‘certificate of urgency’ means a certificate issued by a court stating that a particular case is urgent and must be heard and determined expeditiously;

‘code of practice’ means any documentary form of practical guidance intended to achieve good practice in any profession, occupation, industry or enterprise;

‘child’ means a person who has not attained the age of eighteen years;

‘collective bargaining’ means any negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for:

- (a) determining working conditions and terms of employment; and/or
- (b) regulating relations between employers and workers; and/or
- (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

‘collective agreement’ means a registered agreement concerning any terms and conditions of employment made in writing between a trade union and an employer, a group of employers or an employers’ organization’;

‘Commission’ means the Federal Labour Commission established under **section 25** or the Federal Alternative Dispute Resolution Commission established under **section 209** of this Code as appropriate;

‘competent person’ means a person with relevant qualifications, and adequate training and experience to enable him or her to perform a particular duty or function;

‘contract of employment’ means an express or implied agreement, in whatever form, to employ or to serve as an employee for a period of time, including a contract of apprenticeship;

‘dependent’ means a member of an employee’s family or a relative who substantially depends on that employee for his or her livelihood;

‘Director’ means the Director of Employment or Occupational Safety and Health as the case may be;

‘disability’ means any physical, mental, sensory or other condition, which impairs a person’s visual, hearing, learning, thinking or physical capability, and impacts negatively on such person’s socio-economic participation and, in this context, ‘persons with disabilities’ include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others;

‘discrimination’ means any distinction, exclusion or preference, whether direct or indirect, made on the basis of specific grounds which has the effect of nullifying or impairing equality of opportunity or treatment in employment and occupation, including access to vocational guidance and training, access to employment and to particular occupations, and terms and conditions of employment;

‘employee’ means a person who undertakes to perform manual or non-manual work for an employer under a special or general, oral or written agreement, or by way of apprenticeship or probation, in return for remuneration;

‘employer’ means a physical or juridical person who uses, directs and remunerates the services of an employee, whether continuously or not, and, where appropriate, includes:

- (d) the State or state-owned or controlled or public enterprises;
- (e) an heir, successor, assignee or transferor of an employer; or

- (f) an agent, director, or any person authorized to represent an employer, and
- (g) for purposes of equality of opportunity and non-discrimination, an employment agency, whether public or private;

‘employers’ organisation’ means any association established by employers for the purpose of furthering and defending the interests of employers;

‘employment agency’ means any person, company, institution, agency or other organisation, whether public or private, who or which acts as a go-between for the purpose of procuring employment for an employee with a view to profit, including levying from either an employer or employee an entrance fee, a periodical contribution or any other charge;

‘exposure’ means the amount of a workplace agent that has reached an individual employee externally, or has been absorbed into the individual employee by whatever means;

‘federation’ means a registered federation having two or more trade unions or two or more employer’s organizations, or two or more federations as its members;

‘forced or compulsory labour’ means any involuntary work or service which is extracted from any person under the threat of any penalty, including a loss of rights or privileges;

‘fume’ includes gas or vapour;

‘highly flammable liquid’ means any liquid, liquid solution, emulsion or suspension which gives off a flammable vapour at a temperature of less than 32 degrees centigrade;

‘improvement notice’ means a notice issued requiring a person who is deemed to be contravening safety and health provisions of this Code or any regulations made under it to remedy the contravention within a specified period;

‘industrial undertaking’ includes:

- (a) a mine, quarry and other works for the extraction of any substance from or under the surface of the earth;
- (b) a workshop, manufactory or factory or a place where raw materials or other goods are manufactured, processed or packaged;
- (c) the construction, reconstruction, maintenance, repair, alteration or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland water way, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephone installation, electrical undertaking, gas work, water work or other work of construction, as well as the preparation for or laying of the foundations of any such work or structure; or
- (d) transport of passengers or goods by road, rail, or inland waterway, and connected handling of passengers or goods

- (e) any other place or activity which the Minister, having regard to the nature of the work involved declares an industrial undertaking by order;

'labour or trade dispute' means any dispute between:

- (a) employers and employees, or
- (b) employers' organization and trade union, or
- (c) a federation of employers' organisations and a federation of trade unions, or
- (d) employees and employees, or
- (e) a trade union and a trade union, or
- (f) an employee and a trade union, or
- (g) a trade union and a federation of trade unions, or
- (h) an employers' organization and a federation of employers' organisations,

which is connected with:

- (a) the employment or non-employment, or
- (b) the terms of employment, or
- (c) the conditions of labour of any employee, or
- (d) membership or areas of operation or coverage,
- (e) any other matter that is relevant to a contract of employment;

'light work' means work which is not:

- (a) likely to be harmful to the health or development of a child;
- (b) such as to prejudice a child's attendance at school, the child's participation in vocational orientation or training programmes approved by the Minister or the child's capacity to benefit from the instruction received; and
- (c) likely to be harmful to the health, safety and welfare of persons with disabilities taking into account the nature of the disability;

'lockout' means the closing of a place of employment or the suspension of work or refusal by an employer to employ any employees for the purpose of compelling such employees to accept any demand in respect of a trade dispute;

'machinery' means any article or combination of articles which is used or intended to be used for converting any form of energy to performing work, or which is used or intended to be used for developing, receiving, storing, containing, confining, transforming, transmitting, transferring or controlling any form of energy;

'major hazard installation' means an installation—

- (a) where more than the prescribed quantity of any substance is kept for whatever period;  
or
- (b) where any substance is produced, processed, used, handled or stored in such a form that it has the potential to cause a major incident;

‘major incident’ means an occurrence of catastrophic proportions resulting from the use of plant or machinery or from activities at a workplace;

‘medical surveillance’ means a planned programme of periodic examination, which may include clinical examinations, biological monitoring or medical tests of persons employed by a designated health practitioner or by an occupational medical practitioner;

‘migrant worker’ means a person who migrates or who has migrated from another country to Somalia with a view to being employed otherwise than on his or her own account and includes any person regularly admitted as a migrant worker, but does not include frontier workers, artistes and members of the liberal professions who have entered the country on a short-term basis and seamen or women

‘Minister’ means the Federal Minister for the time being in-charge of labour affairs;

‘Ministry’ means the Ministry for the time being responsible for labour affairs;

‘noise’ means all sound energy, which can result in hearing impairment or be harmful to health or is otherwise dangerous;

‘occupational hygiene’ means the prevention and control of work-place conditions which may cause illness or adverse health effects to persons;

‘occupational safety and health officer’ means any officer appointed under this Code and includes the Director;

‘occupier’ means the person or persons in actual occupation of a workplace, whether as the owner or not and includes an employer;

‘out-employee’ means any person employed to do some work for an employer but who performs the work at home or in premises outside the employer’s designated premises;

‘owner’ means the person for the time being receiving the rents or profits of premises whether on his own account or as agent or trustee of another person, or who would receive the rents and profits if the premises were leased;

‘piece work’ means any work or service for which the rate of payment is based on the amount of work done irrespective of the length of time within which it is done;



‘plant’ includes any equipment, gear, machinery, apparatus or appliance or any part of it;

‘premises’ includes any place and, in particular:

- (a) any vehicle, vessel aircraft or hovercraft, whether moving or still;
- (b) any installation on land or water, or any other installation, whether floating, or resting on the seabed or its subsoil, or resting on other land covered with water or its subsoil;
- (c) any tent or movable structure;

‘prime mover’ means every engine, motor or other appliance which provides mechanical energy;

‘probationary contract’ means a contract of employment which is of not more than twelve months’ duration or part of it, is in writing, and expressly states that it is for a probationary period;

‘probationary period’ means a period during which an employer and an employee test each other’s suitability as employee or employer, respectively;

‘process’ includes the use of any locomotive;

‘prohibition notice’ means a notice issued to any person who is engaged in or is in control of any activities which:

- (a) are in contravention of the provisions of this Code or any regulations made under it, and
- (b) involve or may, in future, involve a risk of serious personal injury, directing that such activities not be carried on unless:
  - (i) conditions stated in the notice are satisfied or,
  - (ii) contraventions are remedied;

‘reasonable accommodation’ means accommodation which satisfies the necessary requirements of adequacy and comfort, and includes necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, in a particular case, to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms;

‘redundancy’ means the loss of employment, occupation, job or career by involuntary means through no fault of an employee, involving termination of employment at the initiative of the employer, where the services of an employee are superfluous, including the practices commonly known as abolition of office, job or occupation and loss of employment;

‘Registrar’ means the Registrar of Trade Unions and Employers’ Organizations appointed under this Code;

‘remuneration’ means the total value of all payments in money or in kind, made or owing to an employee arising from the employment of that employee;

‘risk’ means the probability of occurrence of an adverse effect from a substance on people and persons with disabilities or the environment combined with the magnitude of the consequence of that adverse effect;

‘sanitary conveniences’ include urinals, water-closets, earth-closets, privies, ash-pits and any similar convenience, and special sanitary facilities for persons with disabilities and any mechanisms which facilitate easy access to the facilities;

‘self-employed person’ means an individual who works for gain or reward otherwise than under a contract of employment;

‘steam boiler’ means any closed vessel in which for any purpose, steam is generated under pressure greater than atmospheric pressure, and includes any economizer used to heat water being fed to any such vessel, and any superheated container used for heating to obtain steam;

‘strike’ means the cessation of work by employees acting in combination, or a concerted refusal or a refusal under a common understanding of employees to continue to work, for the purpose of compelling their employer or an employers’ organization of which their employer is a member, to accede to any demand in respect of a trade dispute;

‘subcontractor’ means a person who, himself or herself recruiting the necessary employees, enters into a written agreement with a contractor to carry out specified work or to furnish specified services for an agreed price;

‘substance’ means any natural or artificial matter or material whether in solid or liquid form or in the form of a gas or vapour;

‘supplier’ means a person who provides articles or substances by way of sale, lease, hire or hire-purchase, whether as principal or agent;

‘task’ means such amount of work as can, in the opinion of an authorised officer, be performed by an employee in an ordinary working day;

‘trade union’ means any organisation of employees whose primary purpose is the protection, pursuit and safeguarding of the interests of employees;

‘transmission machinery’ means every shaft, wheel, drum, pulley, system of fast and loose pulleys, coupling, clutch, driving-belt or other devices by which the motion of a prime mover is transmitted to or received by any machine or appliance;

‘undertaking’ means any place or premises where employees are employed;

‘user’ in relation to plant or machinery, means the person who uses plant or machinery for his own benefit or who has the right of control over the use of plant or machinery, but does not include a lessor of, or any person employed in connection with, that plant or machinery;

‘vibration’ means mechanical energy transmitted to a person’s body from a source of oscillations and is harmful to health or otherwise dangerous;

‘woman’ means a female of the age of eighteen years or above;

‘workplace’ includes, any land, premises, location, vessel or thing, at, in, upon, or near which, an employee is, in the course of employment;

‘workroom’ means any room or cubicle in which work is done by persons employed;

‘worst forms of child labour’ with respect to juveniles, means their employment, engagement or usage in any activity comprising of:

- (a) all forms of slavery or practices similar to slavery, including the sale and trafficking of children, debt bondage and serfdom and 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, including the production and trafficking of drugs as defined in the relevant international conventions or 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 the child.

### **3. Application**

- (1) The provisions of this Code or regulations made under it apply to all employers and employees, including those employed in the public service or public institutions to the extent that any of their terms and conditions of service are not governed by any other law.
- (2) The provisions of this Code or regulations made under it do not apply to the armed forces, except those employed in a civilian capacity, police forces and para-military forces of the Federal State.

## **Chapter 2: General Principles**

#### **4. Right to follow any occupation**

Every person has the right to follow any occupation he or she chooses.

#### **5. Legal protection of labour and recognition of employees' role**

The State has the responsibility:

- (a) to protect labour in all its forms and applications, whether organizational or executive, intellectual, technical or manual;
- (b) to promote such conditions as permit the effective exercise of the rights and discharge of the duties provided for in section 4;
- (c) to recognize the important role of the employees in the development of the national economy by encouraging and ensuring their participation in the planning and management of production.

#### **6. Equality and non-discrimination**

- (1) Every person has the right to equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, sexual orientation or gender identity, language, religion, political or other opinion, nationality or national extraction, or , ethnic or social origin, disability, pregnancy, mental status, age or human immuno-deficiency virus (HIV) status, and has the duty to afford such equality to other persons.
- (2) It is the duty of the Minister and all officers working within the Ministry, all state institutions and employers to promote and guarantee equality of opportunity in order to eliminate discrimination in employment.
- (3) The right to equal opportunity and treatment in respect of employment and occupation and the duty to promote and guarantee equality of opportunity in employment applies equally to a person who is a migrant worker or a member of the family of the migrant worker lawfully within the Republic.
- (4) Without affecting the generality of the provisions of sub-section (3) above in respect of migrant workers, and in order to prevent and to eliminate any abuses towards migrant workers and their families, the Minister is required, in consultation with other relevant government agencies and the representative organizations of employers and workers,
  - (a) to ensure application, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within the Federal Republic of Somalia, of treatment which is not less favourable than that which is applied to nationals in respect of employment matters, including employment opportunities and procedures, terms and conditions of employment, training, freedom of association and collective bargaining, social security, legal proceedings,

employment taxes, dues or contributions payable in respect of employed persons guarantees of security of employment, the provision of alternative employment, relief work and retraining

(b) to adopt all necessary and appropriate measures:

- (i) to suppress clandestine movements of migrants for employment and illegal employment of migrants;
- (ii) for the effective detection of the illegal employment of migrant workers and for the definition and the application of administrative, civil and penal sanctions in respect of the organisation of movements of migrants for employment, whether for profit or otherwise
- (iii) against the organisers of illicit or clandestine movements of migrants for employment departing from, passing through or arriving in the territory of the Federal Republic of Somalia, and against those who employ workers who have immigrated in illegal conditions, and
- (iv) to facilitate the departure, journey and reception of migrants for employment.

(5) An employer:

- (a) must strive to eliminate discrimination in any employment policy or practice, and
- (b) is not permitted to discriminate, directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee—

- (i) on grounds of race, colour, sex, sexual orientation or gender identity, language, religion, political or other opinion, nationality or national extraction, ethnic or social origin, disability, pregnancy, mental status, age or human immuno-deficiency virus (HIV) status;
- (ii) on the basis of such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Minister after consultation with representative employers' and workers' organisations, where such exist, and with any other relevant bodies.
- (iii) in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or any other matters relating to employment
- (iv) on grounds of trade union membership or legitimate trade union activities.

(6) It is unlawful to discriminate against an employee or any person seeking employment for exercising any right recognized under this Code.

(7) The following are not discrimination within this Code:

- (a) any measures of affirmative action in order to promote equality or eliminate discrimination in the workplace;
  - (b) to distinguish, exclude or prefer any person in respect of a particular job because of the inherent requirements of the job.
- (8) An employer is under a duty to pay his or her employees equal remuneration for work of equal value.
- (9) Where any allegations of discrimination are made in any proceedings, it is the burden of the employer to prove that the discrimination did not take place as alleged, and that the discriminatory act or omission is not based on any of the grounds specified in this provision.

## **7. Slavery and forced labour and recruitment of children into the armed forces**

- (1) Forced or compulsory labour is forbidden in any form.
- (2) No person is permitted to assist any other person to recruit, traffic or use forced or compulsory labour.
- (3) The term 'forced or compulsory labour' does not apply to:
- (a) any work or service required by law in respect of military service for work of a purely military character, including the organization for national defence or in case of a national calamity or emergency, but not including forced or compulsory recruitment of children for use in armed conflict;
  - (b) any work or service required of a prisoner in pursuance of a sentence passed by a competent court which must not include the person being hired out to or placed at the disposal of private persons, companies or associations, and which work or service is carried out under the supervision and control of a public authority;
  - (c) any minor work or service performed by members of a community in their direct interest which is considered part of the normal civic obligations of the citizens of the Republic, and in respect of which members of the community or their representatives have the right to be and have been consulted;
  - (d) any work or service exacted in cases of emergency and, in general, any circumstance that would endanger the existence or the well-being of the whole or part of the population.
- (4) It is an offence to contravene the provisions of this section. A person who is convicted of this offence is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term of not less than three years and exceeding ten years or to both.

(5) The Minister may permit voluntary recruitment of persons under the age of 18 years into the national armed forces but must maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is:

- (i) genuinely voluntary;
- (ii) carried out with the informed consent of the person's parents or legal guardians;

(b) Such persons

- (i) are fully informed of the duties involved in such military service;
- (ii) provide reliable proof of age prior to acceptance into national military service.

## **8. Sexual harassment**

(1) Sexual harassment of an employee is where the employer or a representative of the employer or a co-employee:

(a) requests, whether directly or indirectly, the employee for sexual intercourse, sexual contact or any other form of sexual activity that contains

- (i) promise of preferential treatment in employment;
- (ii) threat of detrimental treatment in employment; or
- (iii) threat about the present or future employment status of the employee, whether such promise or threat is implied or express;

(b) uses language of a sexual nature, whether written or spoken;

(c) uses visual material of a sexual nature; or

(d) shows physical behaviour of a sexual nature that:

- (i) is unwelcome or offensive to that employee and
- (ii) by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction
- (iii) has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

(2) An employer is under a duty to, in consultation with the employees or their representatives, issue and bring to the attention of employees a policy statement on sexual harassment which must contain:

(a) the definition of sexual harassment as specified in this section;

(b) a statement:

- (i) that prohibits sexual harassment;
- (ii) containing an assurance that the employer will take steps to ensure that no employee is subjected to sexual harassment;

- (iii) that appropriate disciplinary action will be taken against any person who subjects any employee to sexual harassment;
  - (iv) containing how complaints of sexual harassment may be brought to the attention of the employer; and
  - (v) that the employer will keep the name of a complainant or the circumstances related to the complaint confidential except where disclosure is necessary for the purpose of corrective action.
- (3) The employer is under a duty to promptly and independently investigate sexual harassment complaints and to take the necessary measures if the complaint is proven.

## **9. Freedom of association**

- (1) Every employee has the right to:
- (a) participate in forming a trade union or federation of trade unions;
  - (b) join a trade union; or
  - (c) leave a trade union.
- (2) An employee or any person seeking employment must not be discriminated against for exercising any right conferred under this Code.
- (3) Every employer has the right to:
- (a) participate in forming an employers' organisation or a federation of employers' organisations;
  - (b) subject to its constitution, join an employers' organisation or a federation of employers' organizations; or
  - (c) leave an employers' organization or federation.
- (4) An employer must not be discriminated against for exercising any right conferred under this Code.
- (5) Every employee or employer has the right not to join an employees' or employers' association or federation without loss of lawful entitlements.

## **10. Employees' rights not subject to renunciation**

- (1) Subject to the provisions of this Code, the rights conferred on employees must not be subject to renunciation, composition or limitation by agreement and any such agreement is deemed null and void.
- (2) Any rights or benefits already granted by employers of their own accord or by agreement and which are more advantageous for the employees take precedence over those prescribed by this Code.

## **11. Law applicable to labour disputes**



- (1) Disputes to which no provision of this Code or of any contract of employment is applicable must be decided according to the principles of equity, general principles of labour legislation, the Conventions or recommendations of the International Labour Organization ratified by the Republic, the principles of ordinary law which are not contrary to those of labour legislation, legal doctrine, case law and local custom or usage.
- (2) Where there is doubt as to the interpretation or application of any provision concerning labour matters, the interpretation or application which is more favourable to the employees must be adopted.

## **PART II: LABOUR ADMINISTRATION, SUPERVISION AND INSPECTION**

### **Chapter 3: Ministerial Administration**

#### **12. Minister**

- (1) The Minister in charge of labour affairs is appointed in accordance with the Constitution of the Federal Republic of Somalia.
- (2) The Minister is the administrative head of the Ministry in-charge of labour affairs.
- (3) The powers and functions of the Ministry include:
  - (a) to ensure compliance with the provisions of this Code or regulations made hereunder or any other law for the regulation of labour and employment and the protection and welfare of employees;
  - (b) to develop policies, guidelines, codes and programmes with respect to labour and employment
  - (c) to assist, on request, the registered trade unions and registered employers' associations or employers or their federations or in drawing up collective labour agreements;
  - (d) to take such steps as are appropriate to settle labour disputes arising at the national level or disputes of major importance;
  - (e) to direct the education and vocational training of employees and the placement of the unemployed;
  - (f) to be responsible for all matters connected with employment relationships, conditions of work, employment of employees, manpower movements and labour statistics
  - (g) to appoint such officers as are necessary to exercise the powers and carry out the functions of the Ministry and to provide guidelines as appropriate for such exercise and performance.
- (4) Subject to this Code and the laws governing the public service, the Minister appoints the following officers:
  - (a) the Federal Labour Commissioner;
  - (b) the Director of Employment;
  - (c) the Director of Occupational Safety and Health;
  - (d) the Registrar of Trade Unions and Employers' Organisations; and
  - (e) such other officers as may be necessary for purposes of administration of laws relating to labour and employment.
- (5) The Minister must ensure that any appoints he or she makes is done competitively.

- (6) The Minister must ensure that the exercise of powers and the performance of functions by the designated officers are coordinated and achieve the overall functions of the Ministry.
- (7) In exercising her or his powers and performing her or his functions, the Minister must always adhere to the principle and spirit of tripartism and consult with the representatives of workers and employers in matters of policy, legislation and practice that concern or affect the interests of workers and employers.

### **13. Federal Labour Commissioner**

- (1) The Federal Labour Commissioner is responsible for the regulation and supervision of labour and employment relations and monitoring or enforcing compliance with this Code and any other labour law to the extent that they regulate labour and employment relations.
- (2) The Federal Labour Commissioner may, in writing, delegate to any labour officer any of the Commissioner's powers, functions and duties and may:
  - (a) attach conditions to such delegation and may amend or revoke a delegation at any time; and
  - (b) vary or set aside any decision made by a person acting under such delegated authority.

### **14. Director of Employment**

- (1) The Director of Employment is responsible for the regulation and supervision of employment management and monitoring or enforcing compliance with this Code and any other labour law to the extent that they regulate employment management.
- (2) The Director of Employment may, in writing, delegate to any employment officer any of the Director's powers, functions and duties and may:
  - (a) attach conditions to such delegation and may amend or revoke a delegation at any time; and
  - (b) vary or set aside any decision made by a person acting under such delegated authority.

### **15. Director of Occupational Safety and Health**

- (1) The Director of Occupational Safety and Health is responsible for the registration, regulation and supervision of all work-places and monitoring or enforcing compliance with this Code and any other labour law to the extent that they regulate safety, health and welfare in the work-places.

- (2) The Director of Occupational Safety and Health may, in writing, delegate to any occupational safety and health officer any of the Director's powers, functions and duties and may:
- (a) attach conditions to such delegation and may amend or revoke a delegation at any time; and
  - (b) vary or set aside any decision made by a person acting under such delegated authority.

## **16. Other Officers: Designation, and Powers and Functions**

- (1) The officers appointed by the Minister **under section 12(4)(e)** may be designated as:
- (a) labour officers;
  - (b) employment officers; or
  - (c) occupational safety and health officers.
- (2) A labour officer may, for the purpose of monitoring or enforcing compliance with this Code and any labour law relating to labour and employment relations:
- (a) require the production of employment records kept by an employer and to:
    - (i) inspect and examine those records, and
    - (ii) copy any material part thereof;
  - (b) require any person giving out work and any out-employee to give any information which is in that person's power to give with respect to:
    - (i) the names and addresses of the persons to whom the work is given or from whom the work is received, and
    - (ii) the payments to be made for the work;
  - (c) examine:
    - (i) any person whom the labour officer has reasonable cause to believe to be or to have been an employee or
    - (ii) the employer of any such person or a servant or agent of the employer employed in the employer's businessto require such person to sign a declaration of the truth of the matters in respect of which he or she is so examined;
  - (d) freely and without previous notice at any hour of the day or night, enter, inspect and examine any land or building, other structure on or in which the officer has reasonable ground to believe that an employee is residing or is employed to determine compliance with this Code;
  - (e) freely and without previous notice at any hour of the day or night, require:
    - (i) an employer to produce an employee and a document relating to the employment of any employee, and

- (ii) require an employee to produce any document relating to the his or her employment;
  - (f) examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he or she has reasonable ground to believe to be or to contain evidence of an offence under this Code or any other labour law;
  - (g) enter, inspect and examine all latrines and other sanitary arrangement or water supply;
  - (h) inspect and examine all food provided or appearing to be provided for the employees, and take samples thereof in duplicate, in the presence of the employer or the employers' representative, which samples must be sealed and one sample so sealed be left with the employer;
  - (i) order that all buildings and premises where employees are housed or employed be kept in a clean and sanitary condition;
  - (j) without prejudice to the powers of the other federal prosecuting authority or person, institute criminal or civil proceedings in respect of any contravention of any provision of this Code or for any offence committed by an employer under this Code or any other labour law;
  - (k) take into custody and return to his or her parent or guardian, or other appropriate person any child whom he or she reasonably suspects to be employed in contravention of this Code or any other labour law, or
  - (l) make orders requiring an employer to comply with the provisions of this Code, and
  - (m) carry out such other functions and instructions and exercise such other powers as may be given by the Federal Labour Commissioner.
- (3) Where a labour officer seizes a register, record, book or other document in the performance of his or her duties, the officer must give to the employer or his or her representative a receipt.
- (4) A labour officer may, for the purpose of resolving disputes under this Code and any labour law relating to labour and employment relations, conduct conciliation proceedings for the parties involved in the dispute.
- (5) An employment officer may, for the purposes of collecting labour market data, exercise the following powers and carry out the following functions independently or in collaboration with the labour officer:
- (a) require the production of employment records kept by an employer and to:
    - (i) inspect and examine those records, and
    - (ii) copy any material part thereof;

- (b) require any person giving out work and any out-employee to give any information which is in that person's power to give with respect to:
    - (i) the names and addresses of the persons to whom the work is given or from whom the work is received, and
    - (ii) the payments to be made for the work;
  - (c) freely and without previous notice at any hour of the day or night, require:
    - (i) an employer to produce an employee and a document relating to the employment of any employee, and
    - (ii) require an employee to produce any document relating to the his or her employment;
  - (d) examine:
    - (i) any person whom he or she has reasonable cause to believe to be or to have been an employee or
    - (ii) the employer of any such person or a servant or agent of the employer employed in the employer's businessto require such person to sign a declaration of the truth of the matters in respect of which he or she is so examined;
  - (e) examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he or she has reasonable ground to believe to be or to contain evidence of an offence under this Code or any other labour law;
  - (f) inspect and copy any material part of any list of out-workers kept by an employer or other person giving out work to out-workers, or
  - (g) make orders requiring an employer to comply with the provisions of this Code, and
  - (h) facilitate placement
  - (i) carry out such other functions and instructions and exercise such other powers as may be given by the Director of Employment.
- (6) Where an employment officer seizes a register, record, book or other document in the performance of his or her duties, the officer must give to the employer or his or her representative a receipt.
- (7) An occupational safety and health officer may, for the purposes Code, exercise the following powers and carry out the following functions independently or in collaboration with the labour officer:
- (a) freely and without previous notice at any hour of the day or night, enter, inspect and examine any land or building, other structure on or in which the officer has reasonable ground to believe that an employee is residing or is employed to determine compliance with this Code;

- (b) freely and without previous notice at any hour of the day or night, require:
- (i) an employer to produce an employee and a document relating to the employment of any employee, and
  - (ii) require an employee to produce any document relating to the his or her employment;
- (c) examine:
- (i) any person whom he or she has reasonable cause to believe to be or to have been an employee or
  - (ii) the employer of any such person or a servant or agent of the employer employed in the employer's business
- to require such person to sign a declaration of the truth of the matters in respect of which he or she is so examined;
- (iii) examine and make copies of a register, record, book or other document relating or appearing to relate to employment, and seize any register, record, book or other document which he or she has reasonable ground to believe to be or to contain evidence of an offence under this Code or any other labour law;
  - (iv) enter, inspect and examine all latrines and other sanitary arrangement or water supply;
  - (v) inspect and examine all food provided or appearing to be provided for the employees, and take samples thereof in duplicate, in the presence of the employer or the employer's representative, which samples must be sealed and one sample so sealed be left with the employer;
  - (vi) order that all buildings and premises where employees are housed or employed be kept in a clean and sanitary condition;
  - (vii) without prejudice to the powers of the other federal prosecuting authority or person, institute criminal or civil proceedings in respect of any contravention of any provision of this Code or for any offence committed by an employer under this Code or any other labour law;
  - (viii) order an employee who is sick and for whom the conditions prevailing at the place of employment are not conducive to proceed to hospital, and the employer must send the employee to a hospital at his or her own expense;
  - (ix) condemn any food provided for employees which is deemed unfit for human consumption, and have all such food destroyed in his or her presence;

- (x) order at the expense of the employer, such variety of food for an employee as he may deem necessary at a cost that does not exceed the normal cost of rations ordinarily supplied by employers to employees;
- (xi) condemn any building or other structure in which an employee is residing or is employed if, in his or her opinion, it is unfit by reason of its construction, situation or condition for the purpose to which it is put;
- (xii) order the employer to supply an employee working under a written contract of employment with one or more blankets or with clothing, the reasonable cost of which must be paid by the employee and may be deducted from the remuneration for the employee; or
- (xiii) inspect all drugs and medicine provided for the use of employees, or
- (xiv) make orders requiring an employer to comply with the provisions of this Code, and
- (xv) carry out such other functions and instructions and exercise such other powers as may be given by the Director of Occupational Safety and Health.

### **17. Certificate of Authority and Identification Card**

- (1) Every authorised officer must be issued with a certificate of authority and an identification card:
  - (i) by the Minister, in the case of the Federal Labour Commissioner, the Director of Employment, and the Director of Occupational Safety and Health, and
  - (ii) by the Federal Labour Commissioner, in the case of a labour officer, the Director of Employment, in the case of an employment officer, and the Director of Occupational Safety and Health, in the case of an occupational safety and health officer.
- (2) An authorised officer, when performing duties under this Code, must produce his or her certificate and identification card if reasonably requested to do so by any person affected.

### **18. Powers of entry**

- (1) An authorised officer is permitted to enter any premises or place where persons are, or may be, employed for the purpose of performing his or her duties under this Code or any other labour law.
- (2) Such an authorised officer must notify the employer or his or her representative of his or her presence for that purpose at the first practicable opportunity, unless it is



considered that the notification may be prejudicial to the object or performance of his or her duties.

(3) An authorized officer must not be obstructed or hindered in the exercise of his or her duties under this Code and any person who:

(a) intentionally obstructs or hinders the officer, or

(b) neglects or fails to comply with any requirement or order made or given by the officer,

commits an offence and, when convicted, is liable to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding six months or to both.

### **19. Co-operation and assistance from government authorities**

Authorized officers may, where necessary, seek the co-operation and assistance of any government authorities for implementation of the provisions of this Code and regulations made under it.

### **20. Prohibitions**

An authorised officer must not:

(a) have any direct or indirect interest in any undertaking;

(b) reveal, even after leaving the service, any manufacturing or commercial secrets or working processes which may come to their knowledge in the course of their duties;

(c) divulge the source of any complaint bringing to their notice a defect or breach of legal provisions or give any intimation to the employer or his or her representative that a visit of inspection was made in consequence of receipt of such a complaints.

### **21. Powers as police officers**

Authorised officers have, within the limits of the powers, functions and duties assigned to them under this Code or regulations made under it or any other law, the stature and powers of police officers.

### **22. Submission of reports and confidentiality**

(1) The Federal Labour Commissioner, the Director of Employment and the Director of Occupational Safety and Health are required to prepare and publish annual reports of their respective activities, which must include the following information:

(a) In the case of the Federal Labour Commissioner:

(i) development of relevant laws and regulations;

(ii) staff;

- (iii) statistics of work places and employees (including persons with disabilities and any aids being provided), proceedings of labour disputes and their disposal, and work stoppages according to sectors affected;
- (iv) inspection findings;

(b) In the case of the Director of Employment:

- (i) development of relevant policies;
- (ii) staff;
- (iii) productivity level; and
- (iv) labour market information and employment trends;

(c) In the case of the Director of Occupational Safety and Health:

- (i) development of relevant laws, regulations and codes of practice;
- (ii) staff;
- (iii) state of workplaces, statistics of work places and employees (including persons with disabilities and any aids being provided), industrial accidents and occupational diseases; and
- (iv) inspection findings
- (v) statistics of violations detected and penalties imposed.

(2) Disclosure by an authorised officer or other person of information generated as part of the administration of this Code is prohibited, except:

- (a) in accordance with any written law; or
- (b) for the purpose of any legal proceedings or the proper administration of this Code.

### **23. Registrar of Trade Unions and Employers' Organisations**

(1) The Registrar of Trade unions and Employers' Organisations is responsible for the registration and regulation of trade unions, employers' organisations and any federations formed by the two associations, respectively.

(2) The Minister may appoint a deputy registrar, assistant registrars and such other officers as may be required for the purposes of this Code.

(3) The Registrar may, in writing, delegate to the Deputy Registrar or Assistant Registrars any of his or her powers, functions and duties.

(4) The Registrar may—

- (a) attach conditions to a delegation and may amend or revoke a delegation at any time; and
- (b) vary or set aside any decision made by a person acting on delegation.

## **24. Devolvement of officers, and powers and functions**

- (1) The Minister may devolve and establish the offices of the Federal Labour Commissioner, the Director of Employment and the Director of Occupational Safety and Health to the levels below the federal level as is deemed necessary, with jurisdictions, powers and functions as appropriate for each level.
- (2) The Minister may devolve the offices of the labour, employment and occupational safety and health officers to the levels below the federal level as is deemed necessary, with jurisdictions, powers and functions as appropriate for each level.

## **Chapter 4: Federal Labour Commission**

### **25. Establishment**

There is hereby established the Federal Labour Commission.

### **26. Composition and appointment**

- (1) The Federal Labour Commission is composed of:
  - (a) the Federal Labour Commissioner;
  - (b) the Director of Employment;
  - (c) the Director of Occupational Safety and Health;
  - (d) the Registrar of Trade unions and Employers' Organisations;
  - (e) the Registrar of the Labour Court;
  - (f) a representative of the Federal Alternative Dispute Resolution Commission, and
  - (g) the following persons appointed by the Minister:
    - (i) a chairperson who has experience and expertise in labour relations matters;
    - (ii) the general secretary of the most representative federation of trade unions;
    - (iii) the chief executive of the most representative federation of employers' organisations;
    - (iv) two persons appointed from nominees of the most representative federation of employers' organisation dealing with labour matters;
    - (v) two persons appointed from nominees of the most representative federation of trade unions;
    - (vi) not more than two other independent members, who have knowledge of labour relations matters or labour law;
- (2) The office of the Federal Labour Commissioner is the Secretariat of the Commission.

- (3) The Commission may co-opt or have in attendance at its meetings such other persons as are necessary for the effective and efficient exercise of its powers and performance of its functions.

## **27. Powers and Functions**

- (1) The main function of the commission is to advise the Minister on matters related to labour affairs in general, labour and employment relations, employment, and workplaces, including conditions of service and welfare of employees.
- (2) Without limiting the general powers and functions of the Commission, it may advise the Minister on:
- (a) legislation in relation to labour and employment, administration of the labour laws and codes of good practice;
  - (b) formation and development of policies;
  - (c) public employment services;
  - (d) labour relations and trade unionism, and regulation and supervision of collective labour relations;
  - (e) vocational guidance, vocational training and the employment of persons with disabilities;
  - (f) human resource development;
  - (g) systems of labour inspection;
  - (h) productivity measurement and improvement;
  - (i) appointment of remuneration councils;
  - (j) appointment of members of the Labour Court;
  - (k) the setting of compensation benefits in accordance with the provisions of the laws relating to occupational accidents and diseases;
  - (l) registration, suspension and deregistration of trade unions and employers' organisations and their respective federations, and
  - (m) any other matter related to any of the Commission's functions, or on which the Minister may require advice.
- (3) The Commission may:
- (a) conduct any investigations it may consider necessary and research into labour, economic and social policy.
  - (b) determine its own procedure for the performance of its functions.

## **28. Committees or panels**

The Commission may establish such committees or panels as are necessary for the effective and efficient exercise of its powers and performance of its functions.

## **29. Remuneration**

The chairperson and members of the Commission are paid such remuneration, fees or allowances for expenses as the Minister, in consultation with the Minister in charge of finance, may determine.

## **30. Rules of procedure**

The Commission may determine its own rules procedure for the exercise of its powers and the performance of its functions.

## **PART III: ESTABLISHMENT AND REGULATION OF WORK-PLACES**

### **Chapter 5: Administration and Enforcement**

#### **31. The Director**

- (1) The Director of Occupational Safety and Health is responsible for the administration and enforcement of this part of the Code.
- (2) The Minister may appoint such number of Deputy and Assistant Directors as may be necessary to assist the Director.

#### **32. Powers and functions of the Director**

- (1) The powers and functions of the Director include:
  - (a) registration of work-places;
  - (b) development, implementation and enforcement of occupational safety and health standards, regulations and codes of practice, including regulations requiring employers to measure, record, and make reports on the exposure of employees to substances or physical agents which may endanger the health or safety of employees;
  - (c) promotion of occupational safety and health in all workplaces and in the community to encourage a safety and health culture in workplaces;
  - (d) facilitating establishment of a programme related to adapted work settings/sheltered workshops to ensure that persons with disabilities are able to transit from sheltered employment to open labour market;
  - (e) establishment of programmes of medical examinations and tests as may be necessary for determining the incidence of occupational illnesses and the susceptibility of employees to such illness;
  - (f) examination and testing of plants and equipments;
  - (g) conduct of medical examination of employees, medical surveillance on the health of persons employed and safety and health audits of workplaces;
  - (h) conduct of education and training in occupational safety and health for enterprises, self-employed persons, individuals and occupational safety and health officers;
  - (i) collection and dissemination of information on occupational safety and health;
  - (j) conduct of research, experiments and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative methods, techniques and approaches of dealing with

occupational safety and health problems, and new problems created by new technology

- (k) development of criteria to deal with toxic material and harmful physical substances and agents which describe exposure levels that are safe for various periods of employment;
  - (l) development and maintenance of an effective programme of collection, compilation and analysis of occupational safety and health statistics which covers work injuries and illnesses;
  - (m) approval of training institutions providing occupational safety and health training;
  - (n) any other powers and functions necessary for the efficient and effective exercise of the powers and performance of the functions under the Code.
- (3) The Director may advise the Minister on:
- (a) the formulation and development of national occupational safety and health policy framework;
  - (b) legislative proposals on occupational safety and health, including ways and means to give effect to International Labour Organization, and other international, conventions and instruments relating to occupational safety, health, compensation and rehabilitation services;
  - (c) strategic means of promoting the best practices in occupational safety and health;
  - (d) the establishment, maintenance and development of a safety and health preventative culture;
  - (e) reviewing the provisions of this Code, rules and regulations, standards, industry codes of practice;
  - (f) the statistical analysis of work related deaths and injuries; and
  - (g) such other matters affecting occupational safety, health, as the Director considers desirable in the interest of improving the quality of working life.
- (4) The Director may establish technical advisory committees or panels to assist him or her in the exercise of his or her powers and the performance of his or her functions.
- (5) The Director, or any authorized officer working under him or her may prosecute, conduct or defend before a magistrate's court any charge, information, complaint or other proceeding arising under this Code, or in the discharge of his or her duty.
- (6) The Director, or any authorized officer working under him or her may at any time, after informing the occupier or his or her agent in the workplace, take for analysis sufficient samples of any substance used or intended to be used in a workplace in respect of which he or she suspects a contravention of any rule made under this Code, or which he thinks may prove on analysis to be likely to cause bodily injury to the persons employed.

- (7) The Director, or any authorized officer working under him or her, may seize and cause to be rendered harmless (whether by destruction or otherwise) any article or substance found by him or her in any premises which he or she has reasonable cause to believe is a cause of imminent danger or serious personal injury.
- (8) The Director, or any authorized officer working under him or her may serve an improvement notice on any person who in his or her opinion:
- (a) is contravening any of the provisions of this Code or rules made under it; or
  - (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue or be repeated.
- (9) The Director, or any authorized officer working under him or her, may serve on a person a prohibition notice if he or she is of the opinion that any activities being carried on or are about to be carried on by or under the control of the person involve or will involve a risk of serious personal injury.
- (10) The Director, or any authorised officer working under him or her, has power to make prohibition orders with immediate executory force if he or she is of the opinion that any activities being carried on or are about to be carried on by or under the control of the person involve imminent danger to the health or safety of workers.
- (11) Any person who, having been served with a prohibition notice or other orders under this section, continues to carry on the activities to which the notice relates or in any other manner contravenes the notice commits an offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding three months or to both.
- (12) If the contravention in respect of which he or she is convicted is continued after the conviction, he or she commits a further offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding seven days, or to both, for each day on which the offence is so continued.
- (13) Any person who is aggrieved by an improvement or prohibition notice may, within fourteen days from the date of such notice, appeal to the Director (if the notice is given by an occupational safety and health officer), or the Minister (if the notice is given by the Director).
- (14) The Director or Minister as the case may be, may, after considering the appeal, by order in writing confirm, revoke or vary the notice.
- (15) A person who is aggrieved by the decision of the Minister may appeal to the Labour Court, whose decision is final, except with respect to any claims under the Constitution of the Federal Republic of Somalia regarding infringement of fundamental rights.

## Chapter 6: Establishment and Registration



### **33. Register of workplaces**

- (1) The Director is under a duty to keep a register of workplaces in which he or she enters such particulars in relation to every workplace required to be registered under this Code as he or she may consider necessary.
- (2) Such particulars may include:
  - (a) name and contact details of the occupier, and the owner where the occupier is not the owner;
  - (b) the place where the workplace is situated;
  - (c) address to which communications relating to the workplace
  - (d) nature of work carried on, or proposed to be carried on, in the workplace
  - (e) number and categories of persons working in the workplace;
  - (f) the type of plant, machinery, tools or equipment installed or to be installed in the workplace and any known or potential risks involved;
  - (g) list of chemical substances used or intended to be used in the workplace;
  - (h) whether mechanical power is used or intended to be used, and
  - (i) date and serial number of the certificate of registration or renewal of registration.

### **34. Registration of workplaces**

- (1) Any person who intends to occupy or use any premises as a workplace must apply for the registration of the premises by sending to the Director a written notice containing the following particulars:
  - (a) name and address of the owner of the premises or building;
  - (b) address to which communications relating to the workplace may be sent;
  - (c) nature of the work carried on, or proposed to be carried on, in the workplace;
  - (d) the name of the manager of the workplace for the purposes of this Code;
  - (e) the list of chemical substances used or intended to be used in the workplace;
  - (f) whether mechanical power is used or intended to be used and, if so, its nature;
  - (g) whether power presses are in use or intended to be used and if so, type, description and distinctive number, and country and year of manufacture;
  - (h) whether passenger or goods lifts are used or intended to be used and, if so, the type, description and distinctive number, country and year of manufacture, date of the last thorough examination and name of the person by whom the examination was made, and maximum permissible working load;
  - (i) whether steam boilers are used or intended to be used and, if so, type, description and distinctive number, country and year of manufacture, date of

the last thorough examination and name of the person by whom the examination was made, and maximum permissible working pressure in pounds per square inch, and

- (j) total number of persons employed, or intended to be employed, in the workplace.
- (2) On receiving the notice of registration, the Director must take steps necessary to satisfy himself or herself that the premises are suitable for use as a workplace of the nature stated in the notice.
- (3) Upon being satisfied, the Director must register the premises and issue to the applicant a certificate of registration.
- (4) Any person who, occupies or uses any premises as a workplace without a certificate of registration commits an offence and, if on convicted, is liable to a fine not exceeding one \*\*\*\* or to imprisonment for a term not exceeding three months or to both.
- (5) If the contravention is continued after the conviction, he or she commits a further offence and is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding seven days, or to both, for each day on which the offence is continued.
- (6) Where the Director refuses to issue a certificate of registration, he or she must state, in writing, the grounds of such refusal.
- (7) The occupier of a registered workplace must notify the Director in writing of any proposed change in the registered particulars of that workplace prior to the change.
- (8) An occupier of a registered workplace who does not notify the Director commits an offence which is subject to the same penalty as provided for in paragraphs (4) and (5) above.
- (9) A person who is aggrieved by a decision of the Director regarding registration may appeal to the Minister within fourteen days from the date of the decision.
- (10) The Minister may, in consultation with representative organizations of workers and employers, exempt a specific workplace or class of workplaces from registration if he or she is satisfied that there are adequate arrangements in place for the protection of the safety and health of the affected employees.
- (11) The exemption is subject to review by the Director every five years or such shorter period as he or she may deem necessary in order to assess the general status of the safety and health in the exempted workplaces.
- (12) Upon the review, the Director may uphold or withdraw the exemption.

## Chapter 7: Conditions in Workplaces

### 35. General duties of an occupier within the workplace

- (1) The following are the general duties of an occupier:

- (a) To generally ensure the safety, health and welfare at work of all persons working in his or her workplace, including:
  - (i) taking the necessary precautions in his or her establishment to protect the life, health and morality of the employees;
  - (ii) ensuring that his or her staff receive the necessary instructions for the prevention of industrial accidents, occupational diseases and other risks inherent in their occupation;
  - (iii) maintaining machinery, electrical and mechanical plant, instruments and tools in good condition to ensure safety;
  - (iv) providing the necessary safety appliances adapted to machinery and plant;
  - (v) maintaining fire-fighting appliances and staff trained in their use;
  - (vi) providing and maintaining plant and systems and procedures of work that are safe and without risks to health;
  - (vii) arrangements for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
  - (viii) maintaining means of access to and egress from it that are safe and without such risks to health;
  - (ix) informing all persons employed of any risks from new technologies and imminent danger, and ensuring that every person employed participates in the application and review of safety and health measures
  - (x) providing equipment, appliances, facilities and any support which are required for the use of persons with disability;
- (b) to carry out appropriate risk assessments in relation to the safety and health of persons employed and, on the basis of these results, adopt necessary preventive and protective measures;
- (c) to send a copy of a report of risk assessment carried out under this section to the area occupational safety and health officer;
- (d) to take immediate steps to stop any operation or activity where there is an imminent and serious danger to safety and health and to evacuate all persons employed as appropriate;
- (e) to register his or her workplace unless such workplace is exempted from registration;
- (f) to prepare and, as often as may be appropriate, revise a written statement of the general policy with respect to the safety and health at work and arrangements for carrying out the policy, and to bring the statement and any revision of it to the notice of all of his or her employees;

- (g) not to dismiss an employee, injure the employee or discriminate against or disadvantage an employee in respect of the employee's employment, or alter the employee's position to the detriment of the employee because the employee:
    - (i) has made a complaint about a matter which the employee considers is not safe or is a risk to his or her health;
    - (ii) is a member of a safety and health committee established pursuant to this Code; or exercises any of his or her functions as a member of the safety and health committee;
  - (h) to establish a safety and health committee at the workplace (which committee must have representation of persons with disability) in accordance with regulations prescribed by the Minister if:
    - (i) there are twenty or more persons employed at the workplace; or
    - (ii) the Director directs the establishment of such a committee at any workplace;
  - (i) not to make any deduction from an employee's remuneration or levy, or permit to be levied on any of his or her employees any charge in respect of anything done or provided in respect of safety and health;
  - (j) to conduct a thorough safety and health audit of the workplace at least once in every period of twelve months by a safety and health advisor, who must issue a report and send a copy of the report to the Director.
- (2) An occupier who fails to comply with any of the duties imposed under this section commits an offence and, if convicted, is liable to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding six months or to both.
- (3) Any worker who considers that, due to the failure of the employer to fulfil his or her duties, he or she is not safe or is at risk or faces imminent and serious danger to his or her health or life, has the right to remove himself or herself from such situation and cannot be subjected to any penalty, sanction or any other adverse consequences for exercising this right.

### **36. Welfare**

- (1) Every occupier must:
- (a) provide and maintain, for the use of a person employed whose work is done standing, suitable facilities for sitting, sufficient to enable the person employed to take advantage of any opportunities for resting which may occur in the course of his employment;
  - (b) provide an adequate supply of drinking water easily accessible to all employees;

- (c) install first aid facilities and take steps to provide the necessary first aid in urgent cases to employees involved in accidents or falling sick during work;
  - (d) provide suitable cloakroom facilities for the staff
  - (e) cater adequately for the welfare needs of persons with disability.
- (2) An occupier who fails to comply with any of the duties imposed under this section commits an offence and, if convicted, is liable to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding six months or to both.

### **37. Health**

- (1) An occupier must ensure that effective and suitable provision is made, by the circulation of fresh air in each workroom, for the adequate ventilation of the room.
- (2) An occupier must ensure that:
- (a) the workplace is not, while work is carried on, so overcrowded as to cause risk of injury to the health of the persons employed in the workplace;
  - (b) the workplace is of sufficient size for work to be carried out with ease and has the necessary free space and, taking into account the nature of the work, an adequate amount of air for each employee.
- (3) An occupier must ensure that effective provision is made for sufficient and suitable lighting, whether natural or artificial, in every part of the workplace in which persons are working or passing.
- (4) An occupier must ensure that the workplace is kept in a clean state, and free from effluvia arising from any drain, sanitary convenience or nuisance.
- (5) An occupier must ensure drainage of residual waters where any process is carried on which renders the floor wet.
- (6) An occupier must provide suitable installations for the removal of refuse.
- (7) An occupier must provide sufficient and suitable toilet and washing facilities, separately for men and women employees, which are conveniently accessible and kept in a clean and orderly condition.
- (8) An occupier must ensure that the work-place is, in all respects, conducive to persons with disability.
- (9) An occupier who fails to comply with any of the duties imposed under this section commits an offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding six months or to both.

### **38. Safety**

- (1) All plant, machinery and equipment:

- (a) whether fixed or mobile for use either at the workplace or as a workplace, must only be used for work which they are designed for and be operated by a competent person.
  - (b) must be subjected to periodic inspection by a qualified and competent person to ensure that they are in reasonably good working condition and do not pose any risk to the safety and health of employees and any other person who may enter the workplace.
- (2) Every person who operates or in any other way works with or uses any plant, machinery and equipment must be sufficiently trained to ensure that such operation, work or use does not pose a risk to the safety and health of such person, other employees or any other person who may enter the workplace.
- (3) No person undergoing apprenticeship is allowed to attend to any machinery, equipment, tools, plant or process unless adequate supervision and protection against hazardous work conditions and environment is provided and maintained.
- (4) No person is employed at any machine or in any process, being a machine or process liable to cause ill-health or bodily injury, unless he or she has been fully instructed as to the dangers likely to arise in connection with it and the precautions to be observed, and:
  - (a) has received sufficient training in work at the machine or in the process; or
  - (b) is under adequate supervision by a person who has a thorough knowledge and experience of the machine or process.
- (5) The training referred to in subsection (4) must be carried out on:
  - (a) recruitment;
  - (b) transfer or change of job;
  - (c) the introduction of new work equipment or materials or change in equipment or materials, and
  - (b) introduction of new technology.
- (6) The training must be:
  - (a) adapted to take into account new changed risks;
  - (b) repeated periodically;
  - (c) not bear the expense of the employee, and must take place during working hours.
- (7) Every occupier must ensure that an employee from other undertakings or establishments including contractors engaged in work at the occupier's workplace receive appropriate instructions regarding safety and health risks, including emergency procedures at the workplace during their activities and action to be taken in case of an emergency.

- (8) Every occupier must provide special equipment, including suitable protective equipment, and facilities to the persons with disabilities at their work-place and residence and put in place specific safety measures to avoid any injury or accident.
- (9) The Minister may, in consultation with representative organisations of employers and workers, make regulations requiring reasonable arrangements for the medical surveillance and medical examination of the persons or any class of persons employed where he or she is satisfied that:
- (a) cases of illness have occurred which he or she has reason to believe may be due to the nature of the process or other conditions of work;
  - (b) by reason of changes in any process or in the substances used in any process or of the introduction of any new process or new substance for use in a process, there may be risk of injury to the health of an employee engaged in the process;
  - (c) there may be risk of injury to the health of employees from any substance or material brought to the industries to be used or handled or from any change in the conditions in the industries.
- (10) Regulations made under this section may require the medical surveillance to be carried out by persons registered by the Director, and may prescribe the qualifications and other conditions which are to be satisfied in order to be registered for the purpose of this section.
- (11) Where the Minister is satisfied that any work involves a risk to the health of employees, he or she may make rules requiring:
- (a) medical examination of the employees before they are employed, during their employment, and after the termination of their employment; and
  - (b) regular or individual examinations or surveys of health conditions from the point of view of industrial medicine and industrial hygiene.
- (12) The costs of the examinations referred to in subsection (10) are paid by the employer.
- (13) An employer must ensure that the examination specified in this section takes place without loss of earnings for the employees and, if possible, within normal working hours during their employment.
- (14) An employee and former employee of the employer under this section is under an obligation to undergo examination in accordance with the regulations.
- (15) Every employer must provide and maintain for the use of employees in any workplace where employees are employed in any process involving exposure to wet or to any injurious or offensive substance, adequate, effective and suitable protective clothing and appliances, including, where necessary, suitable gloves, footwear, goggles and head coverings.

- (16) Every employer must provide suitable goggles or effective screens to protect the eyes of persons engaged in any of the processes that may pose a risk to or injure the eyes of an employee.
- (17) Every employer must ensure that where in any workplace electric arc welding is carried on, effective provision is made, by screening or otherwise, to prevent employees, other than employees engaged in the welding process, being exposed to the electric arc flash.
- (18) A person who contravenes the provisions of this section or any regulation made under it commits an offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding three months or to both.

### **39. Record of initial or periodic training**

- (1) Every occupier of a workplace is under a duty to establish a register in which is entered details of all initial and periodic training given to persons working in the workplace.
- (2) The particulars in the register must include:
- (a) The date, length, methodology and nature of training;
  - (b) The persons providing the training and their qualifications and experience in respect of the area and methods of training;
  - (c) The persons trained and the positions they hold in the workplace;
  - (d) Nature of evaluation of the effectiveness of the training.

### **40. Register of occupational accidents and diseases**

- (1) Every occupier is under a duty to maintain at the workplace a register of all accidents resulting in injury, temporary or permanent disability or death and cases of occupational diseases.
- (2) The register must contain particulars which must include:
- (a) The date and nature of accident;
  - (b) The persons injured and the nature of injury, temporary or permanent disability, or who have died, as consequence;
  - (c) The nature of, and the person or persons affected by, the occupational disease and when this was established and by who;
  - (d) The steps taken by the occupier after the accident or discovery of the occupational disease.

### **41. Notification of occupational accidents and diseases**



- (1) Every occupier is under a duty to immediately notify the Director or the area safety and health officer of all accidents resulting in injury, temporary or permanent disability, or death and cases of occupational diseases.
- (2) The notification must be in writing and must contain particulars which must include those provided for under subsection 40(2).
- (3) A copy of any inspection, investigation or medical report which has been prepared must accompany the notification.

#### **42. Medical facilities**

- (1) Every undertaking normally employing more than ten employees at a single centre shall maintain a first aid chest.
- (2) Every undertaking normally employing more than 100 employees at a single centre shall also have its own dispensary and adequate medical staff.

#### **43. Conveyance of injured and sick employees**

It is the duty of the employer to arrange, at his or her own expense, for the conveyance to the nearest hospital of any injured or sick employee who can be so conveyed and who cannot be treated on the spot with the means available.

#### **44. Posting of health and safety rules and procedures**

- (1) The occupier is under a duty to communicate safety and health rules and procedures to all employees in the workplace and to post the same in a place which is accessible and convenient to the employees.
- (2) The rules and procedures must be in a language that the employees understand.

#### **45. Enactment of specific laws and regulations dealing with safety in the workplace**

The Minister may, in consultation with the representative organisations of workers and employers, make other laws and regulations dealing with safety and health, and safety and health standards either generally or in respect of a class of workplaces or undertakings, including with regard to:

- (a) Plant, machinery and equipment, including:
  - (i) prime movers;
  - (ii) transmission other machinery;
  - (iii) hand held and portable power tools and equipments;
  - (iv) construction and maintenance of fencing in use;
  - (v) construction and disposal of new machinery;
  - (vi) self-acting machines;

- (vii) hoists and lifts;
- (viii) chains, ropes and lifting tackle;
- (ix) cranes and other lifting machines;
- (x) steam receivers and containers.
- (xi) cylinders for compressed, liquefied and dissolved gases, and
- (xii) refrigeration plants;
- (b) Safety clothing and equipment;
- (c) Fire prevention and control;
- (d) Hazardous chemicals;
- (e) Dangerous emissions;
- (f) Air pollution, noise and vibrations, and
- (g) Safety drills and evacuation procedures.

## **PART IV: EMPLOYMENT**

### **Chapter 8: Ordinary Contracts of Service**

#### **46. Form of contract**

- (1) A contract of employment may be oral or in writing.
- (2) The burden of proving or disproving an alleged term of employment stipulated in an oral or part-oral and part-written contract is on the employer.
- (3) A contract of employment must be in writing if it is for a single or aggregate period of at least three months.
- (4) A labour officer may audit a written employment contract to ascertain that it is in conformity with the provisions of this Code, regulations made under it, or any other relevant law.
- (5) If the labour officer finds such a contract to contravene the provisions of this Code, regulations made under it, or any other relevant law, the officer may:
  - (a) require the parties to amend in order to ensure compliance, and,
  - (b) if the parties do not comply within thirty days, declare the contract null and void for purposes of the employers' rights but may be considered valid for purposes of enforcing an employee's rights.

#### **47. Employment particulars**

- (1) Subject to the provisions of this Code or regulations made under it, a contract of employment must specify the following:
  - (a) name, age, sex, address and occupation of the employee;
  - (b) whether the person has any disability and, if so, the nature of such disability;
  - (c) name of the employer;
  - (d) the job description of the employment;
  - (e) the date of commencement of the employment;
  - (f) duration of contract;
  - (g) hours and place of work;
  - (h) remuneration payable to the employee and the intervals at which it is paid, scale or rate of, the method of calculating the, remuneration and details of any other benefits;
  - (i) any terms and conditions relating to:
    - (i) annual leave and other holidays and holiday pay;

- (ii) incapacity to work due to sickness or injury, including any provision for sick pay, and
  - (iii) pensions and pension schemes;
  - (j) the length of notice which the employee is obliged to give and entitled to receive to terminate his or her contract of employment;
  - (k) any collective agreements which directly affect the terms and conditions of the employment;
  - (l) where the employee is required to work outside the Republic for a period of more than one month:
    - (i) the period for which that employee is to work;
    - (ii) the currency in which remuneration is to be paid;
    - (iii) any additional remuneration payable to the employee, and any benefits due to the employee because of the employee working outside, and
    - (iv) any terms and conditions relating to the employee's return;
  - (m) procedure for suspension or termination of contract;
  - (n) statement on disciplinary rules.
- (2) A statement of employment particulars may make reference to other documents for some particulars, but such documents must be made accessible to the employee.
- (3) Where any matter contained in a statement of particulars changes, the employer must, in consultation with the employee, revise the contract to reflect the change and notify the employee of the change in writing.

#### **48. Employer's duties**

An employer has the following obligations:

- (a) to pay the agreed wages, observing the conditions, times and places for payment agreed upon in the contract or prescribed in this code or regulations made hereunder or collective agreements, or, failing any of these, dictated by custom;
- (b) to adopt, in accordance with laws and regulations, adequate measures to create and maintain better conditions of industrial health and safety, including the prevention of employment injuries;
- (c) to issue free of charge to the employee at his or her request a certificate relating to his or her service;
- (d) to give due consideration to the justified complaints of the employees;
- (e) to fulfill any other obligation imposed by this Code or regulations made under it or any other labour law;
- (f) not to make any deduction from or withhold any moneys forming part of the wages and cash payments due to the employees, except in the manner and subject to the limits prescribed by law;

- (g) not to demand or accept from employees any cash payments or presents of any kind in return for admitting them to employment or for any other reasons connected with the terms and conditions of employment;
- (h) not to compel or encourage employees to buy consumer goods in any particular shop or place;
- (i) not to influence the political convictions or trade union loyalties of the employees.

#### **49. Employee's duties**

An employee has the following obligations:

- (a) to exercise due care, having regard to the nature of the services required of him or her, the interest of the undertaking, and the higher interests of national production;
- (b) to observe such instructions regarding the execution and organization of the work as may be issued by the employer or by those of his or her assistants placed in authority over him or her;
- (c) to take utmost care of the property of the undertaking entrusted to him or her.

### **Chapter 9: Contract of Apprenticeship**

#### **50. Definition, objects and exemptions**

- (1) A contract of apprenticeship is a special employment relationship by which the employer undertakes to give or cause others to give the apprentice in his or her service such instruction in the undertaking as will enable him or her to acquire the technical proficiency necessary to become a skilled employee, while using the services of such apprentice in undertaking. Such a contract shall be in writing.
- (2) The vocational training of an apprentice consists of practical training and related instruction.
- (3) The object of the practical training is to give the apprentice the necessary skill for the work in which he or she is to be employed by gradually accustoming him or her to the work.
- (4) The object of the related instruction is to give the apprentice such technical knowledge as he or she needs to become fully skilled.
- (5) Any fee for such instruction is payable by the employer.
- (6) A contract of apprenticeship is exempt from all stamp duties and registration fees.

#### **51. Particulars**

Every contract of apprenticeship must contain the following particulars:

- (a) name, trade or occupation and address of the employer;

- (b) name, age, civil status, nationality and address of the apprentice;
- (c) occupation, art or trade which is the object of the apprenticeship;
- (d) services which the apprentice undertakes to give;
- (e) duration of the apprenticeship and place where it is to be followed;
- (f) remuneration payable to the apprentice in the form of wages and other benefits during the apprenticeship;
- (g) conditions for the board, lodging and education of the apprentice.

## **52. Duration and conditions**

- (1) Young persons may be employed as apprentices if they are at least 15 and not more than 30 years of age, subject to the restriction as to age and to the prohibitions and limitations on employment laid down in this Code or regulations made under it or by any other law.
- (2) The duration of an apprenticeship contract must not exceed three years.
- (3) Periods served as an apprentice with two or more employers must be added together for the purpose of calculating the maximum period of apprenticeship, on condition that no two such periods are separated by an interval of more than one year and that they relate to the same occupation.
- (4) The hours of work of an apprentice must not exceed eight hours a day and 44 hours a week.
- (5) Time devoted to related instruction are treated for all purposes as hours worked.
- (6) Work is, in all cases, prohibited between 10p.m. and 6a.m..

## **53. Medical examination**

Before an apprentice is employed, the employer must provide for him or her to be medically examined to ensure that he or she is fit for the work for which he or is to be employed.

## **54. Automatic continuation**

If on the expiry of the period of apprenticeship, the contract is not terminated, the apprentice continues to be employed in a capacity corresponding to the qualifications obtained in the proficiency tests, and the period of apprenticeship must count towards his or her length of service.

## **55. Duties of employer**

It is the duty of the employer of an apprentice:

- (a) to give or cause others to give every apprentice in his or her service such instruction in the undertaking as will enable him or her to acquire the proficiency necessary to become a skilled employee;
- (b) to co-operate with public and private bodies responsible for organizing the courses of instructions serving to supplement the practical training;
- (c) to remunerate the apprentice in a just and fair manner;
- (d) to ensure that the apprentice is not employed on work beyond his or her physical strength or work unconnected with the occupation or trade for which he or she has been engaged;
- (e) to give the apprentice, without in any way reducing his or her remuneration, the necessary time-off to attend compulsory courses of related instruction and to ensure that he or she attends such courses;
- (f) to give the apprentice the necessary time-off to take the examination entitling him or her to receive the appropriate qualification;
- (g) to inform the person exercising paternal authority over the apprentice of the progress made by the apprentice in his or her training;
- (h) to ensure that the apprentice is not employed as a labourer.

### **56. Duties of an apprentice**

It is the duty of the apprentice:

- (a) to obey the employer or the person entrusted by the employer with his or her training and to carry out the instructions that are given to him or her;
- (b) to do his or her work in the undertaking conscientiously;
- (c) to maintain regular attendance at related instruction courses;
- (d) to observe the terms of his or her contract.

### **57. Proficiency tests**

- (1) On completing their practical training and related instruction, apprentices must undergo tests to determine their proficiency in the trade in which they have served their apprenticeship.
- (2) The qualifications obtained at the end of the period of apprenticeship must be recorded in the work book.

### **58. Compulsory employment**

An employer employing 30 or more employees must employ at least one apprentice for every 30 employees employed by him or her.

## Chapter 10: Sub-contracts

### 59. Notice and submission of copies

- (1) A subcontractor must, in a notice permanently and prominently displayed in all workshops and other business undertakings run by him or under a subcontract, indicate that he or she is a subcontractor and must give the name, occupation and address of the contractor.
- (2) Where there is a written agreement between a sub-contractor and a contractor, the contractor is under a duty to forward two copies of the contract to the competent labour officer, indicating the location of the workplace being used.

### 60. Liability

- (1) Where the work is carried out in the workshops or other business undertakings of a contractor or elsewhere than in the workshops or other business undertakings of a contractor, a contractor must be substituted for the sub-contractor as regards the latter's obligations towards the employees if the sub-contractor becomes insolvent, unless otherwise stipulated in the agreement between the contractor and the sub-contractor.
- (2) An employee who has suffered loss is entitled, in such cases, to a right of action directly against the contractor.
- (3) The employees of the sub-contractor are entitled to get the same economic and social benefits as similar categories of employees who may be employed by the contractor in connection with the same contract of which the sub-contract forms part, unless more favourable provisions are included in the agreement between the sub-contractor and his or her employees.

## Chapter 11: Terms and Conditions

### 61. Basic minimum conditions of employment

- (1) The provisions of this Chapter constitute basic minimum terms and conditions of contract of employment.
- (2) Where the terms and conditions of a contract of employment are regulated by any regulations, as agreed in any collective agreement or contract between the parties or enacted by any other written law, decreed by any judgment award or order of the a relevant court are more favourable to an employee than the terms provided in this Chapter, then such favourable terms and conditions of service apply.

### 62. Hours of work



- (1) 'Hours of work' means the period during which an employee is at the disposal of the employer, excluding any rest periods prescribed or agreed on within the limits fixed by this Code or regulations made under it or by any other law.
- (2) The normal hours of work of an employee, whether at time rates, piece rates or job rates, must not exceed eight a day or 48 a week.
- (3) Hours worked in excess of the normal hours of work:
  - (a) must not exceed two hours a day and 12 hours a week, and
  - (b) entitle an employee to a proportionate increase in remuneration, which must not be less than 50 per cent of the normal remuneration.

### **63. Intermittent work**

In occupations that involve intermittent duty or mere presence or caretaker activity, the normal hours of work are ten a day and 60 a week.

### **64. Weekly rest days**

- (1) Every employee is entitled to one day's rest each week, which should normally fall on Friday.
- (2) Subject to the exceptions mentioned in subsection (5) of this section, a rest day consists of at least 24 consecutive hours each week.
- (3) As far as possible, the weekly rest must be granted at the same time to all employees employed in an undertaking.
- (4) Employees are also entitled to a rest day on public holidays recognized as such by the State.
- (5) The Minister may, in consultation with representative organisations of workers and employers, specify the occupations in which the rest day:
  - (a) may be granted in rotation, or
  - (b) replaced by other traditional holidays, or
  - (c) granted in respect of periods longer than a week.

### **65. Public holidays**

- (1) An employee is entitled to full remuneration on all official or gazette national and public holidays.
- (2) Work done on national and public holidays entitle an employee to a proportionate increase in remuneration, which must not be less than 50 per cent of the normal remuneration.

### **66. Housing**

- (1) An employer must at all times, at his or her own expense:
  - (a) provide reasonable housing accommodation for each of his or her employees either at or near to the place of employment, or
  - (b) pay to the employee such sum as rent as will enable the employee to obtain reasonable accommodation, in addition to the wages or salary of the employee.
- (2) The sum payable under subsection(1)(b) of this section may be consolidated in the salary or wages in the contract of employment by individual or collective agreement

### **67. Water**

An employer must provide a sufficient supply of wholesome water for the use of his or her employees at the place of employment and, as the case may be, within a reasonable distance of any housing accommodation provided for the employees by the employer.

### **68. Food**

- (1) An employer is only under a duty to provide food to his or her employee where this has been expressly agreed to in, or at the time of entering into, a contract of employment.
- (2) Where this is the case, the employer must ensure that an employee is properly fed and supplied with sufficient and proper cooking utensils and means of cooking, at the employer's expense.
- (3) The provisions of this section do not impose upon an employer any liability in respect of an employee during the time the employee is absent from his or her place of employment without the permission of the employer or without other lawful excuse.

### **69. Medical attention**

- (1) An employer must ensure the provision of sufficient and proper medicine for his or her employees during illness and, if possible, medical attendance during serious illness.
- (2) An employer must ensure appropriate medical care for persons with disability in his or her employment.
- (3) An employer must take all reasonable steps to ensure that he or she is notified of the illness of an employee as soon as reasonably practicable after the first occurrence of the illness.
- (4) An employer is absolved from responsibility if he or she can show that he or she did not know that the employee was ill and that he or she took all reasonable steps to ensure that the illness was brought to his or her notice or that it would have been unreasonable, in all the circumstances of the case, to have required him to know that the employee was ill.

(5) This provision does not apply where:

- (a) the illness or injury to the employee was contracted during a period when the employee was absent from his employment without lawful cause or excuse;
- (b) the illness or injury is proved to have been self-inflicted;
- (c) medical treatment is provided free of charge by the Government or under any insurance scheme established under any written law which covers the employee.

## **70. Annual leave**

- (1) An employee is entitled to 21 days' leave with pay for every year of continuous service after a full year of continuous service.
- (2) On the termination of his or her service after a year of continuous service an employee shall be entitled also to proportionate leave consisting of as many twelfths as there have been months or fractions of months above a fortnight of actual service.
- (3) Where the employment relationship ceases before the employee has taken the leave to which he or she is entitled, he or she must be paid remuneration in lieu of any leave not taken.
- (4) The period of annual leave, at least two-thirds taken continuously, is to be granted at a time to be fixed by the employer taking into the needs of the undertaking and the interests of the employees, and after consultation with the employed person concerned or his or her representatives.
- (5) The employer must notify the employee beforehand of the period fixed for him or her to take the annual leave.
- (6) Shorter periods of not less than six continuous working days may be substituted for the continuous period of leave if the needs of the work so require.
- (7) The period of notice provided for termination of employment by either party must not be included in the annual leave.
- (8) The rate of remuneration payable to the employee at the beginning of his or her annual leave must be paid to him or her throughout the leave period.

## **71. Sick leave**

- (1) After two consecutive months of service with his or her employer, an employee is entitled to sick leave of not less than seven days with full pay and thereafter to sick leave of seven days with half pay, in each period of twelve consecutive months of service, subject to:
  - (a) production by the employee of a certificate of incapacity to work signed by a duly qualified medical practitioner;
  - (b) notification to the employer as soon as is reasonably practicable.

## **72. Compassionate leave**

An employer may, at his or her discretion, give his or her employee compassionate leave to enable him or her attend to personal matters.

## **73. Leave register**

An employer must maintain a leave register, showing:

- (a) the date of entry into service of each of his or her employees;
- (b) the date on which each employee takes his or her annual leave;
- (c) the duration of such leave, and
- (d) the corresponding remuneration.

## **Chapter 12: Determination and Protection of Remuneration**

### **74. Remuneration**

Remuneration is the amount paid or to be paid in cash to the employee by his or her employer clear of any deductions, except any deduction lawfully made:

- (a) for the purpose of a contribution to any provident fund, superannuation scheme, or other lawful contributory social security or medical schemes;
- (b) in respect of rations supplied by an employer which the employer is permitted to make under a wages order;
- (c) under any provision of any other written law for the time being in force which provides for or permits deductions to be made from an employee's wages by the employer; or
- (d) at the request, in writing, of the employee, for any purpose in which the employer has no direct or indirect beneficial interest.

### **75. Adequacy and equality**

- (1) Every employee has the right to receive remuneration which is in proportion to the quality and quantity of his work and which ensures an existence consistent with human dignity.
- (2) In fixing rates of remuneration, there must be no discrimination on account of race, colour, sex, sexual orientation or gender identity, language, religion, political or other opinion, nationality or national extraction, ethnic or social origin, disability, pregnancy, mental status, age or human immuno-deficiency virus (HIV) status or political or trade union activities.
- (3) Equal remuneration must be given for work which is of equal value, efficiency, type of work or duration.

- (4) Any evaluation of equality of remuneration must be carried out using objective criteria.

## **76. Forms**

- (1) Remuneration may be fixed according to unit of time (month, fortnight, week, day or hour) or by unit of work (piece work or by the job).
- (2) The employer must notify the employee:
  - (a) beforehand of the constituent elements of the piece rate applicable to him or her, the work to be performed and the rate payable per unit, and
  - (b) of the quantity of work done and the time taken to do it.
- (3) The employer and employees may agree that a part of the remuneration may take the form of a share in profits, commission or allowances in kind. However:
  - (a) such allowances must be appropriate for the personal use and benefit of the worker and their family; and
  - (b) the value attributed to such allowances is fair and reasonable.
- (4) Except as otherwise provided in the collective labour agreement or individual contract, an employee's share in profits is to be determined on the basis of the net profits of the employer.
- (5) In the absence of a collective labour agreement or other arrangement between the parties, individual disputes are resolved on the basis of local customs and usage or, in their absence or if they are considered by the court to be inequitable, on the basis of equity.

## **77. Minimum wages**

Taking into consideration the economic and social conditions of the country, the minimum wages for any category of employees may be determined by the Minister, having considered the recommendations of a remuneration council, and heard the Federal Labour Commission.

## **78. Fringe benefits**

- (1) An employer must provide:
  - (a) Accommodation when an employee is required to be away from his or her normal residence;
  - (b) Free food to an employee, or subsistence allowance in its place, when the employee is required to work away from his or her normal residence and there are no suitable messing facilities;
  - (c) Free transport to and from the place of work, when an employee is required to work in a town or locality away from his or her normal residence.

- (2) The Minister may also determine:
- (a) other cases in which employees must be provided with accommodation, transport or messing facilities;
  - (b) any other fringe benefits, to be met by the employer.

### **79. Idd bonuses**

- (1) Every employee is entitled to an Idd bonus equal to 15 days' remuneration, half being paid at the end of Ramadan and the other half at the beginning of Arafa, but the bonus due to non-Muslim employees may, if such employees request, be paid in a single sum at the end of the solar year.
- (2) Employees who have not completed one year's service are entitled to a proportionate bonus, consisting of as many twelfths as there have been months, or fractions of months above a fortnight, or actual service.
- (3) Where an employee's services are terminated, a proportionate bonus in respect of the months, or fractions of a month above a fortnight, of actual service must be paid to him or her when his or her accounts are settled.
- (4) In the case of employees remunerated at piece rates or on commission, the bonus are calculated on the average earnings at piece rates or on the average commission received during the last three months or lesser period, after deduction of any expenses borne by the employee himself or herself, whether or not such expenses are determined in the form of a lump sum.

### **80. Mode and periodicity of payment**

- (1) Subject to the provisions of this Code or regulations made under it, the remuneration to an employee must be paid in legal currency.
- (2) Payment of wages in the form of promissory notes, vouchers or coupons, or in any other form alleged to represent legal tender is prohibited.
- (3) Payment must be effected at the place of work and on the last working day of the pay period.
- (4) Except where common usage requires otherwise, remuneration must be paid at regular intervals of not more than a fortnight in the case of an employee paid by the day, and not more than a month in the case of other employees.
- (5) In the case of piece work lasting longer than a fortnight, an employee may request to be paid a fortnightly amount on account in proportion to the amount of work done, subject to a maximum of 80 per cent.
- (6) Except as otherwise agreed in writing, employees remunerated on commission are entitled to receive the rate of commission customary in the branch of activity concerned.

- (7) Commission on business transacted during a given quarter must be paid by the end of the following quarter.
- (8) A share of profits made during a given financial year must be paid during the following year.

### **81. Receipts**

- (1) The payment of remuneration is proved by a receipt or similar document signed by the employee, or authenticated by his or her finger-print if he or she is illiterate.
- (2) Such documents must be preserved by the employer with his or her other accounting records and must be produced at the request of the labour officer.

### **82. Establishment of Remuneration Councils**

- (1) The Minister may establish:
  - (a) a Federal Remuneration Council, to determine minimum terms and conditions at the federal level;
  - (b) Sectoral Remuneration Councils, to determine minimum terms and conditions within a sector or at a sub-federal level.
- (2) The Councils are established through a notice in the official gazette which must:
  - (a) specify:
    - (i) the terms of reference, including the period of service;
    - (ii) the names of persons appointed as members;
  - (b) stipulate the period in which the council is required to investigate and prepare a report for the Minister, and
  - (c) invite representations from interested parties.
- (3) A remuneration council consists of the following members appointed by the Minister, all of whom must have knowledge and experience in the determination of minimum terms and conditions of employment:
  - (a) a chairperson;
  - (b) not more than three members nominated by the representative organization of workers;
  - (c) not more than three members nominated by the representative organization of employers; and
  - (d) not more than three independent members.

### **83. Functions and powers**

- (1) The functions of a council are to:
  - (a) investigate remuneration and conditions of employment;

- (b) invite and consider written and oral representations from interested parties, particularly trade unions and employers' organisations; and
  - (c) make recommendations to the Minister on minimum remuneration and conditions of employment.
- (2) In the performance of its functions, a council may take into consideration the following matters:
- (a) the needs of employees and their families, taking into account the general level of wages in the country, the cost of living, social security benefits and the relative living standards of other social groups;
  - (b) economic factors, including the requirements of economic development, levels of productivity and the desirability of attaining and maintaining a high level of employment and the need to encourage investment;
  - (c) the ability of employers to carry on their business successfully;
  - (d) the operation of small, medium and micro enterprises;
  - (e) the cost of living;
  - (f) the alleviation of poverty;
  - (g) the minimum subsistence level;
  - (h) the likely impact of any proposed conditions of employment on current employment or the creation of employment; and
  - (i) any other relevant factor.
- (3) In the performance of its functions, a council may:
- (a) question any person who may be able to provide information relevant to the investigation;
  - (b) in writing, require any person to provide any information, book, document or object relevant to the investigation; or
  - (c) conduct public hearings.
- (4) A person who without lawful excuse refuses and or neglects to:
- (a) answer any question relevant to an investigation; or
  - (b) furnish any information, book or document requested by a council
- commits an offence.

#### **84. Remuneration Orders**

- (1) The recommendations of the remuneration council to the Minister are gazetted as 'Remuneration Orders'.
- (2) Before gazetting a Remuneration Order, the Minister must publish a notice:
  - (a) specifying that he or she proposes to make a wages order;
  - (b) specifying where copies of a draft of the order can be obtained; and



- (c) inviting comments within a reasonable period on the draft order, which may not be less than thirty days from the publication of the notice.
- (3) Any person may submit written comments on a draft order within the specified period, setting out their views on the order and, if they object:
  - (a) the specific grounds of objection; and
  - (b) the deletions, additions or modifications proposed.
- (4) The Minister:
  - (a) must refer the objections to the proposed wages order and any other comments consideration; and
  - (b) may request the Commission to consider and advice on the objections.
- (5) Where the Minister has received objections and advice and considered the same, or where no objections are received, the Minister may publish a Remuneration Order in accordance with this Code.
- (6) Such Order is:
  - (a) published in the official gazette; and
  - (b) laid before the National Assembly within twenty-one days of publication.
- (7) A Remuneration Order:
  - (a) sets minimum rates of remuneration;
  - (b) specifies the matters in which an employer may make deductions from employee's wages and the maximum amount of deductions;
  - (c) specifies the maximum amount which may be deducted from an employee's wages in respect of rations supplied by the employer;
  - (d) provides that an employer may only make a deduction in respect of rations supplied if authorised in writing by a labour officer;
  - (e) regulates task-based work and piece work;
  - (f) regulates outwork, casual work and contract work;
  - (g) sets minimum standards for sanitation for employees who reside on the premises of their employer;
  - (h) regulates any other matter concerning remuneration or conditions of employment;
  - (i) may make different provisions for different classes of employees, and contain provision for the amendment or revocation of previous orders.
- (8) Once made, a Remuneration Order:
  - (a) constitutes minimum terms and conditions of employment, and
  - (b) becomes part of any individual or collective agreement except to the extent that such agreement contains more favourable terms for the employee or employees.
- (9) An employer who fails to:

- (a) pay to an employee to whom an order applies at least the statutory minimum remuneration; or
  - (b) provide an employee with the conditions of employment prescribed in the order, commits an offence and may be ordered by a court, in addition to any other penalty, to pay the employee the difference between the amount which ought to have been paid in terms of the wages order and the amount which was actually paid.
- (10) A labour officer may institute proceedings on behalf of and in the name of an employee for the recovery of a sum due from an employer to an employee by reason of the failure of the employer to—
- (a) pay to the employee the statutory minimum remuneration; or
  - (b) provide an employee with the conditions of employment prescribed in the order.

## **85. Protection**

- (1) Wages owing to an employee enjoy a general claim on the assets of the employer and have priority over the debts of all creditors of the undertaking.
- (2) The remuneration of an employee is not be liable to be assigned or attached except for an amount not exceeding one-fourth of the remuneration.
- (3) Payments due from the state or from public institutions for work done cannot be seized by third parties, in so far as they relate to the remuneration payable by the employer to the employees.
- (4) All entitlements of an employee to payments under the employment relationship are barred by limitation after three years from the date on which they become due.
- (5) An employer who is not incorporated or resident in the Republic may be required by the Minister to pay a bond assessed at the equivalent of one month's wages for all employees employed or to be employed by the employer.
- (6) A bond paid by any employer is held by the Minister on behalf of that employer in a separate interest bearing account and must 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.
- (7) When the death of an employee from any cause whatsoever is brought to the notice or comes to the knowledge of the employee's employer, the employer must, as soon as practicable thereafter, give notice of the death in the prescribed form to the labour officer or, if there is no labour officer, to the district commissioner of the district in which the employee was employed.
- (8) Upon the death of an employee during the term of a contract of employment, the legal representatives of the employee are entitled to be paid wages and any other

remuneration and property due to the employee as at the date of death within thirty days of submitting the proof.

- (9) The employer of the deceased employee must, within seven days of such payment, provide the labour officer with evidence of the payment.
- (10) Where on expiry of three months after the employee's death:
  - (a) no legal representative has laid claim to the wages or property of the employee; or
  - (b) where the employer is in doubt of or has rejected any claim made to the wages or the property of the employee, the employer, must deliver to the labour officer, all wages due to the employee at the date of his or her death and must deliver to him or her all property of the deceased employee to be held by the labour officer in trust subject to the law relating to succession or any other written law applicable to the disposal of a deceased persons property.
- (11) Where an employee is, during the course of his or her employment killed or incapacitated by injury for a period exceeding three days, his or her employer must, as soon as practicable, send to the labour officer a report.

## **86. Deductions and disciplinary penalties**

- (1) No deductions other than those prescribed by this Code or regulations made under it or any other law or collective labour agreement may be made from an employee's remuneration, except for repayment of advances received from the employer and evidenced in writing.
- (2) Voluntary absence of an employee from his or her work entails the loss of all remuneration for the period of absence.
- (3) Voluntary absence of an employee from the service for a period of seven or more consecutive days without justification is considered as if he or she has resigned from the service of his or her own accord.
- (4) In cases where the employee has defaulted on contractual obligations without warranting the immediate termination of his or her employment relationship, he or she is liable to the following disciplinary penalties:
  - (a) warning;
  - (b) suspension from work for a period not exceeding seven days without pay.
- (5) The employer must immediately notify the employee of the measures to be taken against him or her under the preceding paragraph.

## **Chapter 13: Employment Records**

### **87. Records to be kept by employer**

- (1) An employer is under a duty to keep the following records:

- (a) all employees employed by him or her, with whom he or she has entered into a contract, whether oral or written;
  - (b) Particulars of children employed;
  - (c) any policy statements or codes of practice required by this Code, including on sexual harassment;
  - (d) written contracts and collective agreements;
  - (e) any particulars that the employer is obliged to maintain;
  - (f) any registers that the employer is required to establish and maintain;
  - (g) statement of statutory deductions;
  - (h) security bond for wages;
  - (i) warning letters;
  - (j) notice to terminate contract by either employee or employer;
  - (k) letters of dismissal;
  - (l) particulars of maternity leave;
  - (m) particulars of sick leave;
  - (n) where the employer provides housing, particulars of the accommodation provided ;
  - (o) where the wage rates are deconsolidated, particulars of the house allowance paid to the employee, and
  - (p) particulars of food rations where applicable.
- (2) An employer must permit an authorised officer who may require an employer to produce for inspection the record for any period relating to the preceding thirty six months to examine the record.

### **88.False entries and production**

A person who makes, causes to be made or knowingly allows to be made an entry in a record or some other document required to be established, kept or maintained under this Code, he or she knows to be materially false, or produces, furnishes, causes or knowingly allows to be produced or furnished, to an authorised officer, such record or other document, commits an offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding six months or to both.

## **Chapter 14: Social Security and Social Protection**

### **89.Social Security**

- (1) It is the employer's duty to enroll eligible employees in an existing, or establish an appropriate, social security scheme, subject to the Minister's approval.
- (2) It is the employer's duty to enroll eligible employees in an existing, or establish an appropriate, health insurance scheme, subject to the Minister's approval.

## **90. Social Protection**

The Minister is obligated to establish policies and enact specific laws and regulations dealing with social protection strategies and measures, including social assistance, social insurance and social equity measures and labour market interventions.

## **Chapter 15: Foreign Contracts of Employment**

### **91. Authority**

- (1) A foreign contract of employment is a contract that is made within the Republic and that is to be performed either wholly or in part outside the Republic and where the employee is required to spend a substantial part of the contract term outside the Republic.
- (2) A foreign contract of employment must be in the prescribed form, signed by the parties thereto, and attested by the Minister or an authorized officer on his or her behalf.
- (3) No person is permitted to enter into a foreign contract of employment except with the authority of the Minister, or an authorized officer on his or her behalf.
- (4) Prior to granting authority, the Minister, or an authorized officer, must satisfy himself or herself of the absence of any fraud, coercion or undue influence, and any mistake of fact, or misrepresentation which might have induced the employee to enter into the contract, and that:
  - (a) the consent of the employee to the contract has been obtained;
  - (b) the contract is in the prescribed form;
  - (c) the terms and conditions of employment contained in the contract comply with the provisions of this Code and have been understood by the employee;
  - (d) the employee is medically fit for the performance of his or her duties under the contract; and
  - (e) the employee is not bound to serve under any other contract of employment during the period provided in the foreign contract.

### **92. Security**

- (1) Where it appears to the Minister that the employer who enters into a foreign contract of employment does not reside or carry on business within the Republic, the employer must give security by bond in the prescribed form, with one or more sureties resident in the Republic and approved by the Minister for the due performance of the contract in such sum as the Minister considers reasonable.

- (2) Where the employer has an authorised agent resident in the Republic, the Minister may require that the security bond be given by the agent and the agent is personally bound by the terms of the bond notwithstanding the disclosure of his or her principal.

### **93. Inducing or forcing a person to proceed abroad without an authorized contract**

A person who:

- (a) employs, engages, or knowingly aids in the employment or engagement of, a person with the intention that when so employed or engaged that person shall proceed outside the limits of the Republic; or
- (b) induces or attempts to induce or forces or attempts to force an employee to proceed outside the limits of the Republic,

under a contract which is not authorized under this Code, commits an offence and, if convicted, is liable to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding six months or to both.

## **Chapter 16: Employment Management**

### **94. Director and authorized officer**

- (1) In this Chapter:
- (a) 'the Director' means the Director of Employment, and
  - (b) any reference to 'authorised officer' includes the Director of Employment and an employment officer
- (2) Without detracting from their general powers and functions, the Director and authorized officer are under a duty to facilitate development of:
- (a) habilitation and rehabilitation services for persons with disability, including training programmes for staff working in these services;
  - (b) programmes regarding vocational training and employment services for persons with disabilities.

### **95. Notifications**

- (1) An employer is required to notify the Director of every vacancy occurring in his or her establishment, business or workplace in a prescribed form giving the following details:
- (a) the employer's name and full address;
  - (b) details of the vacant post;
  - (c) minimum qualification required of the person seeking to be employed;
  - (d) the place and type of work, whether casual, permanent or term contract, and

- (e) such other information as the Director may require.
- (2) A vacancy is deemed to occur on the date:
  - (a) an employer creates a post to be filled by an employee or decides to engage one;
  - (b) an employee's services are terminated by the employer and the employer abolishes the post.
- (3) When a post, which has been notified to the Director as vacant, has been filled or has been abolished, the employer must notify the Director of this in writing within two weeks.
- (4) An employer is required to notify an authorized officer within five days of the names and skills of any employees who, for whatever reason, cease to be employed by him or her.
- (5) An employee registered in the general employment register is required to notify the authorized officer within seven days of his or her starting work if he or she is employed directly under the provisions of this Chapter.
- (6) A person registered in the general employment register is required, if he or she continues to be unemployed, renew his or her registration with the authorized officer every three months from the date of registration.

## **96. Registration of Employees**

- (1) Every person seeking employment in the service of another is required to be registered in the general employment register kept by the authorised officer.
- (2) No person is permitted to register himself or herself with more than one authorised officer.
- (3) No person may be registered in the general employment register unless he or she has attained the minimum age prescribed by this Code or regulations made under it or any other law for admission to employment.
- (4) On registration, a person is issued by the authorized officer with a registration card in such form as may be prescribed by regulations made under this Code.
- (5) Every person who applies for registration must be registered in the general employment register in the order in which his or her application is received.
- (6) If a registered person, once employed and discharged, wishes to be found another employment, he or she must be registered again in the order in which his or her subsequent application is received.
- (7) The registered persons must be classified by the authorised officer in separate registers according to their occupational categories.

## **97. Placement of Employees**

Placement is a public service and must be carried out in accordance with the provisions of the Code or regulations made under it.

### **98. Compulsory employment**

- (1) As a general rule, an employer is obliged to employ the employees he or she requires from among those registered in the general employment register.
- (2) This obligation does not apply to:
  - (a) The employer's spouse and his or her relatives who are living with him or her and are maintained by him;
  - (b) Persons holding positions of a director or manager of an undertaking;
  - (c) Employees employed in domestic service;
  - (d) Employees intended for industrial, commercial or agricultural undertakings not employing more than four persons;
  - (e) Employees required for casual work not lasting longer than seven days.
- (3) Employees to be employed in the state central and local services, autonomous agencies and public institutions are recruited through the authorized officers in their respective areas, or as result of duly publicized competitive examination at which the Federal Labour Commissioner is represented.

### **99. Application for employment of employees**

- (1) Subject to exemptions provided in the **section 98**, any employer intending to employ employees is required to make an application to the authorized officer in the area where the work is to be done.
- (2) Where the authorized officer is unable to meet the requirements of the employer wholly or in part, it he or she must refer such to any other authorized officer.
- (3) Applications for employees must state:
  - (a) the number required in each category and trade;
  - (b) the qualifications;
  - (c) the terms and conditions of employment, and
  - (d) the probable duration.
- (4) Application by name of employees may be permitted in the case of:
  - (a) employees required for positions of trust connected with the custody of workshops, worksites or other property of the undertaking;
  - (b) apprentices who have completed their apprenticeship in the undertaking;
  - (c) employees who have already been employed by the same undertaking.
- (5) An authorized officer must, when accepting an employer's application, satisfy himself or herself that the terms and conditions offered to employees are in conformity with



the provisions of this Code or regulations made under it and with the stipulations of collective labour agreements, if any.

### **100. Priorities and reference to employment**

- (1) Except in cases where applications by name are permitted, employees must be found employment in the order of their registration in the general employment register;
- (2) Employees living in the district where the work is to be done have priority in being found employment.
- (3) Employees dismissed from an undertaking owing to reduction of staff have a prior claim to reinstatement in the undertaking for one year, calculated from the date of their dismissal.
- (4) When an employee is referred for employment, the authorized officer must give him or her a letter addressed to the employer.

### **101. Employers may refuse to accept certain employees**

- (1) Notwithstanding the provisions of this Chapter, employers have the right to test employees referred to them for employment with a view to ascertaining their technical skill or suitability for the job and, in case an employee is not found suitable, to ask the authorized officer for another employee.
- (2) An employer may refuse to engage employees whom he or she has already dismissed for reasonable cause.

### **102. Direct engagement of employees**

- (1) An employer may employ employees directly in any case where such employment is justified by an urgent need to avoid damage to persons or plant
- (2) Whenever employees engaged directly under this are employed for longer than a week, the employer must notify the authorised officer of their names, indicating the reasons for direct engagement and the conditions of employment.

### **103. Exemptions**

The Minister may exempt any category of employers, any sector of industry or any industry from, or vary the limit of any of the sections of, this Chapter.

### **104. Offences under this chapter**

An employer who contravenes any of the provisions of this Part commits an offence and shall on conviction be liable to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding six months or to both.

## Chapter 17: Termination of Employment

### 105. Termination by notice

- (1) Either of the parties may terminate a contract of employment by giving written notice of not less than 30 days.
- (2) No notice is required where the duration of the contract does not exceed one month.
- (3) During the period of notice, the employment relationship continues in its original form and retains all its original force unless the party to whom the notice has been given wishes to dispense with the period of notice or any part of it.

### 106. Compensation in lieu of notice

Either of the parties to a contract of employment may terminate the contract without notice upon payment to the other party of the remuneration which would have been earned by that other party, or paid by him or her as the case may be, in respect of the period of notice required to be given under this Code or under the contract.

### 107. Conversion of casual employment to term contract

- (1) Where a casual employee:
  - (a) works for a period or a number of continuous working days which amount in the aggregate to the equivalent of not less than one month; or
  - (b) performs work which cannot reasonably be expected to be completed within a period, or a number of working days amounting in the aggregate to the equivalent of three months or more,the contract of employment of the casual employee is deemed to be one where wages are paid monthly and the conditions therefor apply to that contract of employment.
- (2) In calculating wages and the continuous working days under subsection (1), a casual employee is deemed to be entitled to one paid rest day after a continuous six days working period and such rest day or any public holiday which falls during the period under consideration is counted as part of continuous working days.
- (3) An employee whose contract of employment has been converted in accordance with subsection (1), and who works continuously for two months or more from the date of employment as a casual employee is entitled to such terms and conditions of service as he would have been entitled to under this Code had he or she not initially been employed as a casual employee.

### 108. Probationary contracts

- (1) A probationary period shall not be more than six months but it may be extended for a further period of not more than six months with the agreement of the employee.

- (2) No employer is permitted to employ an employee under a probationary contract for more than the aggregate period provided under subsection (1).
- (3) A party to a contract for a probationary period may terminate the contract by giving not less than seven days' notice of termination of the contract, or by payment by the employer to the employee, of seven days' wages in lieu of notice.
- (4) Where an employer does not expressly terminate the probationary contract and the period expires without any notice having been given by either party, the probationary contract is presumed to have become permanent.
- (5) Where a probationary contract is made or otherwise becomes permanent, the period of service under the probationary contract forms part of the employee's length of service.
- (6) Where the period of the probationary contract is interrupted due to sickness, accident, the performance of a legal duty or a civic obligation, *force majeure* or other factors which are not in the control of the probationary employee, the probationary period is deemed to be extended correspondingly, unless the contract is otherwise lawfully terminated.
- (7) It is prohibited to employ a person below the age of 18 years under a probationary contract.

## **109. Redundancy**

- (1) An employer is not permitted to terminate a contract of employment on account of redundancy unless the employer:
  - (a) where the employee is a member of a trade union, notifies the union to which the employee is a member;
  - (b) notifies the labour officer in charge of the area where the employee is employed of the reasons for, and the extent of, the intended redundancy not less than a month prior to the date of the intended date of termination on account of redundancy;
  - (c) where an employee is not a member of a trade union, notifies the employee personally in writing and the labour officer;
  - (d) has, in the selection of employees to be declared redundant had due regard to seniority in time and to the skill, ability and reliability of each employee or the particular class of employees affected by the redundancy;
  - (e) where there is in existence a collective agreement between an employer and a trade union setting out terminal benefits payable upon redundancy, has not placed the employee at a disadvantage for being or not being a member of the trade union;
  - (f) has where, leave is due to an employee who is declared redundant, paid of the leave in cash;

- (g) has given to an employee declared redundant not less than one month's notice or one month's wages in lieu of notice; and
  - (h) has paid to an employee declared redundant severance pay at the rate of not less than fifteen days pay for each completed year of service.
- (2) Subsection (1) does not apply where an employee's services are terminated on account of insolvency.
- (3) The Minister may make rules requiring an employer employing a certain minimum number of employees or any group of employers to insure their employees against the risk of redundancy through an unemployment insurance scheme operated either under an established national insurance scheme established underwritten law or by any firm underwriting insurance business to be approved by the Minister.

### **110. Misconduct**

- (1) An employer must, before terminating the employment of an employee on the grounds of misconduct, poor performance or physical incapacity explain to the employee, in a language the employee understands, the reason for which the employer is considering termination and the employee is entitled to have another employee or a shop floor union representative of his or her choice present during this explanation.
- (2) An employer must, before terminating the employment of, or summarily dismissing, an employee, hear and consider any representations on the grounds of misconduct or poor performance, which the employee and the person, if any, chosen by the employee to represent him or her, may make.

### **111. Proof of reason for termination**

- (1) In any claim arising out of termination of a contract, the employer is required to prove the reason or reasons for the termination, and where the employer fails to do so, the termination is deemed to have been unfair within this Code.
- (2) The reason or reasons for termination of a contract are the matters that the employer at the time of termination of the contract genuinely believed to exist, and which caused the employer to terminate the services of the employee.

### **112. Summary dismissal**

- (1) Summary dismissal is deemed to take place when an employer terminates the employment of an employee without notice or with less notice than that to which the employee is entitled under this Code or by a contractual term.
- (2) Subject to the provisions of this section, summary dismissal is prohibited.

- (3) An employer may dismiss an employee summarily when the employee has by his or her conduct fundamentally breached his or her obligations, otherwise referred to as 'gross misconduct,' under the contract of employment.
- (4) Any of the following matters may amount to gross misconduct, that is, if:
- (a) without leave or other lawful cause, an employee absents himself or herself from the place appointed for the performance of his or her work;
  - (b) during working hours, by becoming or being intoxicated, an employee renders himself or herself unwilling or incapable to perform his or her work properly;
  - (c) an employee willfully neglects to perform any work which it was his or her duty to perform, or if he or she carelessly and improperly performs any work which, under his or her contract, he or she should have performed carefully and properly;
  - (d) an employee uses abusive or insulting language, or behaves in a manner insulting, to his or her employer or to a person placed in authority over him or her by his or her employer;
  - (e) an employee knowingly fails, or refuses, to obey a lawful and proper command issued by his or her employer or a person placed in authority over him or her by his or her employer.
  - (f) in the lawful exercise of any power of arrest given by or under any written law, an employee is arrested for a cognizable offence punishable by imprisonment and is not within fourteen days either released on bail or on bond or otherwise lawfully set at liberty; or
  - (g) an employee commits, or on reasonable and sufficient grounds is suspected of having committed, a criminal offence against or to the substantial detriment of his or her employer or employer's property.
- (5) The enumeration of such matters or the decision of an employer to dismiss an employee summarily under subsection (4) does not bar an employer or an employee from respectively alleging or disputing whether the facts giving rise to the same, or whether any other matters not mentioned in this section, constitute justifiable or lawful grounds for the dismissal.

### **113. Unfair termination**

- (1) A termination of employment by an employer is deemed unfair if:
- (a) the employer fails to prove that:
    - (i) the reason for the termination is valid;
    - (ii) the reason for the termination is a fair reason related to the employee's conduct, capacity or compatibility; or based on the operational requirements of the employer; and

- (iii) the employment was terminated in accordance with fair procedure;
- (b) it is established that the employer did not act in accordance with justice and equity in terminating the employment of the employee, taking into account:
  - (i) the procedure adopted by the employer in reaching the decision to dismiss the employee, the communication of that decision to the employee and the handling of any appeal against the decision;
  - (ii) the conduct and capability of the employee upto the date of termination;
  - (iii) the extent to which the employer has complied with any statutory requirements connected with the termination, including the issuing of a certificate of service and the procedural requirements set out in **section 122 of this Code**;
  - (iv) the previous practice of the employer in dealing with the type of circumstances which led to the termination; and
  - (v) the existence of any pervious warning letters issued to the employee.
- (2) Unfair termination of the employment of an employee is prohibited.
- (3) An employee who feels aggrieved that his or her employment has been unfairly terminated is entitled to appeal against that termination to the Labour Court.

#### **114. Complaint of summary dismissal or unfair termination**

- (1) An employee who has been summarily dismissed or whose employment has been unfairly terminated may, within three months, present a complaint to a labour officer who, after affording every opportunity to both the employee and the employer to state their case, may recommend to the parties what in his or her opinion is the best means of settling the dispute.
- (2) The right of the employee to present a complaint under this section is in addition to his or her right to complain under the procedures in a collective agreement, or to the Labour Court.

#### **115. Remedies for wrongful dismissal or unfair termination**

- (1) Any unilateral withdrawal from a contract of employment or termination of employment without a lawful or reasonable cause entitles the other party to damages.
- (2) Where in the opinion of a labour officer an employee's summary dismissal or termination of employment was unfair, the labour officer may recommend to, or the Labour Court may order, the employer to:
  - (a) reinstate the employee and treat the employee in all respects as if the employee's employment had not been terminated; or

- (b) re-engage the employee in work comparable to that in which the employee was employed prior to his or her dismissal, or other reasonably suitable work at the same wage.
- (3) The labour officer, before recommending, or the Labour Court, before ordering, reinstatement or re-engagement, must take into account any or all of the following:
- (a) the wishes of the employee;
  - (b) the circumstances in which the termination took place, including the extent, if any, to which the employee caused or contributed to the termination, and the practicability of recommending reinstatement or re-engagement;
  - (c) the common law principle that there should be no order for specific performance in a contract for service except in very exceptional circumstances;
  - (d) the employee's length of service with the employer;
  - (e) the reasonable expectation of the employee as to the length of time for which his or her employment with that employer might have continued but for the termination;
  - (f) the opportunities available to the employee for securing comparable or suitable employment with another employer;
  - (g) the value of any severance pay payable by law;
  - (h) the right to press claims or any unpaid wages, expenses or other claims owing to the employee;
  - (i) any expenses reasonably incurred by the employee as a consequence of the termination;
  - (j) any conduct of the employee which to any extent caused or contributed to the termination;
  - (k) any failure by the employee to reasonably mitigate the losses attributable to the unjustified termination; and
  - (l) any compensation, including ex-gratia payment, in respect of termination of employment paid by the employer and received by the employee.

### **116. Suspension of the employment relationship**

- (1) An employment relationship must be suspended if the work of the undertaking temporarily ceases and the employer has given seven days' written notice of the fact to the employees or posted it up within the undertaking.
- (2) Such notice must also be communicated within the same period to the appropriate authorised officer, with reasons for the temporary cessation of work and of its probable duration.
- (3) The suspension of the employment relationship shall not exceed 30 days, subject to the fact that the Labour Officer may authorize a prolongation of the period up to a

- total of 90 days, if special circumstances or local or seasonal requirements so warrant.
- (4) An employment relationship must also be suspended if:
    - (a) the employee is called up for military service;
    - (b) the employee is detained for a period not exceeding three months under the Public Order Law and returns to work after the period of detention;
    - (c) If the employee is detained for any offence but is finally acquitted and returns to work.
  - (5) In the case of subparagraphs 9c) and (d) of the preceding paragraph, the employee is entitled to be reinstated and the period in question is counted towards his or her terminal benefits.
  - (6) If an employee is detained in custody for an offence concerning his employment, he or she is entitled to receive from his or her employer one-third of his or her basic salary until he or she is acquitted or convicted and, on acquittal is entitled to receive the arrears of salary and, on conviction, forfeits all his or her benefits under the Code.

### **117. Insolvency of an employer**

- (1) An employer is insolvent for the purposes of this Code:
  - (a) if the employer is a person who:
    - (i) has been adjudged bankrupt or has made a composition or arrangement with his or her creditors, or
    - (ii) has died and his or her estate is to be administered in accordance with the laws relating to succession;
  - (b) if the employer is a company:
    - (i) a winding up order or an administration order has been made, or a resolution for voluntary winding up has been passed, with respect to the company;
    - (ii) or a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge.
- (2) Where, on an application made to him or her in writing by an employee or his or her representative, the Minister is satisfied that:
  - (a) the employer of an employee has become insolvent,
  - (b) the employment of the employee has been terminated, and
  - (c) on the appropriate date the employee was entitled to be paid the whole or part of any debt arising from remuneration to the employee,



the Minister is under a duty to pay the employee out of public funds the amount to which, in the opinion of the Minister, the employee is entitled in respect of the debt.

- (3) The Minister may establish a public fund into which employers and any other persons designated by him or her may contribute to enable payments referred to in subsection (2) to be made.
- (4) Where a trustee in bankruptcy or a permanent or interim trustee, a liquidator, an administrator, a receiver or manager, a trustee under a composition or arrangement between the employer and his or her creditors or a trustee under a trust deed for his or her creditors executed by the employer has been or is required to be appointed in connection with an employer's insolvency, the Minister must not make a payment in respect of a debt until the Minister has received a statement from appointee of the amount of debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.
- (5) An appointed officer must, on the request of the Minister, provide the Minister with such statement as soon as is reasonably practicable.
- (1) Where the Minister has made any payment as indicated, the Minister is entitled to any payments from the appointed officer that may accrue to the employer to whom the Minister has made payment.

### **118. Service gratuity**

- (1) On the termination of a contract of employment by either party for any reason after a year's continuous service, the employee or, in case of his or her death, his or her heirs, are entitled to a service gratuity equal to one month's remuneration for every year of service, unless more favourable terms have been agreed.
- (2) If the period of service is less than one year, the employee is entitled to proportionate gratuity except when he resigns from service of his own accord.
- (3) In the case of seasonal occupations or where the duties involved are for a brief duration, whatsoever their nature, if the period of service does not reach one year's duration the employee is entitled to receive a 10 per cent substitution allowance, unless more favourable terms of basic daily remuneration are paid at the termination of service.
- (4) No such gratuity or allowance is payable if the employee is convicted of an offence of causing damages to the employer.

### **119. Transfer of undertaking**

Where an undertaking is legally transferred between living persons or an account of death, or where it is used by or leased to any third party, existing contracts of employment remain in force between the new employer and the employees.

## **120. Prohibition of termination on certain grounds**

The following do not constitute fair reasons for dismissal or for the imposition of a disciplinary penalty:

- (a) a female employee's pregnancy, or any reason connected with her pregnancy;
- (b) the going on leave of an employee, or the proposal of an employee to take, any leave to which he or she was entitled under the law or a contract;
- (c) an employee's membership or proposed membership of a trade union;
- (d) the participation or proposed participation of an employee in the activities of a trade union outside working hours or, with the consent of the employer, within working hours;
- (e) an employee's seeking of office as, or acting or having acted in the capacity of, an officer of a trade union or an employees' representative;
- (f) an employee's refusal or proposed refusal to join, or withdrawal from, a trade union;
- (g) an employee's race, colour, tribe, sex, religion, political opinion or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability;
- (h) an employee's initiation or proposed initiation of a complaint or other legal proceedings against his or her employer, except where the complaint is shown to be irresponsible and without foundation; or
- (i) an employee's participation in a lawful strike.

## **121. Death benefit**

In case of death of an employee during his or her contract of employment, the employer must pay to his or her heirs an amount not less than 15 days' remuneration as death benefit for funeral services.

## **122. Certificate of service**

- (1) An employer must issue to an employee a certificate of service upon termination of his or her employment, unless the employment has continued for a period of less than four consecutive weeks.
- (2) A certificate of service issued under this section must contain:
  - (a) the name of the employer and his or her postal address;
  - (b) the name of the employee;
  - (c) the date when employment of the employee commenced;
  - (d) the nature and usual place of employment of the employee;
  - (e) the date when the employment of the employee ceased; and

- (f) such other particulars as may be prescribed.
- (3) Subject to subsection (1), no employer is bound to give to an employee a testimonial, reference or certificate relating to the character or performance of that employee.
- (4) An employer who willfully or by neglect fails to give an employee a certificate of service in accordance with subsection (1), or who in a certificate of service includes a statement which he or she knows to be false, commits an offence and, if convicted, is to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding six months or to both.

## **PART V: SPECIAL PROTECTION**

### **Chapter 18: Night Work**

#### **123. Definition of 'night work'**

- (1) For the purposes of this Part, 'night work' means any work done between 10p.m. and 5a.m..
- (2) Night work is remunerated by an increase of not less than 25 per cent of the normal remuneration except in the case of work done on regularly recurring shifts

#### **124. Prohibited work**

- (1) It is unlawful to employ children on night work in industrial, commercial and agricultural undertakings and their ancillary establishments, except undertakings in which only members of the same family are employed and in which.
- (2) This prohibition does not apply to employees of either sex who have attained the age of 16 years:
  - (a) if they are employed on work which, by its nature, must be continued night and day;
  - (b) in a case of force majeure which prevents the normal operations of the undertaking.
- (3) In cases covered by subparagraph (b) above, the employer must immediately notify the competent authorised officer, indicating the circumstances of the case of force majeure, the number of children employed, the hours of work adopted and the probable duration of the night work.

#### **125. Powers of the Minister in respect of night work**

- (1) Notwithstanding the provisions of **section 124**, the Minister may, in consultation with representative employers' and workers' organization:
  - (a) reduce the length of the night period in places where special climatic conditions so warrant;
  - (b) authorize and prescribe conditions for the employment of children on night work during seasons and in cases when such work is concerned with raw materials which are being processed and are likely to deteriorate rapidly, if such action is necessary to save the materials from loss.

### **Chapter 19: Children**

#### **126. Meaning of 'employment'**

In this chapter, the term 'employment' includes, in addition to situations where a child is an employee as generally defined, work of a child in a situation where:

- (a) the child provides labour as an assistant to another person and his or her labour is deemed to be the labour of that other person for the purposes of payment;
- (b) the child's labour is used for gain by any person or institution whether or not the child benefits directly or indirectly; and
- (c) there is in existence a contract for service where the party providing the service is a child whether the person using the services does so directly or by agent.

### **127. Children**

- (1) The Minister may, in consultation with the representative employers' and workers' organization, prescribe the types of work that are dangerous or unhealthy or that demand considerable strength or concentration, thus necessitating changes in the minimum age fixed for children and young persons in this Part.
- (2) The maximum weights to be carried, pulled or pushed by children may be prescribed in the same manner.

### **128. Employment of children**

- (1) The minimum age for admission to employment or work of any nature is 15 years.
- (2) Employment of a person of the minimum age and below the age of 18 years must be consistent with the fullest physical and mental development of the child.
- (3) The Minister may, after consultation with the representative organisations of employers and workers, permit the employment or work of persons of 13 and below 15 years of age, or of persons who are at least 15 years of age but have not yet completed their compulsory schooling, on light work.
- (4) The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of children is 18 years.
- (5) The Minister may, after consultation with the relevant organisations of employers and workers, authorise employment or work covered by sub-section (4) of this section from the age of 16 years on condition that the health, safety and morals of the children concerned are fully protected and that they have received relevant and adequate instruction or training in that type of work.
- (6) The provisions of this Section do not apply to work done by children in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the Minister, which prescription has

been done after consultation with the relevant organisations of employers and employees, and which work is an integral part of:

- (a) a course of education or training for which a school or training institution is primarily responsible;
  - (b) a programme of training mainly or entirely in an undertaking, which programme has been approved by the Minister; or
  - (c) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.
- (7) Notwithstanding any provision of any written law, no person is permitted to employ, use, procure or offer a child in any activity which constitutes worst forms of child labour, or in work that is in contravention of minimum age rules.
- (8) The Minister is required to make regulations declaring any work, activity or contract of employment harmful to the health, safety or morals of a child and sub.
- (9) If, during the hearing of a charge for an offence under this Code it is alleged that any person was at the date of the offence of, over or under a particular age, the court hearing the charge has power to give due consideration to the circumstances and determine the age of that person for the purposes of the proceedings, and such determination is final.
- (10) No conviction, order or judgment of a court under this Code is invalidated by any subsequent proof that the age of any person has not been correctly stated to, or determined by, the court.
- (11) Whenever any question arises as to the age of an employee and no sufficient evidence is available as to that employee's age, there is a presumption of minority status.
- (12) A medical officer may estimate the age of the employee by his or her appearance or from any available information, and the age so estimated is, for purposes of this Code, and until the contrary is proved, deemed to be the true age of the employee.
- (13) A person who employs, engages, or uses a child in contravention of the provisions of this Chapter, commits an offence.
- (14) A person who uses a child in any activity constituting worst form of child labour commits an offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding twelve months or to both.
- (15) It is a defence if the accused person proves that he or she genuinely had reason to believe that the child was above the age limit which is the subject of the charge.
- (16) If a child is killed, becomes disabled, dies or suffers any bodily injury in consequence of his or her employer having contravened any provision of this Chapter, the employer is, in addition to any other penalty, liable to a fine not

exceeding \*\*\*\* or to imprisonment for a term not exceeding twelve months or to both and the whole or any part of the fine may be applied for the benefit of the injured child or his or her family or otherwise as the Minister may direct.

- (17) An employer is not liable under sub-section(15):
- (a) in the case of injury to health, unless the injury was caused directly by the contravention; and
  - (b) if a charge against him or her under this Part in respect of the act or default by which the death or injury was caused has been heard and dismissed before the injury occurred.

### **129. Register of children in employment**

An employer who employs a child shall keep and maintain a register containing the following particulars of every child he employs:

- (a) age and date of birth;
- (b) date of entry into and of leaving the employment;
- (c) such other particulars as may be prescribed.

### **130. Medical examination**

- (1) Children must not be employed unless the employer has arranged for their medical examination to ascertain whether they are fit to undertake all or any of the duties on which they are to be employed.
- (2) After the initial medical examination, the employer must arrange for a medical examination once a year for children until they reach the age of 18 years.
- (3) Officials of the health services shall carry out such medical examination and issue the appropriate certificates.
- (4) Where a child is found to be medically unfit to continue his or her job, his or her contract of employment is automatically dissolved.

## **Chapter 20: Women**

### **131. Employment of women**

The Minister may, in consultation with representative employers' and workers' organizations:

- (a) Prescribe the types of work prohibited for expectant and nursing mothers;
- (b) Regulate work-place conditions in order to protect the health and well-being of expectant and nursing mothers and their babies, whether born or unborn;
- (c) Prescribe special terms and conditions under which women may be employed on account of the nature of their sex, but such conditions must not amount or lead to discrimination.

### **132. Maternity and paternity leave**

- (1) A female employee is entitled to **three months** maternity leave with full pay.
- (2) On expiry of a female employee's maternity leave, the female employee has the right to return to the job which she held immediately prior to her maternity leave or to a reasonably suitable job on terms and conditions not less favourable than those which would have applied had she not been on maternity leave.
- (3) A female employee is only entitled to maternity leave if she gives not less than seven days' notice, in writing, in advance or a shorter period as may be reasonable in the circumstances of her intention to proceed on maternity leave on a specific date and to return to work thereafter.
- (4) A female employee is entitled to her annual leave over and above her maternity leave.
- (5) A male employee is entitled to paternity leave of two weeks with full pay on proof of the wife's maternity status.

### **133. Expectant and nursing mothers**

A woman employee must not be discharged during a period of pregnancy, as duly confirmed by a medical certificate, until the end of the period of leave mentioned in the next succeeding paragraph or until the child is 1 year old, except in the following cases:

- (a) the cessation of the activity of the undertaking in which the woman employee is employed;
- (b) the completion of the work for which the woman employee was engaged or the termination of the employment relationship on the expiry of the stipulated term.

### **134. Nursing breaks**

A woman employee who is nursing her own child is entitled, for a maximum of a year after the date of birth of the child, to two daily breaks of one hour each. The breaks are counted as working hours and remunerated accordingly.

## **Chapter 21: Persons with Disability**

### **135. The right to work and non-discrimination in employment**

- (1) Persons with disabilities have the right to work, on an equal basis with others, including the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.
- (2) The Minister, the Federal Labour Commissioner, the Director of Employment, the Director of Safety and Health and the Registrar of Trade Unions and Employers'



Organisations are, in their various capacities, under a duty to safeguard and promote the realization of the right to work for persons with disability, including for those who acquire a disability during the course of employment, by taking appropriate steps to:

- (a) protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;
  - (b) ensure that persons with disabilities are able to exercise their labour and trade union rights on an equal basis with others;
  - (c) Enable persons with disabilities to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;
  - (d) promote employment opportunities and career advancement for persons with disabilities in the labour market, as well as assistance in finding, obtaining, maintaining and returning to employment;
  - (e) promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one's own business;
  - (f) promote employment of persons with disabilities in the public sector and the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;
  - (g) ensure that reasonable accommodation is provided to persons with disabilities in the workplace;
  - (h) promote the acquisition by persons with disabilities of work experience in the open labour market;
  - (i) promote vocational and professional rehabilitation, job retention and return-to-work programmes for persons with disabilities;
  - (j) ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.
- (2) A person with disability must not be discriminated against in employment on account of his or her disability, whether in advertisement or recruitment, during employment or in respect of termination of employment, or with regard to the form of employment, career advancement and safety and health in the work-place.

### **136. Deployment in appropriate work**

Every employer must ensure that an employee with disability is deployed in a manner that recognizes the nature and the limitations of his or her disability and must not be deployed to

work in a place that poses a risk or danger to his or her safety and health owing to the nature and limitations of his or her disability.

### **137. Provision of necessary support**

Every employer must ensure that an employee with disability is given the support necessary to enable him or her perform his or her duties with reasonable comfort.

## **PART VI: OCCUPATIONAL ACCIDENTS, INJURY AND DISEASE**

### **Chapter 22: Administration**

#### **138. The Director**

- (1) For purposes of this part, 'Director' means the Director of Occupational Safety and Health.
- (2) The following are the powers and functions of the Director with respect to matters covered by this Part:
  - (a) register employers;
  - (b) supervise the implementation of this Part of the Code;
  - (c) ensure that all employers insure their employees;
  - (d) ensure appropriate protection of persons with disabilities to avoid occupational accidents, injury and disease or further disability;
  - (e) receive reports of accidents and carry out inquiries or investigations into such accidents; and
  - (f) ensure that employees who are injured are compensated in accordance with the provisions this Code and any regulations made under it.
- (3) The Director is assisted in the exercise of his or her powers and the performance of his or her functions by such other officers as are necessary for the proper administration of the provisions of this Part of the Code.

#### **139. Objections and appeals against the Director's decisions**

- (1) Any person aggrieved by a decision of the Director on any matter under this Part, may within sixty days of such decision, lodge, in writing, an objection with the Director against such decision.
- (2) The Director is required to, within fourteen days after the receipt of an objection:
  - (a) give a written answer to the objection, varying or upholding his or her decision and giving reasons for the decision objected to, and
  - (b) send a copy of the statement to any other person affected by the decision.
- (3) Where an aggrieved person disagrees with the Director's reply, he or she may appeal to the Labour Court within thirty days after receiving the Director's reply.

### **Chapter 23: Employer's, Employee's and the Director's Duties in Respect of Occupational Accidents, Injury and Diseases**

#### **140. Employer's general duties**

- (1) The following are the employer's duties with respect to this Part:
- (a) to ensure appropriate protection of persons with disabilities to avoid occupational accidents, injury and disease or further disability;
  - (b) to obtain and maintain an insurance policy with an insurer approved by the Minister in respect of any liability that the employer may incur under this Code to any of his or her employees, unless exempted by the Minister on account of providing and maintaining in force a security which can meet the liability;
  - (c) to register with the Director, furnish the Director with the prescribed particulars of their business and, within a period determined by the Director, furnish additional particulars as the Director may require.
  - (d) to, within thirty days of any change in the particulars so furnished, notify the director of such change;
  - (e) to keep a register or other record of the earnings and other prescribed particulars of all employees, at all reasonable times produce the register or record on demand to the Director for inspection; and retain the register, record or reproduction for a period of at least six years after the date of the last entry in that register or record;
  - (f) to report an accident, injury and disease to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident or developed an occupational disease;
  - (g) to furnish the employee, or dependants, at their request, with a copy of the notice of the accident furnished by the employer to the Director in respect of a claim for compensation by such employee or dependant;
  - (h) to, within seven days after having received a claim, medical report or other document or information concerning such claim, submit the claim, report, document or information to the Director, and
  - (i) to satisfy any claim for compensation lodged with him or her by the Director.
- (2) An employer who fails or neglects to perform any of these duties commits an offence and, if convicted, is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding one year or to both.

#### **141. Employee's general duties**

- (1) The following are the duties of the employee under this Part:
- (a) to act with care and diligence in the workplace and to ensure that he or she does not, by his or her conduct, create a risk of injury or death or cause injury or death, to himself or herself, or anybody else in the workplace;
  - (b) to give written or verbal notice of any occupational accident, injury and disease, which occurs in the course of employment to the employer and to send a copy of

- the written notice or a notice of the verbal notice to the Director within twenty-four hours of its occurrence;
- (c) to, when reporting the accident, injury or disease or thereafter at the request of the employer or Director, furnish such information and documents as the employer or Director may request;
  - (d) to, once he or she claims compensation or receives compensation, when required by the Director or the employer and after reasonable notice, submit himself or herself at the time and place mentioned in the notice to an examination by the medical practitioner designated by the Director or the employer with the approval of the Director, and
  - (e) to lodge a claim for compensation in accordance with this Code in the prescribed manner within twelve months after the date of the accident; in the case of death, this duty falls upon the person claiming on behalf of the employee.
- (2) A right to benefits in accordance with this Code lapses if the accident, injury or disease, is not reported to the employer within twelve months after the date of such accident or injury, or discovery of the disease.
- (3) Failure to report an accident, injury or disease to an employer is not a bar to compensation if it is proved that the employer had knowledge of the accident, injury or disease from any other source.
- (4) Failure to report an accident, injury or disease to an employer, or any error or inaccuracy in such a notice, is not a bar to compensation if:
- (a) the employer is not or would not be seriously prejudiced by such failure, error or inaccuracy if notice is then given or the error or inaccuracy is corrected; or
  - (b) if such failure, error or inaccuracy was unforeseeable or was caused by the employee's absence from the Republic.

#### **142. Director's duties**

- (1) Where an employer fails to report an accident, injury or disease or to provide information requested by the Director as specified in the request, the Director may:
- (a) conduct an investigation and recover the cost of the investigation from the employer as a debt due from the employer; or
  - (b) levy a penalty on the employer.
- (2) After having received notice of an accident, injury or disease, or having learned that an employee has been injured in an accident or has developed an occupational disease, the Director is required to make such inquiries as are necessary to decide upon any claim or liability in accordance with this Code.

- (3) Where the Director approves any claim against an employer or an insurer, he or she is required to lodge the claim with the employer or the insurer and to require them to settle the claim within ninety days of the lodging of the claim.
- (4) The Director is under a duty to, within thirty days of receipt of the money claimed by or on behalf of an employee, pay the money to the employee who made the claim or his or her dependants.
- (5) An employer or an insurer who fails to pay the compensation claimed commits an offence and, if convicted, is liable to a fine not exceeding \*\*\* or to imprisonment for a term not exceeding one year or to both.

### **143. Medical support**

- (1) An employer is under a duty to provide and maintain such appliances and services for the rendering of first aid to his or her employees in case of any accident.
- (2) Any employer who fails to comply with the provisions of subsection (1) commits an offence.
- (3) The Minister may, after consultation with the Director, by notice in the Gazette, exempt an employer or class of employers from application of this section if the employer has or class of employers have made alternative arrangements for addressing accidents.
- (4) If an employee is injured in an accident or develops a disease which necessitates his or her conveyance to a hospital medical facility or from a hospital or medical facility to the employee's residence, the employer must make the necessary conveyance available.
- (5) An employer must defray any expenses reasonably incurred by an employee as the result of an accident, injury or disease arising out of, and in the course of the employer's employment in respect of the following matters:
  - (a) dental, medical, surgical or hospital treatment;
  - (b) skilled nursing services;
  - (c) the supply of medicine and surgical dressing;
  - (d) travelling and subsistence in connection with the employee's journey to and treatment in a place within the Republic where he or she was directed by his or her medical practitioner to go for treatment; and
  - (e) the supply, maintenance, repair and replacement of artificial limbs, crutches, and other appliances and apparatus used by persons who are physically disabled.
- (6) Any damage to any appliance or apparatus specified in paragraph (1) (e) is deemed to be an injury.
- (7) A medical practitioner who examines an employee must, within fourteen days after the first examination of the employee injured in an accident or within fourteen days after having diagnosed an occupational disease, furnish a medical report to the Director.

## Chapter 24: Compensation, Offences and Specific Laws and Regulations

### 144. Right to compensation

- (1) An employer is liable to pay compensation in accordance with the provisions of this Code to an employee for injury or disease resulting from employment.
- (2) An employee is not entitled to compensation if an accident, injury or disease, not resulting in serious disablement or death, is caused by the deliberate and willful misconduct of the employee.
- (3) An occupational accident or disease resulting in serious disablement or death of an employee is deemed to have arisen out of and in the course of employment if the accident was due to an act done by the employee for the purpose of, in the interests of or in connection with, the business of the employer despite the fact that the employee was, at the time of the accident acting:
  - (a) in contravention of any law or any instructions by or on behalf of his or her employer; or
  - (b) without any instructions from his or her employer.
- (4) The conveyance of an employee to or from the employee's place of employment for the purpose of the employee's employment by means of a vehicle provided by the employer is deemed to be in the course of the employee's employment.
- (5) An injury is only deemed to result in serious disablement if the employee suffers a degree of permanent disablement of forty percent or more.
- (6) The Director may refuse to grant compensation to an employee under this Code if:
  - (a) the employee at any time knowingly and falsely represented to the employer that he or she was not suffering from or had not previously suffered from a serious injury or occupational disease or any other serious disease, and such an accident or occupational disease was caused by, or the death or the disablement resulted from or was aggravated by, such injury or disease; or
  - (b) in the opinion of the Director, the death was caused, or the disablement was caused, prolonged or aggravated by the unreasonable refusal or willful neglect of the employee to submit to medical aid in respect of any injury or disease, whether caused by the accident or existing before the accident.
- (7) If, in a claim for compensation under this Code, it appears that the contract of employment or apprenticeship of the employee is invalid, the Director may approve compensation for the claim as if the contract was valid at the time of the accident.
- (8) Notwithstanding any provision to the contrary in any written law, compensation must not be:

- (a) assigned or pledged;
  - (b) capable of attachment or any form of execution under a judgment or order of a court of law; or
  - (c) set off against any debt of the person entitled to the compensation.
- (9) Any provision of an agreement in terms of which an employee assigns, purports to assign, relinquishes or purports to relinquish any right to benefits in accordance with this Code is void.
- (10) Compensation paid under this Code for the death of an employee is not part of the employee's estate.

#### **145. Offences and penalties**

- (1) Any person who in connection with a claim for compensation in accordance with the provisions of this Code, or in any return, notice, report or statement to be given, made or furnished under this Code, knowingly makes or causes to be made any statement which is false in any material respect commits an offence.
- (2) A person convicted of an offence under this Code for which no other penalty is provided is liable to a fine not exceeding \*\*\*\* or to imprisonment for a term not exceeding one year or to both.
- (2) Any person required to make a return by virtue of any regulation made under subsection (1) who:
- (a) fails to make such return within the time specified;
  - (b) makes or causes to be made a return which the person knows to be false in any material particular; or
  - (c) on being so required fails to give any information or explanation respecting the return which it is in the person powers to give.
- commits an offence and shall, on conviction be liable to a fine not exceeding \*\*\*\*, and, if the contravention in respect of which the person is convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding \*\*\*\* for each day on which the contravention is so continued.
- (3) Where a person convicted of an offence under this section is a company, the chairman, every director and every officer of the company is guilty of a like offence unless that persons proves that the act or omission constituting the offence took place without the person's knowledge or consent.

#### **146. Passing of specific laws and regulations dealing with compensation for occupational accidents, injury and disease**



- (1) The Minister may, in consultation with representative workers and employers' organisations, make other laws and regulations dealing with occupational accidents, injury and diseases, including with regard to:
- (a) determination of level of injury;
  - (b) occupational accidents occurring while employee is in training or performing emergency services;
  - (c) occupational accidents, injury and disease occurring while employee is deployed outside the country;
  - (d) manner of calculating employee's earnings;
  - (e) determination of type or amount of compensation, including:
    - (i) compensation for an employee requiring constant assistance;
    - (ii) compensation and expiry of compensation for temporary total or partial disablement;
    - (iii) compensation for permanent disablement;
    - (iv) compensation to employee previously in receipt of compensation, and
    - (v) amount of compensation in case of death;
  - (f) the process of payment of compensation; and
  - (g) claims against third parties.
- (2) The Minister may, in consultation with representative workers and employers' organisations, make regulations for the purpose of giving better effect to the provisions of this Code and, without prejudice to the generality of the foregoing power, the Minister may make Regulations:
- (a) prescribing procedure, forms and fees;
  - (b) prescribing anything which is to be or may be prescribed under this Code; and
  - (c) requiring employers and insurers carrying on in the Republic the business of insuring employers against their liabilities under this Code to make periodic or other returns as to such matters as the Minister may think fit, and prescribing a time limit for the making of such returns.

## **PART VII: COLLECTIVE LABOUR RELATIONS**

### **Chapter 25: Freedom of Association**

#### **147. Employee's right to freedom of association**

- (1) It is unlawful to engage in any act of discrimination or any act restricting the right of freedom of association, and more particularly to:
  - (a) make the employment of an employee subject to the condition that he or she shall not join a trade union or shall relinquish trade union membership;
  - (b) cause the dismissal of or prejudice an employee in any other way be reason of trade union membership or because of participation in trade union activities.
- (2) It is unlawful for any employer to engage in any act of interference, including financial interference, in the establishment or functioning of a trade union.
- (3) Every employee has the right to:
  - (a) participate in forming a trade union or federation of trade unions;
  - (b) join a trade union; or
  - (c) leave a trade union.
- (5) Every member of a trade union has the right, subject to the constitution of the union to:
  - (a) participate in its lawful activities;
  - (b) participate in the election of its officials and representatives;
  - (c) stand for election and be eligible for appointment as an officer or official and, if elected or appointed, to hold office; and
  - (d) stand for election or seek for appointment as a trade union representative and, if elected or appointed, to carry out the functions of a trade union representative in accordance with the provisions of this Code or a collective agreement.
- (6) Every member of a trade union that is a member of a federation of trade unions has the right, subject to the constitution of the federation to:
  - (a) participate in its lawful activities;
  - (b) participate in the election of any of its office bearers or officials, and
  - (c) stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office
  - (d) stand for election or seek for appointment as a representative of the federation and, if elected or appointed, to carry out the functions of a representative in accordance with the provisions of this Code or a collective agreement.

#### **148. Protection of employees' rights**

- (1) It is unlawful to discriminate against an employee or any person seeking employment for exercising any right recognized under this Code.
- (2) In particular, it is unlawful to do, or threaten to do any of the following:
  - (a) require an employee or a person seeking employment not to be or become a member or to give up membership of a trade union;
  - (b) prevent an employee or person seeking employment from exercising any right conferred by, or from participating in any proceedings specified in, this Code;
  - (c) dismiss or in any other way prejudice an employee or a person seeking employment:
    - (i) because of past, present or anticipated trade union membership;
    - (ii) for participating in the formation or the lawful activities of a trade union;
    - (iii) for exercising any right conferred by, or participating in any proceedings specified in, this Code; or
    - (iv) for failing or refusing to do something that an employer may not lawfully permit or require an employee to do.
- (3) It is unlawful to give or promise to give an advantage to an employee or a person seeking employment in exchange for the person not exercising any right conferred by, or not participating in any proceedings specified in, this Code.

#### **149. Employer's right to freedom of association**

- (1) Every employer has the right to:
  - (a) participate in forming an employers' organisation or a federation of employers' organisations; and
  - (b) subject to its constitution, join an employers' organisation or a federation of employers' organisations.
- (2) Every member of an employers' organization has the right, subject to the constitution of the organization, to:
  - (a) participate in its lawful activities;
  - (b) participate in the election of any of its office bearers or officials; and
  - (c) stand for election or seek for appointment as an office bearer or official and, if elected or appointed, to hold office.
- (3) Every employer, whether or not that employer is a member of an employers' organisation that is a member of a federation of employers' organisations, has the right, subject to the constitution of that federation to:
  - (a) participate in its lawful activities;
  - (b) participate in the election of any of its office bearers or officials;
  - (c) stand for election and be eligible for appointment as an office bearer or official; and

- (d) seek appointment as an office bearer and if elected or appointed to hold office.
- (4) An employer that is a juristic person may exercise the right to stand for election and hold office in an employers organisation or federation of employers' organisations through a representative.

### **150. Protection of employers' rights**

- (1) It is unlawful to discriminate against an employer for exercising any right conferred by this Code.
- (2) In particular, it is unlawful to do, or threaten to do, any of the following:
  - (a) require an employer not to be or become a member or to give up membership of an employers' organisation;
  - (b) prevent an employer from exercising any right conferred by, or from participating in any proceedings specified in, this Code;
  - (c) in any way prejudice an employer:
    - (i) because of past, present or anticipated employers' organisation's membership;
    - (ii) for participation in the formation or the lawful activities of an employers' organisation;
    - (iii) for exercising any right conferred by, or participation in any proceedings specified in this Code; or
    - (iv) failing or refusing to do something that an employer may not lawfully do.
- (3) It is unlawful to give or promise to give an advantage to an employer in exchange for the employer not exercising any right conferred by, or not participating in any proceedings provided for in, this Code.

### **151. General rights and obligations of trade unions, employers' organisations and federations**

- (1) A trade union and an employers' organization have the following rights:
  - (a) to enter into individual contracts or collective agreements respecting conditions of work, to vindicate and enforce the rights contained in such agreements and to take any legal action arising out of such agreements or based on the law;
  - (b) to report to the competent authority all acts which cause prejudice to the collective interests of the occupation which it represents;
  - (c) to acquire ownership rights over movable and immovable property to be used exclusively for the purposes for which the trade union or employers' organization was established;

- (d) to do any lawful act for the achievement of the aims and objectives for which it was established.
- (2) A trade union, an employers' organization and a federation have the following obligations:
  - (a) to inform the Registrar of Trade Unions and Employers' Organisations within ten days of all changes in the membership of the managing body and any amendment to its constitution or rules, with certified copies of the relevant document;
  - (b) to inform the said Registrar each year of the number of new members who have joined and those who have left it;
  - (c) to carry out any other obligation imposed by this Code or regulations made under it or any other law, which obligations must not amount to interference in the internal administration and activities of the trade union, employers' organization or federation.

## **152. Autonomy**

- (1) Every trade union, employers' organization and federation has the right within the law to:
  - (a) draw up its own constitution and rules,
  - (b) elect its representatives in full freedom;
  - (c) organize its administration and activities according to democratic principles;
  - (d) formulate its programmes;
  - (e) participate in forming a federation of trade unions or a federation of employers' organisations;
  - (f) join a federation of trade unions or a federation of employers' organisations, subject to its constitution, and to participate in its lawful activities; and
  - (g) affiliate with, and to participate in the affairs of, any international employees' organisation or international employers' organisation or the International Labour Organisation as appropriate, and or receive financial assistance to or from those organisations.
- (2) A provision in any contract of employment or collective agreement, whether concluded before or after the commencement of this Code, that contradicts or limits any provision of this section is invalid, unless the contractual provision is expressly permitted by this Code.

## **153. Disputes under Chapter**

- (1) If there is a dispute about the interpretation or application of any provision of this Chapter, any party to the dispute may refer the dispute in writing:

- (a) to the Federal Alternative Dispute Resolution Commission to appoint a conciliator as provided for in this Code; or
  - (b) if the dispute is not resolved at conciliation, to the Labour Court for adjudication.
- (2) In any proceedings under this Code:
- (a) a party that alleges that a right or protection conferred by this part has been infringed bears the duty to prove the facts of the conduct; and
  - (b) the party who is alleged to have engaged in that conduct bears the duty to prove that their conduct did not infringe any provision of this Chapter.

#### **154. Civil and criminal liability for restraint of trade**

- (1) The purposes of any trade union do not, by reason merely that they are in restraint of trade, become unlawful so as to render any member of such union liable to criminal prosecution for conspiracy or otherwise.
- (2) The purposes of any trade union do not, by any reason merely that they are in restraint of trade, become unlawful so as to render voidable any agreement or trust.

#### **155. Contents of constitution and rules**

The constitution or rules of every trade union and employers' organization must include provisions in respect of the following matters:

- (a) the name and address;
- (b) the location of its office;
- (c) the total number of members;
- (d) the objects for which it is established, and the purposes for which its funds may be applicable;
- (e) the manner of making, altering, amending and rescinding the constitution and rules;
- (f) the appointment or election and removal of officers or officials;
- (g) keeping of full and accurate accounts by the treasurer;
- (h) investment of the funds and annual or periodical audit of accounts;
- (i) the inspection of the books and names of members by every person having an interest in its funds;
- (j) the manner of taking of all decisions in respect of the election of officials, the amendment of the constitution, strikes, dissolution and any other matters affecting members of the trade union;
- (k) the right of any member to reasonable opportunity to vote;
- (l) the amount of subscription and fees payable by members, and
- (m) the manner of dissolving the organization.

#### **156. Submission of copies of constitution and rules**

Two copies of the constitution and rules of a trade union or an employers' organization and any alterations to it must be submitted to the Registrar of Employees' and Employers' Organisations at the time of the formation of the union or the alteration, as the case may be.

## **Chapter 26: Establishment and Registration of Trade Unions and Employers' Organisations**

### **157. Organisation and purpose**

A trade union or an employers' organization must have as its primary purpose the protection, pursuit and safeguarding of the interests of employees, in the case of a trade union, and employers, in the case of an employers' organization.

### **158. Functions of trade unions**

The functions of trade unions include:

- (a) representation and protection of the employees' interests relating to their working conditions and their dealings with the management;
- (b) facilitating the participation of employees in the planning and management of an enterprise where this is provided for;
- (c) seeing to it that the management strictly observes established regulations on labour, social security, wage payments, hygienic arrangements and safety against accidents;
- (d) bringing to the notice of the competent state authorities any exploitation of employees.

### **159. Establishment**

- (1) Every person engaged in employment may, together with others, establish a trade union, and every person is free to join a trade union within the framework of his or her occupation;
- (2) Every employer may, together with other employers, establish an employers' organization or join an employers' organisation.
- (3) Subject to the provisions of this Code, any member of a trade union may withdraw from it at any time, notwithstanding any stipulation to the contrary.
- (4) Subject to the provisions of this Code, a member of an employers' organisation may withdraw from it at any time, notwithstanding any stipulation to the contrary.
- (5) Trade unions may freely join together to form federations for the protection of their common interests.
- (6) Employers' organisations may freely join together to form federations for the protection of their common interests.

- (7) Any affiliated trade union or employers' organization may withdraw at any time from a federation notwithstanding any stipulation to the contrary, and subject only to the constitution of the federation.
- (8) All the provisions of this Code or regulations made under it concerning trade unions and employers' organizations, respectively, also apply, as appropriate, to their federations.

### **160. Application to register a trade union or employers' organisation**

A trade union, employers' organization or federation must apply to the Registrar for registration.

### **161. Requirements for registering a trade union**

A trade union may apply for registration if:

- (a) it has applied for registration in accordance with this Code;
- (b) it has adopted a constitution that complies with the requirements of this Code;
- (c) it has an office and postal address within the Republic;
- (d) its name is not the same as that of an existing trade union, or sufficiently similar so as to mislead or cause confusion;
- (e) the decision to register it was made at a meeting attended by at least twenty members;
- (f) it is independent from the control, either direct or indirect, of any employer or employers' organisation; and
- (g) the trade union's sole purpose is to pursue the activities of a trade union.

### **162. Requirements for registering an employers' organization**

An employers' organisation may apply for registration if:

- (a) it has applied for registration in accordance with this Code;
- (b) it has adopted a constitution that complies with the requirements of this Code;
- (c) it has an office and postal address within the Republic;
- (d) subject to subsection (3), only members in a sector specified in the constitution qualify for membership;
- (e) its name is not the same as that of an existing employers' organisation, or sufficiently similar so as to mislead or cause confusion;
- (f) the decision to register it was made at a meeting attended by at least four members;
- (g) it is independent from the control, either directly or indirectly, of any trade union or federation of trade unions; and
- (h) its sole purpose is to pursue the activities of a employers' organisation.



### **163. Requirements for registering a federation of trade unions**

The requirements for registration as federation of trade unions are that:

- (a) it has applied for registration in accordance with this Code;
- (b) it has adopted a constitution that complies with the requirements of this Code;
- (c) it has an office and postal address in the Republic;
- (d) its constitution specifies that its members are registered trade unions only;
- (e) it was established at a meeting attended by the representatives of at least three registered trade unions with the mandate of their respective executive boards;
- (f) its name is not the same as one of an existing trade union or federation or sufficiently similar so as to mislead or cause confusion; and
- (g) it is independent from the control, either directly or indirectly, of any employers' organisation or federation of employers.

### **164. Requirements for registering a federation of employers**

The requirements for registration as federation of employers' organisations are that:

- (a) it has applied for registration in accordance with this Code;
- (b) it has adopted a constitution that complies with the requirements of this Code;
- (c) it has an office and postal address in the Republic;
- (d) its federation specifies that its members are registered employers' organisations only;
- (e) it was established at a meeting attended by the representatives of at least three registered employers' organisations with the mandate of their respective executive boards;
- (f) its name is not the same as one of an existing employers' organisation or federation or sufficiently similar so as to mislead or cause confusion; and
- (g) it is independent from the control, either directly or indirectly, of any trade union or federation of trade unions.

### **165. Application for registration**

(1) An application to register a trade union, employers' organisation or federation must be made to the Registrar in a prescribed form, accompanied by:

- (a) the prescribed fee;
- (b) a certified copy of the constitution of the trade union, employers' organization or federation; and
- (c) a certified copy of the attendance register and minutes of the meeting at which the trade union, employers' organisation or federation was established.

- (2) An application to register a trade union shall be signed by five members of the trade union.
- (3) An application to register an employers' organization must be signed by three members of the employers' organisation.
- (4) An application to register a federation must be signed by three members of the federation.
- (5) The Registrar may:
  - (a) call for further information for the purposes of evaluating an application for registration; or
  - (b) give an applicant for registration an opportunity to rectify the application within a period specified by the Registrar.
- (6) If the proposed name of a trade union, employers' organisation or federation is the same or sufficiently similar to that of an existing organisation so as to mislead or cause confusion, the Registrar must:
  - (a) request the applicant for registration to alter the name of the trade union or employers' organisation or federation; and
  - (b) not register the trade union, employers organisation or federation until a suitable alteration has been made.

#### **166. Registration of trade unions, employers' organisation or federation**

- (1) If the Registrar is satisfied that a trade union, employers' organisation or federation that has applied for registration meets the requirements of this Code, the Registrar must register that trade union, employers organisation or federation and:
  - (a) issue a certificate of registration in a prescribed form; and
  - (b) enter the name and details of the trade union, employers' organisation or federation in the appropriate register.
- (2) A certificate of registration issued under subsection(1) is conclusive evidence that the trade union, employers' organisation or federation has been duly registered under this Code unless it is proved that the certificate has been withdrawn or cancelled.

#### **167. Refusal to register a trade union, employers' organisation, or federation.**

- (1) If the Registrar is not satisfied that a trade union, employers' organisation or federation meets the requirements for registration and refuses the application for registration, the Registrar must advise the trade union, employers' organisation or federation of the reasons for that refusal in a prescribed form.
- (2) The Registrar must give an opportunity to the trade union, employers' organization or federation to respond to the reasons given, which response should be made within fourteen days.

- (3) In the event that the Registrar does not reverse the decision not to register, the trade union, employers' organization or federation may appeal to the Labour Court whose decision is final, except with respect to any claims under the Constitution of the Federal Republic of Somalia regarding infringement of fundamental rights.

### **168. Legal consequences of registration**

- (1) A trade union, employers' organisation or federation is registered as a body corporate with:
  - (a) perpetual succession and a common seal;
  - (b) the capacity, in its own name, to:
    - (i) sue and be sued;
    - (ii) enter into contracts;
    - (iii) hold, purchase or otherwise acquire and dispose of movable and immovable property; and
    - (iv) Do all such things as are necessary to further its objects as a corporate body.
- (2) No suit for compensation can be sustained against a trade union, employers' organisation or federation or their officers or members for any acts or omissions in furtherance or their lawful activities.
- (3) Subject to the provisions of this Code, the organization, administration, extinction and dissolutions of a trade union, employers' organisation or federation are governed by their respective constitutions in the first place, and the general provisions relating to incorporated associations having their headquarters in the Republic, in the second.

### **169. Consequences of failure to register**

- (1) No person shall perform any act in furtherance of a trade union or employers' organization or federation unless it:
  - (a) is registered under this Code; or
  - (b) an application for its registration is being considered.
- (2) Notwithstanding the provisions of subsection (1) of this section, a trade union, an employers' organisation or federation may undertake activities in order to secure compliance with the requirements for registration.
- (3) The provisions of this section do not apply to any activity undertaken for the purpose of:
  - (a) defending proceedings against a trade union, employers' organizations or federation; or
  - (b) dissolving the trade union, employers' organization or federation and disposing of its funds in accordance with its rules.

- (4) Except as provided in this Code, no person is permitted to act or purport to act as an officer or official of a trade union, employer's organisation or federation that is not registered or has had its registration cancelled.

### **170. Registered office**

- (1) Every trade union, employers' organization or federation must:
- (a) have a physical office and postal address to which all communication and notices maybe addressed; and
  - (b) give notice of its physical office and postal address and of any change of office or address to the Registrar, who must enter the information in the appropriate register.
- (2) It is unlawful for any trade union, employers' organisation or federation to:
- (a) operate without having a registered physical office; and
  - (b) fail to give notice of its office and address or any change of office or address as required under subsection (1).

### **171. Branches**

- (1) A trade union, employers' organisation or federation must apply to the Registrar in a prescribed form to register its branches.
- (2) An application to register a branch is made to the Registrar and has the same requirements as the organisation as appropriate.

### **172. Amalgamation**

- (1) A registered trade union, employers' organisation or federation may amalgamate with one or more registered trade unions, employers' organizations or federations, as the case may be.
- (2) An amalgamation of trade unions, employers' organisation or federation may occur without a dissolution or division of the funds of the amalgamating organisations.
- (3) An amalgamation of trade unions, employers' organisations or federations under this section may only occur if:
- (a) each of the amalgamating organisations has conducted a secret ballot in compliance with any prescribed requirements;
  - (b) at least fifty percent of the members of each of the amalgamating organisations entitled to vote have voted; and
  - (c) the number of members who vote in favour of the proposed amalgamation exceeds by at least twenty percent the number of members who vote against the amalgamation.

- (4) Notice of a proposal to amalgamate a trade union, employers' organisation or federation must be in prescribed form and be signed by the authorized representative of each party to the amalgamation.
- (5) Where the amalgamated organisation is registered under this Code, the Registrar must:
  - (a) issue a certificate of amalgamation in prescribed form; and
  - (b) remove the amalgamating organisations from the relevant register.
- (6) The Registrar may not register the amalgamated organisation if its name is the same as, or is sufficiently similar to that of an existing union, organisation or federation so as to be likely to mislead or cause confusion.
- (7) Where the Registrar has registered an amalgamated organisation:
  - (a) all the assets, rights, obligations and liabilities of the amalgamating organisations devolve upon and invest in the amalgamated organisation; and
  - (b) the amalgamated organisation succeeds the amalgamating organisations in respect of:
    - (i) any right that the amalgamating organisations enjoyed;
    - (ii) any fund established under this Code or any other law;
    - (iii) any court proceedings, court order, arbitration award or collective or other agreement, but this must not be a bar to the parties re-negotiating any existing agreements;
    - (iv) any written authorization by a member for the periodic deduction of levies or subscription due to the amalgamating organisation; and
    - (v) any notice by the Minister in respect of the deduction of subscriptions to the amalgamating organisations.

### **173. Notification of change of name or constitution**

- (1) 27.(1) A trade union, employers' organisation or federation may resolve to:
  - (a) change or replace its constitution; or
  - (b) change its name.
- (2) A registered trade union, employer's organisation or federation may apply to the Registrar to approve a change of name or an amendment to its constitution and rules by submitting to the Registrar:
  - (a) a notice in prescribed form completed and signed by the secretary;
  - (b) a copy of the resolution containing details of the change; and
  - (c) a certificate signed by the secretary stating that the resolution was passed in accordance with the constitution and rules.
- (3) Notice of the change specified in subsection (2) must be submitted to the Registrar within fourteen days of any resolution to change the name or constitution.

- (4) Upon receipt of the notice of change of name or constitution, the Registrar must give a notice of at least twenty-one days in the Gazette and in one daily newspaper of national circulation inviting any objections to the proposed change of name or constitution by members of the organization and, where any such objection is raised, the Registrar must investigate the complaint and the grounds relied upon and may:
  - (a) refer the matter to the Labour Court;
  - (b) refuse to accept the proposed amendments; or
  - (c) make any orders that he or she may deem fit in the circumstances.
- (5) The Registrar may approve a change of name or to the constitution if the applicable requirements of registration of a trade union, employer's organisation or federation are met.
- (6) The Registrar must issue a certificate of change of name or change of the constitution in the prescribed form.
- (7) Any change of name or change to the constitution and rules of a registered trade union, organisation or federation only takes effect when the Registrar approves it under this section.
- (8) A change in the name of a trade union, employers' organisation or federation does not:
  - (a) affect any of its rights or obligations;
  - (b) render defective any legal proceedings by or against it and any proceedings instituted under the former name may be continued or commenced by or against it under the new name.
- (9) Where the Registrar refuses to approve a change under this section, the Registrar must give written notice of that decision and the reasons for the refusal.
- (10) Any trade union, employers' organization or federation which is dissatisfied with the decision of the Registrar may act in accordance with the provisions of **section 167**.

#### **174. Cancellation or suspension of registration**

- (1) The Registrar must cancel or suspend the registration of a trade union, employers' organisation or federation if:
  - (a) The organisation is dissolved; or
  - (b) the Registrar is satisfied that the organisation has ceased to exist.
- (2) The Registrar may cancel or suspend the registration of a trade union, employers' organisation or federation if the Registrar is satisfied that the organisation:
  - (a) was registered as a result of fraud, misrepresentation or mistake;
  - (b) is operating in contravention of this Code;
  - (c) is being used for an unlawful purpose;
  - (d) has failed to conduct elections in accordance with the requirements of this Code; or

- (e) is not independent.
- (3) The Registrar must not cancel or suspend registration of a trade union, employer's organisation or federation under subsection (2), unless he or she has:
  - (a) given the organization at least two months' notice of his or her intention to suspend or cancel its registration in prescribed form; and
  - (b) considered any representations made by the organisation within the two month period.
- (4) If the Registrar cancels or suspends the registration of a trade union, employers' organisation or federation, the Registrar must:
  - (a) notify it of that decision in prescribed form; and
  - (b) give reasons for the decision.
- (5) A trade union, employers' organisation or federation may appeal against a decision of the Registrar to the Labour Court.
- (6) The decision of the Labour Court is final, except with respect to any claims under the Constitution of the Federal Republic of Somalia regarding infringement of fundamental rights.

## **175. Dissolution**

- (1) Notwithstanding the provisions of this or any other law, the Registrar may apply to the Labour Court to dissolve any trade union, employers' organization or federation the activities of which he or she considers to be detrimental to the interests of the members.
- (2) A trade union, employers' organisation or federation may be dissolved by its members in accordance with the provisions of its constitution.
- (3) When a trade union, employers' organisation or federation is dissolved by the members, it must give notice of the dissolution in prescribed form which:
  - (a) must be submitted to the Registrar within fourteen days of the resolution to dissolve; and
  - (b) must be signed by:
    - (i) the authorized representative; and
    - (ii) five members of a trade union or three members of an employers' organisation or federation.
- (4) The Registrar is required to:
  - (a) issue a certificate of dissolution in prescribed form; and
  - (b) register the dissolution if satisfied that it complies with the applicable constitution.
- (5) The dissolution of a trade union, employer's organisation or federation takes effect from the date of its registration.

## **176. Appeals against a decision of the Registrar**

- (1) Any person aggrieved by a decision of the Registrar under subsection 175(4) of this Code may appeal to the Labour Court within thirty days of the decision.
- (2) The decision of the Labour Court is final, except with respect to any claims under the Constitution of the Federal Republic of Somalia regarding infringement of fundamental rights.

## **Chapter 27: Membership and Management**

### **177. Membership of a trade union**

Subject to the provisions of this Code:

- (a) any person of the age of 18 years or above may join a trade union;
- (b) a person under 18 but 15 years of age or above may join but is not eligible to be nominated, elected or appointed as an executive of the union;

### **178. Voting members of a trade union**

No person is permitted to be a voting member of:

- (a) an employers' organisation unless that person has a physical address or an office in the Republic; or
- (b) a registered trade union, employer's organization or federation if that person's subscriptions are more than thirteen weeks in arrears.

### **179. Officials**

- (1) Officials of a trade union, employers' organisation or federation may be elected or appointed but must:
  - (a) be domiciled in the Republic;
  - (b) be in possession of their civil rights;
  - (c) not have been barred from holding public office.
- (2) No person is permitted to be an official of more than one trade union or employers' organization or federation.
- (3) An official of a trade union may also be an official of a federation of trade unions to which the trade union is affiliated.
- (4) An official of an employers' organization may also be an official of a federation of employers' organisations to which the employers' organization is affiliated.
- (5) No person who has been convicted of a criminal offence involving fraud or dishonesty is permitted to be an official of a trade union or employer's organisation.



- (6) It is unlawful for an employer to transfer to another job or discharge from service any member of a trade union who is an official without prior consent of the trade union concerned.

### **180. Election of officials**

- (1) The election of officials of a trade union, employers' organisation or federation are conducted in accordance with its registered constitution.
- (2) The constitution of a trade union, employers' organisation or federation must:
  - (a) not contain a provision that discriminates unfairly between incumbents and other candidates in elections; and
  - (b) provide for the election, by secret ballot, of all officials at least once every five years.
- (3) Notice of the election of officials under this section or any other change in the officials or offices, must be given to the Registrar in the prescribed form within fourteen days of the completion of the election or such change.
- (4) No person who is not duly elected or appointed in accordance with the constitution of a trade union, employers' organisation or federation is permitted to act or purport to act as an official of a trade union, employers' organisation, or federation or of any branch.
- (5) Disputes arising from, or connected directly or indirectly to, elections held under this section may be referred to the Labour Court.
- (6) The Registrar may issue directions to a trade union, employers' organisation or federation to ensure that elections are conducted in accordance with this section and their respective constitutions.

### **181. Notification of officials**

A trade union, employers' organisation or federation must exhibit prominently:

- (a) in its registered office, a notice giving the names of all officials and their titles;
- (b) in every branch office the notice specified in paragraph (a) of this section and in addition, a notice giving the names and titles of the officials of the branch.

### **182. Duty of officials**

It is the duty of trade a union's, employers' organisation's or federation's officials to represent and protect the interests of their members without prejudice to the members' right to approach directly an authorized officer or a court.

## **Chapter 28: Funds and Other Property, Accounts and Returns**

### **183. Officials as trustees**

- (1) The constitution of a trade union, employer's organisation and federation must provide that:
  - (a) All the officials of the organization are entrusted with the protection, preservation and reasonable use or application of the organization and are deemed to be trustees for purposes of the organization's property;
  - (b) the officials are governed by any laws or regulations that relate to trustees and are subject to the same level of trust as if they had been appointed as trustees of the organisation's movable and immovable property.
- (2) Notwithstanding the provisions of subsection (1) and subject to **subsection (3)** of this section, members may designate or elect three members as specific trustees.
- (3) No person who has been convicted of a crime involving fraud or dishonesty is permitted to be a trustee.
- (4) Any person appointed as a trustee under this section must comply with the duties and responsibilities of a trustee provided for in any law or regulation governing trustees.
- (5) The property, whether movable or immovable, of a registered trade union, employers' organisation or federation vests in its trustees for the use and benefit of the organization and its members.
- (6) The Minister may, with the consent of the trade union, employers' organisation or federation concerned and by notice in the Gazette, authorize the transfer of specified property of that trade union, employer's organisation or federation to persons other than its trustees, or for public purposes, other than the use of the trade union, employer's organisation or federation and its members, which the Minister may prescribe.
- (7) Upon any change in the office of any trustee, the property of a registered trade union, employers' organisation or federation vests in the trustees for the time being of the organisation for the same estate and interest as the former trustee or trustees had in it, and subject to the same trusts, without any transfer, conveyance or assignment.

### **184. Payments by members**

- (1) A member of a trade union, employers' organization or federation may pay any dues, levies, subscriptions or other payments authorised by the respective constitution directly to the trade union, employers' organization or federation.
- (2) A trade union may, in the prescribed form, request the Minister to issue an order directing an employer of more than five employees belonging to the union to:

- (a) deduct trade union dues from the wages of its members; and
- (b) pay monies so deducted:
  - (i) into a specified account of the trade union; or
  - (ii) in specified proportions into specified accounts of a trade union and a federation of trade unions.
- (3) An employer in respect of whom the Minister has issued an order under subsection (2) must commence deducting the trade union dues from an employee's wages within thirty days of the trade union serving a notice in a prescribed form signed by the employees in respect of whom the employer is required to make a deduction.
- (4) The Minister may vary an order issued under this section on application by the trade union.
- (5) Any order issued under this section takes effect from the month following the month in which the notice is served on the employer.
- (6) An employer may not make any deduction from an employee who has notified the employer in writing that the employee has resigned from the trade union.
- (7) A notice of resignation referred to in subsection (6) takes effect from the month following the month in which it is given.
- (8) An employer must forward a copy of any notice of resignation he or she receives to the trade union.

### **185. Deductions from unionisable employees under a collective agreement**

No trade union is permitted to require an employee who is not a member to pay any dues to the trade union, or to give a notice to an employer of an employee who is not a member to deduct and remit any dues to the trade union only by reason of the fact that the person is unionisable and that the employee's position in employment is covered by a collective agreement negotiated between the trade union and the employer.

### **186. General provisions on deductions**

- (1) Any amount deducted in accordance with the provisions of this Part must be paid into the designated trade union account within ten days of the deduction being made.
- (2) The Minister may revoke or suspend a notice issued in accordance with **section 184** if the Minister has reason to believe that:
  - (a) the order was obtained by misrepresentation or fraud;
  - (b) the money is not being paid into the designated account; or
  - (c) the money is being used for a purpose other than the lawful trade union or federation activities.

- (3) Any amount deducted from the wages of a member of a trade union by the member's employer in accordance with this section discharges the liability of the member to pay trade union dues.
- (4) No employer is permitted to make a deduction from the wages of an employee for the purposes of making a payment to any trade union, except in accordance with the provisions of this Part.
- (5) A trade union must acknowledge receipt of any monies paid to it within fourteen days of receiving the money.
- (6) The employer must comply with the order made by the Minister and must pay the amounts into the designated account or accounts.
- (7) An employer or any person who contravenes the provisions of this section commits an offence.
- (8) The Minister may, in consultation with the representative workers and employers organisations, make regulations providing for the collection from employees and the payment to trade unions by employers of sums in respect of levies, subscriptions or payments, other than trade union dues, for particular purposes or objects.
- (9) An employers' organisation or federation may provide in its constitution for its members to:
  - (a) pay subscriptions or levies as a condition of their membership of the employers' organisation; and
  - (b) to charge its members a fee for services rendered to, and expenses incurred on behalf of, the member.

### **187. Application of funds**

Subject to its rules and the provisions of this Code, the following are the only purposes the funds of a trade union, employers' organisation or federation may be used for:

- (a) the payment of salaries, allowances and expenses to its officers or officials;
- (b) the payment of expenses for the administration of the trade union, employer's organisation or federation including auditing of its accounts;
- (c) the prosecution or defence of any legal proceedings to which the trade union, employers' organisation or federation or any member thereof is a party, when the prosecution or defence is undertaken for the purpose of securing or protecting its rights or the rights of any member in any matter concerning employment or the application of any employment law;
- (d) the conduct of trade disputes on its behalf or on behalf of a member;
- (e) the compensation of members for loss arising out of trade disputes;
- (f) the payment of allowances to members or their dependants on account of death, old age, sickness, accidents or unemployment of those members;

- (g) the payment of subscriptions and fees to any registered federation to which it is affiliated.

### **188. Prohibition of payment of fines or penalties**

40. The funds of a trade union, employers' organisation or federation must not be used, either directly or indirectly, to pay the whole or part of a fine or penalty imposed on a person by sentence or order of any court, except a fine or penalty imposed upon the union or federation under this Code or its regulations.

### **189. Misuse of money and other property**

The Labour Court may grant an injunction restraining unauthorized or unlawful expenditure of the funds of a trade union, employer's organisation or federation on application by the Registrar, or by three or more persons having a sufficient interest in the relief sought.

### **190. Rendering of accounts and power to require detailed accounts**

- (1) In this section, 'official' means every official responsible for the accounts of a trade union, employers' organisation or federation for collecting, disbursing, keeping in custody or controlling its funds or moneys.
- (2) Every official is required to render an accurate account of all moneys received or paid by the official:
  - (a) to the trade union, employers' organization or federation and its members:
    - (i) upon resigning or vacating office;
    - (ii) at least once in every year at such time as may be specified by the rules of the trade union, employer's organisation or federation; and
    - (iii) at any other time required by a resolution of the members of the trade union, employers' organisation or federation or by its rules.
  - (b) to the Registrar, when requested by the Registrar
  - (c) specifying:
    - (i) all amounts received or paid by the official since assuming office or, if the official has previously rendered an account, since the date of the last account;
    - (ii) the balance remaining in the possession of the official at the time of rendering the account; and
    - (iii) all bonds, securities or other property of the organisation entrusted to the custody of, or under the control of, the official.

- (3) The accounts must be audited by some qualified person or persons to be appointed by the organisation and a copy of the audited accounts submitted to the Registrar within thirty days.
- (4) Any official of a trade union, employer's organisation or federation or any person who:
  - (a) neglects or fails to comply with any of the provisions of this section or;
  - (b) willfully makes, orders, causes or procures to be made any false entry in or omission from an account rendered in terms of this section, commits an offence.

### **191. Inspection of accounts and records**

- (1) The accounts of a trade union, employers' organisation or federation and a list of its members must be open to inspection by:
  - (a) an official or member of the organisation at such times as may be specified in its constitution; and
  - (b) by the Registrar, or any person authorized in writing by the Registrar, at any reasonable time.
- (2) It is an offence for any person to obstruct or impede the Registrar, or any person authorized by the Registrar, from inspecting the accounts of the organisation.
- (3) The Registrar may, at any time, call upon the an official of a trade union, employers' organization or federation to render detailed accounts of its funds or the funds of any branch for any period, in the manner and containing such information as the Registrar may require.
- (4) It is an offence for a person to fail to comply with a request made by the Registrar under subsection (3).

### **192. Misuse of property**

- (1) The Labour Court may:
  - (a) order any person who has in his or her possession or control any property of a trade union, employers' organisation or federation in violation of its rules or who has unlawfully expended or withheld its moneys, to deliver that property or pay that money to its trustees; and
  - (b) suspend any official who contravenes paragraph (a).
- (2) A complaint under this section may be brought by:
  - (a) the Registrar; or
  - (b) a member of a trade union, employer's organisation or federation.

### **193. Annual returns**

- (1) The authorised representative of a registered trade union, employers' organisation, or federation is required to submit annually by a prescribed date to the Registrar:
  - (a) A general statement of all receipts and expenditure during the year ending 31<sup>st</sup> December of the preceding year, including:
    - (i) all sums of money received by way of donations or grants from any sources;
    - (ii) a list of assistance received from any sources; and
    - (iii) a list of the assets and liabilities as at 31<sup>st</sup> December.
  - (b) a copy of the auditor's report prepared in such form and containing such particulars as may be prescribed;
  - (c) an inventory of the assets;
  - (d) a copy of the rules in force, including all alterations and amendments to the rules, and of all new rules; and
  - (e) a list of all changes of officials during the preceding year.
- (2) Every member of a trade union, employers' organisation or federation is entitled to receive, free of charge on request, a copy of the general statement referred to in subsection (1).
- (3) It is an offence for any authorised representative of any trade union, employers' organization or federation to:
  - (a) fail to comply with any of the requirements of this section; or
  - (b) willfully make or order, or cause or procure to be made a false entry in any of the documents submitted to the Registrar in terms of this section.

## Chapter 29: Recognition of Trade Unions

### 194. Recognition

- (1) An employer, including an employer in the public sector, must recognise a trade union for purposes of collective bargaining if that trade union is duly registered.
- (2) A group of employers, or an employers' organisation, including an organisation of employers in the public sector, must recognise a trade union for the purposes of collective bargaining if the trade union represents a simple majority of unionisable employees employed by the group of employers or the employers who are members of the employers' organisation.
- (3) Where there is no trade union representing a simple majority of the workers, trade unions representing members must be given the possibility to negotiate, jointly or separately, at least on behalf of their own members.
- (4) An employer, a group of employers or an employer's organisation referred to in subsection (2) and a trade union or trade unions under subsection (3) of this section are

required to conclude a written recognition agreement recording the terms upon which the employer or employers' organization recognises a trade union or trade unions.

- (5) If there is a dispute as to the right of a trade union to be recognised for the purposes of collective bargaining in accordance with this section or the cancellation of recognition agreement, either may refer the dispute to the Labour Court under a certificate of urgency.
- (6) Apart from any other matter which may be in it, a recognition agreement must provide for trade union members in a workplace to elect from among themselves trade union representatives in accordance with the constitution of the trade union.
- (7) A trade union representative elected under **subsection (6)** is entitled to:
  - (a) represent members in grievance and disciplinary hearings at the workplace; and
  - (b) perform any other functions specified in the recognition agreement or constitution of the trade union.
- (8) Apart from any other matter which may be in it, a recognition agreement must provide for an employer to grant a trade union reasonable access to the employers' premises for officials or authorised representatives of the trade union to pursue the lawful activities of the trade union, including:
  - (a) recruiting members for the trade union;
  - (b) holding meetings with members of the trade union and other employees outside of working hours;
  - (c) representing members of the trade unions in dealings with the employer; and
  - (d) conducting ballots in accordance with the constitution of the trade union.
- (9) An employer may:
  - (a) impose reasonable conditions as to the time and place of any rights granted in this section to avoid undue disruption of operations or in the interest of safety; and
  - (b) require officials or trade union representatives requesting access to provide proof of their identity and credentials.
- (10) Any dispute concerning the granting of access, or the conditions upon which access is to be granted, may be referred to the Labour Court under a certificate of urgency.

## Chapter 30: Collective Agreements

### 195. Parties to and subject

- (1) For purposes of this Part, a collective agreement is an agreement relating to terms and conditions of work concluded between the representatives of one or more trade unions, on the one hand, and the representatives of one or more employers, on the other hand.



- (2) A collective agreement must be in writing and be signed by:
- (a) the chief executive officer of any employer, the chief executive or national secretary of an employers' organisation that is a party to the agreement or a representative designated by that person; and
  - (b) the general secretary of any trade union that is a party to the agreement or a representative designated by the general secretary.

### **196. Procedure for drawing up**

- (1) A collective labour agreement must be based on democratic principles and be discussed freely between the parties to the collective bargaining, which can be an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other. .
- (2) The contents of an agreement must take into account the State's social policy.
- (3) The collective labour agreement is to be drawn up in the form of a written instrument and a copy each must be submitted to the Registrar of Trade Unions and Employers' Organisations and the Federal Labour Commission.
- (4) For the purpose of conducting negotiations for a collective agreement, an employer is required to disclose to a trade union all relevant information that will allow the trade union to effectively negotiate on behalf of employees, which information must be treated as confidential and must not be disclosed by any person to a person who is not engaged in the negotiations.
- (5) Any dispute regarding what information is required to be disclosed in accordance with the provisions of this section, is to be referred, in writing, by either party, to the Federal Alternative Dispute Resolution Commission for conciliation, and if it remains unresolved, to the Labour Court under a certificate of urgency.

### **197. Contents**

Subject to the provisions of this Code or regulations made under it, a collective agreement must specify the following, besides any other matters agreed on by the parties:

- (a) the parties to the agreement;
- (b) the category of employees to which it relates;
- (c) the period it covers;
- (d) the procedure for conciliation or arbitration in case of disputes, and
- (e) the procedure by, and conditions on, which it may be terminated, renewed or revised.

### **198. Registration**

- (1) Every collective agreement must be submitted to the Labour Court for registration within fourteen days of its conclusion.
- (2) It is the duty of the employer or employer's organization which is party to an agreement to submit it to the Labour Court for registration.
- (3) If an employer or employers' organization fails to submit the collective agreement to the Labour Court as specified in subsections (1) and (2), the trade union may submit it.
- (4) The Labour Court may review the agreement to confirm that it is in accordance with the provisions of this Code or any other relevant law, and that it is adequate in form.
- (5) The Labour Court must register the agreement within fourteen days once it certifies that the agreement fulfills the legal and procedural requirements.
- (6) Where the Labour Court determines that the agreement does not meet the requirements, it must notify the parties, within the fourteen days, of the matters that need to be rectified and require the parties to respond within fourteen days, upon which the Labour Court must proceed in terms of subsection (5) or this subsection, as the case may be.

### **199. Legal effect**

- (1) A collective agreement binds, for the period of the agreement:
  - (a) the parties to the agreement;
  - (b) all trade union members employed by the employer, group of employers or members of the employers' organisation party to the agreement; or
  - (c) the employers who are or become members of an employers' organisation which is party to the agreement, to the extent that the agreement relates to their employees.
- (2) The terms of the collective agreement are deemed to be incorporated into the contract of employment of every employee covered by the collective agreement.
- (3) A collective agreement becomes:
  - (a) enforceable and is implemented upon registration by the Labour Court, and
  - (b) effective from the date agreed upon by the parties.

### **200. More favourable provisions**

A collective agreement may contain provisions that are more favourable to the employees than those of this Code and regulations made under it or any other law but must not conflict with any mandatory provisions.

### **201. Exemption from stamp duties and registration fees**

A collective agreement is exempted from all stamp duties and registration fees.

## **202. Territorial coverage and period of validity**

- (1) A collective labour agreement:
  - (a) may be concluded on a national, regional, district or local basis, or at factory, plant or firm level;
  - (b) must stipulate the period of its validity which must not exceed three years and must not be less than one year;
  - (c) remains in force throughout the period of its validity, except in the case of a substantial change in the situation which has a direct bearing on the execution of the agreement.
- (2) Where such an agreement is not repudiated by either party on the date of its expiry, it shall be deemed to have been renewed for a period equal to that for which it was originally made.
- (3) Notice of repudiation must be given at least three months before the date of expiry of the agreement.

## **203. Subsequent participation**

Any trade union or any employer not associated in the making of a collective labour agreement may subsequently become a party to it.

## **204. Application**

- (1) For the avoidance of doubt, the terms and conditions of work contained in a collective agreement apply to all employees concerned, whether they are members of the trade union or not, to the extent that it contains more favourable terms and conditions.
- (2) Where an employer carries on various independent types of business, the collective agreement governing the individual types of business apply to the employment relationships concerned.
- (3) Individual contracts of employment must not conflict with collective agreements except in the case of clauses containing stipulations more favourable to the employees.

## **205. Termination**

Subject to the provisions of this Code, a collective agreement may be terminated:

- (a) by mutual consent of the parties or for reasons agreed to in the agreement itself, the labour department to be notified in each case by the parties; or
- (b) by being superseded by a subsequent agreement
- (c) by fortuitous circumstances or force majeure, with the approval of the Labour Court.

## **206. Supplementary labour agreements**

With the object of adapting the provisions of collective agreements to the special conditions of an undertaking, supplementary agreements may be drawn up between the employer and the trade union concerned.

### **207. Employment relationships not subject to collective regulation**

Public servants engaged in the administration of the State are excluded from the provisions of this part subject to the State making specific arrangements for collective bargaining in relation to this category of public servants.

### **208. Alternative dispute resolution**

- (1) An employer, group of employers or employers' organisation and a trade union may conclude a collective agreement providing for:
  - (a) the conciliation of any category of trade disputes identified in the collective agreement by an independent and impartial conciliator appointed by agreement between the parties; and
  - (b) the arbitration of any category of trade disputes identified in the collective agreement by an independent and impartial arbitrator appointed by the agreement between the parties.
- (2) A party that has referred a dispute to conciliation in terms of an agreement contemplated in subsection (1) is not required to refer it to the Federal Alternative Dispute Resolution Commission for conciliation, but may seek the Commission's assistance in identifying a suitable conciliator.
- (3) An award in an arbitration in terms of a collective agreement contemplated in subsection (1) is final and binding and:
  - (a) is subject to appeal on points of law to the Labour Court;
  - (b) may be set aside by the Labour Court on any ground recognised in law; or
  - (c) may be enforced by the Labour Court.
- (4) An application to review an arbitration award must be made to the Labour Court within thirty days of the award.

## **PART VIII: DISPUTE RESOLUTION**

### **Chapter 31: Federal Alternative Dispute Resolution Commission**

#### **209. Establishment**

- (1) There is hereby established the Federal Alternative Dispute Resolution Commission.
- (2) The Federal Alternative Dispute Resolution Commission:
  - (a) is an autonomous body;
  - (b) with a capacity to act independently without control or influence from any other authority, with independent personnel and a designated budgetary allocation.

#### **210. Composition and appointment**

- (1) The Federal Alternative Dispute Resolution Commission is composed of nine persons as follows:
  - (a) two persons nominated by the most representative employers' organisation or federation;
  - (b) two persons nominated by the most representative trade union or federation of trade unions;
  - (c) two persons nominated by the government, and
  - (d) three independent persons competitively selected and appointed by a panel constituted and chaired by the Labour Court.
- (2) In all cases, the nominees must be chosen from among persons with demonstrable knowledge and capacity in alternative dispute resolution (from this point referred to as 'ADR').
- (3) The names of the nominees must be submitted to, and subject to the approval of, the National Assembly.
- (4) The nominees are, once approved by the National Assembly, appointed by the President.
- (5) Once appointed, the members must act independently and professionally, and must not represent the interests of the nominating body as they carry out the Commission's mandate.
- (6) The members of the Commission must elect the chair from among themselves in the first formal sitting of the Commission, which shall be convened by the Chief Judge of the Labour Court.

- (7) The Commission must appoint a chief executive officer who is an *ex-officio* member of, and Secretary to, the Commission.
- (8) The Commission must make regulations for its internal management.

## **211. Powers and functions**

The powers and functions of the Commission include:

- (a) to develop policy and legislative frameworks for the application of ADR in disputes arising from labour relations;
- (b) to oversee all ADR processes in labour disputes;
- (c) to establish committees of the commission to oversee the various ADR mechanisms;
- (d) to participate in ADR;
- (e) to establish third party panels of qualified persons to engage in ADR, including panels of:
  - (i) conciliators
  - (ii) mediators
  - (iii) arbitrators
  - (iv) investigators
  - (v) evaluators
- (f) to determine, in consultation with the parties, the most appropriate ADR to be adopted in dealing with specific labour disputes;
- (g) to provide a pool of potential conciliators and committee of inquiry members for the Minister, or, in the alternative, to act on behalf of the Minister in respect of appointment and oversight of conciliators and members of committees of inquiry, and to provide the Minister with reports of resolution of the relevant disputes;
- (h) to liaise with the Labour Court in order to develop court-connected ADR and referral systems;
- (i) to receive and implement or facilitate the implementation of all reports from ADR processes;
- (j) to liaise with all ADR stakeholders and form a consultative forum to bring them together;
- (k) to train and manage all ADR personnel;
- (l) to provide periodic reports to parliament.

## **212. Authorised officers as dispute resolution officers**

It is the duty of the Commission to train, or facilitate the training of, authorized officers in ADR and to establish mechanisms for such officers to be incorporated and participate in resolving labour disputes through ADR.

## **213. Laws and regulations**

The Commission is required propose other laws and make regulations dealing with ADR, including with regard to:

- (a) its status and internal organization and administration;
- (b) its powers and functions and how they are exercised or performed;
- (c) its relationship with authorized officers, and employees' and employers' organisations and state bodies;
- (d) its relationship with external ADR practitioners;
- (e) popularizing, and encouraging disputants to use, ADR;
- (f) procedures for establishing ADR panels and selecting panel members;
- (g) ADR mechanisms and procedures; and
- (h) reporting of ADR processes and implementation of ADR reports, decisions and recommendation

## **Chapter 32: Committee of Inquiry**

### **214. Appointment and functions**

- (1) The Minister, may by notice in the Gazette, appoint a Committee of Inquiry to inquire into any matter which appears to the Minister to be connected with or relevant to any trade dispute or to trade disputes in general, or to trade disputes of any type or class, whether or not any such dispute has been reported to the Minister under this Code.
- (2) Where the Minister has referred any matter to the Committee of Inquiry under subsection (1), the Minister may refer to the Committee of Inquiry any other matter which in his or her opinion ought to be so referred.
- (3) A Committee of Inquiry consists of three or more persons, including a chairman, as the Minister deems fit to appoint and the Minister may appoint a public officer to be the secretary of the Committee of Inquiry.
- (4) A Committee of Inquiry consisting of three or more persons may act notwithstanding any vacancy in their number.

### **215. Reports**

A Committee of Inquiry must inquire into and report on any matter referred to it and submit a report on the matter to the Minister, with recommendations as appropriate, whereupon the Minister determines how to use the report to address the matter.

## **Chapter 33: Labour Court**

### **216. Establishment**

There is established the Labour Court with all the powers and rights set out in this Code or any other law, for the furtherance, securing and maintenance of good industrial or labour relations and employment conditions in the Republic.

### **217. Divisions**

The Labour Court may establish such divisions as it may deem necessary to deal with specific categories of labour disputes.

### **218. Composition, appointment and tenure of office**

- (1) The Labour Court consists of:
  - (a) a Chief Judge;
  - (b) as many judges as the President, acting on the advice of the body for the time being responsible for appointment of judicial officers, may consider necessary; and
  - (c) members of the Labour Court appointed in accordance with this section.
- (2) The Labour Court is constituted by a Judge sitting with two members of the Labour Court.
- (3) A person is not eligible to hold office as the Chief Judge of the Labour Court unless the person:
  - (a) is an advocate of not less than ten years standing, which, for the avoidance of doubt, includes working with the law in capacities other than as a practicing advocate; and
  - (b) has considerable knowledge and experience in the law and practice of industrial relations and employment conditions.
- (4) A person is not eligible to hold the office of a judge of the Labour Court unless the person:
  - (a) is an advocate of not less than seven years standing which, for the avoidance of doubt, includes working with the law in capacities other than as a practicing advocate; and
  - (b) has considerable knowledge and experience in the law and practice of industrial relations and employment conditions.
- (5) A judge of the Labour Court holds office until the judge:
  - (a) retires;
  - (b) resigns from office;
  - (c) is removed from office by operation of the law; or
  - (d) dies.



- (6) The members of the Labour Court are appointed and their appointment revoked for good cause, by the Minister in consultation with the Federal Labour Commission.
- (7) The members are appointed for a term of not more than three years and are eligible for re-appointment for a further term of three years.
- (8) The Minister, in consultation with the Minister for Finance, determines the remuneration of members of the Labour Court.

## **219. Assessors to assist the Labour Court**

- (1) Whenever it appears to be expedient to do so because of the nature of a trade dispute, a judge may, after consulting the parties to a dispute, appoint two assessors to assist in the determination of any trade dispute before that judge.
- (2) An assessor appointed under subsection (1) must have expertise in the subject matter of the dispute.
- (3) Of the two assessors appointed under this section, one assessor must be appointed from a list submitted by the trade union parties to the dispute and the other from a list submitted by the employer parties to the dispute.

## **220. Officers of the Labour Court**

Subject to the laws governing appointments to the public service, the Minister is required to, in consultation with the Chief Judge of the Labour Court, appoint the following officers of the Labour Court to perform the administrative functions of the Labour Court:

- (a) a Registrar of the Labour Court who must be a person with experience and expertise in labour law and administration; and
- (b) one or more Deputy Registrars of the Labour Court and as many other officers of the Labour Court as the administration of justice requires.

## **221. Jurisdiction and powers**

- (1) The Labour Court has exclusive jurisdiction to hear, determine and grant any appropriate relief in respect of:
  - (a) an application, claim or complaint or infringement of any of the provisions of this Code or any other legislation which extends jurisdiction to the Labour Court, or
  - (b) any matter which may arise at common law between:
    - (i) an employer and employee in the course of employment;
    - (ii) an employee or employer's organisation and a trade union, or
    - (iii) a trade union, an employer's organisation, a federation and a member of the organisation.

- (c) an application, claim or complaint by or against an employee, an employer, a trade union, an employer's organisation, a federation, the Federal Labour Commissioner or the Minister
  - (d) any matter that relates to labour or industrial relations.
- (2) In the discharge of its functions under this Code, the Labour Court has the powers to grant injunctive relief, prohibition, declaratory order, award of damages, specific performance or reinstatement of an employee or any other order it deems necessary which will promote the purpose and objects of this Code.
  - (3) A certificate signed by the Registrar of the Labour Court is conclusive evidence of the existence of the decision or order of the Court.
  - (4) Any matter of law arising from a decision at a sitting of the Labour Court and any question as to whether a matter for decision is a matter of law or a matter of fact is decided by the presiding judge of the Labour Court provided that on all other issues, the decision of the majority of the members is deemed the decision of the Labour Court.
  - (5) The Labour Court may make an order for payment of costs, according to the requirements of the law and fairness and in so doing, the Labour Court may take into account the fact that a party acted frivolously, vexatiously or with deliberate delay during conciliation proceedings and in bringing or defending a matter before it.
  - (6) The Labour Court may refuse to determine any dispute before it, other than an appeal or review, if the Labour Court is not satisfied that an attempt has been made to resolve the dispute through conciliation or other ADR.
  - (7) A certificate issued by a conciliator or any other person conducting ADR stating that a dispute remains unresolved after conciliation or other ADR is sufficient proof that an attempt has been made to resolve that dispute through conciliation or that other ADR.
    - (a) The Labour Court may review the performance or purported performance of any function provided for in any written law or any act or omission of any person or body in terms of any written law on any grounds that are permissible;
    - (b) review any decision taken or any act performed by the State in its capacity as employer on such grounds as are permissible in law; or
    - (c) order reinstatement or re-engagement of, or payment of compensation to, an employee whose contract of employment has been wrongly or unfairly terminated;
    - (d) review its own orders, stay proceedings, or obtain evidence and summon witnesses;
    - (e) deal with all matters necessary or incidental to performing its functions in accordance with this Code or any other law.

## **222. Rules**

The Chief Justice of the Republic has the duty to, in consultation with the Chief Judge of the Labour Court, facilitate the making of rules to govern the exercise of powers, the performance of functions and the exercise of the jurisdiction of the Labour Court.

## **223. Proceedings**

The proceedings of the Labour Court are carried out in open court, but the Court has power to exclude members of the public where it is in the interests of justice to do so in a particular case.

## **224. Representation**

In any proceedings before the Labour Court, a party to the proceedings may act in person or be represented by a legal practitioner, an office bearer or official of that party's trade union or employers' organisation and, if the party is a juristic person, by a director or an employee.

## **225. Appeals**

- (1) Any party to any proceeding before the Labour Court may appeal to the **Federal Court of Appeal** against any final judgment, award or order of the Labour Court.
- (2) Appeals from a judgment, award, or decision of the Labour Court only lie on matters of law.

## **226. Enforcement of orders**

An order of the Labour Court made under this Code is executed by the Court or order of the Court in accordance with rules made under this Code.

## **227. Designation of other courts as 'Labour Courts'**

- (1) The Chief Justice has power, in consultation with the Chief Judge of the Labour Court, to designate specific magistrates courts as Labour Courts.
- (2) The parts of this Code on the Labour Court apply to such designated magistrates courts as appropriate.

## **Chapter 34: Settlement of Labour Disputes**

### **228. Individual labour disputes**

- (1) An individual labour dispute is submitted by any of the parties to the authorised officer for conciliation, who attempts to settle the dispute within 14 days of its submission.

- (2) If any of the parties is not satisfied with the decision of the officer, it may, within 14 days from the date of the notification of the decision, refer the dispute to the Federal Alternative Dispute Resolution Commission, which must attempt to use its mechanisms to settle the dispute within 14 days of its submission.
- (3) If any of the parties is not satisfied with the decision of the Federal Alternative Dispute Resolution Commission, it may, within 14 days from the date of notification of the decision, refer the dispute to the Labour Court.

### **229. Collective labour disputes**

- (1) Collective labour disputes are referred, in the first instance, to the Federal Alternative Dispute Resolution Commission, which must attempt to use its mechanisms to settle the dispute within 14 days of its submission.
- (2) If any of the parties is not satisfied with the decision of the Federal Alternative Dispute Resolution Commission, it may, within 14 days from the date of notification of the decision, refer the dispute to the Labour Court.

### **230. Appeals from decisions of the Labour Court**

- (1) Appeals from the decisions of the Labour Court are referred to the **Federal Court of Appeal**.
- (2) The Supreme Court has the ultimate jurisdiction over appeals relating to the constitutionality of any decision which touch on fundamental rights.

### **231. The right to strike and lockouts**

- (1) The right to strike is exercised in accordance with the regulations made hereunder.
- (2) The right to strike is a fundamental right and is, under this Code, enjoyed by workers and their organizations, whether trade unions or federations of trade unions.
- (3) Workers in the public and the private sectors have an equal right to strike, except:
  - (a) members of the armed and police forces;
  - (b) public servants who exercise authority in the name of the State, and
  - (c) workers employed in essential services which, in this Code, means services the interruption of which could endanger the life, safety or health of the whole or part of the population, or services necessary in situations of acute national crisis.
- (4) The right to strike must, however, be exercised in a peaceful manner.
- (5) No person is permitted to take part in a strike or engage in any conduct in contemplation of a strike if:
  - (a) any law, court award or a collective agreement or recognition agreement binding on that person prohibits a strike in respect of the issue in dispute;

- (b) the subject matter of the strike is regulated by a collective agreement or recognition agreement binding on the parties to the dispute;
  - (c) the parties have agreed to refer the trade dispute to the Labour Court or to arbitration;
  - (d) in the case of a dispute concerning the recognition of a trade union, the trade union has referred the matter to the Labour Court;
  - (e) the trade dispute has not been referred for conciliation under this Code, or any provisions of a collective agreement providing for conciliation;
  - (f) the employer and employees are engaged in an essential service;
  - (g) the strike is not in furtherance of a trade dispute, or is of a purely political nature, other than those which seek a solution to major issues in economic and social policy.
- (6) Any trade union or body of workers which intends to engage in strike action must give notice of fourteen days of that intention to the employer or group of employers, and the Minister.
- (7) The notice must indicate:
- (a) the issues that form the basis of the intended strike;
  - (b) the employer or group of employers in respect of whom the issues arise;
  - (c) the date on which, if the issues giving rise to the notice are not resolved, the strike will take commence;
  - (d) the fact that attempts have been made to resolve the issues through conciliation or other voluntary ADR mechanisms and that these attempts have not been successful, and
  - (e) the fact that a simple majority of the workers affected have, by secret ballot, decided on strike action.
- (8) Sympathy strikes are prohibited, except those which are in support of a strike which is itself lawful.
- (9) Workers have a right to picket in a manner that is peaceful, does not involve criminal conduct and does not interfere with the freedom to work of those who do not participate in the strike.
- (10) The Minister is empowered to determine which specific services are essential but must, in exercising this power, act in consultation with organisations of workers and employers.
- (11) The Minister is empowered to impose a minimum safety service in any case of strike action when such minimum services are intended to ensure the safety of persons, the prevention of accidents and the safety of machinery and equipment.
- (12) The Minister is empowered to establish a minimum operational service in an undertaking or undertakings or institution or institutions affected by a strike in public utility services and in public services of fundamental importance.

- (13) The Minister must ensure that organisations of workers and employers and the relevant public authorities participate in determining the necessary minimum safety, and the minimum operational, service.
- (14) An employer is prohibited from hiring other workers to replace striking workers except in respect of a strike in an essential service or under circumstances of utmost gravity and in situations of acute national crisis.
- (15) It is unlawful for an employer to dismiss, take disciplinary action against, or in any other way limit the rights of, trade union officials and workers for organizing or participating in, or for any conduct in contemplation or furtherance of, a lawful strike.
- (16) Civil proceedings may not be instituted against any person for participating in, or for any conduct in furtherance of, a lawful strike.
- (17) An employee who takes part in, calls, instigates or incites others to take part in a strike that is not in compliance with this Code is deemed to have breached his or her contract and:
  - (a) is liable to disciplinary action; and
  - (b) is not entitled to any payment or any other benefit under this Code during the period the employee participated in the strike.
- (18) Any person who refuses to take part or to continue to take part in any unlawful strike may not be:
  - (a) expelled from any trade union or other body or deprived of any right or benefit as a result of that refusal; or
  - (b) placed under any disability or disadvantaged, compared to other members or the trade union, or other body, as a result of that refusal.
- (19) Where workers engage in an unlawful strike, the employer is entitled to effect wage deductions for the days of the strike.
- (20) Any issue concerning whether any strike or threatened strike complies with this Code may be referred to the Labour Court.
- (21) Lookouts are hereby prohibited.

## **PART IX: MISCELLANEOUS**

### **Chapter 35: Penalties**

#### **232. Obstruction to authorized officers**

Any person who willfully obstructs an authorized officer in the performance of his or her official duties, is guilty of an offence punishable with imprisonment for a term not exceeding one year or with a fine not less than \*\*\* Somali shillings and not more than \*\*\* Somali shillings or with both such imprisonment and fine.

#### **233. Other contraventions**

Any person who contravenes the provisions of this Code or regulations made under it for which no penalty is specifically provided has committed an offence and, if convicted, is liable to imprisonment for a term not exceeding six months or with a fine not less than \*\*\*Somali shillings and not more than \*\*\* Somali shillings or with both such imprisonment and fine.

#### **234. Repetition of offence**

If an offence under this Code is repeated, the penalty provided herein may be doubled.

### **Chapter 36: Regulations and Repeal**

#### **235. Regulations**

The Minister may make regulations for the proper implementation of this Code.

#### **236. Repeal**

The Labour Code of the Republic of Somalia, 2012, is hereby repealed.